

ANDREA DONALDSON

Mental Injuries

The Mustapha Framework

Mustapha v. Culligan, 2008 SCC 27 involved a claim for mental injury after the plaintiff found a dead fly in a bottle of water supplied by the defendant, leading to depression, phobia and anxiety. In this case, the Supreme Court of Canada set out the framework for establishing a claim for mental injury:

1. DID THE DEFENDANT OWE THE PLAINTIFF A DUTY OF CARE?

This first question focuses on the relationship between the parties. The defendant only owes a duty of care to those whom the defendant may reasonably foresee as being adversely affected by his/her failure to take care. Often, the relationship between the plaintiff and defendant is of a type which has already been recognized as giving rise to a duty of care, such as in the case of a doctor and patient, or a manufacturer and consumer. In these cases, it is unnecessary to undertake a full-fledged duty of care analysis.

2. DID THE DEFENDANT'S BEHAVIOUR BREACH THE STANDARD OF CARE?

A defendant breaches the standard of care if his or her conduct creates an unreasonable risk of harm.

3. DID THE PLAINTIFF SUSTAIN DAMAGE?

A plaintiff who has sustained injury – including psychological injury – will be found to have suffered damage.

In *Mustapha*, the court noted that the distinction between mental and physical injury is arguably artificial in the context of tort. The court did not purport to define compensable injury exhaustively, but said that it must be serious and prolonged, and rise above ordinary annoyances, anxieties, and fears. Minor and transient upsets do not amount to damage.

4. WAS THE PLAINTIFF'S DAMAGE CAUSED BY THE DEFENDANT'S BREACH?

The final question is whether the defendant's breach caused the plaintiff's harm in fact and in law. In *Mustapha*, it was not in issue that the defendant's breach of the duty of care caused the plaintiff's psychiatric injury in

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fact. However, the plaintiff ultimately failed to prove causation in law, with the court determining that the plaintiff's damage was too remote to warrant recovery. Unusual or extreme reactions to events caused by negligence may be imaginable,

but are not reasonably foreseeable. Once a plaintiff establishes that mental injury would foreseeably occur in a person of ordinary fortitude, the defendant must take the plaintiff as he finds him for the purposes of damages.

IS A MEDICALLY RECOGNIZED PSYCHIATRIC INJURY NECESSARY TO ESTABLISH A CLAIM FOR MENTAL INJURY?

The existence of a recognizable psychiatric injury was not in issue in *Mustapha*, as it was clear that the plaintiff had suffered a major de-



pressive disorder with associated debilitating phobias and anxiety. Recently, in *Saadati v. Moorhead*, 2017 SCC 28, the Supreme Court of Canada overturned the BC Court of Appeal's decision which stated that a recognized psychiatric injury was a necessary

precondition to a mental injury claim, ruling that plaintiffs must only show evidence of a serious and prolonged disturbance, as set out in *Mustapha*. As expert diagnostic evidence is not necessary for recovery for physical injury, the court in *Saadati* sought to put mental and physical injuries on equal footing, so not to perpetuate a view of mental illness as unworthy of equal protection under the law. The court concluded that the elements of the cause of action for negligence together with the threshold for mental injury as stated in *Mustapha*, furnish sufficiently robust protections against unworthy claims.

Andrea practises in the area of medical malpractice at Pacific Medical Law in Vancouver.