

**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. 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.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**MOTION RECORD OF THE PENSION PLAN ADMINISTRATOR
(Advice and Directions re Spousal Waiver)**

Dated: August 24, 2018

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TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 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. 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.

Applicants

NOTICE OF MOTION

(Advice and Directions re Spousal Waivers)

TAKE NOTICE that Morneau Shepell Ltd. ("**Morneau Shepell**" or the "**Plan Administrator**"), in its capacity as administrator for the Sears Canada Inc. Registered Retirement Plan Registration No. 0360065 (the "**Pension Plan**"), will make a motion to a Judge of the Commercial List on a date to be scheduled with the Court at 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, *inter alia*:
 - (a) giving advice and directions to the Plan Administrator as to whether it may accept as valid certain joint and survivor waiver forms (the “**Spousal Waivers**”) completed by spouses of some Pension Plan members who were employed in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia (the “**Plan Spouses**”), at the time the Pension Plan member terminated employment with Sears Canada Inc. (“**Sears Canada**”) or certain of its affiliates, notwithstanding any formal deficiencies in the forms used by Sears Canada, as previous administrator of the Pension Plan;
 - (b) for substituted service of this notice of motion and the motion record (the “**Motion Record**”) on the Plan Spouses; and
 - (c) If necessary, abridging the time for service of this Notice of Motion and the Motion Record, validating the manner of service and dispensing with any further service thereof.
2. Such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:**A. *Advice and Directions regarding the Spousal Waivers***

3. When members were ready to commence receiving benefits under the Pension Plan, Pension Plan members without a spouse at the time of pension commencement received a single life pension with a 10-year guarantee ("**SL10**"), while Pension Plan members with a spouse were required, by the Pension Plan, to take a joint and survivor pension, which would provide the surviving spouse of the member with an entitlement to receive 66.67% of the pension the member was receiving prior to his or her death with a 10-year guarantee ("**J&S67**").
4. While the Pension Plan set the minimum spousal entitlement at 66.67%, applicable provincial pension legislation provides that where a member with a spouse wishes to elect an alternative form of pension, which would provide the spouse, if he or she survives the member, with less than a statutory minimum of 60% joint and survivor benefit, a waiver in the form prescribed by the relevant provincial pension legislation must be signed by the spouse.
5. Since being appointed as Plan Administrator, Morneau Shepell has discovered that Sears Canada provided the waiver of joint and survivor pension form approved by the Superintendent of Financial Services under Ontario pension legislation (the "**Ontario Form**"), to all Plan Spouses regardless of the province in which the Pension Plan member was employed. Given the differences between the Ontario Form and the form mandated in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia, the Plan Administrator

requires the Court's direction as to whether it may accept the non-compliant Spousal Waivers as valid.

6. If Morneau Shepell is unable to accept the non-compliant Spousal Waivers as valid, it is Morneau Shepell's view that all Plan Spouses must be contacted and given an option to elect to sign a compliant Spousal Waiver. The Plan Administrator's actuaries have estimated an additional \$32,000,000 in liabilities for the Pension Plan if (a) all non-complaint Spousal Waivers are not accepted as valid, and (b) compliant Spousal Waivers are not executed by the applicable Plan Spouse and no recovery is made from Pension Plan members for overpayments, including the additional professional and administrative costs to administer the process to locate Plan Spouses. The deficiency on the wind-up of the Pension Plan as finally determined in the actuarial wind-up report (the "**Wind-Up Deficiency**") is currently estimated to be approximately \$260,200,000. The liabilities and costs of seeking compliant Spousal Waivers would increase the estimated Wind-Up Deficiency to in excess of \$290,000,000.
7. The Plan Administrator intends to serve pension regulators in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia with the Motion Record.

B. Substituted Service

8. There is no information provided to Morneau Shepell by Sears Canada with respect to the vast majority of Plan Spouses to allow Morneau Shepell to serve them directly with the Motion Record.

9. Personal service of the Motion Record on the Plan Spouses is impractical, if not impossible.
10. As an alternative method for providing notice of this motion to the Plan Spouses, the Plan Administrator proposes posting advertisements in two national newspapers, one in English and one in French, advising the public of the Plan Administrator's motion for advice and directions and directing them to the Plan Administrator's Motion Record to be posted on the Monitor's website.
11. Ontario *Pension Benefits Act*, RSO 1990, c P.8, ss. 44, 46(1) and 46, *General*, RRO 1990, Reg 909, and Form 3 – Waiver of Joint and Survivor Pension.
12. British Columbia *Pension Benefits Standards Act*, SBC 2012, c 30, s. 80, *Pension Benefits Standards Regulation*, BC Reg 71/2015, ss. 74(9,) 74(10), 74(11), and Form 2 – Spouse's Waiver of 60% Lifetime Survivor Benefit and/or Beneficiary Rights From a Pension Plan or Annuity After Payments Start.
13. Alberta *Employment Pension Plans Act*, SA 2012, c E-8.1, s. 90, *Employment Pension Plans Regulation*, Alta Reg 154/2014, Schedule 6, and Form 4 – Pension Partner Waiver of Entitlement to a 60% Joint and Survivor Pension from a Pension Plan.
14. Saskatchewan *Pension Benefits Act*, 1992, SS 1992, c P-6.001, s. 34, *Pension Benefits Regulations*, 1993, RRS c P-6.001 Reg 1, s. 33, and Form 3 – Spouse's Waiver of 60% Post-Retirement Survivor Benefit.

15. Manitoba *The Pension Benefits Act*, CCSM c P32, s. 23, *Pension Benefits Regulation*, Man Reg 39/2010, s. 3.35, and Form 5A – Waiver if 60% Joint Survivor Pension for Pension Plan or Locked-in Retirement Account.
16. New Brunswick *Pension Benefits Act*, SNB 1987, c P-5.1, s. 41, *General Regulation*, NB Reg 91-195, s. 26(1), and Form 5 – Joint and Survivor Pension Waiver.
17. Nova Scotia *Pension Benefits Act*, RSNS 1989, c 340, ss. 65(1) and 65(2), *Pension Benefits Regulations*, NS Reg 164/2002, Schedule II, and Form 6 – Spousal Waiver Joint & Survivor Pension Benefits.
18. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 11.
19. *Rules of Civil Procedure*, Rules 2.03, 3.02, 16.04, 16.08 and 37.
20. Such further and other grounds to which counsel for the moving parties may refer and of which this Court will take notice.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used on the hearing of the motion:

1. the Affidavit of Hamish Dunlop (Advice and Directions re Spousal Waivers) affirmed August 24, 2018;
2. the Affidavit of Hamish Dunlop (Deemed Trust) affirmed August 24, 2018;
3. the Orders previously granted by the Court in these proceedings;
4. the Reports of FTI Consulting Canada Inc., as Monitor, delivered in these proceedings; and

5. such further or other material as counsel may advise and this Honourable Court may permit.

August 24, 2018

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Lawyers for Morneau Shepell Ltd.,
in its capacity as Administrator for the Sears
Canada Inc. Registered Retirement Plan

TO: THE SERVICE LIST

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. 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.

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Advice and Directions re Spousal Waivers)**

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Retirement Plan

TAB 2

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 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, 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

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**AFFIDAVIT OF HAMISH DUNLOP
(Advice and Directions re Spousal Waivers)**

(Affirmed August 24, 2018)

I, Hamish Dunlop, of the City of Toronto in the Province of Ontario, solemnly affirm as follows:

1. I am a Managing Principal at Morneau Shepell Ltd. (“**Morneau Shepell**” or the “**Plan Administrator**”), the administrator for the Sears Canada Inc. (“**Sears Canada**”) Registered Retirement Plan Registration No. 0360065 (the “**Pension Plan**”). I am responsible for fulfilling Morneau Shepell’s duties as Plan Administrator. In my role at Morneau Shepell, I am familiar with the federal and provincial legislation and regulatory regime regarding Canadian pension plans. As such, I have personal knowledge of the matters to which I depose in this Affidavit, or where my knowledge is based upon information and belief, I refer to the sources of that information, and believe it to be true.

Overview

2. I affirm this affidavit in support of the Plan Administrator's motion for: (i) advice and directions as to the whether the Plan Administrator can accept as valid the joint survivor waiver forms (the "**Spousal Waivers**") completed by the spouses of the Pension Plan members who were resident in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia (the "**Plan Spouses**" and any one of them, a "**Plan Spouse**") at the time the Pension Plan member began receiving benefits from the Pension Plan, notwithstanding any formal deficiencies in the forms used by Sears Canada, as previous administrator of the Pension Plan; and (ii) an order for substituted service of the Plan Administrator's notice of motion and motion record (the "**Motion Record**") given the near impossibility of effecting service on the Plan Spouses.

3. Concurrently with this affidavit, I have sworn an affidavit (the "**Deemed Trust Affidavit**") in support of the Plan Administrator's joint amended notice of motion with the Superintendent of Financial Services (the "**Superintendent**") in his capacity as Administrator of the Pension Benefits Guarantee Fund for an order declaring a deemed trust in favour of the Plan Administrator and the joint and several liability of Corbeil and SLH, together with Sears Canada, with respect to the amount due in respect of the wind-up of the Pension Plan as finally determined in the actuarial wind up report (the "**Wind-Up Deficiency**"), among other relief. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Deemed Trust Affidavit.

4. I affirm this affidavit to provide the Court with information, relating to the Spousal Waivers, their deficiencies and also the process that would be required to attempt to locate all

Plan Spouses to request that they sign compliant Spousal Waivers, including the possibility that the Plan Administrator will be unable to contact a significant number of the Plan Spouses.

Background

5. Morneau Shepell is the largest administrator of retirement and benefits plans in Canada. Established in 1966, Morneau Shepell serves approximately 20,000 clients, ranging from small businesses to some of the largest corporations and associations. With more than 4,000 employees in offices across North America, Morneau Shepell provides services to organizations across Canada, in the United States and around the globe. Morneau Shepell has been involved in many of the most significant pension cases in Canada.

6. Morneau Shepell was appointed to take over from Sears Canada as administrator of the Pension Plan effective October 16, 2017. As Plan Administrator, Morneau Shepell has a fiduciary duty to act in the best interests of Pension Plan beneficiaries across the country.

7. Morneau Shepell's focus in these proceedings is to protect the interests of the Pension Plan beneficiaries and to ensure that the claims of these beneficiaries against Sears Canada and other Applicants are fully and properly advanced. Morneau Shepell takes very seriously its fiduciary obligation to assert the rights of pensioners.

8. Details relating to the Pension Plan and Morneau Shepell's appointment as Plan Administrator are set out in my Deemed Trust Affidavit.

Spousal Waivers

9. Until Morneau Shepell's appointment in October 2017, Sears Canada was the administrator of the Pension Plan, as required by the Ontario *Pension Benefits Act* (the

“**PBA**”). In that role, Sears Canada had oversight for the funding and management of the Pension Plan.

10. When members were ready to commence receiving benefits under the Pension Plan, Sears Canada provided Pension Plan members with the ability to elect the form of pension they were entitled to receive. The normal form of pension for Pension Plan members without a spouse at the time of pension commencement was a single life pension with a 10-year guarantee (“**SL10**”). Pension Plan members with a spouse were required, by the Pension Plan, to take a joint and survivor pension, which would provide the surviving spouse of the member with an entitlement to receive 66.67% of the pension the member was receiving prior to his or her death with a 10-year guarantee (“**J&S67**”).

11. The value of the benefits received by a member with a spouse is reduced to ensure that the total J&S67 benefits received by the member and his or her surviving spouse are the actuarial equivalent of the SL10 benefits. In other words, the member with a spouse would receive a lower monthly benefit during his or her lifetime than a member with an SL10 pension to account for the fact that the member’s surviving spouse would continue to receive benefits after the member’s death.

12. While the Pension Plan set the minimum spousal entitlement at 66.67%, applicable provincial pension legislation provides that where a member with a spouse wishes to elect an alternative form of pension, which would provide the spouse, if he or she survives the member, with less than a statutory minimum 60% joint and survivor benefit, a waiver in the form prescribed by the relevant provincial pension legislation must be signed by the spouse. The applicable legislation in respect of each member and spouse is the pension legislation of the province where the member was employed at the time the member’s employment was

terminated. By electing an alternative form of pension, which could provide less than the J&S67 entitlement to the member's surviving spouse (a "**sub-J&S67**"), the member received increased monthly pension benefits during his or her lifetime, up to the amount that would be received by a pensioner without a spouse (i.e. the SL10 entitlement).

13. Since being appointed as Plan Administrator, Morneau Shepell has discovered that Sears Canada provided the waiver of joint and survivor pension form approved by the Superintendent under Ontario pension legislation (the "**Ontario Form**") to all Plan Spouses, regardless of the province in which the member was employed. Attached as Exhibit "**A**" is a copy of the Ontario Form.

14. Morneau Shepell has reviewed the waiver of joint and survivor pension forms approved in provinces other than Ontario and has determined that there are differences between the Spousal Waiver used by Sears Canada (being the Ontario Form) and those required by pension legislation in other provinces, including:

British Columbia	Spouse's Waiver of 60% Lifetime Survivor Benefit and/or Beneficiary Rights from a Pension Plan or Annuity after Payment Starts (the " BC Form ")	Since January 1, 1993
Alberta	Pension Partner Waiver of Entitlement to a 60% Joint and Survivor Pension from a Pension Plan (the " AB Form ")	Since January 1, 1987
Saskatchewan	Spouse's Waiver of 60% Post-Retirement Survivor Benefit (the " SK Form ")	Since January 1, 1993
Manitoba	Waiver of 60% Joint Survivor Pension for Pension Plan or Locked-in Retirement Account (the " MB Form ")	Since February 1, 1988
New Brunswick	Joint and Survivor Pension Waiver (the " NB Form ")	Since December 31, 1991
Nova Scotia	Spousal Waiver Joint & Survivor Pension Benefits (the " NS Form ")	Since June 1, 2015

15. Attached collectively as Exhibit "B" are copies of the current BC Form, AB Form, SK Form, MB Form, NB Form and NS Form.

16. Morneau Shepell has reviewed the data provided to it by Sears Canada, as previous plan administrator, and is reliant on this data. As at December 31, 2016, Morneau Shepell has identified the following number of Pension Plan members employed in the provinces noted below at the time of termination who had a spouse at the time they commenced receiving benefits and who elected a sub-J&S67 benefit:

British Columbia	395
Alberta	347
Saskatchewan	227
Manitoba	137
New Brunswick	108
Nova Scotia	0
Total	1,214

17. Of the 1,214 Pension Plan members listed above, 1,142 are receiving benefits equivalent to the SL10 entitlement, with no spousal benefit payable. As the SL10 entitlement was selected by the member, Sears Canada's records do not contain any information with respect to the spouse who signed the Spousal Waiver or where that person may be contacted. While the Plan Administrator has not yet identified any Pension Plan members resident in Nova Scotia who elected a benefit that provided their surviving spouse with a sub-J&S67 entitlement, Morneau Shepell continues to investigate and it may uncover non-compliant Spousal Waivers signed by Plan Spouses with respect to Pension Plan members resident in Nova Scotia.

18. In comparing the Ontario Form to the approved Spousal Waiver forms in these other jurisdictions, the Plan Administrator has identified the following differences in the current

Spousal Waiver forms (some of the Spousal Waiver forms have had different requirements under provincial legislation in the past), none of which are found in the Ontario Form:

British Columbia	The legislation in this province requires that the Spousal Waiver be signed by the Plan Spouse not in the presence of the Pension Plan member. The BC Form provides for a confirmation from the Plan Spouse executing the BC Form to this effect. The BC Form also requires confirmation that the Plan Spouse has reviewed a current statement of the Pension Plan member's benefits. The BC Form also contains substantially more detail about what the waiver means and must be signed closer to the date of retirement than the Ontario Form.
Alberta	The legislation in this province requires that the Spousal Waiver be signed by the Plan Spouse not in the presence of the Pension Plan member. The AB Form also provides for a certification from the Plan Spouse executing the AB Form to this effect. Further the AB Form requires that the Plan Spouse certify that he or she has seen the Pension Plan member's retirement statement and is signing of his or her own free will. The AB Form must also be signed closer to the date of retirement than the Ontario Form.
Saskatchewan	The legislation in this province requires that the Spousal Waiver be signed by the Plan Spouse not in the presence of the Pension Plan member. The SK Form also provides for a certification from the Plan Spouse executing the SK Form to this effect and also that he or she is signing freely and voluntarily without any compulsion on the part of the Pension Plan member. The SK Form must also be signed closer to the date of retirement than the Ontario Form.
Manitoba	The legislation in this province requires that the Spousal Waiver be signed by the Plan Spouse not in the presence of the Pension Plan member. The MB Form also provides for a certification from the Plan Spouse executing the MB Form to this effect. Further the MB Form requires that the Plan Spouse certify that he or she has seen the Pension Plan member's retirement statement and is signing of his or

	her own free will without duress, coercion or compulsion of any kind. The MB Form must also be signed closer to the date of retirement than the Ontario Form.
New Brunswick	The NB Form requires that it be notarized or commissioned. The NB Form also requires the Plan Spouse to acknowledge that he or she has signed the NB Form freely and voluntarily.
Nova Scotia	The NS Form specifies who may be a witness to the Spousal Waiver and what information must be included in respect of the witness (i.e. address, phone number).

19. If Morneau Shepell is unable to accept as valid the non-compliant Spousal Waivers, it is Morneau Shepell's view that all Plan Spouses must be contacted and given an opportunity to elect to sign a compliant Spousal Waiver. There is no information with respect to the vast majority of Plan Spouses in the data provided to Morneau Shepell by Sears Canada. Considerable expense and effort would be required to attempt to locate these individuals, which may include correspondence to the last known address of the Plan Spouse if available, correspondence to the last known address of the Pension Plan member, or hiring private investigators to attempt to locate the Plan Spouses, especially where they may no longer be married to the Pension Plan member or may not have survived the Pension Plan member.

20. If the Plan Spouses are located and elect to sign a compliant Spousal Waiver, this has no impact on the amount due in respect of the Wind-Up Deficiency. However, if the Plan Spouses, or any of them, decline to sign a compliant Spousal Waiver, there will be an increase in the Wind-Up Deficiency as a result of additional benefits which will be payable to those Plan Spouses from the Pension Plan. The Pension Plan members whose spouses would have such survivor entitlements will have received something more than the J&S67 benefits as a result of Sears Canada's recognition of the non-complaint Spousal Waiver. The

Plan Administrator may seek to recover the overpayments from the member; for example, where the member is still alive, or the member's estate is not settled and has sufficient assets to repay such overpayments. Morneau Shepell assumes any efforts to recover overpayments may cause hardship to such Pension Plan members.

21. The data available to the Plan Administrator does not include Pension Plan members with spouses at the time of termination of their employment who have now died but previously received SL10 or sub-J&S67 entitlements. An unknown number of Plan Spouses could have signed a Spousal Waiver that is non-compliant. If this Court does not direct the Plan Administrator to accept the non-compliant Spousal Waivers as valid, the Plan Administrator will be required to attempt to locate these Plan Spouses and request that they sign a compliant Spousal Waiver. If they decline to sign, they would be entitled to the equivalent of a J&S67 pension entitlement back-dated to the date the Pension Plan member died

22. In addition, a Pension Plan member who worked in one of the relevant provinces may have elected a sub-J&S67 benefit and both the Pension Plan member and the Plan Spouse may have died. If the Pension Plan member predeceased the Plan Spouse, and if the Spousal Waiver is not enforceable, then the Plan Spouse's estate would be entitled to survivor pension payments that would have been made between the Pension Plan member's date of death and the date of death of the Plan Spouse.

23. The Plan Administrator has little, if any, electronic data regarding Pension Plan members that died prior to 2017 and much less information on Plan Spouses from that period. Attempting to identify Plan Spouses and estates of those Pension Plan members who retired prior to 2017 and worked in the applicable provinces where the Spousal Waivers signed by

the Plan Spouses were non-compliant would require significant efforts and expense by the Plan Administrator.

24. The Plan Administrator has estimated that it could cost millions of dollars in professional and administrative fees to administer the entire process regarding non-compliant Spousal Waivers if it is not able to accept those non-compliant Spousal Waivers as valid.

25. The Plan Administrator's actuaries have estimated an additional \$32,000,000 in liabilities if (a) all non-complaint Spousal Waivers are not accepted as valid, and (b) compliant Spousal Waivers are not executed by the applicable Plan Spouse and no recovery is made from Pension Plan members for overpayments, including the additional professional and administrative costs to administer the process to locate Plan Spouses and to attempt to recover any overpayments which were made to Pension Plan members in reliance on the non-compliant Spousal Waivers. It is estimated that these increased liabilities and costs would increase the Wind-Up Deficiency to in excess of \$290,000,000.

26. The Plan Administrator estimates that the process to attempt to locate Plan Spouses, seek Spousal Waivers in compliance with the applicable provincial pension legislation and seek to recover overpayments from the Pension Plan members if the Plan Spouse declines to execute a compliant spousal waiver form, could take many years. It is highly likely that many Plan Spouses may never be located, leaving the Plan Administrator with no choice but to seek further direction from the Court in order to administer the Pension Plan or to withhold a significant contingency reserve to ensure funds are available in the Pension Plan if these Plan Spouses come forward and are not prepared to execute a compliant Spousal Waiver.

27. The Plan Administrator has been in contact with the Superintendent, as the major authority responsible for the regulation of the Pension Plan, and has advised it of the issues

related to the Spousal Waivers and of the Plan Administrator's intention to bring this motion for advice and directions.

28. Morneau Shepell intends to serve the pension regulators in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia with the Motion Record.

Request for Substituted Service

29. As noted above, there is no information provided to Morneau Shepell by Sears Canada with respect to the vast majority of Plan Spouses to allow Morneau Shepell to serve them directly with the Motion Record.

30. As a result, personal service of the Motion Record upon the Plan Spouses is impractical, if not impossible.

31. As an alternative method for providing notice of this motion to the Plan Spouses, Morneau Shepell proposes posting advertisements in two national newspapers, one in English and one in French (in the form attached as Exhibit "C"), advising the public of the Plan Administrator's motion for advice and directions and directing them to the Plan Administrator's Motion Record posted on the Monitor's website.

32. I believe that the alternative method for service detailed above is the most practical and probable way to bring the Motion Record to the attention of the greatest number of Plan Spouses and is appropriate in the circumstances.

Conclusion

33. The Plan Administrator has brought this motion to seek the Court's advice and directions with respect to whether it can accept the Spousal Waivers as valid notwithstanding that they are not, in all respects, compliant with the applicable provincial pension legislation and to fulfill its fiduciary duty to beneficiaries of the Pension Plan.

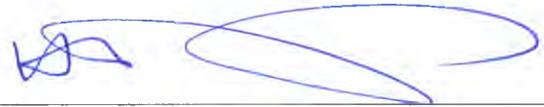
34. I affirm this affidavit in support of the Plan Administrator's motion in these proceedings and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Toronto, Province of Ontario this 24th day of August, 2018



A Commissioner for taking Affidavits
(or as the case be)

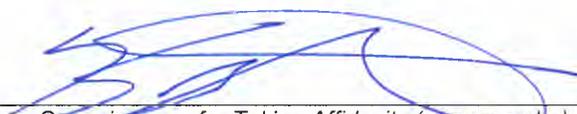
KIRAN PATEL



HAMISH DUNLOP

TAB A

This is **Exhibit "A"** referred to in the
Affidavit of Hamish Dunlop affirmed August 24, 2018



Commissioner for Taking Affidavits (or as may be)

KIRAN PATEL



Approved pursuant to the Ontario Pension Benefits Act (R.S.O. 1990, c. P.8, as amended)

Send this form to the plan administrator or the insurer Do not send it to the Financial Services Commission of Ontario

Name of member or former member We, (referred to below as the "member or former member")

Name of spouse of member or former member and (referred to below as the "spouse")

certify that we are spouses within the meaning of the Pension Benefits Act.

We understand that section 44 of the Pension Benefits Act provides that the pension paid to the member or former member from the

Name of pension plan

must be paid as a joint and survivor pension if we are spouses on the date that the payment of the first instalment of the pension is due and if we are not living separate and apart at that time. We also understand that the amount of pension payable to the surviving spouse must not be less than 60% of the pension paid to the member or former member while we are both alive.

We understand that we may waive our right to the joint and survivor pension provided by section 44 of the Pension Benefits Act by signing this waiver.

We understand that by signing this waiver, the spouse is giving up the right to a survivor pension on the death of the member or former member, as provided by Section 44 of the Pension Benefits Act.

We hereby waive our right to a joint and survivor pension provided by section 44 of the Pension Benefits Act by signing this waiver in the presence of a witness.

We understand that we may cancel this waiver at any time before the date of the commencement of payment of the member's or former member's pension.

Day, Month, Year Dated this day of

Signature of witness Signature of member or former member

Name and address of witness (printed)

Signature of witness Signature of spouse of member or former member

Name and address of witness (printed)

NOTE: Prior to completing this form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.

NOTE: This waiver is not effective unless it is dated, signed and delivered to the administrator of the pension plan or the insurance company, where appropriate, within the twelve months preceding the commencement of payment of the pension benefit, as required by subsection 46(2) of the Pension Benefits Act.

TAB B

This is **Exhibit "B"** referred to in the
Affidavit of Hamish Dunlop affirmed August 24, 2018



Commissioner for Taking Affidavits (or as may be)

KIRAN PATEL

Form 2 (British Columbia Pension Benefits Standards Regulation, sections 74 (11), 77, 81 (1) (b) (i) and (2) (a), 83 (3) (d) (i) and (e) (i) and (4) (a) (i), 103 (4) (d) (ii) (A) and 121 (3) (c) (ii) (A))

**SPOUSE'S WAIVER OF 60% LIFETIME SURVIVOR'S BENEFIT AND/OR
BENEFICIARY RIGHTS FROM A PENSION PLAN OR ANNUITY
AFTER PAYMENTS START**

WHEN TO USE THIS FORM

Form 2 is used when the spouse of a member/former member of a pension plan agrees to waive or give up his or her right to receive survivor's benefits, if the member/former member dies after starting pension or annuity payments, for one or more of the following purposes:

- to permit the member/former member to elect a form of pension, from a defined benefit or target benefit component of a pension plan or from an annuity purchased using the member's/former member's benefits in a pension plan, locked-in retirement account or life income fund, that does not give the spouse a minimum 60% lifetime survivor's benefit;
- to permit the member/former member to designate a beneficiary other than the spouse for any remaining benefits in the pension or annuity;
- to permit the member to designate a beneficiary other than the spouse for any remaining life income type benefits from a defined contribution component of a pension plan.

Right to a minimum 60% lifetime survivor's benefit – If a member of a defined benefit or target benefit component of a pension plan dies after starting a pension or a former member of a pension plan dies after starting annuity payments, the member's/former member's spouse has the right to receive lifetime payments that are at least 60% of the payments that were paid to the member/former member, unless the spouse waives or gives up that right by signing Waiver A of this form.

Beneficiary rights – If a member of a defined benefit or target benefit component of a pension plan dies after starting a pension or a former member of a defined benefit or target benefit component of a pension plan dies after starting annuity payments, and the member's/former member's spouse has waived or given up the right to a minimum 60% lifetime survivor's benefit, the spouse is entitled, as beneficiary, to any remaining benefits in the pension or annuity, unless the spouse waives or gives up that right by signing Waiver B of this form.

If a member of a defined contribution component of a pension plan dies after starting to receive life income type benefits, the member's spouse is entitled, as beneficiary, to receive any remaining life income type benefits, unless the spouse waives or gives up that right by signing Waiver C of this form.

WHEN THIS FORM CANNOT BE USED

A spouse cannot use this form to waive or give up his or her right to a minimum 60% lifetime survivor's benefit if the member/former member has started receiving pension or annuity payments.

If the member/former member has died, a spouse cannot use this form to waive or give up his or her right, as beneficiary, to receive any remaining benefits in the member's/former member's pension or annuity.

A waiver made under this form is void and ceases to have any effect if the member/former member dies before pension or annuity payments start.

Form 4 [*Spouse's Waiver of Beneficiary Right to Benefits in a Pension Plan, Locked-In Retirement Account, Life Income Fund or Annuity Before Pension or Annuity Payments Start*] is used when a spouse agrees to waive or give up his or her right, as beneficiary, to receive the member's/former member's benefits in a pension plan, locked-in retirement account, life income fund or annuity if the member/former member dies before starting pension or annuity payments.

WHEN THIS FORM IS NOT REQUIRED

Form 2 is not required if section 145 of the *Family Law Act* applies to determine the rights of the member/former member and spouse when the relationship ends. Confirmation that section 145 applies must be provided to the pension plan administrator, the locked-in retirement account issuer, the life income fund issuer, or the insurance company holding the annuity.

[Please print]

Spouse of member/former member *[see definition of "spouse" in section 1 of this form]*

Name

Address

Email address

Telephone

Name of member/former member

Address

Email address

Telephone

Name of pension plan holding funds/from
which funds were transferred

Address of plan administrator

Plan's provincial registration number

[Do not complete the following section if the benefits are in the pension plan]

Name of locked-in retirement account issuer or life income fund issuer
or insurance company holding annuity

Address

Account number

I confirm the following:

1. I am the spouse of the member/former member. Being the member's/former member's "spouse" means
 - (a) I am married to the member/former member and have not been living separate and apart from that person for a continuous period longer than 2 years immediately preceding the date on which I sign this form, or
 - (b) I have been living with the member/former member in a marriage-like relationship for a period of at least 2 years immediately preceding the date on which I sign this form.
2. I understand that because I am the member's/former member's spouse, the *Pension Benefits Standards Act* and the regulations under that Act give me the right to receive the following survivor's benefits:
 - (a) ***if the member/former member dies before starting pension or annuity payments*** – I have the right as beneficiary, after the member's/former member's death, to receive the member's/former member's benefits in the pension plan and any locked-in retirement account, life income fund or annuity purchased using those benefits, unless I waive or give up that right by signing Form 4 *[Spouse's Waiver of Beneficiary Right to Benefits in a Pension Plan, Locked-In Retirement Account, Life Income Fund or Annuity Before Pension or Annuity Payments Start]*;
 - (b) ***if the member/former member dies after starting pension or annuity payments*** – After the member's/former member's death, I have the following rights:
 - (i) in the case of a pension from a defined benefit or target benefit component of a pension plan or payments from an annuity purchased using the member's/former

member's benefits in a pension plan, locked-in retirement account or life income fund,

- (A) I have the right to receive lifetime payments that are at least 60% of the payments that were paid to the member/former member, unless I waive or give up that right by signing Waiver A of this form, and
 - (B) even if I waive or give up the right to receive those lifetime payments, I still have the right as beneficiary to receive any remaining benefits in the pension or annuity, unless I waive or give up that right by signing Waiver B of this form;
 - (ii) in the case of life income type benefits from a defined contribution component of a pension plan, I have the right as beneficiary to receive any remaining life income type benefits, unless I waive or give up that right by signing Waiver C of this form.
3. I understand that signing this form does not affect
 - (a) the right I have under the *Pension Benefits Standards Act* set out in section 2 (a) of this form unless I waive or give up that right, or
 - (b) any rights I may have as a result of a breakdown of the relationship between me and the member/former member.
 4. I understand that my survivor's benefits may have substantial value and may be important to provide me with income in my old age.
 5. I have read this form and understand it.
 6. I have reviewed current statements of the member's/former member's benefit entitlement provided by the plan administrator, the locked-in retirement account issuer, the life income fund issuer, or the insurance company holding the annuity.
 7. Neither the member/former member nor anyone else has put any pressure on me to sign this form.
 8. The member/former member is not present while I am signing this form.
 9. The information I have given in this form is true, to the best of my knowledge, when I sign this form.
 10. I am aware that I am entitled to a copy of this form.
 11. I understand that
 - (a) this form gives only a general description of my legal rights under the *Pension Benefits Standards Act* and the regulations under that Act, and
 - (b) if I wish to understand exactly what my legal rights are, I must read the *Pension Benefits Standards Act* and the regulations under that Act and/or seek legal advice.

WAIVER A: Right to a minimum 60% lifetime survivor's benefit

I am signing this waiver, not more than 90 days before the member/former member starts payments from a defined benefit or target benefit component of a pension plan or from an annuity, to waive or give up the right, after the member's/former member's death, to receive lifetime payments of at least 60% of the pension or annuity payments that were paid to him/her.

Instead, I will receive the following from the plan or annuity:

- lifetime payments that are% [*specified joint and survivor benefit permitted under the plan/annuity*] of the lifetime payments that were paid to the member/former member;
- payments during the-year guarantee period [*guarantee period permitted under the plan/annuity*], if the member/former member dies before the end of the guarantee period.

I understand that signing this waiver does not affect my right as beneficiary, after the member's/former member's death, to receive any remaining benefits in the pension or annuity, such as a guarantee period, unless I waive or give up that right by signing Waiver B.

WAIVER B: Beneficiary right after waiver of minimum 60% lifetime survivor's benefit

I am signing this waiver, before the member's/former member's death, to waive or give up the right, as beneficiary, to receive any remaining benefits in a pension from a defined benefit or target benefit component of a pension plan or in an annuity, if the member/former member dies after starting pension or annuity payments.

WAIVER C: Beneficiary right to life income type benefits

I am signing this waiver, before the member's death, to waive or give up the right as beneficiary, after the member's death, to receive any remaining life income type benefits from a defined contribution component of a pension plan.

Date [mm/dd/yyyy]

Signed [spouse]

I witnessed this spouse sign this form in the absence of his or her spouse.

Signed [witness to signature of spouse]

Name of witness.....

Address of witness.....

COMMENTS AND INSTRUCTIONS

Survivor's benefits are important and can be valuable. The *Pension Benefits Standards Act* requires a specific form for waiving survivor's benefits to ensure that serious consideration is given to this decision.

When dealing with valuable assets, obtaining legal advice is usually considered prudent. This form is not a substitute for legal advice.

Waiver A must be signed and witnessed, in the absence of the member/former member, not more than 90 days

- before the date the member's pension is to start, and provided to the plan administrator, or
- before the date annuity payments are to start, and provided to the plan administrator, locked-in retirement account issuer or life income fund issuer who is to purchase the annuity or the insurance company holding the annuity.

Waiver B may only be used if the spouse is also signing, or has previously signed, Waiver A. Waiver B must be signed and witnessed, in the absence of the member/former member, before the member's/former member's death and provided to the plan administrator or to the insurance company holding the annuity.

Waiver C must be signed and witnessed, in the absence of the member, before the member's death and provided to the plan administrator.

For further information, please contact the plan administrator, the locked-in retirement account issuer, the life income fund issuer, or the insurance company holding the annuity.



FORM 4

Superintendent of Pensions

**PENSION PARTNER WAIVER OF POST PENSION
COMMENCEMENT DEATH BENEFITS FROM A
DEFINED BENEFIT PORTION of a PENSION PLAN**

Part 1

Waiver of Minimum 60% Joint Life Pension

I, _____, am a “pension partner” (as
[name]

described below) of _____,
[insert name of member /former member]

(in this waiver form referred to as “the member”) who, at the time of my signing anything in this Form, is alive and is about to commence to receive a pension.

The member earned benefits under defined benefit provisions of _____

_____, a pension plan regulated in accordance with the
[insert name of pension plan]
Employment Pension Plans Act and Regulation (in this Form referred to as “the legislation”).

The money representing those benefits remains in that pension plan.

Being the member’s “pension partner” means that

- (a) I am married to the member and have not been living separate and apart from him or her for 3 or more consecutive years, or
- (b) if paragraph (a) above does not apply to me and there is no other person to whom paragraph (a) applies, I have been living with the member in a conjugal relationship for a continuous period of at least 3 years or, if there is a child of our relationship by birth or adoption, of some permanence.

I understand that the legislation in general requires that the benefits earned under and paid from the pension plan must be paid as at least a 60% joint life pension. This means that if the member starts to receive a pension and dies before I do, survivor payments equal to at least 60% of it will continue to me for my lifetime.

However, I understand that if I choose to sign this Part (Part 1) of this Form and it is filed with the administrator, I give up my rights to the minimum 60% joint life pension. I further understand that my signing this Part 1 means that the member may choose a pension form that

- (a) gives me a lower survivor benefit than the 60% joint life pension,
- (b) provides a lump sum death benefit for which I will be the beneficiary unless I also waive my entitlement to it by executing Part 2 of this Form, or
- (c) provides no death benefit at all.

Nevertheless, I give up my right to receive the minimum 60% joint life pension otherwise required by the legislation.

This Part does not affect any rights that I could have arising as a result of any breakdown or potential breakdown in the relationship between the member and myself.

I have chosen to execute Part 1 of this Form and in so doing I give up my right to receive the 60% joint life pension. By executing this Part 1 of the Form, I do not give up any potential right that I may otherwise have under any designation of myself as beneficiary signed by the member.

Certification as to Part 1

I certify that

- (a) I have read Part 1 of this Form and understand it or the potential results of my signing it,
- (b) I have read the member's retirement statement or a statement from the administrator showing the balance in his or her account and know the approximate current value of the benefit I am giving up as a result of executing this Part (Part 1) of this Form,
- (c) I am signing Part 1 of my own free will,
- (d) the member is not present while I am signing this Part,
- (e) I have obtained independent advice about the implications of signing Part 1,
- (f) I realize that
 - (i) Part 1 only gives a general description of the legal rights I have under the legislation relating to Part 1, and
 - (ii) if I wish to understand exactly what my legal rights are, I must read the legislation applicable and, if necessary, consult a professional with pension expertise,
- and
- (g) the information that I have given in this Part is true, to the best of my knowledge, at the time when I sign this Part but, if any of that information changes before the member dies or receives or commences to receive the benefit, whichever happens first, I undertake that I will immediately notify the administrator of that change.

Dated at _____ in the Province/Territory of _____ this ___ day of _____, 20____.

[municipality] [month] [year]

[Signature of Waiving Pension Partner]

I, _____, of _____

[name of witness] [address of witness]

do witness the signature of the pension partner who signed this Part (Part 1) of this Form before me outside of the presence of the member.

[Signature of Witness to Signature of Waiving Pension Partner]

[Print Full Name of Witness]

Part 2
Waiver of Sole Designated Beneficiary Rights

[NOTE: Before signing this Part, please consider all of the following:

- If you have signed Part 1 of this Form above, you may, but do not have to, sign this part (Part 2).
- You may not sign Part 2 unless you have signed Part 1.
- You may not sign Part 2 if the original plan member has selected any joint life form of pension.
- You do not have to sign Part 2 at the same time as you sign Part 1, but may do it at any time before the member dies.
- If you have previously signed Part 2, you may cancel it at any time before the member dies.]

I am and was, at the time of pension commencement a “pension partner”, as defined in Part 1 above, of the member referred to in Part 1.

The money representing the residual benefit referred to in the next paragraph remains in the pension plan referred to in Part 1.

I understand that, although I have given up my rights to the minimum 60% joint life pension by signing Part 1 above, the legislation makes me the automatic sole designated beneficiary of the member, meaning that I would receive any residual benefit from the plan on the member’s death unless I sign the waiver in this Part (Part 2).

Nevertheless, in addition to giving up my right to the minimum 60% joint life pension (as I have done in Part 1), I also give up all my rights as such automatic designated beneficiary and, as a result, all other benefits or entitlements that I have or may have under the plan.

This Part does not affect any rights that I could have arising as a result of any breakdown or potential breakdown in the relationship between the member and myself.

I have chosen to execute Part 2 of this Form and in so doing I give up my entitlement to be the sole designated beneficiary with respect to any death benefit payable from the plan.

Certification as to Part 2

I certify that

- (a) I have read Part 2 of this Form and understand it or the potential results of my executing it,
- (b) I have read the member’s retirement statement or a statement from the administrator showing the balance in his or her account and know the approximate current value of the benefit I am giving up as a result of executing this Part (Part 2) of this Form,
- (c) I am signing Part 2 of my own free will,
- (d) the member is not present while I am signing this Part,
- (e) I have obtained independent advice about the implications of signing Part 2,
- (f) I realize that
 - (i) Part 2 only gives a general description of the legal rights I have under the legislation relating to Part 2, and
 - (ii) if I wish to understand exactly what my legal rights are, I must read the legislation applicable and, if necessary, consult a professional with pension expertise,

- (g) the information that I have given in this Part is true, to the best of my knowledge, at the time when I sign this Part but, if any of that information changes before the member dies or receives or commences to receive the benefit, whichever happens first, I undertake that I will immediately notify the administrator of that change, and
- (h) I understand that I have the right to cancel this waiver I have signed in this Part (Part 2) at any time before the member dies.

Dated at _____ in the Province/Territory of _____ this ____ day of _____, 20____.

[municipality] [month] [year]

[Signature of Waiving Pension Partner]

I, _____, of _____

[name of witness] [address of witness]

do witness the signature of the pension partner who signed this Part (Part 2) of this form before me outside of the presence of the member.

[Signature of Witness to Signature of Waiving Pension Partner]

[Print Full Name of Witness]



Form 3

[Subsections 32(2.1) and 34(4) of *The Pension Benefits Act, 1992*
and clause 29(4) (c.1) of *The Pension Benefits Regulations, 1993*]

SPOUSE'S WAIVER OF 60% POST-RETIREMENT SURVIVOR BENEFIT

I, _____
(print or type full name of spouse)

certify that I am the spouse (within the meaning of clause 2(1)(ff) of *The Pension Benefits Act, 1992*) of

(print or type full name of member or former member or contract owner)

(hereinafter called "the pensioner") who is a member or former member of a registered pension plan that is subject to the provisions of *The Pension Benefits Act, 1992* or is an owner of a locked-in retirement account contract or a registered retirement income fund contract that is subject to *The Pension Benefits Regulations, 1993*.

1. I understand that, in the absence of this waiver, on the death of the pensioner, I am entitled to a pension of at least 60% of the original amount of the pension payable to the pensioner;

2. I also understand and declare that, by signing this waiver:

(a) I am giving up my entitlement, on the death of the pensioner, to a pension of at least 60% of the original amount of the pension payable to the pensioner;

(b) I am permitting the pensioner to receive a pension that does not comply with section 34 of *The Pension Benefits Act, 1992*; and

(c) on the death of the pensioner, I may receive no pension or may receive a pension of less than 60% of the original amount of the pension payable to the pensioner.

3. I certify that this waiver is being signed freely and voluntarily without any compulsion on the part of the pensioner and outside the immediate presence of the pensioner.

4. I understand that, except in the event that this form is being signed for the purposes of subsection 32(2.1) of *The Pension Benefits Act, 1992* or clause 29(4)(c.1) of *The Pension Benefits Regulations, 1993*, this waiver is not valid if it is signed more than 90 days before pension commencement.

5. I understand that I may revoke this waiver at any time before pension commencement or transfer by providing written notice to the administrator of the pension plan or issuer of the contract, as the case may be.

In witness whereof, I sign this waiver at

_____ this _____ day of _____ 20 ____ in the presence of

(print or type name of witness)

of _____
(address of witness)

(Signature of witness)

(Spouse's signature)

**COMMENTS AND INSTRUCTIONS
FORM 3
SPOUSE'S WAIVER OF 60% POST-RETIREMENT SURVIVOR BENEFIT**

For the purposes of this form, a “survivor benefit” means:

The lifetime benefit provided under section 34 of *The Pension Benefits Act, 1992* (the Act) that ensures that, on the death of a person in receipt of a pension, the surviving spouse will continue to receive a pension of at least 60% of the pension that was being paid to the person.

For the purposes of this form, “pensioner” means:

- the member or former member of a registered pension plan (RPP) that is subject to the Act,
- the owner of a locked-in retirement account (LIRA) that is subject to the Act, or
- the owner of a prescribed registered retirement income fund (pRRIF) that is subject to the Act.

where the pensioner wishes to elect a pension that does not provide the spouse with a survivor benefit of at least sixty percent of the pension payable to the pensioner (i.e. a single-life pension or annuity, a variable benefit pension from a defined contribution plan, payments due to shortened life expectancy) or where the pensioner wishes to transfer his or her entitlement to a pooled registered pension plan (PRPP) or a pooled retirement savings account (PRSA). A PRPP and a PRSA are each subject to the provisions of *The Pooled Registered Pension Plan (Saskatchewan) Act* (the PRPP Act), and the PRPP Act does not have provisions which provide the spouse with a survivor benefit of at least sixty percent of the pension payable to the pensioner.

Under the Act, “spouse” means:

- (a) a person who is married to a member or former member; or
- (b) if a member or former member is not married, a person with whom the member or former member is cohabiting as spouses at the relevant time and who has been cohabiting continuously with the member or former member as his or her spouse for at least one year prior to the relevant time.

This waiver must be completed by the spouse of a pensioner, where the spouse wishes to waive his or her entitlement to the survivor benefit. By signing this form, the spouse is waiving his or her rights to receive the survivor benefit.

This waiver must be completed and signed by the spouse if the pensioner has assets in a RPP, LIRA or a pRRIF and the pensioner wishes to elect a pension that does not provide the spouse with a survivor benefit or where the pensioner wishes to transfer his or her entitlement to a PRPP or a PRSA.

This waiver must be:

- completed in its entirety;
- signed by the spouse, in the presence of a witness, outside of the immediate presence of the pensioner; and
- filed with;
 - the administrator of the RPP, if the transfer is from a RPP, or
 - the issuer of the LIRA or pRRIF, if the transfer is from a LIRA or pRRIF

By providing written notice to the administrator of the RPP or the issuer of the LIRA or pRRIF contract, as the case may be, the waiver may be revoked at any time prior to the commencement of the pension payments from an RPP / life annuity or prior to the transfer to a PRPP or PRSA.

We strongly urge the spouse to seek independent legal advice before signing this waiver.



**FORM 5A - WAIVER OF 60% JOINT SURVIVOR PENSION
FOR PENSION PLAN OR LOCKED-IN RETIREMENT ACCOUNT**

*The Pension Benefits Act, Sections 23, Pension Benefits Regulation, Section 3.35,
Section 10.2 of Division 1, and Section 10.22 of Division 2 of Part 10*

COMMENTS AND INSTRUCTIONS

This form must be completed where the retiring member of a pension plan wishes to

- elect a form of pension or purchase a life annuity that provides the spouse or common-law partner with less than the 60% joint survivor pension required by *The Pension Benefits Act*, or no survivor pension; or
- transfer the funds to a Life Income Fund (LIF) or Variable Benefit.

Prior to completing this form, the spouse or common-law partner should consider obtaining independent legal advice concerning his or her individual rights and the effect of this waiver as well as qualified financial advice about the financial consequences.

This form must be completed where the owner of a Locked-In Retirement Account (LIRA) wishes to

- transfer the funds to a Life Income Fund (LIF) or Variable Benefit; or
- withdraw all or a part of the LIRA account balance as a result of shortened life expectancy.

This form must be

- completed in its entirety;
- signed by the spouse or common-law partner, and witnessed while the member is not present, within 60 days before the member's pension commences;
- filed with the plan administrator;
- used for benefits earned under pension plans subject to *The Pension Benefits Act* of Manitoba;
- provided to the transferee if funds are moved from one financial institution to another; and
- before money is transferred to another vehicle permitted under the Regulation, provided to the administrator of the vehicle receiving the money.

For further information please contact the plan administrator or financial institution.

Definitions

Administrator

Means in relation to a pension plan, the person or body of persons responsible for administering the plan, and in relation to a LIRA, the financial institution responsible for administering the plan or fund.

Common-law partner of a member or member-owner means

(a) a person who, with the member or former member, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, or

(b) a person who, not being married to the member or former member, cohabited with him or her in a conjugal relationship

(i) for a period of at least three years, if either of them is married, or

(ii) for a period of at least one year, if neither of them is married.

Joint survivor pension

35

Means a form of pension that pays a pension on retirement to the member or member-owner for his or her lifetime and, after death, to the spouse or common-law partner for his or her lifetime.

60% joint survivor pension

Means the **joint survivor pension** required by *The Pension Benefits Act* that pays a pension to the member for his or her lifetime and, after death, provides the spouse or common-law partner with a pension for his or her lifetime that is at least 60% of the pension that was payable to the member.

Member

Means an employee or former employee who is accruing or entitled to a pension under a pension plan, but is not yet retired and receiving a pension under the plan.

Member-owner

Means the individual identified in the LIRA contract as the annuitant and who as a former member of a pension plan transferred a pension benefit credit directly or indirectly to that LIRA.

Spouse

Where used in relation to another spouse means the person who is married to that other spouse, and “spouses” mean two persons who are married to each other.

Variable Benefit

Means a retirement benefit payable to a member from a pension plan that is subject to the requirements of the Act and pays an adjustable flow of retirement income to the member based on prescribed annuity factors.

This form should be completed where:

The retiring member of a pension plan wishes to

- elect a form of pension or purchase a life annuity that provides the spouse or common-law partner with less than the 60% joint survivor pension required by *The Pension Benefits Act*, or no survivor pension; or
- transfer the funds to Life Income Fund (LIF) or Variable Benefit.

The owner of a Locked-In Retirement Account (LIRA) wishes to

- transfer the funds to a Life Income Fund (LIF) or Variable Benefit; or
- withdraw all or a part of the LIRA account balance as a result of shortened life expectancy.

I, _____, am the spouse or common-law partner
(as described above) of _____.
(name of member or member-owner)

The member or member-owner earned benefits under a pension plan subject to *The Pension Benefits Act* of Manitoba (Act) and was employed in Manitoba on the day he or she ceased to be an active member of the plan.

I understand that under the Act

- I am entitled to a joint survivor pension on the member's death that must be at least 60% of the pension payment that was payable to the member;
- I may waive my entitlement to the 60% joint survivor pension after receiving certain information and completing this waiver;
- if I sign this waiver I will no longer be entitled to the 60% joint survivor pension;
- this waiver may be revoked before the retirement of the member or member-owner by filing with the administrator a written revocation signed by me.

I certify that

- I have read this waiver and understand it;
- I have read the member's retirement statement or a statement from the financial institution showing the balance in the owner's account and know the amount of the benefit I am giving up;
- I am aware of the consequences of waiving the 60% joint survivor pension, and despite the consequences, I waive it;

- I am not living separate and apart from the spouse or common-law partner by reason of a breakdown of our relationship;
- the member or member-owner is not present while I am signing this form;
- I am signing this form of my own free will without duress, coercion or compulsion of any kind; and
- I realize that:
 - this form only gives a general description of the legal rights I have under the Act and the regulation, and
 - if I wish to understand exactly what my legal rights are, I must read the Act and the regulation and seek legal advice.

I hereby waive my entitlement to the 60% joint survivor pension by signing this form in the presence of a witness.

I sign this form at

_____ (city/town) _____ (province/territory/state) _____ (country)

this _____ day of _____, _____

(signature of spouse or common-law partner)

I, _____, of _____
(print name of witness)

(print address of witness)

do witness the signature of the spouse or common-law partner who signed this form before me outside of the presence of the member or member-owner.

(signature of witness)

FORM 5**JOINT AND SURVIVOR PENSION WAIVER***(General Regulation – Pension Benefits Act, s.26(1))*

TO:

(name of administrator)

administrator of _____

(name of pension plan)

- OR -_____
(name of financial institution)

that sells or sold the annuity to which a locked-in retirement account or life income fund is being or has been converted.

We, the undersigned, direct you under subsection 41(4) of the *Pension Benefits Act* to waive the following described joint and survivor pension in respect of_____
name of person who is a member, a person entitled to the deferred pension, an owner of the locked-in retirement account or life income fund to be or being converted or an annuitant of the deferred life annuity
("the member"/"the owner"/"the annuitant")_____
mailing address_____
date of birth_____
social insurance number**AND**_____
(name of spouse / common law partner)
("the spouse"/"the common-law partner")_____
mailing address**FORMULE 5****RENONCIATION À LA PENSION COMMUNE
ET DE SURVIVANT***(Règlement général de la Loi sur les prestations de pension,
para. 26(1))*

DESTINATAIRE :

(nom de l'administrateur)

administrateur de _____

(nom du régime de pension)

- OU -_____
(nom de l'institution financière)

qui vend ou qui a vendu la rente à laquelle le compte de retraite immobilisé ou le fonds de revenu viager est en voie de conversion ou a été converti.

Nous, soussignés, vous donnons instructions en vertu du paragraphe 41(4) de la *Loi sur les prestations de pension* de renoncer à la pension commune et de survivant qui est décrite ci-après à l'égard de_____
nom de la personne qui est un participant, une personne qui a droit à la pension différée, un titulaire du compte de retraite immobilisé ou du fonds de revenu viager qui sera converti ou est en voie d'être converti ou du rentier de la rente viagère différée
(« le participant », « le titulaire » ou « le rentier »)_____
adresse postale_____
date de naissance_____
numéro d'assurance sociale**ET**_____
(nom du conjoint ou conjoint de fait)
(« le conjoint » ou « le conjoint de fait »)_____
adresse postale

date of birth

date de naissance

The person who is a member, owner or annuitant is entitled to choose one from among the following options (number and describe options):

La personne qui est un participant, un titulaire ou un rentier a droit de choisir l'une des options suivantes (numéroter et décrire les options) :

and has chosen option number _____
number of option chosen

et a choisi l'option numéro _____
numéro de l'option choisie

Statement of Spouse or Common-Law Partner
Signing Waiver

Renonciation du conjoint ou conjoint de fait

I understand that as a result of my signing this waiver:

Je comprends que par suite de ma signature de la présente renonciation

- (a) I waive any right I may have to a survivor pension of at least sixty per cent of my spouse's/common-law partner's benefit should my spouse/common-law partner predecease me;
- (b) my spouse/common-law partner will be able to receive the option chosen above; and
- (c) I will receive no survivor pension or I will receive a pension that is less than sixty percent of my spouse's/common-law partner's pension.

- (a) je renonce à tout droit que je puis avoir à la pension de survivant d'au moins soixante pour cent des prestations de mon conjoint ou de mon conjoint de fait au cas où il me précéderait;
- (b) mon conjoint ou mon conjoint de fait pourra recevoir l'option choisie ci-dessus; et
- (c) je ne recevrai aucune pension de survivant ou je recevrai une pension qui est de moins de soixante pour cent de la pension de mon conjoint ou de mon conjoint de fait.

NOTES:

- (a) This waiver may be revoked at any time before the pension is paid from the pension plan or annuity by completing a revocation of joint and survivor pension waiver form.
- (b) The person who is a member, entitled person, owner or annuitant and the spouse or common-law partner may obtain independent legal or other advice concerning their individual rights and the effect of signing this waiver.
- (c) If the person who is a member, entitled person, owner or annuitant chooses a pension that provides the spouse or common-law partner with benefits that are at least as favourable to the spouse or common-law partner as those provided under the *Pension Benefits Act*, this waiver need not be signed.

REMARQUES :

- (a) La présente renonciation peut être annulée en tout temps avant que la pension ne soit payée à partir du régime de pension ou de la rente en remplissant une formule de révocation d'une renonciation à la pension commune et de survivant.
- (b) La personne qui est un participant, une personne qui a un droit, un titulaire ou un rentier et le conjoint ou le conjoint de fait peuvent obtenir un avis légal ou autre avis indépendant concernant leurs droits individuels et l'effet de leur signature à la présente renonciation.
- (c) Si la personne qui est un participant, une personne qui a un droit, un titulaire ou un rentier choisit une pension qui prévoit pour le conjoint ou le conjoint de fait des prestations qui sont au moins aussi avantageuses pour lui que celles qui sont prévues en vertu de la *Loi sur les prestations de pension*, la présente renonciation n'a pas besoin d'être signée.

(d) This waiver is not valid unless it is signed and delivered, within the year preceding payment of the pension, to the administrator of the pension plan or the financial institution that sells or sold the annuity to which a locked-in retirement account or life income fund is being or has been converted.

(d) La présente renonciation n'est valide que si elle est délivrée, dans l'année précédant le paiement de la pension, à l'administrateur du régime de pension ou à l'institution financière qui vend ou a vendu la rente à laquelle un compte de retraite immobilisé ou un fonds de revenu viager est en voie de conversion ou a été converti.

We acknowledge that we have read the contents of this waiver form, sign it freely and voluntarily and understand the consequences of signing it.

Nous reconnaissons que nous avons lu le contenu de la présente formule, que nous l'avons signée librement et volontairement et que nous comprenons les conséquences de notre signature.

Signature of the member/the owner/the annuitant

Signature du participant, du titulaire ou du rentier

Signature of the spouse/the common-law partner

Signature du conjoint ou conjoint de fait

Declared before me at _____
this ____ day of _____, 20 ____

Déclaration faite devant moi à _____
le ____ jour de _____ 20 ____.

Signature of Commissioner of Oaths

Signature du commissaire à l'assermentation

Being a Solicitor OR My Commission Expires _____

Avocat OU Ma commission se termine le _____

(Clearly Print Name)

(Inscrire le nom clairement en lettres moulées)

--- OR ---

--- OU ---

Signature of A Notary Public

Signature du notaire

in and for the _____
of _____

Fait le _____
de _____

(SEAL)

(SCEAU)

THIS FORM MUST BE SWORN BEFORE A COMMISSIONER OF OATHS. FORMS SWORN OUTSIDE OF NEW BRUNSWICK MUST BE TAKEN BY A NOTARY PUBLIC.

CE FORMULAIRE DOIT ÊTRE SIGNÉ SOUS SERMENT. À L'EXTÉRIEUR DU NOUVEAU-BRUNSWICK, IL DOIT ÊTRE SIGNÉ SOUS SERMENT DEVANT UN NOTAIRE.

Form provided by the Superintendent of Pensions

Formule établie par le surintendant des pensions.

FINANCIAL AND
CONSUMER SERVICES
COMMISSION



COMMISSION DES SERVICES
FINANCIERS ET DES SERVICES
AUX CONSOMMATEURS

Form 6

Spousal Waiver

Joint & Survivor Pension Benefits

► Why complete this form?

Complete this form if the following statements are true:

- You are a member or former member of a pension plan entitled to receive payment of a pension from a pension plan or life annuity.
- You and your spouse both agree that your spouse will waive their right to any joint and survivor pension benefits provided by Section 63 of the Pension Benefits Act.

Before you and your spouse complete this form, you should have private conversations with separate lawyers about how the completion of this form affects your individual rights.

1 ► Give information about the pension plan or life annuity

Name of plan: _____

Registration number: _____

Annuity account number: _____

Name of the administrator or financial institution: _____

Address: _____

Postal code: _____ Phone number: _____

2 ► Give information about the member or former member

Last name: _____

First name: _____ Middle name: _____

Address: _____

Postal code: _____ Phone number: _____

Date of birth (yyyy/mm/dd): _____

3 ► Give information about the spouse

Last name: _____

First name: _____ Middle name: _____

Address: _____

Postal code: _____ Phone number: _____

4 ▶ Sign the member or former member's certification and acknowledgement

I certify that I am a member or former member of the pension plan named in this form.

I understand that if I retire and die before my spouse, the Pension Benefits Act gives my spouse the right to receive at least 60 per cent of the pension that would have been paid to me.

I understand that completing and signing this form takes away my spouse's right to receive the benefits described above.

I understand that my spouse and I may cancel this waiver at any time BEFORE the date the first instalment of the pension is due.

**Signature of member
or former member:** _____

Date (yyyy/mm/dd): _____

Signature of witness: _____

Date (yyyy/mm/dd): _____

This waiver must be signed before a witness. Your witness

- must be at least 18 years of age
- must NOT be your spouse
- must see you sign the form
- must sign, print their name, and date this form immediately after seeing you sign and date this form

5 ▶ Give information about the witness

Last name: _____

First name: _____ Middle name: _____

Address: _____

Postal code: _____ Phone number: _____

6 ▶ Sign the spouse's certification and waiver

I certify that I am the spouse of the member or former member named in this form.

I understand that if my spouse retires and dies before me, the Pension Benefits Act gives me the right to receive at least 60 per cent of the pension that would have been paid to my spouse.

I understand that by completing this form and signing this waiver, I give up the right to receive the benefits described above.

I understand that my spouse and I may cancel this waiver at any time BEFORE the date the first instalment of the pension is due.

Signature of spouse: _____	Date (yyyy/mm/dd): _____
Signature of witness: _____	Date (yyyy/mm/dd): _____

This waiver must be signed before a witness. Your witness

- must be at least 18 years of age
- must NOT be your spouse
- must see you sign the form
- must sign, print their name, and date this form immediately after seeing you sign and date this form

7 ▶ Give information about the witness

Last name: _____

First name: _____ Middle name: _____

Address: _____

Postal code: _____ Phone number: _____

8 ▶ Give this waiver to the administrator or insurance company that looks after your pension plan or life annuity.

Do not give this waiver to the Department of Finance and Treasury Board, Pension Regulation Division

Note: This waiver comes into effect ONLY AFTER it is delivered to the administrator of the pension plan.

It is an offence under the Criminal Code for anyone to knowingly make or use a false document with the intent that it be acted upon as genuine.

This form is approved by the Superintendent of Pensions under the Pension Benefits Act.

Questions? Call 902-424-8915 or email pensionreg@novascotia.ca

How we define spouse, domestic contract, member, former member, and waiver**Spouse**

- The person you are married to.
- The person you are married to, if the marriage hasn't been legally ended.
- The person you thought you were married to, if you are still living together.
- The person you thought you were married to, if you have lived together in the last 12 months.
- The person who is your registered domestic partner under the Vital Statistics Act.
- The person you have been living with in a sexual relationship for at least one year, if neither of you are married to someone else.
- The person you have been living with in a sexual relationship for at least three years, even if one or both are you are married to someone else.

Domestic contract

A domestic contract means

- a written agreement that provides for a division between spouses of a pension benefit, deferred pension, or pension.
- a marriage contract as defined in the Matrimonial Property Act

Member – member of a pension plan

Former member – a person who is entitled to pension benefits and

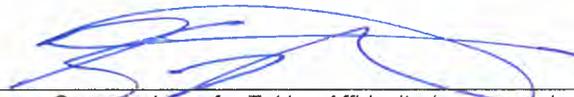
- is no longer employed by the organization that provides the pension
- is no longer a member of the pension plan

Note: A person who had the right to some pension benefits earned by a spouse and is no longer in a relationship with that spouse is NOT considered a former member.

Waiver – a written agreement in which a person gives up a right to something to which they would ordinarily be entitled. For example, a written agreement in which a spouse gives up the right to receive pension benefits to which they would ordinarily be entitled.

TAB C

This is **Exhibit "C"** referred to in the
Affidavit of Hamish Dunlop affirmed August 24, 2018



Commissioner for Taking Affidavits (or as may be)

KIRAN PATEL

SEARS CANADA INC.**NOTICE TO PENSION PLAN MEMBERS AND SPOUSES OF SEARS CANADA INC. REGISTERED RETIREMENT PLAN WHO WERE EMPLOYED IN BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, NEW BRUNSWICK AND NOVA SCOTIA**

TAKE NOTICE that Morneau Shepell Ltd., the administrator of the Sears Canada Inc. Registered Retirement Plan Registration No. 0360065 (the "**Plan**"), has filed a Notice of Motion with the Ontario Superior Court of Justice [Commercial List] (the "**Court**"), returnable [●], 2018, for advice and directions as to whether it can accept as valid the joint and survivor waiver forms completed by spouses of some Plan members who were employed in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia at the time they terminated employment with Sears Canada Inc. or certain of its affiliates.

The Notice of Motion and Motion Record as well as further information with respect to the insolvency proceedings of Sears Canada Inc. and its affiliates can be found at <http://cfcanada.fticonsulting.com/searscanada>.

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 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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF HAMISH DUNLOP
(Advice and Directions re Spousal Waivers)
(Affirmed August 24, 2018)**

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in its capacity as Administrator for the
Sears Canada Inc. Registered
Retirement Plan

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. 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.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

MOTION RECORD OF THE
PENSION PLAN ADMINISTRATOR
(Advice and Directions re Spousal Waiver)

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