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TAB 1

The Twelve-Minute Civil Litigator 2015

Duty of Honesty in Contractual Performance

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Introduction

It has been about ten months since the Supreme Court of Canada's unanimous decision in *Bhasin v. Hrynew*.[1] The decision was the subject of great attention and some alarm when it was released, with a parade of law firm bulletins and academic articles asking what it meant for contract law in Canada. We all told our clients it was a landmark case, and some of us called it "seminal".[2]

Was it? Has it made a difference in cases so far? What did the Court mean when it said there was "a general organizing principle of good faith"? What about the "duty of good faith performance"?

To answer those questions, we undertook a review of the early *Bhasin* jurisprudence in Ontario (at the trial and appellate levels) and nationally (at the appellate level). These findings indicate that *Bhasin* has not resulted in a tectonic shift in the common law of contracts. Rather, the reported decisions to date are consistent with Justice Cromwell's observation on the face of the *Bhasin* reasons – namely, that the decision marks only an incremental change in the law. Important, yes, but not revolutionary.

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[1] *Bhasin v. Hrynew,* 2014 SCC 71 [*Bhasin*].

[2] As only one example, see Geoff Hall, "*Bhasin v. Hrynew:* Towards an Organizing Principle of Good Faith in Contract Law" (2015) 30 B.F.L.R 335 at 335.

This paper proceeds in four parts. We begin with a brief refresher on the *Bhasin* decision and its two "incremental steps". Second, we outline our research findings on the judicial treatment of *Bhasin*. Third, we consider two questions arising from the early jurisprudence on *Bhasin.* Finally, we conclude with a short list of practice tips and takeaways.

Bhasin **Refresher**

Recall that *Bhasin* concerned a dealership agreement between the appellant Bhasin and the respondent Canadian American Financial Corp ("Can-Am"). Can-Am had contracted with Bhasin for over ten years. According to the terms of their agreement, Bhasin operated as an enrollment director, marketing Can-Am's education savings plans to potential investors. The contract between Bhasin and Can-Am provided for automatic renewal after three years, subject to one of the parties giving six-months' written notice to the contrary. Nothing in the provision limited the reasons for non-renewal. The contract contained an entire agreement clause.[3]

Can-Am also had a contract with the other respondent, Hrynew. Hrynew was the enrollment director of the largest agency in Alberta and a direct competitor to Bhasin. Hrynew coveted the lucrative niche market held by Bhasin and made several attempt to convince Bhasin to merge their businesses. After Bhasin's steadfast and repeated refusals of Hrynew's advances, Hrynew encouraged Can-Am to force a merger.[4]

The situation became more extreme. In the months leading up to Can-Am's eventual non-renewal of Bhasin's contract, Can-Am engaged in a host of dishonest behaviour. Key amongst these actions was the decision to appoint Hrynew as a "provincial trading officer," which put him in the position to audit Bhasin's level of regulatory compliance under provincial securities legislation. Can-Am told Bhasin that Hrynew had an obligation to treat the information confidentially, which was untrue. Can-Am also told Bhasin that the Alberta Securities Commission had rejected a proposal to have an outside provincial trading officer

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[3] *Bhasin, supra* note 1 at paras 2-13.

[4] *Ibid,* at paras 2-13.

appointed instead, which was untrue. Finally, Can-Am repeatedly deceived Bhasin regarding the extent of Can-Am's plans for him to merge with Hrynew, which was considered to be a "done deal" by Can-Am. Taken together, these facts led Justice Cromwell to write that "this dishonesty on the part of Can-Am was directly and intimately connected to Can-Am's performance of the Agreement" and constituted a breach of the common law duty to act honestly.[5]

Can-Am was found liable for the damages sustained by Bhasin as a result of his contract not being renewed. Damages were calculated using the ordinary measure of contractual expectation damages, namely to put Bhasin in the position he would have enjoyed had Can-Am not breached the contract. Had Can-Am not lied to Bhasin about the renewal process, Bhasin could have retained the value of his business by contracting his services to others. The lost value of the business was the measure of damages.[6]

Writing for the Court, Justice Cromwell noted that Canadian common law in relation to the good faith performance of contracts was piecemeal, unsettled and unclear. *Bhasin* sought to address this by taking "two incremental steps" toward making the law more coherent and just:[7]

1. The first step was to acknowledge that good faith contractual performance is a general organizing principle of the common law of contract. An organizing principle "states in general terms a requirement of justice from which more specific legal doctrines may be derived. An organizing principle therefore is not a free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations."[8] It is not merely an implied term. As with other organizing principles such as unconscionability, it cannot be excluded by contract, whether with an entire agreement clause or otherwise, though its scope can be

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[5] *Ibid,* at paras 98-103.

[6] *Ibid,* at paras 108-110.

[7] *Ibid,* at para 33.

[8] *Ibid,* at para 64.

circumscribed by the parties' agreement. The Court drew the good faith organizing principle from pre-existing good faith doctrines in areas such as employment, insurance, tendering and franchise, but expressly left the door open to new doctrines in other contexts.[9]

2. The second step was to acknowledge on the *Bhasin* facts a specific doctrine within that organizing principle of good faith: namely, the duty of honest performance of contractual obligations. Thus, the ruling in *Bhasin* can be confined to good faith in the *performance* of contracts. Further, the evidence in *Bhasin* of dishonest performance was undeniable. Therefore, the more nuanced meaning of the duty of honest performance will need to be defined by harder cases in the future.

Judicial treatment of *Bhasin*

As of August 13, 2015, *Bhasin* had been considered in seventy-nine reported decisions across Canada. We focused our review on the thirty-six reported decisions from Ontario (trial and appellate) and the eight appellate-level reported decisions from other provinces.

Of these forty-four decisions, a clear breach of the *Bhasin* duty of good faith was found in only five instances. Three of those cases concerned employment and real estate and were decided largely on the basis of the pre-existing good faith doctrines.[10] It is likely that all three cases would have been decided the same way before *Bhasin*.

The remaining two decisions were applications of *Bhasin* in contractual areas where there was no pre-existing statutory or common law duty of good faith. However, given their

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[9] *Ibid,* at paras 33, 66.

[10] *Antunes v. Limen Structures Ltd.,* 2015 ONSC 2163 (Ont. S.C.J.) [*Antunes*] (employer lied about the value of the company and the existence of a corporate division the plaintiff was promised stock options in); *Bray v. Canadian College of Massage and Hydrotherapy,* [2015] O.J. No. 465 (Ont S.C.S.M.) (constructive dismissal case where employer continually misled employee as to the reason for the reduction in hours); *Business Development Insurance Ltd. v. Caledon Mayfield Estates Inc.,* 2015 ONSC 1978 (Ont. S.C.J.) (vendors are obliged to act in good faith and to make efforts to rectify title defects in sale and purchase of land. Here, defendant made bona fide efforts to complete transaction).

particular facts, even these two cases probably would have been decided the same way before *Bhasin*:

1. *Lavrijsen Campgrounds Ltd. v. Reville*[11] concerned an intentional misrepresentation in a share purchase agreement. The case could have been decided for the plaintiff on the basis of fraudulent misrepresentation, but Justice Kent applied *Bhasin* to conclude that the defendant's dishonesty entitled the plaintiff to recover. [12]

2. In *Valles v. Advantagewon Inc.,* Justice Winny found for the plaintiff for five separate reasons, one of which was a breach of good faith.[13] The case concerned the seizure and sale of a motor vehicle under the *Repair and Storage Liens Act*. As part of a loan agreement, the plaintiff Valles was required to make his lender Advantagewon a loss payee under his automobile insurance but had failed to do so. Advantagewon made a few unsuccessful attempts to contact Valles. Instead of taking other steps to resolve the matter, Advantagewon moved to seize the plaintiff's vehicle and provided no reasons for the seizure.[14] While the Court found that good faith required Advantagewon to give Valles notice of the alleged default and disclose why the vehicle was being seized, it also found that Advantagewon was contractually obligated to do so.[15]

Until this area is further developed, the good faith organizing principle and its consequent duty of honesty in contractual performance is most likely to be applied in those few cases – like *Bhasin* itself – where one party's conduct constitutes an overt departure from reasonable commercial expectations.

Despite *Bhasin*'s limited effect on the outcome of the early decisions considering the case, it is still possible to draw out a few lessons. These questions seem paramount:

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[11] 2015 ONSC 103 (Ont. S.C.J.) [*Lavrijsen*].

[12] *Ibid,* at para 16.

[13] [2015] O.J. No. 2211 (Ont. S.C.S.M.) [*Valles*] at paras 51-67.

[14] *Ibid,* at paras 19, 22-43.

[15] *Ibid,* at paras 52-54.

1. What is the scope of the organizing principle of good faith in contracts?

2. How do we draw the line between silence and dishonesty in contractual disclosure situations?

1. What is the scope of the organizing principle of good faith?

Much of the uncertainty surrounding the implications of *Bhasin* flows from the open-ended nature of the good faith principle. The Supreme Court made no attempt to define the limits of the organizing principle, expressly holding that the list of circumstances to which it may apply is not fixed.[16] The Court also did not provide a definition of good faith, aside from the pronouncement that the "organizing principle is simply that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily".[17] There was no universally accepted definition of good faith in the pre-*Bhasin* case law.[18] Apparently this is still the case after *Bhasin*, at least for now.

Here are some indicators of the limits of the principle:

a) The Court in *Bhasin* said the principle of good faith applies only to contractual performance and does not (yet) extend to the contractual negotiation process.[19] But the open door means that courts will inevitably be asked to consider extensions of the principle beyond performance to other aspects of contract law (such as negotiation,

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[16] *Bhasin, supra* note 1 at para 90.

[17] *Ibid,* at para 63.

[18] See e.g., Hall, *supra* note 2 at 343.

[19] The principle of good faith naturally extends to contract formation, and while it has not happened yet, it may not be long before the courts officially extend good faith to pre-contractual relationships by recognizing a duty to negotiate in good faith. We have already seen the door opened to this possibility with cases like *Molson Canada 2005 v. Miller Brewing Company,* 2013 ONSC 2758 (Ont. S.C.J.) and *SCM Insurance Services Inc. v. Medisys Corporate Health LP,* 2014 ONSC 2632 (Ont. S.C.J.). Recent case law seems to be reinforcing this nascent trend. Consider for example *Lavrijsen, supra* note 11: rather than resorting to the usual contract formation doctrines of fraud and misrepresentation, the trial judge looked to the good faith principle and its consequent duty of honesty to allow the plaintiff to recover.

formation, enforcement and termination[20]). This is particularly the case given the Court's reliance in *Bhasin* on Quebec and U.S. jurisprudence, both of which recognize a duty of good faith in contracts well beyond mere performance.

b) At the minimum, the doctrine requires that parties not lie or "knowingly mislead" each other about matters directly linked to the performance of the contract.[21] The Court's repeated use of subjective-intent language in *Bhasin* suggests that negligent misrepresentation will not breach the duty. Wilful blindness is more difficult to predict: given that it has been equated in some cases with actual knowledge, there is a higher risk that a contracting party who misleads through wilful blindness will be found to have breached the duty.[22]

c) The organizing principle of good faith also has an upper limit – namely, that is does not require contracting parties to act as fiduciaries to one another.[23] Counter-parties are still free to act in their own self-interest.

Between the two extremes of "don't lie" and "permissible self-interest" lies a wide range of obligations, rights and responsibilities.[24] Defining the duty in this middle zone will be a contextual exercise and fact-dependent.[25] The factors considered in these early decisions have

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[20] For example, in employment cases, courts have long recognized that employers have a good faith duty to employees during contract termination: *Wallace v. United Grain Growers Ltd.,* [1997] 3 SCR 701; see also, *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10.

[21] *Bhasin*, *supra* note 1 at paras 74-78; *Antunes, supra* note 10 at para 64; *Reserve Properties Ltd. v. 2174689 Ontario Inc.,* 2015 ONSC 3469 (Ont S.C.J.) at paras 21-22 [*Reserve Properties*].

[22] See *Cora v Adwokat,* [2005] O.J. No. 4 (Ont. S.C.J.) at para 18: "As was pointed out by the Alberta Court of Appeal in *Bartin Pipe & Piling Supply Ltd., v. Epscan Industries Ltd.*, 2004 A.J. No. 126 p. 6 para. 28 the definition of wilful blindness is the same in civil and criminal law. The court adopted the definition set out by the Supreme Court of Canada in *R. v. Williams,* 2003 SCC 41, namely "…willful blindness arises where a person has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth."

[23] *Bhasin, supra* note 1 at para 65; *Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd.,* 2015 ONSC 3404 (Ont S.C.J.) at para 119 [*Addison*]; *Chuang v. Toyota Canada Inc.,* 2015 ONSC 885 at para 102 [*Chuang*]; *Trillium Motor World Ltd. v. General Motors of Canada Ltd.,* 2015 ONSC 3824 (Ont. S.C.J.) at para 154 [*Trillium*].

[24] *Trillium*, *supra* note 22 at para 154.

[25] In this way, *Bhasin* is reinforcing the court's current fact-driven, contextual approach to contractual interpretation. See e.g., *Sattva Capital Corp. v. Creston Molly Corp.,* 2014 SCC 53; see also Hall, *supra* note 2 at 339.

been relatively straightforward. For example, courts have looked to both the sophistication of the contracting parties[26] and the character and duration of their commercial relationship.[27] In circumstances where a pre-existing good faith duty has been recognized (such as employment and franchise) the courts unsurprisingly have looked to pre-*Bhasin* jurisprudence to determine the content of the duty.[28]

Contrary to the early alarm, *Bhasin* has not resulted in an erosion of bedrock contract law. Nothing in the early application of *Bhasin* appears to be superseding established contractual interpretation principles.[29]

In fact, several courts considering *Bhasin* have gone to some lengths to limit its application. In *Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd.,* the plaintiff franchisee argued that good faith required a more equal shouldering of the pain resulting from GM's declining market share between franchisor and franchisee. No such allocation was provided in the agreement. In dismissing the claim, Justice Dunphy writes:

> It would be ironic indeed if a ruling intended to bring coherence and predictability by underscoring the common sense minimum standards of honesty in the commercial context should be misconstrued as a pretext for injecting uncertainty and risk of arbitrary outcomes into the world of commercial agreements whose very raison d'être is the pursuit of predictability and certainty. *Bhasin* is no authority for unbridled creativity in the creation from whole cloth of obligations in a contractual context which the parties have not provided for or have addressed in a fashion which one party regrets in hindsight.[30]

In *Moulton Contracting Limited v. British Columbia*, the BC Court of Appeal reversed a trial judge's finding that the business efficacy doctrine supported the implication of a

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[26] See e.g., *Lavrijsen, supra* note 11 at para 1; see also *Tender Choice Foods Inc. v. Planet Energy (Ontario) Corp.,* 2015 ONSC 817 (Ont. S.C.J.) at para 34 [*Tender Choice*]; see also *Reserve Properties, supra* note 20 at para 4.

[27] See e.g., *Tender Choice, supra* note 25 at paras 22, 34; see also *Reserve Properties, supra* note 20 at para 4.

[28] See e.g., *Trillium, supra* note 22 at para 155; see also *Addison, supra* note 22 at paras 106-117.

[29] *Empire Communities Ltd. v. Ontario,* 2015 ONSC 4355 (Ont. S.C.J.) at para 26.

[30] *Addison*, *supra* note 22 at paras 115-116 [emphasis added].

dissatisfaction term into a logging contract between the province (defendant) and Moulton Contracting (plaintiff). On appeal, the BCCA rejected the plaintiff's argument that even if the implied term could not be supported under the business efficacy framework, its implication could be grounded in the organizing principle of good faith:

> Moulton's submission that *Bhasin* buttresses the trial judge's decision to imply the terms to give effect to the parties' intentions and to redress power imbalances conflates the test for implying terms at law (which may be to redress power imbalances) with the test for implying terms for business efficacy (which requires that the terms be intended by the parties). In my view, *Bhasin* does not suggest that the two tests should be combined to reach a hybrid law-fact conclusion on whether to imply terms.[31]

In *Eureka Farms Inc. v. Luten,*[32] the foreign purchaser of a farm property that included a substantial pig barn brought a claim for bad faith and negligent misrepresentation against the vendor when it was discovered that the purchased barn was empty of swine and that the vendor had not notified them that the supply of piglets had been interrupted. There was nothing in the contract between the vendor and purchaser that provided that the barn would be full of swine.[33] Further, the purchaser had been made aware that the vendor did not have a written contract with the piglet supplier, and the supplier made it clear to the purchaser that they would not enter into a written agreement or guarantee that the supply of piglets would continue in the future. In dismissing the claim (albeit expressing regret), Justice Reilly noted that, "*Bhasin* has not swept away all principles of contractual obligation. The plaintiffs contracted to buy a farm property and they received exactly what they contracted for".[34]

Similarly, in *Tender Choice Foods Inc. v. Planet Energy (Ontario) Corp.,*[35] one of the parties in a fixed-price energy contract alleged bad faith in an attempt to have what had

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[31] *Moulton Contracting Ltd. v. British Columbia,* 2015 BCCA 89 at para 67.

[32] 2015 ONSC 431 (Ont S.C.J.)

[33] *Ibid,* at para 84.

[34] *Ibid,* at para 92.

[35] *Tender Choice, supra* note 25.

become an unfavorable contract set aside. In dismissing the claim, Justice Arrell noted that there were no past dealings between the parties and that the plaintiff was "represented by experienced people who had more than sufficient time to read the contract, seek advice on it, and research the issue…they elected not to do even a minimal amount of due diligence".[36]

In *Reserve Properties Ltd. v. 2174689 Ontario Inc.,* a commercially sophisticated party unsuccessfully attempted to rely on the length of the commercial relationship between the parties to justify its laxity in the performance of contractual obligations.[37] Instead, the contract was applied on its terms.

These decisions are reminders that *Bhasin* will not save you from a bad bargain, nor will it excuse you for careless due diligence or sloppiness in the performance of contractual obligations.

2. What does honesty require for contractual disclosure – can parties still remain silent?

Despite Justice Cromwell's pronouncement that the duty of honesty does not give rise to a duty to disclose, commentators were quick to query how the courts would draw the line between dishonesty and active non-disclosure.[38] Again, the answer depends on the context.

Consider the case of *Empire Communities Ltd. v. Ontario.*[39] The case involved a claim for nondisclosure of material facts in the sale of surplus government lands to the plaintiff (Empire Communities) for the development of residential housing. The plaintiff argued that the defendant (Ontario Realty Corporation) was dishonest in remaining silent as to the existence of a Six Nations' claim and lawsuit concerning the purchased land. In dismissing the claim, Justice Myers noted that the defendant was not obliged to disclose the claims or lawsuit under the

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[36] *Ibid,* at para 34.

[37] *Reserve Properties, supra* note 20 at para 19-22.

[38] See e.g., Julius Melnitzer, "In Good Faith" (2015) Lexpert Magazine, May 2015 at 57.

[39] 2015 ONSC 4355 (Ont S.C.J.).

agreement between the parties, or by the doctrine of latent defects. Justice Myers went on to state:

> Apart from the duty not to lie, *Bhasin* does not create contractual obligations or replace the existing law. As to the (possibly) new duty not to lie or knowingly misrepresent; absent a duty to disclose, the defendant's silence can be neither. If one does not have a positive obligation to disclose certain facts, then silence as to those facts is neither dishonest nor a misrepresentation.[40]

Similarly, in *Chuang v. Toyota Canada Inc.,*[41] Toyota Canada entered into a letter of commitment with Dr. Chuang, a potential franchisee, for the construction and operation of a car dealership. After Dr. Chuang missed a number of deadlines, Toyota started to consider its options. Justice Spence held that since there was nothing in the letter of commitment between the parties necessitating disclosure, that it was not dishonest for Toyota Canada to keep to itself reservations about Dr. Chuang's financial and managerial resources. Nor was it dishonest for Toyota to remain silent on the fact that they were actively considering ending their relationship with Dr. Chuang and preparing for that eventuality.[42] And all of this in a franchise situation, a category of relationship in which we might have expected to see a pro-plaintiff *Bhasin* uplift.

Empire and *Chuang* can be contrasted with *Bhasin*, where Can-Am was actively lying about their intentions, and *Lavrijsen,* where the contract between the parties required disclosure of material facts related to the share purchase agreement.

As an aside, when faced with a disclosure dilemma, parties should look first to their statutory obligations, if applicable. In the franchise case of *Trillium Motor World Ltd. v. General Motors of Canada Ltd.,* Justice McEwen held that the disclosure obligation flowing from section 3 of the *Wishart Act* was operative but was also consistent with *Bhasin*.[43] In the context of

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[40] *Ibid,* at para 27 [emphasis added].

[41] 2015 ONSC 885 (Ont. S.C.J.).

[42] *Ibid,* at para 102.

[43] *Trillium, supra* note 22 at paras 151-153.

franchise relationships, a positive duty to disclose persists and honest performance requires that parties not intentionally omit or knowingly misrepresent facts to contractual counterparties.[44] Given that statutory obligation, however, it is far from clear that *Bhasin* made any difference to the result.

Practical tips/ takeaways

The following tips can be drawn from the early *Bhasin* jurisprudence.[45] As with any developing area, these takeaways should be updated on a regular basis:

1. Don't lie. With a bit of common sense your clients can honestly maintain self-interest in commercial relationships. While *Bhasin* was a performance case, strictly speaking, it is hardly a leap to advise clients not to lie in any aspect of their contractual dealings.

2. Although not yet the subject of any reported decision, commercial parties are free to define the content of honest performance in particular contexts. The Court in *Bhasin* held that, as long as certain "minimum core requirements" are respected, the good faith doctrine can be defined and even relaxed by express contractual terms – just not excluded. For example, the *standards* by which performance will be measured can be defined.[46] This will be an interesting dance.

3. Despite Justice Cromwell's caution that good faith should not be used as a pretext for scrutinizing the motives of contracting parties, parties should consider documenting the decision-making process – especially with regard to the exercise of discretionary contractual provisions. Put another way, while evidence of bad motives may not be fatal, evidence of good motives will always be helpful.

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[44] See also *1250264 Ontario Inc. v. Pet Valu Canada Inc.,* 2015 ONSC 29 (Ont S.C.J.) at para 58.

[45] See also Melnitzer, *supra* note 27 at p 57.

[46] *Bhasin, supra* note 1 at paras 77-78.

4. Good faith is not an invitation for laxity in due diligence or the careless performance of contractual obligations. Commercial parties are still well-advised to read their contracts and perform all of the terms accordingly.

5. Make sure you are aware of your client's obligations under pre-existing statutory or common law good faith doctrines. However, beyond the duty of honest performance, the organizing principle of good faith has not (yet) resulted in any notable expansion of the established good faith requirements in areas such as employment, insurance, tendering or franchise.

6. Coming soon to a pleading near you: allegations that the principle of good faith and/or the duty of honest performance have been breached. Given the open-ended nature of the *Bhasin* ruling and the wide variety of commercial contractual dealings, those allegations may survive preliminary challenges and be sent into broad discovery and possibly even trial – at least until the meaning and limits of the doctrine are established.

Appendix "A"

1. *1250264 Ontario Inc. v. Pet Valu Canada Inc.,* 2015 ONSC 29 (Ont. S.C.J.)
2. *Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd.,* 2015 ONSC 3404 (Ont. S.C.J.)
3. *Antunes v. Limen Structures Ltd.,* 2015 ONSC 2163 (Ont. S.C.J.)
4. *Bartin Pipe & Piling Supply Ltd., v. Epscan Industries Ltd.*, 2004 ABCA 52
5. *Bhasin v. Hrynew,* 2014 SCC 71
6. *Bray v. Canadian College of Massage and Hydrotherapy,* [2015] OJ No. 465 (Ont. S.C.S.M.)
7. *Business Development Insurance Ltd. v. Caledon Mayfield Estates Inc.,* 2015 ONSC 1978 (Ont. S.C.J.)
8. *Chuang v. Toyota Canada Inc.,* 2015 ONSC 885 (Ont. S.C.J.)
9. *Cora v Adwokat*, [2005] OJ No 4 (Ont. S.C.J.)
10. *Empire Communities Ltd. v. Ontario,* 2015 ONSC 4355 (Ont. S.C.J.)
11. *Eureka Farms Inc. v. Luten,* 2015 ONSC 431 (Ont S.C.J.)
12. *Lavrijsen Campgrounds Ltd. v. Reville,* 2015 ONSC 103 (Ont. S.C.J.)
13. *Molson Canada 2005 v. Miller Brewing Company,* 2013 ONSC 2758 (Ont. S.C.J.)
14. *Moulton Contracting Ltd. v. British Columbia,* 2015 BCCA 89
15. *Potter v. New Brunswick Legal Aid Services Commission,* 2015 SCC 10
16. *R. v. Williams,* SCC 41

17. *Reserve Properties Ltd. v. 2174689 Ontario Inc.,* 2015 ONSC 3469 (Ont. S.C.J.)

18. *Sattva Capital Corp. v. Creston Molly Corp.,* 2014 SCC 53

19. *SCM Insurance Services Inc. v. Medisys Corporate Health LP,* 2014 ONSC 2632 (Ont. S.C.J.)

20. *Tender Choice Foods Inc. v. Planet Energy (Ontario) Corp.,* 2015 ONSC 817 (Ont. S.C.J.)

21. *Trillium Motor World Ltd. v. General Motors of Canada Ltd.,* 2015 ONSC 3824 (Ont. S.C.J.)

22. *Valles v. Advantagewon Inc.,* [2015] OJ No. 2211 (Ont. S.C.S.M.)

23. *Wallace v. United Grain Growers Ltd.,* [1997] 3 SCR 701