

The applicable section of the Freedom of Information and Protection of Privacy Act on which the Commission relies in undertaking this blocking out exercise is:

Section 21 (3):

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information:

(a) was compiled and identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or continue the investigation.

Further, the Commission as a law enforcement agency does not disclose records relating to an investigation that is ongoing.

The applicable subsections of the Freedom of Information and Protection of Privacy Act on which the Commission relies are:

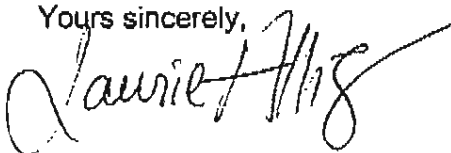
Section 14 (1):

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Should you have any questions or require any clarification, please do not hesitate to contact me.

Yours sincerely,




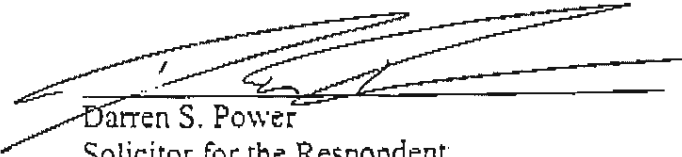
Laurie Allison
Clerk
File No: JWIS-5JUR74
[Enc: Respondent's Reply]

Schedule "A"

1. This response to the complaint of Ms. Candace C. Deane is submitted on behalf of the Respondent City of Ottawa.
2. The Respondent submits that through its Employment and Financial Assistance Branch ("EFA"), it acts as a delivery agent designated by the Ministry of Community, Family and Children's Services (the "Ministry") to administer the *Ontario Works Act, 1997* (the "Act") and provide assistance in the determined geographic area.
3. The Act, along with *Ontario Regulation 134/98*, as amended, prescribes who is eligible for assistance, the obligations of people in receipt of assistance, the application process for people seeking assistance, the responsibilities of recipients and their dependants while receiving assistance, the amount of financial assistance and the method of calculation, the amount and types of income and assets that are to be considered to determine whether a person is eligible, and the reasons for which assistance can be refused, cancelled or reduced by the administrator, among other things.
4. In accordance with section 74(1) of the Act, the Lieutenant Governor in Council has the authority to make regulations respecting the determination of budgetary requirements, income and assets and the maximum value of assets permitted. Additionally, the Lieutenant Governor in Council may make regulations respecting the determination of the amount of assistance to be provided and the time and manner of providing it, including who is eligible to receive the assistance and how to determine what portion of the assistance is provided with respect to each person.
5. In accordance with section 74(2) of the Act, the Minister has the authority to make regulations prescribing the standards a delivery agent is to meet in carrying out its functions and the procedures and practices to be followed by the delivery agent. The Minister also has the authority to make regulations prescribing policy statements that shall be applied in the interpretation and application of the Act and its regulations.
6. As a delivery agent, the Respondent is required to meet the prescribed standards in the performance of its functions and follow the prescribed procedures and practices. Additionally, the Respondent is required to follow the prescribed regulations and policy statements.
7. The Respondent submits that its decisions must be made and resources directed to participants based on the Act, Regulations and Policy Directives. Failure to do so can result in penalties against the Respondent as it is accountable to the Ministry for adhering to same.

8. In accordance with Administrative Directive 48.0, the Respondent does not have the authority to increase or decrease the budgetary requirements set out in *Ontario Regulation 134/98*.
9. In accordance with the Act and its Regulations, the Ministry is solely authorized to determine the cost of assistance and set the delivery standards.
10. The Respondent submits that it is not required to deliver social assistance programs outside of the Ontario Works program.
11. The Respondent denies that it has discriminated against the Complainant in any manner whatsoever.
12. The Respondent submits that it has at all times acted in compliance with its rights and obligations as a delivery agent, and in accordance with the Ontario *Human Rights Code*.
13. The Respondent respectfully submits that, based on the above, it has been named as a Respondent without sufficient grounds. Accordingly, the Respondent submits that the Commission should exercise its discretion pursuant to Section 34 of the Code and not deal with the complaint as against the Respondent City of Ottawa.
14. The Respondent requests that the complaint herein be dismissed, or, in the alternative, that no remedy be directed as against the Respondent.

Dated at Ottawa this 14th day of March, 2003.



Darren S. Power
Solicitor for the Respondent

**Ontario Human
Rights Commission
Inquiry and Intake Office**

180 Dundas St. West, 7th Floor
Toronto, ON M7A 2R9

**Commission ontarienne des droits
de la personne
Accueil et renseignements
généraux**

180, rue Dundas ouest 7^e étage
Toronto (ON) M7A 2R9

**Tel/Tél: 1-800-387-9080
1-416-326-9511
Fax/Télécopieur: 1-416-326-9520
www.ohrc.on.ca**



VIA PRIORITY POST

Direct Line:

**Services are provided in both English and French
nos services sont offerts en français et en
anglais**

**Personal and Confidential
Please Quote Our File No. on All Correspondence**

March 20, 2003

Ms. Mary Truemner
Advocacy Centre for Tenants Ontario
425 Adelaide Street West
5Th Floor
Toronto, Ontario
M5V 3C1

Dear Ms. Truemner:

**Re: [REDACTED]
And
The Administrator of Ontario Works of the County of Lanark
File No: JWIS-5JUQRG**

Please find enclosed a copy of the Respondents' response to your complaint. Once you have reviewed the response, please provide a detailed rebuttal in **writing** by **April 4, 2003**. Please also provide all relevant documentation which you have not already submitted.

In providing you with a copy of the respondent's response to your human rights complaint, you will see that the Commission has blocked out the names of any witnesses on which the respondent wishes to rely in responding to your complaint.

Please be advised that, pursuant to the Freedom of Information and Protection of Privacy Act (FIPPA), the Commission is responsible for protecting the privacy of individuals and therefore, the Commission is required to block out personal information from the Respondent's response.

The applicable section of the Freedom of Information and Protection of Privacy Act on which the Commission relies in undertaking this blocking out exercise is:

Section 21 (3):

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information:

- (a) was compiled and identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or continue the investigation.

Further, the Commission as a law enforcement agency does not disclose records relating to an investigation that is ongoing.

The applicable subsections of the Freedom of Information and Protection of Privacy Act on which the Commission relies are:

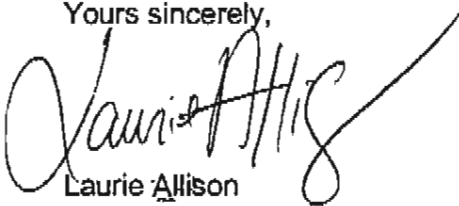
Section 14 (1):

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Should you have any questions or require any clarification, please do not hesitate to contact me.

Yours sincerely,



Laurie Allison
Clerk
File No: JWIS-5JUQRG
[Enc: Respondent's Reply]

FACSIMILE

TORONTO LONDON KINGSTON WATERLOO OTTAWA

STRICTLY CONFIDENTIAL



DATE Monday, March 17, 2003

TO Name: JENNIFER WIENS
Company: ONTARIO HUMAN RIGHTS COMMISSION
Fax: 1-416-326-9520 - Toronto

Hicks Morley Hamilton Stewart Stone LLP
366 King Street East, Suite 310
Kingston, Ontario K7K 6Y3
Tel: 613.549.6353
Fax: 613.549.4068
www.hicksmorley.com

FROM Name: SOPHIA DUGUAY
Direct: 613.549.6353
File No: 3962-19 County of Lanark
re: Sinclair - Human Rights Complaint

Number of sheets being transmitted including this page: 3



CONFIDENTIAL NOTICE: The information in this fax transmission is legally privileged and confidential. It is intended only for use of the addressee named above. If you are not the intended addressee, any disclosure, copying, or distribution of the information, or the taking of action in reliance on it, is strictly prohibited. If you have received this fax in error, please advise immediately, by collect call or fax transmission, to arrange for the return of the faxed information. Thank you for your cooperation.

Sealing Dugway
403 222-1111

30303210 LONDON KINGSTON WATERLOO WINDSOR

File No. 3962-19
March 17, 2003



**BY FAX
STRICTLY PRIVILEGED & CONFIDENTIAL**

Hicks Morley Hamilton Stewart Storie LLP
366 King Street East, Suite 310
Kingston, Ontario K7K 6V3
Tel: 613-549-6353
Fax: 613-549-4068
www.hicksmorley.com

Ms. Jennifer Wiens
Intake Officer
Ontario Human Rights Commission
Inquiry and Intake Office
180 Dundas Street West
7th Floor
Toronto, ON M7A 2R9

Dear Ms. Wiens:

Re: Co [REDACTED] nclair
Ms. Patricia Sinclair and The Administrator of
Ontario Works of the County of Lanark
File No: JWIS-5JUQRG

We have been retained to act on behalf of the Administrator of Ontario Works of the County of Lanark (hereinafter "the County") in the [REDACTED] your correspondence dated February 24, 2003 and the complaint of Patricia Alice Sinclair have been turned over to the writer for reply.

The County requests that the Commission exercise its discretion and decide not to deal with the complaint pursuant to section 34(1)(b) and/or (c) of the *Human Rights Code* on the basis that the complaint is not within the jurisdiction of the Commission and/or the complaint is trivial, frivolous, vexatious or made in bad faith.

In support of this position, the County submits as follows:

In order to fall within the jurisdiction of the Commission, a complaint must allege a proper ground of discrimination in respect of which the Complainant has received unequal treatment. Furthermore, the basis underlying the allegation must, if true, establish a violation of the Code.

The Complainant alleges discrimination on the ground of receipt of social assistance, sex, marital and family status with respect to the occupancy of accommodation. However, the Complainant does not allege that she has been denied accommodation by the Respondent County as a result of any of these grounds. In fact, her complaint states that she rents and occupies a three bedroom semi-detached house in the Village of Lanark. It is clear that, despite the framing of the allegations, the substance of the complaint is that the amount of

Page 2

social assistance provided to the Complainant is not sufficient. This complaint does not constitute an allegation of unequal treatment as a result of a prohibited ground.

The respondent County is a government institution which provides social assistance to the Complainant in accordance with the *Ontario Works Act, 1997*, and its Regulations. The County is not a landlord who provides accommodation or rental housing, and therefore is not properly named as a respondent in a complaint with respect to occupancy of accommodation.

In our submission, the complaint is therefore not within the jurisdiction of the Commission.

We further submit that the complaint was filed without sufficient grounds, for the purpose of protesting policy and/or political decisions with respect to the deployment of public resources in the form of social assistance pursuant to the *Ontario Works Act*. In our submission, this complaint is a disguised attempt to bring attention to a social and/or political issue, with the intent to bring about an increase in the amount of social assistance provided. In our submission, the present complaint was not instituted to redress discrimination or alleged violations of the *Code*, and is therefore frivolous, vexatious or made in bad faith.

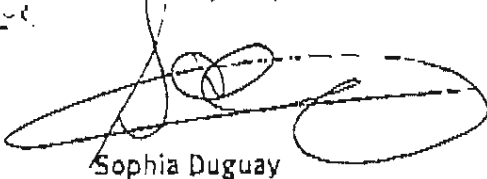
Accordingly, the County submits that the Commission should exercise its discretion pursuant to section 34(1)(b) and/or (c) of the *Code* and decide to not deal with the complaint.

In the event that the Commission declines to exercise its discretion to not deal with the complaint pursuant to section 34 of the *Code*, the County requests an extension of the time limit to file a response on the merits of the complaint pending the Commission's decision regarding the County's section 34 request.

We also reserve the right to make a determination as to whether or not the County will participate in mediation until such time as the Commission has decided the section 34 issue.

[Redacted signature area]

Yours very truly,


Sophia Duguay

SXD/

[Redacted signature area]

Ontario Human
Rights Commission
Inquiry and Intake Office

180 Dundas St. West, 7th Floor
Toronto, ON M7A 2R9

Commission ontarienne des droits
de la personne
Accueil et renseignements
généraux

180, rue Dundas ouest 7^e étage
Toronto (ON) M7A 2R9

Tel/Tél: 1-800-387-9080
1-416-326-9511
Fax/Télécopieur: 1-416-326-9520
www.ohrc.on.ca



Direct Line: 416-326-9510

VIA PRIORITY POST

Services are provided in both English and French
nos services sont offerts en français et en
anglais

Personal and Confidential
Please Quote Our File No. on All Correspondence

April 3, 2003

Ms. Mary Truemner
Advocacy Center for Tenants Ontario
425 Adelaide Street West, 5th Floor
Toronto, Ontario
M5V 3C1

Dear Ms. Truemner:

Re: [REDACTED]
And
The Administrator of Ontario Works of the City of Toronto et al
File No: JWIS-5JUSYR

Please find enclosed a copy of the Respondents' response to your complaint. Once you have reviewed the response, please provide a detailed rebuttal in **writing** by **April 22, 2003**. Please also provide all relevant documentation which you have not already submitted.

In providing you with a copy of the respondent's response to your human rights complaint, you will see that the Commission has blocked out the names of any witnesses on which the respondent wishes to rely in responding to your complaint.

Please be advised that, pursuant to the Freedom of Information and Protection of Privacy Act (FIPPA), the Commission is responsible for protecting the privacy of individuals and therefore, the Commission is required to block out personal information from the Respondent's response.

The applicable section of the Freedom of Information and Protection of Privacy Act on which the Commission relies in undertaking this blocking out exercise is:

Section 21 (3):

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information:

(a) was compiled and identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or continue the investigation.

Further, the Commission as a law enforcement agency does not disclose records relating to an investigation that is ongoing.

The applicable subsections of the Freedom of Information and Protection of Privacy Act on which the Commission relies are:

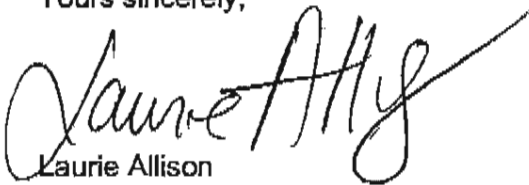
Section 14 (1):

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Should you have any questions or require any clarification, please do not hesitate to contact me.

Yours sincerely,



Laurie Allison
Clerk
File No: JWIS-5JUSYR
[Enc: Respondent's Reply]

ONTARIO HUMAN RIGHTS COMMISSION

BETWEEN:

██████████ SHELTER ALLOWANCE RECIPIENTS
(See paragraph 2 below)

Complainant

- and -

THE ADMINISTRATOR OF ONTARIO WORKS
OF THE CITY OF TORONTO and THE ONTARIO MINISTRY OF COMMUNITY,
FAMILY AND CHILDREN SERVICES

Respondents

RESPONSE OF THE CITY OF TORONTO

1. The Respondent, the City of Toronto (the "City"), is a municipal corporation incorporated under the laws of Ontario.
2. This Response is submitted on behalf of the City in response to the following Complaints:

1) ██████████ and City of Toronto File No.: JWIS-5JUSYR;



2-4

3. The Complaints relate to Ontario Regulation 134/98 (the "Regulation"), made under the *Ontario Works Act, 1997*, S.O. 1997, Chap. 25, Sch. A (the "Act"), which establishes social assistance rates, including shelter allowance rates, in Ontario.

4. In general, the Complainants allege that their rights to equal treatment with respect to occupancy of accommodation have been infringed by the City on the basis of family status, marital status, receipt of public assistance and sex.
5. Specifically, the Complainants allege that the shelter allowance rates contained in section 42 of the Regulation are discriminatory because the rates are inadequate in light of the costs of rent in Toronto.

The City does not set the Shelter Allowance Rates in the Regulation therefore the Complaints against the City should be Dismissed

6. The Ontario Ministry of Community, Family and Children's Services (the "Ministry") is responsible for setting the shelter allowance rates contained in the Regulation. The City merely acts as an agent for the Ministry in the delivery of social assistance to persons who are eligible in the City of Toronto. The City pays the rates for shelter allowance as outlined in the Regulation and has no authority to vary those amounts.
7. These Complaints are not about the delivery of social assistance, they are about the level of shelter allowance rates that are paid to persons on social assistance. The rates are set by the province, not by the City, therefore the City respectfully submits that the Complaints should be dismissed against the City at the outset.

Ontario Works Act, 1997

8. The Act provides the legislative framework for the provision of employment assistance, income assistance and temporary financial assistance to people in financial need (collectively referred to as "Social Assistance"). The Act is a provincial enactment that is the responsibility of the Ministry of Community, Family and Children's Services.
9. The Act establishes the Ministry's authority to prescribe the maximum levels of Social Assistance, including shelter allowance, through the enactment of regulations.

Shelter Allowance

10. Section 42 of Regulation 134/98 establishes the amount payable for shelter allowance. Section 42 (2) 2 of the Regulation sets out the maximum monthly shelter allowance as follows:

Benefit Unit Size	Maximum Monthly Shelter Allowance
1	\$ 325
2	511
3	554
4	602
5	649
6 or more	673

11. The amount of shelter allowance is solely based on the number of persons in a benefit unit. The monthly rate is not determined by the marital status, sex, age or family status of the members of the benefit unit.

The City is Only a Delivery Agent

12. The City has been designated as the delivery agent of the Ministry for the geographical area of the City of Toronto. As such, the Social Services Division of the City delivers Social Assistance, including shelter allowance, to eligible recipients in the City.
13. According to the Act, a delivery agent's duties include providing Social Assistance to eligible recipients by following legislative and regulatory authority and policy directives established by the Ministry. The City therefore pays the rates for shelter allowance as provided for in the Regulation and set out in the chart above.

Steps taken by City to Increase Shelter Allowance

14. In October of 1995, the newly elected provincial government reduced the monthly Social Assistance rates by 21.6%. From the time the province announced its intention to reduce rates, the Social Services Division of the City expressed concern about the impact of such action on the ability of social assistance recipients to meet their basic needs.

15. The City has called on the province to reconsider and/or restore allowances to levels more reflective of the cost of living in large urban areas such as Toronto on a number of occasions since 1995.
16. In order to try and alleviate some of the effects of the province's decrease in shelter allowance rates, the City established a Shelter Fund Enhancement program. This program was created to assist families with dependant children who have accommodation costs in excess of the legislated shelter allowance where the recipient or the recipient's spouse is participating in specific Ontario Works activities.
17. The amount of Shelter Fund Enhancement which can be issued is based on the difference between the maximum shelter allowance under the Regulation and the actual shelter costs, up to a maximum amount determined by the City. Shelter Fund Enhancement can be granted for a maximum period of six months.
18. A number of the Complainants have received funds from the Shelter Fund Enhancement program.

Section 34 Request

19. If the Ontario Human Rights Commission (the "Commission") is of the opinion that the Complaints should not be dismissed against the City at the outset, then the City submits that the Commission should exercise its discretion pursuant to sections 34(1)(a),(b) and (c) of the *Ontario Human Rights Code* and decide not to deal with these Complaints, for the following reasons:
 - a) the City does not provide accommodation to the Complainant;
 - b) the Complainant have not established discrimination;
 - c) the Complaints are more appropriately dealt with by way of a direct challenge of the Regulation; and
 - d) the central issue of the Complaint has already been determined by the courts.

The City does not provide Accommodation

20. The Complainants allege unequal treatment with respect to the occupancy of accommodation. The City does not provide the Complainants with accommodation nor does it have a landlord/tenant relationship with the Complainants.
21. The City does not establish the rental rates in the City of Toronto.
22. The Complainants have not been denied accommodation nor do they allege that they have been denied accommodation. All ████████ of the Complainants are currently living in apartments.
23. The shelter allowance provided to the Complainants attempts to assist Social Assistance recipients in obtaining accommodation. All of the Complainants receive the maximum monthly shelter allowance allowable under the Regulation.
24. The City respectfully submits that where a legislative Act ameliorates the condition of a class of individuals, the Act cannot be said to simultaneously deprive the class of a benefit.

The Complainant have not Established Discrimination

25. The City denies that the Complaints set out a factual basis that establishes unequal treatment with respect to the occupancy of accommodation.
26. The number of persons in the benefit unit determines the shelter allowance rate. There is no distinction drawn on the basis of family status, marital status, receipt of public assistance or sex when determining the shelter allowance received by a benefit unit.
27. Further, there is no differential effect on the Complainants as compared to other Social Assistance recipients. All recipients of Social Assistance and their dependants or spouses are effected in exactly the same way by the shelter allowance rates. All Social Assistance recipients suffer the same disadvantages from the effects of having less income available for food, basic necessities and other expenses.

28. It is respectfully submitted that the Complainant have not demonstrated that [REDACTED] they are treated any differently than any other recipient of Social Assistance.

A Direct Challenge to the Regulation is More Appropriate

29. These Complaints do not raise issues of discrimination, but rather raises issues regarding the Ministry's authority and responsibility regarding shelter allowance rates.

30. As these Complainants are effectively challenging the substantive provisions of the Regulation, it is the City's submission that the proper manner in which to raise these issues is by way of a direct challenge of the Regulation before the courts.

31. This was unsuccessfully attempted in the case of *Masse et al. v. Ontario (Ministry of Community and Social Services)*, 134 D.L.R. (4th) 20 (Div. Ct.), where a group of Social Assistance recipients challenged the 1995 reduction of Social Assistance by the Province.

Remedy

32. It is respectfully submitted that the Ontario Human Rights Tribunal does not have the authority or jurisdiction to make a general declaration as to the validity of a regulation and cannot quash or amend a regulation. [REDACTED] *Canada (Attorney General) v. Druken* (1988), 53 D.L.R. (4th) 29.

33. While administrative tribunals do have the discretion to issue cease and desist orders with respect to the application of a particular provision, it is respectfully submitted that the Ontario Human Rights Tribunal would only have the power to order the City to cease applying the Regulation in question with respect to these [REDACTED] Complainants. [REDACTED] *Canada (Attorney General) v. McKenna*, [1999] 1 F.C. 401; *Dwyer v. Toronto (Metropolitan)*, [1996] O.H.R.B.I.D. No. 22 (Ont. Bd. of Inquiry.); and *O'Neill v. Ontario (Ministry of Transportation)* (1994), 27 C.H.R.R. D/405 (Ont. Bd. of Inquiry).

34. A remedial order of the Ontario Human Rights Tribunal should not amount to a provision in the Regulation being struck down or rewritten as only a judge or tribunal making a

determination under the *Canadian Charter of Rights and Freedoms* may make such an order.
[REDACTED] *Canada (Attorney General) v. McKenna*, [1999] 1 F.C. 401.

35. For all of the above reasons, the City of Toronto respectfully requests that these [REDACTED]
Complaints be dismissed against it.

DATE: March 31, 2003

CITY SOLICITOR'S OFFICE
Station 1260
26th Floor, Metro Hall
55 John Street
Toronto, Ontario
M5V 3C6

Suzanne Clapp
LSUC# 40802J
Telephone: (416) 397-5421
Facsimile: (416) 392-3848



Solicitor for the Respondent,
City of Toronto

2003