

**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 June 20, 2025)**

June 19, 2025

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Table of Contents

Content	Page No.
Part I- Overview	1
Part II- Facts	2
(a)The Receiver activities should not be approved	3
(b)The Receiver’s unauthorized governance interventions and isolation of the elected Board	4-5
(c)Financial disparities and misaligned priorities of the SRDs	5
(d)Legal and Receiver’s fees	5-7
Part III- Issues and Law	7
(1)Whether the Court should approve the Receiver’s second court report and supplemental reports	7-10
(2)Whether the Court should authorize the Receiver to implement the proposed RFEIQ process	10-12
(3)Whether the Court should approve the Receiver’s SRDs	12-13
(4)Whether the Court should approve the disbursements and fees for the Receiver’s counsel	13-16
Conclusion	16
Part IV- Relief Requested	17

PART I – OVERVIEW

1. This factum is filed on behalf of the elected Board of Directors of the Harry Sherman Crowe Housing Co-operative Inc. (the “Co-op”) in response to the Receiver’s motion returnable June 20, 2025. The Receiver’s motion seeks, among other relief, approval of the Second Court Report and its supplemental reports, approval of a new governance process titled the RFEIQ, and court endorsement of the Receiver’s interim Statement of Receipts and Disbursements and associated professional fees.
2. The Board to date has consented to the orders of Mr Justice Penny both in the appointment of the receiver and the second order continuing the receivership as well as authorizing the fees submitted by the receiver. The Board now comes before the court today raising serious issues in the manner and scope of the Receiver’s conduct and reporting. The motion now before the Court invites retrospective approval of broad and costly activity, without sufficient evidence of meaningful service improvement or measured engagement with the Co-op’s unique social housing context.
3. To begin with the Receiver asserts that the Co-op has been “generally stabilized” What the receiver has failed to disclose are the social and real-life issues faced by the residents.
4. The Board strongly objects to a blanket approval of fees specifically fees paid to be paid to the receiver and legal fees presented by Weirfoulds LLP representing the receiver without a process of determining whether the said fees are reasonable in all the circumstances. The Board further strongly objects to the receiver proposed RFEIQ process which not within the mandate of the order of the Honourable Justice Penny dated March 14, 2023. In fact, the process is inconsistent with the statutory governance model under the Co-operative Corporations Act, and an attempt to expand the authority of the receiver without any factual or legal basis to support such an expansion. This demonstrates a system which is clearly broken and raises greater issues of public trust.
5. The Board opposes approval of the Receiver’s Statement of Receipts and Disbursements (SRD) on the grounds that the reported expenditures, including over \$527,000 in fees payable to the Receiver, are disproportionate, insufficiently justified, and fail to reflect measurable outcomes for the Co-op’s residents. The SRD lacks meaningful linkage between the resources spent and tangible improvements in safety, housing quality, or resident services. In a context where public funds are at stake and the stated purpose of the receivership is to restore sound governance, the absence of a transparent, value-based accounting warrants judicial scrutiny..¹
6. For these reasons, the Board respectfully submits that the relief sought by the Receiver should be denied or deferred. At a minimum, no approval of the Receiver’s reports, RFEIQ proposal, or fees should be granted without a more fulsome review of whether the Receiver’s conduct has materially improved the Co-op operations or advanced the equitable treatment of its members. This attempt to broaden the scope of the Receiver has no legal basis.
7. Further the attempt by the Receiver and the City to use the Board chair Rosell Kerr as a scapegoat to justify and divert attention from their actions is unconscionable and destructive to the reputation and safety of Miss Kerr.

¹ Motion Record of the Receiver, Returnable May 13, 2025, Vol. 3, SRD at p. 1019

PART II – FACTS

1. Harry Sherman Crowe Housing Co-operative Inc. (“HSC” or the “Co-op”) is a non-profit housing provider governed by the **Housing Services Act, 2011** and the **Co-operative Corporations Act**, operating a 164-unit complex located at York University in Toronto.
2. The Co-op is governed by an elected Board of Directors comprised of community members. The current Chair, Ms. Rosell Kerr, has served on the Board since 2019. The Board was duly elected under the Co-op’s by-laws and in accordance with the statutory regime governing housing co-operatives in Ontario.²
3. On **March 14, 2023**, this Court appointed RSM Canada Limited (later substituted by TDB Restructuring Limited) as Receiver and Manager of the Co-op pursuant to the City of Toronto’s application. The Appointment Order was made on consent, with the stated purpose of addressing urgent operational and financial concerns.³
4. On **April 29, 2024**, Justice Penny approved the Receiver’s activities up to that date. The Board did not oppose the Receivers report.⁴
5. On **May 01, 2025**, the Receiver brought the present motion seeking approval of:
 - a. *The Second Court Report and three supplemental reports;*
 - b. *A new process for requesting expressions of interest and qualifications (“RFEIQ”) to select future board members;*
 - c. *The Interim Statement of Receipts and Disbursements (SRD) covering the period March 11, 2024 to April 20, 2025; and*
 - d. *Fees and disbursements of the Receiver and its counsel as detailed in the Dhanani and Cho Fee Affidavits.*⁵
6. In response, the Board filed the Affidavit of Ms. Kerr, sworn June 06, 2025, which outlines specific deficiencies in the Receiver’s reporting, continued gaps in service delivery, and concerns about the governance and financial implications of the proposed RFEIQ process.
7. On **June 11, 2025**, the Receiver filed a Third Supplemental Report purporting to respond to the Board’s concerns. Among other things, the Receiver alleged that the supporting Affidavit of Rosell Kerr was unauthorized, disputed the significance of reported operational issues, and defended the scale of its professional fees by asserting that the City and not the Co-op, funds these costs.⁶ It should be noted that counsel for the receiver had the full opportunity to cross examine Ms. Kerr and cancelled said cross examination three hours before the scheduled time without any explanation.
8. The Board remains concerned that the Receiver’s reporting glosses over lived experiences of neglect, fails to account for continued deterioration in resident services, and directs disproportionate resources toward professional fees and management layers rather than direct improvements.

² Affidavit of Rosell Kerr, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para. 1

³ Appointment Order of Justice Penny, dated March 14, 2023

⁴ Approval Order of Justice Penny, dated April 29, 2024

⁵ Notice of Motion, Motion Record of the Receiver (Returnable May 13, 2025), Vol. 1, at p. 2

⁶ Third Supplemental Report, Reply Motion Record of the Receiver (Returnable June 20, 2025), at pp. 7–10

(A) THE RECEIVER ACTIVITIES SHOULD NOT BE APPROVED

9. The Receiver's claim that the Co-op has been "generally stabilized" does not reflect the conditions reported by residents or documented by the elected Board. In her affidavit sworn June 06, 2025, Ms. Rosell Kerr, Chair of the Co-op's duly elected Board, recounts a pattern of persistent deterioration in building conditions and service failures under the Receiver's administration. These issues include unaddressed pest infestations, non-functional heating, water damage, and security lapses in common areas. Ms. Kerr affirms that residents continued to file complaints through Toronto's 311 municipal service during the receivership to report such violations.⁷
10. To confirm the extent of these ongoing failures, the Board submitted a formal request under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), which revealed a significant volume of 311 complaints lodged during the Receiver's tenure. A copy of the City's FOI response and complaint report is appended as Exhibit "B" to Ms. Kerr's affidavit. These records detail issues ranging from inadequate heating and lighting to pest control failures, obstructed emergency exits, and unsafe stairwells. All such reports occurred after the Receiver's appointment in March 2023, directly contradicting the assertion that the Co-op had achieved operational stability⁸ The receiver and legal counsel failed to provide the court with this critical information which is necessary for the court to assess the work of the receiver.
11. Examples of complaints during the receivership include:
 - A July 2023 report of darkened stairwells and unsecured entrances, leading to vandalism and unauthorized access.
 - A December 2023 complaint regarding an unresolved rodent infestation that had spread across multiple units.
 - An April 2024 submission documenting a heating failure across several townhomes with no timely remedy.
 - A September 2024 report identifying fire alarm system issues and obstructed evacuation paths.⁹
12. These documented complaints are consistent with the testimony of Ms. Kerr and reflect a lived experience of ongoing instability. The Receiver's failure to address such issues in its reporting diminishes the credibility of the report.
13. Ms. Kerr also notes that many of the capital repairs now being implemented by the Receiver such as roof replacement, lighting upgrades, and fire safety improvements were longstanding deficiencies previously identified by the Board. The elected Board had submitted two COCHI (Canada-Ontario Community Housing Initiative) funding applications to address these deficiencies, both of which were rejected. Only after the receivership was imposed the COCHI funds were approved.¹⁰

⁷ Affidavit of Rosell Kerr, sworn June 6, 2025, Motion Record of the Board of Directors (Returnable June 20, 2025), at para. 21

⁸ Affidavit of Rosell Kerr, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para. 13 and Exhibit B

⁹ Affidavit of Rosell Kerr, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para. 13 and Exhibit B.

¹⁰ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at paras. 15–16; Exhibit C

(B) THE RECEIVER'S UNAUTHORIZED GOVERNANCE INTERVENTIONS AND ISOLATION OF THE ELECTED BOARD

14. The Receiver's proposal to restructure the Co-op's democratic governance through a Request for Expressions of Interest and Qualifications ("RFEIQ") process lacks legal authority and contravenes the Co-op's existing by-laws and statutory framework. The Receiver was never granted any judicial authorization to replace or filter the Co-op's Board selection process. The Appointment Order dated March 14, 2023, empowered the Receiver to manage the Co-op's operations, finances, and assets, not to unilaterally interfere in the internal democratic processes of a non-profit housing co-operative governed by the Co-operative Corporations Act.¹¹
15. The Order of Justice Penny dated April 29, 2024, approved the Receiver's activities up to that point but did not confer any new governance powers. Nonetheless, in the materials filed by the Receiver in support of its May 01, 2025, Motion of the Receiver sought endorsement of a proposed RFEIQ process to "identify" qualified future Board members. This proposal bypasses the Co-op's existing democratic safeguards, including its formally adopted Electronic Meetings and Balloting By-law, which provides detailed procedures for nomination, eligibility screening, independent oversight, and member voting. The by-law, attached as Exhibit "D" to Ms. Kerr's affidavit, was enacted in full compliance with the Co-operative Corporations Act and is widely supported by co-operative sector leaders.¹²
16. Crucially, neither the Co-operative Housing Federation of Toronto ("CHFT") nor the Co-operative Housing Federation of Canada have endorsed the Receiver's RFEIQ proposal. Both organizations instead support a return to member-led elections conducted under the existing by-laws. The current Board, though constrained under receivership, remains the only body democratically elected by the Co-op's membership. It has consistently advocated for a transparent and fair election to be facilitated by CHFT, not imposed through an external selection mechanism controlled by the Receiver.¹³
17. The Receiver's overreach in this regard must also be viewed against the backdrop of efforts to isolate and marginalize the elected Board, particularly Ms. Kerr. In her affidavit, Ms. Kerr explains that she has been subject to ongoing personal attacks and unfair criticism throughout the course of the receivership. While she refrains from detailing these incidents, she notes that they have created a climate of intimidation and deflection, distracting from the substantive failures in service delivery and governance that residents continue to endure.¹⁴ As a result, she affirms that she will not seek re-election to the Board due to the toll this process has taken on her health.¹⁵
18. The Receiver's justification for the RFEIQ process hinges on a purported need for transition. However, the Co-op already possesses a complete framework for democratic transition, and the involvement of CHFT ensures independent oversight. To impose an unapproved process would not only be ultra vires but would undermine foundational principles of co-operative governance.

¹¹ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at paras. 17–18

¹² Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para. 22; Exhibit D

¹³ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at paras. 20–21

¹⁴ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para. 10

¹⁵ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para. 1

19. Accordingly, the Board urges the Court to reject the Receiver’s proposed RFEIQ process and reaffirm the Co-op’s legal right to conduct elections in accordance with its by-laws and the Co-operative Corporations Act.

(C) FINANCIAL DISPARITIES AND MISALIGNED PRIORITIES IN THE SRDs

20. The Receiver’s Statement of Receipts and Disbursements (“SRD”) covering the period March 14, 2023, to April 20, 2025, reveals troubling financial patterns that undermine any assertion of operational prudence or resident-focused stewardship. Although the Receiver has repeatedly emphasized stabilization and sound management, the SRD data paints a very different picture.
21. When comparing the 2024 SRD (March 14, 2023, to March 11, 2024) to the cumulative 2025 SRD (March 14, 2023, to April 20, 2025), it becomes apparent that expenditures surged dramatically in the second year of receivership, especially in categories unrelated to direct resident benefit. For example:
- a. Legal fees increased from \$17,400 in the 2024 SRD to \$139,601 in the 2025 SRD—a more than eight-fold increase with no evidence of commensurate legal complexity or litigation.¹⁶
 - b. Receiver’s fees jumped from \$204,906 to \$387,889.¹⁷ with no explanation.
 - c. Property management and bookkeeping fees rose steeply from \$423,637 to \$972,521, nearly doubling over the additional 13-month period, without any clear explanation.¹⁸
22. The documentation before the court does not provide a basis for approval of the suggested expenditures without a greater analysis by this honourable court.

(D) LEGAL AND RECEIVER FEES

23. The legal accounts submitted in support of the Receiver’s motion show a striking escalation in professional fees between 2024 and 2025. According to the Receiver’s Interim Statement of Receipts and Disbursements (SRD), legal fees increased from \$17,400 in the 2024 SRD (covering March 2023 to March 2024) to \$139,601 in the most recent SRD (covering March 2023 to April 2025)¹⁹.
24. During cross-examination, Mr. Cho acknowledged that for the one-year period alone, the accounts totalled \$126,996.77²⁰, a discrepancy of nearly \$13,000 from the SRD. No explanation was provided for this divergence. The absence of a clear reconciliation between the SRD and Mr Cho sworn fee affidavit must be addressed by the receiver.
25. The accounts rendered by WeirFoulds LLP between March 18, 2024, and March 31, 2025, as filed by the Receiver, reveal that a total of **eight lawyers** and **two law clerks** were

¹⁶ Receiver’s Motion Record (Mar. 19, 2024), SRD at p. 90; Receiver’s Motion Record (May 13, 2025), Vol. 3, SRD at p. 1019

¹⁷ Receiver’s Motion Record (Mar. 19, 2024), SRD at p. 90; Receiver’s Motion Record (May 13, 2025), Vol. 3, SRD at p. 1019

¹⁸ Receiver’s Motion Record (Mar. 19, 2024), SRD at p. 90; Receiver’s Motion Record (May 13, 2025), Vol. 3, SRD at p. 1019.

¹⁹ Receiver’s Motion Record (Mar. 19, 2024), SRD at p. 90; Receiver’s Motion Record (May 13, 2025), Vol. 3, SRD at p. 1019

²⁰ Cross-Examination of Philip Cho, June 16, 2025, Q. 116

assigned to this matter, comprising **four partners** and **four associates**, in addition to the two clerks. The following chart outlines the names, positions, hourly rates, and total hours billed by each individual across 2024 and 2025:

Name	Position	2024 Hourly Rate	2024 Hours	2025 Hourly Rate	2025 Hours	Year of Call
Philip Cho	Partner	\$750	39.80	\$775.00	15.40	2002
Megan Mossip	Partner	\$725.00	25.70			2011
Jeff Scorgie	Partner	\$650.00	8.20	\$680.00	0.50	2015
Kelsey Ivory	Partner	\$475.00	7.50	\$530.00	7.00	2018
Shade Edwards	Associate		3.80			2023
Victoria Bazak	Associate	\$375.00	59.90	\$375.00	21.70	2024
Kathleen Gregus	Associate		11.90			2024
Malika Grewal	Associate		16.10			2024
Bradley Cook	Law Clerk		0.40			
Bobbie-Jo Brinkman	Law Clerk		2.00			

In total, WeirFoulds LLP billed for **173.3 hours in 2024** and **46.6 hours in 2025**, across multiple senior and junior professionals, many of whom appear to have billed simultaneously for overlapping or administrative tasks.²¹

26. Significant time was also spent on the review and revision of the Co-op’s by-laws. Beginning in October 2024, both Ms. Mossip (partner) and Ms. Bazak (associate) billed multiple overlapping entries for reviewing the Co-op’s governance documents. For example, on October 21, Ms. Mossip billed 1.3 hours for reviewing by-laws and model materials, while on the same day, Ms. Bazak billed 5.3 hours for reviewing the same court materials, legislation, and by-laws.²² This pattern continued into early November, with further entries for repeated review, drafting of memos, and a “steps plan” to amend the by-laws. This work was conducted outside of the order of Justice Penny without first seeking approval of this honorable court.

²¹ Affidavit of Philip Cho, sworn April 29, 2025, Motion Record of the Receiver (returnable May 13, 2025), Vol. 3, p. 1091

²² Affidavit of Philip Cho, sworn April 29, 2025, Motion Record of the Receiver (Returnable May 13, 2025), Vol. 3, Exhibit B, at p. 1123

27. As set out in the Affidavit of Rosel Kerr sector organizations such as the Co-operative Housing Federation of Canada (CHF Canada) and the Co-operative Housing Federation of Toronto (CHFT) already provide well-established, standardized model by-laws specifically tailored for non-profit housing co-operatives under the Co-operative Corporations Act. In the absence of any novel legal issue or regulatory uncertainty, it is difficult to understand why such a large volume of senior legal time was required, especially when cost-effective templates were readily available to support the Receiver's stated objectives.²³
28. The dockets also reflect extensive internal coordination among multiple lawyers on the same file. On November 26, 2024, no fewer than four lawyers, Mr. Cho, Ms. Mossip, Ms. Ivory, and Ms. Bazak billed for attending the same internal update meeting. Similar billing patterns appear throughout the file, including joint attendance at drafting meetings, report discussions, and strategy calls. For example, on November 28, the same four lawyers billed for attending a single status meeting with the Receiver and the City.²⁴

PART III – ISSUES AND LAW

The issues raised by the Receiver's May 01, 2025 motion and the Board's response are as follows:

- **Whether the Court should approve the Receiver's Second Court Report and its three supplemental reports, including the factual and legal characterizations contained therein.**
- **Whether the Court should authorize the Receiver to implement the proposed RFEIQ process for identifying prospective future directors of the Co-op.**
- **Whether the Court should approve the Receiver's Interim Statement of Receipts and Disbursements (SRD) for the period March 11, 2024, to April 20, 2025.**
- **Whether the Court should approve the fees and disbursements of the Receiver and its counsel, as set out in the Dhanani and Cho Fee Affidavits.**

Issue 1 – Whether the Court Should Approve the Receiver's Second Court Report and Supplemental Reports

29. The Receiver's framing of stabilization is overly formalistic and detached from the experience of the community it purports to serve. A narrative of "stability" that ignores the day-to-day impact on residents, such as inaccessible elevators, overflowing waste rooms, recurring pest infestations, and unit-level maintenance failures, is not a credible foundation for court approval. By focusing on checklists, service logs, and invoice payments, the Receiver has substituted bureaucratic reporting for real-world conditions. The result is a self-justifying loop of internal validation that leaves members of the Co-op effectively ghettoized and powerless.
30. The Receiver now minimizes the Board's objections by characterizing them as "misinformed" and "focused on issues that pre-date the appointment." This is inaccurate.

²³Affidavit of Rosell Kerr, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at para 21

²⁴ Affidavit of Philip Cho, sworn April 29, 2025, Motion Record of the Receiver (Returnable May 13, 2025), Vol. 3, Exhibit B, at p. 1133

The Board has submitted evidence of service failures that occurred **during the Receiver's tenure**, including garbage overflow, pest control lapses, elevator breakdowns, and failures in internal communication with residents. These problems are documented in #311 complaints, photographic records, and direct reports from tenants and Board members. It is respectfully submitted that the City and the Receiver knew or should have known about the high level of #311 complaints but failed to provide this information to the court to support the mirage that all is good.²⁵

31. The Receiver's justification for continued involvement based on its oversight of the elevator modernization project and the need to address urgent breakdowns is both unsubstantiated and misleading. While the Receiver's property management company has previously represented that the elevators are "brand new," this claim is directly contradicted by the lived experiences of residents. There is no evidence before the Court—such as maintenance logs, engineering reports, or a schedule of completed capital work—to support the Receiver's assertion that the elevator system is either new or functionally reliable.
32. The Receiver's treatment of the 311 complaints appended as Exhibit "B" to the Kerr Affidavit illustrates this pattern. Complaints are minimized or dismissed based on technicalities such as duplicate request numbers, while ignoring the recurring and cumulative nature of the issues. This method prioritizes optics over operational accountability.²⁶
33. The Receiver attempts to diminish the 311 complaints as not reflective of the time period under receivership. This is contradicted by the access to information report which clearly states that the report covers the period from March 15, 2023, to April 2024.²⁷ It is respectfully submitted that rather than engage with the substance of these complaints, the Receiver attempts to minimize them as "duplicates" or "inconsequential." This approach overlooks the broader pattern: the volume, recurrence, and severity of #311 filings point to ongoing service failures and chronic instability and not one-off anomalies. These are precisely the conditions the receivership was intended to correct.
34. To support its mirage, the Receiver devotes considerable arguments critiquing historical decisions of the prior Board. It is respectfully submitted that these arguments are irrelevant on their application before the Court but are made solely for the purpose of tainting Miss Kerr and the Board to position itself in a better light before the Court. It is respectfully submitted that Miss Kerr made it clear in her affidavit that she is no longer seeking re-election as a member of the Board. The receiver has failed to address this reality but continues to focus on Ms. Kerr.²⁸
35. The Receiver has advanced a series of allegations impugning the conduct and integrity of the Co-op's Board, and in particular, its Chair, Ms. Kerr. These include claims of favoritism in the allocation of Unit 512, impropriety in the RGI assignment for Unit 313, preferential renovation of Board-occupied units, failure to act on illegal subletting, and misuse of Co-op funds for condolence gestures. Each of these assertions is either factually inaccurate, unsupported by documentary or testimonial evidence, or misrepresents the Board's role in

²⁵ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at paras. 12–13.

²⁶ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at paras. 12–13.

²⁷ Kerr Affidavit, sworn June 6, 2025, Responding Motion Record (Returnable June 20, 2025), at paras. 12–13.

²⁸ Affidavit of Rosell Kerr, sworn June 6, 2025, Motion Record of the Board of Directors (Returnable June 20, 2025), at para. 1.

operational matters. In every instance, the decision-making processes at issue were carried out by the Co-op's property management company, in accordance with standard procedures, applicable by-laws, and longstanding practices. There is no evidence before the Court of favoritism, breach of policy, or personal gain.

36. Most critically, the Receiver had the opportunity to cross-examine Ms. Kerr on these matters and test the accuracy of her sworn affidavit. The examination was scheduled for June 16, 2025 at 3:00pm, however, it was unilaterally cancelled by Counsel for the Receiver mere hours before it was to proceed, without explanation. Having chosen not to challenge her evidence through cross-examination or introduce contradictory affidavits from those with direct knowledge (such as the member in Unit 313), the Receiver cannot now rely on untested innuendo to justify extraordinary intervention. The absence of a factual foundation renders these allegations speculative and undermines their relevance to the Court's determination.
37. It is respectfully submitted that this Honourable Court has a duty to objectively scrutinize the actions of the Receiver and not provide a carte blanche opportunity for potential abuse. This position is set out by the Ontario Court of Appeal in *Lash v. Lash Point Association Corp.*, 2022 ONCA 361. Here the Court of Appeal underscored that court-appointed Receivers remain subject to ongoing judicial scrutiny, particularly where their actions affect long-term rights or structures.
38. The decision does not limit Receiver discretion but reaffirms that discretion must be exercised within a transparent, fair, and procedurally sound process. In *Lash*, the Receiver advanced a transaction that had not been exposed to the open market, lacked independent validation, and excluded key governance bodies from deliberations. Despite support from a majority of beneficiaries, the Court of Appeal held that none of the *Soundair* principles were met and disapproved the transaction.²⁹
39. In assessing whether to approve a sale or process proposed by a court-appointed Receiver, the Courts have applied the four-part test articulated in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.). The Court must consider: (1) *whether the Receiver made a sufficient effort to obtain the best price and did not act improvidently*; (2) *whether the interests of all parties were considered*; (3) *the efficacy and integrity of the process by which offers were obtained*; and (4) *whether there was unfairness in how the process was carried out*.³⁰ These principles continue to guide the Court's scrutiny of Receiver conduct, as reaffirmed in *Lash v. Lash Point Association Corp.*, 2022 ONCA 361 where the Court of Appeal declined to approve a sale that was never exposed to the open market and had not been subject to an objective, expert-validated process. The decision does not restrict a Receiver's discretion but confirms that discretion must be exercised through a transparent, procedurally fair, and substantively reasonable process that preserves confidence in court-supervised proceedings.³¹
40. It is respectfully submitted that the principles and legal rationale of both *Lash* and *Soundair* apply to the case at hand. The Receiver and the City come before the Court expecting that the report would rubber stamp the report.
41. It is further respectfully submitted that this Court should not provide blanket approval without requiring the Receiver to justify all expenses as reasonable. This position is

²⁹ *Lash v. Lash Point Association Corp.*, 2022 ONCA 361 at paras. 38–46.

³⁰ *Royal Bank of Canada v. Soundair Corp.* (1991), 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.).

³¹ *Lash v. Lash Point Association Corp.*, 2022 ONCA 361 at paras 38–46.

supported by the decision in *Target Canada Co. (Re)*, 2015 ONSC 7574, a case relied upon by the Receiver in its own factum. In target the Ontario Superior Court explicitly declined to extend blanket approval of monitor reports where “*certain aspects of the information provided... ha[d] not been scrutinized or challenged in any formal sense*” and “*no fact-finding process ha[d] been undertaken by the court.*” The motion had been brought by the court-appointed Monitor in that case, seeking general approval of its reports and activities. The Court held that “*caution should be exercised*” and that “*approval should be limited to the Monitor itself*” where objections remain unresolved and the evidentiary foundation is incomplete.³²

42. The same principle applies here. The Receiver’s request for blanket approval of its reports is premature. The court should not grant approval without scrutiny. The Co-op is not merely a stakeholder on paper; it is a living residential environment.
43. Further, in *Lash*, the Court warned against endorsing major discretionary acts of a Receiver where the interests of governance participants were minimized, and procedural integrity was lacking. Fatal to the Receivers report, there is not one community member that has been identified as supportive of the Receivers actions. It is respectfully submitted that the Order of Mr. Justice Penny was very clear in requiring that the Receiver work with the community not take on a dictatorial role attempting to limit the voices of the community by attacking individual members.
44. This expectation is clearly reflected in the Court’s endorsement dated April 29, 2024, wherein Justice Penny emphasized that “*Toronto and the Receiver should work with the Co-op to begin working toward a plan for when and how the transition back to board control might be achieved,*” and further suggested that “the Receiver and Toronto work toward specific, identifiable metrics and milestones” to facilitate this transition. Moreover, Justice Penny confirmed that the March 14, 2023, Order required the Receiver to report not only to the City but also to the Co-op itself. These statements confirm that the Receiver was never intended to govern in a vacuum, nor to override or isolate the Board, but to engage constructively with the Co-op community in a transitional and collaborative capacity.³³

Issue 2 – The Receiver’s Proposed RFEIQ Process Is Unauthorized and Undermines Democratic Governance

45. It is respectfully submitted that the Receivers proposed RFEIQ process for the purposes of deciding who should be Board members is not only outside the scope of the Order by Justice Penny but has no justifiable purpose by failing to provide any evidentiary basis as to why this is necessary. It is respectfully submitted that such actions are outside the order of Justice Penny and would require that this Court expand the previous order of Justice Penny without any factual or legal foundation. It is respectfully submitted that the impact of this expansion will only benefit the Receiver with additional fees knowing that the taxpayers of the City of Toronto will provide a blank cheque. It is further submitted that the process is arbitrary and completely unnecessary. Further the Receiver’s Appointment Order dated March 14, 2023, mandates the Receiver to manage and stabilize the Co-op’s

³² *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 20–21,

³³ Endorsement of Justice Penny, April 29, 2024; Motion Record of the Receiver, Returnable May 13, 2025, Vol. 1, Appendix E, pp. 95–96

assets and operations. It is respectfully submitted that there is no evidence before the Court as to why the Receiver has taken the extreme position that they should be the decision maker as to which members of the Co-op should be elected as Directors.

46. The Co-op is governed by the Co-operative Corporations Act, R.S.O. 1990, c. C.35 (the “CCA”). The provisions governing director elections are found in sections 85 through 110 of the CCA, which collectively establish a framework requiring that directors be elected by the members of the co-operative at a duly convened meeting. This statutory regime reflects a foundational principle of democratic member control, which is central to the legal structure of all co-operatives in Ontario. The Co-op’s own by-laws echo these statutory requirements, reinforcing that the authority to govern rests with directors elected by and accountable to the membership. Crucially, neither the Appointment Order nor any subsequent Court order has suspended or replaced these provisions.
47. It is respectfully submitted that the Receiver’s current proposal to introduce a Request for Expressions of Interest and Qualifications (“RFEIQ”)—purportedly to screen and select future directors conflicts with this statutory and contractual governance framework. By attempting to substitute an administrative selection process for a lawful member election, the Receiver’s approach is inconsistent with the CCA and exceeds its authority.
48. The process for electing the Board is supported by long-standing democratic principles embedded in Ontario’s legislative framework and the broader co-operative housing sector. The Harry Sherman Crowe Co-operative is a registered member of the Co-operative Housing Federation of Toronto (CHF Toronto), as reflected in the Receiver’s own reporting of an annual membership fee of \$47,904 paid to the organization.³⁴ CHF Toronto serves as a central support body for housing co-operatives in the region, offering governance guidance, training, and conflict resolution services. Its counterpart at the national level, the Co-operative Housing Federation of Canada (CHF Canada), provides similar support across provinces and promotes co-operative housing principles grounded in member control and democratic participation. Critically, neither CHF Toronto nor CHF Canada has endorsed the Receiver’s proposed RFEIQ process. There is no evidence before the Court that the Receiver consulted either organization in formulating this process, despite their role as sector leaders in co-operative governance. Instead, the Receiver unilaterally proposes a process that would effectively bypass the Co-op’s democratic norms and member-led governance.³⁵
49. It is respectfully submitted that such a process risks creating a gatekeeping structure that lacks statutory grounding. Further this proposed process was not developed in consultation with the membership and is fundamentally foreign to co-operative governance models.
50. The Receiver now seeks to justify the proposed RFEIQ process by relying on the April 2024 Endorsement of Justice Penny. However, the very core of that Endorsement emphasized the need for community collaboration and not unilateral governance restructuring. Justice Penny stated: “*in this next phase of the receivership, Toronto and the Receiver should work with the Co-op to begin working toward a plan for when and how the transition back to board control might be achieved,*” further stressing the importance of “*specific, identifiable metrics and milestones for the resolution of the triggering events*

³⁴ Receiver’s SRD (Interim Statement of Receipts and Disbursements), Motion Record of the Receiver (Returnable June 20, 2025), Volume 3, pp. 1019

³⁵ Affidavit of Rosell Kerr, sworn June 6, 2025, Motion Record of the Board of Directors (Returnable June 20, 2025) at para. 21.

*and what the conditions are for a successful conclusion of the receivership and a transition back to board control*³⁶

51. The Co-op's governance model, as enshrined in its by-laws and supported by CHFT, provides a legitimate, proven mechanism for Board selection. The RFEIQ process is not only redundant but also incompatible with the co-operative principles of autonomy, member control, and democratic participation. The Court should reject the Receiver's recommendation and support the reinstatement of the Co-op's own by-law-based governance process.
52. It is respectfully submitted that the Receiver has not complied with the principles set out in *Lash v. Lash Point Association Corp.*, 2022 ONCA 361. Again, the Court of Appeal emphasized that receivership powers must be exercised with procedural fairness, strict adherence to the appointment order, and deference to the rights of affected stakeholders. As stated by the Court, "The Receiver is a court-appointed officer over whom the court has supervisory jurisdiction," and "None of the Soundair principles were met."³⁷ There is nothing in the order or endorsement of Justice Penny authorizing the Receiver to exceed its mandate or to implement parallel governance regimes without express judicial authorization.
53. It is respectfully submitted that the Receivers request is premature, has no factual basis, contrary to Co-operative Housing by-laws and governance and goes to the very heart of the basic principles of democracy in a free and democratic society. The RFEIQ process is not legally grounded, not democratically validated, and not supported by sector experts. It should not be approved. More importantly for this Honourable Court, the proposal of this RFEIQ process is a clear indication of the thought process of the Receiver which can only lead to abuse.
54. It is also respectfully submitted that for this Court to approve this unnecessary, premature, process lays the path for potential abuse which could bring the administration of Justice into disrepute.

Issue 3: Whether the Receiver's Statement of Receipts and Disbursements (SRD) Should Be Approved

55. The Receiver seeks Court approval of its consolidated Statement of Receipts and Disbursements ("SRD") for the period from March 14, 2023, to April 20, 2025, which spans just over two years. For comparison, the SRD filed in support of the Receiver's March 2024 motion covered only the first year, from March 14, 2023, to March 11, 2024. The current SRD subsumes that initial year and extends through an additional 13 months.
56. The Receiver has not provided a year-over-year breakdown or contextual explanation for major increases in spending. However, when comparing the two SRDs, several line items show disproportionately steep increases. For example:
 - *Repairs and Maintenance* rose from \$209,042 to \$863,785. While this increase spans a longer period, the fourfold escalation is not supported by a commensurate

³⁶ Endorsement of Justice Penny, Motion Record of the Receiver, Returnable May 13, 2025, Vol. 1, Appendix E at pp. 95–96

³⁷ *Lash v. Lash Point Association Corp.*, 2022 ONCA 361 at paras 34, 40.

- improvement in habitability. Community members continue to report persistent issues with mold, pests, broken elevators, and security.³⁸
- *Legal Fees* rose from \$17,400 to \$139,601—an eightfold increase. The Receiver provides no justification as to why this was necessary.³⁹
 - The current SRD March 2023-2025 also introduces new categories—such as *consulting fees for capital projects* and expanded *audit charges*—without describing their necessity, scope, or deliverables.⁴⁰
57. Despite these increases, the Receiver provides no measurable benchmarks or service metrics. For example, the reported \$650,000+ increase in repairs has not translated into visible or consistent improvements for residents. The Board respectfully submit that a detailed breakdown of these categories including the process for expenditures is required. It is respectfully submitted that this Honourable Court retains the discretion to withhold SRD approval where disbursements are not shown to be reasonable, proportionate, or effective.
58. In *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, 2023 ONSC 3400, Justice Osborne reaffirmed that fee and disbursement approval must be grounded in value, not merely in process. Applying the *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 framework, the Court held that the following factors must be assessed:
- the nature, extent, and value of the assets;
 - the diligence, skill, and results achieved by the Receiver;
 - the presence or absence of stakeholder obstruction;
 - and whether the cost of services reflects prudent and economical execution.⁴¹
59. Unlike *Triple-I*, where the debtor’s conduct contributed to delays and necessitated additional receiver involvement, the Harry Sherman Receiver has exercised uncontested control since its appointment. The Co-op’s Board has not interfered with operational matters. As *Triple-I* makes clear, judicial approval is not a rubber stamp. The Receiver must provide evidence that fees and disbursements reflect real-world improvements or risk eroding the legitimacy of the process. In *Triple-I*, the Court acknowledged that while *line-by-line docket analysis is discouraged, holistic review remains critical—and approval may be withheld absent meaningful proof of value.*⁴² It is respectfully submitted that the receiver has failed to meet these requirements.
60. It is respectfully submitted that judicial scrutiny of fee structures in social housing receiverships is not merely administrative—it is essential. Public funds are involved, vulnerable residents are affected, and statutory governance rights are at stake. The Receiver’s SRD does not currently satisfy the “fair and reasonable” standard. The Board respectfully submits that the SRD should not be approved in its current form.

Issue 4 – Whether the Receiver’s and Legal Counsel’s Fees Should Be Approved

³⁸ Motion Record of the Receiver, dated March 19, 2024, at p. 90; Motion Record of the Receiver, Returnable May 13, 2025, Vol. 3 at p. 1019

³⁹ Motion Record of the Receiver, dated March 19, 2024, at p. 90; Motion Record of the Receiver, Returnable May 13, 2025, Vol. 3 at p. 1019

⁴⁰ Motion Record of the Receiver, Returnable May 13, 2025, Vol. 3, SRD at p. 1019

⁴¹ *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, 2023 ONSC 3400 at paras. 23–26, citing *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.

⁴² *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para 54

61. The Receiver seeks approval of legal fees totaling \$139,601.00 for the period March 14, 2023, to April 20, 2025, as disclosed in its Interim Statement of Receipts and Disbursements (SRD). This amount represents a more than eightfold increase from the \$17,400.00 in legal fees disclosed for the preceding period ending March 11, 2024. It is respectfully submitted that this increase in legal fees is indicative as to how the Receiver and the City of Toronto has operated in this Receivership.⁴³
62. The Receiver's Statement of Receipts and Disbursements (SRD) reports total legal fees in the amount of \$139,601.00 for the period March 14, 2023, to April 20, 2025. However, during cross-examination, Mr. Cho acknowledged that the docketed legal accounts submitted with his April 29, 2025 affidavit reflected fees totaling only \$126,996.77 for just over a one-year period.⁴⁴ It is respectfully submitted that the cross examination of Mr. Cho on his affidavit of April 29, 2025 raises serious questions as to why this 8 fold increase fees is necessary especially based on arguments heard before this Court as what constitutes reasonable legal fees.
63. In cross examination, as indicated by the transcripts before the court, Mr. Cho's evidence reveals a troubling pattern of high billable fees spread across 8 different lawyers (4 partners and 4 associates) at his firm WeirFoulds LLP ("WeirFoulds"): The dockets reflect:
- Multiple senior counsel billing simultaneously for overlapping internal meetings and reviews;
 - Lawyers performing operational or administrative work—such as drafting the Receiver's Second Report or preparing governance memos—tasks typically performed by the Receiver;
 - Repetitive review of governance documents by multiple professionals in a non-adversarial context;
 - Entries that lack task specificity or suggest duplication.
64. It is respectfully submitted that all fees in relation to bylaw reviews should not be approved by the court since said fees are outside the order of Mr Justice Penny, and unnecessary particularly when sectoral organizations like the Co-operative Housing Federation of Canada (CHF Canada) and the Co-operative Housing Federation of Toronto (CHFT) publish accessible model by-laws specifically tailored for non-profit housing co-operatives governed by the Co-operative Corporations Act.
65. It is further respectfully submitted that failure to utilize these resources which the Co-op is already paying for raises serious concerns as to how public funds are being expended. These precedents were readily available, and an explanation should be provided as to why they were not utilized.
66. In cross-examination, Mr. Cho acknowledged that multiple lawyers from WeirFoulds LLP reviewed the Co-op's by-laws because "there were a lot of questions that were unknown to the Receiver."⁴⁵ He further confirmed that at least eight lawyers were involved in the file, including senior counsel Megan Mossip, who billed nearly 26 hours to "develop a

⁴³ Motion Record (Returnable on May 13, 2025) (Vol. 3), at p.1019; Motion Record (Returnable March 25, 2024) at p.90

⁴⁴ Transcript of Cross-Examination of Philip Cho, June 16, 2025, Q.116

⁴⁵ Cross-Examination of Philip Cho, June 16, 2025, Q.134.

plan” related to governance and elections⁴⁶. When asked whether it was standard practice to involve such a large legal team, Mr. Cho offered only that it “depends on the nature of the matter.”⁴⁷ This vague justification underscores the lack of any clear guideline distinguishing the operational responsibilities of the Receiver from the legal advisory role of its counsel. What emerges is a pattern of diffuse accountability, duplication of effort, and unjustifiable legal fees, all incurred in relation to routine, non-contentious matters that could have been addressed through standard co-operative resources and basic diligence.

67. The involvement of specialized legal counsel in operational matters further illustrates the Receiver’s inefficient allocation of professional resources. Mr. Cho confirmed that WeirFoulds LLP brought in a construction lawyer, Jeff Scorgie, to advise on site safety and contractor coordination, citing uncertainty around applicable legislation, possibly related to WSIB and the need to designate a “primary constructor” when two contractors are present on-site⁴⁸. While compliance with health and safety laws are important, these are matters that typically fall within the purview of property management or construction consultants, not external legal counsel. The Receiver’s resort to senior legal specialists for such routine technical issues suggests an over-reliance on counsel in areas where operational or regulatory guidance would have sufficed. This reflects a broader failure to distinguish between legal necessity and managerial diligence, leading to unjustifiable legal fees for tasks that could have been resolved more economically.
68. In *Pandya v. Simpson*, 2006 CanLII 19443 (ON SC), the Court emphasized that “[t]here should be some correlation of the costs to the benefits derived from the receivership and rejected a simplistic time-multiplied-by-rate approach.⁴⁹ The Court further held that a failure to provide detailed task-based breakdowns and docketed evidence supporting fee quantum warranted a fee reduction of over \$100,000. Here, too, the invoices from WeirFoulds LLP lack meaningful allocation by task, and the supporting affidavits do not demonstrate a clear link between the fees incurred and results achieved for the benefit of the Co-op or its residents.
69. It is further respectfully submitted that according to Mr Cho despite the firm billing the substantial amount he is unable to provide any indication as to when this process will come to an end.⁵⁰
70. The test, as set out in *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, 2023 ONSC 3400 and *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, is whether the fees are “fair and reasonable” based on proportionality, necessity, and efficiency.⁵¹ When public funds are involved, particularly in a social housing receivership, there is an added duty to ensure that professional fees are justified not only formally, but substantively. The Board submits that this standard has not been met.
71. It is further respectfully submitted that the principles set out by the court in *In Pandya are applicable to the request of the request for approval of fess presented before the court. In Pandya* the Court emphasized that where fees absorb significant portions of the estate, courts should apply a cost-benefit analysis.⁵²

⁴⁶ Cross-Examination of Philip Cho, June 16, 2025, Q.36.

⁴⁷ Cross-Examination of Philip Cho, June 16, 2025, Qs.34–36

⁴⁸ Cross-Examination of Philip Cho, June 16, 2025, Qs.69–70.

⁴⁹ *Pandya v. Simpson*, 2006 CanLII 19443 (ON SC) at para 66

⁵⁰ Cross-Examination of Philip Cho, June 16, 2025, Qs.140-142

⁵¹ *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, 2023 ONSC 3400 para 54

⁵² *Pandya v. Simpson*, 2006 CanLII 19443 (ON SC) para 66

72. Finally, the Receiver’s legal counsel justified much of its billing on the basis that it was assisting with “laying out the process for transitioning” governance back to the Board, in accordance with Justice Penny’s endorsement. However, as Mr. Cho conceded, this transition process, primarily handled by corporate counsel remains only “substantively completed,” with unspecified elements still outstanding.⁵³ This raises serious concerns about the open-ended and poorly defined nature of the transition-related legal work. Despite over \$100,000 in legal fees and months of professional effort, there is still no clear, cost-efficient framework or timeline in place to return democratic governance to the Co-op. The concept of transition, rather than providing clarity and accountability, appears to have become a billing category for indefinite advisory work, without measurable outcomes or oversight.
73. It is respectfully submitted that approval of these legal fees is contrary to the intent and order of Mr. Justice Penny and the purported goals of the city of Toronto in maximising the use of government funding to enhance the lives of members of the Harry Sherman co-operative rather than providing a blank check for professional services.

CONCLUSION

74. The intent of the order of Mr. Justice Penny was to provide the Co-op with assistance in returning to financial stability. The further intent of the order of Mr. Justice Penny was that the receiver and the Co-op would work together throughout this process to transition the Co-op out of receivership. It is respectfully submitted that these are the 2 central factors which this honorable court must ensure that the receiver complies with. It is respectfully submitted that the Receiver has failed to comply with the order of Mr. Justice Penny which explicitly emphasized that the next phase of the receivership should involve planning for transition back to board control, including the development of “specific, identifiable metrics and milestones for the resolution of the triggering events”⁵⁴ It is clear that the receiver has failed to comply with this order.
75. The endorsement prescribes a cooperative approach, not a parallel governance regime and stresses that “Toronto and the Receiver should work with the Co-op to begin working toward a plan for when and how the transition back to board control might be achieved” and that “the board work with Toronto to understand and utilize” available governance resources. The Receiver’s unilateral pursuit of governance reform, procurement processes, and prolonged control without the Board input defies both the order of Mr. Justice Penny.
76. In conclusion, the city and the receiver have provided no evidence as to the benefits of the receiver’s role for the community while simultaneously asking the court to approve legal and operational fees which by any measure are excessive and, in some cases, unnecessary.

⁵³ Cross-Examination of Philip Cho, June 16, 2025, Qs.150–152.

⁵⁴ Endorsement of Penny J., dated April 29, 2024, Receiver’s Motion Record (Returnable May 13, 2025), Volume 1, Tab E, pp. 95–96.

PART IV- RELIEF REQUESTED

The Board therefore respectfully requests that:

- The Receiver's Second Court Report and supplemental reports should not be approved in their current form;
- The proposed RFEIQ process be rejected as unauthorized and inconsistent with cooperative legislation;
- The Receiver's legal fees be referred to an assessment officer for an assessment of costs
- That the Toronto Co-operative Housing Federation takes steps to ensure a fair and transparent election of new board members.

ALL OF WHICH RESPECTFULLY SUBMITTED

June 19, 2025

.....*Courtney Betty*.....

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SCHEDULE A
List of Authorities

Lash v. Lash Point Association Corp., 2022 ONCA 361 (CanLII), <<https://canlii.ca/t/jp59c>>, retrieved on 2025-06-17

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA), <<https://canlii.ca/t/1p78p>>,

Target Canada Co. (Re), 2015 ONSC 7574 (CanLII), <<https://canlii.ca/t/gmp4d>>,

Triple-I Capital Partners Limited v 12411300 Canada Inc., 2023 ONSC 3400 (CanLII), <<https://canlii.ca/t/jxlm3>>,

Bank of Nova Scotia v. Diemer, 2014 ONCA 851 (CanLII), <<https://canlii.ca/t/gffxq>>

Pandya v. Simpson, 2006 CanLII 19443 (ON SC) <<https://canlii.ca/t/1nk14>>,

SCHEDULE B STATUTORY AUTHORITIES

Co-operative Corporations Act, RSO 1990, c C.35,

Board of directors

85 (1) Every co-operative shall have a board of directors however designated. R.S.O. 1990, c. C.35, s. 85 (1).

Minimum number

(2) There shall be at least three directors. 1992, c. 19, s. 13.

Resident Canadians

(3) A majority of directors on the board of directors of every co-operative shall be resident Canadians. R.S.O. 1990, c. C.35, s. 85 (3).

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

First directors

86 (1) Each of the persons named as first directors in the articles of a co-operative is a director of the co-operative until replaced by a person duly elected or appointed in his or her stead.

Idem

(2) The first directors of a co-operative have all the powers and duties and are subject to all the liabilities of directors. R.S.O. 1990, c. C.35, s. 86.

Directors to be members

87 (1) Subject to subsection (2), no person shall be a director of a co-operative unless he or she is a member thereof or a director, officer, shareholder or member of a corporate member thereof, and, where a director or a corporation of which he or she is an officer, director, shareholder or member ceases to be a member, he or she thereupon ceases to be a director. R.S.O. 1990, c. C.35, s. 87; 2009, c. 34, Sched. F, s. 4 (1).

Exception

(2) Subject to subsection (3), the by-laws of a co-operative, other than a non-profit housing co-operative, may provide for the appointment or election of directors who are non-members or who are not directors, officers, shareholders or members of a corporate member. 2009, c. 34, Sched. F, s. 4 (2).

Same

(3) The number of directors appointed or elected who are non-members or who are not directors, officers, shareholders or members of a corporate member must not exceed one-fifth of the total number of directors. 2009, c. 34, Sched. F, s. 4 (2).

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

Change in number of directors

88 (1) Subject to subsection 85 (2), a co-operative may by by-law increase or decrease the number, or the minimum or maximum number, of directors as set out in its articles. 1992, c. 19, s. 14 (1).

Filing of by-law

(2) A co-operative shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the members. R.S.O. 1990, c. C.35, s. 88 (2); 1997, c. 28, s. 37; 2017, c. 34, Sched. 9, s. 5.

Validity

(3) Failure to comply with subsection (2) does not affect the validity of the by-law. R.S.O. 1990, c. C.35, s. 88 (3).

No director's term shortened

(4) No decrease in the number or maximum number of directors shall shorten the term of an incumbent director. 1992, c. 19, s. 14 (2).

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

Number of directors if articles provide a range

88.1 If the articles of a co-operative set out minimum and maximum number of directors, the exact number of directors shall be determined by a special resolution or, if authorized by a special resolution, by a resolution of the directors. 1992, c. 19, s. 15.

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

Age and qualification of directors**Age**

89 (1) No person under eighteen years of age shall be a director of a co-operative. R.S.O. 1990, c. C.35, s. 89 (1).

Qualifications

(2) No undischarged bankrupt or person who is incapable of managing property within the meaning of the *Substitute Decisions Act, 1992* shall be a director, and a director who becomes bankrupt or incapable of managing property ceases to be a director. 2009, c. 33, Sched. 2, s. 19 (2).

Consent

- (3) A person who is elected or appointed a director is not a director unless,
- (a) the person was present at the meeting when he or she was elected or appointed and did not refuse at the meeting to act as director;
 - (b) where the person was not present at the meeting when he or she was elected or appointed, the person consented to act as director in writing before his or her election or appointment or within ten days thereafter. R.S.O. 1990, c. C.35, s. 89 (3).

Idem

(4) For the purposes of subsection (3), a person who is elected or appointed as director and refuses under clause (3) (a) or fails to consent under clause (3) (b) shall be deemed not to have been elected or appointed as a director. R.S.O. 1990, c. C.35, s. 89 (4).

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

Election of directors

90 (1) The directors shall be elected by the members at a general meeting, and the election shall be conducted in the manner prescribed by section 91. 2023, c. 9, Sched. 8, s. 7.

Idem

(2) The election of directors shall take place yearly or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but are eligible for re-election. R.S.O. 1990, c. C.35, s. 90 (2).

Continuance in office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected. R.S.O. 1990, c. C.35, s. 90 (3).

Rotation

(4) The articles or by-laws may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least two directors shall retire from office in each year. R.S.O. 1990, c. C.35, s. 90 (4).

Idem

(5) It shall not be necessary for all directors to hold office for the same term. R.S.O. 1990, c. C.35, s. 90 (5).

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

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.

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

93.1 REPEALED: 2009, c. 34, Sched. F, s. 7.

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

Place of meeting

94 (1) Subject to subsections (2) and (3), a meeting of directors shall be held at the place where the head office of the co-operative is located. 2023, c. 9, Sched. 8, s. 9.

Exception

(2) Where the articles or by-laws of the co-operative so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario, but in any financial year of the co-operative a majority of the meetings of the board of directors and a majority of the meetings of the executive committee shall be held at a place within Canada. 2023, c. 9, Sched. 8, s. 9.

Meeting by telephonic or electronic means

(3) Subject to the articles or by-laws and subsection (5), a meeting of directors may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means. 2023, c. 9, Sched. 8, s. 9.

Same, articles, etc.

(4) In addition to any other matters that the articles or by-laws may provide for with respect to the holding of meetings of directors in accordance with subsection (3), the articles or by-laws may,

- (a) limit the manner or manners by which a meeting of directors may be held in accordance with subsection (3); and

(b) specify requirements that apply with respect to the holding of a meeting of directors in a manner described in subsection (3) or in such manner as described by the articles or by-laws made under clause (a). 2023, c. 9, Sched. 8, s. 9.

Same, ability to communicate at meeting

(5) A meeting of directors held in any manner described in subsection (3) or in such manner as described by the articles or by-laws made under subsection (4) must provide that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously. 2023, c. 9, Sched. 8, s. 9.

Same, persons deemed present at meeting

(6) A person who, through telephonic or electronic means, attends a meeting of directors is deemed for the purposes of this Act to be present in person at the meeting. 2023, c. 9, Sched. 8, s. 9.

Same, deemed place of meeting

(7) If a majority of the directors attending a meeting held in a manner described in subsection (3) or in such manner as described by the articles or by-laws made under subsection (4) are in Canada during the meeting, the meeting is deemed to have been held in Canada. 2023, c. 9, Sched. 8, s. 9.

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

Calling meetings of directors

95 (1) In addition to any other provision in the articles or by-laws of a co-operative for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting. R.S.O. 1990, c. C.35, s. 95 (1).

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the co-operative, notice of the time and place for the holding of the meeting called under subsection (1) shall be given to every director of the co-operative by sending the notice ten days or more before the date of the meeting to his or her latest address as shown on the records of the co-operative. R.S.O. 1990, c. C.35, s. 95 (2); 2004, c. 31, Sched. 8, s. 16.

When notice is not required to specify place of meeting

(3) Despite subsection (2) and any other provision in the articles or by-laws of a co-operative, a notice of a meeting of directors is not required to specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. 2023, c. 9, Sched. 8, s. 10.

Instructions re attending meeting by telephonic, etc. means

(4) If the directors may attend a meeting by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting. 2023, c. 9, Sched. 8, s. 10.

Waiver of notice

(5) A director may in any manner and at any time waive a notice of a meeting of directors and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. 2023, c. 9, Sched. 8, s. 10.

Transition

(6) For clarity, this section, as it read immediately before the day section 10 of Schedule 8 to the *Less Red Tape, Stronger Economy Act, 2023* comes into force, continues to apply to a notice that was given before that day in respect of a meeting of directors or to be held on or after that day. 2023, c. 9, Sched. 8, s. 10.

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

Meetings of directors of multi-stakeholder co-operatives

95.1 A meeting of the directors elected by a stakeholder group of a multi-stakeholder co-operative shall be called as nearly as possible in the same manner as meetings of directors generally. 1994, c. 17, s. 25.

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

Resolutions in writing

95.2 (1) A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of the board of directors or of the executive committee, is as valid as if it had been passed at a meeting of the board of directors or of the executive committee. 2023, c. 9, Sched. 8, s. 11.

Exception

(2) Subsection (1) does not apply to a resolution referred to in subsection 49 (3) or section 66 or 171.8. 2023, c. 9, Sched. 8, s. 11.

Copy to be kept

(3) A copy of every resolution passed under subsection (1) shall be kept with the minutes of the proceedings of the board of directors or of the executive committee. 2023, c. 9, Sched. 8, s. 11.

Evidence

(4) Unless a poll is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 2023, c. 9, Sched. 8, s. 11.

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

Duties of board

96 (1) The board of directors shall manage or supervise the management of the affairs and business of the co-operative.

Conduct of business

(2) Subject to section 97, no business of a co-operative shall be transacted by its board of directors except at a meeting of directors at which a quorum of the board is present and at which a majority of the directors present are resident Canadians.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. R.S.O. 1990, c. C.35, s. 96.

Executive committee

97 (1) Where the number of directors of a co-operative is more than six, and if authorized by a by-law, the directors may elect from among their number an executive committee consisting of not fewer than three of whom a majority shall be resident Canadians and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors. R.S.O. 1990, c. C.35, s. 97 (1).

Proportion of non-members

(1.1) The proportion of directors on the executive committee who are non-members or who are not directors, officers, shareholders or members of a corporate member must not be greater than the proportion of directors on the board of directors of the co-operative who are non-members or who are not directors, officers, shareholders or members of a corporate member. 2010, c. 1, Sched. 4, s. 1.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members. R.S.O. 1990, c. C.35, s. 97 (2).

Conduct of business

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present and at which a majority of the members present are resident Canadians. R.S.O. 1990, c. C.35, s. 97 (3).

Counting

(4) Directors on the executive committee who are non-members or who are not directors, officers, shareholders or members of a corporate member must not be counted for the purpose of constituting a quorum. 2009, c. 34, Sched. F, s. 8.

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

Disclosure by directors of interests in contracts

98 (1) Every director of a co-operative who has, directly or indirectly, any interest in any contract or transaction to which the co-operative or a subsidiary thereof is or is to be a party, other than a contract or transaction in which the director's interest is limited solely to his or her remuneration as a director, officer or employee, shall declare his or her interest in such contract or transaction at a meeting of the directors of the co-operative and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the co-operative or a subsidiary thereof, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within the director's knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum.

Interest to be material

(2) Subsection (1) does not require the disclosure of any interest in any contract or transaction unless,

- (a) the interest and the contract or transaction are both material; or
- (b) the subject of the contract or transaction is of a type not available to all members of the co-operative.

When declaration of interest to be made

(3) The declaration required by this section shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he or she becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he or she becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the co-operative's business, would not require approval by the directors or shareholders, at the first meeting of the directors held after the director becomes aware of it.

Effect of declaration

(4) If a director has made a declaration and disclosure of his or her interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the co-operative, the director, if he or she was acting honestly and in good faith at the time the contract or transaction was entered into, is not by reason only of holding the office of director accountable to the co-operative or to its members for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interests of the co-operative at the time the contract or transaction was entered into, is not voidable by reason only of the director's interest therein.

Confirmation by members

(5) Despite anything in this section, a director, if he or she was acting honestly and in good faith, is not accountable to the co-operative or to its members for any profit or gain realized from any such contract or transaction by reason only of holding the office of director, and the contract or

transaction, if it was in the best interests of the co-operative at the time it was entered into, is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

General notice of interest

(6) For the purposes of this section, a general notice to the directors by a director declaring that he or she is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the co-operative is a sufficient declaration of interest in relation to any contract so made. R.S.O. 1990, c. C.35, s. 98.

Liability of directors re purchase of shares

99 (1) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing the acquisition or repayment are jointly and severally liable to the co-operative to the extent of the amount paid out. R.S.O. 1990, c. C.35, s. 99 (1).

Application to court

(2) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, any member of the co-operative or, where the acquisition or repayment is in contravention of subsection 32 (2), 67 (1) or section 69, any creditor of the co-operative who was a creditor at the time of the acquisition or repayment, may apply to the court and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member whose shares were acquired liable to the co-operative jointly and severally with the directors, to the extent of the amount paid to the member. 2002, c. 24, Sched. B, s. 30 (2).

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

Liability of directors re dividends

100 Where any dividend is declared and paid in contravention of section 58,

- (a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the co-operative to the extent of the amount of the dividend so declared and paid or such part thereof as renders the co-operative insolvent or diminishes its capital; and
- (b) any member of the co-operative or any creditor of the co-operative who was a creditor at the time of the declaration of the dividend may apply to the court, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to the member. R.S.O. 1990, c. C.35, s. 100; 2002, c. 24, Sched. B, s. 30 (3).

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

Consent of director

101 (1) A director who was present at a meeting of the board of directors or an executive committee thereof when,

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) his or her dissent is entered in the minutes of the meeting;
- (e) the director files his or her written dissent with the person acting as secretary of the meeting before its adjournment; or
- (f) the director delivers or sends his or her dissent by registered mail to the co-operative immediately after the adjournment of the meeting,

and within seven days after complying with clause (d), (e) or (f) the director sends a copy of his or her dissent by registered mail to the Minister. R.S.O. 1990, c. C.35, s. 101 (1); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

Idem

(2) A director who voted in favour of a matter referred to in subsection (1) is not entitled to dissent under subsection (1). R.S.O. 1990, c. C.35, s. 101 (2).

Consent of director not at meeting

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when,

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) the director delivers or sends to the co-operative by registered mail his or her dissent; or
- (e) the director causes his or her dissent to be filed with the minutes of the meeting,

within seven days after the director becomes aware of the authorization referred to in clause (a), (b) or (c) and unless, within seven days after complying with clause (d) or (e), the director sends a copy of his or her dissent by registered mail to the Minister. R.S.O. 1990, c. C.35, s. 101 (3); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

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

Rules re liability

102 (1) A director is not liable under section 99 or 100 if, in the circumstances, the director discharged his or her duty to the co-operative in accordance with section 108.

Liability not excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him or her. R.S.O. 1990, c. C.35, s. 102.

Liability of directors for wages

103 (1) The directors of a co-operative are jointly and severally liable to the employees of the co-operative for all debts that become due while they are directors for services performed for the co-operative, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under the *Employment Standards Act* and the regulations thereunder or under any collective agreement made by the co-operative. R.S.O. 1990, c. C.35, s. 103 (1); 2017, c. 20, Sched. 3, s. 2.

Limitation of liability

(2) A director is liable under subsection (1) only if,

- (a) the co-operative is sued in the action against the director and execution against the co-operative is returned unsatisfied in whole or in part; or
- (b) before or after the action is commenced, the co-operative goes into liquidation, is ordered to be wound up or makes an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada), or a receiving order under that Act is made against it, and, in any such case, the claim for the debt has been proved. 2002, c. 24, Sched. B, s. 30 (4).

Idem

(3) After execution has been so returned against the co-operative, the amount recoverable against the director is the amount remaining unsatisfied on the execution. R.S.O. 1990, c. C.35, s. 103 (3).

Rights of director who pays the debt

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy and Insolvency Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. R.S.O. 1990, c. C.35, s. 103 (4).

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

Removal of directors

104 The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of his or her term of office and may, by a majority of the votes cast at the meeting, elect any qualified person in his or her stead for the remainder of his term. R.S.O. 1990, c. C.35, s. 104.

Removal of directors of multi-stakeholder co-operative

104.1 Despite section 104, for a multi-stakeholder co-operative, the members of a stakeholder group may, by resolution passed by a majority of the votes of the stakeholder group cast at a meeting of the stakeholder group duly called for that purpose, remove any director elected by the

stakeholder group before the expiration of his or her term of office and may, by a majority of the votes cast at the meeting, elect any qualified person in his or her stead for the remainder of the term. 1994, c. 17, s. 26.

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

Officers

105 (1) A co-operative shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors.

Election and appointment

- (2) In the absence of other provisions in that behalf in the articles or by-laws, the directors,
- (a) shall elect the president from among themselves;
 - (b) shall appoint or elect the secretary; and
 - (c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1990, c. C.35, s. 105.

Chair of the board

- 106** A co-operative may by by-law,
- (a) provide for the election or appointment by the directors from among themselves of a chair of the board;
 - (b) define the duties of the chair;
 - (c) assign to the chair all or any of the duties of the president or of any other officer of the co-operative,

and, if the by-law assigns to the chair any of the duties of the president, it shall also fix and prescribe the duties of the president. R.S.O. 1990, c. C.35, s. 106.

Qualifications of chair and president

107 Unless the articles or by-laws otherwise provide, no person shall be the president of a co-operative unless he or she is a director of the co-operative, but no other officer except the chair of the board need be a director. R.S.O. 1990, c. C.35, s. 107.

Standard of care of directors and officers

108 Every director and officer of a co-operative shall exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the co-operative, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. R.S.O. 1990, c. C.35, s. 108.

Validity of acts of directors and officers

109 An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his or her appointment, election or qualification. R.S.O. 1990, c. C.35, s. 109.

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BETWEEN

CITY OF TORONTO **and**

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

(Applicant)

(Respondent)

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

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