

More From The BC Court Of Appeal On Causation In Personal Injury Lawsuits

The BC Court of Appeal released reasons for judgment this week providing a short and useful summary of the law of causation in personal injury lawsuits.

In this week's case ([Farrant v. Laktin](#)) the Plaintiff was injured in a 2004 collision. He had pre-existing problems due to spinal degeneration which continued to bother him at the time of the collision. Following the collision the Plaintiff's symptoms worsened. At trial the Court rejected the argument that the Plaintiff's on-going symptoms were related to the crash. The BC Court of Appeal ordered a new trial finding that the Trial Judge did not apply the proper legal test for causation. In doing so the Court provided the following helpful summary of the law:

[8] To justify compensation for his disabling pain, the plaintiff must establish a causal connection between the defendant's negligence and that pain.

[9] The general test for causation, established in [Athey v. Leonati](#), [1996] 3 S.C.R. 458 at paras. 13-17, is the "but for" test: "but for" the accident, would the plaintiff have suffered the disabling pain? In [Athey](#), the Court also stated that a plaintiff need not establish that the defendant's negligence was the sole cause of the injury. If there are other potential non-tortious causes, such as the plaintiff's spinal degeneration in this case, the defendant will still be found liable if the plaintiff can prove the accident caused or materially contributed to the disabling pain, beyond the de minimus range.

[10] In [Resurfice Corp. v. Hanke](#), 2007 SCC 7, 1 S.C.R. 333, the Supreme Court affirmed the "but for" test remains the basic test for determining causation, but developed the concept of "material contribution" in a different manner than that used in [Athey](#), formulating a "material contribution" test as an exception to the "but for" test, a matter that is not relevant to this appeal. The Court replaced the [Athey](#) definition of "material contribution" to the plaintiff's injury with the concept of "a substantial connection" between the injury and the defendant's conduct. These developments were usefully summarized by Mr. Justice Smith, writing for the majority, in [Sam v. Wilson](#), 2007 BCCA 622 at para. 109:

"Material contribution", as that phrase was used in [Athey v. Leonati](#), is synonymous with "substantial connection", as that phrase was used by [McLachlin C.J.C.](#) above in [Resurfice Corp. v. Hanke](#). This causal yardstick should not be confused with the "material contribution test". As [McLachlin C.J.C.](#) explained in [Resurfice Corp. v. Hanke](#), at paras. 24 - 29, the "material contribution test" applies as an exception to the "but for" test of causation when it is impossible for the plaintiff to prove that the defendant's negligent conduct caused the plaintiff's injury using the "but for" test, where it is clear that the defendant breached a duty of care owed the plaintiff thereby exposing the plaintiff to an unreasonable risk of injury, and where the plaintiff's injury falls within the ambit of the risk. ...

[11] Thus, in applying the "but for" test, the trial judge was required to consider not just whether the defendant's conduct was the sole cause of the plaintiff's disabling pain, but also whether the plaintiff had established a substantial connection between the accident and that pain, beyond the de minimus level.