

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

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

**NINTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**December 20, 2017**

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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., 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

**NINTH 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 LP, 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;
  - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017; and
  - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the stay of proceedings to October 4, 2017. In addition, an order was issued approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.
4. On October 4, 2017, the Court issued, among other orders, an order extending the stay of proceedings to November 7, 2017 and orders approving the sale of certain businesses and assets of the Applicants.
5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada locations (which liquidation commenced shortly thereafter and is projected to terminate by January 21, 2018); and (b) extending the stay of proceedings to January 22, 2018.
6. On December 8, 2017, the Court issued, among other orders, an order approving a claims process (the “**Claims Process**”) for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their current and former officers and directors.
7. In connection with the CCAA Proceedings, the Monitor has provided eight reports and four 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 available on the Monitor's website at [cfcanada.fticonsulting.com/searscanada/](http://cfcanada.fticonsulting.com/searscanada/) (the "**Monitor's Website**").

## **B. PURPOSE**

8. The purpose of this ninth report of the Monitor (the "**Ninth Report**") is to provide the Court with information and the Monitor's recommendations regarding the Applicants' request for an order (the "**PRS Approval and Vesting Order**") approving a transaction for the sale of Sears Canada's right, title and interest in (i) certain parts inventory and customer lists related to the Sears Canada major appliances protection agreement business; and (ii) certain internet protocol addresses, in each case pursuant to an asset purchase agreement (the "**PRS APA**") dated December 19, 2017 between Sears Canada, Buyers Group of Mississauga Inc. (the "**PRS Purchaser**"), as buyer, the Monitor, for the limited purpose of acting as escrow agent, and solely for the purposes of Section 7.1 and 12.1 of the PRS APA, Directbuy Home Improvements Inc., as parent, and vesting in the PRS Purchaser all of Sears Canada's right, title and interest in such assets free and clear of claims and encumbrances.

## **C. TERMS OF REFERENCE**

9. In preparing this Ninth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management ("**Management**") of, and advisors to, the Sears Canada Entities (collectively, the "**Information**").
10. Except as otherwise described in this Ninth 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 Ninth 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 Ninth Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
- 12. The Monitor has prepared this Ninth Report in connection with the Applicants’ motion for the PRS Approval and Vesting Order. The Ninth Report should not be relied on for any other purpose.
- 13. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017 and December 19, 2017, and the Prior Reports of the Monitor in these proceedings.
- 14. This Report should be read together with the Third Report of the Monitor, dated October 2, 2017, which provides detailed information on the steps taken in connection with the SISP.

**D. PRS APPROVAL AND VESTING ORDER**

- 15. On December 19, 2017, Sears Canada, the PRS Purchaser, Directbuy Home Improvement Inc., and (solely for the limited purpose of acting as escrow agent) the Monitor, entered into the PRS APA for the sale of:
  - (a) certain parts inventory related to the Sears Canada major appliances protection agreement business (the “**PRS Parts**”);
  - (b) certain customer lists related to the Sears Canada major appliances protection agreement business (the “**PRS Customer Lists**”); and
  - (c) certain internet protocol addresses (the “**IP Addresses**”).

16. An unredacted copy of the PRS APA is attached hereto as Confidential Appendix “A”.
17. The major appliances protection agreement business was marketed through the SISP to potentially interested bidders. The Monitor reviewed the bids received in the SISP and can confirm, based upon its review, that no bids were received for the major appliances protection agreement business of Sears Canada.
18. Following the bid deadline under the SISP, BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) engaged in discussions with the PRS Purchaser regarding the acquisition of the PRS Parts and the PRS Customer Lists. On October 13, 2017, the PRS Purchaser submitted a bid for certain assets of the major appliance protection business including the PRS Parts and the PRS Customer Lists and for the IP Addresses. That offer, and the negotiations that followed, resulted in the PRS APA, which was entered into on December 19<sup>th</sup>. The Monitor supervised the process and negotiations that led to the PRS APA.
19. In the Monitor’s view, the process followed to solicit bids for the PRS Parts, PRS Customer Lists and IP Addresses was appropriate in view of: (i) the nature of the assets, including the limited market for the PRS Parts and PRS Customer Lists; (ii) the timing requirements to vacate the distribution centre where the remaining PRS Parts are located; and (iii) the developed market for internet protocol addresses.
20. While sales of assets similar to the PRS Parts, the PRS Customer Lists and the IP Addresses would generally be approved pursuant to the Omnibus Approval and Vesting Order granted by the Court on December 8, 2017, the proposed PRS APA and the proposed PRS Approval and Vesting Order contain certain terms that are not adequately addressed in the Omnibus Approval and Vesting Order. Specifically, Sears Canada continues to require the use of certain of the IP Addresses for a period of time following closing that is not contemplated in the Omnibus Approval and Vesting Order. This is a unique issue resulting from the nature of the assets being sold under the PRS APA and the Monitor expects that future transactions for residual assets will be approved, to the extent court approval is required, pursuant to the Omnibus Approval and Vesting Order.

21. The PRS APA includes the following material terms<sup>1</sup>:

(a) Purchased Assets:

- (i) the PRS Parts are currently located at the Sears Canada distribution centre in Calgary, Alberta. Pursuant to the PRS APA, Sears Canada will prepare the PRS Parts to be collected by the PRS Purchaser and the PRS Purchaser will be responsible for collecting and removing the PRS Parts from the distribution centre at its own cost.
- (ii) the PRS Customer Lists include any information that is related to the use of such customer lists and that can be separated from Sears Canada's other information without material cost; provided, however, that such information shall not include credit card numbers or other information that cannot be disclosed under applicable law. Sears Canada has the right under the PRS APA to continue to use the PRS Customer Lists and personal information contained therein as reasonably necessary to continue the administration of the CCAA proceedings and subsequent similar proceedings.
- (iii) the IP Addresses include several blocks of internet protocol addresses, being approximately 135,000 individual internet protocol addresses in aggregate. An internet protocol address is an identifier for each device connected to a computer network that uses internet protocol for communication. There are a finite number of internet protocol addresses available for use and significant demand for these addresses. As a result, a market has developed for the purchase and sale of these addresses.

(b) Purchase Price: The Purchase Price shall be paid in cash on Closing. The PRS Purchaser shall also be responsible for any transfer taxes payable in connection

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<sup>1</sup> Capitalized terms used in this section and not defined have the meanings given to them in the PRS APA. This summary is for information purposes only. In the case of any inconsistency between the terms of the PRS APA and this summary, the PRS APA shall govern.



with the sale transaction. The portion of the Purchase Price allocated to certain of the IP Addresses identified as the “Retained IP Addresses” for which Sears Canada will retain registered ownership until approximately May 2018, will be held in escrow by the Monitor for release at a later date, as described below.

- (c) Deposit: The PRS Purchaser has provided a cash deposit to the Monitor in an amount equal to approximately 3% of the Purchase Price. This is the amount of the deposit provided by the PRS Purchaser on the bid deadline under the SISP in connection with another transaction that was proposed by the PRS Purchaser at that time and that is not proceeding. The Deposit will be forfeited to Sears Canada if the transaction does not close due to a default by the PRS Purchaser under the PRS APA.
- (d) Representations and Warranties: The representations and warranties of Sears Canada do not survive Closing.
- (e) ARIN Approval: A number of regional internet registries manage the allocation, transfer and records maintenance of internet protocol addresses. The American Registry of Internet Numbers (“**ARIN**”) is the registry for North America. In order to complete the transfer of legal ownership of the IP Addresses to the PRS Purchaser, compliance with ARIN’s policies is required. Sears Canada and the PRS Purchaser will cooperate to obtain ARIN’s approval for the transfer of Sears Canada’s interest in the IP Addresses to the PRS Purchaser at the PRS Purchaser’s expense.
- (f) Conditions of Closing: The closing conditions under the PRS APA are customary for a transaction of this type and include the granting of the PRS Approval and Vesting Order, which has not been reversed, modified, amended or stayed. The PRS Purchaser acknowledges that the right of Sears Canada to transfer the IP Addresses is subject to ARIN’s policies and that the Closing is not conditional upon ARIN permitting the transfer of the IP Addresses to the PRS Purchaser or its designee. In the event that ARIN does not permit the transfer of the IP Addresses to the PRS Purchaser or its designee, the PRS

Purchaser will still complete the transaction without reduction to the purchase price.

- (g) Guarantee: Directbuy Home Improvement Inc., the parent of the PRS Purchaser, guarantees the due, punctual and complete performance of all obligations of the PRS Purchaser under the PRS APA up to a maximum amount of the Purchase Price.
- (h) Closing Date: Closing shall occur no later than two business days after the conditions to closing have been satisfied or waived.
- (i) Outside Date: Closing must occur no later than December 31, 2017 unless otherwise agreed by the parties with the consent of the Monitor.
- (j) Retained IP Addresses. As noted above, the PRS APA allows Sears Canada to continue to use the Retained IP Addresses until May 15, 2018 (the “**Release Date**”). On the Release Date, Sears Canada is required to provide the Buyer with the administrative information in Sears Canada’s possession necessary to change the registration information associated with the Retained IP Addresses and transfer registered ownership of the Retained IP Addresses to the PRS Purchaser. The portion of the Purchase Price attributable to the Retained IP Addresses will be held in escrow following closing by the Monitor. Upon delivery by Sears Canada of the above described information to the PRS Purchaser for a particular Retained IP Address, the escrowed portion of the purchase price for such Retained IP Address is released to Sears Canada. If the above described information is not delivered to the PRS Purchaser for any particular Retained IP Address, the portion of the escrowed purchase price allocated to such Retained IP Address will be released to the PRS Purchaser and will not form part of the purchase price.

The proposed form of PRS Approval and Vesting Order contemplates a two-stage vesting process. The PRS Parts, the PRS Customer Lists and the IP Addresses, other than the Retained IP Addresses, will vest in the PRS Purchaser

free and clear of Encumbrances on delivery of the Monitor's Certificate. The Retained IP Addresses will only vest in the PRS Purchaser upon delivery to Sears Canada of the Escrow Amount attributable to such Retained IP Addresses.

22. Section 36(1) of the CCAA states:

**36(1) Restriction on disposition of business assets** - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

23. Section 36(3) of the CCAA states:

(3) Factors to be considered - In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

24. The Sears Canada major appliances protection agreement business was marketed in the SISP that was approved by Order of the Court on July 13, 2017 (the "**SISP Order**").

25. The Monitor participated at all stages of the SISP and is satisfied that the SISP was carried out in accordance with the SISP Order. For the reasons set out in the Third

Report, in the Monitor's view, the Applicants' marketing efforts during the SISP were appropriate in the circumstances.

26. No transactions that would provide any material value to Sears Canada for the purchase of the major appliances protection agreements business as a whole were identified in the SISP.
27. The PRS Purchaser was a participant in the SISP and subsequently offered to acquire the PRS Parts, the PRS Customer Lists and the IP Addresses. The Monitor supervised the SISP and the subsequent negotiation of the proposed transaction with the PRS Purchaser and believes the process was reasonable. The Monitor notes that Sears Canada has an interest in completing a transaction, in particular for the PRS Parts, on an expedited basis at this time to eliminate storage costs and avoid the cost to ship the PRS Parts to an alternative warehouse where such assets would be consolidated with other remaining residual assets.
28. The IP Addresses were not marketed separately as part of the SISP. The PRS Purchaser offered to acquire the IP Addresses during the negotiation of the PRS APA. While these addresses were not separately marketed, for the reasons discussed in greater detail below, the Monitor is satisfied that the consideration provided for these assets as part of the overall PRS APA is fair and reasonable in the circumstances.
29. The Monitor approved the process set out in the SISP in which the Sears Canada major appliance protection agreements business was marketed. The Monitor also supervised and approved of the subsequent negotiations with the PRS Purchaser.
30. The proposed sale of the PRS Parts, the PRS Customer Lists and the IP Addresses could proceed in a bankruptcy in the same manner as is contemplated under the CCAA proceedings. There would be no additional benefit to proceeding with the proposed transaction in a bankruptcy proceeding rather than the current CCAA proceedings.
31. The proposed transaction maximizes value for the remaining assets of the protection agreement business and the IP Addresses.

32. The proposed transaction also protects the confidentiality of the personal information contained in the PRS Customer Lists and related information. Pursuant to the PRS APA the PRS Purchaser agrees to comply with the requirements of the *Personal Information Protection and Electronic Documents Act* (Canada) applicable to prospective and completed business transactions.
33. The purchase price allocated to the PRS Parts and the PRS Customer Lists represent the highest value generated for these assets in the SISP and through subsequent solicitation from additional potential bidders. In the Monitor's view, the consideration allocated to the PRS Parts and the PRS Customer Lists is fair. The Monitor notes that the PRS Parts and PRS Customer List would only have material value to a small population of potential buyers.
34. The Monitor has considered the purchase price allocated to the IP Addresses. IP Addresses transfer in a developed market in which a range of market values for IP Addresses has been established. Based upon information available to the Monitor regarding past internet protocol address transactions, the Monitor is of the view that the portion of the Purchase Price allocated to the IP Addresses is within the reasonable range of values realized for internet protocol addresses in other transactions.

#### **E. RECOMMENDATION**

35. The transaction set out in the PRS APA represents the highest and best offer obtained for the PRS Parts, the PRS Customer Lists and the IP Addresses. The Monitor supports the Applicants' requests for approval of these transactions.
36. The Monitor also supports the request for a sealing order in connection with the PRS Approval and Vesting Order. The un-redacted copy of the PRS APA attached hereto as Confidential Appendix "A" contains commercially sensitive information regarding the proposed purchase price and other financial information under the PRS APA. The public disclosure of this information would be detrimental to any future marketing efforts for these assets in the event that the transaction under the PRS APA is not completed.

## F. UPDATES ON THE CCAA PROCEEDINGS


### *Pension Wind-Up*

37. The Monitor has previously reported that on November 10, 2017 the Superintendent of Financial Services (the “**Superintendent**”) issued a Notice of Intended Decision advising that it intends to make an order for the wind up of the Sears Canada Pension Plan, effective October 1, 2017 unless a request for a hearing with the Financial Services Tribunal (“**FST**”) was submitted within thirty days of the Notice of Intended Decision. A copy of the Notice of Intended Decision is attached hereto as Appendix “B”.
38. Neither Sears Canada nor the Pension Administrator requested a hearing with the FST.
39. On December 7, 2017, counsel to 1291079 Ontario Limited, a creditor of Sears Canada Inc., delivered a letter to the Service List identifying a concern that the proposed wind-up of the Sears Canada Pension Plan may have the effect of altering priorities among creditors. Based upon this correspondence to the Service List, the Monitor understands counsel to 1291079 Ontario Limited delivered a Request for Hearing Form to the FST requesting a hearing to challenge the intended decision of the Superintendent to wind up the Sears Canada Pension Plan. A copy of the letter from counsel to 1291079 Ontario Limited to the FST and the Request for Hearing Form are attached hereto as Appendix “C”.
40. On December 8, 2017, the FST delivered correspondence to Sears Canada advising Sears Canada of the above described Request For Hearing from 1291079 Ontario Limited and seeking to confirm if Sears Canada will apply for party status in that hearing. Sears Canada has applied for party status. The Monitor will also apply for party status.

The Monitor respectfully submits to the Court this, its Ninth Report.

Dated this 20th day of December, 2017.

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



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director

**CONFIDENTIAL APPENDIX "A"**  
**PRS APA**



**APPENDIX “B”**  
**Notice of Intended Decision**  
**(see attached)**

**Disclaimer**

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Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “*PBA*”);

**AND IN THE MATTER OF** a Notice of Intended Decision of the Superintendent of Financial Services to Make an Order under section 69 of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065.

**NOTICE OF INTENDED DECISION**

**TO:**

**Morneau Shepell Ltd.**  
895 Don Mills Road  
Tower One, Suite 700  
Toronto ON M3C 1W3

**Attention:**

Al Kiel  
Managing Partner

**Administrator**

**AND TO:**

**Sears Canada Inc.**  
700-290 Yonge Street,  
Toronto ON M5B 2C3

**Attention:**

Bev Church  
Senior Director, Treasury

**Employer**

**I INTEND TO MAKE AN ORDER** in respect of the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065, (the “Plan”) under section 69 of the *PBA*.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.**<sup>1</sup> **A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal’s website at [www.fstontario.ca](http://www.fstontario.ca).

**IF A REQUEST FOR HEARING (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you**, sections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the “Superintendent”) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

**IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will order the following:**

1. The wind up of the Plan effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the *PBA*; and
2. That contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

**A COMPLETED REQUEST FOR HEARING** form must be received by the Tribunal within 30 days after this Notice is served on you. It may be mailed, faxed, or delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
Toronto ON M2N 6L9

Attention: The Registrar  
Fax: 416-226-7750

**THE HEARING BEFORE THE TRIBUNAL** will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. Those Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

### **REASONS FOR DECISION**

**I INTEND TO MAKE THE ORDER** for the following reasons:

1. Sears Canada Inc. and its affiliated companies (“Sears”) is the employer under the Plan. Until October 16, 2017, Sears was the administrator of the Plan.

2. The Plan is a single employer, multi-jurisdictional, hybrid pension plan.
3. The Plan was established on January 1, 1971, as a defined benefit (“DB”) pension plan.
4. On July 1, 2008, all members of the Plan had their DB service frozen, although the DB entitlement at termination or retirement would continue to reflect any earning increases after July 1, 2008.
5. For service on or after July 1, 2008, pension benefits for all members accrued under the defined contribution (“DC”) component of the Plan.
6. The latest filed actuarial report for the Plan as at December 31, 2015 (the “2015 Actuarial Report”) indicated that the DB component of the Plan was underfunded by \$267 million on a wind up basis, with a solvency ratio of 0.85 and a transfer ratio of 0.81.
7. On June 13, 2017, Sears released its first quarter financial statements, reporting substantial decline in revenue compared to the previous year and a net loss of \$144.4 million for the quarter. On June 13, 2017, Sears issued a press release indicating that the conditions facing the company “raise significant doubt as to the Company’s ability to continue as a going concern.” This press release was widely reported on, including by the *Globe and Mail* and the *Toronto Star*.
8. On June 22, 2017, Sears was granted an order under the *Companies’ Creditors Arrangement Act* (“CCAA”).
9. On July 13, 2017, Justice Hainey of the Ontario Superior Court of Justice made an order suspending the obligation for Sears to make special payments to the Plan effective on and after October 1, 2017 (the “Special Payment Suspension Order”).
10. Prior to September 30, 2017, Sears was making special payments of approximately \$3.7 million per month.
11. On September 30, 2017, Sears remitted the final special payment to the Plan.
12. On October 13, 2017, Justice Hainey issued an order approving a liquidation sale in respect of Sears (the “Liquidation Sale Approval Order”).
13. The Superintendent appointed Morneau Shepell Ltd. as the administrator of the Plan pursuant to section 8(1.1) of the *PBA* effective October 16, 2017.
14. To date, all required contributions have been made to the DC component of the Plan.

### **Special Payments**

15. As indicated above, the 2015 Actuarial Report indicated a solvency ratio of 0.85.
16. Section 55(2) of the *PBA* states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.

17. Because the Plan is underfunded, Sears is required under sections 4 and 5 of Regulation 909 (the "Regulation") to continue to make special payments in equal monthly installments as calculated in the actuarial valuation report filed for the Plan.
18. Pursuant to the 2015 Actuarial Report, Sears was required to make special payments to amortize the solvency deficiency under the Plan until December 31, 2021.
19. However, pursuant to the Special Payment Suspension Order, Sears ceased to make special payments after September 30, 2017.
20. Section 69(1)(b) of the *PBA* provides that the Superintendent may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
21. Since October 1, 2017, Sears has failed to make special payments as required. Therefore, the Superintendent has grounds pursuant to section 69(1)(b) of the *PBA* to order the wind up of the Plan.

### **Wind Up Date**

22. Pursuant to section 69(2) of the *PBA*, the wind up order must specify the effective date of the wind up.
23. The Superintendent proposes that the effective date of the wind up be October 1, 2017.
24. As a result of the Liquidation Sale Approval Order, Sears will inevitably cease operating and terminate all remaining employees.

### **Contributions to the DC Component**

25. As noted above, Sears continues to make payments to the DC component of the Plan.
26. Approximately 4,500 active members continue to accumulate benefits under the DC component of the Plan.
27. This benefit accumulation has no impact on the funded status of the DB component of the Plan.
28. It would be contrary to the purposes of the *PBA* if members of the DC component of the Plan were forced to cease accumulating retirement benefits.
29. Therefore, the Superintendent proposes that contributions towards the DC component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.
30. Such further or other reasons as may come to my attention.

**THE ADMINISTRATOR IS REQUIRED** pursuant to section 89(5) of the *PBA* to transmit a copy of this Notice of Intended Decision to the following persons:

1. The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hailey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
2. Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
3. Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

**DATED** at Toronto, Ontario, this 10th day of November, 2017.

*Original Signed By*

Lester J. Wong  
Deputy Superintendent, Pensions  
By delegated authority from the  
Superintendent of Financial Services

1NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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**APPENDIX “C”  
Request for Hearing  
(see attached)**



SOTOS LLP | LAWYERS & TRADE-MARK AGENTS

December 7, 2017

VIA FACSIMILE (416-226-7750)

Financial Services Tribunal  
5160 Yonge Street  
14th Floor, Box 85  
Toronto ON M2N 6L9

Attention: The Registrar

David Sterns  
T 416.977.5229  
dsterns@sotosllp.com

Assistant: Georgia Scott-McLaren  
T 416.977.5333 x 310  
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Our File No. 20667

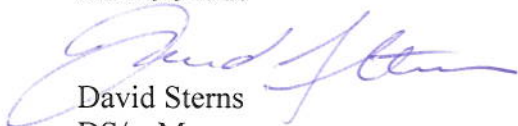
**RE: Notice of Intended Decision - Sears Canada Inc. Registered Retirement Plan  
Registration Number: 0360065 (the "Plan")**

We are the lawyers for 1291079 Ontario Limited, one of the creditors of Sears Canada Inc. listed on the Service List maintained in the Sears Canada Inc. *Companies' Creditors Arrangement Act* ("CCAA") Proceedings to whom a copy of the Deputy Superintendent's Notice of Intended Decision dated November 10, 2017 (the "**Notice**") was transmitted pursuant to Section 89(5) of the *Pension Benefits Act* as referenced in the Notice.

In accordance with the Notice, we enclose a completed Request for Hearing Form on behalf of 1291079 Ontario Limited.

We file the Request for Hearing Form in the event that Sears Canada Inc. itself does not file a Request for Hearing Form, as we believe it is obligated to do, given its Board of Directors' fiduciary duty to creditors to not knowingly allow events to transpire outside the Sears CCAA proceedings which may have the effect of altering priorities as among creditors, without the involvement and supervision of the Honourable Mr. Justice Hainey and the ability of all creditors to make submissions to His Honour about such matters.

Yours truly,  
**SOTOS LLP**



David Sterns  
DS/geMc

Enclosure  
c: Sears Canada Inc. CCAA Service List





# Form 1 - Request for Hearing

For hearings before the  
Financial Services Tribunal

To request a hearing to challenge a proposed or intended decision of the Superintendent of Financial Services, you must complete and file this form with the Registrar, Financial Services Tribunal, by mailing or delivering the form to 5160 Yonge Street, Box 85, 14th Floor, Toronto, ON M2N 6L9, or fax it to (416) 226-7750.

Information that you file with the Tribunal in connection with this matter will be available to all parties to the proceeding and will become part of the public record. When filing material with the Tribunal you may wish to consider protecting the privacy of individuals by removing social insurance numbers and other personal identifiers. Please refer to *Information For Parties With Privacy Concerns* at [www.fstontario.ca](http://www.fstontario.ca). Tribunal hearings are open to the Public unless the Tribunal orders otherwise. The Tribunal's decisions are posted publicly on the internet.

You may represent yourself before the Financial Services Tribunal or you may be represented by someone who is licensed under the *Law Society Act* to practice law or to provide legal services in Ontario (i.e. a lawyer or paralegal) or by someone who is not required to be licensed under that Act (e.g. a trade union representative or a friend helping out on a voluntary basis). If you are not sure whether or not a person can act as your representative (e.g. he or she is not a lawyer or a licensed paralegal), you should contact the Law Society of Upper Canada: (416) 947-3315, or 1-800-668-7380, or [lawsociety@lsuc.on.ca](mailto:lawsociety@lsuc.on.ca). The Financial Services Tribunal cannot assist you in obtaining representation and cannot provide you with information about the authority or licence status of a representative.

**NOTE: You are required to fill out ALL sections of this form as completely as possible. Incomplete forms may be returned and may not be processed until they have been properly completed.**

Tribunal File No.

## Applicant's Name and Address

<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last name	First name	
Company name OR Organization 1291079 Ontario Limited			
Street address c/o Sotos LLP, 1200 - 180 Dundas St. W.		Apt./Unit	
City Toronto	Province Ontario	Postal Code/Zip M5G 1Z8	
Phone number (416) 977-0007	Ext.	Fax number (416) 977-0717	Email address

## Applicant's Representative (if any)

<input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last name Sterns	First name David	
Firm Sotos LLP			
Street address 1200 - 180 Dundas St. W.		Apt./Unit	
City Toronto	Province Ontario	Postal Code/Zip M5G 1Z8	
Phone number (416) 977-0007	Ext.	Fax number (416) 977-0717	Email address dsterns@sotosllp.com
The Representative is: <input checked="" type="checkbox"/> Lawyer <input type="checkbox"/> Paralegal licensed to provide legal services <input type="checkbox"/> Not required to be licensed under the <i>Law Society Act</i> and its By-Laws			

### Superintendent's Proposed or Intended Decision

You must attach a copy of Superintendent's Notice of Proposal or Intended Decision

Date of Superintendent's Notice of Proposal or Intended Decision

### Why do you disagree with the Superintendent's Proposed or Intended Decision?

Briefly outline why you disagree with what the Superintendent is proposing to do. Use point form if desired.  
Please be as specific as possible in referring to the statutory provisions relevant to your case.

The Notice of Intended Decision violates the Orders of the Ontario Superior Court of Justice in the Sears Canada Inc. CCAA proceeding and is stayed by those Orders.

### What do you want the Tribunal to decide or order?

Explain as precisely as possible what decision you want the Tribunal to make. Use point form if desired.

To make such decisions regarding the Plan as (and when) FSCO may be authorized to do so by the Supervising Judge in the Sears Canada Inc. CCAA Proceedings.

### Other Interested Persons

Other persons who may be affected by an order or decision of the Tribunal in this case, including any trade union(s) with bargaining rights, if applicable.

All Creditors of Sears Canada Inc.

### French and Accessibility Requirements

A person has the right to communicate with the Registrar's office and at hearings in French as provided in the *French Language Services Act*. If a person intends to communicate in French as a party in a proceeding, the person shall indicate this intention in the Request for Hearing or in a letter filed with the Registrar as early as is practicable.

Do you intend to communicate in French?

- Yes  
 No

Do you have any accessibility requirements for the proceeding? (e.g., wheel chair access, sign language interpreter, visual aids, or any other accommodation)

- Yes  
 No

If yes, please describe

### Signature

Applicant Name (please print)	Applicant Signature	Date (yyyy/mm/dd)
1291079 Ontario Limited	 By its lawyers SOTOS LLP	2017/12/07
Representative Name (please print)	Representative Signature	Date (yyyy/mm/dd)
David Sterns		2017/12/07

The personal information requested on this form is necessary for the proper administration of a lawfully authorized activity and is collected under the authority of the *Financial Services Commission of Ontario Act, 1997*. This information will be used for the purposes of the proceeding and will be available to all parties in the proceeding and will become part of the public record. Any questions about the collection and use of your personal information may be directed to the Registrar by telephone 1-800-668-0128 or 416-590-7294, or fax at (416) 226-7750.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990,  
c. P.8, as amended (the "*PBA*");

**AND IN THE MATTER OF** a Notice of Intended Decision of the  
Superintendent of Financial Services to Make an Order under section 69  
of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan,  
Registration Number 0360065.

### **NOTICE OF INTENDED DECISION**

**TO:** **Morneau Shepell Ltd.**  
895 Don Mills Road  
Tower One, Suite 700  
Toronto ON M3C 1W3

**Attention:** Al Kiel  
Managing Partner

**Administrator**

**AND TO:** **Sears Canada Inc.**  
700-290 Yonge Street,  
Toronto ON M5B 2C3

**Attention:** Bev Church  
Senior Director, Treasury

**Employer**

**I INTEND TO MAKE AN ORDER** in respect of the Sears Canada Inc. Registered  
Retirement Plan, Registration Number 0360065, (the "*Plan*") under section 69 of the  
*PBA*.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande  
immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de  
l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the

"Tribunal") pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.<sup>1</sup> A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal's website at [www.fstontario.ca](http://www.fstontario.ca).

**IF A REQUEST FOR HEARING (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you**, sections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

**IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will order the following:**

- 1) The wind up of the Plan effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the *PBA*; and
- 2) That contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

**A COMPLETED REQUEST FOR HEARING** form must be received by the Tribunal within 30 days after this Notice is served on you. It may be mailed, faxed, or delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14<sup>th</sup> Floor  
Toronto ON M2N 6L9

Attention: The Registrar

Fax: 416-226-7750

**THE HEARING BEFORE THE TRIBUNAL** will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. Those Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

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<sup>1</sup> NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

## REASONS FOR DECISION

I INTEND TO MAKE THE ORDER for the following reasons:

1. Sears Canada Inc. and its affiliated companies ("Sears") is the employer under the Plan. Until October 16, 2017, Sears was the administrator of the Plan.
2. The Plan is a single employer, multi-jurisdictional, hybrid pension plan.
3. The Plan was established on January 1, 1971, as a defined benefit ("DB") pension plan.
4. On July 1, 2008, all members of the Plan had their DB service frozen, although the DB entitlement at termination or retirement would continue to reflect any earning increases after July 1, 2008.
5. For service on or after July 1, 2008, pension benefits for all members accrued under the defined contribution ("DC") component of the Plan.
6. The latest filed actuarial report for the Plan as at December 31, 2015 (the "2015 Actuarial Report") indicated that the DB component of the Plan was underfunded by \$267 million on a wind up basis, with a solvency ratio of 0.85 and a transfer ratio of 0.81.
7. On June 13, 2017, Sears released its first quarter financial statements, reporting substantial decline in revenue compared to the previous year and a net loss of \$144.4 million for the quarter. On June 13, 2017, Sears issued a press release indicating that the conditions facing the company "raise significant doubt as to the Company's ability to continue as a going concern." This press release was widely reported on, including by the *Globe and Mail* and the *Toronto Star*.
8. On June 22, 2017, Sears was granted an order under the *Companies' Creditors Arrangement Act* ("CCAA").
9. On July 13, 2017, Justice Hailey of the Ontario Superior Court of Justice made an order suspending the obligation for Sears to make special payments to the Plan effective on and after October 1, 2017 (the "Special Payment Suspension Order").
10. Prior to September 30, 2017, Sears was making special payments of approximately \$3.7 million per month.
11. On September 30, 2017, Sears remitted the final special payment to the Plan.
12. On October 13, 2017, Justice Hailey issued an order approving a liquidation sale in respect of Sears (the "Liquidation Sale Approval Order").

13. The Superintendent appointed Morneau Shepell Ltd. as the administrator of the Plan pursuant to section 8(1.1) of the *PBA* effective October 16, 2017.
14. To date, all required contributions have been made to the DC component of the Plan.

#### Special Payments

15. As indicated above, the 2015 Actuarial Report indicated a solvency ratio of 0.85.
16. Section 55(2) of the *PBA* states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.
17. Because the Plan is underfunded, Sears is required under sections 4 and 5 of Regulation 909 (the "Regulation") to continue to make special payments in equal monthly installments as calculated in the actuarial valuation report filed for the Plan.
18. Pursuant to the 2015 Actuarial Report, Sears was required to make special payments to amortize the solvency deficiency under the Plan until December 31, 2021.
19. However, pursuant to the Special Payment Suspension Order, Sears ceased to make special payments after September 30, 2017.
20. Section 69(1)(b) of the *PBA* provides that the Superintendent may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
21. Since October 1, 2017, Sears has failed to make special payments as required. Therefore, the Superintendent has grounds pursuant to section 69(1)(b) of the *PBA* to order the wind up of the Plan.

#### Wind Up Date

22. Pursuant to section 69(2) of the *PBA*, the wind up order must specify the effective date of the wind up.
23. The Superintendent proposes that the effective date of the wind up be October 1, 2017.
24. As a result of the Liquidation Sale Approval Order, Sears will inevitably cease operating and terminate all remaining employees.

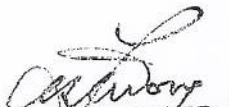
Contributions to the DC Component

25. As noted above, Sears continues to make payments to the DC component of the Plan.
26. Approximately 4,500 active members continue to accumulate benefits under the DC component of the Plan.
27. This benefit accumulation has no impact on the funded status of the DB component of the Plan.
28. It would be contrary to the purposes of the *PBA* if members of the DC component of the Plan were forced to cease accumulating retirement benefits.
29. Therefore, the Superintendent proposes that contributions towards the DC component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.
30. Such further or other reasons as may come to my attention.

**THE ADMINISTRATOR IS REQUIRED** pursuant to section 89(5) of the *PBA* to transmit a copy of this Notice of Intended Decision to the following persons:

- 1) The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hainey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
- 2) Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
- 3) Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

**DATED** at Toronto, Ontario, this 10<sup>th</sup> day of *November*, 2017.

  
 \_\_\_\_\_  
 Lester J. Wong  
 Deputy Superintendent, Pensions  
 By delegated authority from the  
 Superintendent of Financial Services



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., *et al.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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Lawyers for FTI Consulting Canada Inc., in its capacity as  
Monitor