Commercial Litigation

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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.

"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.

VIEW FULL SNAPSHOT

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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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.

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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