

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Williams and Merrette*, 2020 NSSC 260

**Date:** 20200924

**Docket:** CRH 476329

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Sandra “Gwen” Williams and Howard G. Merrette

**SENTENCE DECISION**

**Judge:** The Honourable Justice Jamie Campbell

**Heard:** September 11, 2020, in Halifax, Nova Scotia

**Counsel:** Alonzo Wright, Q.C., for the Crown  
Carbo Kwan, for the Defence of Sandra Williams  
Bernard Thibault, for the Defence of Howard Merrette

**By the Court (orally):**

[1] Sandra “Gwen” Williams and Howard G. Merrette were found guilty by a jury of having committed several offences. As the trial judge, now dealing with the sentencing of the two offenders, I am obliged to find the facts that are essential to each of the offences and to the sentencing with respect to those offences.

Generally, what happened was a property dispute that descended into absurdly vulgar, stupid, and childish behaviour that led to unhinged ranting, online bullying and misogynistic harassment. It eventually ended up in one dangerous assault followed by a long jury trial.

[2] Section 742.1(2) of the *Criminal Code* provides that when a court is composed of a judge and jury the court must accept as proven all facts, express or implied, that are essential to the finding of guilt by the jury. The court may find any other relevant fact that was disclosed by the evidence at the trial to be proven. For most criminal offences that is a matter of accepting the essential elements as having been proved. In cases like criminal harassment the proof of the essential elements involves the consideration of context. That will require more detail than would otherwise be the case.

[3] In *R. v. Landry* 2016 NSCA 53, Beveridge J.A. distilled the law regarding factual findings by judges imposing sentences after a jury trial. Justice Beveridge set out the rules as follows at para. 49 of the decision:

1. The sentencing judge shall accept as proven all facts, express or implied, that are essential for the jury’s guilty verdict.
2. When the jury finding is ambiguous, the sentencing judge should not attempt to follow the logic of the jury. Instead, he or she must make their own independent determination as to the relevant facts.
3. The sentencing judge should only find those facts necessary to permit the proper sentence to be imposed.
4. The sentencing judge may not find as fact things that were rejected by the jury’s verdict.
5. For any aggravating fact, the sentencing judge must be satisfied that the evidence is sufficiently cogent to enable her to find it proved beyond a reasonable doubt.

**The Trial**

[4] The trial began with 17 counts and of those 13 went to the jury. A directed verdict of not guilty was entered on 4 counts. There was one count of assault, against one accused, one count of assault causing bodily harm against the other, and one count of assault with a weapon against both accused. There were charges of criminal harassment against both and counts of mischief, some against both and some against only one accused. The first day of the trial, after jury selection and in the absence of the jury, was used to deal with a motion for disclosure and adjournment. The motion was denied. The trial lasted 18 days and took place over the month of November 2019. The jury deliberated for 4 days and was sequestered for 3 nights.

[5] Both Ms. Williams and Mr. Merrette were self-represented. They noted in the pre-trial conference, held on the record and in the absence of the jury, that the judge was robed, and Crown counsel was robed. They said that they felt disadvantaged by that. At the trial they each wore black gowns that looked like lawyers' robes or church choir gowns. There was no suggestion that they were mocking the court or the process by doing that. I asked Mr. Merrette and Ms. Williams, in the absence of the jury, if they wished to speak to the jury about why they were dressed in that way. They did.

[6] Ms. Williams remained composed and respectful throughout the trial. Mr. Merrette did not. He interjected frequently and reacted with physical gestures to the testimony of witnesses. He consistently referred to himself in the third person, as "Mr. Merrette", to the apparent confusion of some witnesses.

[7] While the jury was deliberating, they sent several written questions that were answered in court. After one of those questions, in the absence of the jury, Mr. Merrette became agitated. He decided that he was just going to leave. I told him that he could not. He turned his back and would not face the court. When he persisted, I had him sent to the cells for an hour and told him that if he did not apologize upon his return I would cite him for contempt in the face of the court and would set a hearing on that matter for the following week. When he returned he did apologize. Soon after that, a physical altercation took place in the courtroom between Mr. Merrette and the sheriffs' officers. While there may be other consequences that flow from that, the situation has no bearing whatsoever on the sentencing with respect to the charges on which Mr. Merrette was found guilty by the jury.

[8] The way both accused behaved during the trial or the way in which they represented themselves was not a relevant consideration for the jury and is not a relevant consideration in sentencing. They are not being sentenced for their eccentric or idiosyncratic behaviour. They are being sentenced for their criminal acts.

### **Pre-sentence Reports**

[9] When the matter was set for sentencing I ordered pre-sentence reports and urged both Ms. Williams and Mr. Merrette to retain counsel. There was no indication that their financial circumstances would be an impediment to both parties getting lawyers to act for them on the sentencing. Mr. Merrette had, on several occasions during the trial proclaimed that he had “deep pockets, very deep pockets” and that people were jealous or afraid of him because of his financial resources. Both Ms. Williams and Mr. Merrette did, each, eventually retain counsel for the sentencing.

[10] Mr. Merrette failed to attend for a meeting to start the process of preparing the required pre-sentence report. That was first ordered on November 28, 2019. When the parties returned with lawyers on January 23, 2020, I repeated the requirement for a pre-sentence report and once again ordered the preparation of a report. Counsel indicated that Mr. Merrette would cooperate in the preparation of a report. He did not. He did not attend and later told the probation officer that he would not comply.

[11] Mr. Merrette has lost whatever benefit he might have had from the court gaining insight into his behaviours.

[12] Mr. Merrette instead filed an affidavit. It appears to function almost as a self-created and self-serving pre-sentence report. None of the information in it is particularly contentious. But the questions that might be asked by the preparer of a pre-sentence report were not addressed. Mr. Merrette gave the information that he wanted to give. It was an unusual procedure, but Crown counsel agreed to proceed without cross-examination on the affidavit.

[13] Mr. Merrette is 60 years old. He has been married to the co-defendant Ms. Williams for 10 years. He is retired from the Royal Canadian Navy having served for 15 years. He was a Weapons Technologist and retired as a Chief Petty Officer 1<sup>st</sup> Class. He was discharged for medical reasons. Mr. Merrette says that after his naval career he worked at Crawford Industries in the area of machining, Pratt &

Whitney in assembly work, Kent Building Supplies, and most recently with the Commissionaires. He has now been fully retired for 4 years.

[14] Mr. Merrette says that the couple's combined income allows them to just be able to pay the mortgage and expenses on their home. His income for 2019 was \$24,921. He says that Ms. Williams operates a clinic which is "lucky to break even". He notes his concern that if either he or Ms. Williams are incarcerated the health clinic will have to close and their ability to afford the house and related expenses will be endangered.

[15] Mr. Merrette says that he has no psychological or mental health diagnoses. He does have various physical ailments. He was diagnosed with cancer 10 years ago and has continued issues with incontinence of bowel and bladder functions. He says that he may have cancer again because there are cysts growing on his thyroid. He has high blood pressure and shingles. He suffers from chronic asthma and is concerned about contracting Covid-19 if incarcerated.

[16] Mr. Merrette provided letters of reference from his daughter and from his brother.

[17] Ms. Williams did attend for the preparation of a pre-sentence report as ordered, and a pre-sentence report was prepared. It is a very positive one. Ms. Williams is now 62 years old. She has been married to Mr. Merrette since 2010. They have a good relationship. She completed her Chinese Medicine and Acupuncture Diploma at the Canadian College of Acupuncture and Traditional Chinese Medicine in 2009. She had completed a 2-year Laboratory Technology Diploma and has an Honours Degree in Science and Botany from the University of Guelph. She also has a Veterinary Assistant's Diploma.

[18] Ms. Williams reported that she is self-employed and runs her own business, Eastern Shore Holistic Acupuncture. She has been operating her own business for the past 11 years.

[19] Ms. Williams told the writer of the pre-sentence report that she and Mr. Merrette earn \$35,000 per year. She said that she had a mortgage and some credit card expenses. When asked about savings she stated, "I don't have any right now."

[20] People who were contacted and asked about Ms. Williams were surprised about the charges. These types of behaviour are generally described as being very

much out of character for a person who is usually, as she presents, calm and soft spoken.

[21] People wrote glowing letters of reference for Ms. Williams. She is highly regarded by her clients and her friends who describe her as kind, selfless and compassionate. Those letters of reference go far beyond any kind of general statement about her good character. They describe someone who is well beyond merely being of good character. She has helped people in very important ways and shown herself to be a genuinely good person. Some refused to believe that Ms. Williams would be capable to doing what she was found by the jury to have done.

[22] Ms. Williams' good character is a factor to be considered in her sentence. It is important to bear in mind, however, that she is not being sentenced for being of bad character. Ms. Williams and Mr. Merrette are being sentenced for crimes that a jury has found that they committed. The commission of those crimes may be very much out of character for Ms. Williams but that does not change the fact of the convictions found by a jury of 12 people after hearing all the evidence.

### **Criminal Harassment: Counts 1, 3, 4, 7, and 10**

[23] Both Sandra Williams and Howard Merrette were found guilty of criminal harassment contrary to s. 264(2)(d) of the *Criminal Code* with respect to Paul Bates and Valerie Bates (count 1), Gregg Bryant and Mary Bryant (count 3), Barry North and Anne North (count 4), Glen Clarke (count 7), and Leanne and Paul Wrathall (count 10). The criminal harassment charges are the starting place because they provide context for the other charges.

[24] The offenders and the victims were neighbours in the area around Scots Lake Road near Musquodoboit Harbour. They did not all live on the same private road, but that road was very much the focus of an ongoing dispute. The road itself is a basic gravel road that people used to access their properties. The neighbourhood looks like a quiet residential neighbourhood in a rural setting with lake access for most homes.

[25] This situation started in 2010 when the Wrathalls instructed their lawyer to write to Ms. Williams, their neighbour on Scots Lake Road. The purpose of the letter was to note that a parking pad that had been constructed and associated with Ms. Williams' home, encroached on the right-of-way that was used by all residents and was legally owned by the Wrathalls. They did not ask Ms. Williams to move

the parking pad or to do anything. It was intended to protect against a claim for adverse possession. The letter was neither aggressive nor rude in any way.

[26] Ms. Williams had recently married Mr. Merrette. Mr. Merrette took offence. He has claimed that the Wrathalls deed was “dubious at best” and contended that his legal research showed that Scots Lake Road, which the residents of the road had for years assumed was a private road, was indeed a public road. Mr. Merrette had great plans for widening, paving or graveling, and generally improving the road. Other members of that small community were not enthusiastic about making any change to the long-standing arrangements by which they all contributed financially to the maintenance of the right-of-way. There was no evidence that anyone else had any issue at all with the Wrathalls’ ownership of the right-of-way.

[27] That dispute festered.

[28] Ms. Williams and Mr. Merrette said that they were the real victims. It was they who were being harassed by a group of neighbours. They maintained that they were being set up by their neighbours, who were not just gathering evidence against them but manufacturing it. The finding of the jury was that they were harassing the neighbours who are noted as complainants in the indictment. That harassment involved Facebook posts and personal contact that went beyond mere gratuitous rudeness. Mr. Merrette’s level of aggression online and in person and the unrelenting nature of it, made life miserable for the people who lived on Scots Lake Road. Neighbours became concerned about having any interaction with him at all, because of the fear that he would fly into a rage in a way that was intended to bully and intimidate. He was not merely a cranky and unfriendly man. He acted as an aggressive bully who was physically intimidating.

[29] Ms. Williams said that Mr. Merrette was her protector or her pitbull. She was not a bystander who happened to be in the wrong place at the wrong time. She joined him. Ms. Williams intervened to support what Mr. Merrette was saying and doing, but in a more calm and subdued way. She posted videos on Facebook that were intended to embarrass and annoy the neighbours whom Mr. Merrette accosted in person. Ms. Williams was the enabler and supporter. Encouraging a bully is another way to be a bully. Both Ms. Williams and Mr. Merrette engaged in the online harassment, each in their own way but both with a view to the same end. Both engaged in the personal harassment, again, each using different methods but both with the same end of harassing and intimidating those whom they had targeted.

[30] Given the nature of the harassment charges it is necessary to set out at least some of the circumstances that would have allowed the jury to conclude that they were guilty of criminal harassment against each of the named complainants.

[31] Valerie Bates' first interactions with Mr. Merrette after he arrived on Scots Lake Road involved a walk with Leanne Wrathall. Mrs. Wrathall's dog had wandered toward Mr. Merrette's property. Mr. Merrette shouted at Leanne Wrathall and called her a "fucking skank, a whore and a cunt". Mrs. Bates said that the incident itself was enough to make her fear Mr. Merrette. Ms. Williams was there beside Mr. Merrette and did nothing to calm him down. Ms. Williams told Mrs. Wrathall that if she didn't like it, she could leave. Again, rude behaviour and vulgar language is not a criminal offence. It becomes criminal when it is done repeatedly with a view to intimidate and harass.

[32] In July 2015, on Scots Lake Road, the car being driven by Paul Bates came upon the green racing car owned by Howard Merrette. The car was blocking the road. Mr. Bates inched by after being shouted at by Mr. Merrette. Ms. Williams told them they had to get out of there. Mrs. Bates called 911 and was on the phone with 911 until their car passed the racing car. Mr. Merrette at one point shouted that he was King Kong and owned the "fucking road".

[33] In one incident Mr. Merrette asked Mr. and Mrs. Bates how they liked the road. It seemed to start as a friendly encounter. Mrs. Bates gave 2 thumbs up. Mr. Merrette came up to them, he started speaking in Mr. Bates' face. Mr. Merrette said they were walking on his fucking road. Mr. Merrette called Mr. Bates a "pussy, a coward and a faggot". Mr. Bates made fists toward Mr. Merrette and Mrs. Bates got between them.

[34] When they were 20 feet apart, Mr. Merrette said words to the effect of "You gotta go by this place." Mr. Bates replied, "Next time she won't be with me so what are you going to do?"

[35] A mediation meeting was held at the old Musquodoboit school, where the RCMP brought the neighbours of Scots Lake Road together to talk about their concerns. Mr. Merrette's behaviour was notable. He paced around and was standing behind the mediator saying the word "asshole". Mr. Merrette eventually left. At the end of the session the question was asked about what Ms. Williams wanted. She told the meeting that people could not be friends with the Wrathalls. Ms. Williams ended the meeting by saying that "this is war" and "you people are all targets". Ms. Williams said they could all "go fuck themselves".



[36] Ms. Williams acknowledged that she had said that they, meaning the others at the meeting, were “all targets”. She said that when asked what she meant by that comment, she said at the meeting that she wasn’t going to smile and wave at people in the neighbourhood anymore. In the context, the word “targets” is not reasonably capable of that interpretation.

[37] In the spring of 2017, Mr. Merrette was walking by Mr. and Mrs. Bates’ home carrying a hockey stick. He stopped in front of the house and said “I’m ready to play” while jabbing the stick into the ground.

[38] Mr. Bates and Mrs. Bates were present on October 6, 2017 when Ms. Williams and Mr. Merrette came walking down Scots Lake Road, after an altercation with Leanne Wrathall involving tree trimmers. That will be described later. Mr. Merrette was in a rage. His demeanor was intimidating. Ms. Williams was with him, supporting what he was saying, in a calm voice, saying again, that they were the victims.

[39] Mr. Merrette did not speak with Mr. and Mrs. Bates. He did not even just shout at them. He berated them and verbally accosted them. He continued to announce that this was “his road”. In court, he maintained that it was a public road. It belonged to the judge, the jury and every member of the public. In the video of Mr. Merrette screaming at Mr. and Mrs. Bates, that was not the nature of his claim. Observing Mr. Merrette’s demeanour in the recorded videos, Mr. and Mrs. Bates would have every reason to be concerned. Mr. Merrette appears to have poor self-control and little sense of interpersonal boundaries.

[40] Ms. Williams said in the trial that Mr. Merrette was a high-ranking military veteran and would not have attained that rank and position if he had not been trusted and respected. She said that she referred to him as a “trained warrior” because he could handle stress, was always under control and aware of what was going on around him. She said that he was not out of control but was always grounded and stable. He knew how to handle himself and she said he was a man who knew decorum. Evidently, she is either mistaken in that assessment, which would appear to be the case, or Mr. Merrette was in fact in control but wished the people he was confronting to operate on the assumption that he had lost control. In any event, the reference to Mr. Merrette as a warrior of any kind would do little to assuage the concerns of the couple’s neighbours.

[41] Gregg Bryant and Mary Bryant each saw Mr. Merrette at an incident on Scots Lake Road when a contractor was sent to do some work for Paul Wrathall.

Mr. Merrette stood in front of the dumptruck saying that he owned the road. Mr. Merrette punched the front light out of the truck. That seemed like an odd thing to do.

[42] Gregg Bryant was returning one evening from playing pool at Paul Wrathall's place. He had the window of his truck down and Mr. Merrette told him to "Get off my fucking road." A video showing the truck and identifying Gregg Bryant was posted on YouTube by Ms. Williams. That video did not only include the incident but had written commentary. Like several other videos of the neighbours, it had been taken from the security camera on the property occupied by Ms. Williams and Mr. Merrette, and was edited by Ms. Williams.

[43] Mr. Merrette called Mr. Bryant's employer. Mr. Merrette said that he owns a company, Crawford Industries Inc., which buys and sells other companies. He said in his direct evidence that when he saw that Paul Bryant was an employee of Russell Metals, he had Crawford Industries buy voting shares of Russell Metals. He said that as a result Gregg Bryant was his employee. His words were, "He's my employee". And, "I own Russell Metals." He said that once Gregg Bryant was identified as the gentleman in the black Ford truck, "I bought his company so he can't attack her", referring to Ms. Williams. He said that he called the company and explained who he was. Again, to quote Mr. Merrette "I own Russell Metals." He said he bought the company, "what more can I say". What Mr. Merrette had done was to purchase some shares in a large multinational company. He estimated that there might be a million shares in that company, and he had bought 1,000 voting shares.

[44] Several neighbours were named as defendants in Peace Bond applications brought by Ms. Williams. Those hearings took place over 5 or 6 nights. They were not successful. Private prosecutions were brought against some of them. They were eventually stayed by the Director of Public Prosecutions as being vexatious and not in the public interest. The courts were being used as tools of harassment. People have the right to access the courts. That does not permit them to use legal proceedings as part of a course of harassment.

[45] In one Peace Bond Hearing the adjudicator told the sheriff to speak with Mr. Merrette and Mr. Merrette said to the sheriff, "if you're going to threaten me you better have something to back it up". Some of the neighbours were present. Gregg Bryant said that his concern was that if someone would behave in that way toward

a sheriff in a public courtroom on Spring Garden Road, what would he do on a dead-end gravel road in Musquodoboit Harbour.

[46] Howard Merrette posted on one of his Facebook pages a statement directed to Anne North. She was named in that posting so that she would be notified when it was posted. It is a graphic statement of an imagined sexual assault. The only way in which its nature can be conveyed is to quote it. The post says, “Anne Noakes North, I’m want to fuck you in the cunt with a coke bottle. I bet you like that you fucking skank. Leanne does. I’ll even let your fuck wad watch. Laughing”.

[47] Mr. Merrette did not deny posting it. Mr. Merrette said that he had had a nasty exchange with Barry North. He said that he was “returning in kind to his lady” referring to Barry North and that this was “maybe over the top, who knows?”

[48] When Howard Merrette saw a post referring to the matter being sent to the police, he took the post down. Anne and Barry North were concerned by the post. Mrs. North had seen Mr. Merrette’s behaviour during the Peace Bond Hearing in which he acted erratically. Howard Merrette also contacted Barry North’s employer to complain about him. Information was posted on Facebook, naming Barry North and his employer.

[49] While Ms. Williams had no direct contact with Anne North, she was part of the ongoing pattern of behaviour involving contacting some of the neighbours’ employers and was involved with Mr. Merrette in the online harassment campaign against the neighbours.

[50] Glen Clarke met with Mr. Merrette in Mr. Merrette’s garage. The discussion was friendly enough until it turned to road ownership. Howard Merrette said that he was taking over the road. He began swearing and shouting toward the Wrathall’s property calling Leanne Wrathall a “skank and a cunt”.

[51] The event made Glen Clarke nervous. Mr. Merrette kept insisting that he owned the road. On one occasion Mr. Merrette was on the road walking slowly in front of Mr. Clarke’s car. He took what Mr. Clarke called baby steps. Mr. Clarke blew the horn. Mr. Merrette turned around and leaned on the hood. Mr. Merrette told him he was taking over the road. Mr. Clarke said that he told him he couldn’t do that. Mr. Merrette said. “What are you going to do about it?” Mr. Clarke didn’t know what to do. He drove home. He said he’d never encountered anyone like this before.

[52] On one day in February 2017 the road had been plowed. There was some snow left in front of someone's driveway and Glen Clarke took his ATV out to plow them out. As he was doing that, he saw Howard Merrette coming toward him driving his much larger truck with a snow-plow attachment. Ms. Williams was in the passenger seat. Mr. Merrette drove within 3-4 feet of him and slammed into the snowbank. Mr. Merrette backed up and this time came within 3-4 inches of him.

[53] Mr. Clarke was at the mediation session held at the old Musquodoboit school. He heard Ms. Williams saying that neighbours had to pick a side and saying that they were now targets. He saw Mr. Merrette's behaviour.

[54] Mr. Clarke was on his property one day and heard yelling and screaming. Mr. Merrette and Ms. Williams were coming toward him. He asked them to keep calm because his mother-in-law was at home and was very ill. Mr. Merrette said he "didn't give a fuck". Mr. Clarke was upset and fearful.

[55] Leanne Wrathall did not generally find Sandra Williams to be rude or abusive though there were exceptions. Their relationship was far from cordial. Her interactions with Mr. Merrette were intimidating and abusive.

[56] Mr. Merrette and Ms. Williams came to the Wrathall's house just after the 2010 lawyer's letter had been sent about the parking pad. Mr. Merrette berated and swore at the nanny who answered the door and was then employed by the Wrathalls. Mr. Merrette said that they were going to "burn him out". Paul Wrathall said that he interpreted that as a threat to burn their property. Some of those interactions were before the period covered by the charges and do not form part of the harassment. They do provide the context within which Paul Wrathall and Leanne Wrathall experienced their interactions with Howard Merrette.

[57] Leanne Wrathall's first encounter with Mr. Merrette was with Lorrie Taylor while walking the dog. Mr. Merrette told her to put the "fucking dog" on a leash. He was yelling and called her a "fucking skank". That caused her some concern.

[58] Later she was walking the dog with Valerie Bates. The dog was at the end of the driveway and Mr. Merrette again called her a "fucking skank" and told her that her "skank juice" was "smelling up the road". Mrs. Wrathall asked Ms. Williams, who was there, whether she thought this was right. Ms. Williams said, "You people started it. You get what you deserve." Mr. Merrette was close to Mrs. Wrathall during the confrontation in which he was aggressive, scary and unpleasant.

[59] Mrs. Wrathall tried to steer clear of them to avoid unpleasantness after that. There was an incident on June 4, 2016. This was an incident in which there was a fire in the driveway of Ms. Williams and Mr. Merrette. Mrs. Wrathall was coming home with her two young children and saw the fire and her husband, Paul Wrathall, who had engaged with Mr. Merrette near the fire. Mr. Merrette was highly agitated. He was yelling and swearing at Paul Wrathall and from the video that was part of the evidence at the trial, Mr. Merrette was also laughing loudly. It sounded on the tape much less like a reaction to something humorous than a kind of cackle or stage laugh.

[60] Mr. Wrathall was there because he was worried that the fire might get out of hand, especially after the comment having been made about burning him out.

[61] Leanne Wrathall called 911. She drove her vehicle up into her driveway and got out, leaving the children in the car. One of the children took a video of some of what happened.

[62] Ms. Williams left the area by the fire and headed up to the vehicle where she began to talk with the Wrathall children, telling them that their father was drunk and that their mother should take them home. Mrs. Wrathall was concerned by Ms. Williams approaching the children. Ms. Williams said that she was sick to her stomach because she felt so bad for the children and wanted to comfort them. That was not her intent. Saying that their father was drunk and that someone should take them home are not words of comfort. The intent was clearly to use the children as part of the intimidation.

[63] The Wrathalls were also present at the mediation session in Musquodoboit Harbour and observed Mr. Merrette's behaviour. They also observed Ms. Williams and her declaration that the neighbours were now all targets.

[64] On October 6, 2017, an incident took place involving tree trimmers who had arrived to clear some of the brush. Some of that incident was caught on video by Mrs. Wrathall. The details are reviewed in reference to the assault charge against Ms. Williams involving Mrs. Wrathall. It was clearly a very unpleasant altercation in which Mrs. Wrathall was assaulted by Ms. Williams and verbally abused by Mr. Merrette in a way that invaded her personal space. Mr. Merrette can be seen and heard calling Mrs. Wrathall a "fucking retard" and screaming into her cellphone only a few centimetres from the phone itself. He does not appear in any way to be a person who is in control of himself.

[65] Mr. Merrette approached Mrs. Wrathall's car, which in various Facebook posts he called it "the pussy wagon". Mrs. Wrathall told him to get away from the car and he can be seen standing by it in a defiant pose. He said that he was looking for the damage, from an accident she had had with the vehicle on Scots Lake Road. Mr. Merrette and Ms. Williams had posted a picture online or on Facebook of Mrs. Wrathall's vehicle in that accident, identifying her.

[66] They continued with posts making suggestions that as a lawyer with Justice Canada Leanne Wrathall was acting inappropriately. She was concerned with posts that brought her employer into the situation. Her employer had to be advised given the fact that the posts were public. Mr. Merrette also called Justice Canada to complain about Mrs. Wrathall.

[67] Mrs. Wrathall was involved in counselling to help her deal with the stress related to these altercations. It affected her work. Mr. Merrette in his testimony said that he saw the counselling as a "silver lining" because Mrs. Wrathall's employer was at least aware of what she was like and she was now being counselled for her problems, which of course in his view, was not related to anything he had done.

[68] The trial in this matter was not the only legal confrontation. There were Peace Bond applications that took place over 6 nights. Mr. Merrette's demeanor at the Peace Bond Hearing was generally aggressive, argumentative and intimidating. Mr. Merrette had verbal altercations with the judge in the Peace Bond hearing. Both Mr. Merrette and Ms. Williams attempted to portray the decision in the peace bond hearings as suggesting that the time was just not right yet for the granting of such an order. In fact, they were not successful in getting a peace bond against any of their neighbours, but the neighbours had to retain legal counsel and spend several nights in the process.

[69] There has been a civil matter. Ms. Williams and Mr. Merrette tried to snatch imaginary victory from the jaws of real-life defeat. They said that the order of Justice Ann Smith gave them the clarity that they wanted about the road. That order makes it clear that the legal title of the right-of-way, known as Scots Lake Road is held by Paul and Leanne Wrathall and that Ms. Williams and the other landowners on the road have the right to perform some maintenance. A costs award of \$3,000 was made against Ms. Williams in favour of the Wrathalls. That means Ms. Williams lost. She did not win.

[70] Ms. Williams started a private prosecution against some neighbours. That prosecution was stayed by the Director of Public Prosecutions as being vexatious and not in the public interest.

[71] The complainants, now victims, noted in the counts charging criminal harassment, were subjected to a campaign undertaken by both Ms. Williams and Mr. Merrette that was intended to make them feel threatened and harassed. That campaign took the form of online bullying, to publicly embarrass and intimidate them. In some cases, it involved contacting their employers, again as a form of intimidation and bullying. It included using the legal process to drag people into court, to expend their time and money for the purpose of continually frustrating and annoying them. It included personal confrontations that were vulgar in the extreme, involving screaming and invading their personal space as a form of intimidation.

[72] What Howard Merrette said to Anne North was very close to the offence of uttering a threat contrary to s. 264.1. The charge is criminal harassment, contrary to s. 264. It amounts to that, at the very least.

**Mischief: Counts 2, 8 and 11**

[73] Both Sandra Williams and Howard Merrette were found guilty of 3 counts under s. 430(1)(d) of the *Criminal Code*. Count 2 relates to Mr. and Mrs. Bates, count 8 relates to Mr. Clarke and count 11 relates to Leanne Wrathall.

[74] The facts that support the guilty finding on count 2 arise from the evidence from Paul Bates and Valerie Bates. The neighbourhood in which Mr. and Mrs. Bates lived changed from a quiet and friendly one to something entirely different. Paul and Valerie Bates' home was changed from a place where they could feel safe and comfortable to a place in which there was an abiding sense of tension. Like their neighbours, they were concerned about meeting or interacting with the offenders in the neighbourhood. They did not want to have to face abuse and intimidation and that changing nature of the neighbourhood affected their enjoyment of their own property.

[75] That change came about because of the intentional acts of Ms. Williams and Mr. Merrette. It was their intent to make life miserable for Paul and Valerie Bates so long as they remained in that neighbourhood. More specifically, the blocking of the road to prevent Mr. and Mrs. Bates from getting to their own home was an act

of mischief. Although Ms. Williams and Mr. Merrette were not operating the green racing car, they were in control of the situation.

[76] Glen Clarke also suffered from a loss of enjoyment of his property through the intentional actions of the offenders. Mr. Clarke specifically was impeded from driving his car down the road to access his house when Mr. Merrette intentionally stood in front of him and challenged him to do something about it.

[77] Leanne Wrathall was the primary target of Ms. Williams and Mr. Merrette. They did what they could to make her life miserable and those actions related directly to her ability to continue to enjoy her property on Scots Lake Road. The actions of the offenders were directed toward making her continued occupation of her property as difficult and unenjoyable as possible, specifically because they were in a property dispute with Leanne Wrathall and Paul Wrathall. They plowed snow from the road, but they did it in a way that was intended to impede access by Leanne Wrathall to her own property. When she had an accident that was caused by that, they mocked her online. They were under no obligation to plow the road and if they chose to plow it, they were under no obligation to plow out the Wrathalls. But they could not plow the road in a way that was specifically intended to make it difficult for Leanne Wrathall to get to her own home.

### **Common Assault: Count 17**

[78] Sandra Williams was found guilty by the jury of assaulting Leanne Wrathall on October 6, 2017. The offence is contrary to s. 266 of the *Criminal Code*.

[79] The intentional application of force by Ms. Williams on Leanne Wrathall was when Ms. Williams is shown in a cellphone video backing into Mrs. Wrathall and later striking the hand that Mrs. Wrathall was using to hold her cellphone. The action was intentional and not accidental. Mrs. Wrathall did not consent to the application of force and Ms. Williams knew that Mrs. Wrathall did not consent.

### **Assault with a Weapon: Count 9**

[80] Both Sandra Williams and Howard Merrette were found guilty of assaulting Paul Wrathall using a weapon contrary to s. 267(a) of the *Criminal Code*. It involves an incident that took place on July 19, 2017.

[81] Paul Wrathall came home from his motorcycle shop on his motorbike wearing motorbiking protective clothes. He was wearing a leather jacket and boots.



He stopped to take pictures of trees that had been cut around his driveway. He didn't see anyone around. He was struck in the wrist with what appeared to have been a wooden broom or shovel handle by Sandra Williams.

[82] He then saw Howard Merrette shooting rocks at him with a hockey stick. Mr. Merrette came toward him. Mr. Wrathall took pictures using his cellphone. Those pictures depict Mr. Merrette holding and in the process of swinging a hockey stick at Mr. Wrathall. Paul Wrathall was struck on the leg near the knee, as he tried to defend himself by raising his leg to deflect the blow. He was struck on the arm as he tried to protect himself.

### **Assault Causing Bodily Harm: Count 12**

[83] Howard Merrette was found guilty of assaulting Paul Wrathall and causing bodily harm to Paul Wrathall on July 19, 2017. That offence is contrary to s. 267(b) of the *Criminal Code*. This relates to the very same incident that gave rise to the conviction for assault with a weapon. This time it involves the nature of the injuries sustained, not whether a weapon was used.

[84] Mr. Wrathall suffered from substantial bruising to his leg and arm. He believed that his arm had been broken though it was not. When he went to the hospital in Musquodoboit Harbour on the day of the assault, his arm was put in a temporary cast. His injuries were in no way minor or trifling.

[85] Mr. Merrette claimed that he had been acting in defence of Ms. Williams. Mr. Wrathall was not threatening Mr. Merrette who he was facing with a cellphone to take pictures and was not engaged with Ms. Williams or threatening her at all.

### ***R. v. Kienapple*, [1975] 1 S.C.R. 729**

[86] Howard Merrette has been found guilty of both assault with a weapon and assault causing bodily harm. One is contrary to s. 267(a) and the other is contrary to s. 267(b) of the *Criminal Code*. The action that Mr. Merrette took is the same. He intentionally struck Paul Wrathall with a hockey stick. The assault with a weapon charge relates to the act and the assault causing bodily harm charge relates to the consequence of the act. A person should not be convicted twice for doing exactly the same thing.

[87] The charges are equally serious. A conditional stay will be entered with respect to the assault with a weapon charge, count 9. Mr. Merrette will be

sentenced for assault causing bodily harm, count 12. The fact that a weapon was used may be an aggravating factor in sentencing.

### **Purposes and Principles of Sentencing**

[88] The “fundamental purpose” of sentencing is to protect society and to contribute to the respect for law and the maintenance of a just, peaceful and safe society by imposing just sanctions. The protection of society and the maintenance of a just, peaceful and safe society are not coded terms for harshness. The protection of society can be brought about in ways that do not necessarily involve longer periods for incarceration. More jails do not create safer or more just societies. The just sanctions imposed have one or more objectives.

[89] The sentence can be used to denounce unlawful conduct and the harm done to victims and the community. Denunciation can be the way in which a society defines for itself the limits of tolerable conduct. Justice must have a place for retribution. That should not be confused with vengeance. Retribution has to be measured and restrained. Even if a sentence has no effect on anyone else in the community, justice requires that there be a price to be paid. That is a particular concern when online harassment is involved. It is conduct that cannot be in any way condoned.

[90] A sentence may deter others from committing offences. The deterrent effect of specific sentences may well be minimal. It is unlikely that anyone who is engaged in a fraught relationship with neighbours and who would be inclined to be abusive and harassing toward them, would pause to reconsider in light of what happens in this case. It must be said, however, that if sentences in general are perceived as being inconsequential, potential offenders can be emboldened. People who take their personal disputes to the point where harassment begins need to know that the law will intervene by imposing meaningful consequences. To be respected, the law must be seen as imposing sentences that provide for those consequences.

[91] Sentences can separate offenders from society where necessary. That should not be the first option. A relatively brief period of incarceration for either Ms. Williams or for Mr. Merrette will not go far to making Scots Lake Road a safer place. The offenders would not be removed from the community for years to allow people to get back to a more peaceful normal state.

[92] Sentences can assist in the rehabilitation of offenders. People can be rehabilitated. That would be unlikely to happen after a sentence of some months in a provincial institution. The rehabilitative effect in this case would be to make clear to the offenders that their actions have consequences. The failure to show the level of restraint required by the law can result in being incarcerated, if only for a brief time. Terms of probation may provide for treatment and counselling but those are only as effective as the willingness of the offenders to participate in a serious way.

[93] A sentence can provide reparations for harm done to victims and to the community. For some crimes, the offender can be ordered to pay for the damages that they have caused. The determination of the amount of damages here would involve likely another long and difficult court process that the victims would likely find even more frustrating.

[94] Sentences can promote a sense of responsibility in offenders and provide an acknowledgement of the harm they have done to victims and the community. That is an important consideration. Mr. Merrette and Ms. Williams must be brought to an understanding of what they have done to the once peaceful and friendly neighbourhood of Scots Lake Road. They must finally be willing to understand that whatever their views are about the ownership or maintenance of the road, they do not have the right to abuse, bully, berate, intimidate, harass or assault their neighbours.

[95] It is a fundamental principle of sentencing that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. Here Ms. Williams and Mr. Merrette have been found guilty of several offences. Assault with a weapon is a broad-spectrum offence. It can involve throwing a paper cup at someone or attacking them with a knife. In this case, Ms. Williams was found guilty of striking Paul Wrathall with some kind of wooden handle. There was no evidence of the nature of the injury sustained by that blow. It was, however, not a minor matter given the nature of the weapon that was used.

[96] Ms. Williams has been found guilty of common assault. The assaults involved backing into Mrs. Wrathall and striking at her hand carrying her cellphone. Both assaults involved physical contact and not only a threat of contact but neither assault appeared to cause any physical pain.

[97] The assault that Mr. Merrette was convicted of was far more serious. It involved striking Paul Wrathall with a hockey stick and causing substantial

injuries. Mr. Wrathall was wounded. The bruising on his leg and arm persisted for some time. His arm was put in a temporary cast because there was a concern that it had been broken. Mr. Wrathall was unarmed. He did not have a stick or anything else. Mr. Merrette struck an unarmed man who was doing nothing more than taking his picture.

[98] The criminal harassment charges did not involve a temporary loss of self-control or a single error in judgement. Both Ms. Williams and Mr. Merrette engaged in a campaign of harassment in which the victims were their targets. Social media allows people to target others relentlessly. The victim can find no escape. In this case, the victims were harassed online, some through their workplaces and while going to or from their once quiet peaceful homes. There was no place to find relief and no getting away from it. Acting with the intent of intimidating, harassing and bullying a person must be treated seriously.

[99] The harassment against Anne and Barry North should be addressed specifically. What Howard Merrette wrote to and about Anne North was not only disgustingly vulgar and coldly brutal but had the intended effect of terrifying the couple. Mr. Merrette said that Facebook was a cesspool and anyone who signs up for it knows that. He said, “You don’t have to watch it.” He said that he was getting back at Barry North, by “returning in kind to his lady”. Anne North had done nothing to him. He hurt her as a way to hurt her husband. When referring to the comment that he made, with Anne North’s name attached, which meant that her family and friends would be notified of it as well, Howard Merrette said, it was “maybe over the top, who knows?”

[100] I do. I know. It was a grossly misogynistic, cruel, cowardly, and violently abusive statement. It shows a lack of self-control, self-respect and self-awareness. It is apparent that he has not gained any more of any of those. When Barry North appeared in court to read the victim impact statement reflecting on the experiences of himself and his wife Anne North, Howard Merrette turned his back on him.

[101] Sentences should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Of course, every crime is unique, every offender is unique, and every victim is unique. Sentencing cannot be reduced to a search for caselaw that most closely matches the circumstances of the case. There are too many variables to make that a reliable tool. That principle means that sentences should generally fall within an accepted scope of usual outcomes and vary within that scope based on the circumstances.

## Ranges of Sentences

[102] Sentencing for criminal harassment is like many offences, context driven. Sentences can range from conditional sentences on summary conviction to incarceration of two years or more. The nature of the harassment and its duration are considerations.

[103] In *R. v. Kubinec* 2019 ONCJ 47, the offender was divorced from the victim. He sent her many text messages and emails. They ranged from expressions of love to demeaning insults. The victim was traumatized, scared and felt socially isolated. The offender in that case pleaded guilty, expressed remorse for what he had done and participated in counselling. He was sentenced to probation for 2 years. The guilty plea and willingness to participate in counselling mitigated the sentence in that case.

[104] Neither Ms. Williams nor Mr. Merrette have shown insight into their actions to the extent to seeking counselling. Ms. Williams has said that she is sorry that the victims feel the way that they do and feels that she could have done more to engage socially with them. Her message is that they were the bullies and she should have been able to deal more effectively with bullies. If that was intended as an apology or an acceptance of responsibility it fell well short of the mark. That is not an aggravating factor in her sentencing. But she cannot claim the same mitigation in sentencing as someone who acknowledges that they did something wrong.

[105] In *R. v. Gill* 2019 BCSC 461, the offence was not committed in the context of a domestic relationship. The offender had been convicted of two driving offences. He made repeated calls to the constable who issued the tickets and tried to call members of the constable's family. The constable left the detachment as a result. The offender kept going despite warning. He said things like, "going to get you" and left text messages saying, "we are getting you bitch" and "you fucked with us you cop". The mitigating factors in that case included the offender's guilty plea and support from his parents. The facts that the behaviour escalated and consumed a significant amount of public resources were aggravating factors.

[106] While the offenders in this case have support from family members and Ms. Williams' clients, there was no guilty plea as in *Gill*. The impact on the victims here over a period of years was significant. Public resources were consumed at an alarming rate in this case. The police were called repeatedly to the neighbourhood.

The courts were used as a method of harassment. Scots Lake Road was an ongoing problem. It had not been before 2010.

[107] In *Gill*, the offender was sentenced to three months imprisonment for the criminal harassment.

[108] In *R. v. Pennell* 2014 NLPC 1313A00584, the offender was 38 years old with no previous criminal convictions. The offences were committed at the end of an intimate relationship with the victim. The harassment went on for 8 months during which the offender repeatedly called the victim and harassed her by phone and text messages. The behaviour continued despite warning coming from the police. The sentence in that case was a period of imprisonment for 6 months.

[109] In *R. v. Settle* 2019 ABPC 328, the offender was 48 years old and again had no prior record. The offender and the victim had been involved in an intimate relationship which the victim tried to end. The offender threatened to tell the victim's wife and eventually did call the victim's wife, anonymously, to tell her about the affair. At one point there were as many as 5 calls a day. The accused harassed the victim with frequent threatening phone calls, nasty text messages and showing up at the victim's place of work. The behaviour escalated despite warnings from the police. The offender was sentenced to 9 months in jail for 2 counts of criminal harassment.

[110] In *R. v. Wenc* 2009 ABCA 328, the harassment was once again at the conclusion of an intimate relationship. The 37-year-old offender sent hundreds of emails, voicemails, web postings, faxes, and phone calls to the victim. He used aliases to conceal his identity. Some of the emails threatened to send naked pictures of the victim to her family. The accused set up a fake profile of the victim on social-networking sites, claiming that the victim was spreading HIV, and other sites showing nude pictures of the victim with her phone number inviting people to contact her for the purpose of having sexual encounters. The offence occurred over a period of 19 months. The offender was first sentenced to a 90-day intermittent sentence of imprisonment. The Alberta Court of Appeal overturned that sentence and replaced it with a 12-month sentence of imprisonment.

[111] In *R. v. Butler* 2019 NLCA 21, the offender was 60 years old. He was married with two children. He had no formal education. The offender had some strict and quite unusual religious beliefs that involved his adoption of conspiracy theories about medical practitioners, among others. The victim was a well-known doctor in the community. The offender began harassing her by walking or driving

by her home (up to five times a day), walking into a travel agency for no apparent reason while the victim was there, following her spouse in the supermarket, and going into the victim's medical clinic uninvited and without an appointment. He had no business in either the travel agency or the clinic.

[112] The Newfoundland Court of Appeal provided a comprehensive review of caselaw dealing with sentencing of those found guilty of criminal harassment. In *Butler*, the sentence was reduced from 2 years incarceration to one year in custody (time served).

[113] There is a range for sentencing that can go from probation up to a period of one or even two years in jail. Society has begun to acknowledge the real harm that is done to the victims of criminal harassment. Social media has been made a weapon for bullies who are emboldened by sitting at a keyboard knowing that they have an audience. It all too often escalates into physical violence.

[114] Assault, assault causing bodily harm and assault with a weapon are broad spectrum offences. A minor assault in some circumstances can result in the granting of a discharge. Sometimes it can involve probation. More serious assaults that do not rise to the level of causing bodily harm can still result in jail sentences. Assault with a weapon and assault causing bodily harm are, by definition, more serious and are treated as such.

[115] Much depends on the circumstances including the nature of the weapon used and the nature and extent of the bodily harm suffered.

[116] Once a sentence has been decided upon for each charge, the principle of totality must be considered. The sum of the sentences may not exceed what would be appropriate in the circumstances.

### **Covid-19**

[117] Both Ms. Williams and Mr. Merrette have cited the Covid-19 pandemic as justifying a lighter sentence. Jails are acknowledged as being harsher environments because of the conditions aimed at preventing the spread of the infection within those institutions. While there is no evidence that Covid-19 is spreading within penal institutions, they are places where large numbers of people are congregated within a confined space. Mr. Merrette and Ms. Williams are each at higher risk if they do contract Covid-19.

[118] There are cases that call for a sentence that is outside of the range of sentences for a particular offence. There are circumstances that justify sentences in which individual considerations outweigh the factors that normally form part of a sentence calculation. But Covid-19 is not a circumstance that will justify imposing a sentence that is unfit and inappropriate.

### **Sandra “Gwen” Williams**

[119] Ms. Williams was found not guilty on count 14 of the indictment. The jury returned guilty verdicts on counts 1, 3, 4, 7, and 10 (criminal harassment), counts 2, 8, and 11 (mischief), count 9 (assault with a weapon), and count 17 (common assault).

[120] Her counsel has argued for a conditional discharge. That would mean that at the conclusion of a period of probation she would not be left with a criminal record. Ms. Kwan, as counsel for Ms. Williams, argued that a criminal record would prevent Ms. Williams from maintaining her membership in the Nova Scotia Chapter of the Chinese Medicine and Acupuncture Association of Canada. “In order to maintain her license to practice, she would need to maintain her membership with NS-CMAAC.” The loss of her ability to run her clinic would have serious implications for her. She would lose her only source of income.

[121] Counsel could not identify any Nova Scotia legislation that regulates the practice of “Chinese Medicine and Acupuncture”. It is not a regulated profession in this province. There was no provincial licensing body that could either grant or remove a licence to practice. Counsel suggested that it might be a federal matter. Again, no federal legislation was identified that would allow for the granting of a license to practice the profession. Ms. Williams may well lose her membership in the organization that promotes the practice of Chinese Medicine and Acupuncture but there was no evidence of any kind put forward to indicate that she would lose a licence to practice or the ability to practice in that field.

[122] In any event, this is not a case in which a discharge is an appropriate sentence. The circumstances of the criminal harassment, assault, assault with a weapon, and mischief charges are such that a discharge would indicate a failure to consider the seriousness of what happened here. Granting a discharge would not be in the public interest.

[123] A period of incarceration would prevent Ms. Williams from providing care for her 88-year-old mother. There are concerns about her own health if she is



incarcerated. Ms. Williams is well regarded by her friends and clients. Many of them would suffer as well if Ms. Williams is required to spend time in jail.

[124] The Crown's view is vastly different. Crown counsel argues for a sentence of 2 years incarceration. The Crown describes the harassment as extreme and crying out for denunciation and deterrence.

[125] Fine people sometimes act wildly out of character. What the writers of the letters of reference see in Ms. Williams is very different from what the victims of these crimes experienced. Both may be true. People are complicated. A sentence must consider who Ms. Williams is, but at the same time has to consider what she is convicted by a jury of having done. While in areas of her personal and professional life Ms. Williams was a source of support and healing for many people, in her relationships with her neighbours, together with Mr. Merrette, she was a source of anxiety and fear.

[126] Ms. Williams does not present as the "kind of person" one would expect to see convicted of criminal offences. But what she did is not consistent with the kind of person that she presents herself as being. She is not someone who has a history of criminal behaviour much less violent behaviour. But her sustained actions over a period of years created so much anxiety for her neighbours that they found it difficult to live in their own community. That disconnect, between who Ms. Williams is and what she has done, makes determining a fit sentence particularly challenging. It is important to step back from the natural emotional reaction to the frustration and fear expressed by the neighbours and consider exactly what Ms. Williams was found guilty of having done. She has not behaved in a seriously violent way. The assault conviction is with respect to an unpleasant altercation that happened to involve physical contact. The assault with a weapon involved one strike which did not result in a serious injury. The mischief and harassment at least did not descend to the level of what Mr. Merrette did. Ms. Williams' behaviors are best characterized as childish, mean spiritedness and passive aggressivity.

[127] Some sentences are available for some offences and not for others. Incarceration is an available sentence. Probation is an available sentence. Discharges are available sentences. A conditional sentence, imposed under s. 742.1 of the *Criminal Code*, commonly referred to as house arrest, is available for some offences and not for others. A conditional sentence is not permitted to be imposed for offences under s. 264 (criminal harassment) or for an offence prosecuted by way of indictment for which the maximum sentence is 10 years and that involved

the use of a weapon. So, a conditional sentence is not available for the assault with a weapon offence under s. 267(a). A conditional sentence is available for common assault (s. 266) and mischief (s. 430).

[128] The most serious of the offences of which Ms. Williams was convicted are those of criminal harassment against Paul Bates and Valerie Bates (count 1), Gregg Bryant and Mary Bryant (count 3), Barry North and Anne North (count 4), Glen Clarke (count 7), and Leanne and Paul Wrathall (count 10). Each person was harassed in different ways. They suffered and their lives were made miserable over the course of years. Ms. Williams allowed her single mindedness to overcome her self-control over a long period of time. She was not vulgarly and physically aggressive but she played her part in the harassment.

[129] A period of incarceration is needed to confirm that bullying that becomes criminal harassment is a form of behaviour that can lead to spending time in jail. People who act like bullies can and do go to jail, even if they are otherwise law abiding and respectable. The purpose is not to remove her from the Scots Lake Road community for a long time. To have a meaningful effect the incarceration would have to be far longer than would be legally justified. The purpose is to make sure that Ms. Williams understands that this is not about her inability to socialize with her neighbours, or about misunderstandings regarding ownership of a road, but about her criminal acts. She needs to know that if this behaviour continues she will face longer periods of time in jail. Probation alone will not serve that purpose.

[130] Ms. Williams' behaviour with regard to each of the named victims in counts 1, 3, 4, 7, and 10 was similar. Unlike Mr. Merrette her actions toward the Norths and the Wrathalls was not more egregious than her behaviour toward the others. She should serve a period of incarceration of 20 days for each charge, served consecutive to each other. That would be a total of 100 days.

[131] In addition she will be required to serve a period of probation for 3 years. The purpose of the probation order is to keep peace in that community and to help prevent Ms. Williams from reengaging in the forms of behaviour that led to the convictions. The terms of the probation will be as follows:

1. Report to a probation officer within 3 days of the expiration of the term of imprisonment.
2. Keep the peace and be of good behaviour.

3. Attend for counselling and treatment as determined by the probation officer and to participate and cooperate in any program of treatment required by the probation officers.
4. To have no contact, directly or indirectly, with any of the following people: Paul Bates, Valerie Bates, Gregg Bryant, Mary Bryant, Barry North, Anne North, Glen Clarke, Leanne Wrathall or Paul Wrathall.
5. To refrain from posting any material on Facebook or any other social media that names, references directly or indirectly, identifies or depicts Paul Bates, Valerie Bates, Gregg Bryant, Mary Bryant, Barry North, Anne North, Glen Clarke, Leanne Wrathall, or Paul Wrathall.
6. Comply with the order of the Supreme Court of Nova Scotia granted by Justice Anne Smith as that order relates to the use and maintenance of Scots Lake Road. Not to travel on Scots Lake Road beyond the property at 68 Scots Lake Road.
7. Not to travel on any portion of Lot PID #41061755 being the right-of-way owned by Paul Wrathall and Leanne Wrathall, except on the travelled roadway portion of that right-of-way, or for the purpose of pulling over to allow a vehicle to pass on that roadway. You may travel on the right-of-way only directly to and from 68 Scots Lake Road and the intersection with Highway #7. You may not travel on that right-of-way in a northerly direction beyond the point at which the northwest boundary of the Lot S-2, 68 Scots Lake Road meets the right-of-way, known as Scots Lake Road.

[132] Ms. Williams was convicted in count 9 of assault with a weapon. That was part of the attack on Paul Wrathall. Ms. Williams caught him unaware when she struck him once with a wooden handle. He was not injured seriously by the strike. Ms. Williams is not being sentenced as a party to what Mr. Merrette did but for a separate and substantially less serious assault. A conditional sentence is not available as a sentencing option and probation in itself is not sufficient. Ms. Williams should serve a period of incarceration of 10 days consecutive to the other periods of incarceration.

[133] Ms. Williams was convicted in count 17 of assaults on Leanne Wrathall. Mrs. Wrathall was not physically injured, and no weapon was used. Ms. Williams backed into her and at one point swatted the hand that Mrs. Wrathall was using to hold her cellphone. The circumstances of that assault do not justify a period of

incarceration. The appropriate sentence in the circumstances is that Ms. Williams be required to complete 40 hours of community service within 9 months of today. That amounts to a week of work.

[134] Ms. Williams was convicted of mischief with respect to Paul and Valerie Bates (count 2), Glen Clarke (count 8) and Leanne Wrathall (count 11). The context in which the mischief offences took place is significant to the sentence that should be imposed. The sentence for each will be 20 hours of community service for a total of 60 hours of community service in addition to the 40 hours of community service imposed with respect to count 17.

[135] The principle of totality requires the court to consider the sentence as a whole and determine whether it is appropriate having regard to Ms. Williams' moral blameworthiness. A series of relatively brief sentences can add up to a total that does not reflect what has actually happened. Sentencing should not be driven by arithmetic. It is necessary to take a step back to look at the larger picture of what the arithmetic produces. The question is whether, in aggregation the sentence reflects the moral blameworthiness of the offender. In total Ms. Williams' sentence amounts to 110 days in jail, three years of probation and 100 hours of community service. Three years of probation is the longest period of probation that can be imposed. It is a significant sentence. A hundred hours of community service is substantial. In order to serve as a deterrent to further behaviour of this kind some jail time is required. But, what Ms. Williams did does not justify a sentence of almost 6 months. The purpose of the sentence, as I have stated, is to deter her from persisting in this behaviour. The sentence must be the least restrictive sentence that is capable of serving the purposes of sentencing and respecting the principles of sentencing. The purpose of deterrence can be achieved by a shorter total jail sentence of 30 days.

[136] Rather than having the sentence on counts 1, 3, 4, 7, and 10 run consecutively they should be served concurrent to each other for a total of 20 days. That would be in addition to the 10 days served on count 9. That means that the total time served will be 30 days. That is in addition to the 3 year term of probation and 100 hours of community service. In total that sentence reflects the extent of her moral blameworthiness which while significant is still far less than that of Mr. Merrette.

**Howard G. Merrette**

[137] Howard Merrette's counsel recommends a sentence of 36 months probation. The Crown recommends a sentence of 2 years incarceration.

[138] Howard Merrette is a military veteran. He left the navy as a Chief Petty Officer after 15 years of service. He has been employed by the Commissionaires. Mr. Merrette rose to that level of rank and presumably was, among other things, able to exercise some degree of self-control. Like Ms. Williams, he has become consumed by the property dispute with his neighbours. He has shown outright hostility and aggression. He has not been able to use self-control when dealing with his neighbours.

[139] He has no criminal record until now.

[140] His health is poor. Spending time in jail will not make it any better. Serving time will be particularly difficult given the kinds of conditions from which he suffers. Mr. Merrette will suffer from incarceration. But the nature of his crimes are such that anything short of incarceration would not be appropriate.

[141] Mr. Merrette was convicted of assault causing bodily harm with respect to Paul Wrathall (count 12). He attacked an unarmed man apparently because he did not want to have his picture taken. Mr. Wrathall was not attacking him or threatening him and seems to have been paying more attention to his phone than to anything else. Mr. Merrette beat him with a hockey stick and caused considerable injuries. A conditional sentence would not be available for this offence. Even if it were it would not be a fit and appropriate sentence. Probation would not be a meaningful consequence on its own. This was a serious assault. It was in no way trifling and the injuries sustained were not minor. Mr. Wrathall was not a threat and there was no way in which he could have been conceived of as a threat. Mr. Merrette just beat him up and had his picture taken by the victim while he was doing it. Howard Merrette is capable of acting violently.

[142] Mr. Merrette will serve a term of custody of 4 months for that assault. That will be followed by a period of probation for three years on the same terms as the probation order for Ms. Williams.

[143] He has been found guilty of criminal harassment against Paul Bates and Valerie Bates (count 1), Gregg Bryant and Mary Bryant (count 3), Barry North and Anne North (count 4), Glen Clarke (count 7), and Leanne Wrathall and Paul Wrathall (count 10). Mr. Merrette was both literally and figuratively more "in your face" with respect to the harassment. While Ms. Williams served as the enabler,

Mr. Merrette was the front line of the criminal behaviour. A conditional sentence is not an available sentence for criminal harassment.

[144] With regard to the counts involving Paul and Valerie Bates, the Bryants, and Glen Clarke, he will serve one month in custody for each offence, consecutive to each other and to the other offences. That is a total of 3 months. The harassment against the Norths and the Wrathalls went to another level of bullying. Each of those offences should attract a sentence of 45 days for a total of 3 months, consecutive to the 3 months on the other criminal harassment charges, and consecutive to the 4 months for assault causing bodily harm. The 3 year probation order will attach to those offences as well.

[145] Mr. Merrette was found guilty of committing mischief against Paul Bates and Valerie Bates (count 2), Glen Clarke (count 8), and Leanne Wrathall and Paul Wrathall (count 11). Community service is simply not a viable option for Mr. Merrette. There is no reason to believe that he would comply. For counts 2, 8, and 11, the sentence should be 10 days for each offence for a total of 30 days, or one month.

[146] Mr. Merrette was found not guilty on counts 13 and 14.

[147] As with Ms. Williams' sentence, the principle of totality must be applied in Mr. Merrette's case. His sentence of incarceration totals 11 months, based on 4 months for the assault on Paul Wrathall, one month for each of the three criminal harassment charges, 45 days for each of the two criminal harassment charges, and 10 days for each of the three mischief charges. That is in addition to three years of probation. Taken together the circumstances of this case, including Mr. Merrette's own circumstances, require a term in jail that is meaningful. It must be capable of acting as a deterrent to him. He has to understand the magnitude of what faces him if he does this again. A brief period in jail will not do that. He acted in ways that were mean and cruel. That does not mean that his sentence should be mean or cruel. It should be only as harsh or stern as it needs to be and not any more. A period of incarceration for 9 months will achieve that purpose. That can be done by having some of the sentence of incarceration served consecutive to others.

[148] Mr. Merrette will serve 4 months of incarceration for count 12, assault causing bodily harm. To that will be added probation for 3 years. He will serve 45 days in jail for count 4, the criminal harassment of the Norths. That will be consecutive to the 4 month jail term on count 12. He will serve 45 days for count 10, the criminal harassment of the Wrathalls. That will also be consecutive to the

sentence for counts 12 and 4. He will serve one month in jail for count 1, the criminal harassment of Mr. and Mrs. Bates. That will be served consecutive to the other sentences. He will serve one month for count 3, the criminal harassment of the Bryants. That will be served consecutive to the other sentences. To that point the total consecutive sentences are 9 months. He will serve one month for count 7, the criminal harassment of the Clarkes. That will be concurrent to the other sentences. He will serve 7 days each for counts 2, 8, and 11. Those sentences will be concurrent to each other, and concurrent to the other sentences.

[149] Mr. Merrette will be required to serve 9 months in custody. That will be followed by 3 years of probation. When considered together that is proportionate to his level of moral blameworthiness.

## **Conclusion**

[150] These comments are directed to the named victims of these offences. I acknowledge what you have gone through with all of this. The years of harassment have taken a toll: emotionally, physically, and financially. No one should have to go through this. People should be able to live in their own homes and go about their own lives without worrying about what your neighbours are going to do next. To you I expect that no sentence imposed on Mr. Merrette and Ms. Williams will feel like “justice”.

[151] Seeing Ms. Williams go to jail for a month and Howard Merrette sent to jail for 9 months will not change anything. It will not recover the lost enjoyment of your neighbourhood and it won't bring things back to the way they were before. It is unlikely to change them very much either. The most we can hope for is an end. The purpose of these sentences is to end this, once and for all using the tools that the law allows.

[152] Mr. Merrette and Ms. Williams, I so wish it had not come to this. You may chose to characterize yourselves as the real victims. You may see the trial and sentencing as a travesty of justice. Even if you do, consider whether things would have turned out much better for you, and for everyone else, had you just been able to let some things go. Maybe everything is not worth a fight. Think of some of the scenes that were recounted in the trial. Think of the ones that weren't even disputed. Mr. Merrette's Facebook post to Anne North as an example. Ask yourselves what that was intended to achieve. How could that ever have been considered to do any good for anyone. Nothing good is ever going to come of swinging a hockey stick at an unarmed man standing on a road with a cellphone

camera. Posting mocking videos on the internet of someone's vehicle trying to get around snow banks on Scots Lake Road with captions and music took some time and effort. How was that childish act going to make anything better for anyone?

[153] You don't need advice from me. You likely wouldn't take it if I offered it anyway. So this isn't advice as much as a warning. You would do well to remember the importance of avoiding conflict over the next number of months in particular.

## **Summary**

### Sandra "Gwen" Williams

[154] Count 1, criminal harassment (Bates): 30 days incarceration and 3 years probation.

[155] Count 3, criminal harassment (Bryant): 30 days incarceration and 3 years probation, concurrent to count 1.

[156] Count 4, criminal harassment (North): 30 days incarceration and 3 years probation, concurrent to count 1.

[157] Count 7, criminal harassment (Clarke): 30 days incarceration and 3 years probation, concurrent to count 1.

[158] Count 10, criminal harassment (Wrathall): 30 days incarceration and 3 years probation, concurrent to count 1.

[159] Count 9, assault with a weapon (Wrathall): 10 days concurrent to count 1.

[160] Count 17, assault (Wrathall): 40 hours community service.

[161] Count 2, mischief (Bates): 20 hours community service.

[162] Count 8, mischief (Clarke): 20 hours community service.

[163] Count 11, mischief (Wrathall): 20 hours community service.

[164] Counts 5, 6, and 14: Not guilty.

[165] Total period of incarceration: 30 days.



[166] Probation: 3 years.

[167] Community Service: 100 hours.

Howard G. Merrette

[168] Count 12, assault causing bodily harm (Wrathall): 4 months incarceration and 3 years probation.

[169] Count 9, assault with a weapon (Wrathall): stay.

[170] Count 4, criminal harassment (North): 45 days incarceration and 3 years probation, consecutive to count 12.

[171] Count 10, criminal harassment (Wrathall): 45 days incarceration and 3 years probation, consecutive to count 4.

[172] Count 1, criminal harassment (Bates): one month incarceration and 3 years probation, consecutive to count 10.

[173] Count 3, criminal harassment (Bryant): one month incarceration and 3 years probation, consecutive to count 1.

[174] Count 7, criminal harassment (Clarke): one month incarceration and 3 years probation, concurrent to count 3.

[175] Count 2, mischief (Bates): 7 days incarceration, concurrent to count 7.

[176] Count 8, mischief (Clarke): 7 days incarceration, concurrent to count 2.

[177] Count 11, mischief (Wrathall): 7 days incarceration, concurrent to count 8.

[178] Counts 5, 6, 13, 14, 15 and 16: Not guilty.

[179] Total period of incarceration: 9 months.

[180] Probation: 3 years.

[181] Ancillary orders: s. 109 weapons prohibition (10 years) and DNA order, for both Ms. Williams and Mr. Merrette.

[182] Victim fine surcharges are waived, for both Ms. Williams and Mr. Merrette.

Campbell, J.