

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

BETWEEN:

CITY OF TORONTO

Applicant

and

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC

Respondent

**FACTUM OF THE RESPONDING PARTY
THE CITY OF TORONTO**

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TDB Restructuring Limited

OVERVIEW – THE NATURE AND CONTEXT OF THE MOTION

1. The motion before this Honourable Court asks that an Order issue directing that legal fees that Betty’s Law Office, Professional Corporation (“Betty’s Law”) incurred in providing services to the Harry Sherman Crowe Housing Co-operative Inc. co-operative housing corporation (“Harry Sherman”, the “Housing Provider” or the “Co-op”) be paid by the City of Toronto and the Receiver, TDB Restructuring Limited (“TDB” or the “Receiver”). The motion also asks that an Order issue that authorizes the Receiver to pay all ongoing fees that Betty’s Law Office may incur in providing services to the Board of Directors of the Co-op, reasonably incurred, out of the Co-op’s assets.¹
2. The within motion has been brought in the context of receivership proceedings. The receivership arose within the legislative framework that governs social housing service providers in Ontario.
3. Responsibility for administering and funding a number of social housing programs in Ontario rests with the municipalities in which these social housing programs operate. These municipalities are designated as Service Managers under the *Housing Services Act, 2011*². The City of Toronto (the “City” or the “Service Manager”) is charged with overseeing those housing projects in its territorial jurisdiction, including the Harry Sherman housing project.

¹ Responding Motion Record of the Receiver, dated May 16, 2025 (“**Receiver’s RMR**”), Notice of Motion, Second Supplement to the Receiver’s Second Report to the Court (“**Second Supplement Report**”), Tab 1, Appendix A, at page 14.

² S.O. 2011, c. 6, Schedule 1 (the “**HSA**” or the “**Act**”).

4. The City brought an Application to appoint a Receiver and Manager over the property, assets and undertaking of Harry Sherman, pursuant to, and in accordance with the provisions of the HSA, because the Housing Provider had contravened the Act and had failed to operate the Housing Project properly. In the course of its ongoing monitoring role, the City determined that the Co-op was experiencing challenges regarding its operations and the administration of its Rent-Geared-to-Income (“RGI”) portfolio. The City also identified issues with the Co-op’s financial position and its governance structures and practices.
5. The Court was satisfied on the record before it that, in light of the circumstances of the Co-op and the challenges that it faced, it was both just and convenient that a Receiver be appointed to manage its affairs, and an Order appointing the Receiver was issued on March 14, 2023 (the “Appointment Order”).³
6. To the extent that the moving party intends to pursue the request set out in its Notice of Motion that the fees of Betty’s Law be paid by the City of Toronto, the City maintains that any obligation it has in respect of the funding of housing provider operations within its jurisdiction are those obligations prescribed by the governing social housing statutory framework. The City has met those funding obligations. There is no basis in fact or law for asserting that the Municipal Service Manager would be obligated to pay for the fees that Betty’s Law has incurred.

³ [Endorsement of Justice Penny, dated March 14, 2023](#), as posted on the Receiver’s website, referenced in the Receiver’s Motion Record, dated May 1, 2025, (“**RMR**”), Receiver’s Second Report to the Court (“**Second Report**”), at pages 15 and 16, at paragraphs 6 and 10.

7. To the extent it is in a position to assist the Court on the issue of whether it would be appropriate, in the circumstances, to order that the fees incurred by Betty's Law be paid out of the assets of the Co-op, the City outlines below the relevant social housing statutory framework, and reviews in some detail the context in which the Court determined that the Receiver be appointed as these matters may prove relevant to the Court's consideration of the motion.

FACTS

The Housing Services Act, 2011, and the Municipality's Duty to Administer and Fund Social Housing Programs⁴

8. The Service Manager's primary obligations are to monitor housing provider operations to ensure that they meet their obligations under the governing legislation and to ensure that housing providers receive the funding to which they are entitled.

(i) Monitoring Housing Provider Operations

9. Housing providers' obligations include, but are not limited to, the establishment of (and adherence to) prescribed RGI practices and protocols, submitting reports regarding key aspects of the housing provider's operations to the service manager, and using the government funding it receives appropriately. If issues with respect to the management of a given social housing project arise, the Service Manager works to ensure that these issues are identified and resolved. The City can also provide housing providers with advice and

⁴ Receiver's RMR, Tab 2, Excerpts from the Affidavit of Julie Western-Set, sworn on November 10, 2022, and Tab 3, Excerpts from the Affidavit of Julie Western-Set, sworn on January 16, 2023, at pages 78-90.

support with an eye to helping them operate independently as viable going concerns, through their Boards of Directors and their staff.

(ii) *The Housing Services Act, 2011's Funding Formula*

10. Housing providers that were originally developed, administered, and funded by the provincial government received two forms of subsidy - an operating subsidy and a rent subsidy. They continue to receive these subsidies under the HSA regime. These subsidies are provided pursuant to, and in accordance with, formulae set out in regulations promulgated under the HSA, including Ontario Regulation 369/11, which aim to achieve the following objectives:

- the **operating subsidy** is paid to subsidize building operating costs in excess of the building market rent potential. It covers any number of operating costs, including, but not limited to: (i) administration and maintenance expenses; (ii) insurance premiums; (iii) bad debt expenses; (iv) utility costs (such as electricity, fuel, water, and sewer charges); and (v) contributions to the housing provider's capital reserve fund⁵. This operating subsidy would cover any shortfall that the housing provider would have to negotiate between provincially established benchmarked annual expenses and revenues.
- the **rent subsidy** is paid to cover the difference between the amount that qualified tenants can pay, based upon their income, and the lesser of the benchmarked or actual market rent for the units they live in. It is given to housing providers so that they can make units available to families that would not otherwise be able to afford to pay market rents. Housing providers are required to set aside a prescribed number of subsidized units in their buildings. They are expected to meet these targets as failing to do so will reduce access to affordable housing in the City. The governing

⁵ Housing providers are responsible for maintaining a capital reserve under the framework established by the HSA. These funds must be set aside so that the housing project can undertake large scale capital projects that it must anticipate having to take on in any given year. Housing providers are expected to establish capital plans to ensure that they are able to manage their budgets so that enough funds are available to cover the costs associated with keeping their buildings in a good state of repair.

legislation also prescribes how these units are to be filled from a centralized waiting list.⁶

11. The Co-op has been, and continues to be, funded and administered in accordance with the above-described framework.

The Powers that the HSA Grants to Municipalities to Ensure that the Interests of Households that Depend on Social Housing Programs are Protected

12. The HSA provides comprehensive administrative mechanisms to help municipalities manage their social housing responsibilities. It includes specific enforcement provisions that grant municipal service managers powers that they can exercise to ensure that these housing projects are properly managed and that the tenants and members in these housing projects have access to the protections and services that they may need.
13. In the event that a social housing provider fails to operate a housing project properly, having regard to the normal practices of similar housing providers, a Service Manager can take certain steps under the HSA to remedy the situation. Service Managers, in appropriate circumstances, can appoint a receiver to step in to act as a surrogate for the housing provider and as a steward for the housing project where the assistance of a third party is deemed necessary to ensure that the housing project is operated and managed properly, and to protect the health of the enterprise as an ongoing concern.⁷

⁶ At the time the Application to appoint the Receiver was heard, there were 14,494 households on the waiting list who have indicated that they would like to be housed at Harry Sherman. Of these more than 14,000 households, 2,051 have been on the waiting list for more than 10 years, 8,226 have been on the waiting list for between 5-10 years, and 4,267 have been on the waiting list for less than 5 years.

⁷ HSA, sections 83 and 85.

14. Subsection 85(6) of the HSA provides that the service manager may appoint an interim receiver for the housing project. Subsection 85(7) of the HSA provides that the service manager may seek the appointment of a receiver by the Superior Court of Justice.
15. The powers that a Receiver that is privately appointed pursuant to subsection 85(6) of the HSA can exercise are set out in Ontario Regulation 367/11. Receivers so appointed have the power to act as the housing provider with respect to its assets, liabilities, and undertakings, including its housing projects. This power includes the power to carry out and manage the business and affairs of the housing provider and to commence, conduct, or defend legal proceedings.⁸
16. The powers that a Receiver that is appointed by order of the court pursuant to subsection 85(7) of the HSA are governed by the Order delineating the Receiver's authority.

The Harry Sherman Crowe Housing Co-operative Inc. Housing Provider

17. Prior to the appointment of the Receiver, the Respondent operated as an independent, self-governing co-operative housing corporation with a Board of Directors (the "Board") elected by its membership, which Board was responsible for making decisions related to the governance of the corporation, including giving appropriate direction to building management and staff who are responsible for the day-to-day operation of the Co-op.
18. The housing provided by Harry Sherman is located within a campus comprised of a series of townhome blocks and a residential apartment building. The Co-op's housing complex contains 164 units. The townhome blocks contain 29 townhome units, while the

⁸ Ontario Regulation 367/11, section 104.

remaining 135 units are contained within a high-rise apartment building. Through and until October 2019, the Co-op was required to maintain a minimum of 82 RGI units. Since October 2019, the Co-op was required to maintain a minimum of 90 RGI units.⁹

The Circumstances That Warranted the Service Manager Taking Remedial Action Pursuant to the HSA

(i) *The Issues the Housing Provider was Struggling with that the Service Manager Identified*

19. Between 2019 and 2020, the City engaged with the Housing Provider in keeping with its monitoring obligations. Operational reviews were carried out in the normal course. Auditor reports, Auditor correspondence, and Annual Information Reports that housing providers are required to submit to the Service Manager every year (“AIR”s) were reviewed.

20. These engagements, and the review of the documentation the City was provided with, revealed that the Housing Provider was struggling with issues on multiple fronts.

21. In respect of Harry Sherman's **operations** (including **governance**), the Housing Provider:

- Failed to meet HSA and local rule requirements;
- Did not have a process for the management of policy and procedure documentation;
- Failed to ensure that a Minute Book was properly maintained in keeping with the standards set out in the *Co-operative Corporations Act*;
- Did not have in place the required policies related to: (i) internal transfers; (ii) RGI reviews, administration, and filling of RGI units; (iii) guests; (iv) the collection, use, and disclosure of personal information; (v) records management; and (vi) occupancy agreements.¹⁰

⁹ [Application Record of the City of Toronto \(“AR”\)](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, at paragraphs 28 and 29, page 60

¹⁰ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraphs 34 and 35, page 61.

22. In respect of the **administration** of Harry Sherman's **RGI portfolio**¹¹:

- There were deficiencies that needed to be addressed, including issues related to possible overhousing, appropriate documentation evidencing eligibility, and the need to ensure the appropriate leases and consents were executed and in place.
- There were fluctuations in the total number of occupied RGI units from year to year, but there were no records of households from the centralized waiting list gaining access to any vacant unit at the Housing Project.

23. In respect of the Housing Provider's **finances**, the reports and correspondences prepared by Harry Sherman's Auditor, year over year, detailed¹²:

- A lack of internal controls at the housing provider (including, critically, unapproved board minutes detailing how key financial decisions about how the housing project's resources were used had been properly considered and authorized);
- The Co-op incurring significant in-year deficits;
- The Co-op having a large number of units that remained vacant for significant periods of time; and
- High rental arrears that the Co-op was failing to manage.

24. The City had brought up the issues it had identified in respect of the housing provider's operations and its deteriorating financial position to the attention of the Co-op, along with requests that steps be taken to address them. No substantive actions were taken to address these issues, which had persisted, and in some instances were worsening, since the fall of 2019.¹³ These unresolved issues constituted contraventions of the HSA and its regulations,

¹¹ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraphs 37, 50, 62, and 63, pages 62, 67, 72, and 73.

¹² [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraphs 60, and 61, pages 70-72.

¹³ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraph 64, page 73.

failures to comply with the requirements of the HSA to ensure that the project was well managed, and failures to operate the designated housing project properly. Each of these unresolved issues were considered "triggering events" under section 83 of the HSA.¹⁴

(ii) *The Issuance of the Notice of Triggering Events*

25. In the spring of 2021, after examining the information available to it concerning the health of the Harry Sherman housing project, the Service Manager prepared and delivered notice of the above-described triggering events to the Housing Provider on March 29, 2021 (the "NTE"), pursuant to paragraph 90(1)(a) of the Act. The NTE specified the particulars of the triggering events. It articulated how:

- The Housing Provider had contravened subsection 75(1) of the HSA by failing to operate the housing project and govern itself in accordance with the prescribed provincial requirements and local standards made by the Service Manager. It had inadequate documented policies that needed to be in place to deal with, among other things, internal transfers, records management, and with reviews regarding RGI households that had been delegated to it. The Housing Provider also failed to correctly implement required policies and procedures regarding the administration of its RGI units and/or the filling of any vacant RGI units in accordance with the applicable local standards;
- The Housing Provider had contravened subsection 69(2) of the HSA by failing to ensure that housing project was well managed. Among other things, it had failed to establish appropriate governance procedures; and
- The Housing Provider had contravened subsection s. 83(11) of the HSA by failing to operate the housing project properly, as evidenced by its significant deficit, its poor financial position, and its failure to establish adequate internal financial controls.¹⁵

26. The March 29, 2021, NTE set out the steps that the Housing Provider was required to take to address these identified contraventions and expressly stated how failure to address all or

¹⁴ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraph 65, page 73

¹⁵ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraph 67 and 68, page 74

any aspect of the contraventions that had been identified as triggering events may result in the City exercising any or all remedies available to it under section 85 of the HSA.¹⁶

27. The Service Manager attempted to engage with the Housing Provider to resolve the identified triggering events. Despite the passage of time, the triggering events remained unresolved and the Housing Provider was not able to pay its debts as they became due. The City determined that it was appropriate to exercise its authority under the HSA and appoint an interim receiver over the housing project, pursuant to subsection 85(6) of the Act.¹⁷

(iii) The Service Manager's Attempt to Appoint a Receiver and Manager Pursuant to Subsection 85(6) of the HSA, and the Housing Provider's Unwillingness to Recognize the Service Manager's Authority To Do So

28. RSM Canada Limited ("RSM") was appointed as the interim receiver of the housing project pursuant to 85(6) of the HSA on May 27, 2022, and was requested, in that capacity, to take control, direction, and possession of the housing project, the revenue and the assets of the housing provider, and the books, records, and accounts of the housing provider or any part of them, pertaining to the housing project.¹⁸

29. Members of the Board escorted the Receiver off the property. Following an exchange of correspondence between May 30th and June 3rd, 2022, the Service Manager was advised that Harry Sherman would not recognize the Service Manager's statutory authority to

¹⁶ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraph 69, page 74.

¹⁷ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraph 87, page 82.

¹⁸ On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of the name RSM Canada Limited.

appoint a Receiver under the governing legislation unless it secured a Court Order to that effect.¹⁹

(iv) *The Application to Appoint a Receiver and Manager Pursuant to Subsection 85(7) of the HSA*

30. The City of Toronto considered what next steps should be taken given its concerns about the housing project and given the Housing Provider's actions and stated position. It decided to take necessary steps to apply to the Superior Court and seek the appointment of a receiver and manager pursuant to the provisions of subsection 85(7) of the HSA, which Application was ultimately heard, and granted, on March 16, 2023.²⁰

31. The City was granted the relief it was seeking. The Court considered the material before it and, as referenced at paragraph 5, above, the Court was satisfied that the City's request had merit. In light of the circumstances of the Co-op, and the challenges it faced, it was both just and convenient that the Receiver be appointed. The Order appointing the Receiver was issued on March 14, 2023 (the "Appointment Order").²¹

32. Neither the City nor Harry Sherman requested that any Order be made as to costs. Each party bore its own costs of the Application.

The Betty's Law Invoices That Relate to the Appointment Application

¹⁹ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraphs 89 through 91, pages 83 and 84.

²⁰ [AR](#), the Affidavit of Julie Western-Set, sworn November 10, 2022, Tab 3, paragraph 92, page 84.

²¹ [Endorsement of Justice Penny, dated March 14, 2023](#),

33. As part of the relief being sought in the within motion, Betty's Law has presented three (3) invoices that the City has identified relate to work that was undertaken and completed prior to the issuance of the Appointment Order – Invoices 1123, 1124, and 1251.
34. Invoice 1123 relates to work that Betty's law performed between January 1, 2023 and February 24, 2023. The invoiced amount totals \$14,125.00. Invoice 1123 also notes that Betty's Law had \$10,000 that it held in its account as a retainer at that time. The City understands that this amount would have been applied to reduce the balance owing in respect of this invoice, rendering the actual amount owing in respect of the work described in Invoice 1123 to \$4,125.00.
35. Invoice 1124 relates to work that Betty's Law performed between March 4th and March 14th, 2023. The invoiced amount totals \$14,229.21.
36. The City understands that invoice 1251 relates to disbursements that Betty's Law paid in the course of work performed between January 1st and March 14th, 2023. These invoiced amounts total \$6,131.95.

The Nature of the Receiver's Appointment and the Actions Taken Subsequent to its Appointment

37. The remedies that Services Managers can access under the HSA are legislative tools that have been put in place to allow Service Managers to take steps to protect housing projects, and the members and residents that reside in them in circumstances where the corporations that are charged with managing them on a day-to-day basis are unable to do so based on key indicators the legislation has identified (the "triggering events" referenced above). In evaluating whether the exercise of a particular remedy under the HSA is appropriate, it is

ultimately the interest of the housing project, and in the instant case, the broader membership of the Harry Sherman Co-op, that is to be taken into account. The provision of a remedy calling for the appointment of a receiver by the Court is consistent with ensuring that the interests of the Harry Sherman members and residents remain paramount, as a receiver so appointed serves as an officer of the Court, who functions as a fiduciary for all the relevant stakeholders.

38. The Appointment Order provides the Receiver with the necessary authority to act in that capacity:

- In paragraph 1, that the Receiver was appointed as Receiver over all of the assets, undertakings, and properties of the Housing Provider acquired for, or used in relation to, a business carried on by the Housing Provider, including the Housing Project, and all proceeds thereof.
- In paragraph 2, that the Receiver was empowered and authorized to act in respect of the property and, without limiting the generality of that proposition, to, among other things:
 - At subparagraph (a) – to take possession and control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property.
 - At subparagraph (d) - to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Court's Order.
 - At subparagraph (i) – to initiate, prosecute, and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Harry Sherman Co-op, the Property, or the Receiver, and to settle or compromise any such proceedings.
- Paragraph 2 expressly provides that, in each of the enumerated cases, where the Receiver takes any such actions or steps, it shall be exclusively authorized to

do so, to the exclusion of all other Persons, including the Harry Sherman Co-op and Harry Sherman's Board of Directors.

The Proceedings Taken Within the Context of the Receivership Since the Issuance of the Appointment Order

39. The Receiver brought a motion to deliver its annual report to the Court. This annual report advised on the action taken and the decisions made under its appointment. The Receiver described the steps it took to address the serious physical, financial, governance, and other problems being faced by the Co-op. In taking these steps, the Receiver has been discharging its role as an officer of the Court to carry out its mandate and rehabilitate the condition of the of the housing project. The motion also sought to approve the Receiver's First Report, its activities, and its fees. This motion was heard on April 29, 2024 (the **"Receiver's First Report – Approval Motion"**).

40. The Receiver has brought a second motion, which motion is pending and set to be heard in June 2025. This second motion has been brought to deliver the Receiver's second annual report to the Court, and seeks to approve said report. The Receiver has advised that the balance of the Co-op's operating account, as of April 20, 2025, was approximately \$74,000. The Receiver continues its work to complete various outstanding capital repair projects, while operating the housing project in accordance with the provisions of the HSA. (the **"Receiver's Second Report – Approval Motion"**).

41. The Receiver's Second Report also presents, and seeks approval of, a process that would see the Receiver engage with the members and residents of Harry Sherman to solicit feedback that the Receiver would then evaluate and report back to the Court on, along with

a recommendation as to what steps should be taken in respect of the Co-op to best ensure that the housing project can continue as a healthy, ongoing, viable concern.

42. The City has reviewed the record and has not been able to find evidence of the Harry Sherman Board of Directors convening any meetings to engage with each other, or with the members and residents of the housing project since the appointment of the Receiver.

The Betty's Law Invoices That Relate to Services Rendered Following the Appointment of the Receiver

43. As part of the relief being sought in the within motion, Betty's Law has presented one (1) invoice that the City has identified relates to work that was undertaken and completed following the issuance of the Appointment Order – Invoice 1247.
44. Invoice 1247 relates to work that Betty's law performed between March 25th and April 29th, 2024. The invoiced amount for this work totals \$5,465.42. The invoice also notes a filing fee associated with the filing of a defence and counterclaim for another matter – “HSC v Maple Property”, in the amount of \$77.00.

THE LAW AND ARGUMENT

There Is No Basis for Ordering the Municipal Service Manager to Fund the Legal Expenses the Moving Party is Seeking to Have Covered

45. Though the language of the Notice of Motion makes reference to an order being sought authorizing the City of Toronto to pay the outstanding fees incurred by Betty's Law, the City understands - having reviewed the motion materials and the submissions of the moving party - that the request before this Honourable Court is a request that is being made

on behalf of the Harry Sherman Board of Directors to access the Co-op's funds to settle these invoices.

46. The City submits that moving before this Court to request access to the Co-op's funds to settle the outstanding invoices in question is the appropriate way to frame and consider the moving party's funding request.

47. As set out in the account of the facts recited above, the City acted appropriately and was successful in bringing its Application to appoint the Receiver over the assets of the housing project pursuant to section 85(7) of the HSA. Though it was successful in securing the relief it was seeking, the City bore its own costs in taking this remedial action, as did Harry Sherman. There is no basis for a finding that the public purse should bear the costs incurred by Harry Sherman in responding to a meritorious Application brought by the Service Manager in the course of discharging its monitoring and oversight role.

48. In addition, both in respect of the requests to settle the unpaid fees Betty's Law charged to Harry Sherman that relate to both the Application to appoint the Receiver and to the work undertaken by Betty's Law following the Receiver's appointment, the City's obligation to provide funding to the Harry Sherman housing project is prescribed by legislation. The City has funded the housing project in accordance with prescribed formulas prior and subsequent to the issuance of the Appointment Order. There is no basis, in fact or in law, for the proposition that the municipality should cover the costs at issue.

The Request that the Fees Incurred by the Board be Paid Out of the Assets of the Housing Project

49. In respect of the request being made to access the Co-op's funds in order to settle the Betty's Law invoices, the City has had the benefit of reviewing the submissions of the moving party and the Receiver. To the extent the City of Toronto can assist the Court in its consideration of these issues, it makes the following submissions to supplement those already before the Court.

50. In the City's submission, the request for funding is best understood as a request to settle two distinct sets of fees that Betty's Law has incurred: (i) those fees related to work undertaken in response to the Application to appoint the Receiver – work undertaken through and until March 14, 2023 – ("Pre-Appointment Fees"); and (ii) those fees related to work undertaken following the appointment of the Receiver ("Post Appointment Fees").

Pre-Appointment Fee Considerations

51. The City does not take issue with the Harry Sherman Board having engaged legal counsel prior to the issuance of the Appointment Order to respond to the Application.

52. To the extent the fees that Betty's Law indicates it incurred in addressing Pre-Appointment matters remain outstanding, they are an obligation that the Co-op has to a creditor.

53. The City understands that the Receiver, following its appointment, determined that the Co-op was insolvent, and undertook to notify all of Harry Sherman's creditors of its appointment and the status of the housing project. The City further understands that all the creditors the Receiver has identified are being treated similarly – as unsecured creditors whose claims are subject to the terms of the Appointment Order and are being considered in that context.

54. The City does not see a basis for distinguishing between these creditors and dealing with one particular creditor differently than any another. Based on its review of list of creditors that the Receiver has identified, almost all the Co-op's creditors would have been providing Harry Sherman with services that, arguably, further the Co-op's principal statutory mandate: Continuing to operate the housing project as a going concern, in a manner consistent with its obligations under the governing legislation.

55. It would be appropriate to settle these outstanding fees in keeping with the process being managed by the Receiver and in accordance with the Appointment Order and any governing bankruptcy and/or insolvency legislation.

Post-Appointment Fee Considerations

56. The City agrees with the submissions of counsel for both the moving party and the Receiver, which both identify the decision of the Court of Appeal in *Peterborough (City) v. Kawartha nation Housing Society Incorporated*²², as establishing the framework to be used when considering a request made to the Board of a non-profit housing corporation that is in receivership to access the corporation's funds to pay counsel.

57. Based on the criteria established by this authority, as part of its consideration of the issues before it, the Court will consider whether:

- The position advanced by counsel for the Board post-Appointment had any merit;
- The Board was acting in the interest of the corporation;
- The position advanced by the Board was properly advanced by the Board rather than the Receiver; and

²² [2010, ONCA 705.](#)

- The position advanced by the Board detracted from the orderly administration of the receivership.²³

(i) *The Merit of the Positions Advanced by Counsel for the Board*

58. The post-appointment proceedings before this Court were undertaken by the Receiver, pursuant to the Appointment Order. The Receiver brought two motions, presenting and seeking approval of the First and Second Receiver's Reports.

59. As the moving party in both these post-appointment proceedings, the Receiver is in a better position to speak to the merit of the position advanced by counsel for the Board in responding to same. In that regard, the City, having reviewed the record before the Court, adopts and agrees with the Receiver's submission, that the relief being sought by the Receiver in the context of the April 29, 2024, motion was granted, and – to the extent any concerns were raised by the counsel for the Board – they were based on a misunderstanding of the "Receiver's First Report – Approval Motion".

60. The "Receiver's Second Report – Approval Motion", is still pending and, based on our review of the record, counsel for the Board hasn't articulated a position in respect of same.

(ii) *The City's Concerns About Whether the Board is Acting in the Interest of the Corporation*

61. The City respectfully submits that it has concerns about whether, in resisting the relief that has been sought to date, the Board is acting in the interests of the Corporation.

²³ Ibid, at paragraph 35.

62. The City catalogued the extent to which Harry Sherman failed to properly operate the housing project in the years leading up its applying to have the Receiver appointed pursuant to the HSA. In particular, both the Service Manager and Harry Sherman's own Auditor had noted how, among other things, the Board failed to maintain proper minutes and proper Board packages, and how member subsidy files were not properly monitored or administered. These are key corporate record keeping processes that any properly managed Co-op must maintain in order to document the meetings it has with its members, and its own meetings.
63. There is no record documenting any engagement between the Board and Co-op members and residents, or of the any Board meeting, that gives the Service Manager some comfort that, in resisting the post-appointment motions before the Court, consideration was given to whether such resistance was rooted in advancing the Co-op's interests.
64. The City's concerns are further exacerbated by the additional details about certain pre-appointment conduct on the part of members of the Board that are described at paragraph 10 of the Receiver's Factum.
65. The City also notes that the conduct of the Receiver in addressing the issues at the Co-op as described in its First Report, and in recommending the proposed engagement with the Co-op members and residents as described in its Second Report, it both has taken, and proposes taking, steps that would advance the interest of the Co-op. To the extent any position is taken in opposition to the relief the Receiver is taking to discharge its mandate and as an officer of the Court, the City submits that such position would not align with the interests of the membership and residents.

(iii) and (iv) – Whether the Position Advanced by the Board was Properly Advanced by Them, and Whether it Detracted From the Orderly Administration of the Receivership

66. For the reasons outlined in paragraphs 59, above, the Receiver is in a better position to speak to these issues. The City feels it is appropriate to identify that the delays in the progress of the post-appointment proceedings before the Courts are consistent with the delays it experienced in its efforts to exercise the remedies available to it under the HSA to best serve the interests of the Co-op's members and residents. The City is concerned that, as was the case in respect of its efforts to initially seek the appointment of the Receiver, the Harry Sherman Board may be taking steps to frustrate efforts to remediate the housing project.


PART IV – THE ORDER SOUGHT

67. The Service Manager requests that the motion be dismissed in respect of the Relief being sought as against it.

68. In respect of the balance of the relief being sought, the Service Manager has presented its submissions in order to assist the Court in its consideration of same.

ALL OF WHICH IS RESPECTFULLY SUBMITTED


Dated: May 29, 2025



Mark Siboni
Lawyer for the Applicant (Responding Party)
the City of Toronto

STATEMENT OF AUTHENTICITY

Pursuant to Rule 4.06(2.1), I, Mark Siboni, lawyer for the City of Toronto, am satisfied as to the authenticity of every authority cited in this factum, dated May 29, 2025.



Mark Siboni
Lawyer for the Applicant (Responding Party)
the City of Toronto

SCHEDULE A – CASELAW

1. Peterborough (City) v. Kawartha Native Housing Society Incorporated, 2010 ONCA 705

SCHEDULE B - APPLICABLE LEGISLATION

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

INTERLOCUTORY ORDERS

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Courts of Justice Act

R.R.O. 1990, REGULATION 194

RULES OF CIVIL PROCEDURE

Applications — By Notice of Application or Application for Certificate

14.05 (1) The originating process for the commencement of an application is, as applicable,

- (a) a notice of application (Form 14E, 14E.1, 68A or 73A); or
- (b) an application for a certificate of appointment of estate trustee (Form 74A or 74J), small estate certificate (Form 74.1A) or amended small estate certificate (Form 74.1E). O. Reg. 383/21, s. 3; O. Reg. 709/21, s. 2.

Application under Statute

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, r. 14.05 (2); O. Reg. 292/99, s. 1 (2).

Housing Services Act, 2011

S.O. 2011, CHAPTER 6

SCHEDULE 1

Purpose of the Act

1 The purpose of this Act is,

(a) to provide for community based planning and delivery of housing and homelessness services with general provincial oversight and policy direction; and

(b) to provide flexibility for service managers and housing providers while retaining requirements with respect to housing programs that predate this Act and housing projects that are subject to those programs. 2011, c. 6, Sched. 1, s. 1.

Role of service manager

12 A service manager shall, in accordance with its housing and homelessness plan, carry out measures to meet the objectives and targets relating to housing needs within the service manager's service area. 2011, c. 6, Sched. 1, s. 12.

General powers of service manager

13 (1) A service manager may establish, administer and fund housing and homelessness programs and services and may provide housing directly. 2011, c. 6, Sched. 1, s. 13 (1).

PART VI

GENERAL RULES FOR TRANSFERRED HOUSING PROGRAMS AND PROJECTS

General duty of service manager

68 (1) A service manager shall administer and fund a transferred housing program as it relates to a housing project designated in the regulations for the purposes of this subsection. 2011, c. 6, Sched. 1, s. 68 (1).

How duty carried out

(2) A service manager shall carry out the duty under subsection (1) in accordance with,

(a) this Act and the regulations, including such criteria and rules as may be prescribed for the program for the purposes of this clause; and

(b) any applicable pre-reform operating agreement. 2011, c. 6, Sched. 1, s. 68 (2).

General duty of housing provider

69 (1) This section applies to a housing provider that operates a designated housing project. 2011, c. 6, Sched. 1, s. 69 (1).

General management

(2) The housing provider shall ensure that the project is well managed, maintained in a satisfactory state of repair and fit for occupancy. 2011, c. 6, Sched. 1, s. 69 (2).

Rent and leases

(3) The housing provider is responsible, in relation to the project, for the collection of rent and the administration of leases. 2011, c. 6, Sched. 1, s. 69 (3).

Information to service manager

(4) The housing provider shall give such information as the regulations require to the service manager that administers the transferred housing program to which the project is subject. 2011, c. 6, Sched. 1, s. 69 (4).

Plans

(5) The housing provider shall prepare and follow such plans relating to the governance or operation of the housing provider as the regulations may require. 2011, c. 6, Sched. 1, s. 69 (5).

Operating rules for projects

75 (1) A housing provider shall operate a Part VII housing project and govern itself in accordance with,

- (a) the prescribed provincial requirements; and
- (b) the local standards made by the service manager. 2011, c. 6, Sched. 1, s. 75 (1).

Triggering events

83 The following are triggering events for the purposes of sections 84 to 98:

1. The housing provider contravenes this Act or the regulations.
2. The housing provider becomes bankrupt or insolvent, takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors.
3. Steps are taken or proceedings are commenced by any person to dissolve or wind up the housing provider.
4. The housing provider ceases or threatens to cease to carry on business in the normal course.

5. A trustee, receiver, receiver and manager or similar person is appointed with respect to the business or assets of the housing provider.
6. REVOKED: 2017, c. 2, Sched. 3, s. 5 (1).
7. Any assets of the housing provider are seized under execution or attachment.
8. The housing provider is unable to fulfil its obligations.
9. The housing provider incurs an expenditure that is, in the opinion of the service manager, substantial and excessive.
10. The housing provider incurs an accumulated deficit that is, in the opinion of the service manager, substantial and excessive.
11. In the opinion of the service manager, the housing provider has failed to operate a designated housing project properly.
12. The housing provider contravenes a lease under which it has a leasehold interest in a designated housing project or in land where a designated housing project is located. 2011, c. 6, Sched. 1, s. 83; 2017, c. 2, Sched. 3, s. 5 (1).

Remedies

85 If a triggering event occurs, the service manager may exercise the following remedies:

1. The service manager may discontinue or suspend the subsidy payments under section 78.
2. The service manager may reduce the amount of the subsidy payments under section 78.
3. The service manager may deduct amounts from the subsidy payments under section 78 to pay all or part of a debt of the housing provider.
4. The service manager may,
 - i. exercise any of the powers or perform any of the duties of the housing provider under this Act, or
 - ii. act as the housing provider with respect to all or part of the assets, liabilities and undertakings of the housing provider, including its housing projects.
5. The service manager may appoint an operational advisor for the housing provider.
6. The service manager may appoint an interim receiver or interim receiver and manager for the housing provider.
7. The service manager may seek the appointment by the Superior Court of Justice of a receiver or receiver and manager for the housing provider.
8. The service manager may remove some or all of the directors or the deemed directors of the housing provider, regardless of whether they were elected or appointed or became directors by virtue of their office.
9. The service manager may appoint one or more individuals as directors of the housing provider. 2011, c. 6, Sched. 1, s. 85.

Other remedies not limited

86 (1) Nothing in sections 84 to 98 limits the exercise of any remedy the service manager may have other than under section 85. 2011, c. 6, Sched. 1, s. 86 (1).

Exception

(2) Subsection (1) does not apply with respect to the appointment, by the court, of a receiver or receiver and manager for a housing provider and a service manager may not seek such an appointment other than under paragraph 7 of section 85. 2011, c. 6, Sched. 1, s. 86 (2).

Multiple remedies allowed

87 In respect of the same occurrence of a triggering event, the service manager may,

- (a) exercise more than one remedy; or
- (b) exercise the same or different remedies at different times. 2011, c. 6, Sched. 1, s. 87.

Remedy must be reasonable

89 The service manager may exercise a remedy only if, in the circumstances, it is reasonable to exercise the remedy and the remedy is exercised in a reasonable way. 2011, c. 6, Sched. 1, s. 89.

Notice, opportunity to rectify and make submission

90 (1) A service manager may exercise a remedy under section 85 in respect of an occurrence of a triggering event only if,

- (a) the service manager has given the housing provider a written notice that complies with subsection (2);
- (b) the triggering event continues following the last day of the period referred to in clause (2) (c), and the service manager has subsequently given the housing provider a written notice that complies with subsection (4);
- (c) the service manager has given the housing provider an opportunity to make a submission to the service manager in accordance with clause (4) (c); and
- (d) the service manager has considered the submission if a submission is made, made a decision, and provided the housing provider with notice of the decision and the reasons for it. 2011, c. 6, Sched. 1, s. 90 (1).

Content of notice of triggering event

(2) The notice referred to in clause (1) (a) must,

- (a) specify the particulars of the occurrence of the triggering event or events;
- (b) specify what if anything the housing provider must do or refrain from doing to rectify the situation that gave rise to the occurrence of the triggering event or events in order to avoid an exercise of a remedy or remedies;
- (c) specify the period within which the housing provider must comply with the notice, which may not be less than 60 days from the date the notice is given; and
- (d) if the notice provides for the submission of a plan by the housing provider, specify the matters that must be addressed in the plan. 2011, c. 6, Sched. 1, s. 90 (2).

Content of notice regarding submission

(4) The notice referred to in clause (1) (b) must,

- (a) specify the particulars of the occurrence of the triggering event or events;
- (b) specify the remedy or remedies that the service manager is considering exercising to address the triggering event or events and the reasons why the service manager is considering them;
- (c) inform the housing provider that it can make a written submission on the service manager's proposed exercise of a remedy or remedies to the service manager by a date that is not less than 60 days after the date the notice is given;
- (d) inform the housing provider that if no submission is received within the period referred to in clause (c), the service manager will make a decision based on the information that is available to it; and
- (e) if the service manager is considering exercising the remedy under paragraph 4 of section 85, advise the housing provider of which powers the service manager would be exercising, which duties the service manager would be performing and the assets, liabilities or undertakings with respect to which it would be acting as the housing provider. 2011, c. 6, Sched. 1, s. 90 (4).

Exceptions

(5) Subsection (1) does not apply if,

- (a) the triggering event is a contravention of section 162;
- (b) the housing provider is unable to pay its debts as they become due;
- (c) the housing provider has operated a designated housing project in a way that has resulted in,
 - (i) significant physical deterioration of the housing project affecting the structural integrity of the housing project, or
 - (ii) danger to the health or safety of the residents of the housing project;

- (d) a report of an audit or investigation of the housing provider alleges fraud, criminal activity or a misuse of the assets of the housing provider and the alleged fraud, criminal activity or misuse of assets has been referred to a law enforcement agency;
- (e) a designated housing project of the housing provider is subject to a mortgage guaranteed by the Province of Ontario and the mortgage is in default;
- (f) the number of directors of the housing provider has been less than the quorum needed for a meeting of the board of directors for a period of 90 days and remains less than the quorum; or
- (g) a circumstance exists that is prescribed for the purpose of this clause. 2011, c. 6, Sched. 1, s. 90 (5); 2020, c. 16, Sched. 3, s. 10 (3).

Opportunity to make submission regarding court appointed receiver

(6) Where a service manager is entitled to seek the appointment of a receiver or a receiver and manager under paragraph 7 of section 85, or to make an application for an extension of the appointment of an interim receiver or an interim receiver and manager under subsection 95 (3), the service manager shall not make a decision to do so unless,

- (a) the service manager has first given the housing provider a written notice that complies with subsection (7);
- (b) the service manager has given the housing provider an opportunity to make a submission to the service manager in accordance with clause (7) (c); and
- (c) the service manager has considered the submission if a submission is made, made a decision, and provided the housing provider with notice of the decision and the reasons for it. 2011, c. 6, Sched. 1, s. 90 (6).

Content of notice

(7) The notice referred to in clause (6) (a) must,

- (a) specify the particulars of the occurrence or continuation of the triggering event or events and the circumstances in subsection (5) that are continuing;
- (b) specify that the service manager is considering making an application to seek the appointment of a receiver or a receiver and manager under paragraph 7 of section 85 or extend the appointment of an interim receiver or an interim receiver and manager under subsection 95 (3) and the reasons why the service manager is doing so;
- (c) inform the housing provider that it can make a written submission on the service manager's proposed exercise of the remedy or application for extension by a date that is not less than 60 days after the date the notice is given; and
- (d) inform the housing provider that if no submission is received by the date specified by the service manager under clause (c), the service manager will make a decision based on the information that is available to it. 2011, c. 6, Sched. 1, s. 90 (7).

Restriction on appointment of receiver, etc.

94 A service manager may appoint an interim receiver or interim receiver and manager under paragraph 6 of section 85, or seek the appointment of a receiver or receiver and manager under paragraph 7 of section 85, only if one of the situations listed in subsection 90 (5) is continuing. 2011, c. 6, Sched. 1, s. 94.

Service manager – appointed receiver, etc.

95 (1) This section applies with respect to the exercise of the remedy to appoint an interim receiver or interim receiver and manager under paragraph 6 of section 85. 2011, c. 6, Sched. 1, s. 95 (1).

Time limit

(2) The maximum period during which there may be an interim receiver or interim receiver and manager is 180 days. 2011, c. 6, Sched. 1, s. 95 (2).

Extension by court

(3) The Superior Court of Justice may, on application of the service manager, extend the maximum period under subsection (2). 2011, c. 6, Sched. 1, s. 95 (3).

Qualification on time limit

(4) Subsection (2) does not limit the appointment of an interim receiver or interim receiver and manager in respect of a different occurrence of a triggering event. 2011, c. 6, Sched. 1, s. 95 (4).

Appointment by agreement

(5) The interim receiver or interim receiver and manager shall be appointed under an agreement between the service manager and the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (5).

Termination, etc.

(6) Despite anything to the contrary in the agreement appointing the interim receiver or interim receiver and manager, the service manager may, without the consent of the interim receiver or interim receiver and manager, terminate or shorten the appointment at any time. 2011, c. 6, Sched. 1, s. 95 (6).

Return of control

(7) When it is appropriate, in the opinion of the service manager, to return control to the housing provider, the service manager shall terminate the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (7).

Copy of agreement to housing provider

(8) The interim receiver or interim receiver and manager shall give the housing provider a copy of the agreement appointing the interim receiver or interim receiver and manager and any amendment to the agreement. 2011, c. 6, Sched. 1, s. 95 (8).

Powers

(9) The interim receiver or interim receiver and manager has the prescribed powers, subject to subsection (10) and any limits in the agreement appointing the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (9).

Powers continued

(10) The powers of an interim receiver do not include the power to sell, convey, lease, assign, give as security or otherwise dispose of the assets of the housing provider, including its housing projects, outside of the ordinary course of business of the housing provider. 2011, c. 6, Sched. 1, s. 95 (10).

Powers are exclusive

(11) The powers of the interim receiver or interim receiver and manager are exclusive and no other person may exercise those powers during the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (11).

Restriction on dealing with housing project

(12) For greater certainty, section 162 applies to an interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (12).

Remuneration

(13) The remuneration of the interim receiver or interim receiver and manager shall be determined under the agreement appointing the interim receiver or interim receiver and manager and shall be paid out of the funds of the housing provider. 2011, c. 6, Sched. 1, s. 95 (13).

Duty to co-operate

(14) The housing provider shall co-operate with the interim receiver or interim receiver and manager and give the interim receiver or interim receiver and manager full access to the housing provider's books and records. 2011, c. 6, Sched. 1, s. 95 (14).

Ratification of acts of receiver, etc.

(15) The housing provider is deemed to ratify and confirm what the interim receiver or interim receiver and manager does during the appointment of the interim receiver or interim receiver and manager, but only with respect to things done in accordance with this Act, the regulations and the agreement appointing the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (15).

Release of receiver, etc.

(16) The housing provider is deemed to release and discharge the service manager and the interim receiver or interim receiver and manager and every person for whom the service manager and the interim receiver or interim receiver and manager is responsible from every claim of any nature arising by reason of any act or omission done or omitted during the appointment of the interim receiver or interim receiver and manager, other than the following claims:

1. A claim for an accounting of the money and other property received by the interim receiver or interim receiver and manager or another person for whom the interim receiver or interim receiver and manager is responsible.
2. A claim arising from negligence or dishonesty by the interim receiver or interim receiver and manager or by another person for whom the interim receiver or interim receiver and manager is responsible. 2011, c. 6, Sched. 1, s. 95 (16).

Reports to housing provider

(17) Every three months, the interim receiver or interim receiver and manager shall give the housing provider and service manager a written report that includes,

- (a) a summary of what the interim receiver or interim receiver and manager has done during the period covered by the report;
- (b) a summary of what the interim receiver or interim receiver and manager proposes to do in the future;
- (c) a summary of the operations of the housing provider during the period covered by the report; and
- (d) a general description of the financial situation of the housing provider. 2011, c. 6, Sched. 1, s. 95 (17).

Not bound by proposed actions

(18) The interim receiver or interim receiver and manager is not required to do anything or prevented from doing anything only because it was included or not included in a report under clause (17) (b). 2011, c. 6, Sched. 1, s. 95 (18).

Reports to cover entire appointment period

(19) The interim receiver or interim receiver and manager shall make reports under subsection (17) covering the entire period of the appointment of the interim receiver or interim receiver and manager, even if that requires a report to be made after the end of the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (19).

Access by housing provider

(20) The interim receiver or interim receiver and manager shall give the housing provider access to the books and records of the housing provider at reasonable times during the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (20).

Limit on report requirements

(21) Subsections (17) and (20) do not require the disclosure of information that, in the opinion of the interim receiver or interim receiver and manager, may relate to fraud or other criminal activity by a director, member or employee of the housing provider. 2011, c. 6, Sched. 1, s. 95 (21).

Restriction

(22) An interim receiver or interim receiver and manager may not be the same person as a property manager retained to act on behalf of the service manager in the exercise of paragraph 4 of section 85 or an operational advisor appointed under paragraph 5 of section 85 in respect of the housing provider. 2011, c. 6, Sched. 1, s. 95 (22).

Court appointed receiver, etc.

96 (1) This section applies with respect to the exercise of the remedy to seek the appointment of a receiver or receiver and manager under paragraph 7 of section 85. 2011, c. 6, Sched. 1, s. 96 (1).

Return of control

(2) When it is appropriate, in the opinion of the service manager, to return control to the housing provider, the service manager shall seek the termination by the court of the appointment of the receiver or receiver and manager. 2011, c. 6, Sched. 1, s. 96 (2).

Limits on receivers, etc., appointed by service manager or court

97 (1) This section applies with respect to a receiver or receiver and manager appointed under paragraph 7 of section 85. 2011, c. 6, Sched. 1, s. 97 (1).

Restriction on dealing with housing project

(2) For greater certainty, section 162 applies to a receiver or receiver and manager. 2011, c. 6, Sched. 1, s. 97 (2).

Restriction on transfer to service manager, etc.

(3) A receiver or receiver and manager shall not transfer a designated housing project unless,

- (a) the receiver or receiver and manager used an open and competitive process to select a transferee that would continue to operate the project under the transferred housing program administered by the service manager; or
- (b) the receiver or receiver and manager was of the opinion that it would not be reasonable to use such a process. 2011, c. 6, Sched. 1, s. 97 (3).

Housing Services Act, 2011

ONTARIO REGULATION 367/11

GENERAL

ENFORCEMENT

Service manager-appointed receiver, etc., powers, s. 95 (9) of the Act

104. (1) This section prescribes, for the purposes of subsection 95 (9) of the Act, the powers that an interim receiver or interim receiver and manager has. O. Reg. 367/11, s. 104 (1).

(2) The interim receiver or interim receiver and manager has the power to act as the housing provider with respect to its assets, liabilities and undertakings, including its housing projects. O. Reg. 367/11, s. 104 (2).

(3) Without limiting the generality of subsection (2), the powers under that subsection include the following:

1. The power to carry on and manage the business and affairs of the housing provider.
2. The power to take possession of, preserve and protect the assets of the housing provider, including its housing projects.
3. The power to commence, conduct or defend legal proceedings.
4. The power to borrow money.
5. The power to receive payments or anything else in satisfaction of any obligation to the housing provider and to compromise any such obligation.
6. The power to enter into contracts, sign documents or do anything incidental to the exercise of its other powers. O. Reg. 367/11, s. 104 (3).

(4) The interim receiver or interim receiver and manager shall not exercise any of its powers unless all of the following are satisfied:

1. The interim receiver or interim receiver and manager has insurance acceptable to the service manager and has provided the service manager with proof of such insurance.
2. The interim receiver or interim receiver and manager has provided the service manager with undertakings, satisfactory to the service manager, that the interim receiver or interim receiver and manager and all persons who the interim receiver or interim receiver and manager procures the assistance of in the carrying out of the powers of the interim receiver or interim receiver and manager,
 - i. shall not do anything that would result in a conflict of interest, and
 - ii. shall comply with the requirements, to which the housing provider was subject, relating to the collection, use, disclosure and safeguarding of privacy of personal information and for a person's access to his or her personal information. O. Reg. 367/11, s. 104 (4).

Housing Services Act, 2011

ONTARIO REGULATION 369/11

SUBSIDIES FOR PART VII HOUSING PROJECTS

**PART II
DETERMINATION OF SUBSIDY**

Application of Part

4. This Part applies with respect to the subsidy that a service manager pays a housing provider unless the housing provider is set out in the Schedule opposite the service manager. O. Reg. 369/11, s. 4.

Determination under this Part

5. The amount of the subsidy for a fiscal year that a service manager shall pay a housing provider shall be determined using the following formula,

$$\text{IBOpCosts} + \text{SMCosts} - \text{IBRev} + \text{RGISub} + \text{PTx} - \text{Sur}$$

in which,

“IBOpCosts” is the provider’s indexed benchmark operating costs for the fiscal year in respect of its housing projects determined under section 6,

“SMCosts” is the provider’s shelter mortgage costs for the fiscal year in respect of its housing projects determined under section 15,

“IBRev” is the provider’s indexed benchmark revenue for the fiscal year in respect of its housing projects determined under section 7,

“RGISub” is the provider’s rent-gear-to-income subsidy for the fiscal year in respect of its housing projects determined under section 8,

“PTx” is the property taxes payable by the provider for the fiscal year in respect of its housing projects, and

“Sur” is the amount equal to 50 per cent of the provider’s surplus for the fiscal year in respect of its housing projects determined under section 9, or such lesser amount as the service manager may determine.

O. Reg. 369/11, s. 5.

Indexed benchmark operating costs

6. (1) For the purposes of section 5, the housing provider's indexed benchmark operating costs for a fiscal year in respect of its housing projects is the amount determined by,

- (a) calculating the indexed benchmark operating cost for the fiscal year for each item listed in the Table to this subsection by,
 - (i) expressing as a decimal number the operating cost index for the item for the fiscal year, as determined by the Minister under subsection (2) or (3),
 - (ii) adding one to the number determined under subclause (i), and
 - (iii) multiplying the indexed benchmark operating cost for the item for the prior fiscal year by the number determined under subclause (ii); and
- (b) calculating the sum of the indexed benchmark operating costs determined under clause (a) for all the items.

TABLE

Item No.	Item	Index
1.	Administration and maintenance	Ontario Consumer Price Index (All items), as published by Statistics Canada.
2.	Insurance	Ontario Consumer Price Index (Homeowners' home and mortgage insurance sub-index), as published by Statistics Canada.
3.	Bad debt	Market rent index, as determined under section 10.
4.	Electricity	Ontario Consumer Price Index (Electricity sub-index), as published by Statistics Canada.
5.	Water	Ontario Consumer Price Index (Water sub-index), as published by Statistics Canada.
6.	Natural gas	Ontario Consumer Price Index (Natural gas sub-index), as published by Statistics Canada.
7.	Oil and other fuel	Ontario Consumer Price Index (Fuel oil and other fuel sub-index), as published by Statistics Canada.
8.	Capital reserves	Ontario Consumer Price Index (All items), as published by Statistics Canada.

O. Reg. 369/11, s. 6 (1).

(2) For the purposes of subclause (1) (a) (i), the operating cost index for an item listed in the Table to subsection (1), other than for item 3, is determined by,

- (a) dividing the index listed in the Table opposite the item for May of the calendar year before the year in which the fiscal year begins by that index for May of the calendar year before that;
- (b) subtracting one from the number determined under clause (a);
- (c) expressing the number determined under clause (b) as a percentage. O. Reg. 369/11, s. 6 (2).

(3) For the purposes of subclause (1) (a) (i), the operating cost index for item 3 of the Table to subsection (1) is the market rent index determined under section 10. O. Reg. 369/11, s. 6 (3).

(4) To reflect a change in the circumstances of a housing provider, the Minister may, after consulting with the housing provider and the service manager, determine a different indexed benchmark operating cost for the fiscal year for an item to be used instead of what would otherwise be calculated under clause (1) (a). O. Reg. 369/11, s. 6 (4).

Indexed benchmark revenue

7. (1) For the purposes of section 5, the housing provider's indexed benchmark revenue for a fiscal year in respect of its housing projects is the amount determined using the following formula,

$$\text{IBRev}(\text{MarkRent}) - \text{IBVacLoss} + \text{BNonrentRev}$$

in which,

“IBRev(MarkRent)” is the provider's indexed benchmark revenue for market rent for the fiscal year in respect of its housing projects determined under subsection (2),

“IBVacLoss” is the provider's indexed benchmark vacancy loss for the fiscal year in respect of its housing projects determined under subsection (3), and

“BNonrentRev” is the provider's benchmark non-rental revenue for the prior fiscal year.

O. Reg. 369/11, s. 7 (1).

(2) For the purposes of subsection (1), the housing provider's indexed benchmark revenue for market rent for a fiscal year in respect of its housing projects is the amount determined by,

- (a) expressing as a decimal number the market rent index determined under section 10;
- (b) adding one to the number determined under clause (a); and
- (c) multiplying the provider's indexed benchmark revenue for market rent for the prior fiscal year by the number determined under clause (b). O. Reg. 369/11, s. 7 (2).

(3) For the purposes of subsection (1), the housing provider's indexed benchmark vacancy loss for a fiscal year in respect of its housing projects is the amount determined by,

- (a) expressing as a decimal number the market rent index determined under section 10;
- (b) adding one to the number determined under clause (a); and
- (c) multiplying the provider's indexed benchmark vacancy loss for the prior fiscal year by the number determined under clause (b). O. Reg. 369/11, s. 7 (3).

(4) To reflect a change in the circumstances of a housing provider, the Minister may, after consulting with the housing provider and the service manager,

- (a) determine a different benchmark non-rental revenue for the fiscal year instead of what would otherwise be used in the formula under subsection (1); or
- (b) determine a different amount for the fiscal year to be used instead of what would otherwise be calculated under subsection (2) or (3). O. Reg. 369/11, s. 7 (4).

Rent-geared-to-income subsidy

8. (1) For the purposes of section 5, the housing provider's rent-geared-to-income subsidy for a fiscal year in respect of its housing projects is the amount determined using the following formula,

$$\text{MarkRent} - \text{RGIRent}$$

in which,

“MarkRent” is the lesser of,

- (a) the total of the provider's indexed benchmark market rent, determined under subsection (2), for the fiscal year from the rent-geared-to-income units in the provider's housing projects, and
- (b) the total of what the rent would be for the fiscal year from the rent-geared-to-income units if no rent-geared-to-income assistance was given in respect of those units, and

“RGIRent” is the rent payable to the provider for the fiscal year by the households accommodated in those rent-geared-to-income units.

O. Reg. 369/11, s. 8 (1).

(2) For the purposes of subsection (1), the total of a housing provider's indexed benchmark market rent for a fiscal year from rent-geared-to-income units in its housing projects is the amount determined by,

- (a) expressing as a decimal number the market rent index determined under section 10;
- (b) adding one to the number determined under clause (a); and
- (c) multiplying the number determined under clause (b) by the total of the provider's indexed benchmark market rent for the prior fiscal year. O. Reg. 369/11, s. 8 (2).

(3) To reflect a change in the circumstances of a housing provider, the Minister may, after consulting with the housing provider and the service manager, determine a different total indexed benchmark market rent for the fiscal year to be used instead of what would otherwise be calculated under subsection (2). O. Reg. 148/16, s. 1.

Surplus

9. (1) For the purposes of section 5, the housing provider's surplus for a fiscal year in respect of its housing projects is the amount determined under this section. O. Reg. 369/11, s. 9 (1).

(2) If the housing provider's accumulated surplus in respect of its housing projects, determined under subsection (6), at the beginning of the fiscal year or the beginning of any previous fiscal year for which the service manager paid the housing provider a subsidy under section 78 of the Act or section 102 of the former Act is equal to or greater than the product of \$300 multiplied by the number of units in the provider's housing projects at the beginning of the fiscal year or that previous fiscal year, as the case may be, the provider's surplus for the fiscal year is the

provider's net operating income for its housing projects for the fiscal year determined under subsection (5). O. Reg. 369/11, s. 9 (2).

(3) If subsection (2) does not apply and if the amount determined using the following formula is positive, the housing provider's surplus for the fiscal year is the amount determined using the following formula,

$$\text{NetOpInc} + \text{AccSur} - \text{Amt}(\$300)$$

in which,

"NetOpInc" is the provider's net operating income for its housing projects for the fiscal year determined under subsection (5),

"AccSur" is the provider's accumulated surplus in respect of its housing projects at the beginning of the fiscal year determined under subsection (6), and

"Amt(\$300)" is the product of \$300 multiplied by the average number of the housing provider's units in the fiscal year.

O. Reg. 369/11, s. 9 (3).

(4) If neither subsection (2) nor (3) applies for the fiscal year, the housing provider's surplus for the fiscal year is nil. O. Reg. 369/11, s. 9 (4).

(5) For the purposes of this section, the net operating income of a housing provider for a fiscal year for its housing projects is the amount by which its revenue for the fiscal year from those projects determined under subsection 16 (1), exceeds its operating costs for the fiscal year with respect to those projects determined under subsection 16 (2). O. Reg. 369/11, s. 9 (5).

(6) For the purposes of this section, a housing provider's accumulated surplus in respect of its housing projects at the beginning of a fiscal year is the portion of its retained earnings at the end of the previous fiscal year determined in accordance with generally accepted accounting principles as they apply to social housing, that can reasonably be considered to be derived from its housing projects. O. Reg. 369/11, s. 9 (6).

Market rent index

10. (1) For the purposes of sections 6, 7 and 8, the market rent index applicable for a fiscal year to a housing provider's housing projects is the lesser of,

- (a) the guideline published under subsection 120 (3) of the *Residential Tenancies Act, 2006*; and
- (b) the percentage change in the average rent for rental units, as determined under subsection (2). O. Reg. 369/11, s. 10 (1).

(1.1) Despite subsection (1), for the purposes of sections 6, 7 and 8, the market rent index applicable to a housing provider's housing projects for a fiscal year that begins in 2021 is the lesser of,

- (a) the guideline determined under subsection 120 (3.1) of the *Residential Tenancies Act, 2006* rather than the guideline published in *The Ontario Gazette* on August 29, 2020; and
- (b) the percentage change in the average rent for rental units, as determined under subsection (2). O. Reg. 713/20, art. 1.

(2) For the purposes of clause (1) (b), the percentage change in the average rent for rental units is determined using the following formula, rounded to the first decimal point:

$$(\text{AvRentRecent}/\text{AvRentPrior} - 1) \times 100$$

in which,

“AvRentRecent” is the number indicated in the edition of the Rental Market Report for fall of the second calendar year before the year in which the fiscal year begins, published by the Canada Mortgage and Housing Corporation, as the “Total” average rent for a “Private Apartment” or “Private Row (Townhouse)”, as the case may be, and for a census metropolitan area centre, census agglomeration centre or a zone, as the case may be, and

“AvRentPrior” is the number indicated in the report published one year before the report referred to in “AvRentRecent” that corresponds to the number determined under “AvRentRecent”.

O. Reg. 369/11, s. 10 (2).

(3) If the Rental Market Report does not provide data required for the calculation of “AvRentRecent” or “AvRentPrior”, then “AvRentRecent” or “AvRentPrior”, as the case may be, is equal to the number indicated in the Rental Market Report as the “Total” average rent for the census metropolitan area centre or census agglomeration centre, as the case may be, or, if that data is not available, for Ontario. O. Reg. 369/11, s. 10 (3).

PART IV COMMON RULES

Shelter mortgage costs

15. For the purposes of sections 5 and 12, the housing provider’s shelter mortgage costs for a fiscal year in respect of its housing projects is the total amount of principal and interest payable by the provider for the fiscal year, where such payments are,

- (a) payable under mortgages guaranteed by the Province of Ontario in respect of those projects; and
- (b) applicable to the portions of those housing projects that are used for residential accommodation and ancillary functions, including meeting rooms, recreational facilities, laundry facilities, parking areas and exterior grounds. O. Reg. 369/11, s. 15; O. Reg. 231/21, s. 1.

Revenue and operating costs

16. (1) For the purposes of sections 9 and 12, the revenue of a housing provider for a fiscal year with respect to its housing projects is the total of the following types of revenue earned by the housing provider in the fiscal year in respect of the housing projects and units in the housing projects:

1. Revenue derived from the parts of the housing projects allocated to residential accommodation.
2. Revenue related to facilities used for ancillary purposes.
3. Revenue derived from the use of parking areas, exterior grounds, external building walls and roofs. O. Reg. 369/11, s. 16 (1).

(2) For the purposes of this Regulation, a housing provider's operating costs for a fiscal year from its housing projects is the total of the following expenses, allowances and contributions of the housing provider for the year that are reasonably applicable to the portions of those housing projects used for residential accommodation and ancillary functions, as determined in accordance with generally accepted accounting principles as they apply to social housing:

1. Administration and maintenance expenses.
2. Insurance premiums.
3. Bad debt expenses.
4. Utility costs, including electricity, fuel, water and sewer charges.
5. Contributions to the housing provider's capital reserve. O. Reg. 369/11, s. 16 (2).

(3) For the purposes of this section, gifts and donations made to a housing provider are not revenue of the housing provider. O. Reg. 369/11, s. 16 (3).

Calculations, rounding off

17. (1) All amounts that are not whole numbers that are used in calculations under this Regulation or that result from calculations under this Regulation must be rounded to two decimal places, unless otherwise indicated. O. Reg. 369/11, s. 17 (1).

(2) Subsection (1) does not apply when a percentage is expressed as a decimal number. O. Reg. 369/11, s. 17 (2)

B E T W E E N :

CITY OF TORONTO

(Applicant)

-and-

HARRY SHERMAN CROWE HOUSING

CO-OPERATIVE INC.

(Respondent)

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

Proceeding commenced at Toronto

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