2025 Snapshot

Through the Lens of Lenczner Slaght

Lenczner Slaght

Introduction

Our *2025 Snapshot* highlights the most significant developments, decisions, and trends in litigation from the past year across 21 practice areas. Reflect on 2025 and look ahead to 2026 through the lens of our expert litigators. They share their extensive knowledge and insights, exploring key questions such as:

- What was the most interesting development of 2025, and why?
- What's the primary takeaway for businesses from the past year?
- What's one trend you are expecting in 2026?

About Lenczner Slaght

Widely recognized as Canada's leading litigation practice, we have successfully represented clients' interests in some of the most complex, high-profile cases in Canadian legal history. Our lawyers are distinguished by their depth of courtroom experience, appearing regularly at all levels of the federal and provincial courts and before professional and regulatory tribunals, as well as in mediation and arbitration proceedings. We bring expert strategy — backed by rigorous research, skilled data management, and solid administrative support — to demanding cases in all areas of litigation. In short, we're expert litigators.

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Commercial Litigation

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"Investing time and attention in contract negotiation and drafting remains one of the most effective tools for managing commercial risk."

What was one of the most interesting trends of 2025, and why?

In 2025, Ontario courts emphasized that it is not their role to save sophisticated parties from the risk allocation they bargained for. The Court of Appeal's decision in *Wilderness North Air v Hydro One Remote Communities* drove that point home.

The dispute arose from a competitive RFP for fuel delivery services. The winning contract included a $50,000 liability cap. After signing, another bidder persuaded Hydro One to breach the agreement and shift work elsewhere. Wilderness sued for significant damages.

At first instance, the Superior Court found Hydro One liable but declined to apply the liability cap, finding it ambiguous and inapplicable to breaches of the duty of good faith. On appeal, the Court of Appeal upheld the liability finding, but enforced the cap, cutting damages back to $50,000, and confirmed that liability limits can apply even where a party breaches its duty of good faith.

What's the primary takeaway for businesses?

The primary takeaway from *Wilderness* and similar 2025 decisions is simple: courts expect sophisticated commercial parties to live with the contracts they negotiate. Ontario courts remain hesitant to intervene where parties have deliberately allocated risk, even if one side later finds the outcome unfair.

For businesses, this underscores the importance of precise drafting and careful risk assessment at the contracting stage. Courts will generally enforce limitation of liability provisions as written. Equally important, the duty of good faith is not a safety valve that allows courts to rewrite deals or override clear contractual language. While good faith governs how parties exercise contractual rights, it does not expand those rights beyond what the parties agreed.

In practical terms, businesses should assume the words on the page will control the outcome of any dispute. Investing time and attention in contract negotiation and drafting remains one of the most effective tools for managing commercial risk.

What's one trend you are expecting in 2026?

Looking ahead to 2026, one trend to watch is the continued pullback on the duty of good faith in commercial agreements. Since *Bhasin v Hrynew*, the Supreme Court of Canada has clarified the doctrine through related duties, including honest performance (*CM Callow Inc v Zollinger*) and limits on the exercise of contractual discretion (*Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*).

In the years since, provincial appellate courts have applied those principles cautiously. They have consistently limited the reach of good faith in favour of certainty — particularly where sophisticated parties deliberately negotiated risk allocation.

That restraint is on full display in *Royal Bank of Canada v Peace Bridge Duty Free Inc*. There, the Court of Appeal held that a contractual obligation to discuss the impact of an adverse event required the parties to negotiate in good faith, but nothing more. The landlord was not required to agree to a rent reduction, and the Court could not impose one.

This trajectory is likely to continue in 2026. Courts will enforce honesty and fairness in how parties exercise contractual rights, but they will not use good faith to fill gaps, soften clear language, or rebalance the deal after the fact.

OUR COMMERCIAL LITIGATION EXPERTISE

Commercial litigation is the heart of our practice. Our lawyers have a wealth of experience in pursuing complex, high-profile and often highly confidential cases across the spectrum of business-related legal matters. Our well-honed courtroom skills have won the respect of judges and fellow counsel at all levels of the courts – including the Toronto Commercial List, where many of Canada's most complex commercial cases are heard.

Commercial Litigation – Fraud

"Mareva injunctions remain one of the most powerful legal tools for plaintiffs in fraud litigation."

What are some of the most interesting developments and trends of 2025?

Incidents of fraud have been on the rise in recent years, and 2025 was no different.

Faced with the significant impacts of financial harm and the complexities of investigating and recovering assets in the age of deepfakes and generative AI, victims of fraud continue to pursue recovery through the courts. In response, courts have continued the trend of providing parties with necessary protections in civil fraud cases by granting interim injunctive relief and related orders, where appropriate.

While continuously adapting to the evolving fraud landscape by implementing effective and time-critical legal remedies, courts continue to emphasize the powerful and sweeping nature of these extraordinary orders.

Unsurprisingly, *Mareva* injunctions (freezing orders) remain one of the most powerful legal tools for plaintiffs in fraud litigation, restraining defendants from removing or dissipating assets. However, the bar to obtain a *Mareva* injunction remains high, even in fraud cases, and the test to be met can be onerous for the moving party.

Courts will not automatically infer a risk of asset dissipation in fraud cases. Evidence is required. In *Hao Chen v Masih Moazen-Safaei*, the Court granted and continued *Mareva*, digital asset preservation, and *Norwich* (third-party production) orders against most (but not all) defendants alleged to have fraudulently operated a cryptocurrency mining business. The Court denied *Mareva* injunctions against some defendants due to insufficient evidence of asset dissipation, emphasizing that proving the risk of dissipation with strong evidence remains crucial. It is not enough to show a strong *prima facie* case of fraud (that is, a case that appears valid before considering any defense or rebuttal). Instead, courts employ a contextual analysis, considering the nature and circumstances of the alleged fraud and the defendants' overall conduct before finding a risk of dissipation.

Similarly, in *Sherif Gerges Pharmacy Professional Corporation v Niam Pharmaceuticals Inc*, the Court denied a *Mareva* injunction despite finding a strong apparent case of conversion and past evidence of the respondents' dishonest conduct. The Court found insufficient risk of asset dissipation to satisfy a judgment likely to be obtained.

In addition to the evidentiary burdens on a plaintiff or applicant, obtaining a *Mareva* injunction may require heightened obligations of candour and disclosure when sought on an *ex-parte* (without notice) basis. In those circumstances, the Court demands full and frank disclosure of all material facts, including those unhelpful to the plaintiff's case. Failure to make proper disclosure may lead to the Court to set aside the *Mareva* order and/or award adverse costs.

In *Saeed Tabrizi v Vahid Farjami*, involving allegations of a $24 million fraud around a failed airline ticket financing business, the plaintiffs successfully obtained *Mareva* and *Norwich* orders. The Court subsequently found the defendants in contempt for breaching the *Mareva* but set the injunction aside after finding the plaintiffs failed to disclose several "material" facts in obtaining those orders. The Court held that this failure undermined the integrity of the Court's process. The plaintiffs have since obtained leave to appeal to the Divisional Court, arguing that the motion judge's decision risks undermining the effectiveness of *Mareva* injunctions in civil fraud cases by elevating technical nondisclosures over substantive justice. The decision remains under reserve and it remains to be seen if the Divisional Court will find that courts should exercise their discretion to maintain a *Mareva*, even with an omission in disclosure, if doing so serves the interest of justice in clear cases of fraud.

What's the primary takeaway for businesses from the past year?

When considering seeking a *Mareva* injunction, businesses should thoroughly understand the available evidence relating to fraud and the fraudster's available assets. This type of upfront diligence serves the goal of avoiding common pitfalls; namely, failure to make full and frank disclosure and lacking sufficient evidence of a serious risk of asset dissipation.

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OUR COMMERCIAL LITIGATION EXPERTISE

Commercial litigation is the heart of our practice. Our lawyers have a wealth of experience in pursuing complex, high-profile and often highly confidential cases across the spectrum of business-related legal matters. Our well-honed courtroom skills have won the respect of judges and fellow counsel at all levels of the courts – including the Toronto Commercial List, where many of Canada's most complex commercial cases are heard.

Commercial Litigation – Shareholder Disputes

"Stabilize the business first; sort out the merits later."

What was the most interesting development of 2025, and why?

In 2025, courts doubled down on a pragmatic approach to shareholder disputes: stabilize the business first; sort out the merits later. Judges continue to favour interim and interlocutory remedies such as targeted injections, information-sharing orders, and bespoke standstills while building an orderly pathway to resolution. In *Meier v Wegmart Ltd*, Justice Schabas removed conflicted directors and appointed auditors rather than ordering a wind-up.

While targeted interim relief is the default toolkit, we have seen an increased readiness to impose separation frameworks where parties agree that a split is inevitable but disagree on the terms. In *Penelas v Cruise*, Justice Kurz channeled a stalemate into a buy/sell pathway while mandating ongoing financial transparency. Court-imposed frameworks tend to feature carefully calibrated remedies and mechanics to deter gamesmanship. Courts preferred targeted director-level interventions and independent auditing over drawn-out oppression trials.

The Morgan Investments Group v ADI Development Group Inc is emblematic of the court's ethos. In this decision, the court first restored the status quo and blocked related-party loan enforcement used for leverage and then imposed a court-supervised buyout with clear timelines and interest adjustments.

What's the primary takeaway for businesses from the past year?

The lesson has not changed, especially with the faster and targeted remedies ordered by the Court: well-drafted shareholder agreements, clean separations between corporate and shareholders' counsel, and disciplined communications remain key when relationships sour.

Where litigation is unavoidable, external advisors can assist in developing a credible interim plan that preserves value and transparency. Early independent legal and accounting input will often be determinative in who steers the company pending resolution.

Parties that fared best arrived with up-to-date shareholder agreements, defined deadlock mechanisms, independent corporate counsel, and disciplined communications. They proposed proportionate interim fixes, including information regimes, interim budgets, and non-disparagement undertakings. Good governance matters (accurate minutes, timely disclosures, and tidy communications) will reduce the evidentiary basis for the oppression claims. Courts reward practical proposals that limit the risk of harming – or ending – successful and long-standing businesses.

What's one trend you are expecting in 2026?

In 2026, we anticipate a shift in how parties litigate shareholder disputes. Courts will increasingly expect parties to move away from "finger-pointing" affidavits and toward front-loaded expert evidence to prove oppressive conduct. Shareholder disputes get ugly fast because they are personal. Founders, family members, and long-time partners bring years of history to their disputes, and emotions can turn every email or text message into Exhibit A.

As the Court of Appeal noted in *Kong v Au*, shareholders cannot simply allege that a company is being run poorly to obtain oppression relief against a co-shareholder; they must prove it with qualified expert evidence. In 2026, expect courts to focus on expert-led processes, including independent valuations and forensic accounting instead of sprawling credibility contests. The aim is fewer narrative battles about motives and more verifiable answers to help parties reach fair, efficient resolutions.

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OUR COMMERCIAL LITIGATION EXPERTISE

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Commercial Litigation – Real Estate

"If there is a breach of any term or condition and you want to terminate the contract, act immediately, clearly communicate the termination, and ensure your conduct aligns with the intention to terminate."

What was an interesting development in 2025, and why?

In real estate transactions, courts continue to prioritize the parties' conduct when determining the existence of an agreement. This was reiterated in *VanderMolen Homes Inc v Mani*, in which the Court of Appeal released a summary judgment finding that, although the agreement's deadline had expired, the purchasers' subsequent conduct indicated they continued to treat the agreement as binding, and therefore breached that agreement by failing to close.

As we noted in our 2024 Real Estate Snapshot, courts continue to apply "time is of the essence" clauses. Those clauses mean what they say, and they entitle the innocent party to terminate the agreement if a deadline is missed. However, if the innocent party continues to treat the agreement as in effect after the deadline (either by words or conduct), they will continue to be bound by it. The lesson for buyers and sellers is clear: if there is a breach of any term or condition (including a "time is of the essence" clause) and you want to terminate the contract, act immediately, clearly communicate the termination, and ensure your conduct aligns with the intention to terminate.

What's a key takeaway for businesses from the past year?

As always, landlords are reminded to ensure their lease agreements expressly contain all material terms, including terms necessary to protect themselves. In *Java Investments v 1000225661 Ontario Inc*, the landlord leased its premises to a tenant who intended to use the leased premises as a cannabis dispensary, and believed the tenant had a "legal right" to do so. The landlord used a standard form lease agreement that contemplated the landlord preparing a more comprehensive lease agreement at a later date but never did so. After the City of Toronto issued a "barring order" under the *Cannabis Control Act*, the landlord was convicted of a provincial offence and fined. The landlord brought an application to declare the lease was terminated, arguing the lease contained implied terms requiring the parties to comply with provincial laws and prohibiting the tenant from conducting business in a manner that subjects the landlord to provincial enforcement measures. While the landlord was ultimately successful, the path needed to obtain that relief was costly and could have been avoided had those implied terms been explicit in the lease agreement.

Landlords are also reminded to act quickly when seeking to exercise their rights. Although the *Real Property Limitations Act* sets out a 10-year limitation period for "an action to recover any land or rent," the Ontario Court of Appeal has again reiterated in *6971971 Canada Inc v Messica* that the fact that "real property is incidentally involved" does not allow claimants to escape the two-year limitation period under the *Limitations Act* when bringing actions for damages for breach of contract.

What's something you are monitoring in 2026?

As discussed in our 2024 Real Estate Snapshot, we have been following the outcome in *Canada Life Assurance Company v Aphria Inc*, where the appellant unsuccessfully argued that commercial landlords should have a duty to mitigate damages when they reject a tenant's repudiation of a lease without terminating the contract. However, the Court of Appeal remarked that this issue was perhaps best left for the Supreme Court of Canada.

As it turns out, the appellant has now successfully obtained leave to the Supreme Court of Canada. A number of parties have been granted standing to intervene, including the Real Property Association of Canada, represented by Lenczner Slaght. The Supreme Court will be hearing the appeal on February 18, 2026, and we will monitor it closely. What the Court ultimately decides could have significant ramifications for commercial landlords and the steps they take after a tenant defaults on the lease.

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OUR REAL ESTATE EXPERTISE

Lenczner Slaght regularly represents the major players in real estate transactions, including developers, property managers, vendors, purchasers, landlords, tenants, lenders, and borrowers. Our real estate practice includes complex litigation matters involving agreements of purchase and sale, broker negligence, condominium disputes, construction contracts, defects and liens, injunctions, lease and mortgage enforcement, real estate investment consortia, tax matters, and more.

Artificial Intelligence

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OUR AI EXPERTISE

The current landscape is inundated with narratives surrounding AI and its intersection with the law. As advocates focused on the future, we are able to build interdisciplinary teams and bring together subject-matter experts to address new and complex problems, like AI, for our clients.

"Canadian courts are open for business. They are now hearing AI disputes, and rightsholders have reason for optimism."

What was the most significant development of 2025, and why?

Canadian courts are now hearing AI disputes, and rightsholders have reason for optimism.

In 2025, rightsholders launched several proposed class actions against companies providing AI products, including Apple, OpenAI, Microsoft, Meta, Anthropic, Stability AI, and Google, primarily alleging copyright infringement. Courts have not yet certified any of these proposed proceedings. In parallel, some rightsholders have engaged Canadian courts outside the context of a class proceeding, with many defendants already contesting the jurisdiction of Canadian courts.

In November 2025, the Ontario Superior Court (Commercial List) delivered its decision in *Toronto Star Newspapers Limited v OpenAI Inc* – a watershed moment for AI litigation in Canada. Seven major Canadian media organizations, represented by Lenczner Slaght, sued OpenAI for copyright infringement, breach of contract, and unjust enrichment over the alleged misappropriation of online content to generate and operate its commercial AI products, including ChatGPT. OpenAI moved to dismiss the case, arguing it should proceed in the United States where similar lawsuits are pending. The Court rejected this, finding that six OpenAI entities carry on business in Ontario through Canadian customers, contracts, and trademarks. The Court also dismissed OpenAI's argument that Canadian courts should defer to pending US litigation: "The fact that similar claims may arise and be pursued in two different jurisdictions that may have different laws is not a reason to block the claims in one jurisdiction from proceeding."

This matters because AI companies have relied heavily on fair use and constitutional pre-emption defences in the United States – neither of which translates easily to Canada. Canadian fair dealing is narrower than American fair use: our doctrine is limited to specific enumerated purposes in the *Copyright Act* and does not recognize transformative use as a factor potentially protecting AI training. As one Canadian court has observed, "what may be transformative, and as a result fair use in the US, may still be copyright infringement in Canada." OpenAI has appealed, but the message is clear: Canadian courts are open for business.

What's the primary takeaway for businesses from the past year?

AI assistance does not reduce responsibility; it may increase it.

In 2025, a striking pattern emerged across courtrooms and regulatory guidance: businesses need to carefully consider their responsibility surrounding the use of AI outputs. This may come as no surprise to those who followed the case in which Air Canada was held to statements its AI customer service chatbot made to a sympathetic customer seeking a modest bereavement refund.

Courts applied similar expectations in 2025, repeatedly condemning counsel's unsupervised use of AI in the context of submitting fictitious authorities. Practicing what they preach, courts established that no judge is permitted to delegate decision-making authority to a computer program regardless of its capabilities.

Beyond the courtroom, employers in Ontario are now required, as of January 1, 2026, to disclose when they use AI in publicly advertised job postings to screen, assess, or select job applicants, enabling hiring decisions to later be evaluated for fairness. This is simply the latest instance of the converging trend: Canada's Directive on Automated Decision-Making (updated in 2025) imposes accountability requirements scaled to risk level. The Office of the Superintendent of Financial Institutions' principles require explainability (how an AI model arrives at its conclusions) in financial AI decisions, and Privacy Commissioners' principles ensure AI output accuracy can be reasonably assessed and validated.

What's one trend you are expecting in 2026?

Ownership of AI-generated content.

In November 2025, an AI-generated country song topped Billboard's Country Digital Song Sales chart and accumulated millions of streams with no human performer. Billboard now reports at least one AI artist charting weekly across genres. This raises a question we've closely tracked: who owns AI-generated outputs? Canada has recognized an AI tool as a co-author of a visual work, but this registration is being challenged, with a Federal Court decision expected in 2026.

As Canadian courts weigh in, we expect that purely AI-generated outputs will be harder to protect. Regardless of industry, documented human involvement may become essential for patent or copyright protection.

Appeals

"While the proposed reforms to the Rules of Civil Procedure will have several direct impacts on appeals, perhaps its largest impact will come from its changes to pre-trial procedure."

What was the most interesting development of 2025, and why?

The Civil Rules Review Working Group advanced the far-reaching reform to Ontario's *Rules of Civil Procedure* slated to begin in 2026. The headline change for appeals relates to the distinction between interlocutory and final orders. The Civil Rules Review Working Group proposes to provide an objective list of final orders and define interlocutory orders by exclusion. These changes should save litigants time and costs by reducing unnecessary appeals and re-direction to the Divisional Court by the Court of Appeal on matters it considers interlocutory.

To minimize interlocutory appeals, the Civil Rules Review Working Group recommends merging all interlocutory orders with the final order and providing a right of appeal at interlocutory orders with a broader appeal in the merits.

For instance, instead of appealing a discovery ruling mid-case, parties could wait until the final judgment, which should streamline litigation and reduce costs.

To facilitate access to justice, judges issuing orders will be required to:

- label each order as final or interlocutory
- identify the appropriate appellate court
- indicate the deadline for filing a notice of appeal

Finally, the Civil Rules Review Working Group recommends codifying commonly applied procedural tests in the *Rules of Civil Procedure*, including tests for:

- extending the time to file or perfect appeals
- seeking an expedited appeal
- introducing fresh evidence on appeal

What's the primary takeaway for businesses from the past year?

The Supreme Court of Canada confirmed the broad and ongoing disclosure obligations of publicly traded companies in its first securities decision in several years: *Lundin Mining Corp v Markowich*. Lenczner Slaght represented the intervener, CFA Societies Canada, in this important matter.

The Supreme Court clarified the distinction between a "material fact" and a "material change" in Canadian securities regulation. Under the Ontario *Securities Act*, a "material fact" is "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities." While a company must disclose a "material fact" periodically, it need not do so "forthwith." A "material change" is a "change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer" and must be disclosed "forthwith."

Emphasizing the goal of alleviating informational asymmetry between issuers and investors, the Supreme Court adopted a flexible model for interpreting "material change," holding that a development in the business, operations, or capital of an issuer need not be important or substantial to constitute a change. The Supreme Court declined to provide a rigid definition of "change" or "business, operations or capital." Instead, it held that the interpretation of these terms is a matter of judgment and common sense unique to the circumstances of each case.

Bottom line: when in doubt, issuers should err on the side of disclosure to avoid regulatory risk.

What's one trend you are expecting in 2026?

While the proposed reforms to the *Rules of Civil Procedure* will have several direct impacts on appeals, perhaps its largest impact will come from its changes to pre-trial procedure. The proposed reform includes several changes to reduce the pre-trial motions culture in litigation. If successful, these changes should mean a reduction in pre-trial appeals.

That said, the proposed reform is liable to come with some growing pains. Where the changes to the *Rules* produce confusion or conflict, parties will seek authoritative guidance from Ontario's appellate courts. We therefore expect an early increase in appeals to clarify the new *Rules*.

Businesses and their counsel should prepare by closely monitoring appellate decisions following the new *Rules* and updating their litigation strategies accordingly. Early adaptation will be key to avoiding procedural missteps.

Read our guide, A New Vision for Litigation, for a full summary of the proposed changes and important considerations for in-house teams to prepare for a smooth transition.

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OUR APPEALS EXPERTISE

We are active in pursuing or defending appeals. Our lawyers have argued hundreds of appeals before all appellate courts, including several provincial courts of appeal, the Federal Court of Appeal and the Supreme Court of Canada. Our lawyers have argued some of the leading appellate cases before the Supreme Court of Canada, including on matters of contract law, constitutional law, and conflict of laws.

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OUR CLASS ACTIONS EXPERTISE

Our lawyers' class actions expertise has been sharpened through hands-on experience in a wide range of complex and technically demanding proceedings. Our firm has defended many of Canada's most closely watched class action lawsuits over the past three decades. It's that experience that has led to our lawyers being repeatedly recognized by various organizations as leaders in the class action bar.

Class Actions

"While the evidentiary burden on certification is lower than it is at trial, rules of evidence continue to apply with equal veracity."

What was the most interesting development of 2025, and why?

In 2025, the Ontario Court of Appeal continued the recent Canadian trend of emphasizing the importance of the class definition on certification.

In *Kinsley v Canada (Attorney General)*, the Ontario Court of Appeal overturned the motion judge's certification of a class action involving disability benefits for veterans. The plaintiff was required to amend the too-broad class definition as a condition of certification. The Court of Appeal refused to certify the class action, emphasizing three key points:

- The *Class Proceedings Act* does not contemplate conditional certification.
- The class definition impacts the other certification criteria.
- Conditional certifications create a variety of issues.

This case can be contrasted with the late 2024 decision *Ingram v Alberta*, where the Court similarly found the proposed class definition unworkable but adopted an alternate definition from the plaintiffs' reply brief and clarified that definition itself.

Together, these cases demonstrate the increased focus on workable class definitions at certification and highlight the uncertainty relating to the Court's ability to fix issues relating to that class definition

What's the primary takeaway for businesses from the past year?

Courts in 2025 emphasized the kinds of damages that are (and are not) compensable in product liability class actions. Notably, damages requiring individual trials, and pure economic loss damages, are not compensable.

In *Syngenta AG v Van Wijngaarden*, the British Columbia Court of Appeal addressed a negligence-based class action alleging that an agricultural product was toxic. The Court declined to certify a common issue of general damages because the plaintiffs could not prove that the defendants' negligence caused each class member's specific losses without individual trials. In making this finding, the Court emphasized that causes of action in negligence, which aim to compensate individuals for harms suffered, are different than causes of action in the *Charter* context, where damages may serve purposes beyond compensation.

In *North v Bayerische Motoren Werke AG*, the Ontario Court of Appeal reaffirmed that pure economic loss damages (i.e., damages that are unconnected to physical or mental injury to the plaintiff's property or person) are not recoverable at all. In *North*, the class members had paid to repair a defective chain assembly system in certain BMW vehicles. The Court found these losses were purely economic and would have been compensable only if the repairs were necessary to avert danger. Accordingly, the Court refused to certify the relevant negligence causes of action.

What's one trend you are expecting in 2026?

In 2026, we expect courts to continue grappling with the evidence required to make out the "some basis in fact" standard for certification. This issue has been a consistent focus in recent years, including in 2025.

For example, in *Price v Smith & Wesson Corporation*, the Court of Appeal reaffirmed the low bar required to satisfy the "some basis in fact" standard on certification. The Court overturned the motion judge's refusal to certify certain causes of action in negligence because the motion judge held the plaintiff to too high an evidentiary standard, including by scrutinizing expert evidence and conducting its own research. By contrast, in *Syngenta*, the Court emphasized that despite the less onerous evidentiary standard on certification, the rules of evidence themselves are not relaxed. In particular, the Court reaffirmed that evidence must be relevant and not subject to an exclusionary rule to be admitted, and that the public record exception to the hearsay rule does not apply to all publicly available documents.

Judicial determinations on the evidence required at certification are crucial to success or failure at certification. 2025 taught us that, while the evidentiary burden on certification is lower than it is at trial, rules of evidence continue to apply with equal veracity. Only time will tell what we learn in 2026.

Commercial Arbitration

"Enforcement risk depends heavily on jurisdiction. Canadian courts treat consent to arbitrate as consent to enforcement."

What was the most interesting development of 2025, and why?

Arbitrator impartiality and the limits of judicial intervention remained a central theme in 2025. The Ontario Court of Appeal reaffirmed the judiciary's strong commitment to arbitral finality alongside a heightened sensitivity to procedural fairness in *Vento Motorcycles, Inc v Mexico*. The Court held that a reasonable apprehension of bias on the part of any arbitrator taints the award as a whole and requires it to be set aside, even where the decision was unanimous and the impugned arbitrator did not control the outcome. The Supreme Court of Canada's denial of leave to appeal in *Aroma Franchise Company, Inc v Aroma Espresso Bar Canada Inc* and *Vento Motorcycles, Inc v Mexico* left this approach intact.

Together, these decisions confirm that courts will not entertain merits-based appeals under the guise of set-aside applications but will intervene where procedural fairness is genuinely at issue.

Courts approached interlocutory matters with the same perspective. In *Lochlan v Binance*, the Court granted an anti-suit injunction to stop an arbitration from proceeding in Hong Kong where the arbitration clause had previously been found unconscionable by the Ontario court. At the same time, courts confirmed the principle of deference to arbitral tribunals on jurisdictional, interlocutory, and procedural matters in *Fredericks v South Western Insurance Group Limited*, *2859824 Ontario Limited v Gen Digital Inc*, and *Alberta Investment Management Corporation v LAPP Corporation* (Lenczner Slaght represented the respondents in this matter).

What's the primary takeaway for businesses from the past year?

Canada's pro-enforcement stance in arbitration remained strong in 2025, including in cases involving sovereign states. In *CCDM Holdings LLC v Republic of India*, the Québec Court of Appeal confirmed that India waived any claim to sovereign immunity at the enforcement stage by agreeing to arbitrate under a bilateral investment treaty. Enforcement proceedings in Canada could therefore move forward in respect of the USD $111 million award, clearing a major jurisdictional hurdle for investors seeking recovery.

This case stands in contrast to enforcement efforts in other jurisdictions involving the same parties. The United Kingdom High Court refused to enforce the award on the basis that India retained state immunity in *CC/Devas (Mauritius) Ltd & Ors v Republic of India*. That Court held that while India had agreed to arbitrate, consent was not sufficient on its own to waive immunity under the UK's *State Immunity Act*.

The Full Federal Court of Australia reached a similar conclusion, holding that India's agreement to arbitrate under a treaty did not waive its immunity from enforcement proceedings under Australia's *Foreign States Immunities Act*.

For businesses and investors with awards against states or state-owned entities, the takeaway is clear: enforcement risk depends heavily on jurisdiction. Canadian courts, as confirmed in *CCDM*, treat consent to arbitrate as consent to enforcement, offering a more predictable and efficient path to recovery than the UK or Australia.

What's one trend you are expecting in 2026?

We expect the use of artificial intelligence in arbitration to prompt greater procedural oversight in 2026. In late 2025, the Chartered Institute of Arbitrators released its *Guideline on the Use of AI in International Arbitration*, calling for early disclosure of AI tools, clear agreement between parties on how AI will be used, and confirmation that decision-making remains with the arbitrators.

Although the guideline isn't binding, we expect it will have an impact on practice, especially in places like Canada where arbitrators have wide procedural discretion but no specific rules on AI. Even without legislation, Canadian tribunals can still adopt these principles through procedural orders and party agreements.

For parties, the message is simple: address AI early and openly. Mismanaging AI use could raise fairness concerns and even enforcement risks. As AI tools become routine, tribunals and counsel will need to treat them like any other procedural issue.

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OUR ARBITRATION EXPERTISE

Clients sometimes choose arbitration for cases involving complex or confidential matters that can be resolved more efficiently, expeditiously and predictably behind closed doors. In other cases, clients turn to arbitration for cross-border disputes or cases involving multiple jurisdictions, where the legal issues are typically complex and often involve competing jurisdictions and conflicting substantive law. In either case, our extensive and unrivalled trial experience makes us a top choice for arbitration clients.

Competition

"The Competition Bureau made it clear that it is intensifying enforcement action against anti-competitive behaviour, particularly against those who engage in drip pricing."

What was the most interesting development of 2025, and why?

The most interesting development of 2025 was the limited private proceedings, despite the recent amendments to the *Competition Act*. When new powers were introduced in June 2025 that enabled private litigants to seek remedy at the Competition Tribunal, many predicted a rapid influx of applications for relief. Historically, private access to the Competition Bureau has been limited. Since 2002, 32 leave applications have been filed, but only nine granted. New provisions expanding access rights were expected to cause those numbers to increase dramatically. However, through the end of 2025, only one application under these new provisions was brought. This is likely due to two main uncertainties:

- The unclear legal test private litigants must meet when bringing an application for leave to the Tribunal.
- More practically, uncertainty on the part of plaintiffs' counsel regarding their ability to get paid in these leave applications. These amendments have seemingly created a quasi-class action regime without the well-established court infrastructure that supports traditional class actions.

The first source of uncertainty will be mitigated by the Tribunal's early 2026 decision in *Martin v Alphabet Inc*, which provides clarity about the leave test for the new "public interest" leave provisions.

Also of particular interest is Google's recent constitutional challenge to the 2022 and 2023 amendments to the *Competition Act* regarding potential administrative monetary penalties. The most recent amendments have dramatically increased the administrative monetary penalties a party could be subjected to, including penalties up to 3% of a business's global revenue. Google has challenged these provisions, arguing they are "true penal consequences" and, therefore, are a violation of the *Charter*. The Bureau, on the other hand, argues these new provisions are remedial and designed to ensure compliance, not punitive measures. This case was heard in Fall 2025, but no decision has been made yet.

What's the primary takeaway for businesses from the past year?

Throughout 2025, the Bureau made it clear that it is intensifying enforcement action against anti-competitive behaviour, particularly against those who engage in drip pricing. The Bureau defines drip pricing as the "practice of promoting something at one price, while concealing the real price from consumers until later in the purchasing process."

In 2024, the Bureau obtained a nearly $39 million administrative monetary penalty from Cineplex for their drip pricing practices, and it showed no signs of slowing down in 2025. In May 2025, the Bureau brought an application against Canada's Wonderland for drip pricing, alleging the park's advertised pricing is misleading because it does not disclose a mandatory processing fee (which can range from $0.99 to $9.99 per purchase).

The Bureau's recent crackdown signals that businesses must be transparent with their pricing at the first instance and should take particular care to ensure that multi-step purchasing processes show the consumer the entire cost as early as possible.

What's one trend you are expecting in 2026?

The Bureau is set to amend several of their guidelines in 2026, including the abuse of dominance enforcement guidelines, parts of the competitor collaboration guidelines, price maintenance guidelines, and merger enforcement guidelines. The new guidelines are currently under review and should be implemented at various times throughout 2026. Combined with the sweeping amendments to the *Competition Act* in recent years, these new guidelines signal a new era of competition law in Canada. Businesses can expect the Bureau to continue their rigorous efforts to crack down on anti-competitive conduct in 2026, while potential litigants will benefit from the added clarity the updated guidelines will provide.

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OUR COMPETITION EXPERTISE

Lenczner Slaght has extensive experience in all areas of competition litigation. We regularly act in cases involving alleged breaches of the *Competition Act*, including misleading advertising, price fixing, and other conspiracy cases. We also represent defendants in competition class actions. Our clients include leading multinational manufacturers, auto parts companies, and technology companies, among others. Our courtroom experience, combined with our deep understanding of strategic business issues, allows us to provide effective representation for both Canadian and international clients in the most vigorously contested disputes.

Construction

"The new year brought with it a new and improved Construction Act, with amendments finally taking effect on January 1, 2026."

What was the most interesting development of 2025, and why?

Ontario's construction industry has experienced rapid growth over the past few years while navigating increased market risks caused by the implementation of stifling tariffs and other supply-chain issues. The most interesting development in 2025 was the continued introduction of legislative reform at both the provincial and federal levels, aimed at building more projects (and building them faster) by cutting red tape. The legislation passed in 2025 which sought to accelerate construction included:

- **Bill 60, *Fighting Delays, Building Faster Act*** – Bill 60 amends the *Construction Act* and the *Development Charges Act* to reduce regulatory and financial barriers for builders, enhance transparency and consistency across municipalities, and support rural and transit-oriented growth.
- **Bill C-5, *One Canadian Economy Act*** – Bill C-5 promises to fast-track infrastructure projects deemed to be in the "national interest" by allowing cabinet to override existing laws, regulations, and guidelines to facilitate investment and the building of these projects. Bill C-5 shifts the focus from whether a project should be built to *how* to get the project built.
- **Bill 17, *Protect Ontario by Building Faster and Smarter Act*** – As its name suggests, Bill 17 aims to speed up developments by limiting municipalities' gatekeeping role in the approval process, expanding the types of projects exempt from certain *Expropriations Act* provisions, and streamlining processes to create more consistent and predictable requirements across municipalities.
- **Amendments to the Ontario *Building Code*** – The new *Building Code Act* aims to reduce regulatory burdens for the construction industry, making it easier to build housing by streamlining processes for the sector and increasing harmonization with national construction codes.

What's the primary takeaway for businesses for this year?

The new year brought with it a new and improved *Construction Act*, with the amendments initially proposed in 2024 finally taking effect on January 1, 2026. The construction industry can expect some growing pains as we enter the transitionary period. Some particularly important changes to be aware of include:

- **Enhanced Payment Practices** – As noted in our 2024 Construction Snapshot, the amended *Construction Act* requires all owners to make annual holdback payments in construction contracts lasting longer than one year.
- **Termination Notice Requirements** – Section 31 of the *Construction Act* has been amended to require parties to publish termination notices within seven days to preserve lien rights and to post them on one of the accepted public sites.
- **Lien Rights Do Not Expire Annually** – Bill 60 decoupled the annual holdback release from annual lien expiry. Lien preservation timelines will continue to operate as under the pre-2026 version of the *Construction Act*.

What's one trend you are expecting in 2026?

Given recent market pressure and ongoing legislative reform, we expect a shift from traditional project delivery models (e.g., design-build-finance-maintain) to more progressive design-build delivery models, including the increased use of pain-share/gain-share mechanisms in large construction contracts.

Although the uptick in alternative project delivery methods will be a welcome change for many, this shift will bring new challenges and will require construction industry participants to develop and adopt new claim strategies. The progressive design-build delivery model is relatively new to Canada, and it remains unclear how disputes under such contracts will play out. Organizations with projects governed by alternative project delivery models should seek early guidance (before disputes arise) to maximize the likelihood of successful outcomes.

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OUR CONSTRUCTION & INFRASTRUCTURE EXPERTISE

Lenczner Slaght handles some of the largest, most complex, and high stakes construction matters in Canada. Our litigation experience covers the spectrum of construction matters, from insurance claims, disputes relating to progress payments, holdbacks, and liens, and claims relating to delay and disruption, defects, omissions, and other performance issues.

Defamation

"Courts will generally not protect false and malicious statements that are likely to cause serious harm, even if they relate to a matter of public interest."

What were the most interesting developments of 2025, and why?

In 2025, the Supreme Court of Canada granted leave to appeal the decision in *Benchwood Builders, Inc v Prescott*. We previously analyzed the Ontario Court of Appeal's decision, which endorsed a nuanced approach to the "no valid defence" analysis, here. The Supreme Court is expected, among other things, to provide further guidance about the difference, if any, between its analysis of this issue in its two leading decisions from 2020 (*1704604 Ontario Ltd v Pointes Protection Association* and *Bent v Platnick*).

While the Supreme Court granted leave to appeal on its fourth anti-SLAPP (Strategic Lawsuit Against Public Participation) case in six years, Ontario's highest appellate court signaled stronger appellate deference to motion judges' decisions on anti-SLAPP motions, dismissing most anti-SLAPP appeals.

Courts regularly granted costs to successful litigants on anti-SLAPP motions in 2025 and clarified whether there is a strong presumptive limit on the quantum of costs to successful defendants/moving parties on anti-SLAPP motions. Motion judges retain discretion to fix costs as they see fit based on the circumstances of the case. Indeed, courts awarded full indemnity costs exceeding $100,000 to defendants and moving parties on successful anti-SLAPP motions (see *Galati v Toews*, *Stackhouse, Jr v CBC*, *Sheridan Retail Inc v Roy*, and *Fowlie v Spinney*).

What's the primary takeaway for litigants from the past year?

Vulgar and exaggerated words that are published to harm others will generally invoke the court's ire, regardless of the medium through which they are published. The Law Commission of Ontario and some litigants have suggested that courts should discount the defamatory meaning of words when they appear in certain social media contexts. To date, Canadian courts have not accepted this approach (see *Neufeld v Bondar*).

Courts will generally not protect false and malicious statements that are likely to cause serious harm, even if they relate to a matter of public interest. Defendants should consider this when assessing whether to bring an anti-SLAPP motion.

What's one trend you are expecting in 2026?

Provincial appellate courts continue to assert that anti-SLAPP motions are a preliminary screening mechanism that should be brought only when the test is clearly met. Expect courts to continue to impress this view on litigants, whether through costs awards or greater emphasis on the deferential standard of review.

Finally, the Supreme Court may use the *Benchwood* appeal as an opportunity to address other trends in the application of anti-SLAPP legislation, particularly given the repeated statements by various courts that the legislation is not achieving its procedural (and, according to some groups, its substantive) purposes.

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OUR DEFAMATION & MEDIA EXPERTISE

Lenczner Slaght has decades of litigation experience in defamation and related media matters. We regularly act as litigation or advisory counsel in libel issues arising across all print, broadcast and digital media channels. We have represented both plaintiffs and defendants through libel trials and appeals. We don't just practice libel law: we shape it. Our lawyers have argued some of the leading defamation law cases before the Supreme Court of Canada.

Employment

"The Ontario approach to termination clauses is increasingly being questioned – both within the province and beyond it."

What was the most interesting development of 2025, and why?

Termination clauses continued to be under assault in Ontario in 2025 – but the judicial approach reached a new extreme. Courts didn't just scrutinize language; they strained to find any ambiguity that could be used to invalidate termination provisions, often departing from basic contractual interpretation principles.

That tension was on full display in conflicting decisions on whether employers can terminate employment "at any time" provided they give notice and pay severance. In *Baker v Van Dolder's Home Team Inc*, following the 2024 decision *Dufault v The Corporation of the Township of Ignace*, the Court held that "at any time" language conflicted with the *Employment Standards Act* (ESA) and invalidated the termination clause. Later that year, *Jones v Strides Toronto* reached the opposite conclusion, finding the language acceptable unless paired with "sole discretion" wording. *Li v Wayfair Canada ULC* also upheld "at any time" language and distinguished *Baker*.

Courts were similarly split on equity plan forfeiture provisions. *Wigdor v Facebook Canada Ltd* upheld restricted stock unit (RSU) forfeitures, while *Liggett v Veeva Software Systems* ignored *Widgor* and found comparable provisions unenforceable.

The result? Deepening uncertainty for employers and a growing sense that in Ontario, outcomes drive interpretation – not the other way around.

What decisions should we look out for in 2026?

Courts within Ontario and beyond are increasingly questioning Ontario's approach to termination clauses. In *Egan v Harbour*, the British Columbia Court of Appeal implicitly criticized Ontario courts' tendency to disaggregate clause language in search of ambiguity rather than focusing on the parties' true intentions.

There are three key decisions from the Court of Appeal to come in 2026: *Baker v Van Dolder's Home Team Inc* and *Li v Wayfair Canada ULC* (heard together), and *Wigdor v Facebook Canada Ltd*. The *Baker* case attracted multiple intervenors and gives the Court a clear opportunity to address whether "at any time" language truly violates the ESA. *Wigdor* allows the Court to revisit the enforceability of forfeiture provisions in RSU plans.

More broadly, these cases may allow the Court to recalibrate its interpretive approach and inject some desperately needed certainty into employment contracting.

What's one trend you are expecting in 2026?

After years of steadily expanding scrutiny, the pendulum may finally start to swing back to a more balanced approach in 2026. With mounting criticism from the employment defence bar and increasing divergence from other provinces, the Ontario Court of Appeal may move toward a more orthodox and predictable approach to interpreting employment contracts.

The appeal decisions in *Baker*, *Wayfair*, and *Facebook* give the Court an opportunity to reassert traditional contractual principles and curb outcome-driven reasoning. A shift toward coherence would not only reduce litigation risk but restore some much-needed certainty for employers trying to draft enforceable agreements in an increasingly volatile legal landscape.

If the Court elects to maintain the lower court's current aggressive approach to striking out termination provisions and ignoring forfeiture provisions, Ontario employers may begin to opt out of court proceedings altogether with arbitration clauses.

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OUR EMPLOYMENT EXPERTISE

Lenczner Slaght provides expert counsel in employment litigation to organizations of all sizes, acting on their behalf in disputes and helping to establish effective corporate policies and practices. Our focus is on complex employment law disputes, including terminations of executives, employee fraud, disputes involving departing employees who take confidential information to a competitor, and employment law class actions.

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Injunctions

"Injunctive relief remains anchored in the RJR-MacDonald framework but is increasingly shaped by context, evidentiary strength, and remedial restraint."

What are some of the most interesting developments and trends of 2025?

Injunctions remain one of the powerful equitable remedies available to prevent harm while cases proceed on the merits. In 2025, Ontario courts continued to refine how the established injunction framework operates, with important developments in both public and private law.

In *Cycle Toronto v Attorney General of Ontario*, the Court accepted that the applicants had met the low serious-issue threshold and established irreparable harm based on increased risk of personal injury if bike lanes were removed in the City of Toronto. The Court nevertheless denied interim relief based on the presumption that duly enacted legislation serves the public good, emphasizing that interlocutory relief should suspend legislative action only in the clearest of cases. *Cycle Toronto* underscores how heavily courts weigh the public interest presumption where an interlocutory injunction would render legislation inoperable.

By contrast, *The Neighbourhood Group v HMKRO* demonstrates a willingness by the Court to tailor remedies when rights to life and security of the person are at stake. In *The Neighbourhood Group*, the Court granted a time-limited exemption from legislation mandating the closure of supervised consumption sites. The Court found there was irreparable harm grounded in elevated risk of overdose and death.

These two decisions underscore three practical points:

- Irreparable harm grounded in credible evidence of health and safety risk does not require proof of certainty, but the strength and specificity of the record are critical.
- In challenges to legislation or government policy, applicants must meaningfully engage the public-interest presumption and demonstrate why interim relief would advance, not undermine, the public interest pending adjudication.
- Courts are more willing to grant narrow, time-limited exemptions that minimize intrusion on legislative choices.

In the private law context, the Ontario Court of Appeal in *Hermina Developments v Epireon Capital Limited* (on motion for a stay pending appeal of a judgment permitting the sale of a property) signaled a continued reluctance to halt transactions absent compelling evidence that damages are an inadequate remedy. The Court of Appeal rejected claims of irreparable harm where the property was not uniquely situated and the alleged loss was monetary and quantifiable. *Hermina Developments* reinforces that in private disputes, the irreparable harm branch of the *RJR-MacDonald* test turns on the nature of the harm, not its magnitude, and that uniqueness arguments require a strong evidentiary record.

Similarly, when assessing the balance of convenience in respect of a property dispute in *Liu v Xing*, the Court conducted a careful analysis of the factual record to determine whether the respondents' argument that the existence of a proprietary injunction would truly hamper their ability to develop the properties. Ultimately, the Court found there was no evidence to support the argument.

What's the primary takeaway for businesses from this year?

Injunctive relief remains anchored in the *RJR-MacDonald* framework but is increasingly shaped by context, evidentiary strength, and remedial restraint. In constitutional cases, courts are giving real effect to the public-interest presumption while preserving flexibility to grant narrow, time-limited exemptions when life and security interests are credibly at risk. In private disputes, courts demand persuasive proof of irreparable harm, and closely scrutinize quantifiability and uniqueness. When considering injunctive relief, counsel should focus on building a robust evidentiary record addressing alleged harm (or lack thereof), meaningfully engaging the public interest on its merits, and considering tailored remedies that minimize interference with legislative policy.

OUR INJUNCTIONS EXPERTISE

Both obtaining and responding to extraordinary legal remedies such as injunctions require the support of a highly skilled and experienced legal team. Lenczner Slaght has extensive experience and knowledge in this specialized practice area and has successfully obtained and responded to a variety of injunctions on an urgent basis, including prohibitive, mandatory, and temporary injunctions, as well as Mareva, Anton Piller, and Norwich Orders.

Insolvency & Restructuring

"Courts are committed to equitable creditor recovery while protecting contractual rights."

What was the most interesting development of 2025, and why?

Courts clarified important insolvency issues in 2025, including when courts will order contractual relationships between insolvent parties and third parties to continue, and when a bankrupt will or will not be released from student loan debts.

The Ontario Superior Court's decision in *Hudson's Bay Company ULC* (in which Lenczner Slaght represented ReStore Capital LLC, the FILO agent) provides clarity on key considerations and criteria for forced contractual assignments under section 11 of the *Companies' Creditors Arrangement Act* (CCAA) and the interpretation of *ipso facto* clauses (contractual provisions that allow a party to terminate or modify an agreement solely because the counterparty has entered insolvency or restructuring proceedings) and other similar clauses. Various landlords successfully opposed Hudson Bay Company's proposed sale of certain leases to a new tenant, finding that the contract counterparty to an insolvent company is not compelled to continue the contractual relationship with a new company to maximize recovery for creditors.

In *Piekut v Canada (National Revenue)*, the Supreme Court of Canada clarified an issue that had split courts in different provinces for over a decade: will the seven-year period after which a bankrupt is released from their student loan debts run from a single date on which they were last enrolled as a student, or from multiple dates on which their different programs of study ended? The court clarified that the seven-year period in section 178(1)(g)(ii) of the *Bankruptcy and Insolvency Act* (BIA) runs from the single last date the bankrupt was enrolled as a student. In reaching this decision, the Supreme Court referenced the statutory purposes of the provision to reduce government losses on student loan defaults, ensure sustainability of the student loan program, and deter opportunistic bankruptcies. The "multiple date" approach would have released bankrupts from more student debt than the "single date" approach.

What's the primary takeaway for businesses from the past year?

2025 was a busy year for insolvency litigation in Canadian courts, with a high volume of cases in the real estate, construction, and retail trade sectors, all of which were heavily impacted by high interest rates, inflation, debt maturities, and international tariffs. Generally, courts appear committed to balancing creditor recovery with affected parties' contractual rights. Businesses facing financial distress or those in contractual relationships with distressed parties should stay informed of their rights and act proactively to protect their interests.

Moving forward, we expect regulatory amendments to the bankruptcy regime in 2026. In November 2025, the Office of the Superintendent of Bankruptcy (OSB) published proposed regulations amending the BIA General Rules and the CCAA Regulations for the purpose of modernizing the bankruptcy system. The proposed changes include: increased digitalization and accessibility, greater consistency between regulatory measures, higher asset-value thresholds for summary administration bankruptcies and consumer proposals, and revised fees under the BIA Rules. While we expect these changes to have a greater impact on consumer proposals than corporate restructurings, they will affect the broader regime.

What's one trend you are expecting in 2026?

As economic uncertainty continues, lenders are increasingly turning to litigation to recover debts. In 2026, we anticipate a steady flow of business insolvency filings in Ontario and a continued increase in bankruptcy and insolvency litigation, particularly in the real estate and construction sectors.

We expect Canadian courts to continue the 2025 trend of balancing equitable recovery for creditors with prioritizing contractual certainty. For example:

- Finding pre-filing payments to be preferences under section 95(1) of the BIA where payment is made to one major supplier without evidence that it would assist in generating future revenue to allow the company to stay in business (see *RPG Receivables Purchase Group Inc v American Pacific Corporation*).
- Expanding the purposes for which courts may grant reverse vesting orders in the context of receivership proceedings (see *Peakhill Capital Inc v Southview Gardens Limited Partnership*, in which the Supreme Court of Canada denied leave to appeal a decision of the British Columbia Court of Appeal granting a reverse vesting order where the main benefit was avoiding tax liability).
- Interpreting properly drafted *ipso facto* and similar clauses in a manner that prevents insolvency proceedings by a contractual counterparty from rendering pre-insolvency contractual agreements and amendments unenforceable (see *Hudson's Bay Company ULC*).

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OUR INSOLVENCY & RESTRUCTURING EXPERTISE

Through more than three decades of courtroom experience, we have advanced our clients' interests in some of Canada's most challenging and complex bankruptcy, insolvency and restructuring litigation. We act not only for creditors and debtors, but also for court-appointed officers such as monitors and receivers. We offer clients a wide scope of substantial experience in commercial reorganizations and restructurings, personal property security matters, creditors' rights, receiverships, bankruptcies, and enforcement in secured transactions.

Insurance

"Ambiguities, conflicts, and outdated language in insurance policies should be reviewed and clarified at the time of contracting. Courts will not hesitate to enforce it."

What was the most interesting development of 2025, and why?

In 2025, decisions from Canadian appellate courts continued to forcefully reiterate the importance of clear contractual language in insurance policies and the need to define policy limits unambiguously.

In *903905 Ontario Limited v Dominion of Canada General Insurance Company*, the insurance policy contained a clause that excluded coverage for property damage from watermain discharge if water entered the property through basement walls. When a watermain broke and water flooded into the property via a pipe that transected the basement wall, the insurer denied coverage because the pipe formed part of the wall. The Court summarily dismissed the insurers' argument, relying on the distinct plain meanings of "wall" and "pipe" and the doctrine of *contra proferentem* (which provides that ambiguous policy language must be interpreted against the insurer who drafted it).

The British Columbia Court of Appeal reached a similar conclusion in *Busato v Gore Mutual Insurance Company*, unanimously overturning the lower court's decision. The Court found that the exclusion clause at issue was ambiguous and should be construed against the insurers. The Court was clear that insurers are free to narrow coverage as they wish, but only if they do so clearly, explicitly, and transparently.

In *2689686 Ontario Inc v Lloyd's Underwriters*, the Ontario Court of Appeal upheld a summary judgment decision in favour of the insurer because there was no ambiguity in the relevant exclusionary clause or its application to the facts of the case.

What's the primary takeaway for businesses from the past year?

Insurers and insureds alike should recognize that courts will not hesitate to enforce the agreed language of an insurance policy. But any apparent ambiguities arising from outdated policy language or conflicting internal provisions will be construed against insurers. Any such ambiguities, conflicts, and outdated language should be reviewed and clarified at the time of contracting. This is particularly important from the insurer's perspective to ensure a specific exclusion will be enforceable. If any aspect of a policy is of critical importance to a party, that party should take extra caution to ensure the language and effect of the clause are clear.

What's one trend you are expecting in 2026?

Along with the rest of the world, the insurance industry has turned to generative AI to assist with creating efficiencies in their business models, including in the underwriting process.

In the fall of 2025, Canada's federal regulator, the Office of Superintendent of Financial Institutions (OSFI), introduced a comprehensive set of rules governing AI and predictive models, and presented insurers with a May 2027 compliance deadline. With a rapid rise in digitalization and AI, there is increased reliance on machine-learning models to support or drive decision-making. The guideline emphasizes the importance of ensuring that the use of predictive modeling is accurate, fair, and representative of consumers, in part to avoid bias from models based on historical data. It will be interesting to see how insurers respond to the stricter rules around the use of AI modeling and what implications this will have for the insurance industry.

We will also be following the impact of the Supreme Court of Canada's decision in *Emond v Trillium Mutual Insurance Co*. The decision makes clear that even with unambiguous language, insurers cannot offer coverage that is then nullified elsewhere in the policy. While exclusion clauses may limit or reduce coverage, they will not be applied so as to defeat the very objective of having purchased the relevant coverage.

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OUR INSURANCE EXPERTISE

We cover all facets of insurance litigation. Our lawyers draw on extensive trial and appellate experience to advise clients on the spectrum of policy, coverage, and defence matters. With over three decades of experience, Lenczner Slaght has a proven record in litigating coverage cases among and against insurers involving issues including trigger of coverage, allocation of defence and indemnity, covered/excluded claims, obligations among primary and excess insurers, reinsurance, drop-down matters and run-off coverage.

Intellectual Property

"In 2025, we saw the first patent case the Supreme Court of Canada has taken in the last decade, before a highly engaged and divided bench."

What were the most interesting developments of 2025, and why?

In patents, Canadian courts continued to grapple with challenges in assessing patentable subject matter. *Dusome v Canada* reinforced the central role of purposive construction in the proper approach to determining subject-matter patentability, while the Supreme Court of Canada heard the appeal in *Pharmascience v Janssen* (discussed below), a pivotal case on the patentability of dosing regimens.

In trademarks, the Canadian Intellectual Property Office made significant progress reducing the backlog of pending trademark applications and improved timelines for the examination of newly filed applications.

In copyright, a major development (discussed in our Artificial Intelligence Snapshot) was the surge in litigation surrounding AI, including actions relating to unauthorized use of copyright material in AI model training.

What's the primary takeaway for businesses from the past year?

Several patent decisions highlight the importance of timing. In *Taillefer v Canada (Attorney General)* and *Canada (Attorney General) v Matco Tools Corporation*, the Federal Court of Appeal upheld refusals to reinstate applications/patents that were abandoned due to inadvertent failure to make maintenance payments. These decisions indicate that applicants and agents will face a high standard in showing that the failure occurred despite due care being taken. *Bayer Inc v Amgen Canada Inc* underscores the importance of submitting a pharmaceutical patent for listing on the Patent Register as soon as possible. The FCA held that Amgen did not need to address a patent under the *Patented Medicines (Notice of Compliance) Regulations* because it was not listed at the time of Amgen's regulatory submission, despite the delay being caused by the Minister taking eight days to list the patent. Finally, in *JL Energy Transportation Inc v Alliance Pipeline Limited Partnership*, the Alberta Court of Appeal held that patent infringement claims are subject to the six-year limitation period under the federal *Patent Act* rather than the provincial two-year period.

Amendments to the *Trademarks Act* that came into force in 2025 will change trademark practice. In particular, businesses should be more engaged before the Trademarks Opposition Board (TMOB) because they no longer have the automatic right to file additional evidence when appealing TMOB decisions to Federal Court.

Anti-piracy remedies in Canada continued to develop in 2025. In *Bell Media v John Doe 1 (Soap2day)*, the Federal Court granted an expandable site-blocking order that required internet service providers to prevent access to websites associated with online piracy and provided the plaintiffs with a simplified procedure to add additional websites linked to the same infringing platform.

What's one trend you are expecting in 2026?

The most hotly anticipated IP decision in 2026 is the SCC's decision in *Pharmascience v Janssen*, which will determine whether methods of medical treatment are patentable in Canada and how courts define or test for a method of medical treatment. This decision has the potential to have far-reaching effects on the ability to obtain and enforce patents in many key innovative industries. The appeal asks the SCC to reverse a long line of Federal Court authority allowing the patentability of dosing regimens and invites the Court to find that dosing regimens are not inventions under the *Patent Act*.

The hearing before the SCC took place on October 9, 2025, before a highly engaged and divided bench. We would not be surprised to see a dissent. This is the first patent case the SCC has taken in the last decade, and it may take the opportunity to pronounce more broadly on patentable subject matter. No matter the outcome, the SCC decision will significantly impact the pharmaceutical industry and potentially other industries including the tech industry in the context of computer-implemented inventions.

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OUR INTELLECTUAL PROPERTY EXPERTISE

At Lenczner Slaght, we recognize the vital importance of intellectual property in a complex and fast-moving global marketplace. Our team represents clients in all types of high-profile and technically sophisticated patent, trademark, and copyright matters in proceedings before all levels of court.

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"Employers should be aware that they do not need a formal complaint to trigger their obligation to investigate harassment in the workplace under the OHSA."

What was the most interesting development of 2025, and why?

The Ontario Court of Appeal confirmed that employers have a duty to investigate alleged incidents of sexual harassment even without a formal complaint and even when the conduct occurs in an off-duty WhatsApp chat on employees' personal cellphones.

In *Metrolinx v Amalgamated Transit Union*, the Court of Appeal considered Metrolinx's dismissal of five employees for sexual harassment. The employees were part of a WhatsApp texting group on their personal cellphones where they made derogatory and sexist comments about other Metrolinx employees. The subject of some of these messages reported them to one of her supervisors after receiving screenshots but did not file a formal complaint. Metrolinx launched an investigation and ultimately terminated the employees for sexual harassment. The employees' union challenged the dismissals, and an arbitrator ordered the reinstatement of the employees. Metrolinx successfully applied for judicial review at the Divisional Court, and the union appealed.

The Court of Appeal found the arbitrator's reinstatement award unreasonable. In finding that Metrolinx should not have launched an investigation absent a formal complaint, the arbitrator failed to meaningfully address Metrolinx's statutory obligations under the *Occupational Health and Safety Act* (OHSA). Employers have a duty under the OHSA to investigate both complaints and incidents of workplace harassment, even in the absence of a formal complaint. While Metrolinx's own Workplace Harassment and Discrimination Prevention Policy states that an investigation is triggered by a complaint, the policy cannot limit Metrolinx's statutory obligations under the OHSA.

The Court emphasized that none of the many reasons a victim of harassment might choose not to pursue a complaint erase an employer's obligation to investigate. Employers owe this duty not only to the victim but to all employees, as they have a right to work in an environment free from demeaning and offensive comments.

The Court clarified that off-duty conduct can give rise to discipline if it manifests in the workplace, as it did in this case when the subject of some of the offensive comments learned of them and became upset by them in the workplace. Regardless of where the impugned conduct originated, it made its way into the workplace and became a workplace issue. Social media's nature and employees' ability to forward messages meant that unknown numbers of other employees could access the content.

Finally, the Court found that the Metrolinx investigator acted properly by asking one of the employees involved in the WhatsApp chat to provide relevant text messages from the employee's private cellphone.

What's the primary takeaway for businesses from the past year?

Employers should be aware that they do not need a formal complaint to trigger their obligation to investigate harassment in the workplace under the OHSA. The language of an employer's policy on workplace harassment cannot circumvent this duty to investigate (for example, by requiring a "complaint"). Further, the duty can arise even where the alleged harassing conduct occurred off duty on a social media chat, as long as it then "manifests" in the workplace.

Employers should ensure their workplace harassment policies are in line with their statutory obligations under the OHSA to avoid confusion.

OUR INVESTIGATIONS EXPERTISE

We conduct internal investigations for boards of directors, special committees, and management when they are confronted with critical and sensitive situations, including where investigations have been ordered by regulators. Our team is relied upon to conduct investigations with efficiency, discretion, and the utmost capability. We have an unparalleled understanding of the law, including the practical considerations courts and regulators apply in assessing an investigation.

Product Liability

"Plaintiffs have attempted to expand the use of public nuisance to a variety of contexts."

What was the most interesting development of 2025, and why?

Historically, courts addressed public nuisance claims in the context of interference with use of public land (such as environmental pollution) and litigants did not consider it a particularly effective private law remedy. Recently, however, plaintiffs have attempted to expand the use of public nuisance to a variety of contexts, including claims against gun manufacturers, opioid manufacturers and distributors, and social media companies.

In 2025, the Ontario Court of Appeal provided further insight into the contours of a public nuisance claim against manufacturers in the context of an allegedly defective product. In *Price v Smith & Wesson Corporation*, the plaintiffs commenced a class action against the manufacturer of a stolen firearm that was used to injure several people on Danforth Avenue in 2018. The plaintiffs alleged the manufacturer failed to implement technology that could have prevented unauthorized use of the gun.

In affirming that the public nuisance claim was not viable, the Court commented that public nuisance has never been applied to hold a manufacturer liable for a risk to public health and safety that may result from the criminal misuse of its product. While it is one thing to impose negligence on gun manufacturers for reasonably foreseeable consequences of third-party use of a firearm, it is quite another to impose liability for public nuisance which does not examine questions of foreseeability, proximity, or standard of care.

In other contexts, such as the Toronto District School Board's case against various social media companies (which is under appeal), a public nuisance claim survived a motion to strike at first instance in respect of allegations dealing with the impact of addictive digital products on student learning. If upheld, this finding would represent a significant expansion on the scope of manufacturer liability.

What are two takeaways from the past year?

Courts continue to clarify the limited cases when plaintiffs can recover compensation for defective products.

The Ontario Court of Appeal recently reinforced that plaintiffs must demonstrate recoverable loss, either through damage to other property, personal injury, or expenditures to avert imminent harm. In *North v Bayerische Motoren Werke AG*, the Court confirmed that internal component failures do not constitute damage to "other property," thereby emphasizing the strict limits on recovery for pure economic loss in negligence.

Manufacturers received some clarity on the application of Ontario's 15-year ultimate limitation period. In *Hennebury v Makita Canada Inc*, a failure to warn decision, the Court concluded that while the injury occurred in 2019 and the action was issued in 2020, the claim was statute-barred because the subject product was manufactured in 2001. There was no basis in that case to suggest the manufacturer's ongoing duty to warn tolled the limitation period, nor was there a finding of successive or repetitive conduct that established a continuing cause of action.

What's a decision you are looking forward to in 2026?

A key piece of evidence in product liability cases is often the allegedly defective product itself. Parties in litigation have an obligation to preserve the product for inspection and examination. Intentionally destroying or disposing of evidence to affect the outcome of anticipated or existing litigation is referred to as spoliation.

Although not a product liability case, the Supreme Court of Canada's upcoming decision in *SS&C Technologies Canada Corporation v Bank of New York Mellon Corporation* may clarify the law on spoliation and the consequences flowing from spoliation. Lenczner Slaght is co-counsel to the respondents on that appeal.

The current remedy for spoliation is entirely discretionary and can range from costs penalties to adverse inferences found against the spoliator, depending on the circumstances. In SS&C, the appellant argued that a harsher mandatory penalty was warranted. It was argued that once the high bar of the spoliation test is met, there should be no discretion: the remedy should be a presumption that the intentionally destroyed evidence would have supported the highest possible award against the spoliator. Beyond this issue, we look forward to potential clarification of when and what adverse inferences may be drawn as a result of spoliation.

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OUR PRODUCT LIABILITY EXPERTISE

Lenczner Slaght regularly represents manufacturers faced with claims involving alleged design and manufacturing defects, incorrect or incomplete labelling or instructions, breaches of the duty to warn and other liability issues. We also provide advice on risk management and insurance-related matters, drawing on our lawyers' deep industry-specific knowledge, as well as their expertise in the legal and regulatory environments in which our diverse clients operate.

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OUR PROFESSIONAL LIABILITY & REGULATION EXPERTISE

Lenczner Slaght has one of the leading professional liability practices in Canada, representing clients in diverse fields across a broad landscape of regulatory, civil and quasi-criminal matters. We defend professionals before disciplinary and regulatory tribunals and in all levels of the courts across the country. We also prosecute professional disciplinary cases for many regulatory colleges and governing bodies. In addition, we act as general counsel to several of those bodies.

Professional Liability

"Professionals who use AI in their practices should understand they must use this technology competently or risk regulatory scrutiny."

What were professionals thinking about in 2025, and why?

In 2025, professionals were thinking about the privacy risks presented by new information technologies; namely, the unique and emerging risks associated with AI tools.

A recent analysis by Statistics Canada found significant growth in expected AI usage in the business, finance, insurance, and healthcare sectors. These tools present clear benefits. For example, an Ontario MD study found that "AI scribes" reduced physicians' time spent on paperwork by 70 per cent.

However, the benefits of these technologies are accompanied by novel risks that can be difficult to anticipate.

A recent privacy breach considered by Ontario's Information and Privacy Commissioner (IPC), Reported Breach HR24-00691, provides an excellent example of this. In this case, a hospital-based physician who relinquished his privileges and left the hospital had inadvertently retained a calendar invitation to a departmental rounds meeting on his personal digital calendar. The invitation contained a videoconference link associated with his personal email address. Months after leaving the hospital, this physician downloaded a publicly available AI-based transcription tool to his personal phone. On the date of the meeting, and unbeknownst to either the physician or the hospital, this AI tool accessed the videoconference link in the physician's personal calendar, "attended" the hospital's specialty rounds using the physician's personal email address, and recorded the meeting. The tool then autonomously circulated a transcription of the meeting to all attendees, including the physician who no longer held privileges at the hospital. This privacy breach underscores the significant risks associated with "AI autonomy."

What's the primary takeaway for professional service providers?

Professionals who use AI in their practices should understand they must use this technology competently or risk regulatory scrutiny. For example, the Law Society of Ontario's practice note recognizes that generative AI is a valuable tool but requires that professionals take the time to understand each tool's capabilities, limitations, and terms of use. The IPC case discussed above is an excellent example of the privacy risks that can be associated with the use of poorly understood and inadequately managed AI tools. While the IPC imposed no fine or sanction, it issued extensive and pointed recommendations to the hospital that are well worth heeding. Among other things, professional service providers should ensure they have robust policies establishing:

- Clear and enforced expectations for vetting and using AI-based tools in individual practice or by staff.
- Controls over the use of personal digital devices, accounts, and online services in connection with any workplace information along with safeguards to ensure client information is confined to secured workplace digital infrastructure.
- Offboarding processes that immediately revoke all access to sensitive information, including access to calendar invites, upon departure by a professional or staff member.

What's one trend you are expecting in 2026?

Expect regulators and the courts to respond to the risks presented by increasingly autonomous AI tools by prioritizing the protection of clients' interests and imposing corresponding obligations on professionals and professional services firms. While the increasing prevalence and sophistication of cyberattacks by bad "human" actors is well understood, significant legal risks can arise from the uncritical use of AI tools that can act without a "human in the loop." Professional service providers would be well advised to get ahead of the curve by adopting procedures to oversee and manage the integration of these tools into their information systems. Those who fail to do so risk becoming unwilling parties to interesting future legal developments before the IPC or the courts.

Public Law

"The SCC will be required to resolve the courts' diverging approaches to the question of whether a court can make a declaration of Aboriginal title over fee simple lands."

What was the most interesting development of 2025, and why?

In 2025, courts in British Columbia and New Brunswick reached opposite conclusions in cases about the legal relationship between private property, Aboriginal title, and the Crown's duty to negotiate in good faith to reconcile those interests.

In August, the British Columbia Supreme Court released a 863-page decision in *Cowichan Tribes v Canada (Attorney General)*. After a 513-day trial, the trial judge declared that descendants of the Cowichan Nation have Aboriginal title over a portion of land in what is now Richmond, British Columbia. This includes land the government holds in fee simple and parcels that private properties own.

The trial judge made several other declarations and findings, including, but not limited to, the following:

- With one exception, Canada's and the City of Richmond's fee simple titles and interests in the lands over which Aboriginal title was declared are defective and invalid.
- Crown grants of fee simple interest in lands did not displace or extinguish the Cowichan's Aboriginal title.
- British Columbia owes a duty to negotiate with the Cowichan to reconcile the Crown-granted fee simple interests held by third parties and private landowners (who were not defendants to the claim) with the Cowichan's Aboriginal title. The Aboriginal title over these lands is the senior and constitutionally protected interest in the land.
- Reconciling the Aboriginal title with private property interests is an issue for the Crown and not the private landowners to resolve. The Cowichan did not challenge the validity of private fee simple interests, and the Court confirmed those interests remained valid for now.

A few months later, in December, the New Brunswick Court of Appeal released its decision in *JD Irving, Limited v Wolastoqey Nation*. In that case, the Court of Appeal overturned the lower court's decision on a pleadings motion and held that it was plain and obvious that the claim for a declaration of Aboriginal title over the appellants' privately held lands had no chance of success at trial.

The Court of Appeal held that the Wolastoqey Nation could pursue their title case against the Crown, including by seeking a finding that they have Aboriginal title over the privately held lands and seeking an award of damages and compensation flowing from that finding.

However, a finding that there is Aboriginal title does not amount to an actual declaration of Aboriginal title. The distinction is important. As acknowledged by the Court of Appeal, "Such a finding, without a confirmatory judicial declaration, would not burden the [private landowners'] title to the lands in question."

What developments do you anticipate in the year(s) ahead?

Over the last few decades, the Supreme Court of Canada has issued several decisions clarifying the legal test for Aboriginal title, including in the context of section 35 of the *Constitution* which "recognized and affirmed" existing Aboriginal and treaty rights. The Supreme Court has not, however, decided a case where Aboriginal title is being claimed over lands held in fee simple. The courts and parties need clear guidance on the relationship between Aboriginal title, fee simple ownership, and the Crown's role in negotiating resolutions where Aboriginal title and fee simple land ownership both exist. The Supreme Court will be required to resolve the courts' diverging approaches to the question of whether a court can make a declaration of Aboriginal title over fee simple lands.

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OUR PUBLIC LAW EXPERTISE

Lenczner Slaght's lawyers help clients navigate complex litigation matters involving all levels of government and the public-sector bureaucracy. Our public law practice includes litigation matters relating to constitutional, human rights, judicial review, municipal, procurement, and professional regulation matters.

Securities

"There is no requirement for a change to be 'important and substantial' before disclosure becomes mandatory."

What was the most interesting development of 2025, and why?

The Supreme Court of Canada's decision in *Lundin Mining Corp v Markowich* stands out as 2025's headline development in securities litigation and represents the Supreme Court's first direct look at disclosure obligations in a decade. Lenczner Slaght represented the CFA Societies Canada Inc, one of the intervenors on this appeal.

In *Lundin*, the plaintiffs alleged that pit wall instability and a rockslide – common occurrences in the mining industry – constituted a material change because the incident materially affected Lundin's global production capacity. The Court addressed when operational events trigger mandatory disclosure obligations under Ontario's *Securities Act*, rejecting a narrow interpretation of a "material change" in favour of a broad, purposive approach aligned with the statute's investor protection objectives. The Court emphasized that the *Securities Act* deliberately leaves "material change" undefined so it can apply flexibly across industries and corporate structures. The Court clarified there is no requirement for a change to be "important and substantial" before disclosure becomes mandatory, instead endorsing an approach which asks whether "a change in the business, operations or capital" would "reasonably be expected to have a significant effect on the market price of securities."

What's the primary takeaway for businesses from the past year?

The Supreme Court's decision in *Lundin* is not alone in recalibrating the risk calculation for businesses.

In *Terry Longair Professional Corporation v Akumin Inc*, the Ontario Court of Appeal clarified that a "public correction" under the *Securities Act* does not require a direct, immediate drop in share price. While the market's reaction can be probative of whether the alleged misrepresentation was material, the question of whether there was a "correction" focuses solely on whether the disclosure corrected an earlier misrepresentation. This clarification may reshape how plaintiffs can plead secondary market misrepresentation cases and could lower barriers to certification.

Together, the rulings in *Lundin* and *Longair* create a pincer effect and raise the practical stakes for continuous disclosure: more events require immediate disclosure (*Lundin*), and more corrections can support secondary-market claims (*Longair*).

Companies wanting to avoid the risk of a securities class action may choose to err on the side of caution and release information as soon as possible, but this must be balanced against other risks such as making premature disclosures if the available information is incomplete or potentially unreliable. For businesses, the path forward requires robust disclosure protocols that assume a broad interpretation of materiality and careful documentation of disclosure decisions.

What's one trend you are expecting in 2026?

The Ontario Court of Appeal's decision in *Lochan v Binance Holdings Limited* signals increased judicial willingness to apply traditional securities law frameworks to cryptocurrency platforms.

The Court found that Binance's mandatory arbitration clause, which required individual arbitration in Hong Kong at significant cost, was both unconscionable and contrary to public policy.

Many cryptocurrency exchanges, trading platforms, and digital asset service providers have operated on the assumption that their user agreements could route disputes away from Canadian courts and toward foreign arbitration forums. *Lochan* demolishes that assumption for Ontario-based investors. Combined with ongoing regulatory scrutiny from the Ontario Securities Commission and increased enforcement activity, 2026 may become a landmark year for digital asset securities litigation in Ontario.

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OUR SECURITIES EXPERTISE

Lenczner Slaght has extensive experience in litigating securities-related disputes before the courts, including the defence of professional negligence and other claims brought against investment advisors and dealers and significant expertise defending shareholder class action proceedings. We also help clients conduct internal corporate investigations relating to potential breaches of securities and other laws either prior to, or in conjunction with, inquiries by regulatory authorities.