

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

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

FORTY-EIGHTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

December 14, 2021

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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., 9845488
CANADA 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

**FORTY-EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. ("**Sears Canada**") and a number of its operating subsidiaries (collectively, with Sears Canada, the "**Applicants**") sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the "**Sears Canada Entities**"). The proceedings commenced under the CCAA by the Applicants are referred to herein as the "**CCAA Proceedings**".

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings; and
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (the “**Stay Period**”), which has subsequently been extended from time to time, most recently to the completion of these proceedings.
3. On July 13, 2017, the Court issued an order appointing Koskie Minsky LLP as representative counsel (“**Pension Representative Counsel**”) to represent the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities in the CCAA Proceedings, solely with respect to (a) entitlements of the represented parties under the Sears Canada Inc. Registered Retirement Plan (the “**Pension Plan**”) and the Sears Canada Inc. Supplementary Retirement Plan (the “**Supplemental Plan**”) and any other pension or retirement plan of the Sears Canada Entities; and (b) other post employment benefits entitlements (the “**PRC Order**”). The PRC Order provided that Pension Representative Counsel would be paid its reasonable fees and disbursements (including disbursements relating to advisors retained by Pension Representative Counsel) by the Sears Canada Entities in accordance with a letter agreement between Sears Canada Inc. and Pension Representative Counsel, dated as of June 22, 2017.
4. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations. The liquidation of all inventory and FF&E was completed and all Sears Canada retail locations were closed.
5. Following completion of various matters, including residual asset sales and claim resolution, in connection with the Sears Canada Entities estates and certain estate-related litigation, on November 23, 2020 an amended and restated joint plan of compromise and arrangement in respect of the Sears Canada Entities (the “**CCAA Plan**”) was approved by the Court pursuant to a Plan Sanction Order and the Plan Implementation Date (as

defined in the CCAA Plan) occurred on December 14, 2020. The CCAA Plan provided for distributions of the net value realized by the Sears Canada Entities from their assets and litigation to their respective creditors. Those distributions have commenced and are expected to be completed early in 2022.

6. On October 25, 2021, the Court granted an order that would terminate the CCAA Proceedings upon the filing, on at least seven days prior notice to the Service List, of a certificate of the Monitor confirming the remaining matters in the proceedings have been completed (the “**CCAA Termination Certificate**”). The Monitor has not delivered the CCAA Termination Certificate at this time.
7. In connection with the CCAA Proceedings, the Monitor has provided forty-seven reports and twenty-five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports, and other Court-filed documents and notices in these CCAA Proceedings are, or will be made, available on the Monitor’s website at fcscanada.fticonsulting.com/searscanada.

B. PURPOSE

8. The purpose of this forty-eighth report of the Monitor (the “**Forty-Eighth Report**”) is to provide the Court with information regarding a motion by Pension Representative Counsel for certain relief with respect to the Supplemental Plan as well as certain amendments to the PRC Order.

C. TERMS OF REFERENCE

9. In preparing this Forty-Eighth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities’ books and records, and discussions and correspondence with, among others, Pension Representative Counsel (collectively, the “**Information**”).
10. Except as otherwise described in this Forty-Eighth Report:

- (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Forty-Eighth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
- 11. Future-oriented financial information reported in or relied on in preparing this Forty-Eighth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
 - 12. The Monitor has prepared this Forty-Eighth Report in connection with the motion by Pension Representative Counsel. The Forty-Eighth Report should not be relied on for any other purpose.
 - 13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

D. MOTION BY PENSION REPRESENTATIVE COUNSEL

- 14. Pension Representative Counsel has brought a motion seeking orders:
 - (a) regarding the following matters related to the trust established in connection with the Supplemental Plan (the “**RCA Trust**”):
 - (i) termination of the RCA Trust;
 - (ii) authorization for Pension Representative Counsel and the Retiree Committee (as defined below) to rely on Segal Rogers Casey for financial investment advice relating to the investment and liquidation of the funds in the RCA Trust during the termination process of the RCA Trust;

- (iii) authorization of CIBC Mellon, as custodial trustee of the RCA Trust, and the Monitor to take steps necessary to terminate the RCA Trust and to distribute the assets of the RCA Trust to the eligible beneficiaries or their estates, in consultation with the Retiree Committee; and
 - (iv) certain liability protections requested for the members of the Retiree Committee; and
- (b) amending the PRC Order to modify the description of the matters on which Pension Representative Counsel provides representation, and for which funding is provided by the Sears Canada Entities.

Termination of RCA Trust

15. Assets available to fund benefits under the Supplemental Plan are held in the RCA Trust with CIBC Mellon Trust Company.
16. The details of the RCA Trust are set out in the affidavit of William Turner, sworn December 10, 2021, in connection with Pension Representative Counsel's motion.
17. Pursuant to an order of the Court dated November 7, 2017, as amended, a retiree committee was established to provide directions to the trustee of the RCA Trust with respect to the assets in the RCA Trust (the "**Retiree Committee**").
18. The Monitor is informed by Pension Representative Counsel that the Retiree Committee believes the wind down of the RCA Trust and the distribution of its property is appropriate at this time and seeks the Court's assistance and direction regarding that process.
19. The Monitor has no objection to the determination of the Retiree Committee in respect of the wind down of the RCA Trust. The Sears Canada Entities do not claim any interest in the funds held by the RCA Trust. The Monitor defers to the judgment of the Retiree Committee on this matter.

20. The retainer by Pension Representative Counsel of Segal Rogers Casey, and the funding of the costs of that retainer by the Sears Canada Entities is in accordance with the order of the Court granted on November 7, 2017 in connection with the appointment of the Retiree Committee.
21. The liability protections requested by Pension Representative Counsel for the Retiree Committee are consistent with the protections already granted in the November 7, 2017 order. The Monitor has not been advised of any claims against the Retiree Committee in connection with these matters.

Amendment to PRC Order

22. The PRC Order established the scope of the mandate of Pension Representative Counsel at the commencement of the CCAA Proceedings. In particular, the order provided that Pension Representative Counsel would represent the interests of non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities on specific matters in these CCAA proceedings, solely with respect to entitlements of the represented parties under various pension and retirement plans and other post-employment benefits, which is referred to in the PRC Order as the “Purpose”.
23. The PRC Order also provides that the Sears Canada Entities will pay the reasonable fees and disbursements of Pension Representative Counsel for fulfilling its mandate in accordance with the PRC Order. There have been ongoing discussions between Pension Representative Counsel and the Monitor regarding Pension Representative Counsel’s fee arrangements in the context of the wind down of the CCAA Proceedings.
24. The claims of former employees and retirees represented by Pension Representative Counsel account for approximately 53% of the total affected unsecured claims against Sears Canada Inc. as calculated for distribution purposes under the CCAA Plan.
25. As set out in the Affidavit of William Turner, sworn December 10, 2021, Pension Representative Counsel has been asked by certain retirees and former employees to provide representation in connection with: (i) a hearing scheduled for January 2022 before the Ontario Financial Services Tribunal involving a dispute regarding certain

former employees' entitlements under the Pension Benefits Guarantee Fund; (ii) termination of the RCA Trust; and (iii) the termination of the Pension Plan.

26. These matters which have been commenced will likely extend beyond the remaining duration of activities in the CCAA Proceedings and in some cases are not conducted before the CCAA court. As a result, it is not clear that these matters will all be captured within the "Purpose" under the PRC Order.
27. Pension Representative Counsel seeks an amendment to the PRC Order to confirm that these matters are within the court-approved mandate of Pension Representative Counsel and, as a result, will be funded by the Sears Canada Entities.
28. Pension Representative Counsel has advised the Monitor that the anticipated cost of these matters for the next twelve months will be \$1,680,000. If the amendment to the PRC Order is approved, the Monitor would add the foregoing amount, which includes the amounts attributable to Segal Rogers Casey discussed above, to the Administrative Reserve to be set aside and not distributed to creditors of the Sears Canada Entities under the CCAA Plan (the "**PRC Fee Reserve**"). The PRC Fee Reserve is within the range of annual fees and disbursements incurred by Pension Representative Counsel for the years 2018, 2019 and 2020 and paid by the Sears Canada Entities.
29. As the Sears Canada Entities are proceeding with final distributions under the CCAA Plan, no further amounts will be available from the Sears Canada Entities to fund costs of Pension Representative Counsel or their advisors beyond the PRC Fee Reserve, if the amendment to the PRC Order is approved.
30. The Monitor believes it is important to receive court direction regarding the amendment to the mandate of Pension Representative Counsel given the terms of the PRC Order and the more typical approach of estate funding for Pension Representative Counsel fees for work in the insolvency proceeding itself. The Monitor believes it is appropriate for this matter to be considered by the Court with notice to the stakeholders on the service list with an economic interest in the Sears Canada Entities' estates.

31. The Monitor notes that the only other potential source of funding for these costs are amounts held by the Pension Plan, or distributable to the Pension Plan from the Sears Canada Entities through the CCAA Plan. However, this would require certain amendments to the distribution provisions in the CCAA Plan.

The Monitor respectfully submits to the Court this, its Forty-Eighth Report.

Dated this 14th day of December, 2021.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities



Steven Bissell
Managing Director

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., *et al.*

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Proceeding commenced at TORONTO

**FORTY-EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

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