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Whatever Happened To . . . Mustapha v. Culligan Water

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Whatever Happened to ... Mustapha v. Culligan: "Judge, There was a Fly in my Water!"

Posted By [Peter Bowal](#) On May 9, 2014 @ 8:02 am In [Famous Cases](#) | [No Comments](#)



[¹]On November 21, 2001, while Waddah Mustapha and his wife were replacing the water dispenser at home, they spotted a dead fly and part of another inside the new, sealed Culligan water bottle. At the sight of the fly, Mrs. Mustapha vomited immediately. Mr. Mustapha became nauseous and suffered of abdominal pains. From seeing the fly in the water, he said he developed major depressive disorder, phobia, and anxiety. He said the fly in the water ruined his life, even wrecking his sex life. He said for months he could not drink coffee made with water, and feared letting the shower water hit his face directly. His regular nightmares involved flies flying on top of feces.

Mr. Mustapha demanded financial compensation for his psychiatric injury caused by Culligan's negligence in allowing the fly into the water bottle. (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 SCR 114 [²])

Background

Mr. Mustapha emigrated from Lebanon to Canada in 1976 at the age of 16. He was trained as a hair stylist and opened Martin's Coiffure & Spa in Windsor, Ontario in 1986. The business was successful enough to expand to two more Windsor outlets. His hair salons and spa attracted celebrities. Some 30 years later, he was about to become a sort of legal celebrity himself.

The Mustaphas were always both concerned about their hygiene and health, keeping their house clean at all times. They heard that Culligan water provided health benefits over city water. They installed Culligan water dispensers in both the salons and their home. For 15 years they were loyal customers of the brand.

Legal Outcomes

Justice Brockenshire, the trial judge in Ontario Divisional Court found Culligan liable in negligence, and awarded Mr. Mustapha with \$80,000 in general damages, \$24,174.58 in special damages, and \$237,600 for loss of business.

Culligan was concerned about the precedent of having to pay major financial compensation for relatively minor lapses such as this. Other customers might make similar claims for extraordinary compensation on the basis of a fly in the water, or even less. It appealed successfully to the Ontario Court of Appeal, which overturned the trial decision on the basis that Mr. Mustapha's reaction to the dead fly was not reasonably foreseeable, and hence did not give him a right to compensation. (*Mustapha v. Culligan of Canada Ltd.*, 2006 CanLII 41807 (ON CA) [³])

Mr. Mustapha appealed to the Supreme Court of Canada, which agreed there should be no compensation paid by Culligan to Mr. Mustapha.

Culligan, as a producer of drinking water, owed Mustapha a duty of care to ensure he was not injured by its negligence. It must take reasonable care that the water is not contaminated by foreign elements. Culligan breached its duty of care by allowing a fly into the bottle during the

sealing process.

Was Mr. Mustapha's injury caused by the Culligan's negligence? Medical evidence supported that Mr. Mustapha had developed a major depression disorder with associated phobia and anxiety from the fly in the water. The dead fly trapped inside the water bottle triggered Mr. Mustapha's psychiatric injury. Was Culligan's negligence, which caused his damage, too remote to warrant compensation? In other words, was the injury reasonably foreseeable by Culligan?

The famous *Wagon Mound* case set the reasonable foreseeability requirement as "*the foresight of a reasonable man*". (*Overseas Tankship (UK) Ltd. v The Miller Steamship Co. (The Wagon Mound, No. 2)*, [1967] 1 AC 617 [4]) While some people are more susceptible than others to serious psychiatric injuries, it would not be reasonable to require third parties to be aware of such possibilities. Unusual or extreme events caused by negligence are imaginable but not reasonably foreseeable. The law of negligence draws the line for compensability of damage. One cannot use unique frailties as a form of insurance.

On the other hand, if the defendant knows of the plaintiff's greater sensitivity, then the plaintiff's injury might be considered reasonably foreseeable. In order for a damage to be considered a legitimate psychiatric injury, the plaintiff must have suffered a recognizable psychiatric injury and this must have been reasonably foreseeable by the defendant. Culligan did *not* know about Mustapha's personal psychiatric vulnerabilities. The Supreme Court of Canada did not find objective reasonable foreseeability of this extremely unusual injury in this case.

Unusual or extreme events caused by negligence are imaginable but not reasonably foreseeable. The law of negligence draws the line for compensability of damage.

In a more recent Canadian case, *Devji v. District of Burnaby et al* 1999 BCCA 599 (CanLII) [5], Yasmin Devji lost her life after losing control of her vehicle while driving and colliding with another. Following the incident, Yasmin's family went to the hospital to identify the body. The Devji family sued the Municipality of Burnaby, alleging that it failed to maintain safe road conditions and claiming to have suffered a nervous shock injury after seeing Yasmin's body. The trial judge decided this was an indirect consequence of the incident, and not because of the direct impact of the negligent conduct of the defendant. No compensation was awarded. The law cannot impose liability for the unique fragility of certain individuals. We can expect people to be reasonably robust and resilient.

Other Case Examples

In *Chinsang v. Bridson*, 2008 CanLII 67408 (ON SC) [6], Michael Chinsang suffered of memory loss, elevated anxiety, and increased depression after a vehicle collision with Mr. Bridson. He sued for psychiatric damages. Mr. Bridson successfully defended with *Mustapha v. Culligan*, arguing that the damages suffered by Mr. Chinsang were too remote for compensation.

In *Healey v. Lakeridge Health Corporation*, 2010 ONSC 725 (CanLII) [7] two patients located in the Lakeridge Health Corporation, a public hospital, were infected with tuberculosis. As soon as the hospital found out, they informed Durham Public Health which, in turn, notified 4,402 other persons who had been in contact with those two patients. Only two of them tested positive for tuberculosis. However, 3500 of the other 4400 people claimed damages for psychological injury, even though they were uninfected. Lakeridge invoked *Mustapha v. Culligan*, arguing those claims were too remote in law. The jury agreed with Lakeridge and did not award any damages.

These, and many more judicial decisions, demonstrate the impact *Mustapha v. Culligan* continues to have on Canadian law.

Where are these Parties Today?

Waddah Mustapha continues to operate his salons in Windsor, Ontario. Even though his case attracted much national media attention and cost him a lot of money, his businesses seem unaffected because of it. After the incident, some people made fun of Mr. Mustapha's reaction to the fly in the bottle. Mr. Mustapha carries on and continues his hygiene practices.

Culligan of Canada Ltd. continues to operate. The company, headquartered in Rosemont, Illinois, is still in the water treatment industry and no other similar cases of water contamination have arisen since *Mustapha*.

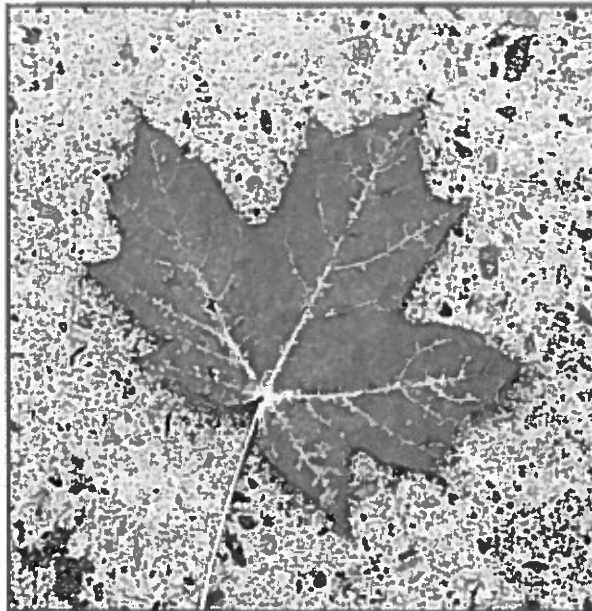
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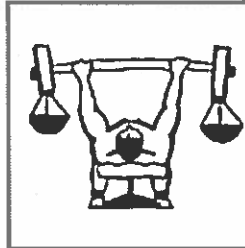


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[1] Image: <http://www.lawnow.org/wp-content/uploads/2012/08/FamousCase.jpg>

[2] *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 SCR 114: <http://canlii.ca/t/1wz6f>

[3] *Mustapha v. Culligan of Canada Ltd.*, 2006 CanLII 41807 (ON CA): <http://canlii.ca/t/1q5hp>

[4] *Overseas Tankship (UK) Ltd. v The Miller Steamship Co. (The Wagon Mound, No. 2)*, [1967] 1 AC 617: <http://www.bailii.org/uk/cases/UKPC/1966/1.html>

[5] *Devji v. District of Burnaby et al* 1999 BCCA 599 (CanLII): <http://canlii.ca/t/545j>

[6] *Chinsang v. Bridson*, 2008 CanLII 67408 (ON SC): <http://canlii.ca/t/21zcj>

[7] *Healey v. Lakeridge Health Corporation*, 2010 ONSC 725 (CanLII): <http://canlii.ca/t/27sxm>

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