

What Is an Employer's Duty of Honest Performance?



Introduction: Why This Matters

Trust is the foundation of every employment relationship. When employees believe their employer acts in good faith, they are more likely to stay engaged, perform at a high level, and contribute to the organization's success. When that trust is broken, the consequences are serious: legal disputes, reputational damage, and a workplace culture of suspicion.

In Canadian employment law, this principle is not just a matter of ethics – it is a legal duty. The “**duty of honest performance**” requires parties to a contract, including employment contracts, to be truthful, candid, and forthright in how they carry out their obligations. It prohibits employers from lying, misleading, or deliberately withholding information that would deprive employees of the benefits of their contract.

Since the Supreme Court of Canada first recognized this duty in *Bhasin v. Hrynew* (2014 SCC 71), it has transformed the landscape of Canadian contract law. In 2020, the Court extended the principle in *C.M. Callow Inc. v. Zollinger*, and in 2021 in *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, clarifying that honest performance goes hand in hand with the broader duty to exercise contractual discretion in good faith.

For HR managers, the implications are profound. Every hiring conversation, performance review, restructuring decision, or termination process carries with it not only a moral but a legal requirement of honesty. This article explores the scope of the duty of honest performance, the risks of violating it, real-world Canadian cases, and practical strategies for embedding it into workplace culture.

Understanding the Duty of Honest Performance

At its core, the duty of honest performance requires parties to act with honesty and fairness when fulfilling contractual obligations. The Supreme Court in *Bhasin* emphasized that this is not a sweeping duty of loyalty or disclosure; rather, it is a narrow duty not to lie or mislead. The Court described it as a “general organizing principle of good faith” in contracts.

In employment contexts, this duty means that employers cannot:

- Mislead employees about their job security, prospects for promotion, or compensation.
- Conceal plans for restructuring or layoffs when directly asked about them in a way that would mislead employees.
- Provide false performance feedback as a pretext for dismissal.

The duty does not require employers to disclose every possible future decision. For example, they do not need to warn employees of every potential restructuring. But once employers choose to communicate about such matters, they must be truthful and cannot mislead.

Key Supreme Court Cases Shaping the Duty

Bhasin v. Hrynew (2014)

This landmark decision involved a commercial dispute, but its implications extend to all contracts. The Court recognized a new duty of honest performance: parties must not lie or knowingly mislead each other about matters directly linked to their contract. For employers, the lesson was clear: dishonesty in managing employment relationships could amount to a breach of contract.

C.M. Callow Inc. v. Zollinger (2020)

In this case, a group of condominium corporations terminated a snow removal contract earlier than expected but misled the contractor into thinking it was secure. The Supreme Court ruled this breached the duty of honest performance because the corporations allowed the contractor to believe in continued work while secretly planning termination.

For employers, Callow underscores that **silence can be dishonest** if it is knowingly misleading. For example, if a manager assures an employee that their role is safe while the company is actively planning elimination of that role, the employer risks liability.

Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District (2021)

Here, the Court clarified that the duty of good faith also applies to discretionary powers under contracts. Employers cannot exercise discretion arbitrarily or capriciously; decisions must align with the purpose of the contract. In HR terms, this means performance bonuses, promotions, or scheduling discretion must be exercised fairly, not as a tool of retaliation or bias.

Employer Risks in Breaching Honest Performance

Legal Liability

Breaching the duty of honest performance exposes employers to damages for breach of contract. Unlike wrongful dismissal damages, these can include compensation for lost opportunities that flowed from dishonest conduct. In **Callow**, damages were awarded for the contractor's lost opportunity to seek other work during the winter season. In employment, this could translate into damages for lost wages, benefits, or career opportunities if dishonesty caused an employee to miss other prospects.

Human Rights Risks

Dishonest performance may intersect with discrimination claims. For example, if an employer provides false reasons for denying a promotion to conceal discriminatory motives, this could lead not only to contract damages but also to human rights tribunal awards.

Reputational Harm

Trust, once broken, is hard to restore. Employers who mislead employees may find their reputation tarnished, leading to difficulty recruiting and retaining top talent. In the age of LinkedIn and Glassdoor, stories of dishonesty spread quickly.

Workplace Culture and Morale

Even when dishonesty doesn't lead to litigation, it corrodes culture. Employees who sense that management is not transparent may disengage, reduce discretionary effort, or adopt dishonest practices themselves.

Examples from Canadian Employment Contexts

1. Misleading About Job Security During Restructuring

A 2019 Ontario case involved an employee who asked repeatedly about the future of their role during a restructuring. Management assured them the role was secure while finalizing plans to eliminate it. The court found this breached the duty of honest performance, awarding damages beyond normal severance.

2. False Performance Feedback

In a 2021 Alberta case, an employer gave an employee artificially negative performance reviews to justify termination for cause, despite privately acknowledging satisfactory performance. The court found this conduct dishonest and awarded aggravated damages.

3. Bonus Denials

In Québec, courts have scrutinized employers who withhold bonuses under discretionary plans without justification. If discretion is exercised dishonestly – for example, promising bonuses to retain staff but later denying them for arbitrary reasons – this can breach both honest performance and good faith obligations.

Balancing Honesty with Business Realities

HR managers often ask: how much must we disclose? The duty of honest performance does not require full transparency at all times. Employers are not obliged to share every potential strategic plan, nor must they disclose decisions still under discussion. What the law requires is that once communication occurs, it must be accurate and not misleading.

For example, if asked directly whether layoffs are being planned, an employer cannot falsely reassure employees if restructuring is imminent. A cautious and honest answer might be: *"We are currently reviewing operations, and no final decisions have been made. If decisions are made that affect your role, we will inform you promptly."*

This kind of candour respects the duty of honest performance without overcommitting.

Embedding Honest Performance into HR Practices

Hiring and Recruitment

Employers must avoid making exaggerated promises during hiring, such as guaranteed promotions, inflated salary expectations, or false job security assurances. As courts have noted in unlawful inducement cases, misleading recruits can expose employers to liability when promises do not materialize.

Performance Management

Performance reviews must reflect genuine assessments. Inflated positives to avoid conflict, or manufactured negatives to justify termination, both risk breaching honest performance. Training managers to provide accurate, constructive feedback is essential.

Compensation and Benefits

Employers must communicate bonus structures, commissions, and benefits truthfully. If plans are discretionary, criteria should be transparent and applied consistently.

Terminations

Perhaps the most sensitive area, terminations must be handled with forthrightness. Providing false reasons for dismissal – such as citing performance issues when the real reason is restructuring – risks liability for dishonesty. While employers are not obliged to disclose all business reasons, they must avoid deception.

Case Study: Callow's Lessons for Employers

Imagine an employee, Alex, who manages a regional sales team. Management decides in March to eliminate the role by September. Through spring and summer, Alex asks whether their role is secure and is repeatedly reassured. In reliance on those assurances, Alex declines another job offer. In September, Alex is abruptly terminated.

Under **Callow**, this is a textbook breach of honest performance. The employer's reassurances were knowingly misleading, and Alex's reliance caused lost opportunities. Damages could extend beyond ordinary severance to compensate for the declined job offer.

For HR, the lesson is simple but powerful: **if you cannot answer honestly, do not answer at all – but never mislead.**

The Broader Cultural Benefits of Honesty

While the duty of honest performance is a legal requirement, its value extends beyond risk avoidance. Organizations that embrace honest communication foster trust, engagement, and loyalty. Employees are more likely to commit to employers who treat them with candour, even in difficult times.

Research on organizational trust consistently shows that transparency reduces turnover, enhances collaboration, and improves resilience during change. By embedding honesty into daily practices, employers strengthen both compliance and culture.

Practical Steps for HR Managers

1. Policy Development

Incorporate the duty of honest performance into HR policies on recruitment,

performance management, and terminations.

2. Manager Training

Provide training on how to communicate honestly without overcommitting, particularly during restructuring or disciplinary processes.

3. Review Employment Contracts

Ensure contracts and incentive plans are drafted with clarity and avoid ambiguous promises.

4. Document Communications

Maintain records of key communications with employees to demonstrate transparency and consistency.

5. Audit HR Practices

Conduct periodic reviews of hiring, performance management, and termination practices to identify risks of misleading communication.

Conclusion: Honesty as Both a Legal Duty and a Strategic Advantage

The duty of honest performance is not an abstract legal concept but a practical guide for managing people with integrity. For Canadian HR managers, it requires vigilance in every stage of the employment relationship: hiring, managing, compensating, and exiting employees.

The risks of breach are real – damages, reputational harm, and cultural erosion. But the opportunities are equally compelling. By embedding honesty into policies, training managers, and fostering transparent communication, employers not only comply with the law but also strengthen their culture, attract top talent, and retain trust during times of change.

In the end, the law is catching up with what employees have always known: honesty is not optional. It is the foundation of a fair, productive, and sustainable workplace.