

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

**BETWEEN:**

**CITY OF TORONTO**

Applicant

and

**HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.**

Respondent

**SUPPLEMENTARY APPLICATION RECORD  
of the CITY OF TORONTO**

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

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**I N D E X**

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# TAB 1

ONTARIO  
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**BETWEEN:**

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and

**HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC**

Respondent

**REPLY AFFIDAVIT of Julie Western Set  
(Sworn January 16, 2023)**

I, Julie Western Set, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. As set out in my Affidavit, sworn on November 10, 2022 (the “JWS November Affidavit”), I am the Manager of Housing & Tenant Supports of the City of Toronto’s Housing Stability Services Unit (the “HSS”). My credentials remain unchanged from those set out in paragraphs 1 through 7 of the JWS November Affidavit.
2. I have reviewed the Affidavit of Ms. Rosell Kerr, sworn on December 21, 2022 (the “Kerr Affidavit”) and have prepared this Affidavit to reply to issues that the Respondent has raised.
3. This Affidavit will speak to the following issues to provide additional clarity and context:
  - a. The roles and responsibilities of the Applicant City of Toronto, as Service Manager, (the “City” or “Service Manager”) and the Respondent Harry Sherman Crowe Housing Co-operative Inc. (“Harry Sherman” or the “Housing Provider”), under the governing legislation;

- b. The nature and character of the Service Manager’s engagement with the housing provider and its Board, understood in that context; and
  - c. The evidence presented in the Kerr Affidavit about the certain aspects of the Housing Provider’s finances, expenses, and operations that illustrate how the appointment of a receiver and manager will be a positive step and will increase the likelihood that the Housing Provider’s operations and finances will be regularized over time.
4. These three issues are related. In speaking to them, I will endeavor to respond to those aspects of the Kerr Affidavit relevant to the Court’s consideration of the Application before it.

**(A) HOUSING PROVIDERS AND SERVICE MANAGERS – ROLES AND RESPONSIBILITIES**

5. The JWS November Affidavit describes how housing providers such as Harry Sherman – a self governing co-operative housing corporation incorporated pursuant to, and governed by, the *Co-operative Corporations Act*, RSO 1990, c. C5 (the “CCA”) – are persons who operate housing projects in Ontario at paragraphs 3 and 4. Housing providers such as Harry Sherman are also governed by, and must conduct their affairs in keeping with, the provisions of the *Housing Services Act, 2011*, SO 2011, c.6, Sch 1, as amended (the “HSA”). Housing provider obligations prescribed by statute include:
  - Ensuring that the housing project is both well managed and maintained in a satisfactory state fit for occupancy;
  - Collecting rent and administering leases;
  - Providing required and necessary information to their service manager; and
  - Preparing and following such plans relating to the governance and/or operation of the housing project as may be required.
6. The JWS November Affidavit, at paragraphs 3 and 4, also describes how service managers are responsible for administering/monitoring and funding housing provider organizations and their designated housing projects. The manner in which housing provider funding is

administered by Service Managers is governed by a funding formula, and within a funding framework, prescribed by the HSA. This funding framework is outlined at paragraphs 14 through 21 of the JWS November Affidavit.

7. Understanding this funding formula and framework is critical to understanding the roles and responsibilities of service managers and housing providers.
8. The operating subsidy that Service Managers distribute to housing providers is designed to cover gaps that may exist in any given fiscal year between indexed and benchmarked revenues and operating costs.
9. Housing providers must therefore discharge their duties to manage housing projects well and to maintain housing projects in a satisfactory state fit for occupancy **by using those provincially indexed and benchmarked values as targets they must strive to meet - in respect of the costs they can budget for in any given year, and the revenue they must aim to generate.**
10. The exercise of managing a housing project is one that, by its nature, requires the housing provider Board to evaluate the needs of their members and to plan and prioritize how to achieve those objectives over time and in a fiscally responsible fashion.
11. Throughout the Kerr Affidavit, reference is made to operational costs that the housing provider has incurred over the past several years to make improvements to the housing project. These projects and their associated costs include improvements the Kerr Affidavit describes making: installing additional security cameras, making improvements to the housing project's laundry room, improving the landscaping at the property, retaining a new company to maintain and clean the housing project, undertaking electrical work at the

property, retaining a “renovation company” who “comes with a certified plumber”, and making improvements to certain units within the housing project complex.

12. To the extent the Kerr Affidavit is presenting these list of operational expenses as costs that the City, in its capacity as Service Manager, should fund, and to the extent the Kerr Affidavit suggests that not funding these expenses is evidence of the City not supporting Harry Sherman, such suggestions fail to appreciate the following: to the extent service managers can provide support and guidance to their housing providers in respect of their financial position that support and guidance is constrained by the tools that they can avail themselves of under the HSA. Those tools contemplate services manager engaging with housing providers in 3 ways:

- (i) **Monitoring**: service managers monitor the financial position of housing providers. This monitoring exercise is predicated on the financial information the HSA requires housing providers to share with services managers.
- (ii) **Notification and Direction**: When circumstances arise that indicate housing providers are facing challenges managing the housing projects they are responsible for, the HSA empowers service managers to provide housing providers notice of issues and direction as to how any identified issues might be addressed – the HSA's Notice of Triggering Event process.
- (iii) **The Exercise of Statutory Remedies**: When a Triggering Event has occurred and persists, despite a housing provider receiving notice of the triggering event(s) and the steps that must be taken to address it (them), the statute authorizes service managers to take any of a number of enumerated remedial enforcement actions to ensure the identified triggering events are addressed.

13. Service managers are not required to provide any funding for specific improvement projects that housing providers and their Boards choose to undertake. Service managers are not required to provide funding outside of the funding that must be provided within the context of the HSA framework, outlined above. To illustrate that point, one need only turn



one's attention to section 84 of the HSA. Section 84 provides how, in circumstances where a service manager becomes aware of situations which might give rise to a triggering event, they can use reasonable efforts to assist the housing provider to deal with the situation. However, section 84 expressly provides how this **“does not require the service manager to do anything that would require the expenditure of funds.”**

**(B) THE NATURE AND CHARACTER OF THE CITY'S INTERACTIONS WITH HARRY SHERMAN**

14. A review of the interactions between the City and Harry Sherman that are set out in detail in the JWS November Affidavit reveals how the City used the monitoring and notification tools the HSA provides for to assist and support Harry Sherman as best it could.
15. In its written and oral communications with the housing provider, the City made every effort to highlight how, based on the financial information available to it, the housing provider was required to evaluate the various issues it was facing and develop a financial plan which would allow it to prioritize any operating expenses and/or capital projects that it felt had to be undertaken. Any such plan would be reviewed, and feedback would be provided to Harry Sherman, with an eye to ensuring that its year-over-year spending would be brought in line with the indexed and benchmarked operational costs and expenses the province establishes as guidelines.
16. Though we do not propose to restate all of the ways in which the Service Manager patiently engaged with Harry Sherman in its good faith efforts to help the housing provider address the operational issues that had been identified and its deteriorating financial position that are set out in the JWS November Affidavit, brief highlights include:

- Service Manager staff engaged with Harry Sherman in the context of a standard operational and Rent-Geared-to-Income (“RGI”) review, initiated in November 2019 (see the JWS November Affidavit, at paragraphs 33 through 43).
- Service Manager staff engaged with Harry Sherman in the context of discussion and meetings held in 2020 that were aimed at gaining some insight into how the housing provider responded to maintenance work orders and how it planned to deal with larger scale capital repairs (see the JWS November Affidavit, at paragraphs 44 through 46).
- In the spring and early summer of 2020, the Service Manager received a request that it provide the housing provider with a \$120,000 advance on its 2021 subsidy payment. This \$120,000 advance is referenced at paragraph 36 of the Kerr Affidavit. The Service Manager provided the housing provider with this advance, and deferred repayment of the amounts until December 2020 (when a \$60,000 repayment became due), January 2021 (when a \$30,000 repayment became due), and February 2021 (when the remaining \$30,000 repayment became due). The Service Manager was prepared to consider deferring repayment of this advance further, but in order to do so it required that Harry Sherman furnish it with certain financial information, including information about the housing provider’s current cash position, updated audited financial statements, and an outline of the measures the Board intended to put in place to improve its corporate cash flow position and overall financial situation. That information was not provided and so the Service Manager could not consider deferring repayment any further.
- Service Manager staff engaged with Harry Sherman in October 2020, flagging issues that had come to its attention regarding the operations and the finances of the housing provider. They also provided the housing provider with direction that spending controls and a financial plan be established to deal with the issues facing it (see the JWS November Affidavit, at paragraphs 64 through 84).
- Service Manager staff engaged with Harry Sherman through the triggering event process contemplated and provided for by the HSA. The Notice of Triggering Events was issued on March 29, 2021. Subsequent to its issuance, City staff attempted to work with Harry Sherman, reaching out to them on various occasions over the next year, culminating in correspondence delivered on March 31, 2022 (see the JWS November Affidavit, at paragraphs 83).

17. When viewed in the context of the Service Manager’s statutory role, and the limits on the nature and scope of the funding it could provide, the bald allegations made throughout the Kerr Affidavit – that the City of Toronto provided it with no support, the Service Manager adopted an oppressive and punitive approach in its dealings with Harry Sherman, and that the cumulative decisions by the City destroyed the Harry Sherman community – are

inaccurate and unfair given the efforts of the Service Manager and its staff to help the Housing Provider and its members.

**(C) THE EVIDENCE PRESENTED IN THE KERR AFFIDAVIT SUGGESTS THAT THE APPOINTMENT OF A RECEIVER AND MANAGER IS WARRANTED IN THE CIRCUMSTANCES**

18. There are specific passages in, and aspects of, the Kerr Affidavit that re-enforce the Service Manager's concerns about the continued operation of the Housing Provider and the appropriateness of the Service Manager's decision to seek the appointment of a Receiver.
19. The passages in question evidence: (i) a lack of precision and/or familiarity in respect of the Housing Provider's financial position; (ii) a lack of familiarity with the HSA's funding framework and the type of plan that the Housing Provider needs to put in place and implement in order to diagnose the issues Harry Sherman faces and formulate what needs to be done to address them; and (iii) a lack of detail and attention in respect of the preparation of the requisite operational and RGI policy documents, which remain deficient.
20. At paragraphs 11, 26, and at various other points in the Kerr Affidavit, reference is made to a fraud that Harry Sherman experienced.
21. As a preliminary matter, I am advised by my staff and believe that at no time did the Service Manager suggest that any member of the Housing Provider's Board was implicated in the described fraud, contrary to any suggestion that may be implied or expressed in the Kerr Affidavit. To the extent staff could provide some guidance to the housing provider, in terms of how to deal with the described fraud, it was to contact the police. The police service is the municipal body best situated to investigate the matter and furnish the Board with what it may require to pursue relief – from their financial institution or from the individuals who perpetrated the fraud.

22. The Service Manager has noted that the Kerr Affidavit describes the Housing Provider having faced a “massive fraud in the sum of \$230,000” that left it with “only \$23” to meet the Co-op’s financial obligations. This account of the scope of the fraud is inconsistent with the information that Harry Sherman provided to the City in its 2019, 2020, and 2021, audited financial statements. Based on my review of those audited financial statements, which were prepared by a professional auditor and reviewed and signed by members of the housing provider’s Board:

- In the 2019 audited financial statement, at Note 14, the auditor stated: “In July 2019, the Co-operative was victimized by a series of unauthorized EFT withdrawals from its current account totalling \$158,333. The financial institution is [was] currently [at the time] conducting an investigation and a resolution had not been reached as of the date of this audit.” (see the JWS November Affidavit, at Exhibit “H”).
- The 2020 audited financial statement updates Note 14, which stated: “Although some funds were recovered, \$149,144 is still [were] outstanding. The co-operative continues [was continuing] to explore alternatives in its attempt to recover this balance.” (see the JWS November Affidavit, at Exhibit “O”). This information remain unchanged in 2021.

23. At paragraph 28 of the Kerr Affidavit, the housing provider describes how it faced significant challenges in 2020 and 2021 in respect of their members ability to pay rent that were novel and related to the pandemic and its effects. The Service Manager notes that this statement does not align with the audited financial statements that were provided to the City of Toronto between 2019 and 2021. These financial statements, found at Exhibits “H”, “O”, and “W” of the JWS November Affidavit suggest that the revenue the housing provider saw from Market and Geared-to-Income rent between 2018 and 2021 remained relatively stable, as set out in the below excerpts from the Statements of Revenue and Expenditure provided:

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

For the year ending June 30, 2019

	(NOTE 10) 2018/19 BUDGET	2019	2018
<b>REVENUE</b>			
Housing charges			
Market	\$ 963,635	\$ 998,507	\$ 947,989
Geared-to-income	1,199,688	343,948	357,794
City of Toronto subsidy, NOTE 5			
Operating subsidy	571,764	571,701	624,708
Property tax subsidy	145,649	157,138	147,316
Rent geared-to-income subsidy	<u>0</u>	<u>817,216</u>	<u>819,559</u>
	2,880,736	2,888,510	2,897,366
Non occupancy charges, NOTE 9	132,908	148,441	140,476
S.H.R.R.P. grant	52,920	52,920	52,920
Vacancy loss on market units	<u>(20,000)</u>	<u>(18,276)</u>	<u>(10,096)</u>
<b>TOTAL REVENUE</b>	<u><b>3,046,564</b></u>	<u><b>3,071,595</b></u>	<u><b>3,080,666</b></u>

STATEMENT OF REVENUE AND EXPENDITURE

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

For the year ending June 30, 2020

	(NOTE 10) 2019/20 BUDGET	2020	2019
<b>REVENUE</b>			
Housing charges			
Market	\$ 973,188	\$ 1,011,627	\$ 998,507
Geared-to-income	1,225,344	334,337	343,948
City of Toronto subsidy, NOTE 5			
Operating subsidy	571,764	530,013	571,701
Property tax subsidy	155,231	169,271	157,138
Rent geared-to-income subsidy	<u>0</u>	<u>847,231</u>	<u>817,216</u>
	2,925,527	2,892,479	2,888,510
Non occupancy charges, NOTE 9	143,200	142,174	148,441
S.H.R.R.P. grant	52,920	52,920	52,920
Vacancy loss on market units	<u>(20,000)</u>	<u>(5,295)</u>	<u>(18,276)</u>
<b>TOTAL REVENUE</b>	<u><b>3,101,647</b></u>	<u><b>3,082,278</b></u>	<u><b>3,071,595</b></u>

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

For the year ending June 30, 2021

	(NOTE 10) 2020/21 BUDGET	2021	2020
<b>REVENUE</b>			
Housing charges			
Market	\$ 1,027,584	\$ 1,039,080	\$ 1,011,627
Geared-to-income	1,215,365	410,108	334,337
City of Toronto subsidy, NOTE 5			
Operating subsidy	530,013	525,149	530,013
Property tax subsidy	162,093	174,252	169,271
Rent geared-to-income subsidy	0	792,376	847,231
	<u>2,935,055</u>	<u>2,940,965</u>	<u>2,892,479</u>
Non occupancy charges, NOTE 9	153,314	107,896	142,174
S.H.R.R.P. grant	0	52,915	52,920
Vacancy loss on market units	<u>(10,596)</u>	<u>(12,047)</u>	<u>(5,295)</u>
<b>TOTAL REVENUE</b>	<u><b>3,077,773</b></u>	<u><b>3,089,729</b></u>	<u><b>3,082,278</b></u>

24. Paragraphs 53 and 55 of the Kerr Affidavit make reference to efforts made by Harry Sherman to: (i) adjust the rate at which it proposes to repay its existing mortgage; and (ii) to approach the municipality with a request to reduce the property taxes that its landlords are obligated to remit.

25. To the extent these steps are being taken to address the financial difficulties the housing provider faces, they exhibit a failure to understand the HSA funding model. As set out at paragraphs 14 through 20 of the JWS November Affidavit, and as the governing legislation make clear, any property taxes that a housing provider pays are fully subsidized by the service manager, as are the principal and interest payments on any mortgage they may have. These efforts to engage with the mortgagor and the municipality would not have any impact on the underlying, critical concern the Service Manager has identified regarding the housing provider's finances – that there is no plan in place to prioritize the co-op's expenses and manage its budget year-over-year.

26. The Service Manager has had the opportunity to review the document attached as Exhibit "M" to the Kerr Affidavit. This document purports to be a budget for the six-month

window between December 2022 and June 2023. This document is not helpful, as it is provided without any context. The housing provider has failed to provide audited financial statements for the 2022 fiscal year and its 2022 Annual Information Return, in contravention of its obligations under the governing legislation. In the absence of any information about the actual revenues and expenses that Harry Sherman generated and had to cover for 2022, any budget document presented in respect of the 2023 fiscal year cannot form the foundation of a viable financial plan that might serve to address the Housing Provider’s worsening financial position.

27. The Service Manager has also reviewed the Internal Transfer, Occupancy Agreement, and RGI Process policy and practice documents that Harry Sherman has referenced at paragraphs 31, 34, and 35, and provided at Exhibits "G", "H", and "I", of the Kerr Affidavit. It has identified that these documents remain deficient, for the reasons identified in the below table:

Practice/Policy	Identified Issues
Internal Transfer Policy	<ul style="list-style-type: none"> <li>• The “internal by-law” and “occupancy by-law” are referenced in the transfer policy document, but have not been provided, so it is difficult to assess the internal consistency of the document.</li> <li>• The policy does not distinguish between market and RGI transfers. The HSA imposes different requirements on RGI households, and so this distinction must be accounted for.</li> <li>• The policy does not mention Special Priority Program (“SPP”) households.</li> <li>• The policy does not specify how over-housed households are added to the internal transfer list.</li> <li>• The policy is undated and unsigned, so it is unclear if the policy document has been reviewed and approved by the Board.</li> <li>• Finally, an unsigned “Housing Services Act” by-law is attached at Exhibit “J” to the Kerr Affidavit. This by-law document also makes reference to internal transfers. This raises the question of which policy document – if both are approved – would take precedence.</li> </ul>

Occupancy Agreement	<ul style="list-style-type: none"> <li>• The form of agreement provided includes/incorporates Schedule A, and Appendices A, B, and C, of one version of the model Occupancy Agreement document Co-op sector organizations have published as reference documents that Co-ops can use.</li> <li>• It does not include Appendix D, Special Needs Unit Terms; Schedule B, Long-term Guest Agreement; and Schedule C, Sub-Occupancy Agreement. It is unclear why these aspects of the template document, especially Schedule B, were excluded.</li> <li>• The full form of the agreement has not been provided.</li> <li>• As with the Internal Transfer Policy, the “Housing Services Act” by-law attached at Exhibit “J” also includes a form of Occupancy Agreement, and so it is unclear – if both are approved – which policy document to take precedence.</li> </ul>
RGI Process Policy	<ul style="list-style-type: none"> <li>• Our review of the document provided indicates that all the dates referenced in the RGI process are not current (they reference 2019 and 2020), so it is not possible to assess whether the dates and timeframes set out in the policy are reasonable.</li> <li>• The process document is undated, and unsigned, so it is unclear whether this is the most up-to-date, Board approved document.</li> <li>• There is no reference within the document itself to the decision the process contemplates being made being implemented.</li> </ul>

28. Separate and apart from my discussion of the three broad issues, above, I address two additional points raised by the Respondent in the Kerr Affidavit that warrant comment:

- At paragraphs 48 and 49, the Kerr Affidavit states that the City acted in bad faith in May of 2022 when it exercised its authority to appoint RSM Canada Limited (“RSM”) as receiver and manager over the housing provider (as described in paragraphs 87 through 91 of the JWS November Affidavit). Harry Sherman points to the fact that the City entered into a Receivership Services Agreement with RSM in April 2022, before the May 9, 2022, deadline it had provided to the housing provider to respond to its March 31, 2022, correspondence. The City notes that the March 31, 2022, correspondence was, itself, one of a series of follow-ups to the March 29, 2021, Notice of Triggering Events (“NTE”) that Harry Sherman was served with. The City did not decide to appoint RSM before it received, reviewed, and considered Harry Sherman’s response to the Notice of Triggering Events and the most recent March 31, 2022, follow-up. However, given how over a year had passed since the issuance of the NTE, the Service Manager thought it appropriate to have a receiver and manager at the ready, in the event it had to exercise its remedies under the HSA. This is not evidence of the Service Manager pre-



determining whether it would exercise any HSA remedy. It is evidence of the Service Manager exercising due diligence and exhibiting good practice, so that if circumstances warranted the exercise of a remedy, the situation that warranted that such steps be taken would not persist longer than necessary.

- At paragraph 41 of the Kerr Affidavit, referenced is made to an application the housing provider describes making for funding made available through the Canada-Ontario Community Housing Initiative (“COCHI”). This COCHI funding opportunity is separate and distinct from the funding the Service Manager is responsible for under the HSA.

SWORN before me )  
at the City of Toronto, )  
in the Province of Ontario, on )  
this 16<sup>th</sup> day of January, 2023. )



\_\_\_\_\_)  
Mark Siboni )  
A Commissioner for taking Affidavits )



\_\_\_\_\_) Julie Western Set

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*(Respondent)*

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto

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**REPLY AFFIDAVIT OF JULIE WESTERN SET**  
**(Sworn on January 16, 2023)**

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*(Applicant)*

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
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