PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Hanlon*, 2016 NSPC 32

Date: 20160315
Docket: 2872044, 2872045, 2901871, 2901867, 2901868, 2932043, 2932044, 2932081 and 2932082
Registry: Halifax

Between:

Her Majesty the Queen

v.

Christopher Rae Hanlon

Judge: The Honourable Judge Theodore K. Tax,

Heard: March 2, 2016, in Dartmouth, Nova Scotia

Decision March 15, 2016

Charges: 430(4), 267(a), 145(2)(a), 266, 145(3), 145(1)(b), 145(1)(b), 145(3) and 145(3) of the Criminal Code of Canada

Counsel: William Mathers, for the Crown
Drew Rogers, for the Defence

By the Court:

INTRODUCTION:

[1] Mr. Christopher Hanlon is before the Court for sentencing after having entered guilty pleas to the following nine charges: (1) an assault of Abigail Brautigam with a weapon contrary to section 267(a) of the **Criminal Code** and (2) unlawfully and willfully damaging the property of Abigail Brautigam contrary to section 430(4) of the **Criminal Code** on June 5, 2015; (3) failing to attend court on July 13, 2015, contrary to section 145(2)(a) of the **Criminal Code**; (4) an assault of Abigail Brautigam contrary to section 266 of the **Criminal Code** and (5) breaching the terms of an Undertaking which required Mr. Hanlon to not have any contact or communication with Abigail Brautigam, contrary to section 145(3) of the **Criminal Code** on August 24, 2015; (6) being unlawfully-at-large, before the expiration of a sentence of imprisonment to which he was sentenced, without lawful excuse, contrary to section 145(1)(b) of the **Criminal Code** on November 6, 2015; (7) being unlawfully-at-large, before the expiration of a sentence of imprisonment to which he was sentenced, without lawful excuse, contrary to section 145(1)(b) of the **Criminal Code** on November 13th, 2015; (8) breaching the terms of Recognizance made on October 28, 2015 which required Mr. Hanlon to

have no direct or indirect contact or communication with Ms. Abigail Brautigam, contrary to section 145(3) of the **Criminal Code** on November 24, 2015; and finally (9) breaching the terms of the Recognizance made on October 28, 2015 which required Mr. Hanlon to remain in his residence at all times subject to a house arrest, and failing to comply with that condition without lawful excuse, contrary to section 145(3) of the **Criminal Code** also on November 24, 2015.

[2] The Crown Attorney proceeded by way of summary conviction on all of the offences before the Court.

[3] The issue for the Court to determine is a fit and proper sentence after taking into account all of the relevant purposes and principles of sentencing, the circumstances of the offence, any victim impact statements and the particular circumstances of the offender, Mr. Christopher Hanlon.

THE POSITION OF THE PARTIES:

[4] It is the position of the Crown Attorney that Mr. Hanlon be sentenced to a period of incarceration of between 14.5 to 16.5 months for all of the offences, less time served, to be followed by a period of 12 months under terms of Probation on this consolidated sentencing. Given the fact that Mr. Hanlon is a relatively youthful offender, who does have a recent and related record, the Crown Attorney submits

that the Court ought to take into account the sentencing purposes of specific and general deterrence and denunciation of the unlawful conduct as well as the sentencing principles of proportionality, totality and restraint. The Crown Attorney does not seek any ancillary orders that may arise from convictions on any of the aforementioned offences.

[5] For his part, Defence Counsel does not necessarily disagree with the relevant purposes and principles of sentencing which ought to be taken into account in determining a fit and appropriate sentence for Mr. Hanlon. However, he submits that when the Court takes those principles and purposes into account, Mr. Hanlon is either in a time served situation to be followed by a period of Probation or the Court should order a short sentence of imprisonment to be served on an intermittent basis followed by Probation. In the further alternative, Defence Counsel submits that the court could consider the imposition of a longer sentence of imprisonment to be served in the community under the terms of the Conditional Sentence Order ("CSO") to be followed by the period under terms of a Probation Order.

CIRCUMSTANCES OF THE OFFENCES:

[6] On June 5, 2015, Ms. Brautigam and Mr. Hanlon were in a relationship for about a week; however, they had dated for a year. During that evening, Mr. Hanlon became very agitated with Ms. Brautigam and their verbal altercation escalated into a physical confrontation. Ms. Brautigam sent a Facebook message asking for help, as Mr. Hanlon had taken her cell phone and would not give it back to her. When the altercation escalated and became physical, Mr. Hanlon either pushed or hit his girlfriend causing her to fall onto their bed, where he continued to push her down with one hand in the area of her abdomen with the other hand on her neck, so she could not move. Ms. Brautigam was attempting to resist Mr. Hanlon by scratching at him. Shortly thereafter, Mr. Hanlon got up and started punching the walls, then he grabbed a nightstand and threw it against a wall. The nightstand broke into pieces and a piece of the broken nightstand hit Ms. Brautigam in the ankle. A neighbor heard the commotion and contacted the police. When the police arrived, they noticed that Ms. Brautigam had red marks and bruising on her throat. At the time of this incident, Ms. Brautigam was about 15 weeks pregnant with Mr. Hanlon's child and he was under the terms and conditions of a Probation Order.

[7] With respect to the July 13, 2015 offence, Mr. Hanlon acknowledges that he failed to attend Dartmouth Provincial Court as he was required to do on that date

and he acknowledges that he did not have a lawful excuse for his failure to attend court.

[8] On August 24, 2015, Ms. Brautigam was then about 26 weeks pregnant, when she and Mr. Hanlon were seen together in a public store. While in the store, Mr. Hanlon became angry with her and got very close to her, so she pushed him away from her. Mr. Hanlon reacted with a forceful push to the body of Ms. Brautigam, which caused her to fall to the floor. Mr. Hanlon was charged with committing a section 266 **Criminal Code** assault on Ms. Abigail Brautigam. At the time of this incident, Mr. Hanlon was under the terms of an Undertaking given by Justice on June 8, 2015, following the first assault incident. The Undertaking contained the condition that he was not to have any direct or indirect contact or communication with Abigail Brautigam, except through a lawyer. As a result of the fact that Mr. Hanlon and Ms. Brautigam had been together in a public store at the time of the assault incident, he failed to comply with the condition in that Undertaking which was an offence contrary to section 145(3) of the **Criminal Code**.

[9] On October 28, 2015, Mr. Hanlon was sentenced for two breaches of Probation and two failures to comply with the Recognizance or an Undertaking contrary to section 733.1(1)(a) of the **Code** and section 145(3) of the **Code**, which

occurred on October 19, 2015 and October 21, 2015. Mr. Hanlon received a sentence of 25 days in custody for all of those offences, to be served concurrently, on an intermittent basis from Fridays at 8 PM until Mondays at 6 AM, with the first weekend starting on October 30, 2015. Mr. Hanlon attended at the Central Nova Scotia Correctional Facility on the first weekend as he was required to do and served four days of that intermittent sentence. However, he failed to report to the Central Nova Scotia Correctional Facility in Burnside as he was required to do on Friday, November 6, 2015, as well as on Friday, November 13, 2015. He was charged with two separate offences contrary to section 145(1)(b) of the **Code** for being unlawfully large in Canada without lawful excuse, for each of those two weekends and he has pled guilty to both of those offences.

[10] Finally, on November 24, 2015, warrants had been issued for Mr. Hanlon's arrest on most, if not all, of the files before the court. In addition, a surety had rendered on November 9, 2015 and a warrant was issued on that file. Police officers received information as to Mr. Hanlon's whereabouts and attended at the IWK Hospital and arrested him. At that time, Mr. Hanlon and two other people were with Ms. Brautigam in the Hospital, after she had recently given birth to a baby girl, for whom Mr. Hanlon is the father.

[11] At the time that Mr. Hanlon was arrested at the IWK Hospital, he was subject to the terms and conditions of a Recognizance which had been ordered by a Judge on October 28, 2015 which contained a condition not to have any direct or indirect contact or communication with Ms. Abigail Brautigam, except through a lawyer and as well as a condition to remain in his residence at all times subject to house arrest. None of the exceptions provided a lawful excuse for his failure to comply with those two conditions in the Recognizance. Mr. Hanlon entered guilty pleas to two separate contraventions of the Recognizance made on October 28, 2015, which were offences contrary to section 145(3) of the **Code**.

VICTIM IMPACT STATEMENT:

[12] Ms. Brautigam was advised of her right to file a Victim Impact Statement by the Crown Attorney's office as well as Victim Services following the incident in June, 2015. Shortly after Mr. Hanlon entered guilty pleas to the charges now before the court and again at the time of these submissions on sentencing on March 2, 2016, the court made inquiries as to whether or not the Crown Attorney or Victim Services had made any further inquiries as result of subsequent events with respect to Ms. Brautigam's intentions to file an impact statement. No statement has been filed by Ms. Abigail Brautigam for the court to consider.

CIRCUMSTANCES OF THE OFFENDER:

[13] Mr. Christopher Hanlon is presently 21 years old (D.O.B. June 1, 1994). His parents separated shortly after he was born and his mother began a relationship with a man who was physically abusive to Mr. Hanlon during the five years that he lived in their residence. Mr. Hanlon said that he grew up in a violent environment where he was physically, verbally and emotionally abused. When he was 13 years old, his mother entered into a long-term relationship with another man who Mr. Hanlon described as a "father figure" and his two children are considered to be a part of Mr. Hanlon's family. Mr. Hanlon only met his biological father four years ago.

[14] Mr. Hanlon began dating Ms. Abigail Brautigam when he was 19 years old and she was 20 years old. He is the father of their four-month-old daughter. Mr. Hanlon advised the Probation officer that he and Ms. Brautigam are still dating and that he would like to move in to live with her.

[15] Mr. Hanlon completed grade nine, and then attended high school for four years, but only achieved one grade 10 credit. He was expelled from school for fighting with students and for incidents with his teachers. Mr. Hanlon was diagnosed with ADHD when he was 10 years old which contributed to his

problems in school. However, he now has an interest in attending the Nova Scotia Community College to get his grade 12 diploma through the Adult Learning Program.

[16] Mr. Hanlon is currently unemployed, since he is presently being held on remand at the Central Nova Scotia Correctional Facility. He had been working in the summer of 2015 doing installations and also indicated that he had been working with his mother's partner installing drywall for commercial and residential projects. He had worked in construction as a laborer in the fall of 2013, and noted that he would like to become a journeyman.

[17] Mr. Hanlon reported that he has good physical health, although he does suffer daily pain as a result of a fall which occurred in 2015. As for his mental health, Mr. Hanlon reported that he was diagnosed with ADHD when he was eight years old and, although he has feelings of depression and anxiety, he has not been formally diagnosed. Mr. Hanlon rarely consumes alcohol, but he did acknowledge using cocaine on a fairly regular basis from age 16 to 21. More recently, he had used crack cocaine, heroin and taken hydromorphone/dilaudid. However, Mr. Hanlon did advise the Probation officer that since he has been held on remand from late November, 2015 to today's date, he has gone through withdrawal and now feels "clean and healthy" with no intention to return to consuming drugs. It

was also noted that Mr. Hanlon completed an anger management course from January 6 to February 8, 2016, while he was on remand.

[18] During the interview with the Probation officer, Mr. Hanlon accepted full responsibility for all of the matters before the court. He explained that, at the time of these offences, he was on drugs. He regrets his actions and expressed his remorse. Mr. Hanlon also indicated that he is willing to pay restitution or perform community service hours if the Court was to impose those terms and conditions and he also indicated that he was motivated to engage in therapy to address his long-standing personal issues. In particular, he would welcome counselling in the area of addictions, healthy relationships and anger management which he now recognizes will help him in the long run.

[19] With respect to his prior convictions, Mr. Hanlon was sentenced on a consolidated sentencing for four breaches of court orders on October 28, 2015 for which he received 25 days in custody to be served on an intermittent basis. In addition, on May 4, 2015, he was sentenced to a total of $4000 in fines plus Victim Fine Surcharges for a theft under offence contrary to section 334(b) of the **Code** and a resistance or obstruction of a peace officer charge contrary to section 129(a) of the **Code**, both of which occurred on October 7, 2014.

[20] Mr. Hanlon's first adult sentence was the result of a consolidation of several charges on July 31, 2014, when he was 19 years old. On that date, his sentence was suspended and he was placed on Probation for a period of two years for an assault charge contrary to section 266 of the **Code**, which occurred on October 22, 2012; a mischief charge contrary to section 430(4) of the **Code** on April 5, 2013; and assault with a weapon charge contrary to section 267(a) of the **Code** which also occurred on April 5, 2013; as well as three theft under charges contrary to section 334(b) of the **Code**, which occurred on October 19, 2012 [when he was 18 years old], May 8, 2014 and May 18, 2014.

ANALYSIS:

Relevant Purposes and Principles of Sentencing

[21] The fundamental purpose and principles of sentencing are set out in sections 718-718.2 of the **Criminal Code**. Parliament has stated that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing "just sanctions" which are focused on one or more of the objectives set out in section 718 of the **Code**. In this case, the Crown Attorney submits that the primary sentencing purposes should focus on denunciation of the unlawful conduct, specific deterrence of Mr. Hanlon and general deterrence of other like-minded individuals.

[22] Defence Counsel does not take serious issue with those primary sentencing purposes, but submits that the Court should also consider a sentence that would best assist in the rehabilitation of the offender and that the offender should only be separated from society, where necessary [sections 718(c) and (d) of the **Criminal Code**]. In that regard, Parliament has also stated in section 718.2(d) of the **Code** that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances and in section 718.2(e) of the **Code** that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders." Mr. Hanlon has told the Court he is not an Aboriginal offender.

[23] Section 718.1 of the **Criminal Code** contains the fundamental principle of sentencing which requires the Court to ensure that the sentence is proportionate to the gravity or seriousness of the offence and the offender's degree of responsibility for the offence.

[24] Section 718.2(a) of the **Criminal Code** requires the Court that imposes a sentence to take into account the principle that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[25] Finally, I must also be mindful of the principle of parity as stated in section 718.2 (b) of the **Code** which requires me to consider that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This sentencing principle reminds the court to consider a range of sentence for each particular offence and to impose sentences which are similar to the circumstances of the case and the offender, bearing in mind that for each offence and for each offender, there will be some elements that are unique.

[26] Given the fact that Mr. Hanlon has entered guilty pleas to nine offences which have occurred on six separate dates between June 5, 2015 and November 24, 2015, it will also be important to consider the sentencing principle of totality which is set out in section 718.2(c) which reminds the Court to take into consideration that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[27] In all sentencing decisions, determining a fit and proper sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the particular circumstances of the specific offender. On this point, the Supreme Court of Canada stated, in **R. v. M. (C.A.)**, [1996] 1 SCR 500 at paras. 91 and 92, that the determination of a just and appropriate sentence requires the trial judge to do a careful balancing of the

societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence while at the same time taking into account the victim or victims and the needs of and the current conditions in the community.

Domestic Violence is not a Private Matter

[28] Since September 3, 1996, with the passage of Bill C-41, Parliament has clearly highlighted the fact that all sentencing courts should be cognizant of the sanctity of domestic relationships and the imperative of repressing violence in the family unit. In that legislation, Parliament specifically reminded sentencing judges in section 718.2(a) of **Criminal Code** that one of the fundamental principles of sentencing is that the court shall take into account that the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances of the offence and the offender. In terms of domestic violence, Parliament specifically noted in section 718.2(a)(ii) of the **Criminal Code**:

> (a)(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner… shall be deemed to be aggravating circumstances.

[29] Prior to the passage of Bill C-41, there had been several pronouncements by courts of appeal and trial courts that domestic violence was a serious matter and the sentence for a significant spousal assault must impress upon the offender and

others that specific and general deterrence as well as denunciation of this unlawful conduct must be the paramount sentencing considerations.

[30] As pointed out by the Ontario Court of Appeal in **R. v. Inwood**, 1989 CanLii 263 (Ont.C.A) at para. 26:

> [26] Domestic assaults are not private matters, and spouses are entitled to protection from violence, just as strangers are. This does not mean that in every instance of domestic violence a custodial term should be imposed, but that it should be normal where significant bodily harm has been inflicted, in order to repudiate and denounce such conduct.

[31] In **R. v. Bates**, 2000 CanLii 5759 (Ont. C.A.) at para.30, Justice Moldaver (as he then was) and Justice Feldman observed that courts have been made increasingly aware of the escalation of domestic violence in our society. They also noted that crimes involving abuse in domestic relationships are rarely isolated events in the life of the victim. The victim is often subjected not only to continuing abuse, both physical and emotional, but also experiences perpetual fear of the offender. For those reasons, the Court in **Bates**, *supra*, clearly stated at para. 36 that it is important for the Court to denounce the conduct of the offender in the clearest terms and added that principles of general and specific deterrence must be the overriding considerations in the determination of a fit sentence.

[32] The Nova Scotia Court of Appeal has also made it very clear to sentencing courts that, in determining a fit and appropriate sentence, where an offender

commits an offence against his or her spouse, it is deemed to be an aggravating circumstance by virtue of section 718.2(a)(ii) of the **Code**: see for example, **R. v. MacDonald**, 2003 NSCA 36 at para. 52 and **R. v. Knockwood**, 2009 NSCA 98 at paras. 40-41. In both of those cases, our Court of Appeal referred to the "blight" of spousal assault and that the nature of the crime "calls out" for denunciation and general deterrence, as well as specific deterrence of the offender.

Aggravating and Mitigating Circumstances

[33] As I indicated previously, section 718.2(a) of the **Criminal Code** requires the Court to take into account relevant mitigating and aggravating circumstances which relate to the offence or the offender. In this case, I find that the aggravating circumstances which should increase the sentence are as follows:

1. The evidence established that Mr. Hanlon physically abused his common-law partner in the commission of two offences, which Parliament has deemed to be a statutory aggravating circumstance - section 718.2(a)(ii) of the **Code**;

2. Mr. Hanlon's assaults of Ms. Brautigam occurred during verbal arguments with her, which were fueled solely by his anger, on two separate occasions. The first one in June, 2015, was objectively the

more serious of the two incidents as there were scratches and bruises on the neck of Ms. Brautigam. In addition, as a result of his uncontrolled anger in smashing a night table, a piece of that table hit her in the leg, which also occurred when his girlfriend was approximately 15 weeks pregnant. Although the second incident involved an assault which would probably be considered to be at the lower end of a continuum of assaults, that assault of an intimate partner is also aggravated by the fact that Ms. Brautigam was, at that time, 26 weeks pregnant with their child and the assault occurred in a public place, when there was a court order in place that he was not to have any contact or communication with her;

3. Mr. Hanlon has a prior, related record for crimes of violence which include convictions for an assault as well as an assault with a weapon in October 2012 and April 2013 respectively. There was no indication during the sentencing hearing whether those prior assaults involved any intimate partners of Mr. Hanlon.

[34] I find the mitigating circumstances which should reduce the sentence in this case are as follows:

1. Mr. Hanlon entered early guilty pleas to all of the charges before the court which meant that the victim did not have to come to court and relive the emotional experiences of relating the assaultive behavior of Mr. Hanlon towards her on two separate occasions;

2. Mr. Hanlon has accepted full responsibility for the offences before the court;

3. Mr. Hanlon has expressed his remorse for the assaults of Ms. Brautigam;

4. Mr. Hanlon has sought out and completed an anger management course while he was being held in custody on remand, and has expressed an interest in engaging in counseling treatment and programming to address long-standing personal issues including substance abuse and mental health;

5. Mr. Hanlon is willing to pay restitution or perform community service to make restitution for the damages done to Ms. Brautigam's property;

6. Although not employed at the present time because he is in custody on remand, Mr. Hanlon would likely be able to work with his "father figure" installing drywall.

Sentencing Precedents for Similar Offenders

[35] In my review of similar cases which involved spousal assaults or partner-related violence, I reviewed **R. v. Hillier**, [2010] N.J. No. 203 (NLPC). In that case Judge Porter sentenced an accused who had pled guilty to a number of offences (theft, mischief, assault of his girlfriend, and four breaches of Undertakings). The accused had assaulted his girlfriend by striking her in the face. The Court ordered a total sentence of nine months of imprisonment, after taking into account pre-sentence custody, to be followed by 12 months on Probation. Judge Porter ordered a period of three months incarceration for the assault of the girlfriend, one month incarceration for three of the breach of Undertaking offences and a further three months incarceration on the final breach of Undertaking offence.

[36] In **R. v. Brenton**, [2010] N. J. No. 210 (NLPC), Judge Gorman accepted the joint recommendation and imposed a period of six months incarceration for an offender who pled guilty to assaulting his spouse and a breach of Probation. In that case, the facts were quite similar to the instant case as the offender had held his spouse down on the floor and caused scratches to her neck. He had a previous

conviction for having assaulted his spouse and was subject to a Probation order at the time as a result of the earlier assault.

[37] In **R. v. Gardner**, [2011] N. J. No. 41 (NLPC), which is also quite similar to the facts of this case, the Court imposed a six-month Conditional Sentence Order of imprisonment in the community to be followed by 12 months on Probation where the accused pled guilty to offences of breach of Recognizance contrary to section 145(3), a threats charge contrary to section 264.1(1), an assault of his girlfriend contrary to section 266(b), an assault of a peace officer contrary to section 270 and a mischief charge contrary to section 430(4) of the **Criminal Code**. At the time of the offences, the accused was 18 years old and had no prior convictions.

[38] In **R. v. Squires**, 2012 NLCA 20 (CanLii), the offender was convicted of a number of offences including the assault of his common-law partner. In relation to that offence, the Court noted that, during the assault, the offender had grabbed the complainant's neck and pulled her hair. The Court of Appeal concluded that a period of three months' imprisonment was an appropriate sentence for that offence.

[39] In other cases that I have reviewed, which involved either the more serious offence of an assault causing bodily harm or an assault with a weapon and

confinement charges, such as **R. v. Gill**, 2007 BCSC 1216, **R. v. Antle**, 2013 CanLii 29 (NLPC), **R. v. Hart**, 1997 CarswellNB 556 (QB) and **R. v. Jardine**, 2014 NSPC 59, the Court ordered sentences in the range of 12 to 24 months in custody followed by a lengthy period of Probation; however, in most of those cases, the offenders had prior convictions for spousal assaults on the same victim, which represented very serious aggravating circumstances in those cases.

[40] In **R. v. Marsh**, [2011] N.J. No. 440 (NLPC), Judge Gorman reviewed several sentencing precedents in the context of intimate relationships where common assaults were committed by an offender with no prior criminal record resulted in Conditional Sentence Orders of imprisonment in the community or an intermittent sentence followed by Probation, while assaults causing bodily harm resulted in a range of six to 12 months of imprisonment.

[41] Looking at those cases, there is no doubt that as the courts have become increasingly aware of the prevalence of violent offences which occur in the context of intimate relationships, I find that the more recent sentencing precedents certainly reflect the view of Parliament in section 718. 2(a)(ii) of the **Code** that an offender who has abused a common-law partner or spouse is deemed to be an aggravating circumstance. Moreover, our Court of Appeal has also made it clear that denunciation of the unlawful conduct and specific and general deterrence

should be the primary sentencing purposes considered by the sentencing judge in these situations, and the sentence should be proportionate to the gravity of the offence where the spouse or partner has been the victim of serious violence in an intimate relationship.

[42] Based upon the sentencing precedents which have been reviewed by the Court, the facts of this case as well as the consideration of the aggravating and mitigating circumstances, I find that the range of sentences for Mr. Hanlon's first assault of Ms. Brautigam with a weapon contrary to section 267(a) of the **Code**, which I regard as a relatively serious assault when I consider the principle of proportionality, given the relative gravity of the offence and Mr. Hanlon's high degree of responsibility for that offence, which involved a fairly violent attack, fueled by anger of his intimate partner who was then approximately 15 weeks pregnant with his child.

[43] As for the second assault of Ms. Brautigam, which was a common assault of his intimate partner contrary to section 266(b) of the **Code**, also precipitated by Mr. Hanlon's uncontrolled anger, there was a disproportionate response, which could not be regarded as self-defense, in relation to Ms. Brautigam's push of Mr. Hanlon to get him "out of her face" so to speak. Mr. Hanlon's intentional application of force caused his intimate partner, who was then approximately 26

weeks pregnant to fall to the ground. Clearly, as indicated previously, the gravity of the second offence would probably militate towards the lower end of an objective assessment in relation to a continuum of assaultive behavior; however, given the fact that Ms. Brautigam was Mr. Hanlon's intimate partner, who was in the later stages of carrying their child, I find that, in the circumstances of that offence, the gravity of the offence is elevated and his degree of responsibility is also relatively high.

[44] Having established the proportionality of the assault charges for which Mr. Hanlon has pled guilty, it is important to note that the Crown elected to proceed by way of summary conviction for both assault charges. Therefore, the maximum sentence that Mr. Hanlon would be facing for the section 267(a) **Code** charge of assault with a weapon would be 18 months in jail. The maximum jail sentence for a common assault contrary to section 266(b) of the **Code** would be a sentence of six months in jail.

[45] Looking at the facts and circumstances of each of the two assault charges of Ms. Brautigam for which Mr. Hanlon entered early guilty pleas, taking into account the principle of proportionality and the aggravating and mitigating circumstances, circumstances of the offences as well as the parity principle, I find that similar offenders who have committed similar offences in similar

circumstances for the assault with a weapon contrary to section 267(a) of the **Code** might be facing sentences in the range of three to six months of imprisonment for an assault of that nature, and would probably be ordered to serve a sentence of imprisonment towards the higher end of that range where there are several significant aggravating factors as there are in this case.

[46] As indicated previously, while I find that Mr. Hanlon's second assault of Ms. Brautigam is, objectively speaking, at the lower end of a continuum of common assaults, I find that similar offenders who have committed similar offences in similar circumstances, have received conditional discharges (especially where there is a youthful, first time offender, relatively few aggravating circumstances and several mitigating circumstances) or suspended sentence and Probation, a short sentence of imprisonment, and depending on the circumstances of the offender, it could be served in the community under the terms of a CSO. However, in this case, I have found that with respect to this second assault charge of Ms. Brautigam, which occurred only a couple of months after the assault with a weapon, there are several, very significant aggravating circumstances present. As I have previously noted, Ms. Brautigam was his intimate partner, who was, at that point in time, approximately 26 weeks pregnant with his child, this was the second assault of his intimate partner in a relatively short period of time, he had a prior

related record for crimes of violence and he was subject to the terms of a Recognizance which required him not to have any direct or indirect contact or communication with Ms. Brautigam. Given the fact that the maximum sentence of imprisonment for this offence is six months in jail, I find that, if a jail sentence was to be ordered, it would, most likely, be towards the lower end of the range of sentences of imprisonment, which, in my view, would be in the range of one to two months in jail.

[47] In terms of sentencing precedents which involved either breaches of Undertakings or breaches of court ordered Recognizances, determining a fit sentence requires the consideration of several factors including specific and general deterrence as well as denunciation of the unlawful conduct to signal the fact that failure to comply with the court order is a serious matter. Clearly, the range of a sentence for breaches of a Recognizance or an Undertaking will, like other sentencing decisions, vary depending on the nature of the breach and the offender's criminal record, in particular with respect to any breaches of any current or prior court orders. Generally speaking, a breach of an Undertaking or a court ordered Recognizance can result in a fine, 15 to 30 days of imprisonment for failure to attend on a trial date or a relatively flagrant disregard of the court order, which will depend upon the circumstances of the offence and the offender, and

then using the "jump principle" between 60 to 90 days of imprisonment for repeated or particularly flagrant violations of those court orders, which may have an impact on the administration of justice.

[48] Since this sentencing decision involves a determination of the fit and appropriate sentence for Mr. Hanlon, who has committed multiple offences over a period of approximately six months, it is clear from several courts of appeal that the first step in sentencing is to determine an appropriate sentence for each offence. In doing so, the sentencing decision ought to take into account all of the relevant purposes and principles of sentencing set out in sections 718-718.2 of the **Code**.

[49] I conclude that for the individual offences committed by Mr. Hanlon, the following sentences are appropriate:

1. for the section 267(a) assault with a weapon, a period of four months imprisonment;

2. for the mischief charge for damaging the property of Ms. Brautigam, a period of one month imprisonment;

3. for the failure to attend court on July 13, 2015 – a sentence of one day which is deemed served by his presence in court today;

4. for the section 266(b) assault of Ms. Brautigam, on August 24, 2015, a period of one month of imprisonment;

5. for the section 145(3) **Code** charge, which was a violation of the no contact or communication condition in an Undertaking, also on August 24, 2015, a period of two months of imprisonment;

6. for the section 145(1)(b) **Code** of failing to attend the Correctional Facility on November 6, 2015, to serve a weekend on a recently imposed intermittent sentence, 15 days of imprisonment;

7. for the section 145(1)(b) **Code** of failing to attend the Correctional Facility on November 13, 2015, an intermittent sentence, a period of one month of imprisonment;

8. for the breach of the Recognizance made on October 28, 2015 by being in contact or communication with Ms. Brautigam contrary to section 145(3) of the **Code**, a period of three months of imprisonment;

9. finally, for the breach of the Recognizance made on October 28, 2015, by failing to comply with the house arrest condition in that order, contrary to section 145(3) of the **Code**, a period of three months of imprisonment.

[50] Once the Court has determined the individual sentences which should be imposed, the next step in the sentencing decision involving the imposition of a sentence when multiple offences have occurred, is to determine if the individual sentences imposed should be served on a concurrent or consecutive basis. Generally speaking, Courts of Appeal have stated that where there is no relationship between the separate commission of criminal offences, the court should, bearing in mind the total term imposed, order a consecutive sentence. A concurrent sentence can be considered where more than one offence has arisen out of the same general circumstances or transaction and there are similar or identical essential elements for the two or more offences in question. Thereafter, the sentencing decision ought to consider the totality principle in sentencing which is found in section 718.2(c) of the **Criminal Code** which states that "where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh."

[51] Having considered the facts and circumstances relating to the charges for which I have indicated a period of imprisonment for the offences which were committed by Mr. Hanlon, I find that several of the offences arose out of the same general circumstances or transaction and there is a sufficient similarity in terms of their essential elements. Therefore, I find that the two offences committed on June

5, 2015 [the assault with a weapon and the mischief charge] should be served on a concurrent basis for a total of four months of imprisonment, consecutive to any other terms of imprisonment that Mr. Hanlon has or will be ordered to serve today.

[52] With respect to the sentences ordered for the charges of assault and the breach of the Undertaking on August 24, 2015, while they do share a common factual basis, the breach of Undertaking offence involves a very different intent and specific and general deterrence would generally lead to those sentences being ordered to be served on a consecutive basis. I find that when I consider the totality principle with respect to these two charges, the imposition of the combined sentence for those two offences would, in my opinion, constitute an unduly long or harsh sentence for this relatively youthful, adult offender given the gravity of the offence and the offender's degree of responsibility. As a result, I conclude that these two sentences of imprisonment should be served on a concurrent basis to each other, but consecutive to any other sentences that Mr. Hanlon is now serving or that I am ordering to be served on a consecutive basis in this decision.

[53] With respect to Mr. Hanlon's failure to attend at the Central Nova Scotia Correctional Facility on two successive weekends to serve an intermittent sentence, I find that the two sentences of imprisonment which I have been imposed must be served on a consecutive basis to underline specific and general deterrence in order

to ensure that Mr. Hanlon and other like-minded individuals are well aware that the court is prepared to engender respect for and strict compliance with its orders.

[54] Finally, with respect to the two breaches of Recognizance on November 24, 2015, which occurred, essentially at the same time, by a Mr. Hanlon not complying with the house arrest condition in the Recognizance and by his direct contact and communication with Ms. Brautigam at the IWK hospital, I find that the three-month period of imprisonment for each of those two offences should be served on a concurrent basis, but consecutive to any other sentences Mr. Hanlon is serving or that I have ordered today. As I said previously, while the Recognizance was breached in two very different ways at the same time, and generally speaking, the court would likely order consecutive sentences since the essential elements and intent of the offender is quite different, I find that when I consider the totality principle with respect to these two charges, the imposition of the combined sentence for those two offences would, in my opinion, constitute an unduly long or harsh sentence for this relatively youthful, adult offender.

[55] Therefore, after having considered which sentences of imprisonment ought to be ordered to be served on a consecutive or on a concurrent basis, as well as taking a step back to consider Mr. Hanlon's age, his criminal record and the impact of a combined sentence to the normal level of sentence for the most serious of the

individual sentences involved, I have concluded that the application of the principles of totality and restraint in this case would result in a total sentence of 10.5 months of imprisonment.

[56] On March 2, 2016, during their submissions, counsel advised the court that as of that date, Mr. Hanlon had been on remand for 100 days (November 24, 2015 to March 2, 2016). Pursuant to section 719(3.1) of the **Code** as recently interpreted by the Supreme Court of Canada, both counsel agree that Mr. Hanlon would be entitled to a credit of one and a half days for each day of pre-sentence custody. Therefore, counsel recommended that the court deduct a total of 150 days or the equivalent of five months of imprisonment from any sentence of imprisonment that was ordered by the court. In addition, the court had indicated to counsel that Mr. Hanlon would be entitled to a further 14 days of pre-sentence custody to be credited at one and a half days' credit for each additional day served on remand, as the court had indicated that the sentencing decision would be delivered on March 15, 2016.

[57] However, I find that the calculation of Mr. Hanlon's pre-sentence custody up to the date of the sentencing submissions (March 2, 2016) has been overestimated since that total of 100 days of pre-sentence custody has not taken into account the impact of section 719(2) of the **Criminal Code** which states as follows:

> Any time during which the convicted person is unlawfully at-large or is lawfully at-large on interim release granted pursuant to any provision of this Act does not count as part of any term of imprisonment imposed on the person.

[58] I find that section 719(2) of the **Criminal Code** applies in the circumstances of this case, as it is clear that Mr. Hanlon failed to attend the Central Nova Scotia Correctional Facility on two successive weekends after having attended on the first weekend (which started on Friday, October 30, 2015) following the 25 day intermittent sentence which was imposed on October 28, 2015. In these circumstances, I find that Mr. Hanlon had not completed serving that intermittent sentence while he was unlawfully at-large, and in fact, he has pled guilty to two charges of being unlawfully at-large contrary to section 145(1)(b) of the **Code**. As a result, while he was held on remand following his arrest on November 24, 2015, I find that pursuant to section 719(2) of the **Code**, Mr. Hanlon was only being held on remand from Tuesdays to Thursdays of each week until his intermittent sentence was completed and that he would have been serving his intermittent sentence from Fridays at 8 PM until Mondays at 6 AM until his intermittent sentence was completed.

[59] The court raised this issue with counsel and asked them to confirm when Mr. Hanlon actually finished serving his intermittent sentence. Counsel have obtained that information from the Manager of Sentence Administration at the Central Nova

Scotia Correctional Facility and they have advised the court that Mr. Hanlon completed his intermittent sentence on December 11, 2015. The sentence administrator also advised counsel that, while Mr. Hanlon was on remand, 11 days were utilized to complete his intermittent sentence. As a result of that information, I find that, as of March 2, 2016, Mr. Hanlon had 89 days of pre-sentence custody to his credit and that he is entitled to 14 additional days of pre-sentence custody for the period of time between March 2 and March 15, 2016. Therefore, as of today's date he has served 103 days of pre-sentence custody, with a total credit of 155 days or about five months of pre-sentence custody, based upon a credit of one and a half days for each day of pre-sentence custody.

[60] Therefore, when I deduct the 155 days or five months of pre-sentence custody from the total sentence that I have ordered of 10 ½ months of imprisonment, I conclude that Mr. Hanlon is now ordered, on a go forward basis, to serve a total of five and a half months of imprisonment. Clearly, a five and a half month term of imprisonment is well above the 90 day maximum sentence of imprisonment that could be considered to be served on an intermittent basis. Therefore, that leaves the question whether Mr. Hanlon should serve that term of imprisonment in the community under the terms of a CSO or whether he would be required to serve the balance of that term of imprisonment in a correctional facility.

Conditional Sentences of Imprisonment

[61] In order to impose a Conditional Sentence Order (CSO) of imprisonment to be served in the community, the offence or offences committed must fall within the parameters of section 742.1 of the **Criminal Code**. In determining if a CSO is an "available" sentencing option, section 742.1 of the **Code** requires the court to be satisfied that:

> **(a)** the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 the **Criminal Code;**
>
> **(b)** the offence is not an offence punishable by a minimum term of imprisonment;
>
> **(c)** the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 14 years or life;
>
> **(d)** the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more;
>
> **(e)** the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that
>
> > (i) resulted in bodily harm,
> >
> > (ii) involved the import, export, trafficking or production of drugs, or
> >
> > (iii) involved the use of a weapon; and
>
> **(f)** the offence is not an offence, prosecuted by way of indictment, under any of the following provisions:
>
> > **(i)** section 144 (prison breach),
> >
> > **(ii)** section 264 (criminal harassment),
> >
> > **(iii)** section 271 (sexual assault),
> >
> > **(iv)** section 279 (kidnapping),
> >
> > **(v)** section 279.02 (trafficking in persons — material benefit),
> >
> > **(vi)** section 281 (abduction of person under fourteen),

(vii) section 333.1 (motor vehicle theft),

(viii) paragraph 334(a) (theft over $5000),

(ix) paragraph 348(1)(e) (breaking and entering a place other than a dwelling house),

(x) section 349 (being unlawfully in a dwelling house), and

(xi) section 435 (arson for fraudulent purpose).

[62] In this case, the Crown has proceeded by way of summary conviction for all of the offences before the court and therefore, none of the statutory bars listed in section 742.1 of the **Code** are applicable. Therefore, I find that the imposition of a CSO of imprisonment in the community is an "available" option and the question remains whether it is the "appropriate" option in all the circumstances of the offences and this particular offender. However, if a CSO is the "appropriate" sentence I must be satisfied that the imposition of such an order would be consistent with all of the fundamental purposes and principles of sentencing <u>and</u> that the offender serving the sentence in the community would not endanger the safety of the community.

[63] In **R. v. Proulx**, 2000 SCC 5 (CanLii) the Supreme Court of Canada indicated that the conditional sentencing scheme was enacted "both to reduce reliance on incarceration as a sanction and to increase the use of principles of restorative justice in sentencing." This comment by Chief Justice Lamer is certainly consistent with section 718.2(d) of the **Code** which requires the

sentencing judge to take into consideration that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances."

[64] In addition, Lamer CJC noted in **Proulx**, *supra,* at para. 102, that incarceration will usually provide more denunciation than a Conditional Sentence, but a Conditional Sntence can still provide a significant amount of denunciation. This is particularly so when onerous conditions are imposed and the duration of the Conditional Sentence is extended beyond the duration of the jail sentence that would ordinarily have been the imposed in the circumstances. The Chief Justice also expressed similar remarks with respect to deterrence when a Conditional Sentence Order of imprisonment is made [see **Proulx,** *supra***,** at para. 107].

[65] As I indicated previously, our Court of Appeal and other courts of appeal have clearly stated that when it comes to crimes of violence perpetrated upon spouses or intimate partners in domestic relationships, the sentencing judge should, in the clearest of terms, stress the denunciation of the unlawful conduct and general deterrence as well as specific deterrence of the offender.

[66] The imposition of a CSO of imprisonment in the community also requires the Court to find that the offender does not constitute a danger to the public.

Danger to the public is analyzed and evaluated by reference to the risk of re-offending and the gravity of the danger of re-offending. See **R. v. Knoblauch**, 2000 SCC 58 (CanLii) at para. 27.

[67] After having considered the circumstances of the offences before the court and the circumstances of the offender, including his prior convictions, I am not satisfied that Mr. Hanlon would comply with the very stringent conditions that would be contained within any Conditional Sentence Order that might be imposed by the Court.

[68] I have come to that conclusion based upon the fact that Mr. Hanlon has, in the past, on several occasions, shown a complete disregard for court orders. On October 28, 2015, Mr. Hanlon was sentenced for two breaches of Probation and for two offences of failing to comply with the Recognizance or Undertaking. As part of the consolidated sentencing on that date, the court ordered Mr. Hanlon to serve a total of 25 days on an intermittent basis starting October 30, 2015. Mr. Hanlon only attended at the Central Nova Scotia Correctional Facility on the first weekend and failed to attend on the next two weekends, as he was required to do. As a result of his failure to comply with the court ordered intermittent sentence, Mr. Hanlon was charged with two offences of being unlawfully at-large, without a reasonable excuse, contrary to section 145(1)(b) of the **Code.**

[69] In addition to the foregoing failures to comply with court orders, Mr. Hanlon is being sentenced today for three more charges contrary to section 145(3) of the **Code** for failing to comply with the terms and conditions of an Undertaking or a Recognizance. As I indicated previously, those orders were made by the court following the initial allegation of assaulting Ms. Brautigam with a weapon contrary to section 267(a) of the **Code** on June 5, 2015 and following the allegation of assaulting Ms. Brautigam contrary to section 266(b) of the **Code** on August 24, 2015. In those court orders, Mr. Hanlon was ordered to not have any direct or indirect contact or communication with Ms. Brautigam; however, instead of seeking a variation of that order to allow for some contact or communication with Ms. Brautigam, Mr. Hanlon simply disregarded those court orders to maintain his contact or communication with her in addition to failing to comply with the terms and conditions of house arrest.

[70] Based upon Mr. Hanlon's prior actions and attitude towards court ordered releases, I am not satisfied that he would comply with the very stringent conditions that would be contained in a Conditional Sentence Order of imprisonment in the community, if I was inclined to make such an order. As such, I find that making an order to serve a CSO in the community would not be consistent with the

fundamental purpose and principles of sentencing which are to be emphasized in this sentencing hearing.

[71] In addition, I find that there is a significant risk of re-offending and that risk also endangers the safety of the community. Mr. Hanlon has, despite the fact that he is only 21 years old, already amassed of record for crimes of violence having committed an assault contrary to section 266 of the **Code** in October 2012 and assault with a weapon contrary to section 267(a) of the **Code** in April, 2013. In addition, in October, 2014, he was charged with resisting or obstructing a peace officer contrary to section 129(a) of the **Code**, and of course, he is being sentenced today for two assaults on his intimate partner, who was approximately 15 weeks and 26 weeks pregnant with their child at the time of those assaults. While Mr. Hanlon has taken an anger management course while on remand, I am still concerned that he is unable to control his violent impulses, especially, in the context of his relationships with his girlfriend or intimate partners. As a result, I also find that there is a significant risk of reoffending and the gravity of potential offences is also significant, given Mr. Hanlon's previous crimes of violence.

[72] Therefore, for all the foregoing reasons, I am not prepared to order a Conditional Sentence of imprisonment in the community, and I hereby order Mr.

Hanlon to serve the balance of the sentence which I ordered, being five and a half months of imprisonment in a correctional facility.

[73] Upon completion of the period of incarceration that I have ordered, I hereby order Mr. Hanlon to be subject to a period of Probation for 12 months. In addition to the **Criminal Code**'s statutory conditions, the following optional conditions are included in this Probation Order:

- report to the Probation officer at 277 Pleasant Street, Dartmouth Nova Scotia, within one day of the expiration of your sentence of imprisonment and thereafter as directed by your Probation officer;
- not to possess, take or consume a controlled substance as defined in the **Controlled Drugs and Substances Act** except in accordance with physician's prescription for you or a legal authorization;
- not to have in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance;
- have no direct or indirect contact or communication in any manner with Ms. Abigail Brautigam, except through a lawyer, or in accordance with the court order for access to a child, or with Ms. Brautigam's express consent which may be withdrawn at any time;
- attend for substance abuse assessment and counseling as directed by Probation officer;
- attend for assessment and counseling in a violence intervention and prevention program as directed by your Probation officer, in particular, the program related to spousal/partner violence;
- attend for assessment, counselling or treatment program as directed by your Probation officer; and
- participate in and cooperate with any assessment, counselling or treatment program directed by your Probation officer.

[74] Finally, section 737(1) of the **Criminal Code** requires an offender who has been convicted of offences under the **Criminal Code** or the **Controlled Drugs and Substances Act** to pay a surcharge for victims in addition to any other punishment imposed on the offender. The amount of the surcharge is determined by section 737(2) of the **Code**, which dictates that in the event no fine is imposed on the offender for the offence(s), the surcharge for victims is $100 for each offence which was punishable by summary conviction. As I indicated at the outset of this sentencing decision, the Crown proceeded by way of summary conviction on all nine of the charges which are before the court today. Therefore, I hereby order Mr. Hanlon to pay the surcharge for victims in the total amount of $900 and given the fact that he is unemployed at the moment and I have ordered a go-forward sentence of five and a half months of imprisonment in a correctional facility, I will provide him with two years to make payment of the surcharge for victims.

[75] As I indicated at the outset, the Crown Attorney did not seek any ancillary orders in this case.

CONCLUSION:

[76] For all of the reasons outlined above, I have ordered Mr. Hanlon to serve a sentence of five and a half months of imprisonment in the provincial correctional facility, to be followed by 12 months under the terms and conditions of a Probation Order.

Judgment accordingly.

Theodore K. Tax, JPC