

**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**

**PART I – OVERVIEW AND ISSUES**

1. This is a motion for an order authorizing the payment of legal fees in the amount of \$30,809.08 outstanding to Betty’s Law Office for legal work completed on behalf of the Harry Sherman Housing Co-operative.
2. This is also a motion for an order authorizing the payment of reasonable legal fees to Betty’s Law Office to continue representation of the Harry Sherman Co-operative in the continued proceedings before the court in order to ensure proper representation of the Co-operative in these proceedings.
3. The issues raised by the Receiver in objection to payment of the outstanding legal fees and continued representation are:
  - a. Whether the legal fees incurred are personal and not on behalf of the Harry Sherman Housing Co-operative.
  - b. Whether the Board’s legal expenses are properly institutional.
  - c. Whether Payment of legal fees would violate insolvency law principles or constituting preferential payments.
  - d. Whether the appointment of the Receiver brings to an end any legal authority of the board of the Harry Sherman Housing Co-operative to make any decisions.
  - e. Whether continued independent legal representation is necessary to uphold the principles of procedural fairness and statutory compliance during the transition period.

## PART II – FACTS

1. The Respondent, Harry Sherman Crowe Housing Co-operative Inc. (“HSC” or the “Co-op”), is a co-operative housing provider governed by the Ontario *Housing Services Act, 2011* and the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35. The Co-op operates a 164-unit housing complex located at York University in Toronto, including both townhomes and a high-rise building.
2. The Co-op is governed by a duly elected Board of Directors (the “Board”) comprised of community members. The current Chair, Ms. Rosell Kerr, has served on the Board since 2019. The Board was elected by Co-op members in accordance with the Co-op’s by-laws and statutory obligations under the HSA. **Affidavit Rosel Kerr paragraph 2**
3. In 2022, the Board of Directors of Harry Sherman Crowe Housing Co-operative Inc. retained Betty’s Law to provide legal support on a range of governance and operational matters. The scope of the retainer included: *reviewing existing contracts and agreements that were of particular concern to the Board; providing general legal advice to ensure compliance with applicable legal requirements; conducting a review of the Co-op’s bylaws, policies, and procedures; and offering legal representation in a variety of matters, including but not limited to civil litigation, landlord and tenant issues, discussions with the City of Toronto.* **Affidavit Rosel Ker paragraphs 6**
4. Betty’s Law Office has also played an integral role in providing legal advice in regard to the receivership proceedings as well as negotiating resolutions between all parties. **Affidavit Rosel Ker paragraphs 6**
5. The role of Betty’s Law Office as the legal representative of the Co-operative has never been questioned by the City or the Receiver until these recent objections.
6. In all proceedings before the court to date Courtney Betty of Betty’s Law Office has appeared as legal counsel for the Board with no objections and in fact facilitated the discussion between all parties. Betty’s Law Office has also appeared and represented the Co-op in approval of the previous payments to the Receiver before the Justice Penny decision dated April 29, 2024. This resulted again as a result of the work of Betty’s Law Office in the party’s consent agreement At no time there was any objection raised by any parties as to the legal authorization of Betty’s Law Office to consent to orders of the court. **Affidavit Rosel Kerr paragraph 4**
7. Betty’s Law Office has submitted invoices totaling \$30,809.08 for services rendered to the Board between 2023 and early 2025. These invoices, attached as Exhibit “A” to the affidavit of Rosell Kerr, reflect services billed at reasonable market rates and incurred solely in connection with the Co-op’s institutional affairs. To date, no party has challenged the work completed and the reasonableness of the legal fees. **Affidavit Rosel Kerr paragraph 9**
8. The Co-op has two different sources of funding: one source is from the City of Toronto in its role as Service Manager under the Housing Services Act, 2011. The primary goal of this funding is to work with the Co-operative in providing rent gear to income RGI units. The second source of funding is tied to income related to unrestricted revenues such as market rents, parking income, and other non-subsidized income sources. These unrestricted revenues, often referred to as “market funds,” are distinct from government subsidy flows

and may be used at the Co-op's discretion, subject to general financial governance.  
**Affidavit of Julie Western paragraphs 14-20 (Sworn November 10, 2022)**

9. It is established that housing providers like HSC retain and apply market revenues, subject to reconciliation rules. The legal fees now at issue are not sought to be paid from the City's RGI subsidy allocations but rather are sought to be paid from the Co-op's general or market funds, which are not earmarked for RGI use.
10. There are currently no other creditors before the Court asserting a claim for payment or priority against the Co-op's funds. No party has come forward to challenge the availability of market or general funds or to assert a competing entitlement to those funds.
11. Legal support is also required to ensure meaningful participation in proceedings, oversight of transition planning, review of further reports, and attendance before the Court or external stakeholders. Without such representation, the Board cannot fulfill its obligations under the *HSA* or respond to critical developments. The legal services rendered were necessary, performed in good faith, and beneficial to the Co-op's stakeholders. **Affidavit Rosel Kerr paragraph 11**
12. The Board seeks authorization for the Receiver to pay the outstanding and future legal fees from the Co-op's general or market funds. In the alternative, it seeks direct access to the necessary funds currently under the Receiver's control for the limited purpose of satisfying legal obligations.

## **PART II – ISSUES AND ARGUMENT**

### **Issue A: Whether the Board's legal expenses are properly institutional, not personal, and therefore reimbursable**

13. The central dispute raised by the Receiver and the City is whether legal fees incurred by the Board of Directors of Harry Sherman Crowe Housing Co-operative Inc. ("the Board" or "the Co-op Board") constitute personal expenses or organizational liabilities. It is respectfully submitted that the legal expenses in question are institutional in nature, incurred by the duly elected governance body of the Co-op for the purpose of fulfilling its statutory and fiduciary obligations.
14. The Board was elected by the membership of the Co-op under the Co-operative Corporations Act, R.S.O. 1990, c. C.35, and operated continuously until the appointment of the Receiver. At no point did the Receivership Order extinguish the Board's existence or its legal ability to represent the Co-op in accordance with its statutory responsibilities under the Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1 (the "HSA").
15. Betty's Law Office was formally retained by the Board in 2022, prior to the initiation of the receivership proceedings. This retainer was not a personal engagement by individual members. The retainer was undertaken to assist the Board in responding to governance challenges, notices from the Service Manager, and other regulatory matters under the HSA. The record is clear that Betty's Law Office represented the Board in negotiations that led to the consensual appointment of the Receiver and in subsequent proceedings relating to receivership extensions.
16. In *City of Peterborough v. Kawartha Native Housing Society Inc.*, 2009 ONSC, the Ontario Superior Court recognized that directors of non-profit housing entities may retain legal counsel, even during receivership, where the purpose is to assist with governance, respond

to receivership processes, and advance institutional interests. Legal fees in that case were found to be organizational, not personal, and the Court authorized partial reimbursement from the provider's own funds. The same principle applies here.

17. The suggestion that these fees are "personal" is contrary to both the legal framework governing housing co-operatives and the factual record before the Court. Rosell Kerr, the Chair of the Board, affirmed in her affidavit that all legal services were rendered for the benefit of the Co-op as a whole and that Betty's Law Office continued to assist the Board in court filings, governance matters, and communications with the Receiver and City.
18. The Board of Directors is not a symbolic body; it is the mechanism by which the Co-op exercises its legal obligations. The critical element is to ensure that the members of the Co-operative interest and statutory obligations are met.
19. Furthermore, the courts have recognized that directors of corporations under receivership retain residual legal authority to act for the corporation where such authority is not displaced by the receiver's mandate. In *Maple Leaf Foods Inc. v. Markland Seafoods Ltd.*, 2007 NLCA 7 at paragraphs 37-38, the Newfoundland and Labrador Court of Appeal conducted a thorough review of Canadian jurisprudence and confirmed that:

*"Upon a receivership the directors retain residual powers. [Though] they are displaced in respect of powers exercisable by the receiver-manager, they remain in office and can exercise limited functions... Powers which the receiver-manager is not authorized to exercise remain vested in the directors."*

*"Whatever their residual authority may be, the boards continue to have an obligation to act in the best interest of the corporations. If, in their opinion, the appointment of a receiver is not in the best interest of the corporations or if they believe that the steps being taken by the receiver... are not in the corporations' best interest, then they are entitled to retain counsel to bring the matter to the attention of the court."*

20. Furthermore, in *City of Peterborough*, Penny J. emphasized that legal fee reimbursement is not automatic and must be justified. At *paragraph 35*, the Court stated:

*"There are no blank cheques. The court will decide whether a board is to be reimbursed for the legal expenses in taking a particular course of action. On exercising its discretion to make a costs award in favour of a board of a corporation in receivership, the court may, in addition to the factors under Rule 57 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, consider the following:*

- i. whether the position advanced by counsel for the board had any merit;
- ii. whether the board was acting in the interest of the corporation;
- iii. whether the position advanced by the board was properly advanced by the board rather than by the receiver; and
- iv. whether the position advanced by the board detracted from the orderly administration of the receivership."

21. It is respectfully submitted that the Board's legal representation meets all the legal requirements for payment of legal fees. The legal fees were incurred to assist with governance and statutory compliance. The legal positions advanced has merit, did not

duplicate the Receiver's role, and were advanced in the interest of the Co-op and its members. They did not detract from the orderly administration of the receivership, but rather supported clarity, fairness, and accountability in the transitional process.

22. Accordingly, the legal fees incurred were institutional, necessary, and undertaken in good faith. They are properly reimbursable from Co-op funds, particularly market funds not encumbered by statutory trusts or designated subsidies. Accordingly, the legal fees incurred were institutional, necessary, and undertaken in good faith. They are properly reimbursable from Co-op funds, particularly market funds not encumbered by statutory trusts or designated subsidies.
23. It is respectfully submitted that the legal fees at issue are not personal expenditures of individual directors, but institutional expenses incurred in the lawful execution of the Board's statutory obligations under the HSA. The Board acted transparently and in good faith, retaining legal counsel to ensure compliance, oversight, and participation in the receivership process.

#### **Issue B: Whether Pre-Receivership Legal Fees May Be Reimbursed Without Violating Insolvency Law Principles or Constituting Preferential Payments**

24. The legal fees incurred by the Board of Directors of the Harry Sherman Crowe Housing Co-operative Inc. prior to the appointment of the Receiver do not constitute preferential payments and are not subject to the prohibitions under section 95 of the *Bankruptcy and Insolvency Act* or the *Assignments and Preferences Act* of Ontario. These fees were incurred by the Board acting in its statutory capacity under the *Housing Services Act, 2011*, to respond to regulatory and governance obligations, including triggering event notices and compliance issues that arose in the course of its legal duties.
25. It is respectfully submitted that this motion does not seek judgment or priority over other creditors. Rather, the Board requests that the Court exercise its equitable jurisdiction to authorize reimbursement for institutional expenditures that were necessary, reasonable, and incurred in good faith. These expenses were not directed to private or adversarial interests, but to the proper governance of Harry Sherman Housing Co-operative. The funds from which reimbursement is sought are not subject to any secured charge or statutory trust—they are unencumbered market funds.
26. The legal services provided during this period supported the stability and lawful functioning of the Co-op during a critical transitional phase. They included regulatory correspondence, governance advisory, and preparation for a lawful response to oversight actions. The Board acted within its mandate and under the legal structure provided by the *Housing Services Act*.
27. The request is therefore properly before this Honourable Court, consistent with section 101 of the *Courts of Justice Act*, and aligned with the broader principles of procedural fairness, equitable oversight, and institutional accountability that underpin the receivership process.
28. The Receiver argues that the Board's legal fees incurred prior to the appointment of the Receiver are unsecured debts and that any payment would constitute an impermissible preference under section 95 of the *Bankruptcy and Insolvency Act* ("BIA") or the *Assignments and Preferences Act* ("APA"). This argument misconceives the legal framework applicable to this motion and the nature of the relief sought.

29. The Board is not asserting a creditor claim or seeking priority under a statutory distribution scheme. Rather, it seeks prospective judicial authorization for reimbursement of legal fees incurred in its institutional role under the *Housing Services Act, 2011* (“HSA”)—fees that were essential to its statutory duties, incurred in good faith.
30. It is respectfully submitted that this Honourable Court in supervising these receivership proceedings sit in equity and are empowered under section 101 of the *Courts of Justice Act* to make any order that appears just. The jurisprudence is clear that in such contexts, reasonable, good faith expenditures related to governance and procedural fairness may be judicially approved even if incurred prior to formal insolvency intervention.
31. It is further respectfully submitted that the decision of the Ontario Court of Appeal in **Golden Oaks Enterprises Inc. v. Scott, 2022 ONCA 509**, helped to clarify the proper interpretation of section 95(1)(a) of the BIA. The Court held that for arm’s length transactions to be voidable as preferences, there must be evidence of an actual “**view to giving a preference**” at the time of payment. In that case, the Court emphasized the importance of intention and contextual analysis in determining whether a transaction was preferential. By contrast, in *Harry Sherman*, Betty’s Law Office acted at arm’s length and provided legal services strictly in response to governance obligations. There is no evidence of intent to prefer, nor of any improper relationship. No other creditor has taken legal steps for any outstanding debt.
32. It is respectfully submitted that in contrast to the facts in *Golden Oaks*, which involved fraud and non-arm’s length conduct, the Harry Sherman Board conducted themselves in a transparent manner and in fulfillment of their legal and governance requirements. It is further respectfully submitted that even on a section 95 analysis, the threshold of preferential intent is not met.
33. It is respectfully submitted that the facts before the court demonstrate there is no legal or equitable basis to treat the Board’s legal fees as prohibited preferences. The motion seeks the Court’s equitable authorization to disburse funds for legitimate governance costs incurred prior to the Receiver’s appointment, consistent with the principles of procedural fairness and statutory compliance.

### **ISSUE C: Whether Continued Independent Legal Representation Is Necessary to Uphold Procedural Fairness and Statutory Compliance During the Transition Period**

34. It is respectfully submitted that the appointment of a Receiver does not displace the mandated administration of a housing co-operative. The consent-based appointment of the Receiver in this case was intended to support financial stabilization—not to extinguish the Co-op’s legal personality or democratic governance. The Receiver’s powers are defined by court order and must be interpreted harmoniously with the statutory framework under the Housing Services Act (HSA), which continues to govern the Co-op’s structure, member participation rights, and governance obligations.
35. The continued involvement of the Board and its ability to access independent legal representation is not a luxury—it is a governance necessity. The Board remains the only democratically elected body authorized to speak on behalf of Co-op members and ensure that the receivership process complies with both the HSA and principles of procedural fairness. Through legal representation, the Board is equipped to interpret court orders,

respond to regulatory developments, and communicate meaningfully with the Receiver, the City, and the Co-op's residents.

36. The right to counsel in this context is grounded in broader legal principles. As the *Supreme Court of Canada* stated in *British Columbia (Attorney General) v. Christie*, 2007 SCC 21 at para. 22:

*“[I]t is important to note that this Court has repeatedly emphasized the important role that lawyers play in ensuring access to justice and upholding the rule of law... Lawyers are a vital conduit through which citizens access the courts, and the law. They help maintain the rule of law by working to ensure that unlawful private and unlawful state action in particular do not go unaddressed. The role that lawyers play in this regard is so important that the right to counsel in some situations has been given constitutional status.”*

37. The Board's continued legal representation serves precisely this function. It is not merely defending its former management role, it is seeking to ensure that the receivership process remains transparent, lawful, and ultimately returns governance to the membership, as required under the HSA. Without legal counsel, the Board would be unable to meaningfully participate in decisions concerning governance transition, the terms of potential restructuring, or the scope of member consultation.
38. The Receiver and the City have argued that legal representation for the Board burdens the Co-op's finances, while justifying their own legal costs as a necessary cost of remedy. This is a fundamental double standard. The Board is not an outside litigant; it is the institutional voice of the Co-op's democratic base. If the Receiver's legal fees funded by the City are deemed essential, then modest and proportionate legal costs incurred by the Board in the fulfillment of its statutory duties are equally justifiable, particularly where they are drawn from unencumbered market revenues.
39. It is respectfully submitted that the Board is not seeking a blank cheque. It seeks prospective judicial authorization for reasonable and accountable legal fees necessary to fulfill its statutory governance role. The Court may impose limits, require affidavits, or set reporting conditions as it sees fit. But to deny representation altogether would sever the Co-op's institutional body from the very legal process determining its future, a result contrary to the rule of law and democratic governance principles embedded in Ontario's co-operative housing regime.
40. Accordingly, the Board respectfully submits that continued access to independent legal representation is a necessary incident of procedural fairness in this receivership. It is also a constitutional safeguard that ensures the transitional process remains accountable, inclusive, and compliant with the Co-op's statutory obligations.
41. It is respectfully submitted that this principle has been recognized by the Court of Appeal in *Peterborough (City) v. Kawartha Native Housing Society Inc.*, 2009 CanLII 92134 (ONCA) where Blair J.A., sitting in chambers, made an interim order authorizing boards of directors in receivership to retain legal counsel for the purpose of appeal proceedings and directed that reasonable fees be paid out of corporate assets following assessment. At paragraphs 5–6, he wrote:

*“Here, the Board[s]' ability to pursue the important issues that are raised on the appeal would be hollow in the extreme if they are not in a position to retain and*

*properly pay legal counsel. The appeal cannot be effectively prepared, presented and argued on behalf of the Corporations without the benefit of counsel. Accordingly, I have no hesitation in directing and ordering that the appellants may be represented by counsel on the appeal and that the Boards are entitled on their behalf to retain counsel for purposes of the appeal.”*

42. Further justice *Blair J.A in Peterborough (City) v. Kawartha Native Housing Society Inc.*, 2009 para 8, also rejected the notion that the boards were required to first seek alternative outside funding:

*“Counsel for the City submitted that there were alternative sources of funding that should have been explored... I am not persuaded that there was any obligation on the part of the boards of the corporations to pursue funding from outside organizations.” paragraph 8*

43. This decision affirms the broader principle that boards in receivership retain the institutional authority to seek representation for legitimate governance and procedural purposes—and that courts may authorize payment of their legal fees from corporate funds where those expenditures are reasonable and advance the corporation’s interests.
44. Respectfully, the Board submits that continued access to independent legal representation is a necessary component of procedural fairness in this receivership process

#### PART IV – RELIEF SOUGHT

21. The Board respectfully requests that this Honourable Court issue an order:

- a. Authorizing the Receiver to pay \$30,809.08 in legal fees incurred by the Board of Directors to Betty’s Law Office from the Co-op’s market funds.*
- b. Authorizing the Receiver to approve and pay future legal fees incurred by the Board on a reasonable basis without further motion, subject to objection rights.*
- c. In the alternative, authorizing the Board to access Co-op market funds for the purpose of paying its legal fees and ensuring its continued representation.*
- d. Granting such further and other relief as this Court may deem just.*

**Date: May 26, 2025**

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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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