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What is the Toronto Commercial List?

The Toronto Commercial List is a specialized branch of the Ontario Superior Court of Justice that handles commercial disputes. It is not a separately constituted court, but more like a division of the Superior Court in Toronto. Eight judges with deep experience in commercial law and litigation staff the List each year, led by a judicial team leader who traditionally occupies the position for many years. The team leader assigns new matters to the Commercial List, and although the judges rotate on and off, there is significant consistency with the assignments to the List.

The Commercial List Practice Direction (which is found in the Consolidated Practice Direction – Toronto Region, Section G) identifies the types of cases the Court will hear. Some matters (those under the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, Winding-up and Restructuring Act, and receivership motions and applications) are mandatory and must be brought before the Commercial List. Other matters (including appeals of arbitral awards, and securities, banking, and pension matters) may, but need not, be brought before the Commercial List. There is also the basket clause for "such other commercial matters" as a Commercial List judge may direct. This 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 judges and counsel bring significant commercial expertise, and the List closely manages every case, disputes move efficiently from start to finish. Multinational public companies, financial institutions, closely held businesses, and others with commercial disputes can be confident the presiding judge will understand the issues and will practically manage the case at every stage.

The Commercial List Practice Direction will tell you important things about the Commercial List, but there are many informal practices. The overriding written rule is known as the "three Cs": cooperation, communication and common sense. Commercial List judges expect counsel and their clients to

uphold these principles to ensure the effective and efficient management of every case.

This written rule underlies many of the informal practices on the Commercial List. By way of example, where a party in a regular case would bring a motion to resolve an interim dispute, the Commercial List 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. As a result, motions for production of documents or refusals on discovery are rare on the Commercial List, and when they do arise, the parties usually resolve them before the hearing. Either counsel sort out issues among themselves, or the case management judge facilitates resolution through a dispute resolution process at a case conference.

Commercial List judges will often make procedural directions at case conferences relating to the production of documents, examinations of witnesses, and other interim issues. They do so based on brief oral submissions and a short case conference memorandum. Because the case management judge is generally not the trial judge (if the case makes it to trial), this process encourages lawyers and clients to take a practical approach and keep the case moving along efficiently.

The result is a court that operates efficiently. Trials, when necessary, can be timetabled and scheduled without significant delay, allowing commercial parties to resolve or decide their disputes and get back to running their businesses.

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