

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. MacDonell*, 2018 NSPC 21

Date: 2018-05-15

Docket: 8110671

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Isaac Peter MacDonell

Judge:	The Honourable Judge Theodore Tax,
Heard:	May 2, 2018, in Dartmouth, Nova Scotia
Decision	May 15, 2018
Charge:	Section 267 (b) of the Criminal Code
Counsel:	Collen Hepburn, for the Crown Counsel Mark Gardiner, for the Defence Counsel

By the Court:

[1] Mr. Isaac MacDonell has pled guilty to a charge of assault causing bodily harm to Ms. Shelby Hennigar contrary to section 267(b) of the **Criminal Code**. The incident giving rise to the charge before the court occurred on April 29, 2017 at or near Grassy Lake, Halifax County, Nova Scotia. The charge before the Court was amended prior to plea, the Crown confirmed that they were proceeding summarily and Mr. MacDonell entered a plea of guilty to that charge.

[2] The issue before the Court is to determine a just and appropriate sentence in all the circumstances of the offence and this particular offender.

[3] The Crown Attorney submits that a ninety-day period of incarceration in a correctional centre on a straight time basis to be followed by eighteen months of probation would be a just sanction in this case. She also seeks ancillary orders of a DNA sample as this is a primary designated offence and a ten-year section 110 **Criminal Code** discretionary firearms prohibition. In addition, as a term of the probation order, the Crown Attorney seeks payment of restitution to Ms. Hennigar within the probation order in the amount of six hundred dollars for lost wages due to being unable to work for two weeks as a result of the injuries that she suffered during the assault.

[4] Defence Counsel submits that a just and appropriate sanction would be a term of imprisonment of up to twelve months, to be served in the community under a Conditional Sentence Order, followed by twelve months under the terms of a probation order. While he acknowledges that there are a couple of aggravating factors present in this case, he points to several mitigating factors including his client's genuine remorse, empathy and insight into his actions, accepting full responsibility as well as taking steps to address issues related to anger management on his own initiative. Defence Counsel does not oppose the DNA order, nor the claim for restitution, but asked the Court not to impose the section 110 **Code** discretionary firearms prohibition as Mr. MacDonell uses a firearm for hunting.

CIRCUMSTANCES OF THE OFFENCE:

[5] The Crown Attorney and Defence Counsel submitted an agreed statement of facts [Exhibit 1] which provided the circumstances of the offence before the Court. At the time of the incident, the complainant, Ms. Shelby Hennigar and the

offender, Mr. Isaac MacDonell were both about twenty-three years old and they were in an intimate relationship. Ms. Hennigar has a six-year-old daughter from a previous relationship.

[6] On April 29, 2017, Ms. Hennigar and the offender were out riding on Mr. MacDonell's all-terrain vehicle (ATV) in the area of Grassy Lake, Halifax County, Nova Scotia. When the ATV broke down, Mr. MacDonell became enraged, shook the complainant and choked her. In addition, he also picked Ms. Hennigar up by the helmet that she was wearing and pushed her down to the ground. As a result of Mr. MacDonell's assault, Ms. Hennigar suffered various injuries including numerous bruises, a black eye and a cut on her leg. The injuries were observed by Ms. Tamara Burns, the complainant's cousin and by Ms. Sandra Hennigar, the complainant's mother who photographed the injuries [Exhibit 4].

[7] There is no doubt that the injuries sustained by Ms. Hennigar were occasioned by the assault perpetrated by Mr. MacDonell and that they constituted bodily harm since the injuries were significant rather than being of a trifling or transient nature. In fact, Ms. Hennigar was put off work for two weeks, which resulted in her missing fifty-five hours of work over seven days, with a loss of wages as a veterinary technician of about six hundred dollars.

CIRCUMSTANCES OF THE OFFENDER:

[8] The offender, Mr. MacDonell is presently twenty-four years old. He is single and is presently living with his parents in Gays River, Nova Scotia. He graduated from high school in 2012 and completed a two-year Heavy-Duty Truck and Transport Mechanic program at NSCC in 2014. His future education plans are to complete the apprenticeship training in order to obtain a Red Seal certification.

[9] Mr. MacDonell has been employed full-time as an Apprentice Technician for trucks in Dartmouth, Nova Scotia for the last three and a half years. Prior to that, he had summer jobs as a mechanic's helper and assisting his father in welding jobs.

[10] Mr. MacDonell has the full support of his family and for the last eleven months he has been in a very positive relationship with another young lady. The offender's mother and his girlfriend describe him as being kind, helpful and a hard worker. The work reference contacted by the Probation Officer confirmed Mr. MacDonell is a very good employee who is easy to work with and readily takes on all projects that he is asked to perform.

[11] The Probation Officer also noted that, after the offence, Mr. MacDonell recognized on his own that he needed help with “anger control” and accessed anger management counselling through the Bridges Institute Program in Truro, Nova Scotia. The Bridges program is a domestic violence counselling, research and training Institute which offers individual and group counselling. A letter from Bridges, dated November 28, 2017, was presented to the Court to confirm that Mr. MacDonell had attended five individual counselling sessions between June 12 and October 17, 2017. It was noted in that letter from Bridges as well as in the Pre-Sentence Report, that Mr. MacDonell found the counselling sessions informative and helpful in generating positive changes in himself and how he behaves with other people.

[12] The Probation Officer also noted that Mr. MacDonell has often reflected on his actions in relation to this offence and his relationship with the victim and expressed genuine remorse for his actions. He also expressed empathy for the victim and regrets any ongoing impacts on her or others from this incident.

[13] Mr. MacDonell has one prior unrelated conviction for a breathalyzer charge contrary to section 253(1)(b) of the **Criminal Code** on November 30, 2015 for which he received the minimum fine of one thousand dollars plus the victim fine surcharge of three hundred dollars and a one-year driving prohibition.

VICTIM IMPACT STATEMENTS:

[14] Ms. Hennigar filed two Victim Impact Statements for the Court to consider on this sentencing hearing. She indicated that she met Mr. MacDonell in November, 2016 and felt that there were warning signs in their relationship prior to the incident due to his alcohol consumption and him being verbally and emotionally abusive. The injuries which were sustained by her as a result of the assault on April 29, 2017 were a severe concussion, bruising over her entire body, burns on the chin from the hot exhaust of the ATV and a cut on her leg. She was off work as a veterinary technician for two weeks and lost about six hundred dollars in wages.

[15] Since the incident she has had pain in her back, leg and neck, continues to have anxiety and sleepless nights which has had an impact on her as well as her six-year-old child. She is now scared to go out for fear of running into the offender or any of his friends and as a result, she and her daughter tend to avoid activities and friends that they used to enjoy.

AGGRAVATING AND MITIGATING CIRCUMSTANCES:

[16] I find that the aggravating circumstances are:

1. The offence occurred in the context of a domestic relationship, although they were not married nor in a common-law relationship at the time of the incident. Notwithstanding that fact, there is no doubt that Ms. Hennigar was a vulnerable victim, who should have been able to trust that her boyfriend would not harm her;
2. The injuries suffered by Ms. Hennigar were not trifling or transient. They caused her to miss work and she has had ongoing emotional and psychological impacts since the incident.

[17] I find that the mitigating circumstances are:

1. Mr. MacDonell is a relatively youthful offender who has one prior unrelated conviction for driving under the influence of alcohol;
2. A plea of guilty was entered at an early date thereby sparing the victim or any other witnesses from having to come to the court to relate the details of the incident in question;
3. Mr. MacDonell has accepted full responsibility for the offence;
4. The offender has expressed genuine regret and remorse for his actions at an early stage of the proceedings, in his meeting with the Probation Officer and in court;
5. Mr. MacDonell has gained insight into his own actions by, on his own initiative, participating in an anger management program with Bridges which has allowed him to positively change how he behaves himself and to recognize the impact that his behavior has on others;
6. The offender has the full support of his family and as well as his girlfriend with whom he has a very positive relationship;
7. Mr. MacDonell has been described as a kind, very hard-working individual, who is supportive of friends and family;
8. The offender completed his grade twelve education and has graduated from the two-year NSCC Heavy Duty Truck and Transport Mechanic's program. Since then, he has been employed on a full-time basis for three and half years and his employer has provided a very positive work reference, working towards his Red Seal certification.

ANALYSIS:

[18] In all sentencing decisions, determining a just and appropriate sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the particular circumstances of the offender. In **R. v. M (CA)**, [1996] 1 SCR 500 at paras. 91-92, the Supreme Court of Canada has held 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 and the needs of as well as the current conditions in the community.

[19] The primary purposes and principles of sentencing are set out in sections 718 - 718.2 of the **Criminal Code**. The Crown Attorney stresses that the Court should emphasize deterrence of the unlawful conduct for this offender and generally other persons from committing offences of this nature, denunciation of the unlawful conduct and the harm done to the victim and to promote a sense of responsibility in the offender by his acknowledging the harm done to the victim in order to protect the public from any future incidents.

[20] For his part, Defence Counsel does not really dispute the emphasis on deterrence and denunciation of the unlawful conduct, but he also submits that that the Court should impose sanctions which assist in rehabilitating the offender and only separate the offender from society where it is necessary to do so. In addition, Defence Counsel submits that pursuant to section 718.2(d) and (e) of the **Code**, the offender should not be deprived of liberty if a less restrictive sanction may be appropriate in the circumstances and that all available sanctions, other than imprisonment that are reasonable in the circumstances and are consistent with the harm done to the victim and the community, should be considered.

[21] Defence Counsel points out that Mr. MacDonell lives in a small, rural community and in recommending a conditional sentence order of imprisonment to be served in the community, he will not be any danger to that community. In addition, it would also send a clear message of general deterrence to any other like-minded people in the area.

[22] In sentencing decisions, the Court must also consider the fundamental sentencing principle of proportionality as stated in section 718.1 of the **Code**, which reminds judges that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this case, given the

nature of the assault and the injuries suffered by Ms. Hennigar, I find that the gravity of the offence is at the higher end of a continuum of assaults, since this was an unprovoked attack which caused significant bodily harm and injuries to the victim which lasted for a few weeks, with ongoing effects to this day. There can be no doubt that Mr. MacDonell's degree of responsibility for this significant attack on his intimate partner which caused bodily harm, is also high.

[23] Defence Counsel has submitted that it would be appropriate to order Mr. MacDonell to be subject to the terms of a conditional sentence order of imprisonment in the community. In **R. v. Proulx**, [2000] 1 SCR 61 at para. 102, Chief Justice Lamer noted that incarceration will usually provide more denunciation than a conditional sentence, but a conditional sentence can still provide a significant amount of denunciation. This is particularly so when onerous conditions such as house arrest are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances.

[24] In **Proulx**, *supra*, at para. 107, Lamer CJ stated that “nevertheless, there may be circumstances in which the need for deterrence will warrant incarceration. This will depend, in part, on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect as well as on the circumstances of the community in which the offences were committed.”

[25] In this case, I find that a conditional sentence order of imprisonment in the community is an available sanction which may be imposed by the Court pursuant to section 742.1 of the **Criminal Code** as there is no maximum term of imprisonment or minimum term of imprisonment which would preclude that order. In addition, although the offence before the Court did result in bodily harm, this offence was prosecuted by way of summary conviction, not by indictment for which the maximum term of imprisonment would have been ten years. Therefore, section 742.1(e) of the **Code** does not apply as the maximum sentence for this offence, prosecuted by way of summary conviction is eighteen months of imprisonment.

[26] Having concluded that a conditional sentence order of imprisonment in the community is an available sanction, I must also consider that the just and appropriate sentence would not result in federal incarceration, that is, a sentence of two years or more. Clearly, neither counsel has recommended a sentence that would result in a federal term of incarceration. Furthermore, given the gravity of

the offence and the degree of responsibility of the offender, I also find that it would not be just and appropriate to suspend the passing of sentence and order Mr. MacDonell to serve a lengthy period of time on probation.

[27] Therefore, while I find that a conditional sentence order of imprisonment in the community remains an available option, it is important to consider whether it is the appropriate order to make in all the circumstances of this case and the offender. In considering this aspect of the sentencing decision, section 718.2(b) of the **Criminal Code** incorporates the principle of parity in sentencing, which reminds judges that the sentence imposed here should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[28] In response to the Court's request to submit a few sentencing precedents to support their position, the Crown Attorney submitted **R. v. Russell**, 2014 NSPC 8, which involved two separate assaults causing bodily harm and uttering threats to the spouse of the offender. The assaults caused numerous injuries, including two black eyes, lacerations, multiple bruises and a dislocated shoulder. The offender had pled guilty, felt remorse, had no prior record, a steady employment history and was intoxicated at the time of these offences. The aggravating factors were the high level of unprovoked violence involved in the assaults, which included the victim being kicked in her forehead with steel-toed work boots, being punched in the face several times and being dragged around by her hair. She missed two weeks of work and had to use vacation days and sick days until her face had healed, but emotional scars remained.

[29] Judge Atwood of this Court noted that the Crown had proceeded by indictment on the charges of assault causing bodily harm and therefore, they were not eligible to be considered for a conditional sentence order of imprisonment, given the provisions of para. 742.1(e) of the **Code**. Atwood J. ordered a sentence of twelve months imprisonment for each of the assault causing bodily harm charges, to be served consecutive to each other for a total of twenty-four months imprisonment. He also ordered a period of three months of imprisonment, to be served concurrently for the uttering threats charge.

[30] In **R. v. B.G.N.**, 2003 NSSC 29, the offender was sentenced after having pled guilty to beating his wife, swinging her by her hair and kicking her with cowboy boots on two separate occasions. The offender was fifty-three years old, disabled, unemployed and had no prior record. The two offences had occurred about twenty and twenty-five years before the matter came before the Court.

Defence Counsel sought a conditional sentence. The Crown Attorney had recommended a prison sentence of nine to eleven months. The Court noted the severity of the assaults, which took place in a domestic context has occurred in the presence of the couple's children. The Court held that a conditional sentence would not be an appropriate sanction given the "horrific acts" of violence in a domestic context. The Court ordered five months in prison for each of the two charges to be served consecutively, for a ten-month sentence.

[31] The final case cited by the Crown Attorney was **R. v. Hanlon**, 2016 NSPC 32, which involved an offender who had pled guilty to assault with a weapon, damage to property, failing to attend court, a separate assault charge and breaches of recognizance. The first assault occurred while offender's girlfriend was about fifteen weeks pregnant, which started with a verbal altercation which escalated into a physical confrontation with him pushing or hitting her, causing her to fall onto a bed where he continued to push her down so she could not move. About eleven weeks later, the offender became angry with his girlfriend at a store and pushed her down, causing her to fall on the floor.

[32] The offender was twenty-one years old and had grown up in a violent environment where he was physically, verbally and emotionally abused, he had grade nine education and was unemployed, but had completed an anger management program by the time of sentencing. He accepted full responsibility for his actions. At the time of the sentencing, the offender and his girlfriend were the parents of a four-month-old child. In **Hanlon**, I ordered four months imprisonment for the assault with a weapon, which occurred when, in his anger during the incident, he broke a night table against a wall, causing one of the pieces of the broken table to hit the victim on her leg and one-month consecutive for the second assault, with additional consecutive time the other offences, less time served, which resulted in a five and half month go-forward sentence, followed by twelve months on probation.

[33] Defence Counsel submitted the case of **R. v. Markotic**, 2007 ONCJ 91, which was a sentencing decision of the offender who had pled guilty to a single charge of assault causing bodily harm to his girlfriend. The incident occurred following an argument at a party. The victim was severely intoxicated, but the offender was not drunk. While in the offender's car on the way home, he elbowed his girlfriend in the face causing injury. When he realized what he had done, he took his girlfriend immediately to the hospital, but the girlfriend did not wish to cooperate with the authorities. However, the offender acknowledged his

responsibility for the injuries when approached by the police. The victim suffered significant injuries which caused two teeth to be driven back in her jaw by the force of the strike, requiring two root canals and two crowns to successfully align and straighten the teeth. The offender and the victim continued in their relationship, but the victim wanted to ensure that he received counselling with her to address issues in their relationship.

[34] In that case, the offender had no prior criminal record, was twenty-three years of age and had never been incarcerated before. He had entered an early guilty plea, accepted responsibility for the offence and expressed genuine remorse for his actions. He fully cooperated with the police and turned himself in, despite the fact that the victim did not wish to cooperate with the police. He had abided by strict bail conditions on curfew for over eight months without incident. The actions of the offender were found to be entirely out of character, with several letters of support being provided by friends and family members. In addition, he immediately began to attend one-on-one anger management sessions on his own initiative. In the final analysis, the Court concluded that there was a low likelihood of reoffending and that it was not necessary for the safety of the public to separate the offender from society. The Court ordered a conditional sentence of imprisonment of five months, with first three months on house arrest, followed by two months on curfew and then followed by twenty-four months on terms and conditions of probation.

[35] Defence Counsel also referred to the decision of my colleague Judge Hoskins in **R. v. Gannon**, 2015 NSPC 97 which was a swarming case involving a sentencing for assault causing bodily harm where the victim sustained very serious injuries. In that case, Judge Hoskins commented on the fact that this case involved youthful offenders, and the proportionality of the offender's act and his unique circumstances in concluding that denunciation and deterrence should be emphasized, but they should not be over emphasized to the "detriment of rehabilitation." In **Gannon**, Hoskins J. distinguished an earlier decision made by me in the case of **R. v. Sutton**, in ordering a twelve-month CSO for the offender's role in the swarming attack of the victim, to be followed by a period of probation for eighteen months.

[36] In **R v. Sutton**, 2012 NSPC 98, I ordered a youthful first-time offender who had pled guilty to a charge of assault causing bodily harm, which proceeded summarily, to a sentence of ninety days to be served on an intermittent basis followed by two years on terms of probation. At the time of the incident, Mr.

Sutton was twenty-one years old with no prior record, he had accepted full responsibility for the offence, was intoxicated at the time of the incident and there was a very positive Pre-Sentence Report.

[37] However, in **Sutton**, there were very aggravating factors in that the assault was a brutal, unprovoked and random swarming attack in a public place outside a bar. Mr. Sutton's punch to the victim's face knocked him unconscious and while the victim lay unconscious and defenceless on the ground, Mr. Sutton and three other males continued to assault the victim causing serious injuries, with his right eye being swollen shut for days, needing four stitches to close a cut and being off work for two weeks due to problems with his vision. In addition, the victim suffered a concussion and required dental surgery to repair and replace dental implants in his front teeth which were dislodged by the brutal assault.

THE JUST AND APPROPRIATE SENTENCE:

[38] At the outset, it is worth repeating here that, in terms of section 718.1 of the **Criminal Code**, which deals with the proportionality principle, I have found that the gravity of this offence is at the higher end of a continuum of assaults given the nature of the assault and the aggravating circumstances in which the injuries suffered by Ms. Hennigar were occasioned by Mr. MacDonell. Furthermore, in terms of Mr. MacDonell's degree of responsibility, I also find that it is relatively high as this assault a completely unprovoked attack on the victim in a rage of anger, following the breakdown of their ATV.

[39] However, I find that the gravity of the assault and the offender's degree of responsibility would not be similar to what I found in the case of Mr. Sutton who sucker punched an unsuspecting victim in a completely unprovoked, swarming attack, which rendered him unconscious and then continued the assault while the victim lay defenceless on the ground. Furthermore, while there is some similarity in the injuries suffered by the victim in **Sutton** and this case, I find that the gravity of the offence was greater in **Sutton**, than the instant case.

[40] I find that the sentences imposed for the assaults causing bodily harm to a girlfriend, spouse or common-law partner of the offender as submitted by the Crown Attorney certainly involved similar offenders who have committed similar offences, however, in my view, the gravity of the injuries suffered by the victim and the degree of responsibility of the offender was higher in those cases than in the instant case. Certainly, if a jail sentence was to be ordered in this case which

required the offender to be separated from society, I find that the Crown Attorney's recommendation would certainly be within the range of a just and appropriate sentence taking all of the aggravating and mitigating circumstances into account.

[41] Since this case does involve a serious crime of violence, in the context of a domestic relationship, I agree with the Crown Attorney that specific and general deterrence as well as denunciation of the unlawful conduct are primary purposes in this sentencing decision.

[42] However, I also agree with Defence Counsel that there should also be a focus on rehabilitation, given the fact that Mr. MacDonell is a youthful offender, there is a very positive Pre-Sentence Report and he has taken steps, on his own initiative, to address issues of anger management. Moreover, when I consider the other mitigating circumstances present in this case, I find that this sentencing decision should also focus on promoting a sense of responsibility in him and his rehabilitation. In those circumstances, I find that the sentencing principles mentioned in sections 718.2 (d) and (e) of the **Criminal Code** are applicable and that the Court should also focus on the principle of restraint in determining the appropriate disposition for this offender who has only one other prior conviction for an unrelated matter of driving under the influence of alcohol.

[43] After having considered the primary purposes and principles of sentencing which are relevant in this case and also considering the difficulty of finding a situation where a similar offender has been sentenced for a similar offence in similar circumstances, given the reality that each case has its own unique facts and circumstances, I conclude that a conditional sentence order of imprisonment in the community is consistent with the fundamental purposes and principles of sentencing set out in section 718 to 718.2 of the **Criminal Code** and that Mr. MacDonell serving that sentence of imprisonment in the community would not endanger the safety of the community.

[44] I agree with Defence Counsel that, in this case, deterrence and denunciation does not have to be over emphasized to the detriment of rehabilitation. Of course, as the Supreme Court of Canada mentioned in the **Proulx** decision, a conditional sentence order of imprisonment in the community still provides a significant degree of deterrence and denunciation of unlawful conduct, especially when combined with onerous conditions including house arrest and the duration of the CSO being extended beyond the duration of the jail sentence that would have ordinarily been imposed in consideration of all of the circumstances of the case.

[45] As a result, I hereby order Mr. MacDonell to serve a period of nine months under the terms of a conditional sentence order of imprisonment to be served in the community under the following terms and conditions, with the first four months of the CSO being served under strict terms of house arrest, the next three months to be served under terms of a curfew which will require him to remain in his residence between the hours of 10:00 PM and 6:00 AM the following day seven days per week, with both periods of time being subject to certain exceptions. The final two months of the CSO will not be subject to the terms of either house arrest or a curfew. In addition to the statutory terms and conditions of a CSO, Mr. MacDonell will be required to:

1. Reside at 398 Cold Stream Rd., Gays River, Nova Scotia unless permission to reside elsewhere is obtained from the Court;
2. Not to possess, take or consume alcohol or intoxicating substances;
3. Not to possess, take or consume a controlled substance as defined in the **Controlled Drugs and Substances Act** except in accordance with a physician's prescription for you or a legal authorization;
4. Attend for substance abuse assessment and counselling as directed by your supervisor;
5. Attend for assessment and counselling in violence intervention and prevention program as directed by the sentence supervisor;
6. Attend for assessment, counselling or program as directed by the supervisor and participate in and cooperate with any assessment counselling or program as directed by your supervisor;
7. Not to have any direct or indirect contact or communication with Ms. Shelby Hennigar;
8. Not to be on or within fifty metres of any premises known as the residence, work or school address of Shelby Hennigar;

[46] In terms of the house arrest and curfew conditions, the following exceptions will be applicable:

1. When at regularly scheduled employment, which the supervisor knows about, travelling to and from the employment by a direct route;
2. When attending a scheduled education program, which the supervisor knows about travelling to and from that education program or activity by a direct route;

3. When dealing with medical emergency or medical appointment involving you or member of your household travelling to and from it by a direct route;
4. When attending a scheduled appointment with your lawyer, your supervisor or probation officer, travelling to and from those appointments by a direct route;
5. When attending court at a scheduled appearance or under subpoena travelling to and from the court by direct route;
6. When attending a counselling appointment or treatment program or meeting of organization such as Alcoholics Anonymous at the direction of or with the permission of your supervisor, travelling to and from those appointments, programs or meetings by a direct route;
7. During the house arrest phase of the CSO, for not more than four hours per week, approved in advance by your sentence supervisor, for the purpose of attending to your personal needs.

[47] Finally, to prove compliance with the house arrest and curfew conditions by presenting yourself at the entrance of your residence should your supervisor and/or a peace officer attend there to check compliance.

[48] Once the CSO is completed, Mr. MacDonell will be subject to the terms of a probation order for a further period of twelve months. In addition to the statutory terms, he will be subject to these additional terms and conditions:

1. Mr. MacDonell will be required to report to the probation officer within five days and thereafter as and when directed by the probation officer or sentence supervisor;
2. Not to possess, take or consume a controlled substance as defined in the **Controlled Drugs and Substances Act** except in accordance with a physician's prescription for you or a legal authorization;
3. Not to have any direct or indirect contact or communication with Ms. Shelby Hennigar;
4. Not to be on or within fifty metres of any premises known as the residence, place of work or school address of Ms. Shelby Hennigar;
5. Attend for mental health assessment and counselling as directed by the probation officer;

6. Attend for substance abuse assessment and counselling as directed by the probation officer;
7. Attend for assessment and counselling in anger management as directed by the probation officer;
8. Attend for assessment and counselling in a violence intervention and prevention program as directed by your probation officer, in particular, the spousal or partner related program;
9. Make restitution through the Clerk of the Court on or before August 15, 2019 to Ms. Shelby Hennigar, in the amount of six hundred dollars;

[49] In addition, I have signed the order authorizing the sheriffs to take a sample of bodily substances for forensic DNA analysis pursuant to section 487.051 of the **Criminal Code** as the charge of assault causing bodily harm is a primary designated offence for the purposes of section 487.051 of the **Code**.

[50] Although the Crown Attorney has asked the Court to exercise its discretion pursuant to paragraph 110(1)(a) of the **Criminal Code** and impose a firearms prohibition for ten years, I have concluded for the following reasons that I am not prepared to grant that order. As a result, for the purposes of subsection 110(3) of the **Code**, where the Court does not make an order under subsection 110(1) of the **Code**, the Court is required to state the reasons for not doing so.

[51] In this case, I have considered the very positive nature of the Pre-Sentence Report, the fact that Mr. MacDonell and Ms. Hennigar are no longer in a relationship, he is in a new and positive dating relationship, no firearm was used or threatened to be used in the commission of the assault causing bodily harm which brought Mr. MacDonell before the Court and, he lives with his parents and he has the full support of his family. Moreover, I have also considered the fact that he has, on his own initiative, accessed counselling, treatment and programming to address anger management especially in the context of domestic relationships and Mr. MacDonell will be subject to the Court's orders to stay away from Ms. Hennigar and to continue any counselling, treatment or programming for the next twenty-one months.

[52] Finally, I have also considered the fact that Mr. MacDonell is actively engaged in hunting as a source of food for the family in the appropriate season. In those circumstances, and after having taken all of the foregoing factors into

account, I have concluded that it is not desirable, nor is it required in the interests of safety of Ms. Hennigar or for that matter any other person, to make an order prohibiting Mr. MacDonell from possessing any firearm or ammunition for hunting, if he has otherwise met all other legal requirements for the possession and use of the firearm and its ammunition. However, pursuant to subsection 110(3) of the **Code**, I am prepared to prohibit Mr. MacDonell from possessing any cross-bow, prohibited weapon, restricted weapon, prohibited device, prohibited ammunition, or explosive substance for a period of ten years.

[53] Finally, there will be a victim fine surcharge of one hundred dollars and Mr. MacDonell will have twelve months to make the payment of that amount.

Theodore Tax, JPC