



Case in Brief: **Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District**

Judgment of February 5, 2021 | On appeal from the Court of Appeal for British Columbia
Neutral citation: 2021 SCC 7

If a party to a contract exercises its discretion unreasonably, it breaches a duty of good faith, the Supreme Court has ruled.

Wastech Services Ltd. (Wastech) was a company that moved and disposed of waste. The Greater Vancouver Sewerage and Drainage District (Metro) was responsible for the administration of waste disposal in the district.

Wastech and Metro had a long-term contract. The contract was for the removal and transportation of waste by Wastech. The contract said that Metro could choose to send the waste to any of three different disposal sites. Wastech would be paid a different rate depending on which site was chosen. Wastech was paid more if the site was farther away. However, the contract aimed to pay Wastech a “target operating ratio” of .89, meaning costs were 89% of revenue, and it did not guarantee a specific operating ratio in any given year. The contract also gave Metro discretion to send the waste to the site of its choice.

In 2011, Metro decided to send more waste to a closer location. This meant that Wastech did not reach the target operating ratio. As a result, Wastech said Metro violated the contract.

The contract said that any legal disagreement should go to arbitration. This is the process where a neutral third party decides who is correct in a disagreement, not a judge or a court. Wastech told the arbitrator that Metro violated the contract by distributing waste in a way that made Wastech unable to reach the target operating ratio under the contract.

The arbitrator said the parties purposely decided not to include a clause in the contract to deal with a situation where the distribution of waste made it impossible for Wastech to reach the target operating ratio. In the arbitrator’s opinion, Metro was allowed to use its discretion in a way that had a negative financial impact on Wastech. But Metro had a duty to act in good faith when using this discretion. Metro breached its duty by using its discretion in a way that prevented Wastech from having any chance of meeting the target operating ratio. Therefore, Wastech was entitled to compensation.

The courts allowed Metro to appeal the arbitrator’s decision. The judge set aside the arbitrator’s award, because the duty applied by the arbitrator contradicted the contract made by the parties. The Court of Appeal upheld the judge’s decision. The Court of Appeal said that the arbitrator applied the wrong legal test, and extended the duty of good faith further than the law allows.

The Supreme Court upheld the lower courts’ decisions, setting aside the arbitrator’s award. It said good faith does not allow a contracting party to use its discretion unreasonably. The Supreme Court considered discretion to be used *unreasonably* when it is used in a way that is unconnected to the purposes for which the parties agreed to have discretion in the first place. In this case, the contract showed the parties agreed to give Metro discretion, so Metro could operate efficiently and keep costs low. The contract did not require Metro to use its discretion to ensure Wastech reached its target operating ratio in any given year. For this reason, the majority found that Metro exercised its discretion for the right purposes. Therefore, Metro did not violate the duty to act in good faith.

The Supreme Court also dealt with good faith in a contract in [C.M. Callow Inc. v. Zollinger](#), which was heard on the same day.

Breakdown of the decision: **Majority:** Justice Nicholas [Kasirer](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#) and [Martin](#) agreed) | **Concurring:** Justices Russell [Brown](#) and Malcolm [Rowe](#) said they disagreed with some of the majority’s analysis and the Court should clarify the legal approach to be taken in reviewing similar cases (Justice [Côté](#) agreed)

More information (case # 38601): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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