

# THE PRINCIPLE OF GOOD FAITH IN CONTRACTS:

## *Essential Updates and Practical Analysis in Canadian Contract Law*

The principle of good faith is redefining how contracts are drafted, interpreted, and performed. Do you know the full story?

Receive a comprehensive overview and analysis of the post-*Bhasin* landscape from an expert faculty.

- Implications of recent landmark decisions and what to expect
- Strategies for litigating in the era of Good Faith
- Important considerations for drafting in the new Good Faith environment: key strategies, clauses, and wording
- Lessons from the Quebec and U.S. experience



**Engage** with current and retired jurists on the implications of changes in the doctrine, and what to expect when bringing cases to court. Featuring:

- **The Hon. Justice Thomas A. Cromwell**  
Supreme Court of Canada (retired) and Borden Ladner Gervais LLP
- **The Hon. Justice Mary V. Newbury**  
British Columbia Court of Appeal
- **The Hon. Justice Michelle O'Bonsawin**  
Ontario Superior Court of Justice

### PROGRAM CHAIRS

**Shantona Chaudhry**  
Pape Chaudhry LLP

**Brandon Kain**  
McCarthy Tétrault LLP

### REGISTRATION OPTIONS

**September 23, 2021:**  
Online – Live, interactive  
9:00 a.m. – 4:45 p.m. ET

OR

**October 28, 2021:**  
Online Replay  
9:00 a.m. – 4:45 p.m. ET

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# The Principle of Good Faith in Contracts:

## *Essential Updates and Practical Analysis in Canadian Contract Law*

In a Trilogy of recent decisions – *Matthews v. Ocean Nutrition Canada Ltd.*, *C.M. Callow Inc. v. Zollinger*, and *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District* – the Supreme Court substantively revisited *Bhasin* for the first time, and provided **important new guidance** about the duty of honest performance, the duty to exercise contractual discretion reasonably, the duty of employers in the manner of dismissing employees, and the broader organizing principle of Good Faith. If your work involves negotiating, drafting, interpreting, and/or litigating contracts, it is imperative that you keep on top of these developments.

In one day, this **OsgoodePD** critical update will give you the knowledge and skills you need to stay current and properly represent your client's interests.

Join an esteemed faculty of senior legal professionals, academics, and judges in this live, interactive online program. You will get a comprehensive, practical overview of the post-*Bhasin* landscape from the lawyers who acted as counsel in these cases, along with valuable information about how and where the emerging Good Faith doctrine affects contract law.

## Topics Include

- Essential guidance and perspectives from the Bench
- Litigating Good Faith disputes: how to advise, plan, and execute
- Overview of the evolution of contract law, including different approaches: Bijuralism, comparative law, and the application of Good Faith in U.S. and Quebec contract law
- Understanding the impact of Good Faith requirements on the unique challenges affecting in-house and the public sector
- Emerging case law issues you need to be aware of
- Vital new considerations when negotiating and drafting commercial contracts

## Who Should Attend

- Corporate and commercial lawyers
- Government and public sector lawyers
- In-house counsel
- Commercial litigators
- Transactional counsel
- Risk management professionals
- Compliance officers
- Contracting and procurement professionals

## Agenda

9:00 a.m.

### Chairs' Introductory Remarks

**Shantona Chaudhury**

Pape Chaudhury LLP

**Brandon Kain**

McCarthy Tétrault LLP

9:15 a.m.

### Contract Drafting Considerations: The Evolving Doctrine of Good Faith and Key Phrasing, Clauses, and Wording

**Geoff R. Hall**

McCarthy Tétrault LLP

**Julia S. Shin Doi**

General Counsel, Ryerson University

**Angela Swan**

Aird & Berlis LLP

In light of the changing jurisprudence in this area, experienced counsel will review key considerations when negotiating and drafting commercial contracts, including:

- Identifying common situations where Good Faith applies
- Advising the client at the pre-drafting stage and conducting informative and useful interviews and meetings
- Good Faith Drafting 101: review of how to structure contracts, including key wording and clauses to include

10:15 a.m.

**Break**

10:30 a.m.

### Litigating Good Faith Disputes: Strategies for 2021 and Beyond

**Catherine Beagan-Flood**

Blake, Cassels & Graydon LLP

**Julia K. Lockhart**

Nathanson, Schachter & Thompson LLP

**Jeremy Opolsky**  
Torys LLP

An experienced panel of commercial law litigators directly involved in Good Faith cases will provide their views of recent developments in contract law jurisprudence, along with practical insights on new approaches to disputes in this area, including:

- Succinct overview of *Bhasin* and related key court rulings since then, including *Matthews*, *Callow* and *Wastech*
- When does the duty of Good Faith create obligations that go beyond the plain text of the contract?
- What remedies are available for a breach of the duty of Good Faith?
- Effective communication strategies when advising clients on the new 'Good Faith environment'
- Advocacy and litigation tactics in contractual disputes

**11:30 a.m.**

### The View from the Bench: What Every Counsel Should Know about Good Faith

**The Hon. Justice Thomas A. Cromwell**  
Supreme Court of Canada (retired)  
and Borden Ladner Gervais LLP

**The Hon. Justice Mary V. Newbury**  
British Columbia Court of Appeal

**The Hon. Justice Michelle O'Bonsawin**  
Ontario Superior Court of Justice

Current and retired jurists drawn from the Supreme Court of Canada and appellate and trial levels discuss the ongoing evolution of contract law in Canada, offering their perspectives on Good Faith and what counsel need to consider when bringing cases.

**12:30 p.m.**

**Lunch Break**

**1:30 p.m.**

### When You Have One Client and Multiple Stakeholders: The Impact of Good Faith Duties on In-House and Government Practice

**Laurel Lui**  
Director, Commercial Services, Upstream,  
Suncor Energy Inc.

**Ryan MacIsaac**  
Counsel, Uber

**Paul Sheridan**  
Counsel, Ontario Ministry of the Attorney  
General, Crown Law Office – Civil

In-house and government Counsel have additional duties and obligations to their clients and stakeholders when advising on contractual matters. The panel will give a detailed overview of the specific and unique challenges posed by Good Faith obligations in this area of practice, and red flags to be aware of.

Relevant to all Counsel, this engaging panel will discuss:

- Best practices in risk management
- The unique circumstances of in-house and government practice, and how all Counsel should be aware of these
- Common areas of in-house/single client practice where Good Faith is a possible issue

**2:30 p.m.**

### The View from the Academy: The Evolution of Good Faith as a Vital Organizing Principle

**Tamara Buckwold**  
Professor Emeritus, Faculty of Law,  
University of Alberta

**Paul Daly**  
Professor, Faculty of Law,  
University of Ottawa

**John McCamus**  
Professor Emeritus, Osgoode Hall  
Law School

Leading legal scholars will weigh in on

the evolution of the Good Faith doctrine as an organizing principle of contract law, explaining how we got to *Bhasin*, the varying approaches to Good Faith taken by different provinces and courts, and how the doctrine may continue to evolve.

**3:30 p.m.**

**Break**

**3:45 p.m.**

### Good Faith in Quebec & the United States: Analysis and Lessons Learned

**Steven J. Burton**  
Professor Emeritus, College of Law, The  
University of Iowa (retired)

**Rosalie Jukier**  
Professor, Faculty of Law, McGill University

No law or jurisdiction exists in a vacuum. Legal experts from Quebec and the U.S. will describe how the doctrine of Good Faith applies in the jurisprudence of their home jurisdictions, and offer guidance on what facets could be transferable and relevant to Canadian common law practitioners.

**4:45 p.m.**

**Program Ends**

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Director, Commercial Services, Upstream, Suncor Energy Inc.

## Registration Details

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Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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