COURT OF APPEAL FOR ONTARIO

CITATION: Ali v. Peel (Regional Municipality), 2023 ONCA 41
DATE: 20230125
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Zarnett, Coroza and Favreau JJ.A.

BETWEEN

Mumtaz Ahmed Ali

Appellant

and

Regional Municipality of Peel

Respondent

Anna Rosenbluth and Rosalea Thompson, for the appellant

Jennifer Bruce, for the respondent

Heard: September 20, 2022

On appeal from the order of the Divisional Court (Justices Katherine E. Swinton, Laurence A. Pattillo and Freya Kristjanson), dated April 30, 2021, with reasons reported at 2021 ONSC 3202.

Favreau J.A.:

A. OVERVIEW

[1] The appellant, Mumtaz Ahmed Ali, appeals an order of the Divisional Court dismissing her application for judicial review of a decision by the respondent, the Regional Municipality of Peel (the "Region"). In its decision, the Region denied

Ms. Ali's request to be given special priority status on the waitlist for subsidized housing in Peel.

[2] Ms. Ali, who worked as a live-in caregiver, had sought special priority status because her employer had abused her. She relied on a regulatory provision, made under the *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1, that gives special priority status for subsidized housing to people who have been abused. The provision defines abuse as including controlling behaviour, and includes in the list of possible abusers those on whom people applying for subsidized housing are financially dependent: O. Reg. 367/11, s. 1(1)-1(2).

[3] The Region denied Ms. Ali special priority status because she was not in a familial relationship with her abuser and because her economic dependence on her abuser ended with the end of the employment relationship. The Divisional Court held that the Region's decision was reasonable because it was consistent with the relevant statutory scheme. The Divisional Court also noted that the Region's mandate was to allocate scarce resources amongst people with competing interests.

[4] Ms. Ali submits that the Divisional Court erred in its interpretation of the relevant regulatory provision, arguing that the special priority list for subsidized housing is not meant to be restricted to people who were abused by family members. She also argues that the Divisional Court improperly inserted its own

rationale for upholding the Region's decision rather than focusing on the Region's reasons.

[5] In my view, the Divisional Court did not err in finding that the Region's decision was reasonable.

B. BACKGROUND

(1) The Region and the administration of the subsidized housing waitlist

[6] The *Housing Services Act, 2011* governs housing subsidies, also known as rent-geared-to-income, in Ontario. In accordance with the regulations under the Act, the Region is designated as a service manager responsible for administering social housing programs in the Region of Peel.

[7] As part of this responsibility, the Region assesses applications for subsidized housing in accordance with specified statutory and regulatory criteria. The Region places applicants who meet the criteria on a waitlist. Applicants who are seeking to leave an abusive household are entitled to be placed on a special priority waitlist.

[8] In 2016, there were approximately 13,000 eligible households on the waitlist for subsidized housing in Peel. At that time, the Region's waitlist for a one-bedroom unit for a single person who was found to be eligible for special priority status was 1.5 years rather than the 2.9-year period for people on the regular waitlist.

(2) Ms. Ali's circumstances

[9] Ms. Ali came to Canada from Pakistan on December 30, 2015, to work as a live-in caregiver. Ms. Ali lived with her employer and his family. She provided care to her employer's mother.

[10] During the course of her employment, Ms. Ali was subjected to controlling and abusive behaviour by her employer and his wife. She was confined to the room of her employer's mother. Her employer checked her phone records. Ms. Ali had limited opportunities to leave her employer's home. Her employer and his wife mocked her religious practices.

[11] On April 9, 2016, Ms. Ali's employer forced her to leave the home. Ms. Ali then moved into a shelter for abused women.

[12] With the assistance of a support worker at the shelter, Ms. Ali applied to the Region for subsidized housing, and asked for special priority status on the waiting list. Ms. Ali made the request on the basis that she was abused by her employer. In her application, Ms. Ali stated that she was also making a claim against her former employer for wrongful dismissal and unpaid wages.

(3) The Region's decision refusing special priority status

[13] The Region found that Ms. Ali met the criteria for rent-geared-to-income housing, but denied her request to be placed on the special priority status list.

[14] In a letter dated August 4, 2016, the Region stated that Ms. Ali did not meet the criteria for special priority status because she was "not in a relationship with the alleged abuser" and because the "abuser was identified as [her] employer".

[15] Ms. Ali requested an internal appeal of the decision. In a decision dated September 16, 2016, a Housing Programs Manager with the Region denied the appeal. The rationale for denying the appeal was that Ms. Ali was in a business relationship and not in a family relationship with her abuser:

> Special priority is only given under very limited circumstances to victims of abuse. Under the interpretation of the priority, legislation and policy specifies who the abuser can be.
>
> The intent of the special priority is to provide earlier access to affordable housing for victims of abuse within a familial relationship. Our review confirms the relationship between you and the alleged abuser(s) is not a familial relationship, but rather a business relationship between an employee and employer. Your financial dependency upon your employer was within the same context as previously mentioned. You were in a business relationship, and your source of income ceased when the business relationship ended with the termination of your employment. [Emphasis added.]

(4) The Divisional Court's decision

[16] The Divisional Court dismissed Ms. Ali's application for judicial review of the Region's decision. The Divisional Court found that the Region's decision was reasonable.

[17] The Divisional Court explained that it was reasonable for the Region to decide that special priority for victims of abuse did not extend to employment relationships given the history and purpose of special priority status:

> The Region found that an employment relationship is not the type of financial dependency encompassed by the Regulation. This is consistent with the purposes and reality of the governing legislative regime. The history of the program has focused on assisting abused women to escape domestic violence. While this has expanded over time, the regulatory scheme has focused on protecting the safety of household members by enabling them to leave an unsafe and abusive situation. The interpretation adopted by the Region is one which enables those whose safety is at risk to receive priority placement so they can separate permanently from their abuser.

[18] The Divisional Court also noted that the Region's role was to allocate scarce resources amongst people with competing interests:

> Here, the issue is where the applicant will stand on a waitlist. This requires the decision-maker to balance the competing interests of others on the waitlist, who are not before the court, and raises public policy issues about rationing scarce resources. This decision accords with the purposes and public realities of the housing priority scheme, which enables applicants whose safety is at risk to separate permanently from their abuser as soon as possible.

[19] The Divisional Court explained that financial dependence in the context of an employment relationship ends with the end of the relationship:

> The applicant was a live-in caregiver entitled to the protections of the *Employments Standards Act, 2000*, S.O. 2000, c. 41. Any financial dependence is limited to the duration of employment relationship; such a

> relationship is finite, and when it ends, there is no financial dependence. The applicant could apply for another job, and in this case, she asserted legal rights through civil proceedings for wrongful dismissal and unpaid wages, alternatives which are not available to those who are victims of intimate partner violence, for example.

[20] Finally, the Divisional Court emphasized the deference it owed to the Region's interpretation of the relevant statutory scheme, and concluded that "[i]nterpreting 'financially dependent' to exclude an employer/employee relationship in the context of the special priority list is a reasonable decision consistent with legislative intent and the statutory and regulatory context surrounding the scarce resource of subsidized housing."

C. ISSUES AND ANALYSIS

[21] The issues on appeal are as follows:

a. The standard of review;

b. The statutory scheme;

c. Whether the Region's decision was reasonable;

d. Whether the Divisional Court erred in inserting its own rationale for denying Ms. Ali's request to be placed on the special priority list; and

e. The appropriate remedy if the Region's decision was unreasonable.

[22] As set out below, in my view, the Region's decision was reasonable. As held by the Divisional Court, courts owe deference to an administrative decision maker's statutory interpretation. The Region's interpretation of the criteria for special priority status was reasonable and the Divisional Court did not improperly supplement the Region's decision.

(1) The standard of review

[23] On an appeal from a decision of the Divisional Court on judicial review, this court is to decide whether the Divisional Court identified the appropriate standard of review and applied it correctly. This amounts to a "*de novo* review of the [administrative decision maker's] decision" and the role of this court is to "step[] into the shoes" of the Divisional Court: *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458, at para. 42; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 45-47; *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780, at para. 49; and *Briggs v. Durham (Police Services Board)*, 2022 ONCA 823, at para. 36.

[24] In this case, the Divisional Court applied a reasonableness standard of review to the Region's decision. As held in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 23, there is a presumption that the reasonableness standard of review applies unless a statute

provides otherwise or a correctness standard is required by the rule of law: see also *Turkiewicz*, at para. 53. Ms. Ali and the Region agree that no exceptions apply in this case and that the appropriate standard of review is reasonableness. I agree.

[25] In applying the reasonableness standard, as held in *Vavilov*, at para. 83, the focus is "on the decision actually made by the decision maker, including both the decision maker's reasoning and the outcome." The court is to look for reasoning that is "rational and logical", having regard to the relevant factual and legal constraints: at paras. 102, 105. In addition, the court is not to hold the reasons up to a standard of perfection or conduct a "line-by-line treasure hunt for error": at para. 102.

(2) The statutory scheme and the Region's policy

[26] The Region is designated as a service manager under O. Reg. 367/11, Sched. 2, made under the *Housing Services Act, 2011* (the "Regulation").

[27] Section 47(1) of the *Housing Services Act, 2011* requires the service manager to create "a system for selecting households from those waiting for rent-geared-to-income assistance in the housing projects in the service manager's service area." Section 47(2) of the Act specifies that the system is to include, amongst other matters, "priority rules for households waiting for rent-geared-to-income assistance".

[28] Section 48(1) of the Act provides that one of the service manager's roles is to determine "the priority of households waiting for rent-geared-to-income assistance, including whether a household is included in a category given priority over other categories." Section 48(2) specifies that the service manager is to make these determinations in accordance with "[t]he prescribed provincial priority rules" and the priority rules established by the service manager. Section 48(3) states that, in the case of a conflict with the provincial priority rules and the service manager's rules, the provincial rules are to be given priority.

[29] The Regulation sets out the provincial eligibility rules for rent-geared-to income, including for placement on the special priority list. There have been some changes to the Regulation since the Region's decisions in 2016. The provisions of the Regulation referred to below were those in place in 2016, at the time of the Region's decisions.

[30] Section 54(1) of the Regulation specifies conditions for placement on the special priority list, including that the individual must have been abused by another person:

> (1) A household is eligible to be included in the special priority household category if,
>
> > (a) a member of the household has been abused by another individual;
> >
> > (b) the abusing individual is or was living with the abused member or is sponsoring the abused member as an immigrant; and

> (c) the abused member intends to live permanently apart from the abusing individual.

[31] The Regulation, in s. 1(1), defines “abuse” to include “controlling behaviour”:

> “abuse” means,
>
> (a) one or more incidents of,
>
> (i) physical or sexual violence,
>
> (ii) controlling behaviour, or
>
> (iii) intentional destruction of or intentional injury to property, or
>
> (b) words, actions or gestures that threaten an individual or lead an individual to fear for his or her safety. [Emphasis added.]

[32] Section 1(2) prescribes the list of people who can be considered as abusers, and includes a person on whom the applicant is “financially dependent”:

> For the purpose of the definition of “abuse” in subsection (1), abuse is done by any of the following persons against an individual:
>
> 1. The individual’s spouse, parent, child or other relative.
>
> 2. A person who is sponsoring the individual as an immigrant.
>
> 3. A person on whom the individual is emotionally, physically or financially dependent. [Emphasis added.]

[33] Section 54(2) of the Regulation sets out the conditions under which a person no longer living with an abuser can apply to be placed on the special priority list. This includes where the application was made within three months of the person no longer living with the abuser.

[34] Section 58 of the Regulation sets out the information an applicant must provide in support of a request for special priority status and, in turn, requires the

Region to accept an applicant's statement that they have been abused that complies with these requirements.

[35] The Region has developed a policy titled "Policies & Procedures No. 2008-07, Subject: Victims of Family Violence" that sets out the criteria and procedures for inclusion on the Region's special priority list for subsidized housing.

(3) The Region's decision was reasonable

[36] Ms. Ali essentially makes two arguments in support of her position that the Region's decision was unreasonable. First, she argues that, relying on its own policy, the Region improperly stated that the special priority list was limited to familial relationships. Second, she argues that there is no basis for excluding employer/employee relationships from the category of financial dependence in the definition of abuser in s. 1(2) of the Regulation. I would reject both arguments.

[37] First, it is evident that the Region's reason for rejecting Ms. Ali's request to be placed on the special priority list was not restricted to the fact that she was not in a familial relationship with her abuser. Rather, the Region also rejected Ms. Ali's request because it decided that employer/employee relationships are not the types of relationships that are meant to be given special priority status. In both the original decision and the appeal decision, the Region did refer to Ms. Ali not being in a familial relationship with her abuser. But it also explained that she was in an employee/employer relationship with him, and that this disqualified her from being

placed on the special priority list. This is evident from the original August 4, 2016 letter from the Region which stated that one of the reasons Ms. Ali did not meet the special priority eligibility criteria was because her "alleged abuser was identified as [her] employer". This rationale was confirmed in the appeal decision dated September 16, 2016, in which the Region stated that Ms. Ali was in a "business relationship" with her alleged abuser which terminated with the end of her employment. In other words, the Region gave two distinct reasons for rejecting Ms. Ali's request. First, she was not in a familial relationship with her abuser, which is one type of relationship that can give rise to special priority status. Second, she was in an employee/employer relationship with her abuser, which is a type of relationship that the Region viewed as not qualifying for special priority status.

[38] I do not accept Ms. Ali's argument that the Region's own policy improperly limits inclusion on the special priority list to people in a familial relationship with their abuser. While the title of the Region's policy and its opening paragraphs refer to "victims of family violence", the policy as a whole refers to all categories of potential abusers listed in s. 1(2) of the Regulation and does not restrict eligibility to circumstances where the abuser and applicant are in a familial relationship.

[39] The second argument Ms. Ali makes is that the reference to financial dependence in s. 1(2) of the Regulation includes employer/employee relationships. In making this argument, Ms. Ali relies on the wording of the definition of abuser as including a "person on whom the individual is emotionally,

physically or financially dependent" (emphasis added). She points out that the definition is not qualified and does not exclude employer/employee relationships. In my view, in making this argument, Ms. Ali improperly invites this court to undertake its own interpretation of the Regulation. As reviewed above, the task of this court is not to decide how the terms "financially dependent" should be interpreted and applied, but rather whether the Region's interpretation of those terms was reasonable in the context of the legislative scheme and the facts of the case: *Vavilov*, at para. 83; and *Turkiewicz*, at para. 56.

[40] As the Region explained in its appeal decision, "[s]pecial priority is only given under very limited circumstances". The Region also distinguished the employer/employee relationship from other potentially abusive relationships on the basis that Ms. Ali's business relationship with her employer ended when the employment relationship was terminated. In other words, her financial dependence on her abuser ended with the termination of her employment, leading the Region to find that she was not "financially dependent" on her abuser within the meaning of the Regulation.

[41] In my view, it would have been open to the Region to accept Ms. Ali's application on the basis of financial dependence. Live-in caregivers are no doubt vulnerable to abuse by their employers because they depend on their employers for housing and because they are typically low wage earners who also often face language and other barriers to economic security.

[42] However, again, the task for this court and the Divisional Court is not to decide how “financially dependent” should be interpreted and how the terms should be applied to Ms. Ali’s circumstances. Given the deference owed to the Region’s decision, in my view it was not unreasonable for the Region to distinguish employer/employee relationships from other circumstances where a person may be financially dependent on an abuser. As noted by the Divisional Court, historically, the special priority list “focused on assisting abused women to escape domestic violence.” Access to the special priority list is now broader and includes other types of abusive relationships. However, as stated by the Divisional Court, the special priority list scheme still focuses “on protecting the safety of household members by enabling them to leave an unsafe and abusive situation” and to “separate permanently from their abuser.” In the case of an employee/employer relationship, as pointed out by the Region, that dependence ends when the employee leaves the employment relationship.

[43] Ms. Ali argues that the Region improperly focused on the abuse ending when the employee/employer relationship ended. She points out that s. 54(2) of the Regulation permits victims of abuse to apply for special priority status up to three months after they leave an abusive household. While this provision was not specifically addressed by the Region or the Divisional Court, I do not accept that this makes the decision unreasonable. It would be reasonable to view the purpose of the three-month window as a mechanism to ensure that victims of abuse are

less vulnerable to returning to an abusive household due to their dependence, including financial dependence, on an abuser. In contrast, once an employment relationship is over, as in this case, there is no risk or incentive for Ms. Ali to return to her abuser's household.

[44] Ms. Ali argues that the *Housing Services Act, 2011* is remedial legislation and that the Region was therefore required to interpret the terms "financially dependent" broadly. However, the special priority list is not just benefit conferring; it establishes a priority list amongst all persons entitled to the benefit, namely subsidized housing. In this context, as held by the Divisional Court, the Region must allocate scarce resources amongst competing interests. Granting special priority to Ms. Ali would mean that someone else on the waitlist will have to wait longer for subsidized housing. This is different from people applying for a benefit that is not limited in availability.

[45] Ms. Ali argues that the availability or sufficiency of subsidized housing should not affect how the Region interprets and applies the criteria for special priority housing. However, there would be no need for a regulatory regime governing special priority status if subsidized housing was not a scarce resource. In *Vavilov*, at para. 93, the Supreme Court instructs that a reviewing court is to consider whether a decision accords with "the purposes and practical realities of the relevant administrative regime". In this case, as noted by the Divisional Court, the Region's decision "accords with the purposes and public realities of the

housing priority scheme, which enables applicants whose safety is at risk to separate permanently from their abuser as soon as possible."

[46] The terms "financially dependent" cannot be looked at in isolation. They must be looked at in the context of the legislative scheme as a whole. The Region is responsible for administering subsidized housing, including the special priority list. The Region understood the historical context and purpose of special priority status. In that context, it was not unreasonable for the Region to decide that an employee/employer relationship was not the type of financial dependence contemplated by the Regulation. Therefore, in my view, the Region's decision denying Ms. Ali's request to be placed on the special priority list is reasonable.

(4) The Divisional Court did not err in explaining why the Region's decision was reasonable

[47] Ms. Ali argues that the Divisional Court improperly amplified the Region's decision by providing a rationale for the decision that the Region itself did not provide. For example, Ms. Ali says that the Divisional Court went beyond its reviewing role by referring to the competing interests and long waitlist for subsidized housing in Peel.

[48] As reviewed above, this court's role is to step into the shoes of the Divisional Court and review whether the Region's decision was reasonable. Having said this, in this case, I have no concerns with the Divisional Court's decision and find that it

correctly applied the reasonableness standard of review in the circumstances of this case.

[49] As held in *Vavilov*, at para. 91, the reasons of an administrative decision maker do not have to be perfect and they must also be understood in the context in which they were made. Furthermore, as stated by this court in *Turkiewicz*, at para. 61, a reviewing court should be mindful of the administrative decision maker's expertise when assessing the reasonableness of a decision.

[50] The Region is responsible for administering the waitlist for subsidized housing, including deciding who should be given special priority status. In performing these tasks, the Region draws on its expertise and on the legislative context within which it operates. It does not have to spell out the scope of that context in every decision. Therefore, in deciding whether the Region's decision is reasonable, the Divisional Court or this court can consider the legislative and factual context in which the decision is made beyond the specific rationale articulated by the Region.

[51] In this case, the Divisional Court did not give a different rationale or arrive at the outcome through a different analytical route than the Region. Rather, the Divisional Court gave legislative and factual context to the Region's reasons for denying Ms. Ali's request. For example, the Divisional Court referred to the number of people on the waitlist, a fact that would have been known to the Region. Also,

the Divisional Court explained that the Region had to make a decision in the context of competition for scarce resources, which, again, was part of the factual and legislative context that would have been self-evident to the Region.

[52] Accordingly, in my view, the Region's decision was reasonable and the Divisional Court did not make any errors in dismissing the application for judicial review.

(5) There is no need to address the issue of remedy

[53] In response to the application for judicial review, the Region argued that, even if its decision was unreasonable, given the extensive passage of time, the court should exercise its discretion not to grant a remedy in this case.

[54] Given my finding that the Region's decision was reasonable and that the Divisional Court did not err in dismissing the application for judicial review, it is not necessary to address the issue of the appropriate remedy in this case.

D. DISPOSITION

[55] I would dismiss the appeal. As agreed between the parties, no costs are to be paid.

Released: January 25, 2023 "B.Z."

"L. Favreau J.A."
"I agree. B. Zarnett J.A."
"I agree. Coroza J.A."