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Case provides little clarity on protection of legal advice



PERSONAL INJURY

While accident victims are required to disclose all of their medical, employment, and tax information as a prerequisite to their pursuit of justice, what happens when a client discusses confidential legal advice with a treatment provider such as a psychologist?

“In the case of *Dupont v. Bailey*, Master Pierre Roger of the Ontario Superior Court of Justice had to grapple with exactly that issue in relation to a motion by defence counsel to access redacted portions of a psychologist’s clinical notes and records,” writes Toronto plaintiff’s personal injury lawyer **Darcy Merkur** in a *Law Times* article. [Read Law Times](#)

“In the case of *Dupont v. Bailey*, Master Pierre Roger of the Ontario Superior Court of Justice had to grapple with exactly that issue in relation to a motion by defence counsel to access redacted portions of a psychologist’s clinical notes and records,” writes Merkur, partner with **Thomson Rogers**.

In the case, he says, the plaintiff claimed injuries arising from a motor vehicle accident that included depression and trauma. Defence counsel requested the clinical notes and records of the psychologist treating the plaintiff. Within those notes were a number of pages that were partially redacted on the basis that the information was either not relevant or subject to privilege.

Ultimately, he says, the court reviewed the redacted portions and concluded “that the redacted portions are irrelevant and if produced would only embarrass and potentially prejudice the plaintiff

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while serving no purpose in resolving the issues in this action," and therefore declined to address whether or not the redacted portions would have been subject to privilege.

"In cases where a client shares privileged information with a treatment provider in the course of therapy, it would make good sense to allow the details to remain protected in order to facilitate productive and effective treatment, writes Merkur.

"However, without a decision about whether the legal advice, once shared with a psychologist in the course of treatment, remains privileged, Dupont provides little comfort to personal injury lawyers worried that their legal advice will end up being disclosed via treatment providers to defence counsel."



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