

This Exhibit ' 5 ' referred to in the
Affidavit of Deirdre Moore.....
sworn before me at the City of Ottawa, this
.....3 day of August....., 20 17..
[Signature]
A Commissioner for taking affidavits

supra, where the plaintiff loses a loved [one] because of negligence or other misconduct of the defendant. In that situation, the plaintiff is compensated through damages for the loss of the loved one's services and or companionship. This does not apply here.

[83] The second circumstance where damages have been awarded under the Family Law Act is for "assaultive behaviour", as an additional award to claims under the Family Law Act upon relationship breakdown: *Huisman v. Black*, [2000] O.J. No. 3243, [2000] O.T.C. 560 (S.C.J.), at para. 17; *Dhaliwal v. Dhaliwal*, [1997] O.J. No. 5964 (Gen. Div.); *Surgeoner v. Surgeoner*, [1993] O.J. No. 2940, 44 A.C.W.S. (3d) 248 (Gen. Div.); *Harris v. Cohen*, [1994] O.J. No. 2142 (Gen. Div.). However, these cases usually follow a criminal conviction for the (physical) assaults alleged and always involve a finding by the trier of fact that the assault actually occurred. The only evidence given by Ms. McLean on whether she was ever assaulted by Mr. Danicic was that he never hit her, although he did kick her in anger on one occasion and once pulled a timer out of a wall and threw it at her. Without more evidence, I am uncomfortable relying on these cases to ground a damages claim because the applicant does not allege that her damages resulted from those incidents. The real basis for her complaint of harassment, and the cause of the damages she claims, is Mr. Danicic's conduct after the relationship ended.

[84] More generally, s. 21.9 of the Courts of Justice Act grants a Family Court jurisdiction, with leave of the judge, to hear and adjudicate upon related matters. Thus, though not pleaded explicitly, I can award damages under the tort of intentional infliction of mental suffering and emotional distress as was done in *MacKay v. Buelow*, [1995] O.J. No. 867, 24 O.C.L.T. (2d) 184 (Gen. Div.). Because the allegations of fact in the statement of claim provide the basis for finding the necessary elements of the tort, I can consider whether the tort was in fact made out even though the tort itself was not pleaded.

[85] The the tort of intentional infliction of mental suffering involves the following three elements: (i) flagrant

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