



COMMERCIAL PRACTICE NOTE 1

COMMERCIAL CHAMBERS

The purpose of this Practice Note is to outline matters relating to the scope of the Commercial Chambers initiative and to clarify booking procedures for the Commercial List.

Part I: Introduction

The Commercial List was established to hear Actions and Applications in Calgary and Edmonton involving commercial insolvency law.

All counsel appearing in Commercial Chambers are expected to know and follow this Practice Note. The Commercial List remains, in the first instance, voluntary, except for bankruptcy and insolvency matters.

Applicants can set matters that qualify for the Commercial List down for hearing either on the Commercial List or elsewhere.

Part II: Matters Eligible for the Commercial List

1. Matters that may be scheduled on the Commercial List are Applications that, in essence, involve the following:
 - a. *Bankruptcy and Insolvency Act*;
 - b. *Companies' Creditors Arrangement Act*;
 - c. Receivership Applications and all interlocutory Applications to appoint, or give directions to, receivers and receiver/managers;
 - d. *Winding-Up and Restructuring Act*;
 - e. *Bank Act* relating to realizations and priority disputes;
 - f. *Business Corporations Act (Alberta)* and *Canada Business Corporations Act* with respect to plans of arrangement, other corporate reorganizations and Applications involving insolvency;
 - g. Other time-sensitive matters arising under the *Business Corporations Act (Alberta)* or *Canada Business Corporations Act*.
 - h. Time-sensitive matters arising under the *Securities Act*;

- i. Matters relating to the winding up or liquidation of credit unions;
 - j. Matters relating to: (i) Norwich Applications; (ii) Mareva injunctions; (iii) Anton Piller Applications; and (iv) Freeze Orders under the *Civil Enforcement Act*; and
 - k. Such other emergency commercial matters as the Chief Justice or an Associate Chief Justice or their designates may direct to be booked on the Commercial List due to their urgent or time-sensitive nature.
2. It is expected that parties seeking an urgent hearing will justify having it heard on the Commercial List and estimate the amount of Justice's reading time required. To address the justification for such other matters, the Applicant shall include a comment in their covering letter giving their reasoning for having the particular matter heard on the Commercial List.
 3. The Co-Chairs of the Commercial Practice Group may be contacted about the scheduling of long matters, urgent matters and matters that may fall within subparagraph 1(k), above. In such cases, it is expected that counsel shall provide details on the matter, the urgency, expected length and mutually convenient dates.
 4. All matters booked under subparagraph 1(k) will be scheduled on a stand-by basis, pending confirmation that the booking is firm. Note that subparagraph 1(k) items may be bumped from the Commercial List by emergency insolvency matters.
 5. For further clarification, the following matters will not be accepted for booking on the Commercial List, except in exceptional circumstances:
 - a. commercial matters that are not urgent or time-sensitive;
 - b. matters that should be properly heard by an Applications Judge, including procedural or production Applications, builders' lien matters and foreclosures;
 - c. appeals of an Applications Judge that are procedural in nature or relate to matters set out in 5(b);
 - d. judicial reviews;
 - e. tenancy appeal board appeals;
 - f. municipal tax appeals; and
 - g. matters that should be properly heard by a Registrar under the *Bankruptcy and Insolvency Act*.

Part III: Justices, Court Officials and General Procedures

6. The Commercial List shall be administered by the Commercial Co-ordinator. Contact information for the Commercial Co-ordinator is posted on the Court's website at:
 - a. For Calgary Commercial List matters:
commercialcoordinator.qbcalgary@albertacourts.ca

For Edmonton Commercial List matters:

commercialcoordinator.qbedmonton@albertacourts.ca

7. The principles of operation of the Commercial List are cooperation, communication and common sense.
8. Applications without notice (formerly *ex parte*) on the Commercial List will be rare. Counsel shall be required to justify the reason for not notifying interested parties. In most cases, notice shall be required, particularly if the matter is part of an ongoing dispute and there are solicitors representing interested parties, even if in respect of other matters.
9. Applications to have matters heard on the Commercial List under subparagraph 1(k) should be accompanied by the consent of the other counsel involved so that the Chief Justice, Associate Chief Justice or their designate have the benefit of that information when deciding whether to grant or refuse the scheduling of the Application. Counsel should also be prepared to address deadlines with respect to the filing of briefs.
10. The default hearing mode for Commercial List matters is virtual. The Commercial Coordinator will circulate WebEx details at the time of booking. The Court may direct a different hearing mode or the parties may request to modify the hearing mode by communicating to the Court in writing.

Part IV: Applications for Bookings on the Commercial List

11. Online grids on the Court's website entitled "Calgary Commercial Assignments & Availability" and "Edmonton Commercial Assignments & Availability" set out judicial assignments and time availability. These grids are set in half hour time slots. Parties may book as many slots as are required and should advise the Commercial Coordinator of the anticipated length of their Application and the nature of the Application.
 - a. For Calgary Commercial Assignments & Availability:
https://albertacourts.ca/docs/default-source/qb/cal_com_schedule.pdf?sfvrsn=6b42ad80_1334
 - b. For Edmonton Commercial Assignments & Availability:
https://albertacourts.ca/docs/default-source/qb/edm-com-d-schedule.pdf?sfvrsn=7942ad80_1192
12. The cut-off for bookings is noon on Wednesday of the preceding week. The Court will accommodate emergency Applications that may arise after the booking cut-off.
13. A matter may be booked on the Commercial List by the Commercial Coordinator if a letter of request and timetable for the filing of briefs is submitted and the matter clearly falls within the categories of subparagraph 1(a) to (j) or subparagraph 1(k), provided a direction allowing the matter to be heard has been obtained.

14. Only a Co-Chair of the Commercial Practice Group, the Chief Justice or an Associate Chief Justice may authorize the booking of a matter on the Commercial List.
15. If the matter is scheduled for a hearing time of one half day or more, counsel must set out in their booking letter an estimate of the amount of time it will take a Justice to read the materials in advance.

Part V: Adjournments and Settlements

16. Counsel are expected to be ready to proceed with matters for which hearing times have been agreed to or set.
17. Adjournment of previously scheduled matters shall be granted only in special circumstances and for a material reason. After one adjournment, the matter will normally be struck from the Commercial List and can be re-booked only with leave of a Co-Chair of the Commercial Practice Group, the Chief Justice or an Associate Chief Justice.
18. Applications for adjournments on consent should be forwarded to the Commercial Coordinator.
19. If an adjournment of a previously scheduled matter is to be sought or appears likely to be required, the Commercial Coordinator must be alerted as soon as possible. This notice is required to accommodate scheduling of other matters or to alert counsel on standby bookings.
20. Where appropriate, matters may be scheduled to be heard on a “standby” basis for a particular date. In these cases, counsel should be prepared to proceed on short notice, or they must keep the Commercial Coordinator advised of times when they are not available.
21. Counsel on Commercial List matters are expected to advise the Court promptly of all concluded settlements or matters that are reasonably likely to settle so that other matters may be scheduled.

Part VI: Justice to Hear Whole Matter

22. It is anticipated that a Justice who determines a substantive component of a complex insolvency proceeding will continue to hear all subsequent substantive components in that proceeding, where possible. Accordingly, that Justice will become, in effect, the Case Management Justice of the matter. Arrangements for these subsequent proceedings may be made to the continuing Justice directly with the Commercial Coordinator. That Case Management Justice should be contacted in writing about the nature of the matter to be heard, preferably with a draft Application and a list of times that all counsel are available. This is to allow the Justice to schedule the matter or refer it back to the Commercial Coordinator for re-assignment.

23. For matters of sufficient complexity, duration or special timing, in the event that the continuing Justice is not sitting on the Commercial List at the time or has not then been assigned to a future Commercial List that is convenient, a request may be made through the Commercial Coordinator for the appointment of a new continuing Justice or team of Justices.

Part VII: Materials for use of the Court

24. It is expected that materials filed for the use of the Court will be filed electronically with the Commercial Coordinator within the following deadlines, or as directed by a Justice of the Commercial Practice Group. Unless the matter is urgent and relief from normal filing deadlines has been authorized by a Justice of the Commercial Practice Group, all moving party or Applicant material must be filed by noon on the Monday that precedes the week of the hearing. All responding material must be filed by noon on the Thursday that precedes the week of hearing.
25. With respect to Applications, briefs and supporting materials, there is a page limit of 35 pages for the briefs. That 35-page limit will apply to each of the Applicants and Respondents. The 35-page limit will not apply to the supporting material, such as the affidavits and exhibits.
26. Hyperlinks are required in respect of all briefs and appendixes or exhibits.
27. All parties with matters booked on the Commercial List are directed to provide all materials that the party intends to rely on – including copies of any materials filed in an earlier Application, in the event that the party intends to rely upon those materials at the hearing – to the Commercial Coordinator in Calgary or Edmonton electronically to the following email addresses:
- a. In Calgary: CommercialCoordinator.QBCalgary@albertacourts.ca
 - b. In Edmonton: CommercialCoordinator.QBEdmonton@albertacourts.ca
28. The Commercial Coordinator should be advised in the booking letter of the specific materials that are required from Court files for the hearing of any particular proceeding. This is particularly important where the matter is on-going or the materials in the Court files are voluminous.
29. In appropriate cases, to supplement any required format, counsel are requested to consider preparing an informal compendium of the key materials to be referred to in argument to assist in focussing the case for the Court. This would include fair extracts of documents, transcripts, previous Orders, and authorities. Relevant portions of the compendium should be highlighted or marked. Counsel are urged to consult among themselves in the preparation of a joint compendium, if possible. The compendium should contain only essential materials.

Part VIII: Moving Matters between Calgary and Edmonton Commercial Lists

30. Under certain circumstances, the Court may permit a matter scheduled on the Commercial List in Calgary or Edmonton to be heard by Justice on the other Judicial Centre's

Commercial List, ie. a matter scheduled on the Calgary Commercial List may be heard by a Justice on the Edmonton Commercial List, or vice versa. For such matters to be heard on the other Judicial Centre's Commercial List, the following conditions must be met:

- a. There is time available on the other Commercial List;
- b. The matter is urgent;
- c. The matter would not require the Justice hearing the matter in the other Judicial Centre to case manage the Action; and
- d. The Co-Chairs of the Commercial Practice Steering Committee both agree that the matter should be heard on the other Commercial List.

This Practice Note is subject to periodic review. Please direct any comments and suggestions concerning the Commercial Chambers initiative to the Commercial Practice Group Co-Chairs, with copies to the Chief Justice and the Associate Chief Justices. The membership of the Commercial Practice Group, including the Co-Chairs, is posted to the Court's website at: <https://www.albertacourts.ca/kb/areas-of-law/commercial>.