



JUSTICE AT WORK

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**Sent via E-mail (Patty.Hajdu@parl.gc.ca and Jean-Yves.Duclos@parl.gc.ca)**

The Honourable Patricia A. Hajdu, P.C., M.P.  
Minister of Employment, Workforce Development and Labour  
House of Commons, Ottawa, ON  
K1A 0A6

The Honourable Jean-Yves Duclos, P.C., M.P.  
Minister of Families, Children and Social Development  
House of Commons, Ottawa, ON  
K1A 0A6

Dear Ministers:

**Re: Forthcoming amendments to the *Wage Earner Protection Program Act***

We are Employee Representative Counsel to employees of Sears Canada Inc. and its affiliates ("**Sears Canada**") in ongoing proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"). We write to you today on behalf of former employees of Sears Canada.

As you are no doubt aware, Sears Canada sought protection under the CCAA on June 22, 2017. Attempts were made on behalf of the company to restructure and emerge from these proceedings, but were unsuccessful. As a result, Sears Canada has undergone liquidation of all of its stores, its remaining assets have been or are in the process of being sold, and over 17,000 employees of Sears Canada have lost their livelihoods – meaningful jobs that provided employees with a sense of purpose, satisfaction, and community.

Because Sears Canada remains under the protection of the CCAA, these individuals have not received any of the termination or severance pay owing to them. In any event, the Monitor estimates employees will receive only 0% to 10% of what they are owed.

We have heard from many employees about the hardship caused by losing their employment with Sears Canada without receiving any compensation in the form of termination and/or severance pay. For example, AB and BB are a married couple who worked at Sears Canada for a combined 81 years. A worked for 42 years, and when his employment was terminated he was working as a maintenance lead. B worked as an associate for 39 years. Collectively, A and B are owed over \$100,000 by Sears Canada.

It was difficult for both A and B to lose their long-service employment in the same year, especially since neither has received any termination or severance pay. They have conveyed that the hardest part of the past year has been waiting to hear whether they will receive any portion of their entitlements – it has been over a year since Sears Canada filed for CCAA protection, and they are anxious to receive even some of what they are owed, having gone from a dual-income household to both being unemployed.

DE worked as a part-time associate with Sears Canada for approximately 13 years. As a single parent with two children, she is the sole income earner in her family. For many years, she worked at a full-time job during the week, and part-time at Sears Canada on weekends to make ends meet. Several years ago, she was laid off from her full-time job, and since then she has been entirely reliant on her income from Sears Canada. Since losing her employment at Sears Canada, DE has been living off of her savings. However, recently she has had to pay for an emergency repair to her home, which nearly eliminated her remaining savings. As a result, she is increasingly concerned about how she will support herself and her children.

FG worked at Sears for 18 years. For the last 10 years of her employment, she worked as a commission salesperson selling appliances. She is the primary income earner in her family. After Sears Canada filed for CCAA protection, FG and other salespeople were placed under increased pressure to sell product. As a result of this pressure and the emotional toll of realizing she was likely to lose her job of 18 years, FG went on long-term disability leave in the fall of 2017. She continues to struggle with her health, and with financial insecurity. As a result of not receiving termination and severance pay, FG has had to use her retirement savings to make ends meet.

For circumstances just like these, the Parliament of Canada has made available the Wage Earner Protection Program (“**WEPP**”) to provide for the payment of outstanding eligible wages to individuals whose employer is bankrupt or subject to a receivership, which includes amounts owing for termination or severance pay.

Immediately after our appointment as Employee Representative Counsel in July of 2017, we as Employee Representative Counsel, along with representatives from Sears Canada and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor in these proceedings (“the **Monitor**”), began to engage in discussions with individuals at the Labour Program and Service Canada responsible for administering WEPP. Our conversations have been productive and all parties are working hard to ensure former Sears Canada employees receive their entitlements under WEPP in a timely manner. However, as Sears Canada is not yet subject to a receivership or bankruptcy order, but continues to operate under the CCAA, its former employees are not yet eligible to receive WEPP payments.

One of the reasons a receivership or bankruptcy order has not yet been sought is that on February 27<sup>th</sup> of this year, the Government of Canada put forth its budget plan – Equality+Growth: A Strong Middle Class. The budget proposes significant enhancements to

WEPP entitlements. Most importantly, it proposes a change to the maximum payment under WEPP to seven weeks of Employment Insurance insurable earnings from four. As of now, that is an increase from \$3976.92 to \$6959.62. This nearly \$3000 difference would be a meaningful increase to the thousands of employees who lost their jobs without being compensated for their years of service through termination and severance pay.

As you know, this proposed increase requires a legislative amendment to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“*WEPPA*”). While we wait for the legislation to be proposed, debated and come into force, former Sears Canada employees remain without the termination and severance pay that they are owed.

As the Ministers overseeing the Labour Program and Service Canada, we are writing to ask your assistance in ensuring that this legislative amendment is made a top priority on September 17, 2018 when Parliament resumes after the summer recess. Thousands of Sears Canada employees across the country are counting on the money they will receive from WEPP, but we must ensure they have access to any forthcoming enhancements.

To that end, we also ask that you consider making legislative amendments retroactive to provide former Sears Canada employees with any increase to maximum entitlements. We are concerned that if amendments to *WEPPA* are not made retroactive and Sears Canada is subject to a bankruptcy order prior to new legislation coming into force, former employees will not benefit from the enhancements. Given the distress that these individuals have experienced during this process, we hope that you would agree former Sears Canada employees ought to benefit from any increase to WEPP entitlements.

On behalf of the former employees of Sears Canada, who have endured significant hardships during this process, we thank you for your time and attention to this important issue and thank you in advance for your assistance.

Yours sincerely,

**Ursel Phillips Fellows Hopkinson LLP**



Susan Ursel