

# Update on Changes to Commercial List Operations in Light of COVID-19

May 5, 2020

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## General Remarks

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1. On March 16, 2020, the Commercial List implemented a protocol, **Changes to Commercial List operations in light of COVID-19**.
2. All matters scheduled through May 31, 2020 have been adjourned, subject to any requests from counsel to have a matter be heard urgently. The same protocol has applied for new matters seeking to be heard
3. Between March 17, 2020, and April 28, 2020, the Commercial List heard 353 matters: 181 audio hearings, 41 video hearings, 131 hearings in writing
4. The Court advises that almost all requests for commercial matters to be heard have been granted
5. Media requests have been accommodated, and the Court is looking to expand the use of functions allowing participants to attend and observe, in recognition of the open court principle
6. The Court is aware of security concerns with Zoom, and these are being considered and technical advice has been sought
7. Once the courts resume normal operations, the expectation is that all electronic materials will be filed with the court, and all orders will be entered in the ordinary course.
8. The Bench is alive to the interest in having handwritten decisions rendered during the pandemic publicly available, and is considering how to make these most readily available. Counsel are encouraged to type up any handwritten endorsements

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## Suggested Protocols

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9. **“Suggested Protocol For Telephonic And Video Conference Motions On The Commercial List During Covid-19 Period”** developed by Thornton Grout Finnigan should be followed
  - a) Particularly important is to have all of the materials in one place for judges: a hyperlinked compendium is preferred
  - b) It would normally not be appropriate for counsel to email a judge directly without prior permission. However, after a matter has scheduled and a judge has been appointed by the Commercial List office, counsel may email the appointed judge about the specific matter, copying all other counsel and the Commercial List office, without prior permission
10. **Sample Notice of Motion** for matters being heard electronically developed by Thornton Grout Finnigan should be used as a template for electronic hearings

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## Orders

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11. Counsel preparing the first draft of the typed version of the order should ask all other counsel to review and approve the typewritten version as to form and content, and then jointly submit to the Court the typewritten copy for approval, as a separate attachment which can be printed if necessary
  12. Draft orders should not make reference to matters being “heard at 330 University”, but simply that they were heard “by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis” (or similar language)
  13. Orders do not need to be entered at this time, and the endorsement and/or order will make reference to dispensing the need to have the order entered at this time
  14. Orders must be entered after the court resumes normal operations
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## Counsel Slips

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15. Counsel bringing a motion is responsible for preparing counsel slip, including counsel's email addresses, and sending it to the presiding judge in advance of the hearing.
16. The simpler the counsel slip the better. Most helpful is a simple list of lawyers and clients in a word document or email in the following format:

Bill Smith for RBC  
Susan Jones for CIBC
17. This allows the judge to copy and paste the list of counsel and clients into their endorsement. A counsel slip that includes additional information such as physical addresses, fax numbers or email addresses means judges have to spend time deleting that information if they want to use the list to copy and paste into an endorsement.
18. A list of email addresses should follow the list of counsel and not be embedded with the counsel names. The names can follow immediately upon one another in the following format:

bill.smith@abc.com;                      s.jones@xyz.ca;                      jane.doe@def.com;  
john.doe@ghi.ca
19. This allows judges to copy and paste the emails into the address field of any email they wish to send to counsel. It is preferable to avoid tables or other formatting functions because they interfere with the ability to copy and paste easily.

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## Other Guidelines and Best Practices for Remote Hearings

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20. Counsel should always copy Commercial List office on correspondence to judge
21. Counsel should ensure everyone other than speaker is muted during a hearing, and take care not to interrupt one another, especially in these telephonic hearings, as it disrupts the telephonic carriage of the matter
22. Counsel bringing a motion is responsible for preparing counsel slip, including counsel's email addresses, and sending it to the presiding judge in advance of the hearing
23. Counsel should ensure they are familiar with share screen function
24. Counsel do not need to gown, but expected to dress appropriately
25. Counsel should be aware that Zip files do not seem to work with iPads, and consider alternate file delivery method