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Birth Injury Claims

Birth injury litigation arises when negligence by medical professionals or institutions during childbirth causes harm to the mother, newborn, or both. These cases are complex, emotionally charged, and often involve severe, lifelong consequences. Due to their intricacy, they rank among the most costly and protracted medical negligence cases, heavily reliant on expert testimony.

Unique Challenges in Obstetrics

As outlined in Robertson & Picard, Legal Liability of Doctors and Hospitals in Canada (5th ed.), obstetrics stands out due to three key factors, justifying the highest malpractice insurance premiums from the Canadian Medical Protection Agency.

Urgency: Newborn fragility demands rapid action in emergencies, as delays can lead to tragic outcomes (Dudas v Munro, 1997 BCJ).

Anticipation: Providers must foresee and prepare for complications, such as shoulder dystocia, where failure to anticipate has led to numerous cases.

Communication: Effective communication within multidisciplinary teams and with patients is critical yet challenging in high-stakes obstetric emergencies.

Types of Harms and Damages

Birth injuries vary in severity, may not be immediately apparent, and can result in lifelong impacts.

Common injuries include:

- Cerebral palsy
- Brachial plexus injuries
- Brain damage (e.g., learning disabilities)
- Bone fractures
- Seizure Disorders

Errors can occur during prenatal care, labor (early labor, delivery, or placental delivery), or up to six weeks postpartum.

Examples include:

- Medication errors
- Inadequate monitoring
- Improper device use
- Untimely responses to fetal distress (as seen in Bailey v Young (2022, Supreme Court of Nova Scotia).

These injuries impose significant emotional, physical, and financial burdens, including costs for treatment, therapy, assistive devices, and ongoing care. Families may also endure emotional distress and reduced quality of life. Litigation seeks compensation to alleviate these burdens and support the affected child's lifelong needs.

Standard of Care and Causation: Role of Experts

To succeed, plaintiffs must prove a breach of the standard of care and a causal link between the negligence and harm, both requiring expert testimony. Specialists like obstetricians and neonatologists review records, assess standards, and testify on whether the defendant's actions fell short and caused the injury.

Expert testimony must meet admissibility criteria, as established in Suwary v Librach (2015 ONSC):

- Relevance
- Necessity in assisting the court
- Absence of exclusionary rules
- Properly qualified expert

Experts **must align with the defendant's clinical context**. For instance, in Miller et al v Dow et al (2017 NBQB), issues arose over the use and interpretation of a tocometer, highlighting the need for experts to address specific practice circumstances.

Additionally, delayed manifestation of injuries complicates causation, as seen in KS v Willox (2018 ABCA), where experts evaluated standards from nearly two decades prior.

Legal Complexities

Birth injury cases are legally challenging due to the need for robust evidence. Attorneys must master medical standards, terminology, and procedures while securing and analyzing records, conducting investigations, and engaging experts—tasks that are resource-intensive.

Case law underscores these challenges. In *Khan v Lee* (2014 ONSC), a case was dismissed for inadequate pre-filing preparation, emphasizing the need for thorough groundwork.

Causation disputes also complicate trials, as seen in *Uribe v Tsandelis* (2019 ONSC), where proper jury instructions on causation were debated, and *Cheung v Samra* (2018 ONSC), where a retrial was ordered due to flawed jury guidance.

Birth injury litigation demands meticulous medical and legal expertise to address the profound impacts on affected families. From proving negligence to navigating complex evidence, these cases require skilled representation to secure fair compensation for lifelong consequences.