

ONTARIO COURT OF JUSTICE

DATE: October 5, 2022

COURT: Toronto Region, Metro North Court

BETWEEN:

HER MAJESTY THE QUEEN

--- AND---

SCOTT WHEELER

Before Justice Leslie Pringle

Heard on: August 31, 2022

Reasons for Sentence released to the parties on September 9, 2022; in court on
October 5, 2022

Mr. M. Sabat..... for the Crown
Mr. D. Locke and Mr. G. Henderson..... for the Defendant

PRINGLE J:

1. Introduction and Overview

[1] Scott Wheeler was found guilty after trial of criminally harassing two women online during the month of October 2018: one on Facebook and the other on Twitter. The harassing posts on Facebook were brief but sexually violent and threatening. The harassing posts on Twitter were also few in number but were taunting and threatening. Both harassments arose in the context of discussions about feminism

and women's issues. At the time, Mr. Wheeler was using the name (Future) Feminist King on Twitter, and the handle @feministking.

[2] These reasons deal with the appropriate sentence for the offences.

[3] The Crown submits that a sentence of 4 months in jail is appropriate; the Defence seeks a conditional discharge.

2. Content of the Messages

2.1 Facebook Messages

[4] Ms. Theriault-Willard and Mr. Wheeler did not know each other personally. They began chatting on Facebook when Mr. Wheeler invited her to join his group, "Maybe Not All Feminists Love Me, But Most of the Ones That Get To Know Me". Ms. Theriault-Willard joined because she thought the content of the group was joking around, and she was trying to start a blog. Their conversation began amiably but quickly became aggressive on both sides when Ms. Theriault-Willard saw other posts by Mr. Wheeler that were insulting to women. After she told him he was disgusting, the following exchange took place over two days:

Scott Wheeler : you're a little bitch who doesn't want to take responsibility for being the rapeworthy trashy abuser you are. Actually you deserve worse than rape.

Ms. Theriault-Willard: I'd stop messaging me now, if I were you.

Scott Wheeler: You deserve to be raped every day for the rest of your life for what you have done. You deserve to be the victim of a crazy serial rapist who locks you in a cage in his cellar and rapes you daily to within an inch of your life before performing a little mouth-to-mouth and bringing you back to life so he can rape you again, daily, for the rest of your life.

Don't forget to let someone know to let me know where you are buried so I can piss on your grave, atop your bloody beaten thoroughly raped body.

Isn't it a shame that we don't get what we deserve?

Ms. Theriault-Willard: Stop messaging me.

Scott Wheeler: No.

You will be monitored.

You are worse than a rapist.

On the one hand I love you because you're a woman

I wouldn't put either hand near your cunt, and you are not worthy of my big throbbing hard penis

[5] Ms. Theriault-Willard blocked Scott Wheeler after that. She testified that she believed he was unstable and she was scared that he was going to try and come after her. She bought herself a taser.

2.2 Twitter

[6] Ms. Edwards did not know Mr. Wheeler personally either. They began communicating when Mr. Wheeler responded to a public tweet sent by Ms. Edwards to her large following. Her tweet said, "let me take care of you, not because I have to but because you make me want to". Mr. Wheeler responded using his handle @feministking and commented something about women not caring about whether a man was perfect.

[7] Ms. Edwards saw from Mr. Wheeler's public profile page under the name (Future) Feminist King that he was following her on Twitter. On his profile page, he had pinned a tweet "#Feminists/ #Women you make me want to not take care of you. So I'll become Feminist King only to save my own life. I won't provide good things. I'll just take out the trash (you) and I don't care about healing you. I just want you to gone and you will be".

[8] Ms. Edwards started to look into the profile of @feministking. When she saw what was there, she began to ask other people if they had had interaction with him. People sent her screen shots of messages alleged to be his from Facebook and Twitter accounts, and she did some research herself. Ms. Edwards believed that @feministking's messages didn't seem safe or stable, so she started to forward some of them to a police officer who followed her on Twitter. She further tweeted out that others should report him.

[9] The following sequence of tweets took place with Ms. Edwards posting publicly, and Mr. Wheeler replying publicly and to her on October 28, 2018:

Ms. Edwards: I won't even apologize for asking people to report someone who is blatantly threatening violence against women who are denying him. This is vile and hateful and frankly, scary. Please report him. [Twitter.com/feministking/s...](https://twitter.com/feministking/s...)”

Mr. Wheeler: hahahaha you're so stupid

oh go on and tell me how I'm threatening violence against women who are denying me. That's all you. It's shit #Women like you that give good men like me reputations. Well, I also have those people who are doing it on purpose, such as some #Feminists

guess your reporting didn't work (followed by four sarcastic laughing emojiis).

awe you didn't call

I will be watching you for the rest of your life

[10] At some point, Mr. Wheeler also told Ms. Edwards that he couldn't wait to hear what it sounded like when she screamed.

[11] Ms. Edwards testified that she was terrified and blocked his account. She is a single mother with children and she slept at her mother's house with the kids for the next two nights because she didn't feel safe. She also went through all her accounts on Instagram and made them more private.

3. Victim Impact

[12] Neither Ms. Theriault-Willard nor Ms. Edwards provided a formal victim impact statement. However, I heard their evidence at trial and found that they were intelligent and reasonable witnesses who were genuinely frightened by his posts. They were knowledgeable about social media and did not embellish their evidence or exaggerate their fears arising from Mr. Wheeler's messages.

[13] Their evidence showed that Mr. Wheeler's offences had a significant impact on them.

4. Mr. Wheeler's Background and Motivation

[14] Mr. Wheeler was 35 years old at the time of the offences. At the time of this sentence hearing he is 39.

[15] His parents both wrote letters to the court indicating that their son had been diagnosed with ADHD at a very early age, and he has been on medication for most of his life as a result. Although bright and gifted as a young man, he had ongoing challenges. In October 2017, his mother said he was in such a bad state that they had to admit him to CAMH for three days, and he chose to stay for an additional seven days.

[16] Mr. Wheeler believes that at the time of these offences he was on too much medication and now reflects back that he was manic. He described his behaviour as “attention seeking in the stupidest of ways”, and told the court that his medication and mental health problems were affecting him a lot more than he realized.

[17] A letter from Dr. Alavi, a psychiatrist at CAMH, sheds some light on Mr. Wheeler's state in December 2018, not long after the offences. Dr. Alavi stated that Mr. Wheeler was in a manic state. He told her that he wanted to care for feminists and cure them, and said he was making a device to help women. He talked about a mental health weapon to get the truth out of people, and stated that he looks after rapists and pedophiles. At that time, he believed the women who said they had been harassed by him were social abusers who were saying someone should be raped, so he wanted to protect the person.

[18] Dr. Alavi found that Mr. Wheeler met the criteria for bipolar, and she started him on medication.

[19] By March 14, 2019, Dr. Alavi advised that Mr. Wheeler's mood was stable and he felt calm. He was still under house arrest but was participating in lots of therapeutic groups. He said he regretted the “twitter thing” and understood that a manic episode had contributed to it, and he won't do it now.

[20] Tammy Tinney is a Registered Social Worker, Psychotherapist. She started seeing Mr. Wheeler in February 2019 when he attended at North York General Hospital for an eight week anger management program. He completed that program, then requested to to continue see her in individual appointments. Over the last three years plus, she has seen him every 1-2 weeks, and continues to do so on a bi-weekly basis. She is prepared to continue with these sessions if Mr. Wheeler is sentenced to a period of probation.

[21] With Ms. Tinney's help, Mr. Wheeler has engaged in cognitive behaviour therapy (CBT) and dialectical behaviour therapy (DBT) to manage his emotions and behaviour. Ms. Tinney explained that individuals who struggle with overwhelming emotions often feel vulnerable, and at any point the smallest trigger can lead to a wave of emotions that leave them feeling confused, angry, alone, hopeless etc.

[22] On August 15, 2022, Ms. Tinney wrote that, currently:

Mr. Wheeler expresses remorse for his behaviour that led to his criminal charges. We have discussed in detail events that led up to the index offences. Previously he minimized the severity of his actions and was unable to see how the victims could be fearful as his intention was to never harm them. His insight in regards to the index offence has improved since he first started counselling with me in 2019 and he is no longer minimizing his behaviour. He has developed an understanding of factors that contributed to his behaviour at this time. We have also implemented a relapse prevention plan to ensure similar circumstances do not happen again.

[23] Ms. Tinney states that there has been a noticeable improvement in Mr. Wheeler's mood and his ability to regulate his emotions, including anger. The changes have been most noticeable in the last year. His mental health is currently stable. She and Mr. Wheeler have also implemented a relapse prevention plan to ensure similar circumstances do not happen again.

[24] Mentors and counsellors in various programs including Hope and Me, the Mood Disorders Association of Ontario and COTA indicate that Mr. Wheeler's participation in their organizations and programs has been very positive, and he has been motivated and proactive in participating in his recovery.

[25] Mr. Wheeler describes his own participation in these programs as follows:

I also attended approximately 100 group therapy sessions through the Mood Disorders Association of Ontario (MDAO) during the 10 months until I started at school in September 2019. I found them helpful to discuss things with peers who also have mental health problems, and I made a lot of friends there. I also went to programs such as Managing Your Depression and Anxiety (MDAO), Stress Management (COTA), Wellness Recovery Action Planning (MDAO, COTA), and a Mental Health and Justice Wellness Support Group (Gerstein Crisis Center & Fred Victor). I found all of them helpful.

[26] In his letter on sentencing, Mr. Wheeler told the court:

I'm really sorry for what I wrote to Ms. Theriault-Willard and Ms. Edwards and the effect that it had on them, as well as my other behaviour online. I don't think my behaviour is justified or ok. I promise it will never happen again.

[27] I accept that Mr. Wheeler now has insight into his actions in October 2018 and is genuinely remorseful for what he did. The counselling he has taken is impressive. The letters tendered on sentencing are undeniable evidence of his motivation, progress, insight and perseverance to rehabilitate himself.

[28] This is a significant mitigating factor in this case.

5. Appropriate Sentence

[29] In *R. v. Bates*, [2000] O.J. No. 2558, the Ontario Court of Appeal highlighted the need for general deterrence and denunciation in cases of criminal harassment, in addition to sending a message of specific deterrence to the individual offender.

[30] In *R. v. Gardner* (2018), 149 W.C.B. (2d) 179, Justice Marshall of the Newfoundland and Labrador Provincial Court recognized that criminal harassment takes on a new dimension when it goes online. She stated at para.26:

The positive opportunity for connection that we enjoy in this day and age through the advent of electronic and internet communication can quickly become a method of torture if it is used in the wrong way. Social media has provided a mechanism for anyone to threaten and harass someone else without having to be in their physical presence. They have the ability to hide behind a computer screen and gain access to someone's private space at virtually any given time and spew out vulgarities and threats stretching to the limits of their imagination without ever having to look the recipient in the eye.

When the line is crossed, general deterrence and denunciation become of particular importance. It is imperative that the community at large get the message that using social media to criminally harass another person will not be tolerated and that serious repercussions will ensue for those who engage in it. (my emphasis)

[31] In a paper entitled “Tech-Facilitated Violence”¹, Nicole Biros-Bolton explained that all too often, the victims of digital violence and discrimination are women, girls and gender diverse people. She notes:

Misogyny and discrimination have permeated our online and digital world, threatening women and girls’ equality and safety. This has led to a creation of another dangerous space, where sexual and gender-based violence has persisted in a largely uncharted realm. With limited monitoring and regulation, there is little consequence for those who engage in digital forms of violence and discrimination against women, girls and gender diverse people, sometimes known as technology-facilitated gender-based violence (TFGBV), and the harms caused by such violence and discrimination are immense. Technology has changed how violence and misogyny cause harm in a multitude of ways, including, for example, prolonging and amplifying the harms through repetitive sharing and viewing, incessant harassment and the tarnishing of one’s character. (footnotes omitted)(my emphasis)

[32] In cases where criminal harassment is motivated by hate based on factors such as religion or sex, s.718.2(a)(i) of the *Criminal Code* indicates that the sentence should be increased to reflect this aggravating factor. In *R. v. Medeiros*, 2014 ONSC 6550, the appellant pled guilty to criminal harassment arising out of an incident in a public park where he yelled at an unknown Muslim woman wearing a hijab, calling out that “Muslims are terrorists” and “pigs”. Justice Campbell found that this section of the *Criminal Code* requires the courts to stand on guard against crimes motivated by such bias, prejudice and hatred, and accordingly, the sentences imposed must provide the necessary general deterrence and denunciation to effectively prevent their commission.

[33] In this case, there are a number of aggravating factors.

[34] Two victims were targeted, each on a different social media platform. Beyond the individual victims, however, it is obvious that by using Facebook and Twitter Mr. Wheeler was reaching a much wider audience. Others were affected by his public posts, and a number reached out to warn both Ms. Theriault-Willard and Ms. Edwards about him.

[35] His messages to Ms. Theriault-Willard and Ms. Edwards were vile and hateful to them, but also to all women. They arose out of discussions about feminism and

¹ April 26, 2021, Women’s Legal Education & Action Fund (LEAF), at p.3

women's issues. In relation to Ms. Theriault-Willard, Mr. Wheeler's comments were sexually violent and threatening in a truly disgusting and extreme way; in relation to Ms. Edwards, his comments were taunting and terrifying in suggesting that she was vulnerable to being watched by him and would not be protected by police.

[36] Accordingly, I agree with the Crown that it was not just these two women who were affected and victimized: the internet spread these hateful messages widely. The courts cannot condone the normalization of this kind of violent and threatening language used against women, and must strongly denounce and deter it. There must be a clear message that this online behaviour was criminal.

[37] On the other hand, I cannot find that the Crown has proven these crimes were motivated by hatred against women. While they *were* hateful and preoccupied with a warped view of feminism, the evidence now reveals that as the victims themselves suspected, Mr. Wheeler was unstable and confused. As Dr. Alavi explained, at the time he was in a manic state and met the criteria for bipolar.

[38] The cases provided by the Defence reveal many cases of criminal harassment where the sentence was a discharge or a suspended sentence. However, none of them deals with a fact situation that reflects the pernicious element of a criminal harassment that is carried out on social media with a broad audience. This is an important factor in Mr. Wheeler's case.

[39] What, then, is the appropriate sentence for Mr. Wheeler for these offences?

[40] In *Gardner*, cited above, the judge sentenced the accused to 90 days jail, to be served intermittently. Mr. Gardner entered a plea of guilty after the two victims flew from B.C. to Newfoundland to testify. He had a prior conditional discharge, and was on probation at the time of the criminal harassment. The messages in his case spanned three months, and were repeated and persistent, related to a debt he said one of the victims owed to him. The messages were violent and profane, threatening rape till "everyone in the city hears your screams". When the first victim did not respond as the accused felt appropriate, he began sending sexual and violent messages to the victim's girlfriend. While the accused had a positive PSR with a low risk assessment, he had little remorse or insight. The sentencing judge held:

Although the range of sentence for this offence spans from discharge to 6 months incarceration, I am satisfied that a discharge would not be the appropriate disposition for Mr. Gardner. Moreover, I do not find that a suspended sentence would adequately address all of the sentencing principles that I must consider in this case. As a result, I

find that a period of incarceration is the appropriate disposition, and that it should be served inside the institution.

[41] In *R. v. Chebeir*, 2018 QCCQ 1578, Paradis J.C.Q. sentenced the accused to four months in jail followed by three years of probation.² Mr. Chebeir pleaded guilty to criminal harassment by repeatedly posting group comments on the social networking site of the Réseau Québécois en Etudes Feministes, with a link to an article about Marc Lepine, followed by a comment, “#JeSuisMarc”. He also posted comments on the social networking site of Sans Oui, C’est Non!, with a photograph of Marc Lepine, followed by a comment, “#JeSuisLepine”. He further sent a private message to a number of site administrators with comments praising Marc Lepine, avenging Marc Lepine and “one day you will pay for all the harm you do to men!”.

[42] The judge found Mr. Chebeir’s messages were motivated by hatred against women. He took into account that the psychological consequences of the repeated messages were severe, and undermined morale and strength at the workplaces where they were received. Mr. Chebeir was 22 and had no record. He suffered from depressive and anxiety disorder, obsessive-compulsive disorder, social phobia, mixed personality disorder and social adjustment disorder. His response to therapeutic support had been minimal in the past and the judge was cautious about his prospects for rehabilitation. The judge also had serious reservations about the sincerity of the accused’s apology to the court, noting a risk of recidivism.

[43] The aggravating features in *Gardner* of a prior probation, a longer span of messaging and little remorse are not present here. Similarly, the aggravating features in *Chebeir* of doubtful remorse and poor rehabilitative prospects are distinguishable from Mr. Wheeler’s situation. As noted, Mr. Wheeler’s sustained and genuine efforts at rehabilitation, accompanied by real progress, are a significant mitigating factor in this case.

[44] Other important mitigating factors in Mr. Wheeler’s case include the fact that Mr. Wheeler is not complacent about his progress. Together with Ms. Tinney, he recognizes the need for continuing relapse prevention including:

- following up with his doctor and taking medication only as prescribed;
- requesting a medication review if needed in the future and not making changes on his own;

² The decision is written in French, with a Google translation provided by the Crown into English.

- continuing mental health counselling regularly including regular practice of skills at home;
- seeking immediate support if/when mental health is decompensating;
- not participating in online forums related to gender politics.

[45] In addition, I note that the number of harassing messages here was small, over a very short period of a day or two.

[46] Looking at all the aggravating and mitigating factors, I find that Mr. Wheeler's case is worthy of a jail sentence to send a clear message of general deterrence and denunciation to others who might be like-minded in their online proclivities. A conditional discharge is not in the public interest.

[47] I note that Mr. Wheeler has in fact already served a jail sentence in this case of 7 days of pre-trial custody, the equivalent of an 11 day sentence. That forms part of the punishment and sentence here. Moreover, he has spent almost four years on a very strict bail of house arrest with a ban on using a computer except for specified school work, and only when one of his sureties was present. This ban prohibited access to social networking sites, peer to peer file sharing networks, and usenet or freenet. In January 2022 the ban was modified to permit communication with counsel and attendance at zoom court proceedings. There has been no suggestion of any breach.

[48] Taking into account the pre-trial custody and pre-trial limitations on Mr. Wheeler's liberty, I do not believe it is appropriate or necessary to impose a further jail sentence.

[49] On today's date, I will impose a suspended sentence on top of an equivalent sentence of 11 days already served (7 x 1.5 days). It is in the best interest of the administration of justice to make a DNA order, for reasons previously explained on August 31, 2022. An order under s.109 prohibiting possession of a firearm or other weapons listed in that section is required by law. It will be for 10 years.

[50] In addition, Mr. Wheeler will be placed on probation for two years, with the following terms and conditions:

- Statutory terms;
- Report;
- No weapons;

- No contact directly or indirectly by any means with Alexis Theriault-Willard or Krystal Edwards;
- not to be within 200 m of anywhere you know Alexis Theriault-Willard or Krystal Edwards live, work or happen to be;
- continue counselling with Tammy Tinney on a regular basis, or as directed by your probation officer;
- sign releases;
- You are not to publish or post on any internet site where such postings or publications can be read by the general public, any information or language regarding issues of feminism, gender issues or women's issues;
- You are not to engage in any online conversations with any individuals in relation to issues of feminism, gender issues or women's issues.

[51] I know this case has been a long journey for everyone. I want to thank Mr. Sabat and Mr. Locke and Mr. Henderson for their very diligent and professional advocacy. To Mr. Wheeler and his parents, I want to wish good luck. I believe that if Scott Wheeler continues his counselling work and adheres to the conditions of his probation, we will not see him back before these courts again.

Justice Leslie Pringle

Released: to the parties on September 9, 2022; in court on October 5, 2022.

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