



Delna Contractor

Jun 15, 2019

Best Practices for Materials on the Commercial List

When it comes to Court materials, sometimes form is more important than substance. You may have excellent legal arguments, persuasive case law and perfect, McGill guide approved footnotes, but if your materials are voluminous and convoluted, a judge may be less inclined to review your materials prior to Court. Here are some tips to keep in mind when preparing your Court materials.

Compendiums

Prepare a compendium of the key documents or key excerpts of the documents to be referred to in argument to assist the Court in focusing the case where the Court materials are voluminous.

The compendium can include affidavits, exhibits, transcript excerpts, and cases all in one brief.

When assembling the compendium, think about ways to make the brief useful to the Court. For example, list the documents in the order in which you will refer to them in your submissions so the judge can easily follow along.

Cheat Sheets

When preparing a new case, especially one with complex facts and a large number of parties, counsel often start by making a chronology or cast of characters. Why not prepare similar “cheat sheets” for the Court?

Counsel may file or hand up diagrams of complex corporate structures, chronology of key events, cast of characters or any other reference document that the Court could use to easily understand the facts of the case.

Cheat sheets will be more effective if they are drafted to be neutral and balanced, otherwise, the Court may view it as an advocacy piece and be less inclined to use it as a reference document.

Blacklines on Model Orders

Counsel are expected to use the model orders developed by the Commercial List Bench and members of the bar as templates for the draft orders they put before the Court. Draft orders that divert from the model order should be blacklined so the differences between the model order and your draft order are easily visible to the Court.

The Commercial List has a number of model orders, including an Initial CCAA Order, Receivership Order, Discharge Orders, Vesting Orders and Anton Piller Orders. Model orders can be found here.

Factums

Factums cannot exceed more than 25 pages, exclusive of schedules. The Commercial List Office has been instructed to enforce the page limit. In order to file a factum which exceeds the 25 page limit, a party must obtain approval from a judge in advance of filing the factum.

The Commercial List Bench has also indicated that footnoting in factums is not user friendly and should be avoided where possible.

USB Keys

Factums and affidavit evidence for contested motions should be provided to the Court on USB keys. The documents in the USB should be in Word format to allow for copying and pasting. Exhibits should be in searchable PDF (OCR), unless they are available in Word.

The USB itself should be properly labeled to identify the matter and the party providing the USB. Send the USB in a separate cover with a cover letter detailing its contents to the Judge.

The USB can be delivered to the Commercial List Office on the 7th floor of 330 University Avenue or sent directly to the Judge presiding over your matter. The USB should not form part of the public file.

As a general practice, the USB should be sent to the Court no later than noon on the day before the hearing.

Note that Counsel may not need to provide a USB if

materials are electronically filled in the Digital Hearing Workspace platform.

Hyperlinking

Counsel should hyperlink all electronic documents that are provided to the Court through the Digital Hearing Workspace or through USB keys.

Factums should hyperlink to any affidavits, exhibits or case law that are referenced in the document. Affidavits should hyperlink to the exhibits or any other affidavits that are referenced in the document.

The Guide Concerning e-Delivery of Documents in the Ontario Superior Court of Justice contains instructions on how to hyperlink PDFs.

Pulling Materials

Call the Commercial List Office to ensure all necessary materials are before the Judge in advance of the hearing. This is particularly important in continuing matters such as receivership or CCAA proceedings, where voluminous materials have already been filed and not all may be relevant for the upcoming hearing.