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Trumped Up Diagnosis Not a Precondition for Recovery of Damages for Mental Injury

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In an explicit repudiation of the widespread societal suspicion of psychiatry and mental illness, in *Saadati v. Moorhead,* 2017 SCC 28, the Supreme Court of Canada has refused to impose a requirement for a claimant to prove that he or she has a recognizable psychiatric illness in order to recover damages for mental injury.

Whereas *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, spoke to the issue of causation in claims for mental injury, the Court's recent decision *Saadati* speaks to the issue of proof of damage in such claims. Specifically, the Court clarified whether it is necessary for a claimant to call expert evidence or other proof of a recognized psychiatric illness, in order to support a finding of legally compensable mental injury.

At trial, the plaintiff successfully established that his personality had changed after an accident, based solely on the testimony of lay witnesses. The court did not rely upon a psychiatric expert to find that the plaintiff had proven his claim. The British Columbia Court of Appeal reversed the trial judge's decision, finding that the plaintiff was required to prove a recognizable psychiatric illness, and that expert medical opinion evidence was required. That decision has been overturned.

Brown J., writing for the Court, stated that there was no requirement for a claimant to demonstrate a recognizable psychiatric illness as a precondition to recovering damages for mental injury. The requirements for proving liability in negligence, namely proximity leading to a duty of care; breach of the standard of care; existence of "damage" which qualifies as mental injury; and causation (in fact and law), combined with the "serious and prolonged" threshold outlined in *Mustapha*, provide sufficient protection against unworthy claims. Where a trier of fact is genuinely uncertain about the worthiness of a claim for mental injury, those concerns should be addressed via a "robust application" of these elements.

His Honour stated that imposing a requirement on a claimant to demonstrate that a mental injury has been recognized and diagnosed by a psychiatric expert places the decision on recovery of damages into the hands of psychiatry, and its established classification system. This was felt not to be a sound means of establishing a fact in law.

The trier of fact is supposed to be concerned with the harm that a claimant has sustained, with symptoms and their effects, not with the ability of an expert to affix a label to those symptoms

and those effects. Moreover, imposing such a requirement would result in less protection to victims of mental injury than to victims of physical injury.

Experts are not entirely out of the picture, however. While rejecting an explicit requirement for expert evidence, the Court acknowledged that expert evidence would often be helpful in determining whether or not a mental injury has been shown. The seriousness and duration of the claimant's impairment, and the effect of treatment (if any), must be considered. The trier of fact may be best informed about these issues by an expert. Furthermore, a defendant may rebut an allegation of mental injury by calling evidence from an expert who can establish that the accident could not have caused any mental injury. Any lack of diagnosis may then be weighed by the trier of fact in determining whether or not mental injury has been established.