

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Patterson v. Hayden et al*, 2024 NSSC 153

**Date:** 20240919

**Docket:** No. 476785

**Registry:** Halifax

**Between:**

Lynn Patterson

*Plaintiff*

v.

Harvey Hayden and Susan Forrest

*Defendants*

**Decision**

**Assessment of Damages**

**Judge:** The Honourable Justice Christa M. Brothers

**Heard:** May 13, 24, 27, June 14, July 27, and September 11, 2024, in Halifax, Nova Scotia

**Written Decision:** September 19, 2024, in Halifax, Nova Scotia

**Counsel:** Barry Mason, K.C. and Laura H. Neilan, for the Plaintiff  
Harvey Hayden, Defendant, Self-Represented  
Susan Forrest, Defendant, Self-Represented

**By the Court:**

**Overview**

[1] On May 29, 2016, the plaintiff, Lynn Patterson, attended the defendants' premises in the course of her work as a community nurse to provide care to the defendant Susan Forrest. Counsel argues that, in her role as a healthcare provider, she was "an angel of mercy". Unfortunately, the plaintiff left the premises requiring medical care herself. While there, Ms. Patterson was attacked by the defendants' Valley Bulldog. As a result of being bitten twice by the defendants' dog, the plaintiff claims to have suffered personal injuries and seeks general damages, special damages, pre-judgment interest, and costs of the action. She also advances a subrogation claim on behalf of the Workers' Compensation Board.

[2] The defendants acknowledge the plaintiff was bitten and say they are sorry but maintain that it was an accident. While they appreciate the plaintiff may have been injured, they argue the claim is completely inflated and they do not have the resources to pay the award. They acknowledge they "did wrong" but cannot fathom that bites could have caused the physical and psychological damage claimed.

[3] The notice of action and statement of claim (the "Action") was issued on May 28, 2018. The Action was personally served by Renny Neumaier on each of the defendants on June 21, 2018. Mr. Neumaier filed affidavits of service with the court. Despite service, neither defendant filed a notice of defence. On May 25, 2021, the plaintiff obtained default judgment against both defendants, given their failure to file defences within the appropriate time frame as set forth in Civil Procedure Rule ("CPR") 31.12.

[4] On April 21, 2017, prior to the Action being filed, Barry Mason, K.C., as counsel for the plaintiff, wrote to the defendants at their residence. In that letter, Mr. Mason stated:

Please be advised that we have been retained by Lynn Patterson in connection with injuries she sustained while attending your home on May 29, 2016. We understand that Ms. Patterson was attacked by your dog when she was attempting to carry out her work duties.

Ms. Patterson has sustained injuries as a result of this attack. We have been retained to pursue her claim for damages.

We would suggest that you pass our letter along to your home insurer so that this matter can be appropriately handled.

We look forward to hearing from your home insurer.

[5] In the course of the assessment of damages, I asked the defendants if they had home or tenant insurance. They advised that they had neither.

[6] On April 26, 2019, Mr. Mason sent a further letter to the defendants' residence via registered mail which stated:

Further to our letter dated April 21, 2017 (copy attached for your reference) and service on you of the attached Notice of Action and Statement of Claim, we note that the Defence has not been filed.

If the Defence has not file (sic) within fourteen (14) days from the date of this letter, then I will be entering Default Judgment.

I would therefore ask that you please attend to the above as soon as possible so that we can move this matter along.

[7] Despite repeated attempts to have the defendants respond to the Action, there was no communication from either defendant, nor were any defences filed. The defendants have had continuous opportunities to defend this claim. They have ignored all opportunities to defend the claim until this motion for an assessment of damages.

[8] The plaintiff is entitled to damages. What follows is the analysis of that amount.

## **Background**

[9] On May 25, 2021, an order for default judgment was issued by the prothonotary. On December 15, 2023, a notice of motion for an assessment of damages pursuant to CPR 70 was filed and issued on behalf of Ms. Patterson. On March 22, 2024, both Harvey Hayden and Ms. Forrest were served with the notice of motion for the assessment of damages. Both affidavits of service were filed with the court on March 28, 2024. The matter was scheduled for April 16, 2024, before the Honourable Justice James L. Chipman.

[10] On April 16, 2024, the defendant Mr. Hayden attended and requested an adjournment on the basis that Ms. Forrest, his wife, was in hospital recovering from a hip replacement and broken femur. He said they were looking to obtain legal

counsel. Despite being served with a notice of motion and being advised by plaintiff's counsel, Laura Neilan, that she could provide them with all of the motion documents, neither defendant contacted her and she was unaware that they would be attending on April 16, 2024, until the motion began. Chipman, J. explained to Mr. Hayden that the matter dated back to 2018 and reviewed each of the steps taken in the proceeding. The defendants were provided with all the paperwork on April 16, 2024. The plaintiff did not contest the adjournment and it was granted with a return date of May 13, 2024, at 11:00 a.m.

[11] On April 16, 2024, the Honourable Justice Chipman was very clear with Mr. Hayden about the adjournment and the assessment motion. As Chipman J. advised, fault had already been determined as a result of the order for default judgment, and the assessment of damages would determine the amount of the plaintiff's damages. The court advised Mr. Hayden that the defendants could be facing significant exposure in this case.

...

COURT: That you and Ms. Forrest, if the court agreed with Ms. Neilan, I'm not saying they would but quite honestly, quite candidly, so I always try to be as direct as I can be in these things, you know there's what we call exposure here to you and Ms. Forrest, the defendants of, in the order of, up to \$75,000. And, so this hearing would be to decided the exact number. Is it \$68,000? Is it \$73,000? You know, that's the purpose of this hearing and Ms. Neilan has done her homework and filed what the court needs to make a decision and today, quite candidly again, if you had not shown up and if I didn't receive a note or a call from Ms. Forrest, all I would have would be Ms. Neilan here and to be again candid, that's what I expected when I reviewed this file you know earlier in this week and I thought alright, and the reason I thought that, it's nothing against you or Ms. Forrest but you know, you never filed defences and nothing's ever been done by your side in all these years. So, we're kind of on the 11<sup>th</sup> hour and I am not being critical of you, but you've come in through the door of the court to say I need a lawyer, I'm not ready. But, what I'm trying to say to you is that the train has left the station and there's exposure here into the tens of thousands of dollars and if you retain a lawyer, which is within your right, and possibly it's a good idea but I'm not sure I can't give you legal advice but what I can say to you is that most of the work here has been done and I suppose, if you had a lawyer, he or she could go back so far as to try to set aside default judgment. But, it has been years since that happened. Again, May 25 of 2021.

And so, what else could a lawyer for you or Ms. Forrest do? I suppose argue that Ms. Neilan's numbers are on the high side and that the court should be looking at lower numbers. But I venture to say that the numbers, based on what I've reviewed, couldn't be too much lower because we have here what I would call a real deal

injury that caused physical harm to Ms. Patterson and emotional distress to her as well. So, Ms. Neilan herself has said she has a range of general damages, but I can tell you it would be in all likelihood within her range okay. So, with all that said and I am not trying to be hard on you Mr. Hayden, but it's rather late in the day to request an adjournment. But I'm not ruling it out because I never like to go ahead if a person comes in and says look I need a lawyer. But if we do that I can tell you that I'm going to set a date today so that we don't kind of lose the thread here and say oh well that's I don't know it might be six months or a year away, no. I am going to set a date sooner than later to get this matter heard.

So, I am again, I did say in my note through Ms. Lewis barring the unforeseen I would intend to proceed today, but I don't want to do that if it's unfair to you and possibly Ms. Forrest if you really want to give this a look and have a lawyer look at it for you. Then, if you're saying that to me I have to listen to you and I certainly will. Okay? Now with all that said we are gonna take a little break, I am going to leave the courtroom, I'm gonna ask you to do that too, Mr. Hayden because I want to give Ms. Neilan a chance to talk to her client privately while we're not in the room because she wants to get instructions on whether she's going to agree to your request for an adjournment okay? And, so I only expect we'll need about five minutes, give or take and I'll let Ms. Neilan sort out with Ms. Lewis if you know Ms. Lewis can wait outside for a little bit or whatever works but you'll have to...

...

COURT: And that's simply that you know, by all means it would make sense to get some legal help here if you could but, and I can't pre-judge this, it may be me it may be another judge, we'll soon find out when I set it down for next time. But it may be that it's going to be a difficult case for the two of you because again, we do have the default judgment and it's really just a matter of how much money are these injuries worth. That's really what it comes down to. And when you read those papers that Ms. Neilan has prepared and if you, it's up to you what you do but you could show them to a lawyer that's possibly what you'll hear from the lawyer as well. But I leave that to you and I leave that to and I leave that to Ms. Forrest.

[12] The defendants were advised of the issues and the nature of the motion before the court, and the procedural route the matter had taken following their failure to file defences. Mr. Hayden approached Legal Aid and Dalhousie Legal Aid to seek representation, but both denied his request.

## **Evidence**

[13] The documentary evidence before me on the substantive issues on the motion consists of an affidavit of Lynn Patterson sworn April 12, 2024. There is also an affidavit of Karen Sutherland, a third-party adjuster with the Legal Services

Department of the Workers' Compensation Board of Nova Scotia, advancing the subrogated claim of the Workers' Compensation Board in the amount of \$11,701.81. A solicitor's affidavit of Ms. Laura Neilan was filed providing a list of disbursements incurred of \$1,405.18. There is an expert report of Dr. Hugh B. Matheson, Ms. Patterson's family physician, dated October 26, 2021, and expert reports of Dr. Michael Ross, a psychologist, dated January 7, August 3, August 23, September 1, 30, and December 6, 2016.

[14] In addition to cross-examining the plaintiff, Dr. Matheson and Dr. Ross, the defendants also gave evidence with respect to the circumstances of the attack. It became clear that the defendants' main arguments on this motion are that the amount sought is excessive, and that the plaintiff should bear some responsibility for her injuries. They also submit that the plaintiff's evidence about picking up a coat rack and using it to push the dog off of her is not credible, because the coat rack was far too heavy to use in that manner.

[15] The defendants say the plaintiff's neck or back pain is not related to the dog attack but was caused by a previous motor vehicle accident. They further submit that the plaintiff is partially responsible for her injuries because she screamed and frightened the dog, and then refused to accept their help to wrap her wounds.

[16] An assessment of damages is done as of the date of the motion (*McKean v. Royal & Son Alliance Insurance Co. of Canada*, 2015 NSCA 33). Here, the medical evidence provided is only as recent as 2021. I can only assess the damages in this case based on the material provided to me, which does not include any updated medicals.

### **Lynn Patterson**

[17] The background for this claim is set forth in the affidavit of Lynn Patterson. Ms. Patterson currently resides in Bruno, Saskatchewan. At the time of the dog attack, she was working as a licensed practical nurse for the Victorian Order of Nurses ("VON"). Her job required her to perform home visits for patients who required in-home care. On May 29, 2016, she was scheduled to care for a patient (Ms. Forrest) at the defendants' address in Spryfield, Nova Scotia. Patterson had been to the home before and knew that the couple who lived there had a dog. However, it had been about a year since she had last been there and the dog had always been put away when she was present.

[18] Ms. Patterson called the patient at around 3:30 p.m. to advise that she was coming and to ensure that the dog was tied up or put away. Upon entering the split-level home, she heard someone shout for her to “come in”. Ms. Patterson proceeded up the stairs and attended to the patient. There was no indication that anyone else was in the home, and no sign of the dog.

[19] Ms. Patterson left the home to retrieve more supplies from her vehicle, then went back inside. When she finished caring for the patient, she updated her chart notes and got ready to leave. Ms. Patterson proceeded down the stairs and onto the landing when a large white dog appeared in front of her, blocking her from reaching the front door. She heard someone coming up the basement steps to her right. The dog attacked her. Ms. Patterson started screaming. She threw herself back into the corner where the coat rack was, grabbed it, and began hitting the dog with it. At this point, the dog had a hold of the back of her right arm and elbow. The man who owned the dog (Mr. Hayden) yelled, “Nobody told me the fucking nurse was still in the house!” The owner was able to get the dog off of Ms. Patterson. A second smaller dog then appeared at her feet. Ms. Patterson was crying and dizzy. She had unknowingly urinated, and blood was dripping from her right arm. Her back was throbbing and burning, and she felt faint. Ms. Patterson walked out of the house and staggered to her car. The man who had pulled the dog away from her yelled at her to come back inside the house so that he could wrap her arm up, and said, “Don’t call 911, they’ll put my dog down.”

[20] Ms. Patterson deposed that the attack was a horrific experience. When she got to her car, she called 911. The police and ambulance came. Her nurse manager also arrived and drove her to the QEII Emergency Department. Ms. Patterson required stitches to the back of her right arm, in the elbow area. Photographs of her injuries are attached as exhibits to her affidavit. Ms. Patterson deposed that she experienced significant anxiety as a result of the dog attack.

[21] Ms. Patterson was off work for a period of time immediately after the attack. On July 11, 2016, she began a graduated return to work program. She worked six-hour days in August. Ms. Patterson received Workers’ Compensation benefits during this time, earning 75% of her normal net earnings. She returned to full-time employment on October 6, 2016.

[22] Ms. Patterson attend physiotherapy for a period of five months for the injuries to her neck and shoulders. She received treatment for a sore right shoulder, sore

lower back, and neck. She reports that her neck continues to give her difficulty and flares up on occasion.

[23] The plaintiff deposed that she suffers from irritable bowel syndrome and that her symptoms can flare with stress. She said her symptoms flared significantly after the dog attack. There is no medical evidence addressing causation of these flares and I have not accepted that the plaintiff has proven the flare in symptoms was caused by the dog attack.

[24] For a period of approximately six months, Ms. Patterson avoided activities like playing the violin, riding her motorcycle, kayaking, scuba diving, gardening, and mowing the lawn due to neck and shoulder pain. She began seeing Dr. Michael Ross, a psychologist, on July 7, 2016. She continued to see him until December 2016. She received treatment from him in relation to a very intense fear of dogs and general anxiety since the attack.

[25] After returning to work, Ms. Patterson was hypervigilant and extremely anxious. She started experiencing panic attacks, usually one per week for about seven months after the dog attack. She had not experienced panic attacks before the attack. Her panic attacks involved dizziness, nausea, sometimes vomiting, and physical shaking.

[26] On two occasions, Ms. Patterson had panic attacks upon encountering unsecured small dogs during patient home visits. As a result of having intense fear of entering other people's homes, which she attributed to the attack, Ms. Patterson quit her job with the VON. She said she would have stayed at the job had she not been attacked by the dog.

[27] The frequency of the plaintiff's panic attacks decreased after she was discharged from Dr. Ross's care, but they still do occur from time to time. Since June 2016, Ms. Patterson takes Lorazepam when she has a panic attack. She continues to work as a nurse but not with the VON. She does not have insurance coverage for psychological treatment and feels she would benefit from additional treatment.

[28] In 2022, one of the plaintiff's neighbors let her dog out without a leash and the dog came running at the plaintiff and barking. This caused Ms. Patterson to have a panic attack. Ms. Patterson said she was not afraid of dogs prior to the dog attack in May 2016. The plaintiff said she has a large scar on the back of her arm from the incident, which she attached a photograph of as an exhibit to her affidavit.



Unfortunately, this photograph is not very clear and it is difficult to see the scar. Ms. Patterson deposed that the site of the scar feels numb. The bite on Ms. Patterson's back has healed and she did not report that it left a scar.

[29] It is clear, based on the photograph attached to the plaintiff's affidavit, that she suffered a significant bite to her right arm, close to her elbow. She also suffered a bite to her back. Ms. Patterson said she experienced further injury when she swung the coat rack at the dog in an effort to push it away from her.

[30] On cross-examination, the defendants asked Ms. Patterson why it took her so long to return to work. The plaintiff testified that after the dog attack she had neck and shoulder spasms and was treated by physiotherapy. She said she spoke to Workers' Compensation, and they wanted her to see a psychologist before she went back to work. The defendants put it to the plaintiff that she could not have picked up the heavy coat rack and used it to try and fend off the dog. The plaintiff was adamant that she did use the coat rack in this manner and that doing so caused her to experience ongoing neck and back pain.

### Expert Evidence

The plaintiff filed expert reports in accordance with the *Civil Procedure Rules*.

### **Dr. Michael Ross**

[31] In 2016, Dr. Michael Ross saw the plaintiff on July 7, August 3, and 23, September 1 and 30; and December 6. In a psychological assessment report dated July 7, 2016, Dr. Ross wrote at page 2:

As a result of the attack by the dog, Ms. Patterson reports that she feels quite shaky inside when she talks about it. She said that she is quite cautious now of other dogs, but also more generally. She describes heightened sense of anxiety and tension. She denied nightmares or dreams related to the attack. She added, however, that she does not sleep normally and was taking sleeping pills prior to the event for sleep-related difficulties. She said that the dog attack, and a sense of danger, is always in the back of her mind. She also reported pain as a result of the attack. She said that her neck went into spasm and has remained so ever since, despite physiotherapy treatment. She said that she required stitches and that her right arm, around her elbow remains hypersensitive. She has been off work since the attack occurred. She stated that she is unsure how she will react when she returns to work. She also anticipates that she will feel quite anxious and be extra careful about ensuring that pets are secured prior to going into patient's houses.

She also reported that she has irritable bowel syndrome (IBS) that has been particularly flared-up since the attack.

[32] In setting out the background information, Dr. Ross observed at page 3:

[Ms. Patterson] described herself as a very resilient and strong person who copes with difficulties actively. Interestingly, she states that she owns the same breed of dog that attacked her. She said that interacting with her own dog has been quite therapeutic for her.

[33] Dr. Ross noted that Ms. Patterson reported a history of difficulty with anxiety and attributed it mainly to a difficult marital relationship. Prior to the attack, the plaintiff had a prescription for Lorazepam, an anti-anxiety medication, which she took on an as needed basis.

[34] In terms of the plaintiff's diagnosis, Dr. Ross stated at page 4:

Based on my interview with Ms. Patterson and her responses to the psychometric questionnaires, it is my opinion that she does not meet the necessary criteria for a diagnosis of post-traumatic stress disorder. She has experienced a traumatic event and meets a number of the criteria, but her diagnosis best fits an Adjustment Disorder With Anxiety. Personally, Ms. Patterson described herself as a resilient person and she is interested in improving her coping repertoire to help deal with the aftereffects (*sic*) of the attack and to resume her normal activities. I agree with her observation that not being able to engage in many of her previously rewarding activities has made coping more difficult and has led to a heightened sense of anxiety and distress.

[35] In a psychological progress report dated August 3, 2016, Dr. Ross noted that although Ms. Patterson's family physician had suggested that she take an antidepressant, Dr. Ross was uncertain as to its necessity:

Ms. Patterson reported that her family doctor has suggested that she take medication, presumably an antidepressant. She is quite hesitant to do so. I discussed with her how best to monitor her symptoms and her progress in order to give her a better indication of whether or not medication is necessary. She continues to use Ativan P.R.N. She stated that she believes taking medication is a sign of weakness. At this point, I am uncertain as to the necessity of the medication and we agree to continue to discuss this issue as we proceed. She is moving shortly, so we have rescheduled in approximately three weeks' time.

[36] Dr. Ross prepared another psychological progress report on August 23, 2016. During their session, Ms. Patterson reported having encountered a small aggressive dog at a patient's home. When the owner did not comply with her request that the dog be put away, she left the situation and reported it to her supervisor so that other arrangements could be made for the patient. Ms. Patterson said she felt upset and dizzy. The next day, she attended an event that had many dogs interacting in an open-air environment. She said she felt comfortable in that environment, even interacting with dogs that she did not know. Dr. Ross concluded at page 2 of the report that Ms. Patterson's fear is not of dogs *per se*; instead, "her anxiety reactions are particular to work-related situations with dogs displaying aggression and owners who appear to underreact" (p. 2).

[37] In his final report, dated December 6, 2016, Dr. Ross said the following:

When seen on November 30, 2016, Ms. Patterson informed me that this was to be our last session. She said that because she is filing a lawsuit against the homeowner in which the incident with the dog took place that it will fall outside the realm of the WCB and therefore further sessions will not be funded. She also informed me that she is continuing the process of looking for a new job.

Symptomatically, Ms. Patterson reported that she still feels "shaky". She stated that Crystal Perry, occupational therapist, had recommended that the job assignments she receives remain stable (meaning no last minute changes) for the next three months. She stated that she also intends to pursue previously pleasurable activities such as resuming the violin and looking to begin doing yoga. She reiterated that the intense panic feelings and dizziness has not recurred and that interoceptive exposure that she did in therapy previously has been quite helpful in that regard. She remained concerned about the feeling that she refers to as a "shakiness" inside.

I have no further contact with Ms. Patterson anticipated. She mentioned that in the future, depending on her health coverage, she might seek assistance privately.

(p. 2)

[38] Dr. Ross's cross-examination began on July 31, 2024. Prior to the appearance, Ms. Forrest and Mr. Hayden asked to appear via phone. While this is not the normal process, I agreed based on their representations they preferred this and it would be easier for them and for Ms. Forrest given what she said were her health issues. The defendants advised that they did not have Dr. Ross's six reports authored throughout 2016. This is despite the fact that plaintiff's counsel maintains all motion documents

were provided when the defendants attended initially for the assessment motion before Justice Chipman. The defendants say they only had two of the reports. Court adjourned so that the reports could be emailed to the defendants and so they could take the necessary time to review the documents. When we resumed the defendants said they were fine to proceed with the cross-examination. After about 30 minutes of cross examination, the defendants started to make comments to the effect that they did not have enough time to review the documents. Despite plaintiff's counsel's indication that all documents were furnished to the defendants months ago, and out of an abundance of caution, and to ensure natural justice, I granted an adjournment to September 11, 2024, for the defendants to have more time with the reports and an opportunity to continue cross-examining Dr. Ross.

[39] Dr. Ross was asked whether the plaintiff's stated symptoms from the dog attack could be explained due to side effects from her medication. Dr. Ross testified that as a psychologist he is not involved in prescribing medication but says the plaintiff's symptoms are consistent with the dog attack.

[40] Dr. Ross acknowledged that the plaintiff had reported some anxiety due to her marital difficulties at the time, but said she also reported anxiety from the attack. Dr. Ross also said an adjustment disorder with anxiety (the plaintiff's diagnosis) will last between three and six months, but if it persists the diagnosis can change, and the actual condition can continue despite what is the usual resolution time.

[41] Dr. Ross's reports demonstrate that the Plaintiff continued to have difficulty with anxiety that was exacerbated and continued for some time because of the dog attack.

[42] Dr. Ross acknowledged the plaintiff had a prior history of anxiety. Despite this, Dr. Ross testified that the plaintiff experienced psychological sequelae as a result of the dog attack. Dr. Ross testified that his opinion remains that the dog attack caused the plaintiff to suffer from an adjustment disorder with anxiety. The defendants suggested there was a contradiction in the plaintiff's presentation, as she was scared of dogs in some circumstances but not of her own or those interacting in an "open air environment". Dr. Ross explained the difference in situations which could result in anxiety. Dr. Ross confirmed in cross-examination that over time the plaintiff did not report resolution, but that intense anxiety feelings had not recurred.

**Dr. Hugh Matheson**

[43] Dr. Hugh Matheson was the plaintiff's family physician before she moved to Saskatchewan. The plaintiff filed an expert report prepared by Dr. Matheson dated October 26, 2021. The plaintiff also attached Dr. Matheson's clinical notes as exhibit "D" to her affidavit. These are mostly illegible, and I am not putting any weight on them.

[44] Dr. Matheson's report of October 26, 2021, provides a summary of Ms. Patterson's appointments with him from April 2015, onward. He indicated that when he saw the plaintiff in his office on April 6, 2015, she reported that she had been in a motor vehicle accident on September 16, 2014. She had been off work for about two weeks as a result of her injuries. She reported neck pain with paresthesia to her left arm, to her fourth and fifth finger. Dr. Matheson saw Ms. Patterson in his office on May 25, 2016, four days before the dog attack. He noted that she was experiencing "some decrease in her mood" in connection with the end of her marriage several months earlier.

[45] Ms. Patterson saw Dr. Matheson again on May 30, 2016, the day after the dog attack. Dr. Matheson summarized the visit at page 2 of his report:

Ms. Patterson was seen in the office on May 30, 2016, the day after the dog attack. Patient was working for VON. She was at a work house call, when she was attacked by the dog. Ms. Patterson had been evaluated at the Emergency Department at the Halifax Infirmary. A dog bite was noted on her right elbow and this site had been cleaned and sutured. Bite marks and abrasions were noted on her mid and lower back. She noted neck pain.

Ms. Patterson was very anxious relating to the incident.

Of her injuries – the physical were relatively minor, the psychological impact was much more severe.

[46] Dr. Matheson's report indicates that as of June 16, 2016, the plaintiff's physical injuries were healing but she continued to experience post-traumatic psychological symptoms. For several years after the accident, the plaintiff continued to report to Dr. Matheson that she was suffering from anxiety since the dog attack. As of October 26, 2021, the date of his report, Dr. Matheson suggested that the plaintiff would benefit from a dedicated psychological intervention and described her outcome as "guarded." He concluded by noting that the plaintiff was provided prescriptions for Lorazepam and Zopiclone to take on an as needed basis.

[47] Dr. Matheson was cross-examined by the defendants. The defendants put it to Dr. Matheson that the plaintiff's depression, anxiety, and panic attacks were all side effects of her Lorazepam medication. Dr. Matheson testified that although he could not 100 percent rule out this possibility, he did not accept it as likely. In his view, the plaintiff's anxiety and panic attacks were causally connected to the dog bite.

[48] Dr. Matheson acknowledged the plaintiff had some anxiety before the dog attack but said that it was not to the same degree.

[49] Dr. Matheson was asked to resile from his opinion that the plaintiff had PTSD on the basis that Dr. Ross did not specifically diagnose her with it. Dr. Matheson said the plaintiff underwent a traumatic event and showed symptoms of PTSD. He was not arguing with Dr. Ross, but merely commenting on her symptoms.

[50] Dr. Matheson was asked to explain how the plaintiff could be having psychological difficulty if she was capable of being around a dog shortly after the incident. Dr. Matheson explained that the incident was one where she was not feeling threatened and it took place in an open-air environment, not in a house.

[51] The defendants put it to Dr. Matheson that the plaintiff's neck pain and arm issues were all related to a previous MVA and not the dog attack. Dr. Matheson did not accept this suggestion and said the dog bite incident had also caused neck pain. He further testified that the plaintiff's attendance at a Zumba class in the fall of 2016 was not incompatible with her ongoing psychological issues.

[52] Dr. Matheson maintained his opinion that the plaintiff's psychological symptoms were related to the dog attack and were not a side effect of her medications.

### **Physiotherapy records**

[53] In her affidavit, Ms. Patterson stated that on June 7, 2016, she began attending physiotherapy sessions for injuries to her neck and shoulders. She continued attending physiotherapy sessions for four or five months. Although Ms. Patterson attached her physiotherapy treatment records as an exhibit to her affidavit, the notes are mostly illegible. That said, I accept from her evidence that she underwent a regime of physiotherapy exercises following the dog attack.

Harvey Hayden

[54] Harvey Hayden testified that he did not know that Ms. Patterson was coming to the home on the day of the incident. He said that when he arrived, there was no car in the driveway. When he entered the home from a door other than the front door, the dog went up the stairs to the landing, with him following right behind. Mr. Hayden testified that the plaintiff scared the dog by yelling. He said the plaintiff did not use the coat rack to ward the dog off but that the coat rack fell. He testified that the coat rack is too heavy and that there is no room in the landing for her to have used it in the manner she claims. Mr. Hayden acknowledged that the attack resulted in a small wound to the plaintiff's arm, but said she is going too far by claiming that the incident caused neck or back pain.

[55] Mr. Hayden testified that he and Ms. Forrest are very sorry for what happened, but the plaintiff startled the dog, then her screams set the dog off. Mr. Hayden said there was no intention to hurt her and that he did not know she was in the home. Mr. Hayden said he also wanted the court to know that he treats all his animals very well and that he felt that the plaintiff was judging him with regards to how he treated his animals without knowing him. He reiterated that he was sorry that it happened, but that he did not set his dog to attack Ms. Patterson. He had not intended for the dog to hurt her.

#### Susan Forrest

[56] Susan Forrest testified that she never knew about the Action and was never served. She said she was in a coma at the time. Ms. Forrest gave this evidence before she knew the date of service, which the court subsequently provided to her. She maintained her evidence that she never received anything, despite the affidavits of service in the court file.

[57] Ms. Forrest is in a common-law relationship with Mr. Hayden. She advised the court that on the day of the incident, she was on home health care for an injury to her foot. Ms. Patterson arrived, and Ms. Forrest yelled for her to come in the house. She said Ms. Patterson had forgotten something from her car. Ms. Forrest testified that Mr. Hayden returned with the dog while Ms. Patterson was out getting something from her car. This evidence belies Mr. Hayden's testimony that when he arrived, there was no car in the yard.

[58] Ms. Forrest testified that the coat rack is 100 pounds of pure metal, and that the plaintiff could not have lifted it. She added that the landing is only six to seven feet wide, and the coat rack was five feet tall, so there was not enough room on the landing for the plaintiff to have maneuvered the coat rack in the manner she claims.

Ms. Forrest testified that the plaintiff did yell at the dog. She said, with respect to the plaintiff, “She’s lying right now. I’m telling ya, I’m not crazy or stupid.” Ms. Forrest said she believes the plaintiff startled the dog. She added, however, that it was not all the plaintiff’s fault. The dog did not like loud noises and would cower if he heard loud noises or a scream. Ms. Forrest maintained that the dog did attack Ms. Patterson, but it was because she scared him. Ms. Forrest gave this evidence despite the fact that she was not on the landing at the time of the incident.

[59] Ms. Forrest said that both she and Mr. Hayden are sorry. It was an accident, they accepted that it happened, and they are terribly sorry. Ms. Forrest said that they feel like they are being punished for trying to help someone. She said they offered help to the plaintiff by asking her to come back in the home so they could bandage her wounds, but she refused.

## **Findings**

[60] It is clear to me from the defendants’ evidence that they misunderstand the basis upon which they are liable to the plaintiff for her injuries. It is largely irrelevant that they offered to help Ms. Patterson bandage her wounds after the attack. Their negligence was in failing to maintain control of their dog when they knew that a VON nurse would be attending the home. Furthermore, I do not accept Mr. Hayden’s evidence that he did not know that the plaintiff was in the home. Likewise, I reject Ms. Forrest’s evidence that she did not know about this Action. All the evidence of service contradicts her bald assertion. Lastly, I accept that the plaintiff did use the coat rack to help defend herself against the dog. The defendants descriptions of the coat rack have changed over time. They have described the coat rack being both 100 pounds, and 60 – 75 pounds. Moreover, Ms. Forrest confidently gave evidence as to what occurred on the landing between Ms. Forrest and the dog without having witnessed any of it. Her evidence is simply not credible.

[61] The evidence before the court, including the expert reports and Ms. Patterson’s affidavit evidence, establishes that as a result of the dog attack, Ms. Patterson received two bites and abrasions. Her wounds required sutures to her arm. I am satisfied that the attack also caused her to suffer ongoing pain to her neck and back and ongoing anxiety and panic attacks.

[62] Although Ms. Patterson said the attack exacerbated her IBS, resulting in flares, there is no medical evidence speaking to the causation of these flare-ups, and I cannot conclude that they were caused by the dog attack.



## **Law and Analysis**

[63] This motion is brought pursuant to Civil Procedure Rule 70. Rule 70.01(2) states:

A party who does not obtain an assessment by the prothonotary may obtain an assessment of damages due to the party or make a motion for an interim payment of damages, in accordance with this rule.

[64] The defendants sought one adjournment before Justice Chipman but did not seek a further adjournment before me and did not ask for additional time to locate a lawyer. When asked about proceeding, the defendants said they were representing themselves and furthermore that there was nothing they could do with regards to the medical evidence, as the doctors had “said what they said.” They were asked if they wished to cross-examine the experts but declined. Ms. Hayden attended the hearing in person while Ms. Forrest requested to appear by phone because she was apparently in hospital. Her request was granted.

[65] Despite having all the materials provided to them on April 16, 2024, Mr. Hayden did not bring any of the documents with him to the hearing on May 13, 2024. Ms. Forrest appeared by telephone, as anticipated. The court provided Mr. Hayden with additional copies of the materials, along with paper and a pen to take notes if needed.

[66] After the motion, I asked for a further appearance on May 24, 2024. At that time, I again asked the defendants if they wished to cross-examine the experts. I explained the potential benefits and disadvantages of doing so, including a potential disbursement claim by the plaintiff for the cost of the experts’ attendance. I gave the defendants a week to consider the issue. The defendants subsequently asked to cross-examine both Dr. Matheson and Dr. Ross.

## **Default Proceedings – Circumstances of the Attack**

[67] Rule 31.12(4) provides that an undefended action constitutes an admission of the plaintiff’s claims:

A party who does not file a Notice of Defence when required is taken to have admitted, for the purposes of the action, the claims made against the party, and the party making the claim may move for judgment under *Rule 8 – Default Judgment*.

[68] Here, the defendants allowed judgment to be ordered against them through default. This results in an admission of the material facts underlying the claims set out in the Statement of Claim. Judgment by default is an implied admission of the Action. The defendants were reminded of the consequences of the default judgment by Justice Chipman when they attended for this motion and again when they attended on a second occasion. Mr. Hayden acknowledged to the court in his evidence that:

- his dog had bitten the plaintiff;
- he's sorry that it happened;
- he has a responsibility to control his dog; and that,
- the plaintiff is owed something.

[69] Mr. Hayden disagreed that the plaintiff was entitled to an amount in the range of \$75,000, which is the amount of the award sought by the plaintiff on this motion.

### **General Damages for Pain and Suffering and Psychological Injuries**

[70] Ms. Patterson was assessed by paramedics at the time of the attack. Their records note:

Back; multiple teeth marks mostly abrasions, one mark appears to be a puncture with no active bleeding.

RT Arm; multiple teeth marks around elbow, lacerations x1 approx 2 cm in length, bleeding control.

[71] Ms. Patterson ultimately could not continue working as a home care worker due to the stress of home visits. Dr. Matheson commented in his report as follows:

By January, 2017, Ms. Patterson could not tolerate the stress of her job. Having suffered the dog attack while working for VON; she was unable to continue that job due to ongoing phobia and anxiety. She went to another company, a health care provider, where she was to work as a supervisor.

[72] In her affidavit, Ms. Patterson deposed at para 33:

The frequency of my panic attacks improved after I was discharged from psychologist (*sic*) with Dr. Ross. They happened less frequently, but they do

continue to occur. I am more in control of myself when panic attacks occur now, given coping mechanisms I have learned. Approximately once per month, I am put in a very stressful and traumatic situation at work (I am still working as a nurse). When this happens, I will usually be able to get through the work day, but will have a panic attack 2-3 days later, which involves significant shaking, to the point that my teeth shatter (*sic*). I do not recall instances like this happening prior to the Attack.

[73] Ms. Patterson's claim is primarily based on the ongoing psychological effects which she continues to experience.

[74] Counsel for Ms. Patterson acknowledged that are not many Nova Scotia cases assessing damages caused by dog bites. Moreover, the cases that do exist do not involve similar facts. Plaintiff's counsel proposes that Ms. Patterson's physical and psychological injuries entitled her to an award of general damages in the range of \$37,000 to \$60,000.

[75] Counsel for Ms. Patterson relied on the following cases to support its position:

1. *Moretto v. Nicolini-Femia*, 2017 ONSC 3945;
2. *Liu and Yi v. Demasi*, 2012 ONSC 4061;
3. *Thompson v. Fisher*, 2016 ONSC 3409;
4. *Trenholm v. H&C Trucking Limited*, 2014 NSSC 90; and,
5. *Jia v. Toronto Standard Condominium Corp. No. 1479*, 2010 ONSC 3433

[76] In addition, I referred the parties to *Hendsbee v. New* (1991), 106 N.S.R. (2d) 437 (S.C. A.D.), and *MacLellan (Litigation Guardian of) v. Fitzgerald*, 2008 NSSC 318.

[77] In *Hendsbee v. New, supra*, the court assessed general damages to compensate for the loss and injury suffered as a result of a dog bite. In that case, one plaintiff received a bite on her foot and received medical treatment, including a tetanus shot and penicillin. She suffered from swelling and missed three days of work. She also testified about nightmares and being terrified of the specific dog that bit her. The second plaintiff was frightened and suffered injuries when she fell down over an embankment and was knocked unconscious. There is no indication that the second

plaintiff was bitten by the dog. The plaintiff who suffered the dog bites was awarded \$2,300, while the other plaintiff who was knocked unconscious was awarded \$800. This is a very dated case.

[78] In *MacLellan (Litigation Guardian of) v. Fitzgerald, supra*, Justice Edwards found that an eight-year-old had been bitten on her face and left ear by a neighbor's dog. Her ear was punctured but had since completely healed. There were also punctures and scratches on the left side of her face, as well a puncture on the right side of her chin. The wounds were taped but did not require stitches. The court concluded that the dog attack was obviously a terrifying experience for this plaintiff and that there had been a fair amount of bleeding. The plaintiff experienced pain for a few weeks, which was treated with Tylenol. The bruising and other marks had largely disappeared after four weeks. The plaintiff also experienced some sensitivity to her ear and the puncture marks on her right chin were barely perceptible. The plaintiff did not have any lasting psychological impact and was only nervous around dogs for a short period of time. She was awarded \$6,000 in general damages.

[79] In *Moretto v. Nicolini-Femia, supra*, the court stated that the plaintiff's left cheek was bitten by a dog, lacerating her skin. She attended the emergency department where she received ten sutures to her face and a tetanus shot. She sustained a 2.1 cm "stellate scar" with a raised flap over a stamp sized area close to the laugh line on the left side of her face. The medical evidence was that the scar was quite noticeable due to hypopigmentation and pin cushioning, and that it would likely be permanent even with surgical or laser treatment. The plaintiff was very self-conscious about the scarring and had been ridiculed and teased at school. The plaintiff claimed a significant emotional and social impact as a result of the dog bite.

[80] The court accepted that the plaintiff suffered from nightmares for a considerable period of time after the incident and developed a phobia towards dogs. There was also a finding that the plaintiff had numerous personal issues both before and after the dog bite incident. The court awarded \$40,000 in general damages for her physical injury, including pain and suffering and the permanent scarring. An additional \$5,000 was awarded for nightmares, flashbacks, reduced self-esteem, confidence, and a phobia towards dogs, for a total general damages award of \$45,000.

[81] In *Liu and Yi c. Demasi, supra*, the plaintiff was walking his dog when he was bitten several times by another dog. He received the following injuries:

1. Right inner arm – 3 cm bite requiring three staples;

2. Outer arm – 1 cm bite requiring two staples;
3. Right forearm – scratch from a bite;
4. Left calf
  - 2 cm bite requiring three staples;
  - 1 cm bite requiring two staples;
  - 2 cm and 1 cm bites requiring not staples; and,
5. Right flank – five 1 cm bites.

[82] The plaintiff was treated at the emergency room, where he was given a tetanus shot and antibiotics, and the wounds were cleaned and stapled. The evidence was that the plaintiff could have a scar revision done. There was also medical evidence that he had functional impairment since the injury because of pain in his left calf, and that he experienced some anxiety and was self-conscious about wearing short sleeves because of the scars. There were no reports adduced from psychologists or psychiatrists. The court found that there was no question he received a number of bite marks and accepted that he suffered from ongoing psychological issues. The court awarded \$30,000 in general damages.

[83] In *Thompson v. Fisher, supra*, the plaintiff was working serving legal documents when the defendant ordered his dog to attack the plaintiff. The plaintiff attempted to flee, hit his head and fell down some stairs, with his hands hitting first on the stony surface. The dog immediately bit his leg by the ankle. The plaintiff was bleeding profusely from his hands. The medical evidence was that the plaintiff suffered a headache, bruised left hip, scraped left knee, reoccurring gout (which he had not experienced before which was accepted as caused by his fall) and his hands were lacerated, with the left one having exposed tendon and bone. The plaintiff received four sutures on his right hand and 12 on his left. He had permanent scarring on his hands. While the plaintiff was not diagnosed with PTSD, he did exhibit a fear of dogs which he did not have before the incident. In ordering general damages of \$30,000, the court stated at para. 19:

In the present case I find that the extent of loss of daily independence from May to August supports an award reflecting the impact of the injury on the Plaintiff's personal wellbeing much greater than suggested by the diagnosis of lacerations to the hands. He was completely dependent for all his ordinary [sic] life functions, more so than a broken bone that might attract greater damages in the ordinary course.

[84] In *Trenholm v. H&C Trucking Limited, supra*, the court assessed damages for nervous shock. The plaintiff in that case was present when a friend was killed in a motor vehicle accident. He sought general damages for post traumatic stress and associated depression. The court awarded \$75,000. Ms. Patterson's counsel acknowledged that the factual circumstances of the case bore no resemblance to the case before me and relied on it only to demonstrate the kind of damage awards being made for psychological injuries.

[85] The plaintiff referred to *Jia v. Toronto Standard Condominium Corp. No. 1479, supra*, for the same reason. In that case, the plaintiff claimed for damages arising from a forceable arrest and eviction. The plaintiff was diagnosed with PTSD with anxiety and sadness. General damages were assessed at \$30,000. I note, however, that the plaintiff in that case also had physical injuries, including bruises to her neck and chest area, and three broken ribs. She continued to have pain in her left side and left leg, was dizzy, and had headaches. She also had shoulder and neck pain.

[86] In all of the circumstances, and based on the evidence and caselaw, I assess general damages at \$40,000.00. Some of the cases provided included much more significant injuries. However, the plaintiff's physical and mental injuries call for an amount of \$40,000.00.

### **Special Damages**

[87] Ms. Patterson earned 75% of her regular earnings during the time she was off work. She received \$4,286.64 in wage loss benefits. She claims the remaining 25%, namely \$1,428.89 plus pre-judgment interest at 5%. I will award \$1,428.89 plus prejudgment interest of 5% for three years (the time period as discussed below) for a total of \$107.16 (reduced as earned over time).

### **Cost of Future Care**

[88] Ms. Patterson deposed that she does not have coverage for psychological treatment. She would like to attend for additional psychological treatment if she had

a means to pay for it. Dr. Matheson stated in his report that “Ms. Patterson would benefit from dedicated psychological intervention.” Ms. Patterson seeks \$10,000 to cover the cost of psychological care. Given the time that has passed and the fact that the plaintiff has not attended treatment for some time, I am not inclined to award \$10,000. I will give a more modest amount for future psychological treatment and award \$2,000.

### **Subrogated Claim**

[89] Ms. Patterson elected to cease receiving Workers’ Compensation benefits in favor of pursuing this claim pursuant to s. 30(1) of the *Workers’ Compensation Act*, S.N.S. 1994-95, c. 10. Section 30(3) of the Act provides the Workers’ Compensation Board with the right of subrogation which it is exercising. The affidavit of Karen Sutherland sworn on April 8, 2024, and filed with court on April 10, 2024, confirms that benefits were paid to the plaintiff as a result of the dog bite, a workplace injury, in the amount of \$11,701.81. This included wage loss of \$4,286.64, medical aid of \$6,351.37, and costs of \$1,063.80. The subrogation claim has been proven and I will include the amount of \$11,701.81 in the award for payment of this subrogated claim.

### **Prejudgment Interest**

[90] There was a delay in bringing this assessment of damages forward. The Action was filed on May 28, 2018. Default judgment was entered on May 25, 2021. It was not until April 20, 2024, that the original motion for the assessment of damages was scheduled. Consequently, the period of time to which the plaintiff is entitled to interest on general damages is three years at a rate of 2.5% per year.

### **Disbursements**

[91] The plaintiff sought disbursements on this claim including filing fees, fees for documents and the like as set forth in counsel’s affidavit. At the motion, I asked Ms. Neilan about the two PPSA search charges, one for \$60 and one for \$17.50. Ms. Neilan acknowledged that these were to search for assets, which are not proper disbursements on this motion for the assessment of damages. Consequently, I will reduce the disbursements by \$77.50, which reduces this category of disbursements to \$1,327.68.

[92] Additionally, the defendants wished to cross-examine the experts who filed expert reports. That was their prerogative. The physicians submitted invoices to

plaintiff's counsel. Dr Matheson expenses totalled \$600.00 and Dr Ross' expenses were \$675.00 for his preparation and attendance for cross-examination in July and he estimated a further \$225.00 for preparation and attendance for the continuation of his cross-examination on September 11, 2024. He estimated he would be 2.5 hours. Given the cross-examination did not take that long, I have reduced this amount by half, to \$112.50. There was very little that came from the cross-examination of these experts. Their evidence was largely accepted, and the cross examination did little to reduce the claim advanced by the plaintiff. I award the plaintiff \$1,387.50 in expert expense disbursements.

[93] The total amount for awarded for disbursements is \$2,715.18

### **Conclusion**

[94] In summary I award the plaintiff the following:

- General Damages in the amount of \$40,000.00
- PJI on Generals at 2.5% for three years – \$3,000.00
- Special damages in the amount of \$1,428.89 plus PJI at 5% for \$107.16
- Cost of Future Care at \$2,000.00
- Subrogated Claim of \$11,701.81
- Disbursements of \$2,715.18

Total before Costs – \$60,953.04

### **Costs**

[95] Ms. Patterson's costs for obtaining default judgment are calculated pursuant to Tariff D. In her brief she sought between \$400.00 and \$650.00. In oral submissions, she sought \$450.00 for costs in relation to the default judgment. The amount of \$450.00 is appropriate given the application of Tariff D.

[96] The plaintiff seeks costs for the motion for assessment of damages. In her brief she sought \$1,000.00 pursuant to Tariff C arguing the matter would take



between one hour and a half day. In oral submissions, she sought costs in the amount of \$7,250.00 plus an additional \$2,000.00 for the fact this took over a day of court time.

[97] The defendants say they do not have the money to pay any award, let alone a costs award.

[98] According to Tariff C and given this application is determinative of the entire matter, I can exercise my discretion and multiply the amount of costs depending on the complexity, the importance of the matter to the parties, and the amount of effort involved in the application. I am not prepared to order \$7,250.00 plus \$2,000.00 per day. However, I am prepared to order \$2,000.00 and multiply that by 2 given the amount of effort involved, the importance of the matter to the parties, and the fact there were many appearances necessitated. I award costs in the amount of \$4,000.00.

Brothers, J.