

**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.

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RESPONDING MOTION RECORD
(Motion To Remove Board of Directors,
Returnable August 27, 2018)

July 23, 2018

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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**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.

APPLICANTS

I N D E X

Tab	Description
1	Affidavit of Graham W. Savage, Sworn July 23, 2018

Tab 1

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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(Sworn July 23, 2018)

I, Graham W. Savage, of the City of Toronto, in the Province of Ontario, businessman,
MAKE OATH AND SAY:

1. I was elected as a director of Sears Canada Inc. (“Sears”) at the Annual Meeting of Shareholders in April 2015 and have served as a director ever since. I am now the chair of the Board of Directors of Sears. I am also the chair of the Special Committee of the Board of Directors of Sears (the “**Special Committee**”), which was formed in May 2017, shortly before this CCAA proceeding. Given that the Board and the Special Committee had the same membership since October 2017, I use the term “Board” to refer to the Board and/or the Special Committee herein, unless the context requires otherwise. Given my role, I have personal knowledge of the matters contained in this affidavit. Where I do not personally know of any matter referred to in this affidavit, I have stated the source of my information and believe such information to be true. I do

not waive or intend to waive any applicable privilege or any right or duties of confidentiality by any statement herein.

2. I swear this affidavit in response to the motion to remove all members of the Board of Directors of Sears brought by the Representative Counsel to the court-appointed Representatives of the non-unionized Active Employees and Former Employees of the Applicants.

3. In this affidavit, I describe some of the Board's activities to date in overseeing the CCAA process and what I anticipate the Board's involvement to be going forward. I also respond to some of the contents of the affidavit of Erin Epp, sworn July 13, 2018 (the "**Epp Affidavit**"), which is the sole evidence put forward in support of the removal motion. However, I note that I am not responding to every statement in the Epp Affidavit with which I disagree, and I should not be taken to agree with the statements to which I do not explicitly respond.

My Background

4. I hold an MBA from Queen's University. I have over 30 years of experience in the finance and investment industry and have served as an officer and director of dozens of both public and private companies in numerous industries. From 1975 to 1996, I served at Rogers Communications Inc. in various positions, including Senior Vice President of Finance and Chief Financial Officer from 1989 to 1996. I served as the Managing Director of the private equity firm Savage Walker Capital Inc. from October 1998 to October 2002, and was then the founding partner of Callisto Capital, also a private equity firm.

5. Apart from Sears, I am currently a director of Cott Corporation and Postmedia Network Canada Corp., among others. In the past, I have served as a director of Canadian Tire Corporation

Ltd., Canadian Tire Bank, Creation Technologies Inc., AT&T Long Distance Co., Alias Corp., Lions Gate Entertainment Corp., FMC Financial Models Limited, MDC Corp., and as the chairman and lead independent director of Whistler Blackcomb Holdings Inc., among many others. Through my directorships, I have been involved in numerous insolvency and restructuring cases, including Hollinger Inc. and Postmedia.

The Current Sears Board

6. Apart from myself, the other three members of the current Sears Board are Deborah Rosati, Raja Khanna, and Heywood Wilansky. Collectively, we bring an extensive and diverse set of corporate governance skills and experience to the company, along with a deep understanding of Sears and its businesses and assets.

Ms. Epp has no Insight into the Role of the Board

7. According to her firm website profile, Ms. Epp is a recently called lawyer who joined Ursel Phillips Fellows Hopkinson LLP in 2018. It is not apparent from her firm website profile that she has ever served as a director of a public or private company, nor is it apparent that she has experience with boards of directors or corporate governance.

8. In her affidavit, Ms. Epp extensively expresses opinions (without stating whether they are her personal opinions or those of her clients or others) about Sears and the workings and role of its Board. However, she has not attended any Sears Board meetings and has no direct insight into the Board's role in the CCAA process. She apparently joined her firm at least a half year after this CCAA proceeding began. In addition, I have been informed by counsel at Bennett Jones LLP, counsel to the Board, that neither Ms. Epp nor any other person at her firm spoke directly to

Bennett Jones about their clients' alleged concerns with respect to the Board until only a few hours before this motion was served, and even then only at Bennett Jones' suggestion.

The Board's Involvement in the CCAA Process to Date

9. Prior to and since Sears filed for CCAA protection on June 22, 2017, the Board has been exercising oversight over the CCAA process and has been heavily involved in various aspects of the process, all with a view to maximizing value and acting in the best interests of the company. While this is by no means an exhaustive list, the Board's involvement in the CCAA process to date has included the following (in no particular order):

- (a) Determining to launch CCAA proceedings and overseeing the preparation and filing of the CCAA application.
- (b) Establishing various key employee retention plans that were within market parameters, reasonable in the circumstances, and designed to provide appropriate incentives to the relevant individuals, including negotiating with the Monitor and management to reduce payments proposed to be made under the employee retention plans and long term incentive plans.
- (c) Holding a weekly or bi-weekly meeting with an agenda containing standing items, which ensured that there was continuity in the topics being addressed and that there was oversight of management and the professional firms involved in the process.
- (d) Overseeing the main sales process, including establishing protocols to address potential conflicts of interest arising from management's involvement, reviewing

and approving sales process documentation, and devoting a substantial amount of time in seeking a going concern resolution for the benefit of all stakeholders.

- (e) Working directly with management to oversee capital expenditures that were required to preserve the estate.
- (f) Negotiating with the liquidators for the liquidation of Sears' inventory.
- (g) Overseeing the sales process for Sears' real estate portfolio.
- (h) Overseeing compliance with Sears' continuing public disclosure obligations, and its relationship with regulators.
- (i) Overseeing management, including dealing with the exit of Sears' Chief Executive Officer, appointing a member of senior management in his place, and managing the transition.
- (j) Managing the professional fees paid by the estate in the CCAA process. I note that the Board negotiated a 10% discount from its own counsel, Bennett Jones, which to my knowledge is the only firm in this proceeding that is discounting its rates.
- (k) Two of my fellow directors – Raja Khanna and Deobrah Rosati – were asked by the Monitor to participate in interviews by the Monitor to assist with the Monitor's investigation into certain past transactions. Mr. Khanna and Ms. Rosati fully cooperated with the Monitor's investigation by participating in those interviews.

10. I am confident that the Board's presence and active involvement in the CCAA process has benefited the estate and its creditors by increasing the proceeds for Sears' assets and decreasing

costs incurred by the estate. I believe that the very fact that a Board is in place to which management and the professional firms must report on a regular basis has ensured that their various proposals have maximized value and were in the best interests of the company. In my opinion, this supervisory role of the Board has added value to the company and the CCAA process as a whole, and will continue to do so going forward.

The Board's Anticipated Involvement Going Forward

11. Going forward, I anticipate that some of the matters with which the Board will be involved are:

- (a) Managing professional fees being paid by the estate. I believe that the Board's oversight of professional fees has led to reduced costs to the estate. Managing the significant professional fees is an ongoing job.
- (b) Maximizing the monetization of remaining assets. There are remaining real estate assets to be sold. Sears' advisors and the Monitor will report to the Board regarding any offers received and their recommendations. As noted above, the Board will consider and approve the sales to the extent it views them as being in the best interests of the company.
- (c) Managing environmental matters in connection with Sears' remaining real estate portfolio to minimize claims against the estate and maximize value.
- (d) Assisting in the development of a CCAA Plan or alternate distribution mechanism.

- (e) Continuing to engage with Sears' and Sears Holdings Corporation's D&O insurers to ensure that coverage will be available if necessary. I understand that certain creditors are of the view that they may have claims against some of Sears' current and former directors, as detailed in the Epp Affidavit. Sears' D&O insurer has not yet confirmed coverage, and Sears Holdings' D&O insurer has denied coverage (which is currently being disputed). If the creditors are of the view that they have viable claims against Sears' directors, the availability of D&O insurance could provide a potential source of recovery.

- (f) On July 17, 2018, the Applicants filed a motion to extend the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and indemnity claims filed by the Directors and Officers pursuant to the Claims Orders to October 1, 2018. The Claims Procedure Order states that the Monitor shall consult with the directors regarding D&O Claims and shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors. The extension of the deadline will therefore necessitate the further involvement of the Board.

12. In addition to the foregoing, based on my experience in other restructurings, I expect that other issues will arise that the Board does not currently anticipate.

13. I also note that the Board has cancelled its regularly scheduled meetings and will only have Board meetings on an *ad hoc* basis when necessary. Although the Board does not have meeting fees so there is no incremental Board cost in holding meetings, those meetings can add expense because of the various advisors that attend.

The Board's Fees are not Disproportionate

14. Although the Epp Affidavit opines that “the continued cost of the Directors is an unnecessary expense to the estate and as such the Directors should be removed” and that “the cost of paying the Directors and their legal representatives is disproportionately high as compared to their function”, the affidavit does not address the value the Board has added and will continue to add or the cost savings the Board has achieved and will continue to achieve. In my opinion, one cannot determine whether an expense is unnecessary without first considering what corresponding value is generated.

15. According to the Eleventh Report of the Monitor (attached as Exhibit “E” to the Epp Affidavit), the directors’ legal and financial advisors’ fees were only 2% of the total professional fees paid by the estate as of January 6, 2018.

16. The Epp Affidavit acknowledges that the directors have agreed to reduce each of our director’s fees to \$5,000 per month. However, it is worth noting that the Board has already voluntarily reduced its fees twice before in recognition of its changing role and being cognizant of creditor recoveries. The Board has also been operating without D&O insurance to reduce the costs of the estate since February 12, 2018 of this year.

17. The Epp Affidavit further states that the Monitor does not anticipate incurring material additional costs as a result of the proposed expansion of its powers. The affidavit contains no analysis in that regard, nor does it define “material”. Moreover, the Epp Affidavit (and presumably the Monitor’s consideration of its incremental costs) does not consider all of the tasks the Board needs to undertake. I believe that the incremental cost of the Monitor and its counsel would at least match and likely exceed the cost of the Board and its advisors.

There are no Conflicts of Interest

18. Ms. Epp opines in her affidavit that “[i]f the Directors are not removed from their positions with Sears Canada, they will be in a conflict of interest position.” According to Ms. Epp, this alleged “conflict of interest” arises from the fact that a Litigation Investigator has been appointed that *may* pursue claims against certain of Sears’ directors.

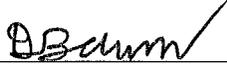
19. As a starting point, no claims have been commenced against any directors by the Litigation Investigator. In any event, the Board did not oppose the appointment of the Litigation Investigator and has not opposed the company providing information to the Litigation Investigator (subject to privilege and confidentiality concerns in the best interests of the company).

20. Ms. Epp also speculates that the directors “may” have access to information and “may” use that information to protect ourselves “rather than act in the best interests of Sears”. As set out above, the Board has done nothing to impede the appointment or investigation of the Litigation Investigator. To the contrary, as described above, the two directors who were requested to do so submitted to voluntary interviews with the Monitor to assist in the Monitor’s investigation of prior transactions. This unfounded attack on the integrity of the Board is without factual foundation and has no merit.

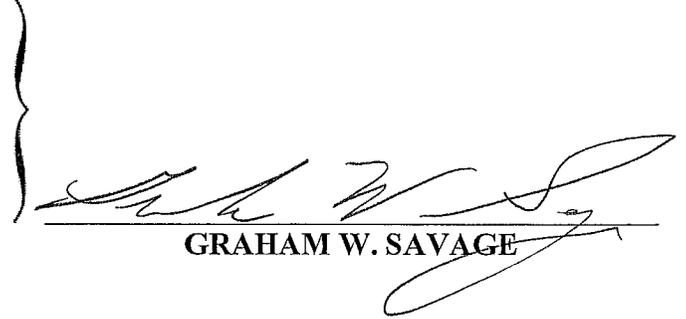
21. I understand that the Litigation Investigator is an independent court-appointed officer of the court. It does not take direction from the Board, and does not even report to the Board. In fact, the Board has no insight into what the Litigation Investigator is doing nor is it in any way involved in its ongoing investigation. I do not believe there is a conflict of interest today, nor do I believe that one is likely to arise. If any issue arose in the future, there are numerous methods of addressing matters that are far less draconian than removing all directors.

22. I believe that the Board has acted, and will continue to act, appropriately in the circumstances and in the best interests of the company and stakeholders as a whole.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on July
23, 2018.



Commissioner for Taking Affidavits



GRAHAM W. SAVAGE

Daniel Rudy Baum, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 11, 2021.

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., 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 GRAHAM W. SAVAGE
Sworn July 23, 2018

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of the Board of Directors of Sears Canada Inc.

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

PROCEEDING COMMENCED AT TORONTO

RESPONDING MOTION RECORD

(Motion To Remove Board of Directors,
Returnable August 27, 2018)

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