

## Determining Liability in Personal Injury Cases

by Joe Antifaev

In Canada, personal injury cases encompass a wide range of incidents, from motor vehicle collisions to slip and falls, animal attacks, sporting accidents, and more. One of the primary challenges in these cases is establishing liability. The determination of liability is essential because it dictates who is legally responsible for the injuries sustained by the plaintiff.

### THE ROLE OF NEGLIGENCE

At the heart of personal injury cases in Canada is the concept of negligence. Negligence occurs when someone suffers injury or loss because of the unreasonable acts or omissions of another. To meet their burden of establishing liability, the plaintiff (injured party) must demonstrate four key elements:

#### DUTY OF CARE

The defendant (person alleged to be at fault) owed the plaintiff a duty of care, or an obligation to do or not do something. Many duties of care are recognized at common law and imposed by statute. New duties of care may be found where the type of injury was reasonably foreseeable and there is a relationship of proximity between the plaintiff and defendant. If a defendant owes a duty or care, then what the defendant is required to do (also called the standard of care) varies depending on the circumstances. However, the standard of care almost always involves a standard of reasonableness. For example, a motorist owes a duty to other users of the road to operate a vehicle reasonably safely.

#### BREACH OF DUTY

The defendant breached their duty of care by acting in a way that a reasonable person would not have under the same circumstances. This breach can include actions or omissions. A breach of duty is

inherently connected with the concepts of fault and wrongdoing.

### DAMAGES

The plaintiff must have suffered actual damages or injuries as a result of the defendant's breach of duty. These losses can be physical, psychiatric, or financial in nature.

### CAUSATION

The defendant's breach of duty was the proximate cause of the plaintiff's injuries. In other words, there must be a direct link between the defendant's actions and the harm suffered by the plaintiff. The most common test is the "but for" test, which asks whether the plaintiff would have suffered the injury but for the negligence of the defendant. In special circumstances, the court may apply a "material contribution" test instead. Causation also engages the question of whether the injury was too remote to be compensable.

### CONTRIBUTORY NEGLIGENCE

It's important to note that determining liability is not always a black-and-white matter. The principle of contributory negligence plays a significant role in many cases. Contributory negligence acknowledges that both the plaintiff and the defendant may share responsibility for an accident or injury. If the injury was contributed to by the plaintiff's failure to take reasonable care for themselves, their compensation may be reduced to reflect their level of fault.

### STATUTORY LIABILITY

In some cases, liability may be governed by legislation. For instance, occupiers' liability legislation imposes

a statutory duty of care on property owners to take reasonable steps to see that users of their premises will be reasonably safe. Similarly, if a dog owner breaches a bylaw requiring their dog to be leashed, that breach can be evidence of negligence.

## PRODUCT LIABILITY

Plaintiffs may have claims against the manufacturers or distributors of defective or dangerous products. In Canada, a plaintiff must show that there was some fault in the design, testing, manufacturing or distribution of the product, causing injury. Courts may consider industry standards in determining whether the defendant acted reasonably. Manufacturers may also have a duty to warn customers of dangers involved in the use of products.

## DEFENCES

Defendants often argue that the plaintiff has not met their burden in proving each element of negligence. A defendant may have additional defences, depending on the circumstances of the case. For example, if the plaintiff brings the lawsuit too late, their claim may be precluded by a limitation period defence. Similarly, if the plaintiff engaged in risky behavior resulting in their injury, the plaintiff could be found to have voluntarily assumed the risk of injury. Specific defendants may enjoy special statutory defences, such as municipalities and police officers.

## EVIDENCE & THE ROLE OF EXPERTS

Plaintiffs are required to prove their claims at trial with evidence, most commonly with witness testimony (oral evidence) and documents. Defendants tender evidence intended to minimize or defeat the plaintiff's claims.

A party may require an expert witness in order to prove something that is outside of the court's experience. In personal injury claims, medical experts may be needed to prove diagnosis, causation of injuries, prognosis, functional impairment, and what future treatment would be beneficial. Liability experts may also be required. For instance, in a product liability claim, experts may be needed

to provide opinions on the origin of a product defect, or industry standards in manufacturing similar products.

## TYPICAL LITIGATION PROCESS

When a lawsuit is filed, the plaintiff serves any defendants and each defendant then files their response to the lawsuit. The plaintiff and defendants are required to exchange their relevant documents. The relevance of any document depends, in part, on the allegations set out in the lawsuit and the defendant's response. The parties usually conduct examinations for discovery (depositions) of each other. Often, plaintiffs need to attend independent medical examinations so that each party can obtain expert medical opinions. The ultimate end date of a personal injury claim is the trial, where a judge or jury decides the issues of liability and how much the claim is worth. The trial decision is made after each party tenders evidence in support of their case, and the opposing parties challenge the evidence through cross-examination. However, most personal injury claims settle before trial, with many settling before a lawsuit is even filed.

## CONCLUSION

Determining liability in personal injury cases is a complex and often contentious process. Whether through the lens of negligence, contributory negligence, statutory liability, or product liability, the goal is to establish who is legally responsible for the plaintiff's injuries, and the value of the plaintiff's losses. Legal principles and precedents, as well as expert testimony and evidence, play a significant role in this determination. Personal injury cases require a thorough understanding of Canadian tort law and, often, the expertise of legal professionals to navigate the complexities of liability and seek fair compensation for the injured party.

If you have any questions please get in touch with [Joe Antifaeu](#) or any other member of our Personal Injury Group. Read more about our expertise in this area [here](#).



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