

IN THE MATTER OF an Application
pursuant to the Ontario *Human Rights Code*, RSO 1990, c H.19

B E T W E E N:

AMANDA HISCOCKS

Applicant

- and -

THE MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES and
VANIER CENTRE FOR WOMEN

Respondents

SCHEDULE “A”

Introduction:

1. The Applicant, Amanda “Mandy” Hiscocks (“Ms. Hiscocks” or the “Applicant”) is an individual who is currently incarcerated at the Vanier Centre for Women, a provincial prison located in Milton, Ontario (“Vanier”).
2. The Applicant brings this application against the Ministry of Community Safety and Correctional Services and the Vanier Centre for Women (“the Respondents”) on the grounds that the Respondents’ manner of assigning security classifications to inmates held in its facilities violates the *Human Rights Code* (“Code”).
3. Specifically, the Respondents’ security classification system is inappropriate for women identified inmates (“inmates”) housed in its facilities, is applied in an ad hoc and arbitrary manner, and relies on prohibited grounds of discrimination, including race, place of origin, citizenship, disability, mental health status, creed, and other discriminatory factors, in determining whether to place inmates in either medium or maximum security units.
4. As a result of the Respondents’ flawed and discriminatory security classification system, inmates in the Respondents’ facilities are being assigned higher security ratings than is appropriate and, in turn, are being denied the opportunity to be housed in medium

security units, for reasons related to their gender, race, citizenship, place of origin, creed, mental health status, physical disabilities, among other prohibited grounds of discrimination.

5. The Respondents are breaching the *Code* by failing and/or refusing to provide reasons for security classification decisions, either at all or in a timely manner. The Respondents are under a procedural and substantive obligation to provide their services in a non-discriminatory manner. By refusing to provide reasons for their security classification decisions, the Respondents are insulating their discriminatory practices from review, and are denying inmates held in maximum security the right to know whether discrimination was a factor in their security classification designation. The Applicant states that the Respondents' failure to provide reasons constitutes a stand-alone breach of the Respondents' procedural duties under the *Code*.
6. In the Applicant's case, the Applicant was placed in maximum security facilities for a period of over seven months for arbitrary and discriminatory reasons related to her gender, and her creed and belief system. At all material times, the Respondent Vanier refused to provide reasons for its security classification designation, and therefore denied the Applicant the opportunity to challenge or seek a review of her discriminatory maximum security designation.
7. The Applicant seeks systemic remedies to address the discriminatory aspects of the Respondents' security classification policy and practices.

The Respondents' Employ Discriminatory Security Classification Practices that are contrary to the *Human Rights Code*:

8. The Respondents' security classification process assigns inmates held in its facilities either a "medium" or "maximum" security rating. Inmates assigned a maximum security rating are held in maximum security facilities, while inmates assigned a medium security rating are housed in medium security facilities.
9. Being assigned a maximum security rating, and therefore being incarcerated in a maximum security unit, results in a significant deprivation of liberty.
10. Inmates held in maximum security units in Vanier are subject to 24-hour lights, have restricted access to programs, are regularly denied yard and outdoor time, and are locked in their cells for a significant period of time.
11. Inmates in maximum security are subjected to monthly cell and strip searches. When inmates are not locked in their cells, they are locked out of their cells. Inmates in maximum security are only allowed secure non-touch visits; further, the windows in maximum security cells are sealed and it is not possible to see out of doors. The maximum security environment is subject to higher restrictions and supervision, and there is very little that inmates are permitted to do.

12. By contrast, inmates held in Vanier's medium security units are entitled to receive the minimal programming and services available on their units, and are subject to less restrictive living conditions, which includes the right to have the lights turned off during the night hours, and access to the outdoors on a more regular basis. Inmates housed in medium security areas of Vanier are also entitled to access their cells throughout the day, and are not locked in or out of their cells for significant periods of the day, as are maximum security designated inmates. Medium security inmates are entitled to open or "touch" visits; further, the windows in medium security cells open and it is possible to see outside.
13. The Respondents employ a security classification process that relies on a number of criteria to assess risk. These criteria include sentence information, criminal history, institutional history and personal history. Personal history factors include place of residence, community ties, employment pattern, domestic stability, family status and family members' social, educational and criminal justice histories, and medical and psychiatric history.
14. In assigning security classifications, the Respondents take into account group characteristics, such as immigration status and any mental health diagnoses and/or physical disabilities.
15. Inmates are also assessed as a medium or maximum security risk based on subjective factors and perceived individual characteristics. These subjective individual factors include the inmate's perceived security needs, perceived risk to other prisoners and/or institutional staff, an inmate's perceived motivation and/or agreement to participate in a treatment program; and an inmate's past behavior and/or a perceived propensity toward aggressive or other risky behavior.
16. At the Federal corrections level, a number of studies, consultations and reports have concluded and/or warned that the classification and assessment tools employed by the Correctional Service of Canada and individual institutions are discriminatory, and therefore in breach of the *Canadian Human Rights Act* and *Charter of Rights and Freedoms*.
17. Fewer studies have been undertaken of Ontario's corrections system; however, the Respondents employ the same and/or similar security classification techniques as those employed at the Federal level which have been criticized for violating fundamental principles of human rights and equality.
18. The security classification techniques employed by the Respondents are discriminatory on a number of levels. First, they are security classification techniques which are designed for men. Studies have shown that when these classification techniques are applied to inmates in prisons for women, this results in the over-classification (more secure classification) of women-identified inmates as maximum security risks.
19. Second, Aboriginal inmates, racialized inmates, and inmates with disabling mental health issues and physical disabilities are more likely to be classified as maximum security.

20. Third, inmates who are non-citizens, who are subject to a deportation order, and/or who have irregular immigration status are automatically considered a flight risk and therefore placed in maximum security, without regard for their individual needs, and other factors, such as family ties in Ontario.
21. Fourth, inmates with physical disabilities who require mobility devices are often automatically placed in maximum security and denied the opportunity to be placed in medium security facilities, as the medium security facilities are inaccessible. As well, when employment history is used as a security assessment criteria, inmates with physical or mental health disabilities often score poorly, as these inmates have historically and remain excluded from traditional employment opportunities for discriminatory reasons that are beyond their control.
22. These are just some of the ways in which the Respondents' security classification process is discriminatory. The examples outlined above do not constitute an exhaustive list.
23. The Canadian Association of Elizabeth Fry Societies' (CAEFS) 2010 publication *Human Rights in Action: A Handbook for Women in Provincial Jails in Ontario* states that women, especially poor women, Aboriginal and other racialized women, and women with mental health issues often score higher on the Level of Service Inventory – Ontario Revision (“LSI-OR”), which is the security assessment and classification technique employed by the Respondents.
24. According to CAEFS, this means that the most marginalized inmates “are often classified as higher security because of things that are hard or impossible to change and therefore treated in a discriminatory and more punitive manner than the law allows.”
25. In summary, Ms. Hiscocks states that the Respondents' classification system is discriminatory and contrary to the Ontario *Human Rights Code* because it results in the over-classification of inmates for reasons related to their sex, gender, race, citizenship, place of origin, ethnic origin, creed, and mental or physical disability.

The Applicant was Placed in Maximum Security in Vanier's Facilities for Discriminatory Reasons:

26. In the Applicant's case, the Applicant was placed in maximum security facilities for a period of over seven months for arbitrary and discriminatory reasons related to her gender and her creed or belief system.
27. At all material times, the Respondent Vanier refused to provide reasons for its security classification designation, and therefore denied the Applicant the opportunity to challenge or seek a review of her discriminatory maximum security designation. The Applicant states that the Respondent Vanier's refusal to provide reasons for her security designation constituted a breach of its procedural obligations under the *Code*.

28. The Applicant is a long-time social justice activist who self-identifies as an anarchist. For Ms. Hiscocks, anarchism is a cohesive and comprehensive belief system and set of practices. In her daily life, Ms. Hiscocks practices anarchism by engaging in non-hierarchical and anti-oppressive social and work relationships and activities that promote social inclusion and freedom from oppression and discrimination on the basis of gender, race, (dis)ability, ethnic origin, sexual orientation, and so on. For Ms. Hiscocks, anarchism involves a belief in a set of fundamental principles, namely a rejection of state power and authoritarianism, a rejection of state violence and coercion, and a belief in individual autonomy, self-actualization, consensus decision-making and mutual aid.
29. Ms. Hiscocks has held this cohesive belief system of anarchism for most of her adult life. It is genuinely and deeply held, comprehensive, and goes to the core of her identity as a person. In a manner that is consistent with her belief system, Ms. Hiscocks promotes and engages in a number of social justice causes and movements such as environmentalism, anti-colonialism and anti-capitalism, among others.
30. The Applicant is serving time in Vanier as a result of her involvement in organizing a series of protests against the G20 leaders summit in Toronto in June 2010, and the G20's proposed anti-austerity measures. Ms. Hiscocks was arrested and charged, along with 20 other social justice activists who were involved in similar anti-austerity G20 organizing.
31. Ms. Hiscocks was charged with several charges, including conspiracy and counseling to commit mischief. The Applicant spent a month in custody, prior to being granted bail. She then spent a year and a half on restrictive bail conditions, before the resolution of the charges against her.
32. Most of the charges against the Applicant were later dropped. The matter was resolved when Ms. Hiscocks and five of her co-accused plead guilty to lesser charges in a plea deal which saw her remaining 11 co-accused go free without any charges.
33. On January 13, 2012, Ms. Hiscocks pleaded guilty to one charge of counseling mischief and one count of counseling to obstruct police. She was sentenced to 16-months' incarceration; her sentence began on January 13, 2012.
34. At her sentencing hearing, Ms. Hiscocks made a statement to the sentencing justice. In her statement, Ms. Hiscocks confirmed her belief in anarchism and outlined her critiques of the underlying inequalities present in the Canadian criminal justice system.
35. Since being sentenced on January 13, 2012, the Applicant has maintained a blog entitled "bored but not broken." In her blog, which she publishes on weekly basis with the assistance of supporters outside of prison, Ms. Hiscocks writes about her treatment and experiences at Vanier, the treatment of other Vanier inmates, her beliefs, and inequalities in the criminal justice system. Ms. Hiscocks' blog is published on the website: <http://boredbutnotbroken.tao.ca/>.
36. Upon sentencing, Ms. Hiscocks was incarcerated at Vanier and placed in Unit 2F, a maximum security unit at that prison.

37. Ms. Hiscocks met with a Vanier social worker upon being admitted to jail, who performed an LSI assessment shortly thereafter. At this time, the social worker failed and/or refused to advise Ms. Hiscocks that the purpose of the meeting was to perform a security classification assessment on Ms. Hiscocks. Instead, the social worker assured Ms. Hiscocks that the meeting was confidential, which later proved to be false. The social worker further indicated that purpose of the meeting was to assess Ms. Hiscocks' social work related needs, if any. At no time during the meeting was Ms. Hiscocks advised that she was, in reality, being subjected to a security classification assessment in that meeting.
38. Ms. Hiscocks requested reasons for her maximum security designation and/or sought clarification as to the reasons for her maximum security designation on several occasions, including on March 2, March 10, March 14, March 15, and March 28, 2012.
39. Despite her repeated requests, the Respondents refused to provide reasons for the Applicant's security classification and placement in a maximum security unit.
40. On July 15, 2012, Ms. Hiscocks submitted a renewed request for reasons for her maximum security designation to the Vanier Superintendent.
41. On July 16, 2012, Ms. Hiscocks received a response which stated that "Due to assessment and past statements by the offender, your current placement is appropriate." The Respondent Vanier refused to provide reasons for its determination, or provide any particulars as to her assessment results or alleged impugned statements.
42. On July 19, 2012, Ms. Hiscocks submitted a further request for reasons for her maximum security designation to the Vanier Superintendent. In her letter, Ms. Hickcock's stated:

I'm sorry for being unclear in my request from 15/7/2012. I'm not looking for confirmation that you find my classification appropriate. I'm looking for the reasons you find it to be so. So I would like to know on what criteria you have deemed me ineligible for unit 3, and which 'past statements by the offender' you have found to be problematic. I assume that all of this can be found in my classification report. Thank you.
43. The Respondent Vanier refused to respond.
44. Ms. Hiscocks submitted a further request for reasons to the regional director on or around August 1, 2012. The regional director never responded.
45. The Applicant has also sought to receive a copy of her LSI assessment report, but such requests have been refused by the Respondents.
46. The Applicant submits that the Respondents assigned to her a maximum security rating in order to punish her for her belief system. At all material times, the Applicant's gender and belief system were factors in the decision to assign her a maximum security rating and place her in maximum security detention between January 13 and August 24, 2012.

47. The Respondents have sought to insulate their discriminatory security classification decision from review by refusing to provide Ms. Hiscocks with written reasons for her classification decision, and by refusing to disclose Ms. Hiscocks' LSI assessment report, which was prepared by the Respondent Vanier's social workers.
48. The Respondents' security classification process as applied to Ms. Hiscocks, which assigned her a maximum security designation because of her gender and her creed, is discriminatory and contrary to the *Human Rights Code*.

Remedies:

49. The Applicant seeks a number of systemic remedies in order to correct the Respondents' discriminatory practices as a whole.
50. The Applicant seeks an order requiring the Respondents to adopt a transparent and non-discriminatory process for assigning security designations to inmates.
51. Specifically, the Applicant seeks an order requiring the Respondents to develop policies and practices to ensure that discrimination on the basis of belief system, creed, and other *Code*-prohibited grounds of discrimination, are not factors in the decision to designate inmates as maximum security offenders, or otherwise.
52. The Applicant requests that the Human Rights Tribunal of Ontario remain seized of this matter and supervise the Respondents' development and implementation of non-discriminatory security designation policies and practices.
53. The Applicant seeks an order requiring the Respondents to work alongside the Ontario Human Rights Commission and/or the Canadian and Ontario Associations of Elizabeth Fry Societies and other appropriate organizations with specialized expertise, in order to develop and implement non-discriminatory security designation policies and practices.
54. The Applicant submits that following should be included as minimum necessary requirements under the Respondents' revised policies and practices:
 - a) The Respondents' social workers or any other staff conducting security classification assessments must be required to disclose to the inmates they are interviewing that:
 - i. they are not required to answer any questions or cooperate, but that a failure to cooperate may lead to an adverse assessment;
 - ii. that any information they disclose will not necessarily be kept confidential;
 - iii. that all information provided will be used to assign them a maximum or medium security rating;
 - iv. that they have a right to receive written reasons for their security classification rating, upon request; and

- v. that their security classification must be reviewed every two weeks, in accordance with the legislation and regulations.
 - b) Inmates held at the Respondents' institutions should be provided with the opportunity to review and correct all statements made to the social worker or other intake worker assigned to conduct a security assessment. Inmates should be given the right to review, approve and sign off on all statements made, to confirm the accuracy of their contents.
 - c) The Respondents' current practice of automatically assigning maximum security ratings based on discriminatory group factors, such as citizenship, immigration status and mental health and physical disabilities, should be eliminated. All security and need assessments should be conducted on an individualized basis.
 - d) The Respondents must provide written reasons for all classification decisions upon request, without delay. The Respondents' reasons must explain to the inmate why a particular security classification was assigned. The requirement to provide written reasons is statutorily mandated for inmates in Federal penitentiaries. The right to written reasons, upon request, should be available to inmates serving time in provincial institutions. The requirement of written reasons is essential, and a component of the procedural requirements of the *Human Rights Code*, as inmates held in the Respondents' facilities must be entitled to know whether discrimination was a factor in the decision to assign them a maximum security rating.
 - e) The Respondents' must provide inmates with access to their LSI reports and all unit reports, upon request.
 - f) The Respondents' must develop a transparent and fair grievance procedure for inmates who disagree with their classification.
 - g) The Respondents must develop identifiable, individualized and specific criteria for assigning security classification ratings, and such criteria should be disclosed to all inmates undergoing a security classification assessment.
55. The Applicant seeks a public interest remedy of mandatory human rights and sensitivity training for all of the Respondents' administration, staff and correctional officers.
56. The Applicant seeks a public interest remedy of an accessibility audit of all of the Respondents' facilities to ensure compliance with the *Accessibility for Ontarians with Disabilities Act, 2005*, to ensure that inmates who have physical disabilities, including those who use mobility devices, are not automatically placed in maximum security units for reasons related to the Respondents' failure to provide barrier-free medium security facilities.

57. Ms. Hiscocks further asks that the Respondents be required to report to the Human Rights Tribunal of Ontario regarding the concrete steps taken to correct the deficiencies in their human rights practices and policies.
58. The Applicant claims general damages and/or special damages to compensate her for the breach of her right to be free from gender and creed-related discrimination, in an amount to be determined at the hearing of the application.

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PINTO WRAY JAMES LLP

Barristers & Solicitors

393 University Avenue, Suite

Toronto, ON M5G 1E6

Niiti Simmonds (58440N)

Tel.: (416) 703-2067

Fax: (416) 593-4923

Lawyers for the Applicant