

## Knock-for-Knock Decision Affirmed by Court of Queen's Bench

By: Nigel Bankes

**Case Commented On:** *Precision Drilling Canada Limited Partnership v Yangarra Resources Ltd*, [2016 ABQB 365 \(CanLII\)](#)

This matter, involving the interpretation of a standard form drilling contract, originally came on before Master Prowse as an application for summary judgement by Precision, the drilling contractor. My post on the Master Prowse' decision, [2015 ABQB 433](#), is [here](#) and my post on Master Prowse's further judgement, [2015 ABQB 649](#), on the "interest clause as penalty" issue is [here](#). Both decisions favoured Precision, and Yangarra appealed both. In this decision Justice E.C. Wilson dismissed both appeals and affirmed Master Prowse's decisions largely by quoting extensively from the learned Master's reasons.

The only new argument before the Court was based on *Bhasin v Hrynew*, [2014 SCC 71 \(CanLII\)](#) and to the effect that there was an implied contractual term of honesty and good faith which Precision had breached. But, just as the Court rejected Yangarra's argument based on fraudulent misrepresentation on the basis that there was no evidence to support the claim, so too did it reject (at paras 38 – 39) Yangarra's claims based upon this head:

[38] Next, Yangarra submits in its more recent claim that Precision breached its contractual duties of honesty and good faith in the execution of this contract which warrants the matter proceeding to trial. I disagree.

[39] This claim of a lack of honesty and good faith really translates into a claim of dishonesty or bad faith which is simply another way of describing its complaint regarding fraudulent misrepresentation and, respectfully, is dismissed for the same reasons, ie the absence of credible evidence to support the claim.

As a result Justice Wilson did not have to rule on (at para 31) "the theoretical possibility of contracting out of the duty of honest performance" (*Bhasin* at paras 77, 78, 80& 81).

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