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## \$1.1M award upheld in birth 'catastrophe'

Women, now 20, can't walk, talk or eat  
Doctors found negligent in '83 delivery

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A lengthy and complex legal battle to hold two doctors accountable for an "obstetrical catastrophe" that took place in a small town hospital delivery room has ended with Ontario's highest court upholding a \$10 million medical malpractice award — one of the largest in Canadian history.

The money will help pay for the future care of Melissa Crawford, who was born severely brain damaged nearly 21 years ago as a result of negligence by two physicians.

"I know people think she's going to be rich, but she's not going to be rich. It will meet her needs," Melissa's mother, Jeanette Crawford, 60, said in an interview yesterday from her home in Smiths Falls, near Ottawa, where she and her husband, Barry, alternate shifts caring for their daughter, who is unable to speak, walk or eat solid foods.

Melissa, who has cerebral palsy, weighed nearly 11 pounds at birth. Although her head delivered normally, her shoulders became stuck in the birth canal. Her brain was starved of oxygen for 15 minutes and she was effectively born dead, but later resuscitated.

A trial judge ruled last year that Dr. Brian Penney had an unrealistic view of his ability to manage Crawford's high risk pregnancy, failed to properly diagnose and treat her gestational diabetes and manage the delivery.

Justice Denis Power also made "devastating" credibility findings against Penney and his colleague, Dr. Greg Healey, a three-judge panel of the Ontario Court of Appeal noted yesterday. Although Penney testified that he consulted with an Ottawa obstetrician about Crawford's condition, Power concluded the conversation never took place.

On appeal, Penney and co-defendant Healey, who maintained Melissa's injuries were the result of an unforeseen emergency, argued that Power failed to adequately explain why the doctors were liable and that he ignored key evidence from expert witnesses, who said the doctors acted reasonably. The experts also testified that Crawford's was not a high-risk pregnancy and could have been handled by a midwife.

But the appeal court was not persuaded. While Power's reasons for judgment were "less than perfect," few of his findings turned on the testimony of experts. In fact, the doctors' expert witnesses — along with Penney's own medical charts — support Crawford's claim that Melissa's condition resulted from negligence and was entirely preventable, said Justices Jean-Marc Labrosse, Robert Sharpe and Eleanor Cronk.

"This case was a very important one for the obstetrical community," Domenic Crolla, the Ottawa lawyer who represented Penney and Healey on appeal, said yesterday, "and I think they're going to be looking at it very carefully."

Toronto lawyer Richard Somers, who, along with Robert Roth, represented the Crawfords through the trial and appeal, said he hopes the case will teach physicians to be more "forthcoming." The trial judge



Jeanette Crawford of Smiths Falls, with son Ken Hamilton, testified she sought, but never received, special care when she learned she was pregnant with Melissa, right, now 20. During delivery, Melissa's collarbone was broken and a drug increased when it should have been stopped.



also found that Penney's testimony was contradicted by what he wrote in his charts.

After learning she was pregnant in May, 1983, Crawford walked into Penney's office and asked if she should see a special-

ist. She'd had a recent miscarriage, was overweight, had a family history of diabetes and had delivered a large baby in the past. Penney assured her it was unnecessary and if any concerns developed, he would refer her to

an obstetrician.

In the ensuing months, however, Crawford rapidly gained weight, developed high blood pressure and, ultimately, gestational diabetes. But Penney, after consulting with colleague

Healey, decided to induce labour and deliver the baby himself at the Smiths Falls Hospital on Dec. 27, 1983.

After Melissa's shoulders became stuck, Penney, while waiting for Healey to arrive from his cottage, resorted to a series of desperate manoeuvres to get her out, including at one point breaking her collarbone.

Power found that Healey was negligent in agreeing, without first examining Crawford, that labour should be induced. Two medical experts who testified on behalf of the Crawfords said that once she started having normal contractions and difficulties developed in getting Melissa's shoulders through the birth canal, the drug used to induce labour — oxytocin — should have been stopped.

Instead, Penney ordered the dosage increased. Both physicians are still practising — Healey in the United States and Penney still in eastern Ontario, although not at the Smiths Falls Hospital, said Daniel Boivin, a lawyer who also represented the doctors.