



## BANKING:

# Bankers/Lenders and the Limited Duty to Act in Good Faith to Borrowers

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*Willowbrook Nurseries Inc. (“Willowbrook”) v. Royal Bank of Canada (“RBC”)* is a case in which RBC for several years gave loans to Willowbrook, a growing plant nursery business. One of the aspects of these loans was that RBC provided temporary overdraft financing – also referred to as “temporary accommodation requests” (“TAR”) – that allowed Willowbrook to exceed temporarily its \$2.75 million line of credit each winter. These TARs were important due to the seasonal nature of the plant nursery business, as Willowbrook earned the bulk of its income from April to October, when its nursery stock was sold. During the winter, Willowbrook was required to cover operating costs and prepare inventory for the following summer.

For many years, Willowbrook paid back the TARs at the end of each summer; however, in the fall of 2018 one of these was not repaid as usual. In response, in October of that year the Company submitted a request to RBC for additional financing. Had RBC granted this request, it would have been lending more funds to Willowbrook than ever before. The following month RBC declined Willowbrook’s request. As a result, Willowbrook suffered losses, including being unable to pay its suppliers on time and having to lay off employees. RBC granted Willowbrook a two-month period to find alternative financing and subsequently the Company secured financing with another bank in the spring of 2019.

Willowbrook was unhappy at having its request for additional financing refused, suffering damages as a result and having to find an alternative source of financing. Consequently, Willowbrook sued RBC for breaching its obligation to perform the “lending agreement in good faith.” From the start of its banking relationship with RBC, the Company argued it had never defaulted on any of its payment obligations to RBC and had been consistently profitable. It further argued there was no good faith reason for its request for further financing to be refused, especially on such short notice. Willowbrook argued its case at both trial and on appeal, where judges examined the relationship between a banker and its client and to determine whether RBC had acted in good faith.



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The courts confirmed that the relationship between a banker and the bank's client is a contractual relationship, simply requiring that the parties act in good faith. They discussed *Bhasin v. Hrynew* 2014, SCC No. 71, where the Supreme Court decided that the duty of honest contractual performance mandated by the duty to act in good faith "did not require a party to forego advantages flowing from the contract and did not impose a general duty on a contracting party to subordinate his or her interest to that of the other party." At both trial and on appeal, the judges citing this case ruled that RBC did not have to look after Willowbrook's financial interest above its own and decided that RBC had not acted in bad faith. The trial judge noted that life must go on when a banking relationship ends and despite what may have been poor financial judgement, RBC was not in breach of its relationship to its client.

