

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA

BETWEEN:

BRITTANY KOWALCHUK, a minor suing by her
Litigation Guardian KIM KOWALCHUK, and
KIM KOWALCHUK

PLAINTIFF

- and -

WESLEY BRITTON, NETTIE BRITTON
and BRAD BRITTON

DEFENDANTS

I.T. Tulloch

for the plaintiff

K.A. Phillips, Q.C.

for the defendants

JUDGMENT
July 14, 2000

MALONE J.

[1] The only issue to be determined in this action is the amount of damages to be awarded to the infant plaintiff as a result of being bitten on the face by a dog. The incident occurred on June 13, 1989, when Brittany was approximately three and one-half years old. Immediately after the incident she was taken to the Pasqua Hospital and received stitches to close the wounds. The following day complications developed and she was hospitalized for three

days. The wounds to her face eventually healed leaving scar tissue on her left cheek. It was hoped that the scars would disappear over time, however, this did not occur and in October, 1997, Brittany consulted a plastic surgeon, Dr. Lee. Dr. Lee describes her scarring, and the treatment he prescribed therefore, in a letter to counsel for the plaintiff as follows:

. . . She had a prominent scar measuring about 1.5 cm on the left upper and lower cheek. I felt that the best way to improve the quality of the scar was to do a dermabrasion, the other choice was to do a laser resurfacing. I explained to Brittany that the scars were permanent and the dermabrasion would only improve the look of the scars but not eliminate them.

On February 16, 1998 I saw her again. Brittany wished to have a dermabrasion of the scar on the left upper and lower cheek done. I arranged an out-patient bed for her to have this done under general anesthetic. On March 23, 1998, she underwent a dermabrasion of the scar on her left cheek.

On April 20, 1998 she returned to my office. The appearance of the scar on the left upper cheek was significantly improved after the dermabrasion. Some improvement was noted on the scar on the left lower cheek. I asked her to return to see me again in six months time.

I last saw her on October 26, 1998. The scar on the upper cheek has improved and the scar on the lower cheek is essentially unchanged. The quality of the scars were as good as they can be. Further revision is not recommended as I feel the appearance of the scars cannot be improved further. Brittany will always have visible scarring on her left upper and lower cheek.

[2] At trial I observed Brittany's scars to be apparent even when she was wearing makeup and very noticeable when she was not. As would be expected of a 13 year old girl, she is very self-conscious of the scarring and testified that she never leaves home without wearing makeup. She also testified that she is always asked about her face by new acquaintances which makes her feel awkward and embarrassed. The scarring also becomes more evident after exposure to the sun or when her face becomes red after playing sports or any exertion.

[3] With respect to damages, I have considered the various authorities referred to by counsel and find none of them particularly helpful except that they all deal with facial scarring.

In the present circumstances, I am mindful that Brittany's scarring is permanent and noticeable even when she wears makeup. I conclude that this is particularly distressing for a young woman entering her formative years as a teenager. Furthermore, she will no doubt be asked about the scarring for the rest of her life and this will continue to cause her concern and embarrassment.

[4] The incident giving rise to this action occurred on June 13, 1989, and Brittany's damages must be assessed as of that date. In my opinion, an appropriate sum to compensate Brittany for her injuries would be \$25,000.00. I am also satisfied that Brittany's mother has established the claim for special damages of \$630.00.

[5] Counsel for the defendants has suggested that this is not an appropriate case to award pre-judgment interest because of the length of time it has taken to bring the matter to trial. In my opinion, however, Brittany's litigation guardian was entitled to see what effect the scarring would have on her over time and whether the scars themselves would disappear as she grew older. I believe it only appropriate to wait until Brittany reached adolescence before pursuing the action to a final conclusion and accordingly award pre-judgment interest on the damages as I have found them to be.

[6] Counsel agree that the SHSP claim including pre-judgment interest is \$3,144.15.

[7] The plaintiff shall therefore have judgment for the following:

1.	General damages	\$25,000.00
2.	Special damages	630.00
3.	SHSP	3,140.15
4.	Pre-judgment interest on \$25,000.00 plus \$630.00.	

[8] The plaintiff is entitled to the taxable costs of the action.

J.