

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE NOVA SCOTIA COURT OF APPEAL)

BETWEEN:

DAVID MATTHEWS

APPELLANT

and

OCEAN NUTRITION CANADA LIMITED

RESPONDENT

-and-

**CANADIAN ASSOCIATION FOR NON-ORGANIZED EMPLOYEES, DON VALLEY
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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PARTS I AND II – OVERVIEW AND POSITION ON THE QUESTIONS IN ISSUE

1. The Canadian Association for Non-Organized Employees (“CANOE”) submits the dissent of Scanlan J.A. was largely accurate when he stated there were implied contractual terms of “**trust, honesty and good faith**”¹ in the employment relationship. CANOE contends that Scanlan J.A.’s analysis in reality encompasses three distinct obligations: (a) the duty of **honesty in contractual performance** recognized in *Bhasin*;² (b) the duty of **trust and confidence** during the employment relationship; and (c) the duty of **good faith and fair dealing** during the **performance** of the employment relationship. The *Bhasin* duty of honesty in contractual performance applies to contracts in general, so it should be expressly recognized that it applies to the employment relationship. The duties of “trust and confidence” and “good faith and fair dealing” **during the performance** of the employment relationship should be recognized as manifestations of the organizing principle in *Bhasin*. While they could be treated as **terms implied by law** (as employment “mutual trust and confidence” is in the United Kingdom), the better view is that, like the *Bhasin* duty of honesty, they should also originate as **contractual doctrine** in order to better protect employees. Employers **cannot contract out of** contractual doctrine. Employer conduct that breaches these obligations within the employment relationship exposes the employer to damages, not merely for wrongful dismissal, but damages representing what the employee would have had but for the breaches. Both employment law principles and contractual doctrine **relevant to the employment relationship** should apply to all employment related contracts such as employee equity plans (e.g. options, LTIP, and restrictive share unit agreements), and other employee incentive plans (e.g. bonus plans).

PART III – STATEMENT OF ARGUMENT

A. Requested Recognition of Modest Incremental Changes: Good Faith Performance is Well Established in the Employment Context.

2. Honesty in performance should be expressly recognized in the domain of employment contracts. **In addition**, in keeping with this Court’s policy of incrementally developing the

¹ *Ocean Nutrition Canada Ltd. v. Matthews*, 2018 NSCA 44 (“*Matthews*”) at para. 161.

² *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494 (“*Bhasin*”).

common law to make it consistent with modern Canadian values,³ a duty of “good faith and fair dealing” should be recognized generally in the **performance** of employment contracts. Good faith and fair performance have been increasingly recognized in the employment context in common law Canada (and the United Kingdom) over the last thirty years.⁴ Chief Justice Wagner stated in *Potter v. New Brunswick Legal Aid Service Commission*⁵ “the employer’s duty of good faith and fair dealing ...has been gaining acceptance at common law.”⁶ This is demonstrated in a catalogue of ways:

a. Constructive Dismissal: The Chief Justice in *Potter* recently noted the employer’s ability to administratively suspend⁷ was subject to duties of good faith.⁸ Importantly, after citing *Bhasin*, in reviewing the employer’s duty to provide work, the Chief Justice in *Potter* noted “... at a minimum acting in good faith in relation to **contractual dealing** means being honest, reasonable, candid, and being forthright”⁹ (emphasis added). In *Farber v. Royal Trust Inc.*¹⁰ Gonthier J. noted that acting in bad faith in a constructive dismissal case would have an impact on damages awarded to the employee.¹¹

b. Employer Discretion: A “sole discretion” clause for payment is required to be used honestly and in good faith.¹²

³ See discussion in *Bhasin* at para 40 where cases such as *R. v. Salituro*, [1991] 3 S.C.R. 654 are discussed.

⁴ Cromwell J. in *Bhasin* at paras 83-85 notes the acceptance of good faith and fair dealing in both the United States and in civil law.

⁵ *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10, [2015] 1 S.C.R. 500 (“**Potter**”) at para. 84 citing D.J. Doorey, “Employer ‘Bullying’: Implied Duties of Fair Dealing (2005), 30 Queen’s L.J. 500 (CANOE’s Book of Authorities, Tab 4). See also discussion in Banks, “Progress and Paradox: The Remarkable Yet Limited Advance of Good Faith Duties in Canadian Common law” (2011) 32 Comp. Labor Law & Pol’y Journal 547 (CANOE’s Book of Authorities, Tab 2).

⁶ *Potter* *ibid* para. 84.

⁷ *Ibid* para. 99.

⁸ *Ibid* at para. 86.

⁹ *Ibid* at para. 99 citing *Bhasin* at para 66.

¹⁰ *Farber v. Royal Trust Inc.*, [1997] 1 S.C.R. 846 (“**Farber**”).

¹¹ *Ibid* at para. 27.

¹² *Greenberg v. Meffert* (1985), 18 D.L.R. (4th) 548 (Ont. C.A.) leave to appeal to S.C.C. refused 30 D.L.R. (4th) 768n.

c. Evaluations: The employer’s duty is to evaluate fairly and honestly, particularly when potential compensation is involved.¹³

d. Payment of Bonus: Payment of bonuses earned during employment and that to be owed for the period of reasonable notice must be determined in good faith and reasonably.¹⁴

e. Manner of Dismissal: This Court has held that the manner of dismissal is to be exercised in a manner consistent with good faith and fair dealing, which includes the duty to be honest and forthright for the reasons of dismissal.¹⁵

f. Probation: Probationary employees need to be assessed on the basis of a “fair, honest and valid assessment.”¹⁶

B. Recognition of Duties of “Honesty”, “Trust and Confidence”, and “Good Faith and Fair Dealing” in Contractual Performance is Consistent with Modern Canadian Employment Law Policy.

3. The existence of the organizing principle of good faith described in *Bhasin* is especially relevant in the employment context in both Canada and the United Kingdom. There are very

¹³ *Marlowe v. Ashland Canada*, 2001 BCSC 954, 13 CCEL (3d) 307 (BCSC) at para. 158:

Employers are bound to deal with matters of employment fairly and in good faith.

¹⁴ See *Gilbara v. ABN-Amro Bank* (2003), 29 CCEL (3d) 80 (Ont. S.C.) at para 26 applying *Clark v. Normura International pc.*, [2000] I.R.L.R. 766 (Q.B.). *Lippa v. Can Cell Industries Inc.* (2009), 78 CCEL (3d) 46 (Alta Q.B.) at paras 96-9. The fact an employee is terminated because he or she is redundant does not remove the employer of its obligation to exercise discretion in relation to compensation honestly and reasonably: *Bain v. UBS Securities Canada Inc.* 2016 ONSC 5362 affd at 2018 ONCA 190. See too *Horkulak v. Cantor Fitzgerald International*, [2004] EWCA Civ 1287 where the same principles were espoused.

¹⁵ *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 (“*Wallace*”); *Honda Canada Inc. v. Keays*, [2008] 2 S.C.R. 362 (“*Keays*”).

¹⁶ *Regan v. Chaleur Entrepreneurship Centre Inc.* (1994), 7 CCEL (2d) 46 (N.B.Q.B.) at p. 50 (CANOE’s Book of Authorities, Tab 1). See also discussion in *Mison v. Bank of Nova Scotia* (1994), 6 CCEL (2d) 146 (Ont. Gen. Div).

strong policy reasons why employment contracts **and relationships** should not be excluded from the new duty of “honest contractual performance”.

4. These strong policy reasons suggest this Court should also recognize new manifestations of the *Bhasin* organizing principle, namely: (a) an obligation of “**trust and confidence**” (as the United Kingdom does); and/or (b), **a mutual** obligation of “**good faith and fair dealing**” in **contractual performance** in the employment context. This Court and the House of Lords have recognized, *inter alia*, the following in relation to the evolution of employment contracts:

a. Employees are a vulnerable class in society that should be protected;¹⁷

b. There is a disparity in bargaining power between employers and employees;¹⁸

c. There is normally a disparity of legal knowledge between employers and employees;¹⁹

d. Work is considered to be “one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.”²⁰

¹⁷ See Dickson C.J.C. in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1057 where it is noted “...the importance that this Court has placed on the protection of employees as a vulnerable group in society.” See also *Wallace* at para 93. See too *Malik v. Bank of Credit and Commerce Inter'l*, [1997] 3 All E.R. 1, [1997] UKHL 23 (“*Malik*”) where Lord Nicholls stated: “An employment contract creates a close personal relationship, where there is often a disparity of power between the parties. Frequently the employee is vulnerable. Although the underlying purpose of the trust and confidence term is to protect the employment relationship, there can be nothing unfairly onerous or unreasonable in requiring an employer who breaches the trust and confidence term to be liable if he thereby causes continuing financial loss of a nature that was reasonably foreseeable.”

¹⁸ *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 (“*Machtinger*”) per Iacobucci J. at para. 31 quoting K. Swinton, “Contract Law and the Employment Relationship: The proper Forum for Reform, in Reiter and Swan ed., *Studies in Contract Law* (Toronto: Butterworth, 1980) at page 363. See also Lord Nichols in *Malik v. Bank of Credit & Commerce Intentional S.A.* See too *Wallace, supra*, at para. 93.

¹⁹ See *Machtinger* at para. 31 where Etherington, “The Enforcement of Harsh Termination Provision in Personal Employment Contracts: The Rebirth of Freedom of Contract in Ontario” (1990) 35 McGill L.J. 459 at 468 is cited.

²⁰ *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at p. 368. See also *Potter, supra*, at para. 83 and *Wallace, supra* at para 93.

5. The above and similar factors have played a role in determining the common law and interpreting legislation in relation to employment.²¹ These factors must be considered to determine: (a) whether the duty of honesty in contractual performance is expressly recognized in the employment context; (b) whether a mutual obligation of trust and confidence in the performance of the employment relationship should be recognized in Canada; and (c) whether an obligation of good faith and fair dealing in **performance** of the contract of employment should be recognized, which is distinct from the implied obligation of good faith and fair dealing in the **manner of dismissal** that currently exists.

C. Proposed Mutual Good Faith Duty in *Performance* of Employment Contracts

6. As Prof. O’Byrne notes, *Wallace* did not eliminate the possibility of the development of an employer good faith and fair dealing obligation **during** the employment relationship²² [i.e. during contractual performance]. Several Canadian cases in passing have noted that employers have an obligation of good faith and fair dealing throughout the employment relationship,²³ **including this Court.**²⁴ It would be appropriate to recognize a duty throughout the relationship for a number of reasons, including:

²¹ See discussion in *Ceccol v. Ontario Gymnastic Federation*, (2001), 55 O.R. (3d) 614 (C.A.) at paras 47-8.

²² O’Byrne, *The Implied Term of Good Faith and Fair Dealing: Recent Developments* (2007), 86 Can. Bar Rev. 193 at p. 214 (CANOE’s Book of Authorities, Tab 9). See also Banks, “Progress and Paradox: The Remarkable Yet Limited Advance of Employer Good Faith Duties in Canadian Common Law” (2011), 32 Comp. Labor Law & Pl’y Journal 547 at 547-8 (CANOE’s Book of Authorities, Tab 2).

²³ See e.g. *Marlowe v. Ashland Canada*, 2001 BCSC 954 at para. 158, 13 CCEL (3d) 307 at p. 331: “**Employers are bound to deal with matters of employment fairly and in good faith.**” [emphasis added]

²⁴ *McKinley v. BC Tel*, [2001] 2 S.C.R. 161 at para 73 noted that the obligations of good faith and fair dealing “...**subsist throughout the employment relationship** up until, and including its termination”. As noted in *Potter*, supra, at para 99 “...**acting in good faith in relation to contractual dealings means being honest, reasonable, candid and forthright.**” Prof. Mummé notes in “A Comparative Reflection From Canada—A Good Faith Perspective”, *The Contract of Employment* (Oxford U.P., 2016), M. Freedland Gen. Ed., at p. 316: “By imposing a good faith obligation on...residual authority, the Court in *Potter* applied the concept of **good faith beyond the duty of honest contractual performance.**” [emphasis added] (CANOE’s Book of Authorities, Tab 8).

a. Employment is a Relational Contract

7. The fact that employment contracts are **relational contracts**²⁵ makes it especially compelling for there to be an obligation of good faith throughout the relationship.

b. Reciprocity of Good Faith

8. It has long been an established principle that a “servant owes a duty of loyalty and faithfulness to his master.”²⁶ There ought to be a general reciprocal obligation of good faith and fair dealing owing by employers to employees.²⁷

c. Special Features of the Employment Relationship

9. The recognition of an obligation of good faith and fair dealing throughout the employment relationship would be consistent with the recognition of the special features of vulnerability, inequality of bargaining power and the human aspects of employment contracts discussed above.

d. Consistent with Approach Used to Interpret Employment Legislation

10. Given that employment legislation has been interpreted to “protect as many employees as possible,”²⁸ the common law should approach in a similar spirit the issue of employer good faith and fair dealing in contractual performance.

D. Proposed Duty of Trust and Confidence

11. Scanlan J.A. noted that the contract of employment contains an implied term of “**trust**”, as well as a duty of “honesty and good faith.”²⁹ It is respectfully submitted that Scanlan J.A. is *almost*

²⁵ See Freedland, *The Personal Employment Contract* (2003), Oxford University Press at p. 90 (CANOE’s Book of Authorities, Tab 5); *Johnson v. Unisys Ltd.*, [2001] 2 All E.R. 801 at para 20; and *Slater v. Sandwell Inc.* (1994), 5 CCEL (2d) 308 at para 38-9 (Ont. Ct. (Gen. Div.)). Scanlan J.A. in dissent at para 175 describes the LTIP agreement as being symbiotic: “...predicated upon the parties working in a long term arrangement to the mutual benefit of both.”

²⁶ See *Eastwood v. Magnox Electric plc.*, 2004 UKHL 35 at para 5. See also discussion in Banks, *supra* at pages 551-53 and S.R. Ball “Bad Faith Discharge” 39 McGill L.J. 568 (1994) at p. 570 (CANOE’s Book of Authorities, Tab 3).

²⁷ See discussion in Banks, *supra* and Ball *supra*.

²⁸ For statutory interpretation see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para 24. See also *Machtinger*.

²⁹ Reasons of Scanlan J.A. at para 161. See also *Fredrickson v. Newtech Dental Laboratory Inc.*, 2015 BCCA 357, 390 DLR (4th) 577 at para 29-33 where it was noted “the trial judge was clearly wrong in failing to reflect the **mutuality of trust, in the context of this employment,**

correct in law. The employer “trust and confidence” duty is firmly grounded in English common law. Since *Malik v. Bank of Credit and Commerce Inter'l*,³⁰ English common law implies into every contract of employment that the employer will not conduct itself “in a manner likely to destroy or seriously damage the relationship of **confidence and trust** between the employer and the employee.”³¹ The duty of trust and confidence is a term implied by law in the United Kingdom.³² It applies to contractual performance during the employment relationship.³³

12. CANOE agrees, subject to the discussion below, there should be an obligation of trust and confidence in the performance of the contract of employment in Canada, as in the United Kingdom.

E. Protection of Employees: Contractual Doctrine or Implied Terms?

13. The new *Bhasin* duty of honesty is imposed by contractual doctrine, as opposed to the parties’ contractual intent.³⁴ It should remain as a matter of doctrine in the employment context.

14. The proposed employer duty of “trust and confidence” **could** be considered as a term implied by law, as it is in the United Kingdom. The proposed employer good faith and fair dealing obligation during contractual performance could also be considered as a term implied by law.³⁵ It

inherent in the relationship between employer and employee”. The court approved the English approach found in *Edwards v. Chesterfield Royal Hospital NHS Trust*, [2011] UKSC 58 at para. 1. See also *Vorvis v. ICBC*, [1989] 1 S.C.R. 1085 at para 42 where Wilson J. in dissent refers to the nature of the employment relationship as one of “**trust and confidence.**”

³⁰ *Malik, supra*.

³¹ See *Eastwood v. Magnox Electric plc*, [2005] 1 A.C. 503 (H.L.) at 522, [2004] UKHL 35 at para 4-6.

³² *Eastwood ibid*. See also *Johnson v. Unisys Ltd* [2001] 2 All ER 801, 2001 UKHL 13 (“*Johnson*”) at para 24: “It is not a term implied in fact. It is an overarching obligation implied by law as an incident of the contract of employment. It can also be described as a legal duty imposed by law: Treitel, *The Law of Contract*, 10th ed, p 190.”

³³ See generally, J. Fudge, “The Limits of Good Faith in Contract of Employment: From Addis to Vorvis to Wallace and Back Again” (2007), 32 Queen’s L.J. 529 at p. 560 (CANOE’s Book of Authorities, Tab 6).

³⁴ *Bhasin, supra* at para 75.

³⁵ In *Haldane v. Shelbar Enterprises Ltd.* (1999), 46 O.R. (3d) 206 at para. 15 Doherty J.A. noted: “In recent years, considerable jurisprudence has developed over the extent to which terms should be implied as a matter of law into employment contracts: e.g., see *Machtinger supra*; *Wallace supra*; *Malik supra*; S.K. O’Byrne, “Bad Faith -- Contexts of Employment -- Wallace v. United Grain Growers Ltd.” (1998), 77 Can. Bar Rev. 492. **The special relationship created by employment contracts and the power imbalance between the parties renders these contracts particularly susceptible to the implication of terms as a matter of law.**” See also

is submitted that these two proposed manifestations of the organizing principle **should** be considered as **contractual doctrine**, as opposed to implied terms. While terms implied by law have been developed to protect employees in the modern employment relationship³⁶ better protection would exist if the implied duties of “good faith and fair dealing” and “trust and confidence” in employment contractual performance were considered as imposed by **contractual doctrine**.

15. Contractual doctrine provides **better protection** to employees since **written contracts of employment cannot override contractual doctrine**.³⁷ This is especially relevant in the context of sophisticated employers with overwhelming bargaining power over most ordinary employees. Employers should simply not be allowed to contract out of good faith and fair dealing for public policy reasons. This reasoning **applies to exclusion clauses**. An example *par excellence* of an existing application of doctrine to protect employees in the employment context is the restraint of trade doctrine, which can nullify written employment contracts regardless of written contractual terms and intent.³⁸ Other examples of contractual doctrine overriding written contracts would include the doctrines of illegality and unconscionability.

F. Remedy

(a) Damages for Breach of Honesty and New Manifestations of Organizing Principle

16. Pursuant to *Bhasin* an employer should be liable for damages on the basis of what the plaintiff’s economic position would have been had the employer fulfilled its duty of honest

Johnson v. Unisys, supra, at para 35-6 as to the evolution of the creation of implied terms to protect U.K. employees.

³⁶ See *Johnson supra* at paras 35-36 per Lord Hoffman : “...the common law has adapted itself to the new attitudes, proceeding sometimes by analogy with statutory rights. The contribution of the common law to the employment revolution has been by the evolution of implied terms in the contract of employment. The most far reaching is the implied term of trust and confidence.”

³⁷ See *Bhasin supra* at para 72-75 where an “entire agreement clause” could not exclude the application of the duty of honesty in contractual performance.

³⁸ See generally *Shafron v. KRG Insurance Brokers (Western) Inc.*, 2009 SCC 6 and J.D.

Heydon, *The Restraint of Trade Doctrine* (London: Butterworths, 2008) at p.86-90 where the protection of employees through the restraint of trade doctrine is discussed (CANOE’s Book of Authorities, Tab 7).

contractual performance.³⁹ Should this Court agree that a “duty of trust and confidence” and/or a “duty of good faith and fair dealing” exist in the performance of contracts of employment, an employer could potentially be liable for damages on the same basis. The Court could also hold that employers are estopped from using contractual discretion in bad faith.

(b) Total Employment Contract Concept

17. Scanlan J.A. called the LTIP agreement a “symbiotic arrangement” with the employment relationship.⁴⁰ It is submitted that employer agreements and programs which affect the employee can and should be considered part of the “**total employment contract**”.⁴¹ The total employment contract should be subject to employment law principles which recognize the unique nature of the contract of employment which are, *inter alia*, designed to protect employees who are a vulnerable group in society.

18. Part of the total employment contract would include employee compensation and incentive programs for example, employee shareholder bonus agreements, stock options, restricted share unit agreements, and employer-controlled benefit and pension plans. Compensation and incentive programs should be considered as incorporated written terms in the contract of employment, or alternatively terms implied by fact.⁴² Breach of the existing duty of honesty, as well as the proposed duties of “trust and confidence” and “good faith and fair dealing” in contractual

³⁹ *Bhasin supra* at para. 108.

⁴⁰ Dissenting reasons of Scanlan J.A. at para 175.

⁴¹ Prof. Freedland in *The Personal Employment Contract*, Oxford 2003 at p. 27 notes “...the concept of the personal employment contract, a wider one than that of the contract of employment, should be seen as encapsulating and expressing the set of contracts which constitute the concern and subject matter of employment law” (CANOE’s Book of Authorities, Tab 5).

⁴² It is noteworthy that under the total employment contract concept, the authorities relied upon by the majority and the Respondent such as *Kieran v. Ingram Micro Inc.*, (2004) 33 CCEL (3d) 157 (O.N.C.A.) are doubtful since the equity plans potentially violated statutory minimums. Hence, the restrictions on vesting provisions were void for violating employment standards legislation. Even potential violations of ESA minimums will create an illegality which will void a contractual provision: *Shore v. Ladner Downs* (1998), 160 DLR (4th) 76 (B.C.C.A.) and *Wood v. Fred Deeley Imports Ltd.*, 2017 ONCA 158, 134 OR (3d) 481, 2017 ONCA 158.

performance should warrant damages relating to all relevant aspects of the total employment agreement, including damages relating to the LTIP in this case.

19. It is CANOE's position that conduct which occurs within the employment relationship should be relevant to all aspects of the total employment contract. Scanlan J.A.'s "trust, honesty and good faith" duties have a bearing on agreements and compensation programs related to employment.

(c) Damages versus Pay in Lieu

20. Scanlan J.A. states the Respondent should pay **damages** for breaches of its duties. Some appellate courts have held that the employer's duty is merely to provide notice or "pay in lieu". It is submitted that this is wrong in law, as demonstrated by numerous appellate decisions.⁴³ The employer's breach of any aspect of the total contract of employment (whether its express, incorporated or implied terms), or duties imposed by doctrine, exposes the employer to **damages**, not "pay in lieu."

PARTS IV AND V – COSTS AND ORDER SOUGHT

21. CANOE does not seek costs and asks that no costs be awarded against it. No order is sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

July 30, 2019

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⁴³ Concerning the employer's duty to provide reasonable notice, see *Keays v. Honda* [2008] 2 S.C.R. 362 at para 56: "The contract of employment is, by its very terms, subject to cancellation on notice or subject to payment of **damages** in lieu of notice..." (emphasis added). See also *Bain v. UBS Securities Canada Inc.*, 2018 ONCA 190 (Ont. C.A.) at para 13 concerning employer's obligation to pay damages. For **other** contractual breaches, other than the duty to provide reasonable notice, the employer should be expected to pay damages.

PART VI – AUTHORITIES

	Case Law	Para # of Factum
1.	<i>Bain v. UBS Securities Canada Inc.</i>, 2016 ONSC 5362 aff'd at 2018 ONCA 190	2, 20
2.	<i>Bhasin v. Hrynew</i>, 2014 SCC 71, [2014] 3 S.C.R. 494	1, 2, 13, 15, 16
3.	<i>Ceccol v. Ontario Gymnastic Federation</i>, (2001), 55 O.R. (3d) 614 (Ont. C.A.)	5
4.	<i>Eastwood v. Magnox Electric plc.</i>, 2004 UKHL 35	8, 11
5.	<i>Edwards v. Chesterfield Royal Hospital NHS Trust</i>, [2011] UKSC 58	11
6.	<i>Farber v. Royal Trust Inc.</i>, [1997] 1 S.C.R. 846	2
7.	<i>Fredrickson v. Newtech Dental Laboratory Inc.</i> (2015) BCCA 357, 390 DLR (4th) 577	11
8.	<i>Gilbara v. ABN-Amro Bank</i> (2003), 29 CCEL (3d) 80 (Ont. S.C.)	2
9.	<i>Greenberg v. Meffert</i> (1985), 18 D.L.R. (4th) 548 (Ont. C.A.) leave to appeal to S.C.C. refused 30 D.L.R. (4th) 768n	2
10.	<i>Haldane v. Shelbar Enterprises Ltd.</i> (1999), 46 O.R. (3d) 206	14
11.	<i>Honda Canada Inc. v. Keays</i>, [2008] 2 SCR 362	2, 20
12.	<i>Horkulak v. Cantor Fitzgerald International</i> [2004] EWCA Civ 1287	2
13.	<i>Johnson v. Unisys Ltd.</i>, [2001] 2 All ER 801(HL)	7, 11, 14,
14.	<i>Kieran v. Ingram Micro Inc.</i>, (2004) 33 CCEL (3d) 157 (ONCA)	18
15.	<i>Lippa v. Can Cell Industries Inc.</i> (2009), 78 CCEL (3d) 46 (Alta Q.B.)	2
16.	<i>Machtinger v. HOJ Industries Ltd.</i>, [1992] 1 S.C.R. 986	4, 10, 14
17.	<i>Malik v. Bank of Credit and Commerce Inter'l</i>, [1997] 3 ALL E.R.1, [1997] UKHL 23	4, 11, 14
18.	<i>McKinley v. BC Tel</i>, [2001] 2 S.C.R. 161	6
19.	<i>Marlowe v. Ashland Canada</i>, 2001 BCSC 954, 13 CCEL (3d) 307	2, 6
20.	<i>Mison v. Bank of Nova Scotia</i> (1994), 6 CCEL (2d) 146 (Ont. Gen. Div)	2
22.	<i>Potter v. New Brunswick Legal Aid Services Commission</i>, 2015 SCC 10, [2015] 1 S.C.R. 500	2, 4, 6
23.	<i>R v. Salituro</i>, [1991] 3 S.C.R. 654	2
24.	<i>Reference Re Public Service Employee Relations Act (Alta.)</i>, [1987] 1 S.C.R. 313	4
25.	<i>Regan v. Chaleur Entrepreneurship Centre Inc.</i> (1994), 7 CCEL (2d) 46 (N.B.Q.B.)	2
26.	<i>Rizzo & Rizzo Shoes Ltd. (Re)</i>, [1998] 1 S.C.R. 27	10
27.	<i>Shafron v. KRG Insurance Brokers (Western) Inc.</i>, 2009 SCC 6	15
28.	<i>Shore v. Ladner Downs</i> (1998), 160 DLR (4th) 76 (B.C.C.A.)	18
29.	<i>Slaight Communications Inc. v. Davidson</i>, [1989] 1 S.C.R. 1038	4
30.	<i>Slater v. Sandwell Inc.</i> (1994), 5 CCEL (2d) 308 (Ont. Ct. (Gen Div.))	7

31.	Vorvis v. ICBC, [1989] 1 S.C.R. 1085	11
32.	Wallace v. United Grain Growers Ltd., [1997] 3 S.C.R. 701	2, 4, 14
33.	Wood v. Fred Deeley Imports Ltd., 2017 ONCA 158, 134 O.R. (3d) 481	18

	Journal Articles and Textbooks	Para # of Factum
34.	Banks, Kevin, “Progress and Paradox: The Remarkable Yet Limited Advance of Good Faith Duties in Canadian Common Law” (2011) 32 Comp Labor Law & Pol’y Journal 547	2, 6, 8
35.	Ball, S.R., “Bad Faith Discharge” 39 McGill L.J. 568 (1994), p.570	8
36.	Doorey, D.J., “Employer ‘Bullying’: Implied Duties of Fair Dealing” (2005), 30 Queen’s L.J. 500.	2
37.	Freedland, Mark, <i>The Personal Employment Contract</i> (2003), Oxford University Press	7, 17
39.	Fudge, Judy, “The Limits of Good Faith in Contract of Employment: From Addis to Vorvis to Wallace and Back Again” (2007), 32 Queen’s L.J. 529, p. 560	11
40.	Heydon, J.D., <i>The Restraint of Trade Doctrine</i> (London: Butterworths, 2008), p. 86-90	15
41.	Mummé, Claire, “A Comparative Reflection From Canada—A Good Faith Perspective”, <i>The Contract of Employment</i> (Oxford U.P., 2016), M. Freedland Gen. Ed, p.316	6
42.	O’Byrne, S.K., <i>The Implied Term of Good Faith and Fair Dealing: Recent Developments</i> (2007), 86 Can. Bar Rev. 193, p.214	6