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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.

YEAR IN REVIEW

Commercial Litigation

“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.

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