

For Immediate Release

### **Unanimous Supreme Court of Canada decision a justice win for renters**

**Toronto, ON – March 18<sup>th</sup>, 2024** – The Supreme Court of Canada (“Court”) released their decision on *Yatar v TD Insurance Meloche Monex*. The Court unanimously ruled that the Ontario Court of Appeal (“ONCA”) erred in restricting access to judicial review to “rare cases” where there is a limited right of appeal on a decision. This decision means that renters will continue to be able to bring a judicial review that examines questions of mixed fact and law, irrespective of whether they have pursued an internal appeal through the Landlord and Tenant Board (“LTB”). This is victory for renters and improves meaningful access to justice in our legal system.

#### **The difference between internal reconsideration and judicial review**

For cases that pass through the LTB, there is an internal mechanism to request reviews on decisions made by the Board’s adjudicators. The *Residential Tenancies Act* also provides for a right of appeal to Divisional Court, but only on a question of law. Many decisions made by the LTB do not raise purely legal questions, however, and are better characterized as questions of mixed fact and law. In addition, the majority of renters that appear at the LTB are self-represented and have difficulties describing a legal error to the Court even when one exists. That is why many people affected by LTB decisions need access to judicial review.

When *Yatar* first passed through the Divisional Court, the court ruled that individuals should not be allowed to request judicial review except in “exceptional circumstances.” On appeal, the Ontario Court of Appeal held that judicial review could only be exercised in “rare cases” where applicants had an internal reconsideration option. This greatly restricted legal avenues for renters to pursue justice.

The Court has found that a right of appeal does not, on its own, preclude an individual from seeking judicial review. This decision means that judges, while they have the discretion to hear a judicial application on the merits and decline relief, do not have the option of declining to consider solely on the basis of the quality or quantity of an internal review mechanism of a tribunal. Renters are, therefore, free to bring a request for judicial review at any time where LTB decisions contain errors that are not appealable.

“This is a really promising decision,” says Rosalea Thompson, staff layer with the Advocacy Centre for Tenants Ontario (“ACTO”), one of the interveners on the case. “It supports the rights of renters living on low incomes to have meaningful, adequate options to challenge unreasonable decisions.”

“Given the severity of the housing crisis in Ontario and the erosion of renters access to justice, this is a really positive outcome,” says Douglas Kwan, Director of Advocacy and Legal Services

at ACTO. “It reinforces the idea that tribunals are subordinate to the courts, who have the constitutional responsibility to preserve the rule of law so that renters’ rights are protected.”

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### **About Advocacy Centre for Tenants Ontario**

The Advocacy Centre for Tenants Ontario (ACTO) is a specialty community legal clinic with a province-wide mandate to advance and protect the interests of tenants living with lower incomes. ACTO specializes in housing issues related to tenants. ACTO also provides legal information and assistance to self-represented tenants appearing at the Landlord and Tenant Board through the Tenant Duty Counsel Program (TDCP).

### **For more information, including interviews with representatives, please contact:**

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