

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE  
INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT  
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM  
COMMERCE LABS INC., INITIUM TRADING AND SOURCING  
CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA  
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711  
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

(each an "Applicant", and collectively, the "Applicants")

**RESPONDING MOTION RECORD**  
**(Motion Re: Employee Claims Process and Retiree Claims Process,**  
**returnable February 22, 2018)**

February 21, 2018

**KOSKIE MINSKY LLP**

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**AFFIDAVIT OF WILLIAM TURNER**  
**(Sworn on February 20, 2018)**

I, **WILLIAM TURNER**, of the City of Toronto, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am a retiree of Sears Canada and one of the three Pension Representatives appointed by the Court in this proceeding to represent approximately 18,000 retirees and beneficiaries across Canada. I have personal knowledge of the matters stated in this Affidavit, except where I have acquired such information from others or from documents attached hereto, in which case I believe such information to be true.

2. By order of this Court dated July 13, 2017, I together with retirees and SCRG members Ken Eady and Larry Moore were appointed by the Court as representatives (the "**Pension Representatives**") to represent the pensioners and other former employees of the Applicants (together with SearsConnect, the "**Sears Canada Entities**") and their beneficiaries for purposes of claims pertaining to pension matters and "other post-employment benefits" such as health benefits, life insurance benefits, and supplemental pension benefits (known collectively as "**Other Post-Employment Benefits**"; "**OPEBs**").

3. I swear this Affidavit in response to the Motion by the Applicants for an Order establishing claims procedures for the identification and quantification of employee and retiree claims.

***Proposed Employee and Retiree Claims Procedure Order***

4. During their employment years, Sears Canada employees earned pension benefits that are to be paid to them during their retirement years for their lifetimes. In addition to earning pension benefits, Sears Canada retirees also earned entitlements to OPEBs. As of October 1, 2017, Sears Canada terminated all OPEBs. The liability for unpaid OPEBs in the future for Sears pensioners is a valid claim against the Sears Canada Entities.

5. I have read the Affidavit of Becky Penrice affirmed February 16, 2018 and filed in these proceedings, and the Court Appointed Pension Representatives support the proposed Employee and Retiree Claims Procedure Order, which was prepared with input from our advisors and instructions from us.

***Supplementary Pension Benefits***

6. Sears established the Sears Canada Inc. Supplementary Retirement Plan (the "SRP") on March 29, 1974 to pay supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that paid under the Sears Canada Inc. Registered Retirement Plan, which are subject to maximum amounts as a result of the maximum pension benefit limits under the *Income Tax Act (Canada)*.

7. For individuals entitled to an SRP benefit and whose active service with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from a Retirement Compensation Arrangement Trust fund (the "RCA Trust" or the "Funded SRP Arrangement") established by Sears Canada in 2006. For those individuals whose active service with Sears Canada ended *after* January 1, 2010, the SRP benefit is paid to them monthly out of the operating funds of Sears Canada (the "Unfunded SRP Arrangement"). The SRP benefit was suspended as of October 1, 2017.

8. By order of this Court dated November 8, 2017, a Retiree Committee was established for the purposes of the RCA Trust. I, along with Brent Hollister, George Hughes, Larry Moore, Claude Senechal, and Ken Eady, are members of the Retiree Committee.

9. I am advised by Koskie Minsky LLP, Pension Representative Counsel in these CCAA Proceedings, that as at October 1, 2017, there were fewer than 110 people entitled to benefits under the SRP. All but three of those eligible individuals are represented by Pension Representative Counsel.

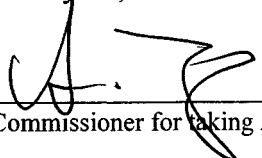
10. I am also advised that the Proposed Employee and Retiree Claims Procedure Order contemplates that claims relating to entitlements under the SRP will be submitted through an omnibus proof of claim by Pension Representative Counsel on behalf of all eligible individuals, including those individuals who are not represented by Pension Representative Counsel.

11. I am advised by the actuarial advisor to the Pension Representatives, Tom Levy of Segal Canada that the methodology Segal will use to value both the Funded and Unfunded SRP Arrangements is the Prescribed Annuity method. I am advised by Segal that a Prescribed Annuity calculation determines, for each individual, the lump sum that is needed such that after taxes, the member receives a net payment from an individual annuity that equals what they were receiving from the SRP. Attached herein as Exhibit "A" is Segal's proposed methodology for the SRP claim calculation.


12. I and the other Court Appointed Pension Representatives support the methodology that will be used by Segal to value both the Funded and Unfunded SRP Arrangements, and shall instruct our advisors to prepare a claim using such methodology.

13. I swear this Affidavit in support of a motion establishing the Employee and Retiree Claims Procedure and for no improper purpose.

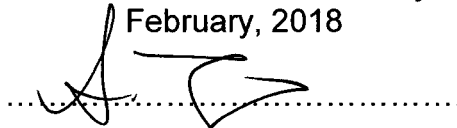
SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February 20, 2018.

  
A Commissioner for taking Affidavits, etc.

LSUC # 70164k

  
WILLIAM TURNER

This is **Exhibit "A"** referred to in the  
affidavit of William Turner  
sworn before me, this 20<sup>th</sup> day of  
February, 2018

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a large, sweeping flourish that loops back under the line. The signature is positioned above a horizontal dotted line.

A Commissioner for taking affidavits,  
etc.

LSUC # 70164K



## PRIVILEGED AND CONFIDENTIAL MEMORANDUM

**To:** Mark Zigler, Andrew Hatnay  
**From:** Thomas Levy, Nevio Tenuta  
**Date:** January 30, 2018  
**Re:** Sears Canada CCAA Claims – SRP

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This document identifies Segal's proposed principles for valuing CCAA claims related to the Supplemental Retirement Plans previously provided by Sears but discontinued in whole or in part through the CCAA proceedings. Present values determined by Segal will be in accordance with accepted actuarial practice in Canada.

For simplicity, this memorandum is written based on the premise that the computations will be based on Ontario tax rates regardless of residence. A more precise calculation would be to differentiate results by applying the actual tax rates of each claimant's own province of residence. Further, prescribed annuity rules in accordance with the Income Tax Act<sup>1</sup> will be used, even though they technically are not applicable to indexed annuities.<sup>2</sup>

### **SUPPLEMENTAL RETIREMENT PLAN (SRP) (Both the Funded and Unfunded arrangements)**

- Segal will determine the liability on an individual-by-individual basis as of October 1, 2017.
- Mortality will be based on Canadian Institute of Actuaries (CIA) tables with amount adjustments to reflect maximum RPP and CPP/QPP benefits and the individual's SRP.<sup>3</sup>
- Discount rates will be the CIA's annuity purchase guidance for October 2017.

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<sup>1</sup> "Prescribed Annuities" recognize the recovery of the premium on a tax-free basis over the annuitant's life expectancy using CRA's tables. For example, assume the premium for a \$10,000 annual pension is \$120,000 (paid for with after-tax income) for someone with a 15-year life expectancy. The expected annuity payments = \$10,000 x 15 years = \$150,000. Under prescribed annuity rules, \$120,000/\$150,000 = 80% of each payment is tax-free, and the balance is taxable income, regardless of how long the annuitant lives.

<sup>2</sup> Prescribed annuity taxation rules only apply to level payment annuities. Sears' SERP payments increase each year, and so are not prescribed annuities. However, the taxation of non-level annuities is complex so we propose to use the prescribed annuity rules, even though technically they are not applicable.

<sup>3</sup> The fact that those with higher pensions live longer is well documented in the actuarial literature.



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- The claim will be determined based on the Prescribed Annuity Method as laid out in the Income Tax Act and described below:
  1. Determine the average tax rates for Ontario residents whose income in 2017 was solely maximum RPP and CPP/QPP benefits and the individual's SRP.
  2. Solve for the lump sum amount that will provide the same after-tax SRP benefit for the participant, using the same average tax rate as in #1, above.
  3. Use the maximum Ontario marginal tax rate to gross up the lump sum found in #2, above, to reflect that any distribution would be a taxable event. This is the amount that will be taxed in the year of receipt, and what remains is the amount needed to purchase the annuity that, after taxes, will be the same as computed in #2.
  4. Segal will determine the liability as for the Funded SRP and this amount will be offset by any assets allocable to the individual, including refundable tax amounts currently held by the Canada Revenue Agency (CRA) and any related expenses. The net amount will not be treated as less than zero.

cc: Gus Tertigas  
Amy Tang

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COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF WILLIAM TURNER  
(SWORN ON FEBRUARY 29, 2018)**

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