

BOOK REVIEW**“THE COMMERCIAL COURT”**

(Thomson Round Hall, 2007)

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Mr. Justice Peter Kelly says in the forward “I cannot think of any lawyer engaged in commercial litigation who would want to admit to not having a copy of this book on their shelves”. Having read Stephen Dowling’s book I would wholeheartedly endorse Mr. Justice Peter Kelly’s view. It is not a book to be read from cover to cover as I have done for this review but rather to be a reference book to which those practising in commercial litigation will revert again and again.

The author demonstrates enthusiasm, energy and erudition in his treatment of the Commercial Court. He has undoubtedly achieved the two objectives stated in his Preface. It is both a comprehensive guide for practitioners on the Commercial Court procedures and a broader analysis of the role that case management plays within the framework of High Court case procedure.

The Introduction commences with Lord Justice Bridge’s observation that “brevity and simplicity are the hand-maidens of justice, length and complexity its enemies”. In the following chapters the book emphasises how the Commercial Court has succeeded to a large measure in achieving brevity and simplicity in its operation and curtailing the enemies of time and minimising the complexity. This is a remarkable achievement in a relatively short period of time, and much credit is due to the judges of the Commercial Court, and in particular Mr. Justice Peter Kelly, whose early Central Office experience combined with his experience as a leading commercial practitioner and judge are clearly to the forefront. Many of us, including the writer,

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remember “the depressingly familiar experience suffered by lawyers and litigants of turning up for trial only to be told there is no judge available to conduct it”, and will be glad that in the Commercial Court it is “a thing of the past”.

Chapter 2 deals with the objectives and imperatives of the Commercial Court, and highlights RSC Ord 63A, r 5 and the overriding purpose of the case management conference which is “to ensure that the proceedings are prepared for trial in a manner which is just, expeditious and likely to minimise the costs of the proceedings”. These objectives are returned to time and again in the later chapters. Further in this chapter there is an interesting discussion of how these three objectives of determining a case justly, expeditiously and in a way which minimises costs can at times compete against each other.

Chapter 3 has a full discourse on proceedings that may gain entry to the Commercial List, and in particular the discretion vested in the Commercial Court judge, and why a case that has as its primary issue a constitutional challenge should not be conducted in the Commercial List. The categorisation of the most common proceedings that have been admitted to the Commercial List contained in this chapter make most interesting reading.

Chapter 4 discusses the four stages of proceedings in the Commercial Court but returns again to the theme of justice, expedition and minimisation of cost. It highlights the necessity for party co-operation, the reasonably short timescales, how trials are focused on the matters which are truly in dispute, and above all how control of the commercial litigation is transferred from the parties to the Court.

Chapter 5 deals with the pleadings and particulars. The author highlights the objective / philosophy of the Commercial Court in that the parties should make every effort to narrow down the issues with a view to saving costs and time. The author places a big emphasis on this, which is often repeated throughout the book. There is a particular emphasis on certain cases which are repeated to good effect, although one could be critical of such repetition.

Chapter 6 assesses the aim of the Commercial Court to identify and clarify as “precisely” and “concisely” as possible all the salient features in the case at an early state. Mr. Dowling in

this chapter again returns to a topic discussed earlier in the book of a weakness, namely that appeals from the Commercial Court are not fast-tracked, and if an appeal of a decision is taken to the Supreme Court the advantage of having the proceedings determined in the Commercial Court can be lost.

Chapter 7 deals with discovery and interrogatories, and stresses the far reaching procedural change whereby parties to proceedings in the Commercial Court are entitled to deliver interrogatories without requiring leave from the court.

Chapter 8 concentrates on expert witnesses and the two key provisions of consultation between experts and exchange of experts' statements. There is a useful discussion on whether the contents of experts' consultations are without prejudice, with the view being expressed that they are in furtherance of settling a dispute but not where there is agreement between the parties.

Chapter 9 contributed by Larry Fenelon deals with alternative dispute resolution (ADR) and the Commercial Court. The Commercial Court judge does not have power to direct that the parties submit the dispute to ADR, and the power is limited to adjourning the proceedings to allow the parties time to consider whether the dispute ought to be referred to ADR.

Chapter 11 deals with evidence in the Commercial Court and the fact that the Commercial Court has an even wider discretion than normal. The court can order that proceedings shall continue either on oral evidence with formal proceedings or without formal pleadings and on affidavit with or without oral evidence. There are an interesting few paragraphs on whether a judge of the Commercial Court could direct that a plenary matter be heard by way of affidavit only, even if one party objects.

Chapter 13 deals with one of the unique features of the Commercial Court, with its capacity of being able to admit and determine proceedings which seek relief by way of judicial review. The difference between the case management of judicial review proceedings in the Commercial Court and the ordinary judicial review list are examined.

Chapter 14 concentrates on costs, and opines that costs in the Commercial Court tend to be "front-ended". This is certainly the case in the reviewer's experience and the commissioned study suggested in this chapter to collect empirical data would be

welcome. Whilst costs are “front-ended”, and in many cases necessarily significant costs are involved in cases before the Commercial Court, when reviewed against the significant costs (including, of course, management resources *etc.*) involved in lengthy delays in litigation outside the Commercial Court it certainly seems that the Commercial Court represents acceptable and attractive value for money. Indeed the success of the Commercial Court bears testament to the view of the business community and its legal advisors.

Overall the author has done a great service for the users of the Commercial Court by writing this book. I would hope that he will in future years author further editions, so as to keep us all up to date with the prodigious workload of the Commercial Court.