

**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., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS 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.

**FACTUM OF THE MONITOR
(Motion for a Restraining Order)
(returnable January 22, 2018)**

January 16, 2018

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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PART I - INTRODUCTION

1 This is a motion by FTI Consulting Canada Inc. in its capacity as court-appointed monitor of the Applicants (the **Monitor**) for an Order (the **Restraining Order**):

- (a) declaring that the plaintiffs in the class action styled as *Karine Tremblay v. Centre Hi-Fi Chicoutimi, et al.* (the **Tremblay Plaintiffs**) have breached the stay of proceedings ordered by this Court (the **Stay**); and
- (b) restraining the Tremblay Plaintiffs and the other class action plaintiffs described herein (collectively with the Tremblay Plaintiffs, the **Plaintiffs**) from taking any further steps in breach of the Stay or any Order of this Court.

2 Despite repeated notices and advisories from the Monitor and the Applicants, the Tremblay Plaintiffs have refused to comply with the Stay, choosing instead to continue their class actions and add additional parties covered by the Stay without regard for this Court's

supervisory jurisdiction under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the **CCAA**).

3 The Tremblay Plaintiffs have failed to seek this Court's permission to lift the Stay or vary its terms. To the contrary, the Tremblay Plaintiffs have simply refused to accept the fact that they are stayed from continuing their actions at this time. Such indifference to the jurisdiction of this Court, and to this CCAA proceeding generally, can neither be sanctioned nor tolerated.

PART II - THE FACTS

A. The CCAA Proceeding

4 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 from this Court (as amended and restated on July 13, 2017, the **Initial Order**).¹

5 The Initial Order granted the Stay in respect of the Applicants and Sears Connect LP (**Sears Connect**), a partnership forming part of the operations of the Applicants (collectively with the Applicants, the **Sears Canada Entities**), the Monitor, and all of their respective employees and representatives until July 22, 2017. The Initial Order also applied the Stay in respect of all current and former directors and officers of the Sears Canada Entities.²

6 The Stay was extended by various orders, and most recently on October 13, 2017. Although the Stay is currently scheduled to expire on January 22, 2018, the Applicants have brought a motion to extend the stay until April 27, 2018.³

¹ Motion Record of the Monitor dated January 10, 2018 (**Monitor's Record**), Tab 2E, p 155.

² Initial Order, Monitor's Record, Tab 2E, pp 162-163 and 166, at paras 14, 17 and 25.

³ Tenth Report of FTI Consulting Canada Inc, as Monitor dated January 10, 2018 (the **Tenth Report**) at para 2, Monitor's Record, Tab 2, p 10.

7 On December 8, 2017, the Court issued an order approving a claims process for the identification, determination and adjudication of claims of certain creditors against the Sears Canada Entities and their current and former officers and directors (the **Claims Process**).⁴

B. The Class Actions

8 The Plaintiffs are consumers in Quebec who purchased extended warranties from various appliance and electronics retailers, including Sears Canada and Corbeil Électrique Inc. (**Corbeil**) (collectively, the **Defendants**).

9 The Plaintiffs allege that the Defendants made misrepresentations regarding the detrimental consequences of not purchasing extended warranties. The Plaintiffs are seeking reimbursement for the cost of the extended warranties at issue (including taxes), as well as punitive damages. The exact amount of damages being sought is unknown at this time.⁵

10 There are four class actions at issue (the **Warranty Class Actions**):

- (a) *Karine Tremblay v. Centre Hi-Fi Chicoutimi, et al.* (Superior Court of Quebec File Number: 150-06-000010-173) (the **Tremblay Class Action**);
- (b) *Luc Cantin and Francois Routhier v. Ameublements Tanguay Inc. et al.* (Superior Court of Quebec File Number: 500-06-000709-143) (the **Cantin/Routhier Class Action**);
- (c) *Lise Ostiguy v. Sears Canada Inc.* (Superior Court of Quebec File Number: 500-06-000537-106); and

⁴ The Tenth Report at para 5, Monitor's Record, Tab 2, p 10.

⁵ The Tenth Report at paras 16-17, Monitor's Record, Tab 2, p 10.

(d) *Jacques Fillion v. Corbeil Électrique Inc.* (Superior Court of Quebec File Number: 500-06-000535-100).⁶

11 The Plaintiffs in each of the Warranty Class Actions are represented by the same counsel: David Bourgoïn of BGA Avocats, S.E.N.C.R.L. and Benoit Gamache of Cabinet BG Avocat Inc.⁷

12 On October 5, 2017, and again on October 11, 2017, counsel for the Plaintiffs emailed the Monitor to ask how to file proof of claims with the Monitor for the Warranty Class Actions, so that the Plaintiffs could be added to the list of creditors.⁸

13 On October 17, 2017, counsel to the Monitor telephoned counsel for the Plaintiffs to discuss his questions. During this telephone call, counsel to the Monitor explained how the CCAA process worked and notified counsel for the Plaintiffs of the Stay. Counsel to the Monitor also advised that it was anticipated that the Sears Canada Entities would commence a claims process in which the claims of the Plaintiffs could be addressed.⁹

C. The Consumer Protection Bonds

14 On October 18, 2017, counsel for the Plaintiffs sent an email to the Monitor's counsel attaching various documents and letters. In his email, counsel for the Plaintiffs indicated that he believed that Sears Canada and Corbeil had both posted performance bonds (the **Consumer Protection Bonds**) with the Consumer Protection Office of Quebec as security for their obligations under the *Consumer Protection Act* (Quebec).¹⁰

⁶ The Tenth Report at para 7(b), Monitor's Record, Tab 2, p 11.

⁷ The Tenth Report at para 19, Monitor's Record, Tab 2, p 14.

⁸ Appendix A to the Tenth Report, Monitor's Record, Tab 2A, pp 22-24.

⁹ The Tenth Report at para 20, Monitor's Record, Tab 2, p 14.

¹⁰ The Tenth Report at para 22 and Appendix B to the Tenth Report, Monitor's Record, Tabs 2 and 2B, pp 14 and 30.

15 Counsel for the Plaintiffs suggested that the funds posted for the Consumer Protection Bonds did not constitute property of the Applicants, and indicated that he wished to access these funds for the benefit of the Plaintiffs. In his email, counsel for the Plaintiffs acknowledged that the Stay prevented the Plaintiffs from claiming the funds, writing:

*To exercise our rights in respect of the contracts of security and have the OPC intervene, we must first obtain either a judgment (impossible under the stay) or an out-of-court agreement covering the protection plans.*¹¹ [Translated]

16 On October 27, 2017, in response to this email, counsel for the Monitor advised the Plaintiffs' counsel that the Monitor would be making inquiries into the Consumer Protection Bonds and would respond once it had sufficient information to evaluate his request.¹²

D. The Tremblay Plaintiffs Breach the Stay

17 On November 14, 2017, the Plaintiffs' counsel advised the Monitor that the Plaintiffs would be taking steps to add the Monitor as a defendant to the Tremblay Class Action and urged the Monitor to find a "negotiated solution to the current situation."¹³

18 On November 15, 2017, counsel to the Monitor wrote to Plaintiffs' counsel reminding them that the Stay applied not only as against the Sears Canada Entities, but as against the Monitor and their respective employees and representatives as well. The letter enclosed copies of both the Initial Order and a subsequent stay extension order, and quoted the relevant excerpts of those orders in French. Counsel to the Monitor also advised the Plaintiffs' counsel

¹¹ Appendix B to the Tenth Report, Monitor's Record, Tab 2B, p 30.

¹² Appendix C to the Tenth Report, Monitor's Record, Tab 2C, p 37.

¹³ The Tenth Report at para 19 and Appendix D to the Tenth Report, Monitor's Record, Tabs 2 and 2D, pp 15 and 103.

that the Plaintiffs would be able to prove any claims they might have once this Court approved a claims process, including any claims with respect to the Consumer Protection Bonds.¹⁴

19 The Plaintiffs' counsel did not respond to either the Monitor or its counsel. However, on November 29, 2017, the Plaintiffs served counsel to Sears Canada (in three of four the Warranty Class Actions) with a motion to amend (the **Motion to Amend**) the pleadings in the Tremblay Class Action by adding the Monitor and certain former and current directors of Sears Canada (the **Named Directors**) as defendants.¹⁵

20 In response to the Plaintiffs' motion to amend, counsel to the Monitor immediately moved to file a "Notice of Stay" in each of the Warranty Class Actions that same day. On December 4, 2017, counsel to the Monitor sent a further letter to the Plaintiffs' counsel regarding the Stay asking the Plaintiffs to withdraw their Motion to Amend no later than December 7, 2017. Counsel for the Monitor advised that in the event of further breach of the Stay, the Monitor would be compelled to institute the appropriate proceedings. The Plaintiffs did not respond to the Monitor's letter and did not withdraw their Motion to Amend.¹⁶

E. The Chicoutimi Case Conference

21 On December 1, 2017, the Honourable Justice Dallaire of the Superior Court of Quebec in Chicoutimi wrote a letter to the parties in the Tremblay Class Action requesting a case conference to discuss the impact of the Motion to Amend on a previously scheduled motion to dismiss (the **Chicoutimi Case Conference**).¹⁷

¹⁴ The Tenth Report at para 27 and Appendix E to the Tenth Report, Monitor's Record, Tabs 2 and 2E, pp 16 and 129.

¹⁵ The Tenth Report at para 28 and Appendix F to the Tenth Report, Monitor's Record, Tabs 2 and 2F, pp 16 and 189.

¹⁶ The Tenth Report at para 29 and Appendix G to the Tenth Report, Monitor's Record, Tabs 2 and 2G, pp 16-17 and 270-271.

¹⁷ The Tenth Report at para 31, Monitor's Record, Tab 2, p 17.

22 On December 8, 2017, having been advised of the Chicoutimi Case Conference, and having received no response from the Plaintiffs' counsel, the Monitor's counsel wrote to Justice Dallaire (copying counsel to the parties in the Tremblay Class Action) to advise His Honour of the CCAA proceedings and the Stay, and to detail the history of the Monitors' repeated notices to the Plaintiffs' counsel regarding the Stay.¹⁸

23 On December 12, 2017, counsel for the Plaintiffs wrote to Justice Dallaire stating that they "consider[ed] it inappropriate for our colleague to plead his clients' position in writing without having been authorized by the court and without any status to do so." This letter remains the only correspondence – direct or indirect – received by the Monitor from the Plaintiffs' counsel since their November 14, 2017 email.¹⁹

24 On December 21, 2017, the Chicoutimi Case Conference took place by telephone as scheduled. The Monitor participated in the telephone call in an attempt to avoid the incurring the costs of the herein motion. Justice Dallaire ultimately directed the parties to make full written submissions on the issue around the Plaintiffs' Motion to Amend at a hearing returnable in Chicoutimi on February 16, 2018.²⁰

25 Under the timeline ordered by Justice Dallaire, each of the existing defendants, the Monitor and the Board of Directors are required to submit any written submissions to the Court by February 2, 2018.²¹

¹⁸ The Tenth Report at para 32 and Appendix K to the Tenth Report, Monitor's Record, Tab 2 and 2K, pp 17-18 and 382.

¹⁹ The Tenth Report at para 33 and Appendix L to the Tenth Report, Monitor's Record, Tabs 2 and 2L, pp 18 and 389.

²⁰ The Tenth Report at para 35, Monitor's Record, Tab 2, p 11.

²¹ The Tenth Report at para 36, Monitor's Record, Tab 2, 12.

F. Further Disregard of Court Orders

26 On October 4, 2017, this Court issued orders approving the sale of various businesses and assets of the Applicants, including the going-concern sale of substantially all of the assets of Corbeil to Am-Cam Électroménagers Inc. (the **Corbeil Purchaser**). The transaction closed on November 25, 2017.²²

27 On November 9, 2017, the Plaintiffs in the Cantin/Routhier Class Action commenced an application to add the Corbeil Purchaser as a defendant and hold it responsible for the alleged actions of Corbeil. In response, counsel for the Corbeil Purchaser wrote to counsel for the Plaintiffs by letter dated November 28, 2017 to advise that the transaction had been the subject of an approval and vesting order dated October 4, 2017 that specifically excluded the assumption of any liabilities of Corbeil in the Cantin/Routhier Class Action (the **Approval and Vesting Order**).²³

28 As the Plaintiffs in the Cantin/Routhier Class Action failed to provide a substantive response to counsel for the Corbeil Purchaser or withdraw their application, the Corbeil Purchaser filed its own application to dismiss the Plaintiffs' application on December 21, 2017.²⁴

G. Summary of Notices and Advisories to the Plaintiffs' Counsel

29 Since June 22, 2017, the Plaintiffs' counsel have received numerous notices and advisories from the Monitor and others regarding the Stay and the CCAA proceedings. In particular:

²² The Tenth Report at para 4, Monitor's Record, Tab 2, p 10.

²³ The Tenth Report at para 38, Monitor's Record, Tab 2, p 12.

²⁴ The Tenth Report at para 32 and Appendix K to the Tenth Report, Monitor's Record, Tabs 2 and 2H, pp 18 and 382.

No	Date	Notices to the Plaintiffs' Counsel
(1)	June 26, 2017 ²⁵	Nick Rodrigo, counsel to Sears Canada in three of the four Warranty Class Actions, emailed Mr. Gamache, counsel for the Plaintiffs regarding the Stay and CCAA proceedings.
(2)	September 21, 2017 ²⁶	Mr. Rodrigo wrote to the Honourable Justice Nollet of the Superior Court of Quebec in Montreal, advising His Honour of the Stay and the CCAA proceedings. Messrs. Gamache and Bourgoïn were sent a copy of Mr. Rodrigo's letter.
(3)	September 26, 2017 ²⁷	Mr. Rodrigo wrote to the Honourable Justice Dallaire of the Superior Court of Quebec in Montreal, advising His Honour of the Stay and the CCAA proceedings. Messrs. Gamache and Bourgoïn were sent a copy of Mr. Rodrigo's letter.
(4)	October 17, 2017 ²⁸	Arad Mojtahedi, a n associate at Norton Rose Fulbright Canada LLP, counsel to the Monitor, advised Mr. Gamache by telephone about the Stay and the CCAA process generally.
(5)	November 15, 2017 ²⁹	Mr. Mojtahedi wrote to Mr. Gamache to remind him that the Stay applied not only against the Sears Canada Entities, but as against the Monitor and their respective employees and representatives as well.
(6)	December 4, 2017 ³⁰	Mr. Mojtahedi wrote to Mr. Gamache advising him of the Stay and asking him to withdraw the Plaintiffs' Motion to Amend the Tremblay Class Action.
(7)	December 8, 2017 ³¹	Mr. Mojtahedi wrote to Justice Dallaire, copying Messrs. Gamache and Bourgoïn, to advise of the CCAA proceeding, the Initial Order and the Stay.
(8)	December 15, 2017 ³²	Mr. Mojtahedi wrote to Justice Dallaire, copying Messrs. Gamache and Bourgoïn, to respond to Mr. Bourgoïn's assertion that it was inappropriate for the Monitor's counsel to advise Justice Dallaire of the Stay or participate in the Chicoutimi Case Conference telephone call.

²⁵ Appendix H to the Tenth Report, Monitor's Record, Tab 2H, p 277.

²⁶ Appendix I to the Tenth Report, Monitor's Record, Tab 2I, p 284.

²⁷ Appendix J to the Tenth Report, Monitor's Record, Tab 2J, p 333.

²⁸ The Tenth Report at para 20, Monitor's Record, Tab 2, p 14.

²⁹ Appendix E to the Tenth Report, Monitor's Record, Tab 2E, p 129.

³⁰ Appendix G to the Tenth Report, Monitor's Record, Tab 2G, p 269.

³¹ Appendix K to the Tenth Report, Monitor's Record, Tab 2K, p 382.

ISSUES, LAW & SUBMISSION

30 There is no question that the Tremblay Plaintiffs have breached the Stay.

31 The stay of proceedings is a central feature of the CCAA process. The purpose of a stay is to preserve the *status quo* and hold creditors at bay while the debtor company attempts to develop a plan to compromise its debts for the benefit of all stakeholders. A stay of proceedings is designed to prevent “manoeuvres for positioning among the creditors.”³³ If a creditor has knowledge of, and disobeys a stay order under s. 11 of the CCAA, the creditor is guilty of contempt of court.³⁴

32 Sections 11.02 and 11.03 of the CCAA give a court the express statutory authority to grant a broad stay of proceedings as against a debtor company and its directors. The court’s statutory stay power is supplemented by the Court’s inherent jurisdiction to grant a stay in appropriate circumstances.³⁵

33 The stay of proceedings is essential to maintaining the supervisory jurisdiction of the single CCAA court or “command centre” for the insolvency or bankruptcy. As Justice Hamilton of the Quebec Superior Court recently explained in *Bloom Lake General Partner Ltd., Re*:

29 In principle, all issues relating to a debtor's insolvency are decided before a single court. This rule is based on the “public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse.” This public interest favours a “single control” of insolvency proceedings by one court as opposed to their fragmentation among several courts.

³² Appendix M to the Tenth Report, Monitor’s Record, Tab 2M, p 397.

³³ *Canadian Airlines Corp, Re*, [2000] A.J. No. 1692 (QB) at paras 12-19, Book of Authorities of the Monitor (the **Monitor’s Authorities**), Tab 3; *Lehndorff General Partner Ltd, Re*, 1993 CarswellOnt 183 (Gen Div) [**Lehndorff**] at para 6, Monitor’s Authorities, Tab 5.

³⁴ *Re Philip’s Manufacturing Ltd.* (1991), 9 C.B.R. (3d) 17 (BCSC) at para 21, reversed on other grounds (1992), 9 C.B.R. (3d) 25, (BCCA), leave to appeal to SCC refused (1992), 15 C.B.R. (3d) 57, Monitor’s Authorities, Tab 6.

³⁵ *Lehndorff*, at para 16, Monitor’s Authorities, Tab 5.

30 The Supreme Court in *Sam Lévy* concluded as follows with respect to the relevant test:

76 In the present case, we are confronted with a federal statute that prima facie establishes one command centre or "single control" (Stewart, *supra*, at p. 349) for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a "stranger to the bankruptcy", has the burden of demonstrating "sufficient cause" to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of "locality of a debtor" in s. 2(1). The trustee in that locality is mandated to "recuperate" the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors. (Emphasis added)

31 Although the *Sam Lévy* case was decided in the context of the Bankruptcy and Insolvency Act ("BIA"), **the same principles apply in the context of the other insolvency legislation, including the CCAA.** The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings. The stay of proceedings under the CCAA gives effect to this principle by preventing creditors from bringing proceedings outside the CCAA proceedings without the authorization of the CCAA court.

32 There are clear efficiencies to having a single court deal with all of the issues in a single judgment.

33 The general rule is therefore that the Court should rule on all issues that arise in the context of these insolvency proceedings.³⁶ [Emphasis Added]

34 Although none of the Plaintiffs are seeking to lift the Stay in this case, it is instructive to consider the threshold for such relief. A party applying for an order to lift a stay of proceedings faces a "very heavy onus". Lifting a stay of proceedings is a discretionary decision, and courts have identified a limited set of circumstances in which a stay may be lifted, none of which are present in this case.³⁷ Once again, the Plaintiffs have not moved for an order lifting the Stay.

³⁶ *Bloom Lake General Partner Ltd, Re*, 2017 QCCS 284 at paras 29-33, Monitor's Authorities, Tab 1.

³⁷ *Canwest Global Communications Corp, Re*, 2011 ONSC 2215 at para 27, Monitor's Authorities, Tab 4.

H. The Class Actions Are Stayed

35 The Initial Order defines a “Proceeding” for the purpose of the Stay as a “proceeding or enforcement process in any court or tribunal.”³⁸ The Class Actions are court proceedings and therefore subject to the Stay.

36 By attempting to continue the Tremblay Class Action and add the Monitor and Named Directors as additional defendants therein, the Tremblay Plaintiffs have breached, and are continuing to breach the Stay and the Initial Order. This Court must act to assert its supervisory jurisdiction as the “command centre” and protect the integrity of these CCAA proceedings. As the Court held in *Canada Metal Co. v. Canadian Broadcasting Corp. (No. 2)*,

*To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the Court can be treated with disrespect, the whole administration of justice is brought into scorn...Loss of respect for the courts will quickly result in the destruction of our society.*³⁹

37 The Plaintiffs will suffer no prejudice from being restrained from continuing the Warranty Class Actions. It remains open for the Plaintiffs’ counsel to file proofs of claim in the Claims Process in respect of each of the Warranty Class Actions, including any claims the Plaintiffs may have in respect of the Consumer Protection Bonds.

38 By contrast, the Applicants, the Monitor and the Applicants’ stakeholders will suffer significant prejudice if the Tremblay Plaintiffs are not restrained from breaching the Stay and the Orders of this Court. Moreover, the expense and distraction caused by the Tremblay Plaintiffs’ breaches is amplified by their unduly aggressive conduct. In particular, the Tremblay plaintiffs have:

³⁸ Appendix E to the Tenth Report, Monitor’s Record, Tab 2E, p 163.

³⁹ *Canada Metal Co. v. Canadian Broadcasting Corp. (No. 2)*, [1974] O.J. No. 1999 at para 70, Monitor’s Authorities, Tab 2.

- (a) taken the position before Justice Dallaire that the Monitor should not be permitted to make submissions in the Tremblay Action regarding the Stay;
- (b) failed to meaningfully respond to a single letter or email from the Monitor's counsel since they first threatened to bring proceedings against the Monitor;
- (c) pressured the Monitor to consider an out of court "solution" with the Plaintiffs in order to avoid further difficulties;
- (d) attempted to circumvent the Monitor by failing to serve the Monitor with the motion materials adding the Monitor as a defendant to the Tremblay Action; and
- (e) attempted to undermine the Monitor's ability to bring the herein motion by writing to Justice Dallaire on January 12, 2018 seeking another case conference in advance of the return of the herein motion.

39 As a result, responding to the Tremblay Plaintiffs' attempts to circumvent and frustrate this Court's Orders has already taken far more of the Monitor and the Applicants' limited time and resources than should ever have been necessary.

40 The Applicants, the Monitor and the other parties protected by the Stay and those Orders should not have to continue responding to the Tremblay Plaintiffs' breaches, to the detriment of all stakeholders. As Justice Blair stated in *Skydome Corp., Re*,

*Parties affected by a CCAA Order—as with any other Order—are not entitled to ignore that Order, much less to flout it, simply because they don't like its effect on them or because they wish to use the difficulties caused to the CCAA company by their non-compliance as a lever enhance their bargaining position with the debtor company.*⁴⁰

⁴⁰ [1999] O.J. No. 221 at para 20, Monitor's Authorities, Tab 7.

PART III - ORDER REQUESTED

41 In light of the foregoing, the Monitor respectfully requests that this Court grant the Restraining Order together with an award of substantial indemnity costs against the Tremblay Plaintiffs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of January, 2018.



Norton Rose Fulbright Canada LLP
Lawyers to the Monitor, FTI Consulting Inc.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bloom Lake General Partner Ltd, Re*, 2017 QCCS 284.
2. *Canada Metal Co. v. Canadian Broadcasting Corp. (No. 2)*, [1974] O.J. No. 1999.
3. *Canadian Airlines Corp, Re*, [2000] A.J. No. 1692 (QB).
4. *Canwest Global Communications Corp, Re*, 2011 ONSC 2215.
5. *Lehndorff General Partner Ltd, Re*, 1993 CarswellOnt 183.
6. *Philip's Manufacturing Ltd., Re* (1991), 9 C.B.R. (3d) 17 (BCSC), reversed on other grounds (1992), 9 C.B.R. (3d) 25, (BCCA), leave to appeal to SCC refused (1992), 15 C.B.R. (3d) 57.
7. *Skydome Corp., Re*, [1999] O.J. No. 221.

**SCHEDULE “B”
RELEVANT STATUTES**

1. Companies’ Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
- (b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F).

2. *Consumer Protection Act (Quebec)*, CQLR c P-40.1

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS
CANADA INC., et al.

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

Proceeding commenced at Toronto

**FACTUM OF THE MONITOR
(Motion for a Restraining Order)
(returnable January 22, 2018)**

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