

Construction and Infrastructure Disputes – Specialized Practices and Procedures – Good Faith in Contractual Performance (Webinar)

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Two landmark decisions by the Supreme Court of Canada (SCC) in the past couple of years have addressed good faith in contractual performance. A review of these cases, and a discussion of their implications for construction contracts, was a major focus of a recent webinar: Construction and Infrastructure Disputes – Specialized Practices and Procedures – Good Faith in Contractual Performance, with Alexandre Fallon, Paul Ivanoff and Lia Bruschetta.

A general organizing principle of good faith underlies all contracts, with the principle simply being that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily. In the one case where a maintenance services company sued a group of condominium corporations for breach of contract for not renewing a winter contract despite some indication they would do so, the SCC found this constituted “active deception” and a breach of the duty of honest contractual performance on the part of the condominium group. In the other case, where a major grocer changed the waste allocation in a long-term contract which potentially affected the target profitability of the waste company, the SCC denied the waste company’s appeal, with the view that the grocer’s duty to exercise contractual discretion was reasonable.

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