Real Estate Disputes & Litigation

The real estate and development markets form a critical part of the nation's economy and are breeding grounds for high stakes disputes. When disputes do arise, it is important to have a skilled team of advocates who can appreciate the nature of the deal and provide strategic counsel. We help you navigate disputes with a focus on resolving conflicts efficiently.

As members of Canada's preeminent litigation practice, BLG's team of real estate litigation lawyers has deep bench strength, combining national reach with local insight and experience. We stand at the forefront of the industry with experience in all types of real estate disputes, including commercial, industrial, and residential real estate development disputes.

We understand that litigation is one part of a broader commercial strategy. Guided by your objectives, BLG's Real Estate Disputes team works collaboratively to manage risk and deliver timely solutions through negotiated settlements and precise and effective litigation or arbitration.

Our services cover all issues in the real estate and development sector including:

- collapsing and collapsed purchase and sale transactions;
- commercial lease disputes, including rent defaults, renewal arbitrations, terminations, and post-termination obligations;
- shareholder, joint venture and partnership disputes;
- beneficial interest disputes;
- claims involving breach of contract, breach of the duty of good faith and honest performance, misrepresentation, fraud, and negligence;
- restrictive covenants, rights of way, and boundary disputes; and
- commission disputes.

Experience

- **Transactional disputes**
  - Real estate developer in successfully striking a certificate of pending litigation and obtaining dismissal of a purchaser's summary trial in *2022 BCSC 1674*, defeating claims for breach of contract and relief from forfeiture following a failed closing.
  - Developer client in four related actions in British Columbia (2021), successfully cancelling five certificates of pending litigation where no interest in land was properly pleaded, with awards of special costs in three matters (2021 BCSC 1922, 2021 BCSC 2354, 2021 BCSC 2310, *Marharj v. Chou*, unreported and 2021 BCSC 2580).

- Office tenant in successfully enforcing an option to purchase a commercial building through arbitration and settlement (2018–2019), securing long-term ownership and avoiding litigation.
- Real estate developer in successfully defending the validity of several purchase and sale agreements in a land assembly dispute in 2017 BCSC 430 with that judgment upheld on appeal in 2018 BCCA 337, confirming enforceability of the transactions.
- Developer client in successfully resisting a summary judgment application in a contract and REDMA dispute, establishing that credibility issues required a full trial and preserving the client's right to defend on the merits.
- Property vendor in successfully defending a summary trial for damages related to property condition at closing, relying on an "as-is-where-is" clause to defeat the purchaser's claim.
- Property owner in successfully defeating a purchaser's claim that an option to purchase had been assigned, preserving the client's control of the property (2008 BCSC 978)
- Real estate vendor in obtaining a rare order for specific performance, compelling the purchaser to complete the transaction as agreed (1997 CanLII 2085)

- **Commercial leasing disputes**
  - Landlord in successfully resisting an injunction to reinstate a terminated lease and prevent re-entry, preserving the landlord's ability to re-let the premises (2024 BCSC 2503).
  - Landlord in successfully defeating a tenant's petition for relief from forfeiture, avoiding reinstatement and maintaining the client's right to terminate (2024 BCSC 2246).
  - Commercial tenant in successfully recovering overpaid rent through private arbitration (2024), establishing that the landlord had systematically overcharged under a complex rent formula.
  - Retail tenant in successfully obtaining injunctions restraining the landlord from re-entry and protecting the lease during ongoing disputes (2023 BCSC 2367 and 2023 BCSC 2479).
  - Landlord in successfully recovering damages for a tenant's failure to occupy leased premises and defeating claims of force majeure and frustration (2023 ABKB 300).
  - *o* Construction company in successfully resisting a motion for a certificate of pending litigation in *HK United Construction Ltd. v. Malanca, 2022 ONSC 6295*, preserving control over a large development property during a commercial dispute.
  - *o* Ontario city in successfully defending against claims by a commercial tenant in *Orillia (City) v. Metro Ontario Real Estate Limited, 2021 ONCA 291*, a dispute over lease interpretation concerning termination dates and repair obligations, resulting in affirmation by the Ontario Court of Appeal and clarification of the City's rights as landlord.
  - Two quick-service restaurant franchisees in successfully resolving rent disputes through commercial arbitration (2021) in Halifax, resulting in rent adjustments favouring the tenants.
  - Institutional and private landlords in multiple successful ground lease rent arbitrations (2016–2020), achieving favourable rent resets and negotiated outcomes tied to complex valuation metrics.
  - *o* Restructuring firm, as Court-appointed Sales Officer, in *Royal Bank of Canada v. Oxford Medical Imaging Inc., 2019 ONSC 1020*, successfully defending the termination and assignment of a lease under an asset sale agreement, resulting in validation of the transaction and rejection of tenant objections.
  - *o* Awards and promotional products provider in successfully defeating a landlord's attempt to impose liability for lease arrears on a corporate parent in *H. De Groot Real Estate v. Scribes Inc., 2018 ONSC 870*, resulting in dismissal for lack of agreement, assignment, or equitable obligation.

- Tenant in successfully obtaining an injunction against a landlord's interference with tenant property and leasehold interests (2018 BCSC 1762).
  Subtenant in successfully defending the validity of a commercial sublease and upholding a favourable rent determination on appeal, applying the doctrine of issue estoppel (2018 BCCA 277).
- Commercial ground lessee in successfully upholding an arbitral rent decision (2013–2015), with victories at both the Superior Court and Ontario Court of Appeal, confirming a below-market valuation method.
- Commercial tenant in successfully defeating a landlord's claim that the tenant was overholding based on a server left on-site, avoiding post-termination liability (2017 ONSC 5833).
- Commercial tenant in successfully obtaining an injunction restraining a landlord from interfering with parking rights, preserving customer access in a high-traffic retail plaza (2010 BCSC 1371).
- Commercial tenant in successfully resisting a landlord's petition to terminate a lease based on non-compliance with the Commercial Tenancy Act, resulting in continued occupancy (2010 BCSC 4).
- Retail tenant in successfully resisting both a receiver's motion to vest out leasehold interest and an injunction that would eliminate exclusive parking rights, preserving key occupancy terms (2008 CanLII 6937).
- *o* Commercial tenant in successfully opposing a receiver's attempt to extinguish a leasehold interest in *Winick v. 1305067 Ontario Limited, 2008 CanLII 6937*, resulting in preservation of tenancy rights through denial of the sale approval order.
- *o* Canadian fitness club chain in successfully resisting an application for injunctive relief in *Good Life Corporation v. Hazeldean Properties Inc., 2008 CanLII 17126*, preserving exclusive parking rights for a commercial tenant at a busy retail plaza.
- Retail tenant in successfully resisting an injunction requiring the business to continue operations at the landlord's premises, protecting the tenant's business autonomy (2007 BCSC 1564).
- Tenant in *Loblaw Companies Limited and National Grocers Co. Ltd. v. Mitra Kermani* (Ontario Superior Court), in successfully obtaining injunctive relief for nuisance and interference with commercial property rights.

- **Shareholder, joint venture and partnership disputes**
  - 50 per cent shareholder in an order to buy out the opposing shareholder after demonstrating that joint ownership was unsustainable, resulting in full ownership and operational control (2023 ONSC 480).
  - Real estate brokerage in successfully removing the firm from a joint venture dispute involving one of its realtors, avoiding liability and preserving independence (2012 BCSC 997).
  - Real estate investor in defending against an application to discharge a certificate of pending litigation, resulting in preservation of the client's interest in the disputed property (2009 BCSC 1041).
- **Title and beneficial interest disputes**
  - Private landowner in successfully settling a claim for adverse possession over downtown Toronto property (2025), securing registered title and resolving longstanding uncertainty in ownership.

- *o* Ontario city in successfully defending a proprietary estoppel claim in *Grape Island Property Owners Association Inc. v. Corporation of the City of Orillia, 2025 ONSC 1480*. The claim, involving allegations over dock placement on a public waterlot, resulted in full dismissal of the claim and protection of public access.
- o Creditor in defeating claims of constructive and resulting trust in petition proceedings where the petitioner sought to shelter assets from enforcement, resulting in full recovery (2025 BCSC 83).
- o Municipality in defending against a claim for a beneficial interest in a municipally owned parking lot, resulting in dismissal at trial and confirmation on appeal (2022 BCSC 508) upholding that decision on appeal (2023 BCCA 209).

- **Easement and restrictive covenant disputes**
  - o Toronto property owner in successfully negotiating a settlement (2023) confirming prescriptive easement rights over a private laneway, ensuring long-term legal access to the client's property.
  - o Landowner in obtaining a summary judgment dismissing a claim to enforce a restrictive covenant, resulting in protection of development rights (2007 CanLII 38569).
  - o Toronto institutions in *Maple Leafs Sports & Entertainment Ltd. v. Loblaw Properties Limited and Ryerson University (2012)*. Represented institutional clients in a complex dispute over restrictive covenants on historically significant downtown property, helping navigate multi-party litigation and settlement options.
  - *o* Energy company in successfully obtaining summary judgment in *Mohawk Square Developments Ltd. v. Suncor Energy Inc., 2007 CanLII 38569*, dismissing a claim to enforce a restrictive covenant and preserving development rights over the property.
- **Misrepresentation disputes**
  - o Group of investors in successfully seeking damages against developers based on failure to disclose key facts, resulting in a trial judgment in the investors' favour for misrepresentation (2008 BCSC 1160).
- **Negligence disputes**
  - o Real estate lender in defeating negligence claims from pre-sale strata lot purchasers and preserved priority ranking against claims arising from a failed subdivision development (2008 BCSC 201 and 2008 BCSC 1138).
- **Real estate commission disputes**
  - o Property owner in successfully defending against a claim for commission based on a disputed agency relationship, with judgment upheld on appeal (2012 ONSC 694), upholding that order on appeal (2012 ONCA 600).
  - o Property owner in defeating a claim for commission where the listing agreement did not apply to the disputed transaction, with the result confirmed on appeal (2010 ONSC 3725), upholding that order on appeal (2011 ONCA 77).

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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 800 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.

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