

CITATION: City of Toronto v. Harry Sherman Crowe Housing
Co-Operative Inc., 2025 ONSC 3908

COURT FILE NO.: CV-22-00688248-00CL

DATE: 20250630

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: CITY OF TORONTO

Applicant

AND:

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent

BEFORE: KIMMEL J.

COUNSEL: *Mark Siboni*, for the Applicant

Philip Cho & Wojtek Jaskiewicz, for the Receiver TDB Restructuring Limited

Courtney Betty, for the Elected Board of Directors of the Harry Sherman Crowe
Housing Co-Operative Inc.

HEARD: June 20, 2025

ENDORSEMENT
(RECEIVER’S MOTION FOR DIRECTIONS, APPROVAL
OF FEES AND ACTIVITIES AND PROPOSED RFEIQ PROCESS)

Procedural Context

[1] The City of Toronto (“Toronto” or the “City”) brought an Application to appoint a Receiver and Manager over the property, assets and undertaking of Harry Sherman Crowe Housing Co-operative Inc. (the “Co-op”) pursuant to, and in accordance with the provisions of the *Housing Services Act, 2011*, S.O. 2011, c. 6, Schedule I (the “HSA” or the “Act”). The receivership application was brought because the City (the designated service manager of the Co-op under the HSA) determined that the Co-op was experiencing challenges with respect to its operations and the administration of its Rent-Geared-to-Income (“RGI”) portfolio. The City also identified issues with the Co-op's financial position and its governance structures and practices.

[2] These challenges and issues were among the triggering events that were detailed in a March 29, 2021 letter from the City to the Board of the Co-op setting out alleged contraventions of the HSA and regulations thereunder. These included the failure to adopt adequate policies and

procedures, inadequate management and governance, and operational failures involving financial management and controls. This letter also set out what the City expected the Board to do in the short and longer term to remedy these concerns. The City was ultimately not satisfied with the Board's response to this letter, and sought the appointment of the Receiver.

[3] Since the Receiver was appointed by order of this court on March 14, 2023 (the "Appointment Order"), the individuals who comprised the elected members of the board of directors of the Co-op prior to the appointment of the Receiver (the "Board") have participated in the receivership proceedings through their independently appointed legal counsel. They have eventually agreed to some or all of the relief sought by the City and/or the Receiver over the course of these proceedings. However, the Board has typically objected initially and filed materials in opposition to most requests for relief that have come before the court since these proceedings were initiated. In some instances, their objections have resulted in refinements or changes to the orders sought.

[4] While this motion by the Receiver (described below) was pending (it was originally returnable on May 13, 2025), the Board purported to call an annual general meeting ("AGM") on Saturday, May 10, 2025, that was adjourned to Saturday, May 17, 2025, at which the current elected members of the Board proposed to set in motion a process for the election of new directors to the Board. In the meantime, the Board requested an adjournment of the Receiver's motion to afford it time to respond to it and to seek approval for the payment of its past and continuing legal fees (the "Board Legal Fees Motion"). The court concluded that it would be prepared to grant a brief adjournment of the Receiver's motion to allow the Board Legal Fees Motion to be heard, on the condition that the current Board not proceed with the AGM or any other meetings of the members of the Co-op until after the Receiver's motion (this motion) had come back before the court and been determined.

[5] The court's decision on the Board Legal Fees Motion was released on June 3, 2025.

The Present Motion

[6] The Receiver's present motion seeks an order:

- a. Approving the Second Annual Court Report dated April 30, 2025 (the "Second Report") and the First, Second and Third Supplemental Reports thereto dated May 8, 16 and June 20, 2025 respectively (the "Supplemental Reports"), including its Fourth, Fifth and Sixth Quarterly Reports (the "Quarterly Reports") setting out the Receiver's activities from April 23, 2024 to December 17, 2024 (the "Quarterly Reports"), and the activities and conduct of the Receiver described in all of these Reports (collectively, the "Reports");
- b. Approving a process for requesting expressions of interest and qualifications to serve as Members of the board of directors of the Co-op as described in the Receiver's Second Report (the "RFEIQ Process"); and,

- c. Approving the interim fees and disbursements of the Receiver and its counsel, as set out in the Affidavit of Arif Dhanani and the Affidavit of Philip Cho (the "Fee Affidavits").

[7] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Receiver's Second Report.

[8] The Board initially opposed all of the relief sought by the Receiver. After cross examining the Receiver's counsel and after delivering its factum in opposition to this motion on June 19, 2025, the Board withdrew its objections to the Receiver's request for approval of its fees and the fees of its counsel at the hearing on June 20, 2025, leaving that approval to the court to determine. At the same time, the Board also withdrew its objection to the approval of the Reports and the activities and conduct of the Receiver described therein, except insofar as they relate to the approval of the RFEIQ process.

[9] Even though the Board eventually withdrew its opposition, the court must be satisfied that the approval of the Receiver's fees; the fees of its counsel; and of the Reports and the activities and conduct of the Receiver described therein are appropriate. Those aspects of the Receiver's motion will be addressed first, followed by the request for approval of the RFEIQ process that the Board continues to oppose. To preview that aspect of the motion, and for the reasons that follow, the proposed RFEIQ process is approved in part, with the expectation that there will be a report from the Receiver to the court before the end of this year.

Approval of Fees, Reports Activities and Conduct

[10] All of the Receiver's activities set out in its Reports were conducted within the ambit of its powers as granted by the Appointment Order, and in furtherance of the objectives of this appointment and the HSA. The approval of the Reports and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders.

[11] The statement of receipts and disbursements appears to be in order. While there were some initial concerns raised by the Board about certain of the disbursements in this year compared to the prior year, those appear to have been the result of a misunderstanding about the cumulative nature of this statement.

[12] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner. This provides certainty for the Receiver and stakeholders, and provides an opportunity to address any problems. This approval falls within the court's inherent jurisdiction: see *Target Canada Co. (Re)*, 2015 ONSC 7574, 31 C.B.R. (6th) 311, at paras. 22-23; *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882, at para. 27.

[13] I am satisfied that the Receiver's activities have been conducted in a prudent and diligent manner and, as noted above, in accordance with its mandate under the Appointment Order and the objectives of the HSA. The Reports and the Receiver's activities and conduct described in them

are approved, excluding only the proposed RFEIQ process the approval of which is discussed in the next section of this endorsement.

[14] The professional fees and disbursements claimed for the Receiver and its counsel are supported by Fee Affidavits and reflect the nature of the work that has been done, the complications and difficulties encountered, and include detailed time descriptions of the work performed. The fees are commensurate with the tasks performed and the Receiver considers the fees and hourly rates to be reasonable and within the range of comparable market rates: see *Confectionately Yours Inc. (Re)* (2002), 219 D.L.R. (4th) 72 (Ont. C.A.), at paras. 40, 45.

[15] The total professional fees were understandably higher in the second year than the first year of this receivership because most of the court attendances are covered by the second year's fees and some of the issues required specialized professional input: ranging from corporate and governance, construction, landlord and tenant, insolvency, and general litigation. Given all that they were contending with, the professionals appear to have staffed the file in a manner commensurate with the issues involved, and to have involved juniors at lower hourly rates when appropriate. Importantly, the City is paying the fees of the Receiver and its counsel directly, they are not being paid out of the operating funds of the Co-op, and the City supports the Receiver's request for this fee approval.

[16] I find the fees of the Receiver and its counsel to be fair, reasonable and justified in the circumstances and having regard to relevant factors: see *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, 20 C.B.R. (6th) 292, at paras. 33, 44-45.

[17] The Receiver owes duties to all relevant stakeholders. One of its duties is to provide an annual report. The Receiver's first annual report was presented to the court on April 29, 2024 (the "Receiver's First Report - Approval Motion"), at which time the First Report, the Receiver's activities described in it and its fees and disbursements were approved. The court's endorsement on that motion dated April 29, 2024 (the "April 2024 Endorsement") observed that, after the first year, progress has been, and continued to be, made to stabilize the Co-op's finances, governance and physical condition.

[18] The continued progress made in this regard is detailed in the Receiver's Second Report and Quarterly Reports and summarized at paragraph 7 of the Receiver's factum on this motion. The work has been extensive and wide ranging. The Receiver has generally stabilized operations of the Co-op with the assistance of the property manager that it hired, Community First Developments Inc. ("CFDI"). In the course of its mandate, CFDI has made recommendations and undertaken some work to address certain of the triggering events.

[19] As was noted at the time of the court's approval of the Receiver's First Annual Report, and remains the case now as approval of the Second Annual Report is sought, the Receiver continues to work with the service manager (the City), the property manager, the Co-op and other stakeholders to ensure the Co-op is operating in a manner consistent with the HSA. The Receiver has also worked on a number of capital projects that are detailed in its Second Report and Appendix J thereto.

[20] I do wish to make an observation regarding some of the stated grounds of objection by the Board to the approval of the Receiver's activities and fees, even though their objections were eventually withdrawn. The objections were, at least in part, premised on an argument that the Receiver should have to show some measurable connection between the work it has been doing and the physical state of the Co-op and its facilities. One area of criticism is that there are still problems and ongoing complaints being made to Toronto 311.

[21] While the Receiver has focused some of its attention on urgent repair, capital improvements and maintenance work regarding the physical facilities, it is not realistic in the circumstances of this case to expect that the Receiver would be able to resolve all concerns regarding the finances, governance and physical condition of the Co-op since its appointment. The Second Report is detailed and demonstrates the breadth of issues that had to be attended to and prioritized. In its Third Supplement to the Second Report, the Receiver has addressed the concerns noted in the log of Toronto 311 calls (after noting its evidentiary objection to the introduction of those call logs), many of which relate to problems pre-dating the Appointment Order, and some of which have been addressed.

[22] The Receiver's counsel was also understandably concerned about some of the other criticisms raised against the conduct of the Receiver and its counsel in the Board's opposition to these approvals, even though that opposition was ultimately withdrawn, specifically arguments suggesting that:

- a. the Receiver and its counsel were milking this mandate for their fees;
- b. the Receiver and its counsel had misrepresented facts and misled the court; and
- c. the Receiver was acting with *mala fides* towards the Board.

[23] In the court's last endorsement, the Board was invited to direct questions they had about the Receiver's Reports and activities in writing to the Receiver, but they declined to do so. Instead, they read the Reports, interpreted them, and raised arguments based on their own interpretations and views about how the Receiver and its counsel should be conducting themselves. These accusations (examples of which can be found throughout the Factum filed on behalf of the Board and the supporting affidavit of Rosell Kerr sworn June 6, 2025) have not been substantiated and are denied by the Receiver and its counsel.

[24] The Receiver and its counsel are officers of the court. Criticisms against them are a serious matter. These types of attacks on court officers made without evidentiary foundation can be subject to sanctions, such as costs: see *Kaptor Financial Inc. et al v. SF Partnership, LLP et al*, 2016 ONSC 6607, 41 CBR (6th) 262, at para 7. No sanction is being sought at this time, but it was appropriate for the Receiver to point out the many unfounded criticisms and accusations. This has been duly noted by the court.

Approval of Proposed RFEIQ Process

The Proposed RFEIQ Process

[25] The Receiver's proposed process for Requests of Expressions of Interest and Qualifications ("RFEIQ Process") is described as a preliminary process for: (i) engaging with the membership of the Co-op, soliciting expressions of interest and qualifications from members to serve on the board of directors (the "Board") with a view to developing a transition plan for return of management of the Co-op and out of the Receivership, and (ii) formulating a recommendation to the Court as the viability of the Housing Project continuing to operate within the co-operative housing model.

[26] The proposed RFEIQ Process has been developed by the Receiver in consultation with the City. It has three phases (described in the Second Report) projected to take place over the next 9 months, so that the final report to the court would coincide with the Receiver's Third Annual Report to the court in April 2026:

- a. First, the Receiver will disseminate information to the members of the Co-op through an FAQ and Town Hall meeting about what led to the appointment of the Receiver, what the Receiver has been doing, and what will be required for the management of the Co-op to be transitioned back to an elected board: including the duties and responsibilities of the board members. The Receiver plans to invite local non-profit sector organizations that support co-operative housing providers (the Cooperative Housing Federation of Canada, "CHFC" and the Cooperative Housing Federation of Toronto, "CHFT", collectively, the "Federations") to attend a town hall meeting to speak to the members and to answer questions about co-operative housing principles and what is expected of those managing a housing co-operative, from a governance perspective (the "RFEIQ Information Phase"). The estimated timeline is 45 days from the date of this decision to conduct the Town Hall meeting, allowing for 21 days from the date of the decision (within the same 45 day period) to disseminate the FAQs.
- b. Second, the Receiver will engage with the members of the Co-op to ascertain their interest and their capacity to serve as potential Co-op Board members (the "RFEIQ Identification of Board Candidates Phase"). The estimated timeline is 75 days from the date of the town hall meeting to receive final Expression of Interest and Qualifications ("EIQ") forms from interested members.
- c. Third, the Receiver will review and evaluate the responses it receives from the members and any additional feedback it may receive from the Service Manager, and the housing provider's landlord - York University – and reporting to the court to report on the results of the RFEIQ process and to make a further recommendation to the Court about next steps (the "RFEIQ Evaluation of Board Candidates Phase"). The estimated timeline for this phase is 90 days from the EIQ deadline for the Receiver to review the EIQs, confirm qualifications for candidacy, conduct due diligence on the candidates and evaluate them, and consult with the City and the Landlord. Further, within 12 months of the date of the decision, the Receiver will prepare a report on the results of the RFEIQ process, an evaluation of the EIQs received, and for the Receiver to make its recommendations to the court.

[27] At the hearing, the Board focused their objection on the second and third phases of the RFEIQ, arguing that what the Receiver is proposing to do in these phases falls outside of the Receiver's mandate from the court under the Appointment Order and improperly supplants the statutory and corporate processes and procedures in place for the election of a board of directors by the members of the Co-op.

The Receiver's Mandate and Authority

[28] The powers of a Receiver appointed by order of the court pursuant to subsection 85(7) of the HSA are governed by the Appointment Order. Under the Appointment Order, the Receiver was empowered and authorized to act in respect of the Property, defined to include the assets, undertakings and property acquired or used in relation to the business carried on by the Co-op, and to manage, operate and carry on the business of the Co-op and take any steps reasonably incidental to the exercise of its statutory powers or powers under the Appointment Order.

[29] The Receiver's non-exhaustive powers under the Appointment Order include the power to meet, and to receive and share information with any Persons (including the Board and other members of the Co-op), subject to terms as to confidentiality. The Receiver also is authorized by the Appointment Order to apply to the court at any time for advice and directions in the discharge of its powers and duties.

The Future Role of the Current Board

[30] For their own reasons, each of the Receiver and the Board place emphasis on the following directions contained in the April 2024 Endorsement given at the time of the court's approval of the Receiver's First Annual Report:

- a. At paragraph 9: Now that the situation has begun to stabilize, the Receiver should, as outlined in the First Report, continue with the initiatives it has undertaken. At the same, time, 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.
- b. At paragraph 10: I strongly recommend that the board work with Toronto to understand and utilize these resources [available to board members, and potential board members, to help them understand what is required to successfully manage a co-op housing project]. The history of this matter leads me to believe that, in the past, the board has on occasion failed to understand, and to follow, various requirements necessary to maintain the service manager's support and co-operation. If the board wishes to successfully transition out of the receivership, it will have to show it has a clear understanding of what is required, from a regulatory, governance and financial point of view, for the successful operation of the Co-op.

- c. At paragraph 11: Similarly, it would enhance the process if, during the next phase of the receivership, the Receiver and Toronto work toward specific, identifiable metrics and milestones for the resolution of the triggering events and what the conditions are for a successful conclusion of the receivership and a transition back to board control.

[31] The Board contends that these provisions of the April 2024 Endorsement make it clear 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”.

[32] The Receiver does not dispute this, but contends that the provisions of the April 2024 Endorsement make it clear that the Receiver was expected to continue its work to try to stabilize the Co-op, both financially and from a governance perspective. It further contends that the existing Board was to engage with the Receiver and seek out resources available to them if they wanted to have a meaningful role in the transition back to board control. Part of that would entail satisfying the City and the Receiver, and ultimately the court, that the triggering events under the HSA that had led to the Appointment Order had been or could be addressed and avoided in future.

[33] In the course of its mandate, which included a review of the triggering events, CFDI has confirmed, where it was able to obtain the necessary records and information, the validity of the stated grounds for the triggering events. It has also confirmed that certain of those concerns (which pre-dated the appointment of the Receiver) have not been addressed by the current Board. The Receiver believes that certain of these concerns would need to be addressed before management could be transitioned back to this Board, such as: (1) the inappropriate allocation of units and related record keeping, (2) the renovation of certain selected units; and (3) some other general management and governance concerns detailed in Section 5 of the Second Report.

[34] The Receiver has described in Section 7 of the Second Report that when its efforts to engage the Board after the April 2024 Endorsement got no response, it engaged with the City to come up with a plan (e.g., the RFEIQ Process) that would ensure all members of the Co-op were informed and had the opportunity to participate in a process that was designed with the intention that there eventually be an elected board to which management and control of the Co-op could be transitioned to from the Receiver.

[35] The Board indicated in their submissions to the court that the Receiver did not engage with them after the April 2024 Endorsement. That is contrary to what the Receiver has said in its Second Report. Notably, this was not challenged by the Board to indicate otherwise, either in the form of questioning, or contradictory evidence. The Receiver also points out that the Board has not put in any evidence to demonstrate having attempted to access available resources such as courses offered through the CHFC or the CHFT as contemplated by the April 2024 Endorsement. Nor did the Board offer any comments on the proposed RFEIQ Process until they responded to this motion to oppose it, despite invitation to do so by the court in its May 30, 2025 endorsement (the “May 2025 Endorsement”).

[36] Overall, the Board has not demonstrated an interest or willingness to engage with the Receiver. Rather, it appears to be waiting for control to be transitioned back to it after the Receiver has stabilized the financial and physical concerns. But this ignores the governance and management concerns that were among the triggering events noted by the City dating back to March 2021. The April 2024 Endorsement made it clear that, “[if] the board wishes to successfully transition out of the receivership, it will have to show it has a clear understanding of what is required, from a regulatory, governance and financial point of view, for the successful operation of the Co-op”.

[37] In the May 2025 Endorsement, I observed (at paragraph 33):

[33] The Board’s request and presumption that the transition will necessarily be back to this Board (as presently constituted) goes too far. The Receiver’s proposed RFEIQ process, if approved, or some further direction or order of the court will determine what the transition will look like, and to whom at the appropriate time. The concerns that existed at the outset when the Appointment Order was made, that included financial management and governance issues associated with this Board, may factor into this analysis. That remains an open question.

[38] It was under this backdrop that it was contemplated that the Receiver and the City would work with the Co-op (if the Board was willing to engage) toward a plan for when and how the transition back to some form of board control might be achieved. The Receiver’s proposed RFEIQ process is a product of the functions carried out by the Receiver under the authority of the Appointment Order and the prior directions of the court toward this objective, in the absence of engagement by the Board.

The Board’s Objections to the RFEIQ Identification and Evaluation of Board Candidates Phases

[39] The Board has been struggling to regain its authority since the Receiver was appointed. It does not like the proposed RFEIQ process because the Receiver appears to be proposing to exercise control and oversight over the potential candidates in the RFEIQ Identification of Candidates Stage, and to be pre-vetting the prospective members of the Co-op who will be permitted to run for election in the RFEIQ Evaluation of Board Candidates Phase.

[40] The Board is concerned that the approval now of the proposed RFEIQ process is laying the foundation for a future request to do away with the statutory and corporate board election process. The current elected Board members fear that those of them who wish to stand for re-election may be disqualified by the Receiver without their candidacy being considered through the established voting procedures under the Co-op’s by-laws and the statutorily mandated process for elections of the board under ss. 90-91 of the *Co-Operative Corporations Act*, R.S.O. 1990, c. C.35.

[41] The Board emphasizes that, from their perspective, the triggering events were due to a fraud that was committed by someone who is no longer involved in the Co-op. They point out that this is not a social housing project. A certain number of the units are designated for RGI housing that is subsidized by the City, but the remaining members are paying market rent.

[42] The Board argues that the premise of the proposed RFEIQ process presupposes that this long-standing community housing co-op that has been operating since 1989 is incapable of managing the Co-op or even managing to conduct a democratic vote to elect its own board of directors, despite having done so in the past. The Board is concerned that the proposed RFEIQ will supplant the by-laws and statutory framework for electing directors and deprive the members of the Co-op of their democratic right to elect their own Board. The Board maintains that there is no demonstrated reason for supplanting the normal processes for board elections prescribed by the applicable by-laws and statutory framework.

[43] The Board further contends that it reflects a bias against them for the Receiver to suggest that there is a need to supervise their democratic elections process. They went so far in their submissions at the hearing to suggest that the Receiver's proposed RFEIQ process is fraught with biases against the members of this community and their abilities, on the basis of their race, ethnicity, socio-economic and marital status among other grounds. I find these latter accusations to be inflammatory and lacking in any evidentiary foundation.

[44] The Board also does not like that this is projected to be a lengthy and prolonged process that would not result in an election of a new board until after April of 2026. The Board is less concerned about the Receiver's proposed FAQ or Town Hall but suggest that there should be a board election within 3-6 months. They have suggested that the Federations be asked to oversee the elections, as has been done in the past.

The Receiver's Response to the Board's Objections

[45] The Receiver counters that there is no evidence about the demographics of the members of the Co-op and that its concerns and recommendations are primarily based on the remaining unresolved triggering events. It acknowledges that it also has lingering concerns about the seeming disinterest of the Board to avail itself of the resources that they were encouraged to explore in the April 2024 Endorsement to educate themselves about the responsibilities of board members and good corporate governance.

[46] The Receiver maintains that the proposed RFEIQ process does not directly address the election of the Board. It is primarily concerned with steps that would precede any election. That said, the proposed RFEIQ process does contemplate a pre-vetting of declared candidates by the Receiver in the second and third phases directed to the identification and evaluation of board candidates.

[47] The Receiver also acknowledges that the eventual outcome of the RFEIQ process will be to make recommendations to the court about the viability of holding an election to appoint a new board, depending on the results of the Receiver's diligence regarding candidates who have declared their interest in serving on the board and whether, in the Receiver's view, there are enough interested, qualified candidates to hold an election. The Receiver and the City do not foreclose the possibility of a scenario under the current proposed RFEIQ process in which the Receiver might recommend that there not be an election of a new board but rather some other path forward (that

would be subject to court approval with a full opportunity for members and any other interested stakeholders to be heard).

Analysis

[48] The primary objective of the RFEIQ process at this stage should be to provide information to members so that all potential candidates are identified, and to gather information about the qualifications of potential candidates to form a board, against the important back drop of the events that led to this receivership, and the governance and management issues that were among the triggering events for the City to seek the appointment of the Receiver in the first place. The first and second RFEIQ Information and Determination of Board Candidacy Phases should be the initial focus.

[49] The Receiver describes in its factum that the goal of the RFEIQ process is to provide the Receiver with sufficient information to then formulate a recommendation for the Court's consideration on the question of whether it is viable for the Housing Project to continue operating within the co-operative housing model. I consider it to be premature at this stage to approve now any future steps that may be required if the Receiver has concerns about the pool of potential candidates for election to the board.

[50] There can be objective and subjective aspects to the determination of the qualifications of candidates. The objective aspects include statutorily mandated requirements, such as minimum age, residency, and membership in the Co-op (e.g. ss. 85, 87 and 89 of *Cooperative Corporations Act*). Some objective aspects may also include a willingness to accept the fiduciary responsibilities and obligations of serving on this Board, as well as the associated time commitment. Further objective aspects may include a willingness to undergo available education and training to ensure that candidates understand those fiduciary responsibilities and obligations, and that they are equipped to run the Co-op and manage its annual budget of in excess of \$100,000.

[51] During the hearing, I explored with counsel the possibility of removing from the proposed RFEIQ process, for the time being, the aspects of phases two and three that involve the Receiver vetting, independently researching or evaluating and making its own subjective recommendations about specific individual members who express an interest in becoming board members. I also explored shortening some of the timelines so that the Receiver can report to the court before the end of 2025, so that the court, the members and other stakeholders can first hear what is being recommended by the Receiver coming out of those phases. I further explored ways in which the canvassing of potential candidates for the board could be done based on objective metrics and questions to be developed in consultation with the Foundations, or using their resources – with a view to the Receiver reporting to the court on the outcome of these phases but not expressing its subjective views about the candidacy of any particular individual.

[52] Counsel responded to questions from the court about the sequencing and timing of the steps that could be taken in furtherance of the first two phases of the proposed RFEIQ process and an earlier report to the court before the end of this year. Having considered the written and oral submissions of the parties and the evidence before the court, I have determined that it is just and

convenient to approve certain aspects of the first two phases of the proposed RFEIQ process, as follows:

- a. RFEIQ Information Phase: unchanged estimated timeline of 45 days from the date of this decision to conduct the Town Hall meeting, allowing for 21 days from the date of the decision (within the same 45 day period) to disseminate the FAQs. The Receiver shall confer with the City and the Foundations about: what information to include in the FAQs, about what objective qualifying questions to include on the EIQs, and generally about the Town Hall. The Foundations shall be invited to attend the Town Hall Meeting if they are willing to, and to provide whatever resources, support and assistance they deem appropriate. They are not party to this proceeding and were not represented at this hearing, so no orders or directions are made against the Foundations, just a request for their assistance to be provided. The Receiver shall arrange for the Town Hall Meeting to be publicized through available means and shall have the EIQ forms available at that time and to members thereafter, to be downloaded from its website or through any other means the Receiver deems appropriate.
- b. RFEIQ Identification of Board Candidates Phase - Reporting: estimated timeline of 75 days from the Town Hall meeting. The submission deadline for EIQs will be 30 days after the Town Hall Meeting, but the Receiver may extend that deadline for an additional 15 days during which it may assist prospective candidates who were unable to meet the deadline or whose EIQs were incomplete. The Receiver shall prepare a report about the conduct of the RFEIQ to date, and about the EIQs received. Individuals who submitted EIQs shall not be named or identified in the Receiver's report or its appendices. The Receiver shall not offer any subjective views or its own assessments of these candidates.

[53] In anticipation of the Receiver's report, a case conference shall be arranged in the normal course through the Commercial List office for a date that is after the Receiver expects to have delivered its report, before me if my schedule permits. At this case conference, the Receiver shall outline whether any, and if so which, of its recommendations require further directions or approvals from the court (with a draft Notice of Motion if appropriate). Based on the above timeline, it is expected that this case conference will take place before the middle of November 2025.

[54] The Receiver relies on the court's general jurisdiction to include such terms as are just in connection with any receivership order as provided for under s. 101(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 in asking that the court exercise its discretion to approve the proposed RFEIQ process that is intended to inform the eventual recommendations for transitioning management and control of the Co-op out of the receivership. It analogizes this to the many other circumstances in which receiver's come to court for approval of specific steps they propose to take. I agree with the Receiver that the requested approval of the proposed RFEIQ process falls within these general parameters of a motion for advice and directions to be given to a court officer under supervision by the court.

[55] In other contexts where court officers seek court approval of proposed steps (often by a motion for advice and directions arising out of the original appointment order) the court has consistently required that the receiver's powers be exercised with procedural fairness, strict adherence to the appointment order, and deference to the rights of affected stakeholders. For example, these procedural safeguards are embodied in the test for approval of a sale transaction endorsed by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (C.A.); see also *Lash v. Lash Point Association Corp.*, 2022 ONCA 361, at paras. 34, 37-41, 45. The Board itself in its submissions urged the court to apply these procedural safeguards, by analogy, when considering whether or not to approve the proposed RFEIQ process.

[56] In my view, a more directly analogous test to apply for the approval of a proposed process would be the test for the approval of a sales investment solicitation process ("SISP"), which typically is sought by a motion for directions. In that context, several factors have been established to guide the exercise of the court's discretion. In considering whether to approve a SISP, the court considers, among other things, factors such as:

- a. the fairness, transparency and integrity of the proposed process;
- b. the commercial efficacy of the proposed process in light of the specific circumstances facing the court officer running the process; and
- c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

See *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 5338, at paras. 7-8; *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, 2020 ONSC 3517, at paras. 15-16; *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, 90 C.B.R. (5th) 74, at para. 6).

[57] At a high level, these same considerations are relevant to a motion such as this for advice and directions concerning the proposed RFEIQ process. The analytical framework for the court to consider in deciding whether to approve a process that is recommended by the Receiver should focus on whether it will optimize the chances, in the particular circumstances, of achieving some important objective or goal in the receivership.

[58] In the circumstances of this case, the eventual goal is to transition the management of the Co-op out of the control of the Receiver in a way that mitigates against the continuation or recurrence of the triggering events, many of which were governance and management related. The Second Report explains how the RFEIQ process was designed with this goal in mind. It is in the interests of all of the Co-op members to have a board that is comprised of members who seek election with full knowledge of their duties, responsibilities and the time commitment involved, who are willing to educate themselves and avail themselves of available resources and support from the Foundations and who otherwise meet the statutory requirements to serve as board members, if that can be achieved.

[59] I find the first and second phases of the proposed RFEIQ process, as amended and described above, to be fair, transparent and commercially efficacious in the circumstances. I am satisfied that the approval now of these aspects of the proposed RFEIQ process will lay a

foundation for achieving the eventual objective of transitioning the management and control of the Co-op out of the receivership to an elected board (or, if later determined to be appropriate, some other management structure or operating entity). In the exercise of my discretion, these first two phases of the RFEIQ process (as amended) are approved.

[60] The Receiver is directed to undertake the steps set out above and report back to the court before the end of 2025 about the outcome of these first two phases and for advice and directions concerning any further recommendations it has, on a date to be scheduled with the court at a scheduling appointment or case conference to be arranged in the fall of 2025. The court will consider at that time what the Receiver is recommending as the path forward, to end the receivership and ultimately transfer management of the Housing Project to a permanent operator, whether that be the Co-op or some other structure. If the Receiver is then still recommending further vetting of prospective board members before an election, that can be revisited.

Disposition

[61] The Receiver's motion is granted in part. The draft order submitted by the Receiver shall be updated to reflect the date of this decision and the parties in attendance at the hearing. Schedule "A" to the order shall be amended to reflect the limitations on what aspects of the proposed RFEIQ process are being approved at this time, carving out the aspects of phases two and three that involve the Receiver vetting, independently researching or evaluating and making recommendations about specific individual members who express an interest in becoming board members. It shall also be amended to adjust the timelines to correspond with those imposed under this endorsement.

[62] A revised draft order with Schedule A, together with a blackline to show the changes made to implement the court's directions in this endorsement, shall be sent by the Receiver to me by email to my judicial assistant: linda.bunoza@ontario.ca with a copy to counsel for the Board and counsel for the City. I will review this draft and edit as needed to ensure conformity with the intention of this endorsement and then will sign it.

[63] No costs were sought by the Receiver, despite the concerns noted earlier in this endorsement about the unfounded allegations of misconduct and misfeasance.

[64] Given the outcome of the RFEIQ process approval (largely in favour of the Receiver) and the timing of the Board's withdrawal of its opposition to the other aspects of the relief sought by the Receiver, no costs are awarded to or in favour of the Board.

[65] In the meantime, and to be clear, as a term of accepting and implementing the Board's request (at least for the time being) that the court not to approve the third phase of the proposed RFEIQ process and those aspects of the second phase involving subjective assessments and evaluations of prospective board members by the Receiver, the Board shall not call an AGM or any other meeting, while the RFEIQ process is ongoing, without leave of the court.

KIMMEL J.

Date: June 30, 2025