

In the Court of Appeal of Alberta

Citation: Opabin Sand and Gravel Inc v VINCI GeoInfrastructure Canada Limited, 2026 ABCA 212

Date: 20260624

Docket: 2503-0241AC

Registry: Edmonton

Between:

Opabin Sand and Gravel Inc.

Appellant

- and -

VINCI GeoInfrastructure Canada Limited

Respondent

- and -

Sarcee Gravel Products Limited Partnership, Sarcee Gravel Products Ltd, Tsuu T'ina Contracting Limited Partnership, Tsuu T'ina Contracting GP Inc, ABC Corp, ABC LP, SGPLP Management Ltd, Def Corp, Def LP, and His Majesty the King in right of Alberta

Not Parties to this Appeal

The Court:

**The Honourable Justice Kevin Feehan
The Honourable Justice April Grosse
The Honourable Justice Alice Woolley**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice S.N. Mandziuk
Dated the 29th day of October, 2025
Filed on the 15th day of December, 2025
(2025 ABKB 623, Docket: 2403 04577)

Memorandum of Judgment

The Court:

I. Background

[1] The appellant Opabin Sand and Gravel Inc. appeals a decision refusing to strike the respondent VINCI GeoInfrastructure Canada Limited's amended counterclaim. The amended counterclaim alleges the appellant is liable for the torts of abuse of process and conversion because of its claims involving the respondent.

[2] The respondent was the general contractor for construction of Alberta's Springbank Off-Stream Reservoir project. Alberta assigned the respondent subcontracts for materials to be provided by Sarcee Gravel Products Ltd. Sarcee allegedly had difficulty meeting its contractual obligations. As a result, in 2022 Sarcee and a related entity, Tsuu T'ina Contracting Limited Partnership, (collectively, the "subcontractors") issued purchase orders to the appellant and another company to obtain the required materials. The appellant provided materials pursuant to the purchase orders in 2022 and was paid for doing so.

[3] The appellant alleges the parties had agreed, in accordance with representations made by the respondent and the subcontractors, that its work providing materials would resume in the spring of 2023. Instead, on the direction of the respondent, the subcontractors did not proceed with the balance of the purchase orders, thereby allegedly breaching their agreements with the appellant. The appellant says it incurred additional expenses based on its understanding of the agreements and the representations made to it.

[4] On July 28, 2023, the appellant delivered to Alberta notice of an approximately \$9,000,000 claim in respect of the Springbank Off-Stream Reservoir project pursuant to section 14(1) of the *Public Works Act*, RSA 2000, c P-46. As a result, Alberta held back progress payments payable to the respondent and directed the respondent to investigate the appellant's claim. Alberta only released the progress payments after the respondent obtained a letter of credit as security.

[5] On March 6, 2024, the appellant filed a statement of claim against the respondent, the subcontractors and Alberta in relation to the project, which it amended on March 3, 2025 (the "Civil Claim").

[6] On September 24, 2024, the respondent filed a statement of defence and counterclaim, amending the counterclaim on October 25, 2024. In its amended counterclaim, the respondent alleges the appellant is liable for abuse of process and conversion. It says the Civil Claim and *Public Works Act* notice were advanced for the "improper purpose of using the economic pressures

caused by withheld progress payments that result from the Opabin PWA Claim to improperly pressure Sarcee to acquiesce to Opabin's claims for compensation or, alternatively, to obtain further supply agreements, for the [Springbank Off-Stream Reservoir] Project or otherwise". It characterizes the *Public Works Act* claim as a wrongful interference with the respondent's entitlement to amounts owed under its contract with Alberta.

[7] An applications judge struck the respondent's counterclaim under Rule 3.68(2)(b) of the *Alberta Rules of Court*, Alta Reg 124/2010 as disclosing no reasonable claim: *Vinci GeoInfrastructure Canada Limited v Opabin Sand and Gravel Inc*, 2024 ABKB 683 at paras 13-14, 23-24 [*Application Decision*]. A chambers judge reversed that decision, holding that as pleaded the claims for abuse of process and conversion were not hopeless: *Opabin Sand and Gravel Inc v Tsuu T'ina Contracting Limited Partnership*, 2025 ABKB 623 at paras 63, 67-70, 80-84 [*Chambers Decision*]. The appellant appeals that decision.

[8] For the reasons that follow, the appeal is allowed and the amended counterclaim is struck.

II. Issues and Standard of Review

[9] The appellant identifies the following grounds of appeal:

- (a) Did the chambers judge err by holding the amended counterclaim pleaded facts which, if proven, constitute the tort of abuse of process?
- (b) Did the chambers judge err by holding the amended counterclaim pleaded facts which, if proven, constitute the tort of conversion?

[10] Pursuant to Rules 3.68(1)(a) and 3.68(2)(b), a claim may be struck where the "pleading discloses no reasonable claim". The court assumes the facts as pleaded are true and assesses whether it is plain and obvious that the pleading does not disclose a valid claim: *Tuharsky v O'Chiese First Nation*, 2025 ABCA 267 at para 16; *SR v Edmonton (Police Service)*, 2024 ABCA 340 at para 13; *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 at para 20 [*Elder Advocates*].

[11] While a chambers judge's determination on an application to strike is generally afforded a high level of deference, the specific question of whether the amended counterclaim discloses a cause of action in abuse of process or conversion is a question of law for which the standard of review is correctness: *Okeke v Oakes*, 2025 ABCA 52 at para 10; *Co-Solve Solutions Inc v Purdy*, 2023 ABCA 324 at para 7; *Dixon v Canada (Attorney General)*, 2012 ABCA 316 at para 7.

III. Abuse of Process

A. *The Decisions Below*

[12] The applications judge struck the respondent's counterclaim as disclosing no reasonable claim. He found that "[f]iling a claim under the [*Public Works Act*] is not 'a legal process' within the meaning of that term as it is used by the Courts in describing the tort of abuse of process": *Application Decision* at para 14. He emphasized that the tort of abuse of process was "created or instituted by the Courts to protect its own process": *Application Decision* at para 17. He concluded the process for addressing a claim under the *Public Works Act* is administrative, not legal: *Application Decision* at para 19.

[13] The chambers judge reversed the *Application Decision*. He identified the four elements of the tort of abuse of process (*Chambers Decision* at para 44) and found the amended counterclaim had sufficiently pleaded each of the four elements.

[14] While the amended counterclaim was "capable of multiple interpretations", it had specifically alleged the Civil Claim was an abuse of process, which satisfied the first element of the tort, that the respondent be a party to a legal process initiated by the appellant: *Chambers Decision* at para 63.

[15] As to the second element, the chambers judge observed the amended counterclaim specifically identified an improper purpose "of using economic pressures caused by withheld progress payments" to "obtain acquiescence to Opabin's 'claims for compensation' or obtain 'further supply agreements'": *Chambers Decision* at para 64.

[16] The chambers judge observed that hoping to induce settlement is not itself an improper purpose; however, the amended counterclaim alleged the appellant's Civil Claim was "not commenced in order to resolve a *bona fide* dispute, but instead to increase the economic pressure already initiated through the [*Public Works Act*] Claim": *Chambers Decision* at paras 66-67. The chambers judge found that, "[f]ramed this way, it is *not* plain and obvious on the face of the pleadings that the Civil Claim was *not* brought for an improper purpose": *Chambers Decision* at para 67 [emphasis in original].

[17] With respect to the third element of the tort, the chambers judge accepted that notice of a claim under the *Public Works Act* could be a "definite act" outside the legal process despite the discretion of the Minister under that legislation. The pleadings "state the PWA Claim was used to disrupt payment flows and 'harm [the respondent's] financial interests'". He agreed whether this qualifies as a "definite act" is "arguable and should be determined on a full evidentiary record": *Chambers Decision* at para 68.

[18] Regarding the fourth element, the chambers judge acknowledged it was unsettled in the law of abuse of process whether the special damages pleaded must arise from the Civil Claim, or

whether they could arise from the definite act taken to further the improper purpose. He found that, given the uncertainty in the law, the fact that the special damages pleaded arose from the *Public Works Act* claim not the Civil Claim did not preclude the action from proceeding: *Chambers Decision* at paras 69-70.

B. Analysis

[19] The chambers judge did not err in identifying the four elements of the tort of abuse of process: (1) the plaintiff is a party to a legal process initiated by the defendant; (2) the legal process was initiated for the predominant purpose of furthering some indirect, collateral and improper objective; (3) the defendant took or made a definite act or threat in furtherance of the improper purpose; and (4) some measure of special damages has resulted: *Pine Glen Thorold Inc v Rolling Meadows Land Development Corporation*, 2025 ONCA 604 at para 67 [*Pine Glen*]; *QHR Technologies Inc v Niebergal*, 2022 SKCA 85 at para 54; 3058354 *Nova Scotia Company v On*Site Equipment Ltd*, 2011 ABCA 168 at para 57; *Harris v Glaxosmithkline Inc*, 2010 ONCA 872 at paras 27-28, leave to appeal to SCC refused, 34111 (14 July 2011).

[20] The second and third elements ensure parties cannot engage in an endless series of retaliatory litigation but rather can commence an action based on being sued only in exceptional circumstances: *Pine Glen* at para 67. The narrow scope of the tort of abuse of process is consistent with the doctrine of absolute privilege which, for policy reasons, shields the legal process from itself becoming the source of further litigation: *Oei v Hui*, 2020 BCCA 214 at paras 39, 40 [*Oei*].

[21] For the reasons that follow, the chambers judge erred in law with respect to the scope of the tort of abuse of process. It is plain and obvious the second and third elements of the tort are not met on the facts as pleaded in this case.

Does the amended counterclaim identify a legal process initiated by the appellant?

[22] The respondent argues that two legal processes are sufficiently identified for the purposes of the first element of the tort of abuse of process: the Civil Claim and the *Public Works Act* claim.

[23] We agree with the chambers judge that the amended counterclaim, generously interpreted, pleads an abuse of process in relation to the Civil Claim. It alleges the “Claim is an abuse of process” and that the appellant filed “the within Action” for an improper purpose. The Civil Claim is a legal process initiated by the appellant to which the respondent is a party. The amended counterclaim thus sufficiently pleads facts to make out the first element of the tort.

[24] Although not strictly necessary for the purposes of deciding this appeal, we are prepared to assume the *Public Works Act* claim, also identified in the amended counterclaim as abusive, could satisfy the first element of the tort. It was initiated by the appellant, and the respondent could be considered a party in the sense that it is the “contractor” referred to in the section 15 “Payment of claim” provisions of the *Public Works Act*.

[25] In relation to whether the *Public Works Act* claim constitutes a “legal process”, Alberta courts have acknowledged the possibility that abuse of administrative process can give rise to liability under the tort of abuse of process: *Grenon v Canada Revenue Agency*, 2016 ABQB 260 at paras 112-113, varied on other grounds, 2017 ABCA 96, leave to appeal to SCC refused, 37584 (21 September 2017) [*Grenon*]; *Hunt Oil Company of Canada, Inc v Galleon Energy Inc*, 2010 ABQB 212 at paras 19-20 [*Hunt Oil*]; *Big Bear Hills Inc v Bennett Jones Alberta Limited Liability Partnership*, 2010 ABQB 764 at para 71 [*Big Bear*]. Similar acknowledgments have been made in other provinces, including with respect to builders’ liens: *Metrick v Deeb*, 123 ACWS (3d) 831, 2003 CanLII 804 (ONCA) at paras 1-2 [*Metrick*]; *601 Main Partnership v Centura Building Systems (2013) Ltd*, 2024 BCCA 76 at paras 78, 132 [*601 Main*].

[26] Notably, the *Public Works Act* empowers the courts to determine disputed claims. Section 15(4) permits the Crown to apply to the Court of King’s Bench to have funds paid into court and allows the court to “determine the persons who are entitled to the money and direct payment of the money in accordance with that determination”. The *Public Works Act* procedures are thus not siloed from those of the court, suggesting their abuse may give rise to the same concerns with protecting court resources that animate, at least in part, the tort of abuse of process.

[27] Further, and importantly, as the British Columbia Court of Appeal has noted, pre-judgment administrative processes like liens – and here, the *Public Works Act* claim – are “powerful pre-judgment weapons” that may be abused by “unscrupulous persons to achieve results which could not otherwise be obtained”: *601 Main* at para 129, citing *Atlas Painting & Restorations Ltd v 501 Robson Residential Partnership*, 2016 BCSC 2472 at para 1 and *Guilford Industries Ltd v Hankinson Management Services Ltd* (1973), 40 DLR (3d) 398 at 405-406, 1973 CanLII 1065 (BCSC) [*Guilford*]. The tort of abuse of process reflects a concern with the integrity of the administration of justice, and the rule of law. It prevents instruments of the law being abused to achieve a result they were not designed to provide, and allows persons targeted by such abuse to recover their resulting damages.

[28] We accept that the amended counterclaim sufficiently pleads facts related to the first element of the tort.

Does the amended counterclaim identify an “indirect, collateral and improper objective”?

[29] The amended counterclaim alleges the appellant filed the Civil Claim and issued the *Public Works Act* notice for two “improper purposes”: first, to “improperly pressure Sarcee to acquiesce to Opabin’s claims for compensation” and second, “to obtain further supply agreements, for the [Springbank Off-Stream Reservoir] Project or otherwise”.

[30] The improper purpose must be the predominant purpose of, and external to, the impugned proceedings. The proceedings must be “merely a stalking-horse to coerce the defendant in some way entirely outside the ambit of the legal claim upon which the court is asked to adjudicate”: *Varawa v Howard Smith* (1911), 13 CLR 35 at 91 per Isaacs J (HC Austl); *Oei* at para 26;

Sappideen et al, *Fleming's The Law of Torts*, 11th ed (Pyrmont, NSW: Thomson Reuters (Professional) Australia Limited: Lawbook Co, 2024) at 816 [*The Law of Torts*]; see also *Big Bear* at para 70, citing *Rocky Mountain Rail Society v H & D Hobby Distributing Ltd*, 27 Alta LR (3d) 424, 1995 CanLII 9029 (ABQB) at para 13 [*Rocky Mountain*], citing *Tsiopoulos v Commercial Union Assurance Co* (1986), 57 OR (2d) 117 at 119-120, 1986 CanLII 2531 (ONSC). The legal process must have been used “to gain an end which the legal process does not entitle the plaintiff to obtain”: *Teledata Communications Inc v Westburne Industrial Enterprises Ltd*, (1990) 71 OR (2d) 466 at 469, 1990 CanLII 6887 (ONSC) [*Teledata*]; *Big Bear* at paras 70, 71; *Rocky Mountain* at para 14.

[31] A legal claim does not have an improper purpose simply because it has no merit, because the party advances the claim to achieve settlement of the action, or because the party advancing the claim has bad motives, such as seeking to antagonize, impoverish or intimidate the party against whom the claim is brought: *Oei* at paras 33-37, 52; *Grenon v Canada Revenue Agency*, 2017 ABCA 96 at para 33; *Grenon* at paras 116-118; *Hunt Oil* at para 22; *Scintilore Explorations Ltd v Larch*, 1999 CanLII 14948 at para 216 (ONSC) [*Scintilore*]; *Rocky Mountain* at paras 15, 20; *Teledata* at 469. Economic harm is a natural consequence of litigation, and the fact of economic harm does not establish litigation has an improper purpose: *Rocky Mountain* at para 20.

[32] The tort of abuse of process does not create the civil equivalent of a claim for malicious prosecution. In civil litigation, unmeritorious and frivolous claims are addressed otherwise, through the rules of civil procedure, and costs: *Oei* at para 35. The tort of abuse of process instead corrects the wrong that occurs where a party exploits the power of the legal system to achieve a goal outside the law's parameters. It allows recovery for the loss inflicted by a party who used the law for what it could be made to give, not for what it was designed or intended to give. As explained in *The Law of Torts* at 815-816, “Unlike malicious prosecution, the gist of this tort lies not in the wrongful procurement of legal process..., but in the misuse of process, no matter how properly obtained, predominantly for any purpose other than that which it was designed to serve”.

[33] The facts necessary to establish that a party commenced an action for an improper purpose, and the evidence sufficient to prove the existence of that purpose at an adjudication on the merits, depend on the circumstances of a particular case. Facts which do not, in and of themselves, indicate a legal claim has an improper purpose, including that it was wholly without merit and would result in economic harm, may still be relevant to the case plead or as evidence at trial. Nonetheless, the element of the tort of abuse of process requiring that an action has been commenced for an improper purpose focuses on this point: did the impugned action exploit the law to accomplish an end outside the law's parameters?

[34] The first “improper purpose” alleged in the amended counterclaim – to “pressure Sarcee to acquiesce to Opabin's claims for compensation” – is not “entirely outside the ambit of” either the Civil Claim or *Public Works Act* claim. On the contrary, obtaining compensation from Sarcee is legally and factually intertwined with the claim against the respondent.

[35] The Civil Claim expressly seeks compensation from Sarcee for work performed on the project. The claim alleges that Sarcee and the respondent jointly made representations; the claim against them is joint and several. In other words, the claim for compensation from Sarcee is factually and legally linked to the appellant's claim against the respondent. The fact the respondent alleges the claim for compensation is meritless and was made to "pressure Sarcee to acquiesce" does not take its purpose outside the ambit of the litigation advanced by the appellant. As noted, the normal consequences of an action, including settlement of the claims related to that action, are not collateral and improper purposes: *Oei* at para 53. As an example, in *Grenon*, the alleged purpose of the subject tax proceedings was "to force Grenon to pay an amount of tax beyond what was legitimately owing". That did not constitute a collateral purpose, because the purpose of the litigation was to collect taxes. Initiating a claim for the purpose of inducing settlement of the alleged tax liability, even if the claim was "factually groundless", was not outside the ambit of the litigation: *Grenon* at paras 116-117. As another example, in *Pirooz v Levi*, 2022 BCSC 644 at paras 27-32, that the plaintiff's claim may have been "knowingly baseless" and brought for the purpose of putting pressure on the defendant to settle did not make that purpose indirect, collateral, and improper.

[36] The respondent relies on *Goldman, Sachs & Co v Sessions*, 93 ACWS (3d) 231, 1999 CanLII 5317 (BCSC) [*Goldman Sachs*], in which a court recognized the possibility that a claim in abuse of process might arise where a plaintiff joined corporate defendants to a claim in order to "garnish the defendants' bank accounts and cause them commercial distress... and thereby coerce the personal defendant, the corporate defendants' principal, into settling the claim against him to avoid damage to their businesses": *Goldman Sachs* at paras 2, 27-29.

[37] *Goldman Sachs* does not, however, assist our analysis of what constitutes an improper purpose. The judge in that case considered the tort of abuse of process only tangentially; the issue before him related to the disclosure of otherwise privileged documents. The factual context was also unique, including because the action against the corporate defendants had been finally determined in their favour. In our view, the principle articulated in the broader case law remains: a party pleading abuse of process must identify an improper purpose distinct from the impugned claim itself.

[38] Like the Civil Claim, the *Public Works Act* notice was expressly submitted in respect of outstanding compensation owed by Sarcee. According to the amended counterclaim, the notice was submitted in respect of "material processing, site setup, mobilization, permitting, agreements, royalties, labour, equipment, financing, management and damages". The *Public Works Act* expressly contemplates this type of claim. The version of the *Act* in force at the time of the appellant's claim provided that a person "may send a notice of" a claim to the province in respect of a public work where that person was "not paid by the party who [was] legally obliged to pay" it. The Crown could then decide to "pay the claimant the amount the Crown considers proper" or it could "apply to the Court of King's Bench to pay the money into Court": *Public Works Act*, ss

14(1), 15(1), 15(4).¹ The alleged purpose of pressuring Sarcee into settlement thus falls within, not “entirely outside”, the ambit of the *Public Works Act* claim.

[39] The respondent argues the *Public Works Act* does not contemplate sub-subcontractors like the appellant submitting notices of claim. That is incorrect. The version of section 14(1) in force when the appellant submitted its claim applied to “a person” who “provides labour, equipment, material or services used or reasonably required for use in the performance of a contract with the Crown for the construction, alteration, demolition, repair or maintenance of a public work”. A sub-subcontractor who provides material required for the performance of a contract with the province, like the appellant in this case, falls within that definition. The case on which the respondent relies, *Alberta Social Housing Corporation v Dawson Wallace Construction Ltd*, 2025 ABKB 124 [Dawson Wallace], does not say otherwise. It endorses as “persuasive” the submission “that all levels of subcontractors can give notice of claims” under the *Public Works Act* but suggests sub-subcontractors cannot claim entitlement to money paid into Court under section 15(4): *Dawson Wallace* at paras 26, 33, 35. We need not decide whether the latter conclusion is correct. For present purposes it suffices to say the *Public Works Act* contemplates sub-subcontractors providing notice of claims of the type submitted by the appellant. While the appellant may have been late in submitting notice, the procedure it adopted was not fundamentally improper.

[40] The respondent relies on *Guilford*, a 1973 British Columbia Supreme Court decision, as authority for the proposition that ill-founded lien claims can ground claims for abuse of process. It argues the *Public Works Act* claim advanced by the appellant was ill-founded, and thus similar to the lien claim in *Guilford*. However, the purpose of the lien claim in *Guilford* truly was indirect, collateral and improper. In that case, a builder put a lien on lands in respect of which it had never provided any work for the purpose of “blackmailing” the landowner to settle a third party’s claim related to the purchase of certain building lots. The intended purpose of the British Columbia *Builders Lien Act*, SBC 1997 c 45 (the successor to the *Mechanics’ Lien Act*, RSBC 1960, c 238 at issue in *Guilford*) is to provide a mechanism for securing “a claim for the price of the work and materials provided by contractors, subcontractors and workers” (601 Main at para 132), not to procure property or settle claims for property by applying duress to third parties. Unlike the *Public Works Act* claim in this case, the liens in *Guilford* were “merely a stalking-horse to coerce the defendant in some way entirely outside the ambit of the legal” process.

[41] The chambers judge erred in law in his interpretation of the scope of “improper purpose”. As the alleged improper purpose of obtaining compensation from Sarcee was within the ambit of the legal processes initiated by the appellant, it is plain and obvious that purpose does not constitute an indirect, collateral and improper objective sufficient to satisfy the second element of the tort of abuse of process in respect of either the Civil Claim or the *Public Works Act* claim.

¹ The current version of these provisions uses slightly different language.

[42] The other “improper purpose” alleged in the amended counterclaim – “to obtain further supply agreements, for the [Springbank Off-Stream Reservoir] Project or otherwise” – is different. We understand that by referring to “further supply agreements”, the respondent is alleging the appellant seeks contracts outside the scope of its action against the respondent and Sarcee. That is, the respondent alleges the appellant seeks to coerce it and Sarcee to enter into new, unrelated commercial relationships. Assuming this understanding is correct, we are satisfied that, if sufficiently pleaded, such a purpose could satisfy the second element of the tort. The amended counterclaim does not, however, clearly plead that purpose.

[43] The alleged purpose of securing further supply agreements is analogous to the purpose in *Guilford*. In both cases, the improper purpose relates to commercial agreements that are not the subject of the legal processes invoked. Neither the Civil Claim nor the *Public Works Act* claim ground an entitlement to “further supply agreements”. The Civil Claim makes allegations related to existing agreements and the supply of materials under those agreements in 2022 and 2023. The *Public Works Act* notice similarly claims compensation for “material processing, site setup, mobilization, permitting, agreements, royalties, labour, equipment, financing, management and damages” already provided or incurred.

[44] If the predominant purpose behind the Civil Claim and *Public Works Act* claim was to obtain further, different supply agreements, that could amount to an indirect, collateral and improper objective. That relief was not sought in the Civil Claim or in the *Public Works Act* claim, was not related to those claims, and could not have been obtained in either.

[45] Alberta courts have recognized that weaponization of a legal process to obtain a commercial benefit in business dealings can constitute an abuse of process. In *Colborne Capital Corporation v 542775 Alberta Ltd*, 30 Alta LR (3d) 127, 1995 CanLII 9100 (ABQB) [*Colborne*], the trial judge found the plaintiffs had issued their statement of claim as part of a scheme to prevent the defendant from raising the financing it required to complete the purchase of certain shares. The plaintiffs’ stated intention was to “screw the Stampeder deal”. The trial judge concluded, “What Colborne was attempting to obtain by issuing the statement of claim in combination with its other action was totally outside the scope of the action itself”: *Colborne* at paras 359-363, 379. On appeal, this Court declined to “interfere with the finding of liability against Colborne et al. for the torts counterclaimed”, which included the tort of abuse of process: *Colborne Capital Corporation v 542775 Alberta Ltd*, 1999 ABCA 14 at para 245.

[46] We are satisfied that the objective of securing further, unrelated supply agreements could constitute an indirect, collateral, and improper objective.

[47] However, the facts as pleaded in the amended counterclaim do not support the assertion that either the Civil Claim or *Public Works Act* claim were initiated for that purpose, as distinct from the apparent purpose of resolving the asserted claim for outstanding compensation. There is no fact pleaded which, if true, would permit that inference, aside from the bare allegation that the appellant “filed the Opabin PWA Claim and the within Action... to obtain further supply

agreements”. As this Court had held, “bald assertions of misconduct (such as malice, fraud, deceit, ‘absence of honest belief’, bad faith, misfeasance in public office, etc) will not be accepted as being true without reasonable particulars of the allegations”: *Anglin v Resler*, 2024 ABCA 113 at paras 45, 58, aff’d 2026 SCC 23 [*Anglin*]; *Gay v Alberta (Workers’ Compensation Board)*, 2023 ABCA 351 at paras 12, 14 [*Gay*]; *Clark v Hunka*, 2017 ABCA 346 at paras 31, 32 [*Clark*]. The respondent’s claim of misconduct by the appellant is subject to this principle. Its assertion of a connection between the appellant’s two claims and the “further supply agreements” is a bare, speculative allegation of impropriety without reasonable particulars. As such, it is insufficient to withstand an application to strike.

[48] Therefore, neither alleged improper purpose is sufficiently pleaded to establish the second element of the tort of abuse of process.

Does the amended counterclaim identify an overt act in furtherance of the improper purpose?

[49] Given the relationship between the second and third elements, we continue here to address the third element of the tort of abuse of process.

[50] The requirement that a claim of abuse of process include an overt act or threat exists to prevent the risk that “any legal process could be challenged on account of its ‘hidden agenda’”: *The Law of Torts* at 816. The overt act must be external to the impugned claim, thereby supporting the requirement that the improper purpose falls “outside the ambit of the action”, rather than simply arising from the alleged bad motives of the party who commenced it: *Office and Professional Employees Int’l Union v Office and Professional Employees Int’l Union, Local 15 et al*, 2006 BCSC 847 at para 24, cited with approval in *Oei* at para 79. Without an overt act external to the impugned claim that furthers the improper purpose, there will only be a “bare allegation” a claim was brought for an improper purpose: *Metrick* at para 3. See also, *Barton v Potash Corporation of Saskatchewan Inc*, 2013 SKCA 141 at para 96-97; *Hunt Oil* at para 30; *Rocky Mountain* at para 25; *Grenon* at para 119.

[51] To disclose a cause of action in abuse of process, the amended counterclaim must identify a definite, or overt, act or threat by the appellant in furtherance of the improper purpose. Specifically, the amended counterclaim must identify an overt act furthering the alleged improper purpose of the Civil Claim or *Public Works Act* claim: *i.e.*, an act pressuring the respondent or subcontractors to enter into “further supply agreements” with the appellant.

[52] The respondent asserts the overt act relative to the Civil Claim is the *Public Works Act* claim. That position was accepted by the chambers judge. We acknowledge the notice given by the appellant under the *Public Works Act* could be considered extraneous to the litigation, and could also result in pressure on the respondent and subcontractors; however, as previously noted, the facts as pleaded in the amended counterclaim are no more than bald allegations that the Civil Claim and the notice were issued to advance the purpose of coercing “further supply agreements”.

The connection between the *Public Works Act* claim and the goal of obtaining “further supply agreements” is a bare, speculative allegation without reasonable particulars. It is insufficient to withstand the application to strike: *Anglin* at para 45; *Gay* at para 12; *Clark* at para 31.

[53] The same issue arises if the *Public Works Act* is considered the abusive process, and the Civil Claim is considered the overt act outside of that process. The Civil Claim seeks damages; it does not seek further supply agreements. Nothing pleaded in the amended counterclaim provides reasonable particulars of the bare allegation the Civil Claim was filed in furtherance of the purpose of obtaining further supply agreements: *Anglin* at para 45; *Gay* at para 12; *Clark* at para 31.

[54] The respondent relies on the decision of the British Columbia Court of Appeal in *601 Main* to assert that an unmeritorious *Public Works Act* claim is sufficient to satisfy the requirements of the tort of abuse of process – as an overt act with an improper purpose. In that case, the Court of Appeal held that filing an exaggerated lien claim can give rise to an action for abuse of process. Filing the lien was an act “outside the underlying debt or enforcement action” brought by the contractor against the owner: *601 Main* at para 128. Further, the court held filing the lien “may amount to an abuse of process, even without specific evidence of an ulterior motive” where the filing party has no claim and knows it has no claim: *601 Main* at para 128. The court concluded at para 132:

The filing of a lien employs a legal process to tie up funds. The purpose of the *Builders Lien Act* is to provide for the attachment of a lien to improvements, the land on which improvements are located and the materials delivered to the land, in order to secure a claim for the price of the work and materials provided by contractors, subcontractors and workers, to the extent that the price remains unpaid. Where a lien is filed by a person who knows the value of the claim is unsupportable, it is open to a court to find the *Builders Lien Act* is being used for an improper purpose because, in such circumstances, the lien has not been filed to secure a judgment the lienholder has a legitimate prospect of obtaining.

[emphasis added]

[55] The court’s decision in *601 Main* does not fit easily with the elements of the tort of abuse of process. Notably, however, the decision addresses a specific legal problem, one that is addressed in Alberta through section 40 of the *Prompt Payment and Construction Lien Act*, RSA 2000, c P-26.4 [*Prompt Payment Act*]. Section 40 creates liability for costs and damages for persons who file grossly exaggerated liens or liens which they know or ought to know are without merit. That is, it resolves the problem of how to prevent dishonest and unscrupulous people from exploiting powerful pre-judgment remedies like liens to extract economic power, while also allowing those pre-judgment remedies to continue to operate as an efficient and effective tool for protecting the interests of prospective lien claimants.

[56] The question is whether the respondent's allegation of unjustified use of the *Public Works Act* ought to be permitted to proceed by analogy to *601 Main*. Assessed through the logic of that decision, the amended counterclaim identifies an exaggerated and unwarranted use of a pre-judgment enforcement mechanism to obtain security for a judgment to which the appellant was not entitled.

[57] This would be a novel claim. That is not, however, sufficient for it to proceed: "a claim will not survive an application to strike simply because it is novel". If "a court would not recognize a novel claim when the facts as pleaded are taken to be true, the claim is plainly doomed to fail and should be struck": *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 19.

[58] In Alberta, the availability of relief for financial harm arising from an exaggerated or unfounded lien claims is explicitly provided through section 40 of the *Prompt Payment Act*. No similar relief is available in the *Public Works Act*. In that statutory context, where the legislature has chosen to provide relief for improper use of one type of pre-judgment enforcement mechanism, but not for another, we decline to recognize a novel claim the legislature has chosen not to recognize. We note in this respect that while a *Public Works Act* claim may delay or interfere with a party's ability to be paid for its work, it does not interfere with or encumber title to land. A *Public Works Act* claim is sufficiently different from a lien that we are not persuaded that the reasoning in *601 Main*, even if this Court were to accept it, ought to apply.

[59] We thus conclude the chambers judge erred in law in concluding that the amended counterclaim disclosed a reasonable cause of action in abuse of process. The amended counterclaim fails to disclose a reasonable cause of action in abuse of process because of failure in pleading either an indirect, collateral and improper objective or a definite act or threat in furtherance of such an objective.

Does the amended counterclaim identify special damages arising from the abuse of process?

[60] Because of the other deficiencies identified in the amended counterclaim, we do not need to consider whether it properly identifies special damages arising from the abuse of process.

Conclusion on abuse of process

[61] The amended counterclaim does not disclose a reasonable cause of action in abuse of process.

IV. Conversion

A. *The Decisions Below*

[62] The applications judge also struck the respondent's claim that issuance of the *Public Works Act* notice amounted to conversion of the respondent's progress payments. He explained the Crown had not yet decided that the respondent was entitled to the progress payments, which meant it was premature for the respondent to say those payments were its property: *Application Decision* at para 23.

[63] The chambers judge disagreed. He cited the definition of conversion from *Boma Manufacturing Ltd v Canadian Imperial Bank of Commerce*, [1996] 3 SCR 727 at para 31 [*Boma*], "[t]he tort of conversion 'involves a wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession'": *Chambers Decision* at para 72. He noted that the goods subject to conversion can include money, and that a person must either have possession of the good, or an immediate right to possess it, at the time of the alleged conversion: *Chambers Decision* at para 74.

[64] The chambers judge found the appellant's *Public Works Act* claim could be a wrongful act if its lack of merit was accepted: *Chambers Decision* at para 80. Further, he found it was not impossible for the respondent to establish it had either possession or an immediate right of possession to the withheld progress payments: *Chambers Decision* at para 81.

[65] The chambers judge accepted filing the *Public Works Act* claim could be a wrongful interference with the respondent's right to possess the progress payments, because it was foreseeable that filing the claim would result in the progress payments being withheld from the respondent: *Chambers Decision* at para 82. He concluded the conversion claim was not hopeless: *Chambers Decision* at para 84.

B. *Analysis*

[66] It is questionable whether a contractual debt or account receivable of the type alleged by the respondent can be the basis of a claim for conversion. The tort of conversion applies to the wrongful interference with the "goods" or "chattels" of another: *Boma* at paras 31, 36; 373409 *Alberta Ltd (Receiver of) v Bank of Montreal*, 2002 SCC 81 at para 8; *Teva Canada Ltd v TD Canada Trust*, 2017 SCC 51 at para 3; *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25 at para 31 [*Driving Force*]. Although it has long been accepted that bills of exchange, such as a cheque, can found a claim in conversion (*Boma* at paras 30, 36-37, 82; *Driving Force* at para 44), there is compelling authority that the tort of conversion does not capture claims for wrongful interference with other intangible choses in action: *BG Ltd v Allen*, [2007] UKHL 21; *Sarzynick v Skwarchuk*, 2021 BCSC 443 at paras 257-261. The scope of the tort in this regard has been described as a live issue in Canada: *RIP Beverages Co Ltd v Dave Dunn Enterprises Ltd*, 2026 SKCA 9 at para 52; see also *Murray v Toronto-Dominion Bank*, 2026 ONCA 210 at para 7.

[67] We need not, however, decide whether the progress payments at issue could properly constitute “goods” or “chattels” for the purposes of the tort; it is plain and obvious the notice issued by the appellant under the *Public Works Act* did not constitute a “wrongful interference” with those payments.

[68] A subcontractor providing notice of a claim in relation to a public work under section 14(1) of the *Public Works Act* is not “taking, using or destroying” (*Boma* at para 31) payments owed to the general contractor, nor is it doing anything akin to “taking, using or destroying” such payments. It advised the province it had a claim for money owing in respect of certain work on a project. A statutory mechanism then permits determination of entitlement to the claimed amount: the province may decide that question, acting on evidence, or it may refer the matter to the courts: *Public Works Act*, ss 15(1)-(4).² Invoking a statutory dispute resolution mechanism to determine entitlement to funds does not amount to conversion of those funds.

[69] The amended counterclaim does not disclose a reasonable cause of action against the appellant for conversion and the chambers judge erred in law in concluding that it did.

V. Conclusion

[70] The appeal is allowed, and the amended counterclaim is struck.

Appeal heard on April 9, 2026

Additional submissions received on May 8, 2026

Memorandum filed at Edmonton, Alberta
this 24th day of June, 2026

Feehan J.A.

Grosse J.A.

Woolley J.A.

² Amendments were introduced in April 2025 that also permit adjudication of disputes less than a specified value in accordance with the adjudication procedures set out in the *Prompt Payment and Construction Lien Act*, RSA 2000, c P-26.4.

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