

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

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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."

[Read the article at Canadian Lawyer Inhouse.](#)

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035