

**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.

Applicants

**RESPONDING AFFIDAVIT FILED ON BEHALF OF
OXFORD PROPERTIES GROUP**

**(Re Motion for Appointment of Litigation Trustee
Returnable February 15, 2018)**

February 14, 2017

THORNTON GROUT FINNIGAN LLP
100 Wellington St. West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Tel: (416) 304-1616
Fax: (416) 304-1313

D. J. Miller (LSUC #34393P)
Tel: (416) 304-0559
Email: djmiller@tgf.ca

Mudasir Marfatia (LSUC#68499A)
Tel: (416) 304-0332
Email: mmarfatia@tgf.ca

Lawyers for Oxford Properties Group

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

**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.

Applicants

**AFFIDAVIT OF LEANNE M. WILLIAMS
(Sworn on February 14, 2018)**

I, **LEANNE M. WILLIAMS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

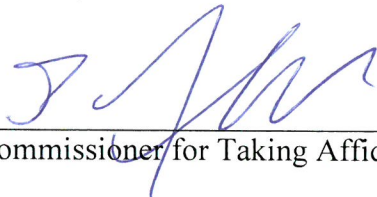
1. I am a partner in the firm Thornton Grout Finnigan LLP (“TGF”) and previously represented Whirlpool Canada Inc. (“**Whirlpool**”) in this proceeding. I have personal knowledge of the matters to which I hereinafter depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.
2. Whirlpool has not been a creditor in this proceeding since December 1, 2017, although I still appear on the Service List.

3. I am advised by my partner John Porter and do verily believe that he represents Mattel, Inc., (“**Mattel**”) an unsecured creditor of Sears Canada Inc. I am further advised by John Porter and do verily believe that, while he appears on the Service List in this proceeding, at no time has he (nor has anyone else at TGF), on behalf of Mattel: (i) attended on any motion in this proceeding; (ii) filed any materials in this proceeding; (iii) taken any position on behalf of Mattel on any issue in this proceeding.
4. I am advised by my partner D.J. Miller, who represents Oxford Properties Group (“**OPG**”) an unsecured creditor in this proceeding, of the matters set out in paragraphs 5 to 8 of this Affidavit, and do verily believe them to be true.
5. On February 13, 2018 at 8:21a.m. Ms. Miller sent an email to counsel for key stakeholders in this proceeding, the Monitor and its counsel, providing a complete answer and resolution to the only two issues that had ever been previously raised (the “**Resolution Email**”) relating to the motion brought by Representative Counsel for the court-appointed Representatives of the 18,000 retirees returnable on February 15, 2018 (the “**Retirees’ Motion**”). When originally sent, the email was marked Confidential.
6. Later that day, at 6:21 pm, the Superintendent of Financial Services and the Administrator it appointed Morneau Shepell Ltd. (collectively, “**FSCO**”) served a Joint Factum opposing the Retirees’ Motion (the “**FSCO Opposition**”).
7. Upon receiving the FSCO Opposition, Ms. Miller sent an email to the Monitor’s counsel, copied to counsel for other stakeholders, requesting that the Monitor’s Report (yet to be served in respect of the Retirees’ Motion) make full disclosure of certain factual inaccuracies and omissions in the FSCO Opposition. The Monitor declined to do so, and

in a responding email suggested that Ms. Miller make these “arguments” at the hearing of the motion. Annexed hereto and marked as Exhibit “A” is a true copy of this email exchange between Ms. Miller and Orestes Pasparakis of Norton Rose LLP, counsel for the Monitor with respect to the (at that time) unserved Monitor’s Report.

8. At 10:50 pm on February 13, 2017 Ms. Miller re-sent the Resolution Email to the same parties, including the Monitor and its counsel, deleting all references to it being Confidential, and confirming that it would be filed with the Court. Annexed hereto and marked as Exhibit “B” is a true copy of the email sent by Ms. Miller to the stakeholders, the Monitor and its counsel at 10:50 pm on February 13, 2018.
9. I swear this Affidavit in order to bring certain facts to the attention of the Court, and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 14th day of
February, 2018.



Commissioner for Taking Affidavits

Puya J Fesharaki



LEANNE M. WILLIAMS

D. J. Miller

From: D. J. Miller
Sent: February-13-18 6:58 PM
To: Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie; Michael Barrack Forward; Ken.Rosenberg@paliaroland.com; 'Susan Ursel'; Andrew Hatnay; 'MacParland, Natasha'; Lamek, Edmond; 'dullmann@blaney.com'; John C. Wolf; Linda Galessiere; Mudasir Marfatia; David Sterns (dsterns@sotosllp.com); 'Ibrzezinski@blaney.com'
Subject: FW: In the matter of Sears Canada Inc., et al., Court File No. CV-17-11846
Attachments: Joint Factum of the Pension Plan Administrator and the Superintendent (r....pdf; Service List (as of 12Feb2018) (1).pdf

I trust that when the Monitor finally delivers its Report it will make full disclosure of the fact that:

- Whirlpool (former client of TGF) sold its claim some time ago and is no longer a creditor in the estate
- Mattel has never participated in any motion and has never attended in Court in this proceeding although it appears on the Service List
- Blakes has 5 separate mandates in this proceeding – one of which for Morneau, is as champion of the deemed trust, the other 4 of which are directly adverse to that position as unsecured creditors

Morneau and FSCO's efforts to interfere with, derail or delay a process and the appointment of Frank Newbould as Litigation Trustee (relief that is specifically requested by the court-appointed Representatives for the 18,000 pension beneficiaries whose interests they purport to represent), is inexplicable.

We will address the balance in Court on Thursday.

D.J.



D. J. Miller | DJMiller@tgf.ca | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by calling (416) 304-1616 and delete this e-mail without forwarding it or making a copy. To Unsubscribe/Opt-Out of any electronic communication with Thornton Grout Finnigan, you can do so by clicking the following link: [Unsubscribe](#)

From: MELLOR, KIRSTY [mailto:Kirsty.Mellor@blakes.com]
Sent: Tuesday, February 13, 2018 6:19 PM
To: [Service List]
Cc: Michael Barrack Forward <michael.barrack@blakes.com>; PATEL, KIRAN <KIRAN.PATEL@blakes.com>; BUSH, KATHRYN <KATHRYN.BUSH@blakes.com>; HUFF, PAM <PAM.HUFF@blakes.com>
Subject: In the matter of Sears Canada Inc., et al., Court File No. CV-17-11846

TO THE SERVICE LIST:

Please find attached the Joint Factum of Morneau Shepell Ltd., in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan and the Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund with respect to the motion returnable February 15, 2018, which is served upon on you pursuant to the *Rules of Civil Procedure*.

Regards,

Kirsty Mellor
Legal Assistant to Nicole Henderson, Kiran Patel and Louise James
kirsty.mellor@blakes.com
416-863-2398

The logo for Blakes, featuring the word "Blakes" in a stylized, cursive script font.

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com | [Twitter](#) | [Unsubscribe](#)

Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

D. J. Miller

Subject: FW: In the matter of Sears Canada Inc., et al., Court File No. CV-17-11846

From: D. J. Miller

Sent: February-13-18 7:13 PM

To: Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com>

Cc: Cobb, Evan <evan.cobb@nortonrosefulbright.com>; Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com>; Michael Barrack Forward <michael.barrack@blakes.com>; Ken.Rosenberg@paliarerland.com; Susan Ursel <Sursel@upflaw.ca>; Andrew Hatnay <ahatnay@kmlaw.ca>; MacParland, Natasha <NMacParland@dwpv.com>; Lamek, Edmond <edmond.lamek@dlapiper.com>; dullmann@blaney.com; John C. Wolf <jwolf@blaney.com>; Linda Galessiere <lgalessiere@mcleankerr.com>; Mudasir Marfatia <MMarfatia@tgf.ca>; David Sterns (dsterns@sotosllp.com) <dsterns@sotosllp.com>; lbrzezinski@blaney.com; Mr. Greg Watson <greg.watson@fticonsulting.com>; Mr. Paul Bishop <paul.bishop@fticonsulting.com>

Subject: Re: In the matter of Sears Canada Inc., et al., Court File No. CV-17-11846

That's fine. We will put it before the court.

D.J.

D.J. Miller | djmiller@tgf.ca | Direct Line: 416-304-0559 | Thornton Grout Finnigan LLP | www.tgf.ca



D. J. Miller | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | www.tgf.ca

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately and delete this e-mail without forwarding it or making a copy.

On Feb 13, 2018, at 7:12 PM, Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com> wrote:

DJ

These are arguments you can make I am sure.

On Feb 13, 2018, at 6:59 PM, D. J. Miller <DJMiller@tgf.ca> wrote:

I trust that when the Monitor finally delivers its Report it will make full disclosure of the fact that:

- Whirlpool (former client of TGF) sold its claim some time ago and is no longer a creditor in the estate
- Mattel has never participated in any motion and has never attended in Court in this proceeding although it appears on the Service List
- Blakes has 5 separate mandates in this proceeding – one of which for Morneau, is as champion of the deemed trust, the other 4 of which are directly adverse to that position as unsecured creditors

Morneau and FSCO's efforts to interfere with, derail or delay a process and the appointment of Frank Newbould as Litigation Trustee (relief that is specifically

requested by the court-appointed Representatives for the 18,000 pension beneficiaries whose interests they purport to represent), is inexplicable.

We will address the balance in Court on Thursday.

D.J.



D. J. Miller | DJMiller@tgf.ca | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP
| Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion
Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by calling (416) 304-1616 and delete this e-mail without forwarding it or making a copy. To Unsubscribe/Opt-Out of any electronic communication with Thornton Grout Finnigan, you can do so by clicking the following link: [Unsubscribe](#)

From: MELLOR, KIRSTY [<mailto:Kirsty.Mellor@blakes.com>]
Sent: Tuesday, February 13, 2018 6:19 PM
To: [Service List]
Cc: Michael Barrack Forward <michael.barrack@blakes.com>; PATEL, KIRAN <KIRAN.PATEL@blakes.com>; BUSH, KATHRYN <KATHRYN.BUSH@blakes.com>; HUFF, PAM <PAM.HUFF@blakes.com>
Subject: In the matter of Sears Canada Inc., et al., Court File No. CV-17-11846

TO THE SERVICE LIST:

Please find attached the Joint Factum of Morneau Shepell Ltd., in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan and the Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund with respect to the motion returnable February 15, 2018, which is served upon on you pursuant to the *Rules of Civil Procedure*.

Regards,

Kirsty Mellor
Legal Assistant to Nicole Henderson, Kiran Patel and Louise James
kirsty.mellor@blakes.com
416-863-2398

<imagecf09e8.GIF>

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com | [Twitter](#) | [Unsubscribe](#)

D. J. Miller

From: D. J. Miller
Sent: February-13-18 10:46 PM
To: 'Merskey, Alan'; 'Galessiere Linda'; Mudasir Marfatia; 'MacParland, Natasha (NMacParland@dwpv.com)'; 'Mighton, Jesse (JMighton@dwpv.com)'; 'David T. Ullmann (dullmann@blaney.com)'; 'Edmond Lamek (edmond.lamek@dlapiper.com)'; 'John C. Wolf (jwolf@blaney.com)'; 'Amy Tang (atang@kmlaw.ca)'; 'SUrsel@upfhlaw.ca'; 'Katy O'Rourke (Korourke@upfhlaw.ca)'; 'ahatnay@kmlaw.ca'; 'BUSH, KATHRYN'; Michael Barrack Forward; 'PAM.HUFF@blakes.com'; 'Lily.Harmer@paliareroland.com'; 'Ken Rosenberg'
Cc: 'Watson, Greg'; 'Bishop, Paul'; 'Bissell, Steven (Steven.Bissell@fticonsulting.com)'; 'Pasparakis, Orestes'; 'Gauthier, Virginie'; 'Cobb, Evan'
Subject: RE: Sears - Motion re: Litigation Trustee

Re-sending the email below, deleting any prior Confidential designations, as it will be filed with the Court tomorrow.

D.J.



D. J. Miller | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | www.tgf.ca

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately and delete this e-mail without forwarding it or making a copy.

From: D. J. Miller
Sent: Tuesday, February 13, 2018 8:21 AM
To: 'Merskey, Alan' <alan.merskey@nortonrosefulbright.com>; Galessiere Linda <lgalessiere@mcleankerr.com>; Mudasir Marfatia <MMarfatia@tgf.ca>; MacParland, Natasha (NMacParland@dwpv.com) <NMacParland@dwpv.com>; Mighton, Jesse (JMighton@dwpv.com) <JMighton@dwpv.com>; David T. Ullmann (dullmann@blaney.com) <dullmann@blaney.com>; Edmond Lamek (edmond.lamek@dlapiper.com) <edmond.lamek@dlapiper.com>; John C. Wolf (jwolf@blaney.com) <jwolf@blaney.com>; Amy Tang (atang@kmlaw.ca) <atang@kmlaw.ca>; SUrsel@upfhlaw.ca; Katy O'Rourke (Korourke@upfhlaw.ca) <Korourke@upfhlaw.ca>; ahatnay@kmlaw.ca; BUSH, KATHRYN <KATHRYN.BUSH@blakes.com>; Michael Barrack Forward <michael.barrack@blakes.com>; PAM.HUFF@blakes.com; Lily.Harmer@paliareroland.com; Ken Rosenberg <ken.rosenberg@paliareroland.com>
Cc: Watson, Greg <greg.watson@fticonsulting.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; Bissell, Steven (Steven.Bissell@fticonsulting.com) <Steven.Bissell@fticonsulting.com>; Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com>; Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com>; Cobb, Evan <evan.cobb@nortonrosefulbright.com>
Subject: Sears - Motion re: Litigation Trustee

Ken and Mike (copied to all):

A meeting arranged by Andrew Hatney (Representative Counsel to the 18,000 Sears Canada retirees/pension plan members) among the parties copied on this email (other than the Monitor and its counsel) was hosted at TGF on Monday, February 5 at 6:15 pm with Frank Newbould, Q.C. Some attended in person; others by conference call.

The purpose of the meeting was to address the concerns that had been raised by Ken Rosenberg (representing FSCO / Superintendent of Pensions) and Mike Barrack (representing Morneau, the wind-up pension plan

administrator appointed by FSCO) regarding the motion to be brought by Andrew Hatney seeking the Court appointment of Frank Newbould as Litigation Trustee for the benefit of the estate of Sears Canada and its creditors. The concerns expressed through prior emails, meetings and calls by Ken and Mike related to Frank Newbould's "affiliation" with TGF by virtue of his being Counsel to the firm, and the fact that I represent Oxford Properties Group ("OPG"), a landlord / unsecured creditor of Sears Canada.

We have previously discussed that I do not believe there is any conflict (or potential for conflict) between Frank Newbould's appointment as Litigation Trustee by the Court, and my representation of an unsecured creditor. Frank Newbould also advised he did not see such a conflict. As has been consistently discussed, the purpose of the appointment is to try to enlarge the pot of cash available for creditors – a common objective of all of our creditor clients. Even if recoveries become available for one group of stakeholders (alone) from any source, that is a benefit to all other creditors. It has the effect of reducing the claim of the creditors who have received that recovery, making the existing pot of cash available to be distributed amongst a smaller pool of claims. As has been discussed at length, the Litigation Trustee would have no role whatsoever in determining claims against the applicants, or weighing into any inter-creditor priority disputes including as it relates to any deemed trust in favour of the pension plan beneficiaries.

As Ken and Mike confirmed at the meeting of February 5, their concern is not with Frank Newbould himself as the choice for Litigation Trustee. All agree that he would be excellent for the role. The concern was with a perceived conflict due to his "affiliation" with TGF.

At the February 5 meeting I asked Ken to articulate the exact nature of his client's concern, so that it could be clearly understood by all. He responded by stating: "Put bluntly, your client is a landlord / unsecured creditor of Sears Canada and is directly adverse in interest to the pension deemed trust." I asked Ken and Mike if that represented the entirety of the concern and Ken said yes.

Mike then indicated that there was a second issue which he described as "structural", and provided the following example: the Litigation Trustee may determine that the facts and evidence supporting a particular cause of action is only available to one creditor group [pensioners] and not all unsecured creditors generally. The unsecured creditor that I represent may take a different view, or be a landlord representative on a consultative committee, apparently with a view to trying to steer the Litigation Trustee in a particular direction.

I asked if there were any other issues of concern, to ensure that all participating stakeholders had the benefit of hearing the entire universe of potential concerns. In particular, I indicated that I didn't want to consider if there was some way to resolve these 2 concerns, only to have new ones raised thereafter. You both indicated that there were none.

I have discussed these issues with my client and can confirm that in order to fully and finally resolve all issues relating to the appointment of Frank Newbould as Litigation Trustee consensually, their instructions (which they have invited me to share with this group) are as follows:

- they will take no position whatsoever on any priority dispute involving the pension deemed trust priority issue advanced by or on behalf of the Sears pensioners.
- they will not participate in any respect (as landlord representative or otherwise) with any consultative committee regarding the Litigation Trustee
- no facts exist or are likely to ever arise with respect to the hypothetical "structural" issue described by Mike. To the extent that any issue arose in future, the parties would be free to attend in Court to address it.

The draft Order included in Andrew's motion record includes language confirming that one of the Litigation Trustee's first tasks in undertaking its mandate is to investigate all potential causes of action for the benefit of the estate. This expressly excludes any aspect of individual creditor claims against the estate, or issues as to priority among creditors.

While I disagree that the issues raised by Ken and Mike have any bearing on the appointment of Frank Newbould as Litigation Trustee, it is now moot as the concerns identified have been fully addressed. While the Monitor was not at the meeting on February 5, I have copied them and their counsel so that they have the benefit of this information that the issues of concern have been resolved.

D.J.

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

Proceedings commenced at Toronto

**AFFIDAVIT OF LEANNE M. WILLIAMS
(Sworn on February 14, 2018)**

Thornton Grout Finnigan LLP
100 Wellington St. West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Tel: (416) 304-1616
Fax: (416) 304-1313

D. J. Miller (LSUC #34393P)
Tel: (416) 304-0559
Email: djmiller@tgf.ca

Mudasir Marfatia (LSUC#68499A)
Tel: (416) 304-0332
Email: mmarfatia@tgf.ca

Lawyers for Oxford Properties Group