

# *Bhasin v Hrynew*

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A MODERN VIEW OF COMMERCIAL CONTRACTS

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**PAPE BARRISTERS**  
*Professional Corporation*

# Background

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Mr. Bhasin, a retail dealer for ESPs, sued Can-am for breach of contract

Can-am chose not to renew contract term with Mr. Bhasin and gave the required notice

Can-am fully complied with the express, unambiguous words of the contract

However, Can-am's conduct in exercising the provision was dishonest



# The Supreme Court's decision

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Two “incremental steps”:

1. Duty to act honestly; and
2. **General “organizing principle” of good faith**



# Reaction

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Decision raised eyebrows

How to define “good faith”?

What is an “organizing principle”?

Commercial certainty?



# What does “good faith” mean?

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Easier to define in the negative

Good faith is not:

- Lying to the other party
- Acting in a capricious or arbitrary way
- Trying to escape the bargain
- Taking advantage of a power imbalance

Specific meaning depends on the relationship in each case

- Improves or limits commercial certainty?



# What is an “organizing principle”?

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## Not a specific rule/duty

- Rules *command*
  - E.g. You cannot lie to the other party when performing the contract

## A guiding principle, theme

- Principles *justify*
  - E.g. You cannot lie because parties should perform the contract in good faith
  - Consistency and flexibility

## Balanced against other principles

- E.g. freedom of contract



# Why do we need an organizing principle of good faith?

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To organize “eclectic” rules/duties

To control haphazard, *ad hoc* decision making and “palm tree justice”

To recognize how contract relationships have evolved

- One-time transaction between strangers
- vs
- Long-term relationships of mutual trust and cooperation

Improves commercial certainty?



# Conclusion and more questions

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Commercial certainty?

Contract negotiation?

Proving damages?