

Supreme Court of Canada clarifies law of causation in long-awaited *Hemmings v. Padmore* decision

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How should litigants and trial judges approach the causation analysis in negligence cases?

In *Hemmings v. Padmore*, 2026 SCC 34, released on October 23, 2026, the Supreme Court of Canada clarifies and restates the law of causation in negligence cases, including complex medical negligence cases. The decision underscores the distinct roles of factual causation and remoteness and the need to address each separately in the causation analysis.

BLG is proud to have represented the respondent hospital in successfully defeating this appeal.

Key takeaways

- Causation entails two distinct inquiries: factual causation and remoteness are separate inquiries.
- The language of “legal causation” (and related terms such as “proximate cause”, “proximity” or “cause-in-law”) is consigned to the “dustbin of history” – the correct term is remoteness.
- Factual causation asks whether the defendant’s breach caused the injury as a matter of fact. Under the usual “but for” test, the plaintiff must establish on a balance of probabilities that the injury would not have occurred had the defendant met the standard of care. This counterfactual analysis asks whether appropriate care would have avoided the injury, not merely changed the sequence of events.
- Remoteness asks whether there is a sufficient connection between the defendant’s wrongful conduct and the plaintiff’s injuries such that the defendant should be liable. This inquiry can limit legal responsibility, even where there is factual causation. This is a context-specific inquiry.

Background

Sophia Hemmings suffered a cardiac arrest following anesthetic complications during an emergency caesarean section and sustained severe, permanent brain damage. She and her family sued the hospital and several healthcare providers involved in her care, including Dr. Padmore, the obstetrician who treated her during much of her pregnancy; Drs. Peng and O'Brien, the obstetricians involved in her care around the delivery; and Dr. Jamensky, the anesthesiologist who administered general anesthesia during the operation. The claim against the hospital included vicarious liability for the alleged negligence of a nurse, who provided telephone advice to Ms. Hemmings 12 days before the cardiac arrest.

The trial judge found the hospital, Dr. Padmore, who provided prenatal care, and Dr. Jamensky, the anesthesiologist, liable. The Court of Appeal set aside the findings of liability against the hospital and Dr. Padmore but upheld the judgment against Dr. Jamensky. The Supreme Court dismissed both the family's appeal and Dr. Jamensky's appeal, confirming that the hospital and Dr. Padmore were not liable, while upholding the finding of liability against the anesthesiologist, Dr. Jamensky.

Clarifying causation

The decision reinforces that a successful plaintiff must prove both that the defendant's breach of the standard of care was the factual cause of the damages, and that the injuries are not too remote from the defendant's conduct to assign liability. Factual causation ordinarily asks whether, on a balance of probabilities, the injury would have occurred but for the defendant's negligent conduct. In complex cases, the court may need to engage in an explicit counterfactual analysis to determine if the injury would have occurred even if the defendant's conduct had not fallen below the standard of care.

Remoteness, previously referred to as legal causation, asks whether the injury suffered was a reasonably foreseeable consequence of the breach. The majority sets out three guiding principles for the remoteness analysis. First, a negligent defendant can only be liable for those consequences that they could have reasonably foreseen at the time of their breach. Second, there must have been a real risk or probability that the type of injury could occur such that a reasonable person would have taken reasonable precautions to prevent it. Third, the defendant need not have foreseen the precise sequence of events leading to injury, but the type of accident or incident must have been foreseeable.

The majority also clarified how the concept of reasonable foreseeability is applied at both the duty of care and remoteness stages. At the duty of care stage, the focus is on the type of harm and class of plaintiff. At the causation stage, the focus is on whether there is a sufficient connection between the defendant's wrongful conduct and the *particular injury* suffered by the plaintiff.

Applying the legal principles, the Court unanimously dismissed the appeal involving the hospital, with all seven judges agreeing that the hospital should not be held liable. The Court was more divided in its assessment of the claims against the physicians. This decision underscores the complexity of conducting a causation analysis, even where the governing legal principles are settled.

Hemmings is a welcome restatement of the law of causation, and will have a far-reaching impact well beyond the medical context.

By

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