

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Chisholm v. Valemount Forest Products Ltd.*,  
2025 BCCA 48

Date: 20250218  
Docket: CA49599

Between:

**Leonard Chisholm**

Appellant  
(Plaintiff)

And

**Valemount Forest Products Ltd. and His Majesty the King in right of the Province of British Columbia as represented by the Ministry of Forests, Land and Natural Resources Operations**

Respondents  
(Defendants)

Before: The Honourable Madam Justice Horsman  
The Honourable Justice Iyer  
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated December 20, 2023 (*Chisholm v. Valemount Forest Products Ltd.*, 2023 BCSC 2242, Prince George Docket 1241160).

Counsel for the Appellant: R.B. McNeney

Counsel for the Respondent, Valemount Forest Products Ltd.: R. Bacha

Counsel for the Respondent, British Columbia as represented by the Ministry of Forests, Land and Natural Resources Operations: A.C. Bjornson  
M.M. Salt

Place and Date of Hearing: Vancouver, British Columbia  
November 15, 2024

Place and Date of Judgment: Vancouver, British Columbia  
February 18, 2025

**Written Reasons by:**

The Honourable Madam Justice Horsman

**Concurred in by:**

The Honourable Justice Iyer

The Honourable Justice Edelman

**Summary:**

*The appellant was injured while driving on a forest service road. He alleged that the respondents, including the Province of B.C., were negligent because they failed to maintain the road in a safe condition. The chambers judge dismissed the claim against the Province on the basis that s. 24(3) of the Industrial Roads Act gave the Province complete immunity. The appellant appeals this decision.*

*Held: Appeal allowed. The chambers judge erred in his interpretation of s. 24(3) of the Industrial Roads Act by failing to consider the text, context, and purpose of the statute. Properly interpreted, the immunity in s. 24(3) extends only to “industrial roads” within the meaning of the statute. The road where the injury occurred was a forest service road under the Forest Act, which is expressly excluded from the definition of industrial road. Accordingly, the immunity does not apply in this case.*

**Reasons for Judgment of the Honourable Madam Justice Horsman:**

[1] On June 16, 2010, the appellant was driving a motorcycle on the Canoe West Forest Service Road (the “Road”) near the town of Valemount, B.C. when he collided with a log on the roadway (the “Accident”). He filed a notice of civil claim seeking damages for injuries he allegedly suffered due to the negligence of the respondents in failing to maintain the road in a safe condition.

[2] The respondent His Majesty the King in right of the Province of British Columbia (the “Province”) is the owner of the Road. In its response to civil claim, the Province pleaded that at all material times the respondent Valemount Forest Products Ltd. (“Valemount Forest”) held a road use permit for the Road and was responsible for its maintenance. Valemount Forest pleaded that the Road was not being used for logging purposes at the time of the Accident, and that the Province was responsible for maintaining the Road. This dispute on the pleadings remains unresolved.

[3] In 2023, the Province filed an application seeking to dismiss the claim against it through summary judgment, or alternatively judgment on a summary trial. The application was based on the assertion that s. 24(3) of the *Industrial Roads Act*, R.S.B.C. 1996, c. 189, provided the Province with complete immunity to the claim. The chambers judge accepted the Province’s argument and dismissed the claim against the Province on the basis of this statutory immunity.

[4] For the reasons that follow, I would allow the appeal and set aside the order dismissing the claim against the Province. In my view, the chambers judge erred in his interpretation of s. 24(3) of the *Industrial Roads Act* by adopting an interpretation that was not supported by the text, context, and purpose of the statute. Properly interpreted, the immunity in s. 24(3) of the *Industrial Roads Act* only extends to roads that are “industrial roads” within the meaning of the statute. The parties agree that at the material time the Road was a forest service road under the *Forest Act*, R.S.B.C. 1996, c. 157, and was therefore excluded from the definition of an industrial road under the *Industrial Roads Act*. Accordingly, the Road falls outside the scope of the immunity.

**The statutory immunity**

[5] Section 24 of the *Industrial Roads Act* provides:

**Liability of industrial road operator**

**24** (1) In an action for indemnity for damages or injury sustained because of construction or operation of an industrial road, the defendants may

- (a) plead the general issue,
- (b) give this Act and the special matter in evidence at the trial, and
- (c) prove that the damages or injury alleged were done under this Act.

(2) No inspection under this Act, nothing in this Act and nothing done or ordered or omitted to be done or ordered, under this Act, relieves an industrial road administrator of or from or diminishes or affects any liability or responsibility resting on it, either toward Her Majesty or toward a person, or the spouse, parent or child, executor or administrator, heir or personal representative, of a person, for anything done or omitted to be done by the industrial road administrator, or for a wrongful act, neglect or default, misfeasance, malfeasance or nonfeasance of the industrial road administrator.

(3) Despite subsections (1) and (2), a person using a road, or the person’s heir, personal representative, spouse, parent or child is not entitled to indemnity or compensation from the owner or licensee of the road or from Her Majesty in right of the Province for loss, damage, injury or expense caused by the condition of the road or a work that is part of it, but this subsection does not affect the liability of the owner or licensee or Her Majesty with respect to the agents, contractors or employees of the owner or licensee.

[Emphasis added.]

[6] The following definitions in s. 1 of the *Industrial Roads Act* are relevant:

“**highway**” has the same meaning as in the *Transportation Act*;

“**industrial road**” means a road on Crown or private land used primarily for transportation by motor vehicle of

- (a) natural resources, whether raw, processed or manufactured, or
- (b) machinery, materials or personnel,

and includes all bridges, wharves, log dumps and works forming a part of the road, but does not include

- (c) a highway,
- (d) a forest service road as defined in the *Forest Act*,

[...]

“**industrial road administrator**” means a person who constructs, owns or operates an industrial road;

[...]

“**road**” means a strip of ground, used for travel by motor vehicles, that is not a highway;

[Emphasis added.]

[7] The *Transportation Act*, S.B.C. 2004, c. 44 defines a “highway” as follows:

“**highway**” means a public street, road, trail, lane, bridge, trestle, tunnel, ferry landing, ferry approach, any other public way or any other land or improvement that becomes or has become a highway by any of the following:

- (a) deposit of a subdivision, reference or explanatory plan in a land title office under section 107 of the *Land Title Act*;
- (b) a public expenditure to which section 42 applies;
- (c) a common law dedication made by the government or any other person;
- (d) declaration, by notice in the Gazette, made before December 24, 1987;
- (e) in the case of a road, colouring, outlining or designating the road on a record in such a way that section 13 or 57 of the *Land Act* applies to that road;
- (f) an order under section 56 (2) of this Act;
- (g) any other prescribed means;

[8] Subsections (a)-(g) of the definition of “highway” in the *Transportation Act* apply to the entire list of places contained in the definition (“a public street, road, trail, lane, bridge, trestle, tunnel, ferry landing, ferry approach, any other public way or any other land or improvement”). Accordingly, a public highway can only be

established under the *Transportation Act* by way of the methods set out in (a)-(g): *Adam v. Insurance Corporation of British Columbia*, 2018 BCCA 482 at paras. 39–46.

**The chambers judgment: 2023 BCSC 2242**

[9] The chambers judge found that on a “plain reading” of the *Industrial Roads Act*, the immunity in s. 24(3) was not restricted to industrial roads: at para. 62. His reasons on the issue of statutory interpretation are concise:

[55] The [appellant] says that the *Act* only applies to industrial roads and the [Road] is not an industrial road.

[56] The *Act* defines the term “industrial road” as well as the term “road”. Subsections 24 (1) and (2) of the *Act* [refer] to the term “industrial road”. However s. 24 (3) of the *Act* specifically refers to the term “road”.

[57] The [Road] falls into the definition of road pursuant to the *Act*. It is not a “highway” as defined in the *Transportation Act*.

[...]

[62] On a plain reading of the *Act*, the [Road] is a road as defined in s. 24(3).

[10] The chambers judge also found support for his interpretation of s. 24(3) of the *Industrial Roads Act* in legislative history. He found this history confirmed that the intent of the provision was to facilitate public access to back country roads and address the concerns of the forest industry over the liability of road owners. He also expressed agreement with the judgment in *Redenbach v. Taina Holdings Ltd.*, 1987 CarswellBC 1237, [1987] B.C.J. No. 348 (S.C.), in which Curtis J. held that the same immunity in a predecessor statute was not restricted to industrial roads.

[11] Accordingly, the chambers judge concluded that the Road fell within the scope of the statutory immunity, and he dismissed the appellant’s claim against the Province.

**On appeal**

[12] The appellant alleges that the chambers judge erred in his interpretation of s. 24(3) of the *Industrial Roads Act*. Specifically, the appellant says the chambers judge erred in failing to interpret the reference to “road” in s. 24(3) to mean

“industrial road”. The appellant contends that on a contextual reading of the statute, the term “road” can only plausibly mean “industrial road”. He says that the immunity in s. 24(3) does not apply to the Road because a forest service road is expressly excluded from the definition of “industrial road”.

[13] In response, the Province argues that the legislature used the term “road” rather than “industrial road” in s. 24(3), and the legislature must be taken to mean what it says. On the Province’s theory, the immunity in s. 24(3) applies to any strip of ground used for motor vehicle travel in the Province of B.C. that does not fall within the definition of a highway under the *Transportation Act*. This includes the Road on which the Accident occurred.

[14] The respondent Valemount Forest agrees with the Province’s position and arguments regarding the interpretation of s. 24(3).

[15] It is common ground that the issue raised on appeal is one of law, and the standard of review is correctness: *Manns v. Vancouver Island Health Authority*, 2024 BCCA 110 at para. 6.

## **Analysis**

### **Principles of statutory interpretation**

[16] The general principles of statutory interpretation were recently summarized by this Court in *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101:

[39] The modern rule of statutory interpretation requires that the words of a statute be read in their entire context, and in their grammatical and ordinary sense harmoniously with the scheme of the Act and statutory objects and purposes: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21 [*Rizzo*]; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26 [*Bell ExpressVu*]. The modern rule is consistent with s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which provides that every statute must be construed as remedial and “given such fair large and liberal construction and interpretation as best ensures the attainment of its objectives”.

[40] As the Supreme Court of Canada has stated on a number of occasions, the grammatical and ordinary sense of a provision is not, on its own, determinative. A statutory interpretation analysis is incomplete without consideration of context and purpose, no matter how plain the meaning might appear when the provision is viewed in isolation: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at

para. 48; *R. v. Alex*, 2017 SCC 37 at para. 31. As explained by the Court in *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at para. 10:

Words that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to statutory interpretation...

[41] Thus, it is necessary in every case for the court to undertake the contextual and purposive approach mandated by the modern rule, and thereafter determine whether there is ambiguity in the wording of a statute. There is a genuine ambiguity only where the words of a provision are capable of more than one meaning when read in light of the entire context of a provision, which includes the statutory purpose: *Bell ExpressVu* at paras. 29–30.

[17] In interpreting the provisions of a statute, a court may have regard to legislative history, as well as other statutes that make up the legislature’s “statute book”: *Adam* at para. 27.

### **The proper interpretation of s. 24(3) of the Industrial Roads Act**

#### ***Text and context***

[18] The Province’s proposed interpretation of s. 24(3) is focussed on a single word in the subsection. The Province’s argument, simply put, is that “a road is a road”, and the legislature’s choice to use this term in s. 24(3) signals an intent for the immunity to apply to roads other than industrial roads. If one focussed solely on the word “road”—in isolation from the text of s. 24, and from the statute as a whole—the Province’s interpretation might be a plausible one. However, words in a statute cannot be read in isolation. In my view, the Province’s argument overlooks several indicators of a contrary legislative intent within the language of s. 24 itself, as well as within the broader statutory context.

[19] First, the Province’s interpretation ignores subsections (1) and (2) of s. 24 of the *Industrial Roads Act*. Context must always be considered in interpreting a statutory provision, and in this instance there is also an express contextual connection in the opening words of s. 24(3): “Despite subsections (1) and (2)”. Subsections (1) and (2) are concerned with the liability of an “industrial road administrator” in relation to the construction and operation of an “industrial road”

(emphasis added). Section 24(1) provides that a defendant in an action for damages sustained because of the construction or operation of an industrial road may plead a general denial (“plead the general issue”), rely on the *Industrial Roads Act* at trial, and prove that the damages or injury were done under this Act. Section 24(2) establishes the general liability of “an industrial road operator” for negligent or wrongful acts or omissions. Section 24(3) provides that “despite subsections (1) and (2)”, certain entities have immunity from liability where a person who is not an agent, contractor, or employee of the road owner or operator suffers injury due to the condition of the road. In light of that wording, s. 24(3) can only plausibly be read as creating an immunity in relation to the liability that would otherwise arise under ss. 24(1) and (2). The liability under s. 24(1) and (2) plainly and explicitly concerns only industrial roads and industrial road operators.

[20] Thus, while s. 24(3) uses the term “road”, the context of the provision suggests that the legislature intended this to refer to an industrial road. If it were otherwise, s. 24 could not be read as a cohesive provision. There is further support for such a legislative intent in the heading of s. 24 of the *Industrial Roads Act*: “Liability of an industrial road operator” (emphasis added). While headings are not determinative, they may be used as intrinsic aids in interpreting ambiguous legislation: *R. v. Lohnes*, [1992] 1 S.C.R. 167, 1992 CanLII 112 at 179; *Ambrosi v. British Columbia (Attorney General)*, 2014 BCCA 123 at para. 54, leave to appeal to SCC ref’d, [2014] S.C.C.A. No. 320.

[21] In addition, the broader statutory context also suggests a legislative intent to limit the immunity in s. 24(3) to industrial roads. The provision is contained in an Act that is, as its title suggests, wholly concerned with the regulation of industrial roads. The *Industrial Roads Act* sets out the duties of an “industrial road administrator” in constructing, maintaining, and inspecting industrial roads. It provides for certain powers on the part of the Minister in regulating industrial roads. Under the Act, industrial road administrators are assigned certain regulation-making powers in relation to industrial roads. The Act also prescribes the provisions of the *Motor Vehicle Act* that apply to industrial roads. In sum, the provisions of the *Industrial*

*Roads Act* as a whole suggest a legislative intent to comprehensively regulate the use and operation of industrial roads in B.C. Nothing in the statute indicates that the legislature intended to include within this highly specialized regime a general immunity provision that is applicable to the owners and operators of all private roads across British Columbia.

[22] The Province emphasizes that the terms “road” and “industrial road” are separately defined in s. 1 of the *Industrial Roads Act*. The Province says there would be no point in defining the term “road” unless the legislature intended “road” to have a meaning distinct from “industrial road” within the statute. I do not agree. There is a purpose in defining “road” because that, in turn, informs the other statutory definitions that incorporate the term “road”. For example, to fall within the definition of “industrial road”, the surface in question must meet the definition of a “road”, in that it must be “a strip of ground, used for travel by motor vehicles, that is not a highway”: *Industrial Roads Act*, s. 1. A surface cannot be an industrial road unless it is first a road: *Marshall v. British Columbia*, 30 B.C.L.R. (3d) 164, (*sub nom. York v. Marshall*) 1997 CanLII 4318 (S.C.) at para. 33. Therefore, it is not that “industrial road” and “road” have distinct meanings, but rather that “industrial road” incorporates the definition of “road”.

[23] Finally, it is worthy of note that the term “road” is used in other provisions of the *Industrial Roads Act* where the clear legislative intent is to refer to an industrial road. By way of example, ss. 21 and 22 of the Act provide:

**21** If the violation or nonobservance of a regulation is attended with danger or annoyance to the public, or hindrance to the industrial road administrator in the lawful use of the road, the industrial road administrator may summarily interfere, using reasonable force, if necessary, to prevent the violation or to enforce observance, without prejudice to any penalty incurred for the violation or nonobservance.

**22** Signs must be placed at the junction of a public road or highway and an industrial road warning the public or the drivers of vehicles that they are entering a privately owned industrial road, and that, if they are permitted to enter, they must govern themselves according to the rules governing the road.

[Emphasis added.]

[24] Thus, it is evident that the legislature has used the term “road” interchangeably with “industrial road” in the *Industrial Roads Act* where the context makes it clear that the intended reference is to an industrial road.

[25] Accordingly, in my view the text and context of s. 24(3) suggest that the legislature intended the immunity to apply only to industrial roads.

***Legislative purpose***

[26] The Province says that the legislative history of s. 24(3) of the *Industrial Roads Act* demonstrates a statutory purpose that is inconsistent with restricting the operation of s. 24(3) to industrial roads.

***Legislative history of s. 24(3)***

[27] In 1963, the earliest version of the immunity now set out in s. 24(3) came into force with the enactment of the *Private Roads Act, 1963*, S.B.C. 1963, c. 33. This statute had the effect, among other things, of amending the *Industrial Transportation Act*, R.S.B.C. 1960, c. 192, by adding the following subsection to s. 29:

(4) Notwithstanding the provisions of subsections (1), (2), and (3), a person using a road, or his heir, personal representative, wife, husband, parent, or child, is not entitled to any indemnity or compensation from the owner or licensee of the road or from her Majesty in right of the Province for any loss, damage, injury, or expense caused by the condition of the road or any work forming a part thereof, but this subsection does not affect the liability of the owner or licensee or Her Majesty with respect to the agents, contractors, or employees of the owner or licensee.

Sections 29(2) and (3) of the *Industrial Transportation Act* had substantially the same wording that is now in ss. 24(1) and (2) of the *Industrial Roads Act*. Section 29(1) of the *Industrial Transportation Act* contained a one-year limitation period on actions for damages sustained by reason of the construction or operation of an industrial road.

[28] The Province submitted extrinsic evidence of legislative history, including the March 21, 1963 report of the Special Committee on Public Access to Private Roads (the “Committee”) that preceded the enactment of the *Private Roads Act, 1963*. The Committee engaged in stakeholder consultation that was directed at possible

legislative change to facilitate the recreational use of, and general public access to, private roads. Consideration was given to a draft statute—*An Act to Govern Access*—which would have permitted the Lieutenant-Governor in Council to designate any private road as an access road if its use was “deemed to be in the general public interest”. A group of road owners, predominantly industrial operators, proposed more modest amendments to existing statutes to facilitate public access to their roads without exposing the road owners to increased liabilities.

[29] The legislature opted to amend existing statutes, as proposed by the industry representatives, which was accomplished through the enactment of the *Private Roads Act, 1963*. The addition of the statutory immunity in s. 29(4) of the *Industrial Transportation Act* addressed the concerns of industry operators about the liability associated with the public’s use of their roads, thereby encouraging industry operators to permit public access.

[30] With the 1979 statute revision, the *Industrial Transportation Act* was renamed the *Highway (Industrial) Act*, R.S.B.C. 1979, c. 168. The one-year limitation period in s. 29(1) of the *Industrial Transportation Act* was repealed, and the remaining liability provisions—in substantially the same form as the current ss. 24(1)-(3) of the *Industrial Roads Act*—were moved to s. 24 of the *Highway (Industrial) Act*.

[31] Between 1963 and 2004, forestry roads fell within the definition of an “industrial road” (a road constructed or existing for transportation by motor vehicle of natural resources) in the *Industrial Transportation Act* and the *Highway (Industrial) Act*. This changed in 2004 with the enactment of the *Highway (Industrial) Amendment Act, 2004*, S.B.C. 2004, c. 37 [*Amendment Act*]. The *Amendment Act* changed the name of the *Highway (Industrial) Act* to the *Industrial Roads Act*. It also repealed the definition of “industrial road”, and replaced it with a definition that expressly excluded “a forest service road as defined in the *Forest Act*” and “land designated as a development road under section 8(1) of the *Petroleum and Natural Gas Act*”: *Amendment Act*, s. 2(b) (emphasis added). In introducing the *Amendment Act* for second reading in the legislative assembly, the then-Minister of Transportation stated that the amendments were intended, among other things, to

“[eliminate] regulatory duplication by exempting roads that are regulated separately by the Ministry of Forests and the Ministry of Energy and Mines”: British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 37-5, Vol. 25, No. 7 (May 10, 2004) at 1450.

**Discussion**

[32] The Province emphasizes that a version of s. 24(3) of the *Industrial Roads Act* has remained in force since 1963 in substantially the same form. It says this shows a consistent legislative intent to protect private road owners and operators from liability arising from the use of their roads by the public. There is no doubt that the legislation reflects a consistent legislative intent. The question is whether the intent was, and is, to protect the owners of private roads generally from liability, or whether the intent is specific to the owners and operators of private industrial roads.

[33] I see nothing in the legislative history to suggest that the legislature intended to extend the immunity to private roads other than industrial roads. The initial enactment of the immunity in 1963 responded to industry concerns, primarily from the forest industry, about the potential liability arising from increased public access to their roads. The immunity was added to a statute that specifically regulated the use of industrial roads, and to a provision that explicitly addressed the liability of industrial road operators. This has consistently been the case over time. Such a history points to a legislative purpose of protecting industrial operators from liability to the public in relation to the use of industrial roads.

[34] It is instructive to consider the breadth of the immunity which would result from the Province’s interpretation of s. 24(3) of the *Industrial Roads Act*. On the Province’s theory, the owner and licensee of every “strip of ground, used for travel by motor vehicles” that is not a highway within the meaning of the *Transportation Act* would be immune from liability to members of the public arising from the condition of their roads: *Industrial Roads Act*, s. 1. As noted, a road falls within the definition of a highway under s.1 of the *Transportation Act* only if it has become a highway through one of the prescribed means listed in (a)-(g) of the definition: *Adam* at paras. 39–46. The Province’s proposed interpretation of s. 24(3) would, therefore, create a broad

swath of immunity covering the owners and licensees of private roads, driveways, and parking lots across British Columbia for injuries caused by unsafe conditions.

[35] Nothing in the text or context of the *Industrial Roads Act* indicates that the legislature intended for an immunity provision contained in a subsection of a rarely-cited statute concerned with the regulation of industrial roads to have such general and dramatic effect. Furthermore, it is difficult to see how an immunity provision of such scope could be reconciled with the terms and purposes of the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337 [OLA]. Section 3 of the OLA imposes a general duty of care on an occupier to ensure that their premises are reasonably safe. An occupier's duty of care under the OLA is routinely extended to private roads, driveways, and parking lots. See by way of illustration only: *Tommy v. 7-Eleven Canada, Inc.*, 2024 BCSC 1558; *O'Leary v. Rupert*, 2010 BCSC 240; *Wilfong v. Stanger*, 2008 BCSC 1247; and *Goldsmith v. Callaghan Construction Co.*, 1988 CarswellBC 3883, [1988] B.C.J. No. 908 (S.C.). Yet on the Province's theory, the defendant in such a case is immune from liability under s. 24(3) of the *Industrial Roads Act* because the relevant private road, driveway, or parking lot is a "road" that is not a highway under the *Transportation Act*.

[36] It is a principle of statutory interpretation that statutes dealing with similar subjects are presumed to be coherent, and thus interpretations that promote harmony among those statutes should prevail over discordant ones: *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015, 1997 CanLII 390 at 1054. Accordingly, it is relevant that the Province's proposed interpretation of s. 24(3) of the *Industrial Roads Act* overlooks the existence of a comprehensive provincial occupiers' liability scheme that would be substantially undermined if the Province's interpretation prevailed.

### **Conclusion**

[37] In summary, I conclude that the chambers judge erred in his interpretation of s. 24(3) of the *Industrial Roads Act* by considering the plain meaning of the term "road" in isolation from its context and statutory purpose. Such a literal and decontextualized interpretive approach is contrary to the modern approach to

statutory interpretation. The text, context, and purpose of s. 24(3) all point in the same direction, indicating a legislative intent to limit the immunity in s. 24(3) to industrial roads. This interpretation also ensures harmony between the statutory immunity in s. 24(3) and the general duty of care imposed on occupiers under the *OLA*.

[38] For the purpose of this appeal, it is unnecessary to determine the question of whether the Road is a “resource road” within the meaning of the *OLA*, which would have the effect of imposing a more limited duty of care on the occupier under s. 3.1 of the *OLA*. That is a matter for trial. The key point for present purposes is that all parties agree that the Road was a forest service road at the material time. Therefore, the Road was not an industrial road, and the immunity in s. 24(3) has no application. This is sufficient to dispose of the appeal.

**Disposition**

[39] I would allow the appeal, and set aside the order of the chambers judge dismissing the appellant’s claim against the Province.

“The Honourable Madam Justice Horsman”

I AGREE:

“The Honourable Justice Iyer”

I AGREE:

“The Honourable Justice Edelman”