

Court File No. 238/20

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

**BETWEEN:**

**L [REDACTED] S [REDACTED]**

Appellant

and

**YOUTHLINK YOUTH SERVICES**

Respondent

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**FACTUM OF THE APPELLANT**

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**PART 1 – IDENTIFICATION**

1. This is an appeal by the Appellant, L [REDACTED] S [REDACTED], of a decision issued June 22, 2020 by the Landlord and Tenant Board (the “**Board**”). Ms. S [REDACTED] was a tenant of the Respondent, YouthLink Youth Services (“**YouthLink**”). She lived in transitional housing operated by the Respondent from December 8, 2019, until her eviction on March 31, 2020 (the “**Housing Program**”).

2. Following her eviction, Ms. S [REDACTED] applied under s.9 of the *Residential Tenancies Act* (“**RTA**”) to determine whether the Housing Program falls within the jurisdiction of the Board.

3. On April 24, 2020, a hearing was held before Member Nathan Ferguson and on June 22, 2020, Member Ferguson released his decision finding that the Housing Program

satisfied the exemption under s.5(k) of the *RTA* and was therefore exempt from the *RTA* and the Board's jurisdiction. As the Board found it did not have jurisdiction over the tenancy it did not consider the question of whether the eviction was illegal.

4. This is an appeal under s.210 of the *RTA* to the Divisional Court that challenges the Board's finding that YouthLink's Housing Program is exempt from the *RTA*.

## **PART 2 – OVERVIEW**

5. This appeal challenges the Board's finding that YouthLink's Housing Program is exempt from the *RTA*. Ms. S [REDACTED] is a vulnerable young tenant whose tenancy is intended to be, and should be protected by the *RTA*.

6. YouthLink provides transitional housing to vulnerable young people. The Board found that YouthLink is exempt from the *RTA* under s. 5(k), which applies to "rehabilitative and therapeutic" service providers. In doing so, it relied on old and poorly reasoned jurisprudence that didn't account for the introduction in 2017 of a new exemption in s. 5.1 that specifically regulates transitional housing providers.

7. By failing to account for the recent legislative changes, the Board has interpreted the *RTA* in a manner that is contrary to legislative intent and contrary to the modern approach to statutory interpretation that incorporates a contextual, purposive approach. The outcome is an overbroad application of s. 5(k) that frustrates the purpose of s.5.1, namely to ensure that vulnerable tenants in transitional housing are protected with occupancy agreements that meet the requirements of s. 5.1(3).

8. Ms. S [REDACTED] is a vulnerable young person who was unfairly evicted from her home. She was provided no notice of the eviction and was not given any recourse to seek a review or

appeal of the decision. YouthLink provided her no assistance to find alternative accommodation. Indeed, when she returned to the home to collect her belongings, YouthLink responded by calling the police which led to Ms. S [REDACTED]'s being handcuffed without charge and being removed from the home without her belongings. She has experienced unstable housing since her eviction.

9. The eviction was illegal and YouthLink ought to remedy the eviction through assisting her to find alternative stable housing.

### **PART 3 - FACTS**

#### **A. Background – YouthLink’s Transitional Housing Program**

10. YouthLink is a registered charity that provides a range of different services for young people. As part of their services to address youth homelessness, YouthLink offers the Housing Program at four separate locations in Toronto and Scarborough, to young people aged 16 to 21 years old. It offers residents a private room in a shared home. It also offers some support from staff to build the life skills needed to transition tenants to more permanent housing.<sup>1</sup>

11. When a young person applies for housing with the Housing Program, they have an intake meeting where they are provided with several documents including:

- a. Intake Information Sheet;<sup>2</sup>
- b. Application Form;<sup>3</sup> and

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<sup>1</sup> YouthLink Service Options webpage, Appellant’s Appeal Book and Compendium (“**Appellant’s Compendium**”) at Tab 7, pp.77; See also YouthLink Co-Op Housing Program webpage, Appellant’s Compendium Tab 8, pp.86.

<sup>2</sup> YouthLink Co-Op Program Intake and Information Package (“**Intake Package**”), pp.1-3, Appellant’s Compendium Tab 9 pp.91-93.

<sup>3</sup> Intake Package, pp.8-13, Appellant’s Compendium Tab 9 pp.98-103.

- c. Three forms requiring the young person's signature, namely i) a Benefit and Risks form; ii) a Rules and Expectations form; and iii) a Rental Agreement. Young people are required to sign these forms when they agree to move into the Housing Program.<sup>4</sup>

12. The Housing Program's primary focus is on providing stable housing for the residents and an opportunity for them to develop the life skills necessary to live independently in more permanent housing. The Intake Information Sheet describes the objectives of the Housing Program as follows:

The Co-op Housing Program provides affordable housing for young people ages 16-19. Young people can stay for up to one year. It provides young people the opportunity to practice life skills and live co-operatively with others. The program can help support young people in their schooling, employment, and in connecting with community resources and social supports. The program also provides support in helping young people transition to their next housing option, which includes accessing financial and housing supports, and completing housing applications.<sup>5</sup>

13. Prior to moving into the Housing Program young people are expected to demonstrate they can manage "higher levels of responsibility and lower levels of support". The acceptance criteria for the Housing Program includes that the young person must be in full-time school or employment, be able to pay the rent and other expenses and be able to live collaboratively with others. They must be able to manage intense feelings and access counselling and mental health support elsewhere, outside of the Housing Program.<sup>6</sup>

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<sup>4</sup> Intake Package, pp.4-7, Appellant's Compendium Tab 9, pp.94-97. Note the actual forms signed by Ms. S [REDACTED] differ and appear at Appellant's Compendium Tab 10, p.105.

<sup>5</sup> Intake Package, p.1, Appellant's Compendium Tab 9 p.91.

<sup>6</sup> Intake Package, pp.1-2 and 4, Appellant's Compendium Tab 9 pp.91-92, 94.



14. Tenants are expected to pay a \$40 rental deposit and \$335 in rent per month, which includes furniture, a shared landline phone, cable, utilities, dishes and a shared TV. Residents must provide their own bedding, clothing, toiletries, food and transportation.<sup>7</sup>

15. The Housing Program includes a live-in mentor and a Youth Transitional Support Worker (“**Support Worker**”). The mentor’s role is to regulate activities within the house such as chores, house meetings and mediating disputes. The mentor is not a trained counsellor and that is not their role within the Housing Program. They often work or go to school during the day.<sup>8</sup>

16. Similarly, the Support Worker’s role is not to provide therapeutic support but to help young people to access employment or education, provide referrals to community resources, and help youth find more permanent housing. Their role is to assist the Housing Program to be a “stepping stone to help you move out on your own”.<sup>9</sup>

17. The three forms set out the terms residents must agree to in order to participate in the Housing Program. For example, the forms set out the rules residents must agree to with respect to rent payments, school or work attendance, guests, house meetings, length of stay, and behaviour.<sup>10</sup>

18. The duration of the tenancy that Ms. S [REDACTED] agreed to is set out in the Rules and Expectations form. This form was revised in June 2018. Prior to 2018, the form didn’t specify the Housing Program could be extended. In 2018, the form was amended as follows:<sup>11</sup>

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<sup>7</sup> Intake Package, p.2, Appellant’s Compendium Tab 9 p.92.

<sup>8</sup> Intake Package, p.3, Appellant’s Compendium Tab 9 p.93.

<sup>9</sup> Intake Package, p.3, Appellant’s Compendium Tab 9 p.93.

<sup>10</sup> Intake Package, pp.4, 6-7, Appellant’s Compendium Tab 9 pp. 94, 96-97.

<sup>11</sup> Intake Package, p.6, Appellant’s Compendium Tab 9 p. 96.

“The length of stay is **up to one year**. Extensions may be negotiated, if appropriate”.[Amendment underlined]

19. With respect to discharge from the Housing Program, the “Benefits and Risks” form provides:

[Residents] Could be suspended and/or asked to move out of the house if you are consistently not following through with expectations despite ongoing discussions to resolve these concerns.<sup>12</sup>

20. The Rules and Expectations form further explains the circumstances in which youth will be required to move out and provides:

My signature indicates that I am in agreement with the rules and expectations and understand that non-compliance or concerns about safety may result in me being suspended or asked to move out.<sup>13</sup>

21. None of the documents provided at intake and admission set out a process by which to address disputes between a resident and the Housing Program. They do not describe the rights and responsibilities of the tenant, the process by which a tenant may be asked to move out, nor set out a policy for assisting tenants to find alternative accommodation or to seek readmission to the program if they are asked to move out.

#### **B. Ms. S■■■■'s Admission to the Transitional Housing Program**

22. In 2019, Ms. S■■■■ faced several barriers to securing permanent housing. She was receiving assistance from the Children’s Aid Society of Toronto but “aged-out of care” on her 18<sup>th</sup> birthday, December 10, 2019. Since arriving to Canada alone two years prior, Ms. S■■■■ had obtained a temporary resident permit and had applied for permanent residence but was not yet entitled to work or receive government-funded health care. Her few family members in

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<sup>12</sup> Intake Package, p.4, Appellant’s Compendium Tab 9 p. 94.

<sup>13</sup> Intake Package, p.6, Appellant’s Compendium Tab 9 p. 96.

Canada were not able to support her. Nonetheless, she was attending school and sometimes worked cash jobs to support herself.<sup>14</sup>

23. Ms. S■■■■ applied to live at YouthLink because she was seeking a stable living arrangement that would enable her to work towards her goals of finishing high school and obtaining her permanent residence.<sup>15</sup> YouthLink was very much aware that Ms. S■■■■ had been receiving support and services through the Children's Aid Society, and had precarious immigration status.

24. As part of the application process, Ms. S■■■■ met with the Support Worker, reviewed the Intake Package and completed the Application Form. Upon acceptance, she agreed to and signed the three forms. She moved into the rental unit on December 8, 2019, two days before her children's aid society supports came to an end.<sup>16</sup>

25. At intake, YouthLink staff explained to Ms. S■■■■ that the duration of Housing Program was initially for twelve months but that this was flexible and could be extended. This was confirmed in the version of the Rules and Expectations form that she signed, which says extensions to the one year length of stay could be negotiated.<sup>17</sup>

26. Furthermore, she specifically asked the Support Worker during intake about whether she would be able to stay for longer than one year. The Support Worker recorded the following note of their conversation:<sup>18</sup>

“Also she asked if she would be able to stay longer, I explained the program is a one year, and that there are at times a few spots for extensions

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<sup>14</sup> Schedule A in support of Form A1, dated April 7, 2020 at 2, Appellant's Compendium Tab 5 p.31.

<sup>15</sup> Signature Pages of Intake Package (“**Signature Pages**”) at 12, Appellant's Compendium Tab 10 p.112.

<sup>16</sup> Signature Pages, Appellant's Compendium Tab 10 p. 105. See also, Current Resident's List, Appellant's Compendium at Tab 11 p. 114.

<sup>17</sup> Signature Pages, Appellant's Compendium Tab 10 p. 105; Current Resident's List, Appellant's Compendium Tab 11 p.114.

<sup>18</sup> YouthLink's CYSIS notes, dated December 9, 2019, Appellant's Compendium Tab 12 p. 117.

but it all depends on how the youth does in our program. I explained if that was an option then we would approach her at that time to discuss this”

**C. The Housing Program’s Didn’t Offer Ms. S [REDACTED] Services to Support her Needs**

27. When Ms. S [REDACTED] first moved into the Housing Program she sought and was given permission from the Support Worker to be exempt from the requirement to attend school full-time, as she needed to register at a new school closer to the Housing Program.<sup>19</sup> It was mid-December and school registration would not be available until January.

28. As early as January 13, 2020, the Housing Program mentor expressed concerns to the Support Worker that Ms. S [REDACTED] was not yet attending school and was therefore not meeting the requirements to remain housed within the Housing Program. She was also concerned Ms. S [REDACTED] was having visitors outside of permissible hours, was making noise at night and not following the “house expectations”.<sup>20</sup>

29. Despite Ms. S [REDACTED]’s assurances that she was registered to begin school on January 31, 2020, YouthLink advised they felt she was not able to follow the Housing Program expectations and would be asking her to move out early. They spoke to her about making applications to different housing programs, but left this task up to Ms. S [REDACTED] and another housing worker at a different agency.<sup>21</sup>

30. YouthLink didn’t offer any therapeutic, rehabilitative or other similar supports – they didn’t offer counselling or a referral to counselling of any kind, they didn’t discuss what barriers she might be facing or offer to assist her to register for school or support finding a job.

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<sup>19</sup> *Ibid*, dated December 9, 2019 and December 18, 2019, Appellant’s Compendium Tab 13 pp. 119.

<sup>20</sup> *Ibid*, dated January 13, 2020, Appellant’s Compendium Tab 14 pp. 121.

<sup>21</sup> *Ibid*, Appellant’s Compendium Tab 14 pp. 121; YouthLink emails regarding House Meeting - Florence, dated January 8-14, 2020, Appellant’s Compendium Tab 15 pp. 123.

Their response to her apparent non-compliance with the requirement to attend school was to immediately threaten to evict her out of the program.<sup>22</sup>

31. When a concern arose in February around about Ms. S■■■■ having alcohol and marijuana in her room, YouthLink staff didn't provide referrals to mental health service providers, or even to drug and alcohol counselling. Instead, they sought to transition her out of the program by sending her housing applications and referring her to a housing worker at a different agency to help her find another place to live.<sup>23</sup>

#### **D. The Illegal Eviction**

32. On March 18 2020, the Province of Ontario declared a State of Emergency due to the COVID-19 pandemic. At the same time, Health Canada and Public Health Ontario released recommendations to help prevent the spread of COVID-19, including recommendations for social distancing, prohibiting large gatherings and for self-isolation of those who exhibited symptoms of COVID-19. As of mid-March, governments have very quickly and regularly updated the recommendations and regulations to respond to the spread of COVID-19.<sup>24</sup>

33. Ms. S■■■■'s first notice of YouthLink's concerns regarding her tenancy were received in an email on March 29, 2020. In the email, Ms. S■■■■ was advised that she was temporarily evicted from the rental unit for a period of fourteen days, effective immediately. The email advised that the eviction was due to concerns that she was unwell with symptoms of COVID-19, that she had been spending time outside of the home, and that she was not

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Ontario Ministry of Health, "Enhanced Measures to Protect Ontarians from COVID-19" News Release (Toronto: March 16, 2020, 8:19pm), Appellant's Compendium Tab 16 p. 128; Office of the Premier of Ontario, "Ontario Enacts Declaration of Emergency to Protect the Public" (Toronto: March 17, 2020 9:13am), Appellant's Compendium Tab 17 p. 132.

following the government recommendations regarding social distancing and self-isolation.<sup>25</sup>

34. The email advised that “Prior to returning, you will be required to complete a 14 day self-isolation at an alternative location and speak with a member of the pandemic team.” It further advised that “If you should return to the house during this required time of self-isolation, it will be considered trespassing and the police can be called.” YouthLink didn’t offer to assist Ms. S■■■■ with accessing health care services, and they did not identify where Ms. S■■■■ was supposed to live during the period of self-isolation and didn’t help her to make any arrangements in this regard.<sup>26</sup>

35. YouthLink made this decision and sent this email without any discussion with Ms. S■■■■ or her doctor about her current health status. Indeed, at the time she was evicted Ms. S■■■■ did not have symptoms of COVID-19 and her doctor had not advised her to self-isolate. She had been unwell in late February 2020 and early March 2020. At that time, she spoke to her doctor who advised that her symptoms were not concerning and that she was not required to self-isolate or be tested for COVID-19.<sup>27</sup>

36. When she received the notice of her eviction, Ms. S■■■■ was staying outside the home with her boyfriend at an Airbnb. YouthLink staff never warned Ms. S■■■■ that staying outside the home was not permitted. Housing Program staff didn’t hold a house meeting, make any changes to house rules or provide any information about their expectations of the residents during the COVID-19 pandemic. Ms. S■■■■ thought she was following the government directives by not gathering in large groups.<sup>28</sup>

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<sup>25</sup> Email from YouthLink to Ms. S■■■■, dated March 29, 2020, Appellant’s Compendium Tab 18 p. 136.

<sup>26</sup> *Ibid.*

<sup>27</sup> Letter from Claire Millgate to YouthLink, dated March 31, 2020, Appellant’s Compendium Tab 20 p.142.

<sup>28</sup> *Ibid.*

37. Ms. S■■■■ tried to call and speak with the Housing Program staff but they did not return her calls. The next day, March 30, 2020, Ms. S■■■■ returned to her home in order to collect her belongings. She waited outside the residence and tried again to call housing staff. No one answered her calls. Needing to speak with someone and access her personal property, Ms. S■■■■ went into the home. There she was confronted by the house mentor, who told her to leave and then called the police.<sup>29</sup>

38. Police officers attended the residence and told Ms. S■■■■ to pack her belongings. When she didn't do so quickly enough, they arrested her, handcuffed her and sat her outside on curb. She didn't have a coat or appropriate shoes. A police officer returned to the house to obtain Ms. S■■■■'s personal ID, and then advised Ms. Smith to leave. The police officer didn't charge her with any offence.<sup>30</sup>

39. Following the eviction, Ms. S■■■■ has not had a stable place to live. No alternative housing was offered or provided by YouthLink. She has been reliant on various friends and relatives for temporary places to stay. The impact of the eviction on Ms. S■■■■ was traumatic and negatively impacted her mental health. She has also had difficulty accessing her clothing, personal care items and other property at the residence, including her coat and shoes. YouthLink took a whole week to make arrangements for Ms. S■■■■'s property to be returned to her via the Children's Aid Society.<sup>31</sup>

40. In a letter from YouthLink, dated April 6, 2020 and received by Ms. S■■■■ on April

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> YouthLink discharge letter, dated April 6, 2020, (“**Discharge Letter**”) Appellant’s Compendium Tab 21 p. 146; Email from Ms. S■■■■, dated April 21, 2020, Appellant’s Compendium Tab 22 p.149; Email from Tennyille Mason, dated April 21, 2020, Appellant’s Compendium Tab 23, p.158; Letter from Dr. Regisford, dated April 20, 2020, Appellant’s Compendium Tab 24 p.160.

7, 2020, YouthLink advised that Ms. S [REDACTED] is “permanently discharged” from the Housing Program, citing concerns she was endangering the health and safety of staff and residents by failing to follow the government recommendations with respect to COVID-19. They provided almost no notice of the eviction and no dispute resolution, appeal route, or due process of any kind.<sup>32</sup>

41. Despite the new and unprecedented nature of the pandemic government directives, YouthLink staff didn’t provide residents with a COVID-19 response plan and didn’t explain to them how the government directives would be implemented within the Housing Program. They didn’t support residents to navigate the different services in place to determine whether they were presenting COVID-19 symptoms, to be tested, and didn’t provide any plan or options to quarantine or self-isolate. Their response to the COVID-19 pandemic wasn’t supportive, nor did it support life skills development, and it was certainly not therapeutic: it was consistent with housing provider whose primary concern is the maintenance of a shared housing service.<sup>33</sup>

#### **E. The Hearing Before the Board**

42. Ms. S [REDACTED] applied to the Landlord and Tenant Board (the “**Board**”) under s.9 of the *Residential Tenancies Act* (“**RTA**”) to determine whether YouthLink fell within the jurisdiction of the Board. She sought to have the application heard urgently because of her precarious housing following the eviction.

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<sup>32</sup> Discharge Letter, *supra* note 31, Appellant’s Compendium Tab 21 p.146; Letter from Claire Millgate to YouthLink, dated April 3, 2020, Appellant’s Compendium Tab 25 p.162; Email from YouthLink to Ms. S [REDACTED], dated March 29, 2020, Appellant’s Compendium Tab 18 p.136; Email from YouthLink to Ms. S [REDACTED], dated March 30, 2020, Appellant’s Compendium Tab 19 p.139.

<sup>33</sup> *Ibid.*



43. A hearing before Member Nathan Ferguson was held on April 24, 2020. The hearing was not recorded and no transcript is available. On June 22, 2020, Member Ferguson released his decision, finding YouthLink was exempt from the *RTA* under s.5(k) and that the Board therefore did not have jurisdiction over the tenancy.<sup>34</sup>

#### **PART 4 – ISSUES AND LAW**

44. This appeal raises the following issues:

- a. What is the Divisional Court’s jurisdiction to hear the appeal and what is the appropriate Standard of Review?
- b. Did the Board err in finding that YouthLink’s transitional Housing Program is exempt from the *RTA* under s. 5(k)?
- c. Did the Board err in failing to find that YouthLink’s transitional Housing Program did not meet the requirements for exemption under s. 5.1(3) of the *RTA*?
- d. If so, was Ms. S [REDACTED] evicted illegally?

#### **A. The Divisional Court’s Jurisdiction and Standard of Review**

45. This appeal is brought pursuant to the *RTA* s.210, which provides that an order of the Board may be appealed to the Divisional Court, “but only on a question of law”.<sup>35</sup>

46. Section 210 (4) and (5) set out the Divisional Court’s powers on appeal, which include the power to “affirm, rescind, amend or replace the decision or order” and to “make any other order in relation to the matter that it considers proper and may make any order with

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<sup>34</sup> Order of Member Nathan Ferguson, dated June 22, 2020 (the “**Decision**”), Appellant’s Compendium Tab 2 p.8.

<sup>35</sup> *RTA*, s.210.

respect to costs that it considers proper.”<sup>36</sup>

47. This Court must consider whether the Board erred in finding the Housing Program falls within the exemption under s.5(k) and is not required to comply with s.5.1 of the *RTA*. This issue raises questions of statutory interpretation and the scope of the Board’s jurisdiction under the *RTA*. This is a question of law.

48. Appellate review of a tribunal decision on a question of law and statutory consideration is squarely addressed by the Supreme Court of Canada (“**SCC**”) in *Vavilov*. The SCC found that in these circumstances the standard of review is correctness:<sup>37</sup>

Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker’s authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8.

## **B. The Statutory Scheme Under the *RTA***

49. The *RTA* is remedial legislation with a “tenant protection focus”. As remedial legislation, the *RTA*’s provisions must be interpreted liberally to ensure the realization of its objectives. Section 1 of the *RTA* outlines its purpose:<sup>38</sup>

The purposes of this Act are to **provide protection for residential tenants from unlawful rent increases and unlawful evictions**, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. [Emphasis added]

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<sup>36</sup> *RTA*, ss.210 (4) and (5).

<sup>37</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 <http://canlii.ca/t/j46kb> at para.37, Appellant’s Compendium Tab 27, p.170.

<sup>38</sup> *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44 <http://canlii.ca/t/hx688> at para.19, Appellant’s Compendium Tab 28 p.174; *Matthews v. Algoma Timberlakes Corporation* (“**Matthews**”), 2010 ONCA 468 <http://canlii.ca/t/2bbcz> at paras. 22-23, Appellant’s Compendium Tab 29 pp.177-178.

50. Section 3 of the *RTA* addresses the general scope of the *RTA*'s application:

3 (1) This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

51. Exemptions to the application of the *RTA* are set out in ss. 5 and 5.1. If a housing provider falls within the scope of an exemption, they are not subject to the *RTA* and fall outside the jurisdiction of the Board.

52. The exemptions to the *RTA* at issue in this matter are s.5(k) and s.5.1. Section 5(k) applies to “living accommodation occupied by a person for the purpose of receiving rehabilitative or therapeutic services”. The period of occupancy must be “intended to be provided for no more than a one-year period”.

53. The exemption in s. 5.1 was introduced to the *RTA* in 2017. It is divided into two parts: subsection 5.1(2) provides a definition of an exempt ‘program’, while ss. 5.1(3) describes the agreement that must be in place between a program provider and the occupant of the living accommodation in order for the program to be exempt.

54. As is discussed below, the legislature intended s. 5.1(2) to provide a definition of transitional housing programs so that, where they complied with the agreement requirements in s. 5.1(3), transitional housing programs could be exempt from the *RTA*.<sup>39</sup>

55. Finally, s. 5.1(5) preserves the availability of all exemptions in the *RTA*, providing “nothing in this section limits the availability of other exemptions under this Act.”

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<sup>39</sup> See Appellant’s factum at paras. 86-90.

### **C. The Board Erred in Finding the Housing Program Meets the s. 5(k) Exemption**

56. The YouthLink Housing Program is not a rehabilitative and therapeutic service and therefore cannot be exempt from the applicability of the *RTA* under s. 5 (k). The Board erred in finding otherwise. The Board erred in its analysis in the following ways:

- by relying on previous jurisprudence that is no longer applicable, as it fails to account for a change in the legislation specifically intended to address the situation in the case at bar; and
- by failing to properly apply recognized rules of statutory interpretation, including failing to apply the ordinary meaning to the interpretation of words and phrases and appropriately consider the legislative intent; and
- by failing to adopt a purposive approach in its analysis to ensure that its interpretation is consistent with the overall scheme and context of the Act and avoid an absurd result.

57. The exemption in s. 5.1 of the *RTA* could be applicable to the YouthLink Housing Program as it satisfies the definition of transitional housing in s. 5.1(2), but, YouthLink has not met the required criteria in 5.1(3) as they failed to enter an agreement that includes a description of rights and responsibilities, and processes by which the tenancy may be terminated.

#### **a. Previous Jurisprudence No Longer Applicable because of Amendment Adding s. 5.1**

58. The Board erred in interpreting s. 5(k) as available to the Housing Program by relying on outdated jurisprudence which was decided before the *RTA* was amended to include s. 5.1.

59. In coming to its conclusion, the Board relied heavily on its own decision in SOL-

45003-14, which predates the enactment of s. 5.1. As further outlined below, the Board ignored how the introduction of s. 5.1 evidences a clear and specific change in the legislature's approach to transitional housing and the application of different exemptions, especially s. 5(k).

**b. Statutory Interpretation – Modern Approach**

60. In addition to being of limited precedential value, the analysis of s. 5(k) in SOL-45003-14 relied on by the Board does not comport with well-established rules of statutory interpretation.

61. The SCC has consistently applied Driedger's Modern Approach as the prevailing rule of statutory interpretation:

[t]oday there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.<sup>40</sup>

62. Analyzing the applicability of possible exemptions to the *RTA* requires this Court to consider the entire context of the provisions. In interpreting s. 5(k), the Board failed to consider the ordinary meaning of the words used and the legislative intent in retaining s. 5(k) following the 2017 amendments to the *RTA*.

**i. Ordinary Meaning of Words**

63. The Board's decision in SOL-45003-14, and thus in the case at bar, relies on one dictionary definition of 'rehabilitative' to determine the meaning of the exemption. Dictionary meanings are notoriously unreliable because different dictionary's offer different meanings,

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<sup>40</sup> *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 <http://canlii.ca/t/51s6> at para 26, quoting E. A. Driedger, "The Construction of Statutes" 2nd ed. (1983), at 87, Appellant's Compendium Tab 32 p.199.

and “dictionary meaning is a-contextual. .... It cannot, and does not purport to, indicate the meaning of a word as used in a particular context, in relation to a particular set of facts”.<sup>41</sup>

64. The SCC has rejected this approach to statutory interpretation as it repeatedly creates unreasonable results.<sup>42</sup>

65. Instead, the words used should be interpreted in their grammatical and ordinary meaning, being “the natural meaning which appears when the provision is simply read through” and understood within its immediate context and common usage. This is not the same as a dictionary definition.<sup>43</sup>

66. The ordinary meaning of ‘rehabilitative’ refers to alcohol and drug rehabilitation (see para 69 below). It may also apply in other medical contexts, such as rehabilitation of an injury or in a criminal context with respect to rehabilitation of people serving a criminal sentence.

67. The exemption found at s. 5(k) of the *RTA* is therefore intended to be reserved for accommodation providing specialized counselling and rehabilitation services - services far beyond the supports offered by YouthLink’s transitional Housing Program.

## *ii. Legislative Intent*

68. Dreiger’s modern principle requires an interpreting Court to go beyond the meaning of the words used in the exemption. It must to ensure its interpretation aligns with the other contextual considerations. In the case at bar, this includes considering the legislature’s intent

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<sup>41</sup> Ruth Sullivan, *Sullivan on the construction of statutes*, 6<sup>th</sup> ed (Markham, ON: NexisLexis Canada, 2014) (“Sullivan”) at 39-41, Appellant’s Compendium Tab 30 pp.184-186.

<sup>42</sup> *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)* (“**Mowat**”), 2011 SCC 53 <http://canlii.ca/t/fnl47> at para.64, Appellant’s Compendium Tab 31 p.196.

<sup>43</sup> Sullivan at 30.

in retaining s. 5(k) after the introduction of s. 5.1.<sup>44</sup>

69. While the *RTA* has never defined “rehabilitative and therapeutic”, a 2016 consultation paper released by the Ministry of Housing (discussed further below) clarifies what is intended in s. 5(k) and describes the types of services that would fall within that exemption.<sup>45</sup>

“MHO is considering whether the 5(k) exemption for accommodation occupied for the purpose of receiving rehabilitative and therapeutic services should remain in the *RTA* for accommodation such as **short-term addiction, alcohol and drug rehabilitation centres (where often the resident has a primary residence to return to after completion of the program)**.” [emphasis added]

70. The YouthLink Housing program does not fit within the intended scope of s. 5(k). It provides no therapy or counselling and no rehabilitative services of any kind. There are no therapists or specially trained counsellors what so ever. Youth are not supported to address any addiction, substance use or mental health issues. The role of staff is only to support youth attend school and/or employment, to build the skills required for independent living and to obtain more permanent housing.<sup>46</sup>

71. Furthermore, the Housing Program is not limited to less than one year as required under s. 5(k). The Agreement signed by Ms. S [REDACTED] says the Housing Program could be extended beyond one year. Staff advised Ms. S [REDACTED] at intake that the Housing Program could be extended beyond one year. The Board specifically erred in finding an extension beyond one year was not provided for in the Intake Package: it is found on page 6. This flexible duration beyond one year

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<sup>44</sup> *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 <http://canlii.ca/t/1mj71> at para. 48, Appellant’s Compendium Tab 33 p.202.

<sup>45</sup> Ontario Ministry of Housing, “Legislative Framework for Transitional Housing Under the Residential Tenancies Act, 2006” (Ontario: September 2016) (“**Consultation Paper**”), <http://www.mah.gov.on.ca/AssetFactory.aspx?did=15806> accessed September 25, 2020, at 25, Appellant’s Compendium Tab 34 p.220.

<sup>46</sup> Intake package, pp.1 and 3, Appellant’s Compendium Tab 9 pp.91 and 93.

is simply not available if a transitional housing program seeks to be exempt under s. 5(k).<sup>47</sup>

72. The intent of the legislature in retaining s. 5(k) even after the introduction of s. 5.1, as described in the Ministry of Housing's 2016 consultation paper, is to create a distinction between temporary, short term *rehabilitation and therapeutic* facilities (s. 5(k)) and transitional housing programs.

73. There may be limited and narrow circumstances where a transitional housing provider's primary purpose more appropriately fits within the short-term *rehabilitation and therapeutic* exemption under s. 5(k). Section 5.1(5) makes all other exemptions available to transitional housing providers for this reason. However, any claimant must still demonstrate that the primary purpose of their program meets the requirements of the other exception. This is not the case for the YouthLink Housing Program.

**D. The Board Failed to Account for the Purpose of Section 5.1 and To Apply it to YouthLink's Housing Program**

74. Section 5.1 was added to the *RTA* in order to appropriately provide a tailored exemption for transitional housing programs, provide for security of tenure and due process rights for tenants, and to cure the problem of decision makers inappropriately using s. 5(k) to exempt transitional housing programs from the *RTA*.

75. YouthLink's Housing Program's primary purpose fits squarely within the definition contained in s. 5.1: a program intended to support tenants' employment and life skills development and that is "intended to support the occupant of the living accommodation in subsequently obtaining and maintaining more permanent living accommodation". Its primary

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<sup>47</sup> Decision at para.15, Appellant's Compendium Tab 2 p.11.



purpose is to provide transitional housing to vulnerable young people. Any finding that YouthLink's Housing Program is exempt from the *RTA* should have been evaluated under s. 5.1.

76. The Board failed to interpret s. 5.1 in line with the well-established rules of statutory interpretation and in particular, failed to account for the legislature's purpose in enacting s. 5.1. This led to its failure to properly understand the scope of s. 5.1 and its application to the Housing Program.

77. Understanding legislative purpose is an essential part of Dreidger's modern principle. Purpose must be considered in every case and at every stage of interpretation. In so far as the language of the text permits, Courts should adopt an interpretation that promotes the purpose of the Act as a whole and the provision in question within that purpose.<sup>48</sup>

78. To establish a provision's purpose the Court may consider legislative history, including consultation papers, Parliamentary debates, and similar material as extrinsic aids to assist in interpretation. Purpose may also be ascertained by considering the "mischief" or the problem which Parliament sought to remedy.<sup>49</sup>

#### *i. Legislative History*

79. The legislative history of s. 5(k) and s. 5.1 demonstrates that:

- a. Section 5(k) was never intended to include transitional housing providers, and clearly is no longer to be understood to include transitional housing providers;

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<sup>48</sup> Sullivan at 261-262, Appellant's Compendium Tab 30 p.187.

<sup>49</sup> *Reference Re Firearms Act (Can.)*, 2000 SCC 31 <http://canlii.ca/t/5251> at para 17, Appellant's Compendium Tab 35 p.223.; *Abdula v. Canadian Solar Inc.*, 2012 ONCA 211 <http://canlii.ca/t/fqswm> at para.52, Appellant's Compendium Tab 36 p.227.; *R. v. Proulx*, 2000 SCC 5 <http://canlii.ca/t/527b> at para. 78-79, Appellant's Compendium Tab 37 p.231.

- b. Section 5.1 was enacted in 2017 to remedy previous injustice created by conflicting and unclear decisions about the interpretation s. 5(k);
- c. Section 5.1 introduced a clear definition of transitional housing and specific exemption for that category of tenants and housing providers that sought to balance the interests of providers and participants; and
- d. A key purpose of s. 5.1 is to ensure that Ontario's most vulnerable tenants are provided with some security of tenure, and related due process rights by having robust agreements in place with providers.

80. Section 5(k) formed a part of the *RTA* when it was first introduced in 2006.<sup>50</sup> The terms 'rehabilitative' and 'therapeutic' were not defined or discussed in the legislative debates. Transitional housing wasn't defined and wasn't explicitly included within the exceptions.<sup>51</sup>

81. Including transitional housing programs as exempt under s. 5(k) developed in the Board's decisions, where adjudicators interpreted the meaning of the words 'rehabilitative' and 'therapeutic' to include transitional housing programs. The inclusion of transitional housing within s. 5(k) was always problematic:<sup>52</sup>

Decisions by the former Ontario Rental Housing Tribunal, the LTB and the courts have not provided clarity regarding the interpretation. The 5(k) "rehabilitative or therapeutic services" exemption has been interpreted in different, and sometimes inconsistent ways over time."

82. As in the case at bar, the line of cases from the Board exempting transitional housing under 5(k) relied almost exclusively on a dictionary definition of 'rehabilitative',

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<sup>50</sup> *Residential Tenancies Act*, S.O. 2006, c. 17 - Bill 109, s.5(k).

<sup>51</sup> *Ibid*; Complete transcripts of the legislative debates of Bill 109, Residential Tenancies Act, 2006 can be accessed here: <https://www.ola.org/en/legislative-business/bills/parliament-38/session-2/bill-109/debates>.

<sup>52</sup> Consultation Paper, *supra* note 45 at 11, Appellant's Compendium Tab 34 p.210; *SOL-45003-14*, 2014 CanLII 52441 (ONLTB) <http://canlii.ca/t/g8z5h> at paras. 10-12 ("SOL 2014"), Appellant's Compendium Tab 38 p.237.

without a thorough analysis of the context and legislative scheme.<sup>53</sup>

83. The Ministry of Housing (the “**Ministry**”) recognised this lack of clarity and uncertainty as a problem to be addressed by the Legislature. In 2016-17, the Ministry consulted transitional and supportive housing providers and their participants. As mentioned above, it released its Consultation Paper in September 2016 describing options for legislative amendment.<sup>54</sup>

84. The Consultation Paper specifically recognised and articulated the need to provide a new, separate exemption for transitional housing within the *RTA*. Options for reform were proposed, all included a new definition for transitional housing to be included as part of an exemption in the *RTA*,<sup>55</sup> and each option sought “to balance increased flexibility for transitional housing providers with a level of assurance of appropriate protections for participants”.<sup>56</sup> The Ministry highlighted the need to protect the interests and rights of vulnerable tenants who are transitional housing participants:<sup>57</sup>

“Participants in transitional housing programs are among Ontario’s most vulnerable residents, and it is necessary to ensure they are provided adequate rights and protections while they participate in these programs”

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<sup>53</sup> SOL 2014, *supra* note 52, at paras.10-12 and 13, Appellant’s Compendium Tab 38 p.237-238; *TST-01778 (Re)*, 2010 CanLII 67970 (ON LTB) <http://canlii.ca/t/2dh97> at para. 39, Appellant’s Compendium Tab 39 p.243; *NOT-18915-15-RV (Re)*, 2015 CanLII 35176 <http://canlii.ca/t/gjn9m> at para 4, Appellant’s Compendium Tab 40 p.245; *CET-70982-17 (Re)*, 2018 CanLII 41842 (ON LTB) <http://canlii.ca/t/hs064> at para 19, Appellant’s Compendium Tab 41 p.251.

<sup>54</sup> Consultation Paper, *supra* note 45 at 2-3 and 9-11, Appellant’s Compendium Tab 34, p.206-210; “Bill 124, Rental Fairness Act, 2017”, 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41-2, No 74 (1 May 2017) at 3907 (Hon. Chis Ballard), available at: <https://www.ola.org/en/legislative-business/house-documents/parliament-41/session-2/2017-05-01/hansard#para771>, Appellant’s Compendium Tab 42, pp.256 (“**Hansard 1 May 2017**”).

<sup>55</sup> Consultation Paper, *supra* note 45 at 19-25, Appellant’s Compendium Tab 34 pp.214-220.

<sup>56</sup> *Ibid* at 19, Appellant’s Compendium Tab 34 p.214.

<sup>57</sup> *Ibid* at 17-18, Appellant’s Compendium Tab 34 pp.212-213.

85. Following further consultation, the *RTA* was amended by the *Rental Fairness Act, 2017*, to include the addition of s. 5.1 to the *RTA*. In Hansard debates, the Minister of Housing makes clear that the changes are part of the government’s commitment to end homelessness by 2025, and that transitional housing plays an important role in *preventing* homelessness. The amendments are also intended to enhance tenants’ security of tenure and to “make Ontario’s housing system fairer, more affordable and more predictable for tenants”.<sup>58</sup>

86. With respect to transitional housing, the Minister of Housing noted that the change had a dual purpose: “to provide flexibility for transitional housing providers while ensuring clients in vulnerable situations have appropriate protections”.<sup>59</sup>

87. The Minister uses the specific example of vulnerable young people who have aged out of care – the Appellant before this Honourable Court. The Minister notes that young people need flexibility in the duration of the program. He also notes the importance of the written agreements for programs, to ensure participants understand the rules in place and their rights and responsibilities in the program.<sup>60</sup> With respect to agreements, the Minister notes:

“The bill therefore responds to that concern and extends the current

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<sup>58</sup> “Bill 124, Rental Fairness Act, 2017”, 3rd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41-2, No 85A (18 May 2017) at 4523-5 (Mme Nathalie Des Rosiers) available at <https://www.ola.org/en/legislative-business/house-documents/parliament-41/session-2/2017-05-18/hansard#para240>, Appellant’s Compendium Tab 43 p.260 (“**Hansard 18 May 2017**”); “Bill 124, Rental Fairness Act, 2017”, 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41-2, No 71 (25 April 2017) at 3785 (Mme Nathalie Des Rosiers) available at <https://www.ola.org/en/legislative-business/house-documents/parliament-41/session-2/2017-04-25/hansard#para964>, Appellant’s Compendium Tab 44, p.267 (“**Hansard 25 April 2017**”); “Bill 124, Rental Fairness Act, 2017”, 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41-2, No 73 (27 April 2017) at 3861 (Mme Nathalie Des Rosiers) available at <https://www.ola.org/en/legislative-business/house-documents/parliament-41/session-2/2017-04-27/hansard#para184>, Appellant’s Compendium Tab 45 p.271; “Bill 124, Rental Fairness Act, 2017”, 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41-2, No 75 (2 May 2017) at 3951 (Mme. Nathalie Des Rosiers) available at <https://www.ola.org/en/legislative-business/house-documents/parliament-41/session-2/2017-05-02/hansard#para216>, Appellant’s Compendium Tab 46 p.275 (“**Hansard 2 May 2017**”).

<sup>59</sup> Hansard 1 May 2017, *supra* note 54 at 3907 (Hon. Chis Ballard), Appellant’s Compendium Tab 42, pp.256.

<sup>60</sup> *Ibid*; Hansard 25 April 2017, *supra* note 58 at 3785 (Mme Nathalie Des Rosiers) Appellant’s Compendium Tab 44, pp.267; Hansard 18 May 2017, *supra* note 58 at 4525 (Mme Nathalie Des Rosiers), Appellant’s Compendium Tab 43, pp.260.

exemption of one year to four years to ensure that people who are in transitional housing have the benefit of the treatments that are offered for four years, provided that – and we are quite clear in the bill – they need to have some protection as well and be treated very fairly.” [Emphasis added]

88. Once the amendment was enacted, the Assistant Deputy Minister (“ADM”) wrote to transitional housing providers across the province, putting them on notice that they are now required to have agreements with their tenant clients that meet the requirements set out in the *RTA* s.5.1(3). The ADM’s letter further makes clear that the intent of the legislative reform is to provide an exemption that specifically applies to and is tailored towards all transitional housing providers.<sup>61</sup>

89. The effect of s. 5.1 is to provide a standalone exemption from the *RTA* for transitional housing programs. It created a new definition of transitional housing that specifically included any transitional housing provider that would have previously fallen under the s. 5(k) exemption. The definition includes transitional housing offering ‘rehabilitative and therapeutic’ services and applies not only for one year, but for up to four years.

90. The use of the same terminology in s. 5.1 as is used in s. 5(k) evidences an intent by the legislature to replace s. 5(k) for transitional housing providers with a more detailed and tailored exemption that ensures they retain the flexibility they require while also introducing important protections for its tenants. Transitional housing providers can continue to be exempt from the *RTA* and retain the flexibility they require, but only in so far as they also ensure the rights of vulnerable tenants are protected by having occupancy agreements in place that comply with s.5(3).<sup>62</sup>

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<sup>61</sup> Letter from Assistant Deputy Minister’s Office, dated January 22, 2018, Appellant’s Compendium Tab 48 p.281.

<sup>62</sup> Sullivan at 217, Appellant’s Compendium Tab 30 p.190.

***ii. Statutory Interpretation Analysis Should Support Remedial Purpose and Avoid Absurd Outcomes***

91. The interpretation proposed above avoids the absurd outcome that arose here, where the purpose of protecting tenants under s. 5.1 was defeated by the Board's interpretation that YouthLink's Housing Program isn't required to have a robust occupancy agreement with the tenants in its program.

92. The SCC in *R. v. Proulx* found that an interpretation that defeats the remedial purpose of a provision is absurd and ought to be avoided. In that case, the court avoided an interpretation of s.718.2(e) of the *Criminal Code* that would limit the availability and remedial effect of that sentencing provision for Indigenous offenders.<sup>63</sup>

93. Allowing transitional housing providers to avoid the occupancy agreements required under s. 5.1(3) contradicts the intent of the legislature to ensure that security of tenure and procedural protections are in place for vulnerable tenants living in transitional housing.

94. This result runs contrary to the primary purpose of the *RTA*, "to provide protection for residential tenants from unlawful rent increases and unlawful evictions", and the remedial nature of the legislation that seeks to protect tenants.<sup>64</sup>

95. Further, this result contradicts the Legislature's intent to comply with international instruments and its human rights obligations both within Canada and internationally. The legislature makes several express references to international covenants addressing basic housing rights and the importance of a minimum of security of tenure. The legislature also received submissions throughout their consultation and at the Legislative Committee Hearings,

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<sup>63</sup> *R. v. Proulx*, 2000 SCC 5 <http://canlii.ca/t/527b> at para.92, Appellant's Compendium Tab 37 p.233.

<sup>64</sup> *RTA*, s 1; *Matthews*, *supra* note 38 at paras. 22-23 and 32, Appellant's Compendium Tab 29, pp.177.

raising concerns about the protection of transitional housing tenants and their basic human rights.<sup>65</sup>

## **E. Conclusion**

96. Ms. S [REDACTED] is a young person who is vulnerable in myriad ways, and has experienced significant personal challenges to housing, including family abandonment and unstable immigration status. She recently ‘aged out’ of the care of the Children’s Aid Society. She is the vulnerable tenant the Minister referred to in Hansard and exactly who the s. 5.1 amendment is intended to protect.

97. Without a robust agreement in place in accordance with s. 5.1(3), Ms. S [REDACTED] was evicted from YouthLink in the middle of a pandemic, with nowhere to go, and at a time when all evictions and eviction enforcement was suspended, pursuant to the March 19th Order of Justice Morowtz. Ms. S [REDACTED] had no notice of the decision to evict her, and no recourse to seek a reconsideration.

98. YouthLink effected the eviction by calling the police, leading to Ms. S [REDACTED] being handcuffed (without any charge) and removed by force from her residence because she was moving too slowly. Following the eviction, Ms. S [REDACTED] went almost a week without her property, including very basic items like proper shoes and her coat.

99. Ms. S [REDACTED] had no notice and no recourse to seek a review of the decision. YouthLink provided her with no support to find alternative housing and as a result, L [REDACTED] has

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<sup>65</sup> Hansard 2 May 2017, *supra* note 58 at 3951 (Mme Nathalie Des Rosiers), Appellant’s Compendium Tab 46 p.275; Hansard 25 April 2017, *supra* note 58 at 3781 (Mme Nathalie Des Rosiers), Appellant’s Compendium Tab 44, pp.266; “Bill 124, Rental Fairness Act, 2017”, Standing Committee on General Government, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41-2, No G-22 (9 May 2017) at G-352 (Mr. Jonathan Ho), Appellant’s Compendium Tab 47, pp.279.

remained unstably housed. This is precisely the vulnerable and precarious situation the introduction of s.5.1 and in particular, s.5.1(3) seeks to prevent.

100. Applying the modern principle of statutory interpretation to both exemptions leads to the conclusion that transitional housing providers must comply with the requirements of s. 5.1 in order to be exempt from the *RTA*. The Board's interpretation of s. 5(k) fails to take into account the legislative intent behind s. 5.1 and its operation within the legislative scheme. By permitting YouthLink to rely on s. 5(k), the Board produced an absurd result that defeats the purposes to the amendment by allowing transitional housing providers to avoid occupancy agreements with their tenants.

101. Applying the exemption under s. 5.1, YouthLink meets the definition of a program described in s. 5.1(2). However, it fails to comply with the requirements of an occupancy agreement under s. 5.1(3) and therefore can not be permitted to rely on this exemption.

102. As YouthLink does not comply with any exemption, the *RTA* applies to it. This includes all the provisions relating to service of a notice of eviction and the requirement for an eviction hearing before the Board. As the *RTA* eviction procedures were not followed, Ms. S [REDACTED] was illegally evicted.

## **PART 5 - ORDERS SOUGHT**

103. The Appellant respectfully requests the following remedies:
- a. An Order setting aside the June 22, 2020 Order of the Board;
  - b. A Declaration that the *RTA* applies to the Appellant's tenancy, and;
  - c. An Order requiring the Respondent to pay a specified sum to the Appellant for:



- i. The amount of any increased rent the Appellant has incurred following the eviction and for one year following the date of this Court's order; and
  - ii. Reasonable out-of-pocket moving, storage and other like expenses related to tenancy which the Appellant has incurred following the eviction and for one year following the date of this Court's order;
- d. An Order that the Respondent pay an administrative fine of \$10,000 payable to the Minister of Finance;
- e. Such other orders as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25<sup>th</sup> day of September, 2020

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Claire Millgate and Mary Birdsell,  
Counsel for the Appellant, L [REDACTED] S [REDACTED]  
Justice for Children and Youth

## SCHEDULE “A” – LIST OF AUTHORITIES

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

*Honsberger v Grant Lake Forest Resources Ltd*, 2019 ONCA 44.

*Matthews v Algoma Timberlakes Corp*, 2010 ONCA 468.

*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42.

*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53.

*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4.

*Reference Re Firearms Act (Can.)*, 2000 SCC 31.

*Abdula v. Canadian Solar Inc*, 2012 ONCA 211.

*R v Proulx*, 2000 SCC 5.

*SOL-45003-14*, 2014 CanLII 52441 (ON LTB)

*TST-01778 (Re)*, 2010 CanLII 67970 (ON LTB)

*NOT-18915-15-RV (Re)*, 2015 CanLII 35176

*CET-70982-17 (Re)*, 2018 CanLII 41842 (ON LTB)

## SCHEDULE “B” – LEGISLATIVE PROVISIONS

### **Residential Tenancies Act, 2006, S.O. 2006, c. 17**

#### **PART I INTRODUCTION**

##### **Purposes of Act**

**1** The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

##### **Exception, Part V.1**

(2) Subsection (1) does not apply to Part V.1. The purpose of Part V.1 is to provide protection to members of non-profit housing co-operatives from unlawful evictions under this Act and to allow non-profit housing co-operatives and their members access to the framework established under this Act for the adjudication of disputes related to the termination of occupancy in a member unit of a non-profit housing co-operative. 2013, c. 3, s. 20.

##### **Application of Act**

**3** (1) This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary. 2013, c. 3, s. 22 (1).

##### **Exemptions from Act**

**5** This Act does not apply with respect to,

(k) living accommodation occupied by a person for the purpose of receiving rehabilitative or therapeutic services agreed upon by the person and the provider of the living accommodation, where,

(i) the parties have agreed that,

(A) the period of occupancy will be of a specified duration, or

(B) the occupancy will terminate when the objectives of the services have been met or will not be met, and

(ii) the living accommodation is intended to be provided for no more than a one-year period;

##### **Other exemption from Act**

**5.1** (1) This Act does not apply with respect to living accommodation provided to a person as part of a program described in subsection (2) if the person and the provider of the living accommodation have entered into a written agreement that complies with subsection (3). 2017, c. 13, s. 2.

**Program requirements**

(2) A program referred to in subsection (1) is a program that meets all of the following requirements:

1. The program consists of the provision of living accommodation and accompanying services where,

i. the living accommodation is intended to be provided for no more than a four-year period, and

ii. the accompanying services include one or more of the following services, regardless of where and by whom the services are provided:

- A. rehabilitative services,
- B. therapeutic services,
- C. services intended to support employment, or
- D. services intended to support life skills development.

2. The program is intended to support the occupant of the living accommodation in subsequently obtaining and maintaining more permanent living accommodation.

3. All or part of the program is,

i. provided by, or funded under an agreement with,

- A. the Crown in right of Canada or in right of Ontario,
- B. an agency of the Crown in right of Canada or in right of Ontario,
- C. a municipality, or
- D. a service manager as defined in the *Housing Services Act, 2011*, or

ii. provided or funded by a registered charity within the meaning of the *Income Tax Act* (Canada). 2017, c. 13, s. 2.

**Agreement between the provider and the occupant of the living accommodation**

(3) The agreement between the provider of the living accommodation and an occupant of the living accommodation must meet all of the following requirements:

1. The agreement must state that the provider of the living accommodation intends that the living accommodation be exempt from this Act and must also state that the occupant may apply to the Board under section 9 of this Act for a determination of whether this Act applies with respect to the living accommodation.

2. The agreement must set out the following:

- i. the legal name and address of the provider of the living accommodation,
  - ii. the maximum period of the occupant's occupancy of the living accommodation,
  - iii. the circumstances under which and the process by which the occupant's occupancy of the living accommodation may be terminated by the provider of the living accommodation,
  - iv. the occupant's rights and responsibilities in respect of the occupant's occupancy of the living accommodation,
  - v. the rules that apply to the occupant's occupancy of the living accommodation,
  - vi. the amount of any consideration required to be paid by the occupant for the right to occupy the living accommodation, and
  - vii. the amount of any other charges to be paid by the occupant in conjunction with the living accommodation.
3. The agreement must set out a process to address disputes between the occupant and the provider of the living accommodation which must,
  - i. include a reasonable method by which either party may initiate the process,
  - ii. provide for the involvement of an individual not otherwise involved in the dispute, to assist the parties in resolving the dispute, and
  - iii. meet such other requirements as may be prescribed.
4. Unless the information is set out in a separate agreement under subsection (4), the agreement must set out the following information in respect of the program under which the living accommodation is provided to the occupant:
  - i. the occupant's rights and responsibilities in respect of the occupant's participation in the program, other than the rights and responsibilities described in subparagraph 2 iv,
  - ii. the rules that apply to the occupant's participation in the program, other than the rules described in subparagraph 2 v,
  - iii. the amount of any charges to be paid by the occupant in conjunction with the program, other than the charges referred to in subparagraphs 2 vi and vii,
  - iv. the policy of the provider of the living accommodation or the administrator of the program, as applicable, with respect to securing alternate living accommodation for an occupant whose participation in the program or whose occupancy of the living accommodation is terminated, and

v. the policy of the provider of the living accommodation or the administrator of the program, as applicable, with respect to readmission into the program.

5. The agreement must meet such other requirements as may be prescribed. 2017, c. 13, s. 2.

**Requirements in subpars. 4 i to v of subs. (3)**

(4) Where the provider of the living accommodation and the administrator of the program under which the living accommodation is provided to the occupant are not the same person or entity, any information required by subparagraph 4 i, ii, iii, iv or v of subsection (3) may be set out in the agreement in respect of the occupant's participation in the program entered into between the occupant and the administrator of the program, if the agreement,

(a) sets out the legal name and address of the administrator of the program; and

(b) meets such other requirements as may be prescribed. 2017, c. 13, s. 2.

**No limitation**

(5) Nothing in this section limits the availability of other exemptions under this Act. 2017, c. 13, s. 2.

**Existing tenancy**

(6) For greater certainty, nothing in this section exempts living accommodation that is subject to a tenancy to which this Act applies, unless the tenancy has first been terminated in accordance with this Act. 2017, c. 13, s. 2.

**Application to determine issues**

**9** (1) A landlord or a tenant may apply to the Board for an order determining,

(a) whether this Act or any provision of it applies to a particular rental unit or residential complex;

(b) any other prescribed matter. 2006, c. 17, s. 9 (1).

**Order**

(2) On the application, the Board shall make findings on the issue as prescribed and shall make the appropriate order. 2006, c. 17, s. 9 (2).

**PART XII**

**BOARD PROCEEDINGS**

**Appeal rights**

**210** (1) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law. 2006, c. 17, s. 210 (1).

**Board to receive notice**

(2) A person appealing an order under this section shall give to the Board any documents relating to the appeal. 2006, c. 17, s. 210 (2).

**Board may be heard by counsel**

(3) The Board is entitled to be heard by counsel or otherwise upon the argument on any issue in an appeal. 2006, c. 17, s. 210 (3).

**Powers of Court**

(4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,

- (a) affirm, rescind, amend or replace the decision or order; or
- (b) remit the matter to the Board with the opinion of the Divisional Court. 2006, c. 17, s. 210 (4).

**Same**

(5) The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper. 2006, c. 17, s. 210 (5).

**Criminal Code (R.S.C., 1985, c. C-46)**

**Other sentencing principles**

**718.2** A court that imposes a sentence shall also take into consideration the following principles:

- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

LYDIAN S [REDACTED]

and

YOUTHLINK YOUTH SERVICES

Appellant

Respondent

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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

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**APPELLANT'S FACTUM**

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