



SUPERIOR COURT OF QUÉBEC

Montréal, June 22, 2018

CONSOLIDATED NOTICE TO MEMBERS OF THE BAR SUPERIOR COURT - DISTRICT OF MONTREAL COMMERCIAL DIVISION : GENERAL DIRECTIVES

1. Commercial Matters

Any matter where the initial claim is based primarily on the provisions of the following statutes will constitute a commercial matter and will be heard before the Commercial Division :

a) Statutes of Canada :

- *Bankruptcy and Insolvency Act*
- *Companies' Creditors Arrangement Act*
- *Winding-up and Restructuring Act*
- *Farm Debt Mediation Act*
- *Bank Act*
- *Canada Business Corporations Act*
- *Commercial Arbitration Act* (e.g. : enforcement of awards)

b) Statutes of Québec :

- *Civil Code of Québec :*
 - Articles 2230 *et seq.* (e.g. : dissolution and liquidation of partnerships in commercial matters)
- *Code of Civil Procedure :*
 - Articles 645 *et seq.* (e.g. : homologation of an arbitration award)
 - Articles 652 *et seq.* (e.g. : recognition and enforcement of arbitration awards made outside Québec)
- *Winding-up Act*
- *Business Corporations Act*
- *Securities Act*
- *Act respecting the Autorité des marchés financiers*

- c) And any other matter determined to be commercial by the coordinating judge of the Commercial Division or any other judge designated by the coordinating judge, whether *ex officio* or upon request.

2. General Provisions

- 2.1 Matters before the Commercial Division are governed by the procedural rules of the specific statute in question and, on a suppletive basis, by the *Code of Civil Procedure* and the *Rules of practice of the Superior Court of Québec in civil matters*;
- 2.2 In matters before the Commercial Division, the registrar exercises the jurisdiction granted by section 192 of the *Bankruptcy and Insolvency Act* and, where appropriate, the jurisdiction conferred on special clerks by articles 72 and 73 of the *Code of Civil Procedure*;
- 2.3 The registrar sits in room 16.10;
- 2.4 The judge sits in room 16.12;
- 2.5 Gowns must be worn in both courtrooms, except in July and August;
- 2.6 The calling of the roll is at 8:45 a.m. in room 16.10 and at 9:00 a.m. in room 16.12.

3. Proceedings and Exhibits

- 3.1 In addition to the requirements of the specific statute, every proceeding must, on the first page, contain the words “Commercial Division” under the title “Superior Court”, followed by a reference to the specific statute;
- 3.2 Where a proceeding relates or responds to another proceeding, it must, under the title of the proceeding on the first page, indicate the sequential docket number (plumitif) of that other proceeding;

Example:

CONTESTATION (Relating to proceeding # __)

- 3.3 It is the responsibility of the interested parties to consult the record or computerized docket to confirm the accuracy of the sequential docket number of the proceeding;
- 3.4 The exhibits alleged in a proceeding must not be attached thereto but rather be filed in a separate book with a list of exhibits at least two working days, excluding Saturdays, prior to the hearing;

In addition, a copy of the proceeding in WORD format, along with a copy of the exhibits alleged therein in PDF-OCR format must be supplied by electronic means to the judge assigned to hear the case;
- 3.5 Exhibits must be numbered and paginated in accordance with section 18 of the *Regulation of the Superior Court of Québec in civil matters*;
- 3.6 Unless a judge or registrar orders differently, the court office of the Commercial Division will refuse any proceeding that does not comply with Directives 3.1 to 3.5 and will return it to the parties to be corrected;

3.7 Parties or their counsel may send by email a copy of a proceeding or exhibits to the judge hearing the case. Unless authorized by the judge, no such email shall be sent after 5:00 p.m. of the working day preceding the hearing date. The original of the proceeding must always be filed with the court office of the Commercial Division and Directive 3.4 above must always be observed.

4. Applications

4.1 Applications must include a notice of presentation before the registrar in room 16.10 at 8:45 a.m.;

4.2 No notice of presentation may indicate room 16.12 without the authorization of the coordinating judge of the Commercial Division, a judge, or the registrar;

4.3 If the application falls within the jurisdiction of the registrar, he will adjudicate it. If not, he will refer the application to the judge sitting in room 16.12;

4.4 An application in the nature of an oppression remedy is subject to the filing of a case protocol, using the form "Case Protocol (in civil matters)". Disagreements over the contents of the protocol may be submitted for adjudication by way of a notice of case management served on all the parties and presented in room 16.10;

4.5 No other applications before the Commercial Division are subject to the filing of a case protocol, but they will only be entered on the roll for hearing on the merits once a "Joint Declaration that a File is Complete" has been received (See also Directives 7.3 to 7.5 below).

5. Urgent Matters

5.1 Every application concerning an urgent matter must be filed with the court office of the Commercial Division at least 24 hours preceding its presentation before the registrar in room 16.10;

5.2 The registrar will adjudicate the application if it falls within his jurisdiction. If not, he will refer the application to the judge sitting in room 16.12;

5.3 For an urgent matter to be heard in room 16.12, the coordinating judge of the Commercial Division must be notified at least 24 hours before its presentation to ensure that the judge sitting in room 16.12 or another judge is available to hear it.

6. Incidental Applications

6.1 An incidental application must be notified and filed with the court office of the Commercial Division at least two working days, excluding Saturdays, prior to its presentation in room 16.10;

6.2 The registrar will adjudicate the application if it falls under his jurisdiction. If not, he will refer it to the judge sitting in room 16.12.

7. Scheduling Hearing Dates

7.1 Any hearing of two days or less in room 16.12 is set by the registrar sitting in room 16.10 or by the judge sitting in room 16.12;

- 7.2 Any request for a hearing of more than two days in room 16.12 is referred to the coordinating judge of the Commercial Division;
- 7.3 The hearing on the merits of an oppression remedy is subject to the filing of a "Request for Setting Down for Trial and Judgment by Way of a Joint Declaration" (articles 173 and 174 of the *Code of Civil Procedure*), whereas the hearing on the merits of any other proceeding in the Commercial Division is subject to the filing of a "Joint Declaration that a File is Complete - Commercial Practice", regardless of the planned trial length (see also Directives 4.4 and 4.5 above). Their content must comply with the appropriate forms, available on the Superior Court website;
- 7.4 Any hearing of an application before the Commercial Division must be preceded by the filing of a joint table of admissions indicating the chronology of events and the facts in dispute, as well as a joint list of outstanding issues;
- 7.5 During the roll call in room 16.12, the parties may be called upon to briefly present their respective positions in the form of an "executive summary", so that the judge may, if necessary, better circumscribe the debate.

8. Standard Orders

Any application seeking an order in accordance with one of the standard orders published on the Bar of Montreal website must be accompanied by a copy of the relevant standard order on which are indicated any distinctions, deletions, or additions sought. At the present time, the standard orders are :

- Interim and Final Order pursuant to section 192 of the *Canada Business Corporations Act* or pursuant to sections 414 *et seq.* of the *Business Corporations Act* (Québec);
- Initial Order pursuant to the *Companies' Creditors Arrangement Act*;
- Claims and Meetings Procedure Order pursuant to the *Companies' Creditors Arrangement Act*;
- Vesting Order pursuant to the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;
- Receiving Order pursuant to section 243 of the *Bankruptcy and Insolvency Act*.

9. Case Management Notices

Any case management notice must set out the respective positions of the parties and be presented in room 16.10 before the registrar who will adjudicate any proceedings that fall within his jurisdiction. If the proceedings do not fall within his jurisdiction, the notice will be referred to room 16.12.

10. Special Case Management Applications

- 10.1 Any application for special management of a case must be made by way of a case management notice served on all the parties and presentable in room 16.10;
- 10.2 The application must allege the grounds justifying special management of the case and, if applicable, include the case protocol;
- 10.3 The application will then be referred to the judge sitting in room 16.12;
- 10.4 If it appears to the judge, based on the record and its probable progress, that the case could warrant special case management, the judge will refer the application to the coordinating judge of the Commercial Division for adjudication. If not, the application will be dismissed;

- 10.5 The coordinating judge may, if he or she deems it necessary, refer *ex officio* any Commercial Division case for special case management;
- 10.6 Applications concerning an arrangement under the *Companies' Creditors Arrangement Act* or an arrangement or reorganization under the *Canada Business Corporations Act* or under the *Business Corporations Act* (Québec), are first sent to the coordinating judge of the Commercial Division or a judge appointed by the coordinating judge and, thereafter, automatically referred for special case management;
- 10.7 Notwithstanding any provision to the contrary in these Directives, the judge appointed to manage a case will hear all preliminary and incidental motions, and preside the hearing on the merits, if there is one.

11. Objections

To be scheduled for hearing, debates on objections must be requested by way of a case management notice that includes a joint document grouping the questions and the undertakings sought by subject matter and indicating the time required to adjudicate them.

12. Postponements

- 12.1 Any request to postpone an application scheduled in room 16.12 is heard by the judge sitting there, after prior written notice is given to the coordinating judge of the Commercial Division. The judge will grant the request to postpone only for serious reasons and subject to the conditions he or she deems appropriate. Postponement requests will not be granted based on the sole consent of the parties;
- 12.2 Where a hearing has previously been scheduled in room 16.12, the court office of the Commercial Division will not grant or take note of any request for postponement made by telephone or fax;
- 12.3 The court office of the Commercial Division may grant a request for postponement made by fax for certain proceedings scheduled on the roll of room 16.10, subject to the terms and conditions set out in the Notice to Members of the Bar published on the website of the Bar of Montreal.

13. Particular Directives in Bankruptcy Matters

13.1 Motions

- 13.1.1 As stated in section 11 of the *Bankruptcy and Insolvency General Rules*, any application must be made by motion;
- 13.1.2 Such motion must include, below its title, specific reference to the provisions of the *Bankruptcy and Insolvency Act* and the *Bankruptcy and Insolvency General Rules*;
- 13.1.3 The original of the motion, supporting affidavits and proof of service must be filed with the court office of the Commercial Division at least two working days, excluding Saturdays, prior to the date of presentation;
- 13.1.4 The notice of presentation must indicate that the motion will be presented before the registrar in room 16.10;

13.1.5 If the motion falls within the jurisdiction of the registrar, he will hear the parties or, as the case may be, determine the timetable to prepare the case for trial. In that event, the registrar will postpone the motion *pro forma* to a later date for the scheduling of a hearing date.

13.2 Appeals from Orders or Decisions of the Registrar

13.2.1 Motions in appeal from an order or a decision of the registrar cannot be scheduled on the roll in room 16.12 if the transcript of the hearing before the registrar, including the reasons for judgment, has not been filed with the court office of the Commercial Division;

13.2.1 Prior to fixing such a motion on the roll, the judge or the registrar may require each party to file with the court office of the Commercial Division, within a set deadline, a memorandum not exceeding 10 pages that sets out:

- a summary of the order or decision being appealed;
- the issue(s) in dispute;
- the reasons the appeal should (or should not) be allowed;
- a list of the relevant authorities.

Eva Petras
Associate Chief Justice