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Getting on the Commercial List

The Commercial List is a specialized branch of the Ontario Superior Court of Justice that handles complex commercial disputes in a more efficient and focused way. If you have a commercial dispute in Toronto, having your matter heard on the Commercial List can speed up proceedings and provide access to judges with expertise in commercial law.
That sounds great, but how do you get your case on the Commercial List? As the List gets busier and busier every year, it seems securing a spot has become increasingly difficult. This post covers the basics of how to get a case on the Commercial List.

How to Get Your Case on the Commercial List

There are two ways to bring your case to the Commercial List:

1. Start your case directly on the Commercial List.
2. Ask the Court to permit your case to be transferred from the regular Civil List to the Commercial List.

Which Cases Qualify?

Not every business dispute qualifies for the Commercial List. Only cases that fall into categories outlined in the Toronto Practice Direction, Part G.2 are eligible, including matters involving any of the following:

- *Bankruptcy and Insolvency Act* (BIA)
- *Bank Act*, relating to realizations and priority disputes
- *Business Corporations Act* (Ontario or Canada)
- *Companies' Creditors Arrangement Act* (CCAA)
- *Limited Partnerships Act*
- *Pension Benefits Act* (Ontario) and *Pension Benefits Standards Act*, 1985 (Canada)
- *Personal Property Security Act*
- Receivership applications and all motions related to the receivership proceeding
- *Securities Act*
- *Winding-up and Restructuring Act*
- *Credit Unions and Caisses Populaires Act*, relating to credit unions and caisses populaires under administration or that are being wound up or liquidated

- Suitably complex matters relating to appeals from domestic arbitration awards under the *Arbitration Act*, 1991 (Ontario) and/or the enforcement of international arbitral awards under the International Commercial Arbitration Act, 2017 (Ontario) and the Commercial Arbitration Act (Canada)
- Other matters as directed by a Commercial List judge (known as the “basket clause”)

Cases outside these categories, or not sufficiently commercial in nature, may not be suitable for the Commercial List.

The Commercial List operates exclusively in Toronto. Only Toronto matters can appear on the List unless a Commercial List judge grants special authorization. In recent years, judges have rarely permitted non-Toronto matters on the Commercial List.

Starting a Case on the Commercial List

If your case fits within the categories above, you may attempt to start it directly on the Commercial List by completing a New Matter Request Form, which requires you to provide details about your case and explain why it belongs on the Commercial List. You must send the completed form to the Commercial List office, which will either approve or decline the request. If the case is declined, you will need to commence your case on the regular Civil List.

For some types of matters, including matters under the BIA, CCAA, and Winding-up and Restructuring Act, as well as receivership matters, it is mandatory to commence the proceeding on the Commercial List. For non-mandatory matters, including those relying on the basket clause, a judge must approve the case before it can proceed on the Commercial List.

Transferring a Case to the Commercial List

For non-mandatory cases or cases under the basket clause, you may ask the Court to transfer an existing matter to the Commercial List. A motion to transfer a regular list matter to the Commercial List requires consent of all parties’ counsel and a completed New Matter Request Form setting out clear reasons why the matter belongs on the Commercial List.

Sometimes, a judge who is not on the Commercial List can provisionally transfer a case to allow a Commercial List judge to hear the motion.

Making Your Case for Listing on the Commercial List

When deciding, whether at first instance or via a transfer, to

permit a case on the Commercial List (especially under the basket clause), judges consider the following factors:

- Whether the matter is commercial in nature
- The commercial complexity of the matter, procedure, or parties
- Whether the issue fits, or is similar to, the categories in the Practice Direction
- The number of parties involved
- The matter's connection to Toronto
- The current and expected caseload of the Commercial List
- The Commercial List's expertise in dealing with the kind of commercial issue the case raises
- Advantages or disadvantages of being on the Commercial List compared to the regular Civil List

No single factor guarantees inclusion; the goal is to show that your case involves complex commercial issues that will benefit from specialized handling.

Unique Features of the Commercial List

The Commercial List offers tools and procedures designed to move cases efficiently:

1. **The "Three Cs"**: Judges expect counsel to cooperate, communicate, and use common sense. Judges prioritize substance over form and expect civility. Breaches may result in costs.
2. **Quick 9:30 a.m. Chambers Appointments**: Short, often virtual hearings address urgent, scheduling, or consent matters. Longer matters require separate booking.
3. **Case Management**: Most cases have a designated judge to ensure efficient progress, reduce formal motions, and maintain continuity. Non-compliance can lead to costs.
4. **Rare Adjournments**: The List strongly discourages adjournments and grants them only for emergencies or imminent settlements.

These features are particularly advantageous for high-value, multi-step, or time-sensitive cases, where judicial continuity and quick access to a judge help move matters toward final adjudication while reducing reliance on formal motions. Less complex or highly adversarial matters may see limited benefit.

Key Takeaways

The Commercial List is a valuable tool for businesses and

parties involved in complex commercial disputes in Toronto. By providing access to judges with specialized expertise and offering streamlined procedures, the Commercial List can help cases move more efficiently toward resolution.

Remember:

- **Eligibility Matters**: Only cases that fall within the categories outlined in the Toronto Practice Direction, Part F, or approved under the basket clause, can proceed on the Commercial List.
- **Starting or Transferring a Case**: You can initiate a case directly on the Commercial List or transfer one from the regular Civil List, but non-mandatory matters generally require the Court's approval.
- **Judges Consider Complexity**: Judges evaluate the commercial complexity, number of parties, connection to Toronto, and the benefits of specialized handling when deciding whether to permit a case.
- **Efficiency is Key**: Features such as case management, quick chambers appointments, and the expectation of cooperation among counsel help move cases forward faster and reduce delays.

For businesses involved in multi-step, high-value, or time-sensitive disputes, the Commercial List offers significant advantages. Even if your case is not automatically eligible, understanding the process and the factors judges consider can help you determine whether your dispute could benefit from this specialized branch of the Ontario Superior Court of Justice.