

Disclaimer

This is a reproduction of a NOID as issued and is provided for reference purposes only. In the event of an inconsistency, the NOID as issued takes precedence over this reproduction.

Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to make an Order under section 83 of the PBA, respecting the **Sears Canada Inc. Registered Retirement Plan**, Registration Number **0360065**

NOTICE OF INTENDED DECISION

TO:

Morneau Shepell Ltd.
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention:

Al Kiel
Managing Partner

Administrator

AND TO:

Sears Canada Inc.
700-290 Yonge Street
Toronto ON M5B 2C3

Attention:

Bev Church

Employer

I INTEND TO MAKE AN ORDER under section 83 of the PBA declaring that the Pension Benefits Guarantee Fund (“Guarantee Fund”) applies to the **Sears Canada Inc. Registered Retirement Plan**, Registration Number **0360065** (the “Plan”).

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l’Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.**¹ A copy of that form is included with this Notice of Intended Decision. Additional copies can be obtained by visiting the Tribunal’s website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the “Superintendent”) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and its regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the intended decision to make an order requiring the Plan administrator to administer the PRA provisions of the Plan as set out on page 2 of this Notice pursuant to section 87(1)(a) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days after this Notice is served on you. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

REASONS FOR INTENDED DECISION:

1. The Plan is registered under the PBA.
2. The Plan provides defined benefits that are not exempt from the application of the Guarantee Fund by the PBA or the regulations made thereunder.
3. The Plan was wound up in whole effective **October 1, 2017**. The Order to wind up the plan was issued on March 29, 2018.
4. There are reasonable and probable grounds that the funding requirements of the PBA and regulations cannot be satisfied. In an Actuarial Opinion prepared by the Plan’s Actuaries, dated May 31, 2018, and filed by the Administrator, the Plan’s Actuaries attest that the Plan’s assets are not sufficient to cover the liabilities of the Plan on a wind up basis. They also attest that the Ontario assets of the Plan are less than its Ontario wind up liability. If

funds become available from the estate of the employer, the administrator will be required to make an appropriate refund of any allocation amount received by the Plan from the Guarantee Fund.

5. Such further and other reasons as may come to my attention.

THE ADMINISTRATOR IS REQUIRED to transmit a copy of this Notice of Intended Decision to the following persons:

1. The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hainey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
2. Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
3. Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

DATED at Toronto, Ontario, this 30th day of July, 2018.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 *NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.*

2 *Section 10.04 was amended once in 2004 by City of Toronto By-Law No. 243-2004. Previously, the first sentence of section 10.04 was: "Each July 1, the monthly incomes of the following Members will be increased..."*

© Queen's Printer for Ontario, 2018