

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the Matter of... Sears Canada Inc

Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: McEwen

Counsel	Telephone No:	Facsimile No:
<u>A. Hatnag / S. Tafelman</u>		
<u>E. Cobb</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows): _____

This matter appeared before me today with respect to the motion brought by Representative Counsel for the Retirees of Sears Canada's ~~motion~~ concerning the calculation of amounts to be distributed and other related relief.

I have reviewed the materials and heard submissions of

25 April 22
Date

McEwen
Judge's Signature

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Judges Endorsment Continued

Representative Counsel. The Monitor advises that it supports the relief sought.

The order shall go as per the draft filed and signed.

I am satisfied that the relief sought concerning the calculations is accurate, fair and reasonable.

The related relief is also fair and reasonable and necessary to terminate the PCA Trust.

With respect to the sealing order I agree that the Distribution Sheet ought to be sealed, kept confidential and not form part of the public record.

The Distribution Sheet identifies each of the retirees (84), provides additional personal information and calculations of each of the retirees' entitlement to amounts.

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They are entitled to under the RCA Trust.

I agree with Representative Counsel that a sealing order is appropriate since:

- The information reflects their supplemental pension income and is personal, private information;
- The retirees/beneficiaries are elderly and could be exploited should their identities/amounts of distribution be known;
- Throughout this proceeding, Sears Canada who administered the RCA Trust safeguarded the information;
- Sealing the information is consistent with the various statutory protections under the applicable Federal and provincial statutes e.g. s. 21(3) of

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The Ontario Freedom of Information and Protection of Privacy Act;

• The sealing order sought is consistent with the sealing of KERPs by this Court: see OSC v. Bridging Finance Inc 2021 ONSC 4347 at para 25;

• a sealing order is consistent with the confidential fashion in which Sears administered the pension plan; and,

• The RCA Trust Funds do not form part of Sears estate, there is no prejudice to other stakeholder and no stakeholder has sought access to the information.

Further, in my view, such an order is consistent with the SCC case law set out in the Sierra Club and Sherman Estate

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Cases -

Disclosing the confidential information protects the retirees' right to control fundamental information about their identities and the amounts they are to be paid from the RCA Trust

This case is distinguishable from the factual matrix in *Sherman Estate* and consistent with decisions of this court in *OS (supra)*; *Canwest Publishing* 2010 ONSC 222 at para 65; *Canwest Global* 2009 CarswellOnt 6184 at para 52.

I also see no alternative measures to ameliorate the situation.

Redaction of the retirees' names only still potentially exposes the disclosure of their identities as set out in the Retirees' Paction at paras 49-51.

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Last, when one considers the issue of proportionality, the benefits of keeping the elderly retirees in Paratex confidential outweigh any negative effects for the reasons above, particularly where no stakeholder opposes, the Monitor provides support and only one document - the Distribution Sheet - is being sealed. The public has access to all other documents.

In all of these circumstances, sealing the Distribution Sheet has a minimal deleterious effect on the open court principle, and is significantly outweighed by the protection of the privacy and dignity of the retirees/beneficiaries.

TM Addendum TM counsel will file a paper copy of the Distribution Sheet with the Commercial List office along with a copy of this endorsement in clu

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

THE HONOURABLE JUSTICE McEWEN) TUESDAY , THE 25TH DAY
)
) OF APRIL, 2022

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., 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.

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

ORDER

THIS MOTION, brought by Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pensions and post-retirement benefits of the Applicants ("**Representative Counsel**"), was heard this day by videoconference *via* Zoom in Toronto, Ontario.

ON READING the Affidavit of William Turner sworn April 12, 2022, and the Supplementary Affidavit of William Turner sworn April 22, 2022, the Affidavit of Genevieve Lussier sworn April 12, 2022 and the Supplementary Affidavit of Genevieve Lussier sworn April

22, 2022, and on hearing the submissions of Representative Counsel, and counsel to the Monitor, no other counsel appearing,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today, and that further service thereof is hereby dispensed with. Capitalized terms not otherwise defined have the meanings given to them in the affidavit of William Turner, sworn April 12, 2022.
2. **THIS COURT ORDERS** that the Retiree Committee is authorized to direct The Segal Company to calculate the individual amounts to be distributed to each beneficiary of the RCA Trust by using the "prescribed annuity method", as such phrase is described in the affidavit of Genevieve Lussier sworn April 12, 2022.
3. **THIS COURT ORDERS** that the Distribution Sheet contained in the Confidential Exhibit "B" to the affidavit of Genevieve Lussier sworn April 12, 2022, as adjusted in the Confidential Exhibit "A" to the Supplementary Affidavit of Genevieve Lussier sworn April 22, 2022, which sets out the individual amounts to be distributed to each beneficiary from the RCA Trust is approved in substantially its form, the amounts therein subject to minor adjustments prior to the date of distribution by CIBC Mellon Trust Company as are necessary to account for factors including, but not limited to, the current amount of the assets in the RCA Trust, the payment of legal costs, other adviser and administrative costs from the fund, and the death of a beneficiary prior to distribution (collectively, the "**Adjustments**").
4. **THIS COURT ORDERS** that the Retiree Committee is authorized to issue a letter of direction to CIBC Mellon to proceed to terminate the RCA Trust and distribute all of its assets to the beneficiaries in the individual amounts set out in the Distribution Sheet, subject to the Adjustments.
5. **THIS COURT ORDERS** that CIBC Mellon is authorized to rely on the Committee's letter of direction to terminate the RCA Trust, the Distribution Sheet and the Adjustments, and proceed with the termination of the RCA Trust and distribute all of its assets to the beneficiaries.

6. **THIS COURT ORDERS** that CIBC Mellon is authorized to pay all legal and other advisor and administrative expenses from the fund of the RCA Trust, as have been approved by the Committee.

7. **THIS COURT ORDERS** that both the Confidential Exhibit "B" to the affidavit of Genevieve Lussier sworn April 12, 2022 containing the Distribution Sheet, and the Confidential Exhibit "A" to the Supplementary Affidavit of Genevieve Lussier sworn April 22, 2022 containing the adjusted Distribution Sheet, shall be and are hereby sealed, kept confidential, and shall not form part of the public record, pending further Order of this Court.

8. **THIS COURT ORDERS** that none of past or present Retiree Committee members, namely, William Turner, Larry Moore, George Hughes, Claude Senechel, Ken Eady, and Brent Hollister, shall have any liability with respect to their appointment or the fulfilment of their duties including with respect to the termination of the RCA Trust, including relating to the investment and distribution of the RCA Trust assets to the beneficiaries, save and except for any claim based on gross negligence or wilful misconduct on their part.


JUSTICE McEWEN

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., 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")

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

Proceeding commenced at Toronto

ORDER

(Motion for approval of RCA Trust Distribution Sheet, returnable April 19, 2022, adjourned re: Sealing Request to April 25, 2022)

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