COURT OF APPEAL FOR ONTARIO

CITATION: MacKenzie v. Ottawa Community Housing Corporation, 2023 ONCA 43
DATE: 20230125
DOCKET: C69962

Zarnett, Coroza and Favreau JJ.A.

BETWEEN

Charlas MacKenzie

Appellant (Applicant)

and

Ottawa Community Housing Corporation and The City of Ottawa

Respondents (Respondents)

Lesli Bisgould, Sylvia Chapman and Anna Rosenbluth, for the appellant

Geneviève Langlais, for the respondent City of Ottawa

Gabriel Cormier, for the respondent Ottawa Community Housing Corporation

Jackie Esmonde, Danielle Bisnar and Aminah Hanif, for the intervener Canadian Centre for Housing Rights (formerly the Centre for Equality Rights in Accommodation)

Heard: September 20, 2022

On appeal from the order of the Divisional Court (Justices Gregory Ellies R.S.J., Katherine E. Swinton and John R. McCarthy), dated March 5, 2021, with reasons reported at 2021 ONSC 1640.

Favreau J.A.:

A. OVERVIEW

[1] The appellant, Charlas MacKenzie, was eligible for rent-geared-to-income assistance pursuant to the *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1. He occupied a unit administered by the respondent, Ottawa Community Housing Corporation, where he lived with his two daughters.

[2] In 2018, Mr. MacKenzie faced criminal charges. His bail conditions precluded him from living with his daughters and required him to live with his surety, who was his mother.

[3] In 2019, after finding out about these bail conditions, the respondents terminated Mr. MacKenzie's rent-geared-to-income subsidy on the basis that he failed to report the change to his household composition within 31 days and that his household had been absent from his unit for more than 60 consecutive days.

[4] The Divisional Court dismissed Mr. MacKenzie's application for judicial review, finding that the respondents' decisions were reasonable. Mr. MacKenzie now appeals that decision to this court.

[5] Mr. MacKenzie submits that the respondents' decisions were not reasonable because the removal of his children was only temporary and because he resided in the unit during the day while sleeping at his surety's residence at night. Mr. MacKenzie also argues that it was unreasonable for the respondents not to

find that there were extenuating circumstances that would warrant maintaining his rent-geared-to-income assistance.

[6] I see no error in the Divisional Court's decision and, in my view, the respondents' decision to terminate Mr. MacKenzie's rent-geared-to-income assistance was reasonable. The decision was based on the respondents' interpretation of the relevant statutory and regulatory provisions and the application of those provisions to Mr. MacKenzie's particular circumstances. The Divisional Court and this court owe deference to that exercise. I would therefore dismiss the appeal.

B. BACKGROUND

(1) The respondents and the administration of rent-geared-to-income assistance

[7] The *Housing Services Act, 2011* governs housing subsidies, also known as rent-geared-to-income assistance, in Ontario. In accordance with the regulations under the Act, the respondent City of Ottawa (the "City") is designated as a service manager responsible for administering social housing programs in Ottawa.

[8] As part of its role as service manager, the City is permitted to subdelegate some of its responsibilities to social housing providers, such as the respondent Ottawa Community Housing Corporation ("OCHC").

[9] In Ottawa, there are 16,502 rent-geared-to-income subsidies available to eligible households. The City allocates the subsidies to people who meet eligibility criteria under the *Housing Services Act, 2011* and its regulations. The amount of assistance provided to a household is based in part on household income and the number of dependents living in the household.

[10] Recipients are subject to annual reviews to ensure that they remain eligible. One of the requirements for continued eligibility is that recipients report any changes to the composition of their household within 31 days of the change. Another requirement is that recipients not be absent from their unit for more than 60 consecutive days or more than 90 days within a year.

[11] At the relevant time, there were approximately 13,500 people on the waitlist for rent-geared-to-income assistance in Ottawa, including 2,600 households waiting for a three-bedroom unit. If a recipient is no longer eligible for rent-geared-to-income assistance, the subsidy is provided to the next household on the waitlist.

(2) Mr. MacKenzie's circumstances

[12] Mr. MacKenzie receives income support from the Ontario Disability Support Program ("ODSP"). Given his low income, Mr. Mackenzie was found to be eligible for rent-geared-to-income assistance.

[13] In 2012, Mr. Mackenzie began living in a three-bedroom townhouse operated by the OCHC. He lived in the unit with his two daughters. The rent-

geared-to-income assistance reduced Mr. Mackenzie's rent to $222 per month, which was paid directly by the ODSP to the OCHC.

[14] On June 22, 2018, Mr. MacKenzie was charged with criminal offences. He was subject to bail conditions that prohibited him from having contact with his two daughters or from residing or being alone with anyone under the age of 16. As a result of these conditions, Mr. MacKenzie's two daughters were placed in the care of the Children's Aid Society. On November 29, 2018, an additional bail condition required Mr. MacKenzie to reside with his surety, who was his mother.[1]

[15] Mr. MacKenzie did not inform the OCHC of his bail conditions, including the fact that his daughters were no longer living with him and that he was required to live with his surety.

(3) The respondents' termination of Mr. MacKenzie's rent-geared-to-income assistance

[16] In early June 2019, the OCHC became aware of Mr. MacKenzie's bail conditions.

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[1] At the hearing of the appeal, counsel informed the court that Mr. MacKenzie's criminal proceedings are now completed. He was found guilty on two charges and received a six-month conditional sentence and eighteen months' probation. He has resumed contact with his children and one of them lives with him 50% of the time. This information was helpful to ensuring that the appeal is not moot. However, the court cannot consider this information in deciding the issues on appeal. There was no motion for fresh evidence and, in any event, on an application for judicial review, the court is to consider the reasonableness of the decision based on the record before the original decision maker.

[17] On June 7, 2019, the OCHC issued a decision terminating Mr. MacKenzie's rent-geared-to-income assistance on the basis that he failed to report the change in the composition of his household and that his entire household had been absent from the unit for more than 60 days.

[18] Pursuant to the City's procedures, Mr. MacKenzie was entitled to a review of the OCHC's decision by the City, which he requested. After conducting a hearing before a three-member panel, the City dismissed the review request in a decision dated December 18, 2019 (the "review decision").

[19] In its review decision, the City found that Mr. MacKenzie had failed to report that his daughters no longer lived with him. The City also did not accept Mr. MacKenzie's explanation that he expected his daughters to return to live with him:

> The Review Panel found that the two children listed as occupants of the unit […] have not resided at [the unit] since June 2018. You verbally confirmed this at the hearing. You explained that they may reside with you in the future, but there is not an available return date at this time. You did not report this change of information (household composition) to [OCHC] within the required 31 days.

[20] The City also found that Mr. MacKenzie was absent from the unit for more than 60 consecutive days and more than 90 cumulative days in the year. The City did not accept Mr. MacKenzie's submission that his daily attendance at the unit meant that he was not absent from the unit:

> You, Sylvia Chapman, and Danielle Craig verbally described that you attend [the unit] during the day. You described that you shower, keep your clothing, and spend time in the unit each day. You stated that you continue to collect mail at your [unit] address, keep food at the unit, and rely on neighbours for emotional support. The Review Panel finds that these statements do not verify that you occupy the unit as your legal domicile because you are legally bound to reside at [your surety's residence] since November 29, 2018.
>
> The Panel concluded that the Recognizance of Bail document together with the verbal testimony provided at the hearing verify that you have been absent from the unit and not occupying the unit for residential purposes for more than 60 consecutive days and more than 90 cumulative days in the year.
>
> The Review Panel considered the purpose of the legislation which is to provide [rent-geared-to-income] assistance to eligible households in units prescribed under the regulations. If a household is not occupying the rental unit for residential purposes, then they are not entitled to [rent-geared-to-income] assistance. It is reasonable to conclude that when households are not using their units as intended (for residential purposes) for extended or cumulative periods of time, they are absent from the unit. The Panel finds that although you verbally explained that you spend time regularly at the unit, store belongings and receive mail at the address, that you do not occupy the unit for residential purposes as intended by the legislation.

[21] Finally, the City found that there were no exceptional circumstances that would justify Mr. MacKenzie's failure to report the change in his household composition or his extended absence from the unit:

> The Review Panel found that there was no other information provided by you which would sufficiently document other reasons which could be deemed

> exceptional circumstances for not reporting the 2018 change to your household composition to your landlord, or to permit the absence from residing in your unit.

[22] As a consequence of the revocation of his rent-geared-to-income assistance, Mr. MacKenzie is required to pay full rent for his unit. At the time of the City's decision, the monthly rent was $1,279.

(4) The Divisional Court's decision

[23] The Divisional Court found that the respondents' decisions were reasonable.

[24] The Divisional Court rejected Mr. MacKenzie's argument that it was unreasonable for the respondents to have terminated his rent-geared-to-income assistance on the basis of the change in the composition of his household:

> I cannot accept the Applicant's submission that the unreported information would not have affected his eligibility or the suggestion that the change to the household size was only temporary and need not have been reported. One, there was (and is) no date for the return of the Applicant's daughters from the care of the Children's Aid Society to the household. Two, the composition of the household is clearly information "previously provided to the service manager" under s. 28(2). Three, that information is highly relevant since a household ceases to be eligible for [rent-geared-to-income] assistance if the household occupies a unit that is larger than the size permissible in the local rule. The local rules require that for a child to be entitled to a bedroom, that child must reside in the household 50% of the time. Finally, the legislative scheme deals with the current composition of a household; the only allowance for eventual/potential members is reserved for the case of pregnancies. Therefore, the Panel reasonably concluded that the Applicant had failed to inform the

> OCHC of the change in the household composition in a timely manner.

[25] The Divisional Court also rejected Mr. MacKenzie's argument that it was unreasonable for the respondents to find that he was "absent" from the unit:

> The interpretation put forward by the Applicant that, by attending at and carrying out some aspects of daily living at a unit, a person cannot be said to be absent from that unit, is not in harmony with the clear intention of the legislative scheme.
>
> With a waiting list of 13,500 households (including about 2,600 households waiting for three-bedroom accommodation of the kind here), the City is clearly facing a high demand for a limited number of units. The number of [rent-geared-to-income] subsidies is also limited to 16,502. Permitting a person such as the Applicant to retain a three-bedroom unit while all members of the household are sleeping elsewhere would not be harmonious with the purpose of the publicly funded housing scheme. It could also lead to the absurd outcome that would have publicly funded subsidized units not being used for the residential purposes intended.

[26] Finally, the Divisional Court rejected Mr. MacKenzie's argument that the respondents' finding that there were no extenuating circumstances was unreasonable:

> There is simply no basis to conclude that the service manager was unreasonable in exercising her discretion not to allow an extension or continue the Applicant's eligibility. One, there is no obligation on the service manager to engage in that exercise; it is entirely permissive. Two, it is apparent from both the internal hearing form and the notice of decision that the decision makers were in possession of the relevant information.

> Three, the Panel's decision clearly sets out the evidence it considered, and it turned its mind to the potential for exceptional circumstances. Having reviewed all the Applicant's information, the Panel fairly concluded that there was no other information provided which could constitute exceptional circumstances for not reporting the 2018 household change or to permit the absence from residing at the unit.

C. ISSUES AND ANALYSIS

[27] The issues on appeal are as follows:

a. The standard of review;

b. The statutory and regulatory scheme;

c. Whether the respondents' finding that Mr. MacKenzie failed to report the change in his household's composition was reasonable;

d. Whether the respondents' finding that Mr. MacKenzie was absent from the unit was reasonable;

e. Whether the respondents' finding that there were no extenuating circumstances was reasonable; and

f. The impact of the submissions made by the intervener.

[28] The Divisional Court and this court owe deference to the respondents' interpretation of the relevant legislative and regulatory provisions and to the application of those provisions to Mr. MacKenzie's circumstances. As discussed below, in my view the respondents' decisions to terminate Mr. MacKenzie's rent-

geared-to-income assistance were reasonable and the Divisional Court did not err in dismissing the application for judicial review.

(1) The standard of review

[29] 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.

[30] In this case, the Divisional Court applied a reasonableness standard of review to the respondents' decisions. 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. Mr. MacKenzie and the respondents agree that

no exceptions apply in this case and that the appropriate standard of review is reasonableness. I agree.

[31] 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 and regulatory scheme

[32] Part V of the *Housing Services Act, 2011* addresses the rent-geared-to-income assistance regime in Ontario.

[33] Section 38 of the Act defines "rent-geared-to-income" as "financial assistance provided in respect of a household to reduce the amount the household must otherwise pay to occupy a unit".

[34] Under the Act, service managers are responsible for administering the rent-geared-to-income regime in their region. As mentioned above, the City is designated as a service manager under the *Housing Services Act, 2011*, per Sched. 2 of O. Reg. 367/11.

[35] Section 42(1) of the Act provides that eligibility for rent-geared-to-income assistance is to be based on the prescribed provincial eligibility rules and local eligibility rules made by the service manager. Pursuant to s. 45 of the Act, service managers are to determine whether a household is eligible for rent-geared-to-income assistance based on the prescribed provincial rules and local eligibility rules.

[36] Pursuant to s. 43(1) of the Act, service managers are responsible for establishing “occupancy standards for determining the size and type of unit permissible for a household receiving rent-geared-to-income assistance.” Section 46(1) of the Act also requires service managers to determine the size and type of unit an eligible household is entitled to occupy.

[37] Section 52(1) of the Act requires service managers to conduct periodic reviews to ensure that households receiving rent-geared-to-income assistance remain eligible for the assistance. Section 53 requires service managers to provide written notice when they determine that a household is no longer eligible for rent-geared-to-income assistance.

[38] Ontario Regulation 367/11, made under the *Housing Services Act, 2011*, sets out the provincial eligibility rules for receiving and continuing to receive rent-geared-to-income assistance (the “Regulation”). The specific eligibility rules relevant in this case are discussed in the sections below. There have been some

changes to the Regulation since the respondents' decisions in 2019. The provisions of the Regulation referred to below were those in place in 2019, at the time of the decisions.

(3) The finding that Mr. MacKenzie failed to report the change in his household's composition was reasonable

[39] Mr. MacKenzie argues that the City's finding that he failed to report the change in his household composition was unreasonable. In making this argument, he suggests that it was unreasonable for the City not to consider that he expected his daughters to be returned to him at the conclusion of the criminal proceedings and that the change in the composition of his household was therefore temporary. In my view, the City's determination on this issue was reasonable.

[40] Section 28(1) of the Regulation provides that a household ceases to be eligible for rent-geared-to-income assistance if the household fails to notify the service manager of a change described in s. 28(2). At the relevant time, pursuant to s. 28(2), a household was required to report changes to information previously provided or that would be relevant to a household's eligibility for rent-geared-to-income assistance:

> The change referred to in subsection (1) is a change to any information or document that the household previously provided to the service manager and that the household was required to provide for the purposes of determining the household's eligibility or continued eligibility for rent-geared-to-income assistance or for the

> purposes of determining the amount of rent payable by the household.

[41] Section 28(3) specifies that notice of the change must be provided to the service manager within 30 days of the occurrence of the event and the City's own rules state that the notice of a change must be provided within 31 days.

[42] A change in household composition is significant because the amount of rent-geared-to-income assistance a household receives depends in part on the number of people in the household. In addition, the type and size of unit a household is entitled to occupy also depend on the composition of the household.

[43] In this case, there is no dispute that Mr. MacKenzie's children stopped living with him in June 2018 due to his bail conditions and that he did not notify the OCHC or the City of this change. Mr. MacKenzie also does not dispute that a change in his household composition would constitute the type of change he is required to report to the OCHC or the City. However, he argues that he was not required to report his children's absence because it was a temporary, not a permanent, change.

[44] In its review decision, the City acknowledged that Mr. MacKenzie took the position that his children may reside with him in the future. However, by the time of the hearing before the review panel, the children had not lived with him for over one year and, as indicated above, the City noted that "there is not an available return date at this time."

[45] I have no difficulty in finding that the City's decision on this issue was reasonable. In accordance with *Vavilov*, the City's reasoning and conclusion on this issue is logical, and it accords with the applicable legal and factual context of the case. The City considered the regulatory requirement that Mr. MacKenzie report changes to information he had previously provided and that may affect his eligibility for rent-geared-to-income assistance. The City found that the removal of Mr. MacKenzie's two daughters from the household constituted such a change. By the time the City became aware that the children were no longer living in the unit, at least one year had passed. There was no information about whether the children would return to live with Mr. MacKenzie and no available return date. It was reasonable for the City to treat this as a change that Mr. MacKenzie was required to report and not, as Mr. MacKenzie suggests, as a temporary change based solely on his hope that the children would return to live with him.

[46] Mr. MacKenzie suggests that this issue raises a matter of statutory interpretation, arguing that the requirement in s. 28 to report a "change" refers to a permanent change rather than a temporary change. Notably, the provision does not make this distinction. In any event, as reviewed above, the City considered and rejected Mr. MacKenzie's argument that the change in his household composition was temporary. The City's conclusion on this issue was reasonable in the circumstances of the case.

[47] Mr. MacKenzie submits that it is unfair to treat someone in his position – who, although subject to bail conditions, was still presumed to be innocent – as though he had been found guilty. He argues that, if he were to be exonerated in the criminal proceedings, he nevertheless would risk losing the ability to live with his children because he would lose his rent-geared-to-income assistance and his three-bedroom unit. While one may have sympathy for Mr. MacKenzie's circumstances, it is not for the Divisional Court or this court to decide that his children's absence from the household should only be treated as temporary. The court's role is to decide whether the City's decision was reasonable. The City administers a rent-geared-to-income system with limited available units. There are many people on the waitlist. There are likely many recipients who face evolving circumstances in their family households. In my view, it was reasonable for the City to find that Mr. MacKenzie's household composition had changed such that he was required to report the change to the OCHC and the City.

(4) The finding that Mr. MacKenzie was absent from his unit was reasonable

[48] Mr. MacKenzie submits that it was unreasonable for the City to find that he was absent from the unit for more than 60 consecutive days or more than 90 days within the year. I disagree.

[49] Section 37(1) of the Regulation permits a service manager to make a rule for the termination of rent-geared-to-income assistance in the case of prolonged absences from a unit:

> A service manager may make a local eligibility rule providing for a household to cease to be eligible for rent-geared-to-income assistance if all the members of the household are absent from the unit for which the household receives rent-geared-to-income assistance for more than the maximum number of days specified in the local eligibility rule.

[50] Section 37(3) provides that a local rule made by a service manager must stipulate that an absence is at least 60 consecutive days and s. 37(4) provides that the absence must be at least 90 days within a year. Section 37(5) further provides that a local rule must provide that members of a household who are absent for medical reasons are deemed not to be absent.

[51] The City has adopted a rule that reflects the contents of s. 37 of the Regulation. In other words, in Ottawa, a household ceases to be eligible for rent-geared-to-income assistance if the household is absent for at least 60 consecutive days or at least 90 days within a year.

[52] In this case, Mr. MacKenzie argues that it was unreasonable for the City to find that he was absent from the unit given that he was present in the home throughout the day, and used the unit for all aspects of his daily life except for sleeping. He argues that the City's interpretation of "absent" was unreasonable.

[53] Again, the role of the Divisional Court and this court is not to determine the meaning of “absent” in s. 37 of the Regulation but, rather, to decide whether the City’s determination of that meaning was reasonable. In its review decision, the City noted the bail condition that Mr. MacKenzie reside with his surety and the evidence that he had not been sleeping at the unit since the bail condition was in place. The City then considered the purpose of rent-geared-to-income, which is to provide assistance for the occupation of a unit for “residential purposes”. While acknowledging that Mr. MacKenzie spent time at the unit during the day, the City found that this did not amount to occupying the unit for residential purposes.

[54] In my view, the City’s decision on this issue is reasonable. The City considered the purpose of the legislative scheme. In doing so, the City has the knowledge and expertise to understand the purpose for which rent-geared-to-income assistance is provided. This context includes providing housing assistance to people who have a low income and do not have another residence. The context also includes a long waiting list for a limited number of available units. In the circumstances, it was not unreasonable for the City to find that, given Mr. MacKenzie’s bail conditions, he was not residing in the unit and he was therefore absent from the unit in the sense that he was not occupying it for residential purposes. As required by *Vavilov*, this chain of reasoning is logical and coherent, and it accords with the legislative scheme and factual record.

[55] Mr. MacKenzie argues that the City failed to consider that the *Housing Services Act, 2011* is benefit conferring legislation and that it should therefore be interpreted generously. In *Ali v. Peel (Regional Municipality)*, 2023 ONCA 41, an appeal heard at the same time as this appeal, this court considered a similar argument regarding the remedial nature of the *Housing Services Act, 2011*. As held in that case, the benefits conferred under this Act are different from those conferred by other types of benefit conferring legislation. There are a limited number of subsidies for public housing and a limited number of public housing units. Allowing Mr. MacKenzie to maintain his unit for an extended period of time while his bail conditions precluded him from residing at the unit has the effect of depriving another household that would meet the eligibility requirements for the unit. The respondents' role is to make decisions about eligibility and continued eligibility in the context of these competing interests.

[56] Mr. MacKenzie argues that the scarcity of housing subsidies and public housing units is a political issue that should play no role in the interpretation of the *Housing Services Act, 2011* and the Regulation. However, the limited number of rent-geared-to-income subsidies forms part of the legislative and regulatory scheme in this case. As held in *Vavilov*, at para. 93, a reviewing court must respect an administrative decision maker's expertise in understanding the "purposes and practical realities of the relevant administrative regime" and "the consequences and the operational impact of the decision" (emphasis added). The City's decision

is reasonable in the context of the "practical realities" and "operational impact" of the rent-geared-to-income assistance regime under the *Housing Services Act, 2011.*

[57] Finally, Mr. MacKenzie argues again that the impact of the City's decision is that he may be deprived of living with his children if he is exonerated in the criminal proceedings. While this may be an unfortunate consequence of the City's decision, it does not render the City's interpretation of the word "absent" unreasonable.

(5) The finding that there were no extenuating circumstances was reasonable

[58] Mr. MacKenzie argues that the City failed to consider whether there were any extenuating circumstances that would justify relieving him from notifying the respondents that his daughters were no longer living with him. Specifically, in the context of the appeal, he argues that he has mental disabilities that would make it hard for him to provide notice of his changed household. In addition, he argues that the City should have considered that he had no control over the delay in resolving his criminal proceedings and the impact of the decision on his children.

[59] Section 28(7) of the Regulation allows a service manager to determine that a household remains eligible for rent-geared-to-income assistance where they are satisfied that there are extenuating circumstances.

[60] In my view, there are two problems with Mr. MacKenzie's argument.

[61] First, it is evident from the City's review decision that it did consider whether there were extenuating circumstances. Specifically, it stated that Mr. MacKenzie did not provide any information that would give rise to extenuating circumstances. While I do not agree with the Divisional Court's statement that the City was not required to consider the issue of extenuating circumstances, it is evident that the members of the review panel turned their mind to the issue and found no extenuating circumstances. Moreover, it is evident from the decision that the City was aware of Mr. MacKenzie's criminal proceedings and the impact on his children, but it was entitled to conclude that these were not extenuating circumstances that would justify waiving the notice requirement.

[62] Second, it is only on appeal that Mr. MacKenzie raises the issue of his mental disabilities and the impact these issues may have had on his ability to understand the need to provide notice. While this is an issue that could have been raised before the review panel, it is not appropriate for this court to decide the issue afresh. Notably, Mr. MacKenzie was represented by counsel before the review panel and he therefore cannot assert that he did not have the ability to raise the issue in that context.

[63] While the City did have an obligation to consider whether there were extenuating circumstances, the Divisional Court and this court owe significant deference to the City's decision on this issue. In this case, the City evidently considered whether there were extenuating circumstances and concluded that

there were none. Again, the City has expertise in administering eligibility for rent-geared-to-income assistance, including in determining what may constitute extenuating circumstances in any given case. I see nothing unreasonable in the Divisional Court's conclusion on this issue.

[64] In any event, the presence of extenuating circumstances would only impact the issue of notice and not the issue of Mr. MacKenzie's absence from the unit. Ultimately, on its own, the City's finding that Mr. MacKenzie was absent from the unit for more than the prescribed amount of time would justify terminating his rent-geared-to-income assistance, regardless of his failure to notify the respondents of the change in his household composition and that his children no longer lived with him.

(6) Submissions made by the intervener

[65] The intervener argues that the relevant provisions of the *Housing Services Act, 2011* and the Regulation should be interpreted in a manner consistent with international human rights instruments. The intervener submits that international law supports an interpretation of the *Housing Services Act, 2011* and the Regulation that would require service managers to consider principles drawn from international human rights law when deciding whether there are exceptional circumstances that would justify not terminating rent-geared-to-income assistance. Specifically, drawing from the United Nations' International Covenant on

Economic, Social and Cultural Rights, Can. T.S. 1976 No. 46, the intervener argues that service managers should be required to take the following steps before deciding to terminate rent-geared-to-income assistance: 1) explore all feasible alternatives to the termination and determine if a less restrictive approach is appropriate; 2) ensure no discrimination is involved in the decision to terminate, with particular attention to any adverse impacts on equality-seeking groups; 3) ensure the decision is not made for punitive reasons; and 4) where children are involved, give primary consideration to the best interests of the child.

[66] In my view, the intervener's arguments do not assist Mr. MacKenzie on his appeal. As reviewed above, the role of this court is not to interpret the *Housing Services Act, 2011* afresh, but to decide whether the respondents' decisions are reasonable. It would therefore not be appropriate for this court to consider arguments about how the legislation should be interpreted that were not made to the City.

[67] As reviewed above, the respondents arrived at a defensible interpretation of the governing legislation, and the decisions were justified based on the factual circumstances of the case. The decisions were reasonable and the international legal instruments the intervener relies on do not affect that conclusion.

D. DISPOSITION

[68] 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.”