

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



THE HONOURABLE MR.)
JUSTICE MAINEY)

THURSDAY, THE 13TH

DAY OF JULY, 2017

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.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

EMPLOYEE REPRESENTATIVE COUNSEL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day at 330
University Avenue, Toronto, Ontario.

ON READING the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits
attached thereto (collectively, the “**Wong Affidavit**”), the pre-filing report dated June 22, 2017
of FTI Consulting Canada Inc., in its capacity as the proposed Monitor of the Applicants, and the
affidavit of Ashley Schuitema sworn July 12, 2017, and on hearing the submissions of counsel
for the Applicants and SearsConnect (the “**Partnership**”, and collectively with the Applicants,

the “**Sears Canada Entities**”), counsel to the Board of Directors of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors of SCI, counsel to the proposed Monitor, and on hearing from Employee Representative Counsel (as defined below), and those other parties present:

APPOINTMENT OF REPRESENTATIVE COUNSEL

1. **THIS COURT ORDERS** that Ursel Phillips Fellows Hopkinson LLP (the “**Employee Representative Counsel**”) is hereby appointed as employee representative counsel to represent the interests of the non-unionized Active Employees and Former Employees (each as defined below) of the Sears Canada Entities (collectively, the “**Employees**”) in these CCAA proceedings, other than with respect to (a) entitlements of Employees under the Sears Pension Plan and the Supplemental Plan (each as defined in the Wong Affidavit), and any other pension or retirement plan of the Sears Canada Entities; and (b) Employees’ other post-employment benefits entitlements (the “**Purpose**”). As used herein, “**Active Employees**” means all non-union employees of the Sears Canada Entities employed as of June 22, 2017, including such employees on authorized leaves of absence; “**Former Employees**” means all non-union employees of the Sears Canada Entities who (i) received notice of termination of employment dated June 22, 2017; or (ii) received notice of cessation of severance payments dated June 22, 2017; and “**Employees**” shall (x) exclude the senior management of the Sears Canada Entities; and (y) include any person claiming an interest under or on behalf of an Employee.

2. **THIS COURT ORDERS** that Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Sara Sawyer and Barb Wilser (collectively, the “**Employee Representatives**”) are hereby appointed as representatives of all Employees (excluding the Opt-Out Individuals (as defined below), if any) in these CCAA proceedings, to act in the overall best interests of the Employees,

and to advise and where appropriate instruct the Employee Representative Counsel, in every case, solely for the Purpose. The Employee Representative Counsel may rely upon the advice, information and instructions received from the Employee Representatives in carrying out the mandate of the Employee Representative Counsel without further communications with or instructions from the Employees, except as may be recommended by the Employee Representative Counsel or ordered by this Court.

3. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals, (a) the Employee Representatives and the Employee Representative Counsel shall represent all Employees in these CCAA proceedings; (b) the Employees shall be bound by the actions of the Employee Representatives and the Employee Representative Counsel in these CCAA proceedings; and (c) the Employee Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Employees for the Purpose and compromise any rights, entitlements or claims of the Employees, subject to approval of this Court.

4. **THIS COURT ORDERS** that the Sears Canada Entities shall provide to the Employee Representative Counsel, subject to confidentiality arrangements satisfactory to the Sears Canada Entities and the Monitor, without charge, the following information, documents and data (the “**Information**”) to only be used for the Purpose in the context of these CCAA proceedings,

- (a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Employees (excluding Opt-Out Individuals, if any, who have opted out prior to delivery of the Information); and
- (b) upon request of the Employee Representative Counsel, such documents and data as may be reasonably relevant to matters relating to the issues affecting the

Employees in these CCAA proceedings provided that such Information is to be only used for the Purpose;

and that, in so doing, the Sears Canada Entities are not required to obtain express consent from such Employees authorizing disclosure of the Information to the Employee Representative Counsel for the Purpose and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, this Order shall be sufficient to authorize the disclosure of the Information for the Purpose, without the knowledge or consent of the individual Employees.

5. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided by:

- (a) the Sears Canada Entities, with the assistance of the Monitor, delivering a letter from the Employee Representative Counsel explaining the terms of this Order, which shall include the Monitor's website address where a full copy of this Order can be reviewed, to be delivered forthwith to the Employees by ordinary mail to the physical address of each Employee as last shown in the books and records of the Sears Canada Entities, or by such other electronic means as is maintained by the Sears Canada Entities for the purposes of communicating directly with its non-unionized active and former employees, and further that a copy of this Order be posted on the Monitor's website; and
- (b) the Sears Canada Entities, with the assistance of the Monitor, publishing (i) in *The Globe & Mail* (National Edition), an English notice substantially in the form attached as Schedule "A" hereto (the "**English Notice**") within 14 days of the date of this Order; and (ii) in *La Presse*, the English Notice and a French notice

substantially in the form attached as Schedule "B" hereto within 14 days of the date of this Order.

6. **THIS COURT ORDERS** that any individual Employee who does not wish to be represented by the Employee Representatives and the Employee Representative Counsel in these CCAA proceedings shall, within 30 days of the date of the letter pursuant to paragraph 5 above, notify the Monitor, in writing, that he or she is opting out of representation by the Employee Representatives and the Employee Representative Counsel by delivering to the Monitor an English or French opt-out notice in the form attached as Schedule "C" hereto (each an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Employee Representatives or the Employee Representative Counsel and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in these CCAA proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph, "**Opt-Out Individuals**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Sears Canada Entities and the Employee Representative Counsel as soon as reasonably practicable.

7. **THIS COURT ORDERS** that the Employee Representative Counsel shall be given notice of all motions to which the Employees are entitled to receive notice in these CCAA proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.

8. **THIS COURT ORDERS** that Employee Representative Counsel may retain such actuarial, financial and other advisors and assistants (collectively, the "**Advisors**") as may be reasonably necessary in connection with its duties as Employee Representative Counsel in relation to the Purpose.

9. **THIS COURT ORDERS** that, subject to the terms of the letter agreement between SCI and the Employee Representative Counsel dated as of June 22, 2017 (the “**Employee Representative Counsel Letter**”), which Employee Representative Counsel Letter has been approved by the Monitor, the Employee Representative Counsel shall be paid its reasonable fees and disbursements (including disbursements relating to Advisors retained by the Employee Representative Counsel) by the Sears Canada Entities on a monthly basis, forthwith upon rendering its accounts to the Sears Canada Entities for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Employee Representative Counsel and the Employees. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.

10. **THIS COURT ORDERS** that the Employee Representative Counsel shall be entitled to benefit of the Administration Charge (as defined in the Initial Order in these CCAA proceedings issued by the Court on June 22, 2017, as amended), as security for its professional fees and disbursements incurred at its standard rates and charges, up to an aggregate maximum amount of \$75,000.

11. **THIS COURT ORDERS** that the payments made by the Sears Canada Entities pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers of undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable laws.

12. **THIS COURT ORDERS** that the Employee Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

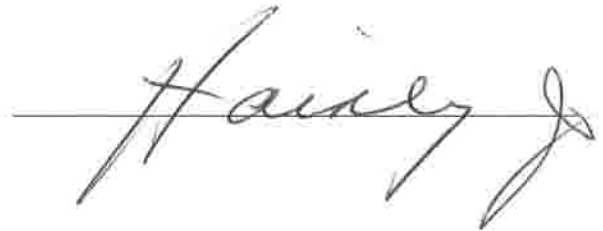
13. **THIS COURT ORDERS** that the Employee Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Employee Representative Counsel, which shall be brought on notice to the Sears Canada Entities, the Monitor, Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP Revolving Credit Agreement (as defined in the Wong Affidavit), GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement (as defined in the Wong Affidavit), and other interested parties, unless this Court orders otherwise.

14. **THIS COURT ORDERS** that the Employee Representative Counsel and the Employee Representatives shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

15. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Employee Representative Counsel or the Employee Representatives in respect of the performance of their duties under this Order without leave of this Court on seven (7) days' notice to the Employee Representative Counsel or the Employee Representatives, as the case may be.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to

give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order and in case, any which motion to be served within three (3) weeks of the date of this order.

A handwritten signature in cursive script, appearing to read "Hainey J", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 13 2017

PER / PAR:

Handwritten initials, possibly "PL", written in cursive.

SCHEDULE "A"

ENGLISH NEWSPAPER NOTICE

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. (collectively referred to as the "Sears Canada Entities")

NOTICE TO CERTAIN NON-UNIONIZED ACTIVE AND FORMER EMPLOYEES

On June 22, 2017, the Sears Canada Entities commenced court-supervised restructuring proceedings under the Companies' Creditors Arrangement Act ("CCAA") pursuant to an Order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court"). FTI Consulting Canada Inc. has been appointed by the Court as monitor in the Applicants' CCAA proceedings (the "Monitor").

TAKE NOTICE THAT pursuant to an Order of the Court:

1. Ursel Phillips Fellows Hopkinson LLP ("Employee Representative Counsel") was appointed as employee representative counsel for the purpose of representing the interests of the non-unionized employees of the Sears Canada Entities who were employed as of June 22, 2017 (including those on authorized leaves of absence) and non-unionized former employees of the Sears Canada Entities who received notice of termination of employment dated June 22, 2017 or received notice of cessation of severance payments dated June 22, 2017 and of any person claiming an interest under or on behalf of such persons (collectively, the "Employees"), in relation to the CCAA proceedings or any other forum related to this purpose. Employee Representative Counsel represents the interests of the Employees other than with respect to their entitlements under the Sears Canada Inc. Registered Retirement Plan or any other pension or retirement plan provided by the Sears Canada Entities and of any individual with an entitlement to other post-employment benefits (including retiree health and dental benefits and retiree life insurance benefits). Employee Representative Counsel will also advise the representatives appointed by the Court (collectively, the "Employee Representatives") as representatives of all Employees.

For active employees, all regular inquiries about your ongoing employment should continue to be directed to you appropriate human resources representative.

2. For more information, visit the Employee Representative Counsel's website at [<http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>]

IF YOU DO NOT WISH TO BE REPRESENTED by the Employee Representatives and the Employee Representative Counsel, you must, before ●, 2017, provide an Opt-Out Notice (a copy of which can be obtained from the Employee Representative Counsel's website) indicating that you wish to opt-out of such representation and send the completed Opt-Out Notice to:

FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Sears Canada Entities

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON, M4K 1G8
Fax: 416-649-8101

Attention: Jim Robinson

Persons requiring further information should review the website established by the Monitor <http://cfcanada.fticonsulting.com/searscanada> or call the Monitor's Hotline at 1-855-649-8113.

SCHEDULE "B"

AVIS DANS LES JOURNAUX FRANÇAIS

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., TRANSPORTS S.L.H. INC., THE CUT INC., SERVICES CLIENTÈLE SEARS INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., CENTRE DE REVÊTEMENTS DE SOL SEARS 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. ET 3339611 CANADA INC. (collectivement appelées les « entités Sears Canada »)

AVIS À CERTAINS ANCIENS EMPLOYÉS ET EMPLOYÉS ACTIFS NON SYNDIQUÉS

Le 22 juin 2017, les entités Sears Canada ont amorcé un processus de restructuration supervisé par un tribunal en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (la « LACC ») aux termes d'une ordonnance (l'« ordonnance initiale ») de la Cour supérieure de justice de l'Ontario (rôle commercial) (la « Cour »). La Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur aux fins de l'instance en vertu de la LACC intentée par les requérants (le « contrôleur »).

AVIS EST PAR LES PRÉSENTES DONNÉ qu'aux termes d'une ordonnance de la Cour :

1. Le cabinet Ursel Phillips Fellows Hopkinson LLP (les « conseillers juridiques des représentants des employés ») a été nommé à titre de conseiller juridique des employés dans le but de défendre les intérêts des employés non syndiqués des entités Sears Canada qui était à l'emploi de celles-ci en date du 22 juin 2017 (dont les employés en congé autorisé) et des anciens employés non syndiqués des entités Sears Canada qui ont reçu un avis de cessation d'emploi daté du 22 juin 2017 ou un avis de cessation lié à leur indemnité de départ daté du 22 juin 2017, ainsi que des personnes revendiquant un droit par l'intermédiaire de ces personnes ou pour celles-ci (collectivement, les « employés ») en lien avec l'instance en vertu de la LACC ou toute autre procédure portant sur cette question. Les conseillers juridiques des représentants des employés représentent les intérêts des employés, sauf en ce qui a trait à leurs droits aux termes du régime de retraite agréé de Sears Canada Inc. ou des autres régimes de retraite offerts par les entités Sears Canada, et des personnes physiques qui ont droit à d'autres avantages postérieurs à la retraite (dont l'assurance santé et dentaire et l'assurance-vie pour les retraités). Les conseillers juridiques des représentants des employés conseilleront aussi les représentants que la Cour a nommés (collectivement, les « représentants des employés ») en qualité de représentants de tous les employés.

Les employés actifs qui ont des questions courantes concernant leur emploi peuvent continuer à les adresser à leur représentant des ressources humaines.

2. Pour de plus amples renseignements, veuillez consulter le site Web des conseillers juridiques des représentants des employés à <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>.

SI VOUS NE SOUHAITEZ PAS ÊTRE REPRÉSENTÉ par les représentants des employés et les conseillers juridiques des représentants des employés, vous devez, avant le ● 2017, remettre un Avis de retrait (dont vous trouverez copie sur le site Web des conseillers juridiques des représentants des employés) sur lequel vous aurez indiqué que vous ne souhaitez pas être représenté, et faire parvenir cet Avis de retrait rempli à :

FTI Consulting Canada Inc., en sa qualité de contrôleur des entités Sears Canada nommé par la Cour
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto (Ontario) M4K 1G8
Télec. : 416 649-8101

À l'attention de Jim Robinson

Les personnes qui souhaitent obtenir de plus amples renseignements devraient consulter le site Web que le contrôleur a créé à <http://cfcanada.fticonsulting.com/searscanada>, ou composer le 1 855 649-8113 pour obtenir la ligne d'aide du contrôleur.

SCHEDULE "C"

FORM OF OPT-OUT NOTICE

To: **FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of the Sears Canada Entities
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON, M4K 1G8
Fax: 416-649-8101

Attention: Jim Robinson

I hereby provide written notice that I do not wish to be represented by Ursel Phillips Fellows Hopkinson LLP, employee representative counsel (the "Employee Representative Counsel") for the Active Employees and the Former Employees of Sears Canada Inc. and certain of its subsidiaries (collectively, the "Sears Canada Entities") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-17-11846-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation if I wish to take part in the CCAA Proceedings I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Employee Representative Counsel and to the Sears Canada Entities.

Witness

Signature

Name [please print]: _____

Address: _____

Telephone: _____

Note: To opt out, this form must be completed and received at the above address on or before _____, 2017.

ANNEXE "C"

AVIS DE RETRAIT

À : FTI CONSULTING CANADA INC., en sa qualité de contrôleur des entités
Sears Canada nommé par la Cour
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto (Ontario) M4K 1G8
Télec. : 416 649-8101

À l'attention de Jim Robinson

Par les présentes, je vous avise que je ne souhaite pas être représenté par le cabinet Ursel Phillips Fellows Hopkinson LLP, conseillers juridiques des représentants des employés (les « conseillers juridiques des représentants des employés ») qui représentent les employés actifs et les anciens employés de Sears Canada Inc. et de certaines de ses filiales (collectivement, les « entités Sears Canada ») dans le cadre l'instance intentée en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (n° de dossier de la Cour : CV-17-11846-00CL) (l'« instance en vertu de la LACC »). Je comprends que si je refuse d'être ainsi représenté et que je souhaite prendre part à l'instance en vertu de la LACC, je devrai le faire à titre indépendant. Je devrai alors, le cas échéant, retenir les services de mes propres conseillers juridiques, et je serai personnellement responsable des frais de ma propre représentation juridique.

Je comprends qu'une copie du présent avis de retrait sera remise aux conseillers juridiques des représentants des employés et aux entités Sears Canada.

Témoin

Signature

Nom [en caractères d'imprimerie] : _____

Adresse : _____

Téléphone : _____

Note : Pour refuser les services de représentation, le présent formulaire doit être rempli et reçu à l'adresse qui précède au plus tard le _____ 2017.

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., 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. (collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

EMPLOYEE REPRESENTATIVE COUNSEL ORDER

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Tel: 416.862.5997

Lawyers for the Applicants