



pursuant to the *Family Law Act*, R.S.O. 1990, c.F.3 ("*FLA*"), as amended, for loss of companionship normally provided by Micaela. There is no claim for special damages.

[3] As noted, the defendants, Charlene and Walter Brown, failed to deliver a Statement of Defence and were noted in default. Accordingly, they are deemed, pursuant to the *Rules of Civil Procedure* ("*the Rules*"), to have admitted the truth of the allegations of fact contained in the Statement of Claim, including the allegation that they are jointly and severally liable for the damages resulting from the attack of the dog.

### **Background Facts**

[4] The plaintiff, Micaela Lambert, was born on February 28, 2003. On July 5, 2005, Micaela, along with her older sister Jacelyn and her mother, the plaintiff, Alison Lambert, visited Alison's mother, Charlene Brown, and her stepfather, Walter Brown, at their newly rented home located at 205 Huntington Crescent, Courtice, Ontario.

[5] While there to view the new home, the two dogs owned by the Browns, including Dante, a mixed Labrador and Kuvasz, who had been kept in the laundry room, were released into the kitchen area where the Browns, along with Alison and the two girls were standing.

[6] Dante pounced on Micaela, who was then 28 months old, knocked her to the floor and began to bite and maul her. Alison quickly intervened, but not before Dante had caused significant injuries to Micaela's face, scalp, ear and chin.

[7] As a result of the injuries, Micaela was taken to hospital where she remained for 24 hours. She underwent plastic surgery to repair the injuries to her face and scalp. She underwent a second operative procedure on July 16, 2005 to remove the sutures.

[8] This action was commenced on June 11, 2007.

### **The Evidence**

#### *Alison Chisholm*

[9] Alison Chisholm gave evidence at the trial. She was born November 3, 1975 and is the mother of Micaela. At the time of the injury, she lived at 106 Durham Street, Apartment 2, Oshawa with her common-law husband, Aaron Lambert and her daughter, Jacelyn, born May 3, 1997, and Micaela. She and Aaron separated in February of 2013.

[10] She testified that at the time of the injury, Micaela was a happy, energetic and lively child, like any two-year-old. Micaela had experienced no previous injuries. At the time of the incident, Micaela weighed approximately thirty pounds.

[11] She testified that at the time of the dog bite, her mother and stepfather were the owners of Dante, the dog that bit Micaela. They still own the dog. Micaela was familiar with the dog, Dante, who at that time weighed approximately 150 pounds and was approximately 2 to 2 1/2 feet high, and therefore was larger than Micaela. She testified that Dante was a pretty good dog, who never exhibited aggression.

[12] On July 5, 2005, she and the girls went to visit her mother's new home. She stated that the dogs were more excited than normal and her mother had put them in the laundry room. They took a tour of the house. A friend of Alison's who lived down the street from her mother's new house dropped by and they also gave her a tour of the house. Alison opened the laundry room door and the dogs bounded out. She stated that she was standing by the front door, near the laundry room, Micaela was in the kitchen and the dogs were in between. She testified that Dante began to growl and then jumped on Micaela and started biting her. She stated that the attack lasted a very short period of time, about 30 seconds she thought, although it seemed like very much longer. She approached Dante and he got up and walked away. When he did so, she saw that Micaela was injured. Micaela had sustained multiple lacerations to her face and scalp. Between her eyes, there was a flap of skin that was ripped wide open. She could see the tissue below. Micaela had also sustained a laceration from the nose to the lip, through which the gums and teeth were exposed. There were also large lacerations on the head, including a C-shaped laceration from front to back, where the skin was flapped open and she could see the skull. There was also a second laceration which went from right to left at the back of the top of the head and intersected with this C-shaped laceration. She also sustained lacerations to her ear and chin.

[13] Alison applied pressure to Micaela's wounds using towels. She requested that her mother call 911. Micaela was taken to Lakeridge Hospital in Oshawa where she was admitted to the emergency department, prepped for surgery, given morphine and hooked up to IVs. Aaron was at work at the time and joined her later at the hospital.

[14] Dr. Hutchinson performed plastic surgery on Micaela, which took approximately 2 hours. Dr. Hutchinson spoke with Alison and Aaron after the surgery was completed, and advised them that Micaela had approximately 300 stitches applied to her scalp, forehead, lip, ear and chin.

[15] Alison testified that after the surgery, and Micaela's discharge from hospital, she and Aaron had to ensure that the stitches were cleaned and that polysporin was applied. Micaela was also in pain and took Tylenol for a couple of weeks.

[16] She testified that Micaela now has visible scarring from the nose to lip, between the eyes and in the scalp. Micaela still gets headaches when she wears her hair in a ponytail for too long a period of time, due to the scarring.

[17] Following the attack and the surgery, Micaela did not like looking at herself in the mirror, and when she did, would comment on the scars on her face. She would comment that she did not look right. She was upset when she looked in the mirror; made comments about her appearance and about how she looked different and how she felt ugly. She did this for a couple of years but does not do so now.

[18] Alison is fearful that when Micaela grows older, she will be teased by others and that, when she becomes a teenager, others will make fun of her and comment on her scars. She testified that teenage girls are conscious of and concerned about their looks. She is fearful that Micaela will become self-conscious.

[19] Alison further testified that after the accident, Micaela would awaken every night screaming from nightmares, was "on edge", and was afraid of dogs.

[20] Micaela still jumps when she hears a dog bark. She is still concerned when she sees a large dog. While she does not remember the incident, Micaela does know that she was attacked and bitten by a dog.

[21] She testified that Micaela is generally a happy, energetic child who is now in grade 4 and doing well.

*Aaron Lambert*

[22] Aaron Lambert also testified. He was born March 15, 1974. He is the father of Micaela.

[23] He is a paramedic employed by the City of Toronto, and has been so employed for 11 years. Prior to that time, he was employed with Emergency Medical Services at the City.

[24] He testified that Dante's head height was almost 3 feet and it weighed approximately 150 pounds at the time of the incident. He testified that Dante was fairly well-behaved, but was aggressive, especially when tussling with Walter Brown.

[25] He testified that Micaela and Dante were not too "up close and personal" and that he tried to keep Dante at a distance from Micaela. She was, however, familiar with Dante.

[26] On July 5, 2005, he was at work, had just cleared a hospital when he was contacted by the dispatchers and told that Micaela had been bitten by a dog. He had someone drive him to Lakeridge Hospital in Oshawa, which was approximately one hour distance from Toronto.

[27] Aaron testified that he saw Micaela prior to the surgery. Her head was wrapped in gauze and she was sedated. He spoke with the doctor who removed the gauze and he was able to see her injuries. He noted bruising and scratching on her torso. He saw that she had sustained a very deep laceration from her lip to her nose with the tendon and muscle exposed. On her forehead, he could see a large, deep opening to the skull. On the scalp, he noticed two large lacerations, one on the top of her head and a second, which was C-shaped, through which he could see the skull. Micaela required a lot of surgery and stayed at the hospital overnight.

[28] After the surgery, Aaron noted that Micaela was in discomfort. He could tell this from the fact that she grimaced when her lacerations were touched and said "ouch". As the lacerations healed, they were not as painful. She complained of pain and discomfort on her scalp for a longer period of time, particularly when her hair was washed or brushed. It took approximately one year before they began to heal.

[29] He testified that the scars are still raised and obvious. When she is in the sun, and tans or burns, the scars become even more obvious, due to the fact that they remain white and do not tan or burn.

[30] Aaron testified that he is concerned about her as she grows older. Micaela is a little girl and when she becomes a teenager, he is afraid that she will be teased, that people will make comments about her scarring. He has not, to date, seen her teased because of the scarring. He

wants her to have every opportunity in the future, and also wants her to have more plastic surgery if that is what is recommended.

[31] He testified that, from the ages of 4 to 6, Micaela would make comments about her appearance, including that she looked like a "clown". He further stated that she would point to her scars and indicate that that was where the dog had attacked her.

[32] With respect to non-physical effects, he stated that she would have nightmares. Around the ages of 3 to 4, she would wake up and think that wolves were around her. He testified that she had never had nightmares before. She was more withdrawn. She was very afraid around animals. If she saw a large dog, she would become clingy. He testified that this is not currently so frequent, although if she hears barking, she will go to her parents' side very quickly.

[33] He stated that otherwise, Micaela is a very happy and a very strong child.

#### The FLA Claim

[34] With respect to the *FLA* claim, Alison testified that her relationship with Micaela prior to the incident and today has not changed; that she loves Micaela very much.

[35] Alison testified that the family used to go camping, but stopped doing that because they avoided anywhere where they may encounter dogs. Alison testified that she is still fearful of having dogs around Micaela.

[36] She testified that witnessing the incident had an impact on her. It affected her, she still feels guilty and is upset by it. She was upset while giving her testimony at trial. She testified that she suffered from flashbacks until recently when she became preoccupied by the separation from Aaron.

[37] She further testified that, due to the incident, she has not talked to her mother since that time. She testified that her mother made no effort to contact her to find out how Micaela was, had her husband, Walter Brown, call once, but has not attempted to make contact since the incident.

[38] With respect to the marriage, she said that there was considerable impact on the marriage due to the fact that Aaron blamed her because she was the one who opened the laundry room door to let the dogs out. She said that the incident pushed them "farther apart".

[39] Aaron testified that after the incident, the family stopped camping and walking in the forest as they were too afraid of animals near her. Aaron stated that he became afraid to take Micaela out for fear of her being hurt. He loved to photograph his children, but for the first couple of years, stopped photographing Micaela because he did not want her to have memories of that time.

[40] Aaron testified that, for years, he experienced a lot of anger toward the defendants and Dante. He testified that Charlene Brown neglected Alison and Micaela after the incident.

Charlene Brown did not want to put Dante down. He testified that on one occasion after the incident, Charlene took Jacelyn to another relative's home and left her there in the presence of a pit bull.

[41] He stated that he went through depression and began to blame Alison for Micaela's injuries. He subsequently consulted a psychiatrist, who he saw for a period of time. During those sessions, he learned that he had been carrying a lot of baggage from the past, and began to let things go. There were no medical records before me with respect to consultation with a psychiatrist.

[42] With respect to the relationship with Alison, he stated that they started fighting, had arguments, that there was blame and hurt. He stated that the incident did not cause their separation although it may have been one of a number of factors.

#### *Micaela Lambert*

[43] At the end of the testimony given by the witnesses, I invited Micaela to come up to the dais so that I could see her scarring up close. Micaela is, physically, a beautiful child, who is poised and self-assured. The scars on her face and scalp from the dog attack, which occurred eight years ago, are visible, but do not detract from her beautiful smile, nor from her lovely personality. They are, nevertheless, evidence of the significant dog bites which she sustained. Given that the scarring is still apparent after eight years, it is probable that they will remain visible in the future.

#### *Analysis*

[44] As indicated at paragraph 3, above, there is no issue of liability in this case as liability is deemed admitted given that the defendants were noted in default and the allegations set forth in the Statement of Claim are deemed to be true. The only issue is the quantum of damages to be awarded. As noted earlier, there is no claim for special damages, but only for general damages and, with respect to the parents, Alison and Aaron, for damages pursuant to the *FLA* for loss of companionship.

[45] Ms. Rai submitted in closing that there was a dearth of precedents regarding damages awarded in dog bite cases. She provided a brief of caselaw with respect to the appropriate range of damages, including *Sgro v Verbeek*, [1980] O. J. No. 3607; *Strom v White*, 1994 CanLII 7342; *Chatterton v Cowan*, 2010 ONSC4314. I find the case of *Strom v White* to be similar with respect to the injuries sustained. I note, however, that the injuries were sustained by a six-year-old boy and that the scars had healed nicely two years later and were almost obscure. The award of damages in 1994 was \$22,000. In this case, the scarring is to the face of a young girl and is more extensive, being on the forehead between the eyes, the scalp, and from lip to nose, with scarring still visible eight years later.

[46] The case of *Chatterton v Cowan*, *supra.*, was referenced by Ms. Rai, given that it provided a survey of cases dealing with dog bites. The cases reviewed in *Chatterton*, *supra.*, provide a summary of cases and include a range of cases regarding (1) the extent of the scarring, ranging from minimal to more major scarring; (2) the location of the scarring, from lesser

visibility, *eg.* scarring on the torso, to greater visibility, *eg.* on the face, and include a range of damages awarded from \$8,000 to \$35,000.

[47] As I observed at paragraph 43, above, Micaela continues to have significant, visible scarring after eight years, which is not likely to change. She has sustained significant emotional distress arising from the incident and the resulting injuries, developed a fear of dogs, experienced nightmares and has expressed comments about her appearance.

[48] In making an award of damages, I have taken into consideration the extent and visibility of the scarring on the face, the significance of the scarring which remains visible after eight years and is likely to be permanent, the concerns of the parents that as Micaela enters her teenage years, she may be the subject of teasing and comment by others which, given the undue emphasis which teenaged girls place on looks, is a likely possibility. If this occurs, I do hope that Micaela retains her poise and self-confidence and allows her inner beauty to shine through. As I indicated to her, beauty is not just skin deep. Rather, it comes from within.

[49] In all of the circumstances of this case, and taking into account the caselaw referred to by Ms. Rai, although the most recent cases were from 2008 and 2010, I find that Micaela has sustained significant visible scarring, which is not likely to change and, as well, has sustained significant emotional distress. I find that, in all of the circumstances, she is entitled to an award of \$45,000, plus pre-judgment interest pursuant to the *Courts of Justice Act*.

[50] Given Micaela's age, I make the usual order for payment of this money into Court.

#### The FLA Claims

[51] The plaintiffs, Alison and Aaron, seek damages for loss of companionship pursuant to the *FLA*. They plead in the Statement of Claim that they have been deprived of the companionship normally provided by Micaela. Again, as the defendants, Charlene and Walter Brown, have been noted in default, they are deemed, pursuant to the *Rules*, to have admitted the truth of the allegations of fact contained in the Statement of Claim.

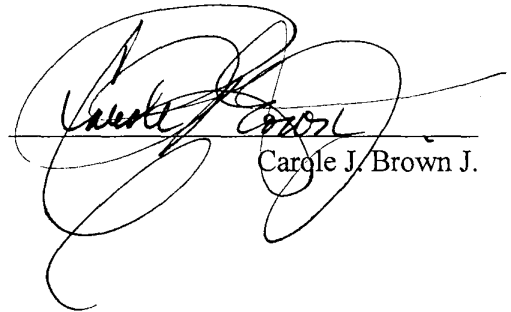
[52] The "companionship" contemplated pursuant to 61 of the *FLA* has been judicially interpreted as "the loss of the rewards of association which flow from the family relationship": *To v Toronto Board of Education*, [2001] O.J. No. 3490, 55 O.R. (3d) 641 (Ont.C.A.). In determining the issue of loss of companionship, the evidence must be reviewed and considered.

[53] Based on the evidence of Alison and Aaron, they were significantly affected by their daughter's injuries, as were their family activities previously enjoyed together. They were deprived of Micaela's companionship for a significant period of time, as a result of the attack and the injuries arising therefrom. They curtailed their outdoor family activities such as camping, walking in the forest, playing in the park with Micaela and enjoying family time together outside, due to concerns about Micaela's fear of dogs and the possibility of encountering dogs on outdoor activities. They both love Micaela very much, had a close family relationship and enjoyed doing outdoor recreational activities together as a family. I find that, due to the dog attack and the resulting injuries, there was a loss of the reward of association which flowed from the family relationship. The parents were both deprived of Micaela's companionship with respect

to the family outings and activities that they had enjoyed, when such activities were curtailed after the incident. Based on the pleadings, which are deemed to be true, and on the evidence, I find that Alison and Aaron are entitled to *FLA* damages in the amount of \$5,000 each, plus interest pursuant to the *Courts of Justice Act*.

**Costs**

[54] Ms. Rai seeks costs of this action on a partial indemnity basis. She provided a bill of costs for work done in services rendered from 2005 to the trial. The bill of costs the total fees, inclusive HST in the amount of \$35,550.91 and disbursements, inclusive of HST in the amount of \$2,506.66. I find that the plaintiffs are entitled to their costs on a partial indemnity basis in the total amount of \$38,063.57.



Carole J. Brown J.

**Date:** June 7, 2013