

June 15, 2015

**COURT OF QUEEN'S BENCH OF ALBERTA**

**Q.B. COMMERCIAL PRACTICE NOTE NO. 1**

**THE COMMERCIAL CHAMBERS INITIATIVE**

The purpose of this Practice Note is to clarify issues relating to the scope of the Commercial Chambers initiative and to clarify booking procedures for the Commercial List.

Effective June 15, 2015, this Practice Note applies to matters that may be booked on the Commercial List in Calgary and Edmonton. It *supersedes* all previous Notices concerning Commercial Chambers.

**Part I: Introduction**

The Commercial List was established to hear actions, applications and motions in Calgary and Edmonton involving issues of commercial insolvency law. In 2014, the scope and nature of matters that could be heard on the List was expanded to include certain matters that arise under statute, certain types of injunctive relief and urgent commercial matters, subject to availability of time on the List and the approval of a Justice of the Commercial Practice Group.

Issues have arisen with respect to this expansion. This Practice Note amends previous Notices and clarifies the limits on matters that may be booked on the List.

All counsel appearing in Commercial Chambers are expected to know and follow this Practice Note. The Commercial List remains, in the first instance, voluntary, except for bankruptcy and insolvency matters. Applicants may continue to set other matters that may qualify for the Commercial List down for hearing either on the Commercial List or elsewhere.

**Part II: Matters Eligible for the Commercial List**

1. Matters that may be scheduled on the Commercial List are applications and motions that, in essence, involve the following:
  - a) *Bankruptcy and Insolvency Act*;
  - b) *Companies' Creditors Arrangement Act*;
  - c) Receivership applications and all interlocutory motions to appoint, or give directions to, receivers and receiver/managers;
  - d) *Winding-Up and Restructuring Act*;

- e) *Bank Act* relating to realizations and priority disputes;
- f) *Business Corporations Act (Alberta)* and *Canada Business Corporations Act* with respect to plans of arrangement, other corporate reorganizations and applications involving insolvency;
- g) Matters relating to the winding up or liquidation of credit unions; and
- h) Such other emergency commercial matters as the Chief Justice or the Associate Chief Justice or their designates may direct to be booked on the List due to their urgent or time-sensitive nature.

The Co-chairs of the Commercial Practice Group may be contacted about the scheduling of long matters, urgent matters and matters that may fall within subparagraph 1(h), above. In such cases, it is expected that counsel shall provide details on the matter, the urgency, expected length and mutually convenient dates.

All matters booked under subparagraph 1(h) will be scheduled on a stand-by basis, pending confirmation that the booking is firm. It should be noted that these subparagraph 1(h) items may be bumped from the List by emergency insolvency matters.

For further clarification, the following matters will not be accepted for booking on the Commercial List, except in exceptional circumstances:

- a) commercial matters that are not urgent or time sensitive;
- b) matters that should be properly heard by a Master, including procedural or production applications, builders' lien matters and foreclosures;
- c) appeals of a Master that are procedural in nature or relate to matters set out in (b);
- d) judicial reviews;
- e) tenancy appeal board appeals;
- f) municipal tax appeals; and
- g) matters that should be properly heard by a Registrar under the *Bankruptcy and Insolvency Act*.

### **Part III: Justices, Court Officials and General Procedures**

2. The Commercial List shall be administered by the Commercial Co-ordinators, who currently are Paula Lorenz and Keri-Ann Stevenson (403-476-4804) in Calgary and Sharon Hinz (780-644-7389) in Edmonton.
3. The principles of operation of the Commercial List are cooperation, communication and common sense.
4. A Commercial Practice Group Justice will be available in Commercial Chambers at 10:00 a.m. on Monday of each week in Calgary (or Tuesday, if Monday is a holiday) and Tuesday at 10:00 a.m. in Edmonton (the "Appearance Court") to deal with urgent, scheduling and

consent matters, and applications for extension of time to file materials for pending motions. None of these matters must take more than 10 minutes, except with leave.

5. Counsel must notify the Commercial Co-Ordinator by noon on the Friday preceding the Appearance Court of their intention to appear, with a brief explanation of the nature of the matter to be addressed. Counsel are expected to have discussed the matter in advance and to have prepared a draft resolution for consideration by the Chambers Justice. If possible, counsel should file materials for the appointment by noon on that previous Friday.
6. Applications without notice (formerly *ex parte*) on the Commercial List will be rare. Counsel shall be required to justify the reason for not notifying interested parties. In most cases, notice shall be required, particularly if the matter is part of an ongoing dispute and there are solicitors representing interested parties, even if in respect of other matters.
7. Applications to have matters listed on the Commercial List under subparagraph 1(h) should be accompanied by the consent of the other counsel involved so that the Chief Justice, Associate Chief Justice or his designate may decide to either grant or refuse the scheduling of the application. Counsel should also be prepared to address deadlines with respect to the filing of briefs.
8. Counsel who intend to make submissions on an application are expected to appear personally, unless they are allowed by the Justice who will hear the matter to appear by telephone or video conference. A request for such special accommodation must be made in advance of the hearing to the Commercial-Coordinator.

#### **Part IV: Applications for Bookings on the Commercial List**

9. An on-line grid on the Court's website entitled "Commercial Practice Bookings" sets out judicial assignments and time availability. The grid is set in half hour time slots. Parties may book as many slots as are required, and should advise the Commercial Co-ordinator of the anticipated length of their application and the nature of the application. The cut-off for bookings is noon on Wednesday of the preceding week. The Court will accommodate emergency applications that may arise after the booking cut-off.
10. A matter may be booked on the Commercial List by the Commercial Co-ordinator if a letter of request and timetable for the filing of briefs is submitted and the matter clearly falls within the categories of subparagraph 1(a) to (g) (above) or subparagraph 1(h), provided a direction allowing the matter to be heard has been obtained.
11. Only a Co-Chair of the Commercial Practice Group, the Chief Justice or the Associate Chief Justice may authorize the booking of a matter on the Commercial List.

12. If the matter is scheduled for a hearing time of a half day or more, counsel must set out in their booking letter an estimate of the amount of time it will take a Justice to read the materials in advance.

## **Part V: Adjournments and Settlements**

13. Counsel shall be expected to be ready to proceed with matters for which hearing times have been agreed to or set. Adjournment of previously scheduled matters shall be granted only in special circumstances and for a material reason. After one adjournment, the matter will normally be struck from the List, and can be re-booked only with leave of a Co-Chair of the Commercial Practice Group, the Chief Justice or the Associate Chief Justice.

Applications for adjournments on consent should be forwarded to the Commercial Co-ordinators or, if directed by the supervising Justice, shall be spoken to at the next available Appearance Court.

14. If an adjournment of a previously scheduled matter is to be sought or appears likely to be required, the Commercial Co-ordinator must be alerted as soon as possible. This notice is required in order to accommodate scheduling of other matters or to alert counsel on standby bookings.
15. Where appropriate, matters may be scheduled to be heard on a “standby” basis for a particular date. In these cases, counsel should be prepared to proceed on short notice or they must keep the Commercial Co-ordinator advised of times when they are not available.
16. Counsel on Commercial List matters are expected to advise the Court promptly of all concluded settlements or matters that are reasonably likely to settle so that other matters may be scheduled.

## **Part VI: Justice to Hear Whole Matter**

17. It is anticipated that a Justice who determines a substantive component of a complex insolvency proceeding will continue to hear all subsequent substantive components in that proceeding, where possible. Accordingly, that Justice will become, in effect, the case management Justice of the matter. Arrangements for these subsequent proceedings may be made to the continuing Justice directly with the Commercial Co-ordinator. That case management Justice should be contacted in writing about the nature of the matter to be heard, preferably with a draft application and a list of times that are convenient to all counsel. This is to allow the Justice to conveniently schedule the matter or refer it back to the Commercial Co-ordinator for re-assignment.
18. For matters of sufficient complexity, duration or special timing, in the event that the continuing Justice is not sitting on the Commercial List at the time or has not then been assigned to a future Commercial List that is convenient, a request may be made through the

Commercial Co-Ordinator for the appointment of a new continuing Justice or team of Justices.

## **Part VII: Materials for use of the Court**

19. It is expected that materials filed for the use of the Court will be filed with the Commercial Co-ordinator within the following deadlines, or as directed by a Justice of the Commercial Practice Group. Unless the matter is urgent and relief from normal filing deadlines has been authorized by a Justice of the Commercial Practice Group, all moving party or applicant material must be filed by noon on the Monday that precedes the week of the hearing. All responding material must be filed by noon on the Thursday that precedes the week of hearing.
20. The Commercial Co-ordinator should be advised in the booking letter of the specific materials that are required from court files for the hearing of any particular proceeding. This is particularly important where the matter is on-going or the materials in the court files are voluminous.
21. In appropriate cases, to supplement any required format, counsel are requested to consider preparing an informal compendium of the key materials to be referred to in argument (fair extracts of documents, transcripts, previous orders, authorities, etc.) to assist in focussing the case for the Court. Relevant portions of the compendium should be highlighted or marked. Counsel are urged to consult among themselves in the preparation of a joint compendium, if possible. The compendium should contain only essential materials.

This Practice Note is subject to periodic review. Please direct any comments and suggestions concerning the Commercial Chambers initiative to the Commercial Practice Group Co-Chairs, with copies to the Chief Justice or Associate Chief Justice. The current Co-Chairs of the Commercial Practice Group are Romaine, J. in Calgary and Topolniski, J. in Edmonton (with Nielsen, J. as Acting Co-Chair from September 2015 to May 2016).

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Neil C. Wittmann, Chief Justice

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John D. Rooke, Associate Chief Justice