

SUPREME COURT OF NOVA SCOTIA

Citation: *R v. Chambers*, 2024 NSSC 67

Date: 20240220

Docket: 513750

Registry: Bridgewater

Between:

His Majesty the King

v.

Carl Chambers

**Restriction on Publication: Pursuant to s. 539.(1) of the *Criminal Code*
This ban expired on February 20, 2024**

Judge: The Honourable Justice Diane Rowe

Heard: February 16, 2024, in Bridgewater, Nova Scotia

Oral Decision: February 20, 2024

Counsel: Bryson McDonald, for the Crown
David R. Hirtle, K.C., for the Accused

Publication Ban pursuant to s. 539.(1) of the *Canadian Criminal Code*:

539 (1) Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry

- (a) may, if application therefor is made by the prosecutor, and
- (b) shall, if application therefor is made by any of the accused, make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,
 - (c) he or she is discharged, or
 - (d) if he or she is ordered to stand trial, the trial is ended.

By the Court, orally:

[1] This is an oral decision. The Court reserves the right to adjust or edit the decision should it be released in written form, for grammar, structure, readability and organization, as well as to provide complete citations and references, without changing the reasoning or the result.

[2] On June 17, 2020, Carl Chambers lost his temper. When Mr. Chambers heard that Craig Webster had made inappropriate comments to his partner, he then went, in a rage, to Mr. Webster's house to confront him.

[3] As a result of his actions that day, Mr. Chambers was charged in an indictment with 7 counts filed with the Supreme Court on March 29, 2022. The charges, then, included aggravated assault, breaking into a dwelling house with intent to commit an indictable offence, causing a disturbance, committing mischief, possessing pruning shears and a hammer to use for a dangerous purpose, and uttering threats to cause death.

[4] On November 20, 2023, he entered a plea of guilty in regard to the lesser but included offences contrary to the *Criminal Code*, R.S.C., 1985, c. C-46 as follows: forcible entry contrary to s. 72 (1); mischief under \$5000 contrary to s. 430(4); and uttering threats contrary to s. 264.1(1).

[5] The Crown did not lead evidence in relation to the remaining counts. Crown and Defence tendered an Agreed Statements of Facts, as follows:

The Crown alleges, an the accused, Mr. Chambers admits, for the purposes of plea, the following facts:

1. On the afternoon of June 17, 2020, Craig Webster went to his now former place of employment, the 325 Diner in Wileville, Nova Scotia. While at the diner, Mr. Webster encountered his now former colleague, Christine O'Quinn, who was working at the diner. Mr. Webster proceeded to give Ms. O'Quinn a nonconsensual hug and one that made her uncomfortable. Mr. Webster also asked Ms. O'Quinn to smell him.
2. Ms. O'Quinn noted Mr. Webster to be under the influence of alcohol. Mr. Webster admitted to drinking five 5% abv vodka coolers prior to attending the diner. While at the diner, Mr. Webster took a bottle of vodka out of his backpack and continued to drink.
3. Also present at the diner that afternoon was Dawn Ewing who was the manager of the diner. Ms. Ewing was separated from her husband, who was also present at the diner at this time to pick her up to go on a date. Ms. Ewing was also involved romantically with Mr. Webster.
4. At the end of her shift, Ms. O'Quinn returned home and advised her now-husband, Carl Chambers, that Mr. Webster hugged her and tried to make her smell him while she was at work.
5. Mr. Chambers then called Ms. Ewing asking where Mr. Webster resides as Mr. Chambers wished to confront Mr. Webster about the hug.
6. After closing the diner, Ms. Ewing's husband drove Mr. Webster home, before dropping Ms. Ewing off at her apartment. At some point later, Ms. Ewing went to Mr. Webster's residence located at 118 Starr Street in Bridgewater, Nova Scotia.
7. Mr. Chambers later called Ms. Ewing a second time and this time Mr. Webster answered the call. The two discussed what had occurred at the diner.
8. Mr. Webster and Ms. Ewing then sat down to have some alcoholic drinks following the phone call with Mr. Chambers.
9. Mr. Chambers, not know that Mr. Webster was at his residence, had Ms. O'Quinn drive him to Mr. Webster's residence. Mr. Chambers had with him a pair of pruning shears and a hammer.

10. Mr. Webster was alerted to Mr. Chambers presence when he saw Mr. Chambers in the kitchen window. At some point while at Mr. Webster's residence, Mr. Chambers threatened to kill Mr. Webster/
11. There is an unfinished woodshed that is attached to the back of the main dwelling where a door was damaged.
12. Mr. Chambers proceeded to a small open entry into the back porch of the residence.
13. The porch is adjacent to the kitchen where Mr. Webster was along with Ms. Ewing. Mr. Webster's 18-year-old son was home at the time, but was upstairs during the entirety of Mr. Chambers' presence at the residence.
14. Inside the open entry, there is an aluminum door with large glass panels and a wooden door. The glass was smashed out of the aluminum door. Mr. Chambers then proceeded to use the hammer on the wooden door with glass inlay that was between the entry and the porch. In doing so, Mr. Chambers broke the glass in the door and put the hammer through the door. Mr. Webster attempted to block the door while Mr. Chambers was hitting the door with the hammer to prevent Mr. Chambers from entering the porch.
15. Mr. Webster then defecated himself and threw his feces at Mr. Chambers through one of the broken windows in the wooden door. The windows in the door were tear-shaped and contained shards of broken glass at the time Mr. Webster threw his feces.
16. Ms. Ewing left the kitchen upon Mr. Chambers' arrival and went to hide in a bedroom. While in the bedroom, Ms. Ewing could hear glass shattering and heard Mr. Webster yell for her to call 911. There were two calls to 911, one by Ms. Ewing and one by the neighbour.
17. Mr. Chambers then exited the entry and began to walk down the driveway towards Starr Street. While walking bac up the driveway, Mr. Chambers told Ms. O'Quinn to call 911. Police arrived on scene as Mr. Chambers neared the end of the driveway. He was covered in both blood and feces, neither of which were his, when he was met by police. As the first police officer was driving down the street, Mr. Chambers put the hammer and pruning shears down and laid down on the ground prior to the initial arriving officer being on scene. Mr. Chambers was co-operative with police throughout his arrest and detention.
18. Mr. Chambers broke five exterior windows and damaged or destroyed four doors while at Mr. Webster's residence.
19. During the incident, Mr. Webster received a laceration to his right arm. He was transported to the South Shore Regional Hospital by ambulance where he received 36 stitches to close the wound and was released later the same night. How he was injured is not certain, but the injuries were not caused

by Mr. Chambers or any of the tools in his possession. The injuries appear to be consistent with having been caused by glass.

[6] Mr. Chambers did forcibly enter the home of Mr. Webster, without excuse, and with knowledge he was not welcome. There is no dispute that as he did so, he broke doors and windows thereby committing mischief, and at one point shouted a death threat aimed at Mr. Webster.

Sentencing Documents

[7] A Pre-Sentence Report (“PSR”) was not filed for the Court’s assistance. Counsel for Mr. Chambers has, instead, submitted several supportive correspondences as exhibits in support of his client rather than proceed to obtain a PSR.

[8] The Crown filed two Victim Impact Statements, obtained by a worker at Nova Scotia Victim Services. Those two statements were signed and then filed the afternoon before the hearing, and were not available to the offender’s counsel until the next morning. The victims did not attend the hearing.

[9] One statement is purported to be Mr. Webster’s, with the other by Ms. Dawn Ewing, who resided with Mr. Webster at the time of the offences.¹

¹ In the oral decision, Ms. Ewing was referenced as Ms. McEachern, as that was her name at the time of the indictment and on the Victim Impact Statement filed with the Court. For simplicity and accuracy, in this written decision, she will be identified as Ms. Ewing.

[10] Both statements are hand written on the Victim Impact Statement form, in block print, and signed by an employee at Victim Services. There is a portion of the form headed: “If you completed this statement on behalf of the victim please indicate the reasons why you did so and the nature of your relationship with the victim.” Mr Webster’s form then has as an entry at this portion stating that it was signed by a member of Victim Services as he was unable to attend the office due to recent surgery. Ms. Ewing’s form notes at this section that she was unable to complete the form in person at Victim Services due to her employment.

[11] The Court heard brief submissions from both counsel on whether these materials were admissible. It was aware that the decision in *R v. Gabriel*, 1999 CanLII 15050 (ONSC) (para 16) indicates that one of the several essential elements for admissibility of these materials pursuant to s. 722(2) of the *Code* is that a victim impact statement be authored by a person meeting the definition of “victim” pursuant to s. 722(4) of the *Code*. The Court mentioned this case in Court during the sentencing hearing, after it had heard from counsel, and then, with my own later research, it has informed my use of these materials while I considered sentence.

[12] It is evident that both of the Victim Impact Statements were the result of the Victim Services worker speaking with these persons, and then making her

notations of what she heard on the form and signing it off, just the day before the sentencing hearing was held. The Court is concerned about the context in which this occurred, and their admissibility.

[13] *R v. Gabriel, supra*, is part of Nova Scotia's jurisprudence, as other judges have considered the issues of the scope and content of victim impact statements. Judge Derrick, as she then was, relied extensively on *Gabriel, supra*, (at paras 22 through to 26) in her review of the Victim Impact Statement regime in *R v. BP*, 2015 NSPC 34. She noted at para 31 that:

[31] Mr. Craig opened his submissions by urging a return to "first principles." First principles as they relate to victim impact statements were articulated by Hill, J. in *Gabriel*:

22 Without, in any fashion, diminishing the significant contribution of victim impact statements to providing victims a voice in the criminal process, it must be remembered that a criminal trial, including the sentencing phase, is not a tripartite proceeding. A convicted offender has committed a crime - an act against society as a whole. It is the public interest, not a private interest, which is to be served in sentencing.

[14] Justice Rosinski in *R v. Denny*, 2016 NSSC 76, distinguished *R v. BP, supra*, to an extent, by writing at paras 112-116 that:

[112] Recently in *R v. B.P.*, 2015 NSPC 34, Judge Derrick voiced concerns about the victim impact statements in that case not being in compliance with s. 722 of the *Criminal Code*. While that sentencing dealt with a youth under the specific provisions of *Youth Criminal Justice Act*, she relies on authorities from the adult context which are helpful, though they predate the recent amendments, in ensuring victim impact statements do not stray from the permitted content.

[113] It must be remembered that Victim Impact Statements are intended to be read by, or read to, the judge. The offender is in attendance and thereby hears the

impact their offence has had upon the victim(s); however, the offender is not the primary person to whom the victim is speaking.

[114] On the other hand, the *VRBA* and associated *Criminal Code* amendments, should be interpreted expansively, in an effort to ensure that victims have a full and fair opportunity to convey to the court the impact of the offender's crime upon them.

[115] I agree that Victim and Community Impact Statements are not to contain assertions of fact purportedly about the offence or offender; nor should they comment on the offender's character or disparage the offender; or make recommendations or comments about the sentence the court may impose. They are intended to convey, in a meaningful way, various aspects of the impact upon victims of the crime.

[116] Nevertheless, I also believe courts must recognize that in cases where victims' losses are profound, such as in this case, courts should be hesitant to deny entirely, or parse, victim impact statements, in what surely would be seen as an uncaring exercise, and a disproportionate response given the respect victims are entitled.

[15] It is apparent that a Court must engage in balancing public interests when a Victim Impact Statement is not clearly compliant with the provisions of either the *Criminal Code* or policy. This Court is also mindful of the risks associated with liberally admitting Victim Impact Statements without engaging in this balancing, particularly when the statements have not been authored by the victim, as the potential harms to the offender can be quite serious and may be pervasive, especially when later decisions on programming or parole may be made with reference to the statement.

[16] Counsel mutually identified areas of each Victim Impact Statement that were not factually accurate. The Court expressed to counsel that in the event that I found one or both admissible they would be accorded corresponding weight.

[17] The Court finds that the Victim Impact Statement of Ms. Ewing is inadmissible. It is not appropriate for a Victim Impact Statement to be hurriedly filed the day before a hearing, authored and signed by an employee at Victim Services as a declarant, with a comment that Ms. Ewing was unable to attend to sign due to work obligations. There had been slightly over three months that had passed after Mr Chambers had pled guilty and Ms. Ewing was informed she could file a Victim Impact Statement then.

[18] As for Mr. Webster's Victim Impact Statement, I am admitting his form with redactions made on the form and highlighted with my initials. In doing so, I am relying on the representations made by Victim Services concerning Mr. Webster's circumstances, that they are a true declaration that he was unable to make the statement himself as he was unable to attend their offices due to recent surgery. I am still mindful that three months had passed since he, too, was informed he could file his Victim Impact Statement, but it is unclear whether the medical condition that required this surgery was one that was coincident with the time since Mr. Chambers pled guilty.

[19] It is entirely possible a victim may lack the capacity, literacy or functional ability to complete and sign a Victim Impact Statement form personally. That was

not put before the Court here, though. That is most certainly not the case in regard to Ms. Ewing.

[20] I will note that the form for a Victim Impact Statement states in plain language that a person might – it is at their discretion – file a Victim Impact Statement. It is mandated on a prosecutor to speak to the Court on whether the victim has been advised to file one, in keeping with their obligation under the *Canadian Victim's Bill of Rights*, S.C. 2015, c. 13, s.2, but it is not mandatory for a victim to complete one for filing.

[21] This Court is concerned that the filing of Victim Impact Statements is not to become a “phone in” administrative process, done at the last minute. That does not meet the purposes of the legislation or regulations that create the space in the criminal justice process for victims to be heard, which was created to achieve a balance with the broader public interest in the fair and impartial administration of criminal justice.

[22] The Crown may provide evidence of harm to the victim as part of a sentencing hearing to support their submission. In this matter, the Court will consider the circumstances of the offence, in its entirety, as set out in the Agreed Statement of Facts and make findings based on my own experience, logic and

common sense in presuming the existence of grief, loss or despair. (*R v BP, supra* at para 25).

[23] Mr. Webster's Victim Impact Statement refers to being unable to move and feeling like a prisoner in his own home. His emotional impact includes post traumatic stress disorder, nightmares and flashbacks. Mr. Webster has some relationship impacts with his partner and his son. He expresses distrust that "the system" can protect him, and he experiences general distrust of people. Mr. Webster stated there was an economic impact of the offence upon him, referring to the costs to repair the home after the incident.

Testimonial Letters and Statement of Counsel

[24] Mr. Chambers is 55 years old, and formerly resident in the United Kingdom. He served 16 years in the British Army and has won awards recognizing his merit in that role. He has no prior criminal record.

[25] During his military career, he was a battalion sniper, and an expedition leader who has worked with children, including those with special needs, in outings over army assault courses. Mr. Chambers was deployed during those years in active service in Bosnia in 1994, Northern Ireland in 1995, Kosovo in 1999 and Iraq in 2003.

[26] He was awarded a Mention in Dispatches from HRH Queen Elizabeth II for gallantry in service while he was in Bosnia for saving his patrol. The effect upon him of this service in Bosnia was lasting stress issues, including a physical response of bald patches due to stress.

[27] Mr. Chambers has an ongoing interest in medicine. He served as a team medic and took courses in first aid, combat medics and sports injury.

[28] In time, Mr. Chambers took a medical discharge and then moved to Canada in or around 2003. He became a permanent resident in 2014. While living in Alberta, he worked with the Canadian Red Cross Advanced Wilderness and Remote First Aid, teaching wilderness and first aid.

[29] Mr. Chambers then moved to Ontario where he joined the Wainfleet Volunteer Fire Department, teaching first aid. In 2018 he returned to the United Kingdom briefly and then moved to Nova Scotia. He met his wife Christine at that time. Carl Chambers and Christine married in 2022.

[30] Before marrying, Mr. Chambers had purchased a farm in Caledonia and joined the North Queens Fire Association as a volunteer firefighter. This farm was sold and another purchased in Bakers Settlement, Nova Scotia. While living in Bakers Settlement, both Mr. Chambers and Christine have joined the local VFD.

He is a medical first responder and provides care until paramedics arrive. He has responsibilities currently for caring for his wife's elderly parents, as well.

[31] In 2019, Carl Chambers had a courier job driving a truck. Then, in August 2022, he took a job with Medavie as a driver for the Patient Transfer Unit. He has also volunteered with the South Shore Regional Hospital as a Emergency Support Aid in December 2022. This pending case has resulted in his suspension from this role, upon his plea of guilty, and a conviction, it has been told to the Court, will completely end this.

[32] In order to obtain further training as a nurse, Mr. Chambers has sought to increase his high school qualifications and now requires only one additional credit to obtain a Canadian high school equivalency further to that goal.

[33] In other volunteer undertakings, he and his wife volunteer with the St. John Ambulance Therapy Dog Program. It is noted a criminal conviction will preclude this continuing.

[34] Further, he indicates he wished to join the Canadian Military reserve forces. However, if he has a criminal record this will prevent that. As time passes, his eligibility to apply shortens.

[35] Mr. Chambers characterizes the incident as being out of character, and certainly out of proportion as a response to his partner being touched inappropriately by Mr. Webster.

[36] An accompanying letter from North Star Immigration law, dated January 23, 2024, indicates that if Mr. Chambers receives a conviction with imprisonment for over 6 months there will be an accompanying negative impact on his immigration status. If he is sentenced to a conditional sentence order, or a conditional discharge, he would not be considered inadmissible to Canada.

[37] The remaining seven letters filed by his counsel are written by community members who all speak of their experiences with Mr. Chambers in his roles as a volunteer, a student, and a colleague in glowing terms. He is characterized as a hard working person, compassionate, and effective. There is significant support for him in the community.

[38] Mr. Chambers also spoke in Court, expressing his remorse for the events of that day. It was evident to the Court that this sense of remorse continues.

Sentencing Principles of Law

[39] Justice Bodurtha, at paras 39 to 43 of his decision in *R v. Taylor*, 2023

NSSC 143, sets out a précis of sentencing principles in a manner this Court finds

helpful:

[39] Sentencing is an individualized and discretionary exercise within the applicable confines of the *Criminal Code* provisions pertaining to the subject offences and specifically guided by the purpose, objectives and principles set out by Parliament in section 718 of the *Criminal Code*.

[40] The objectives of sentencing are codified in section 718 of the *Criminal Code*. They include the following objectives: the need to denounce unlawful conduct; to deter the offender and others from committing offences; to separate offenders from society where necessary; to assist in the rehabilitation of offenders; to promote a sense of responsibility and acknowledgement in offenders for the harm they have done; and to provide reparations for harm done.

[41] Section 718.1 directs that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The Court must also apply the principle of parity codified in section 718.2(b).

[42] Section 718.2(c) states that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[43] Section 718(d) sets out the objective of "assist[ing] in rehabilitating offenders." Rehabilitation can be seen to achieve the objective of protecting the public as it assists in preventing further offences. An offender's "positive potential for rehabilitation" should be to the benefit of the accused on sentence: *R v Gouliaeff*, 2012 ONCA 690 at para 12. In certain cases, where there is a realistic possibility of rehabilitation, the Courts may opt not to impose a jail sentence where it would otherwise be appropriate: *R v Preston*, 1990 CanLII 576 (BCCA).

[40] The Court has also noted that counsel for both the Crown and Mr. Chambers referred the Court to *R v. Pham*, 2013 SCC 15 (CanLII).

Submissions on Sentence

[41] The Crown submits that a conditional sentence order of 14 to 16 months is fit and appropriate, with the first half served on house arrest and the remaining half as curfew. There is also a request that counselling be included in the order, as well as ancillary orders for Mr. Chambers to abide by. The Crown relies upon *R v. Henry*, 2018 ONSC 427, and *R v. MacInnis*, 2014 NSPC 55, in arriving at a suggested range for the Court to consider in imposing sentence, as these two cases concern similar fact situations with a forcible entry and related injury. The Crown does, however, distinguish these cases as involving domestic violence as an aggravating factor.

[42] Mr. Chambers submits that a conditional discharge of 14 months is appropriate. He is willing to abide by any conditions imposed by the Court. He directs the Court's attention to the factors set out in *R v Fallofield*, [1973] B.C.J. No. 559. There is no question that in regard to the first and second *Fallofield* factor that a discharge, it is submitted, in like circumstances can be granted by the Court. Further, receiving a discharge is in the interests of Mr. Chambers. Finally the Court is to consider whether a conditional discharge effectively denounces the actions of Mr. Chambers in the circumstances and meets the factor of general deterrence.

Aggravating Factors

[43] The Crown outlined that the maximum sentence for the offences of forcible entry and mischief under \$5000 is two years. The maximum sentence for an offence for uttering threats is 5 years.

[44] The Crown recognizes that aggravating features of the offence include that Mr. Chambers violated the safety of Mr. Webster's, and others, home. Further, the incident was an attempt by Mr. Chambers to exact vigilante justice, because of his reaction to Mr. Webster touching his partner. The uttering of threats, while using a hammer and shears to break down doors and windows, was out of proportion.

[45] The Court finds that the victim, Mr. Webster, was very adversely impacted by the incident as he decompensated to the point of defecating in fear and then using his own feces in an attempt to somehow deter Mr. Chambers. As a matter of human experience, it is clear that Mr. Webster had an intense and literally primal fear reaction to Mr. Chambers' breaking through his door. Mr. Webster's Victim Impact statement indicates he is still haunted by the experience, which is an understandable reaction to the events of that day.

[46] The Court notes that as Mr. Chambers is an experienced combat veteran of the British Army, his ability to harm another is as much a part of him as his ability to assist others who have been harmed.

Mitigating Factors

[47] In terms of mitigation, the Court observes that Mr. Chambers has pled guilty and taken responsibility for his actions. It also notes that he has no prior criminal record, either in Canada or in the United Kingdom. Further, Mr Chambers has not breached any conditions associated with release, although over three years have passed since the incident.

[48] Crown and defence also remarked on Mr. Chambers remarkably pro-social life over the course of his lifetime, since joining the British Army in his youth and continuing into his current life here in Canada. He is 55 years old, with a lifelong pattern of public service, voluntarism, and pro-social community-oriented actions as he seeks to assist others and participate fully in community life.

[49] The Court takes note, too, of Mr. Chambers' behaviour while interacting with all justice participants upon his arrest, in difficult circumstances, as lending themselves to mitigation. Mr. Chambers' was polite and respectful to all justice participants, even while left without the means to clean himself of blood and feces, and while unclothed, through the course of his overnight detention on his initial arrest.

[50] While I noted in my *voir dire* decision, I am not applying the *R v. Nasogaluak*, 2010 SCC 6, [2010] 1 SCR 206 decision in making this sentencing decision applying a s. 24 *Charter* remedy for a *Charter* breach of a reduction in sentence.

[51] I did reserve the right to weigh this aspect as a mitigating factor. Mr. Chambers' requests that the Court consider his very high degree of self-discipline even in that circumstance, which was remarked upon as evident by the Court throughout the video evidence put forward by the defence at the earlier *voir dire*. This, when considered with the submissions to the Court concerning his prior life, experience and training would mitigate against a carceral sentence.

[52] Indeed, both the Crown and defence have made submissions on an appropriate sentence, neither of which include a term of imprisonment. Both counsel agree the offences do not preclude a conditional sentence being imposed.

[53] The Court received submissions by both the Crown and Mr. Chambers of the impact on his immigration status in the event that he receives a conditional sentence, with a resultant criminal record, and how this may relate to considering parity of sentence for this particular offender.

[54] The Supreme Court of Canada in *Pham, supra* at paras 8-13 advises sentencing judges that:

[8] In addition to proportionality, the principle of parity and the correctional imperative of sentence individualization also inform the sentencing process. This Court has repeatedly emphasized the value of individualization in sentencing: *Ipeelee*, at para. 39; *R. v. Wust*, 2000 SCC 18, [2000] 1 S.C.R. 455, at para. 21; *R. v. M. (C.A.)*, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 92. Consequently, in determining what a fit sentence is, the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(a) of the *Criminal Code*), as well as objective and subjective factors related to the offender's personal circumstances.

[9] As a corollary to sentence individualization, the parity principle requires that a sentence be similar to those imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b) of the *Criminal Code*). In other words, "if the personal circumstances of the offender are different, different sentences will be justified" (C. C. Ruby, G. J. Chan and N. R. Hasan, *Sentencing* (8th ed. 2012), at §2.41).

[10] Ultimately, the sentence that is imposed must be consistent with the fundamental purpose of sentencing, which is to contribute to respect for the law and the maintenance of a just, peaceful and safe society. The sentence must have one or more of the objectives of denunciation, general and specific deterrence, separation of offenders from society if need be, rehabilitation, reparations to victims for harm done to them, promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community (s. 718 of the *Criminal Code*).

[11] In light of these principles, the collateral consequences of a sentence are any consequences for the impact of the sentence on the particular offender. They may be taken into account in sentencing as personal circumstances of the offender. However, they are not, strictly speaking, aggravating or mitigating factors, since such factors are by definition related only to the gravity of the offence or to the degree of responsibility of the offender (s. 718.2(a) of the *Criminal Code*). Their relevance flows from the application of the principles of individualization and parity. The relevance of collateral consequences may also flow from the sentencing objective of assisting in rehabilitating offenders (s. 718(d) of the *Criminal Code*). Thus, when two possible sentences are both appropriate as regards the gravity of the offence and the responsibility of the offenders, the most suitable one may be the one that better contributes to the offender's rehabilitation.

[12] However, the weight to be given to collateral consequences varies from case to case and should be determined having regard to the type and seriousness of the offence. Professor Manson explains this as follows:

As a result of the commission of an offence, the offender may suffer physical, emotional, social, or financial consequences. While not punishment in the true sense of pains or burdens imposed by the state after a finding of guilt, they are often considered in mitigation.

...

The mitigating effect of indirect consequences must be considered in relation both to future re-integration and to the nature of the offence. Burdens and hardships flowing from a conviction are relevant if they make the rehabilitative path harder to travel. Here, one can include loss of financial or social support. People lose jobs; families are disrupted; sources of assistance disappear. Notwithstanding a need for denunciation, indirect consequences which arise from stigmatization cannot be isolated from the sentencing matrix if they will have bearing on the offender's ability to live productively in the community. The mitigation will depend on weighing these obstacles against the degree of denunciation appropriate to the offence.

[Emphasis added.]

(The Law of Sentencing (2001), at pp. 136-37)

[13] Therefore, collateral consequences related to immigration may be relevant in tailoring the sentence, but their significance depends on and has to be determined in accordance with the facts of the particular case.

[55] In this case, it is admitted by defence that a conditional sentence, whether as a sentence with a criminal record or a conditional discharge, will not attract the potential severe impact of Mr. Chambers being inadmissible to Canada. The Crown submits that, based on its scan of the cases of like sentences in like matters, that Mr. Chambers may have received a sentence of imprisonment but that the sentence proposed by the Crown in this matter was tailored, with *Pham, supra*, in mind. The Crown requests that the Court consider carefully the degree of denunciation, in the sense of general denunciation, the community concerning this

offence. It does not dispute that Mr. Chambers experienced significant specific deterrence and denunciation, but submits that there should be a sanction that denounces vigilantism in our community as unacceptable.

[56] The Court agrees with the submission that our communities can not descend into vigilantism. The Court is, however, not convinced that imposing a sentence in this case with unseen collateral consequences which a conditional sentence would impose on Mr. Chambers is a balanced sentence as against the rehabilitative aims of sentencing, especially for a first offender, and the parity principle as applied for this offender.

[57] The Court agrees that tailoring the sentence to fit Mr. Chambers in his circumstances is appropriate, and in reading *Pham, supra* is informed that the mitigating effect of indirect consequences (para 12 *R v. Pham, supra*) is a consideration for the Court. In Mr. Chambers' case, the indirect consequences are that he has lost employment, has lost volunteer opportunities and the community has lost his valuable services as a result, as well. In the Court's view the appropriate sentence imposed may be one that does not preclude him in continuing to volunteer, work in the medical field, and continue in his pattern of pro-social behaviour as there is a very high likelihood of his continued success with very little likelihood to reoffend, especially in light of his high degree of personal discipline.

[58] Finally, the Court is of the view that the third *Fallofield, supra*, factor has been met, as the discharge is “not contrary to the public interest”, or in other words, it is not deleterious (*R v. Thompson*, 2017 NSPC 18 (CanLII) at para 51 and 52). Mr. Chambers’ conditional discharge is dependent on him meeting the conditions, and on his continued good behavior does not appear contrary to the public interest given his uniquely long pattern of pro-social, pro- community and high degree of personal discipline.

Restitution and Victim Surcharge

[59] Counsel for the Crown and Mr. Chambers indicated that there is agreement on the amount for a restitution order for Mr. Chambers for the damages to Mr. Webster’s property, in the amount of \$3500.

[60] In regard to the issue of the Victim Surcharge, the Crown commented that the amount would be \$600, as set by statute, but made no submissions on whether it should be applied, subject to Mr. Chambers’ submissions. Mr. Chambers indicates that due to his suspension from work that payment of the restitutionary amount would in itself be challenging, given his financial circumstances, but if the Court did levy this amount it was requested if it could be paid over a period of time, perhaps over the course of sentence.

[61] The Court finds, in this matter, that it is appropriate that Mr. Chambers does pay the Victim Surcharge, in the amount of \$600, with the total amount to be remitted at least 30 days prior to the end of his sentence.

Conclusion

[62] Mr. Chambers, I am going to ask you to please stand.

[63] Mr. Chambers, you have entered a plea of guilty in regard to the lesser but included offences contrary to the *Criminal Code* as follows: forcible entry contrary to s. 72 (1) of the *Code*; mischief under \$5000 contrary to s. 430(4) of the *Code*; and uttering threats contrary to s. 264.1(1) of the *Code*.

[64] I have considered the submission of both the Crown and the defence in this matter and impose the following sentence, for the reasons that I have just set out, as follows:

1. Sentence of conditional discharge in the amount of 16 months from the date of this Order subject to the following conditions:
 - a. Keep the peace and be of good behaviour;
 - b. Appear before the Court when required to do so by the Court;

- c. Report to a Probation Officer in Bridgewater forthwith;
- d. Notify the probation officer in advance of any change of name or address, and promptly notify the supervisor of any change of employment or occupation;
- e. To have no contact, directly or indirectly, with Craig Webster and Dawn Ewing;
- f. Refrain from attending any known addresses of the above-named individuals, including residences, places of employment, and educational institutions, with the exception of Mr. Chambers own educational pursuits;
- g. Attend for mental health assessment and counselling as directed by your probation officer;
- h. Attend for assessment and counselling in anger management as directed by your probation officer;
- i. Attend for, participate in and successfully complete any other assessment, counselling, treatment or program directed by your probation officer; and,

- j. Sign any consents required by service providers to allow your probation officer to get updates or reports as to your participation and progress.

[65] There is an order for restitution in the amount of \$3500.

[66] A Victim Surcharge amount is also ordered, in the amount of \$600, to be payable in full 30 days before the end of the conditional discharge sentence that has been imposed.

Diane Rowe, J.