

## Changes to Commercial List operations in light of COVID-19

March 16, 2020

### **A. General comments**

1. In accordance with the [Notice to the Profession](#) issued by Chief Justice Morawetz, March 15, 2020, all regular matters which have been scheduled and are not urgent, or time sensitive, will be adjourned to after June 1, 2020 subject to any further direction from the court.
2. The judges of the Commercial List will continue to hear and decide urgent and time sensitive matters by teleconference during the COVID-19 pandemic. The court will also hear appropriate time sensitive matters in writing and encourages the use of this process in appropriate cases. For example, in *Lydian International Limited (Re)* 2019 ONSC 7473, the first stay extension motion was done in writing at Chief Justice Morawetz's direction.
3. The Commercial List scheduling office will continue to operate during the closure. Counsel with matters already scheduled will be contacted by the Commercial List office to indicate that the matter will be adjourned to after June 1, 2020.
4. The adjournment will be subject to counsel's indication that this is an urgent or time sensitive matter. The Court will also hear matters where there are immediate and significant financial repercussions which may result if there is no judicial hearing. The Commercial List judges will use their discretion to determine whether a matter should be heard urgently.
5. The same process will be applied to determining the urgency and time sensitivity of new matters.
6. Counsel should email the Commercial List office ([Toronto.commercialist@jus.gov.on.ca](mailto:Toronto.commercialist@jus.gov.on.ca)) with details about any matter they wish to have heard urgently, identifying why the matter is urgent, time sensitive or will result in significant financial consequence. Counsel should also advise of a time estimate for the hearing.
7. Any steps taken by the court or counsel outside the usual procedure due to COVID-19, including proceeding by way of teleconference, should be expressly noted and recorded in the endorsement or order if necessary.

### **B. Conduct of teleconference hearings**

8. If the Court accepts that a matter is to be heard urgently, the Commercial List office will direct counsel to communicate directly with the judge who will hear the matter by email.

9. The matter will proceed by way of teleconference. The Court anticipates having teleconference lines available, some with recording capabilities. In the meantime the court may ask counsel to provide conference facilities.
10. The Commercial List judges expect counsel to follow the three Cs of the Commercial List: cooperating, communicating and using common sense, particularly in terms of scheduling.

**C. *Materials for hearings***

11. Parties should email the judge hearing the matter with all relevant materials necessary for the teleconference hearing, and copy the Commercial List office on the email. The system cannot accommodate large records. Parties should exercise discretion in determining what materials are necessary. Parties should also consider sending large documents by way of secure file share rather than attachments. As set out in the Notice to the Profession, caselaw and other source materials referenced in facta should be hyperlinked. Where hyperlinks are provided, it will not be necessary to file a Book of Authority. The judge will ask for further materials if necessary.
12. Provided the Commercial List office is copied on the email, it is not necessary to file hard copies at this time.

**D. *Affidavits***

13. Parties should have regard to the Law Society's [Virtual Commissioning](#) resource as well as the [Law Society's Corporate Statement re: COVID-19](#) which provides that:
  - a. The Law Society will interpret the requirement in section 9 of the *Commissioners for Taking Affidavits Act* that "every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public" as not requiring the lawyer or paralegal to be in the physical presence of the client.
  - b. Rather, alternative means of commissioning such as commissioning via video conference will be permitted.
14. The Court will accept unsworn affidavits prior to the hearing, provided that a sworn affidavit is provided prior to or at the hearing, or the affiant is available at the teleconference to swear the truth of its contents in accordance with the Notice to the Profession.

**E. Orders**

15. Finalized draft orders should be emailed directly to the judge. The judge will sign the order and send a scanned signed copy to counsel.
16. Orders may be entered at the courthouse. If this changes, the Court will provide further direction.

**F. Urgent matters**

17. Any matters that fall into the following categories will likely be considered to be urgent or time sensitive matters that will be heard:
  - Initial Orders under the CCAA
  - CCAA stay extensions (if parties agree, a draft order on consent can be forwarded to the Judge)
  - Receivership Applications
  - Plans of Arrangements
  - Injunctions
  - Approval and Vesting Orders
18. The Court will also continue to hear urgent bankruptcy applications.

**G. Issuing Claims**

19. The usual process will continue to be followed for issuing new claims on the Commercial List. Counsel should email the Commercial List office with the statement of claim and ask permission to issue on the Commercial List. The request will be considered by the Court in accordance with the normal process. If counsel is running into a limitation period issue, parties may issue electronically on the regular civil list, and then make a request to transfer the matter to the Commercial List

**H. Notice to the profession and stakeholders**

20. The Commercial List requests all Commercial List Users Committee members to distribute this information as soon as practicable, as broadly as possible, to all stakeholders.