

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDINGS 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

Proceeding under the *Class Proceedings Act, 1992*

Notice published under the *Class Proceedings Act, 1992*

TO ALL FORMER CANADIAN SEARS HOMETOWN STORE DEALERS

If you operated a Sears Hometown Store in Canada under a Dealer Agreement at any time from July 5, 2011 to November 19, 2013, this Notice will be important to you. A legal claim against Sears Holdings Corporation (“**SHC**”), ESL Investments, Inc. (“**ESL**”), William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell (the “**Former Directors**” and collectively with SHC and ESL, “**the Defendants**”) has been certified as a Class Proceeding (the “**Class Proceeding**”) by the Ontario Superior Court of Justice. Certification of the Class Proceeding was not sought against the defendant, Sears Canada Inc. (“**Sears Canada**”), which is currently insolvent and subject to ongoing proceedings under the *Companies’ Creditors Arrangement Act*. The Class Proceeding will deal with claims alleged against the Defendants, which, if proven, could entitle you to a monetary payment.

This Notice is published by Order of the Ontario Superior Court of Justice dated June 21, 2019 (the “**Certification Order**”) and deals with:

1. Nature of the Class Proceeding and Common Issues;
2. Inclusion In/Opting Out of the Class Proceeding;

3. Possible Financial Consequences of the Class Proceeding; and
4. Other Matters.

1. Nature of the Class Proceeding and Common Issues

This action is brought by 1291079 Ontario Limited (the “**Representative Plaintiff**”) against SHC, ESL and the Former Directors on behalf of the following class (the “**Class**”):

All corporations, partnerships, and individuals carrying on business as a Sears Hometown Store under a Dealer Agreement with [Sears Canada] at any time from July 5, 2011 to November 19, 2013.

The Representative Plaintiff claims damages and other relief against the Defendants for oppression contrary to the *Canada Business Corporations Act*. The alleged oppressive conduct relates to the payment of a \$509 million extraordinary dividend by Sears Canada on December 6, 2013.

At the time the extraordinary dividend was declared, Sears Canada was a defendant in a class proceeding brought on behalf of a class of Hometown dealers relating to alleged breaches of their dealer agreements with Sears Canada and provincial franchise laws (the “**Original Class Action**”). The Original Class Action was certified as a class proceeding. Before the any determination of the merits of the Original Class Action, Sears Canada paid the extraordinary dividend.

This Class Proceeding alleges that the authorization and payment of the extraordinary dividend was oppressive to the creditors of Sears Canada, including the Class.

The Defendants deny all allegations made by the Representative Plaintiff and intend to defend this action. None of the allegations made by the Representative Plaintiff have been proven in Court. They remain to be determined at a future trial.

This action will proceed to trial to determine the following common issues:

- (a) Are the class members “complainants” within the meaning of section 238(d) of the *Canada Business Corporations Act*, RSC 1985, c C-44 (“**CBCA**”) in respect of the claims made in the action as against the defendants, and each of them?
- (b) Did the defendants, or any of them, engage in conduct that was “oppressive” to the class members’ interests within the meaning of section 241 of the CBCA in respect of the authorization and payment of an extraordinary cash dividend paid on December 6, 2013?
- (c) If so, are those defendants jointly and severally required to pay compensation pursuant to section 241(3)(j) of the CBCA or otherwise to the class members?

- (d) In determining the compensation:
- (i) Is the quantum of such compensation to be based on the Plaintiff's proven affected unsecured claim against Sears Canada Inc. of \$80,000,000, as agreed by the court-appointed monitor in the filing by Sears Canada under the *Companies' Creditors Arrangement Act* ("CCAA") and as set out in the plan of arrangement filed by the Monitor in the CCAA?
 - (ii) If not, directions with respect to the calculation of the quantum of compensation to be determined at a subsequent hearing following the determination of common issues (a), (b) and (c).

2. Inclusion In / Opting Out of the Class

A. Automatic inclusion in the Class

If you carried on business in Canada as a Sears Hometown Store dealer under a Dealer Agreement from July 5, 2011 to November 19, 2013, then you are automatically included in the Class. No steps are necessary to "join" the Class.

B. How to be excluded from the Class

If you do **not** wish to be included in the Class, you must fill out the attached coupon and send it to Sotos LLP, the lawyers for the Class, or alternatively, send Sotos LLP an email, or some other legible, written, signed request to opt-out containing substantially the same information as the Opt-Out Coupon. The deadline for opting out is **January 16, 2020**, which is 90 days after the date of this notice. If your written request to opt out is not received by that date, you will remain a member of the Class.

C. Consequences of opting out

If you opt out of the Class, you will not be affected by any decision the Court makes on the common issues whether favourable or not.

3. Possible Financial Consequences of the Class Proceeding

In determining the common issues in the Certification Order, the Court will decide whether the Defendants should pay any monies to the Class Members.

Class Members may be required to participate in some stages of the lawsuit, particularly in the distribution of monies, if any are awarded. The determination of how any recovery should be distributed to each individual Class Member will be made either by the Court or by a process to be supervised and sanctioned by the Court. Some individual participation may be required by Class Members in determining the amount of money to which the Class Member is entitled during this stage of the process.

If the Class Proceeding is not successful, Class Members other than the Representative Plaintiff will not be responsible for any legal costs or face any other financial obligations arising from the proceedings.

Whether or not the Class Proceeding is successful, all Class Members who do not opt out will be bound by the judgment. This means, for example, that after the Class Proceeding has concluded a Class Member cannot start its own individual claim against the Defendants based on the same or similar allegations.

4. Other matters

Retainer Agreement

The Representative Plaintiff has retained the law firms of Sotos LLP and Blaney McMurtry LLP to represent the Class in the Class Proceeding. The law firms will be paid legal fees only if the Class Proceeding is successful. The Representative Plaintiff has agreed that the law firms' fees will be 33% of the amount recovered plus disbursements, in addition to any costs the Defendants are required to pay. The retainer agreement and any fees charged by class counsel must be approved by the Court.

For further information about the class action lawsuit you may contact:

Sotos LLP, Suite 1200, 180 Dundas St. West, Toronto, Ontario M5G 1Z8, Attention: Andy Seretis (aseretis@sotosllp.com), telephone (416) 977-0007.

The statement of claim and other court papers in this action, including the Order of the Ontario Superior Court of Justice dated June 21, 2019, are available on Sotos LLP's website: <https://sotosclassactions.com/cases/current-cases/sears-canada-oppression/>

PLEASE DO NOT CALL the Ontario Superior Court of Justice or the Registrar of the Court. They will not be able to answer your questions about the lawsuit.

October 18 , 2019

OPT OUT COUPON

TO:

SOTOS LLP

Barristers and Solicitors
Suite 1200
180 Dundas Street West
Toronto, Ontario M5G 1Z8

Attention: Andy Seretis

Facsimile: (416) 977-0717

Email: aseretis@sotosllp.com

I wish to opt out of the Sears Canada class action lawsuit.

Signature

Name of Company:
(please print)

Store No:

Address:

Postal code:

Telephone:

Note: To opt out, this coupon must be completed and received at the above address before January 16, 2020.