



SUPERIOR COURT OF QUÉBEC

Montréal, September 26, 2013

COMMERCIAL DIVISION GENERAL RULES

1. Commercial Proceedings

Any application substantially based upon the provisions of the following statutes is considered a commercial proceeding and must be instituted in 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

b) Statutes of Québec :

Civil Code of Québec:

- Article 2230 (Dissolution and liquidation of partnerships in commercial matters)

Code of Civil Procedure:

- Article 946.1 (homologation of an arbitration award in commercial matters)
- Article 949.1 (recognition and execution of arbitration awards made outside Quebec in commercial matters)

Winding-up Act

Business Corporations Act

Securities Act

An Act respecting the Autorité des Marchés Financiers

- c) As well as any other application of a commercial nature so determined, *ex officio* or upon demand, by decision of the Coordinating Judge of the Commercial Division or of any other judge designated by him.

2. General Provisions

- 2.1 A proceeding in the Commercial Division is governed by the procedure determined by the particular statute and, in a suppletive manner, by the *Code of Civil Procedure* and the *Rules of Practice of the Superior Court of Quebec in Civil Matters*;
- 2.2 The jurisdiction of the Registrar is governed by Section 192 of the *Bankruptcy and Insolvency Act*. When appropriate, the Registrar exercises the jurisdiction of the Special Clerk under Article 44.1 of the *Code of Civil Procedure* in matters instituted in the Commercial Division;
- 2.3 The Registrar/Special Clerk presides in Room 16.10;
- 2.4 The judge presides in Room 16.12;
- 2.5 Attorneys and articling students must be gowned in both rooms, except in July and August;
- 2.6 The calling of the roll is at 9 a.m. in Room 16.10 and at 9:15 a.m. in Room 16.12.

3. Proceedings and Exhibits

- 3.1 In addition to any other requirements of a particular statute, every proceeding filed in the Commercial Division must contain on its front page the words "Superior Court" and the notation "Commercial Division", with a reference to the statute governing the application;
- 3.2 Every proceeding filed at the office of the clerk of the Commercial Division must contain on the first page, under the title of the proceeding, the sequential number from the *plumitif* of the proceeding, if any, to which it relates :

Example :

<p>Contestation: (Related to proceeding #)</p>

- 3.3 It is up to the parties to check the court record or the *plumitif* in order to determine the correct sequential number of the related proceeding;

- 3.4 The exhibits alleged in a proceeding must not be attached to it, but filed in a separate binder accompanied by a list of exhibits;
- 3.5 The pages of any exhibit of more than ten pages must be numbered;
- 3.6 Unless a judge or a Registrar/Special Clerk otherwise orders, the clerk of the Commercial Division will refuse and return to the parties for correction any proceeding that does not comply with Rules 3.1 to 3.5;
- 3.7 No party or attorney shall send any proceeding or exhibit by e-mail to a judge of the Commercial Division unless authorized to do so by that judge. Where same is permitted, no such e-mail may be sent after 5 p.m. on the juridical day preceding the date of hearing, unless previously authorized by the judge in question and without derogation from Article 78 of the Code of Civil Procedure.

4. Introduction of Proceedings

- 4.1 Introductory Motions must contain a Notice of Presentation before the Registrar/Special Clerk in Room 16.10 at 9 A.M. Every amended Introductory Motion must contain a similar Notice of Presentation;
- 4.2 No Notice of Presentation in Room 16.12 may be given without the authorization of either the Coordinating Judge of the Commercial Division, another judge or the Registrar/Special Clerk;
- 4.3 When the parties have negotiated and filed an Agreement as to the conduct of the proceedings, they are not required to be present; in such a case, the Agreement is referred for verification;
- 4.4 In case of disagreement as to the Agreement, the file is referred to the judge presiding in Room 16.12;
- 4.5 After verification of the Agreement, the Court may summon the parties to discuss it in order to ensure proper management of the proceedings (Art. 4.1 *C.C.P.*);
- 4.6 In the case of an oral contestation, the reasons for the contestation must be summarily indicated in the Agreement or in the minutes of the hearing on presentation of the Introductory Motion.

5. Urgent Matters and Applications for Safeguard Orders or Directions

- 5.1 Every Motion concerning an urgent matter or for a Safeguard Order or for Directions must be filed at the office of the clerk of the Commercial Division who refers it to the Registrar/Special Clerk in his office or in Room 16.10;
- 5.2 If the motion falls within his jurisdiction, the Registrar/Special clerk disposes of it. If not, it is referred to the judge presiding in Room 16.12.

6. Incidental Motions

- 6.1 Every incidental motion must be filed at the office of the clerk of the Commercial Division one clear juridical day before its presentation in Room 16.10;
- 6.2 The Registrar/Special Clerk disposes of the motion if the application falls within his jurisdiction. If not, he refers it to the judge presiding in Room 16.12.

7. Fixing of the date of hearing

- 7.1 Every application for a hearing of two days or less in Room 16.12 is fixed by the Registrar/Special Clerk or by the presiding judge;
- 7.2 Every application for a hearing of more than two days in Room 16.12 is referred to the Coordinating Judge of the Commercial Division;
- 7.3 A Joint Declaration that a file is complete must be produced in all files to be scheduled for trial on the merits before the judge sitting in the Commercial Division. This applies in all cases, whatever the estimated length of the trial. The Joint Declaration must contain the information appearing on the [form available on the website of the Superior Court of Québec](#);
- 7.4 In any shareholders' dispute, no hearing date will be set unless and until the respective attorneys attest to the fact that the parties have explored the possibility of settling the matter out of Court.

8. Standard Orders

All Motions seeking conclusions based on the Standard Orders available on the Montréal Bar's website must be in conformity with said Orders or indicate to the Court any and all discrepancies between the Order presented and the proposed Standard form, by underlining additions, substitutions or suggested deletions. For now, the Standard Orders are :

- Interim and Final Order pursuant to the *Canada Business Corporations Act* or its provincial counterpart pursuant to Article 414 of the *Business Corporations Act* (Québec);
- Initial Order pursuant to the *Companies' Creditors Arrangement Act*;
- Order to appoint a Receiver pursuant to Article 243 of the *Bankruptcy and Insolvency Act*.

Coming soon :

- Vesting Order

9. Special Case Management

- 9.1 Every application for Special Case Management must be made by motion presentable in Room 16.10. After presentation, the motion is referred to the Coordinating Judge of the Commercial Division or, in his absence, to the Associate Chief Justice;
- 9.2 Where he deems it appropriate, the Coordinating Judge of the Commercial Division may *ex officio* refer any matter instituted in the Commercial Division for special case management;
- 9.3 Applications for an arrangement under the *Companies' Creditors Arrangement Act* (R.S.C. (1985), c. C-36), or for an arrangement or reorganization under the *Canada Business Corporations Act* (R.S.C. (1985), c. C-44) or under the *Business Corporations Act* (L.Q. 2009, c. 52), are first referred to the Coordinating Judge of the Commercial Division and, thereafter, are automatically referred for special case management;
- 9.4 In the case of an application for an initial order under the *Companies' Creditors Arrangement Act*, or for an interim or final order under the *Canada Business Corporations Act* or the *Business Corporations Act*, it is suggested to submit a draft order similar to the standard order available on the Web site of the Superior Court and on the Web site of the Bar of Montreal;

- 9.5 If the draft order contains variations from the standard order, a copy of the draft with the variations underlined must also be submitted;
- 9.6 Notwithstanding any provisions to the contrary contained in the present Rules, the judge appointed to manage the case hears all the preliminary and incidental motions and, if necessary, presides the hearing on the merits.

10. Objections

No request for the adjudication of objections is fixed for hearing on the roll of Room 16.10 or 16.12 unless the parties first file at the office of the clerk of the Commercial Division a document, preferably joint, setting out the objections, grouping them by subject and indicating the time required for their adjudication.

11. Case management notices

All Case management notices must be presentable before the Registrar in Room 16.10. He will dispose of it if it falls within his jurisdiction or, if not, refer the Case management notice to Room 16.12 if necessary. The presiding judge will then dispose of it or refer it to the Coordinating Judge of the Commercial Division.

12. Postponement

- 12.1 Every application for postponement of a motion presentable in Room 16.12 is heard by the presiding judge, after prior written notice to the Coordinating Judge of the Commercial Division. It will be granted only for serious reasons and on such conditions as are deemed appropriate. No application for postponement will be granted on the sole consent of the parties;
- 12.2 The office of the clerk of the Commercial Division will not grant or consider any application for postponement made by telephone or telecopier for any hearing fixed in Room 16.12;
- 12.3 The office of the clerk of the Commercial Division may grant the postponement by consent of some proceedings fixed on the roll of Room 16.10, subject to the conditions and modalities specified in the Notice to Members of the Bar published on the Web site of the Bar of Montréal.

13. Bankruptcy matters

13.1 Motions

- 13.1.1 As provided in Section 11 of the *Bankruptcy and Insolvency Rules*, every application is made by motion;
- 13.1.2 Every motion must contain under its title the precise reference to the section of the *Bankruptcy and Insolvency Act* and the *Bankruptcy and Insolvency General Rules*;
- 13.1.3 The original of the motion, the affidavits in support thereof and proof of service are filed at the office of the clerk of the Commercial Division at least one clear juridical day before the date of presentation;
- 13.1.4 The notice of presentation of the motion indicates 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 hears the parties or, as the case may be, determines a schedule to ready the file for hearing and puts the motion over pro forma for the purpose of setting a hearing date.

13.2 Appeals of Orders or Decisions of the Registrar

- 13.2.1 No motion in appeal of an order or a decision of the Registrar is fixed on the roll of Room 16.12 until the transcript of the hearing before the Registrar, including the reasons for his order or decision, has been filed at the office of the clerk of the Commercial Division;
- 13.2.2 Before adding an appeal from an order or a decision of the Registrar to the roll of Room 16.12, the judge or the Registrar may require that each party file at the office of the clerk of the Commercial Division, within a prescribed time limit, a brief not to exceed ten (10) pages, which shall set out :
 - a) a summary of the order or of the decision to be appealed;
 - b) the issues to be decided;

- c) the reasons why the appeal should (or should not) be granted;
- d) a list of the relevant authorities.

14. Prior Rules

Effective September 25, 2013, the present rules replace those contained in the Notice to the Members of the Bar dated June 11, 2012.

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