

**Commercial List User's Committee:
An Update from the Best Practices Subcommittee:**

By Martin Rosenbaum*, Lawyer

The Commercial List is a specialized Commercial Court within the Ontario Superior Court of Justice in Toronto restricted to commercial and insolvency matters. The Commercial List Users' Committee is a committee made up of members of the bench who sit on the Commercial List from time to time, members of the bar who practice regularly before that court nominated by relevant Bar organizations and representatives of the Court administration. The Commercial List Users' Committee meets regularly to consider improvements to the operations and organization of this specialized court. The Users' Committee makes recommendations to the Regional Senior Justice and the Chief Justice of the Ontario Superior Court of Justice.

The Commercial List Users' Committee established a Best Practices Subcommittee in the fall of 2004 to collect good ideas from the users of that court to improve systems and processes in commercial and insolvency cases. The Best Practices Subcommittee has made it possible to bring forward non-controversial changes to improve practice and procedures on the Commercial List for the benefit of the stakeholders represented by those who practice in that Court.

The work of the Subcommittee is a continuing process which we hope will lead eventually to a relatively complete set of Best Practices that would be formulated for the assistance of users of the Commercial List. Initially, the recommendations of the Subcommittee, as adopted by the Commercial List Users' Committee, do not have the force of the Rules or the Practice Direction but they improve the systems and procedures used by the Court. However, some recommendations might eventually evolve into a future generation of the Practice Direction.

The Subcommittee regularly requests and obtains input from various users and constituents of the system, including, the judiciary, registrars, court administration and members of the bar. Before any suggestions are accepted, the Subcommittee circulates them to all members of the Users' Committee for comment. The members of the Users' Committee in turn circulate the suggestions to their constituents for comment. The comments are then accumulated, reviewed and distilled by the Subcommittee for further refinement, acceptance or rejection by the Users' Committee. Participation by all constituents in the process is encouraged. Many ideas come from experience in other Courts in Ontario and elsewhere. The Subcommittee is an available forum for all constituents to present ideas and suggestions to improve the workings of the Commercial List.

Recommendations Adopted

The Best Practices Subcommittee has recommended the following practices that have been adopted by the Commercial List Users Committee and which have been implemented by the Court:

- 1) Bulk Sales Applications:** Bulk Sales applications can now proceed on the Commercial List.
- 2) Substantive Franchise Disputes:** Matters under the Arthur Wishart Act (Franchise Disclosure), 2000 and disputes relating to compliance with or termination of franchise Agreements, other than collection matters can now proceed on the Commercial List.

3) Application and Counter-Application Materials: In contested applications where there are counter- applications, the Court office assigns a fresh court file numbers to the counter-applications. However, the same affidavit material is generally used for both the main application and the counter-application. In fact, both are usually heard together. The court office had been requiring the parties to duplicate the affidavit material for filing in both court files. In complex matters this results in voluminous duplicative material being filed. The Commercial List office has allowed the parties to file one set of affidavits for use in both the main application and in the counter-application.

4) Standby Times: Where appropriate, matters may be scheduled to be heard on a standby basis for a particular date. If you are scheduling something on a standby basis you must prepare materials and serve them on the other side sufficiently in advance of the standby date to comply with the notice requirements in the Rules. You should notify the other side that the matter is on standby and that counsel should be prepared to proceed on short notice in the event that the standby date is confirmed by the Court. Counsel should contact the Commercial List office regularly to determine whether the matter is confirmed to proceed. If counsel check early and often enough they may discover that the standby date is confirmed earlier than originally expected.

Current Initiatives E-filing has been used in several large CCAA matters recently. However, this has been on a case by case basis using primarily e-mails and PDF documents. There has not been a centralized service to manage or co-ordinate e-filing system or to create a formal Internet based system. CourtCanada.Com demonstrated a revolutionary high tech Internet e-court file system to the Users' Committee. The system development is near completion. This was a preliminary demonstration of the system at work. No decision has yet to be made by the Users' Committee or the Court administration. We hope to hear more about this exciting new development soon.

Late cancellations and last minute adjournments continue to cause scheduling challenges to the Commercial List. This issue has been raised by the Users' Committee, the bench and the bar. Late cancellations and last minute adjournments result in wasted Court resources. The Subcommittee is in the process of giving detailed consideration to framing "Best Practices" for this issue and would appreciate input from all users of the system. Members of the Subcommittee are in the process of looking into various other electronic initiatives to improve, serve and facilitate the work of the bar, including, case and document indexing, and a more sophisticated standby booking system.

FURTHER SUGGESTIONS

If you have any questions or comments on the Commercial List, contact Martin Rosenbaum at 416-364-1919, e-mail mzr@rosenbaum.com or visit www.rosenbaum.com.

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