

# No means no: No jurisdiction or bifurcation of PPCLA claims in the Alberta Court of Justice

August 23, 2024

The Alberta [Prompt Payment and Construction Lien Act](#) (the PPCLA) creates an extraordinary statutory remedy that enables parties to register a lien on an owner's land to collect money owed to them when they have worked or supplied materials to improve the lands. Section 40 of the PPCLA<sup>1</sup> provides a safeguard against the wrongful registration of liens by stipulating that parties may be liable for legal and other costs as well as damages incurred from the registration of liens in grossly excessive amounts, or in circumstances where a party ought to have known that a person did not have a lien.

The Alberta Court of Justice's recent decision in [844170 Alberta Inc. v. MCL Group Ltd., 2024 ABCJ 120](#) [MCL Group], serves as a reminder that the Court of Justice is not a court of inherent jurisdiction. Justice S.L. Corbett clarified that the Court of Justice does not carry or share jurisdiction over Section 40 claims within the PPCLA, as the legislation expressly defines "court" as the Court of King's Bench of Alberta. As such, PPCLA claims, including Section 40 claims, fall outside of the Court of Justice's limited jurisdiction, and will be diverted to the Court of King's Bench.

## Background: Unpaid invoices in dispute

In MCL Group, the Alberta Court of Justice canvassed whether it had statutory jurisdiction to assess claims pursuant to Section 40 of the PPCLA.

By way of background, 844170 Alberta Inc. (the Plaintiff) and MCL Group Ltd. (the Defendant) entered into an agreement whereby the Plaintiff would supply and deliver clay to a water treatment plant for stockpile. The Plaintiff brought an action against the Defendant for unpaid invoices totalling \$54,913.28, and the Defendant subsequently filed a counterclaim for \$32,338.36 for costs incurred for third-party trucking services, plus \$7,113.76 for standby charges improperly invoiced to the Defendant.

Notably, the Defendant's dispute note and counterclaim alleged that the Plaintiff improperly registered a builders' lien against the Defendant's land. As such, the Defendant sought indemnification for legal and other costs, and damages from the Plaintiff pursuant to Section 40 of the PPCLA.

Prior to determining the appropriate resolution track for the action, the Alberta Court of Justice directed the parties to attend case management to determine whether the Court had jurisdiction over the Defendant's Section 40 claims. The parties addressed the issue by way of written submissions. While the Plaintiff submitted that the Court of Justice did not carry jurisdiction to hear the Defendant's counterclaim, the Defendant argued that the balance of the issues, namely its claims related to the assessment and entitlement to costs pursuant to Section 37.1 of the [Court of Justice Act](#), ought to be decided by the Court of Justice, even if it did not have jurisdiction to award costs related to the lien.

## The decision: The PPCLA does not designate shared jurisdiction with the Alberta Court of Justice

The Court ultimately concluded that the Defendant's counterclaim was beyond its jurisdiction and the action was subsequently transferred to the Court of King's Bench.

### Relevant legislation

Section 40 of the PPCLA addresses the wrongful registration of liens by providing that a party may be liable for legal and other costs, plus damages incurred, from registering a lien for an "amount grossly in excess of the amount due to the person or that the person expects to become due to the person or when the person knows or ought reasonably to know that the person does not have a lien [...] unless that person satisfies the court that the registration of the lien was made or the amount of the lien was calculated in good faith and without negligence."<sup>2</sup> Notably, **section (1)(c) of the PPCLA expressly defines "court" as the Court of Queen's Bench (as it then was).**<sup>3</sup>

### Nature of the Court of Justice 's jurisdiction

The Court of Justice clarified that it is not a court of inherent jurisdiction. Rather, it is a statutory court which derives its jurisdiction from the Court of Justice Act. If an action falls outside the scope of the Court of Justice's limited jurisdiction, the appropriate remedy is a transfer of the action to the Court of King's Bench.

Much like its predecessor statute, the Builders' Lien Act, claims arising from the PPCLA are restricted to the jurisdiction of the Court of King's Bench, based on the statute's limited definition of the term "court." The Court of Justice referred to other statutes where it shares jurisdiction with the King's Bench, and observed that shared jurisdiction is clearly designated within the enabling legislation; **the PPCLA does not refer to any such shared jurisdiction** .

The Court of Justice also rejected the Defendant's alternative argument that its costs claim could be bifurcated from the analysis of liability, such that the Court of Justice would have the jurisdiction to review costs pursuant to Section 37.1 of the Court of Justice Act<sup>4</sup> and **Section 38 of the Court of Justice Civil Procedure Regulation.**<sup>5</sup> The Court refused to bifurcate the Defendant's costs claim as costs would ultimately hinge on the court's findings on the validity of the lien, as part of the Section 40 assessment under the PPCLA.

## Key takeaways

- The Alberta Court of Justice is not a court of inherent jurisdiction. If an action falls outside the scope of the Court of Justice’s limited jurisdiction, the appropriate remedy is a transfer of the action to the Court of King’s Bench.
- The PPCLA expressly defines “court” as the Court of King’s Bench - it does not designate shared jurisdiction with the Court of Justice. As such, claims advanced pursuant to the PPCLA, including Section 40 claims, must be brought before the Court of King’s Bench.
- Section 40 claims cannot be bifurcated between liability and costs assessment such that the Court of Justice would have jurisdiction over the latter assessment.

## Contact us

If you have questions related to this article, the PPCLA, or any other construction-related issues, make sure to reach out to any of the authors and contacts below, or any lawyer from [BLG’s Construction Group](#).

## Footnotes

<sup>1</sup> PPCLA, s 40.

<sup>2</sup> PPCLA, s 40.

<sup>3</sup> PPCLA, s 1(c).

<sup>4</sup> Court of Justice Act, s 37.1.

<sup>5</sup> Court of Justice Civil Procedure Regulation, Alta Reg 176/2018, s 38.

By

[Rodney A. Smith](#), [Grace Jiyeon Shory](#), [Dhara Pathak](#)

Expertise

[Construction](#), [Infrastructure](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.