

Commercial Court



NOTICE TO THE PROFESSION 10/2009

EARLY NEUTRAL EVALUATION: PILOT PROCESS

- 1 The parties to a proceeding in the Commercial Court seeking to have a without prejudice, confidential and non-binding early neutral evaluation (“evaluation”) of the dispute or of one or more issues in the proceeding should seek a direction from the List Judge that the matter be referred for evaluation.
- 2 The parties shall each provide to the List Judge a written statement identifying precisely the matter sought to be referred and recording its consent to the procedure.
- 3 The process and conduct of an evaluation shall be in the discretion of the Judge or other person (“the evaluator”) appointed by the Judge in charge of the Commercial Court to conduct the evaluation but, unless otherwise directed, the pilot process shall be as follows:
 - (a) The parties shall produce a common folder(s) of only the key documents which are necessary for the evaluation.
 - (b) Each party shall provide a written submission of no more than 10 pages on facts and law.
 - (c) The common folder(s) and written submissions must be provided on the date determined by the evaluator as notified to the parties.
 - (d) The evaluator will appoint a date to meet with the parties (“the hearing”) to answer any questions which the evaluator may have or, at the evaluator’s discretion, to hear any further submissions which a party may seek to make.
 - (e) The hearing with the evaluator will be held in private, shall not exceed half-a-day and any further submissions shall be confined to one hour for each party.
 - (f) The evaluator may give an evaluation at the conclusion of the hearing or at such other time as the evaluator may determine and may do so orally or in writing at the discretion of the evaluator.
- 4 The parties may seek from the evaluator different and particular directions to suit the specific circumstances of the matter to be referred, where the process and conduct described in paragraph 3 above would not be appropriate.

- 5 Parties seeking directions from the evaluator under paragraph 4 shall each provide to the evaluator a written statement:
- (a) identifying precisely the matters sought to be referred for evaluation;
 - (b) identifying precisely the particular directions sought for the process and conduct of the evaluation including:
 - (i) whether the parties propose to lead evidence and, if so, whether that is sought to be done orally, or in writing, and whether with, or without, cross-examination;
 - (ii) the length of any oral hearing;
 - (iii) whether the parties will seek to make submissions and, if so, the time limits to be imposed on any oral submission or the page limits on any written submissions;
 - (iv) whether the parties propose to provide key documents on which they rely;
 - (v) whether there will be any expert report;
 - (vi) whether the evaluator will be asked to provide a written evaluation;
 - (vii) whether a person other than a Judge should be appointed as the evaluator.
- 6 An evaluation will be conducted on a strictly confidential basis to assist the parties to settle their disputes. Communications in relation to the evaluation shall be treated as being without prejudice unless all parties otherwise agree, so that nothing said or produced in, or for, the evaluation may be used or relied upon by the parties outside of the evaluation.
- 7 The costs of an evaluation shall be borne by the parties equally in the first instance unless otherwise agreed between them. The costs, however, may be included in the costs of the proceeding when these are determined.

4 August 2009

Byrne J

Efthim AsJ

Hargrave

Daly AsJ

Pagone J

Gardiner AsJ

Robson J

Kings AsJ

Judd J

Davies J