

**ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

CITY OF TORONTO

Applicant

- and -

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent

**FACTUM OF THE RESPONDENT
(Motion Returnable on December 11, 2025)**

December 10, 2025

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PART I – OVERVIEW AND FACTS

1. Harry Sherman Crowe Housing Co-operative (“Co-op”) has been under a court appointed receivership since March 14, 2023, when Penny J. issued an Appointment Order under the Housing Services Act. That Order was directed at stabilizing the Co-op’s operations, addressing longstanding compliance issues, and ensuring the continuity of the housing project for its members. The central issue before the Court at the time was the significant financial challenges facing the Board. Justice Penny’s Order dated March 14, 2023, contemplated placing the Co-op into receivership for the purpose of restoring financial stability and bringing the Co-op back to a stable and sustainable condition. The Order did not alter the statutory governance model established by the Co-operative Corporations Act nor did it transfer democratic control of the Co-op to the Receiver. From the outset, the receivership has been explicitly transitional. *As Justice Kimmel emphasized in her June 30, 2025, endorsement, the “eventual goal” of this receivership is a return to member control through an elected board,*¹ and the Receiver’s role is confined to operational management not to redesigning governance or substituting itself for statutory election processes.
2. In March 2024, the Receiver’s appointment was transferred from RSM Canada to TDB Reconstructing, but no change to the underlying mandate occurred.² The Receiver nonetheless began expressing concerns throughout 2024 and early 2025 with respect to the Board process. These concerns led the Receiver on its own initiative to propose a multi-stage RFEIQ process intended to inform members about board responsibilities and solicit expressions of interest.
3. When this proposal came before the Court, Justice Kimmel approved only its first two phases: providing information to members and receiving expressions of interest. Critically, Justice Kimmel refused to authorize any further steps or any action that might intrude on governance, *candidate assessment, or the statutory election scheme.* Justice Kimmel further held that it would be premature to approve the Receiver’s future plans and emphasized that nothing in the RFEIQ process permitted the Receiver to interfere with election processes or to evaluate the suitability of potential candidates.³
4. Despite these carefully delineated limits, the Receiver’s present motion asks the Court to sanction a suite of governance powers that were neither contemplated by the Appointment Order of Justice Penny nor permitted by Justice Kimmel’s endorsement. The Receiver now seeks authority to develop governance “Options” to design and administer voting procedures, convene governance oriented town halls, and assume authority over membership and unit transfer applications. These requests amount to an attempted restructuring of the Co-op’s governance framework under the guise of operational management.⁴ The suggested direction of the Receiver directly conflicts with the statutory governance rights of members, the Co-op’s bylaws, and the carefully constrained role the Court has imposed on the Receiver.

¹ Motion Record of the Receiver dated December 3, 2025 (“MR”), Tab 2, Endorsement order Justice Kimmel dated June 30, 2025 (“Endorsement”), at para. 58.

² IBID, Tab 2, Substitution order, at para. 68.

³ Motion Record of the Receiver dated December 3, 2025 (“MR”), Tab 2, Endorsement order Justice Kimmel dated June 30, 2025 (“Endorsement”), at para 49

⁴ IBID, Tab 2, Third Court Report, at paras. 77 – 90.

PART II – ISSUES

5. The central issue for the Board is that the Receiver's request for expanding its authority is incompatible with the decisions of the court to date. Specifically, in light of the Receiver's suggested approach and the previous court orders there are two significant areas for which the Board is entitled to input.
 - (a) **First, that the Board and its advisory Board which includes senior and respected members of the community who have agreed to assist the Board in this transitioning process be provided the opportunity to also provide an option to the court.**
 - (b) **No decision has been made in terms of membership or unit transfers without the input of the Board.**

PART III – LAW AND ARGUMENTS

6. The starting point is the Court's *own articulation of the purpose of this receivership. Justice Kimmel described it unequivocally: the receivership is transitional and must culminate in the restoration of control to an elected board.*⁵ Any request that shifts the Co-op further away from member-driven governance or creating new governance mechanisms not found in statute or by-law runs contrary. The Receiver's motion does precisely this. By seeking authority to craft governance Options, establish voting procedures, and evaluate membership applications, the Receiver is attempting to exercise powers that fall outside, and indeed contrary to, the scope of authority conferred by the Court.
7. The legal framework governing this analysis is well-established. *A court-appointed Receiver must act honestly, in good faith, prudently, and diligently.*⁶ The duty of prudence and diligence is inseparable from the requirement that a Receiver act strictly within the limits of its mandate. Activities that exceed or disregard those limits cannot be characterized as diligent, even if undertaken with good intentions. When an officer of the Court seeks authority to perform functions that the Court has deliberately held to the contrary, this standard cannot be met.
8. There is an additional safeguard. *Whenever a receiver seeks approval for a process affecting stakeholders, the Commercial List applies familiar procedural-fairness principles developed in the “Soundair” line of cases and in decisions approving court-supervised processes.*⁷ These principles require transparency, fairness to affected parties, and most importantly strict adherence to the boundaries of the Appointment Order. A process that alters statutory rights, restructures governance, or influences democratic

⁵ BID, Tab 2, ENDORSEMENT (RECEIVER'S MOTION FOR DIRECTIONS, APPROVAL OF FEES AND ACTIVITIES AND PROPOSED RFEIQ PROCESS), at para. 58.

⁶ BID, Tab 2, ENDORSEMENT (RECEIVER'S MOTION FOR DIRECTIONS, APPROVAL OF FEES AND ACTIVITIES AND PROPOSED RFEIQ PROCESS), at para. 12

⁷ BID, Tab 2, ENDORSEMENT (RECEIVER'S MOTION FOR DIRECTIONS, APPROVAL OF FEES AND ACTIVITIES AND PROPOSED RFEIQ PROCESS), at para 55

participation cannot satisfy these standards unless the Court has expressly authorized such an incursion, which has not occurred here.

9. Justice Kimmel's endorsement of June 30, 2025, is explicit on these limitations. The order stated at para 49 that *it was premature to approve any future steps beyond the initial two phases of the RFEIQ process*⁸ and that the Receiver could not be granted anticipatory authority over matters relating to governance, candidacy, or election processes. This was not a casual comment; it was a deliberate protection of the statutory rights of members and of the democratic core of the Co-op. The endorsement also prohibits the Receiver from offering subjective assessments of candidates or acting in a manner that would undermine the statutory election scheme. Despite these constraints, the Receiver now seeks authority to design voting procedures for member preference polling and to develop governance options for future consideration activities that cannot occur without subjective evaluations, without influencing member expectations, and without affecting the eventual election process. These are precisely the activities the Court held to be impermissible.
10. The Receiver's approach fundamentally misconstrues its mandate under the Appointment Order. That Order gives the Receiver control over operations and management so that the Co-op may be stabilized. It does not confer, even implicitly, any power over governance. The distinction between management and governance is essential. Decisions about who may become a member, how units may be transferred, or how the board should be structured are quintessential governance questions fixed by the Co-operative Corporations Act and the Co-op's bylaws. A Receiver may not assume such functions absent clear judicial authorization, and no such authorization has ever been granted. Justice Kimmel's endorsement of June 30, 2025, at para 49 in fact confirms the opposite: these governance matters remain in place and must not be displaced by the receivership.
11. Under the Co-operative Corporations Act, R.S.O. 1990, c. C.35 statutory governance authority is vested exclusively in the members and the duly elected board. Section 23 assigns decisions about member admission to the co-operative itself, while sections 90 and 91 provide that the board manages the affairs of the co-operative and that directors must be elected by the members at a general meeting. Sections 92 and 93 further confirm that the composition of the board, the duration of directors' terms, and the filling of vacancies are all matters governed by statute and determined through member decision-making.
12. Nothing in the Appointment Order or in any subsequent endorsement displaces these statutory protections. A Receiver appointed under the Housing Services Act cannot assume governance powers reserved by statute to members and the elected board, including the authority to redesign governance models, influence or conduct elections, or determine membership rights. The Receiver's request for governance authority is therefore incompatible with the Co-operative Corporations Act, which requires that democratic control remain with members unless expressly removed by statute or court order neither of which has occurred.
13. The Receiver's attempt to obtain Court approval of governance Options is also inconsistent with the high threshold for altering statutory governance structures. A Receiver may not redesign governance on the basis of administrative convenience or its own views about member capacity. The Court has already rejected the Receiver's concerns about potential

⁸ IBID, Tab 2, ENDORSEMENT (RECEIVER'S MOTION FOR DIRECTIONS, APPROVAL OF FEES AND ACTIVITIES AND PROPOSED RFEIQ PROCESS), at para 49

candidates as a basis for deviating from the statutory election model. The Receiver now seeks indirectly what it could not seek directly, the permission to craft long term governance pathways at a stage where the Court has expressly held such decisions are premature.

14. The Board's concern extends to the Third Report itself. The Report includes substantial commentary and recommendations related to governance design, member voting frameworks, and membership approvals. These do not fall within the Receiver's mandate and should not be approved by the Court. Approval of a Report that contains ultra vires actions risks validating work that the Court has already said must not be undertaken.
15. Further, the Receiver asks this Court to endorse a fundamental re-shaping of the Co-op's governance landscape in the midst of a receivership whose expressed purpose is to *restore* democratic governance, not to reinvent it. The Court should decline to grant the Receiver any authority over governance functions, membership decisions, voting procedures, or the design of governance models.
16. The Receiver's Legal Fees from April to October 2025 Are unreasonable and should not be approved. The Receiver also seeks Court approval of more than \$175,448.15 in legal fees incurred by its counsel, WeirFoulds LLP, between April and October 2025.⁹ These fees are disproportionate, unnecessary, and inconsistent with the principles governing court-supervised receiverships. The invoices demonstrate excessive partner involvement in administrative and clerical tasks, duplication of work across multiple lawyers, and significant time spent on activities unrelated to the Receiver's operational mandate including governance design, litigation strategy, and commentary well outside the Appointment Order.
17. Under *Diemer v. Bank of Nova Scotia*, 2014 ONCA 851, fees in a receivership must be value-based, proportionate, and justified with clear evidence. Similarly, in *Triple III Capital Partners*, 2023 ONSC 3400, the Court rejected fees where work was duplicative or inefficient. The legal fees here do not satisfy these standards. The Receiver has not demonstrated that the hours billed were necessary or reasonable, nor that the work was within the scope of its mandate. The Court should therefore decline to approve the April–October 2025 legal fees, or in the alternative, significantly reduce them.

PART IV – ORDER REQUESTED

18. The Duly Elected Board respectfully submits that the Receiver's motion should be dismissed in part. The Court has already defined the scope and purpose of this receivership, and the Receiver's request for expanded governance authority exceeds that mandate.
19. Accordingly, the Duly Elected Board requests an Order:
 - a. Dismissing the following *relief* sought by the Receiver:
 - to *develop or implement governance Options*;
 - to *design or administer member voting procedures*;

⁹ MR, Tab 2, Affidavit Phillip Cho, at para 2.

- *to conduct governance-based town halls beyond the informational purposes already approved;*
 - *to consider or approve membership applications or unit transfer requests;*
 - *Approving the sum of \$175,000 for legal fees.*
- b. The Duly Elected Board further requests such directions or further relief as this Honourable Court may deem just, including reaffirmation of the limits placed on the Receiver's governance role to ensure that the receivership remains transitional and consistent with the ultimate restoration of democratic member control.

ALL OF WHUCH IS RESPECTFULLY SUBMITTED

December 10, 2025

Courtney Betty.....
Courtney Betty
Counsel for the Respondent
Harry Sherman Housing Co-operative

STATEMENT OF AUTHENTICITY

Pursuant to Rule 4.06(2.1), I COURTNEY BETTY, lawyer for the Respondent, Harry Sherman Housing Co-operative, am satisfied as to the authenticity of every authority cited in this factum dated December 10, 2025.

...Courtney Betty.....

Betty's Law Office
Counsel for the Respondent
Harry Sherman Housing Co-operative

Schedule “A”
List of Authorities

1. Bank of Nova Scotia v. Diemer, 2014 ONCA 851
<https://www.canlii.org/en/on/onca/doc/2014/>
2. Triple-I Capital Partners Limited v 12411300 Canada Inc., 2023 ONSC 3400 (CanLII)
< <https://www.canlii.org/en/on/onsc/doc/2023/>>

Schedule “B”
Statutory Authorities
Co-operative Corporations Act, R.S.O. 1990, c. C.35

Passing of by-laws

23 No by-law is effective until it is,

- (a) passed by the directors of a co-operative; and
- (b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide. R.S.O. 1990, c. C.35, s. 23.

Becoming a member

61(1) Each incorporator of a co-operative who has subscribed for a membership share in the cooperative or who has paid a membership fee, if any, shall upon the effective date of incorporation be entered upon the register of members. R.S.O. 1990, c. C.35, s. 61 (1); 1994, c. 17, s. 2. Applicants for membership

(2) No person shall become a member of a co-operative until the person’s application for membership has been approved by the directors and the applicant has complied fully with the by-laws governing admission of members. R.S.O. 1990, c. C.35, s. 61 (2).

Membership in multi-stakeholder co-operative

(2.1) Despite subsection

(2), the by-laws governing admission of members of a multi-stakeholder co-operative may provide that no person shall become a member of the co-operative until the person’s application for membership has been approved by the directors elected by the appropriate stakeholder group and the person has complied fully with the by-laws governing admission of members. 1994, c. 17, s. 17. Membership

(3) A subscription for membership shares in a co-operative with share capital constitutes an application for membership and the allotment of the minimum number of membership shares required for membership to the applicant constitutes admission to membership. 2001, c. 8, s. 13 (1). Idem

(4) An application for authorization of the transfer of membership shares in a co-operative with share capital constitutes an application for membership and the passing of the resolution authorizing the transfer constitutes admission to membership. R.S.O. 1990, c. C.35, s. 61 (4); 1994, c. 17, s. 2. Jointly held membership (5) Two or more persons may jointly hold a membership if the by-laws of the co-operative provide for joint membership and, in determining the number of members for the purposes of this Act, those persons shall count as one member. 2001, c. 8, s. 13 (2).

Voting for directors

91 (1) Every member entitled to vote at an election of directors, if the member votes, shall cast at or before a general meeting a number of votes equal to the number of

directors to be elected, and the member shall distribute the votes among the candidates in such manner as the member sees fit, but no candidate shall receive more than one vote from each member. R.S.O. 1990, c. C.35, s. 91; 2023, c. 9, Sched. 8, s. 8.

Directors may be acclaimed

(2) Despite subsection (1) and subject to the by-laws, if the number of candidates for election as directors of a co-operative at a general meeting is the same or fewer than the number to be elected at that meeting, the chair may declare the candidates to have been elected by acclamation. 2009, c. 34, Sched. F, s. 5.

Section Amendments with date in force (d/m/y)

Vacancies

92 (1) Subject to subsection (2), where a vacancy occurs in the board, and a quorum of directors remains, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term, but the articles may provide that such vacancy may only be filled by election at a general meeting of the members duly called for that purpose.

Idem

(2) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a general meeting of the members duly called for that purpose.

Idem, where no quorum

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the members to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any member. R.S.O. 1990, c. C.35, s. 92.

Quorum of directors

93 (1) Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors. R.S.O. 1990, c. C.35, s. 93.

Counting

(2) Directors who are non-members or who are not directors, officers, shareholders or members of a corporate member are not to be counted for the purpose of constituting a quorum. 2009, c. 34, Sched. F, s. 6.

Court File No. CV-22-00688248-00CL

BETWEEN

CITY OF TORONTO and

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(Respondent)

ONTARIO

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PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE RESPONDENT

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