

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

Cite as: R. v. Frank, 2012 NSPC 5

**Date:** January 24, 2012  
**Docket:** 2244882-88  
277993, 2277995 - 96  
2287846-53  
2287856, 2287858  
**Registry:** Halifax

Her Majesty the Queen

v.

Robert Douglas Frank

**DECISION ON SENTENCE**

**Judge:** The Honourable Judge Anne S. Derrick  
**Heard:** January 13, 2012  
**Decision:** January 24, 2012  
**Charges:** sections 145(3) x9; 145(5.1) x 9; 430(4)  
264(2)(b) of the *Criminal Code*  
**Counsel:** Rick Woodburn - Crown Attorney  
Peter Planetta - Defence Counsel

**By the Court:***Introduction*

[1] On August 12, 2011 I convicted Robert Frank of offences that occurred during the fall of 2010 and the winter of 2011. These offences were breaches of undertakings, recognizances and probation orders prohibiting him from having contact with Susan Chawner, who had been a friend he knew from their church, a mischief charge, and a criminal harassment charge for calls made to Ms. Chawner's mother, Joyce Chawner. During the fall of 2010 and the winter of 2011, Mr. Frank repeatedly defied conditions to have no contact with Susan Chawner and committed the two substantive offences I just mentioned. In total, four informations were laid against him and all heard before me in one trial. Of the 23 charges, I stayed 3 section 145(3) *Criminal Code* charges.

[2] Following Mr. Frank's trial I wrote a lengthy decision detailing the evidence (*R. v. Frank, [2011] N.S.J. No. 729*) and concluded as follows:

[139] ...I do not believe anything Mr. Frank has said about the events that have been the subject of this trial. I found him to be dissembling and evasive. His evidence was full of fabrications and deceit. I do not believe that anyone other than Mr. Frank was responsible for making the harassing calls to Mrs. Chawner. Not only do I disbelieve Mr. Frank's denials, the rest of the evidence leads to only one inference; that Mr. Frank targeted Mrs. Chawner as part of a campaign to make Susan Chawner's life miserable. That is entirely consistent with his other strategies during this time.

[140] The evidence satisfies me that Mr. Frank was obsessed with Susan Chawner, could not cope with her pulling back from the friendship, especially given the fanciful notions he had about their relationship, and became consumed by jealousy and vengeance. He could not let Susan Chawner go. He visited his hostility on Susan Chawner by puncturing her

tires. Staples found in Ms. Chawner's and her mother's driveways were identical to the staples that Larry Smith said were brought on to the truck in abundance by Mr. Frank. He manufactured stories about rogue cell phones and stealthy assailants. He crafted menacing notes and left cryptic messages. He even inflicted superficial injuries on himself and concocted another fable about being attacked. He was not living by biblical teachings of kindness and love: he wanted Susan Chawner to be his and he was angry that she had cut off contact with him. He thought of her as a "bitch" and chafed at not being able to have what he wanted from her. In the course of his preoccupation with Ms. Chawner and his thwarted hopes, he crossed the bright lines of the criminal law...

### *Crown and Defence Positions*

[3] Mr. Frank is now before me for sentencing. It is agreed by Crown and Defence that he should be subject to a custodial sentence. It is also agreed that he is entitled to receive credit for the time he has spent in pre-sentence custody in the amount of 10 months. The Crown submits that a 24 month sentence is appropriate in this case with a net "go forward" sentence of 14 months. The Defence position is that Mr. Frank's sentence should either be "time served" on the basis of his having spent the equivalent of 10 months in jail or, using 12 months as an appropriate sentence and subtracting the remand credit, a "go forward" sentence of 2 months.

[4] Both Crown and Defence agree that whatever length of sentence I fix should be followed by a probationary term of 3 years with the condition that Mr. Frank have no contact with either Susan or Joyce Chawner.

[5] Mr. Frank has already received a three year probation order which has not yet taken effect as he is still in custody. The order was imposed on June 24, 2011 following a conviction for criminally harassing Susan Chawner on dates between June 25 and September 1, 2010. I am told that probation order contains conditions for mental health assessment and counseling. The Crown and Defence are not seeking to have that condition repeated in any probation order I impose.

*Mr. Frank's Criminal Record*

[6] Mr. Frank has a dated record for assault in 1998 which netted him a conditional discharge. This is not material to my assessment of the appropriate sentence for Mr. Frank on the charges before me. It is an unrelated and stale record.

[7] What is material is Mr. Frank's more recent record, his conviction for criminally harassing Susan Chawner. The criminal harassment occurred between June 25 and September 1, 2010. Mr. Frank was convicted following a trial and sentenced on June 24, 2011. Pre-sentence custody of 115 days was taken into account and he was given a sentence of time served plus three years probation. In sentencing Mr. Frank, Sherar, J. noted that he was "mindful" of Mr. Frank's "minimal prior record" and the fact of the Crown proceeding summarily.

[8] The criminal harassment of Susan Chawner that resulted in Mr. Frank receiving in June 2011 the equivalent of nearly 4 months custody occurred over the summer of 2010, up to September 1, 2010 according to the Information. The criminal offences I am sentencing Mr. Frank for started on September 1, 2010 and continued through to March 1, 2011. Mr. Frank was obviously not deterred by being charged the first time.

*Victim Impact Statements*

[9] Susan and Joyce Chawner have had their lives turned upside down by Mr. Frank. Joyce Chawner is 78 years old. She lives by herself. In her Victim Impact Statement she described being "constantly anxious and fearful" because of the criminal harassment. She suffered a lack of sleep and constant anxiety about her daughter's safety and emotional well-being. There have been physical implications as well for Mrs. Chawner: she has a tremor condition which is made much worse by stress and affects her ability to eat, drink and write.

[10] Susan Chawner described in her Victim Impact Statement being “afraid in ways I’ve never experienced before.” The ringing of the phone makes her cringe. In December 2010 she and her mother had to relocate their Christmas celebrations to Ms. Chawner’s home, a break with tradition, because Ms. Chawner was concerned about her car being sabotaged in her mother’s driveway. Ms. Chawner expressed sorrow that her long connection to Trinity Anglican Church has been disrupted, if not, ruptured. She says she is not comfortable attending the church anymore and “may never be able to go back.” Ms. Chawner concluded her Victim Impact Statement with these words:

I’m sure it’s hard for most of you to believe, but Robert Frank was once someone I regarded as a friend. But as a result of the hurt and fear he has instilled in me, his unprovoked harassment, the flattened tires, the intimidation tactics, the cruel lies he has spread about me and his reckless disregard for my safety, that friendship is lost forever. His fixation on me is beyond explanation and I’m afraid to even consider how this might end.

[11] It was emphasized to Mr. Frank at his sentencing on June 24 that Ms. Chawner wanted nothing to do with him ever again. In view of what Mr. Frank said during the trial I heard, this message is plainly going to have to be drilled into Mr. Frank at this sentencing as well.

*Pre-sentence Report – June 2, 2011*

[12] The pre-sentence report that was prepared for Mr. Frank’s June 24 sentencing was made available to me. Mr. Frank is 54 years old. He was divorced some years ago and has an adult son and daughter.

[13] Mr. Frank has dyslexia and left school early to start working, although he subsequently upgraded his education to Grade 12. His brother, Bill Frank employed him in his business and told the author of the pre-sentence report that if Mr. Frank was given specific instructions he worked well. At the time of his remand into custody on March 1, 2011, Mr. Frank had been working with Atlantic Automatic Sprinklers.

[14] A former rector of Trinity Anglican Church, Reverend Andrews noted that Mr. Frank experienced a significant period of loneliness after the breakdown of his marriage that led to his involvement with Trinity Church and an obsessive interest in studying the Bible.

[15] As for Ms. Chawner and the events relating to this case, Mr. Frank repeated the same fictions in his pre-sentence report interview that characterized his evidence at trial. It appears that much of what Mr. Frank told the pre-sentence report author was consistent with his trial testimony, which I rejected as a wholesale fabrication.

[16] A general consensus emerges from the pre-sentence report that Mr. Frank has a serious mental health problem. That concern is advanced by Susan Chawner, Bill Frank, and Reverend Ashton. Mr. Frank was identified as someone who fails to take responsibility for his actions and does not believe he has done anything wrong. No confidence is expressed that Mr. Frank will abide by conditions to stay away from Ms. Chawner: he is described as having no “processing skills”, not listening, being reactive, and, according to Reverend Ashton, liking “to take the role that what he is doing is God’s will.”

#### *Section 672.11 Criminal Code Psychiatric Assessment*

[17] Mr. Frank’s sentencing was originally scheduled for September 16. At that time, a joint Crown and Defence request was made for a section 672.11 *Criminal Code* psychiatric assessment to explore the issue of whether Mr. Frank might be not criminally responsible by reason of mental disorder (NCR-MD). The East Coast Forensic Hospital was unable to complete the assessment until November 25 and Mr. Frank’s sentencing was adjourned accordingly. On December 6, 2011, the sentencing date of January 13, 2012 was confirmed.

[18] The section 672.11 assessment concluded that Mr. Frank did not have an NCR-MD defence to the charges. Dr. Aileen Brunet concluded that Mr. Frank did not show a history that would support the diagnostic criteria for a “mood, anxiety or psychotic” disorder. She requested a psychological consultation with Dr. Kelln who had Mr. Frank complete the Minnesota Multiphasic Personality Inventory – 2<sup>nd</sup> Edition (MMPI-2), “a self-report measure that provides information on a

variety of scales of psychopathology, including mental illness and personality disorder features as well as the person's response style." Dr. Kelln reported the following:

Mr. Frank's responses on the MMPI result in a profile strongly suggestive of an individual who is at odds with society. Individuals with similar profiles often present as narcissistic, selfish and self indulgent and are likely to be impulsive and unable to delay gratification. In addition, such individuals frequently show poor judgment and are unwilling to accept responsibility for their behaviour preferring instead to rationalize their shortcomings and issues by blaming others for their problems. Such individuals are often moody and irritable with a low tolerance for frustration and harbor feelings of anger and hostility..."

[19] Dr. Kelln noted that Mr. Frank's MMPI-2 responses "did not immediately suggest the existence of a psychotic condition." Dr. Kelln concluded that Mr. Frank's "overvalued ideation potentially [bordering] on delusional...about his relationship with...Susan" are most appropriately attributed to personality issues.

[20] Dr. Brunet made observations in her section 672.11 assessment report about Mr. Frank's presentation (mildly arrogant, self-aggrandizing, prone to exaggerating, anger and resentment towards those he claims have lied about him) and his manner of communicating (tangential, rambling, excessive detail, over inclusive, poor recall of chronology.) She concluded that while Mr. Frank "...seemed unable to respond in a concise and direct manner even when requested to do so..." she did not find him to be "disorganized as can be seen in psychosis." She noted that he offered "consistent derogatory descriptions" of Susan Chawner and "...repeatedly expressed a wish for vengeance against those he blamed for his circumstances."

[21] Dr. Brunet noted a significant number of indicators in Mr. Frank's account of events that "are suggestive of mental illness", also commenting that "The extent of Mr. Frank's denial of the offences, externalization of responsibility and crafting of other explanations is remarkable and unique" in her experience. She also identified "numerous elements" that are "inconsistent with mental illness." She concluded that Mr. Frank is "mentally disturbed and may have a burgeoning

mental illness” that falls short of an NCR-MD defence. Dr. Brunet observed that: “It is highly atypical for individuals who have committed offences while mentally ill to not only completely deny the offences but also engage in active deception and dishonesty about their conduct.”

[22] Of Mr. Frank’s claims, which he made at trial, of being victimized, Dr. Brunet had the following opinion:

As an individual who has a long history of being self-centred, narcissistic and unable to accept responsibility as well as being psychologically vulnerable to injuries of the ego, being in [the role of the morally superior victim] is more emotionally tolerable to him than being rejected and he has consequently crafted a version of events that he might actually believe in order to preserve and maintain his psychological integrity.

[23] Dr. Brunet concluded that Mr. Frank’s presentation during the assessment indicated he would not be receptive to receiving help for his “emotional and psychological difficulties.” In her opinion, it will take Mr. Frank acknowledging or accepting responsibility for his “problematic behaviours” for him to become “a candidate for psychological interventions.”

### *Legal Principles - Sentencing*

[24] Parliament has articulated the fundamental purpose and principles of sentencing in sections 718 and 718.1 of the *Criminal Code*, emphasizing denunciation, specific and general deterrence, and rehabilitation. The proportionality principle set out in Section 718.1 is relevant to sentencing Mr. Frank: a sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. I will be addressing this further.

[25] Section 718.2 recites the other sentencing principles that the sentencing court is mandated to take into consideration, including the function of aggravating and mitigating factors in increasing or reducing a sentence and the totality principle, that “where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.” (section 718.2 (c)) Also relevant is the parity



principle, that similar offenders should received similar sentences for similar offences committed in similar circumstances.

### *Aggravating and Mitigating Factors*

[26] The aggravating factors in this case include the requirement in section 264(4) of the *Criminal Code* that I consider the fact that when Mr. Frank criminally harassed Joyce Chawner he was on conditions under a recognizance to have “no direct or indirect contact or communication” with her. He was also on a condition under that same recognizance to keep the peace and be of good behaviour.

[27] I also consider it aggravating that Mr. Frank continued his unlawful behaviour immediately after being charged for the criminal harassment of Susan Chawner during the summer of 2010. While he did not have a criminal record at the time he committed the offences I am sentencing him for, he was, in June 2011, found guilty of having criminally harassed Susan Chawner the summer before which means that his campaign of hostility against her has been lengthy and persistent. His criminal harassment of Joyce Chawner, which inflicted harm on her directly, was a strategic part of his determined efforts to torment her daughter.

[28] The Crown has said there are no mitigating factors in this case. I am unable to identify any. There is the issue of Mr. Frank’s mental state although, having considered it, I am not satisfied this is a case where it plays more than a very minimal role in mitigating sentence.

### *Mental Illness and Moral Culpability in Sentencing*

[29] Mental illness is often treated as a mitigating factor in sentencing. So it should be. It must be factored into how moral blameworthiness is to be assessed. (*see, for example, R. v. Resler, [2011] A.J. No. 618 (C.A.), paragraph 16*) How a sentencing court applies the principles of sentencing will be influenced by the presence of a mental illness, as the Ontario Court of Appeal has explained:

“...where offenders commit offences while they are out of touch with reality due to mental illness, specific deterrence is meaningless to them. Further, general deterrence is unlikely to be achieved either since people with mental illnesses that contribute to the commission of a crime will not usually be deterred by the punishment of others. As well, severe punishment is less appropriate in cases of persons with mental illness since it would be disproportionate to the degree of responsibility of the offender. In such circumstances, the primary concern in sentencing shifts from deterrence to treatment as that is the best means of ensuring the protection of the public and that the offending conduct is not repeated. (*R. v. Batisse*, [2009] O.J. No. 452 (C.A.), paragraph 38; see also *R. v. Tkach*, [2008 O.J. No. 5973, (O.C.J.), paragraph 28)

[30] Dr. Brunet concluded that Mr. Frank is “mentally disturbed and may have a burgeoning mental illness.” But she was struck by the “highly atypical” nature of his denial of the offences and his “active deception and dishonesty”.

[31] In convicting Mr. Frank (*R. v. Frank*, [2011] N.S.J. No. 729), I described instances where it was apparent from the evidence that he knew very well what he was doing to Ms. Chawner and took steps to cover his tracks or set up a justification. An example of him concocting a story to make it seem Ms. Chawner was agreeable to having contact with him is the June 4, 2010 memo, which I discussed at paragraphs 63 – 71 of my decision. The June 4 memo purported to be an agreement that Mr. Frank and Ms. Chawner could call each other. I found that the reason the June 4 memo was created at all, and created after Mr. Frank was warned by police on June 4 to stop calling Ms. Chawner, was “so that Mr. Frank could make it appear he had Ms. Chawner’s consent to contact her, something he did not have...”. The logic behind Mr. Frank’s creation of the memo was that if he “could show that Ms. Chawner was okay with him calling her, then there would be no problem with him doing so.” (*paragraphs 71, 70*)

[32] Mr. Frank’s preparation of threatening “dot notes” in November and December 2010 is another example of how he endeavoured to lay a false trail that would “deflect suspicion away from him during a time when he was being accused of various offences in relation to Ms. Chawner.” As I found, the notes appeared

after the first set of charges - that is the first set of charges in the series I am dealing with - were laid against Mr. Frank on November 3, 2010. (*paragraph 88*)

[33] Mr. Frank's false claims of being attacked by unknown assailants were also part of his strategy to throw anyone who might suspect him of targeting Ms. Chawner off the scent.

[34] There is also the fact that the calls Ms. Chawner received from September 3, 2010 to February 28, 2011, which I found Mr. Frank made, were either pay phones calls, blocked pay phone calls or simply blocked numbers (with the exception of two calls that came up unknown names.) I found that this indicated extra pains were being taken to prevent Ms. Chawner from being able to tell who the calls were coming from. (*paragraph 112*)

[35] Larry Smith, Mr. Frank's co-worker at Atlantic Automatic Sprinklers, observed Mr. Frank engaging in counter-surveillance measures when he used pay phones during the time frame when he was on conditions to have no contact with Ms. Chawner. He testified that Mr. Frank would look for pay phones where there were no cameras and would take a rag with him and wipe the phone down after using it. I accepted Mr. Smith's description of Mr. Frank's suspicious and furtive behaviour when making calls from pay phones, calls I found were to Susan Chawner. (*paragraph 125*)

[36] Mr. Smith also testified that he and Mr. Frank drove by Susan Chawner's house on an occasion when Mr. Frank was on conditions to stay away from her and while doing so, Mr. Frank slouched down in his seat so as not to be seen. It was Mr. Smith's evidence that Mr. Frank had wanted to check to see if Ms. Chawner was home at the time. (*Trial Transcript, pages 238 – 239*)

[37] I found that Mr. Frank nurtured an unhealthy obsession with Ms. Chawner that was freighted with sexual overtones. (*paragraphs 62, 78*) His criminal harassment of Joyce Chawner was a feature of that obsession. I concluded that Mr. Frank's calls to Mrs. Chawner could only have been for the purpose of harassment. "The caller could not have been trying to reach anyone because the calls were terminated after a single ring." (*paragraph 136*)

[38] I am prepared to accept that Mr. Frank has some serious mental health issues. In the circumstances of this case I am not satisfied that they should mitigate his sentence. His conduct was rooted in features of his personality, his offences were deliberate and calculated, and he consistently took pains to cover his tracks. His moral blameworthiness for the offences he committed is high. His sentence should reflect that.

[39] As I have mentioned, Mr. Planetta on Mr. Frank's behalf made a plea for a minimal period of custody, as little as time served to no more than a go forward sentence of two months. It was Mr. Planetta's submission that in jail Mr. Frank will not get the treatment and counseling he requires and that he needs to be in the community to see mental health professionals. Mr. Planetta submitted that the services Mr. Frank needs are not available in jail.

[40] There are two difficulties with these submissions. The first is that Mr. Frank has been adamant that he does not require mental health treatment and the second is that I have no evidence to tell me what interventions would be helpful to him, were he to accept that he should address his issues. I am willing to accept that there are more mental health treatment options available in the community than in jail but which of those options might be appropriate for Mr. Frank I simply do not know. Also, as I have noted, Dr. Brunet and the pre-sentence report indicate that presently Mr. Frank is not receptive to accepting responsibility for his conduct and seeking help. I will add that the evidence at Mr. Frank's trial indicates that Larry Smith testified that Mr. Frank had called him from jail and told him, at the end of the conversation: "Keep an eye on you know who." This is a further indication of Mr. Frank's entrenched obsession with Ms. Chawner. (*Trial Transcript, page 240*)

#### *Denunciation and Deterrence in Stalking Cases*

[41] Emphasizing the sentencing principles of denunciation and deterrence is likely to be inappropriate in cases where an offender's mental illness played a role in their crimes. The Ontario Court of Appeal in *Batisse* lays this out very persuasively, as I noted earlier. In criminal harassment cases, the paramount sentencing principles are denunciation and deterrence. (*see, for example, R. v.*

*Bates*, [2000] O.J. No. 2558 (C.A.)) They should be the governing principles in the sentencing of Mr. Frank.

[42] In *Bates*, the Ontario Court of Appeal quoted from a scholarly article by Bruce MacFarlane (“*People Who Stalk*” (1997), 31:1 *U.B.C. Law Review* 37):

Many stalkers are not violent but all are unpredictable. The irrational mania that drives them to pursue their victims is beyond comprehension within the normal framework of social behaviour. It is this unpredictability that generates the most fear, coupled with the knowledge that, in some cases, the stalker’s behaviour may, without warning or apparent reason, rapidly turn violent...(page 43)

[43] It has been pointed out by Mr. Planetta that Mr. Frank’s misconduct did not involve, as some criminal harassment cases do, actual threats or assaults. That is true although I do not regard that fact as mitigating. Furthermore, some of Mr. Frank’s contact with Ms. Chawner was menacing. An example of this is the message he left for her on her office voice mail in November 2010, a message of a single pejorative word: “Bitch.” Ms. Chawner experienced this message as “kind of threatening” and was frightened by it. (*paragraph 56*) Mr. Frank’s hostility toward Ms. Chawner was also expressed in his puncturing of her tire in December 2010. His campaign against her, which included his criminal harassment of her elderly, widowed mother, was shot through with overtones of menace, hostility, and anger.

[44] I believe it is the role of this court in sentencing Mr. Frank to denounce his conduct toward Susan and Joyce Chawner in the clearest terms. The sentence must serve to deter Mr. Frank where Ms. Chawner’s requests and court orders failed to. The fog surrounding Mr. Frank’s characterization of events must be penetrated: he must be made to recognize that his treatment of Ms. Chawner and her mother will be met with a heavy sanction. Let him understand that his personality and mental health issues have got him to this point and that only his addressing these issues will avoid further conflict with the law and increasingly punitive consequences.

[45] The cases supplied to me by the Crown, and those from the Defence, offered a window into the extent to which these kinds of cases - criminal harassment and

the breaching of no-contact court orders – echo common themes: a predatory campaign of harassment, pervasive fear and apprehension on the part of the victims, and a denial of responsibility on the part of offenders. Obviously the extent of the harassment varies, and this seems to drive the length of the sentence. (*R. v. Wenc*, [2009] A.J. No. 1075 (C.A.); *R. v. Watson*, [2002] O.J. No. 5221 (S.C.J.); *R. v. Lepore*, [2001] O.J. No. 2396 (S.C.J.); *R. v. Verral*, [2003] A.J. No. 749 (C.A.); *R. v. Barnes*, [2006] A.J. No. 1601 (C.A.); *R. v. Beaton*, [2010] N.B. J. No. 50 (Q.B.); *R. v. Sobhani*, [2011] B.C.J. No. 88 (S.C.))

[46] Sentencing is a highly individualized and nuanced process. In my determination of what constitutes a fit and proper sentence in this case, I have taken into account the primacy of denunciation and deterrence but also the possibility that rehabilitation may eventually play a role in Mr. Frank's situation. For that to happen, Mr. Frank is going to have to accept that he has come into such serious conflict with the law solely because of his own deeply troubled choices. I do not think that Mr. Frank should receive, as urged by the Crown, a federal penitentiary sentence before the application of the remand credit. That may be what awaits him if his conduct persists. Having said that, I am not persuaded that a sentence as minimal as that proposed by the Defence is appropriate. I am of the view that the global sentence I impose should fall short of two years but must represent a sufficiently emphatic loss of liberty.

[47] In the circumstances of this case, I have decided that Mr. Frank's sentence should be as follows:

- For the damage to Susan Chawner's tire in December 2010 - three months in custody; [Count 8 of the 8-count March 2, 2011 Information – section 430(4)]
- For the criminal harassment of Joyce Chawner between December 16, 2010 and March 1, 2011 by repeatedly calling Mrs. Chawner – nine months in custody, to be served consecutively to the three months sentence on the mischief charge; [Count 1 of the 3-count March 2, 2011 Information – section 264(2)(b)]

- For breaching the no-contact condition of his December 13, 2010 recognizance on January 30, 2011 by going to Joyce Chawner's home and having contact with Susan Chawner – two months in custody, to be served consecutively to the sentences for the mischief and criminal harassment charges; [Count 2 of the February 1, 2011 Information – section 145(3)]
- For breaching the no-contact condition of his September 1, 2010 OIC undertaking by leaving Susan Chawner a voice mail message on November 1, 2010 – one month in custody, to be served consecutively to the other terms of custody I have imposed; [Count 6 of the November 3, 2010 Information – section 145(3)]
- For breaching the “no contact” conditions of recognizances dated November 4, 2010, December 13, 2010 and February 2, 2011 between October 22, 2010 and March 1, 2011, by making calls to Susan Chawner – three months on each count, concurrent to each other, but on Count 3, the three months will be consecutive to the other terms of custody I have imposed; [Counts 3, 5 and 7 of the 8-count March 2, 2011 Information – section 145(3)]
- For all remaining breaches, two months in custody for each breach, to be served concurrently to the custodial sentences I have imposed and concurrently to each other. [Counts 1 and 2 of the November 3, 2010 Information – section 145(3)]; [Counts 3, 4 and 5 of the November 3, 2010 Information – section 145(3)]; [Count 7 of the November 3, 2010 Information – section 145(3)]; [Count 1 of the 8-count March 2, 2011 Information – section 145(5.1)]; [Counts 2, 4 and 6 of the 8-count March 2, 2011 Information – section 145(3)]; [Count 3 of the 3-count March 2, 2011 Information – section 145(3)]; [Count 4 of the February 1, 2011 Information – section 145(3)]; and [Count 5 of the February 1, 2011 Information – section 145(5.1)]

[48] The above terms of incarceration total 18 months. I have concluded this is a fit and appropriate sentence for Mr. Frank and I am therefore of the view that the principle of totality has no application. An eighteen month sentence reflects the seriousness of Mr. Frank's misconduct during the fall of 2010 and the winter of

2011; an unabated campaign against Ms. Chawner that started in the summer of 2010 with Mr. Frank eventually dragging Joyce Chawner into the orbit of his harassment. With a remand credit of ten months, Mr. Frank has eight months left to serve.

[49] In addition, I am imposing a three year period of probation with the usual statutory conditions, which include, I remind Mr. Frank, the requirement that he keep the peace and be of good behaviour. As proposed by counsel, the only conditions I am adding to the statutory conditions is that Mr. Frank is to have no direct or indirect contact or communication with Susan or Joyce Chawner at any time for any purpose whatsoever and that he not be within 100 meters of their residences or Susan Chawner's place of employment. Mr. Frank is also not to attend at the gravesite of Susan Chawner's father. There is evidence from the trial that he did so during the period of the harassment.

[50] Mr. Frank, at one time you and Susan Chawner had a friendship. That was all. Nothing else. You destroyed that friendship. It is over. Ms. Chawner and her mother are going to go on and lead their lives. They are going to do so without you. You have no place in their lives for any purpose at any time. You are to conduct yourself as though you never knew either of them. You are prohibited from having any contact of any kind, directly or indirectly, with either of them. You will be committing a criminal offence if you do. You have claimed to be a student of the Bible. I heard evidence during the trial that you have thought of yourself as something of a prophet. Reverend Ashton said in the pre-sentence report that you like to imagine yourself as an instrument of God's will. I want to be clear: the ultimate authority in this country is the rule of law. No religion or religious belief trumps that. You are subject to the orders of this court. Those orders and the criminal law mark the bright lines within which you must conduct yourself. If you fail to do so, Mr. Frank, there will be further severe consequences.

[51] I am also imposing a DNA order and a mandatory prohibition order under section 110 of the *Criminal Code* prohibiting Mr. Frank from possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance for life.



