

THE NEW DUTY OF GOOD FAITH AND CAVEAT EMPTOR

The recent and significant Supreme Court of Canada decision [*Bhasin v Hrynew*, 2014 SCC 71](#) recognizes the duty of good faith as an implied term in Canadian contracts. In our view this marks a profound development in Canadian law. The Court states that an “entire agreement” clause in a contract cannot displace a general duty of good faith. The implications of this decision likely will continue to evolve over the next decade. As applied to contracts for the sale of land where contamination is found, a question that will arise is how will a general duty of good faith affect the doctrine of *caveat emptor*. *Caveat emptor*, of course, means “buyer beware”. The concept of *caveat emptor*, to some degree, lies at the other end of the spectrum from a general duty of good faith. While it may well be that the Supreme Court of Canada did not intend its decision to impact *caveat emptor*, the evolution of this new duty of good faith may well, in appropriate circumstances, have that result.