

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Knull v. East Kootenay Regional Hospital*,  
2026 BCSC 351

Date: 20260302  
Docket: S33622  
Registry: Cranbrook

Between:

**Kyla Ashley Lauren Knull**

Plaintiff

And

**East Kootenay Regional Hospital and Interior Health Authority**

Defendants

Before: The Honourable Justice B. Smith

## **Reasons for Judgment**

The Plaintiff, appearing in person:

K.A.L. Knull

Counsel for the Defendants:

A. Severn

Place and Date of Hearing:

Cranbrook, B.C.  
January 7, 2026

Place and Date of Judgment:

Cranbrook, B.C.  
March 2, 2026

**Introduction**

[1] This is a medical malpractice action. The plaintiff, Ms. Knull, sustained a hand injury, following which she sought and received treatment at the defendant, East Kootenay Regional Hospital (the “Hospital”). The defendant, Interior Health Authority (“IHA”), operates the Hospital. Ms. Knull alleges the Hospital and IHA were both negligent, because of which she says she has suffered ongoing impairment, muscle loss and permanent deformity.

[2] Ms. Knull applies, pursuant to Rule 9-6 of the *Supreme Court Civil Rules*, BC Reg 168/2009 [*Rules*], for summary judgment on her entire claim; or summary judgment on the issue of liability only, in respect of the incidents pleaded in her notice of civil claim and her affidavit material.

[3] In response, IHA says the action is not currently suitable for summary judgment, and the application should be dismissed. Alternatively, IHA says that if the action is suitable for summary judgment, the plaintiff has not established her claim, and the action should be dismissed.

[4] I find Ms. Knull’s application fails the test for summary judgment and must be dismissed.

**Overview**

[5] On January 13, 2023, Ms. Knull presented at the Hospital, reporting that the previous day she had accidentally stabbed her hand with a knife. The uncertified hospital records show that Ms. Knull was admitted early in the morning, assessed by a doctor a few hours later, given a tetanus booster, prescribed three days of medication, and told to follow up within 48 hours with her family physician for any evolving tendon or nerve injury.

[6] Subsequently, Ms. Knull sought further medical attention from the Hospital, was referred by a family physician to a specialist, and seen by the specialist. When Ms. Knull was seen by the specialist is uncertain. In Ms. Knull’s first and second affidavits, she deposes that four months post-injury, the specialist told her he

suspected she had a partially severed nerve. The specialist indicated that he suspected “potential for a severed or partially severed nerve” and that “had timely diagnosis and intervention been pursued, the window to repair the harm likely would have been possible, but at this time it would be too late to intervene”. Ms. Knull’s materials show that on May 16, 2023, she met with another physician to discuss the specialist’s findings. That physician noted a “Partial tendon injury - chronic” and “left thumb partial tendon injury”.

[7] In addition to Ms. Knull’s claim concerning her hand injury, she has three other claims alleging that she received dismissive or inadequate treatment at the Hospital in relation to:

1. post-operative pain management in October 2023 following laparoscopic surgery;
2. a miscarriage in March 2025; and
3. multiple visits for cardiac symptoms.

[8] Ms. Knull commenced the action against IHA and the Hospital by notice of civil claim filed May 20, 2025. IHA filed a response to civil claim on June 13, 2025. The Hospital has not filed a response to civil claim. IHA says the Hospital is not a proper party to these proceedings because the Hospital is not an independent legal entity.

[9] Ms. Knull has not sued any of the physicians involved in her care.

[10] Ms. Knull pleads:

1. negligence;
2. failure to meet informed consent standards;
3. breach of statutory duties under the *Hospital Act*, R.S.B.C. 1996, c. 200 and the *Health Professions Act*, R.S.B.C. 1996, c. 183; and

4. violation of institutional policy and diagnostic standards for nerve injuries.

[11] Ms. Knull says the limitation period did not begin to run until October 2024, which is when she says the injury and its full implications were reasonably discoverable.

[12] Ms. Knull's notice of civil claim states:

**The Plaintiff seeks the following relief:**

1. General damages for pain, suffering, and loss of enjoyment of life.
2. Aggravated damages for the dismissive and negligent treatment experienced.
3. Damages for permanent disfigurement and loss of function in the Plaintiff's left hand.
4. Costs of this action.
5. Such further and other relief as this Honourable Court may deem just.

[13] Ms. Knull served a list of documents dated June 27, 2025. IHA served a list of documents dated September 15, 2025. Examinations for discovery have neither taken place nor been scheduled. Trial dates have neither been scheduled nor canvassed. IHA has filed an application seeking production of Ms. Knull's medical records from third-party record holders which is scheduled to be heard on April 13, 2026.

**Legal Principles**

***Supreme Court Civil Rules, BC Reg 168/2009***

[14] Rule 9-6 of the *Rules* states:

**Application**

(2) In an action, a person who files an originating pleading in which a claim is made against a person may, after the person against whom the claim is made serves a responding pleading on the claiming party, apply under this rule for judgment against the answering party on all or part of the claim.

[...]

**Power of court**

(5) On hearing an application under subrule (2) or (4), the court,

- (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
- (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
- (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
- (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

### **Jurisprudence**

[15] An application for summary judgment pursuant to Rule 9-6 asserts that the defence or claim is factually without merit and raises an issue of fact only or, at best, mixed fact and law: *Brown v. Canada (Attorney General)*, 2015 BCSC 1910 at para. 5. The test is whether the defendant or plaintiff is bound to lose: *J.A. Brink Investments Inc. v. B.C.R. Properties Ltd.*, 2015 BCSC 144 at para. 24.

[16] On an application for summary judgment the court can undertake only a limited review of evidence: *Beach Estate v. Beach*, 2019 BCCA 277 [*Beach Estate*] at para. 48. To be successful in a summary judgment application, the court must conclude beyond a reasonable doubt that there is no genuine issue for trial – it must be manifestly clear: *Beach Estate* at para. 65.

[17] Issues of law should be decided only if there is no real dispute about the material facts and the issue of law is well-settled by authoritative jurisprudence: *L.D. (Guardian ad litem of) v. Provincial Health Services Authority*, 2011 BCSC 628 at para. 20 (reversed on other grounds, 2012 BCCA 491).

[18] An application for summary judgment may be premature if there is material evidence that has not come to light but stands a reasonable prospect of emerging during discovery and disclosure: *Xiao v. Fan*, 2020 BCSC 69 at para. 48.

[19] Medical negligence cases almost always require opinions from qualified experts to establish a standard of care and breach of that standard: *Tripp v. Ur*, 2013 BCSC 785 at para. 12.

[20] Assessment of a limitation defence is inherently a factual exercise that generally requires a full evidentiary foundation that should be addressed in most instances at trial. If the evidence needs to be weighed and assessed, then the application is to be dismissed: *Rooney v. Galloway*, 2024 BCCA 8 at para. 167:

[167] Nor are limitation issues readily determined under a summary judgment application brought under R. 9–6 of the *Rules*, where the question is whether there is a “genuine issue of material fact requiring trial” (*Canada (Attorney General) v. Lameman*, 2008 SCC 14, at para. 11, citing *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 432, 1999 CanLII 664, at para. 27). Thus, on an application under R. 9–6, “if the evidence needs to be weighed and assessed, then...the application is to be dismissed” (*Beach Estate v. Beach*, 2019 BCCA 277 at para. 67).

**Positions of the parties**

**Ms. Knull**

[21] Ms. Knull says:

1. the Hospital and IHA have not engaged meaningfully with the claims or evidence and have summarily dismissed allegations that are contradicted by their own internal records;
2. she has filed multiple affidavits, supported by contemporaneous medical records, EMG test results, photographic evidence, correspondence with IHA and witness statements;
3. her evidence outlines a clear timeline of injury, diagnostic failure, and lack of corrective action, including external specialist findings confirming that delays in care resulted in further harm;
4. IHA has not disclosed any rebuttals, investigative findings, or responsive materials; and
5. the evidentiary record, including a prior decision from the College of Physicians and Surgeons of BC acknowledging liability in one of the incidents remains unanswered by the Hospital and IHA, and no alternative factual narrative has been provided.

**IHA**

[22] IHA says this action is not suitable for summary judgment because:

1. Ms. Knull has not alleged a sufficient factual or legal basis in her notice of civil claim or notice of application;
2. further document production and disclosure is necessary;
3. Ms. Knull has not established that IHA's defence is not viable;
4. the issues are not straightforward; and
5. no expert evidence regarding standard of care has been tendered.

[23] IHA says that further document production and disclosure is necessary to determine whether there is a limitation defence concerning Ms. Knull's hand injury.

[24] IHA says expert opinions are essential to establish if there was any breach of the standard of care.

[25] IHA says the uncertified medical records appended to Ms. Knull's affidavits are not admissible for truth of content. Relying on *Universe v. Fraser Health Authority*, 2020 BCSC 1398 at para. 84 [*Universe*], IHA says that records admitted under s. 51 of the *Hospital Act* have the same status as "business records" admitted under s. 42 of the *Evidence Act*, R.S.B.C. 1996, c. 124; however, no such records have been admitted and therefore statements of fact contained within the records are not admissible for truth.

[26] IHA says the Hospital does not employ the physicians and nor are they carrying out any of the Hospital's duties to their patients. The physicians are independent contractors who are directly liable to their patients, and the Hospital is not vicariously liable for their negligence: *Basil v. Interior Health Authority*, 2012 BCSC 1158 at paras. 41–44; *Shannahan v. Fraser Health Authority*, 2010 BCSC 144 at paras. 9–13. Diagnosis is not the responsibility of the hospital or servants: *Sahyoun v. Ho*, 2015 BCSC 392 at paras. 89–93.

[27] IHA says loss of confidence in the medical system is not a compensable injury under Canadian tort law: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

[28] IHA says breach of statute does not in itself give rise to damages, nor does it necessarily constitute negligence: *The Queen (Can.) v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205.

### **Discussion**

[29] Ms. Knull's application fails the test for summary judgment, because it is not manifestly clear that there is no genuine issue for trial. Concerning Ms. Knull's hand injury, there are clearly several genuine issues for trial, primary among them being whether IHA has a limitation defence and whether there was any breach of the standard of care. It is not clear that IHA is "bound to lose". Concerning Ms. Knull's other claims, it is likewise not clear that IHA is "bound to lose". I cannot review the evidence and make inferences with respect to matters going to the heart of Ms. Knull's claims, which is what she wishes me to do. It is settled law that the court can undertake only a limited review of evidence.

[30] IHA's material provides a factual basis demonstrating the need to obtain further document production and disclosure. Ms. Knull has not provided the specialist's complete file, certified hospital records or any expert opinion reports. Despite IHA's repeated requests, Ms. Knull has not executed an authorization for IHA to request her medical records from third-party record holders. Evidence from discovery of the specialist and disclosure of their file is material to IHA's limitation defence. Evidence of experts is material to the standard of care and various other issues related to Ms. Knull's injury.

[31] The medical records Ms. Knull has provided (the "Records") are uncertified. Ms. Knull says IHA has not challenged the Records on any basis. Accordingly, Ms. Knull says the Records should be considered reliable. Ms. Knull is not correct when she says IHA has not challenged the Records on any basis. IHA has challenged the Records on the basis that in uncertified form they are hearsay and therefore inadmissible for truth of content. Ms. Knull has the onus to ensure the Records are

admissible for truth of content, if that is the purpose for which she wishes them to be considered. So far, Ms. Knull has failed to do so.

[32] Ms. Knull says I can consider a letter that her family doctor wrote in support of her application for disability benefits as expert evidence. In the context of this application, I respectfully disagree.

[33] Concerning Ms. Knull's three claims alleging that she received dismissive or inadequate treatment at the Hospital, she has not provided evidence to establish compensable damage resulting from the alleged dismissive or inadequate treatment.

[34] Finally, Ms. Knull's position is not supported by the primary legal authorities she refers to. Broadly speaking, this is because, while some of these authorities elucidate legal principles that are relevant to medical malpractice cases, none of them inform the issue I must determine on this application. For example:

1. *Reibl v. Hughes*, [1980] 2 S.C.R. 880 (involved informed consent);
2. *Hopp v. Lepp*, [1980] 2 S.C.R. 192 (involved informed consent);
3. *Malette v. Shulman*, 72 O.R. (2d) 417 (C.A.) (involved the tort of battery);
4. *Ter Neuzen v. Korn*, [1995] 3 S.C.R. 674 (involved standard of care);
5. *Ediger v. Johnston*, 2013 SCC 18 (involved causation);
6. *Roper v. Royal Victoria Hospital*, [1975] 2 S.C.R. 62 (involved mandamus);
7. *Cimolai v. Children's & Women's Health Centre of BC*, 2003 BCCA 338 (involved certiorari);
8. *St-Jean v. Mercier*, 2002 SCC 15 (involved medical liability under Quebec civil law).

**Disposition**

[35] Ms. Knull’s application for summary judgment on her entire claim is dismissed. Ms. Knull’s application for summary judgment on the issue of liability only is dismissed.

[36] It is not necessary for me to consider IHA’s alternative submission that the action ought to be dismissed.

**Costs**

[37] IHA has been successful in defending the application and is entitled to costs at Scale B.

“B. Smith J.”

B. SMITH J.