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**STRICTLY PRIVATE & CONFIDENTIAL**

Mr Justice Peter Kelly  
 Chairman  
 Review of the Administration of Civil Justice  
 The Four Courts  
 Dublin 7  
[submissions@civiljusticereview.ie](mailto:submissions@civiljusticereview.ie)  
**BY EMAIL AND POST**

2 May 2018

**Your ref:**

**Our ref:** DB/KC

MHC-17963394-1

**Matter: Review of the Administration of Civil Justice**

Dear Mr Justice Kelly,

I apologise for the piecemeal nature of my correspondence but I would like to convey one idea for consideration by the group relating to one aspect of discovery. The suggestion relates to commercial cases primarily but may be of wider applicability.

Discovery around quantum is often uncontested because it usually clearly passes the relevance test. Equally, if such discovery is contested, it is usually ordered again because of the clarity around relevance. However, the burden imposed on the party alleging loss by such discovery relating to quantum can be very high. The burden on a defendant in wading through the material provided is also high.

An alternative would be to replace a party's right to such discovery in relation to quantum with a right for the party's designated expert on quantum to access information held by a counterparty sufficient to enable him to give appropriate expert evidence on quantum. This right to information would be subject obviously to the usual undertakings on use and confidentiality.

Given that evidence on quantum in commercial cases is nearly always given by experts and their assessment is based on an interrogation of information made available on discovery, much of which they don't want or need, it is probably easier, quicker and cheaper for experts to interrogate information from the records and systems of counterparties and to form a view based on their review of a party's information in that way.

In their report and their evidence they can disclose what they have reviewed. And as a backstop, a right to discovery could exist if the expert gives evidence that he or she has been precluded from accessing information needed in order to form a view regarding quantum.

An approach like this could at least curtail one aspect of discovery with a cheaper, quicker and better process in some cases.

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Yours sincerely,

A handwritten signature in blue ink that reads "PP Declan Black".

Declan Black  
Managing Partner  
MASON HAYES & CURRAN