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What is the Commercial List?

The Commercial List is a specialized commercial Court of the Ontario Superior Court of Justice. It is not a separately constituted court, but more like a division of the Superior Court in Toronto. There are currently eight judges experienced in commercial law and litigation who are assigned to the Court for the year including a judicial team leader who traditionally occupies the position for many years. Although the judges rotate on and off the Commercial List there is significant consistency with the assignments to the List.

The Commercial List Practice Direction identifies the types of cases the Court will hear including insolvency, banking and securities cases as well as cases under our provincial and federal business corporations acts. There is also the basket clause for “such other commercial matters” as a Commercial List judge may direct. The basket clause allows counsel to propose, and the Court to accept, other Toronto based cases involving significant commercial issues to be managed and heard before the Commercial List.

The benefits of the Commercial List are similar to those of commercial courts around the world. Because cases are closely case managed and the judges and counsel are experienced in commercial matters, it is an efficient and effective Court. Multinational public companies, financial institutions, closely held businesses and others with commercial disputes can be comfortable that the judge will understand the issues and will aim to apply a measure of practicality to managing the case along the way.

The Practice Direction will tell you key important things about the Commercial List, but in practice there are many informal practices. The overriding written rule is known as the “the three C’s”: cooperation, communication and common sense. The judges of the Commercial List demand the three Cs of counsel and our clients in the way the cases are managed.

This written rule underlies many of the informal practices on the Commercial List. By way of example where in a regular case a party would bring a motion to resolve an interim dispute, on the Commercial List, the Court expects that the parties try to work out the issue. If the

parties can't or won't figure it out for themselves, the Court will assist them in doing so. This means that motions for production of documents or refusals on discovery are not generally brought before the Commercial List and if they are brought, generally speaking, they are resolved before they are heard. This happens either directly with counsel or through an informally mediated process with the judge case managing the proceeding. Because the case management judge will not be the trial judge if the case makes it to trial, this process is highly effective in making the lawyers and clients more practical in moving the case along efficiently. Because of the efficiency of the Court, trials (if they are necessary) can be timetabled and scheduled without any significant delay allowing the commercial parties to get their dispute resolved or decided and get back to the core of running their business.