

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Gaudet, 2009 NSPC 54

**Date:** 20091020

**Docket:** 1931074, 1931075, 1956680

**Registry:** Pictou

**Between:**

Her Majesty the Queen

v.

Robert Joseph Gaudet

**Judge:** The Honourable Judge Theodore K. Tax

**Heard:** September 1, 2009 in Pictou, Nova Scotia  
October 8, 2009 in New Glasgow, Nova Scotia

**Oral Decision:** October 20, 2009 in Pictou, Nova Scotia

**Charges:** Section 266(b)CC  
Section 266(b)CC  
Section 268(2)CC

**Counsel:** Jody McNeill, for the Crown  
Doug Lloy, for the Defence

(Orally)

[1] On May 5, 2009, Mr. Robert Gaudet entered guilty pleas to two charges of common assault, contrary to section 266(b) of the **Criminal Code** relating to two separate assaults in the early morning hours of July 12, 2008 of Morgan Snyder and Samantha Duggan in Pictou, Nova Scotia. The Crown proceeded summarily on these two charges.

[2] On June 6, 2009, Mr. Gaudet entered guilty pleas to a charge of aggravated assault, contrary to section 268(2) of the **Criminal Code**, arising out of an incident on September 14, 2008 with his brother, John Ryan Coady in Pictou, Nova Scotia. The aggravated assault charge, contrary to section 268(2), is an indictable offence and Mr. Gaudet elected to have his trial in the Provincial Court.

[3] The three charges were joined for the purposes of sentencing. The Crown's sentencing submissions were made on September 1, 2009, and the Defence submissions being made on October 8, 2009. At the request of the court, counsel provided cases in support of their sentencing submissions.

#### **POSITIONS OF THE PARTIES:**

[4] Crown counsel submitted that the appropriate range of sentence where a charge of aggravated assault was involved, and in this case the victim being stabbed with a knife, would range anywhere from one year in jail to a federal period of incarceration

followed by a significant period of time on Probation. Taking into account all aggravating and mitigating factors present in this case, Crown counsel submitted that the court should impose a period of incarceration for 10 to 12 months followed by 18 months probation. The Crown's position is that the court should focus on deterrence and denunciation of this unlawful conduct and that a conditional sentence order, for several reasons, was not a fit and proper sentence in the circumstances of this case.

[5] Defence counsel, on the other hand, submitted that in light of all of the mitigating factors, the fact that the case law involving sentencing on aggravated assault charges varies widely, and although being a purely indictable offense, there was no minimum penalty prescribed by the **Code**. Counsel submitted cases in support of his sentencing submission which proposed a three-year suspended sentence on strict terms or, in the alternative, a conditional sentence order of two years less a day in order to allow Mr. Gaudet to serve his sentence of imprisonment in the community, followed by one year on terms of probation.

#### **BACKGROUND FACTS:**

[6] The assaults involving Ms. Snyder and Ms. Duggan occurred in separate, but related incidents on July 12, 2008 at about 3:45 AM , just outside the Highlander Pub in Pictou, Nova Scotia. Ms. Snyder was leaving the pub shortly after 3 AM and was waiting outside for her friend, Samantha Duggan, to come to pick her up. Mr. Gaudet

was walking down the street and as he passed the Pub, he started cursing at Ms. Snyder, who was waiting on the steps for her drive home. Mr. Gaudet was highly intoxicated at the time and did not heed the advice of Ms. Snyder to go home and leave her alone. He spit in her face a couple of times, took a swing at her with a closed fist, which she dodged and attempted to block with her hand, and then he bit her left hand. Ms. Duggan, who had driven to the pub in order to give her friend a drive home, got out of her car and tried to separate the two and intervene between Mr. Gaudet and Ms. Snyder. When Ms. Duggan intervened in that manner, Mr. Gaudet spit in her face and then punched her in the face with a closed fist.

[7] The incident involving the aggravated assault of John Ryan Coady occurred in Pictou, Nova Scotia, on September 14, 2008, around 2 AM. Mr. Gaudet and his brother, John Ryan Coady, had been drinking alcohol and watching an ultimate fighting competition on television. An altercation ensued over whose favorite fighter had won the match, tempers flared, with John Coady pushing and shoving Mr. Gaudet into the kitchen. In response to Mr. Coady's actions, Mr. Gaudet grabbed a small kitchen filleting knife and stabbed Mr. Coady three times - once in the left chest and abdomen, another in the right chest and abdomen and also on the ankle. None of the wounds were life-threatening; however, there was a significant loss of blood and the wound on the right side of the abdomen was 3 to 4 inches deep and required several

stitches. The other two wounds were more of a superficial nature.

[8] Despite being advised of their rights to do so, none of the victims filed a victim impact statement. In fact, at the sentencing hearing, Mr. John Ryan Coady testified on behalf of the defence and acknowledged that he had initiated the incident by being physically aggressive with Mr. Gaudet. Moreover, he maintained that all of the wounds inflicted by the knife were superficial and not deep wounds. He has forgiven his brother for the incident and being aware of the Crown's position to seek a custodial sentence, he wanted to support his brother and his efforts to continue with the education program that Mr. Gaudet just started.

#### **ANALYSIS:**

[9] In order to assist judges in determining a fit and proper sentence, Parliament has set out in sections 718, 718.1 and 718.2 of the **Criminal Code**, the fundamental purpose and principles of sentencing. In section 718 of the **Code**, Parliament established that the fundamental purpose of sentencing and the objectives which the sentence should attempt to achieve. These objectives are denunciation, general and specific deterrence, separation of offenders from society where necessary, rehabilitation, making reparations and the promotion of a sense of responsibility in the offender.

[10] In section 718.1 of the **Code**, Parliament established that a fundamental

principle of sentencing is proportionality, which requires a sentence to be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[11] In section 718.2 of the **Code**, other fundamental sentencing principles require the court to take into account the various relevant aggravating and mitigating circumstances. The court must also take into account the principle that like offenders should be treated alike and the totality principle where consecutive sentences are imposed to ensure that the combined sentence is not unduly long or harsh. Finally, the court must consider the principle that imprisonment should, within reason, be seen as a last resort, especially in the case of aboriginal offenders.

#### **THE OFFENDER'S CIRCUMSTANCES:**

[12] Mr. Gaudet is a 21-year-old, first time adult offender. He has completed his grade 12 education in 2008, after failing grade 11 due to poor attendance. Mr. Gaudet has been living on his own since he was 17 years old, and during the grade 11 school-year, he found it difficult to balance both work and school. At school, he successfully completed the Occupational Preparation Program in the auto care, food service and retail programs, and enjoyed the hands-on experience. He was described as being a hard-working and responsible person, and a model student of this program. In September, 2009, he was accepted into the machinery program offered by the Nova

Scotia Community College, Pictou campus and correspondence received indicates that he is progressing well, completing his assignments on time and is showing a lot of interest in the program.

[13] A pre-sentence report was prepared and the probation officers noted that the offender's father stated that he was not surprised by his son's behavior because the relationship between Mr. Gaudet and his brother, John Ryan Coady, had always been strained. The offender's father also noted that alcohol had become an issue in his son's life. Mr. Gaudet advised the probation officers that he stopped drinking in October 2008 as a result of his release condition to abstain from the use of alcohol. He agreed that in the past, he may have had a "minor problem" with alcohol, but did not feel he had an addiction. Mr. Gaudet also reported that he had consumed marijuana on a daily basis, however, he also stopped using that drug in October 2008.

[14] The probation officers found that, while Mr. Gaudet stated he accepted full responsibility for his involvement in the aggravated assault, he also appeared to minimize his actions as well as the serious nature of the offence in stating that "I poked, but didn't stab him. He always picked on me." The probation officers concluded their assessment by stating that while "Mr. Gaudet has acknowledged responsibility for his role in the offence, his sincerity is questionable." In their opinion, Mr. Gaudet minimized his role in the offence and justified his actions

through indicating that the victim “had it coming.” As result, the probation officers did not believe that the offender displayed any empathy towards the victim or any real remorse for his behavior.

### **SENTENCING CONSIDERATIONS- AGGRAVATING & MITIGATING FACTORS:**

[15] Mr. Gaudet comes before the court to be sentenced on three crimes of violence. The most serious of the three charges is, of course, the aggravated assault charge in which he used a knife to stab his brother three times. Two of the stab wounds may have been more of a superficial nature, but one was 3 to 4 inches deep and it occasioned a significant loss of blood and required stitches. None of the stab wounds were life-threatening and Mr. Coady has made a complete recovery.

[16] As aggravating factors, the Crown counsel points out that the attack on the two women outside the pub was completely unprovoked and involved the intentional application of three forms of force being applied to the women without their consent. The assaults on the two women outside the Highlander Pub, included the assaultive, demeaning and disgusting action of spitting on both women, biting one woman’s hand when she attempted to block a punch and the punching of the other woman in her face with a closed fist. The Crown points out that Mr. Gaudet had a prior **Youth Criminal Justice Act** record when he was 17 years old for 3 break, enter and thefts and one



assault of a peace officer, and that Mr. Gaudet was 20 years old at the time of the offences for which he is to be sentenced today.

[17] A further aggravating factor as far as the Crown was concerned was that the aggravated assault occurred while Mr. Gaudet was free on an undertaking given to an officer in charge on the two assault charges involving Ms. Duggan and Ms. Snyder, which contained clauses to abstain from the use of alcohol and controlled drugs. The Crown also points out that Mr. Gaudet appears to have accepted full responsibility for the three charges, but with respect to the aggravated assault, he appeared to minimize his involvement and the serious nature of his actions.

[18] As mitigating factors, Defence counsel points out that his client is a youthful first time adult offender, although there was one prior related offence involving the assault of a peace officer as a young person under the **Youth Criminal Justice Act**. Defence counsel pointed out that the aggravated assault charge was unpremeditated and occurred after an argument escalated to physical force, against a backdrop of being constantly picked on and bullied by his older brother. Mr. Gaudet has taken steps to stop his alcohol and drug usage and has enrolled in a course at the Nova Scotia Community College. His tuition is being paid on a fee sharing arrangement with the Department of Community Services to assist Mr. Gaudet in becoming a machinist, and if incarcerated, Mr. Gaudet would not be able to continue with the

course and would have to repay \$5000 of the \$15,000 tuition.

[19] Defence counsel also pointed out that since being released on the undertaking by the officer in charge in September 2008, there have been no allegations of any failures to comply with the terms and conditions of his release. Counsel also points out that there were early guilty pleas to the charges which saved the state the expense of a trial and that his client accepts full responsibility for the three assaults. During the sentencing hearing, Defence counsel called Mr. John Ryan Coady, the victim of the aggravated assault, who confirmed that he had initiated the incident on the evening in question, he has since forgiven his brother and did not wish to see him incarcerated for this offence. Mr. Coady wished to have his brother continue with his education.

### **THE CRIME OF AGGRAVATED ASSAULT:**

[20] In the case of **R. v. Marsman**, [2007] NSCA 65, the Nova Scotia Court of Appeal had occasion to hear a sentence appeal involving a charge of aggravated assault. Chief Justice MacDonald noted in paragraph 17 of the judgment that, in Canada, assault charges are organized along a continuum depending upon the severity of the attack. They range from the least serious common assault to the ultimate “assault”, that is, murder. Short of culpable homicide, aggravated assault represents the most serious indictment. It involves either wounding, maiming, disfiguring or the

endangerment of life and carries a potential punishment of 14 years in jail.

[21] In **Marsman**, Chief Justice MacDonald referred to and agreed with the remarks of Mr. Justice Cameron of the Saskatchewan Court of Appeal in **R. v. Keshane**, [2005] S.J. No. 97. In that case, Cameron J.A. observed that the gravity of the aggravated assault charge lies in the nature and comparative seriousness of the offence as well as in the circumstances of its commission and in the harm caused.

[22] As a starting point, given the seriousness of the crime generally and the vicious nature of the attack, Chief Justice MacDonald said in **Marsman** at paragraph 26 that the principles of deterrence and denunciation can only be properly addressed through a period of incarceration. In his view, “this is unavoidable.” The Court of Appeal went on to note in paragraph 27 that despite what they referred to as “special mitigating circumstances” surrounding Marsman, including his sincere and constant remorse, his lack of adult record, his mental illness and his overwhelming community support, a period of incarceration was still mandated. The Court concluded in paragraph 30 that this offence commands a period of incarceration and that probationary measures cannot adequately address the objectives of denunciation and deterrence.

[23] The Nova Scotia Court of Appeal has held a long-standing view that in aggravated assault charges, particularly where a weapon is involved, the overriding consideration in sentencing with respect to crimes of violence of this nature, must be

specific and general deterrence, save very exceptional cases. This point was made in **R. v. Perlin**, [1977] NSJ No. 548, and reiterated in **R. v. Dzikowski**, [1990] NSJ No. 353 and more recently in **R. v. King**, [1999] NSJ No. 331.

[24] From these decisions and the statutory purposes and principles of sentencing, I conclude that the Court of Appeal has instructed trial judges that a fit and proper sentence in the case of this nature must more effectively address the principles of deterrence and denunciation, while at the same time balancing the obvious need to see the offender rehabilitated. A period of incarceration given the seriousness of the crime is “unavoidable.” I also conclude from my review of these cases that probationary measures alone, even where there are special mitigating circumstances surrounding the particular offender, cannot adequately address the objectives of denunciation and deterrence.

#### **AVAILABILITY OF CONDITIONAL SENTENCE ORDERS:**

[25] As the Nova Scotia Court of Appeal has pointed out in **Marsman**, where there is a charge which involves an aggravated assault, the sentencing judge should primarily focus on the principles of specific and general deterrence, as well as denunciation of the unlawful conduct. The Court of Appeal has also instructed trial judges that these principles can only be properly addressed through a period of

incarceration. The question remains whether that imprisonment should be incarceration in a correctional facility or by way of a conditional sentence order which would allow the offender to serve the term of imprisonment in the community under strict conditions.

[26] In section 742.1 of the **Code**, Parliament has established the criteria for a trial judge to consider in determining the two-stage process outlined in **R. v. Proulx**, 2000 SCC 5 and as recently applied in Nova Scotia in **R. v. Knickle**, 2009 NSCA 59 and **R. v. Conway**, 2009 NSCA 95. From these decisions, it appears that the overall approach to section 742.1 of the **Code** requires the sentencing judge to determine if a conditional sentence is available and if so, whether it is an appropriate disposition in all of the circumstances of the case.

[27] Section 742.1 of the **Criminal Code** provides as follows:

“If a person is convicted of an offence other than a serious personal injury offence as defined in section 752, 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, or an offence punishable by a minimum term of imprisonment, and the court imposes a sentence of imprisonment of less than two years and is satisfied that 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 court may, for the purpose of supervising the offender’s behaviour in the community, order that the offender serve the sentence in the community subject to the offender’s compliance with the conditions imposed under section 742.3.”

[28] Looking at section 742.1 of the **Code**, as amended in 2007 by Parliament in the Statutes of Canada, Chapter 12 [Bill C-9], I note that the amendment, which I've just read, came into force on December 1, 2007, provided that a person convicted of a "serious personal injury offence" as defined in section 752 of the **Code**, which is prosecuted by way of indictment and for which the maximum term of imprisonment is 10 years or more, is not eligible for a conditional sentence. The 2007 amendment made by Parliament did not alter the other conditions precedent to a court's consideration of a conditional sentence, namely, that the sentence of imprisonment must be less than two years and that the court must be satisfied that serving 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 of the **Code**.

[29] That part of the definition of a "serious personal injury offence" contained in section 752 which is relevant to the circumstances of this case is:

“(a) an indictable offence, other than high treason, treason, first degree murder or second-degree murder, involving

(I) the use or attempted use of violence against another person,  
or

(ii) conduct endangering or likely to endanger the life or safety of

another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for 10 years or more, ...” (The second part deals with sexual assaults, which is obviously not relevant here.)

[30] As mentioned above, by virtue of section 268(2) of the **Code**, a charge of aggravated assault where the offender either wounds, maims, disfigures or endangers the life of the complainant is an indictable offence. While there is no minimum sentence prescribed by Parliament in that section, the offender is liable to imprisonment for a term not exceeding 14 years. As a result of the 2007 amendment to the **Code**, I conclude that Parliament has determined that if an offender is convicted of an aggravated assault charge, and the defining criteria of a “serious personal injury offence have been met, then a conditional sentence order of imprisonment to be served in the community, is not one of the available options to the sentencing judge.

[31] Having regard to the facts and circumstances of this case, and the definition contained in section 752 of the **Code**, I find that the use of violence, which wounds, maims, disfigures or endangers the life of the complainant is an essential element of the offence of aggravated assault. In this case, the facts indicate that Mr. Gaudet’s stabbing of Mr. Coady may not have actually endangered his life; however, I nevertheless conclude that Mr. Gaudet’s actions in stabbing Mr. Coady may have

endangered his life or safety. In essence, I do not believe that I have to make a qualitative analysis of the seriousness of the injury, since I have concluded that although only one of the two aspects of the definition of a “serious personal injury offence” needs to be established, I am satisfied that, in this case, both aspects of the definition have been established beyond a reasonable doubt by the Crown.

[32] As result of the December 1, 2007 amendment to section 742.1 of the **Code**, and my analysis of the definition of a “serious personal injury offence”, I conclude that a conditional sentence order of imprisonment to be served in the community, is not one of the available options to me as the sentencing judge in all the circumstances of this case.

### **THE APPROPRIATE DISPOSITION:**

[33] In determining the appropriate disposition for this case, I am of the view that I should first deal with the assaults of the two women in July, 2008, as they were the first offences in time. At the time of those offences, Mr. Gaudet was 20 years old and did not have any prior adult criminal record. There is no doubt in my mind that the assaults of the two women were at the lower end of the continuum of assaults to which Chief Justice MacDonald referred in the **Marsman** decision of the Nova Scotia Court of Appeal. Moreover, these incidents were the result of Mr. Gaudet being highly



intoxicated and becoming embroiled in a verbal altercation with two young women who were complete strangers to him. Neither woman filed a victim impact statement and based upon the information provided by the Crown, neither one suffered any serious injuries.

[34] Given the nature of these two offences and the fact that Mr. Gaudet has taken steps to address his successful rehabilitation, I am of the view that the appropriate disposition for these two offences can largely focus the individual offender's rehabilitation and promoting a sense of responsibility in him to become a productive citizen in the community. Based on the information that I have received, Mr. Gaudet has already taken action towards his rehabilitation by abstaining completely from the use of alcohol and controlled drugs and substances. This, in my view, is a very positive development as I have no doubt that the incidents involving the two women were fueled by Mr. Gaudet being highly intoxicated at the time of those two offences.

[35] In terms of these two charges, I find that a sentence imposed here under section 718.2(b) of the **Criminal Code** should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Having regard to all of the facts and circumstances of these two charges as well as the purposes and principles of sentencing in sections 718 to 718.2 of the **Criminal Code**, I conclude that a community-based disposition would be the appropriate disposition for the two

assault charges contrary to Section 266(b) of the **Code**. For these two charges, I hereby suspend sentence and order him to observe terms and conditions of probation for a period of 12 months. I will outline those terms and conditions of probation in a moment.

[36] As for the charge of aggravated assault contrary to section 268(2) of the **Criminal Code**, my review of the Nova Scotia Court of Appeal decisions has clearly indicated that deterrence and denunciation are the overriding concerns, and that they can only be addressed through a period of incarceration. At the same time, particularly when we are dealing with a youthful first time adult offender, I must be mindful of the principles of rehabilitation and promoting a sense of responsibility in this offender to ensure the long-term protection of society. So, the rehabilitation of Mr. Gaudet must be taken into account, but given the seriousness of the aggravated assault charge, I must do so in an appropriate manner to ensure that the goals of denunciation and deterrence remain the overriding concern, and the law on this point is clear.

[37] In this case, Mr. Gaudet stabbed his brother three times, with two of those stab wounds being in his chest or abdomen. It is acknowledged that the context in which this aggravated assault occurred was between brothers, who were drinking alcohol and probably intoxicated, and that it was not a random act of violence involving strangers. As pointed out in the background facts and circumstances of this charge, the pre-

sentence report and acknowledged by the victim John Ryan Coady at the sentencing hearing, there has been a history of him bullying his younger and smaller brother, Mr. Robert Gaudet. Mr. Coady acknowledged that he initiated the physical altercation with his brother following the conclusion of an ultimate fighting competition that they were watching on television. During that altercation, Mr. Gaudet responded by stabbing or to use his word “poking” his brother three times with a knife that he found in the kitchen, as Mr. Coady came towards him.

[38] Having regard to all of the facts and circumstances of this case, there is no doubt in my mind that this senseless violence must be deterred and denounced firmly by the court. Not only this specific offender must be deterred, but also a clear message must be sent that this conduct will not be tolerated by society and will be met by and with a meaningful response. I find that the specific deterrence of Mr. Gaudet himself, and general deterrence of others from committing this senseless kind of serious and potentially life-threatening violence, is an overriding concern and the most important sentencing objective to be addressed today. I also find that there is no legal issue of self-defence or any other legal justification for Mr. Gaudet to have stabbed at his brother with a knife, especially when considering that Mr. Coady was stabbed on three occasions, two of which being in the chest and abdomen area. While there was a significant loss of blood from one of the stab wounds that was 3 to 4 inches deep in

the chest and abdomen area, fortunately for all concerned, the injuries were not life threatening or of a long-standing nature.

[39] The Crown submitted cases involving aggravated assaults, many of which included fights while intoxicated where the offender resorted to stabbing the victim. Those cases, which in some situations took account and gave credit for pretrial custody, ranged from a period of an additional nine months to 12 months incarceration to as high as four years in the penitentiary. Both Crown and Defence pointed out that sentencing is a highly individualized process with each case having to be determined individually on its own merits. Both counsel agreed that a period of probation would be required in order to assist the offender with his rehabilitation and to protect society.

[40] As I have previously indicated, with Parliament's amendment of section 742.1 of the **Criminal Code** in December, 2007, a conditional sentence order is not one of the available options for my sentencing determination. I have also concluded that given the circumstances of this offence and the seriousness of the charge of aggravated assault, a suspended sentence and a lengthy term of probation would be wholly inappropriate to address the paramount concerns of denunciation and deterrence for this potentially life-threatening and senseless violent conduct. As a result, I have come to the conclusion that a period of incarceration is "unavoidable" to use the words of Chief Justice MacDonald in **Marsman**.

[41] In determining the appropriate disposition, I am mindful that there was a generally positive pre-sentence report which highlighted several rehabilitative steps being taken by Mr. Gaudet. First, he has either been gainfully employed or taken steps to further his education while these charges were before the court. He has successfully completed his grade 12 requirements and was described as a model student attaining above average grades. Mr. Gaudet is presently enrolled at the Nova Scotia Community College, Pictou campus in the machinery program and is reported to be doing well in his assignments and the requirements of the program. I am also mindful that he has stopped consuming alcohol and drugs since being put on conditions of release in September 2008, following the aggravated assault incident with his brother.

[42] Mr. Gaudet has entered an early guilty plea and accepted full responsibility for the offence, although the pre-sentence reporters were of the view that he was not remorseful. The issue of Mr. Gaudet's remorse was explained during the sentencing hearing and relates back to the years of bullying at the hands of his brother, John Ryan Coady. On this point, I simply note that the expression of remorse is a mitigating factor, but I do not consider the absence of remorse to be an aggravating factor.

[43] In addition to those positive elements of the pre-sentence report, there was also the testimony at the sentencing hearing from Mr. John Ryan Coady acknowledging his years of bullying and picking on Mr. Gaudet, and the fact that he initiated the

physical altercation, which culminated with him being stabbed by his brother. He has forgiven Mr. Gaudet and pointed out to the court that none of the injuries were serious or life-threatening, and that he wished to see his brother continue with his education at the Nova Scotia Community College. While Mr. Coady's views are relevant information for consideration of an appropriate disposition, they are not determinative of the issue, as there is still a societal concern for the protection of the public.

[44] Having concluded that a period of incarceration was inevitable given the seriousness of the charge and circumstances of this aggravated assault and the fact that a conditional sentence order was not an available option, I conclude that a term of nine months' incarceration in a provincial institution would be the appropriate disposition. Following the completion of that sentence of incarceration, in order to promote Mr. Gaudet's rehabilitation and the protection of society, I am ordering that he comply with the following terms and conditions of probation for a period of 12 months:

1. Keep the peace and be of good behavior;
2. Appear before the court as and when required to do so by the court;
3. Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of the employment or occupation

And in addition to those statutory conditions, he is required to:

4. Report to the probation officer at 115 MacLean street, New Glasgow, Nova Scotia, within 10 days after the expiration of his sentence of imprisonment, and thereafter as directed by the probation officer;
5. Remain within Nova Scotia unless written permission to go outside the province is obtained from the probation officer in advance;
6. Abstain from the consumption of alcohol or other intoxicating substances;
7. Abstain from the consumption of controlled drugs and substances except in accordance with a physician's prescription or the Medical Marihuana Access Regulations;
8. Not to be in any place or establishment or alcohol as a primary product for sale;
9. Make reasonable efforts to locate and maintain employment or educational program as directed by the probation officer;
10. You must also stay away from the person, premises and place of business, if any, of Morgan Snyder and Samantha Duggan and have no contact, directly or indirectly, with them even if invited to do so and there are no exceptions.
11. Attend for assessment and counseling as directed by the probation officer, but in particular, to attend for alcohol and substance abuse as well as anger management assessment and counseling.
12. If assessment, counseling or a program is directed by the probation officer, you are to actively participate and cooperate with that assessment, counseling or program recommended by that assessment.

[45] In addition, given the fact that the aggravated assault charge is a primary designated offence, I am also making a firearms order under section 109(2) of the **Criminal Code**, which prohibits you from owning or possessing a firearm, other than

prohibited firearm or restricted firearm, and any crossbow restricted weapon, and ammunition or explosive substance from today's date and ending not earlier than 10 years after your release from imprisonment. With that, there is also a prohibition from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[45] Finally, the Crown has asked for a DNA order to be made under section 487.051 of the **Code**, and given the fact that the aggravated assault charge is the primary designated offence for that purpose as well, I make that order requiring you to provide a sample of bodily substance for the purpose of DNA analysis at a date, time and place to be determined by the police authorities.

---

**JUDGE THEODORE K. TAX, A JUDGE  
OF THE PROVINCIAL COURT FOR THE  
PROVINCE OF NOVA SCOTIA**