

**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 QUEBEC INC.,  
191020 CANADA INC., THE CUT INC., SEARS CONTACT  
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM  
COMMERCE LABS INC., INITIUM TRADING AND SOURCING  
CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA  
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711  
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., and 3339611 CANADA INC.

((each an "Applicant", and collectively, the "Applicants" or "Sears Canada"))

**RESPONDING MOTION RECORD  
(Re: Motion to file Bankruptcy Application against Sears)  
-and-  
SUPPLEMENTARY MOTION RECORD  
(Motion re: Deemed Trust and distribution to the pension plan)**

September 19, 2018

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Representative Counsel for the Retirees of  
Sears Canada

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# TAB 1

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

**AFFIDAVIT OF RONALD HUSK  
(Sworn September \_\_, 2018)**

I, **RONALD HUSK**, of the City of Mount Pearl, in the Province of  
Newfoundland and Labrador, **MAKE OATH AND SAY:**

1. I am a former employee of Sears Canada Inc. ("**Sears**") and a member of the  
Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the "**Sears  
Canada Plan**"). I am currently 72 years old, and will turn 73 next month.
2. I worked for Sears for approximately 35 years, and retired in 2000. As such, I  
have personal knowledge of the matters stated in this affidavit, except where I have

acquired such information from others, in which case I believe such information to be true.

3. On July 20, 2018, Representative Counsel to the Sears' Retirees filed a motion for a declaration that the claim that had been submitted by Representative Counsel (and the Pension Plan Administrator, Morneau Shepell) for the amount of the pension plan wind up deficit that is owing by Sears to the underfunded Sears Canada Plan (the "**Wind Up Deficit**") is deemed to be held in trust for the beneficiaries of the Sears Canada Plan pursuant to section 57(4) of the Ontario *Pension Benefits Act* R.S.O. c. P. 8 (the "**Pension Deemed Trust**") and therefore the claim is entitled to first priority recovery from the assets of the Applicants.

4. This affidavit is filed to oppose the motion by Employee Representative Counsel on September 7, 2018 which seeks the permission of the court to file a bankruptcy application against Sears and its related entities. I believe that motion is an effort to try to defeat the priority of the Pension Deemed Trust and render the Wind Up Deficit claim as an unsecured claim.

***My employment history with Sears***

5. I began working with Sears in February of 1965. After 35 years of employment, I retired from Sears in 2000 and began collecting the monthly pension benefits that I earned from Sears.

6. I spent the entirety of my 35 year career with Sears working at store-level in various stores in St. John's. I began as a sales clerk in the clothing department at Simpsons-Sears in downtown St. John's, and then trained as a manager. I worked in the

sporting goods department, and then in hardware and paints. For the last thirty years of my employment career, I worked in home major appliances at the Sears Village Shopping Centre store.

7. As part of my compensation for my years of employment service with Sears, I earned pension and health benefits that are payable to me on my retirement for my lifetime. I planned and relied on receiving my Sears pension and health benefits to pay for my and my wife's livelihood in our elderly years when I am retired from Sears and am too old or ill to work.

*The personal impact of Sears' failure and insolvency*

8. My wife and I have always relied solely on the income that I brought home. On my retirement, we planned to rely on my monthly Sears pension benefits and health and dental benefits. My wife was unable to return to work after she got sick during the pregnancy of one of our children many years ago. As a result, she is not entitled to Canada Pension Plan benefits nor any workplace pension.

*a) Pension losses*

9. The monthly pension payable to me from the Sears Canada Plan was modest to begin with. When I retired in 2000 at age 55, I was entitled to a monthly pension of approximately \$1500 per month, as well as a temporary bridging benefit (payable until age 65) of approximately \$700 per month for a total of about \$2,200 per month. I lost the bridging benefit when I turned 65 and my pension dropped to approximately \$1,500 per month. In August, 2018, my pension benefit was reduced further by approximately

\$450 as a result of the underfunding of the Sears Canada Plan. The monthly pension I now receive from the Sears Canada Plan after statutory deductions is only \$993.52.

10. As I was a Sears pension plan member who reported for work in Newfoundland and Labrador, I have no entitlement to assistance from the Ontario Pension Benefits Guarantee Fund, which only assists Ontario pension plan members of underfunded pension plans on their wind up. Newfoundland does not provide such assistance for pensioners.

*b) Health and dental benefits losses*

11. In addition to the 30% reduction to my monthly pension benefit, in October 2017, Sears Canada also entirely terminated my health and dental benefits coverage (I previously elected a buy-out of my life insurance benefit from Sears prior to its CCAA filing).

12. We cannot afford replacement health and dental coverage. When my health and dental benefits were terminated, I had to apply to the Newfoundland and Labrador Prescription Drug Program (NLPDP), which provides financial assistance for individuals residing in the province whose monthly prescription medication costs represent a certain percentage of their total monthly household income. But the NLPDP only partially covers certain prescriptions. Medical services, equipment, medical care, and dental care, which were benefits I earned and were terminated by Sears, are not covered by the NLPDP.

13. I am advised by Representative Counsel and believe that, in addition to the Pension Deemed Trust claim referred to above, they also submitted a claim in the CCAA

Claims Process for the affected retirees' terminated health, dental, and life insurance benefits (the "**Retiree Benefits Claim**") but these claims in contrast to the priority Pension Deemed Trust claim, are unsecured claims.

14. The reduction of my monthly pension benefits and the loss of health and dental benefits have significantly impacted the financial security and retirement financial planning for me and my wife. We now have a significantly reduced income imposed on us in our elderly years. We have to pay for essential medical care and medications out of pocket. My wife needs specific dental treatments every six months as she has a condition that can lead to cancer if not regularly treated by a dentist. This used to be covered by my Sears dental benefits. We cannot afford to send her to the dentist and are waiting for my income tax refund so I can send her for this important treatment.

15. Financially, we live week to week and never know if we will be able to make ends meet. As a result of these sudden and unexpected financial pressures, I have had to return to work. At the age of 72, I started to look for a job and eventually obtained a job at Home Depot in St. John's as a Customer Greeter. My doctor has told me that it is bad for my health to continue to work. I have angina and suffered a heart attack less than 2 years ago. I face a higher risk of a second heart attack due to the financial stress from the pension reduction and health benefit losses. After working at Sears and elsewhere for 56 years of my life and being in poor health, I had planned to retire and rely on my Sears pension and benefits, but now I cannot. I still have a mortgage on my home. My wife and I live in constant fear that we will lose our house.

16. I have reviewed the Monitor's 22<sup>nd</sup> Report and I understand that even if the court rules that the Pension Deemed Trust is applicable, there will not be sufficient funds to

pay the Pension Wind Up Deficit claim in full because there is not enough money left in Sears Canada to cover the amount of the Wind Up Deficit. I also understand and accept that if the Pension Deemed Trust applies, I will not recover anything for my Retiree Benefit Claim.

17. Nevertheless, the 30% reduction to my monthly pension benefit has caused immediate and significant hardship for me and my wife, and I would strongly prefer to have my monthly pension benefit increased with the amount that is left in the company, rather than get a one-time lump sum cheque for pennies on the dollar for my Retiree Benefit Claim, and only an inconsequential increase to my pension benefit if the Wind Up Deficit becomes an unsecured claim.

18. I swear this affidavit to oppose the motion by Employee Representative Counsel for the permission of the court to file a bankruptcy application against Sears and its related entities, and for no other or improper purpose.

SWORN AFFIRMED BEFORE ME at the  
City of Mount Pearl, Newfoundland, this \_\_\_\_  
day of September, 2018.

\_\_\_\_\_  
A Commissioner for taking Affidavits, etc.

\_\_\_\_\_  
**RONALD HUSK**

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

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

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., 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.

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at Toronto

**AFFIDAVIT OF RONALD HUSK**  
(Sworn September \_\_, 2018)

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Representative Counsel for the  
Pension and Retiree Group

# TAB 2

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**AFFIDAVIT OF AUDREY RICHARDSON  
(Sworn September \_\_, 2018)**

**I, AUDREY RICHARDSON**, of the settlement of Beaver Dam, in the County of York, in the Province of New Brunswick, **MAKE OATH AND SAY:**

1. I am a former employee of Sears Canada Inc. ("**Sears**") and a member of the Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the "**Sears Canada Plan**"). I am currently 73 years old.

2. I worked for Sears for approximately 50 years, before being terminated by the company after it commenced its proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**").

3. As such, I have personal knowledge of the matters stated in this affidavit, except where I have acquired such information from others, in which case I believe such information to be true.

4. On July 20, 2018, Representative Counsel to the Sears' Retirees filed a motion for a declaration that the claim that had been submitted by Representative Counsel (and the Pension Plan Administrator, Morneau Shepell) for the amount of the pension plan wind up deficit that is owing by Sears to the underfunded Sears Canada Plan (the "**Wind Up Deficit**") is deemed to be held in trust for the beneficiaries of the Sears Canada Plan pursuant to section 57(4) of the Ontario *Pension Benefits Act* R.S.O. c. P. 8 (the "**Pension Deemed Trust**") and therefore the claim is entitled to first priority recovery from the assets of the Applicants.

5. This affidavit is filed to oppose the motion by Employee Representative Counsel on September 7, 2018 which seeks the permission of the court to file a bankruptcy application against Sears and its related entities. I believe that motion is an effort to try to defeat the priority of the Pension Deemed Trust and render the Wind Up Deficit claim as an unsecured claim.

***My employment history with Sears***

6. I began working as a full-time employee with Sears on June 20<sup>th</sup>, 1966. In 2006, I retired and began to receive my pension. In 2007, I returned to work part-time for Sears. I was terminated in February, 2018 during the CCAA proceedings.

7. For the approximately 50 years that I worked for Sears, I spent most of my time working at store-level at the Fredericton store. I also spent some years working at the warehouse for the Sears Catalogue business.

8. I gave the best years of my life to Sears, and for my work I earned pension, health, dental, and life insurance benefits that are payable to me on my retirement for my lifetime.

***The personal impact of Sears' failure and insolvency***

***a) Pension losses***

9. The pension amount payable to me from the Sears Canada Plan was modest to begin with. When I retired in 2006, I had earned a pension of just over \$500 per month or about \$6,000 per year. Starting in August, 2018, due to the underfunding in the Sears Canada Plan, this amount was reduced by approximately 30%. Since I was a Sears employee from New Brunswick, I do not have entitlement to coverage by the Ontario Pension Benefits Guarantee Fund. As a result of the 30% reduction, and after statutory deductions, the amount of the pension that is deposited into my account each month is less than \$300. I am 73 years old and need to draw my pension for another 20 years or more. Every dollar that I lose each month creates financial problems and stress on my ability to make ends meet.

***b) Health, dental, and life insurance losses***

10. In October 2017, Sears Canada also entirely terminated my health, dental, and life insurance benefits coverage. This meant that my husband also lost his entitlement to these benefits and we now have to pay an additional \$600 to \$700 per month for

insurance premiums, deductibles and other amounts that we had relied on and planned would be covered by Sears. This has also had a catastrophic effect on the finances of my family. Coupled with the reduction to my pension benefits, we now live week to week and constantly live in fear that we will not be able to make ends meet.

11. I feel very let down by Sears, not just because I was misled when I was told by the company that I would receive pension and health, dental, and life insurance benefits on retirement for my lifetime, but also because based on that promise my husband elected not to continue his medical and dental benefits when he retired as a government employee from the Province of New Brunswick. We did not plan that we needed his health benefits because I had coverage from Sears that extended to him.

12. I am advised by Representative Counsel and believe that, in addition to the Pension Deemed Trust claim, they also submitted a claim in the CCAA Claims Process for the affected retirees' terminated health, dental, and life insurance benefits (the "**Retiree Benefits Claim**") but those claims, in contrast to the priority Pension Deemed Trust claim, are unsecured claims.

13. In addition to the total loss of health and life insurance benefits and the 30% reduction to my monthly pension, Sears also did not pay me severance pay when I was terminated in February, 2018. Pursuant to the Employee and Retiree Claims Process, I received a Termination Claim Statement from the Monitor, outlining the details of my employment and the calculation of my Termination Claim.

14. I have reviewed the Monitor's 22<sup>nd</sup> Report and I understand that even if the court rules that the Pension Deemed Trust is applicable, there will not be sufficient funds to pay the Pension Wind Up Deficit claim in full because there is not enough money left in

Sears Canada to cover the amount of the Wind Up Deficit. I also understand and accept that if the Pension Deemed Trust applies, I will not recover anything for my Termination Claim and Retiree Benefit Claim.

15. Nevertheless, the 30% reduction to my monthly pension has caused immediate and significant hardship for me and my family, and I would strongly prefer to have my monthly pension benefit increased with the amount that is left in the company, rather than get a one-time lump sum cheque for pennies on the dollar for my Termination Claim and Retiree Benefit Claim, and an inconsequential increase to my pension benefit if the Wind Up Deficit becomes an unsecured claim.

16. I swear this affidavit to oppose the motion by Employee Representative Counsel for the permission of the court to file a bankruptcy application against Sears and its related entities, and for no other or improper purpose.

SWORN AFFIRMED BEFORE ME at the  
City of \_\_\_\_\_, this \_\_\_\_ day of  
September, 2018.

\_\_\_\_\_  
A Commissioner for taking Affidavits, etc.

\_\_\_\_\_  
**AUDREY RICHARDSON**

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Representative Counsel for the  
Pension and Retiree Group

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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Court File No.: CV-17-11846-00CL

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