

## Legal update

### Supreme Court of Canada confirms psychiatric diagnosis not required for recovery of mental injuries

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**July 2017**  
**Insurance**

The Supreme Court of Canada, in *Saadati v. Moorhead*,<sup>1</sup> unanimously held that a court can award damages for mental injuries in the absence of any psychiatric diagnosis or expert medical evidence.

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#### Background

The plaintiff was involved in a car accident and brought an action in the Supreme Court of British Columbia against the driver of the car that hit him. The defendant did not contest liability.

The plaintiff alleged he had suffered psychiatric injuries, including personality change and cognitive difficulties. However, the plaintiff did not provide the court with any evidence of a medical cause or with proof that those psychiatric injuries met the threshold of a recognizable psychiatric illness. Instead, the plaintiff relied on testimony from his family and friends that his personality had changed for the worse after the accident: he had become sullen and prone to mood swings. He had also suffered cognitive difficulties. The trial judge accepted this testimony as sufficient proof of mental injury and awarded the plaintiff \$100,000 in non-pecuniary damages. The plaintiff failed to establish any physical injury resulting from the accident.

The British Columbia Court of Appeal overturned the trial judge's decision and found that this type of psychological or emotional harm must be substantiated by expert medical opinion evidence of a "recognizable psychiatric illness."

#### Supreme Court of Canada

The Supreme Court of Canada restored the trial judge's decision, holding that the judge's findings supported a finding of mental injury. In reaching its decision, the Court provided important guidance on liability for mental injuries:

- The standard test for liability in negligence that applies to physical injury claims applies equally to claims for mental injury.
- A court adjudicating an allegation of mental injury is not concerned with a specific diagnostic label, but with the symptoms and their effects on the plaintiff.
- To establish mental injury, a plaintiff must demonstrate that he or she has suffered a serious and prolonged disturbance, rising above ordinary annoyances, anxieties and fears of living in civil society. This means that the injury must pass some threshold before being compensable.

- To establish legal causation, a plaintiff must show that the negligent defendant could have foreseen that his or her conduct could cause mental harm in a person of ordinary fortitude.
- Expert evidence, though not required, remains helpful to the courts in determining whether or not a mental injury has been established. Although the lack of a diagnosis cannot on its own be dispositive, the court may weigh this against the other evidence.
- It remains open to a defendant to call expert evidence to rebut a claim, for example, if expert evidence establishes that the accident could not have caused any mental injury.

## Conclusion

In finding that a plaintiff does not necessarily have to lead expert evidence, the Supreme Court of Canada has seemingly lowered the evidentiary burden for proving damages for mental injuries. Defendants should be prepared to respond to any claims for damages for mental injuries even in the absence of expert evidence or diagnosis supporting such a claim. Nonetheless, *Saadati* does not stand for the proposition that damages for mental injuries should be awarded as a matter of course. The Supreme Court of Canada was clear that plaintiffs must still show that they suffer from a serious and prolonged disturbance, and the required analysis should provide protections for defendants against unmeritorious or trivial claims.

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## Footnote

<sup>1</sup> 2017 SCC 28.

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