

This approach may be perceived as unsatisfactory to some. However, as Lord Hoffman recognized in the aftermath of *Fairchild*,⁷⁷ the most satisfactory outcome may feel unfair in isolation, but can be remedied through other avenues.⁷⁸ Parties should be encouraged to put the very best admissible evidence before courts to assess causation. If all parties take this approach, then we should hope to minimize the number of incidents that create the challenges and confusion discussed in this paper.

V. Conclusion

It is time to take the leap and definitively put material contribution to rest. The question should no longer be whether ambit of risk is the alternative to the “but for” test or if loss of chance should be the new material contribution test. There ought to be one definitive test for causation: “but for”.

Settling material contribution may be somewhat akin to New Year’s Eve. While the evening is filled with grandeur and ripe with new promises, the world looks much the same at 12:01 a.m. as it did at 11:59 p.m. This is not intended to undermine the significance of a changing time and renewed clarity, but speaks to the limited substantive change with closing the door – whether to a year gone by or to material contribution. With the existing door to accessing material contribution narrowed to a crack, perhaps it can finally latch without fireworks.

⁷⁷ *Fairchild*, *supra* note 14.

⁷⁸ Lord Hoffman writing extra-judicially, *supra* note 29.