

Jeff Cowan Discusses Energy Fundamentals Group Inc. v. Veresen Inc., Impact of Bhasin v. Hrynew, in Canadian Lawyer Inhouse

July 21, 2015

Jeff Cowan, partner at WeirFoulds LLP, discusses the recent Ontario Court of Appeal decision in *Energy Fundamentals Group Inc. v. Veresen Inc.* in *Canadian Lawyer Inhouse*. The case involved implied terms in contracts.

The court's decision suggests greater freedom for trial judges in contract law cases, which Mr. Cowan says is consistent with the ground-breaking Supreme Court decision in *Bhasin v. Hrynew* that recognized a new general duty of honesty in contractual performance.

"The Court of Appeal found Justice [Michael] Penny properly applied the necessity and business efficacy tests for implying a disclosure requirement," says Cowan. "Having done that, referring to the common doctrinal underpinning of good faith was not an error. I don't believe they found that doctrine of good faith on its own can be used to imply terms. It is a device for supplementing the terms to deal with aspects of the relationship that have not been specifically dealt with by the parties."

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