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May 13, 2026

5-Year Retrospective: Top 10 Noteworthy Cases

This retrospective examines 10 noteworthy commercial decisions between 2021 and 2025, each offering practical lessons that extend beyond the facts of the individual case. Spanning disputes over business breakdowns, contractual interpretation, fraud, insolvency, asset preservation, and jurisdiction, the cases collectively underscore:

- The critical importance of precise contractual drafting
- The Court's willingness to impose personal liability and disgorgement in cases of fiduciary breach and fraud
- Evolving standards for reverse vesting orders and CCAA proceedings
- The broad reach of *Mareva* injunctions
- The emerging jurisdictional implications of AI-driven data-scraping across borders

Taken together, these decisions offer a practical roadmap for litigators, in-house counsel, and business leaders navigating the complexities of modern commercial disputes.

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Libfeld v Libfeld

Four brothers who equally owned The Conservatory Group, a major GTA real estate developer valued at an estimated $2.5 to $4 billion, sought to dissolve their irretrievably broken business relationship. After a 21-day trial, Justice McEwen rejected all four proposed remedies and made no findings of oppression, concluding the disputes were the product of shared dysfunction. The Court ordered a court-supervised wind-up and sale under the oversight of Ernst & Young Inc., with the brothers permitted to bid as potential purchasers.

Key Takeaways

- **Wind-Up Available Even Without Oppression Finding:** The Court ordered a wind-up without a finding of oppression, relying upon section 35(f) of the *Partnerships Act* and the equitable jurisdiction afforded by section 207 of the OBCA, which allows a wind-up where the relationship between the partners and/or corporate stakeholders has broken down.

- **Risks of Proposing Remedies that Require Ongoing Cooperation:** The Court rejected all proposed remedies requiring ongoing cooperation between parties who could not cooperate. Litigants should assess whether proposed remedies are realistic given the actual dynamics between the parties.
- **Appointment of a Court Officer and the Creation of a Data Room Were Central to Achieving a Fair Outcome:** The Court recognized the deep distrust between the brothers meant no remedy could succeed without independent oversight and equal access to information, highlighting the Court's willingness to grant robust procedural safeguards in high-conflict business dissolutions.

Porter Airlines Inc v Nieuport Aviation Infrastructure Partners GP

The Court addressed a dispute between Porter Airlines and Nieuport Aviation, operator of the Billy Bishop Airport passenger terminal, over terminal fees during COVID-19. Porter argued that *force majeure* and a reasonableness clause relieved it of payment obligations during its 18-month suspension of operations. The Court rejected both arguments, finding Porter's suspension was a commercial decision rather than one compelled by government orders, and awarded Nieuport over $131 million in damages.

Key Takeaways

- ***Force Majeure* and Payment Obligations**: The decision reinforces a strict approach to *force majeure*, confirming that a dramatic revenue decline caused by an external crisis does not automatically trigger *force majeure* protection for payment obligations.
- **Reasonableness Clauses are Not Price Adjustment Mechanisms**: The Court's treatment of the reasonableness clause underscores that such provisions cannot be used to rewrite the economic terms of an agreement and are not substitutes for express price adjustment mechanisms. Parties seeking flexibility in fee arrangements should negotiate express price adjustment or abatement provisions at the outset.

Canadian National Railway Company v Holmes

The Court found that Holmes, a CN track supervisor, breached

his fiduciary duties by secretly incorporating companies and directing CN work to them without disclosure over many years. The Court found his common-law spouse liable for conspiracy based on willful blindness. The Court ordered disgorgement of $10,264,237 in profits and awarded $1 million in punitive damages, rejecting Holmes' defense that his companies charged below market rates.

Key Takeaways

- **Fiduciary Obligations Extend Beyond the C-suite**: The Court can hold individuals who facilitate employee self-dealing fully liable even without a direct relationship with the employer. Businesses should audit contractor relationships where employees have significant procurement authority.

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Re Harte Gold Corp

Justice Penny approved a reverse vesting order (RVO) to facilitate the sale of an insolvent gold mining company to a subsidiary of Silver Lake Resources Limited. The decision is one of the most thorough judicial examinations of the RVO mechanism in Canadian insolvency proceedings. Justice Penny grounded the Court's jurisdiction in section 11 of the CCAA, expressing doubt that section 36(1) provides standalone authority for what is essentially a share transaction, and applied the section 36(3) framework to approve the transaction.

Key Takeaways

- **The RVO is Not Routine**: Courts will treat the RVO as an extraordinary measure requiring close scrutiny. Applicants should provide evidence to demonstrate why the RVO is necessary and produces the best outcome for stakeholders.
- **Stakeholder Impact is Paramount**: The Court placed significant weight on the overwhelmingly positive effects of the transaction on creditors, employees, suppliers, and Indigenous communities. Future applicants should be prepared to explain how any adverse effects on particular stakeholders are justified and unavoidable.

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Re Original Traders Energy Ltd

Justice Osborne granted a *Mareva* injunction freezing a 70-foot yacht purchased with allegedly misappropriated corporate funds. The respondents had deregistered the yacht, renamed it,

and upon learning of the motion, sailed it toward the Bahamas. The Court confirmed Ontario courts may grant *Mareva* relief over assets located outside Canada where *in personam* jurisdiction exists and dispensed with the usual undertaking as to damages given the applicant's insolvency.

Key Takeaways

- ***Mareva* Injunctions are Available Even Where Assets are Outside Ontario**: *In personam* jurisdiction over a defendant is sufficient for *Mareva* relief. There is no requirement that assets be located within Ontario. Counsel should not hesitate to seek such relief where assets are in another province or country. However, parties should be prepared to bring motions on short notice with well-documented evidence when there is a genuine risk of asset dissipation.

Riar v Khudal

The Court addressed motions to vary a *Mareva* injunction in a large-scale fraud case involving over 200 plaintiffs and approximately $47 million in alleged misappropriated funds. Justice Osborne denied the defendants' request for additional legal expenses, declined to vacate the injunction against certain family members, and reduced permitted monthly living expenses, finding the defendants had failed to make full and frank disclosure of their assets.

Key Takeaways

- **Prioritize Compliance with Disclosure Obligations**: Courts will rigorously scrutinize defendants' disclosures subject to *Mareva* injunctions. Any omissions or inconsistencies will undermine entitlement to variations of the order. Requests for the release of frozen assets must be supported by detailed, line-item budgets and a clear accounting of how previously released funds were spent.

Chu De Québec-Université Laval v Tree of Knowledge International Corp

Québec's largest hospital network contracted with Tree of Knowledge Inc. (TOKI) for 3 million NIOSH-certified N95 masks valued at approximately $11.19 million USD during the COVID-19 pandemic. TOKI instead delivered approximately 156,000 non-certified KN95 masks of no value. The Court found TOKI's sole director, Michael Caridi, personally liable for fraudulent

misrepresentation based on his reckless indifference to the accuracy of his representations and declared the judgment non-dischargeable in bankruptcy.

Key Takeaways

- **Recklessness as a Basis for Deceit**: Recklessness, including being indifferent as to whether a representation is true or false, can establish deceit and give rise to personal liability for directors and officers, even when acting under time pressure.
- **Non-discharge Under the BIA is a Powerful Creditor Tool**: The Court declared the judgment non-dischargeable under section 178(1)(e) of the BIA as a debt resulting from obtaining property by fraudulent misrepresentation, a powerful tool for creditors pursuing fraud-based claims.

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340268 Ontario Limited v Georghiades and Georghiades v Georghiades

Two brothers (Nickolas Georghiades and George Georghiades) who co-founded Lexington Park, a real estate investment company with 46 properties, were locked in a dispute over control and access to information. Justice Black found a *prima facie* case of oppression and appointed an independent monitor to address the informational imbalance, declining to appoint a more intrusive receiver given the monitor's sufficient mandate.

Key Takeaways

- **Tailor the Remedy to the Problem**: Courts will calibrate the remedy to the problem. Requesting a monitor with a limited observational mandate invites a lower threshold than requesting a receiver-manager with full operational control.
- **Build the Evidentiary Record for Informational Imbalance**: The success of Nickolas' motion rested in large part on his ability to demonstrate an ongoing informational imbalance. Litigants seeking similar relief should carefully document instances of withheld, delayed, or selective disclosure of financial information to demonstrate informational imbalance.

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Toronto Star Newspapers Limited v OpenAI Inc

Justice Kimmel dismissed a jurisdictional challenge by OpenAI entities seeking to avoid litigation in Ontario over allegations

that OpenAI scraped copyrighted content from major Canadian news organizations to train its large language models. The Court held that it possesses jurisdiction and that Ontario has a real and substantial connection to six of the 10 defendants, finding that the United States is not a clearly more appropriate forum.

Key Takeaways

- **AI Companies with Global Reach Should Anticipate Multi-jurisdictional Exposure**: Operating web crawlers, contracting with users, and offering products in a jurisdiction can collectively establish sufficient nexus for courts to assume jurisdiction, even when core operations occur elsewhere.
- **Unjust Enrichment May Extend Liability Up the Corporate Chain**: Plaintiffs should consider asserting unjust enrichment claims against parent and holding companies to extend liability up the corporate chain and provide a basis for jurisdiction over entities otherwise unconnected to the forum.

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Re Hudson's Bay Company

Justice Osborne declined to approve the assignment of up to 25 department store leases from the insolvent HBC to Central Walk, a newly incorporated entity. Every counterparty landlord opposed the assignment, and the court-appointed monitor declined to approve it. The Court found Central Walk fell "well short of any reasonableness standard," citing unrealistic projections, inadequate management experience, and misleading representations about key personnel.

Key Takeaways

- **The Purpose of the Assignment Within the Broader Restructuring Will Be Closely Scrutinized**: Lease assignments sought solely to generate recoveries for secured creditors in a liquidation, rather than to preserve a going concern, will face demanding justification. The Court's refusal to compel landlords into long-term relationships with an untested counterparty sets a high bar for similar transactions.
- **Expert Evidence Can Be Decisive**: The landlords' decision to retain expert advisors to critique the business plan proved highly effective, particularly in the absence of responsive expert evidence from the applicants. Applicants seeking contested lease assignments should

anticipate the need for independent expert validation.

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Read our Commercial List Year in Review: 5-Year Retrospective for more.