

SAADATI V MOORHEAD: EXPERT MEDICAL EVIDENCE IS NOT REQUIRED TO SUCCESSFULLY CLAIM DAMAGES FOR MENTAL INJURY

Posted on September 11, 2017

Categories: [Insights](#), [Publications](#)

The recent Supreme Court of Canada decision in *Saadati v Moorhead*, 2017 SCC 28 will have important implications for employees looking to claim damages for mental injury against their employers. In *Saadati*, the Supreme Court ruled that a finding of legally compensable mental injury need not be supported by expert evidence demonstrating a medically recognized psychiatric injury.

Background

This case arose from a claim in negligence as a result of a motor vehicle accident. The defendant struck a vehicle driven by the plaintiff. At the scene of the accident, the plaintiff did not suffer any physical injury and apart from being emotionally shaken, did not show signs of any mental injury. However, shortly after the accident, the plaintiff's behaviour began to change. He suffered from headaches, violent mood swings, and friends and family testified that he was a completely different person.

At trial, the defendant admitted liability but argued that the plaintiff suffered no compensable injury. The trial judge found that the plaintiff suffered no physical injury. In determining whether the plaintiff had suffered mental injury, the trial judge relied solely on the testimony of the plaintiff's friends and family. On this basis, the trial judge found that the plaintiff had suffered psychological injury and awarded damages for mental injury.

The defendant appealed, arguing that the plaintiff had to prove that he or she suffered from a "medically recognized psychiatric or psychological illness or condition".^[1] The Court of Appeal overturned the trial judge's decision and held that, to successfully claim damages, a plaintiff must adduce expert evidence and prove that he or she is suffering from a medically recognized psychiatric or psychological condition.

SCC Decision

In a unanimous decision, the Supreme Court of Canada held that there is no requirement for a plaintiff to adduce expert evidence and no requirement to prove the existence of a recognizable or recognized psychiatric illness in order to claim damages for mental injury.

The Supreme Court of Canada provided a useful summary of the law surrounding the evidentiary threshold for showing mental injury.^[2]

- The law should not seek to perpetuate misguided prejudice surrounding mental health. Questions about exaggerated claims of mental injury are questions of fact and are best entrusted to the “triers of fact, upon whose credibility determinations of liability often rest”.
- There is no distinction between physical and mental injury. The legal test for determining physical and mental injury are the same and nothing will be gained by treating them as different kinds of personal injury.
- Requiring claimants who allege “mental injury to prove that their condition meets the threshold of recognizable psychiatric illness, while not imposing a corresponding requirement upon claimants alleging physical injury to show that their condition carries a certain classificatory label, is inconsistent with prior statements of the Court. It accords unequal protection to victims of mental injury and it does so for no principled reason”.
- Expert evidence can still be useful in determining whether or not a mental injury has been shown and will often be important to consider. It is a relevant factor that will be taken into account by the trier of fact.
- It remains open to the defendant, “in rebutting a claim, to call expert evidence establishing that the accident cannot have caused any mental injury or at least any mental injury known to psychiatry”.

Application to the Employment Context

Employees can claim damages for mental injury against employers in both contract and tort.

In contract, employees can claim damages for mental distress if the damage arises from the employer’s breach of contract.^[3] Generally speaking, mental distress arising from wrongful dismissal is not compensable. Damages for mental distress can only be claimed from the manner of the dismissal if they result from employer conduct, during the course of the dismissal, that is unfair, in bad faith, untruthful, misleading, or unduly insensitive.^[4]

In tort, an employee can claim damages for intentional infliction of mental distress^[5] and in negligence for negligent infliction of mental suffering.^[6]

The jurisprudence on employee claims for mental distress illustrates that there is uncertainty with regards to whether or not expert medical evidence is required for a successful claim for mental injury. In some cases, damages were awarded without expert medical testimony and in others, the lack of expert medical evidence precluded the employee from claiming damages. The Supreme Court of Canada’s ruling in *Saadati v Moorhead*

will certainly clarify any ambiguity surrounding the need for expert medical testimony.

The abrogation of any distinction between mental and physical injury will assist employees looking to claim damages for mental distress. Employees no longer need a professional psychiatric diagnosis to prove that they have suffered mental injury. Additionally, employees will no longer need to show that they suffer from a medically recognized psychiatric injury. An employee only needs to show that their disturbance is “serious and prolonged and rises above the ordinary annoyances, anxieties and fears that come with living in a civil society”. The clear rejection of a requirement of expert evidence of a “recognized” mental injury will surely make it easier for employees to satisfy the threshold for showing that they have suffered compensable mental injury.

by Melanie Harmer, Natalie Cuthill and Colin Cheng, Temporary Articled Student

[1] Saadati v Moorhead, 2015 BCCA 393 at para 22.

[2] Saadati v Moorhead, 2015 BCCA 393 at paras 21-22, 35-36, 38.

[3] Rahemtulla v. Vanfred Credit Union, 3 WWR 296 at para 34, [1984] BCJ No. 2790 (SC).

[4] Keays v. Honda Canada Inc. 2008 SCC 39, [2008] SCR 362 at para 57.

[5] Rahemtulla v. Vanfred Credit Union, 3 WWR 296 at para 47, [1984] BCJ No. 2790 (SC).

[6] Sulz v Canada (Attorney General), 2006 BCSC 99, [2006] BCWLD 1794.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2017