

**Court File No. CV-17-11846-00CL**

**SEARS CANADA INC.,  
AND RELATED APPLICANTS**

**FORTY-SECOND REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**November 17, 2020**

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Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488  
CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741  
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041  
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND  
3339611 CANADA INC.

APPLICANTS

**FORTY-SECOND REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. INTRODUCTION**

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively, with Sears Canada, the “**Applicants**”) sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the “**Sears Canada Entities**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings; and
  - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (as subsequently extended, the “**Stay Period**”). The Stay Period was most recently extended to January 31, 2021 by Order of the Court granted on September 29, 2020.
3. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations.
4. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
5. The liquidation of all inventory and FF&E was completed in early 2018 and all Sears Canada retail locations were closed.
6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination, and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors.
7. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification, determination, and adjudication of claims of employees and retirees of the Sears Canada Entities.
8. On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C., as Court-appointed litigation trustee (the “**Litigation Trustee**”), were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013 (the “**Estate 2013 Dividend Litigation**”). The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by Morneau Shepell Ltd., as administrator of the Sears Canada

Inc. Registered Retirement Plan (the “**Pension Plan Administrator**”) and class action claims (collectively, the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers, each also arising from the 2013 Dividend, to be commenced or continued. These claims have now been resolved pursuant to settlements that were approved by the Court on March 17, August 25 and September 18, 2020. These settlements are described in detail in the Thirty-Fifth, Thirty-Eighth and Thirty-Ninth Reports of the Monitor.

9. On October 27, 2020, the Court issued an order (the “**A&R Meetings Order**”) authorizing the Monitor to file an amended and restated joint plan of compromise and arrangement in respect of the Sears Canada Entities (as further amended as described herein, the “**A&R Plan**”) and to convene meetings of creditors on a virtual meeting platform for the purpose of considering and voting on the A&R Plan (the “**Meetings**”). A copy of the A&R Meetings Order is attached hereto, without schedules, as Appendix “A”.
10. The Meetings were held on November 16, 2020, and the eligible voting creditors have voted in favour of the A&R Plan by the required majorities.
11. In connection with the CCAA Proceedings, the Monitor has provided forty-one reports and twenty-five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports, and other Court-filed documents and notices in these CCAA Proceedings are, or will be made, available on the Monitor’s website at [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada).

## **B. PURPOSE**

12. The purpose of this Forty-Second Report of the Monitor (the “**Forty-Second Report**”) is to provide the Court with information regarding:
  - (a) the results of the voting on the A&R Plan;
  - (b) the Monitor’s request for an Order pursuant to section 6 of the CCAA for approval of the A&R Plan (the “**Sanction Order**”); and

(c) the Monitor's recommendations in connection with the foregoing.

### C. TERMS OF REFERENCE

13. In preparing this Forty-Second Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, and discussions and correspondence with, among others, advisors to the Sears Canada Entities' stakeholders (collectively, the "**Information**").
14. Except as otherwise described in this Forty-Second Report:
  - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Forty-Second Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
15. Future-oriented financial information reported in or relied on in preparing this Forty-Second Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
16. The Monitor has prepared this Forty-Second Report in connection with its request for the Sanction Order. The Forty-Second Report should not be relied on for any other purpose.
17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
18. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears

Canada; (iii) the affidavits of Mr. Philip Mohtadi, the former General Counsel and Corporate Secretary of Sears Canada; (iv) the A&R Plan; and (v) the Prior Reports.

#### **D. MEETINGS OF CREDITORS AND VOTING RESULTS ON THE A&R PLAN**

##### *Notice of Meetings and Sanction Hearing*

19. Notice of the Meetings and the motion for the Sanction Order was provided in accordance with the provisions of the A&R Meetings Order as follows:
  - (a) On October 29, 2020, the Monitor sent copies of the Second Supplement to the Twenty-Ninth Report, the A&R Plan, the Notice of Meetings and Sanction Hearing, the Creditor Proxy, the Creditor Letter and the Virtual Meeting Protocol (collectively, the “**General Creditor Information Package**”) to Affected Unsecured Creditors as required by the A&R Meetings Order;
  - (b) On October 29, 2020, the Monitor, on behalf of Employee Representative Counsel, sent copies of the ERC Information Package (as defined in the A&R Meetings Order) to each ERC Employee (as defined in the A&R Meetings Order);
  - (c) On October 28, 2020, the Monitor posted the A&R Meetings Order, the General Creditor Information Package and the ERC Letter on the Monitor’s website;
  - (d) On October 30, 2020 and November 2, 2020, the Monitor caused the Notice of Meetings and Sanction Hearing to be published in *The Globe and Mail* (National Edition) and the electronic edition of *La Presse*.
  - (e) The Monitor is advised by Pension Representative Counsel that, on November 11, 2020, Pension Representative Counsel sent copies of the PRC Information Package (as defined in the A&R Meetings Order) to each PRC Retiree (as defined in the A&R Meetings Order); and
  - (f) On November 11, 2020, the Monitor posted the PRC Letter (as defined in the A&R Meetings Order) on the Monitor’s website.

*Meetings of Creditors*

20. The Meetings were held for the purpose of allowing the Affected Unsecured Creditors in each Unsecured Creditor Class to consider and vote on the A&R Plan as follows:
- (a) the meeting of the SLH Creditor Class, comprised of the Affected Unsecured Creditors of any SLH Parties, was held at 10:00 am on November 16, 2020; and
  - (b) the meeting of the Sears Creditor Class, comprised of the Affected Unsecured Creditors of any Sears Parties, was held at 11:00 am on November 16, 2020.
21. The Meetings were chaired by Paul Bishop, a representative of the Monitor, and were conducted in accordance with the provisions of the A&R Meetings Order. A quorum was present for each of the Meetings.
22. Resolutions to approve the A&R Plan were presented at the Meetings. Pursuant to the A&R Meetings Order, the Monitor kept a separate record and tabulation of votes by Affected Unsecured Creditors holding Unresolved Voting Claims.

*Voting on the A&R Plan*

23. The Affected Unsecured Creditors voted as follows:

**SLH Creditor Class:<sup>1</sup>**

**Voting Claims**

	Number	Value	% Number	% Value
FOR	378	\$29,077,963	99.7%	99.7%
AGAINST	1	\$84,903	0.3%	0.3%
TOTAL VOTING CLAIMS	379	\$29,162,866	100.0%	100.0%

<sup>1</sup> There were no votes by Affected Unsecured Creditors holding Unresolved Voting Claims at the Meeting of the SLH Creditor Class.



**Sears Creditor Class:****Voting Claims**

	Number	Value	% Number	% Value
FOR	31,308	\$1,249,750,799	100.0%	100.0%
AGAINST	0	\$0	0.0%	0.0%
TOTAL VOTING CLAIMS	31,308	\$1,249,750,799	100.0%	100.0%

**Voting Claims + Unresolved Voting Claims**

	Number	Value	% Number	% Value
FOR	31,309	\$1,253,863,339	100.0%	100.0%
AGAINST	0	\$0	0.0%	0.0%
TOTAL VOTING + UNRESOLVED VOTING CLAIMS	31,309	\$1,253,863,339	100.0%	100.0%

24. Pursuant to Section 6 of the CCAA, a majority in number representing two-thirds in value of creditors present and voting at a meeting of creditors is required for the approval of a plan of compromise or arrangement. As shown above, the required majorities voted in favour of the resolutions to approve the A&R Plan at each of the Meetings.
25. Also, as shown above, the votes cast by Eligible Voting Creditors in respect of Unresolved Voting Claims would not affect the results of the vote of either Unsecured Creditor Class.

**E. REQUEST FOR THE SANCTION ORDER**

26. The Monitor's comments on the A&R Plan are set out in detail in the Twenty-Ninth Report and the Second Supplement to the Twenty-Ninth Report, which will be included in the Monitor's Motion Record.
27. The Monitor believes the Sears Canada Entities have complied with the Orders granted by this Court during the CCAA Proceedings in all material respects.
28. The Monitor is not aware of any actions taken or purported to have been taken by any of the Sears Canada Entities that are not authorized by the CCAA.
29. For the reasons set out in the Twenty-Ninth Report, the Second Supplement to the Twenty-Ninth Report and herein, the Monitor is of the view that the A&R Plan complies with the

statutory requirements under the CCAA and the A&R Plan is fair and reasonable. In considering the fairness and reasonableness of the A&R Plan, the Monitor has considered:

- (a) the classification of creditors and results of the unsecured creditors' vote;
- (b) what creditors would receive in a bankruptcy as compared to the A&R Plan;
- (c) viable alternatives to the A&R Plan;
- (d) whether there is any oppression to the rights of creditors;
- (e) whether there is any unfairness to shareholders; and
- (f) the public interest.

*Classification and Composition of the Vote*

- 30. In the A&R Meetings Order, this Court approved the classification of Affected Unsecured Creditors for voting purposes and the partial substantive consolidation set out in the A&R Plan for distribution purposes.
- 31. As noted above, the A&R Plan was approved by a very high majority of the Affected Unsecured Creditors voting at the Meetings.

*Estimated Recoveries and Alternatives to the A&R Plan*

- 32. The Second Supplement to the Twenty-Ninth Report sets out the Monitor's estimate of recoveries to Affected Unsecured Creditors under the A&R Plan.
- 33. In the Monitor's view, the A&R Plan is the best available option to achieve the following objectives: (i) implementing the resolution of significant claims of creditors including the Pension Claim; (ii) providing certainty of distributions to the creditors of the Sears Canada Entities in the near term, and (iii) completing the final material steps in these CCAA Proceedings.

*Oppression of Rights of Creditors and Unfairness to Shareholders*

34. The Monitor believes that creditors are fairly treated under the A&R Plan in accordance with their respective priorities and in accordance with settlements entered into during these CCAA Proceedings, and no aspect of the A&R Plan oppresses the rights of creditors.
35. The shareholders of the Sears Canada Entities (with the exception of Sears Canada itself as a shareholder of 9370-2751 Québec Inc.) will not receive recoveries under the A&R Plan. These shareholders do not have an economic interest in the assets of the Sears Canada Entities, which are not sufficient to satisfy the claims of creditors.

*Public Interest*

36. In the Monitor's view, there is nothing in respect of the implementation of the A&R Plan that is contrary to the public interest.
37. The A&R Plan advances the important goal of bringing these proceedings, which affect the interests of a very large number of creditors, to completion.

**F. AMENDMENTS TO A&R PLAN**

38. Following the date of the A&R Meetings Order, the Monitor has made certain non-material amendments to the A&R Plan. A comparison version showing the changes to the A&R Plan is attached hereto as Appendix "B". The Monitor notes that Section 11.5 of the A&R Plan contemplates these types of administrative amendments.

**G. MONITOR'S RECOMMENDATION**

39. For the reasons set out in this Forty-Second Report as well as the Twenty-Ninth Report and the Second Supplement to the Twenty-Ninth Report, the Monitor respectfully recommends that this Court grant the Monitor's request for the Sanction Order.

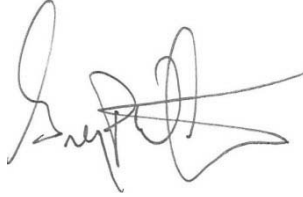
The Monitor respectfully submits to the Court this, its Forty-Second Report.

Dated this 17<sup>th</sup> day of November, 2020.

FTI Consulting Canada Inc.  
in its capacity as Monitor of  
the Sears Canada Entities



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director