

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**DANIEL HACHE**

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**Transcript of the Sentencing by the Honourable Chief Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 30<sup>th</sup> day of July, 2019**

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**APPEARANCES:**

M. Fane:	Counsel for the Crown
T. Boyd:	Counsel for the Defence

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Charge(s) under s. 267(b) of the Criminal Code of Canada

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1           **DECISION BY THE COURT:**

2           THE COURT:           It is often said that sentencing is one of  
3                               the most difficult and daunting responsibilities of a  
4                               judge. Deciding the punishment another person will  
5                               receive is never easy. Imposing punishment is never  
6                               pleasant.

7                               But some cases are more difficult than others,  
8                               and this case is one of those extremely difficult ones.  
9                               Today, it is my responsibility to sentence Daniel Hache.  
10                              In making my decision, I have to take into account what  
11                              happened. I have to take into account the personal  
12                              circumstance of Mr. Hache, and I have to apply the  
13                              legal principles that govern sentencing.

14                             At the outset, I want to thank counsel for their  
15                             thorough submissions. They have said everything that  
16                             could be said about all the things I need to consider  
17                             and balance in making this decision.

18                             I must sentence Mr. Hache on the basis of the  
19                             facts as they were presented by the Crown and  
20                             admitted by him at the sentencing hearing.

21                             I mention this because in some of the victim  
22                             impact statement materials filed, included at Exhibit S-  
23                             3, there are comments that suggest that the victim of  
24                             this offence, and some of his family members, may  
25                             have a view or understanding of what happened that is  
26                             different from the facts that are set out in the agreed  
27                             statement of facts, and that they believe that the events

1 may have unfolded differently than what the agreed  
2 facts say.

3 I, of course, have to make my decision based on  
4 the facts that were presented by the Crown, and  
5 admitted by Mr. Hache, and are outlined in the two  
6 agreed statement of facts that have been marked as  
7 exhibits. I will summarize those facts now.

8 On June 20th, 2017, Mr. Hache, Mr. Zemnick, and  
9 Mr. Zemnick's partner Julia Carpenter, and their two  
10 children, were all on an island on Prelude Lake, outside  
11 of Yellowknife. They were there to build a cabin for Mr.  
12 Hache's father, and his father's partner, Mrs. Chenard.  
13 After a day's work at the site, the adults started  
14 consuming alcohol with dinner, and continued drinking  
15 throughout the evening.

16 Mr. Zemnick went to sleep. Mr. Hache and Ms.  
17 Carpenter stayed up. Shortly after midnight, Ms.  
18 Chenard called Mr. Hache and asked him to come pick  
19 her up at the dock near the Prelude Lake campground.  
20 Mr. Hache agreed to do so, and left the island on the  
21 Sea-Doo. En route, the Sea-Doo partially sank. Mr.  
22 Hache held onto it and called out for Ms. Carpenter to  
23 come get him. It took her some time to do so, and  
24 during that time Mr. Hache was in the water, hanging  
25 on to the partially sunk Sea-Doo.

26 Once they were back on the island, Mr. Hache  
27 yelled at Ms. Carpenter about how long it had taken her

1 to come get him. She yelled back at him. Mr.  
2 Zemnicky awoke to this. He physically confronted Ms.  
3 Carpenter about her yelling. Mr. Hache told him to  
4 stop. Mr. Hache saw him strike Ms. Carpenter multiple  
5 times, including once with his fist striking towards her  
6 mouth. Mr. Hache continued to yell at Mr. Zemnicky to  
7 leave Ms. Carpenter alone.

8 At the end of the confrontation with Ms.  
9 Carpenter, Mr. Zemnicky had her in what is described  
10 in the agreed facts as a "hugging-type" hold. He let her  
11 go, turned towards Mr. Hache and raised his arms. He  
12 approached Mr. Hache and attempted to place him in  
13 the same type of "hugging-type" hold. A brief physical  
14 confrontation then took place between Mr. Hache and  
15 Mr. Zemnicky. At this point, they were near the fire pit  
16 of the campsite.

17 Mr. Hache grabbed an object referred to in the  
18 agreed facts as a "cast iron pie iron." In other  
19 materials, this object is referred to as a "hobo pie stick."  
20 I understand it to be a cast iron object with a long  
21 handle used to cook over a campfire. Mr. Hache hit Mr.  
22 Zemnicky once on the left side of the head with this  
23 object. Mr. Zemnicky fell and hit his head either on the  
24 fireplace or on the campfire, or the rock next to it.

25 It is admitted that when he struck Mr. Zemnicky,  
26 Mr. Hache did so for the purpose of defending himself,  
27 but that what he did was not a reasonable and

1 proportional response to what was happening. In other  
2 words, Mr. Hache acknowledges that he cannot, in law,  
3 benefit from the defence of self-defence.

4 If the defence applied, he would not be guilty of  
5 a crime. Because our law recognizes that it is  
6 permissible to use force to defend one's self. But the  
7 force used cannot be disproportionate. Here, Mr.  
8 Hache acknowledges the force he used was not  
9 proportionate.

10 Mr. Hache quickly realized that Mr. Zemnick  
11 was hurt. He tried to assist him by bandaging his  
12 wound and trying to stop him from removing the  
13 bandage. He called the operational communications  
14 centre of the Yellowknife RCMP to ask for help.

15 There were several calls. I think it's fair to say  
16 that Mr. Hache sounds panicked and desperate in  
17 some of those calls, repeatedly asking the operator to  
18 send help. He also told the operator how Mr. Zemnick  
19 got injured.

20 Police officers and paramedics arrived on the  
21 island at about 3:30 in the morning. Paramedics  
22 attended to Mr. Zemnick and transported him back to  
23 Yellowknife so he could receive medical care. When  
24 the police officers arrived on the island, Mr. Hache told  
25 them what happened. He showed them where it  
26 happened near the fire pit, and the object he used. Mr.  
27 Hache was arrested and kept in custody. The next

1 day, he gave a formal statement to police, in which he  
2 confirmed his admissions of the previous night.

3 Mr. Zemnický suffered extremely serious  
4 injuries. Exhibit S-6 sets out the details of those  
5 injuries, and aspects of how his recovery has  
6 progressed. The injuries included a depressed skull  
7 fracture, an orbital fracture and a facial fracture. He  
8 suffered a serious brain injury. As a result of this brain  
9 injury Mr. Zemnický has numbness to the right side of  
10 his body. He had to relearn how to speak, and the tone  
11 of his voice is altered. He has frequent headaches. He  
12 has ringing in his ears. He has had chronic seizures,  
13 some significant, including one that required him to be  
14 taken to emergency. The frequency and intensity of  
15 those seizures has diminished somewhat, but he still  
16 has them.

17 He has had a number of surgeries already, and  
18 is on a waiting list now to have another one, which will  
19 consist of having a titanium mesh implanted in the hole  
20 to his skull. There is a moderate chance of this  
21 reducing the frequency of his seizures. Mr. Zemnický is  
22 a carpenter. He has been unable to work since these  
23 events. He cannot lift anything heavy, as this could  
24 trigger seizures. His prospects for being able to work in  
25 the future are uncertain.

26 Aside from the physical impact that this has had  
27 on Mr. Zemnický, these events have had serious

1 financial impact and immeasurable emotional impact on  
2 him and his family. These are described in the  
3 materials included in Exhibit S-3. The victim impact  
4 statements that he has prepared, as well as those  
5 prepared by his sister, his spouse and other family  
6 members, are heartbreaking. Trying to summarize or  
7 paraphrase these documents would not do them  
8 justice. But as I have already said, the consequences  
9 have been catastrophic, life-changing and permanent  
10 for this family.

11 These proceedings and the sentence I impose,  
12 no matter what it is, cannot repair the harm done.  
13 Nothing can repair this harm.

14 I turn now to the circumstances of Mr. Hache  
15 himself, which I must also take into account in making  
16 my decision. He was 21 years old at the time of these  
17 events and is now 23. He is of Metis descent. He has  
18 no criminal record. I have the benefit of the pre-  
19 sentence report to assist me in understanding Mr.  
20 Hache's background and family circumstances. I will  
21 not repeat here all the information that is in the report,  
22 but I have considered it all. It is a thorough report and it  
23 is very helpful.

24 Mr. Hache's father and mother separated when  
25 he was still a baby. He was raised by his father and  
26 paternal grandparents. When he was nine, his father  
27 began a relationship with a woman, and Mr. Hache



1 lived with them. Mr. Hache says he was bullied  
2 emotionally and physically at school. He completed  
3 grade 11, but dropped out after that.

4 His plans are to go back and complete high  
5 school, and eventually go to college to work as a  
6 mechanic, or in the area of autobody repair. He says,  
7 though, that he needs to be financially stable before he  
8 goes back to school, to maximize his chances of  
9 success.

10 In the report, he described his childhood as both  
11 happy and hard. He says his stepmother was  
12 physically abusive to him when he was between 10 and  
13 11, but he also has fond memories of going fishing with  
14 his father and uncles, and spending time with his  
15 grandfather, who he was very close to. He describes  
16 feeling extremely loved by his paternal grandparents.  
17 His grandfather passed away when he was eight, but  
18 he remained close to his grandmother. Their  
19 relationship has been strained since what happened in  
20 June 2017.

21 When he was 15 years old, Mr. Hache travelled  
22 to Alberta with his father, and met his biological mother  
23 and siblings. This was a significant event for him. At  
24 17, he moved to Calgary to live with her. Things were  
25 not going well in high school in Yellowknife at that point,  
26 and he wanted a fresh start. A few years later, he  
27 moved back to Yellowknife though, because he missed

1 his friends and family.

2 At the time the report was prepared, Mr. Hache  
3 lived with his grandmother. At the time of sentencing  
4 submissions, he was living with his stepsister, who he  
5 is close to. As I understood counsel's submissions, he  
6 was doing chores for her in exchange for staying there.

7 Mr. Hache's employment history is limited,  
8 although there is mention in the report that for the  
9 periods he did work, he was considered a good  
10 employee. He is unemployed at this time. His counsel  
11 said he had been looking for work, but without success.

12 The report says that Mr. Hache suffers from  
13 depression, anxiety and insomnia, as a result of the  
14 events that led to this charge. This may explain why he  
15 has had some difficulty finding work.

16 Although Mr. Hache was drinking on the night of  
17 these events, there is no suggestion that he was highly  
18 intoxicated, or that he has an alcohol problem. There is  
19 no indication that he is a violent person. The author of  
20 the report wrote that he presented as a shy, respectful  
21 and soft-spoken young man, and that he answered  
22 questions openly, honestly and without hesitation.

23 Mr. Hache was originally charged with  
24 aggravated assault. That is an indictable offence that is  
25 punishable by a maximum of 14 years' imprisonment.  
26 When he first appeared in court on this charge, he  
27 elected to have his trial proceed before a jury, and to

1 have a preliminary hearing. The preliminary hearing  
2 proceeded. Mr. Zemnick and Ms. Carpenter testified  
3 at that hearing. A date was eventually set for the jury  
4 trial.

5 A date was also set for a hearing into the  
6 admissibility of what Mr. Hache said to the telephone  
7 operator who took his calls that night, and of his  
8 admissions to police officers. I concluded that the  
9 things he said on those occasions were admissible and  
10 could be presented at his trial.

11 Sometime after I communicated that decision to  
12 the parties, but before the trial started, Mr. Hache with  
13 the consent of the Crown, entered a plea of not guilty to  
14 aggravated assault, but guilty to the lesser charge of  
15 assault causing bodily harm, proceeded summarily.  
16 The law requires the court to show deference to the  
17 manner in which the Crown exercises its discretion,  
18 when it consents to pleas to lesser charges. The  
19 reason for that deference is that the Crown knows its  
20 case, its strengths and its frailties, and is in the best  
21 position to assess what course of action is best in the  
22 public interest.

23 As a result, the charge Mr. Hache is to be  
24 sentenced on is assault causing bodily harm,  
25 proceeded summarily. That charge is punishable by a  
26 maximum of 18 months' imprisonment, and there is no  
27 minimum punishment.

1                   The Crown says that I should impose the  
2                   maximum sentence, 18 months' imprisonment. The  
3                   Crown acknowledges that there are mitigating factors  
4                   and extenuating circumstances in this case, but argues  
5                   that those are already accounted for in the Crown's  
6                   acceptance of the plea to the lesser offence.

7                   The Crown points out that absent the mitigating  
8                   factors of this case, a person who causes this type of  
9                   injury could expect to be sentenced on an aggravated  
10                  assault charge to a jail term in the penitentiary range.

11                  The Crown also seeks a restitution order in the  
12                  amount of \$7,884.79 pursuant to s. 739.1 of the  
13                  *Criminal Code*. That provision allows the court to make  
14                  such an order to compensate a victim of crime for  
15                  financial losses that are the result of the offence, if  
16                  those amounts are readily ascertainable.

17                  Defence counsel acknowledges that a jail term  
18                  must be imposed, but asks that it be imposed as a  
19                  conditional sentence, meaning that Mr. Hache would be  
20                  permitted to serve it in the community under strict  
21                  conditions, including house arrest. Defence counsel  
22                  emphasizes his youth, his lack of record, and the fact  
23                  that although he admits he used excessive and  
24                  disproportionate force, he was not the aggressor, and  
25                  did what he did trying to defend himself.

26                  As for the restitution order, the defence does not  
27                  dispute that it is open to me to make such an order, and

1 that the materials filed at the sentencing hearing make  
2 the amount sought readily ascertainable. But defence  
3 asks me to refrain from making such an order, given  
4 that Mr. Hache has no employment at this time, and  
5 does not have any means to make immediate  
6 restitution.

7 The main issue I have to decide today is  
8 whether a conditional sentence ought to be imposed.  
9 In law, a conditional sentence is available when three  
10 conditions are met. First, the sentence has to be less  
11 than two years. That condition is met here, because  
12 the maximum sentence I could impose is 18 months.

13 Second, I must be satisfied that allowing Mr.  
14 Hache to serve his sentence in the community would  
15 not endanger the safety of the public. In this case, on  
16 the evidence before me, that condition is met as well.  
17 The Crown is not suggesting that Mr. Hache presents a  
18 threat to the safety of the public.

19 The third condition is the critical one in this case.  
20 To impose a conditional sentence, I have to be satisfied  
21 that allowing Mr. Hache to serve his sentence in the  
22 community would be consistent with the fundamental  
23 principles and purposes of sentencing. To answer that  
24 question, those principles and purposes must be  
25 examined. They are set out in the *Criminal Code*. The  
26 objectives of sentencing are outlined in s. 718, and they  
27 are:

- 1 (a) To denounce unlawful conduct and the harm
- 2 done to victims, or to the community that is
- 3 caused by unlawful conduct.
- 4 (b) To deter the offender and other persons from
- 5 committing offences.
- 6 (c) To separate offenders from society when
- 7 necessary.
- 8 (d) To assist in rehabilitating offenders.
- 9 (e) To provide reparations for harm done to
- 10 victims, or to the community, and;
- 11 (f) To promote a sense of responsibility in
- 12 offenders, and acknowledgement of the harm
- 13 done to victims or to the community.

14 The sentencing principles are also set out in the  
15 *Criminal Code* in several different sections. The  
16 fundamental principle is proportionality. A sentence  
17 should be proportionate to the seriousness of the  
18 offence, and to the degree of responsibility of the  
19 person who committed it.

20 The other sentencing principles are all aimed at  
21 helping the court balance the various factors, and arrive  
22 at a sentence that is proportionate. One of those  
23 principles is restraint. It means that a sentence should  
24 never be harsher than what is required to achieve the  
25 objectives of sentencing. It means incarceration should  
26 be the last resort, and it means that when incarceration  
27 is imposed, it should never be for longer than what is

1 required to achieve the sentencing objectives.

2 Mr. Hache is of Metis descent, and because of  
3 this, the principles that govern the sentencing of  
4 indigenous offenders apply in this case. These  
5 principles, explained and articulated in the Supreme  
6 Court of Canada cases of *R. v. Gladue* and *R. v.*  
7 *Ipeelee* and others, apply in a large number of  
8 sentencing hearings in this jurisdiction, since a large  
9 part of our population is indigenous.

10 I am required to take judicial notice of  
11 background, and systemic factors that have had an  
12 impact on indigenous people in this country, and  
13 contributed to their overrepresentation in Canadian  
14 jails. And I have done so.

15 I am also required to take into account specific  
16 things from Mr. Hache's background, as an indigenous  
17 man, that have had an impact on him and have a  
18 bearing on his level of blameworthiness. The principles  
19 that govern the sentencing of indigenous offenders are  
20 rooted in the recognition of the disadvantages they  
21 have been subjected to historically, the consequences  
22 that this has had on people, and how it has resulted in  
23 indigenous people being overrepresented in Canadian  
24 jails. The underlying objectives of these principles is to  
25 address the issue of that overrepresentation.

26 The law is clear that these principles apply to all  
27 offences, even the most serious ones. Depending on

1 the circumstances though, they may have less of an  
2 impact on sentencing for more serious offences, than  
3 they do on sentencing for less serious offences. It  
4 depends, and the analysis has to be done on a case-  
5 by-case basis. As I alluded to already, this ties back  
6 into the principle of proportionality, and more  
7 specifically the assessment of the offender's level of  
8 responsibility.

9 When assessing the degree of blameworthiness  
10 of an indigenous offender, courts must take into  
11 account that systemic and individual factors that I have  
12 talked about may have had an impact on their level of  
13 blameworthiness.

14 I have taken all of this into account in my  
15 deliberations. I recognize that Mr. Hache has faced  
16 some struggles in his upbringing. However, fortunately  
17 for him, he was not subject to the level of abuse and  
18 dysfunction that we often hear about at sentencing  
19 hearings. I do not find that in this case, his  
20 blameworthiness in the commission of this offence is  
21 significantly reduced by his circumstances, or by the  
22 systemic and background factors that I have taken  
23 judicial notice of.

24 That being said, Mr. Hache is a young man and  
25 a first offender. This makes rehabilitation an important  
26 sentencing objective.

27 The law is also clear, however, that the



1 principles of deterrence and denunciation take on  
2 particular importance when dealing with crimes of  
3 violence. The court must ensure that its sentences  
4 underscore and demonstrate society's condemnation of  
5 violence.

6 There are mitigating factors to consider. Mr.  
7 Zemnick's conduct during the events must be taken  
8 into account.

9 In assessing Mr. Hache's level of  
10 blameworthiness, I cannot overlook the fact that, even  
11 though he used disproportionate force, it is admitted  
12 that the force he used was with the intention of  
13 defending himself, and after having witnessed Ms.  
14 Carpenter being assaulted. The victim's role in the  
15 incident is a mitigating factor, as was noted in *R. v.*  
16 *Whiteley* 2017, ONCA 804 at Paragraph 15.

17 In addition, Mr. Hache has pleaded guilty. This  
18 plea was not entered at an early stage of these  
19 proceedings. The victim and his partner had to testify  
20 at the preliminary hearing into this matter. The *voir dire*  
21 into the admissibility of Mr. Hache's statement  
22 proceeded. But the timing of the plea has to be  
23 weighed against the fact that the Crown accepted the  
24 plea to a charge that carries significantly less jeopardy  
25 than the charge Mr. Hache was facing up until then.

26 As I already said, aggravated assault carries  
27 with it a maximum sentence of 14 years. It is not an

1           offence for which a conditional sentence can be  
2           imposed. The charge he has pleaded guilty to carries a  
3           maximum sentence of 18 months in jail, and is one that  
4           leaves open the possibility of a conditional sentence.  
5           Given this change in jeopardy, and given the Crown's  
6           acknowledgement that there would have been triable  
7           issues had this matter gone to trial, I am satisfied that  
8           Mr. Hache is entitled to credit for his guilty plea, even  
9           though it was not entered at early stages in these  
10          proceedings.

11                     A guilty plea avoids a trial. It also signals that an  
12          accused accepts responsibility for his actions. Often, it  
13          is considered a sign of remorse. Mr. Hache chose not  
14          to speak when he had an opportunity to do so, at the  
15          conclusion of sentencing submissions. And that was  
16          his right. As a result, the only information I have about  
17          his views about what happened is what is included in  
18          the pre-sentence report. The author of the pre-  
19          sentence report writes that Mr. Hache feels badly about  
20          what happened, but does not want to apologize,  
21          because he feels an apology would be insincere.

22                     This suggests to me that at some level, Mr.  
23          Hache still feels a sense of justification in what he did,  
24          that he had no choice, even though through his plea he  
25          has accepted that in law, he did not have an actual self-  
26          defence defence to this charge. Evidently, Mr. Hache  
27          was honest with the author of the report, and that is to

1 his credit. But I must say, I find his way of looking at  
2 things, even now, a bit troubling.

3 I accept he was trying to help someone else,  
4 and defend himself, but there is no way around the fact  
5 that the force he used was completely disproportionate.  
6 I hope that irrespective of the sentence I impose today,  
7 Mr. Hache will continue to reflect about what happened,  
8 and his responsibility in it. But that is not something  
9 that can be forced on him, he will have to come to this  
10 on his own.

11 I have talked about the mitigating factors. Those  
12 must be balanced against the seriousness of this  
13 offence. The devastating consequences that this  
14 assault had must not be allowed to completely overtake  
15 the analysis. That point was made in *R. v. Blackrabbit*,  
16 2011 ABSC 211 where the court, citing an Alberta  
17 Court of Appeal case *Mellstrom* (1975) 22 CCC (2d)  
18 472 said,

19 While the enormity of the tragic consequences  
20 of an offence is a factor to be taken into  
21 consideration, it must not be permitted unduly to  
22 distort the consideration of the court, as to the  
23 appropriate sentence for the offence committed.

24 The same point was also made by the Alberta Court of  
25 Appeal in *R. v. Child's* 1991 ABCA 300.

26 Still, the consequences of the crime are relevant  
27 in assessing its seriousness.

1                   There are situations where the same behaviour  
2                   can bring very different consequences. For example,  
3                   courts see countless cases that involve a single punch  
4                   where the victim ends up with a bruise, a black eye or a  
5                   small cut, or some other relatively minor injury. In  
6                   another case, the same single punch might result in a  
7                   broken nose or a broken jaw. And every once in a  
8                   while, tragically, that single punch causes the victim to  
9                   fall, hit his head and die. In these different situations,  
10                  the punch is the same, but the consequences vary  
11                  dramatically, and the sentences imposed in each of  
12                  these scenarios, inevitably, would reflect that.

13                  In my examples, the actual charge the person  
14                  would face would probably be different. But I am just  
15                  trying to illustrate that the same blameworthy act may  
16                  bring about very different consequences, and that  
17                  variation in consequence will inevitably have a bearing  
18                  on the sentence imposed.

19                  That is especially so when the blameworthy act  
20                  itself is very serious. Beyond the consequences of the  
21                  act, that is what is key, the nature of the act itself.  
22                  There is a multitude of different ways an assault can be  
23                  committed, some much more blameworthy than others.  
24                  In my example of the single punch, I think it is fair to  
25                  say the possibility that it might result in serious harm or  
26                  death is quite remote. It is not a consequence that  
27                  would normally be expected to flow from that act.

1                   Here, Mr. Hache picked up a cast iron object  
2                   and struck Mr. Zemnicky on the head with it. This is an  
3                   extremely serious act, both from the point of view of the  
4                   weapon used, and the part of the victim's body that was  
5                   struck. The catastrophic consequences that followed  
6                   were entirely foreseeable. An act like this will inevitably  
7                   result in very serious injuries. It could have easily  
8                   resulted in death.

9                   This is a highly dangerous, highly blameworthy  
10                  act. It was as predictable that serious harm would  
11                  result as it would have been if Mr. Hache had picked up  
12                  a knife or an axe, and struck Mr. Zemnicky with it. I am  
13                  not overlooking that this happened in the context of an  
14                  altercation initiated by Mr. Zemnicky, but the  
15                  introduction of a weapon in a physical fight escalates  
16                  things, and elevates the risk that serious injury will  
17                  occur. This happened in this case, and is also  
18                  illustrated in many of the cases filed by the Crown at  
19                  the sentencing hearing.

20                 The need to deter and denounce that type of  
21                 conduct is extremely important. And while courts have  
22                 recognized that a conditional sentence can have a  
23                 deterrent and denunciatory impact, actual incarceration  
24                 is what sends the most powerful denunciatory message  
25                 that a court can send. As I said, the fundamental  
26                 question in deciding whether a conditional sentence  
27                 can be imposed is whether, in all the circumstances,

1 allowing Mr. Hache to serve his sentence in the  
2 community would be consistent with the fundamental  
3 purpose and principles of sentencing.

4 I have given this issue anxious consideration  
5 over the past few weeks, and I have concluded that it  
6 would not adequately reflect the high level of  
7 blameworthiness and inherent dangerousness of what  
8 he did. This court has a duty to send a strong  
9 denunciatory message about behaviour that is  
10 dangerous, and that causes that level of harm. I am  
11 not satisfied that this message can be adequately  
12 conveyed through the imposition of a conditional  
13 sentence, even if it were to include house arrest and  
14 other conditions.

15 It would send the wrong message to others who  
16 might be tempted to introduce this kind of weapon in an  
17 altercation, and use it in this manner. It would not send  
18 the right message about the importance of not using  
19 disproportionate, potentially lethal force in this kind of  
20 situation.

21 This is not about revenge or retribution. It is  
22 about ensuring that the sentence adequately reflects  
23 the seriousness of what happened, and the harm done.  
24 It is about sending a clear message about the use of all  
25 forms of weapons that can cause this much damage.

26 I have not overlooked the mitigating factors, and  
27 the unusual circumstances of this case, including the

1 situation Mr. Hache was in, his efforts to assist Mr.  
2 Zemnicky in getting help to the island after this  
3 happened, and his admissions about his involvement  
4 the night of these events.

5 I am also very mindful of the importance of  
6 restraint. This is Mr. Hache's first conviction. The fact  
7 of actual incarceration, in and of itself, will send a  
8 powerful message not just to him but to others.

9 To be very clear, an 18-month jail term could  
10 very well be imposed in this case, and an even longer  
11 sentence could have been imposed, had this  
12 proceeded as an aggravated assault charge. If Mr.  
13 Hache had been convicted of aggravated assault after  
14 trial, he easily could have been looking at a sentence of  
15 imprisonment of several years.

16 However, in trying to balance the need for a  
17 denunciatory sentence with restraint, as much as  
18 possible, I will impose a shorter sentence than what the  
19 Crown was seeking. The other reason I have decided  
20 to reduce the jail term imposed is that I have decided,  
21 having considered the principles set out in *R. v. Castro*,  
22 2010 ONCA 718. to grant a restitution order in this  
23 case. I have so decided for the following reasons.

24 First, the amount sought is far less than the  
25 actual financial loss to Mr. Zemnicky. Second, one of  
26 the sentencing objectives is the reparation of harm  
27 done to victims. It is of course beyond this court's

1 power to restore Mr. Zemnicky to the position he was in  
2 before this happened. But to the extent that a  
3 restitution order will facilitate in possibly recovering  
4 some of his losses, that is a form of partial reparation.

5 I have taken into account Mr. Hache's limited  
6 means at this time, as well as the fact that he will be  
7 incarcerated for a period of time. But I have taken into  
8 account as well that he is a young man. He is or  
9 should be able to obtain employment, and it is in his  
10 interest to do that when he is released, and move  
11 ahead with his life. It is not unrealistic to think that at  
12 some point in the future, he will be able to satisfy this  
13 restitution order.

14 Mr. Hache, can you stand please? Mr. Hache,  
15 having considered this matter very carefully, I have  
16 decided that for the charge of assault causing bodily  
17 harm, the sentence will be of one-year imprisonment.  
18 You can sit down.

19 I also make a restitution order pursuant to s.  
20 739.1 of the *Criminal Code* in the amount of \$7,884.79  
21 for the benefit of Mr. Zemnicky. I trust that Crown  
22 counsel has explained to him the scope of such an  
23 order, and will ensure that he is informed of the steps  
24 you need to take to eventually enforce it.

25 I have every expectation that the sentence that I  
26 have imposed today will be viewed as overly harsh by  
27 some, and not harsh enough by others. But no matter



1                   how the people involved in these tragic events view the  
2                   sentence imposed, it is my hope that the conclusion of  
3                   these proceedings will mark one more step in the  
4                   recovery and healing process, and assist with providing  
5                   some closure to everyone who was involved and  
6                   affected by these events. Is there anything I've  
7                   overlooked, Mr. Fane?

8           M. FANE:           Just with respect to, Your Honour, to the  
9                   ancillary orders.

10          THE COURT:           Remind me what they were. You were --

11          M. FANE:           That DNA is primary --

12          THE COURT:           Sorry?

13          M. FANE:           It's -- it's a DNA primary designated offence.

14          THE COURT:           All right.

15          M. FANE:           And as well, Your Honour...

16          THE COURT:           I don't recall you seeking a firearms  
17                   prohibition.

18          M. FANE:           I wanted to make sure that I haven't done so,  
19                   and no, I did not.

20          THE COURT:           It is not mandatory on a charge like this,  
21                   and I would not impose one. Mr. Hache is still very  
22                   young, and I really hope that this will close a chapter for  
23                   you, Mr. Hache, and that you can move on with your  
24                   other plans and have a productive life. Because there's  
25                   no reason why you shouldn't be able to have one.  
26                   Anything I've overlooked from defence's perspective?

27          T. BOYD:           Not from defence, Your Honour.

1 THE COURT: Thank you. Close court.

2 THE CLERK: All rise. I declare the Supreme Court  
3 closed.

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6 **(PROCEEDINGS CONCLUDED)**

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**CERTIFICATE OF TRANSCRIPT**

Neesons, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability. Judicial amendments have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 4th day of September, 2019.

  
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Kim Neeson  
Principal