COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Manns v. Vancouver Island Health Authority,* 2024 BCCA 110

Date: 20240320
Docket: CA48012

Between:

Paivi Manns executor of the Estate of Erik Michael Manns and on behalf of herself

Appellant
(Plaintiff)

And

Vancouver Island Health Authority, operating a public hospital under the name Nanaimo Regional General Hospital, Dr. Daniel Marwood, Christopher Parry, Christina Legg, Deanna Mikolas, Dr. John Doe and/or Jane Doe #1 and, 2 and/or John Doe and/or Jane Doe RN #1, 2, 3

Respondents
(Defendants)

Before: The Honourable Chief Justice Marchand
The Honourable Mr. Justice Groberman
The Honourable Mr. Justice Hunter

On appeal from: An order of the Supreme Court of British Columbia, dated December 10, 2021 (*Manns v. Vancouver Island Health Authority*, 2021 BCSC 2418, Vancouver Docket S194542).

Counsel for the Appellant:	D.J. Renaud
Counsel for the Respondents, Vancouver Island Health Authority, Christopher Parry, Christina Legg and Deanna Mikolas:	T.J. Wedge K.N. Orr
Place and Date of Hearing:	Vancouver, British Columbia October 20, 2022
Place and Date of Judgment:	Vancouver, British Columbia March 20, 2024

Written Reasons by:
The Honourable Mr. Justice Groberman

Concurred in by:
The Honourable Chief Justice Marchand
The Honourable Mr. Justice Hunter

Summary:

The plaintiff commenced an action under the Family Compensation Act against the Vancouver Island Health Authority, a doctor, and three nurses, alleging that her son died in hospital as a result of an overdose of opioid medication caused by the negligence of the defendants. The nurses pleaded that they were not proper defendants because s. 14 of the Health Authorities Act immunized them from personal liability. On an application for summary judgment, a judge of the Supreme Court dismissed the claim as against the nurses. Held: Appeal dismissed. The statute, in its clear terms, provides broad personal immunity for employees of the Health Board carrying out the Board's duties under the Act, which include the delivery of health services in the Health Board's region. Nothing in the statute's context or purpose casts doubt on the plain meaning of the immunity provision. As there is no genuine ambiguity in the statute, external aids are neither necessary nor helpful to the interpretation.

Reasons for Judgment of the Honourable Mr. Justice Groberman:

[1] Erik Michael Manns was admitted to the Nanaimo Regional General Hospital in September 2017, suffering symptoms of pancreatitis. After the administration of opioid medication, he went into cardiopulmonary arrest. He was placed on life support but did not recover. He died on September 28, 2017. Ms. Manns, his mother, brought an action under the *Family Compensation Act*, R.S.B.C. 1996, c. 126. She alleges that negligent medical treatment — particularly the administration of an overdose of opioid medication — contributed to her son's death.

[2] Ms. Manns sued the Vancouver Island Health Authority (the "VIHA"), which operates the hospital, as well as the physician(s) who ordered the medication and the nurses who administered it. The VIHA and the three nurses who were identified in the notice of civil claim applied to have the claim dismissed as against the nurses, contending that provisions of the *Health Authorities Act*, R.S.B.C. 1996, c. 180 [the "*Act*"] precluded them from being sued personally in respect of good faith actions or omissions in the course of their employment.

[3] The judge granted the application and dismissed the claim against the nurses. In doing so, he noted that dismissal of the claim against the nurses did not affect Ms. Manns' right to continue to pursue her allegations that the nurses acted

negligently, though the claim could only proceed as against the VIHA on the basis that it is vicariously liable for their negligence.

[4] Ms. Manns appeals. While she acknowledges that she is still able to pursue all of her substantive claims, she asserts that she is prejudiced by having the nurses removed from the action because she will not have a right to examine each of the nurses for discovery without obtaining leave to do so. In her argument, she notes the importance of discovery in civil litigation. She contends that it is especially important to have individual rights of discovery in claims that allege medical negligence, because medical services in a hospital are provided by a team of professionals rather than by a single individual.

[5] Ms. Manns says that the personal immunity provided for in the *Act* should be interpreted as only providing protection for regional health board members and their delegates when they perform discretionary functions in fulfilling the boards' health care policy objectives. She says it should not be applied to nurses or other practitioners delivering health services to patients.

The Provisions of the *Health Authorities Act*

[6] The sole issue before the judge, and the sole issue on this appeal, is the breadth of the immunity provisions in the *Act*. It is common ground that this issue is one of law, and that the standard of review is correctness. This Court is not required to defer to the trial judge's views on the issue: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.

[7] The relevant statutory provisions are as follows:

> **Definitions**
>
> 1 In this Act:
>
> **"board"** means a regional health board designated under section 4;
>
> **…**
>
> **"regional services"** means the health services specified under section 5(1)(a)(i) for a region;
>
> …

Regional health boards

4(1) The minister may, by regulation, designate

(a) a regional health board, and

(b) an area of British Columbia that constitutes the region for the board.

...

Purposes of a board

5(1) The purposes of a board are as follows:

(a) to develop and implement a regional health plan that includes

(i) the health services provided in the region, or in a part of the region,

(ii) the type, size and location of facilities in the region,

(iii) the programs for the delivery of health services provided in the region,

(iv) the human resource requirements under the regional health plan, and

(v) the making of reports to the minister on the activities of the board in carrying out its purposes;

(b) to develop policies, set priorities, prepare and submit budgets to the minister and allocate resources for the delivery of health services, in the region, under the regional health plan;

(c) to administer and allocate grants made by the government for the provision of health services in the region;

(d) to deliver regional services through its employees or to enter into agreements with the government or other public or private bodies for the delivery of those services by those bodies;

…

(f) to develop and implement regional standards for the delivery of health services in the region;

(g) to monitor, evaluate and comply with Provincial and regional standards and ensure delivery of specified services applicable to the region;

(h) to collaborate, to the extent practicable, with British Columbia Emergency Health Services, the Provincial Health Services Authority and societies that report to the Provincial Health Services Authority, facilities and other health institutions and agencies, municipalities and other organizations and persons in the planning and coordination of

(i) the provision, in British Columbia, of provincially, regionally and locally integrated ambulance services, emergency health services, urgent health services and ancillary health services, as those terms are defined in the *Emergency Health Services Act*, and

> (ii) the recruitment and training of emergency medical assistants, within the meaning of the *Emergency Health Services Act,* and other persons to provide the services referred to in subparagraph (i).
>
> …
>
> **Powers and procedures of a board**
>
> 8(1) A board has the powers of a natural person of full capacity for the purposes of carrying out its powers, duties and functions under this Act.
>
> ….
>
> **Staff and benefits**
>
> 11(1) A board may appoint officers and hire employees it considers necessary for the work of the board.
>
> …
>
> **Liability of members**
>
> 14(1) No action for damages lies or may be brought against a member, officer or employee of a board because of anything done or omitted in good faith
>
> (a) in the performance or intended performance of any duty under this Act, or
>
> (b) in the exercise or intended exercise of any power under this Act.
>
> (2) Subsection (1) does not absolve a board from vicarious liability for an act or omission for which it would be vicariously liable if this section were not in force.

[8] The VIHA has been designated a regional health board under s. 4(1) of the *Act* (see *Regional Health Boards Regulation*, B.C. Reg. 293/2001, s. 4), and the Nanaimo Regional General Hospital is within its region.

The Judgment Below

[9] The judge began his analysis by setting out the approach to interpreting statutory provisions. The parties are agreed that the approach that he set out is the proper one:

> [23] The accepted method for conducting statutory interpretation remains as set by the Supreme Court of Canada in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26, where it formally confirmed that Elmer Driedger's "modern approach" is to be used. That approach is to read the words of an Act in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislator. Furthermore, s. 8 of the British Columbia *Interpretation Act*, R.S.B.C. 1996, c. 238 provides that: "[e]very enactment must be construed as being remedial, and must be given such

> fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

[10] After setting out the provisions of the *Act*, the judge's analysis was brief:

> [27] In my view, the grammatical and ordinary sense of the words contained within s. 14 of the *Act* prohibit the bringing of an action for damages against an employee of a regional health board for anything done or omitted in good faith in the performance of duties or in the exercise of powers under the *Act*. Those duties and powers include providing health services within the designated region.
>
> [28] A review of Ms. Manns' notice of civil claim reveals clearly that she is alleging that the Nurses committed acts and omissions while providing health services to Erik Manns at the [Nanaimo Regional General Hospital] in their capacity as employees of VIHA. Ms. Manns has not pleaded that the Nurses were acting in bad faith, and no material facts have been set out in the notice of civil claim which might suggest a lack of good faith on the Nurses' part. Accordingly, I find that Ms. Manns' claim against the Nurses is barred by operation of s. 14 of the *Act*.

[11] The judge cited two unreported oral judgments at the trial-level that included interpretations of s. 14: *Mohebbi v. Lions Gate Hospital* (7 October 2016), Vancouver Docket S149473 and *Bahinipaty v. Vancouver Coastal Health Authority*, (22 July 2019), Vancouver Docket S175536. With respect to those decisions, he said:

> [31] While counsel for Ms. Manns noted correctly that neither of these decisions contain a detailed analysis of s. 14 of the *Act*, that is not a reason to conclude that they are wrongly decided. To the contrary, it suggests that both judges were of the view that the applicability of the statute bar was sufficiently obvious so as not to merit a lengthy discussion of this question in their respective reasons.

[12] In my view, neither *Mohebbi* nor *Bahinipaty* were of assistance in the interpretation of s. 14. While both decisions referred to the section, they did so without analysis, and because several other matters were in issue in those decisions, the interpretation of s. 14 was not critical to their ultimate holdings.

[13] The judge did not, however, place undue reliance on *Mohebbi* or *Bahinipaty*. Rather, he simply concluded that it was plain and obvious that the words of s. 14, in their grammatical and ordinary sense, immunized the nurses from suit.

[14] On the face of it, the judge's approach was an appropriate one. His brevity in examining the statutory provisions was understandable. Neither party engaged in a detailed examination of the statutory language in their arguments. The defendants referred to s. 14(1) of the *Act* as providing broad immunity and attempted to buttress that position by referring to several other statutes that provide broad personal immunity for particular classes of employee. The plaintiff, for her part, largely ignored the text of the *Act*, concentrating her submissions on policy reasons why nurses should not enjoy personal immunity, and on external aids to statutory interpretation. She argued that a narrow construction of the immunity provisions was appropriate but did not explicitly indicate how such a narrow construction was consistent with the language of the *Act*.

The Language of the *Act* and "Genuine Ambiguity"

[15] The starting point for statutory interpretation must always be the words of the statute. The great American professor and jurist Felix Frankfurter is often quoted as having told his students that there are three imperatives to be observed in statutory interpretation: "(1) Read the statute; (2) Read the Statute and (3) READ THE STATUTE!" (see, for example, Justice Henry J. Friendly, *Benchmarks* (Chicago: University of Chicago Press, 1967) at 202. In his more formal writing, Frankfurter emphasized that while courts are entitled to look beyond the language of the statute in their efforts to interpret it, they must not entertain interpretations that are at odds with the words used: "While courts are no longer confined to the language, they are still confined by it" (Felix Frankfurter, "Some Reflections on the Reading of Statutes", (1947), 47 Colum. L. Rev. 527 at 543).

[16] In many cases, the process of interpreting a statutory provision not only starts with the text of the statute, but also ends there. Frankfurter emphasized this point at 527–28:

> If only literary perversity or jaundiced partisanship can sponsor a particular rendering of a statute there is no problem. When we talk of statutory construction we have in mind cases in which there is a fair contest between two readings, neither of which comes without respectable title deeds. A

> problem in statutory construction can seriously bother courts only when there is a contest between probabilities of meaning.

[17] The same theme is evident in the judgment of the Supreme Court of Canada in *Bell ExpressVu*. While the Court acknowledges that interpretation of a statute involves not only its text, but also its context and purpose, it cautions (at para. 29) that resort to external aids to statutory interpretation is limited to cases where the statute itself exhibits “genuine ambiguity”.

[18] The respondents contend that there is no ambiguity in the statute. They say that s. 14 is a clear and broad grant of immunity, such that it is not permissible for the Court to go beyond the language of the *Act* in search of its correct interpretation.

[19] A cursory reading of a statute, however, will not always uncover complexities of interpretation; genuine ambiguities will not necessarily leap off the page. A detailed analysis of statutory provisions can reveal difficulties that are not apparent from a more casual examination. The appellant contends that the judge erred “by applying a strictly textual analysis of the *Act*”. I take this to be an assertion that a more detailed look at the text, context and purposes of the *Act* may support a different interpretation.

[20] In her factum, the appellant does not engage in any detailed examination of ambiguities in the *Act*. Instead, her argument jumps ahead to issues of statutory purpose and general public policy. While those issues are often critical to statutory interpretation, they will not be decisive unless there is some indeterminacy in the language of the statute itself. It is essential, therefore, for this Court to begin the process of interpreting the *Act* with a close examination of the statutory provisions.

[21] Section 14 of the *Act* confers personal immunity from liability on Health Authority employees, but that immunity is not unlimited. Immunity is conferred only in respect of acts and omissions in the performance of duties or the exercise of powers under the *Act*. The question that must be answered, therefore, is whether nurses, in caring for patients, are “performing duties” or “exercising powers” under the statute.

[22] The *Act* is primarily concerned with the structure and responsibilities of Regional Health Boards. To the extent that the statute establishes duties and powers, they are generally duties and powers of Regional Health Boards rather than those of line workers. Line workers, however, may be engaged in performing the duties or exercising the powers of a Regional Health Board.

[23] The statute does not explicitly set out the duties and powers of Regional Health Boards, but those powers and duties may be inferred from the enumeration of the "purposes" of Regional Health Boards set out in s. 5 of the *Act*.

[24] The only purpose set out in s. 5 that could be engaged in this case is described in s. 5(1)(d), which provides that a purpose of a Regional Health Board is "to deliver regional services through its employees or to enter into agreements with the government or other public or private bodies for the delivery of those services by those bodies".

[25] As I read this provision, the Regional Health Board is empowered to exercise some discretion in deciding what health services are to be delivered within its region. The provision of regional health services is, thereafter, a statutory duty of the Board. It may fulfill the duty either by having its employees provide services, or by entering into agreements to have other entities provide them. In the case of nursing services at Nanaimo Regional General Hospital, the VIHA has opted to have its employees discharge the duty.

[26] On the face of it, then, a nurse providing regional health services is an "employee" engaged in "the performance or intended performance of [a] duty under th[e] *Act*". A nurse acting in good faith, would appear, therefore, to be immune from being sued personally under s. 14(1) of the *Act*. Under s. 14(2), the Health Authority remains vicariously liable for tortious acts committed by a nurse.

Broader Context and Statutory Purpose – Appellant's Arguments

[27] Thus far, I have concentrated on the plain meaning of the statutory provisions. Statutory interpretation entails more than simply examining the text of the

provision being interpreted and the text of other provisions of the statute. A court is entitled to consider legislative purposes and the broader legal and social context of a statute in interpreting it: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada, 2022) at §22.01.

[28] Both the appellant and the respondents advance arguments with respect to the broader context and statutory purpose of s. 14 of the *Act*, and I will now consider those arguments, and how they affect the interpretation of the provision.

The Broad Abstract Purposes of Health Care Legislation

[29] The appellant says that the *Act* can only be understood in the context of the health care system as a whole. She says that the statute's purpose, in concert with several other pieces of legislation, is to "provid[e] universal public health services for the benefit of citizens in need of medical care". In her factum, she then argues that:

> … the purpose of public health care legislation is to provide healthcare to consumers of public health care by *putting patients first*.[1] The chambers judge failed to connect this objective with the immunization of a select class of individuals from civil suit, which is contrary to the interests of patients seeking justice for injuries suffered as a result of receiving substandard care.
>
> …
>
> Precluding civil actions against individuals such as nurses, who provide substandard care to hospital patients, is inimical to the objectives of the [*Act*] as it reduces transparency and accountability in the health care system. Transparency and accountability in the health care system are consistent with the objective of putting patients first. Patients are already impaired in their search for the truth by the most detailed and lengthy portion of the *Evidence Act*. It prevents their access to investigations into adverse events, justified by the object of improving patient safety.
>
> [Emphasis in original.]

[30] There are several difficulties with this argument, starting with the appellant's formulation of the purpose of the legislation. While providing "universal public health services" might be an aspirational goal of British Columbia's health care system, it is not one that the statutes meet. While the system does provide broad coverage, there

[1] The reference to "putting patients first" comes from the Minister's statement in the legislature in opening second reading of legislation amending the statute. I will deal with the use that may be made of such statements below, in discussing external aids to interpretation.

are lacunas and limits. The formulation is also inaccurate in referring to the beneficiaries as “citizens”. Not all citizens are covered by British Columbia’s Medical Services Plan, and, conversely, many residents who are not citizens of Canada are covered.

[31] These objections, however, might be characterized as mere quibbles. With a sufficiently detailed description of purpose, it might well be possible to accurately describe the basic purposes of British Columbia’s health care legislation. The use of such a description to interpret individual statutory provisions, however, would still be problematic.

[32] In his article, “The Purpose Error in the Modern Approach to Statutory Interpretation” (2022), 59 Alta. L. Rev. 920, Mark Mancini describes misuses of the concept of statutory purpose in interpreting statutes. He notes that statutes do not usually have a single purpose, but rather have multiple purposes that can be expressed at different levels of abstraction. Statutes often represent compromise — for example, while the broad ensemble of health care statutes in British Columbia undoubtedly seek to provide a universal system of care, they are also designed to ensure that the system operates efficiently, and that costs are kept under control. This makes it difficult to use statutory purpose as the primary basis of interpretation. Mancini makes this point at 920:

> Inevitably, courts attempt to achieve all statutory purposes, at all levels of abstraction, across the statutory context. But because legislation is in reality a series of compromises, not every purpose will be achieved at all costs.

[33] Courts are instructed (by *Bell ExpressVu* and other authoritative decisions of the Supreme Court of Canada) to read “the words of an Act … in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament”: *Bell ExpressVu* at para. 26. As Mancini points out at 921, that cannot mean giving priority to an abstract purpose that is attributed to the statute:

> A harmonious interpretation implies an approach that does not erroneously maximize purpose to the expense of other tools of interpretation. When courts do this, they commit a purpose error. When courts fail to harmoniously

> interpret a statute, they can do so by giving too much weight to primary purposes of a statute — *why* a statute was enacted at a high level of abstraction — over secondary purposes represented in legal rules and standards sourced in text — *how* a statute aims to accomplish its goals. Both component parts, the *why* and the *how*, must be given effect as a matter of legislative sovereignty, but courts sometimes fail to do so by prioritizing more abstract purposes at the expense of the text.
>
> [Footnotes omitted; emphasis in original.]

[34] Mancini suggests, at 929, that two factors are typically (though not always) present when a court commits a "purpose error":

> (1) an acceptance of a rhetorically abstract purpose; and (2) the attachment of too much weight to this abstract purpose, without paying sufficient attention to text, scheme, and secondary purposes. To be clear, these should not be seen as items on a checklist that are applicable in all cases. These two factors are set out to make a simple point: the risk of the purpose error occurring is heightened when courts base their reasoning on an abstract purpose with little representation in text. The result is a distortion of how the legislature intended its expression (its text) to apply.

[35] In my view, the appellant's argument is an open invitation to the Court to commit a purpose error. Health care legislation in British Columbia is complex and nuanced, and it is not appropriate to extract a high-level purpose and then apply that abstract concept to determine what legislation would best serve it. Such an exercise would fail to give proper emphasis to the text of the legislation, and to the legislation's chosen methods of achieving its multiple goals.

[36] I do not find the appellant's argument, which proceeds at a high level of abstraction, to be helpful in interpreting the concrete provisions of the statute.

The Interaction of Section 14 with other specific statutory provisions

[37] The appellant does make other arguments that are more focussed, including three that focus on the language of statutory enactments. She argues, for example, that the use of the words "regional services" in s. 5(1)(d) of the *Act* means that the "employees" referred to in the statute (including in s. 14) are only those providing "regional" services and not those providing "individual" services.

[38] The distinction that the appellant draws between “regional” and “individual” services enjoys no support in the statute. “Regional services” is a defined term and refers to the health services that are provided in the health region, or in a part of it. Services provided to individual patients clearly fall within the scope of “regional services”.

[39] Similarly, the appellant argues that because statutes other than the *Health Authorities Act* establish standards that nurses must meet and duties that they must fulfill, their “powers and duties” cannot be said to arise under the *Act*. I see no difficulty with the idea that a person may have duties and powers that derive from different sources, including different statutes. The mere fact that nurses and other health care professionals are regulated under the *Health Professions Act,* R.S.B.C. 1996, c. 183 and regulations under that statute does not mean they cannot also be fulfilling the duties of their Health Authorities under the *Health Authorities Act*.

[40] Finally, in terms of statutory provisions, the appellant cites s. 14.1(1) of the *Health Professions Act*:

> 14.1(1) The liability of a registrant for professional negligence is not affected by the fact that the registrant practises the designated health profession as an employee of a corporation.

[41] It is clear that the specific purpose of s. 14.1 of the *Health Professions Act* is to ensure that health professionals are not able to hide behind a corporate veil in order to avoid liability for professional negligence. It does not purport to override specific immunities enacted in other legislation. Thus, if s. 14 of the *Health Authorities Act* is applicable to the respondent nurses, it is not overridden by s. 14.1 of the *Health Professions Act*.

Policy and Operational Roles

[42] The appellant contends that the personal immunity conferred on employees in s. 14 of the *Act* applies only to functions of a “planning, administrative, policy, or managerial nature” and not to work of an operational nature.

[43] Section 14 does not make such a distinction. While many of the duties that the statute imposes on a board are of a planning, administrative, policy, or managerial nature, some of the duties include operational components. There is nothing in s. 14 (or the statute as a whole) that would justify the court in treating s. 14 as an equivalent of the "policy/operational" dichotomy that has developed in the law of public authority liability. Indeed, given that public authorities are, typically, immune from liability for "policy" decisions, there would be no purpose to an immunity provision that duplicated that immunity.

[44] If the immunity conferred by s. 14 is limited to specific aspects of a Health Authority's functions, the limitation must be based on the language of the statute, and not simply on a theory that immunity should be confined to policy and administrative types of functions.

Absurd Consequences

[45] The appellant also suggests that interpreting s. 14 of the *Act* as immunizing health care workers from personal liability would be an "absurd consequence", and that the section should be interpreted to avoid the absurdity.

[46] The particular absurdity alleged by the appellant is that the personal liability of a health care worker would be different depending on whether the worker was an employee of a health authority or an employee of a contractor.

[47] While I accept that the courts have provided an elastic definition of "absurd consequences", I am unable to appreciate how the consequences alluded to by the appellant are "absurd".

[48] The *Act* clearly intends to provide immunity from personal liability to some subset of workers. Thus, it must be interpreted as creating the sort of distinctions alluded to by the appellant. The question is not whether it does so, but rather where it draws the line between those who are relieved of personal liability and those that are not.

[49] Especially given that the statute maintains the Health Authority's vicarious liability for its employees, I am unable to agree that the interpretation espoused by the respondents is "absurd".

Broader Context and Statutory Purpose – Respondents' Arguments

[50] Just as the appellant makes arguments to the effect that the broad statutory purposes of the *Act* demand a narrow interpretation of s. 14, the respondents argue that the statutory purposes demand a broad interpretation.

Other Legislation

[51] The respondents note that it is not uncommon for legislation to grant personal immunity to employees of public authorities. They cite, in particular, the following statutory provisions:

- *School Act*, R.S.B.C. 1996, c. 412, s. 94;
- *Police Act*, R.S.B.C. 1996, c. 367, s. 21;
- *Emergency Health Services Act*, R.S.B.C. 1996, c. 182, s. 10;
- *Correction Act*, S.B.C. 2004, c. 46, s. 5;
- *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 101; and
- *Local Government Act*, R.S.B.C. 2015, c. 1, s. 738

[52] The respondents say, in respect of these statutes, that:

> [T]he relevant sections protect employees providing care, services, and treatment, for actions done or omitted in good faith while carrying out their duties or exercising powers under the [cited statutes]. The statutory language clearly demonstrates that the legislature intends to bar actions for damages against particular categories of individuals performing public services. The respondents submit that the same objective exists in the [*Act*].

[53] I am not convinced that the mere existence of other statutes with immunity provisions provides much assistance in interpreting the *Health Authorities Act*. While there is some commonality among the statutory provisions cited by the respondents, in that they all provide personal immunity for groups of persons employed in the broad public service, the provisions differ in several respects. Some specifically

enumerate the types of employees who are protected by the immunity, while others, like the *Health Authorities Act*, use a more open-ended description, protecting all "employees" of the particular public authority.

[54] The statutes also differ in respect of the duties covered by the immunity. The provisions of the *School Act*, *Police Act*, and *Local Government Act* extend the personal immunity to all duties performed by the protected individuals, not just duties arising from the statute itself. The interpretive issue that we are dealing with in this case, then, does not arise under those statutes.

[55] The personal immunity provisions of the *Correction Act*, and the *Child, Family and Community Service Act* are confined to duties arising out of the particular statute, but the statutes expressly set out those duties, so the interpretive difficulty that arises in the case before us is unlikely to arise under those statutes.

[56] The only statutory provision mentioned by the respondents that is similar in structure to s. 14 of the *Health Authorities Act* is s. 10 of the *Emergency Health Services Act*. It confines personal immunity to the performance of duties arising under the statute and the statute does not expressly enumerate duties.

[57] Despite their similarity to s. 14 of the *Act*, it is difficult to see how the provisions of the *Emergency Health Services Act* can assist the Court in interpreting that section. We have not been referred to any definitive interpretation of the *Emergency Health Services Act*.

[58] Before leaving the subject of the immunity provisions in other statutes, it is worth noting that it is not obvious that the various pieces of legislation cited by the respondents are directed at precisely the same problems. For example, the provisions of the *Police Act* were designed primarily to ensure that some public institution bore legal responsibility for the torts of police officers. Prior to statutory reform, neither municipalities nor the Crown were vicariously liable (see *Aitken v. Minister of Public Safety*, 2013 BCCA 291 at paras. 27–28).

[59] The cited statutes, then, provide little assistance in the interpretation of the *Health Authorities Act*.

[60] The same can be said in respect of the Alberta *Public Health Act,* R.S.A. 2000 c. P-37, which was considered in *Frank v. Alberta Health Services*, 2018 ABQB 541; aff'd 2019 ABCA 332, a case considered by the chambers judge. That statute expressly included "a health practitioner" among the class of persons who enjoyed immunity from suit. Further, the statute explicitly placed a duty on the health care authority to undertake the activity that led to the lawsuit.

Specific Purpose of the Immunity Provision

[61] One of the difficulties in interpreting the scope of s. 14 of the *Act* is that it is not entirely clear why the legislature chose to include an immunity provision in the statute. The respondents suggest that it is to avoid disincentives that nurses might face in performing their jobs. In their factum, they say:

> Nurses are public employees who do not select the patients to whom they provide care. In granting Nurses statutory protection against being personally named in a lawsuit, the legislature reasonably intended to address the range of legal liability exposures nurses face in providing care to a diverse public. Looked at in a practical and remedial sense, if a nurse could be sued for care they provide in the course of their employment, they may decline or be reluctant to assist in circumstances involving high-risk or particularly vulnerable patients and this result would not be in the public interest.

[62] It is not apparent that s. 14 meaningfully eliminates the risks that medical personnel assume when they treat patients. While the section might prevent them from being named as defendants in lawsuits, it does not prevent them from having to answer for their actions in lawsuits brought against the Health Authority. They may also be personally subject to disciplinary proceedings, including proceedings instituted by the regulators of their profession. If the respondents are correct in their assertion that nurses "may decline or be reluctant to assist in circumstances involving high-risk or particularly vulnerable patients", it is difficult to see that s. 14 would make an important difference, at least assuming that such personnel would, in any event, be insured or indemnified by their employers.

[63] The only purpose that can safely be ascribed to s. 14 is the obvious one: in making the Health Authority solely liable for torts committed in good faith by their employees, the legislation also gives the Health Authority complete control over the defence and settlement of lawsuits. I am not persuaded that this "purpose" is of much assistance in interpreting the section.

[64] Having considered the context and purpose arguments put forward by the parties, I conclude that the plain meaning of the statutory provision must govern in this case. The parties' more esoteric arguments with respect to statutory purpose and context do not particularly buttress the "plain meaning" interpretation, but neither do they cast any doubt on it.

External Aids to Interpretation

[65] As there is no genuine ambiguity in the statute, it is not permissible for the Court to consider "external aids" to interpretation, such as the older canons of statutory construction: *Bell ExpressVu* at para. 29.

[66] Without specifically identifying a genuine ambiguity in the statute, the appellant has referred to certain external aids to interpretation. I will briefly mention those matters, though, because there is no genuine ambiguity in the statute, they cannot be used to interpret it.

The Hansard Excerpt

[67] The appellant urges the Court to consider the remarks of the Minister of Health Planning, in her opening statement on second reading of the *Health Authorities Amendment Act, 2002*, S.B.C. 2002, c. 61. She said:

> Restructuring the health authorities has been fundamental in ensuring that each region of the province has the population base and resources needed to support the health needs of their citizens. The improvements we've introduced will help measure the performance of our health care system, strengthen accountability to both the public and the government for tax dollars spent and will help in our ultimate goal of ensuring patients are put first.

[68] While Ministerial comments that deal with specific statutory purposes or specific provisions can sometimes be aids to interpretation, it is not clear how this statement assists. The most basic problem with the appellant's reference to Hansard is that the 2002 legislation that was being debated did not propose any substantive changes to s. 14, which was effectively unchanged from its original enactment in 1993.

[69] Even leaving this crucial point aside, however, the Hansard excerpt would not be of assistance. On its face, the statement merely reinforces the fact that the obvious purpose of the statute was to consolidate health authorities in British Columbia.

[70] The appellant places considerable emphasis on the Minister's statement that the government's "ultimate goal" is "ensuring patients are put first". She says that putting patients first includes making it easier for them to pursue litigation.

[71] As I have already indicated, it is my view that this vague and abstract statement of statutory purpose is of no assistance in interpreting the specific provision at issue in this case. It is little more than an invitation to the Court to commit what Mancini terms a "purpose error".

[72] There is, however, a further difficulty with using the Minister's statement in the way that the appellant suggests. While Ministers can and do make statements about statutory purposes and mechanisms during debates, their statements are not confined to that sort of content. The primary purpose of legislative debate is not to provide an interpretation of a new law, but rather to convince Members of the Legislative Assembly (and more importantly, the general public) of the wisdom of enacting it. Debates include opinions, speculation, and a good deal of political rhetoric. While such statements may have considerable value within the public forum of the legislature, they are not generally of assistance to a court grappling with the interpretation of a law.

[73] It seems to me that the Minister's statement that the statute had the ultimate goal of "putting patients first" was political in nature and not helpful in interpreting the statute.

Other Principles of Interpretation

[74] Before the unequivocal adoption of Driedger's Modern Approach to statutory interpretation in cases such as *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, there existed many principles of statutory interpretation, often referred to as "canons of construction". In *Bell ExpressVu*, the Supreme Court of Canada consigned these principles to a secondary role:

> [28] Other principles of interpretation — such as the strict construction of penal statutes and the "*Charter* values" presumption — only receive application where there is ambiguity as to the meaning of a provision.

[75] Notwithstanding this clear indication that secondary principles of interpretation are only to be used in cases of genuine ambiguity in a statute, they are frequently cited in courts without recognition of their subordinate status. The appellant falls into this error.

[76] One of these residual canons of construction is the principle that:

> Statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the freedom of the individual should be adopted.
>
> *Colet v. The Queen*, [1981] 1 S.C.R. 2 at 10, quoting with approval from *Maxwell on Interpretation of Statutes*, 12th ed. (London: Sweet & Maxwell, 1969) at 251. See also *Venning v. Steadman* (1884) 9 S.C.R. 206 at 210

[77] This canon of construction is applicable to legislative provisions that curtail a litigant's right to pursue a cause of action. In *Berardinelli v. Ontario Housing Corp*, [1979] 1 S.C.R. 275, a tenant of the Ontario Housing Corporation slipped on ice or snow within his complex and sued the corporation. He did not do so, however, within six months of the date of his injury. The Housing Corporation raised *The Public Authorities Protection Act*, R.S.O. 1970, c. 374, s. 11 as a defence. That provision

set a six-month limitation period for suing a public authority for “an act done in … the execution … of any statutory or other public duty or authority …”. The Court had to determine whether the clearing of ice and snow from the Housing Corporation’s premises was a “statutory or other public duty”.

[78] The Court considered that the statutory language could support two different interpretations. Given that the Ontario Housing Corporation was a statutory entity, and that its operation of rental premises was in furtherance of public policies, it could be said that all of its duties were “statutory or other public dut[ies] or authorit[ies]”. On the other hand, the duties of landlords to clear snow and ice from rental premises generally arise from private law. Arguably, the duties of the Housing Corporation to provide ordinary services to its tenants was simply the same private law duty that any landlord would have.

[79] At 280 and 283, the majority of the Court explained why the case should be decided in the plaintiff’s favour:

> Section 11, being a restrictive provision wherein the rights of action of the citizen are necessarily circumscribed by its terms, attracts a strict interpretation and any ambiguity found upon the application of the proper principles of statutory interpretation should be resolved in favour of the person whose right of action is being truncated. There is little doubt about the presence of ambiguity and uncertainty of meaning in the section.
>
> …
>
> It therefore follows that the reference in s. 11 to “any statutory or other public duty” applies in the context of s. 6(2) of *The Housing Development Act* to those aspects of the statutory powers and duties there established which have a public aspect or connotation, and does not comprehend those planning, construction and managerial responsibilities (to paraphrase s. 6(2)) which have a private executive or private administrative application or are subordinate in nature.

[80] The case before us is distinguishable from *Berardinelli*. In our case it is clear on the face of the statute that the provision of health services to patients is a duty of a Regional Health Board. It is a statutory obligation of the board. Further, the statute we are considering does not use language that suggests that the duties referred to in s. 14 must be duties of a “public” nature. Finally, I note that the purpose of s. 14 appears to differ from that of the legislation in *Berardinelli*. The legislation in that

case was in place to limit the liability of the statutory authority, to the detriment of the person aggrieved by its actions. Accordingly, the argument in favour of strict construction was a strong one. Here, on the other hand, the legislation specifically preserves the liability of the public authority.

[81] I acknowledge the appellant's argument to the effect that she is disadvantaged by not having automatic rights to examine individual hospital workers for discovery. Such a disadvantage, however, is comparatively minor. The Regional Health Board is still required to give full discovery, and if the plaintiff can establish that an examination of an individual employee under oath is critical, a court will allow such an examination on a discretionary basis.

[82] There is neither genuine ambiguity in the statute, nor any contextual basis for giving it a reading that conflicts with its plain and ordinary meaning.

Conclusion

[83] In the result, I would uphold the judge's reading of the statute, and affirm his dismissal of the claim against the individual nurses, without prejudice to the appellant's right to pursue those claims against the VIHA.

"The Honourable Mr. Justice Groberman"

I AGREE:

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Mr. Justice Hunter"