

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

Reply to City of Toronto's and Receiver Opposition Regarding Legal Fee Reimbursement

**PART 1: LEGAL CONTEXT AND ROLE OF THE BOARD UNDER THE  
HOUSING SERVICES ACT**

1. This Reply is submitted on behalf of Bettys Law Office representing the elected Board of Directors (“the Board”) of the Harry Sherman Crowe Housing Co-operative Inc. (“HSC” or “the Co-op”) in response to the Receiver’s and City of Toronto’s opposition to the Board’s motion for reimbursement of legal fees.
2. Betty’s Law Office was retained by the Board in 2022, prior to the receivership proceedings. Following the appointment of the Receiver, Betty’s Law Office continued to represent the Board as indicated in prior legal proceedings and documentations filed with the court. Betty’s Law Office played a critical role in the negotiations between the City and the Board of Harry Sherman Co-operative in reaching a consent agreement to appointment the receiver as well as the second extension of the receivership for an additional year. At no point was the issue of representation contested by the City or by the Receiver.
3. The *Ontario Housing Services Act*, 2011<sup>1</sup>, provides the legislative framework through which Ontario municipalities, as service managers, oversee subsidized housing providers. The Act empowers service managers to intervene when there is a failure to operate a housing project in accordance with legal and financial standards. Under **section 85(6)** of the HSA<sup>2</sup>, a service manager may appoint a receiver or receiver and manager, and under

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<sup>1</sup> Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1

<sup>2</sup> *Ibid*, s. 85(6)

**section 85(7)**<sup>3</sup>, may seek such an appointment through the Superior Court. The process requires that the party who is facing the application for receivership be entitled to legal representation.

4. It is respectfully submitted contrary to the arguments of the receiver its appointment does not dissolve the legal status of Harry Sherman's Board or its authority to represent the interests of its members. This is even more critical under the present circumstances where the intention in appointing a receiver was to assist in creating greater financial stability so that the Harry Sherman Co-operative could continue to manage its Co-op. Further there is no legal authority has been presented which extinguishes its governance rights.
5. The Board is not a symbolic body, it is the core governance mechanism of the Co-op. In a co-operative housing corporations, the Board of Directors is elected by the membership and is entrusted with managing the Co-op's affairs in accordance with its by-laws, the Co-operative Corporations Act, R.S.O. 1990, c. C.35 and its obligations under the Ontario Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1.. The Board ensures operational oversight, accountability to members, special programs for members, and compliance with service agreements and regulatory standards. It is the entity through which the Co-op exercises legal personality, enters contracts, and interfaces with service managers, tenants, funders, and the courts. The Board speaks for the Co-op's democratic membership and is uniquely positioned to safeguard resident interests during periods of external control such as receivership. Its ability to retain independent legal representation is not ancillary or optional but is essential to preserving the integrity of the Co-op's governance structure, ensuring transparent transition, and upholding the rule of law within a statutory framework that values both municipal oversight and community self-management.

## **PART II – RESPONSE TO KEY OPPOSITION ARGUMENTS**

### **A. The Board's Legal Representation Is Not "Personal"**

6. In response to paragraph 6, the Receiver submits that since it did not retain Betty's Law Office, the resulting legal fees are "personal" to the Board and thus not reimbursable. The Board of Directors is not an ad hoc or private entity, it is the core governance structure of the Co-op, elected by the membership and continued under **section 92 of the ("HSA")**,<sup>4</sup> **even during receivership. The Board's mandate is to act in the best interests of the Co-op as a whole, and its institutional authority is not extinguished by the appointment of a receiver. In fulfilling that mandate, the Board incurred legal costs not for self-interest, but to uphold governance continuity, procedural fairness, and member representation throughout the receivership.**
7. As held in *City of Peterborough v. Kawartha Native Housing Society Inc.*, 2009 ONSC (Court File No. 314/03), the Superior Court acknowledged that while boards of non-profit housing providers in receivership may face limitations, their directors may still incur organizational legal expenses where counsel was retained to engage with the court process,

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<sup>3</sup> *Housing Services Act, 2011*, s. 85(7).

<sup>4</sup> *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1, s. 92.

assist with governance matters, or respond meaningfully to the Receiver. **The court distinguished between legal counsel retained prior to the appointment of a receiver—which carries a presumption of validity as a corporate act—and counsel retained afterward, which may still be reimbursable where it serves institutional functions and is not frivolous or self-interested.** In that case, the court ultimately authorized partial reimbursement of legal fees from the organization’s funds, emphasizing that such costs were not personal, but incurred in service of the corporate and governance interests of the housing provider. The court expressly noted that “retaining legal counsel was not frivolous and vexatious” and that such submissions assisted the court in its oversight role (paras. 52–54, 85). By analogy, the Board’s actions in the present matter were institutional in nature and undertaken on behalf of the Co-op in circumstances where receivership threatened to displace its democratic structure and obligations to members.

8. In fact, in receivership proceedings, the elected governance body may continue to incur legitimate legal expenses where such costs are necessary to ensure lawful oversight, engage constructively with the Court and the Receiver, and maintain organizational accountability. These debts are not personal liabilities; they are institutional arising directly from the Board’s continuing statutory role under the HSA<sup>5</sup>, and specifically in the case at bar to have input as to how the Co-op existing receivership, processes and systems maintain overall stability and not just on the financial aspect.
9. In response to paragraph 8 of the Receiver’s materials, the receiver was aware prior to May 13, 2025, that Betty’s Law Office represented the Board. In fact, the agreements for appointment of the receiver were dependent upon the consent executed by Betty’s Law Office representing the legally elected Board of the Co-op. No issue was taken at the time by the receiver or by the City of Toronto.
10. In response to paragraph 25 of the Receiver’s materials, the Receiver suggests that the Board’s legal fees are personal in nature. However, to characterize these legal fees as “personal” is a misunderstanding as to how co-operative governance works. The Board acted within its legal mandate, sought legal advice to carry out its duties, and should not be penalized for doing so. These fees were incurred to protect the interests of the Co-op as a whole and should be treated as organizational expenses eligible for reimbursement from market housing funds.

## **B. Pre-Receivership Legal Fees Are Not Preferential Payments**

11. In response to paragraph 12 of its materials, the Receiver argues that the Board’s legal fees incurred before the receivership appointment are unsecured debts and that their payment would constitute a preference under **section 95 of the Bankruptcy and Insolvency Act** (“BIA”) or the **Assignment and Preferences Act** (“APA”) of Ontario. This objection misconceives both the nature of the legal services in question and the legal mechanism by which the Board now seeks reimbursement. The Board is not asserting a creditor claim, nor is it seeking priority treatment under a statutory distribution scheme. This motion is not brought under the BIA or the APA. Rather, it is brought under this Court’s **inherent**

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<sup>5</sup> Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1.

**equitable jurisdiction** in a court-supervised receivership. The relief sought is not directed at securing priority over other creditors, but at obtaining **judicial authorization** for reimbursement of necessary institutional expenditures which are necessary to ensure representation of the Co-op in these legal proceedings. More importantly, this request is for payments from non-subsidized Co-op funds, namely funds that are not subject to any express statutory trust or secured charge.

12. The jurisprudence is clear that courts in receivership proceedings **are courts of equity**, and within that framework, the Court may authorize payments where they are **reasonable, necessary to governance or administration, and in the overall interest of the estate and affected stakeholders**. Section 101 of the **Courts of Justice Act**, R.S.O. 1990, c. C.43, grants the Court broad authority to “make any order that appears to be just” in matters before it, including orders for interim relief, reimbursement, or disbursement.
13. The legal fees incurred by the Board were not gratuitous, duplicative, or adversarial. They were directed to matters of **governance stability, procedural compliance, and institutional risk** arising in the lead-up to receivership. These services included: responding to triggering event notices under the Housing Services Act, managing relations with the Service Manager, advising on internal complaints and membership rights, and preparing for the statutory obligations associated with AGMs and regulatory transitions.
14. These legal expenses arose in the ordinary course of the Board’s governance role under the **Housing Services Act**.<sup>6</sup> While section 85 of the HSA empowers service managers to seek receivership appointments, **no provision in the HSA extinguishes liabilities incurred in good faith prior to such an order**, particularly where the services rendered were responsive to regulatory duties and aimed at facilitating operational continuity. Section 92 of the HSA remains instructive in confirming the Board’s ongoing obligations until lawfully displaced.
15. It is respectfully submitted that the Board is not seeking a judgment, nor a declaration of priority. It is asking for the payment of legal fees which had been necessary for the Board to meet all the requirements mandated by the HSA. To characterize these legal fees as ‘preferential’ under section 95 of the BIA or the APA would be to ignore the context in which they were incurred. There is no evidence of any intent to prefer Betty’s Law Office over other creditors.
16. It is respectfully submitted that contrary to arguments of the receiver even where insolvency statutes apply, **section 95(1)** of the BIA only prohibits transfers made “with a view to giving that creditor a preference.” There is no such intent or outcome here. The legal services at bar were not obtained for the benefit of Betty’s Law Office, but to fulfill governance functions. They were incurred transparently, in good faith, and before the appointment of the Receiver.
17. In conclusion, this motion does not offend any statutory prohibition, nor does it undermine the orderly distribution of the estate. Rather, it invokes the Court’s equitable jurisdiction.

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<sup>6</sup> Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1, s. 85(6).

### **C. Ongoing Representation Is Essential For Transition**

18. In Response to paragraph 20, the Receiver questions the utility of continuing legal representation for the Board and expresses concern about the impact of legal fees on the Co-op's working capital. It further notes that it has never retained Betty's Law Office and is unclear whether the retainer originated from the Board as a whole or from individual members. These concerns reflect a misunderstanding of the purpose and necessity of the Board's legal representation during the ongoing receivership transition.
19. Continued legal representation is essential to this participation. The Receiver has acknowledged engaging stakeholders in shaping the Co-op's future governance. The Board, as the institutional voice of those stakeholders, requires legal support to engage in that dialogue effectively and lawfully, particularly in interpreting court orders, responding to timelines, and ensuring that the process reflects both procedural fairness and the values of Harry Sherman co-operative.
20. The City takes the position on paragraph 19-20 that the Receiver and its counsel's fees are justified as a "cost of remedy" under the appointment order and notes that those fees have been fully funded by the City. It simultaneously argues that the Board's fees, if paid from Co-op funds, would "compromise the Co-op's working capital." This is a double standard. The Board is not an outsider; it is part of the governance framework that pre-dated the receivership and is the only structure that maintains continuity with the Co-op's membership. Legal expenses incurred by the Board are just as critical to the transition process as those of the Receiver especially where the Receiver is restructuring democratic oversight.
21. There is no evidence that Betty's Law Office is acting on behalf of individual Board members or pursuing personal interests. All work performed has been in response to institutional issues raised by the Receiver and the City, including triggering event notices, the transition of governance, the handling of membership and complaint processes, and participation in court-supervised proceedings. This is not private advocacy, it is public-interest legal support within the statutory housing framework.
22. Continued representation ensures that the transition process is not unilaterally controlled, permits affected parties can be heard, and the legal integrity of the Co-op is maintained. This is not an abstract entitlement; it is a functional necessity in a transitional governance context. To deny the Board's access to legal representation while affirming that of the Receiver is to silence the only voice elected by the residents, the very people the housing framework is meant to protect.

### **D. The Receivership Order Confirms Institutional Legal Authority: The City's Position is Internally Contradictory**

23. The City of Toronto's position that Betty's Law Office was retained in a "personal" capacity by members of the Board is directly contradicted by the Receivership Order of this Court, dated March 14, 2023, which governs the structure, powers, and obligations of the Receiver and the Co-op. Nowhere in that Order does the Court extinguish the institutional character of the Board of Directors. In fact, the Order confirms that the Board

continues to exist, subject to non-interference, and retains specific statutory obligations under the Housing Services Act, 2011<sup>7</sup>

24. The Receivership Order authorizes the Receiver to retain legal counsel under section 2(d) and to initiate or defend legal proceedings under section 2(i), all as part of its mandate to stabilize the Co-op.<sup>8</sup> Those legal fees are routinely paid from Co-op funds. By contrast, the Board's use of legal counsel to comply with triggering event notices, participate in governance restructuring, and protect member interests was a necessity. The argument presented is inconsistent with the structure of co-operative governance and the Receivership Order itself, which preserves the legal identity of the Board and its statutory functions under the Housing Services Act, 2011.<sup>9</sup> The selective recognition of authority — legal for the Receiver but “personal” for the Board — undermines the principle of equitable participation and misrepresents the legal framework under which both entities operate.

### **PART III – CONCLUSION AND RELIEF SOUGHT**

25. The legal fees incurred by the Board were not personal expenses, but necessary instruments to preserve democratic participation, transparency, and fairness within a complex receivership.
26. The Board respectfully requests an order:
- i. Authorizing the payment of \$30,809.08 in legal fees to Betty's Law Office from market funds currently under the Receiver's control;
  - ii. Authorizing the Receiver to approve future reasonable legal fees incurred by the Board without further motion, subject to oversight; and
  - iii. Such further relief as this Honourable Court may deem just.

All of which is respectfully submitted this 21<sup>st</sup> day of May 2025.

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<sup>7</sup> *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1.

<sup>8</sup> *Ibid.*, at s. 2(i).

<sup>9</sup> *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1.

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BETWEEN

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(Applicant)

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**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT TORONTO**

**REPLY**

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