

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

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee,  
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,  
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES  
MCBURNEY, DEBORAH ROSATI and DONALD ROSS

Defendants

**SUPPLEMENTARY MOTION RECORD OF THE ESL PARTIES**  
**(Motion To Strike Returnable April 17-18, 2019)**

March 29, 2019

**POLLEY FAITH LLP**

The Victory Building  
80 Richmond Street West, Suite 1300  
Toronto, ON M5H 2A4

**Harry Underwood (20806C)**

hunderwood@polleyfaith.com

**Andrew Faith (47795H)**

afaith@polleyfaith.com

**Jeffrey Haylock (61241F)**

jhaylock@polleyfaith.com

**Sandy Lockhart (73554J)**

slockhart@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants,  
ESL Investments Inc., ESL Partners, LP, SPE  
I Partners, LP, SPE Master I, LP, ESL  
Institutional Partners, LP and Edward S.  
Lampert

TO: **THE LITIGATION SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**SEARS CANADA INC., by its Court-appointed Litigation Trustee,  
J. DOUGLAS CUNNINGHAM, Q.C.**

**Plaintiff**

**and**

**ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,  
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES  
MCBURNEY, DEBORAH ROSATI and DONALD ROSS**

**Defendants**

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Court File No. CV-18-00611217-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

MORNEAU SHEPELL LTD. in its capacity as administrator of the  
Sears Canada Inc. Registered Pension Plan

Plaintiffs

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY,  
DONALD CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI,  
R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

**DEMAND FOR PARTICULARS**

The defendants Edward S. Lampert, ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP demand particulars of the following allegations in your statement of claim:

1. With respect to the allegation in paragraph 42 that “[a]uthorization and payment of the 2013 Dividend in the circumstances set out above was oppressive and unfairly prejudicial to the interests of the Plan and its beneficiaries and unfairly disregarded their interests”:
  - (a) identify the expectations of the Plan and its beneficiaries that are alleged to have been violated; and

- (b) identify the “interests” of the Plan and its beneficiaries that are alleged to have been oppressed, unfairly prejudiced, or unfairly disregarded.

January 18, 2019

**POLLEY FAITH LLP**  
The Victory Building  
80 Richmond Street West  
Suite 1300  
Toronto, ON  
M5H 2A4

**Harry Underwood (20806C)**

hunderwood@polleyfaith.com

**Andrew Faith (47795H)**

afaith@polleyfaith.com

**Jeffrey Haylock (61241F)**

jhaylock@polleyfaith.com

**Sandy Lockhart (73554J)**

slockhart@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants, Edward S.  
Lampert, ESL Investments Inc., ESL Partners,  
LP, SPE I Partners, LP, SPE Master I, LP, and  
ESL Institutional Partners, LP

TO: The Litigation Service List

MORNEAU SHEPELL LTD., in its capacity as administrator of the  
Sears Canada Inc. Registered Pension Plan

-and- ESL INVESTMENTS INC. et al.

Plaintiff

Defendants

Court File No. CV-18-00611217-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**DEMAND FOR PARTICULARS**

**POLLEY FAITH LLP**

The Victory Building  
80 Richmond Street West  
Suite 1300  
Toronto, ON M5H 2A4

**Harry Underwood (20806C)**

hunderwood@polleyfaith.com

**Andrew Faith (47795H)**

afaith@polleyfaith.com

**Jeffrey Haylock (61241F)**

jhaylock@polleyfaith.com

**Sandy Lockhart (73554J)**

slockhart@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants, Edward S. Lampert, ESL  
Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE  
Master I, LP, and ESL Institutional Partners, LP

# **Tab 2**



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

B E T W E E N :

MORNEAU SHEPELL LTD. in its capacity as administrator of the  
Sears Canada Inc. Registered Pension Plan

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY,  
DONALD CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI,  
R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

**RESPONSE TO DEMAND FOR PARTICULARS**

The Plaintiff Morneau Shepell Ltd. in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan provides the following particulars in response to the defendants' Edward S. Lampert, ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP, Demand for Particulars, dated January 18, 2019:

**Particulars Requested:**

1. With respect to the allegation in paragraph 42 that “[a]uthorization and payment of the 2013 Dividend in the circumstances set out above was oppressive and unfairly prejudicial to the interests of the Plan and its beneficiaries and unfairly disregarded their interests”:

- (a) identify the expectations of the Plan and its beneficiaries that are alleged to have been violated; and
- (b) identify the “interests” of the Plan and its beneficiaries that are alleged to have been oppressed, unfairly prejudiced, or unfairly disregarded.

**Response:**

1. (a) The Plan and its beneficiaries reasonably expected that Sears Canada (as administrator of the Plan) and the Defendants would act in accordance with their and/or Sears Canada’s duties to the Plan and Plan beneficiaries. In fulfilling these obligations, the Plan and Plan beneficiaries reasonably expected that Sears Canada, its affiliates, officers and directors would act in the same manner that an independent administrator would have acted in properly discharging the fiduciary duties and other duties owed to the Plan and Plan beneficiaries, including the duty to respect the priority of claims against Sears Canada.

(b) The interests of the Plan and Plan beneficiaries were to have all the pension promises under the Plan fulfilled by Sears Canada and to have the Plan funded so as to permit such promises to be met.

January 31, 2019

**BLAKE, CASSELS & GRAYDON LLP**

Barristers & Solicitors  
199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, ON M5L 1A9

**Michael Barrack** LSO #21941W

Tel: (416) 863-5280  
michael.barrack@blakes.com

**Kathryn Bush** LSO #23636O

Tel (416)863-2633  
kathryn.bush@blakes.com

- 3 -

**Kiran Patel** LSO #58398H  
Tel: (416) 863-2205  
kiran.patel@blakes.com

Fax: (416) 863-2653

Lawyers for the Plaintiff

TO: THE LITIGATION SERVICE LIST

MORNEAU SHEPELL LTD. in its capacity as administrator and ESL INVESTMENTS INC. et al.  
of the Sears Canada Inc. Registered Pension Plan

Court File No.: CV-18-00611217-00CL

Plaintiff

Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

**RESPONSE TO DEMAND FOR PARTICULARS**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, ON M5L 1A9

**Michael Barrack** LSO #21941W  
Tel: (416) 863-5280  
michael.barrack@blakes.com

**Kathryn Bush** LSO #23636O  
Tel: (416) 863-2633  
kathryn.bush@blakes.com

**Kiran Patel** LSO #58398H  
Tel: (416) 863-2205  
kiran.patel@blakes.com

Fax: (416) 863-2653

Lawyers for the Plaintiff

SEARS CANADA INC., by its Court-appointed Litigation Trustee,  
J. DOUGLAS CUNNINGHAM, Q.C.  
Plaintiff

-and- ESL INVESTMENTS INC. et al.  
Defendants

Court File No. CV-18-00611214-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**SUPPLEMENTARY MOTION RECORD OF THE ESL  
PARTIES  
(MOTION TO STRIKE RETURNABLE APRIL 17-18,  
2019)**

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The Victory Building  
80 Richmond Street West, Suite 1300  
Toronto, ON M5H 2A4

**Harry Underwood (20806C)**

[hunderwood@polleyfaith.com](mailto:hunderwood@polleyfaith.com)

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[jhaylock@polleyfaith.com](mailto:jhaylock@polleyfaith.com)

**Sandy Lockhart (73554J)**

[slockhart@polleyfaith.com](mailto:slockhart@polleyfaith.com)

Tel: 416.365.1600

Fax: 416.365.1601

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SPE I Partners, LP, SPE Master I, LP, and ESL Institutional  
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