

Bhasin and Sattva since 2014

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mccarthy
tetrauit

The logo consists of the words "mccarthy" and "tetrauit" stacked vertically. The letters are filled with a complex, layered image. The top half of the letters shows green grass and yellow flowers, while the bottom half shows a brown bird, possibly a sparrow, perched on a branch. The overall color palette is earthy, with greens, yellows, and browns.

Bhasin

1. The general attitude of the courts

Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd., 2015 ONSC 3404, reversed on other grounds 2016 ONCA 724:

“*Bhasin* is no authority for unbridled creativity in the creation from whole cloth of obligations in a contractual context which the parties have not provided for or have addressed in a fashion which one party regrets in hindsight.”.

2. There are few, if any, cases in which Bhasin has had any impact on the outcome at all

3. Only one case has purported to find a new doctrine under the general organizing principle

Styles v Alberta Investment Management Corp., 2015 ABQB 621: duty of fair and reasonable exercise of discretionary powers granted under a contract (not really all that new)

4. Most cases reiterate points that were apparent from Bhasin itself

Jorgenson v. ASL Paving Ltd., 2015 SKCA 66: no duty of good faith in pre-contractual negotiations

Moulton Contracting Ltd. v. British Columbia, 2015 BCCA 89: no duty of disclosure

5. Bhasin has not meaningfully returned to the Supreme Court of Canada

One passing reference in one case, but on an uncontroversial point: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at para. 99 (“at a minimum, acting in good faith in relation to contractual dealings means being honest, reasonable, candid, and forthright”)

Sattva

1. Effect of the factual matrix and mode of appellate analysis

Puri Consulting Limited v. Kim Orr Barristers PC, 2015 ONCA 727

The contract:

“The plaintiff, Puri Consulting Limited, offers to settle this proceeding on the following terms:

1. payment by the defendant to the plaintiff in the amount of \$50,000, plus HST, in full and complete satisfaction of the plaintiff’s claim; and
2. this offer will remain open for acceptance until one minute after the beginning of the trial of this action.”

The holding:

“First, the motion judge made a reversible error in taking a literal interpretation of the Offer, on that focused only on the words ‘in full and complete satisfaction’ and ignored other words used in the Offer. Second, the motion judge failed to consider the factual matrix of the Offer and its acceptance.”

2. The rebellion in the provincial appellate courts

First the Alberta Court of Appeal and the B.C. Court of Appeal criticized *Sattva* and distinguished it in the case of standard form contracts:

Vallieres v. Vozniak, 2014 ABCA 290

Precision Plating Ltd. v. Axa Pacific Insurance Company, 2015 BCCA 277

Ledcor Construction Limited v Northbridge Indemnity Insurance Company, 2015 ABCA 121

Then the rebellion moved east in late 2015:

MacDonald v. Chicago Title Insurance Co. of Canada, 2015 ONCA 842

Then on September 15, 2016 the Supreme Court of Canada accepted a modified version of the rebellion and adopted an exception to *Sattva* such that correctness applies to appeals of interpretations of standard form contracts:

Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co., 2016 SCC 37