

Court File Number: CV-18-0061(2/4-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Sears Canada Inc
Plaintiff(s)

AND

ESL Investments Inc
Defendant(s)

Case Management Yes No by Judge: McGowan

Counsel	Telephone No:	Facsimile No:

- 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):

An order shall go re: the conspiracy claim issue as per the Endorsement attached as Schedule A.
The Trial schedule is also approved as per Schedule B attached - in all actions.

12 July 19
Date

McGowan
Judge's Signature

Additional Pages _____

M Schedule A *M*

ENDORSEMENT

1. The Litigation Trustee shall deliver an Amended Statement of Claim by July 19, 2019, which, if the Litigation Trustee continues to advance a conspiracy claim, shall include the following additional particulars in respect of the conspiracy claim:
 - (a) the agreement between or amongst the defendants to conspire, including particulars as to the parties to the agreement, the individuals involved, the terms of the agreement, the mode of the agreement and shall reasonably describe the time or time period and place of the agreement; and
 - (b) the specific overt acts alleged to have been done by each of the alleged conspirators in pursuit and furtherance of the conspiracy, including the individuals involved, the nature of the acts, and shall reasonably describe the time or time period and place of the acts.
2. The defendants, other than SHC, shall deliver the remaining Statements of Defence by July 29, 2019.
3. Any further motion to strike portions of the Litigation Trustee's Amended Statement of Claim or demand further particulars arising from the Litigation Trustee's Amended Statement of Claim shall be raised at a 9:30 before Justice McEwen who will decide whether to schedule to motion or otherwise address it.

M Schedule B M

Court File No. CV-18-00611214-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J.
DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE
MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,
EDWARD S. LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES
MCBURNEY, DEBORAH ROSATI and DONALD ROSS

Defendants

Court File No. CV-18-00611217-00CL

BETWEEN:

MORNEAU SHEPELL LTD. in its capacity as administrator of the
Sears Canada Inc. Registered Pension Plan

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY, DONALD
CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI,
R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

Court File No. CV-18-00611219-00CL

BETWEEN:

FTI CONSULTING CANADA INC.,
in its capacity as Court-appointed monitor in proceedings
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL
INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM R. HARKER
and WILLIAM C. CROWLEY

Defendants

Court File No. CV-19-617792-00CL

BETWEEN:

1291079 ONTARIO LIMITED

Plaintiff

and

SEARS CANADA INC., SEARS HOLDING CORPORATION, ESL INVESTMENTS
INC., WILLIAM C. CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL
ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES
MCBURNEY and DOUGLAS CAMPBELL

Defendants

TRIAL SCHEDULE

PROPOSED TIMETABLE	
Productions (except SHC)	July 2, 2019
Replies by Monitor and Morneau	July 10, 2019
Defences	<p>Non-SHC Parties' Defences to 129 Action and Litigation Trustee Action: within one week of the release of decisions on the motions to strike in the Litigation Trustee Action if the motion is dismissed or one week after the plaintiff's amended statement of claim if the motion is allowed with leave to amend (per the Endorsement of McEwen J., dated May 27, 2019 July 12, 2019)</p> <p>SHC: September 16, 2019</p>
All Remaining Replies¹	September 26, 2019
Productions (SHC)	October 15, 2019
Motions relating to the scope of production	<p>Notices of motion and joint motion record: August 23, 2019</p> <p>Moving parties' factums: August 30, 2019</p> <p>Responding parties' factums: September 6, 2019</p> <p>Hearing of the motions: September 12, 2019</p> <p>If ordered, documents to be produced by: October 15, 2019</p>
Examinations for discovery (to commence)²	November 22, 2019
Examinations for discovery (completed by)	December 16, 2019
Answer all undertakings and provide positions on under advisements and refusals	January 10, 2020
Notices of motion for refusals and answers	January 20, 2020

¹ Any party wishing to move for summary judgment will so move by this date. Such a motion, if brought, will not otherwise impact this schedule. For greater clarity, it is the plaintiffs' position that motions for summary judgment are not appropriate and, in any event, that the commercial list protocol for summary judgment is applicable.

² Parties to confer and agree upon timing, location, procedure, and appropriate representatives for examinations for discovery prior to September 15, 2019.

PROPOSED TIMETABLE	
Moving parties' factums on motions for refusals and answers	January 20, 2020
Responding parties' factums on motions for refusals and answers	January 27, 2020
Hearing of motions for refusals and answers	February 3, 2020
Mediation phase one³	February 4-7 and 10-11, 2020
Further answers	February 14, 2020
Plaintiffs' expert reports	February 21, 2020
Plaintiffs' affidavits (fact witnesses)⁴	February 28, 2020
Defendants' responding expert reports	March 23, 2020
Defendants' affidavits (fact witnesses)	March 30, 2020
Mediation phase two⁵	April 6-7 and 14-16 , 2020
Reply expert reports (if any)	April 22, 2020
Reply affidavits	April 29, 2020
Joint trial	May 19, 2020 – July 10, 2020
Part 2 of class trial	To be set in accordance with the class action litigation plan.

³ Dates to be held by counsel. The length of mediation to be determined in conjunction with the chosen mediator.

⁴ Dates for delivery of fact witness affidavits are without prejudice to any position which may be taken by any party on trial procedure, including whether to have some or all witnesses' examination in chief conducted by way of affidavit. The parties acknowledge having no agreement on the appropriate trial procedure which shall be further discussed and determined by December 20, 2020.

⁵ Dates to be held by counsel. The length of mediation to be determined in conjunction with the chosen mediator.

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. DOUGLAS CUNNINGHAM, Q.C. Plaintiff	-and- Defendants	ESL INVESTMENTS INC. et al. Court File No. CV-18-00611214-00CL
FTI CONSULTING CANADA INC., in its capacity as Court- appointed monitor in proceedings pursuant to the <i>Companies'</i> <i>Creditors Arrangement Act</i> , RSC 1985, c. c-36 Plaintiff	-and- Defendants	ESL INVESTMENTS INC. et al. Court File No. CV-18-00611219-00CL
MORNEAU SHEPELL LTD. in its capacity as administrator of the Sears Canada Inc. Registered Pension Plan Plaintiff	-and- Defendants	SEARS CANADA INC. et al. Court File No. CV-18-00611217-00CL
1291079 ONTARIO LIMITED Plaintiff	-and- Defendants	SEARS CANADA INC. et al. Court File No. CV-18-00611217-00CL

Court File No. cv-19-617792-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
TRIAL SCHEDULE**

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