Case Name:
R. v. Noddle

Between
Regina, and
Darren Ross Noddle (also known as Darren Ross)

[2018] B.C.J. No. 3648

2018 BCSC 2013

Docket: 174146

Registry: Victoria

British Columbia Supreme Court
Victoria, British Columbia

Matthews J.

Heard: May 9-10, 2018.
Oral judgment: October 1, 2018.

(126 paras.)

Counsel:

Counsel for the Crown: P. Cheema, Q.C.

Counsel for the Accused: D. McKay.

Oral Reasons for Sentence

MATTHEWS J. (orally):--

Overview

1 On May 18, 2018, I found Mr. Noddle guilty of criminal harassment contrary to s. 264 of the *Criminal Code* of Canada.

2 The Crown, Mr. Noddle and his trial counsel appeared before me on June 15, 2018, for the purpose of making submissions on sentence. Mr. Noddle's counsel applied to be removed as counsel at that appearance. I allowed the application and I adjourned the sentencing hearing in order for Mr. Noddle to have an opportunity to retain new counsel.

3 On August 17, 2018, the sentencing hearing was reconvened. New counsel represented Mr. Noddle. Mr. Noddle brought a preliminary application to reopen the trial and adduce fresh evidence on which he represented himself. I dismissed those applications. The Crown and defence counsel for Mr. Noddle then made submissions on sentencing. I reserved my reasons to today.

4 These are oral reasons for sentence. If a transcript is requested, they will be edited, but the substance and the result will not change.

The Facts

Circumstances of the Offence

5 Mr. Noddle and Andrea McEachran met in grade school. They next made contact in 2007. In March 2008, they began communicating by email. At that time, Dr. McEachran was living in British Columbia and Mr. Noddle was living in Ontario. Dr. McEachran is a psychologist who has a private practice in Victoria.

6 Dr. McEachran and Mr. Noddle had a consensual emotional, but non-sexual relationship over several months in 2008. Dr. McEachran broke it off when she became uncomfortable with the romantic content of Mr. Noddle's communications.

7 They did not have further communications until 2011 when Mr. Noddle started emailing Dr. McEachran again. In 2012, Mr. Noddle sent Dr. McEachran emails and communications that she found to be bizarre. They created anxiety in her.

8 The communications continued through 2012 and 2013 and escalated in October of 2013. They included communications about an organization to end world hunger and to provide safe drinking water. It goes by the acronym SAFFE and was variously called SAFFE International or SAFFE Global.

9 Towards the end of 2013, Dr. McEachran wrote to Mr. Noddle by email and told him that he was scaring her and that she needed him to stop communicating with her. She told him that if he did not stop communicating with her, she would have to get other people involved as she did not feel she could handle it without help anymore.

10 In December 2013, after Dr. McEachran's email asking him to stop communicating with her,

Mr. Noddle travelled from Ontario to Victoria and attended at the building where Dr. McEachran practiced. She was not there at the time, but learned that he was there and she called the police. He was arrested and charged with criminal harassment under s. 264 of the *Criminal Code* of Canada.

11 In May 2014 while out on bail before his trial, Mr. Noddle showed up at Dr. McEachran's practice premises a second time. On that occasion, Dr. McEachran was there. He left without incident. Dr. McEachran reported this visit to the police.

12 In October 2014, Mr. Noddle was tried and convicted in the Provincial Court of British Columbia of harassment under s. 264 of the *Criminal Code* and of three counts of breaches of his bail terms under s. 145(3) of the *Criminal Code*. On December 1, 2014, Mr. Noddle received a sentence of four months for the s. 264 criminal harassment count and five months for the three counts of breaches of recognizance concurrent to each other and consecutive to the s. 264 sentence and three years' probation. One of the conditions of the probation order was that he not contact Dr. McEachran.

13 After his conviction, Dr. McEachran received communications that she believed to be from him in 2015, 2016, and November 2017. Those communications are not the subject of this conviction.

14 Mr. Noddle's probation ended at the end of November 2017. Over Christmas 2017, Dr. McEachran was out of her office. When she returned to the office in January 2018, three packages had arrived. In early January 2018, she received an email from Mr. Noddle. In February 2018, she received another package from Mr. Noddle. At trial, Mr. Noddle admitted to sending the three December 2017 packages and the February 2018 package.

15 Dr. McEachran testified that while Mr. Noddle was on probation, she was advised that he was not reporting to his probation officer and no one knew where he was. The postmarks on the December 2017 packages meant to her that he was getting closer and closer to B.C. She testified that the packages arrived at her private practice office where she is often alone or with sensitive clients. She found the communications invasive and they caused her to feel unsafe in her office.

16 At trial, Dr. McEachran reviewed the contents of the December 2017 packages and the February 2018 package. Like other communications she has received from him since his conviction, they were about lawsuits; SAFFE, which is an organization to end world hunger; authorizations, and patents. She said that the reference to her sister on one of the documents she understood to be related to the fact that Mr. Noddle knows her sister lives in Ontario and is a police officer. Some of the contents of the packages referred to Dr. McEachran. For example, one of them described her as a person who Mr. Noddle trusted is safe, and his intellectual property.

17 In my reasons for judgment on convicting Mr. Noddle, I found that the communications Mr. Noddle sent in December 2017 and February 2018 were largely unintelligible in content, but they were not benign. The communications were directed at Dr. McEachran and drew a connection

between her and Mr. Noddle. They made Dr. McEachran feel unsafe and they tormented her.

18 There was no pre-sentence report. The information which I have about Mr. Noddle relates to this charge and the conduct that underlay his previous convictions.

19 At trial, Mr. Noddle testified that in 2010 he went to his doctor for a rash. His doctor prescribed a drug called Aldara. Mr. Noddle claims that this was a defective pharmaceutical. He testified that it caused him a number of injuries between 2010 and 2016 including damage to his brain, damage to his muscles, skeleton, Parkinson's disease symptoms, insomnia, sleep deprivation, and an immune digestive disorder, induced suicide, tremors, and panic attacks.

20 At sentencing, counsel handed up a letter marked as Exhibit 2 written by Mr. Noddle's family physician. Dr. Gutman writes that Mr. Noddle suffers from seizures, memory loss, lack of coordination, pain, paresthesia, and muscle fatigue. Dr. Gutman reports that Mr. Noddle attributes the symptoms to Aldara. He thinks it is more likely a "conversion reaction", the agent for which is mental illness. Counsel for Mr. Noddle also has handed up a letter from a physician with Vancouver Island Regional Correctional Centre, which was marked as an exhibit. That letter responds to a request from Mr. Noddle as to whether cytokine deficiency is treatable. Dr. Herriot states that "there would hypothetically be no treatment for such a condition." Dr. Herriot does not state that Mr. Noddle has cytokine deficiency.

21 Returning to the chronology of events relating to Mr. Noddle and Dr. McEachran, Mr. Noddle testified that he did not know that Dr. McEachran wanted no further contact with him until December 2013 when she sent him an email telling him that. He said up until that time he had no idea she was feeling that way.

22 He testified that he came to Victoria after receiving her email in December 2013, because he was suicidal and he wanted Dr. McEachran's help. Mr. Noddle testified that he was released on bail after his December 2013 arrest. He was banned from B.C. He returned to Victoria in May 2014 to drop off his intellectual property for eliminating hunger, homelessness, and poverty with Dr. McEachran and then end his life.

23 Mr. Noddle testified that at the time of his 2014 trial and conviction, he understood that he had been convicted of criminal harassment of Dr. McEachran. Mr. Noddle agreed that he understood that his probation included conditions that he report as directed and that he not have contact with Dr. McEachran. He said there was no part of those conditions that he did not understand.

24 Mr. Noddle testified that in 2016 he started to recover mentally from the drug. He described that as "coming to." He started a series of lawsuits. He brought lawsuits in Ontario against his doctor who prescribed the drug and against the Attorney General of Ontario. He has brought lawsuits against many levels of government in Canada for denying him counsel. He testified as to the connection between the civil suits and Dr. McEachran. He testified that she was a person who knew him before his injury and that, because she is a psychologist, she may be able to give expert

evidence at these trials.

25 Mr. Noddle testified that in 2016 he indirectly sent Dr. McEachran a CD from Australia while the terms of the probation order prohibited contact with her. He said he sent her those communications because he had to serve her because of the lawsuit and he did not know that was prohibited contact. He also said that he had to make her aware of what had happened to him to keep her safe. He said he has to keep everyone safe and he would do anything to prevent what happened to him from happening to anyone else.

26 In April 2018, Mr. Noddle was convicted of breaches of his probationary sentence conditions pertaining to his 2014 conviction. He was convicted of one count of breach of probation for contacting Dr. McEachran and one count of breach of probation for failing to report to his probation officer. On the latter charge, the provincial court judge found that Mr. Noddle had told his probation officer that he was moving around frequently to avoid being supervised. He was sentenced to two consecutive sentences of six months each. On the first, he was credited five months for time served pre-sentencing.

27 As I have said, Mr. Noddle handed up letters from his Ontario family physician and a doctor associated with the Vancouver Island Regional Correctional Centre where Mr. Noddle is incarcerated. He also handed up, and it was marked as an exhibit, an email from a friend of his family who has known Mr. Noddle for a long time. He wrote of a change in Mr. Noddle after he took Aldara. The friend attributes Mr. Noddle's symptoms to Aldara.

28 Mr. Noddle's conduct, including his description of his symptoms following the prescription of the drug Aldara, the multiple lawsuits he has commenced, and his claims that he has patents that can save the world, prompted me to inquire whether Mr. Noddle has a mental health condition about which I should be aware on sentencing. Through counsel, Mr. Noddle advised me that he has undergone psychological testing and there is nothing wrong with him. Mr. Noddle does not believe that he suffers from any mental illness.

Impact on the Victims and/or the Community

29 Dr. McEachran testified that she finds it alarming that he continues contact despite that she has asked him to stop, the police have told him to stop, he was arrested and convicted, and there has been a probation order that prohibited contact with her. Since the probation order ended, it has escalated. She testified that despite that the communications do not threaten her physical safety, she finds his behaviour aggressive and she does not know when he might turn angry. Because he has shown up at her office in the past when she does not know where he is and when he sends communications to her at her office, she feels unsafe. She feels like she always needs to be looking over her shoulder and she feels panicky. Mr. Noddle's December 2017 and February 2018 communications tormented and plagued Dr. McEachran.

Mr. Noddle's Current Circumstances

30 At the time of sentencing, Mr. Noddle was serving the second of the two consecutive sentences of six months each for breaches of his probation order. Counsel for Mr. Noddle expected that Mr. Noddle's second sentence would expire in early September 2018. It did. Mr. Noddle has continued to remain in custody on the charges for which I have convicted him.

31 I have asked counsel for an update on that situation and counsel has advised me that Mr. Noddle was released on September 6 and commenced serving time on these charges on September 7. Accordingly, if I impose a custodial sentence, it will be necessary to calculate the time served. Counsel have assisted me with that.

Legal Parameters

32 I convicted Mr. Noddle of criminal harassment under s. 264 of the *Criminal Code*. This case proceeded in this court by direct indictment. Subsection (3) of s. 264 provides a maximum term of imprisonment of 10 years.

33 Subsection (4) of s. 264 provides that if at the time of the offence the person contravenes certain court orders, such contravention shall be considered an aggravating factor. While Mr. Noddle has been convicted of contravening the terms of the probation order in relation to his first conviction of criminal harassment of Dr. McEachran, he was not contravening any of the types of orders referred in s. 264(4) at the time of the offence.

34 In *R. v. Bates*, [2000] O.J. No. 2558 (Ont. C.A.), the Ontario Court of Appeal considered an appeal from a sentence of a suspended sentence and three years' probation following seven months of pretrial custody which the trial judge credited on a two-for-one basis. The circumstances of that case are not similar to this case, but the Ontario Court of Appeal discussed the nature of convictions for criminal harassment and considerations on sentencing which are helpful. First, the Ontario Court of Appeal confirmed that in convictions for repeat criminal harassment, where there have been breaches of court orders involving repetition and escalation of the harassing conduct, deterrence with regard to breach of court orders is very important. The sentence must also address deterrence and denouncement of the harassing conduct.

35 With regard to the nature of the crime itself, the Ontario Court of Appeal said as follows at paragraph 31:

> [31] In his very comprehensive article on the history of stalking and the criminal law, Bruce MacFarlane vividly describes the profile of a stalker at p. 43:
>
> > Many stalkers are not violent but all are unpredictable. The irrational mania that drives them to pursue their victims is beyond comprehension within the normal framework of social behaviour. It is this unpredictability that generates the most fear, coupled with the knowledge that, in some

> cases, the stalker's behaviour may, without warning or apparent reason, rapidly turn violent. Escalation of the level of threat forms one of the most common features of stalking.

Then at paragraph 36, the Ontario Court of Appeal said:

> [36] Consequently, when an offender like the respondent comes before the court for sentencing, it is important for the court to denounce his conduct in the clearest terms by fashioning a heavy sentence. The statement of this court in R. v. Denkers (F.P.) (1994), 1994 CanLII 2660 (ON CA), 69 O.A.C. 391 at 394, where the accused was appealing his sentence for the attempted murder of his former girlfriend, is equally applicable to cases of criminal harassment:
>
> > This victim, and others like her, are entitled to break off romantic relationships. When they do so they are entitled to live their lives normally and safely. They are entitled to live their lives free of harassment by and fear of their former lovers. The law must do what it can to protect persons in those circumstances. In this case its order that the appellant not have contact with the victim failed to provide that protection.
> >
> > It follows that the principles of general and specific deterrence must be the overriding considerations in the determination of a fit sentence in this case. Those principles demand a very heavy sentence to act as a general deterrent to other persons who cannot abide their rejection by a person whom they love. The sentence must act as a specific deterrent to this appellant who was not deterred by the victim's requests that he leave her alone nor by a court order requiring him to do so.

36 In this case, the Crown seeks a sentence to be served consecutively with the consecutive sentences Mr. Noddle was serving at the time of trial pertaining to his breaches of probation on his 2014 conviction. The defence submits that the sentence I impose should be concurrent with those sentences. Section 718.3(4)(a) of the *Criminal Code* provides as follows:

> **Cumulative punishments**
>
> **(4)** The court that sentences an accused shall consider directing
>
> > **(a)** that the term of imprisonment that it imposes be served consecutively to a sentence of imprisonment to which the accused is

subject at the time of sentencing;

...

37 In *R. v. Li*, 2009 BCCA 85, at para 100, the British Columbia Court of Appeal described the test as to whether sentences should be concurrent or consecutive as "whether the acts constituting the offence were part of a linked series of acts within a single endeavour".

Positions of Crown and Defence

38 The Crown seeks a sentence of 15 months in custody to be served consecutive to Mr. Noddle's current sentence followed by a three-year probationary order. Crown counsel emphasizes that Mr. Noddle has demonstrated a history of disregard for court orders and this should factor into the appropriate sentence. The Crown also seeks as conditions of the three-year probationary order that Mr. Noddle not contact Dr. McEachran, that he not attend at her office or residence, and that he be banned from Vancouver Island except for during his custody.

39 Defence counsel agrees that a custodial sentence is appropriate, but says an appropriate length is four to six months, concurrent to the sentence Mr. Noddle was serving at the time of sentencing submissions, and a 12 month probation period. He agrees that there should be a no contact order with regard to Dr. McEachran, but argues for an exception for lawful court purposes. He does not agree that Mr. Noddle should be banished from Vancouver Island as he says that simply turns one's community's problems over to another. Defence counsel submits that it is clear that the provincial court judges who have sentenced Mr. Noddle to time in custody for breaches of court orders have sent a message that court orders need to be obeyed. He argues that anything over six months in custody is excessive given that Mr. Noddle's conduct in harassing Dr. McEachran, for which he has been convicted on this occasion, has not included violence or threats of violence and has been by mail as opposed to by personal contact.

40 Defence counsel argues that the no-contact order and the probation order must make an exception for court appearances in the civil suits Mr. Noddle has brought and for which he says that Dr. McEachran is an important witness.

41 In this regard, I have been advised today that, due to being in custody, Mr. Noddle was not able to attend a court appearance in another province and was fined a significant sum of money in the order of $1,000 or $2,000.

42 With regard to credit for time served, counsel agree that if I impose a custodial sentence, 1.5 days of credit shall be given for each of 31 days reducing the sentence I impose by 47 days.

Case Law

43 The Crown cited *R. v. Finnessey*, [2000] O.J. No. 3316; *R. v. R.D.C.*, 2016 BCPC 388; *R. v. Butler*, [2018] N.J. No. 67 (Nfld. Prov. Ct.); and *R. v. Q.C.*, 2012 BCSC 904.

44 The defence relied on *R. v. Patrick*, 2016 BCCA 321; *R. v. Taylor*, 2014 BCCA 304; *R. v. Malakpour*, 2008 BCCA 326; *R. v. Sanchez-Lopez*, 2011 BCCA 14; and *R. v. Olivier*, 2002 BCPC 673.

45 The cases do not readily demonstrate a range if fit sentences because the circumstances of criminal harassment can be very broad and can be based on written communications and/or violence or threats of violence or death. In *R. v. Q.C.*, 2012 BCSC 904, at para 12, Mr. Justice Barrow said as follows:

> **12** It is necessary to characterize the gravity of this offence in order to find the appropriate sentence. There is no usual range of sentence for offences of this kind because, perhaps more than most offences, they can be committed in an almost infinite variety of circumstances (see *R. v. Kohl*, 2009 ONCA 100 at para. 41). The cases to which the Crown has pointed demonstrate that clearly. They also demonstrate that some of the factors that are significant to assessing the gravity of the offence are the length of time over which the harassment has occurred and the motive for it.

46 In *R. v. R.D.C.*, Flewelling, P.C.J, reviewed several British Columbia authorities on sentencing for criminal harassment. The custodial sentences range from six months to four-and-one-half years. Many of the cases in the two years and over category involved violence or threats of violence. *R.D.C.* involved several counts including assault and criminal harassment of a former spouse through threats, entering the victim's home repeatedly, and setting up a watch outside her home. Judge Flewelling imposed a sentence of 15 months in custody.

47 In *Q.C.*, Mr. Justice Barrow sentenced the victim's ex-spouse to two years less a day which, when reduced for time served, was a further 14 months followed by six months of probation. In that case, the offender, who had been previously convicted of assaulting the victim, went into her home several times over the course of a weekend when she was not there. He telephoned her from the house. He purported not to understand why she would find that terrifying, a position that Mr. Justice Barrow found astounding. *Q.C.*'s lengthy criminal record factored significantly in the sentence, although it was in part ameliorated by *Q.C.*'s attempts at rehabilitation.

48 The range that these cases create is four months to four and one half years of custody, sometimes followed by probation. In my view, the cases that are most similar to this one are cases in which a custodial period measured in months is followed by a lengthy probationary period aimed at keeping the offender and the victim apart.

<u>Mitigating and Aggravating Factors</u>

49 The aggravating factors set out in s. 264(4) of the *Criminal Code* are not applicable nor are any of the aggravating circumstances set out in s. 718.2 of the *Criminal Code*.

50 Neither the Crown nor defence have brought any mitigating factors or circumstances to my attention.

51 I have taken into account Mr. Noddle's prior convictions. His previous conviction for criminal harassment and his convictions for breaches of probation and breaches of recognizance are related to his conduct in harassing Dr. McEachran over many years.

52 One issue is of particular concern. At his trial before me, Mr. Noddle testified that he sent some of the communications to Dr. McEachran, including what he considers to be service of her with legal proceedings, because she was an important witness to those proceedings. She is not named in the proceedings, but Mr. Noddle testified that because she knew him prior to the time at which he commenced taking Aldara, she can testify as to how he has changed. He testified that he did not know that serving her with these documents was contact with her. He has now been convicted of criminal harassment with regard to such communications. Notwithstanding this conviction, he asked for an exception to the no contact provision of any probation order that he be permitted to contact her or subpoena her in his civil cases.

53 His position in this regard is related to his overall lack of remorse. Instead of being remorseful and showing remorse, he defends his reasons for contacting Dr. McEachran. This is not an aggravating factor, but rather demonstrates that specific deterrence is important in fashioning a fit and proper sentence in this case.

Principles of Sentencing

54 Sections 718 to 718.2 of the *Criminal Code* codify the objectives and principles of sentencing. Section 718 provides that the fundamental purpose of sentencing is to protect society and to contribute to respect of the law and maintenance of a just, peaceful, and safe society. Subsections (a) through (f) of s. 718 set out objectives to achieve the fundamental purpose, namely, denouncing unlawful conduct and its resultant harms, deterrence both general and specific, separating offenders from society where necessary to protect the public, assisting in rehabilitation, providing for reparation for harms done, and promoting responsibility in offenders and acknowledging the impact of their conduct. As explained by the Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6, at para 43, none of these factors are inherently more important than the other. Rather, the sentencing judge must determine which are important and persuasive given the circumstances of the case.

55 Sections 718.1 and 718.2 provide a non-exhaustive list of sentencing principles. Section 718.1 mandates that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 provides for the consideration of aggravating and mitigating circumstances, the principles of parity and totality, and the instruction to consider all available sanctions other than imprisonment that are reasonable in the circumstances. The most

fundamental of these principles is proportionality.

56 As the court explained in *R. v. Nasogaluak*, sentencing is a discretionary exercise in which the sentencing judge is charged with the responsibility of determining a sentence that is apt for the nature and circumstances of the offence and the offender in accordance with principles and objectives of sentencing and paying due regard to the ranges for certain offences set by case law. I quote as follows from *Nasogaluak* at paragraphs 43 and 44:

> **43** The language in ss. 718 to 718.2 of the *Code* is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender. The determination of a "fit" sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case (*R. v. Lyons*, [1987] 2 S.C.R. 309; *M. (C.A.)*; *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.)). No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case. The relative importance of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge's discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the *Code* and in the case law.
>
> **44** The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the *Code*. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

Reasons

57 The first issue I will address is whether a custodial sentence is appropriate. Mr. Noddle has engaged in a pattern of failing to heed the prior attempts to convince him to cease harassing Dr. McEachran and to obey court orders. In such cases, a custodial sentence may be appropriate:

Sanchez-Lopez at para 16.

58 Mr. Noddle is resistant to accepting that he must not have contact with Dr. McEachran. He continues to insist that he does not intend to harass her, despite her communication to him that he is scaring her, his previous conviction for harassment, and my reasons for judgment in which I found that his actions in contacting her constitute harassment despite his assertions. He continues to seek the ability to involve her in his lawsuits despite that being some of the very conduct that has resulted in his conviction and by which she is harassed.

59 In my view, it is necessary to separate him from society for a significant period of time to prevent him from continuing to do harm and to communicate to him the court's view of the gravity of the harm he has done.

60 In addition, Mr. Noddle has been in custody previously with regard to his harassment of Dr. McEachran and breach of court orders. It will not further the objectives of sentencing to move to a more lenient form of sentence. I conclude that a custodial sentence is appropriate.

61 Mr. Noddle does not accept that he has done harm or he chooses --

62 THE ACCUSED: I haven't harmed anyone.

63 MR. McKAY: Hey --

64 THE ACCUSED: You harmed me. You guys -- you -- you -- you harmed me with a chemical drug and all I did was serve a witness to protect the goddamned community and you are turning around and saying at this sentencing --

65 MR. McKAY: Darren --

66 THE ACCUSED: -- to protect the public that I am not protecting the public when it is you --

67 MR. McKAY: Mr. Noddle --

68 THE ACCUSED: -- it is you who is not protecting the public.

69 MR. McKAY: Mr. Noddle --

70 THE ACCUSED: You hid the damned disclosure.

71 MR. McKAY: Mr. Noddle --

72 THE ACCUSED: You wouldn't look at it and now you are fucking me over. You fucked my life for 10 years now.

73 THE COURT: Mr. Noddle --

74 THE ACCUSED: You left me to fucking die and now you will not let me take a witness to court because of you, because of the Crown. This is absurd.

75 THE COURT: Mr. --

76 THE ACCUSED: Take me out of here. How dare you? You are damned right I am sorry for what happened to Ms. McEachran, but my intentions are not to harm this lady. You are damned right I feel remorse, but I certainly feel a lot more remorse for the people you are injuring from this defective pharmaceutical that you took me down for five years.

77 THE COURT: Mr. Noddle, have a seat.

78 THE ACCUSED: No, take me back to my cell.

79 THE COURT: Mr. Noddle --

80 THE ACCUSED: I am tired of this. I am tired of the -- this is arrogance. You guys are not looking at the truth. You evaded the evidence last time I was in court. You did not even take the appreciation to look at the police video statement showing the [indiscernible/yelling] that this damn Crown hid from the damn court.

81 THE COURT: All right.

82 THE ACCUSED: How dare you do this to somebody?

83 THE COURT: We are going to take a break, Mr. Noddle. You are fully --

84 THE ACCUSED: How dare you do this to somebody?

85 THE COURT: You are going to return to --

86 THE ACCUSED: You have no idea what you have done to me. You have no idea.

87 THE COURT: We will adjourn for 10 minutes.

88 THE ACCUSED: How dare you do this to somebody? You lied. You hid disclosure and you don't have the balls to bring it to court.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

89 Thank you. Continuing with my reasons for sentence, I was saying that Mr. Noddle does not accept that he has done harm or he chooses to ignore it so that he can pursue his lawsuits to save the world from the drug Aldara. He must consider that his objective is not more important that Dr.

McEachran's right to be left alone. As a matter of logic, he should also accept that her involvement in his objective is not important and she does not want to be involved. So his objective will not be furthered by continuing to involve her. For these reasons, it is my view that the primary consideration is specific deterrence. However, as it has been said in many of the cases about harassment, general deterrence and denunciation is also important to convince persons who might want to make unwanted communications that torment others that society will not tolerate such behaviour.

90 The sentence I impose is intended to communicate to Mr. Noddle that he must cease this behaviour. He must stop justifying his attempts to communicate with Dr. McEachran and simply cease them. It is also to say to Mr. Noddle and to society at large that this type of behaviour will not be tolerated.

91 THE ACCUSED: But -- but this does not make any sense.

92 THE COURT: Mr. Noddle, you must --

93 THE ACCUSED: How --

94 THE COURT: -- sit and be seated.

95 THE ACCUSED: How do you justify a chemical assault on our genitals and tell me that having a witness in court to -- to -- to stop that from happening to Canadians is justified here?

96 THE COURT: Mr. --

97 THE ACCUSED: You will not give me a lawyer. I would have happily had a lawyer. If you gave me a lawyer, Ms. McEachran would have been served by somebody else, but I do not have that option. I do not have any money. I do not know anything about civil law. I was placed in this position to protect Canadians. You are talking about harming people's genitals, their reproductive organs. Fucking Canadians, we have a right not to be injured this way.

98 THE COURT: Mr. Noddle, I have heard --

99 THE ACCUSED: But --

100 THE COURT: Mr. Noddle, listen to me. I have heard you on your submissions on the injuries that you believe you have suffered from the drug.

101 THE ACCUSED: Not believe, they happened.

102 THE COURT: I have heard your submissions, Mr. Noddle, and they are not assisting you any further. I will continue these reasons. We can do it one of two ways. We can continue now if you are prepared to remain calm and quiet until I conclude, I am almost finished, or if you cannot,

we will adjourn so that you can be returned to the correctional facility and we will set up a video link so that I can continue to give these reasons and you cannot interrupt them. However, it is necessary for you to be present while I impose sentence. So I am going to -- I see you are seated. I thank you for that. I am going to continue, but if you interrupt again, we are going to follow the second option.

103 With regard to rehabilitation, the Crown is of the view that Mr. Noddle, in his present frame of mind, is resistant to rehabilitation through counselling or other efforts. I agree. Accordingly, a heavy sentence is the method by which the court can keep society safe and convey the gravity of the situation to Mr. Noddle.

104 Mr. Noddle's family physician referred to mental illness as a cause of Mr. Noddle's physical symptoms. Based on that, and on his submissions, I asked whether mental illness should be addressed. Mr. Noddle is of the view that he does not have a mental illness. The Crown was of the view that a presentencing report would not be of assistance. I have not considered mental illness in passing sentence.

105 I have reviewed all of the cases cited by counsel. Cases involving a custodial sentence of longer than a year have generally involved repeat offenders where the conduct has included violence and/or threats of harm. Mr. Noddle is a repeat offender, but his behaviour has not included violence or express threats of harm.

106 In *Campbell*, the court noted that in determining the gravity of criminal harassment for the purposes of determining a fit and proper sentence, as compared to the sentences imposed on similar offenders for similar offences, the court should consider the length of time over which the harassment occurred and the motive. I would add to that the nature of the acts of harassment should be considered. As I have noted, this conduct has not been violent or involved express threats of physical harm. Dr. McEachran does fear that it could turn violent and she is tired of fearing for her safety.

107 This offence took place over three months as part of a multi-year campaign of unwanted communications. Dr. McEachran's sense of security was at that time undermined by the fact that Mr. Noddle was not reporting on probation as ordered and no one knew where he was. This was exacerbated when the packages arrived in a bunch shortly after his previous three-year probation order ended.

108 With regard to motive, Mr. Noddle's stated objectives are to serve Dr. McEachran with legal process in civil cases to which she is not a party and to which her connection is infinitesimally small, if there is a connection at all. He also seeks to protect his intellectual property by giving it to her. These motives are not logical, but more importantly, Mr. Noddle does not accept that they are less important than not harassing Dr. McEachran. His motives are entirely self-centred, even though he sees them as part of a noble cause to save the world.

109 This aspect of his continued harassment of Dr. McEachran is also relevant to proportionality. He has not been violent or threatened violence, but he is intransigent in his determination to continue contacting Dr. McEachran. He has not accepted Dr. McEachran's request that he stop, the terms of his bail which required him to have no contact, or the terms of his probation order prohibiting him from contact. He has not stopped despite having been convicted of criminal harassment and having testified that he understood that he was required by his probation order to not contact her. There are no mitigating factors which call into question whether Mr. Noddle should be held responsible for his behaviour.

110 Mr. Noddle's previous sentences have been four months for harassment; five months for each of three breaches of recognizance, served concurrently to each other and consecutive to the four-month criminal harassment conviction; and two consecutive six-month sentences for breach of probation. I am of the view that a step-up is warranted.

111 I order nine months in custody. In doing so, I have considered the totality principle. At the time that sentencing submissions were made, he was serving the second of two six-month sentences for breach of his probation. His second sentence expired on September 6, 2018. If considered as a part of a continuum, this sentence will make his total time in custody 21 months prior to reduction for time served. In my view, this is not an unduly harsh custodial term for these offences in the circumstances.

112 With regard to credit for time served, ordinarily an offender will receive credit of 1.5 days for each day served: *R. v. Summers*, 2014 SCC 26; *R. v. Taylor*, 2014 BCCA 304. As discussed previously in these reasons, the Crown and defence counsel have agreed to 47 days as credit, which incorporates 1.5 days for each day of time served.

113 With regard to whether this sentence should be consecutive or concurrent, although the most recent custodial sentences for breach of probation relate to his conduct towards Dr. McEachran, the breaches were not part of a single endeavour or act. Rather, they were distinct in time and they are materially distinct and separate from the conduct that constitutes this conviction for criminal harassment. I note that the two breaches of probation order sentences were made consecutive as were his sentences on his first conviction for harassment and breaches of recognizance convictions. I order this sentence be served consecutively to his two six month breach of probation orders.

114 Mr. Noddle asserts that the probation term should not preclude him from communicating with Dr. McEachran for the purposes of his ongoing civil suits including subpoenaing her to testify. The Crown says the preclusion is appropriate and, if there are compelling circumstances requiring exception, Mr. Noddle can apply to vary the probation order.

115 In my view, prohibiting conduct of this sort is appropriate. Mr. Noddle's assertion that she is an important witness as to how he changed after he took Aldara and that she can give expert evidence is not persuasive. Dr. McEachran and Mr. Noddle had a largely email-based relationship for less than a year before she broke it off. They met in person once (other than when they were

young when they knew each other at grade school). There are other persons who have known Mr. Noddle for longer and on a more direct basis. A letter from one of them was put into evidence on this sentencing hearing. Dr. McEachran could not, under any rational scenario, be put forward as an expert witness to give evidence in a trial involving Mr. Noddle.

116 Unfortunately, the position that Mr. Noddle has taken in this regard demonstrates the thinness of excuses Mr. Noddle will use to communicate with Dr. McEachran. In my view, a three year probationary period excluding any contact with Dr. McEachran is appropriate.

Decision and Ancillary Orders

117 Mr. Noddle, please stand.

118 I sentence you to a term of imprisonment of nine months. You have been in custody for 31 days after your most recent sentence expired. The term of imprisonment I would have imposed before granting any credit is nine months or 273 days. I am granting credit at a rate of 1.5 days for each day spent in custody prior to this sentence. The total credit I am granting is 47 days. The sentence imposed is 226 days which, by my math, is 7 months and 16 days.

119 Following the expiration of your sentence, you will be on a period of probation for three years. The terms of your probation are that you:

(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 at the probation office nearest to the custodial institution from which you are released within 72 hours of release from custody for the purpose of ensuring you understand the terms of your probation order, and thereafter, if and when required by the probation officer, and in the manner directed by the probation officer, consistent with the purpose of ensuring you understand the terms of your probation order.

(d) notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

(e) abstain from communicating directly or indirectly with Andrea McEachran, including through social media or electronic means.

(f) refrain from going to Andrea McEachran's residence or place of work.

(g) refrain from being on Vancouver Island without the prior written permission of your probation officer.

120 Mr. Noddle, I want to make it very clear that I have made the order that you not contact Dr. Andrea McEachran unconditional. I rejected your counsel's argument that you should be permitted to contact her for your civil court purposes. Under no circumstances may you contact her directly or indirectly.

121 Mr. Noddle, you may have a seat while I go through the ancillary orders.

122 Pursuant to s. 743.21(1) of the *Criminal Code*, I prohibit you from communicating with Andrea McEachran for any purpose while you are in custody.

123 You shall pay a victim fine surcharge in the amount of $200 forthwith and, if not paid, you shall be sentenced to one additional day in custody consecutive to the sentence I have imposed.

124 The count of criminal harassment of which you have been convicted is a secondary designated offence for the purpose of the DNA provisions of the *Criminal Code*. The Crown seeks an order that samples of your DNA to be taken for the purposes of registering in the DNA National Databank pursuant to s. 487.051 of the *Criminal Code*. I have considered, Mr. Noddle, your criminal record and the circumstances of this offence. You have never been convicted of a violent crime or crime that involved the threat of violence. There has been no violence or threats of violence in your dealings with Dr. McEachran as I have previously discussed.

125 While there is no evidence that the taking of samples would affect your privacy in a manner different from other offenders and I accept that you will be in custody where one's privacy interests are expected to be diminished, I also accept that the taking of samples is an invasion of privacy. Given your history, I see little benefit from it. I conclude that to require a DNA sample would impact your privacy in a manner that is grossly disproportionate to the public interest, the protection of society, and the orderly administration of justice through the early arrest and conviction of offenders. Accordingly, after considering the factors in s. 487.051 of the *Criminal Code*, I am satisfied that it is not appropriate to make an order authorizing the taking of bodily substances from you for the purpose of registration in the DNA National Databank.

126 Pursuant s. 109(3) of the *Criminal Code*, I prohibit you from possessing any firearm, cross-bow, restricted weapon, ammunition, and explosive substance for life.

MATTHEWS J.