

In the Court of Appeal of Alberta

Citation: North American Polypropylene ULC v Williams Canada Propylene ULC, 2026 ABCA 65

Date: 20260306
Docket: 2301-0324AC
Registry: Calgary

Between:

North American Polypropylene ULC

Appellant

- and -

**Williams Canada Propylene ULC, Williams Energy Canada ULC,
the Williams Companies, Inc. and InterPipeline Ltd.**

Respondents

The Court:

**The Honourable Justice Kevin Feehan
The Honourable Justice William de Wit
The Honourable Justice Kevin Feth**

Memorandum of Judgment

Appeal from the Judgment of
The Honourable Justice R.A. Neufeld
Dated the 28th day of November, 2023
(2023 ABKB 673, Docket: 1601 10614)

Memorandum of Judgment

The Court:

Introduction

[1] North American Polypropylene ULC (“NAPP”) appeals a trial decision dismissing its action for breach of contract: *North American Polypropylene ULC v Williams Canada Propylene ULC*, 2023 ABKB 673 (the “Decision”).

[2] NAPP and the respondent, Williams Canada Propylene ULC (“Williams Canada”) entered into a Propylene Sales Agreement (“Agreement”) to build two adjacent and interdependent propylene and polypropylene manufacturing plants near Redwater, Alberta. Ultimately, construction of the plants never happened, and the Agreement was terminated prior to a final investment decision (“Final Investment Decision”) being made by the parties about whether to proceed. NAPP sued, seeking amongst other things, the specified termination costs provided for in the Agreement. Following a five-week trial, NAPP’s claims were dismissed in their entirety.

[3] NAPP argues the trial judge erred in narrowly construing Williams Canada’s contractual duty to cooperate, and in finding it “unlikely that NAPP would have achieved [the required] financing” under the Agreement: Decision at para 171.

[4] The appeal is dismissed.

Background

[5] A detailed factual background is provided in paragraphs 11-79 of the Decision, which is largely uncontested. A summary is set out below.

[6] Williams Canada was a wholly owned subsidiary of the respondent, Williams Companies Inc (“Williams Inc”), a publicly traded company and one of the largest pipeline and midstream companies in the United States. The respondent, Williams Energy Canada ULC (“Williams Energy”), another of Williams Inc’s wholly owned subsidiaries, operated for many years in Alberta in the mid-streaming business, focusing on the extraction, transportation and fractionation of natural gas liquids into component products such as propane. In 2012, Williams Energy was investigating the feasibility of upgrading its propane production to propylene, a building block for petrochemicals, which can be used as feedstock to manufacture polypropylene.

[7] Williams Energy received approval from Williams Inc to evaluate and develop a propylene plant (the “Propylene Plant”) in Redwater, Alberta. Project planning included the possibility of building an adjacent polypropylene plant (“Polypropylene Plant”). By July 2013, Williams Inc

selected Vinmar International (“Vinmar”) for the development of the Polypropylene Plant. Vinmar is an affiliate of a private family-owned group of companies known as the Goradia Group.

[8] At this time, NAPP had not yet been created, but would come to be incorporated by the Gordia Group for the single purpose of developing and owning the Polypropylene Plant. Vinmar’s plan was to project finance construction of the Polypropylene Plant; thus, NAPP would be relying on debt financing obtained on the economic strength of the Polypropylene Plant rather than Goradia Group’s corporate resources and balance sheet.

[9] In February 2014, the parties finalized a Letter of Intent and a non-binding Term Sheet describing the scope of both plants and various operational, construction, and financial responsibilities. These served as interim measures until the finalization of the Agreement, which did not follow until 18 months later.

[10] On August 19, 2015, after several delays and hard-fought negotiations for the allocation of risks, Williams Canada and NAPP finally signed the Agreement. The trial judge found the Agreement was much more than a sales agreement, and was intended to govern the relationship between the parties (1) in the early stages of developing each party’s “respective projects”, ie “pre-construction” or “pre-[Final Investment Decision]”; (2) following the Final Investment Decision to proceed with construction, and including the construction and commissioning of the plants; and (3) during the operation of both plants as adjacent operators, and the associated buying and selling of propylene and polypropylene.

[11] The Agreement was ultimately terminated before the Final Investment Decision was made by either party as to whether construction would proceed.

[12] The parties had initially agreed that the Final Investment Decision would be signed by September 1, 2016, by which time conditions precedent had to be either met or waived. This included NAPP securing financing for the Polypropylene Plant. The Agreement had various clauses about cooperation and good faith, as well as deadlines for financing of the plants.

[13] By mid-January 2016, NAPP had advanced its project planning for the Polypropylene Plant to the verge of issuing a “teaser” to potential lenders. Unknown to NAPP, Williams Inc had initiated a company-wide review of capital spending in response to a slow down in the economy, including the collapse of oil and gas prices, and uncertainties brought on by an ongoing hostile takeover bid of the company. These developments caused Williams Inc’s stock to drop, and it no longer enjoyed an investment grade credit rating. As a result, Williams Canada was told that its 2016 budget would be significantly reduced and the Propylene Plant project would be put into “value preservation mode, under which only critical expenditures would be made in 2016”. A few weeks later, Williams Canada was told that Williams Inc was putting its Canadian operations up for sale, including both Williams Canada and Williams Energy.

[14] Approximately six months after the parties entered into the Agreement, but before NAPP had secured financing for the Polypropylene Plant, Williams Inc told both NAPP and Williams Canada on January 13, 2016, that it was implementing a “Slow Roll” of the financing and development of the Propylene Plant. Shortly afterwards NAPP was advised on February 9, 2016, that Williams Inc would be selling Williams Canada (the “Sales Process”). The Gordia Group and NAPP decided that approaching lenders at that point would be pointless. NAPP continued however, to finish certain work necessary to secure financing for the Polypropylene Plant in accordance with its original March 31, 2016, target date.

[15] In February 2016, NAPP sought amendments to the Agreement. During a meeting on February 18, 2016, NAPP told Williams Canada that it was still scheduled to meet the September 1, 2016, deadline for the Final Investment Decision, and identified non-timing related expectations on any amendments, including “[n]o change to provisions where termination requires Williams to reimburse NAPP costs”. Williams Canada responded to NAPP on March 1, 2016, indicating that its Slow Roll was not a cancellation of the Propylene Plant and inviting NAPP to discuss new timelines: Decision at paras 106-107.

[16] Williams Canada and NAPP negotiated a possible extension of the Agreement’s timelines, including the date of the financial close and other conditions precedent from September 1, 2016 to June 30, 2017. Williams Canada received the extension agreement from NAPP on April 18, 2016, with a 24-hour turnaround requirement. Williams Canada sent the extension agreement to Williams Inc for review. On April 28, 2016, Williams Inc sent the extension agreement for a final legal review before execution. However, before receiving an answer, on April 29, 2016, NAPP told Williams Canada that it was no longer prepared to enter into the extension agreement.

[17] On May 11, 2016, NAPP sent Williams Canada a formal request for cooperation in financing the Polypropylene Plant and specifically, that certain information and assurances from Williams Canada were required by May 31, 2016. Williams Canada offered brief answers but declined to agree; it indicated that the requests made were a demand to renegotiate the terms in the Agreement under the “guise of cooperation in financing”. NAPP eventually sent two notices of termination of the Agreement, alleging Williams Canada breached its contractual duty to cooperate.

[18] On August 11, 2016, NAPP commenced an action in Alberta alleging breach of contract and misuse of confidential information, which later became the central issues at trial.

[19] On August 31, 2016, Williams Canada gave formal notice terminating the Agreement because NAPP’s actions allegedly demonstrated an intention to repudiate, including NAPP’s reduction in spending and its commencement of litigation.

[20] During the trial, NAPP argued that Williams Canada breached its cooperation obligations in the Agreement and its duty of good faith by failing to:

1. consult with NAPP in advance of the decision to Slow Roll and sell Williams Inc's Canadian operations;
2. accept NAPP's initial demands to amend the Agreement because of the inclusion of non-timing amendments to the Agreement;
3. negotiate and execute a replacement amendment agreement within a reasonable time;
4. fund ATCO Group for necessary work to maintain the schedule for a common utilities building ("Common Utilities Building"), that it knew was necessary for NAPP to obtain financing;
5. provide a satisfactory response to NAPP's request for financing cooperation in a letter sent May 11, 2016; and,
6. identify, introduce and promote NAPP to prospective purchasers of Williams Canada's operations: Decision at para 88; Appellant's Factum at para 41.

[21] NAPP claimed that because of these breaches, Williams Canada was obligated to pay NAPP the Termination Costs and Technical Work Costs defined in the Agreement, in the amount of \$43,625,737 (USD). The relevant portions of the Agreement include the following:

1.1 Definitions

...

"NAPP Termination Costs" means, as of any date of determination, the lesser of (i) 35,000,000, and (ii) the aggregate amount of (A) any and all documented third party out of pocket expenditures (including advisory and legal costs) incurred prior or after the execution and delivery of this Agreement by the Parties hereto as of such date by North American or its Affiliates in connection with the development of the North American Facilities and the transactions contemplated hereunder, including, *without duplication*, the Early Works Costs, the achievement of the Financial Close Date, all expenses and early termination costs payable by North American under the Financing Parties' Commitment Letters, the Financing Documents and related project documents, and (B) all documented costs of salary, benefits, and other compensation actually paid to any employees of North American or its Affiliates incurred prior or after the execution and delivery of this Agreement by the Parties hereto as of such date, to the extent that such employees are dedicated on a full time basis to the development of the North American Facilities, but excluding in all cases the Technical Works Costs;

...

"**Technical Work**" has the meaning ascribed thereto in clause 2.2(b). . .

. . . all engineering, design, equipment, and construction work completed in respect of the North American Facilities to the date of termination, all technology licenses required for the construction and operation of the North American Facilities as contemplated hereunder. . . .

"**Technical Works Costs**" means, as of any date of determination, the actual third party out-of-pocket cost paid as of such date by North American or its Affiliates for the Technical Work, whether incurred prior or after the execution and delivery of this Agreement by the Parties hereto;

...

2.2 Termination Obligations and Rights

...

(c) If either Party terminates this Agreement pursuant to clause 2.5(b) because of (x) Williams' failure to fulfill the conditions precedent set forth in clauses 2.3(a), 2.3(b) and 2.4(c) or (y) North American's failure to fulfill the condition precedent set forth in clause 2.4(b) to the extent such failure is due to the breach by Williams of its obligations under clause 2.8, then Williams shall:

(i) pay to North American no later than thirty (30) Days from the date of such termination the NAPP Termination Costs *plus* the Technical Works Costs, it being acknowledged and agreed hereunder by the Parties that the Technical Works shall remain following the payment made under this clause 2.2(c)(i) the sole and exclusive property of North American. . . .

[Emphasis in original]

The Decision

[22] The trial judge rejected all of NAPP's arguments that Williams Canada breached the Agreement, and in particular, its cooperation obligations or duty of good faith. He found NAPP's failure to obtain financing was not due to a lack of cooperation by Williams Canada, which acted honestly and in good faith, consistent with *Bhasin v Hrynew*, 2014 SCC 71 at para 93, [2014] 3 SCR 494 [*Bhasin*].

[23] NAPP alleged Williams Canada had breached two provisions of the Agreement, Articles 1.10 and 2.8: Article 1.10 provides:

Good Faith Cooperation

The Parties agree to act in a good faith with each other and cooperate with respect to all matters hereunder, including:

- (a) the negotiation and implementation of the Related Agreements;
- (b) the conduct of construction, maintenance, and operations at the Site;
- (c) the fulfillment of their respective obligations under this Agreement and the Related Agreements; and
- (d) the resolution of any disagreement or dispute related to this Agreement, the Related Agreements or the Site Facilities pursuant to clause 9.6.

Article 2.8 states:

Cooperation Regarding Financial Close

- (a) The parties acknowledge and recognize that North American is implementing an expedited schedule to reach Financial Close.
- (b) Williams agrees that, from the date hereof until the Financial Close Date, Williams shall provide all cooperation reasonably requested by North American in connection with achieving by North American of the Financial Close Date. The Parties agree that notwithstanding its obligation to provide all cooperation requested by North American, Williams shall not be required to alter its contractual rights under this Agreement.

[24] The trial judge found Article 1.10 was general in nature, spanning the three phases (pre-construction, construction and operation of the plants) under the Agreement. The Article reflected the organizing principle of good faith performance and confirmed “the shared objective of the parties to act in a cooperative and coordinated manner”. Conversely, Article 2.8 was “narrower in scope and duration”, providing that Williams Canada would assist NAPP in achieving the requisite financing to meet their financial close by September 1, 2016, but not to the extent that it was required to alter its contractual rights: Decision at paras 81-85, 126.

[25] The trial judge found Articles 1.10 and 2.8 did not reasonably require:

1. Williams Inc to give NAPP prior notice of its decision to sell its Canadian operations; nor,

2. Williams Canada to have a minimum spending obligation, an obligation to continue funding the Common Utilities Building, or to give NAPP a right of consultation regarding Williams Canada's Slow Roll or to be involved in the sale of Williams Canada's shares: Decision at paras 95-96, 126.

[26] More specifically, the trial judge determined Articles 1.10 and 2.8 could not reasonably capture obligations the parties did not accept during negotiations - a prohibition against the change of control of either party in the pre-construction phase nor any other protective clauses against William Inc's choice to sell its Canadian operations. The risk that one party could come under the control of a new entity which might not be inclined to proceed past the pre-construction phase, was a risk to which both parties exposed themselves. Similarly, the trial judge found the organizing principle of good faith cannot "be extended to impose an obligation that was not part of the contract as bargained, [particularly] one that was eschewed in negotiations by the party now advancing it", being NAPP. Further, even if it did, the trial judge found Williams Canada did not have the power to direct Williams Inc's approach to selling its Canadian operations: Decision at paras 91-93.

[27] The trial judge concluded Williams Canada went above and beyond its contractual obligations both by informing NAPP as early as February 9, 2016, of William Inc's Sales Process and by introducing NAPP to the purchaser of its shares, the respondent InterPipeline Ltd, on July 15, 2016: Decision at para 94. The trial judge found Williams Canada was not contractually required to take either step.

[28] As for supporting NAPP's financing, the trial judge made three key findings relevant to whether Williams Canada satisfied its duty to cooperate:

1. There was no evidence supporting NAPP's implication that Williams Canada cancelled its Propylene Plant without notice or appropriate consideration for NAPP's interests. Even though Williams Inc could have cancelled the Propylene Plant, it opted instead for a reduction in spending. Notwithstanding this reduction, Williams Canada expended more money (\$57.9 million (USD)) on its Propylene Plant project than NAPP did on its Polypropylene Plant project (\$12.1 million (USD)) from December 2015 to June 2016: Decision at paras 98-100.
2. NAPP's opportunity to proceed with financing and construction of the Polypropylene Plant (while delayed) was not entirely foreclosed by the arrival of InterPipeline Ltd. NAPP could have used the pre-existing contractual relationship as a baseline to market itself and resume financing efforts: Decision at para 101.
3. There was no compelling evidence that continued financing of the Common Utilities Building by Williams Canada was necessary for NAPP to secure financing. The trial judge was unable to determine whether the temporary back-up grid arrangements set up between Williams Canada and Sumitomo Mitsui Banking Corporation in lieu of Common Utilities

Building financing would have satisfied potential lenders' concerns because NAPP never approached lenders: Decision at paras 102-104.

[29] While NAPP further alleged Williams Canada was uncooperative when both parties attempted to renegotiate substantive provisions of the Agreement from February to May 2016, the trial judge found Williams Canada's March 1, 2016, response to NAPP's expectations was reasonable and appropriate. Namely, Williams Canada was entitled to believe NAPP's claim that the September 1, 2016, Final Investment Decision was still achievable under the existing Agreement and otherwise kept open the possibility for extension discussions: Decision at paras 105-109.

[30] The trial judge also concluded that by backing away from the extension agreement on April 29, 2016, NAPP showed it was not truly after the benefits that an extension could bring to it. Rather, NAPP needed substantive amendments to the Agreement, without which it was not worthwhile to continue spending on the Polypropylene Plant, including securing financing. The trial judge found Williams Canada's delay in executing the extension agreement "coincided with NAPP's conclusion that it was time to cut bait on this project by stopping pre-construction spending while maximizing recovery of its development costs to date": Decision at paras 110-120.

[31] Following on these findings, the trial judge characterized the May 11, 2016, request of cooperation from NAPP to Williams Canada as a letter of "positioning" rather than a genuine attempt at achieving financing. The letter misleadingly stated that Williams Canada's breach of the duty to cooperate in financing underlined NAPP's decision to stop pursuing financing when, in fact, no financing efforts were underway, nor lenders approached. Further, the letter forestalled NAPP's obligation under the Agreement to give notice of its inability to obtain financing by keeping its attempts at financing "notionally alive": Decision at paras 126-128.

[32] The trial judge found Williams Canada's response to NAPP's "request for 'cooperation in financing' was consistent with its contractual obligations and the organizing principle of good faith in performance". Where NAPP's demands surreptitiously attempted to negotiate new Agreement terms, Williams Canada was not obligated by their contractual duty of cooperation under Articles 1.10 or 2.8 to yield to those demands: Decision at paras 129-130. In other words, Williams Canada was not obligated to resolve the uncertainties created by the Slow Roll and Sales Process in favour of NAPP, particularly where the "measures requested would alter the rights of Williams Canada under the [Agreement], as negotiated, and agreed upon in August 2015": Decision at para 152.

[33] The trial judge also found that actions taken by Williams Canada to address the economic impacts on NAPP of the Slow Roll and Sales Process were fair and reasonable. No evidence showed Williams Canada lied or misled NAPP about its contractual performance. Instead, Williams Canada acted promptly in advising NAPP of decisions made by Williams Inc and was willing to extend NAPP's financing deadlines. Moreover, Williams Inc offered to reimburse NAPP

for its project development costs if the new owner did not proceed with the Propylene Plant (even though not contractually required), but this offer was “rebuffed”: Decision paras 131-133.

[34] Lastly, while the trial judge considered Williams Canada’s alternative and hypothetical argument that NAPP would nevertheless have failed to meet its financial close irrespective of the Slow Roll and Sales Process, he declined to make a final determination on the issue as no breach by Williams Canada was found. Nonetheless, he stated that if such a determination had been necessary, he “would have found that on balance it was unlikely that NAPP would have achieved financing given the obstacles to be overcome under an aggressive and expedited schedule”: Decision at para 171.

Issues on appeal

[35] NAPP alleges the trial judge erred by:

1. finding that the organizing principle of good faith could not impose positive obligations that were not expressly bargained for in Articles 1.10 and 2.8; and
2. failing to consider whether NAPP had discharged its burden to establish causation and entitlement to Termination Costs.

Standard of review

[36] “Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix”: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 50, [2014] 2 SCR 633 [*Sattva*]. As a result, the standard of review applied to a trial court’s interpretation of a contract is deferential, and requires palpable and overriding error: *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*, 2016 SCC 37 at para 21, [2016] 2 SCR 23 [*Ledcor*]. See also *Chemtrade Electrochem Inc v Superior Plus Corporation*, 2025 ABCA 31 at para 22 [*Chemtrade*].

[37] A correctness standard of review will only be applied on those “rare” occasions when an extricable question of law arises in the interpretation process, such as where a trial judge applied an incorrect principle, failed to consider a required element of a legal test, or failed to consider a relevant factor: *Ledcor* at para 21; *Sattva* at paras 53-54.

[38] A palpable and overriding error is one that is obvious and had a material impact on the result. A contractual interpretation that is “unreasonable, or not reasonably available to the trial judge on the record, amounts to a palpable and overriding error”: *Chemtrade* at para 23.

Analysis

a) No error in finding that Williams Canada did not breach its contractual obligations of cooperation or its duty of good faith

[39] The organizing principle of good faith generally requires parties to perform their contractual duties “honestly and reasonably and not capriciously or arbitrarily”. The principle “is not a free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations”: *Bhasin* at paras 63-64. “In general, the particular implications of the broad principle for particular cases are determined by resorting to the body of doctrine that has developed which gives effect to aspects of that principle in particular types of situations and relationships”: *Bhasin* at para 93.

[40] As a further “manifestation” of the organizing principle, all contracts are subject to a common law duty of honest performance: *Bhasin* at para 93.

[41] NAPP contends the trial judge erred in three ways: a) he misconceived the scope of the duty of good faith; b) he failed to recognize this case fell within an existing doctrine of the duty of good faith; and c) he erred in finding the duty to cooperate was not breached. We find no reviewable errors.

[42] The trial judge determined the scope and substance of the parties’ contractual promises and whether Williams Canada failed to perform its promises. He correctly confirmed the principles guiding those determinations (paragraph 80 of the Decision):

. . . The former task requires determination of the objective intent of the parties, having regard for the factual matrix surrounding the agreement. The focus of analysis is on what the parties objectively intended, not their subjective intentions. The second task requires assessment of the actions taken (or not taken) by the Defendant in discharging its obligations under the contract as per the objective intent of the parties and having regard for the organizing principle that all contracts are expected to be performed in good faith and honesty: *Bhasin* [] at para 93. . . .

[43] In assessing the scope and substance of the parties’ contractual promises, the trial judge noted the Agreement contains express obligations about “Good Faith Cooperation” (Article 1.10), which are “reflective of the organizing principle of good faith performance” and “confirm the shared objective of the parties to act in a cooperative and coordinated manner”. He also found more specific obligations about “Cooperation Regarding Financial Close” in Article 2.8, which “is narrower in scope and duration” and does not require Williams Canada to alter its contractual rights under the Agreement: Decision at paras 82-84.

[44] The trial judge then correctly confirmed at paragraph 89 that the contractual language, the organizing principle of good faith, and the surrounding factual matrix inform the interpretation of the Agreement: “Whether viewed from the perspective of contractual interpretation or the organizing principle of honesty and good faith in performance, Williams Canada’s duty to cooperate must be evaluated in the context of the structure and wording of the contract and the factual matrix underlying its formation.”

[45] NAPP argues the trial judge incorrectly truncated the content of the duty of good faith into an obligation not to lie or mislead. We disagree.

[46] The trial judge recognized the “duty to cooperate” and the requirement for “good faith in performance” were found in both the contractual language and the “organizing principle of honesty and good faith performance”: Decision at para 89. He considered whether the conduct of Williams Canada was “fair and reasonable”: Decision at para 133. He confirmed the “particular implications” of the organizing principle are “determined by resorting to the body of doctrine that has developed ... in particular types of situations or relationships”, quoting *Bhasin* at para 93: Decision at para 131.

[47] The trial judge then turned to the “general duty of honesty in contractual performance” and found Williams Canada “did not lie or mislead”: Decision at para 132. The trial judge was addressing the duty of honest performance separately. He did not conflate or confuse the organizing principle with the common law duty of honest performance.

[48] NAPP contends the trial judge misapprehended the content of the organizing principle because he found that the three “categories” of situations or relationships mentioned in *Bhasin* about the particular implications of the organizing principle did not apply. Specifically, NAPP submits the first category – “where the parties must cooperate in order to achieve the objects of the contract” – was engaged here: *Bhasin* at para 47.

[49] The three categories in *Bhasin* were examples of “three broad types of situations” in which a duty of good faith performance had been found in the existing jurisprudence, relying on commentary in John McCamus, *The Law of Contracts*, 2d ed (Toronto: Irwin Law, 2012) at 835-868. The first category of cases generally involved circumstances in which a duty of good faith was necessarily implied to secure performance of the objects of the contract. The second involved the exercise of contractual discretion. The third concerned the use of a contractual power, such as repudiation, to evade a contractual duty. Nevertheless, the Supreme Court recognized the imprecision of these categories, noting the “cases overlap to some extent”. The value of the cases was to “provide a useful analytical tool to appreciate the current state of the law on the duty of good faith”: *Bhasin* at paras 48-51. The Supreme Court further clarified these categories are not exhaustive; there are other “classes of relationships that call for a duty of good faith to be implied by law” and “the types of situations and relationships in which the law requires, in certain respects,

honest, candid, forthright or reasonable contractual performance ... is not closed”: *Bhasin* at paras 53, 66.

[50] The three categories assisted the Supreme Court in recognizing the organizing principle, including its scope and content. However, the application of the organizing principle is not a categorization exercise. The categories do not exhaustively define the circumstances in which the principle applies.

[51] The trial judge concluded that “none of these [three categories] apply in the present case”: Decision at para 131. Reading the Decision holistically, he interpreted the first category to apply to situations in which a duty of good faith is necessarily implied because no express terms addressing good faith performance are present. Here, he found no implication was required because the express contractual language included a duty of good faith cooperation. The trial judge’s analysis demonstrates he applied the organizing principle of good faith performance to the interpretation and application of Articles 1.10 and 2.8 specifically and the Agreement generally. Consequently, even if the first category applied, nothing turned on such an error.

[52] The trial judge acknowledged the language of Article 1.10 that the “Parties agree to act in good faith with each other and cooperate with respect to all matters hereunder including ... the fulfillment of their respective obligations under this Agreement”. He correctly held “Williams Canada’s duty to cooperate must be evaluated in the context of the structure and wording of the contract and the factual matrix” even if “viewed from the perspective of ... the organizing principle”. He recognized the inquiry into the exercise of that duty includes an objective assessment of “what a court considers unreasonable”: Decision at para 89.

[53] The trial judge’s approach is illustrated in his analysis of the duty to cooperate regarding financial close under Article 2.8. He considered whether NAPP’s “request for ‘cooperation in financing’ was consistent with ... the organizing principle of good faith in performance”: Decision at para 129. He confirmed Williams Canada’s express obligation to “provide all cooperation reasonably requested” and assessed whether Williams Canada’s decision to reduce “project spending and place its Canadian operations for sale were fair and reasonable”. He noted “NAPP was advised of the Williams Inc’s decisions promptly” and that “Williams Canada was willing to extend the dates for NAPP to obtain debt financing for its project”: Decision at para 133.

[54] NAPP argues the trial judge failed to recognize the organizing principle of good faith can impose positive obligations on relationships, even if unwritten, “where the parties must cooperate in order to achieve the objects of the contract”: *Bhasin* at para 47. Specifically, NAPP contends the trial judge erroneously held that neither Articles 1.10 and 2.8, nor the organizing principle of good faith, could be extended to impose obligations that were not part of the express provisions of the Agreement. Moreover, NAPP asserts the trial judge improperly leapt to the conclusion that “because something has not been expressly forbidden under a contract, it follows that it is

permitted”: *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 138. We disagree that he interpreted the law in these ways.

[55] The trial judge determined the parties’ bargain, including both express and implied terms. He then considered whether the cooperation sought by NAPP was inconsistent with those terms. The trial judge undertook to “contextualize the [Agreement] and the circumstances surrounding its finalization”: Decision at para 11. He considered the “factual matrix” and did not confine his analysis to the express wording of the Agreement. He found the negotiation of the Agreement was “difficult and hard fought” between sophisticated parties and “an exercise in allocation of risk”. The parties sought to “allocate known risks in a way that both parties could accept”: Decision at paras 39-40.

[56] The trial judge found the Agreement “does not prohibit either party from undergoing a change of control due to sale of its shares” and did not “require Williams Inc or Williams Canada to maintain their planned expenditures”. His contextual analysis led to this finding based on the objective intentions of the parties, not just the express terms of the Agreement.

[57] The trial judge searched for the content of the bargain between the parties, including the allocation of the risks. He noted that during the negotiation process, “NAPP did not want a change of control provision at the pre-construction stage”, and Williams Canada agreed. He found the parties agreed to no “other restrictions, such as prior notice of a proposed sale, rights of first refusal, disclosure of and introduction to potential purchasers, or disclosure of the intentions of prospective purchasers regarding carrying on with the project as then envisaged”. He also found: “Both parties were at risk that the other could come under the control of a new entity, who may not be inclined to proceed past the pre-construction stage”: Decision at para 91. He then concluded “NAPP was not entitled to receive prior notice of the decision of Williams Inc to sell its Canadian operations ... Had NAPP wished to obtain such a concession it could have bargained for it during the [Agreement] negotiation process. It did not.”: Decision at para 92. In short, after considering the surrounding circumstances (including the sophisticated and detailed negotiations) and the contractual language, the trial judge found the Agreement *permitted* a change in control without the obligations later sought by NAPP.

[58] The trial judge then considered whether the general or specific duty of cooperation contained in the Agreement could reasonably have been intended to override the balance of the bargain between the parties. He determined Articles 1.10 and 2.8 “cannot reasonably have been intended to extend such rights ... Nor can the organizing principle of good faith ordinarily be extended to impose an obligation that was not part of the contract as bargained, not to mention one that was eschewed in negotiations”: Decision at para 93. As this Court confirmed in *Styles v Alberta Investment Management Corp*, 2017 ABCA 1 at para 45: “Applying the ‘organizing principle of good faith’ involves a difficult balancing exercise. Contracting parties are generally entitled to perform (and expect performance of) the contract in accordance with its terms.”

[59] The trial judge explained his approach: “when viewed in isolation, neither the decision of Williams Inc to reduce authorized expenditures by Williams Canada, nor the decision to place its Canadian operations for sale would have constituted a breach of the [Agreement]”: Decision at para 86. The reference to “in isolation” was a comment about the contractual terms before assessing whether the duty to cooperate and good faith performance of the Agreement imposed additional positive obligations, including prior notice of any sale and involvement in the Sales Process.

[60] The trial judge engaged in a similar analysis to find the Agreement did not require “Williams Inc or Williams Canada to maintain their planned expenditures”: Decision at para 86. He found the Agreement contained no minimum spend obligation, and no requirement that Williams Canada fund the development of the Common Utilities Building: Decision at para 126. Williams Canada was therefore permitted to engage in the Slow Roll.

[61] NAPP otherwise agreed the Agreement did not prevent either party from undergoing a change of control. After concluding “neither the decision of Williams Inc to reduce authorized expenditures by Williams Canada, nor the decision to place its Canadian operations for sale would have constituted a breach of the [Agreement]”, the trial judge found the additional positive obligations sought by NAPP were incompatible with the bargain and the allocation of risks negotiated by the parties. “On an objective basis, Articles 1.10 and 2.8 cannot reasonably have been intended to extend such rights given the absence of any restrictions on change of control”: Decision at para 93. This finding is sound.

[62] Finally, no palpable and overriding error is demonstrated in the trial judge’s findings that the duty to cooperate and the requirement for good faith performance were not breached.

[63] NAPP contends Williams Canada failed to cooperate reasonably by: a) advancing the Slow Roll and Sales Process without regard for the impact of those actions on NAPP; b) refusing to fund the ATCO Group for work necessary to keep the Common Utilities Building project on schedule; c) failing to provide a satisfactory response to NAPP’s May 11, 2016 Request for Cooperation in Financing letter; and d) failing to identify, introduce and promote NAPP to prospective purchasers of Williams Inc’s Canadian operations. NAPP argues that Williams Canada was obligated to provide “all cooperation reasonably requested” provided Williams Canada was not required to alter its contractual rights.

[64] First, the trial judge reasonably concluded “the contractual duty to cooperate in financing did not extend to measures that would alter the rights of Williams Canada under the [Agreement], including imposition of a minimum spend obligation, [and] the right to be involved in the sale of Williams Canada shares”: Decision at para 126. As summarized at paragraph 130, he reasonably found the Agreement:

. . . contains no prohibition or restrictions on change of control . . . Given the wording of the agreement and the factual matrix the objective intent of the parties cannot have been to impose such restrictions under the duty to cooperate within the contract (either generally or in respect of NAPP's financing efforts specifically). Nor can such obligations arise under the organizing principle of good faith and honest performance.

[65] The trial judge nevertheless reviewed the “actions taken by Williams Canada to substantively address the economic impact on NAPP of the Williams Canada decision to reduce [Propylene Plant] project spending and place its Canadian operations for sale”, including prompt notice of decisions, an extension to the dates for NAPP to obtain debt financing, and Williams Inc's offer to reimburse NAPP for its project development costs if a new owner of Williams Canada did not proceed as planned. He found Williams Canada's actions were “fair and reasonable” Decision at para 133. No palpable and overriding error is demonstrated.

[66] Second, the trial judge considered and reasonably rejected NAPP's contention about the development of the Common Utilities Building. He found no compelling evidence to support NAPP's claim that funding the Common Utilities Building was necessary for NAPP to receive debt financing commitments. In particular, he concluded: a) NAPP sought during negotiations but did not obtain a condition precedent in its favour requiring Williams Canada to have a third-party energy supply agreement in place at financial close; b) Williams Canada had planned for connection to the Alberta power grid in case the Common Utilities Building was not available when the plants were commissioned; and c) the power supply issue was addressed through a temporary back-up supply. These findings are supported by the evidence.

[67] Third, the trial judge reasonably found Williams Canada's response to the Request for Cooperation in Financing letter was consistent with its contractual obligations and the organizing principle of good faith. Williams Canada responded to the letter, but objected to requests for certain commitments and assurances, including: a) the identification of the purchaser of the Canadian operations and the purchaser's plans, commitments and financial capacity; b) details of Williams Canada's spending program and source of funds; c) funding commitments for the ATCO Group's construction costs on the Common Utilities Building; and d) construction and operation guarantees for the benefit of NAPP's lenders. The trial judge's conclusion that the letter was “an exercise in positioning” seeking to alter Williams Canada's contractual rights rather than cooperation in the performance of the existing Agreement is grounded in the evidence.

[68] Fourth, the trial judge reasonably concluded Williams Canada had no obligation to identify, introduce and promote NAPP to potential purchasers. Indeed, the identity of any potential owner was not yet known to Williams Canada. No palpable and overriding error is shown.

[69] In sum, this ground of appeal has no merit.

b) The trial judge’s finding about whether NAPP discharged its burden to establish causation and entitlement to Termination Costs need not be considered

[70] As the trial judge determined Williams Canada did not breach the Agreement, he found “it is unnecessary to decide the bankability of the NAPP project”. However, if a finding had been necessary, the trial judge “would have found that on balance it was unlikely that NAPP would have achieved financing given the obstacle to be overcome under an aggressive and expedited schedule”: Decision at para 171. The trial judge then provided a provisional analysis.

[71] Given our findings on the first ground of appeal, further consideration of the provisional assessment of causation is unnecessary. We decline to make additional comments.

Conclusion

[72] The appeal is dismissed.

Appeal heard on March 12, 2025

Memorandum filed at Calgary, Alberta
this 6th day of March, 2026

Feehan J.A.

de Wit J.A.

Feth J.A.

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