

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

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

**SUPPLEMENT TO THIRTY-THIRD REPORT OF FTI CONSULTING CANADA INC.,
AS MONITOR**

October 31, 2019

**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

**SUPPLEMENT TO THIRTY-THIRD REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

1. On October 23, 2019, the Monitor filed its Thirty-Third Report to the Court (the “**Thirty-Third Report**”) in these CCAA Proceedings in relation to the Reserve for the RRP and the Redwater Motion (all as defined in the Thirty-Third Report).
2. Capitalized terms used in this Supplement to the Thirty-Third Report and not otherwise defined have the meanings given to them in the Thirty Third Report.

Communications from the EAB

3. As set out in the Thirty-Third Report, the Monitor advised the Director and the parties to the EPO of its intention to seek the Court’s approval of the Reserve, and the calculations giving rise to the Reserve. None of those parties have objected to the Reserve.
4. However, during the course of recent motions proceedings before the EAB, the EAB itself made the following comments on the Monitor’s motion seeking the Reserve:

The Board notes comments from several of the participants that the Director has “signed off” on the remediation plan. It appears from these comments that a number of the participants are treating the remediation plan component of this matter as concluded – this is to say that the remediation plan is now a fixed decision.

Respectfully the Board notes two of the issues that will be considered as part of the hearing are: “Was it appropriate for the Director to issue the EPO?” and “Are the terms and conditions of the EPO appropriate?” In the Board’s view the Board’s Report and Recommendations and the Minister’s Decision in response to these issues could result in changes to the EPO that could require changes to the remediation plan, notwithstanding the Director has signed off on it.

In the Board’s view, this creates the possibility that the work Sears Canada Inc. (“Sears”) and any other person responsible are required to do may change and cost more than is currently estimated. In turn this may mean the fund that Sears has set aside as part of the proceedings under the *Companies’ Creditor Arrangement Act*, R.S.C. 1985, c.C-36 (“CCAA”) are no longer sufficient.

As the amount of money that needs to be included in the fund Sears is setting assigned to meet its obligations under the EPO has not yet been determined, **it would seem prudent for the Environmental Appeals Board matter to be concluded before the Sears Monitor makes application to the Court to pay out the remaining funds.** [emphasis added]

A copy of the letter in this regard dated October 29, 2019 from general counsel to the EAB is attached as Appendix “A”.

5. The EAB has not explicitly directed or requested an adjournment of this motion and neither it nor any other person has proposed an alternate Reserve. However, the EAB’s letter raises the possibility that the decision arising from its hearings on December 3-5 will suggest a different amount for the conduct of the RRP, even after the decision on this motion is final. This in turn gives rise to the possibility of either jurisdictional conflicts or uncertainty regarding future remediation costs notwithstanding the Reserve.
6. In the circumstances the Monitor intends to seek the Court’s direction at the return of this motion on November 4, 2019, as to whether an adjournment is appropriate.

The Monitor respectfully submits to the Court this, its Supplement to the Thirty-Third Report.

Dated this 31st day of October, 2019.

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

A handwritten signature in blue ink, appearing to read 'S. Bissell', with a long horizontal stroke extending to the left.

Steven W. Bissell
Managing Director

APPENDIX "A"



ALBERTA
ENVIRONMENTAL APPEALS BOARD

October 28, 2019

Via E-Mail

To Distribution List:

Dear Ladies and Gentlemen:

**Re: Sears Canada Inc., Concord North Hill GP Ltd., and Suncor Energy Inc.
EPEA Environmental Protection Order No. EPO-2018/01-SSR & Amendment 2
Our File Nos.: EAB 17-069-070 and 18-013**

The Board has reviewed the submissions of the participants in response to the application by Suncor Energy Inc. to adjourn the hearing. The Board has decided to deny the application. **The hearing will proceed as scheduled on December 3, 4, and 5, 2019.** The Board's reasons will be provided as soon as possible.

The Board believes it is necessary to communicate a concern that has arisen out of its review of the submissions. This is with regard to the remediation plan. These comments should not be considered the Board's reasons for its decision to proceed with the hearing as scheduled.

The Board notes comments from several of the participants that the Director has "signed off" on the remediation plan. It appears from these comments that a number of the participants are treating the remediation plan component of this matter as concluded – this is to say that the remediation plan is now a fixed decision.


Respectfully, the Board notes two of the issues that will be considered as part of the hearing are: "Was it appropriate for the Director to issue the EPO?" and "Are the terms and conditions of the EPO appropriate?" In the Board's view, the Board's Report and Recommendations and the Minister's Decision in response to these issues could result in changes to the EPO that could require changes to the remediation plan, notwithstanding the Director has signed off on it.

In the Board's view, this creates the possibility that the work Sears Canada Inc. ("Sears"), and any other persons responsible, are required to do may change and cost more than is currently estimated. In turn, this may mean that the fund that Sears has set aside as part of the proceedings under the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") are no longer sufficient.

As the amount of money that needs to be included in the fund Sears is setting assigned to meet its obligations under the EPO has not yet been determined, it would seem prudent for the Environmental Appeals Board matter to be concluded before the Sears Monitor makes application to the Court to pay out the remaining funds.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6569 for Valerie Myrmo, Registrar of Appeals, and 780-427-7002 for Denise Black, Board Secretary. We can also be contacted via e-mail at valerie.myrmo@gov.ab.ca and denise.black@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel
and Settlement Officer

The information collected by the Board is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of these appeals. **The information you provide will be considered a public record.**

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

**SUPPLEMENT TO THE THIRTY-THIRD REPORT TO
THE COURT SUBMITTED BY FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS MONITOR**

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