

A Year in Review – July 2022

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The Commercial List Users' Committee (“**CLUC**” or the “**Users' Committee**”) is pleased to provide the following updates to the Commercial List Bar with respect to the activities of CLUC and the Commercial List.

Message from Justice McEwen

After a very testing period for all, including the Commercial List community, I am pleased to be able to announce that we will be returning to more normal Court operations, commencing on July 4, 2022, as detailed in the Guidelines set out below in this Newsletter. Through the pandemic I have been constantly impressed by the adaptability and resilience of the Court staff, my fellow judges, counsel and all those participating in the life and work of our Court. We emerge from this unprecedented time stronger than we went into it and I look forward to the continuation of the Court's traditions of excellence and service.

Table of Contents

ADMINISTRATION 3

PRACTICE NOTES..... 3

TRIBUTE TO THE HONOURABLE JUSTICE GLENN HAINEY 4

POSTING OF NEWSLETTERS 8

USERS' COMMITTEE MEMBERS 8

Administration

Commercial List Judges

Current judges sitting on the Commercial List include Justices McEwen (Team Lead), Cavanagh, Conway, Dietrich, Gilmore, Kimmel, Osborne, and Penny. Chief Justice Morawetz continues to provide assistance.

Report from the Judiciary

The Commercial and Estates Lists will be split as of Labour Day, September 9, 2022. Justice Dietrich will lead the Estates team, with Justice Gilmour also sitting on the team.

The Commercial List is currently booking motions and short applications 8-12 weeks out and long motions and applications 16-20 weeks out. Trials are being booked a year out. The Commercial List continues to deal with emergencies on a timely basis.

Practice Notes

Guidelines

The Commercial List will conduct itself slightly differently than under the presumptive guidelines for the regular Civil List. While details are still being determined, parties appearing before the Commercial List can expect the following:

- ▶ Matters that are one hour or less (consent orders, scheduling issues, case conferences, shorter motions, etc.) will be heard virtually. No gowns are required if the matter is one that would ordinarily be heard in Chambers. Gowns will be required if the matter would ordinarily be heard in open Court (e.g., opposed motions). The forgoing is subject to the discretion of the presiding judge in specific cases.
- ▶ Matters that are 90 minutes or more will be in person, subject to judicial discretion. Gowns are required for motions, applications and trials.
- ▶ Materials should continue to be filed electronically only, unless specifically requested by the Court.

Courtroom Update

The Commercial List is hoping to equip the Courtrooms for virtual/hybrid hearings. The COVID-19 add-ons (plexiglass, and other physical barriers) have been removed in two courtrooms and the remaining courtrooms will be dealt with in due course.

Tribute to The Honourable Justice Glenn Hainey



Justice Hainey joined Smith Lyons in 1981, having been called to the Bar in 1976, worked for three years as the Executive Assistant to the Ontario Ombudsman, and then practiced criminal law in association with Arthur Maloney for two years. Following Smith Lyons' merger with Gowling Lafleur Henderson in late 2001, Justice Hainey assumed the leadership of Gowling's Toronto litigation group in mid-2002 and continued in that role until 2010. In 2008, he was appointed a Bencher of the Law Society of Ontario.

Justice Hainey was one of the Gowling's senior commercial litigators until his appointment to the Ontario Superior Court of Justice in December 2010. His Honour was subsequently appointed as the Head of the Commercial List.

Justice Hainey loved life and he loved sharing his passions with others. Whether it was music (he was an avid guitar player and singer), golf (he was a passionate golfer), skiing (he was a long time member and the former president of the Georgian Peaks Ski Club), or wine and food (which allowed him to combine storytelling, joke telling (no matter how many times his audience had heard the joke), and singing (while enjoying a great bottle of wine), Justice Hainey was happiest pursuing these interests with friends, colleagues and family.

Justice Hainey leaves behind his wife Susan, their three children David, Laura and Michael, and two grandchildren Charlotte and Jack.

Justice Hainey was a legal titan and a force of nature. He will be sorely missed by his fellow judges, his former partners, and his friends and colleagues at the firm and across Canada.



Tribute by Justice McEwen:

First and foremost, the judges of the Commercial List have lost a great friend.

Glenn left an indelible mark on the profession, the bench and all of his colleagues. While his professional accomplishments were vast, we are most profoundly appreciative for the positive influence that he had over the way the Commercial List operates.

Glenn was always adamant that in order to be effective, the Commercial List had to operate as a “business court” in a prompt and efficient manner. Glenn led by example, making himself available in a timely manner to deal with difficult matters. In doing so, he continued and enhanced the Commercial List’s reputation.

Glenn led with quick wit, a great sense of humour and a smile on his face. He was personable, charming, engaging and intelligent.

Glenn was the best problem solver that I have ever met. He was eminently sensible and practical. He had a unique ability to resolve the most difficult and complex cases on the Commercial List. He promoted case management and encouraged all of us to assist counsel and parties with settling cases where appropriate – but none of us was as effective as Glenn. In fact, he was so dogged at mediating that counsel understood (sometimes reluctantly) that Glenn would keep working if there was any chance the case could settle. In addition to his unsurpassed problem-solving skills, he also had a wonderful way with people and dealt with them in a fashion that almost always made them see that they should resolve their disputes.

Glenn also strongly supported the equity, diversity and inclusion initiatives on the Commercial List and in the profession generally. In recent years, he became more outspoken about this issue and recognized that his experience and position afforded him with a trusted voice on these topics.

He was also a fierce advocate for getting younger lawyers “on their feet” – this focus was only heightened during the pandemic, when he was concerned that advocacy opportunities for young lawyers were becoming even more infrequent.

We are all honoured and privileged to have worked alongside Glenn. He left the Commercial List in great shape and we are humbled to continue stewarding his passion and legacy. We miss him terribly.

Tribute by Emily Y. Fan:

Justice Hainey created space for everyone. I recall attending a chambers appointment early in my career on a highly contentious matter. Being the most junior lawyer in the room I assumed that I was only there to observe. And thus thoroughly safe from any rapid-fire questioning and embarrassing myself in any way. His Honour made sure that was not the case. I was the first lawyer he called on to explain the nuances of my client's position. Many of my peers have shared similar stories.

Justice Hainey was fearless. His Honour was unrelenting in driving the parties towards practical, business solutions. And was prepared to devote innumerable hours to achieve those results, even despite his demanding schedule. There were matters in which the parties could not have been further apart in their positions, with complex business and legal problems between them. But Justice Hainey did what he did best – and was His Honour ever effective. Justice Hainey forced the parties to reconsider their well-entrenched positions, and arrive at elegant solutions that avoided costly, drawn-out proceedings. Everyone walked away having made a compromise, but were now able to put the legal proceedings to rest so that they could move on with their lives and businesses.

Upon hearing of Justice Hainey's passing, one of our clients remarked that they would never forget what His Honour had done for them in facilitating a resolution. Similarly, those of us who had the great privilege of appearing before Justice Hainey will never forget his impact on the Commercial List. The no-nonsense approach. The knack for tackling the toughest issue. The terrific sense of humour. Justice Hainey will forever be in our memories.

Tribute by Monique Jilesen:

Justice Hainey was deeply committed to the legal profession. He relished passing on his knowledge and experience to the youngest in our profession, always an active participant in events for junior members of the Bar. As Head of the Toronto Commercial List, he welcomed, without reservation, a Diversity and Inclusion subcommittee to the Commercial List Users' Committee and was instrumental in diversifying the Committee itself.

Although he is best known for his time on the Commercial List, Justice Hainey's impressive judicial career includes a mix of business disputes, civil procedure, criminal law, estates, health law, municipal law, and more recently, bankruptcy and insolvency. He presided over Algoma, Crystallex, Sears, Forever XXI, and more. But Justice Hainey had as much (or even more) influence in his chambers as he did in the courtroom.

He welcomed you into chambers with his wide smile and quick wit but quickly got down to business. Often you walked in the room to schedule a two-day contested motion and walked out with an undertaking by His Honour to personally mediate the dispute. And did he ever mediate! Justice Hainey took the resolution of complex, multi-party, multi-million disputes as a matter of personal pride. The harder the problem to solve, the harder His Honour worked at solving it. He fashioned results in the mediation room that could never have been fashioned in the courtroom, all to the benefit of the parties, counsel, and the justice system – a distinct and unique approach that will not soon be forgotten.



Tribute by Clifton Prophet:

I was privileged to know Glenn in many capacities: law partner, pre-eminent advocate, respected judge and occasional pop singer. At Gowling, Glenn was known for his passionate commitment to our people, particularly our younger people and our staff. With them and with all of us he shared his charm, his warmth and the power of his character. No one left a meeting with Glenn without knowing what he thought or without understanding that he was working with you toward your common goals. If the mark of a person is the feeling that they leave with people, then Glenn can be best understood by the intense loyalty that he inspired in those who worked with him. On a personal note, I have a very particular memory of serving with Glenn on the management committee for our office when I was a younger partner. Despite the difference in our seniority, Glenn always listened to things I had to say and, when they made any sense at all, he backed them, even if they were unpopular. We at Gowling feel Glenn's loss keenly and will remember him fondly.

Posting of Newsletters

The creation of a newsletter was important for two main reasons. First, so that members of the Bar and other organizations who use the Commercial List are informed of the workings of the Users' Committee. And second, so that users of the Commercial List are given the opportunity to make recommendations for the continued improvement of the operation and administration of the Court.

Copies of this Issue and all previous issues of the Newsletter may be found on the following linked websites:

- [CAIRP](#)
- [Commercialist.com](#)
- [Ontario Bar Association](#)
- [Toronto Lawyers Association](#)

Users' Committee Members

Commercial List Judges

- Chief Justice Morawetz
- Justice McEwen
- Justice Cavanagh
- Justice Conway
- Justice Dietrich
- Justice Gilmore
- Justice Kimmel
- Justice Osborne
- Justice Penny

Committee Members

- Associate Justice Ilchenko
- Justice Wilton-Siegel
- Andrea Burke, Davies Ward Phillips & Vineberg LLP
- Andrew Gray, Torys LLP
- Arif Dhanani, RSM Canada
- Bosco Mascarenhas, Court Operations, Government of Ontario
- Brendan Bissell, Goldman Sloan Nash and Haber LLP
- Brian Empey, Goodmans LLP
- Caitlin Fell, Reconstruct LLP
- Clifton Prophet, Gowling WLG (Canada) LLP
- Chantelle Cseh, Davies LLP
- Delna Contractor, Lenczner Slaght LLP
- Denise Cooney, Paliare Roland Rosenberg Rothstein LLP
- Derek Bell, DLA Piper (Canada) LLP
- Emily Y. Fan, Lerner LLP
- Eric Block, McCarthy Tétrault LLP
- Jeffrey Larry, Paliare Roland Rosenberg Rothstein LLP
- Ken Pearl, Fuller Landau LLP
- Maria Konyukhova, Stikeman Elliott LLP
- Miranda Spence, Aird & Berlis LLP
- Monica Simion, Court Operations, Government of Ontario
- Monique Jilesen, Lenczner Slaght LLP
- Sharon Hamilton, EY Canada
- Shaun Laubman, Lax O'Sullivan Lissus Gottlieb
- Shayne Kukulowicz, Cassels Brock & Blackwell LLP