

COURT APPOINTED REPRESENTATIVES YOUR VOICE IN THE MATTER OF THE SEARS CANADA ESTATE

Webinar on Pension and OPEB
issues for former employees of
Sears Canada Inc.

April 22, 2021

My name is Ken Eady.

Bill Turner, Larry Moore and I are Court
Appointed Representatives.

Our role is to be the voice of former
employees of Sears Canada with respect
to issues impacting the pension plan and
other-post employment benefits

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

We are volunteers who for
more than a decade have been
working on behalf of

All former employees of Sears
with respect to pensions and
other post-employment benefits
and

are pleased to do so

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

We provide input and
consult with Koskie Minsky
LLP, the court-appointed
representative counsel, on
matters involving the
administration of the Sears
CCAA process

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

We provided oversight and
consult regularly with the
Pension plan Administrator
on matters involving the
administration and wind-up
of our pension plan

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

Agenda

The agenda for this webinar will be as follows:

- Legal update from our Court Appointed Representative Counsel – Koskie Minsky
- Update from the Pension Wind-up Administrator – Morneau Shepell
- Update from the CCAA Monitor of Sears – FTI Consulting Canada Inc.

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

Question

- After the presentations we hope to have time for questions and answers.
- Any unanswered questions will be addressed on the FAQ section of the Koskie Minsky Website

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

Speaking to you today will be
Andrew Hatnay of Koskie Minsky

Koskie Minsky has worked as legal counsel for Sears Retiree Groups for more than a decade. They then became the court-appointed Representative Counsel to all Sears retirees in the CCAA proceeding.

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

Next will be
Hamish Dunlop of Morneau Shepell

Morneau Shepell was appointed by the Ontario pension regulator in 2017 to take over the administration of the Sears Canada pension plan.

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate

Next is
Steve Bissell of FTI Consulting Canada
Inc.

FTI was appointed by the Court to be the Monitor of Sears Canada in the CCAA proceeding. They are now responsible to dispose of Sears Canada's assets pay creditors, like Sears Retirees

Your Court Appointed Representatives
Your Voice in the matter of the Sears Canada Estate



Sears Canada CCAA Update

Koskie Minsky LLP

April 22, 2021

Agenda

- Background
- PBA Deemed Trust Priority Claim Settlement
- Dividend Litigation Settlement
- CCAA Plan of Compromise
- Plan Distributions
 - Distribution to Pension Plan
 - Distribution to Retirees re OPEB Claims
- Next Steps
- Questions

Background

- June 22, 2017: Sears Canada applied for CCAA protection
 - Koskie Minsky LLP appointed as Representative Counsel for non-union retirees and workers re: pension, other post-employment benefits
 - FTI Consulting Canada Inc. appointed as Monitor
- Sears Canada was unable to achieve a going-concern solution; closed down operations and liquidated assets instead
- October 17, 2017: FSCO (now FSRA) appointed Morneau Shepell Ltd. as replacement administrator for Sears Canada Pension Plan
 - Plan underfunded on a windup basis by ~\$260 million
- August 2018: Morneau cut pension benefits by 30%; since softened to 20% reduction
 - Ontario exception due to Ontario Pension Benefits Guaranty Fund

Deemed Trust Priority Claim

- Ontario *Pension Benefits Act's* Deemed Trust
 - If an employer owes money to a pension plan when it is wound up, that money is deemed to be held in trust for the plan beneficiaries
 - Other provinces have similar legislative provisions
- Provincial law's impact during insolvency proceedings is complicated
 - Federal paramountcy
- *Re Indalex*: 2013 Supreme Court decision
 - During CCAA proceedings, deemed trusts may still operate

Deemed Trust Priority Claim

- December 17, 2017: Representative Counsel filed a motion arguing that the pension claim should be paid in priority to other claims
 - Other creditors opposed this motion

Deemed Trust Priority Claim: Settlement

- October 18, 2018: Parties attended mediation re: priority of pension claims
- Settlement: Pension Deficit Claim will be treated as unsecured claim but valued at 2.5 times the amount of the actual deficit
 - Valuation: \$650 million instead of \$260 million
 - Expected payment: \$57.7 million
- All creditors treated as unsecured
 - Paid 10.38 cents on the dollar for Sears Canada claims

Other Post-Employment Benefits Claim

- October 1, 2017: Sears Canada terminated retiree health and life insurance benefits
- Amount: \$420 million
- Unsecured claim
- Sears Canada claims will be paid at 10.38 cents on the dollar
- SLH claims will be paid at 23.06 cents on the dollar
 - Claims are subject to applicable adjustments and withholding taxes

Supplemental Pension Claim

- Some employees received pension benefits in addition to those from the Sears Canada Plan
 - RCA Trust
 - General revenues (9 employees)
- June 5, 2020: Monitor agreed to accept the Supplemental Pension Claim in full
 - Unsecured claim of \$12 million
 - Paid at 10.38 cents on the dollar

Purchase Discount Claim

- Lifetime purchase discount benefit; lost when Sears stopped operating stores
- Valuation: \$14.8 million
- Accepted by the Monitor
- Unsecured claim; paid at same rate as other unsecured claims

Dividend Litigation

- 2013: Sears Canada paid \$509M dividend to shareholders
- December 2018: three lawsuits commenced
 - By CCAA Monitor: dividend was “transfer at undervalue” and should be recovered to compensate creditors
 - By Litigation Trustee of Sears Canada: directors breached duties when approving payment; damages would compensate creditors
 - By Morneau as plan administrator: directors breached fiduciary duty; damages would improve plan’s underfunding

Dividend Litigation Settlement

- Summer 2020: Parties mediated all three claims
- Court approved two settlements
 - Former directors of Sears Canada: \$50 million
 - Edward Lampert and his companies: \$22.5 million
- 36% or \$26.4 million to be paid directly into Plan
55% or \$39.6 million to be paid to the Sears Estate
9% or \$6.5 million paid to Class Action Parties
- Of the \$39.6 million paid directly to the Sears Estate the Pension plan will recover approximately \$12 million
- Total litigation recovery for plan: \$38 million

Summary of Recoveries

- Settlement of Pension Deficit Claim: \$57.7 million
- Litigation settlement paid directly to Plan: \$26 million
- Litigation settlement paid to Plan via estate distributions: \$8 million
- Total: \$91.7 million

Plan of Compromise

- November 16, 2020: Majority of creditors vote to approve the CCAA Plan of Compromise
 - SLH Creditor Class: 99.7% of creditors in number and value voted to approve the Plan
 - Sears Canada Creditor Class: 100% of creditors in number and value voted to approve the Plan
- November 23, 2020: Ontario Superior Court of Justice (Commercial List) releases decision approving the Plan of Compromise

First Interim Distribution to Pension Plan

- Impact on funded ratio
 - Estimated to be 86% as of May 2021
- Lump sum payments
 - Quebec non-pensioners
 - Non-Quebec non-pensioners can choose this or a pension
- Wind-up process and annuity purchases
 - Quebec pensioners: annuity purchase or transfer to Retraite Québec
 - Non-Quebec pensioners: annuity purchase

ESDC Clearance

- Prior to releasing any distribution the Monitor obtain clearance from Employment and Social Development Canada (“ESDC”).
- If you received EI benefits at some point during 2017 you may have to repay some or all of those benefits from the upcoming distribution.
- The repayment is calculated by ESDC and facilitated by the Monitor so that you receive the net amount of any distribution

Questions

Please contact Representative Counsel at:

searsrepounsel@kmlaw.ca

1-800-244-7120

Sears Pension Plan Wind Up

Hamish Dunlop, Managing Principal
Sears Pension Plan Members
February XX, 2021



Improving lives. Improving business.

Sears Wind-Up – Key Dates

- On October 17, 2017 the Superintendent of the Financial Services Commission of Ontario (FSCO) appointed Morneau Shepell as replacement administrator of the Sears Pension Plan (the “Plan”), with a mandate to administer and wind up the Plan.
- On March 29, 2018 the Superintendent issued an order that the Plan be wound up effective October 1, 2017.
- On September 27, 2018 the Superintendent issued an order declaring that the Pension Benefits Guarantee Fund applied to pensions accrued in respect of employment in Ontario.

Sears Pension Plan – Key Facts

- Approximately 17,600 people are entitled to benefits out of the Sears Plan.
- Plan members were employed in every province in Canada.
- Plan assets when we were appointed totaled just over \$1 billion.
- Plan liabilities (the estimated cost of providing full pensions for the remaining lifetimes of Plan members and their survivors) totaled just over \$1.26 billion.
- The Plan is therefore underfunded by about \$260 million, which was the amount of our claim against the Sears estate and former directors in the recent litigation.

Applicable Law

- In general, pension legislation in Canada is the responsibility of individual provinces.
- Sears had employees in each province, so the legislation of each province will apply in respect of Plan members who worked in that jurisdiction.
- Pension plans are registered in the province where a plurality of employees are employed – since the greatest number of Sears employees were employed in Ontario, the Plan was registered with the FSCO, which was subsequently replaced by the Financial Services Regulatory Authority (FSRA) in 2019.
- In general, the process for winding up the Plan is governed by Ontario law, whereas the entitlement of Plan members on wind up is governed by the law in which the Plan member was employed.

Applicable Law (Cont.)

- The terms of the Plan must also be applied, subject to applicable law and the funded status of the Plan.
- The Income Tax Act (*ITA*) also applies to payments made out of the Plan.
- The Companies' Creditors Arrangement Act (*CCAA*) applied in respect of our claim against the estate of Sears for the deficit in the Plan.

Minimum Pension Error

- Our ability to file a Wind Up Report has been complicated by an error we discovered in the calculation of pension benefits of some Sears members.
- Error relates to an alternative form of pension calculation designed to benefit employees whose income varied significantly year-to-year.
- The error relates to how inflation is calculated.
- Applies to pensions calculated after 2007.
- May apply to as many as 25% of pensions calculated since 2007.
- Impact is small for most, but significant for some.

Minimum Pension Error

- Error has required us to re-calculate all pensions after 2007.
- Error means Sears existing pension calculation software cannot be relied on to calculate new pensions or lump-sum values.
- As a result, we have to develop new programs to calculate member pensions and lump sums.
- This problem has added about a year to the wind up process.
- As a result, we do not anticipate filing a Wind Up Report for the Plan until late in 2021.

The Pension Benefits Guarantee Fund (PBGF)

- Applies in respect of pensions accrued for employment subject to Ontario pension regulation.
- The first \$1,500 of monthly pension earned in respect of employment in Ontario is fully guaranteed.
- Any pension in excess of \$1,500 per month is not guaranteed and paid out at the Plan funded ratio applicable to Ontario.
- The guarantee is taken into account when calculating any lump sum a Plan member may elect in lieu of a pension.
- Since most pensions in Ontario are under \$1,500 per month, most Ontario pensions will be paid in full, but the *Pension Benefits Act* excludes indexation adjustments occurring after the wind up date from benefits payable to Ontario members who are covered by the PBGF.

The Pension Benefits Guarantee Fund (Cont.)

Example

- A member who was employed in Ontario is entitled to a pension of \$2,000 per month.
- The Plan is only 85% funded.
- The member would receive 100% of the first \$1,500 per month.
- The member would also receive 85% of the \$500 entitlement in excess of \$1,500, or \$425 per month.
- The member will receive in total \$1,925 per month.

Non-Ontario Members

- Because non-Ontario members and members of federally-regulated companies are not covered by the PBGF, their pensions will be paid to the extent the Plan is funded.
- In our previous example, a non-Ontario member entitled to a pension of \$2,000 per month would receive 85% of his pension, or \$1,700, as of the wind up date.
- Non-Ontario members will also receive the 0.5% per annum indexation adjustments payable after the wind up date, as applicable, with the exception of Plan member employed in Nova Scotia, as these benefits were not required to be pre-funded on a solvency basis.

Cut-Backs

- Plan members are entitled to pensions based on the funded ratio from the wind up date of October 1, 2017.
- Pensioners continued to be paid 100% of their entitlement after we were appointed until we had enough data to cut pensions back in August 2018. New pensions were put into pay based on a 75% funded ratio.
- In August, 2018, we estimated the Plan was about 80% funded.
- We therefore cut pensions back to 70% to enable us to recover the overpayments made from October 1, 2017 to August 2018.
- In April, 2019, having recovered the overpayments, we increased pensions back to the 80% payout level.

Pension Increase – May 2021

- Having received funds from the estate of Sears, we have decided to increase the interim funded ratio to 86% commencing with the May, 2021 pension payment.
- Note that 86% is our estimate of the final funded ratio, which will not be known until the Plan is fully wound up and annuities purchased.
- The final funded ratio could be higher or lower than 86%, although there is some conservatism built into the estimate that makes it more likely the final funded ratio will be higher than our estimate.

Investment of the Pension Fund

- Following our appointment, we adopted a policy of immunizing the assets of the Plan.
- Immunizing largely means purchasing a portfolio of bonds whose cash income matches the predicted cash outflows of the pension plan.
- Our investment strategy means that the funded status of the Plan should not be impacted by changes in equity markets or interest rates.
- Things that could effect the final funded ratio include mortality experience better or worse than expected, as well as the cost of annuities.

Settlement Options

- Settlement options available to Plan members vary somewhat depending on the province in which they were employed.

In General:

- Outside Quebec:
 - Pensioners will have annuities purchased to provide them with pension benefits.
 - Non-pensioners will be able to choose between a pension or a lump-sum roughly equivalent to the value of their pension (a commuted value). A number of active members have already made this election.
- Quebec:
 - Non-pensioners must take a lump-sum transfer.
 - Pensioners may elect to either transfer their pension entitlement to Retraite Québec to be administered for a period of up to 10 years, or to have their benefit settled by annuity purchase.

Wind Up Next Steps

- We anticipate filing the Wind Up Report sometime in late 2021. It will be shared with all pension regulators across Canada.
- We anticipate approval of the report sometime in 2022.
- Once the Wind Up Report is approved, we will send all members who have a choice of how to receive their benefits an option form outlining the options available, including Quebec retirees).
- Once these option forms are returned, we will arrange an annuity purchase for those members who elect a pension, and transfer benefits to Retraite Québec based on Quebec retiree elections.
- Following the annuity purchase, lump sums will be transferred from the Plan for members who made that election.

Annuity Purchase

- Plan members who elect an annuity will have one purchased from a Canadian Insurance Company.
- Annuities are guaranteed by the Assuris program.
- Annuities purchased will have the same features as the member's pension (e.g Joint and Survivor, Life Only, any remaining guarantees).
- Because pensioners are entitled to a pension at the final funded ration from the wind up date onwards, many will receive a lump-sum retroactive pension payment.

Lump-Sum Transfers

- Most lump sums will be transferred to a Locked-in RSP on a tax-free basis.
- The *ITA* sets limits on the amount that can be transferred; any excess transfer is taxable unless you have available RSP room.
- Generally, money cannot be withdrawn from a Locked-in RSP.
- When you want to start receiving a retirement income, you can transfer the money on a tax-free basis to a Locked-in Retirement Income Fund (LRIF) or purchase a life annuity from an insurer.
- The *ITA* requires an annual minimum to be withdrawn from a LRIF, and pension legislation puts an upper cap on annual withdrawals.

Partially Paid Members

- A number of Sears' employees working in 2017 elected to transfer their pension entitlement out of the Plan and received a partial payment.
- These members will receive an additional payment only if the final funded ratio is higher than the payout ratio they received.



April 22, 2021

Webinar on Plan Distribution Payments to Individuals with Retiree Claims against the Sears Canada Entities

FTI Consulting Canada Inc.

FTI Consulting Canada Inc. in its capacity as Monitor of Sears Canada Inc. (“Sears Canada”), Corbeil Électrique Inc., S.L.H. Transport Inc. and their affiliated companies, collectively the Sears Canada Group (together, the “Applicants” or the “Sears Canada Entities”)

Plan Distribution

Today's representatives from the Monitor include:

- **Steven Bissell**, FTI, Managing Director
- **Hrvoje Muhek**, FTI, Senior Director
- **Arad Mojtahedi**, Norton Rose Fulbright Canada, Monitor's legal counsel

In this section of the presentation the Monitor will explain:

- How your Plan Distribution is calculated
- Adjustments to your Plan Distribution for:
 - Payments you may received through WEPP;
 - Employment Insurance overpayments; and
 - Applicable withholding taxes
- How your Plan Distribution will be issued to you

Calculation of Your Plan Distribution

$$\text{Plan Distribution \%} = \frac{\text{Total Funds Available for Plan Distribution to Unsecured Creditors}}{\text{Total Proven Claims of Unsecured Creditors}}$$



$$\begin{aligned} \text{Plan Distribution \%} \\ \text{Sears Canada Creditors} &= \mathbf{10.38\%} \\ \text{SLH Creditors} &= \mathbf{23.06\%} \end{aligned}$$

$$\begin{aligned} \text{Your Plan Distribution before adjustments and applicable taxes} \\ = \\ \text{Plan Distribution \%} \times \text{Your Total Proven Claims} \end{aligned}$$



Example:

You are a retiree of Sears Canada and you have a Retiree Benefit Claim of \$80,000 and a Lifetime Discount Claim of \$840. Sum of Your Total Proven Claims is equal to **\$80,840**.

Your Plan Distribution before adjustments and applicable taxes is equal to:

$$\mathbf{\$80,840 \times 10.38\% = \$8,391.19}$$

Calculation of Your Plan Distribution (cont.)

- Prior to receiving your Plan Distribution, **the Monitor will issue you a letter with information to help you understand how your Plan Distribution amount was calculated.** In that letter, the Monitor will include a table, similar to the one below, showing how your Plan Distribution was calculated and indicating what, if any, amounts were adjusted from your Plan Distribution as a result of WEPP payments, Employment Insurance overpayments and/or withholding taxes.

	Your Termination Claim	Your Other Employee Claim or Other Retiree Claim	Your Retiree Benefit Claim	Your Lifetime Discount Claim	Your Supplemental Plan Claim	Total
Claim Amount	\$0.00	\$0.00	\$80,000.00	\$840.00	\$0.00	\$80,840.00
<i>Plan Distribution as a % of Total Proven Claims</i>						<i>10.38%</i>
Your Plan Distribution before adjustments and applicable taxes [1]						\$8,391.19
Adjustments (where applicable):						
(-) Repayment of Wage Earner Protection Program amount received [2]						\$0.00
(-) Recovery of Employment Insurance benefits overpayment [3]						\$0.00
Your Plan Distribution after adjustments, <u>before</u> applicable taxes						\$8,391.19
(-) Withholding taxes [4]						(\$1,678.24)
Your Plan Distribution <u>after</u> applicable taxes						\$6,712.95

Calculation shown on the previous slide

Adjustments and withholding taxes – will vary based on personal circumstances

Wage Earners Protection Program (“WEPP”)

- **Individuals with Retiree benefit claims whose employment was terminated following the commencement of the CCAA proceedings**, may also hold a Termination Claim, and based on that claim they were eligible to apply to the Wage Earners Protection Program.
- In case you applied and received a payment under the WEPP, **your WEPP payment must be repaid to the Government of Canada** dollar for dollar from your Plan Distribution on account of your Termination Claim, as mandated by the WEPP program.
- **The majority of individuals with Retiree claims retired before the Sears Canada Entities commenced their CCAA Proceedings in June 2017 and as a result do not have a Termination Claim, nor a WEPP adjustment.**

Employment Insurance

- **If you applied for and received EI benefits in 2017 or 2018 following commencement of the Sears Canada CCAA Proceedings**, the payment of your Plan Distribution may result in an EI overpayment situation.
- **Service Canada is entitled under legislation to recover the EI overpayment amount from your Plan Distribution.** Service Canada will review all distributions to Retirees and former Employees to determine if the Plan Distribution results in an EI overpayment.
- **Based on the current EI review status of Service Canada, it is expected that a very small number of retirees will be affected by this Plan Distribution adjustment!**
- If it has been determined that your Plan Distribution must be adjusted to recover the EI overpayment, you will or may have already received a **letter from Service Canada** to inform you of their assessment.
- The Sears Canada Entities are required to withhold and remit directly to Service Canada a portion of your Plan Distribution to compensate Service Canada for the EI overpayment.
- If you believe that Service Canada made an error in calculating your EI overpayment, you have **30 days** from when they communicate their decision to you to request a reconsideration.
- If you would like more information on filing a request for reconsideration regarding an EI decision, you can visit the Service Canada website at: <https://www.canada.ca/en/services/benefits/ei/ei-reconsideration.html>

Withholding Tax

- CRA and Provincial taxing authorities (where applicable), have agreed with the Sears Canada Entities on the portion of your Plan Distribution that is subject to Federal and/or Provincial withholding taxes.
- These tax withholdings will be remitted and reported directly to Canada Revenue Agency and Provincial taxing authorities (where applicable) on your behalf.
- Taxes withheld from your Plan Distribution payment may not be equal to the actual tax liability owing on account of that distribution. **Your actual tax liability will be determined when you file your 2021 taxes.**
- After you file your 2021 taxes, you may receive a partial refund of the withholding tax or you may have to pay an additional amount, depending on your personal financial circumstances.
- **Where required by taxing authorities, tax slips with respect to the Plan Distribution will be sent to you by mail by the end of February 2022.**
- It is important that you inform the Monitor in case your mailing address changes. Contact information will be provided at the end of the presentation.

Receiving the Distribution

- While the majority of individuals with retiree claims will be issued Plan Distribution payments at the end of April 2021, **the timing of distributions to a small group of individuals with retiree claims will depend on the timing of Service Canada's assessment of potential EI overpayments.** The Monitor is in regular contact with Service Canada to ensure it has all the information it requires to complete its review as soon as possible.
- Prior to receiving your Plan Distribution, **the Monitor will issue you a letter with information to help you understand how your Plan Distribution amount was calculated.**
- **Your Plan Distribution payment will be sent to you via direct deposit** based on the payroll records of the Sears Canada Entities or your banking information obtained from the Pension Administrator. If the Sears Canada Entities do not have your direct deposit banking information, a **cheque** will be issued to you based on the mailing address on record with the Sears Canada Entities or as provided by the Pension Administrator.
- **If your banking or address information has changed recently, please contact the Monitor as soon as possible.** Contact information will be provided at the end of the presentation.

The Monitor's Contact Information

■ **For updates with respect to your mailing or direct deposit banking information, please contact the Monitor at:**

— **Email:** SearsRetireeClaimSite@fticonsulting.com

— **Toll free:** 1 855 649 8113

Your Court Appointed Representatives

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the Sears Canada Estate

This increase in your pension
payment and the
payments for lost post-
employment benefits
is the next step in our work

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We will continue to be
there for you as long as
there is work to be
completed.

Thank you for attending

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