



Aoife Quinn
416-865-9907
aquinn@litigate.com



Jennah Khaled
416-798-5951
jkhald@litigate.com

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Key Development in Tort Law: Supreme Court of Canada Establishes New Framework for Novel Torts

On May 15, 2026, the Supreme Court of Canada rendered its decision in *Ahluwalia v Ahluwalia*, a highly anticipated decision in tort law. The majority of the Court allowed the appeal of the decision of the Court of Appeal for Ontario and outlined a consolidated framework for recognizing new torts. Though the decision deals specifically with the recognition of a tort of intimate partner violence, the framework applies to all courts seeking whether to recognize a new tort in any context. Any party litigating a tort claim in Canada should understand its implications.

Background & Judicial History

This case originated from a family law dispute between former spouses. At the Superior Court of Justice, the trial judge rejected the argument that the claim was statute-barred and then held it was appropriate to recognize a new common law tort of family violence, citing the method outlined in *Jones v Tsige*. In that case, the Ontario Court of Appeal recognized the novel tort of “intrusion upon seclusion.”

On appeal, a unanimous panel of the Court of Appeal reversed the trial judge and declined to recognize the new tort. The Court of Appeal held that the analysis for recognition of a new tort should consider whether:

- there are “adequate alternative remedies available”
- the change to the legal system wrought by the advent of a new tort would be “indeterminate or substantial”

The Court of Appeal cautioned that changes to the common law are slow and “evolutionary” and that significant change is best left to the legislature. Leave to appeal was granted to the Supreme Court on the question of whether the trial judge was correct to recognize a new tort as the basis for the father’s liability.

The Framework: Three Requirements for a Novel Tort

The Supreme Court established three requirements courts

must satisfy before recognizing a novel tort.

1. The facts must disclose a wrongful act that offends a recognized legal interest in private law.

The plaintiff's allegations must disclose wrongful conduct that offends a recognized legal interest in private law, or an interest around which there is an "emerging acceptance." The courts will constrain their inquiry to the facts and the impugned conduct before them.

Recognized legal interests in private law are those deemed worthy of legal protection in keeping with the "evolution of society." A new tort grounded in the distinct wrong and distinct harm arising from particular conduct can simplify how litigants may advance these claims and equips judges with a tool to grant redress for the full scope of harm suffered.

2. The existing remedies must be inadequate.

Existing torts and their associated remedies must be inadequate. If such torts and remedies are capable of addressing the alleged interference, judicial recognition of a new nominate tort will be unnecessary and unwarranted.

To be adequate, the existing tort or remedy must be capable of capturing the nature and scope of the wrong. While a difference of extent of harm resulting from the wrongful act will generally not justify a finding of inadequacy of an existing tort, the severity of the conduct may reach such an extreme as to alter its nature. Courts may look to academic literature for consensus on the nature of the legal interest protected by tort law and the adequacy of existing torts and remedies.

3. The novel tort must offer a proper response.

If the facts disclose a wrongful act that offends a recognized legal interest and existing remedies are not capable of remedying that interference, courts must formulate a proper remedy in tort. Though there is no unique and exhaustive checklist, courts must ensure that any tort they recognize is precisely tailored to:

- the wrongful conduct
- the legal interest at stake
- the gap it seeks to fill

The Court described recognition of a novel tort as a "judicial acknowledgement of a new cause of action grounded in the material facts before the court that were not previously considered redressable."

Key Takeaways

We can expect that parties will seek to apply this framework and ask the courts to recognize novel torts in cases going forward. It will take some time for this case to be applied by the courts before we are able to determine how the principles outlined by the Supreme Court will be applied in practice.