



Even when someone is allowed to put an end to a contract, this has to be done in an honest way, the Supreme Court has decided.

Mr. Callow ran a property maintenance business. In 2010, his company concluded a contract with some condo corporations. The contract was for things like clearing away snow and it lasted for two winters. The company made a new contract with the condo corporations in 2012. It was supposed to last two more winters. But if the condo corporations weren't happy, the contract said they could end it for any reason. They just had to give ten days' notice.

In the winter of 2012 to 2013, some people complained that snow wasn't always removed from their parking spots. Mr. Callow came to a meeting to talk about the problem. The meeting went well. Everyone seemed happy enough. A few months later, the condo buildings got a new property manager, Ms. Zollinger. Ms. Zollinger told the committee in charge of the contract that they should put an end to it before the next winter. The committee decided to end the contract but no one told Mr. Callow.

Mr. Callow thought everyone was happy with his services. People from the condo corporations talked to him and led him to believe that he would probably get another contract for more winters. He thought this was true. He also had a summer contract with the condo corporations. During the summer, he did extra work for free because he wanted to encourage them to renew the winter contract.

In September 2013, the condo corporations told Mr. Callow they were putting an end to the winter contract. They gave him ten days' notice. Mr. Callow didn't think this was fair. It was too late to find a new contract for the winter. He said the condo corporations didn't live up to their "duty of honest performance." This duty means that people who make contracts together can't lie to or mislead each other on purpose in doing what they have agreed to in the contract. It's part of every contract, even if the parties do not want to include it.

Mr. Callow sued. He asked the court for over \$80,000. This was to cover breaking the contract, not being honest with him, and the extra services he gave the condo corporations for free. The condo corporations said they had lived up to their duty. They said not telling Mr. Callow certain things didn't mean they had been dishonest with him.

The trial judge said the condo corporations knew they were going to put an end to the contract. But they actively misled Mr. Callow into thinking it was safe, and that it would likely get renewed again, by communicating with him in a way that suggested this. The trial judge said he should be paid for everything except the free services. The Court of Appeal disagreed, though. It said that the condo corporations had not been dishonest. It also said anything the condo corporations did to mislead Mr. Callow was about the next contract (for the next two winters he hoped to be hired for), not the current one. There was no duty of honest performance for a contract that didn't exist yet.

The majority of judges at the Supreme Court said the condo corporations breached the contract. The condo corporations had a duty to act honestly toward Mr. Callow. They were dishonest in how they dealt with putting an end to the contract. They actively misled Mr. Callow to believe they were happy with his work and that the contract would not be ended early. The majority said the dishonesty was about the current contract because the condo corporations acted dishonestly in putting an end to it.

The majority said the duty of honest performance doesn't mean one side has to sacrifice their interests for the other. It didn't mean the condo corporations had to tell Mr. Callow that they were going to end the contract early. But it did mean they couldn't mislead him about it. They couldn't pretend it would be renewed once they knew it would be ended.

Contracts are agreements that give people rights against each other. The majority said that no one is allowed to exercise a right under a contract in a dishonest way.

The civil law and the common law are two Canadian legal traditions. Civil law, historically related to French law, is used for law about contracts in Quebec. Common law, historically related to English law, is used in the rest of Canada. Even though this case was decided under the law of Ontario, the majority looked at civil law sources from Quebec to help illustrate how the case should be decided in the common law. The majority said that ideas from the civil law were useful to understand whether the dishonesty was about the current contract.

Breakdown of the decision: *Majority:* Justice Nicholas [Kasirer](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Karakatsanis](#), and [Martin](#) agreed) | *Concurring:* Justice Russell [Brown](#) said analyzing this case using civil law concepts was not necessary, and that Mr. Callow's company deserved compensation because he relied on the condo corporations' misleading statements, not because he expected the contract to be performed (Justices [Moldaver](#) and [Rowe](#) agreed) | *Dissenting:* Justice Suzanne [Côté](#) said the contract gave the condo corporations the right to cancel for any reason and they did not lie or knowingly mislead; she would have dismissed the appeal

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