

Commercial Court



NOTICE TO THE PROFESSION 6/2009

COMMUNICATIONS WITH ASSOCIATES

The Judicial Officers of the Commercial Court with the approval of the Chief Justice advise the profession as follows:

1. Communication between the legal profession and associates is frequently necessary for the smooth running of the Commercial Court. All such communication must, however, be undertaken with care to ensure that the impartiality and integrity of the Court is not undermined.¹
2. Communications between an associate and legal practitioners must always be open and uncontroversial. Communication by telephone should be avoided in all but purely administrative routine matters which involve no controversy. Otherwise, email correspondence is preferred with all parties included as recipients. It is the responsibility of each practitioner to disclose to all other practitioners and parties the content of any email or fax correspondence, or phone conversation, between him or herself and an associate.
3. Associates are not permitted to give legal advice and practitioners should not request such advice. Matters that practitioners may helpfully enquire about include:
 - a. The Judge's or Associate Judge's available listing times for applications or directions;
 - b. Whether a summons is required or whether an application can be listed informally;
 - c. How material can be provided for the Judge in addition to filing with Registry.
4. Practitioners must ensure that associates do not become part of the dispute between practitioners or the parties. A practitioner seeking a

¹ See, for example, *R v Fisher* [2009] VSCA 100; *R v Phillips* [2009] QCA 57

time for a hearing or agreement to a course of action should, except in ex parte hearings or where otherwise unavoidable, first inform the other parties before contacting an associate. It is undesirable for one party to secure agreement from an associate of a contested time, or contested course of action, before seeking agreement from other practitioners and other parties. The formal processes available by summons and operation of the Rules should be used to avoid compromising the Court where there is a risk that what a practitioner seeks from, or proposes to, an associate may not be agreed to or may be contested.

5. Matters that practitioners should avoid enquiring about include:
 - a. Whether a Judge or Associate Judge is likely to adjourn a matter on the papers;
 - b. What is the timeframe within which the Judge or Associate Judge is listing matters for trial;
 - c. Whether the Judge or Associate Judge will list a proceeding for trial early, within a specified timeframe, or before pre-trial steps are completed;
 - d. Whether the Judge or Associate Judge will find another Judge or Associate Judge to hear the matter at an early date.

Each of the above queries should be made of the Judge or Associate Judge in open Court with all appropriate parties present.

6. Practitioners should only request that orders be made on the papers by agreement of all relevant parties. Absent agreement on any issue, practitioners should not enquire of the associate if the Judge or Associate Judge will decide that issue on the papers without the matter being ventilated in Court.