

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Saunders*, 2025 NSSC 430

Date: 20251205

Docket: CRH No. 536615

Registry: Halifax

Between:

His Majesty the King

Plaintiff

v.

Scott Matthew Saunders

Defendant

DECISION

Judge: The Honourable Justice Ann E. Smith

Heard: May 26, 2025, September 12, 2025 and December 5, 2025,
in Halifax, Nova Scotia

Oral Decision: **Oral Decision, Acquittal – December 5, 2025**

Counsel: Jonathan Gavel, for the Plaintiff
Stanley MacDonald, K.C., for the Defendant

By the Court:

Introduction

[1] Scott Matthew Saunders is charged as follows:

That between Jan. 1, 2019 and December 31, 2019 at Hammonds Plains Nova Scotia he handled a firearm in a careless manner or without reasonable precaution for the safety of other persons contrary to Section 86(1) of the *Criminal Code*;

That between January 1, 2019 and December 31, 2019 at Hammonds Plains, Nova Scotia he used a firearm while committing an indictable offence, contrary to Section 85(1)(a) of the *Criminal Code*; and

That between January 1, 2019 and December 31, 2019 at Hammonds Plains, Nova Scotia he committed an assault with a weapon, contrary to Section 267(a) of the *Criminal Code*.

Positions of the Parties and Evidence

[2] Mr. Saunders gave evidence and denied that he assaulted the complainant, Fern McCuish, with a weapon.

[3] The Crown says that the evidence before the Court proves each element of the offences to which Mr. Saunders is charged.

[4] The Court heard evidence from Fern McCuish, the sole witness called by the Crown. The accused testified as did Sergeant Kenneth Rhodenizer. Ella Penner, Detective Constable Todd Blake and Ms. Sarba Sohail, a forensic handwriting analysis.

Criminal Law Principles - Reasonable Doubt and the Presumption of Innocence

[5] Section 11(d) of the *Canadian Charter of Rights and Freedoms* provides that a person charged with an offence has the right “to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

[6] Accordingly, Mr. Saunders is presumed innocent of each charge, unless the Crown proves each element of each charge beyond a reasonable doubt. In *R. v. Lifchus*, [1977] 3 S.C.R. 320, Cory J., speaking for the majority, summarized the principles a reasonable doubt at para. 36:

- the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;
- the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;
- a reasonable doubt is not doubt based upon sympathy or prejudice;
- rather, it is based upon reason and common sense;
- it is logically connected to the evidence or absence of evidence;
- it does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and
- more is required than proof that the accused is probably guilty – a jury which concludes only that the accused is probably guilty must acquit.

[Emphasis of Cory J.]

[7] In *R. v. Starr*, 2000 SCC 40, Iacobucci J. stated for the majority that “an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities” (para. 242).

[8] The Crown must prove the guilt of Scott Saunders Alexander beyond a reasonable doubt.

[9] Reasonable doubt may arise from testimony by an accused or evidence tendered by the Crown or defence, or both.

[10] Proof beyond a reasonable doubt in the context of credibility of conflicting testimony involves the application of the *W.D. (R. v. D.)*, [1991] 1 S.C.R. 742 test where the Supreme Court of Canada stated that the trial court must acquit an accused in three situations: First, if the trial judge believes the accused; second, if the trial judge is left with a reasonable doubt based on the evidence of the accused; and third, even if the evidence of the accused is not believed, but there is a reasonable doubt as to guilt based on all the evidence. In addition to these three instances, where the trial judge does not know whom to believe, there must be a reasonable doubt resulting in an acquittal, (*R. v. J.H. S.*, [2008] 2 S.C.R. 152).

Credibility and Reliability of Witnesses

[11] Without doubt, credibility is a key issue in this trial. In determining whether the Crown has proven beyond a reasonable doubt that Scott Saunders is guilty of assaulting the complainant with a weapon, the Court is required to consider the credibility and reliability of all of the witnesses who testified, including the complainant Fern McCuish and Scott Saunders.

[12] The following comments by Justice Galligan in *R. v. M.G.*, 1994 CanLII 87733 (ONCA) at para 27 are instructive when assessing credibility:

[27] Probably the most valuable means of assessing the credibility of a crucial witness to examine the consistency between what the witness said in the witness box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where the inconstancy involves a material matter about which an honest witness is unlikely to be mistaken the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.

[13] In *Rafyna v. Chorny*, [1951] B.C.J. 153 (B.C.C.A.), a decision often cited by Canadian Courts, the British Columbia Court of Appeal discussed credibility as follows:

11 The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

[14] In *Baker v. Aboud*, 2017 NSSC 42, Forgeron J. summarized the principles governing credibility assessment (some citations omitted):

13 Guidelines applicable to credibility assessment were canvassed by this court in paras. 18 to 21 of *Baker-Warren v. Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 1000, which guidelines include the following:

* Credibility assessment is not a science. It is not always possible to “articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events: *R. c. Gagnon*, 2006 SCC 17 (S.C.C.), para. 20...”[A]ssessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization: “*R. v. M. (R.E.)*, 2008 SCC 51 (S.C.C.), para. 49.

* There is no principle of law that requires a trier of fact to believe or disbelieve a witness’s testimony in its entirety: *Novak Estate, Re*, 2008 NSSC 283 (N.S.S.C.). On the contrary, a trier may believe none, part or all of a witness’s evidence and may attach different weight to different parts of a witness’s evidence, *Novak Estate, Re*, supra.

* Demeanor is not a good indicator of credibility: *R. v. Norman* (1993), 1993 CanLII 3387 (ONCA), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55.

* Questions which should be addressed when assessing credibility include:

a) What were the inconsistencies and weaknesses in the witness’ evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness’ testimony and documentary evidence, and the testimony of other witnesses [citations omitted];

b) Did the witness have an interest in the outcome or were they personally connected to either party;

c) Did the witness have a motive to deceive;

d) Did the witness have the ability to observe the factual matters about which they testified;

e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular pace and conditions;

- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[15] I also refer to the decision of the Ontario Court of Appeal in *R. v. M.G.*, (1994), 93 C.C.C. (3d) 347 there the Court commented on the means of assessing credibility as follows:

[28] The effect of inconsistencies upon the credibility of a crucial witness was recently described by Rowles J.A. speaking for the British Columbia Court of Appeal in *R. v. B.* (R.W.) (1993), 40 W.A.C. 1 at pp. 9-10, 19 W.C.B. (2d) 260:

Where, as here, the case for the Crown is wholly dependent upon the testimony of the complainant, it is essential that the credibility and reliability of the complainant's evidence be tested in the light of all of the other evidence presented.

[16] Reliability is a principle related to credibility. In *Cameco Corporation v. The Queen*, 2018 TCC 195, the Court explained the relationship between the concepts of credibility and reliability:

[11] The reliability of a witness refers to the ability of the witness to recount facts accurately. If a witness is credible, reliability addresses the kinds of things that can cause even an honest witness to be mistaken. A finding that the evidence of a witness is not reliable goes to the weight to be afforded to that evidence. Reliability may be affected by any number of factors, including the passage of time. In *R. v. Norman*, 1993 CanLII 3387 (ONCA), [1993] O.J. No. 2802 (QL), 68 O.A.C. 22, the Ontario Court of Appeal explained the importance of reliability as follows at paragraph 47:

...The issue is not merely whether the complainant sincerely believes her evidence to be true; it is also whether this evidence is reliable. Accordingly, her demeanour and credibility are not the only issues. The reliability of the evidence is what is paramount...

Summary of The Evidence

[17] I will now review the evidence of the witnesses who testified at trial. Although I may not mention all of the evidence. I have carefully considered all of the evidence. The complainant's evidence was heard first and was the only witness called by the Crown. While I may comment on the credibility, reliability or consistency of aspects of the evidence, I will draw no conclusions on credibility and reliability all of the evidence has been considered.

Fern Elizabeth McCuish

[18] Ms. McCuish was 66 on the day she testified. She is retired, having had a career with the Department of National Defence and with Health Canada.

[19] Ms. McCuish's evidence was that she met Scott Saunders in 1997 and they started dating. They lived in what she described as a common law relationship in 2001 and 2002, after which time they separated. They came back together and in February or March 2023 purchased a home together where they lived together for 17 years (the "Residence").

[20] Ms. McCuish's evidence was that she left Mr. Saunders on December 10, 2020 and at that time their intimate partner relationship ended, although Ms.

McCuish said there were attempts to reconcile. She stated that her relationship with Mr. Saunders ended permanently in February of 2023.

[21] Ms. McCuish stated that she is involved in a civil case with Mr. Saunders in the Nova Scotia Supreme Court, Family Division which she described as acrimonious and long drawn-out. She said that that matter was going into its third year.

[22] Ms. McCuish gave evidence that when she and Mr. Saunders bought the Residence in 2003, her teenage daughter moved in with them. Her daughter was in grade 11 or 12 at that time. Her daughter moved out of the Residence after approximately one year.

[23] No one else lived in the Residence after Ms. McCuish's daughter left apart from her and Mr. Saunders.

[24] When asked by Crown counsel what she understood to be the reason for her evidence, Ms. McCuish responded that it was to talk about the mental abuse she suffered and the "gun assault" in 2019.

[25] She said that this assault took place during the first or second week of April, 2019. She added that it happened in the week prior to a visit to by Mr. Saunder's

uncle, Blaine. She said that there was an altercation that evening, and Blaine never came back.

[26] Ms. McCuish described the events leading up to the assault. She said that it was after supper and it was dark. It happened in the living room, also called the TV room. She described the layout of the living room in some detail.

[27] In terms of the lead up to the event, Ms. McCuish could not remember if she worked that day. They had supper together. After supper she went into the living room, which she often did. Her evidence was that she often went to bed around 8:30 p.m. She was reclined on a sofa. She said that Scott started arguing about her financially helping her daughter. Her daughter was off work for health reasons. She said that the conversation escalated into Scott telling her that she had no business giving her daughter money. Ms. McCuish said that at this point she was crying and stated, "It's my child". She told Mr. Saunders to mind his own business.

[28] Ms. McCuish said that things escalated quickly. She said, "how dare you tell me I can't help my own child", or words to that effect. Ms. McCuish maintained that the argument was solely about financial help to her daughter. She said that Mr. Saunders then got off the sofa and went to a small table next to a wall in the same room. She described the table as painted green with a brown top. She said that she

saw Mr. Saunders pull open the left drawer in this table and take a revolver from the drawer. Ms. McCuish said that he was in a rage. She was caught off guard. Ms. McCuish's evidence was that Mr. Saunders pulled her ponytail and at the same time, with his other hand, he pushed or jammed the revolver into her left temple. At this point he was over her. She said that as this was happening, her head was pulled back and it went into the pillow behind her. She said that he used force against her. Ms. McCuish did not remember if Mr. Saunders said anything, that she was in shock at the time, but she recalled that he was screaming at her, "raging in her face". Ms. McCuish said that Mr. Saunders was "spitting mad". Ms. McCuish did not remember what, if anything she said to Mr. Saunders. She said that the gun was against her temple, "maybe" five or six seconds.

[29] Ms. McCuish described these events as happening very quickly from the time that Mr. Saunders got to his feet from where he was sitting in a chair, crossed the room, opened the drawer, pulled out the revolver and put the bullet end to her temple. She testified that she vaguely recalled pushing either the gun or his hand away.

[30] When asked by Crown counsel how these events ended, Ms. McCuish said that she got up from the sofa and went into another room she called the "kitchen/living room", being all one big room. She sat down in that room. She went to bed approximately one hour later.

[31] When asked where Mr. Saunders went, she said that she did not know. Ms. McCuish could not recall if she went to work the next day, although she said that she probably did. Ms. McCuish testified that she had no further interaction with Mr. Saunders that night. She stated that he was at the house, that she didn't hear the front door open. She said that Mr. Saunders was drinking that night, that she saw him drinking and that she didn't expect that he would leave the house. Ms. McCuish said that she had nothing to drink that evening.

[32] She did not notice a bruise, but her head was sore the next day. She did not seek medical attention.

[33] When asked by Crown counsel about the revolver, she said that it was one that she had seen it many, many times in the house. She said that it was a "Smith and Wesson". She testified that Mr. Saunders had told her that it was a United States customs special revolver and said it was one which looked like bullets were pushed into the chamber. She said that the revolver was a source of contention. Her evidence was that there were two revolvers in the house and they were not locked up. She said that Mr. Saunders would play with them out in the open and it was a source of contention. Ms. McCuish said that the drawer in the living room he took the gun out of that evening, was not the only place he kept that revolver.

[34] Ms. McCuish identified a photograph of a revolver as the gun used in the alleged assault (Exhibit 1). She said that the photograph was taken at the house and that it was on their shared photographs. She said that Mr. Saunders took the photograph. She said that she and Mr. Saunders shared photos on the hard drive on their computers and phones and that her phone shared pictures with his phone. She did not recall when the photo of the revolver was taken.

[35] Ms. McCuish testified that one or other of the revolvers was in the living room at any given time. She said that sometimes he kept a revolver in a shoebox in the downstairs of the house.

[36] When asked by Crown counsel if she knew the evening of the alleged assault whether the revolver was loaded, she replied that she did not know. Ms. McCuish testified that she had several discussions with Mr. Saunders concerning whether the gun was loaded. She said that she recalled the first of these taking place early the next morning (following the events in the living room with the revolver) in the kitchen. She brought up the evening before. Ms. McCuish stated that Mr. Saunders gas lit her, saying, “don’t be ridiculous”, that the gun was not loaded and that she was overreacting. She said that when she brought the subject up with Mr. Saunders on many other occasions he dismissed it and minimized it, saying that he did not play with loaded guns.

[37] Ms. McCuish was asked by Crown counsel whether she spoke with police about the alleged assault with the revolver. Her answer was, “No, not right away”. She said that she did so in November, 2023. Crown counsel asked her why she did so at that point. Ms. McCuish said that she was going through extensive therapy and it took her time to realize the magnitude of what happened and that it was not something which she could get beyond. She said that Mr. Saunders minimized her trauma and that it damaged her psychologically. She said that he laughed about it and did take any accountability for his actions.

[38] When asked in cross-examination about her evidence on direct that Mr. Saunders “minimized her allegation” and stated that in fact Mr. Saunders denied her allegation of assault, Ms. McCuish responded, “No, not necessarily”. She stated that Mr. Saunders called her sick or delusional many times and often repeated, don’t be silly as the gun was not loaded.

[39] In cross-examination counsel put to Ms. McCuish that her direct evidence was that the incident occurred during the first or second week of April 2023 but when she reported what had happened to the police in November, 2023 she said that the incident occurred sometime in the spring of 2019. Her response was that that was true, but she was able to clarify the date based upon the vicinity of when Ms.

Saunder's uncle visited. She said that she knew that the incident had occurred in April, and that April was spring.

[40] In cross-examination, Ms. McCuish was asked about an incident which occurred at the Residence on May 21, 2022. Ms. McCuish said that she recalled the incident. She said that she was visiting the house at the time and that Mr. Saunder's mother was there. When asked by defence counsel whether she recalled that calls were made to 911, Ms. McCuish said that there were. It was put to her that she told the 911 operator about the gun incident and said that it had happened "last year". When asked if she recalled telling that to the operator, Ms. McCuish said she did not. At that point, defence counsel put a copy of a transcript of the 911 call. The transcript states that on that day Ms. McCuish made a complaint to the 911 officer about an alleged assault by Mr. Saunders' mother and that she also wanted to report an assault with a firearm. When the operator asked when this happened and who had the firearm, the transcript records that Ms. McCuish told the operator that her husband had the firearm, that it was reported to an officer in December, and happened "last year". When this was put to Ms. McCuish she said that she was in a high stress environment at the time of the 911 call, that she had just been assaulted, and that she conceded that she was probably wrong about the date of the assault with the gun, and that it definitely took place in 2019.

[41] When defence counsel submitted to Ms. McCuish that her direct evidence was that the argument between her and Scott Saunders which preceded the assault was in relation to her daughter. Ms. McCuish confirmed that that was the only thing they argued about that she recalled which precipitated the gun incident. However, defence counsel put to Ms. McCuish that Officer Rhondenizer recorded that she told him that the gun incident followed from a verbal argument between them which was about how Mr. Saunders had kicked his uncle out of the house the previous week. Ms. McCuish said, “it’s likely that we talked about that as well”. Ms. McCuish’s evidence in direct had been that the argument that evening was “solely” about her daughter. She stated in cross that the argument “could have been” also about the incident involved Scott Saunders’ uncle. She added that she did not recall everything that they argued about that night and that she might have been mistaken when she used the word “solely” in her direct evidence. She then added that both of the incidents had happened within days of each other.

[42] Defence counsel put to Ms. McCuish the photograph of the firearm which she said Mr. Saunders used to assault her (Exhibit 1) She agreed that at the top of the photograph was the word, “Tightrope”. Her evidence was that Mr. Saunders told her that he had brought the firearm back from the United States when he was a participant in the RCMP Musical Ride. Ms. McCuish agreed with defence counsel

that she sent that photograph to the police since she said that it was the firearm used by Scott Saunders in the assault. Defence counsel put to Ms. McCuish that Scott Saunders had traded the firearm he had as part of the Musical Ride at a gun show around 2015 or so, before the alleged assault. Ms. McCuish responded that perhaps Mr. Saunders had two firearms that looked alike, that it has his hobby and she didn't keep track of what he traded, that she was not involved in that at all.

[43] Ms. McCuish said that she was not familiar with the Waverly Gun Show. She agreed with defence counsel that Mr. Saunders was a gun collector and that at the time of the incident he had a large collection of guns. Ms. McCuish said that she recalled that Mr. Saunders attended one or two gun shows and that she went with him to one show in Truro.

[44] Ms. McCuish said that the gun used in the assault was a silver gun with a round wooden handle. Ms. McCuish stated again that she believes that the firearm depicted in Exhibit 1 was the one used in the assault, or one which looked very much like it.

[45] Ms. McCuish agreed with defence counsel, that as a gun collector, that Mr. Saunders was required to have a firearm license. Defence counsel put to Ms. McCuish that she had told the police that Mr. Saunders would often get firearm

licence renewal information in the mail and he would put it on the fridge so that he would fill them out and send them back in. When asked if that was accurate, Ms. McCuish replied, “All of my evidence is accurate”.

[46] Ms. McCuish agreed with defence counsel that in order to maintain a firearm, that there was a procedure to follow for its renewal. She said that she “presumed” that to renew, a person had to file a renewal application.

[47] In cross-examination, defence counsel put to Ms. McCuish a document titled, “Royal Canadian Mounted Police, Application for Renewal of a Firearm Licence for an Individual” with the “Personal Information” section of this document being personal information of Scott Saunders. The document is dated December 11, 2019. The second page of this document has a section titled, “E: Information About Current Conjugal Partner”. Ms. McCuish agreed that her name appears there. She added, “It does. I’ve never seen this before”. Defence counsel indicated to Ms. McCuish that the defence would call evidence to show that this document was obtained as a result of an application under the *Freedom of Information Act*. Block E, “Information About Current Conjugal Partner”, has dark shading in subsections 8(e) “signature of current spouse, common-law or other conjugal partner”, as well as the date of signature and the telephone number and time of day the person can be reached.

[48] When defence counsel suggested that Mr. Saunders had advised that Ms. McCuish had signed this renewal document, she stated that she had “never, ever, seen this document ever in my life”. She added, “I’ve absolutely never seen this document before”. Then, “I absolutely don’t recall ever seeing this document before”. She then added, “No, I’ve absolutely never, ever seen this document before that I have any memory of”.

[49] Part E of this document also has a bolded section which states, “If the signature of your current spouse, common-law or other conjugal partner is not provided, the Chief Firearms Officer has a duty to notify them of your application”. There is also a statement in Part E, also in bolded text which states, “If you have any safety concerns about this application, please call 1 800 731-4000”. When asked by defence counsel when she was ever notified of this firearms’ application, Ms. McCuish stated, “Not that I’m aware of”. When asked whether Ms. McCuish had ever called that telephone number to voice safety concerns about Mr. Saunders’ application, Ms. McCuish stated, “I didn’t know anything about this phone number, ever, I’ve never seen this before”. When it was put to her by defence counsel that her signature on this document was vetted out by FOIPA personnel, Ms. McCuish replied, “Oh no, no. I’ve never signed anything like this; I’ve never seen this before”.

[50] Ms. McCuish specifically denied that she had gone to a shooting range with Mr. Saunders in August, 2022.

[51] When asked by Crown counsel, Ms. McCuish said that she didn't hear Mr. Saunders open the front door of the house, so she didn't believe he left the house. In cross-examination, defence counsel put to Ms. McCuish that she told the police that Mr. Saunders slept in the same bed as her that night. She agreed that that was correct. She added that usually when the front door of the house is opened the alarm would say, "front door open" if the alarm system was on.

[52] Ms. McCuish's evidence in cross-examination was that yes, she "hated Scott Saunders for what he has done". Defence counsel put to her that "you hate everything about him". Ms. McCuish responded, "I didn't say that".

[53] Ms. McCuish agreed to defence counsel's suggestion that she had emailed Mr. Saunders numerous times since the alleged assault. Defence counsel put to Ms. McCuish an email dated March 1, 2025 from her to Mr. Saunders which she said that she recognized. In the first paragraph of that email, Ms. McCuish states, "Actually Scott, I hate everything about you". When this was put to her, Ms. McCuish stated, "Yeah, I guess that's right". She added to her testimony, "In a moment of anger, frustration I said that to him. She said that they had been arguing

“about the disposition of our home”. She agreed that she had accused Mr. Saunders of being unfaithful to her and of prolonging the Family Court proceedings. She maintained that Mr. Saunders was doing those things and that it was frustrating to her and causing her further trauma.

[54] In cross-examination, defence counsel put to Ms. McCuish that since November 16, 2023 (the day Mr. Saunders was arrested for the alleged offence before the Court) that she had sent a total of 429 email messages to Scott Saunders. She said that these were about trying to negotiate the matters before the Family Court, but agreed in cross-examination that they were also about his “cheating” and infidelity.

[55] It was put to Ms. McCuish that on August 3, 2024 she called Mr. Saunders on his cell phone number 46 times. Her response was, “I don’t recall. Did I?”

[56] Defence counsel asked Ms. McCuish whether she recalled an RCMP officer, Constable Drake. She said that she did. Defence counsel put to Ms. McCuish that in January 2024, Constable Drake told Ms. McCuish not to contact Scott Saunders. Ms. McCuish replied, “I don’t recall”. Ms. McCuish also gave evidence in cross-examination that she did not recall being told by Constable Broderick Gaverick on May 9, 2025 that if she contacted Scott Saunders again she would be charged with

criminal harassment. Ms. McCuish agreed that on May 14, 2025 she was arrested for criminal harassment of Scott Saunders.

[57] Ms. McCuish testified in cross-examination that Ella Penar is Scott Saunder's girlfriend and that she lives in Poland. When asked whether Scott Saunder had told her that he has gone to Poland to meet with Ella, Ms. McCuish said, "no", but then agreed that he had told her, since it "depended on the conversation", that there were many conversations. Ms. McCuish agreed that she met Ella at the Residence on July 18, 2024. Defence counsel asked Ms. McCuish whether she was offended by some of the things Ella said to her that day. She replied that she was offended by some of the emails that Ella sent as well. She said that Ella questioned her about proof of purchase of certain items in the house and told her that she had no business taking any equity from the house where Ms. McCuish said that she had lived for many years.

[58] Defence counsel asked Ms. McCuish whether she would agree with him that in the course of the Family Court proceedings, there was no need for her to contact Ella. She responded, "Yes, I'd like to subpoena her". When asked the question again, about whether there was a need for Ms. McCuish to email Ella or otherwise contact her for the Family Court proceedings, Ms. McCuish answered, "Not necessarily".

[59] Ms. McCuish was asked by defence counsel whether she would agree that since July 18, 2024 that she had sent over 200 emails to Ella. She answered, “I don’t know, I’d have to see”. She agreed that she had sent emails to Ella and contacted her. Defence counsel suggested to Ms. McCuish that Ella had sent an email to her requesting that Ms. McCuish stop contacting her. She agreed that Ella had done so. Defence counsel read to Ms. McCuish from an email sent to Ella dated September 5, 2024, “I am writing to request that you immediately stop sending me further emails or any other forms of communication. Your messages have been both unwelcome and inappropriate”. Ms. McCuish said that she remembered that but added, “but since that time, I’ve had a conversation with her on the phone”, which she estimated lasted about 5-10 minutes. Ms. McCuish also agreed in cross-examination that after receipt of Ella’s email that she attempted to contact Ella on numerous occasions while Ms. McCuish was travelling in Europe. She testified that she contacted Ella on these occasions because she wanted to talk to Ella about a subpoena and whether or not she was coming to Canada and about “her comments”. Defence counsel put an email message to Ms. McCuish dated February 21, 2025 to Scott Saunders which was copied to Ella. In this email, Ms. McCuish refers to the Residence being appraised, that she had been to the house and it was dirty, with long hairs in the bathroom sink and stating, “what a pig”, in reference to Ella, as well as

Mr. Saunders “dragging that filth into our house”. When it was put to Ms. McCuish that there was nothing in that email about subpoenaing Ella for Court, she agreed that there was not. Ms. McCuish agreed that after September, 2024 when Ella asked her not to email or communicate with her again, Ella did not reply to any of her emails. Ms. McCuish added, “except when I spoke to her”. She maintained that Ella had “disrespected her”.

[60] In cross-examination, defence counsel again put to Ms. McCuish that she had sent Ella over 200 email messages. Her response was, “I’d have to see them. That’s a little of a stretch”. The Family Court proceedings were ongoing as of October 31, 2023. Defence counsel put to Ms. McCuish that the parties had a settlement conference scheduled in Family Court in November 2023, and that was when she went to the police alleging that Scott Saunders had assaulted her. She denied this, and stated that she didn’t connect the two.

[61] In re-direct, Ms. McCuish was asked by Crown counsel about Scott Saunders’ firearms’ renewal license. Ms. McCuish reiterated her previous evidence that she didn’t recall seeing that document before, “ever”. She testified that there was nothing on the unredacted document that was her handwriting. She volunteered that Scott Saunders had her signature “on file in our computer and it’s quite possible that my signature may have been put on this document before it was sent in. I know I’ve

never seen this document before. To my recollection. I would remember signing something like this, and I know I never have”.

[62] The Crown did not lead further evidence after the conclusion of Ms. McCuish’s evidence, and closed its case.

Corporal Kenneth Rhodenizer.

[63] The Defence chose to lead evidence. The first witness called by the defence was Corporal Kenneth Rhodenizer. This Halifax District RCMP officer was a general duty police officer on October 31, 2023. He had been a police officer at the time of trial for approximately 18 years.

[64] Officer Rhodenizer gave evidence that on October 31, 2023 he was advised by dispatch that a “Fern McCuish” had called in and wanted to report historical assault between her and her former spouse, Scott Saunders. Officer Rhodenizer spoke with Ms. McCuish that same day and took notes of what she told him. Officer Rhodenizer testified that Ms. McCuish told him that the incident involving Mr. Saunders stemmed from an argument about an uncle who had been there that Mr. Saunders had kicked out of the house a week or two prior. When asked by Defence counsel as to what was his understanding of when that argument was in relation to the assault, he said that he believed it was a week or two before. Corporal

Rhodenizer said that he believed that the argument at the time of the assault was also about the uncle. In cross-examination by Crown counsel, Officer Rhodenizer stated that he recalled that Ms. McCuish also mentioned an argument with Mr. Saunders about her adult daughter. Officer Rhodenizer said that he asked Ms. McCuish about whether there were children, as was typical of questioning for a domestic assault. He said that Ms. McCuish raised her daughter and he understood that contributed to the tension between them. However, when referred to notes he made on October 31, 2023 contemporaneous to his telephone call with Ms. McCuish he recorded only that there was an adult daughter, but nothing about an argument about the daughter or the uncle in connection with the alleged assault. Officer Rhodenizer completed an initial officer's report later that day. In that report Officer Rhodenizer recorded that the argument between Ms. McCuish and Scott Saunders on the evening of the assault was about how Mr. Saunders had kicked his uncle out of the house the previous week. On November 5, 2023, Officer Rhodenizer met Ms. McCuish at the RCMP detachment in Halifax and Ms. McCuish gave a statement at that time.

[65] At this point in the trial, Defence counsel advised that his client wished the trial adjourned so that he could bring a third party records application to the Court for disclosure of the original, i.e. an unredacted copy of Scott Saunders' December, 2019 Firearms Application Renewal form. Defence counsel also advised that he

wanted to apply for police records in connection with Ms. McCuish's arrest for criminal harassment. While the Crown did not consent to the adjournment, the Court agreed with Defence counsel that he could not have anticipated Ms. McCuish's evidence that she had never seen, or signed the Firearms' Renewal Application and that he wanted to obtain the original. Given that credibility would likely be an important aspect of determining this matter, and in order to allow the Defence a fair and full opportunity to defend the charges, the Court granted the Defence application for an adjournment.

[66] The Third Party (O'Connor) Records' Application was scheduled and heard on June 19, 2023.

Third Party Records Application – Decision on Voir Dire

[67] This part of the Court's decision, includes its decision on whether records in the possession of the Royal Canadian Mounted Police, specifically, the Canadian Firearms Program should be produced to the accused and Crown. Mr. Saunders applied for production of these documents in accordance with principles of law in *R. v. O'Connor* and subsequent case law, and section 7 of the *Canadian Charter of Rights and Freedoms*. Specifically, the Applicant sought production of the original application for renewal of a firearms licence filed by Scott Saunders dated December

11, 2019. Notice was given to the Counsel for the Canadian Firearms Program and Fern McCuish.

[68] Stage 1 of the *O'Connor* application was heard on June 30, 2025.

[69] As noted earlier in this decision, during her testimony in this trial, Fern McCuish was presented on cross-examination with a document entitled Application for Renewal of a Firearms Licence, signed by Scott Saunders and dated December 11, 2019. Fern McCuish denied that she had ever seen that document and her evidence was that she did not sign it.

[70] Scott Saunders had applied pursuant to the *Freedom of Information and Protection of Privacy Act* for a copy of the Application for Renewal of a Firearms Licence dated December 11, 2019. Mr. Saunders received the document which was attached to his Affidavit in support of the *O'Connor* application. This document has certain redactions in Part E; these include the original signature of the spouse or common-law partner. Mr. Saunders says that Fern McCuish signed this document.

[71] Mr. Saunders' position on the *O'Connor* application is that the original, unredacted Application for Renewal of a Firearms Licence is in the possession of the Royal Canadian Mounted Police, Canadian Firearms Program and that this

original document is required in order for him to make full answer and defence to the allegations made against him by Fern McCuish.

[72] The legal framework for this application falls under the framework for production outlined in *R. v. O'Connor*, [1995] 4 S.C.R. 411. That two stage process was summarized by the Supreme Court of Canada in its subsequent decision in *R. v. McNeil*, 2009 SCC 3, at para. 27 as follows:

At the first stage, if satisfied that the record is likely relevant to the proceeding against the accused, the judge may order production of the record for the court's inspection. At the next stage, with the records in hand, the judge determines whether, and to what extent, production should be ordered to the accused.

Stage 1:

[73] At the first stage, the Applicant must establish that the documents are “likely relevant” to the proceedings. In *R. v. McNeil*, the Supreme Court of Canada stated that the “likely relevant” threshold is met where there is (para. 33):

...a reasonable possibility that the information is logically probative to an issue at trial or the competence of a witness to testify...An “issue at trial” here includes not only material issues concerning the unfolding of the event which form the subject matter of the proceedings, but also “evidence relating to the credibility of witnesses and the reliability of other evidence in the case”.

[Emphasis added]

[74] In *R. v. Buggins*, 2018 SCC 44, Rowe, J. stated that it is “likely relevant” is lower than “true relevance” and “includes information in respect of which there is a

reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence” (para. 27, citing *McNeil* at para 44; and *O’Connor* application at para 21).

[75] If the Court is satisfied that the records are likely relevant, they will be produced to the Court for review. The Court will refer to the records which are the subject matter of this *O’Connor* application as the “Records” or the “Record”.

Position of the Parties

[76] The Applicant argued that Fern McCuish’s signature on the Record is a key issue, which will be relevant to her credibility. The Applicant’s position was that Fern McCuish has not being truthful about whether she ever saw the Record and whether she signed it. The Applicant says that given that the Court will have to assess the guilt or innocence of Scott Saunders after determining the credibility of witnesses, specifically that of Fern McCuish, the third-party Record is directly relevant to her credibility. The Applicant says that logically the fact that Fern McCuish would support Mr. Saunders’ application for renewal of his firearms licence is probative of whether the alleged assault occurred, which Mr. Saunders categorically denies.

[77] The Crown admitted that on the issue of likely relevance at Stage 1 of the *O'Connor* application, that test is met.

[78] Ms. McCuish took the position that the Record was not relevant, and that she possessed evidence which she was taking to the Tantallon detachment of the RCMP that day with regards to her signature. Crown counsel advised that any such documents would be provided to Crown counsel, and would not automatically be evidence, either at Stage 2 of the *O'Connor* or at trial.

[79] The Applicant narrowed the request for production of the Record to only the redacted parts of the Record at box 8 (e) “signature of current spouse, common-law or Other Conjugal Partner” and 8 (f) “date”.

[80] The decision of the Court was that the Record should be produced to the Court. Counsel for the RCMP attended the hearing and provided the Court with an unredacted copy of the Record in a sealed envelope. He advised that the original of the Record was no longer available, all such records having been digitalized.

Stage 2

[81] Stage 2 of the *O'Connor* application was heard on July 25, 2025.

[82] At Stage 2, the Court must assess the true relevance of the records and then balance the accused's right to make full answer and defence against the privacy interests of third parties, considering the factors set out in *O'Connor* and the sequent cases.

[83] I have reviewed the Record that was produced in unredacted form. At Stage 2, the Court must consider any residual privacy interests that may remain with the information that is permitted to be disclosed, such that the privacy of Fern McCuish may yield to the extent necessary for Mr. Saunders to make full answer and defence (*McNeil*, at para 43). This is a contextual analysis with regard to the issues of the case and material that may be of use to the defence, such as "in cross-examining a witness on matters of credibility or in pursuing other avenues of investigation" (*McNeil* at para 44).

[84] Here, Crown Counsel and counsel for the Court agreed that that part of the Record which contained information as to the spouse or common-law partner's telephone number, including extension and whether they could be reached at the number during the day or evening, were not sought. This Court agreed and its privacy assessment concluded that the information contained in those parts of the Records would not be disclosed.

[85] The Court concluded that the portions of the Record contained in 8(e) “signature of current spouse, common-law or other conjugal partner” and 8 (f) “Date” are relevant to an issue at trial, that is the credibility of Fern McCuish, and that they are necessary for Mr. Saunders to make full answer and defence. The salutary effects of disclosure outweigh any deleterious effects of non-disclosure, particularly with the redactions noted.

[86] The *O’Connor* application was granted with respect to the portions of the Record indicated.

Evidence of Scott Saunders

[87] The accused testified.

[88] At the time of trial, Mr. Saunders was 60 years old. Mr. Saunders lives in Nova Scotia. He has lived in the Residence in Hammonds Plains since 2003. Mr. Saunders works for GPI Group, a UK based company. He said that he was currently contracted for work in the Gulf of Mexico. His work involves monitoring a project for a large US corporation which carries out oil exploration on the ocean bottom. Mr. Saunders’ evidence was that while in the Gulf of Mexico he is on a ship the entire time, unless he is required to go to shore for services or supplies.

[89] At the time of trial, Scott Saunders' work schedule was 6 weeks on, and approximately 5 ½ weeks off, including travel.

[90] At the time of the allegations before the Court, Scott Saunders was working for the same company doing similar work. Mr. Saunders' evidence was that in April, 2019, he thought that he left home around April 8 and was in the Gulf of Mexico working from April 9 until the end of April, 2019. He had ten days off, then returned to the Gulf of Mexico.

[91] Mr. Saunders started work in this industry in 2001. Prior to 2001 he was a member of the RCMP for nine and a half years from 1986 to 1995. His first post as a member of the RMP was in Chatham, Ontario, where he worked on federal investigations. He later worked on a drug squad and at the airport in Windsor where he had general duties. He also was in the Fire Range Office in charge of four firing ranges in Southern Ontario. His evidence was that this required yearly qualifications. From 1991 to 1994 he was stationed in Ottawa and involved in the RCMP musical rides. For three years from 1991 to 1994 he toured in the U.S.A. as a rider for the Musical Ride. In the fall of 1994 he was transferred to Cape Breton Reserve Mines and he left the RCMP the following year, in 1995.

[92] Mr. Saunders testified that he first met Fern McCuish in about 1997. He said that they lived together in Ms. McCuish's house from the late 1990's into 2000. In March of 2003 they moved together to the Residence. They lived there together until December 10, 2020 at which point she left

[93] Scott Saunders' evidence was that he and Fern McCuish lived together as common-law spouses, but did not marry.

[94] Scott Saunders stated that he initiated Family Court proceedings involving Fern McCuish in late 2022. He stated that the primary dispute between them was the equity in the Residence. He described the Family Court proceedings as excruciating, financially draining and very unpleasant. Mr. Saunders said that the proceedings were intentionally delayed by Fern McCuish.

[95] Mr. Saunders' evidence was that as part of the Family Court proceedings a settlement conference with a mediator provided by the Province was scheduled for November 9, 2023. He had his own legal counsel as did Ms. McCuish.

[96] Scott Saunders stated that he understood that Ms. McCuish first went to the police with the complaints against him which led to this trial at the end of October, 2023. He said that when he went to the settlement conference on November 9, 2023, he had known about the criminal allegations for about two days. No resolution was

reached at the settlement conference. Mr. Saunders was arrested on November 16, 2023.

[97] Scott Saunders said that Ella Pennar is his current girlfriend and that she lives in Poland. The two met as crew members on the same vessel in 2004. They started conversing on messenger in the spring of 2023 but he did not see Ella Pennar in person until September 18, 2023 at which point he said that they became romantic partners. Mr. Saunders testified that while he was on a vessel in June, 2023, Ella Pennar told him that she sent a parcel to the Residence. He arrived at the Residence in July.

[98] Mr. Saunders testified that Ms. McCuish sent him an email on September 11, 2023 concerning the parcel which had arrived at the Residence and asked him if she wanted her to open it. Ms. McCuish stated in the email, “You must be dying to know what Ella sent you. Want me to open it for you?” The package had a return address for EP in Poland. His evidence was that Ms. McCuish knew who Ella Pennar was and prior to September 2023 had accused him of being in a relationship with Ella Pennar. Mr. Saunders’ email response to Ms. McCuish’s email was, “Absolutely not. Stop the Games”.

[99] In terms of the allegation that he had assaulted Ms. McCuish with a handgun in 2019, Mr. Saunders stated, “No”. When asked if the incident described by Ms. McCuish happened, Mr. Saunders said, “No”.

[100] Defence counsel asked Mr. Saunders about the allegation that the firearm involved in the alleged assault had been obtained by him while he was with the RCMP Musical Ride. His evidence was that he obtained a firearm while he was with the Musical Ride in 1994. However, he said that he got rid of that gun in 2025 or 2016 when he traded it at the Waverly Gun Show for a combat style “blackwater” collectors’ knife. He described the Gun Show as a swap meet where firearms, ammunition, sporting and hunting gear could be traded. At that point he stated that the firearm was de-activated which he said meant that ammunition could not be put in it, and it could not be fired. Mr. Saunders stated that in 2019 he did not have the firearm he obtained while he was with the Musical Ride. He also gave evidence that the firearm depicted in Exhibit 1, which Fern McCuish had testified had been the one, or similar to the one he assaulted her with in 2019, was not the firearm he obtained while he was with the Musical Ride. He recognized the firearm depicted in Exhibit 1 and stated that he purchased it in August 2021 during an Ontario live auction. He first obtained that firearm in September 2021. The registration certificate that Scott Saunders obtained for this firearm was dated September 7,

2021. The serial number for this firearm is BKN7416. The registration certificate was entered as a trial exhibit (Exhibit 7).

[101] Mr. Saunders identified another photograph of a firearm as a picture of the same firearm in Exhibit 1, with the addition that he said someone had added a caption, “Tuesday, October 12, 2021”. There is a notation indicating “Apple iPhone 6” on the caption. Mr. Saunders’ evidence was that he took the photograph of the firearm depicted in Exhibit 1 and that it was the same photograph as depicted in the photograph of the firearm depicted in Exhibit 7. He said that the date of October 12, 2021 was accurate as to when the photograph of the firearm were taken. His evidence was that this firearm was featured in the movie, “Tightrope”. He said that he took the photograph of the firearm after he received it in September, 2021 and posted on a page of a Facebook group called “Smith and Wesson Collectors”. This photograph was entered into evidence as Exhibit 8.

[102] Mr. Saunders’ evidence was that he was familiar with firearms and considers himself a collector of firearms.

[103] Mr. Saunders was asked where the firearm depicted in Exhibits 1 and 8 was located when he was arrested on November 15, 2023 he said that it was locked in

his gun safe in his garage. He testified that, to his knowledge, the firearm was seized by police at that time and was still in the possession of the police at the time of trial.

[104] Mr. Saunders' evidence was that in April 2019 he was not in possession of a firearm from his time with the Musical Ride and was not in possession of the firearm depicted in Exhibits 1 and 8.

[105] Mr. Saunders testified that he has been licensed to possess firearms since he was 16 years old. He stated that he was familiar with the process to renew a firearm license.

[106] Mr. Saunders testified that the current process for registration renewal is that every five years through a process called PAL or Possession and Acquisition License. He said that one must renew every five years on one's birthday and pay a fee. His birthday is May 11, 1965. Mr. Saunders' evidence was that when he lived with Fern McCuish he applied for a firearms renewal license during the period 2013 and 2020. The years he applied were 2005, 2010, 2015 and 2020. Mr. Saunders' evidence was that each time he applied to renew his firearm license it was signed by Fern McCuish.

[107] Mr. Saunders said that he was familiar with Exhibit 2, his December 13, 2019 firearms renewal license. He was asked by Defence counsel why he applied for

renewal in December if his birthday was in May. He stated that one can't let the license expire, so he completed the application five months in advance. Further, he said he was going to work that spring (2020).

[108] Mr. Saunders was shown a copy of the unredacted firearm application dated December 13, 2019 which was ordered by this Court to be produced as a result of its decision in the *O'Connor* application. Mr. Saunders said that he recognized Fern McCuish's signature on the document in the box 8(e) "signature of current spouse, common-law partner or other conjugal partner" and that he had seen her signature before. He said that he saw Fern McCuish sign the document. When asked by defence counsel whether, as suggested by Fern McCuish, he had placed her signature on the document by electronic means, his evidence was that he did not do so. Mr. Saunders' evidence was that he had retained a handwriting expert in relation to that signature.

[109] Mr. Saunders testified that Fern McCuish went with him to a firing range behind the Halifax airport many times, Atlantic Marksman Association. Specifically he testified that Fern McCuish accompanied him to a firing range in August 2022. He said that Fern McCuish had her own pistol at that time, a 22 Winchester rifle. He said that Fern McCuish fired the pistol that day as well.

[110] Mr. Saunders testified that since the day of his arrest in November, 2023 he has received 429 emails from Fern McCuish. He described the tone of these emails as derogatory and accusatory. His evidence was that he has also received telephone calls from Fern McCuish. He recalled that on August 3 or 4, 2024 that Fern McCuish called him 46 times. Mr. Saunders testified that he took a screen shot of his incoming calls on his cell phone which lists all of his incoming calls on August 3, 2024. The list indicates that 46 calls were “incoming” from a telephone number he indicated was that of Fern McCuish on August 3, 2024. His evidence was that he did not speak to Ms. McCuish on August 3, 2024. The document was entered as Exhibit 10.

[111] At the conclusion of his evidence Mr. Saunders denied assaulting Ms. McCuish as alleged. He denied using a firearm against her as alleged.

[112] In cross-examination Mr. Saunders agreed that the relationship between him and Ms. McCuish was acrimonious. He denied that he had been hostile towards her. He denied saying that Ms. McCuish drank all day or that she was stupid. He said that he might have said those things when they were together and had arguments like any normal persons.

[113] Mr. Saunders repeated in cross-examination that he left for work around April 9, 2019. He said he knew that date from looking at his time sheets. He returned around May 10, but was only off work 10 days then returned to work again.

[114] Mr. Saunders' testimony was that he did not have a disagreement with his uncle but he said that he could honestly not remember when that visit took place.

[115] When asked in cross-examination whether Fern McCuish was knowledgeable about guns, Mr. Saunders stated, "She should be; she was in the military". He said that Fern McCuish would usually recognize the gun that she shot at the range because he had it reconfigured for her because she is left-handed. Otherwise, his evidence was that he couldn't speak to whether she would recognize the make or model of a firearm. He added that he thought she could identify certain firearms very well.

[116] Mr. Saunders stated in cross-examination that in April 2019 he did not have the firearm he obtained from the Musical Ride in 1994. He said that he got rid of that firearm in 2015 or 2016.

Mr. Saunders estimated that he had 27 registered firearms in 2019. He said that these were seized by police at the time of his arrest. He said that he also added two firearms including an historical 1940 RCMP revolver in 2021 or 2022. He said that

there is no registration required for an antique firearm. Mr. Saunders also said that he has a large, old musket shotgun from 1850 hung over the fireplace in the Residence. Mr. Saunders' testimony was that as at the time of trial he had something like 40 firearms between registered firearms and historic or antique guns. He said that that number would be slightly higher at present than it was in 2019 because he thought he added two historical rifles from WWII in 2021 and the gun from Exhibit 1. Of those, he said that approximately 27 were registered handguns. His evidence was that in 2019 the number which looked like guns would have been all the ones which were seized by the police. He said that many were in cases and boxes and that everything would be in gun cases.

[117] Mr. Saunders was asked in cross-examination whether there would ever be a gun or something which looked like a firearm hanging around in the living room or in a drawer. He answered that years ago he had a deactivated firearm around the Residence which he used for dry firing. He said that although it was deactivated, the trigger action still worked on the Smith and Wesson and he used it for familiarization and used it for training for the timing of the trigger. He'd participate in many competitions with this deactivated firearm. He said he'd never leave it lying out, but it was around the Residence in several different places. This deactivated firearm was the one from the Musical Ride. He said that it was deactivated in the

early 2000s. His evidence was that deactivated firearms are looked at like collector pieces and he swapped that firearm for a knife. He said that the Firearm Office would not know that the gun was deactivated. He said that once the firearm was deactivated, there was no need to register it.

[118] In cross-examination, Mr. Saunders said that he and Ms. McCuish went to a firing range together in August 2022 and that they were trying to reconcile at that time.

[119] In cross-examination, Mr. Saunders stated that the first time which he met Ms. Pennar on a romantic basic, in person, was on September 18, 2023. Prior to that, including since 2004 they were crewmates and friends; he was a navigator and she was a marine mammal observer at the time. His evidence was that he had started seeing her again in an on-line relationship in the late spring of 2023. His evidence was that Fern McCuish accused him of having a sexual relationship with Ms. Pennar during the time when they were only crewmates and friends.

[120] Crown counsel put to Mr. Saunders in cross-examination that the events which led to the charges before the Court were not the first time which Fern McCuish had alleged that he had put a gun to her head. He agreed, but said that he didn't respond to her because it was all nonsense. At this point, Defence counsel stated

that his questions of Mr. Saunders were about when Ms. McCuish went to the police with the allegations and he was not alleging prior consistent statement. Crown counsel responded, “certainly not” that the purpose of the questioning went to rebut any suggestion of recent fabrication.

[121] Defence counsel advised that what he would be arguing at the end of the case that the factors Crown counsel mentioned are what animated Ms. McCuish to go to the police and that is as far as the defence intended to go with that.

[122] Mr. Saunders was asked about the photocopy of the December 2019 Firearms Renewal Application (Exhibit 9) in cross-examination. He stated that he filled the form out himself using a pen, with the exception that Fern McCuish signed it. He said that he witnessed her sign the application. They were sitting at the kitchen counter at the Residence. He identified Fern McCuish’s signature at 8(e). He said that he told her it was up for renewal and asked her to read it and sign it. He said that she read it and then signed it as she had done so every five years in the past. He said that he did not in any way force Ms. McCuish to sign the application.

[123] Crown counsel asked Mr. Saunders whether he had the ability to copy Ms. McCuish’s signature, that he had other examples of her signature. He responded that he did not have other copies of her signature. He said that it was possible that

Ms. McCuish might have had folders on the computer with her signature on them, but he wasn't aware if there was and he had never looked at any of these folders. Mr. Saunders' evidence was that it was unlikely that there was anything in the Residence with Ms. McCuish's signature on it.

[124] Mr. Saunders agreed with Crown counsel that in 2019 if he wasn't away for work, he likely was at the Residence.

[125] Mr. Saunders specifically denied that he placed Ms. McCuish's signature on the application for renewal form.

Detective Constable Todd Blake

[126] Kenneth Todd Blake has been a member of the Halifax Regional

[127] Police since November 1995. In January 2019 he was seconded to the RCMP, specifically the National Weapons Enforcement Support Team ("NWEST"). The Team assists municipal, provincial and federal agencies in firearms investigations, specifically proper identification of firearms and related devices.

[128] Constable Blake identified a report which he prepared which lists the firearms seized from Scott Saunders' Residence on November 16, 2019 (Exhibit 11). His evidence was that Mr. Saunders had a restricted firearms licence and that all of his

restricted firearms are listed in this Report. The Report indicates that there were 27 registered firearms and 15 other, non-restricted firearms. Those 15 did not require registration.

[129] Defence counsel asked Constable Blake about an entry for the firearm with serial number BKN7416. He described this firearm as a handgun, a revolver, 350 Mag calibre, 6 shot with a 64 mm barrel length. Constable Blake read from the report that it was a prohibited firearm with Certificate No. 20131069. Under the heading “FRN” appears 21972 – he said that that is a well-respected identification number, recognized by other countries, and identifies the make and model of the firearm. Constable Blake’s evidence was that the certificate number would be for Mr. Saunders, that when he registered this firearm he would be given that certificate number that is attached just to this Smith and Wesson 66. There is also a VIN number which stays attached to the firearm even if he sells it, with the VIN number going to the new owner. Constable Blake also identified Exhibit 7 as the firearm registration certificate for this same firearm. The issue date of the certificate is August 27, 2021. Constable Blake stated that that was the date that Mr. Saunders took possession of the firearm. Constable Blake said that this certificate matches with the firearm Smith and Wesson listed in his Report and that there was no doubt

in his mind that it was the same firearm, even though the certificate did not identify the calibre of the firearm.

[130] In cross-examination, Constable Blake's evidence was that the registration of a firearm does not occur when someone takes possession, but rather that the certificate is needed before the person is allowed to take possession.

[131] Constable Blake stated that there was a process to deactivate a firearm and that once it was deactivated it would no longer require registration.

Ella Pennar

[132] Ella Pennar was called as a defence witness. She testified via video from Poland. She stated that she is 47 years old. She described Scott Saunders and her as life partners. Her evidence was that she has known Mr. Saunders for around 20 years, first meeting him in 2005, the same year that she started working on the same vessel as him. She was a marine mammal observer at that time. Her current occupation is as a translator and teacher. Ms. Pennar said that her relationship with Scott Saunders in 2005 was not romantic. She said that her relationship with him as life partners started in the spring/summer of 2023.

[133] Ms. Pennar's testimony was that she sent Scott Saunders a package in June 2023 a couple of weeks before he was supposed to join a ship for his work. Her evidence was that she came to Canada to see Scott Saunders in September 2023 and again in July 2024.

[134] Ms. Pennar said that she was at the Residence with Scott Saunders in July 2024 when the house was being appraised. Fern McCuish was also present. She characterized her interaction at that time with Ms. McCuish as not nice. She stated that Ms. McCuish was probably surprised to see her. She said that Ms. McCuish started to attack her with accusations.

[135] Ms. Pennar said that after July 2024 she was contacted by Fern McCuish many times. Her evidence was that Fern McCuish stated sending her messages from the messenger platform which would go to her spam. She said that she then started to receive emails from Ms. McCuish. She was asked by Defence counsel if she had counted the number of emails she had received from Ms. McCuish since 2024. She replied that she had and that she had received until that day around 205. She testified that Ms. McCuish also contacted her by phone, including calling her in the middle of the night but that she never answered any of these calls. In terms of the emails from Ms. McCuish, Ms. Pennar said that she responded to only one of these, after she had received about 15 emails. Her response was to ask Ms. McCuish to please

stop contacting her, that she didn't want any contact from her, but Ms. McCuish continued to send her email messages.

[136] Ms. Pennar denied that she ever engaged in a telephone conversation with Ms. McCuish and specifically a 5 – 10 minutes telephone conversation (which had been the evidence of Fern McCuish).

[137] In cross-examination Ms. Pennar said that from 2025 to 2023 she and Scott Saunders were not close at all, they were regular workers, friends and colleagues at work. She stated that she thought that they worked together on the same ship for 2 or 3 years. Then they each went to different ships. Her evidence was that they kept in contact by email, every now and then, as she did with every other crew member.

[138] In cross-examination Crown counsel asked Ella Pennar how she knew the phone calls were from Fern McCuish. Her evidence was that she never gave Ms. McCuish her phone number. In cross-examination Ella Pennar denied that it was possible that she might have answered one of the phone calls from Fern McCuish that she received in the middle of the night. She said that when Fern McCuish called for the first time she saw that it was a Canadian phone number. She did not pick up the call. The next day she stated that she asked Scott Saunders if the number she had seen belonged to Ella Pennar and he told her that it did. Ella Pennar said that

she reported the calls to the RCMP and they confirmed that the number belonged to Fern McCuish.

[139] Ella Pennar's testimony was that she had never received a subpoena from Fern McCuish.

The Expert Evidence of Sarba Sohail.

[140] The Defence gave notice to the Crown that it intended to call expert evidence from a handwriting expert.

[141] The Defence waived delay for the period October 8 to December 5, 2025, the day the expert testified.

[142] The Defence proposed that Sarba Sohail be qualified as an expert witness to give opinion evidence in relation to forensic document examination and in particular, handwriting comparison and analysis. The Crown consented to this qualification. Ms. Sohail prepared a report in compliance with Rule 55 of the Nova Scotia *Rules of Civil Procedure*. The Court permitted Ms. Sohail to testify by video evidence. Ms. Sohail's C.V. was entered into evidence (Exhibit 12).

[143] The Court qualified Ms. Sohail as an expert witness in the areas proposed by the Defence and consented to by the Crown.

[144] Ms. Sohail holds a Bachelor's degree in Microbiology from the University of Delhi and a Master's degree in Forensic Science from Amity University, which she stated is internationally accredited by the World Education Services. She successfully completed a Graduate Certificate Course (Advanced Investigation and Enforcement). Ms. Sohail also successfully completed a Graduate Certificate Course (Forensic Identification). Ms. Sohail participated in three-day webinars for the purpose of continuing education in sessions held by the International Association of Document Examiners in 2024 and 2025.

[145] Ms. Sohail has said that she has been involved in approximately 250 cases and has examined more than 7000 documents as a handwriting expert. Ms. Sohail has worked as a document examiner in Canada for the last three years and prior to that time worked in a similar capacity in India.

[146] Ms. Sohail has been qualified in the field for forensic document examination and handwriting analysis in seven Court cases in Canada. She has given opinions in handwriting analysis in various other capacities in over 250 cases.

[147] Ms. Sohail's expert's report was entered into evidence as Exhibit 13. This report provides that Ms. Sohail received one signature of Fern McCuish for examination. This was the signature appearing on the Application for Renewal of a

Firearms submitted by Scott Saunders dated December 11, 2019. She refers to this signature as the “question document”. She also received eleven (11) known comparison samples identified in her report as K1-K11 which were each attributed to Fern McCuish for comparison. Her report provides signature samples in an appendix to her report. Ms. Sohail testified that she was tasked with comparing known signature samples of Fern McCuish from the provided documents with the questioned signature within the questioned document. She stated the objective was to determine whether they were authored by the same individual.

[148] Ms. Sohail’s report states that after a thorough examination of the questioned signature, along with a detailed comparison to the known signature samples, similarities were observed between the known and questioned signature present on the questioned document.

[149] Ms. Sohail’s opinion is that there is a high probability that the questioned signature was authored using the same hand as the known signature samples attributed to Fern McCuish and therefore can be deemed as genuine.

[150] Ms. Sohail states that in the realm of document examination, affirming authorship of a handwriting or signature requires a meticulous comparison with known genuine handwritings. She states that the object is to identify similarities in

characteristics substantial enough to confidently conclude that the questioned writing is indeed authored by the same individual, thus eliminating any possibility of alternative writers. In her report, Ms. Sohail states that it is an accepted industry practice that even a singular, unexplainable, and significant deviation in the document can cast doubt on the credibility of the document. Ms. Sohail also states in her report that all writing displays inherent variation, which means that no two writing samples from the same author will be identical. Subtle discrepancies exist in various handwriting features, requiring document examiners to differentiate between natural variations within an individual's writing and the writing of a different person.

[151] Ms. Sohail's evidence was that on August 26, 2025 she received a set of documents from Docufraud Canada for the purpose of forensic examination. She explained that Docufraud Canada sources documents with signatures. Ms. Sohail explained that she did not obtain these documents from Defence counsel, but directly from Docufraud.

[152] The documents provided to Ms. Sohail through Docufraud Canada were:

- (a) An identification card for Fern McCuish issued by the Public Services and Procurement Canada, undated, but with expiration date of August 14, 2018;
- (b) A Quit Claim Deed dated September 1999;
- (c) A signature given under oath for a Quit Claim deed sworn February 11, 2000;
- (d) Nova Scotia Driver's License for Fern McCuish issued June 30, 2026;
- (e) A Warranty Deed dated October 17, 2020
- (f) An Affidavit sworn by Fern McCuish dated October 17, 2020;
- (g) An HST Certificate – Sale of Used Residential Property certified by Fern McCuish and dated October 17, 2020;
- (h) An HST Certificate – Sale of Vacant Land, certified by Fern McCuish and dated October 17, 2020
- (i) A document sworn by Fern McCuish dated May 4, 2021.
- (j) A Collateral Mortgage sworn by Fern McCuish dated June 23, 2021;

- (k) An Affidavit and Proof of Execution sworn by Fern McCuish on June 23, 2021.

[153] Ms. Sohail's opinion, as set forth in her Report and to which she testified is as follows:

- (a) In conclusion, a comprehensive examination of the questioned signature appearing on the Renewal of Firearms Licence for an Individual dated December 11, 2019, was conducted and compared against the known signature samples attributed to Fern McCuish. Although the questioned and known sets of signatures exhibit some differences, a more detailed analysis revealed notable and unavoidable similarities in letter formation, strike quality, speed and writing habits. Therefore, in my professional opinion there is a high probability that the known signatures and the signature in question is authored by the same hand as Fern McCuish and can be deemed as genuine.
- (b) Further, analysis of the questioned signature also indicates towards a freehand signature. There is no evidence of cut and paste within the signature and is signed freehand.

[154] Ms. Sohail's report states that her opinion is based on the Scientific Working Group for Document Examination terminology standard for expressing conclusions. She identifies these as identification (definite conclusion of identity); strong probability (high probable, very probable); probable; indications (evidence to suggest); no conclusion (totally inconclusive, indeterminable); indications did not; probably did not; strong probability did not; and elimination.

[155] Ms. Sohail confirmed in direct examination that the comparison documents she received were of good quality and that government-issued or public documents provide a level of confidence. She also testified that reviewing 11 of these comparison samples was sufficient for handwriting comparison.

[156] Ms. Sohail testified that the quality of the Renewal of Firearm License was of pretty good quality. She received the document in pdf format, rather than having an original document. Ms. Sohail explained that that is why she classified her opinion as "high or very probable" as opposed to "definite conclusion of identity".

[157] In cross-examination Ms. Sohail stated that she found no evidence that the questioned signature had been "traced". She stated that tracing shows as a heavy

pen, with hesitations conflicting strokes. The signature in question had none of these characteristics.

[158] Ms. Sohail was asked in cross-examination whether the question before her was whether the question document had been forged, in particular by someone with a career in law enforcement, Ms. Sohail said that she would not know “what was going on in the background” that she would come to her own opinion based on her analysis.

[159] At this point in the trial, the Defence closed its case.

[160] In Rebuttal, the Crown called Fern McCuish.

The Evidence of Fern McCuish in Rebuttal

[161] Crown counsel asked Ms. McCuish whether the signature on the Application for Firearm Renewal (Section 8(e)) was her signature. She stated, “It appears to be my signature, but I don’t believe that I wrote it”. Her evidence was that her signature is usually a lot messier and that that signature looked very uniform. Ms. McCuish stated that it looked like it was made with another pen at another time.

[162] In cross-examination, Defence counsel put the signature of Fern McCuish on the Quit Claim deed dated September 1999 referred to in Ms. Sohail’s report. Ms.

McCuish stated that she recognized the document and that her signature appeared on it, but added “but it doesn’t match this one”. Defence counsel put another document referred to in Ms. Sohail report – an Affidavit which she swore on February 11, 2020 in connection with the Quit Claim deed. When asked if it was her signature on this Affidavit she said, “yes”, that she was assuming that it was. When asked by Defence counsel if she had any reason to believe that it was not her signature, she replied, “well, I don’t have the original in front of me”. She stated that it appeared to be signature, but it was not the original, but a copy.

[163] Defence counsel put the document referred to in Ms. Sohail’s report as Ms. McCuish’s Nova Scotia driver’s license and asked whether the signature appearing on that document was her signature. Ms. McCuish responded that it appeared to be her signature but it “doesn’t resemble the other”.

[164] Defence counsel also put the Warranty Deed dated October 17, 2020 referred to in Ms. Sohail’s report to Ms. McCuish. When asked if the signature on the Warranty Deed was her signature, Ms. McCuish’s testimony was that it appeared to be.

[165] Also put to Ms. McCuish by Defence counsel was the Affidavit attached to the October 17, 2020 Warranty Deed sworn October 17, 2020. When asked if her

signature was on that Affidavit, Ms. McCuish stated that it appeared to be, but she wasn't sure because she didn't have the original. She added that her signature varies in almost every document that she signs. When asked by Defence counsel what the original would do for her, she responded, "Well, it's an original document". She added that her signature was held on their home computer and Scott Saunders might have used it to sign this document.

[166] When asked about other signatures on the documents in Ms. Sohail's report which she used as "known signatures", Ms. McCuish responded either that they appeared to be similar, or that the signature had similarities to her signature, or that they appeared to be similar.

Key Assets of the Positions of the Crown and Defence

[167] There are three counts before the Court. Assault with a weapon, using a firearm in the commission of an offence and the careless use of a firearm.

[168] Jurisdiction is not an issue; nor is the identity of the accused. There was some evidence that Mr. Saunders may not have been in the country during a week of the two weeks in April 2019 when Ms. McCuish said that the alleged offences occurred. However, Defence counsel did not take the position that Mr. Saunders did not have the opportunity to commit the offences, as alleged in the indictment.

[169] At issue is therefore whether the factual underpinnings for any of those charges occurred.

[170] The Defence submitted that these circumstances simply did not occur. The Crown says that it has proven all of the elements of these three offences beyond a reasonable doubt.

[171] In terms of the elements of the Section 267 offence, there needs to be a direct or indirect application of force without the victim's consent and it needs to involve a weapon.

[172] The Crown says that if the Court accepts the evidence of Fern McCuish the elements are firmly established. She testified that Scott Saunders pressed a gun against her head, which is either a direct or indirect application of force. A gun is clearly a weapon, and even if there was a question as to whether the object used was a gun, the object was clearly being used as a weapon. There is no suggestion that Fern McCuish consented to the application of the force in question.

[173] The Crown counsel says that there was clearly some acrimony between the parties after their separation and tension around Mr. Saunders having a new romantic partner.

[174] In terms of the evidence of Ella Penard, the Crown says that she was not an unbiased witness, being Mr. Saunder's current partner. He suggests that Ms. Pennar was combative at times with the Crown during cross-examination, but that little turns on her evidence as a whole.

[175] In terms of the evidence of Detective Constable Todd Blake from the RCMP weapons' team, The Crown says that his evidence was credible and reliable. However, the Crown points out that Ms. McCuish gave evidence about the gun being used in the assault as that depicted in Exhibit 1. However, the Crown points out that Todd West's testimony was that many firearms look the same and that there were four Smith and Wesson revolvers seized from the Residence. The Crown notes that it is not required that the Crown show that a particular firearm was used in the assault, but that an object was used as a weapon, with the appearance of a firearm.

[176] The Crown submits that Ms. McCuish presented a clear and cogent account of the alleged offences.

[177] The Court heard the testimony of Mr. Saunders. Of course, there was no need for him to testify; he had the right to remain silent. However, he did testify and his evidence was that he did not commit any of these offences. Crown counsel described Mr. Saunders' testimony as a "flat denial". Defence counsel says that the defence

presented more than simple, “this didn’t happen”, but rather through Mr. Saunders’ cross examination, the other defence evidence, including that of the expert witness, the complainant’s evidence has been undermined to such an extent that the Court should not accept the complainant’s evidence as credible. Accordingly, the defence says that it goes well beyond a flat denial.

[178] Defence counsel says that Mr. Saunders was a credible and reliable witness and that his evidence alone raises a reasonable doubt, if not be outright believed by the Court.

[179] In terms of the evidence of Fern McCuish, Crown counsel describes her testimony as straightforward and genuine.

[180] Defence counsel submits that she was anything but those adjectives. Rather, the defence says that Fern McCuish was evasive and argumentative and non-responsive to questions.

[181] Defence counsel submits that Fern McCuish was simply untruthful about certain things in her testimony, in particular, about ever having seen or signed the Firearms Renewal Application in December 2019.

[182] Defence counsel also says that Ms. McCuish has many reasons to make Mr. Saunders suffer, not the least of which is her obvious hatred of him.

[183] Clearly, Ms. McCuish's evidence forms the foundation of the case against Mr. Saunders. Can that foundation support the heavy burden of proof beyond a reasonable doubt? This Court finds that it cannot.

[184] Defence counsel pointed to several aspects of the evidence of Ms. McCuish which it says are not believable and show that she is not a credible first.

[185] The first relates to the time of the allegation. The indictment says that the offence occurred between January 1, 2019 and December 31, 2019. Ms. McCuish's evidence was that the offences occurred during the first two weeks of April 2019. Defence counsel points out that it was only in her trial evidence that Ms. McCuish narrowed it down to the first two weeks in April. Ms. McCuish agreed in cross-examination that she had not told that before. Ms. McCuish spoke with Corporal Rhodenizer on October 31, 2023 and gave a police statement on November 5, 2023. Defence counsel says that on neither occasion did she give the time frame of the first two weeks of April, but rather said "in the spring of 2019".

[186] Defence counsel also says that he cross-examined Mr. McCuish on a 911 call she had made to the police from the Residence involving Ms. McCuish and the mother of Mr. Saunders on May 21, 2022. During that call Ms. McCuish told the 911 operator that she had been assaulted by Mr. Saunders with a gun "last year", i.e.,

in 2021. Defence counsel says that is an entirely different date than 2019. If someone had held a gun to one's head, defence counsel submits that you would expect them to remember the year, let alone the date.

[187] Defence counsel says that Mr. McCuish could not remember what she had done before the alleged assault which she placed as happening in the evening and that she could not remember if she went to work or stayed home the next day. Defence also points to the evidence of Scott Saunders that he was not working the first week of April 2019, so would likely have been at the Residence, but was working offshore during the second week of April 2019, having checked his work records to so confirm.

[188] Defence counsel says that the Court should also consider Ms. McCuish's evidence that just before the alleged assault that she and Mr. Saunders were arguing about her daughter and the money that Ms. McCuish was spending on her. Counsel says that during her direct evidence, Ms. McCuish said that the argument was solely about her daughter. However, the Court heard the testimony of Corporal Rhodenizer. He testified that he spoke to Ms. McCuish on October 31, 2023 and he wrote a report of what she told him. He said that his report and his memory of the event was accurate. What he recorded in his report was that Mr. Saunders and Ms. McCuish had been arguing about was an incident that Mr. Saunders had had with

his uncle. When Defence counsel put to Ms. McCuish her direct evidence that she and Mr. Saunders had argued “solely” about her daughter, she questioned whether she had used the word “solely” and then added that they might have argued about more than one thing.

[189] Defence counsel says that when Fern McCuish was asked on direct examination whether she saw Scott Saunders again the night of the alleged incident she said “no”. When asked if he remained in the house, she said “yes” because she did not hear the door open and the security alarm indicate that he had left. However, in cross-examination she admitted that Scott Saunders slept in the same bed as her that night. Defence counsel says that this testimony was evasive and that Fern McCuish was reluctant to admit that Mr. Saunders had done so on the same night that she says he held a gun to her head.

[190] The main focus of the Defence’s attack on the credibility of Fern McCuish arises from the December 2019 Firearm Renewal application. Defence counsel says that it is critical evidence for two reasons. The first is for purposes of credibility. The defence says that Mr. McCuish misled the Court when she said that she had never, ever, seen that document before and that she absolutely did not sign it. The second reason advanced by Defence counsel is that Ms. McCuish knew full well how inconsistent it would be to allege that Mr. Saunders had held a gun to her head

in the spring of 2019 and then support his Firearm Renewal application in December 2019.

[191] Defence counsel says that on the point of why Fern McCuish did not want to admit that she signed the Firearm Renewal Application (Exhibit 9), the document states in bolded letters, above where the spouse or common-law partner is to sign their name, the following: “If you have any safety concerns about this application, please call 1 800 731 4000.” Defence submits that if Scott Saunders had held a gun to Fern McCuish’s head in April 2019, surely she would have some safety concerns arising from his application to renew his firearm application, and as a result would call the phone number provided. Crown counsel says that the Court should be careful not to draw an inference from this aspect of the evidence.

[192] The Defence says that although it has no obligation to do so, that it has established on a balance of probabilities that Fern McCuish saw and signed the December 2019 Firearms Renewal Application. The Defence points to the expert evidence of Ms. Sohail who gave evidence that there is a high degree of probability that the signature on that application was Ms. McCuish’s. If she had been able to review the original document that would have assisted her in determining that the signature was definitely that of Ms. McCuish. The RCMP no longer had the original

document, its documents having been digitalized. Defence counsel says that Ms. Sohail's evidence was not undermined in any way during cross-examination.

[193] Defence counsel points out that in cross-examination when he put the "known signatures" to Ms. McCuish for her identification, the best she would say is that they appeared to be her signatures because they weren't originals. However, as Defence counsel points out, these 11 documents are documents which Ms. McCuish would be familiar with, i.e., a quit claim deed, a warranty deed, affidavits and her driver's license. Ms. McCuish also suggested that someone put her signature on the document. She said that Mr. Saunders had access to her signature. However, that was not his evidence. Further, Ms. Sohail stated that she did not find evidence that the signature was superimposed or traced.

[194] In terms of the firearm which Ms. McCuish claims was used by Scott Saunders in the alleged assault, the Crown tendered through Ms. McCuish a photograph of the firearm (Exhibit 1). In direct she was quite specific about that being the firearm used by Scott Saunders. She also gave evidence that Scott Saunders had told her that he had obtained the gun in Exhibit 1 when he was part of the RCMP Musical Ride.

[195] However, the subsequent evidence shows that the gun depicted in Exhibit 1 could not have been the one used in the alleged assault in 2019 because Mr. Saunders

testified that he did not obtain the gun depicted in the photograph (Exhibit 1) until August or September of 2021, more than two years later.

[196] Further, the registration certificate for that gun was entered into evidence (Exhibit 7) which shows an issuance date of August 27, 2021. The serial number of this gun is BKN7416.

[197] The Court also heard the evidence of Constable Todd Blake. Exhibit 11 was introduced through this witness, the NWest Report. That report shows that on November 16, 2023 the firearms seized from the Residence included a firearm with serial number BKN7416 which matches the serial number on the Certificate. Constable Blake's evidence was that it would not be possible for Scott Saunders to obtain that gun prior to the Registration Certificate being issued, i.e., August 27, 2021. Accordingly, the Defence says that Scott Saunders could not have had that gun in April 2019. Further, the defence introduced Exhibit 8 which is the same picture as that contained in Exhibit 1 (introduced by the Crown) except that Exhibit 8 has metadata on it which shows the date the picture was taken, which is October 12, 2021. Scott Saunder testified that he took that photograph because he was putting it on a FaceBook group for gun collectors. What this means is that the photograph in Exhibit 1 was not even taken until October 2021.

[198] Ms. McCuish also said that she was told by Mr. Saunders that the gun used in the alleged assault was a gun he had obtained while he was a member of the RCMP Musical Ride. Mr. Saunders' evidence was, in addition to that not being the same gun as Exhibit 1, that he had his Musical Ride gun decommissioned and he traded it for an historical knife at a gun show in Waverly 2015 or 2016.

[199] The Court notes that in cross-examination Ms. McCuish said that if the firearm used by Scott Saunders in the assault was not that depicted in Exhibit 1, it was one that looked similar to it, and that he had many firearms at the Residence. However, here the Court notes that the police seized all firearms from the Residence and they remain in their possession. If there was a firearm seized that resembled that used in the alleged assault, the Crown could have obtained a photograph of that firearm or brought the gun to Court. However, there was no such evidence.

[200] Of course, the Defence does not have to show that Exhibit 1 could not be the firearm. Rather, the defence says that this evidence is part of the totality of the evidence and serves to raise a reasonable doubt.

[201] Defence counsel also made submissions about the timing of Ms. McCuish's complaint to the police, saying that Ms. McCuish's initial report to the police on October 31, 2023 occurred around the same time as the Family Court proceedings

were gearing up. A settlement conference had been scheduled for November 9, 2023. Defence counsel also suggests that the timing of the complaint coincides with when Ms. McCuish became aware of Ms. Saunders' romantic relationship with Ella Pennar. Counsel points out that although Ms. McCuish said that she was not so aware until July 2024, that the Court had the evidence of Fern McCuish in September 2023 when the package sent by Ella Pennar arrived at the Residence. Ms. McCuish sent Mr. Saunders an email message when she saw the package stating, "you must be dying to know what Ella sent you".

[202] Defence counsel says that the degree to which Fern McCuish resented the relationship between Scott Saunders and Ella Pennar is manifested by the numerous emails she sent Ms. Pennar, even after Ms. Pennar asked her to not send further emails (150).

[203] Defence counsel also says that Mr. McCuish's evidence was that she spoke to Ella Pennar for 5 to 10 minutes on the telephone, which Ms. Pennar denied.

[204] Defence counsel reiterated in submissions that it was not alleging recent fabrication.

Analysis and Disposition

[205] This Court finds that the evidence of Fern McCuish lacks credibility and reliability. I am left in reasonable doubt based on the number and type of credibility issues arising from her evidence.

[206] A complainant may delay reporting an assault for many reasons. That is not what the Court is referring to. Rather, it is Ms. McCuish's evidence around subsequent reports she made of when these events occurred that causes me concern. I am not concerned about what the Defence suggests is a change from her initial November 2023 report that the assaults occurred in the Spring of 2019, to her trial evidence that they occurred during the first two weeks of April 2019. April could be spring.

[207] However, questions about the complainant's credibility do arise from her 911 report in May 2022 when she told the 911 operator that Scott Saunders had assaulted her with a gun "last year", i.e., in 2021 and not in 2019.

[208] I find that Fern McCuish was often evasive when cross-examined by Defence counsel. For example, when asked in direct examination if Scott Saunders remained in the Residence after the assault, she said that she didn't think he left the house and that she didn't see him further that evening. However, in cross-examination, she acknowledged that she slept in the same bed as Scott Saunders the evening of the

alleged assault. It is not the fact that she did so that is of concern (it is not), but that fact that she was so evasive in admitting this fact.

[209] However, the greatest concern that the Court had with Ms. McCuish's testimony was around her signature on the December 2019 Firearm Renewal Application. She absolutely denied ever, ever, seeing this document before it was put to her, and adamantly denied that it was her signature on it.

[210] Yet, the Court accepts the expert evidence of Ms. Sohair that there was a high probability that the signature on that document was that of Fern McCuish. I find that Ms. McCuish was evasive and at pains not to acknowledge that her signature was on the documents used by Ms. Sohair as known examples of Ms. McCuish's signature, including a warranty deed, a quit claim deed with attached affidavit, a driver's license and a public service identification card. She would only acknowledge that the signature on each of these documents appeared to be her signature, but qualified her answer on the basis that she wasn't given the original of these documents. An honest witness would readily acknowledge their signature on these type of documents, documents which she was clearly familiar with.

[211] This Court has no reason to doubt Ms. Sohair's opinion. She did not have the original of the Firearms Renewal Application, that original no longer being in the

possession of the RCMP (it was digitalized), and for that reason alone gave her opinion based on the second highest category of surety, that of “high probability” as opposed to a determination. The evidence before the Court establishes on a balance of probabilities that Fern McCuish did sign the Firearms Renewal Application and that she was untruthful about having done so. Fern McCuish was therefore not a trustworthy witness on key parts of her evidence.

[212] I also find that reasonable doubt arises from the evidence of Scott Saunders. He was not caught in any inconsistencies or outright lies. He maintained that these events did not occur. He admitted that his work schedule could have allowed him to be present at the Residence during part of the first two weeks of April 2019, the time frame Ms. McCuish alleges for the assault.

[213] I find that Ella Pennar was a credible witness, irrespective of her current relationship with Scott Saunders. I accept her evidence over that of Fern McCuish that she did not have a telephone call with Mr. McCuish lasting 5 – 10 minutes. I had no reason to not believe Ms. Pennar, whereas Ms. McCuish’s evidence as a whole caused me to doubt her credibility. The evidence of Fern McCuish that she was mainly contacting Ms. Pennar because she wanted to find out about subpoenaing her to Family Court was not believable. Ms. McCuish never issued a subpoena for Ms. Pennar, yet she contacted her over one-hundred times.

[214] Each of the police witnesses, Corporal Rhodenizer and Sergeant Todd Blake were credible and reliable witnesses. They gave evidence that was not undermined in any way during cross-examination.

[215] As noted by the Crown counsel, I do not have to find that any particular object, or firearm was used for the Section 267 offence in order for the elements of that offence to be proven. However, I also have concerns arising from Ms. McCuish's initial evidence that the firearm used to assault her was the firearm depicted in Exhibit 1, when that could not be the firearm used, based upon all of the evidence before the Court. However, that alone, as is evident from the Court's overall concern about the credibility Ms. McCuish's evidence is not the sole basis upon which the Court bases its finding that it cannot rely upon Ms. McCuish's account of the events giving rise to the charges.

[216] For all of these reasons, I find that I cannot rely upon Ms. McCuish's evidence that Scott Saunders assaulted her with a firearm. Accordingly her evidence raises reasonable doubt in my mind. On the basis of that reasonable doubt, I must acquit Scott Saunders of all charges.

Conclusions

[217] When the Court looks at the entirety of the evidence, I have reasonable doubt as to whether Mr. Saunders held a revolver to Fern McCuish's head. As a result, the Crown has failed to prove beyond a reasonable doubt that Scott Saunders assaulted Fern McCuish with a firearm. Specifically, none of the charges against Scott Saunders have been proven beyond a reasonable doubt.

[218] Given all of the evidence, I find Scott Saunders not guilty of all charges.

Smith, J.