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## “Sears Act” Needed to Protect Employee Rights When Bankruptcy Strikes

The crisis facing previously terminated and soon-to-be out of work Sears Canada employees is a frustrating one. I've spoken with some of them personally, both at the office and on our radio program, The Employment Hour.

The latest news concerning retention bonuses has infuriated employees and the public even more so. Thirty-six Sears Canada executives and managers will receive an additional \$2.8 million in cash bonuses, while thousands upon thousands of Sears Canada employees will receive nothing in terms of severance when the retailer's doors close for good.

However, the rage that many Canadians have expressed is misdirected at Sears Canada. Since bankruptcy proceedings began four months ago, the retail giant has had one legal obligation, and that is to maximize the amount of money for their secured creditors. They have no say in this matter. The only way they can fulfill this obligation is by liquidating their assets. The company and the court have decided that certain key people are needed to oversee the process, in order to ensure that Sears Canada provides as much money as possible to their secured creditors.

Even if Sears Canada had actually wanted to provide financial support to their employees in the form of severance pay, that request would have been rejected by the court, as such a plan would have compromised the entitlements of the secured creditors.

In 2009, the federal NDP proposed the “Nortel Act” to better protect workers during corporate bankruptcies. The act sought to have workers considered as preferred creditors in order to secure the unfunded portion of their pensions.

The proposed law was never passed.

Who was ultimately going to lose if that act was passed? Secured creditors. Who are secured creditors? Usually, they are the banks. Banks wield a great deal of power, enlist many supporters, and carry great political clout. If I'm a bank, and I have clout, I would likely use that clout to stop legislation like the "Nortel Act" from being passed in the House of Commons.

In fairness, the way many businesses operate is by negotiating loans from the banks. They need those loans to start the business, and to survive. What we don't want to do is create an environment where banks are going to be hesitant to loan money to a business if there is a chance that said business might go bankrupt.

**This delicate situation requires a balancing act - one that supports an environment where banks and business can flourish, but doesn't completely compromise employee rights.**

Bankruptcy should not be an "all or nothing" game for employees.

Employees should be made secured creditors, with respect to a portion of their entitlements. In a bankruptcy situation, where an employee is owed two years' severance pay, it would be unreasonable to make them a secured creditor. Perhaps their minimum entitlements under the Employment Standards Act could be guaranteed, or greater security provided where pensions are concerned. What is abundantly clear is that a "Sears Act" is needed to provide better protection for Canadian workers when bankruptcy strikes.

When things go wrong in the world of business, employees should not be left in the worst possible situation.

Today, it is Sears Canada. Tomorrow, it could be Toys 'R' Us. Best Buy and Indigo are facing strong competition as well. Unless our laws change, and soon, we will see this story play out again and again on the front page of newspapers, the lead story in radio newscasts, and on the lips of millions of Canadians.

Sincerely,

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