

Court of King's Bench of Alberta

**Citation: Telsec Property Corporation v Tan Dat Tran Professional Corporation, 2026
ABKB 424**

Date: 20260604
Docket: 2101 12633
Registry: Calgary

Between:

Telsec Property Corporation

Plaintiff

-and-

Tan Dat Tran Professional Corporation and Tan Dat Tran

Respondents

Reasons for Decision of the Honourable Justice N. M. Carruthers

I. Introduction and Background

[1] This matter came before me as an appeal from the order of Applications Judge Farrington, dated March 21, 2024, in which he granted summary judgment against the Defendants for rent owing under a lease.

[2] The Defendant's cross-application for summary dismissal was dismissed. The Defendants sought to have the action against Dr. Tran dismissed, in his personal capacity, as well as to set off the value of the leasehold improvements against the rent claimed by the Plaintiff. The Defendants also challenged the rent claim as excessive, in light of the occupation by a new tenant soon after the Defendants left the premises. The new tenant was another dental office and was able to occupy the premises on a turnkey basis, after buying the Defendants' equipment from the lender when the Defendants went into default.

[3] The Plaintiff, Telsec Property Corporation (Telsec), leases commercial property. The Defendant, Tan Dat Tran Professional Corporation, entered a lease with Telsec on October 17, 2016, for ten years, commencing July 7, 2017. I will refer to the Defendants collectively as Tran and will refer to Dr. Tran by name or as the Individual Defendant, as he is addressed in the submissions.

[4] The Statement of Claim alleges that Tran failed to pay June 2021 rent and, on July 6, 2021, Telsec issued a written notice that Tran was in breach. The outstanding rent identified in the notice was \$19,167.27, representing one month of rent obligations.

[5] No further payments were made. Telsec states in its Statement of Claim that it released the property and was able to collect full rent on it again, effective March 31, 2022.

[6] The Statement of Claim outlines the basis on which Telsec calculates its claim in paragraph 7, which includes reference to the Base Rent in each year, along with the Additional Rent which covered Tran's proportionate share of operating costs and property taxes, based on the square footage of the rented area. GST is applicable to the rent. The Plaintiff also claimed interest at a rate of 2% per month, compounded monthly, repayment of the costs to re-let the property, and solicitor and own client legal fees and disbursements on a full indemnity basis.

[7] Telsec further claims the right to retain the damage deposit of \$13,500, which may be applied to the Base Rent or Additional Rent at the landlord's discretion.

[8] The March 2024 judgment of \$88,389.65 includes the rent payable under the Lease, inclusive of Additional Rent for the period June 1, 2021, to December 31, 2021, and Base Rent for the period June 1, 2021, to March 31, 2022. The overall claim has been reduced to reflect Tran's damage deposit of \$13,500.00 and advance rent of \$11,726.47, as these amounts were to be applied to the outstanding rent pursuant to the Lease.

[9] The Statement of Defence contains standard denials and alternative claims refuting liability and refuting the amounts claimed. Dr. Tran states he is not personally liable as he did not sign the lease on his own behalf, nor did he sign an indemnification or guarantee. He specifically pleads section 107 of the *Health Professions Act* (HPA), and asserts that he is not personally liable for the outstanding rent as the indebtedness does not relate to or arise in connection with the provision of professional services.

[10] Applications Judge Farrington granted summary judgment in favour of the Plaintiff on March 21, 2024. The principal amount awarded against both Defendants is \$88,389.65. The accumulated interest was set at \$65,498.87, after the parties reappeared in front of Applications Judge Farrington on a second occasion. The total judgment is \$153,888.52. Full indemnity costs were awarded and were to be assessed.

[11] Applications Judge Farrington found that Dr. Tran was personally liable for the lease obligations of the dental practice. He also found the Plaintiff's mitigation strategy to be reasonable and effective, and no better strategy had been proposed by the Defendants. The landlord's actions significantly decreased the Defendants' obligations under the lease. Upon reading the oral decision of Applications Judge Farrington, it did not appear that he addressed the setoff argument.

[12] The Defendants now appeal the order of Applications Judge Farrington. The appeal focused primarily on the narrow issue of whether section 107 of the HPA can be interpreted such that Dr. Tran is personally liable for the professional corporation's obligations under its commercial lease with the Plaintiff. This is a significant issue for the shareholders of professional corporations and those with whom they do business.

II. Issues

[13] There are few factual disputes in this matter. It is undisputed that Dr Tran expressly refused to provide a personal guarantee or indemnity in respect of the Telsec lease. Neither party anticipated or intended that Dr. Tran would be personally liable under the lease.

[14] The Plaintiff argued, and Applications Judge Farrington agreed, that section 107 of the HPA makes Dr. Tran personally liable for obligations of the professional corporation arising in respect of carrying on the business of the professional corporation. The obligations include the amounts owing under the commercial lease of the premises where the professional services are provided. The Defendants say that section 107 can only be interpreted to hold the Individual Defendant personally liable for matters directly related to the provision of professional services to patients, and not for business transactions to which the professional corporation was a party.

[15] The Defendant has framed the issues on appeal as follows:

- (a) Did the lower Court err in determining that “professional services” under section 107 of the *HPA* applies to the act of executing or entering into a commercial lease by the corporate defendant, so as to attract personal liability for the Individual Defendant, the voting shareholder of the corporate defendant? I might reframe this issue to ask what is the extent of a regulated professional’s personal liability for acts other than the provision of professional services, while carrying on the business of a professional corporation.
- (b) Did the lower Court turn its mind to the modern principles of statutory interpretation when interpreting section 107 of the *HPA*?
- (c) Did the lower Court err in its quantification analysis by not finding that the Defendants are entitled to a set-off on the claimed amounts as a result of the value of the leasehold improvements and the fact that the landlord was able, with the tenant’s full cooperation, to re-let the premises to a new tenant within a short period of time?

[16] In oral submissions, the issue of the interest calculation was also raised, but I was not provided with fulsome submissions on this point prior to or at the oral hearing. I understand the parties appeared before Applications Judge Farrington to settle the terms of the order regarding interest, after the original application. The apparent difference between the parties was whether interest immediately began to accrue on the whole amount due to the end of the lease, or whether it would accrue on the amount owing each month as it came due. I have not considered this issue in my decision as it was not identified as an issue for determination in the appeal briefs. I was advised that the interest calculation was not the focus of the appeal in any event.

III. Standard of Review

[17] The standard of review on an appeal from a decision of an applications judge is correctness: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166 at para 30; *Lesenko v Wild Rose Ready Mix Ltd*, 2024 ABKB 333 at paras 14-15. Although it is an appeal on the record, it is

considered *de novo* due to the ability of the appellant to expand on the factual record from the court below, in certain circumstances: ***Kadco Construction Inc v Sterling Bridge Mortgage Corp***, 2021 ABCA 52 at para 11.).

[18] There is no controversy over the standard of review.

IV. Application of Section 107 of the HPA

[19] I will start by considering the extent of personal liability facing the shareholder of a professional corporation, when entering a commercial contract related to their practice. When only the professional corporation signs a commercial lease, does section 107 of the HPA apply to make the regulated professional personally liable under the lease? Or is the personal liability of the regulated professional limited to liability arising from the provision of defined professional services to a patient? The inquiry engages the meaning of “the business of the professional corporation”, as contemplated by section 107 of the HPA.

[20] Section 107 of the HPA provides as follows:

Liability of shareholders

107 Despite anything to the contrary in the *Business Corporations Act* and despite the providing of the professional services of a regulated member

- (a) of the College of Physicians and Surgeons of Alberta who is a physician, surgeon or osteopath,
- (b) of the College of Dental Surgeons of Alberta,
- (c) of the College of Chiropractors of Alberta, or
- (d) of the Alberta College of Optometrists,

on behalf of a professional corporation, every voting shareholder of a professional corporation is liable to the same extent and in the same way as if the shareholder were, during that time, carrying on the business of the professional corporation as a partnership or, if there is only one voting shareholder, as an individual providing professional services.

[21] The Defendants referred to cases such as ***Rizzo v Rizzo Shoes Ltd.*** [1998] 1 SCR 27 and ***Abbas v Esurance Insurance Company of Canada***, 2023 ABCA 36, which offer guidance on statutory interpretation. For ease of reference, I have included the relevant passages from our Court of Appeal in ***Abbas***, as follows:

[48] The governing principles of statutory interpretation are straightforward and not contentious.

[49] First, an adjudicator must read the entire statute and related statutes. “Context is a primary determinant of meaning. A legal instrument

typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts.”

[50] Second, an adjudicator must ask what the plain and ordinary meaning of the contested text is. “A permissible meaning is one that a reasonable reader who uses the language correctly would give the text at the time of its production”. It goes without saying that it is a cardinal sin for an adjudicator to give text a meaning it cannot possibly bear.

[51] If the text supports only one plausible meaning, the inquiry is complete.

[52] But if the text can be legitimately interpreted to have more than one plausible meaning, the adjudicator must “select the option that best advances the purpose that accounts for the text.” Legislators always pass laws for a purpose. The best indicator of a statute’s purpose is the statute’s text. Section 12 of the *Interpretation Act* – “Every enactment ... shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects” – strongly supports this direction.

[53] This means that on most occasions a court must search for the reason the legislature passed the contested provision.

[22] Both parties agreed on the principles of statutory interpretation and that section 107 of the HPA must be interpreted with a view to the language of the provision, the context in which the language is used, and the purpose of the legislation or statutory scheme in which the language is found. The parties disagree on the interpretation and the outcome.

[23] The Defendants say that Applications Judge Farrington failed to address the principles of statutory interpretation in his oral reasons. The Plaintiff stated that, while Applications Judge Farrington’s analysis of statutory interpretation was not explicit, he still considered the statutory wording, purpose and applicable case law. The Plaintiff supports the finding of personal liability against Dr. Tran and the finding of a link between the professional services of the regulated member and the execution of the commercial lease for the dental office.

[24] When the principles of statutory interpretation are applied, the Defendant says that the section makes a regulated professional personally liable only when professional services are rendered to a third party. Such professional services are defined as being provided within the scope of practice of the regulated professional, and section 3 of Schedule 7 of the HPA clearly lists the activities that constitute the practice of dentistry. None of the listed activities or services refer to the business activities of the regulated professional, but rather refer to patient care activities.

[25] The Defendants submit that the legislators did not intend to include activities that are not related to patient care within the purview of section 107. Signing a lease is not an activity that involves the provision of the dentist’s professional services to the landlord. As such, the Defendants submit that entering a lease does not give rise to personal liability on the part of Dr. Tran under section 107, even if the leased premises are used for a dental office.

[26] Both parties put forward Hansard excerpts in support of their submissions regarding legislative intent. The Defendants stated in their written submissions that Hansard evidence may be of limited weight, but can assist with determining the purpose of legislation. It can also be helpful in cases of ambiguity. The excerpts, in my view, confirm that the legislature was concerned with ensuring that regulated health professionals remained personally accountable to clients and customers. The record shows that there was also a discussion regarding the fact that regulated health professionals are not able to conduct their practice through limited liability corporations. It was acknowledged in the legislature that the issues concerning the use and availability of certain business structures for regulated professionals was complicated and the legislature was not changing or addressing the *status quo* at the time it introduced the new HPA. There is no indication what the legislators understood about the current state of the law related to the personal liability of regulated professionals for business obligations, such as a commercial lease.

[27] The Plaintiff landlord admitted it did not rely on section 107 of the HPA when it entered the lease. It is clear that Dr. Tran did not sign a personal guarantee or indemnity. Neither party believed the landlord had a claim for rent against Dr. Tran in his personal capacity until this litigation was under way. The landlord was satisfied to have its lease agreement with the dentist's professional corporation. The Plaintiff says that it qualifies as a member of the public that is contemplated in the legislation, the purpose of which is public protection.

[28] The Defendant says the landlord holds the bargaining power and, further, is a sophisticated entity capable of doing its own due diligence. In this context, the statute should be interpreted to preclude personal liability for all activities except for those related to patient care.

[29] The Defendants suggested that holding Dr. Tran personally liable for the professional corporation's obligations under the lease bypasses the stringent requirements of the *Guarantees Acknowledgement Act* (GAA). I do not agree with this assessment. If the professional corporation did not exist, Dr. Tran would have been required to sign the lease in his personal capacity and no guarantee would be contemplated. His personal liability for the business obligations incurred by his professional corporation in conducting his practice is a function of the statute which regulates his profession, and is distinct from the operation of the GAA.

[30] The Plaintiff takes the position that the inclusion of the words "carrying on the business of the corporation" in section 107 broadens the scope of personal liability of the professional corporation's shareholders to include activities that extend and are connected to the "practice" of dentistry. Telsec submits that the plain text of the provision must be read in its entirety, including the reference to "carrying on the business of the corporation". Personal liability exists not only in the context of providing professional services to a patient, but also in the context of commercial contracts that are necessary to support the conduct and operation of the professional's practice. As such, the Plaintiff submits that Dr. Tran is personally liable for the professional corporation's obligations under the lease.

[31] The parties addressed the issue of what other means might be available to shield the shareholders of a professional corporation from personal liability. The Plaintiff brought forward the decision of **852819 Alberta Ltd v ManII Management (Edmonton) Ltd**, 2026 ABKB 11, in which lawyers created a limited liability company to hold the lease for the law practice. This sort of arrangement was proposed to protect the law firm partners from liability. This approach is also

endorsed by the Law Society of Alberta in its practice guidance, found at [New Firm: 4.2 How Alberta Lawyers Organize Their Professional Businesses](#) . In the LSA’s online learning centre, the section on business structures provides the following advice to lawyers:

Some lawyers incorporate a management company that employs the spouses and/or children of the proprietor or the partners. Because of the restrictions in the *Legal Profession Act*, a management company cannot practice law, so its activities must be restricted to providing non-legal services such as secretarial, accounting, administrative, space and other like services to the firm.

[32] In *ManII*, however, the lawyers conducted themselves in a manner consistent with the law firm being the tenant rather than the limited liability management company. The court found an equitable assignment of the lease, such that the lawyers were directly and personally liable for the lease obligations. While the decision is not directly on point, I have included it to demonstrate that the legal profession has identified and addressed the challenges in limiting the personal liability of the regulated professionals who are the shareholders in their professional corporations.

[33] Prior to the implementation of the current HPA, a provision similar to section 107 was considered in *Sandilands v Powell*, 2003 ABCA 162 (“*Sandilands*”). The Court of Appeal overturned a lower court decision that found a dentist personally liable for the obligations of his professional corporation arising from the repudiation of a purchase and sale agreement involving the sale of his clinic. The Court found that the acquisition of the practice was not “practicing dentistry”, but rather a business transaction. The Defendants submitted *Sandilands* should apply in this case, and that the parties’ lease was akin to a commercial acquisition. They emphasize that the leased premises were vacant and the Defendant’s dental practice did not operate from that location for approximately 18 months after the lease commenced, until tenant improvements were completed.

[34] The Court in *Sandilands* considered the purpose of the legislation, which was to protect the public. The context and meaning of “practicing” was considered and the Court found that it meant the ongoing activity of the treatment of patients. The Court accepted a regulated professional has personal liability for obligations arising from carrying on the professional practice. The legislation was not intended to apply to business dealings where dentists chose to contract with one another through their professional corporations. and, in the context of the *Sandilands* decision, the acquisition of a practice was not practicing dentistry. The court accordingly found no personal legal obligation on Dr. Powell arose under the legislation governing dental professionals.

[35] Paragraph 40 of *Sandilands* summarizes the Court’s reasoning, and states:

[40] Liability arising from a breach of contract is usually visited only upon the parties to it. The nature of the liability sought to be recovered from Dr. Powell in this case is not a liability to a member of the public incurred by Dr. Powell as an individual practising dentistry. Most significantly, no concept of the protection of the public is engaged when, in pith and substance, one dentist acquires the dental practice of another. It is a business transaction. The acquisition of the practice is not “practising dentistry”.

[36] I also referred to a recent decision by Justice Marion in *BridgePoint Financial Services Inc. v William S. Klym Professional Corporation*, 2026 ABKB 236, in which he considered the purpose of the legislation that governs regulated professionals. The context of his remarks are with regard to section 133 of the *Legal Profession Act* (LPA), which contains similar wording to the HPA. For ease of reference I have set it out below:

Liability of shareholders and employees

133(1) Notwithstanding anything to the contrary in the *Business Corporations Act*, every person who is a voting shareholder of a corporation during the time that it is the holder of a permit or of a corporation during the time that it acts in contravention of section 106(1) is liable to the same extent and in the same manner as if the voting shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, if there is only one voting shareholder, as an individual practising as a barrister and solicitor.

(2) The liability of any person in carrying on the practice of a barrister and solicitor is not affected by the fact that the practice of a barrister and solicitor is carried on by that person as an employee and on behalf of a professional corporation.

[37] In *BridgePoint*, the lawyer's professional corporation had guaranteed a loan agreement in the course of representing a client. It was related to an action over which he had carriage as counsel. Justice Marion found at paragraph 129 that BridgePoint had established that the loan agreement was directly related to the business context in which Klym's professional legal services were provided. Pursuant to section 133 of the LPA, Klym was personally liable on the loans to the same extent as his professional corporation and there was no genuine issue requiring a trial.

[38] At para 128, Justice Marion cites and relies on the Court of Appeal decision in *Horst Tyson Dahlem Professional Corporation v John F. Schneider Professional Corporation (Canmore Legal Services)*, 2017 ABCA 97 (*Dahlem*). The parties in the matter before me also referred to this decision. In paras 23-24 of *Dahlem*, the Court stated as follows:

[23] Professional corporations were originally created to allow professionals to access tax advantages available to other small businesses. At the same time, **the traditional rule that professionals are personally liable for the obligations of their practices was maintained**, "notwithstanding anything to the contrary in the Business Corporations Act". While personal liability to the professionals' clients and the protection of the public are central issues addressed in the legislation, the general rule set out in s 133 is that **the shareholder would remain personally liable for all the debts of the professional practice**. *Bourbonnais* and *Sandilands* delineate the outer boundary of that personal liability. *Bourbonnais* confirms that tax liability of the corporation remains that of the corporation, if only because access to the separate taxation regime was the primary point of professional corporations. *Sandilands* holds, in essence, that capital transactions relating to the purchase of the professional practice are not included.

[24] *Bourbonnais* and *Sandilands* are factually distinguishable because, unlike this case, neither decision involved an ongoing professional practice. As stated in *Corkery*, “practising as a barrister or solicitor” is not confined to professional services provided to clients but **includes the business context in which those professional services are provided.**

[emphasis added]

[39] In *Dahlem*, the Court of Appeal agreed that the wages of an associate lawyer were a debt that arose in respect of the practice of law. Further, the debt was found to be one that was intended to benefit the practice (para 25). As such, Mr. Schneider was found personally liable for the wages owed by his professional corporation to Mr. Dahlem.

[40] *Beaver v Alberta (Director of Employment Standards)*, 2019 ABQB 784, is another similar case, though not cited in the briefs. In that case, the court was considering an umpire’s decision under the *Employment Standards Code*. It stated at para 50 that it was reasonable for the umpire to apply section 133(1) of the LPA and to find Mr. Beaver personally liable, as the sole shareholder of the corporation, for the unpaid wages of the affected employees of Beaver’s professional corporation. The result is consistent with the Court of Appeal decision in *Dahlem*, cited above.

[41] There are additional examples in the decisions set forth in *Sandilands* which were used to inform the Court’s ruling. I will start with *Corkery v. Foster Wedekind*, 1987 CanLII 3215 (ABQB). In that case the indebtedness was for wage benefits incurred by the professional corporation and directly connected with carrying on the practice of law. The relevant section at the time was section 116(1) of the *Legal Profession Act*. The court there found that costs associated with maintaining the operation of an office for the practice of law, including the wages and benefits of employees who are lawyers, are costs directly related to carrying on the business of the practice of law and are matters for which the sole shareholder of a professional corporation remains personally liable.

[42] *Edmonton Telephones Corp. v Monette*, 1994 CanLII 9215 (AB QB), was a case in which the court found the regulated professional (an accountant) personally liable for the cost of leased equipment used directly in the accounting practice. Master Funduk rejected outright the argument that the shareholder of the professional corporation was only liable to clients for negligence, and not for debts incurred in the course of operating the practice. He found the professional personally liable for the unpaid amounts under the lease as it was undisputed that the leased equipment was directly connected to the provision of the accountant’s professional services, which she offered through the “façade” of the professional corporation.

[43] The court in *Corkery* also referred to *Bancorp Fin. Ltd. v. Thomas N. Mather Pro. Corp.*, 1985 CanLII 3678 (AB KB), 36 Alta. L.R. (2d) 92, [1985] 3 W.W.R. 190, 61 A.R. 208 (Q.B.). In that case Mather, a dentist, was the sole shareholder of a professional corporation. The corporation purchased and mortgaged certain land. The purchase was not related to Mather’s practice of dentistry. Stratton J. interpreted s. 77(1) of the *Dental Association Act*, which was virtually identical to section 116(1) of the *Legal Profession Act* at the time, and held that the corporation alone was liable for the mortgage. He stated that the language of the legislation made the dentist

liable only for those matters related to practising dentistry or dental surgery and not for all activity of the professional corporation. It is to be noted, however, that the property in question was not purchased for purposes related to or connected with the practice of dentistry and was simply an investment of income from the practice. The *Bancorp* decision did not consider property that was leased for the purpose of conducting a practice, but it is helpful in establishing where to draw the line.

[44] The Defendant here seeks to equate the lease of empty premises to the situation in *Sandilands*, where the transaction did not relate to engaging in practice but was in relation to the sale of a practice. The Defendant says the leased property was not related to his practice in the sense that it was not an operating clinic at the commencement of the lease term. Dr. Tran's professional corporation had to invest over \$900,000 in leasehold improvements and obtain a permit before he could conduct his dental practice there. I note, however, that the lease always contemplated the operation of a dental clinic in the leased premises and Dr. Tran's practice did, in fact, operate at that location until the time of default. The fact that the premises did not contain an operating clinic at the outset is not relevant, as that was the stated purpose for which the lease was created. The lease also contained an exclusive use clause, whereby the landlord was prevented from leasing space in the building to another competing dentist. I find that the leased premises were, in fact, always intended to form part of Dr. Tran's dentistry practice and the lease was directly connected to the provision of his professional services.

[45] The Plaintiff seeks to engage in a broader interpretive exercise which recognizes the importance and meaning of the reference in the statute to "carrying on the business of the professional corporation". This goes beyond the definition of what it means to be engaged in "practice" and the provision of professional services within the doctor-patient relationship. The Plaintiff submits that, if the legislature meant to confine personal liability to liability arising in the provision of professional services to patients, the legislation would have different wording. Telsec argues the reference to "carrying on the business" of the professional corporation broadens the scope of personal liability of shareholders in a professional corporation to include business activities that extend to and are connected to the "practice" of dentistry.

[46] The further context in which the legislation must be viewed relates to the purpose of the provisions. The Plaintiff submits the language in section 107 is situated in the rules which dictate how professional corporations are governed and how they may engage in their practices through partnerships or corporations. The professional corporation provides commercial freedom to operate a business, together with economic and tax advantages. In turn, the Plaintiff says that section 107 maintains protection of the public. The legislation effectively pierces or eliminates the corporate veil in favour of public protection, which is the overall purpose of the HPA. Patients are certainly protected, but also other members of the public with whom the regulated professionals conduct business in the normal course of operating their practices. Landlords are such protected members of the public.

[47] The Plaintiff sees two distinct purposes for the legislation. There are provisions describing what it means to be a dentist, defining practice and professional services, but those are distinct from the provisions which regulate the business practices and corporate structures. Section 107 focuses on the intersection between the professional's practice and the personal liability of

professional corporation's shareholders when engaged in business activities related to that practice.

[48] The Plaintiff has submitted that an analysis of the context of the legislation may also take into account the requirement for professional liability insurance. Regulated professionals are required to obtain professional liability insurance for the purpose of public protection, when a regulated professional is subject to a claim for negligence. The Plaintiff submits it is illogical to argue that the legislature intended section 107 to cover only circumstances involving direct patient care and liability to patients when mandatory liability insurance is in place to protect the patients. Section 107 would be superfluous for the purpose of protecting the public if the only personal liability a regulated professional would face arose from the provision of insured professional services.

[49] I agree that regulated professionals are not permitted to hide behind a limited liability company to avoid liability for malpractice or professional negligence and that the legislation ensures they are accountable to members of the public. The requirement for professional liability insurance is part of that accountability and ensures that the regulated professional has resources to respond to a potential claim. The accountability of regulated professionals to their clients and patients has certainly been a concern of the legislature, on reading the excerpts from Hansards put forward in the briefs.

[50] The Plaintiff submits that the provisions in both the former and current versions of the legislation governing dentists have the effect of making the professional corporation's shareholders personally liable for the business activities of their professional corporation if the business activities in question are related and connected to the practice of their profession. They submit there is a public policy consideration underlying the legislation. It would be concerning if professionals entered commercial contracts related to their practices with the intent that they would not be required to fulfill their obligations, and knowing there would be no repercussions if they engaged in business activities through their professional corporations. The Plaintiff also submits that the public expects to be able to contract with professionals who will be reliable and uphold their contractual obligations.

[51] The parties agreed that, at the time the contract was entered, neither the landlord nor Dr. Tran was aware of the potential application of section 107 of the HPA and neither believed that Dr. Tran had personal liability under the lease. In fact, the issue had been raised and Dr. Tran had explicitly refused to sign an indemnity or guarantee. Notwithstanding that history and background, I agree with the Plaintiff's submissions that the parties' subjective understanding of the liability issues when they entered the lease is not relevant, nor is their knowledge or understanding of the applicability of section 107 at the relevant times, prior to the commencement of litigation. I also understood the parties agreed that a regulated professional cannot contract out of the provisions of the HPA in this regard, and I agree as well.

[52] In the decision giving rise to this appeal, Applications Judge Farrington considered relevant case law which applied the legislation governing dentists and other regulated professionals. In this matter, there is some judicial precedent to guide the exercise of statutory interpretation. In reliance on cases such as *Dahlem*, the courts have considered the connection between the expense or liability incurred and the professional's practice. A regulated professional will be personally

responsible for commercial contracts, including for expenses related to equipment and employees' wages, where the professional corporation has entered a contract that is connected to carrying on the business of the professional corporation.

[53] The Defendants referred to and relied on the wording of Schedule 7 of the HPA to define and limit what constitutes the practice activities of a dentist. They say a regulated professional under the HPA can only be personally liable in respect of the professional services defined in Schedule 7. They distinguish the legislation applicable to the health professions from that applicable to lawyers or accountants, as there is no similar approach to defining legal or accounting services in the respective statutes that govern those professions. The Defendants take this approach in an apparent effort to distinguish this situation from the case law that has been applied to lawyers and other professionals, including dentists, prior to the implementation of the HPA. I do not agree, however, that there is a distinction. The language of the relevant legislation applicable to health professionals and lawyers is virtually the same, as is the purpose of the legislation, which is to protect the public.

[54] It is essential to define the practice activities of a health professional, as it is in the public interest to ensure that unauthorized services are not offered by unqualified individuals. Definition of a professional service is essential to regulation, in ensuring that regulated professionals are accredited and qualified in their practice area and that only qualified individuals provide certain defined services to the public, in accordance with their training and expertise. There are also provisions in the HPA that require those in a partnership to be members of the same regulated profession or college – see section 98, for example. The defined scope of practice is relevant to those aspects of the HPA as well.

[55] The College of Dental Surgeons has also passed bylaws, under the authority of section 132 of the HPA. They form part of the regulatory context and must also be considered, although I am not aware if they have been the subject of prior judicial consideration. In section 20.1, the bylaws deal with the scope of business that may be carried out by a professional corporation. Section 20.1 states as follows:

Business and Powers

The business that may be carried on and the powers that may be exercised by a Professional Corporation shall include:

- (a) to engage in every phase and aspect of rendering the same dental services to the public that a dentist, being a member of the College, is authorized to render;
- (b) to purchase or otherwise acquire to own, mortgage, pledge, sell, assign, transfer or otherwise dispose of, and to invest in, deal in and with, real and personal property necessary for the rendering of dental services;
- (c) to contract debts and borrow money, issue and sell or pledge bonds, debentures, notes and other evidences of indebtedness and execute

mortgages, transfers of corporate property or other instruments to secure the payment or corporate indebtedness as required; and

- (d) to enter into partnership, consolidate or merge with or purchase the assets of another corporation or individual rendering the same professional services.

[56] The foregoing bylaw spells out what the regulator, under the authority of the legislation, considers as the scope of business of the regulated professional's professional corporation. This will also be the subject of scrutiny when a regulated professional applies to create and register a professional corporation under section 108 of the HPA. From a practical standpoint, it recognizes that ownership of real or personal property may be necessary in the course of the professional's practice. Most, if not all, professional health services practitioners need a location from which to offer their regulated services. The lease in this case was directly connected to Dr. Tran's dentistry practice, and to the provision of his professional services, as it provided the physical location from which the dental services were delivered. The Defendants sought to maintain the distinction between professional services in Schedule 7 and the business functions of the professional corporation in the bylaws, but in my view both provide context to a consideration of the statutory interpretation of section 107. It is important to note, however, that the description of the permissible business functions of a professional corporation also contemplates activities that are not necessarily related to the provision of professional services, such as borrowing and purchasing another practice.

[57] I return again to the wording of section 107. It speaks of carrying on the business of the professional corporation. The College has defined for itself what that means and, according to the bylaws adopted by the College, the business of a professional corporation includes dealing in, and with, real and personal property necessary for the rendering of dental services. Leasing premises for the conduct of a dental practice is such an activity.

[58] I find that the provisions in Schedule 7 of the HPA, considered in context and when looking at the legislation and related bylaws as a whole, do not limit the scope and application of section 107 of the HPA in the manner submitted by Dr. Tran's counsel. It is not the case that only the provision of defined professional services to patients gives rise to personal liability on the part of the shareholder of the professional corporation.

[59] I find that the leasing of business premises is connected to the practice of dentistry in the broader business sense and is contemplated by section 107 of the HPA, such that Dr. Tran has personal liability for the financial obligations arising from the default under the lease with the Plaintiff. This finding is in accordance with binding authority from our Court of Appeal in *Dahlem*, where the Court stated as follows at para 18:

Personal liability is not limited "to matters arising directly out of the carrying out of professional duties" as a barrister and solicitor, but rather depends on "the directness of the connection to the practice of law in the broader business sense"

[60] The analysis is applicable to health professionals pursuant to section 107 of the HPA. The Defendants fail on this part of their appeal. The appeal regarding the finding that Dr. Tran is

personally liable under the lease is dismissed. I find that Dr. Tran is personally liable for the amount outstanding and owed to Telsec pursuant to the terms of the lease.

V. Quantification of the Loss

[61] The Defendants argue that Applications Judge Farrington erred when he found the Plaintiff had properly mitigated its claim under the lease. The Plaintiff says that there was no error in finding Telsec had properly mitigated its damages. The parties are also at odds regarding whether the Defendants are entitled to a setoff for the tenant improvements.

[62] I will deal first with the issue of mitigation. The parties in this matter do not seem to be in disagreement about whether the landlord had a duty to mitigate. The case of *1218807 Alberta Ltd v Muslim Association of Canada Ltd*, 2023 ABKB 300 at paras 170-171, confirms that, if a landlord decides to terminate a lease after a breach, the landlord has a duty to mitigate. Further, the onus is on the tenant to prove lack of mitigation and whether the landlord has taken reasonable steps to reduce the damages payable, by finding a new tenant to lease the premises.

[63] At paragraph 172, the court in the **Muslim Association** case stated as follows:

[172] The general test for mitigation is whether 1) the plaintiff has acted unreasonably in their mitigation efforts, and 2) had the plaintiff acted reasonably, would the damages claimed have been reduced. The Alberta Court of Appeal provided further guidance on mitigation in a landlord tenant situation [*citation omitted*]:

...[T]he law does not exact perfection or hindsight by the creditor (landlord). His test is relatively lax: whether a reasonable but conservative person in his shoes, knowing only the facts then known, might have made the same choice. ... The creditor need not take risky, expensive or unethical steps to mitigate: [*citation omitted*]

[64] The issue over which the parties differ is whether the efforts to lease the space were reasonable and, more specifically, whether it was reasonable for the landlord to offer a rent holiday to the new tenant.

[65] The Defendants say the new tenant obtained early occupancy on August 31, 2021, and opened their doors October 10, 2021. They were given a rent-free period and began to pay Additional Rent January 1, 2022. Full Basic Rent became due and owing after March 31, 2022.

[66] The Defendants say the damages claim is inflated. Specifically, the claim includes amounts for a rent-free period to allow the new tenant to conduct leasehold improvements but, given the existing state of the leased premises, the improvements were never needed. The Defendants had spent approximately \$900,000 on tenant improvements for the dental practice. The new tenant was another dental practice, and they were able to open their doors in October 2021, very soon after getting possession. This was due not only to the fact that the office improvements had been completed, but also due to the undisputed fact that the new tenant bought the Defendants'

equipment from the lender, RBC. The parties worked well together in dealing with Dr. Tran's departure. The Plaintiff was proactive in putting RBC in touch with its prospective tenant and the new tenant bought the dental equipment. There is no dispute that Dr. Tran was also very cooperative in all matters related to the sale of the equipment.

[67] On the basis of the foregoing, the Defendants state there was no reason to provide an extended rent-free period to the new tenant as the premises were a turn-key operation. The tenant received the benefit of the premises on a rent-free basis for seven months, which the Defendant submits is unreasonable in the circumstances. This is particularly unreasonable given Dr. Tran's cooperation in ensuring the premises and dental equipment were left in excellent condition, for the benefit of the new tenant. Further, the rent-free period was granted to the new tenant for the purported purpose of completing leasehold improvements, though the Defendants submit none were needed and none were done.

[68] The Defendants submit that there was only lost rent for one month, in August 2021. The security deposit was applied to the unpaid rent owing in June and July of 2021.

[69] The Plaintiff agrees that it signed a new lease with a new tenant in August 2021, just over a month after issuing notice of default to the Defendants. Payments for Additional Rent started January 1, 2022, with payment for Basic Rent starting April 1, 2022. March 31, 2022, was the last day of the fixturing period.

[70] After the Defendants' default under the lease in July 2021, the evidence shows that the Plaintiff began to immediately seek a new tenant and secured the new tenant through network or industry contacts. The Plaintiff also directly influenced the new tenant to contact RBC to purchase Dr. Tran's dental equipment, which was still located in the leased premises. The Plaintiff asserts through its corporate officer, Sean Flathers, that market conditions in 2021 made it difficult to obtain a new dental practice as a long-term tenant. During oral submissions, the parties referenced the negative impact that Covid had on the Defendants' dental practice, and the impact of the pandemic was acknowledged in Mr. Flathers' sworn interrogatory responses as well. The lease accordingly contemplated benefits to incentivize the new tenant to sign a long-term lease, and this included offering a rent-free period.

[71] Mr. Flathers provided further information about the leasing process through written interrogatories, just prior to the oral hearing of this matter. Mr. Flathers indicated he has 18 years of commercial leasing experience. He gave his evidence not as an expert but as a party, and shared his extensive personal knowledge of the landlord's efforts to re-let the space as well as the usual practices in which he would engage when negotiating with new tenants. In addition to contacting others in his leasing and business networks, other efforts to re-let the premises included touring multiple prospective tenants through the property. While other efforts were ongoing in the early stages to market the space, the Plaintiff's industry contacts proved to be most effective in securing the new tenant.

[72] During negotiations, it was important to the new tenant to secure early occupancy, among other things. Mr. Flathers says it is standard in almost all retail lease spaces to offer early occupancy, and Telsec understood in this case that the new tenants wished to make some improvements of their own and to have time to set up their business and administration before

operating. He acknowledged that leasehold improvements were already in place, and he did not know what further work the new tenant was contemplating. He stated, however, that it was usual to offer a rent-free period as it would allow the new tenant time to set up and bring clients to the new address. There was a further offer of three rent-free months after October which, again, was normal practice. Some landlords offer more extensive rent-free periods to entice potential tenants to enter long-term leases in what Mr. Flathers described as a competitive commercial environment. He says the Plaintiff followed a standard commercial practice and, in this case, the rent-free period was described by Mr. Flathers as modest, compared to what is often otherwise required. In a more general sense, it was Mr. Flathers' experience that the landlord would routinely offer new tenants an opportunity to complete general business setup and staffing, and to establish business operations before rent obligations commenced.

[73] The written submissions of the Plaintiff also revert to the wording of the lease and the contractual rights that arose according to its terms.

[74] The Defendant relied on *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, to support its position. *Wastech* stands for the proposition that the duty to exercise contractual discretion in good faith requires the parties to exercise their discretion in a manner consistent with the purposes for which it was granted in the contract. In the terminology of the organizing principle in *Bhasin v. Hrynew*, 2014 SCC 71, parties are to exercise their discretion reasonably and not arbitrarily (para 63). In this case, the Defendants submit that the landlord's discretion under the lease was not exercised in good faith when it extended a seven-month rent-free period to the new tenant.

[75] I note, however, that in *Anthem Crestpoint Tillicum Holdings Ltd. v. Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI*, 2022 BCCA 166, the court questioned whether a landlord had been engaging a contractual discretionary power or remedial right conferred by the law of contract to a lease agreement. If exercising a remedial right, there is no exercise of a contractual discretionary power pursuant to *Wastech* and *Bhasin* that requires the landlord to proceed in good faith. The Court in *Anthem Crestpoint* stated as follows at paras 95 and 96:

[95] In my opinion, the principles set out in *Bhasin* and *Wastech* have no application to the election by Anthem to affirm the Lease and the related decision not to take any steps to re-let the Premises. This decision by Anthem did not engage a discretionary power conferred by a clause in the Lease. Anthem was not exercising a contractual discretionary power, but rather a remedial right conferred by the general law of contract as applied to leases.

[96] I conclude that absent a provision in the lease to the contrary, there is no basis in law for the assertion that a failure on the part of a landlord to pursue the possibility of re-letting the Premises is, if proven, a defence to the claim for unpaid rent.

[76] The Plaintiff asserts it was exercising a remedial right following the tenant's default and no duty of good faith applies. These submissions are supported by the Court's decision in *Anthem*

Crestpoint, as noted. The Plaintiff also submitted that the contractual duty of good faith cannot extend to the landlord's negotiation with another tenant who is not a party to the original contract.

[77] I find that in these circumstances, the Plaintiff was not exercising a contractual discretionary power under the lease, but was instead exercising a remedial right following the Defendants' default under the lease. Accordingly, the Plaintiff was not required to proceed in good faith by attempting to minimize the Defendants' obligations under the lease. I was not provided with evidence to suggest that the landlord had conducted itself inappropriately or unfairly in any event.

[78] Applications Judge Farrington dealt with the landlord's mitigation efforts briefly in his reasons, and found the mitigation efforts were reasonable. I agree that the landlord's strategy was reasonable. It facilitated the sale of the dental equipment on site, which made it easier to attract the new tenant it had identified through its own networking. The Defendant had not proposed a better strategy, other than to suggest the rent holiday was too long. The new lease was what the landlord was able to negotiate and it cut a significant number of years off the Defendants' lease obligations.

[79] The onus is on the tenant to establish the mitigation efforts were unreasonable. There does not seem to be a complaint about anything but the number of rent-free months. The Defendants have not, however, brought their own evidence to address market conditions or standard leasing practices. They have elicited no evidence to suggest that the new tenants would have entered the lease if the rent-free months had not been offered. The new tenant appears to have been represented by another leasing agent, who would be familiar with standard negotiation points and strategies and who would no doubt be seeking the best deal possible for his own clients.

[80] Ultimately, it is the Defendants' onus to establish that the mitigation efforts were unreasonable. They have asked many questions of Mr. Flathers on more than one occasion and none of the answers detract from a finding that the landlord did anything but act expeditiously in finding another dental practice to take over the lease. They moved quickly and had a deal done by the end of summer. The Defendants have not brought forward any evidence to suggest it was unreasonable to offer what Flathers described as a standard incentive, in the form of a rent holiday. The Defendants' own lease also deferred the payments of rent during the early occupancy period and they cannot say this was an unusual term. The landlord's early adoption of a new lease with another dental practice was the best possible outcome and significantly shortened the period of time for which rent was owed.

[81] In the circumstances, I find that the Plaintiff was reasonable in its mitigation efforts to find a new tenant and the Defendants have provided no basis on which to challenge the amount of rent claimed by the Plaintiff. The Defendant's appeal on this ground is denied.

[82] I will deal next with the issue of setoff. The leasehold improvements cost over \$900,000 and the Defendants say they were valued at \$585,000 in January 2021. The improvements remained with the premises when the new tenant took over.

[83] The Defendants further submit that the Plaintiff's claim ought to be reduced to zero due to an equitable set-off, to take into account the value and benefit of the leasehold improvements to

the landlord. In addition to their significant value, the leasehold improvements expedited the re-leasing of the Premises.

[84] The lease is attached to Flathers' affidavit of December 15, 2021. The Plaintiff points to clause 5.5, pursuant to which the landlord becomes the owner of all leasehold improvements and fixtures of the tenant. The improvements become the property of the landlord free and clear of liens and encumbrances, and the landlord is not obliged to pay the tenant for them. The same applies to trade fixtures which are not removed from the premises, which are described as movable or free-standing partitions that can be removed without damaging the premises.

[85] The landlord also relies on a waiver of set-off in paragraph 6.6 although the wording refers to the benefits of a provincial enactment in this clause. It is not entirely clear what might be meant by the reference to a provincial enactment. In any event, there is sufficient authority in the lease to establish that the Defendants are not entitled to claim a set off. I find the tenant's leasehold improvements are the landlord's property and there is no right of setoff in favour of the Defendants, in respect of the leasehold improvements.

VI. Summary and Conclusions

[86] The Defendants have been unsuccessful in their appeal. Pursuant to section 107 of the HPA, I have found that Dr. Tran is personally responsible for the lease obligations incurred by his professional corporation in the lease with the Plaintiff, as the lease was entered for the purpose of conducting or carrying on the business of the professional corporation. The Individual Defendant's personal liability is not limited to liability arising out of the provision of defined professional services to patients, as submitted by the Defendants.

[87] I have interpreted the relevant legislation in accordance with multiple judicial precedents in Alberta which have interpreted the statutory wording in issue. Similar wording is found in the legislation governing health professionals, as well as lawyers and accountants. I am bound by decisions issued by this court and the Court of Appeal. Legislative amendments would be necessary to change the extent of the personal liability of regulated professionals for liability they incur while carrying on the business of their professional corporations. Short of legislative amendments, this is not a problem without a solution. Other professionals have established limited liability management companies to attempt to limit their personal financial exposure for business expenses associated with operating their practice, as was seen in *ManII*.

[88] I have also found that the Defendants are not entitled to any credits or adjustments for the value of the leasehold improvements. The lease does not provide for a credit or adjustment back to the tenant for the value of the improvements, and the terms are very clear. There could have been no reasonable expectation on the part of the Defendants that they would receive such a concession, based on the wording of the lease agreement.

[89] The Defendants have also failed to meet the onus upon them to establish that the Plaintiff failed to mitigate. There is no reduction in the amounts owing as a result.

[90] The Applications Judge directed the parties to have the Plaintiff's solicitor-client full indemnity costs assessed, and that was not the subject of appeal. In similar fashion, I am directing

the parties to have the full indemnity costs of this application assessed by the Court of King's Bench review and assessment officers, on notice, if the parties do not otherwise reach an agreement.

Heard at Calgary, Alberta, on the 14th day of May, 2026.

Dated at the City of Calgary, Alberta this 4th day of June 2026.

N.M Carruthers
J.C.K.B.A.

Appearances:

Lukas Frey and Taran Dhanda-Sidhu, Scott Venturo Rudakoff LLP
for the Applicant

Tina Cai, WBA Law LLP
for the Respondents