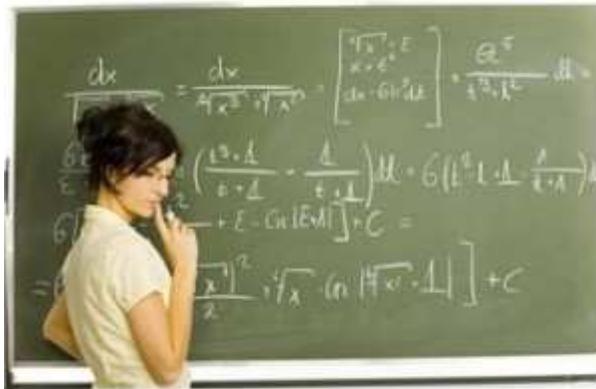


BC Court Of Appeal Clarifies "Causation" In Tort Law

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In order to successfully sue for personal injuries in negligence you must prove that the person you are suing was a cause of your injuries. This sounds simple enough but in fact it is a fairly involved area of personal injury law. Today the BC Court of Appeal released reasons for judgement attempting to clarify the principle of causation.

In today's case ([Clements v. Clements](#)) the Plaintiff, a passenger on a motorcycle, was seriously injured when the driver "pulled out to pass another vehicle, (then) a sharp object, likely a nail, punctured the rear tire of the motorcycle causing it to rapidly deflate". This caused the motorcycle to capsize and flip over resulting in injuries to the Plaintiff.

The Plaintiff sued and succeeded at the trial level with the judge finding that the Defendant was driving too fast and the bike was overloaded and this materially contributed to the loss of control. The insurer for the Defendant appealed arguing that the judge was wrong in using the 'material contribution' test. The BC Court of Appeal agreed and dismissed the Plaintiff's lawsuit.

The Court discussed the law of causation at length at paragraphs 38-62 and the judgement is worth reviewing in full for anyone interested in this issue. The Court concluded with the following short summary of the test Judges are to use in establishing 'causation' in BC negligence lawsuits:

[63] In summary, having regard to the over-arching policy that the material-contribution test is available only when a denial of liability under the but-for test would offend basic notions of fairness and justice, I agree with the following statement made by Professor Knutsen in setting out his conclusions (at 187):

g) The "but for" test rarely fails, and currently only in situations involving circular causation and dependency causation:

1) Circular causation involves factual situations where it is impossible for the plaintiff to prove which one of two or more possible tortious causes are the cause of the plaintiff's harm;

2) Dependency causation involves factual situations where it is impossible for the plaintiff to prove if a third party would have taken some action in the face of a defendant's negligence and such third party's action would have facilitated harm to the plaintiff;

h) If the "but for" test fails, the plaintiff must meet two pre-conditions to utilize the material contribution test for causation:

1) It must be impossible for the plaintiff to prove causation (either due to circular or dependency causation); and,

2) The plaintiff must be able to prove that the defendant breached the standard of care, exposed the plaintiff to an unreasonable risk of injury, and the plaintiff must have suffered that type of injury.

[64] What does this mean for the present case? It means that once the trial judge determined that Mrs. Clements had failed to establish that the motorcycle would not have capsized but for Mr. Clements's negligence, he should have found that causation had not been proven. This is not a case involving either circular or dependency causation. Rather, it is a case like many others in which, given the current state of knowledge, it is not possible to prove whether the negligent actions of a defendant caused harm. I do not consider it either unfair or unjust, or, to use the words of Professor Knutsen (at 172), "just plain wrong" not to fix Mr. Clements with liability when Mrs. Clements has been unable to show factually that his negligence was a cause of her damages.