

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

B E T W E E N:

ALBA LUCIA TORRES

Tenant
(Appellant)

- and -

MINTO MANAGEMENT LIMITED

Landlord
(Respondent)

- and -

**WOMEN'S LEGAL EDUCATION AND ACTION FUND and
CENTRE FOR EQUALITY RIGHTS IN ACCOMODATION**

Intervenors

**FACTUM OF THE INTERVENORS:
WOMEN'S LEGAL EDUCATION AND ACTION FUND AND
CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION**

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PART I: OVERVIEW

1. The Appellant, Ms Torres, lived with her husband and children in an apartment they rented from the Respondent Minto Management Limited (“the Landlord”). After living together in the apartment for over 15 months, Ms Torres’ husband separated from her and moved out of the family home. Ms Torres and her children wanted to remain in their home, however, the Landlord required her to sign a new tenancy agreement and raised her rent by 41 percent before allowing her to continue living in the same apartment. Ms Torres made an application under s. 144 of the *Tenant Protection Act*, claiming that the new rent was illegal because it violated the rent control provisions of the *Tenant Protection Act*.

2. The Ontario Rental Housing Tribunal (“the Tribunal”) ruled that Ms Torres was not a “tenant” within the definition of that term in the *Tenant Protection Act* because she did not pay rent to the Landlord. Therefore, she did not have any right to stay in the apartment after her husband left, unless she entered into a new tenancy agreement, and she did not benefit from the rent control provisions of the *Tenant Protection Act*. In a review of this decision, another Tribunal member found that whether or not Ms Torres was a tenant, the Notice of Termination her husband gave the Landlord when he separated from Ms Torres was equally binding upon her.

3. The principal question in this case is whether the Tribunal erred in law in failing to find that Ms Torres was an original tenant with her husband and therefore entitled to the rent control and security of tenure protections of the *Tenant Protection Act*.

4. The Intervenors, the Centre for Equality Rights in Accommodation (“CERA”) and the Women’s Legal Education and Action Fund (“LEAF”), will argue that:

- a) the Tribunal’s failure to interpret the definition of “tenant” as including the spouse of the person who has directly paid the rent is contrary to principles of equality guaranteed in s.15(1) of the *Canadian Charter of*

Rights and Freedoms because women are disproportionately affected by the decision, for several reasons:

- (i) they are more vulnerable than men to housing crises;
 - (ii) they are less likely to have incomes and therefore less likely to be paying rent directly to the landlord; and
 - (iii) their contributions to the household are more likely to be in the form of unpaid labour;
- b) the Tribunal's decision does not conform with International Instruments enshrining rights to housing and to security of tenure, and the right to enjoy these without discrimination on the basis of sex;
 - c) the Tribunal's restrictive interpretation of the definition of "tenant" leads to absurd results; and
 - d) should Ms Torres be found to have status as a tenant in the original tenancy, Mr. Coto's Notice of Termination should not affect her tenancy given the broad purpose of the legislation, and the interpretive influence of the *Canadian Charter of Rights and Freedoms* and international law.

PART II: THE FACTS

5. The Intervenors wish to highlight some of the facts pertaining to Ms Torres, and to provide social and economic facts that must be taken into account by the Tribunal in considering the *Charter of Rights and Freedoms* and international human rights issues.

1. Facts Concerning Ms Torres

6. Ms Torres moved into her present home, a two-bedroom rental unit at 53 Woodridge Cr. in Nepean, at the same time as her husband, Mr. Coto, and their two children on August 1, 1999. The Respondent Landlord was aware that Ms Torres was residing with her husband from the outset. On or about October 29, 2000, Mr. Coto informed his wife, the Appellant, that he wished to separate from her and the children and move out of the unit immediately.

- i) "*Schedule A*" to the *Tenant Application of Alba Torres*, Appellant's Appeal Book, pages 23 and 24,

as adopted by the parties, *Transcript of Hearing*, Appellant's Appeal Book, page 46 (hereinafter "*Schedule A*")

7. Mr. Coto informed the Respondent Landlord that he decided to move out of the unit, but that Ms Torres and their two children would remain in the unit

- i) *Transcript of Hearing*, Appellant's Appeal Book, page 49

8. The Landlord Respondent advised the Appellant, Ms Torres, that if she wished to continue residing in the unit she would have to sign a new yearly lease starting on January 1, 2001 at a monthly rent of \$1185 which was \$345 more than the monthly rent of \$840 charged for the apartment at the time. The increase constituted an increase of 41 percent. It would not have been a legal increase to an existing tenant, not only because the rent may not be increased within 12 months, but also because the legislated allowable increase for rents in 2000 was 2.6 percent.

- i) "*Schedule A*"
- ii) *Tenant Protection Act*, S.O. 1997, c.24 as amended (hereinafter "*Act*"), ss. 126, 129
- iii) Ministry of Municipal Affairs and Housing, *History of Rent Regulation (press release)*, dated 4 August 2000

9. For the next several days, the Appellant, Ms Torres, visited the Respondent's office to plead that she should not have to pay the increase as she had been residing in the apartment since the tenancy began, and she did not have enough income to pay the higher rent. On or about November 3, 2000, Ms Torres had to provide a new last month's rent deposit at the increased rent because the Respondent informed her that if she did not sign a new lease and pay it on that very same day, then she would have to vacate her home.

- i) "*Schedule A*"

10. Ms Torres was physically abused by her husband while he was living with her and her children. She is now a single mother.

- i) *Transcript of Hearing, Appellant's Appeal Book,*
page 45

2. Relevant Social and Economic Facts

11. Social and economic indicators suggest that women such as Ms Torres are particularly vulnerable to poverty and to housing crises. In particular, as discussed further below,

- a) women are economically vulnerable, particularly at the point of relationship breakdown;
- b) single mothers are the poorest of all women and of all family types in Canadian society;
- c) women are the primary caregivers in the home, and do a disproportionate amount of unpaid work in the home;
- d) women are more vulnerable than men to violence by their spouse; and
- e) obtaining housing in the rental market is extremely difficult.

a) Women's Vulnerability to Poverty

12. The majority of poor people in Canada are women.

- i) Statistics Canada, *Women in Canada: A Gender-based Statistical Report* (Ottawa: Ministry of Industry, 2000) (hereinafter "*Women in Canada 2000*"), Chapter 6

13. Women are economically disadvantaged relative to men. Their incomes are on average about 58 percent that of men. They are more likely to be in low-paying jobs and in part-time work. 70 percent of women are concentrated in low-wage sectors, compared to 29 percent of men, and 27 percent of women work part-time, compared to 10 percent of men.

- i) Warren Clark, "*Economic Gender Equality Indicators 2000*", insert in *Canadian Social Trends*,

Statistics Canada, March 2001 (hereinafter "*Economic Gender Equality Indicators 2000*")

- ii) *Women in Canada, Work Chapter Updates 2000*; Statistics Canada - Catalogue No. 89F0133XIE (Ottawa: Minister of Industry, 2001)

14. Because of their economic disadvantage, women are more likely than men to be poor and when poor, they experience greater depths of poverty than men.

- i) M. Townson, *Report Card on Poverty*, (Ottawa: Canadian Centre for Policy Alternatives, 2000) at pp. 1, 3-8
- ii) S. Day and G. Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programmes* (Ottawa: Status of Women Canada, 1998) at pp. 5-8
- iii) *Women in Canada 2000, supra*, at pp. 103-105, 107, 135-138

15. Women's economic disadvantage increases dramatically upon separation from a spouse. One year after separation, women may expect to experience a severe decrease in their income (-23 percent), whereas men experience an average increase of 10 percent.

- i) Diane Galarneau and Jim Sturrock, *Family Income After Separation*, Statistics Canada – Catalogue no. 89-503-XPE (Ottawa: Minister of Industry, 1997) at pp. 7, 8 and 15

16. Women of colour, Aboriginal women and women with disabilities are more vulnerable to poverty than other women.

- i) Statistics Canada. *Women in Canada 2000: A Gender-based Statistics Report, supra*, at 199-200, 203-206, 225-226, 230-233, and 256-259

b) *Single Mothers' Specific Vulnerability to Poverty*

17. Women continue to make up the large majority of single parents. In 1996, 83 percent of all one-parent families were headed by women, a figure that has remained relatively constant since the mid-1970s. Over 50 percent of female lone parents in 1996 were either divorced or separated from a spouse. 54.2 percent, or more than half, of single-parent mothers lived in poverty in 1998.

- i) *Women in Canada 2000, supra*, at pp. 32-33
- ii) *National Council of Welfare, Poverty Profile 1998* (Ottawa: Supply and Services Canada, 2000) at pp. 13-15

c) *Women's Unpaid Work*

18. A major reason for women's economic disadvantage relative to men, and their greater vulnerability to poverty, is the fact that they do a disproportionate amount of unpaid work in the home and family environment. Unpaid work involves a myriad of time-consuming labour, especially caring for children and the elderly, housekeeping, preparing meals and arranging the logistics of family life. Women do two thirds of all unpaid work, or about one and a half times the amount done by men. This amount has remained stable since the early 1960's, notwithstanding women's increased participation in the workforce.

- i) *"Economic Gender Equality Indicators 2000", supra*
- ii) *Households' Unpaid Work: Measurement and Valuation*, Statistics Canada - Catalogue number 13-603-MPE, No. 3 (Ottawa: Minister of Industry, 1995) (hereinafter "*Households' Unpaid Work*") at pp. 7, 35, 44-45
- iii) Karen Hadley, *"And We Still Ain't Satisfied" -- Gender Inequality In Canada: A Status Report for 2001*, (Ottawa: National Action Committee on the Status of Women and CSJ Foundation for Research

and Education, June 2001) (hereinafter "*And We Still Ain't Satisfied*") at p. 7 and Appendix I

19. The cost of replacing the value of women's labour in households is high. In 1992, it was estimated that the replacement value of the unpaid work of women with children ranged between \$18,320 and \$22,540 per year. The unpaid work done by men in the household is valued at several thousand dollars less – between \$7,790 and \$10,310 per year.

i) *Households' Unpaid Work, supra.* at p. 45

20. Statistics Canada has concluded that the primary reason for the earnings differential between men and women is the presence of children, and the responsibility of women for childcare. In families with two parents in the paid workforce, women were fully or mainly responsible for childcare in 80 percent of cases. Women comprise 94 percent of all stay at home parents.

i) *And We Still Ain't Satisfied, supra.* at pp. 22-23.

ii) *Women in Canada 2000, supra.* at pp. 97 and 110.

d) *Women's Vulnerability to Violence*

21. Women are eight times more likely than men to be victimized by their spouse. 30 percent of women have been assaulted by their spouse, resulting in physical injury in almost half of those cases.

i) Robin Fitzgerald, *Family Violence in Canada: A Statistical Profile: 1999* (Ottawa: Minister of Industry, 2000) Statistics Canada - Catalogue no. 85-244-XIE at pp. 5, 12

ii) Marika Morris, *Violence Against Women and Girls Fact Sheet*, (Ottawa: Canadian Research Institutes for the Advancement of Women, Updated March 2002) (Internet: www.criaw-icref.ca/violence_fact_sheet_a.htm)

e) The Rental Market

22. The vacancy rates for 2 bedroom units in Ottawa declined from 4.7 percent in 1996 to 0.2 percent in 2000. In Nepean, the vacancy rate for a 2 bedroom apartment was 0.1 percent in 2000. The average monthly rent for a 2 bedroom apartment in Nepean in 2000 was \$948.

- i) CMHC, *Rental Market Report – Ottawa*, October, 2001, at pp. 5 and 8
- ii) Dumphy, Noreen and Lapointe, Linda. *Where's Home: A Picture of Housing Needs in Ontario. A Project to Raise Housing Awareness in Ontario*, sponsored by the Ontario non-Profit Housing Association and the Co-operative Housing Federation of Canada. March 1999. Chapter 8, Table 8.5.1
- iii) CMHC, *Rental Market Report FASTFAX - Ontario*, November 26, 2002

PART III: THE ISSUES

23. This appeal raises two issues:

- 1. Did the Tribunal err in law in finding that Ms Torres was not a tenant under the original tenancy agreement?
- 2. If the Tribunal did err, and Ms Torres was a tenant, was her tenancy terminated by the Notice of Termination submitted by Ms Torres' husband when he moved out of the home?

PART IV: THE LAW ADDRESSED BY THE INTERVENORS

ISSUE #1

Did the Tribunal err in law in finding that Ms Torres was not a tenant under the original tenancy agreement?

24. In order to determine whether the Landlord charged Ms Torres an illegal rent, the Tribunal first had to consider whether Ms Torres had been a “tenant” prior to entering into the new tenancy agreement for the unit she had been occupying.

25. The definition of “tenant” in the *Tenant Protection Act* (the “*Act*”) is not exhaustive. On the contrary, the definition is drafted in open-ended and inclusive language as follows (emphasis added):

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being [a co-owner of the complex, or a shareholder]

i) *Act*, s.1(1)

26. Central to this case, therefore, is the application of principles of statutory interpretation to the definition of “tenant”. LEAF and CERA submit that the case must be resolved with reference to the principle that where legislation is capable of more than one interpretation, the interpretation which must prevail is that which conforms to values and principles enshrined in the *Charter* and in international human rights law. LEAF and CERA state that the exclusion of a woman living with her spouse from the definition of “tenant” in the *Act* is contrary to these principles and therefore cannot be correct.

i) *Slaight Communications Inc. v Davidson*, [1989] 1 S.C.R. 1038 at p. 1078

1. The Charter

27. Section 15(1) of the *Charter* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ... sex.

i) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

28. Discrimination need not be direct in nature to attract the section 15(1) prohibition. Where a statute or the interpretation of that statute, which is gender-neutral on its face, gives rise to a disproportionately adverse impact on women, discrimination may be found despite a lack of intention.

- i) Peter Hogg, *Constitutional Law of Canada*, 4th ed, (Toronto: Thomson, 1997) at p. 1280

29. A consideration of *Charter* values requires a focus on the impact of the Tribunal's decision on Ms Torres, namely, the potential loss of housing or an unregulated rent increase at a moment when she is most economically vulnerable as a woman in Canadian society. It is submitted that section 15 of the *Charter* must be considered in this circumstance. The interpretation of the definition of tenant must take into account Ms Torres' position as a single mother at the end of a relationship and the fact that this makes her particularly vulnerable to gender-related poverty and possible housing crises. As seen above, women, unlike men, may expect to experience a severe decrease in their income after separation, and most single mothers live in poverty.

- i) *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at pp. 671-672
- ii) *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 (hereinafter "*Law*")

30. A consideration of *Charter* values also requires a purposive approach to the *Charter* interests at issue. Section 15 is concerned with preventing disadvantages created or perpetuated by the application of the law to persons who are already vulnerable. The purpose of section 15 has been described as follows:

... to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.

- i) *Law, supra*, at para. 23

31. It is submitted that not recognizing Ms Torres as a tenant imposes on her a disadvantage that detrimentally impacts upon her dignity and freedom.

32. A consideration of *Charter* values also involves an examination of the social and economic context in which the case arises, in particular, the vulnerability and relative powerlessness of the persons affected by a law. In this case, single mothers such as Ms Torres are already vulnerable to poverty and housing crises, and this vulnerability is increased by the Tribunal's decision that she has no security of tenure in her family home, and is subject to an eviction or an unregulated rent increase.

- i) Helena Orton, *Using Constitutional Equality Principles to Shape Jurisprudence - Moge v. Moge*, in *Special Lectures of the Law Society of Upper Canada 1993*, (Toronto: Carswell, 1994) at pp. 66-69, 71-76
- ii) *Law, supra*, at p. 23
- iii) *R. v. Turpin* (1989), 48 C.C.C. (3d) 8 at pp. 34-35

33. It is submitted that family law principles protecting a woman's right to a division of matrimonial property upon separation from a spouse must also be taken into account as a gauge by which to measure whether the Tribunal's decision accords with section 15. These principles were developed in response to the demand for women's equality, in particular, recognition of women's unpaid labour in the home. The principles which are relevant in this case include:

- a) the principle that upon separation neither party may do anything to compromise either party's right to the matrimonial home.
- b) the principle that domestic violence and parenting arrangements are factors which must be taken into account in determining whether a woman is entitled to sole possession of the matrimonial home.
- c) the principle that equity (by way of a constructive trust) should recognize unpaid labour even where there is no legal entitlement to property.
 - i) Law Reform Commission of Canada, *Family Property, Working Paper 8*, (Ottawa, March 1975) at pp. 5-12, 14, 16, 28-29, 39, 41

- ii) Ontario Law Reform Commission, *Family Property Law, Report on Family Law Volume IV* (Toronto: Ministry of the Attorney General, 1974) at pp. xii, 7
- iii) Fredam Steel, *The Ideal Marital Property Regime - What Would it be?* (Ottawa: Canadian Advisory Council on the Status of Women, November 1985) at pp. 1, 4, 11
- iv) *Moge v. Moge* (1992), 99 D.L.R. (4th) 456 (S.C.C.) at pp. 488-490
- v) *Peter v. Beblow* (1993), 101 D.L.R. (4th) 621 (S.C.C.) at pp. 633-635
- vi) *Family Law Act*, R.S.O. 1990, c. F-3, ss. 18-24

34. Whether or not these principles apply directly to Ms Torres through the family law regime, it is submitted that the equality-based rationale for them applies in the circumstances of this case. The Tribunal's decision runs contrary to these principles in that it deprives Ms Torres of any interest in the matrimonial home and ignores any interest which she might have in that home by virtue of her unpaid labour.

35. The family law principles and their equality-based rationale also should have informed the Tribunal in its consideration of whether Ms Torres 'paid rent' under the definition of tenant. An interpretation of the definition which insists on an occupant financially contributing directly to the rent ignores unpaid contributions to the household and therefore has the effect of disproportionately excluding women.

36. Moreover, the economic realities of women will often result in many women having to rely on spouses for economic support. In 94 percent of the cases where there is a stay at home parent, it is the woman who stays at home. Even women working outside the home have incomes lower than men, due in large part to childcare responsibilities.

37. The statistics also demonstrate that, upon separation, women are more likely to single parent than men. This being the case, women are more likely than men to need to

remain in the matrimonial home to provide continuity of home and environment for the children.

38. It is not the position of the Intervenor that women in Ms Torres' circumstances must prove contributions to the household in order to establish that they are a tenant. However, where contributions are made (either financial or through unpaid labour), the Intervenor agrees with the Appellant that such women satisfy the test that they have 'paid rent' for the purposes of meeting the statutory definition of tenant. Given the statistic that women do 2/3 of the unpaid labour in Canada, the concept of paying rent must be broad enough to include contributions to a household through unpaid labour in the family. It is therefore submitted that a woman must be entitled to a tenancy interest, by virtue of her unpaid work performed in the home.

2. International Human Rights Law

39. Housing has long been recognized as a fundamental human right in international human rights law. The *Universal Declaration of Human Rights*, adopted by the United Nations in 1948 and considered the foundation of international human rights protection and subsequent human rights law, states in Article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...
Motherhood and childhood are entitled to special care and assistance.

- i) *Universal Declaration of Human Rights*, GA Res. 217A (III), U.N. Doc. A/810 (1948)

40. The *International Covenant on Economic, Social and Cultural Rights* (the "*Covenant*") is also one of the cornerstones of international human rights law. Article 11 of the *Covenant* provides:

The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

41. And Article 2 of the *Covenant* states that the rights enunciated in the *Covenant* will be exercised without discrimination of any kind as to, *inter alia*, sex.

- i) *International Covenant on Economic, Social and Cultural Rights*, Can. T.S. 1976 No. 46 (concluded December 16, 1966; in force for Canada August 19, 1976) (hereinafter "*Covenant*")

42. The U.N. Committee on Economic, Social and Cultural Rights ("CESCR") has confirmed that a number of factors must be taken into account in determining whether housing is "adequate":

While adequacy is determined in part by social economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats . . .

(c) In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.

- i) United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4*, (6th Session 1991) UN doc. E/1992/23 at para. 8

43. CESCR in its reviews of Canada has emphasized the importance of extending security of tenure protections to all tenants and has taken note of the particular vulnerability of women in situations of domestic violence with respect to the right to adequate housing.

- i) United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, Consideration of Reports submitted by States parties Under Articles 16 and 17 of the *Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, Geneva, 10 June 1993, E/C 12/1993/19

- ii) United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States parties Under Articles 16 and 17 of the Covenant: *Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, Geneva, 10 December 1998, E/C.12/1/Add.31

44. The Commission on Human Rights, overseen by the Office of the United Nations High Commissioner on Human Rights, has recognized the detrimental impact of gender-based discrimination and violence on women's equal right to adequate housing. In its Resolution adopted in April 2001, it stressed that local policies should be designed in such a way that they not interfere with women's capacity to acquire and retain resources such as adequate housing. The Commission also indicated that it was mindful of the fact that elimination of discrimination against women requires consideration of women's specific socio-economic context. Canada co-sponsored this Resolution.

- i) United Nations Human Rights Committee, *Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing*, UN Doc. No. CN.4/RES/2001/34 (20 April 2001)

3. How International Law Applies to Domestic Adjudication

45. It is a general rule of statutory interpretation that a legislature is presumed to respect the values and principles contained in international law, so that any interpretation of domestic legislation must reflect these values and principles.

- i) R. Sullivan, *Driedger on the Construction of Statutes*, (3rd ed.) (Toronto: Butterworths, 1994) (hereinafter "*Driedger*") at p. 330

46. The Supreme Court of Canada has affirmed that domestic law should be interpreted consistently with international human rights law. Most recently in *Baker v. Canada (Minister of Citizenship and Immigration)*, L'Heureux-Dubé, J. asserted for the

majority that international law is a relevant consideration in the interpretation of all legislation and “a critical influence on the interpretation of the scope of the rights included in the *Charter*.” She further elaborated on that principle in *R. v. Ewanchuk*, where she stated that “the equality guarantee, along with the guarantee of security of the person, will be particularly important vehicles for incorporating international human rights norms, as these two rights “embody the notion of respect of human dignity and integrity.”

- i) *Re Baker and Hayward* (1977), 16 O.R. (2d) 695 (C.A.) at p. 699
- ii) *R. v. Ewanchuk* (1999), 169 D.L.R (4th) 193 (S.C.C.) at p. 220

47. It was in the context of invoking the right to work under the *Covenant* that the Supreme Court adopted Dickson C.J.’s precept that “the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada ratified.” Social and economic rights, particularly those linked with the right to an adequate standard of living, including adequate food, clothing and housing, directly engage the fundamental values of “respect of human dignity and integrity.” The *Covenant* has appropriately been used on prior occasions by tribunals to interpret the scope of rights under provincial legislation.

- i) *Slaight Communications, supra*, at p. 1056
- ii) *Cameron v. Nel-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170 at D/2171 (Ont. Bd. of Inquiry), leave to appeal to Ont. Div. Ct. refused (November 25, 1985) Doc. No. 456/84
- iii) *Ianiro v. Gilbert* (1996), Trib. des Droits de la Personne du Quebec, April 17, 1996 (unreported) at p. 3

48. The U.N. Committee on Economic, Social and Cultural Rights has affirmed that compliance with the *Covenant* requires that domestic decision-makers ensure that interpretation of domestic statutes is consistent with the recognition of the rights in the *Covenant*:

Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.

- i) United Nations Committee on Economic, Social and Cultural Rights, Nineteenth Session, *General Comment No. 9 The Domestic Application of the Covenant*, Committee on Economic, Social and Cultural Rights, Geneva, 16 November - 4 December 1998, E/C.12/1998/24 at para. 15

4. Avoidance of Absurd Results

49. Even in the absence of the *Charter* and international law, it is submitted that the definition of tenant must be interpreted so as to avoid absurd results.

- i) *Driedger, supra*, at pp. 92-93

50. The definition must be read in the context of the full *Act* which allows a landlord to charge a new rent to a new tenant, but which leaves the landlord the choice to accept any tenant it wants if a unit no longer has a tenant occupying it. If the definition is interpreted to include only spouses that pay rent directly to the landlord, a spouse whose husband has died may find herself out of the home in which she has raised her family and grown old. Even if she is willing and able to pay a new and increased rent, she is at the mercy of the landlord's decision of whether or not to enter into a new tenancy agreement. In other words, even willing to pay the new rent, she would have no guarantee of keeping her home. It would be absurd to suggest that the legislature intended to render widows homeless.

51. The Respondent's position also results in absurd results with respect to women who experience violence. Public policy suggests that a woman should be encouraged to call the police and seek removal from the home of her violent spouse. The Tribunal's interpretation of tenant would result in her losing her right to stay in the family home should the landlord terminate the tenancy of the "tenant" spouse on the basis of him having committed an illegal activity on the premises or having fallen into arrears while in

jail. The threat of losing her home would be a disincentive to seeking police involvement. It is submitted that this is an absurd result which must be avoided.

i) *Act*, ss. 61, 62, and 69

ISSUE #2:

If the Tribunal did err, and Ms Torres was a tenant, was her tenancy terminated by the Notice of Termination submitted by Ms Torres' husband when he moved out of the home?

52. It is submitted that should Ms Torres have met the definition of tenant in the original tenancy, then her security of tenure may not be upset by her husband's Notice of Termination.

53. Section 46 of the *Act* states that:

"A tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with section 47."

i) *Act*, s. 46

54. Legislation must be interpreted so as to give effect to its overall purpose, which, it is submitted, given the *Act's* title, is to protect tenants. This purpose would be severely thwarted if one person's tenancy could be terminated by another without consent.

i) *Driedger, supra*, at pp. 131 and 376

55. The then Minister of Municipal Affairs and Housing, the Honourable Al Leach, stated on proclamation day that the *Act* "protects tenants first and foremost." The Minister also stated:

First of all, tenants are protected from arbitrary eviction. There are specific reasons laid out in the *Landlord and Tenant Act* for the eviction of a tenant and these involve serious violations of the landlord-tenant relationship. The new *Tenant Protection Act* would continue the same protection from arbitrary eviction that tenants currently enjoy.

i) *Ministry of Municipal Affairs and Housing News Release*, June 17, 1998

- ii) Standing Committee on General Government,
Hearings on Bill 96 (Tenant Protection Act),
Hansard, 12 June, 1997 at pp. 8-9

56. The *Act* is the successor legislation to Part IV of the *Landlord and Tenant Act* (the “LTA”). Most of the changes made by the new legislation deal with administrative rent control issues rather than with security of tenure issues, and the *Act* was intended to continue the same protection from arbitrary eviction that tenants had under the previous legislation.

- i) Paul Rapsey, “*See No Evil, Hear No Evil*”, (2000)
15 *Journal of Law and Social Policy* 163 at p. 165

57. The *Tenant Protection Act* is sufficiently similar, in intent and content, to the LTA so that the statements made with respect to that predecessor legislation should have application to the new legislation. In *Re Baker and Hayward*, Wilson J.A. (as she then was) made note that “one of the reasons for the revision of the [LTA] in 1969 was to rectify the imbalance deemed to exist in favour of the landlords.”

- i) *Re Baker and Hayward* (1997), 16 O.R. (2d) 695
(C.A.) at p. 699

58. It is submitted that it could not have been the intention of the legislature to create a mechanism which could be used by landlords to evict spouses remaining in the family home after spousal separation, particularly women with children. A fundamental purpose of the TPA is to protect a tenant's security of tenure. The interpretation should be that which would serve best to protect that security. This requires that a notice given without consent of the other tenant in the same unit is binding only on the tenant providing notice.

59. In one case, where an agreement to terminate a tenancy was signed by a vacating spouse, and where the remaining spouse gave evidence that she did not consent to a termination, the Ontario Rental Housing Tribunal dismissed a landlord's application to evict her. The Tribunal reasoned that the vacating spouse's agreement to terminate could not constitute an agreement between the remaining spouse and her landlord.

- i) *Kallinis v. Hall and Watson* (14 September 2000; Ittleman), File No. TEL-14543 (ORHT)

60. In another case, the tribunal found that a tenancy could only be terminated by one tenant on behalf of the spouse if he was acting as her agent. Given that Ms Torres gave no consent to her husband to terminate her tenancy, and was desperate to remain in her home with the children, it is submitted that Ms Torres' tenancy was not terminated.

- i) *Hunters Lodge Apartments v. Varontsov*, (12 July 2001; McGavin), File No. TNL-27754 (ORHT)

61. When the validity of a Notice of Termination is challenged, the Tribunal is mandated by the *Act* s. 188 to look to the "real substance" of the transaction, which in this case was that only Mr. Coto wished to leave. Where Ms Torres clearly did not consent to the termination of the tenancy, the Notice of Termination cannot affect her security of tenure.

- i) *Act*, s.188

62. In the new regime of vacancy decontrol, whereby a landlord may now charge a new rent if it can establish a new tenancy, landlords may attempt to profit from a vacating spouse's Notice to Terminate. In Nepean, for example, at the time Ms Torres' husband vacated the family home, the vacancy rate for 2 bedroom apartments was 0.1 percent, and rents were high, giving the landlord much room to increase rents through a new tenant.

- i) CMHC, *Rental Market Report* – Ottawa, October, 2001

63. It is submitted that the *Charter* and international human rights law also dictate a finding that the Notice of Termination may only be valid when consented to by Ms Torres. Although the right to housing, and the right to security of tenure as enshrined in the international instruments are intended for all people, as seen above, women are more likely than men to be in the position of the remaining spouse. Therefore, women are more likely to be threatened with involuntarily losing their home in the social and economic reality of hardship relative to men. Allowing the Notice of Termination to

affect Mr. Coto's tenancy and not Ms Torres' tenancy is consistent with her right to housing, and the protection of women, particularly women with children after separation.

PART V: ORDER REQUESTED

64. The Intervenors request the same order as the Appellant except that the Intervenors are not seeking costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: April 24, 2002

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in Accommodation**

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

BETWEEN:

ALBA LUCIA TORRES

Tenant
(Appellant)

- and -

MINTO MANAGEMENT LIMITED

Landlord
(Respondent)

- and -

**WOMEN'S LEGAL EDUCATION AND ACTION FUND and
CENTRE FOR EQUALITY RIGHTS IN ACCOMODATION**

Intervenors

**INTERVENORS' CERTIFICATE
RE ESTIMATE OF TIME**

I, MARY TRUEMNER, counsel for the Intervenors, estimate that the time required for oral argument on behalf of the Intervenor (not including reply) is not more than 1 hour.

An Order under subrule 61.09(2) (original record and exhibits) is not required.

Date: April 25, 2002

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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038
2. *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624
3. *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497
4. *R. v. Turpin* (1989), 48 C.C.C. (3d) 8 (S.C.C.)
5. *Moge v. Moge* (1992), 99 D.L.R. (4th) 456 (S.C.C.)
6. *Peter v. Beblow* (1993), 101 D.L.R. (4th) 621 (S.C.C.)
7. *Re Baker and Hayward* (1977), 16 O.R. (2d) 695 (C.A.)
8. *R. v. Ewanchuk* (1999), 169 D.L.R. (4th) 193 (S.C.C.)
9. *Cameron v. Nel-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170 at D/2171 (Ont. Bd. of Inquiry), leave to appeal to Ont. Div. Ct. refused (November 25, 1985) Doc. No. 456/84
10. *Ianiro v. Gilbert* (1996), Trib. des Droits de la Personne du Quebec, April 17, 1996 (unreported)
11. *Kallinis v. Hall and Watson* (14 September 2000; Ittleman), File No. TEL-14543 (ORHT)
12. *Hunters Lodge Apartments v. Varontsov*, (12 July 2001; McGavin), File No. TNL-27754 (ORHT)

SCHEDULE “B”

STATUTES, REGULATIONS AND BY-LAWS

1. *Tenant Protection Act, 1997*, S.O. 1997, c.24, as amended
2. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11
3. *Universal Declaration of Human Rights*. GA Res. 217(III) UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71
4. *Family Law Act*, R.S.O. 1990, c. F-3
5. *International Covenant on Economic, Social and Cultural Rights*, Can. T.S. 19756 No. 46 (concluded December 16, 1966; in force for Canada August 19, 1976)

SCHEDULE "C"

BOOKS, ARTICLES AND REPORTS

1. Ministry of Municipal Affairs and Housing, *History of Rent Regulation (press release)* dated 4 August 2000
2. *Women in Canada: A Gender-based Statistical Report*, Statistics Canada (Ottawa: Ministry of Industry, 2000)
3. Warren Clarke, "Economic Gender Equality Indicators 2000", insert in *Canadian Social Trends*, Statistics Canada, March 2001
4. *Women in Canada, Work Chapter Updates 2001*; Statistics Canada - Catalogue No. 89F0133XIE (Ottawa: Ministry of Industry, 2000)
5. M. Townson, *Report Card on Poverty*, (Ottawa: Canadian Centre for Policy Alternatives, 2000)
6. S. Day and G. Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programmes* (Ottawa: Status of Women Canada, 1998)
7. Diane Galarneau and Jim Sturrock, *Family Income After Separation*. Statistics Canada – Catalogue no. 89-503-XPE (Ottawa: Minister of Industry, 1997)
8. National Council of Welfare, *Poverty Profile 1998* (Ottawa: Supply and Services Canada, 2000)
9. *Households' Unpaid Work: Measurement and Valuation*, Statistics Canada - Catalogue No. 13-603-MPE, No. 3 (Ottawa: Minister of Industry, 1995)
10. Karen Hadley, "And We Still Ain't Satisfied" – *Gender Inequality In Canada: A Status Report for 2001* (Ottawa: National Action Committee on the Status of Women and CSJ Foundation for Research and Education, June 2001).
11. Robin Fitzgerald, *Family Violence in Canada: A Statistical Profile 1999*, Statistics Canada - Catalogue No. 85-244-XIE (Ottawa: Minister of Industry, 2000)
12. Marika Morris, *Violence Against Women and Girls Fact Sheet*, (Ottawa: Canadian Research Institutes for the Advancement of Women, Updated March 2002) (Internet: ww.criaw-icref.ca/violence_fact_sheet_a.htm)
13. CMHC, *Rental Market Report* – Ottawa, October, 2001

14. Noreen Dumphy and Linda Lapointe, *Where's Home: A Picture of Housing Needs in Ontario*. A project to raise housing awareness in Ontario, sponsored by the Ontario Non-Profit Housing Association and the Co-operative Housing Federation of Canada. March 1999.
15. CMHC, *Rental Market Report FASTFAX - Ontario*, November 26, 2001
16. Peter Hogg, *Constitutional Law of Canada*, 4th ed. (Toronto: Thomson, 1997)
17. Helena Orton, *Using Constitutional Equality Principles to Shape Jurisprudence - Moge v. Moge, in Special Lectures of the Law Society of Upper Canada 1993*, (Toronto: Carswell, 1994)
18. Law Reform Commission of Canada, *Family Property, Working Paper 8*, (Ottawa: March 1975)
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20. Fredam Steel, *The Ideal Marital Property Regime - What Would it be?* (Ottawa: Canadian Advisory Council on the Status of Women, November 1985)
21. United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4*, (6th Session 1991) UN doc. E/1992/23
22. United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, Consideration of Reports submitted by States parties Under Articles 16 and 17 of the Covenant: *Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, Geneva, 10 June 1993, E/C 12/1993/19
23. United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States parties Under Articles 16 and 17 of the Covenant: *Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, Geneva, 10 December 1998, E/C 12/1/Add.31
24. United Nations Human Rights Committee, *Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing*, UN Doc. No. CN.4/RES/2001/34 (20 April 2001)
25. Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994)
26. United Nations Committee on Economic, Social and Cultural Rights, Nineteenth Session *General Comment No. 9 The Domestic Application of the Covenant*, Geneva, 16 November - 4 December 1998, E/C.12/1998/24

27. *Ministry of Municipal Affairs and Housing News Release*, June 17, 1998
28. Standing Committee on General Government, *Hearings on Bill 96 (Tenant Protection Act)*, Hansard, 12 June, 1997
29. Paul Rapsey, "See No Evil, Hear No Evil", (2000) 15 *Journal of Law and Social Policy* 163

ALBA LUCIA TORRES
Tenant (Appellant)

- and -
MINTO MANAGEMENT LIMITED
Landlord (Respondent)

- and -
**WOMEN'S LEGAL EDUCATION
AND ACTION FUND, et al.**
Intervenor

Court File No. 01-DV-000621

**ONTARIO
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Proceedings commenced at Ottawa

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Tenant (Appellant) Landlord (Respondent)

- and - **WOMEN'S LEGAL EDUCATION
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