

SCRG Annual General Meeting

October 16th, 2013

Mission: SCRG is a volunteer organization dedicated to the protection of the company pensions and benefits of all Sears Canada retirees and their surviving beneficiaries.

Vision: To be recognized by all retirees, government agencies and corporations as Canada's foremost advocate for pensions and benefits.



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retiree association

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de sears canada_{inc.}



Agenda

- Welcoming Remarks – Bill Turner
- Guest Speakers – Andrew Hatnay, Mark Zigler – Koskie Minsky LLP
- Q & A
- 10 Minute Break
- SCRG Board Members – Bill Turner
- President’s Report – Bill Turner
- Secretary’s Report – John Pullam
- Treasurer’s Report – Ken Davids
- Committee Reports – Ken Eady, Barry Carnegie, Nina MacLavery
- Q & A
- Closing Remarks – Nina MacLavery



*Hoping for the Best
but
Preparing for the Worst*

Registered Retirement Plan deficit \$165 M

Retiree benefits deficit \$250 M

Guest Speakers

Andrew Hatnay & Mark Zigler
Koskie Minsky LLP



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CORPORATE RESTRUCTURING AND PENSION AND BENEFIT PLANS

**Presentation to the
Sears Canada Retiree Association**

October 16, 2013

Mark Zigler

Andrew J. Hatnay

**KOSKIE
MINSKY_{LLP}**
BARRISTERS & SOLICITORS





AGENDA

1. Overview of court-supervised corporate restructuring
2. Protections for pensions & benefits during a corporate restructuring



INTRODUCTION

- This is a general presentation for educational purposes to address concerns raised to us by Sears retirees.
- The issues outlined in this presentation will not necessarily affect Sears retirees or employees.
- Sears is currently an active company and there is no information that an insolvency filing is imminent or will ever occur.
- However, corporate restructurings do occur for companies under financial pressure.
- It is important to be prepared and aware of the impact a corporate restructuring can have on pensions and benefits.



CORPORATE RESTRUCTURINGS

- In some recent Canadian restructurings (Hollinger, Air Canada, Stelco and Algoma) pensions benefits were preserved. In other cases (Nortel, Eaton's) there were different results.
- Our experience in these cases points to the importance for early preparation and retiree organization.



CORPORATE RESTRUCTURINGS

- Court-supervised corporate insolvencies typically occur through the following routes:
 1. *Companies' Creditors Arrangement Act* (“CCAA”)
 2. *Bankruptcy and Insolvency Act* (“BIA”):
 - a) proposal
 - b) receivership
- The method will largely depend on the company’s financial position, the relationships with its major creditors and how it intends to conduct its future affairs.
- Legal representation is vital in such proceedings to protect employee and retiree interests.



CORPORATE RESTRUCTURINGS CCAA

- In recent years, corporate restructurings most commonly occur under the federal CCAA.
- This is a flexible process and company management remains in place.
- A Monitor is appointed to oversee the process and report to the court.
- A “stay of proceedings” is put in place, meaning that a party cannot continue or commence legal proceedings against the company.



CORPORATE RESTRUCTURINGS

CCAA

- There are typically two routes in CCAA:
 - a) Sale of all or part of the business: This involves a sale to a third party purchaser of the business, who will *not* acquire the pension and benefit plan, which in turn will be terminated or compromised.
 - b) Plan of Compromise: whereby the company negotiates with its stakeholders to compromise the amounts it owes to creditors. A Plan of Compromise can involve either the continuation of the pension and benefit plan or a compromise of pensions and benefits. A Plan is only effective if approved the requisite majority of creditors.



CORPORATE RESTRUCTURINGS CCAA

- In a CCAA proceeding, creditors and stakeholders participate in the restructuring and negotiation process.
- Retirees, unions and salaried employees are often represented in such proceedings with their own counsel or court-appointed representative counsel.
- Pension plan administrators and government regulators are typically also involved.



CORPORATE RESTRUCTURINGS CCAA

- The Company has the ability to disclaim or terminate many agreements that are in place prior to the CCAA filing date (subject to certain exceptions) on notice.
- Pension and benefit contracts (non-union) can be amended or terminated in a CCAA.



CORPORATE RESTRUCTURINGS CCAA

- If a CCAA restructuring fails, then the company may become either a “liquidating CCAA”, a bankrupt under the BIA or a receiver may be appointed.
- Either route will generally involve the sale of the assets or the business as a going concern, the wind up of the pension plan and the termination of retiree benefits.



CORPORATE RESTRUCTURINGS CCAA

- If CCAA restructuring succeeds and the company restructures, it can emerge from CCAA protection with much of its debt obligations reduced and with different contractual arrangements with its employees, retirees, lenders and trade creditors.
- If the business is sold in a CCAA, then the purchaser will take the business usually without the pension and benefit plans. Retirees will remain behind as creditors of the old company.



CORPORATE RESTRUCTURINGS CCAA

- Retiree health benefits are often an issue in a CCAA.
- These are unsecured debts that are not protected by legislation or a government pension guarantee fund.
- Retiree life insurance and unregistered supplemental pension plans are also often an issue in a CCAA proceeding.



CORPORATE RESTRUCTURINGS

Bankruptcy/receivership

- Instead of a CCAA, a company that is insolvent may become a bankrupt under the BIA or subject to a receivership.
- A bankruptcy means that all the assets of the company immediately vest in the trustee in bankruptcy.
- A bankruptcy or receivership involve the sale of the company's assets or the business as a going concern to liquidate the assets and distribute the cash to creditors.
- A receivership involves the appointment of a receiver who obtains most of its powers from a court order.
- A trustee and a receiver are subject to court supervision.



CORPORATE RESTRUCTURINGS


Bankruptcy/receivership

- The BIA is a less flexible, more rules-based statute than CCAA.
- The BIA has a scheme of priority distribution of a company's assets in respect of creditors' claims.
- A pension plan will be wound up in bankruptcy.
- Health, dental and life insurance benefits are unsecured claims and are in jeopardy under BIA proceedings.



PENSION LAW PROTECTIONS

- A pension plan may be wound up in a CCAA or a bankruptcy.
- Ontario pension law governs the process for a plan wind-up.
- An outside pension plan administrator will be appointed by the pension regulator if a company is insolvent and abandons the pension plan in a CCAA or if it becomes a bankrupt.
- A pension plan administrator owes a fiduciary duty to plan members.
- There are laws that provide some limited protection to retirees and employees in a company insolvency:
 - a) Pension Benefits Guarantee Fund (Ontario only);
 - b) CCAA and BIA priorities for unpaid current service pension contributions; and
 - c) The *Pension Benefits Act* deemed trust and the recent Supreme Court of Canada decision in *Indalex*.




PENSION LAW PROTECTIONS PBGF

- The PBGF applies to most underfunded Ontario pension plans on their wind up.
- Pension benefits are guaranteed under the PBGF for the first \$1,000 per month of pension benefit entitlements.

Example:

- \$1,600 monthly pension and a 50% underfunded plan
- The first \$1,000 is fully protected
- The last \$600 is at 50% or \$300
- Total pension is reduced to \$1,300 per month in the event of an insolvency



PENSION LAW PROTECTIONS PBGF

The PBGF does not cover:

- Pension benefits greater than \$1,000 per month.
- Benefit improvements that became effective in the last 5 years prior to a plan wind-up.
- Employment service earned outside Ontario (if an individual has employment service in more than one province, only the employment period served in Ontario will benefit from PBGF protection).
- Indexation subsequent to the wind-up date.



PENSION LAW PROTECTIONS

BIA and CCAA Protections

- The BIA and the CCAA have provisions for a priority payment to an underfunded pension plan for unpaid current service pension contributions, but not unpaid special payments and not wind up payments.
- Wind up payments are usually the greatest amount owing to a pension plan.
- If wind up payments are not paid and the plan remains underfunded on wind up, it will result in pension benefit cuts to pension plan members.



OTHER PROTECTIONS

The PBA Deemed Trust

- A deemed trust is a legislative device designed to provide a super-priority recovery in insolvency.
- There is a deemed trust in the PBA to cover amounts owing to a pension plan by an employer.
- The Supreme Court has held that a provincial deemed trust does not apply in a bankruptcy.
- In *Indalex*, the Supreme Court held that:
 - a) The PBA deemed trust continues to apply in CCAA proceedings, subject to the doctrine of paramountcy;
 - b) The deemed trust covers the entire wind deficit; and
 - c) The pension plan must be wound up for the deemed trust to apply.
- Fact-specific priority contests remain after *Indalex*, requiring strategic advice.



OTHER PROTECTIONS

Health and Other Post-Employment Benefits

- These include unfunded supplemental pension plans and health, dental and life insurance plans.
- Unless a company has pre-funded its benefit plans (e.g. through a trust), there are few legal protections to protect these benefits, and they will be unsecured claims.
- These benefits can be reduced or terminate entirely in a CCAA or bankruptcy.



Questions?

10 Minute Break



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SCRG Board Members

Bill Turner



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SCRG Founders

SRG

Nancy Bromberg	Fred Ionson	John Purkis
Lorne Carroll	Bob McClelland	Al Rennie
Joe Colucci	Larry Moore	Don Secord
Bill Dupley	Don Morrison	Duke Stregger
David French	Bob Nicholls	Bill Turner

ASCR

Barry Carnegie	Nina MacLaverty	John Pullam
Ken Davids	Stewart MacLeod	Claude Senechal
Ken Eady	Rob McKenzie	Rejeanne Steingart



SCRG Founders

Founders Retired During 2013

- Lorne Carroll
- Bill Dupley
- David French
- Fred Ionson
- Rob McKenzie
- Don Morrison
- Al Rennie
- Don Secord

SCRG Directors Retiring 2013

- Nancy Bromberg
- Stew MacLeod



2013/2014 Board of Directors



Barry Carnegie



Gary Charlton



Joe Colucci



Jack Connell



Ken Davids



Ken Eady



Nina MacLavery



Bob McClelland



Larry Moore



Bob Nicholls



John Pullam



John Purkis



Claude Senechal



Duke Stregger



Rejeanne Steingart



Bill Turner



And our special thanks to ...

- Gerry Black
- John Butcher
- Ada Caputo
- Michelle Fisher
- Frances Magliocchi
- Ruth Anne Videan



Accomplishments 2012-13

SRG

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ASCR

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Accomplishments 2012-13

Contact with Sears

- Letters re. Benefits Buyout and \$100M Dividend
- Meetings with Calvin McDonald and Senior Officers
- Meetings with Sears Pension and Benefits Committee



Accomplishments 2012-13

Benefits and Pension

- Background for all contact with Sears
- Board Member Pension Education
- Relationship with Nortel Pensioner Group
- Meeting with FSCO
- Participation in CFP (Canadian Federation of Pensioners)
- Pension Reform Proposals to the Office of the Premier of Ontario



SCRg

Accomplishments 2012-13





Accomplishments 2012-13

Membership

- Contacted 3500 retirees from SRG retiree list
- Reduced the number of members requiring Link by post by 2500
- Updated 2845 membership records
- Added 266 new members
- Identified over 700 "missing" SRG members (working with Sears to resolve)



Accomplishments 2012-13

Marketing and Communications

- Created new SCRg website, letterhead, and logo
- Developed support tool for membership call-out program
- Created insert for Sears pension/benefit mailing
- Published 11 LINK email communications
- Created and mailed first LINK by post
- Improved relationship with Sears
- Met with Uritas (Sears Reputation/Communication Agency)

Secretary's Report

John Pullam



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Secretary's Report

We the members of SCRГ resolve not to appoint a public accountant for the Corporation for the fiscal year beginning January 1, 2013.

Treasurer's Report

Ken Davids



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Treasurer's Report

Revenues

ASCR	10,884
SRG	45,372
Memberships	4,603
Total	60,859

Expenses

Mailing	4,877
Legal	3,106
Internet	678
Post box	235
PayPal fees	142
Insurance	135
Room rentals	80
Total	9,253

Balance	51,606
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Committee Reports

Benefits & Pension – Ken Eady

Membership & Fund Raising – Barry Carnegie

Marketing & Communications – Nina MacLaverty



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Benefits & Pension

2013/14 Priorities

- Advocate the position, requirements and claims of SCRG in writing and in person to Sears, the Federal and Provincial Governments and the public.
- Obtain, review, interpret and communicate all appropriate information concerning Sears Benefits and Pension, to SCRG Members.
- Continue to request that Sears provide the details of the Benefit Trust and its intended funding method after the depletion of the trust.
- Build alliances with like-minded retiree associations to support initiatives directed at governmental agencies and the public.
- Foster a transparent relationship with Sears, while further developing open and honest communications with all stakeholders.
- Deliver benefit and pension education for board and committee members



Membership & Fund Raising

2013/14 Priorities

Develop an effective Regional and Local Chapter Structure

- Identify responsibilities, recruit & engage Regional Representatives and Chapter Chairs
- Add Regional Representatives to the SCRG website

Maximize SCRG Membership

- Cleanse data base and follow-up on 719 retirees currently identified as Lost
- Achieve a targeted growth of 50% of all retirees – 6000. (currently 4863)
- Develop materials to engage with and attract new members
- Establish method to communication recruitment results with regional structure

Generate Revenue

- Develop and implement an education-based fundraising campaign
- Achieve a targeted goal for contingency fund of \$250K
- Develop and implement a process for annual member renewals when paid-up period has passed



Marketing & Communications

2013/14 Priorities

Marketing

- Evolve website content to inspire engagement of members and potential members
- Investigate broadcast communication options
- Encourage local retiree group chapters to evolve into SCRG members
- Build a plan to monetize the website, consistent with our mission and vision
- Develop an “opt-in” marketing list

Communications

- Recruit writers who are also subject matter experts
- Support regional recruitment tool requirements
- Develop education and support tools for potential groundswell



Questions?



What can you do?

- Become a Sears “*ambassador*”
- Volunteer
- Encourage others to join SCRG
- Educate yourself and fellow retirees about benefits and pensions
- Support the fund raising plan