

Each year at OJEN's Toronto Summer Law Institute, former Ontario Court of Appeal judge Stephen Goudge presents his selection of the top five cases from the previous year that are of significance in an educational setting. This case summary and related questions, based on his comments and observations, is appropriate for discussion and debate in the classroom.

## **SAADATI v MOORHEAD 2017 SCC 28**

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<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do>

### **Facts**

Mr. Saadati's truck was hit by a vehicle driven by Mr. Moorhead. This was the second of five accidents that Mr. Saadati was in before the case came to court, and he had been experiencing chronic pain since the first one. Mr. Saadati sued Mr. Moorhead for non-pecuniary loss (losses such as pain and suffering that are difficult to quantify in dollar amounts) and income lost. Due to the subsequent accidents, Mr. Saadati had been declared mentally incompetent in the interim, and was not available to testify at trial. The trial judge found (based on the testimony of Mr. Saadati's friends and family, and not based on the expert evidence that was also presented) that Mr. Saadati had psychological injuries, such as personality changes and cognitive difficulties, caused by the second accident specifically. Mr. Moorhead admitted liability for the accident, but opposed Mr. Saadati's claim for damages.

### **Procedural History**

The trial judge awarded Mr. Saadati \$100,000 in damages. The Court of Appeal for British Columbia overturned the trial judge's decision on the ground that Mr. Saadati had not

demonstrated any psychological injury through expert medical advice. Prior to this case, it was not unusual for courts to require this with respect to claims of mental injury.

### **Issues**

1. How should a claim of mental injury be decided?
2. Does a claim of mental injury need to be proven by expert medical evidence?
3. Should a claim of mental injury be treated differently from a claim of physical injury?

### **Decision**

The Supreme Court of Canada (SCC) allowed the appeal and restored the trial judge's award. Mr. Saadati had established that the accident with Mr. Moorhead had caused psychological injury for which he should be compensated.

## Ratio

The law of negligence causing mental or physical injury requires claimants to meet the same criteria. A finding of legally compensable mental injury does not require a diagnosis of a recognized psychiatric illness. Rather, the person claiming mental injury caused by negligence must establish:

1. That the defendant owed him or her a duty of care;
2. a breach of that duty;
3. damage; and
4. a legal and causal relationship between the breach and the damage.

## Reasons

The SCC unanimously held that the trial judge's finding of negligence causing mental injury and the \$100,000 damage award were correct and that Mr. Saadati was entitled to be compensated accordingly (without referring the matter back to the Court of Appeal). In coming to this decision, the court confirmed the law of negligence and described how courts should apply it to cases of mental injury rather than physical injury.

The SCC stated that like a claim of physical injury for compensation, the person claiming mental injury needs to show that there was a duty of care owed to the claimant, a breach of that duty, damage, and a relationship between the breach and damage.

The Court then found that the ordinary duty of care analysis – used for physical injury and damages – should be applied to mental injury. Expert evidence is not required by law to establish

a physical injury so it should not be required to prove a mental injury. The claimant needs to meet criteria that show the mental injury is **serious, prolonged, and rises above ordinary annoyances**. The SCC did not bar expert evidence, saying that it could be used to show mental injury. However, where a psychiatric diagnosis is unavailable, the judge can still find the occurrence of a mental injury on a balance of probabilities through other evidence.

The Court then applied this reasoning to Mr. Saadati's case. They found that there had been a duty of to take reasonable care to avoid causing foreseeable mental injury which Mr. Moorhead had breached. The Court then concluded that Mr. Saadati had suffered a mental injury based on the evidence of friends and family at trial, even though no expert evidence of a recognized psychiatric diagnosis was provided. Lastly, the SCC confirmed the trial judge's finding that this injury was caused by Mr. Moorhead's breach of the duty of care.

## DISCUSSION

1. Which are more difficult to prove: claims of mental injury or physical injury? Why?
2. Which do you think receive more stigma and more sympathy from society?
3. Should they be treated differently under the law? Consider the perspectives of claimants, defendants and insurers as you think about your answer.

4. Why do you think the law requires claimants of mental injury to show the injury is “serious, prolonged and rises above ordinary annoyances”?
5. How is this ruling from the SCC helpful for other courts in Canada?



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