



P. MACAULAY & ASSOCIATES INC.

130 King Street West, Suite 1800, Toronto, ON M5X 1E3

P 416.642.6010 E pmacaul@pmacaulay-assoc.com

Court of Queen's Bench of Alberta awards the Plaintiffs both their Damages, and a Disgorgement of Profits by the Defendants. The Court of Appeal Upholds the Decision.

This judgment is unusual because the Plaintiffs were awarded both: a) their damages, and b) a disgorgement of the Defendants' profits.

Normally, the Plaintiffs would be awarded damages. In some cases, the Plaintiff is awarded a disgorgement of the Defendant's profits instead of damages. It is unusual for the Plaintiff to be awarded both their damages and a disgorgement of the Defendant's profits.

	Damages Award	Disgorgement Award	Total Award
Plaintiff's damages	\$899,277		\$899,277
Defendants' profits		\$1,062,306	\$1,062,306
Total			<u>\$1,961,583</u>

The Plaintiff Indutech Canada Limited ("Indutech") manufactures specialized steel products for sale to petroleum producers in the Alberta oilsands.

The Defendants Gibb Pipe Distributors Ltd. et al ("GPD"), for a number of years marketed and sold Indutech products in the oilsands, pursuant to two agency agreements.

The judge found that GPD had breached the agency agreements, and the fiduciary and good faith duties owed by GPD to Indutech. Specifically, the Defendants set up a manufacturing firm and diverted orders away from Indutech to their manufacturing firm, charged more than the 5% mark-up allowed under the agency agreements, and a number of other breaches.

The judge awarded Indutech their damages, and the Defendants' profits flowing from the breaches. The Court of Appeal upheld this decision. Part of the Court's logic is that damages alone are "insufficient to satisfy the need for deterrence and denunciation"(para 554).

In addition, the Court awarded punitive damages of \$150,000 and allowed substantially all of the enhanced cost awards claimed by Indutech.

To enlist my help with your damages claim, please contact me.

Peter Macaulay, CPA, CA●IFA, MBA, has 25 years' experience quantifying damages in commercial disputes.
www.pmacaulay-assoc.com

CanLII: 2011 ABQB 38, 2012 ABQB 425, and 2013 ABCA 111