PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Boudreau*, 2019 NSPC 69

Date: 2019-11-25
Docket: 8073611
Registry: Antigonish

Between:

Her Majesty the Queen

v.

Kyle Boudreau

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	2019: 19 August; 4, 25 November, in Antigonish, Nova Scotia
Charge:	Subsection 255(2.1), *Criminal Code of Canada*
Counsel:	Johnathan Gavel and Peter J Craig QC for the Nova Scotia Public Prosecution Service Coline Morrow for Kyle Boudreau

By the Court:

Synopsis

[1] Kyle Boudreau operated a motor vehicle on a highway, at night, with a criminally high level of blood-alcohol concentration (BAC) in his body; because of the impairing effect of his BAC, he failed to negotiate a turn and drove off the road. Both Mr Boudreau and a passenger were injured very badly and required hospitalization. Police became involved and laid charges. Mr Boudreau elected trial in this court and pleaded guilty to a single, straight-indictable count under § 255(2.1) of the *Criminal Code*—operating a motor vehicle with an excessive BAC and causing an accident which resulted in bodily harm. The prosecution seeks a sentence of 5 ½ to 6 months in prison, followed by an 18-month term of probation, along with a 2-year driving prohibition. Defence counsel advocates for either a fine, probation and a prohibition, or an intermittent term of imprisonment instead of a fine.

[2] For the reasons that follow, the court imposes a fine of $2000 and places Mr Boudreau on probation for a term of two years. There will be a two-year driving prohibition that will commence immediately.

Statutory range of penalty

[3] Sub-section 255(2.1) of the *Criminal Code* prescribes a maximum term of imprisonment of ten (10) years. There is no mandatory minimum term of imprisonment; however, given § 255(3.3), the $1000-minimum-fine provisions of ¶ 255(1)(a)(i) of the *Code* would be applicable to this charge. A mandatory minimum sentence is not a mandatory sentence (*R v Denny*, 2017 NSSC 127 at ¶ 36, varied on other grounds, 2018 NSCA 11), and a court may impose a sentence greater than a mandatory-minimum fine; this may include a period of imprisonment, which will be reckoned as greater than a mandatory-minimum fine amount (*R v Hatcher*, 2000 NFCA 38). In the result, a discharge (except under § 255(5), which is not being sought in this case), or a suspended sentence would be illegal. Given that bodily harm is implicated in this charge, a conditional sentence would be illegal given ¶ 742.1(e)(i). Accordingly, the following would be legal sentences:

- A fine alone of at least $1000 (§ 255(1)(a)(i), 255(3.3), 734);
- A fine and probation (¶ 731(1)(b));
- A term of imprisonment of up to 10 years (§ 255(2.1), 718.3, 787);
- A term of imprisonment of up to 10 years and a fine (§ 734);

- A term of imprisonment not exceeding two years and a term of probation (¶ 731(1)(b));
- An intermittent term of imprisonment of up to 90 days with a term of probation (§ 732).

[4] In virtue of ¶ 259(2)(b), the court may impose a discretionary term of prohibition of up to 10 years plus any term of imprisonment which might be imposed.

[5] The charge would fall within the definition of a "secondary designated offence" as classified under that hearing in 487.04(a); however, the prosecution has not sought a DNA collection order, so that one is not granted.

General sentencing principles

[6] Sentencing is a highly individualized process: *R v Ipeelee*, 2012 SCC 13 at ¶ 38 (*Ipeelee*).

[7] In determining a fit sentence, a sentencing court ought to take into account any relevant aggravating or mitigating circumstances; that is prescribed by ¶ 718.2(a) of the *Code*. The court must consider also objective and subjective factors related to the personal circumstances of the person being sentenced and the facts pertaining to the particular case: *R v Pham*, 2013 SCC 15 at ¶ 8.

[8] Assessing moral culpability is an extremely important function in the determination of any sentence. This is because a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender; that fundamental principle is set out in s. 718.1 of the *Criminal Code*.

[9] In *Ipeelee* at ¶ 37, the Supreme Court of Canada noted that proportionality is tied closely to the objective of denunciation. Proportionality promotes justice for victims and proportionality seeks to ensure public confidence in the justice system.

[10] In *R v Lacasse*, 2015 SCC 64 (*Lacasse*), the Supreme Court of Canada confirmed that proportionality is a primary principle in considering the fitness of a sentence. The severity of a sentence depends upon the seriousness of the consequences of a crime and the moral blameworthiness of the person who committed the act. The Court recognized at ¶ 12 that determining proportionality is a delicate exercise, because either overly lenient or overly harsh sentences might have the effect of undermining public confidence in the administration of penal justice.

[11] In many respects, the *Lacasse* decision comes close to constitutionalizing the principle of proportionality in the imposition of just and fair sentences.

[12] In determining an appropriate sentence, the court is required to consider, pursuant to ¶ 718.2(b) of the *Criminal Code*, that a sentence should be similar to sentences imposed on similar persons for similar offences committed in similar circumstances. This is the principle of sentencing parity.

[13] The court must apply the principle that a person to be sentenced not be deprived of liberty if less restrictive sanctions might be appropriate in the circumstances; furthermore, the court must consider all available sanctions other than imprisonment that are reasonable in the circumstances.

[14] It is essential to recognize that restraint is an organizing principle of the law of sentencing. This requires necessarily that the court consider the effect of the modification of Part XXIII of the *Code* in SC 1995, c 22, s 6, in force 3 Sep 1996 in virtue of SI/96-79, introduced originally in the House of Commons as Bill C-41. This amendment carried into effect, among other provisions, s 718.2, particularly ¶¶ (c)-(e); these values of restraint, as explained in *R v Gladue*, [1999] 1 SCR 688 at ¶ 39 and 48, were part of the first significant reform of sentencing principles in the history of Canadian criminal law. This remedial provision helped carry into effect Parliament's intention to reduce the use of prisons for non-violent persons, and its resolve to expand the use of restorative-justice principles in sentencing. See

also, *R v Proulx*, 2000 SCC 5 at ¶ 15, and particularly ¶ 16, where the Court held unanimously:

> 16 Bill C-41 is in large part a response to the problem of overincarceration in Canada. It was noted in *Gladue*, at para. 52, that Canada's incarceration rate of approximately 130 inmates per 100,000 population places it second or third highest among industrialized democracies. In their reasons, Cory and Iacobucci JJ. reviewed numerous studies that uniformly concluded that incarceration is costly, frequently unduly harsh and "ineffective, not only in relation to its purported rehabilitative goals, but also in relation to its broader public goals" (para. 54). ... Prison has been characterized by some as a finishing school for criminals and as ill-preparing them for reintegration into society... iv. In *Gladue*, at para. 57, Cory and Iacobucci JJ. held:
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> > Thus, it may be seen that although imprisonment is intended to serve the traditional sentencing goals of separation, deterrence, denunciation, and rehabilitation, there is widespread consensus that imprisonment has not been successful in achieving some of these goals. Overincarceration is a long-standing problem that has been many times publicly acknowledged but never addressed in a systematic manner by Parliament. In recent years, compared to other countries, sentences of imprisonment in Canada have increased at an alarming rate. *The 1996 sentencing reforms embodied in Part XXIII, and s. 718.2(e) in particular, must be understood as a reaction to the overuse of prison as a sanction, and must accordingly be given appropriate force as remedial provisions*. [Emphasis by Lamer C.J.]
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> 17 Parliament has sought to give increased prominence to the principle of restraint in the use of prison as a sanction through the enactment of s. 718.2(d) and (e). Section 718.2(d) provides that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances", while s. 718.2(e) provides that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders". Further evidence of Parliament's desire to lower the rate of incarceration comes from other provisions of Bill C-41: s. 718(c) qualifies the sentencing objective of separating offenders from society with the words "where necessary", thereby indicating that caution be exercised in sentencing offenders to prison . . . .

[15] Where Parliament has created a statutory remedy, one that is more than merely a codification or declaration of existing common-law principles, sentencing courts must give effect to that remedy and must recognize, necessarily, the effect

the modernisation of the law will have had on the precedential weight of appellate penal benchmarks that predated it. Stated simply, a statutory revision may overtake what had been prescriptive appellate ranges.

Offence seriousness

[16] Courts have taken judicial notice consistently of the danger inherent in substance-impaired driving.

[17] In *R v Bernshaw*, [1995] 1 SCR 254 at ¶ 16, a minority opinion observed:

> Every year drunk driving leaves a terrible trail of death, injury, heartbreak and obstruction. From the point of view of numbers alone it has a far greater impact on Canadian society than any other crime. In terms of the deaths and serious injuries resulting in hospitalization, drunk driving is clearly the crime which causes the most significant social loss to the country.

[18] *R v Lohnes*, 2007 NSCA 24 reiterated the peril over a decade later:

> 46 As stated by Justice Bateman in *R. v. Cromwell*, [2005] N.S.J. No. 428, 2005 NSCA 137, in most cases of drunk driving denunciation and general deterrence are the prominent objectives of sentencing. Although no one was injured as a result of the matters under appeal, the following passage from Cromwell bears repeating:
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> > [28] Drunk driving is an offence demanding strong sanctions. In *R. v. MacLeod* (2004), 222 N.S.R. (2d) 56; [2004] N.S.J. No. 58 (Q.L.)(C.A.), the Crown appealed an 18 month conditional sentence for impaired driving causing bodily harm and leaving the scene of an accident. Cromwell J.A., writing for the Court, in allowing the appeal and substituting a sentence of 18 months imprisonment for the driving offence and six months consecutive for leaving the scene, said:
> >
> > [22] This and other courts have repeatedly said that denunciation and general deterrence are extremely weighty considerations in sentencing drunk driving and related offences: see for example, [citations omitted] I

accept the point that generally incarceration should be used with restraint where the justification is general deterrence. However, I also accept the view of the Ontario Court of Appeal in *Biancofiore*, [1997] O.J. No. 3865 shared by the Supreme Court of Canada in *Proulx*, that offences such as this are more likely to be influenced by a general deterrent effect. As was said in *Biancofiore*, "... [T]he sentence for these crimes must bring home to other like-minded persons that drinking and driving offences will not be tolerated." (at para. 24) I would add that this is all the more important where, as here, the respondent's drunk driving caused serious physical injury to an innocent citizen and where, by fleeing the scene of the "accident," the offender has shown disregard for the victim's condition and disrespect for the law.

[29] The sentence must provide a clear message to the public that drinking and driving is a crime, not simply an error in judgment. Those who would maim or kill by driving their vehicles while impaired are as harmful to public safety as are other violent offenders. The proliferation of this crime and the risk that it will be seen by society as less socially abhorrent than other crimes heightens the need for a sentence in which both general deterrence and denunciation are prominent features. Referring again to *Biancofiore*, *supra*, per Rosenberg J.A.:

[26] The drinking and driving offences occupy a unique position in the criminal law. Unlike most other criminal offences, such as crimes of violence or crimes against property, the stigma attached to the drinking and driving offences is often not matched by the objective gravity of these crimes ...

[27] ... Section 718 directs that "the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society." As Ms. Gallin pointed out, it is too easy for otherwise law-abiding people to view what happened in this case as an "accident," an unfortunate consequence of an error in judgment, rather than the commission of a criminal offence. Sentencing courts should be careful to ensure that they do not bolster that view of serious drinking and driving offences.

[28] The pressing need to ensure that the drinking and driving offences not be destigmatized might not be met by a conditional sentence in this case. ...

[30] Denunciation as a component of sentencing is intended to communicate society's collective condemnation of the offender’s conduct (*R. v. M.(C.A.)*, [1996] 1 S.C.R. 500; [1996] S.C.J. No. 28 (Q.L.) (S.C.C.) per Lamer C.J.C. at para 81).

See also *R v Beaudry*, 2007 SCC 5 at ¶ 41; *R v Farrell*, 2009 NSCA 3 at P 37.

[19] Legal literature has framed this as an enduring problem. As summarised in R. Solomon, S. Pitel, B. Tinholt & R. Wulkan, "Predicting the Impact of Random Breath Testing on the Social Costs of Crashes, Police Resources, and Driver Inconvenience in Canada" (2011), CLQ 438 at 438-9:

> Impairment-related crashes are the leading criminal cause of death in Canada, claiming almost twice as many lives per year as all categories of homicide combined. While impaired driving deaths fell sharply from the early 1980s until the late 1990s, little progress has been made in the interim. In fact, the number of impairment-related crash deaths and injuries in 2008, the latest year for which there are national data, are roughly comparable to the 2000 levels. Thus, despite the current sobriety checkpoint campaigns, countless awareness campaigns, various server-training programs, alternate transportation policies, progressive provincial and territorial legislation, and numerous *Criminal Code* amendments, impaired driving continues to be a serious problem in Canada.

[20] Public statistics bear this out, as impaired driving remains one of the leading criminal causes of death in Canada; in fact, Nova Scotia has the highest rate of impaired-driving infractions of all the Atlantic provinces: Samuel Perreault, *Juristat: Impaired Driving in Canada*, 2015 85-002-X (Ottawa: Statistics Canada, 2016) at 4-7 (these data have not been refreshed officially since 14 December 2016).

[21] In *R v McVeigh*, (1985), 22 CCC (3d) 145 at 150 (ONCA) (*McVeigh*), the Court gave voice to what were surely the concerns of many, particularly sentencing courts:

> In my view, the sentences for the so-called lesser offences in this field should be increased. The variations in the penalties imposed for drinking and driving are great and increasing sentences for offences at the "lower end" would emphasize that it is the conduct of the accused, not just the consequences, that is the criminality punished. If such an approach acts as a general deterrent then the possibilities of serious and tragic results from such driving are reduced. No one takes to the road after drinking with the thought that someone may be killed as a result of his drinking. The sentences should be such as to make it very much less attractive for the drinker to get behind the wheel of a car after drinking. The public should not have to wait until members of the public are killed before the courts' repudiation of the conduct that led to the killing is made clear. *It is trite to say that every drinking driver is a potential killer.*
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> Members of the public when they exercise their lawful right to use the highways of this province should not live in the fear that they may meet with a driver whose faculties are impaired by alcohol. It is true that many of those convicted of these crimes have never been convicted of other crimes and have good work and family records. It can be said on behalf of all such people that a light sentence would be in their best interests and be the most effective form of rehabilitation. However, it is obvious that such an approach has not gone any length towards solving the problem. In my opinion, these are the very ones who could be deterred by the prospect of a substantial sentence for drinking and driving if caught. General deterrence in these cases should be the predominant concern, and such deterrence is not realized by over-emphasizing that individual deterrence is seldom needed once tragedy has resulted from the driving. [Emphasis added]

[22] *McVeigh* continues to be followed widely. As recently as *Lacasse* at ¶ 73, the Supreme Court of Canada stated:

> [73] While it is true that the objectives of deterrence and denunciation apply in most cases, they are particularly relevant to offences that might be committed by ordinarily law-abiding people. It is such people, more than chronic offenders, who will be sensitive to harsh sentences. Impaired driving offences are an obvious example of this type of offence, as this Court noted in *Proulx*:
>
> > . . . dangerous driving and impaired driving may be offences for which harsh sentences plausibly provide general deterrence. These crimes are often committed by otherwise law-abiding persons, with good employment records and families. Arguably, such persons are the ones most likely to be deterred by the threat of severe penalties: see *R. v. McVeigh* (1985), 22 C.C.C. (3d) 145 (Ont. C.A.), at p. 150; *R. v.*

> *Biancofiore* (1997), 119 C.C.C. (3d) 344 (Ont. C.A.), at paras. 18-24; *R. v. Blakeley* (1998), 40 O.R. (3d) 541 (C.A.), at pp. 542-43. [para. 129]

[23] While the potential-killer argument in *McVeigh* may become distorted when it is employed to exaggerate the seriousness of the conduct of a person who is to be sentenced for an impaired-driving-related offence, in this case the characterisation is valid, as the risk of lethality here was real and not merely notional—the reality is evident in the injuries suffered by Mr Boudreau's passenger (and by Mr Boudreau himself), coupled with the admission of causation inherent in the guilty plea.

[24] Drinking-and-driving offences which result in bodily harm are a serious class of offence, reflected in the statutory range of penalty; however, a class of offence cannot be aggravating in and of itself; were it otherwise, every such offence would be aggravating, which would nullify the principle of proportionality: *R v Johnston*, 2011 NLCA 56 at ¶ 18-20.

[25] Mr Boudreau had a very high level of BAC; the prosecution—not Mr Craig when the facts were put before the court—and defence seemed to adopt the analysed value of 177 mgEtOH/100ml bld as the proper metric. However, the facts put before the court by the prosecution in accordance with § 723-4 of the *Code* were that the blood sample taken from Mr Boudreau was collected more than two hours after the last time of driving, so that one of the requirements for the

presumption of identity—¶ 258(1)(d)(ii)—was not fulfilled. Further, it remained unclear whether the sample that got analysed was a diagnostic sample, or a forensic sample collected pursuant to a demand governed by ¶ 254(3)(a)(ii). Accordingly, Mr Boudreau's analysed BAC could not be related back to the last time of driving. After some searching on the day sentencing submissions were made, the prosecution—again, this was not Mr Craig—located what counsel accepted as a properly prepared retrograde-extrapolation certificate of analyst under ¶ 258(1)(e), which determined Mr Boudreau's BAC at the last time of driving to have been between 200-223 mgEtOH/100ml bld. Any BAC greater than 160 mgEtOH/100ml bld is aggravating statutorily under § 255.1 of the *Code*.

[26] Mr Boudreau's passenger was hurt very badly. It is not necessary to review the private details of that person's injuries; suffice it to say that the facts heard at the sentencing hearing speak for themselves: the level of victim impact was very high, an aggravating circumstance under ¶ 718.2(a)(iii.1) of the *Code*. However, it appears that medical treatment has been effective, and the injuries to the victim do not appear to have been life-altering. I have considered the victim-impact statement filed by the passenger (received in the form of a hard copy of an email message); however, rather than an accounting of the effect the offence had on the victim, the statement offers an understandable insight into the victim's empathy for

Mr Boudreau—understandable indeed, as they remain good friends. In weighing the victim-impact statement, I must be mindful that this is not a private matter between Mr Boudreau and his passenger; this is because the criminal law is the law of public wrongs, and a criminal act has an effect on the entire community, not just on the named victim. Further, a victim-impact statement may not advocate for a particular sentence, whether harsh or, as in this instance, lenient.

[27] I would situate this case toward the midrange of seriousness for an impaired-related offence involving non-fatal injuries

Circumstances of Mr Boudreau

[28] Mr Boudreau was just two months beyond his nineteenth birthday when this offence took place. He pleaded guilty and has accepted responsibility for his actions. He has no record prior to this offence, although he was given a discharge for a § 430 count committed in 2017.

[29] A presentence report dated 18 September 2019 informs the court that Mr Boudreau regrets his actions profoundly. Mr Boudreau is responsible for the care of his father, who is in failing health. He has developed in maturity in the almost three years since the offence, and has adopted a healthier attitude regarding the use

of alcohol and controlled substances. The report concludes with the observation that Mr Boudreau requires minimal corrective intervention.

[30] The court was presented by defence counsel with character-reference letters from a retired physician who knows Mr Boudreau well, and from Mr Boudreau's brother, who is a physician in training: both speak highly of Mr Boudreau's character, his dedication to the care of his infirm father, and his commitment to personal wellness and self-improvement.

[31] In short, Mr Boudreau appears unlikely to come into conflict with the law again. His prospects for rehabilitation are excellent.

[32] I would place Mr Boudreau's moral culpability toward the lower end of the range.

Sentence parity

[33] I have reviewed the authorities presented to the court by the prosecution: *R v George*, 2016 NSCA 88; *R v Morine*, 2011 NSSC 46; *R v Kerrivan*, 2015 NJ No 369 (PC); *R c Vincent*, 2015 QCCQ 2620. These cases support generally the imposition of terms of imprisonment in drinking-and-driving cases which result in bodily harm or death, although I would observe that the level of criminality in *Morine* exceeds the by far the seriousness of Mr Boudreau's conduct. The level of

victim impact in *Kerrivan* was life altering, which does not appear to be the case here. Unlike the respondent in *George*, there is nothing to suggest that Mr Boudreau is conning the court; and, unlike *Vincent*, Mr Boudreau did not try to deceive police about his responsibility as the driver.

[34] I have reviewed as well the one authority presented to the court by defence: *R v Fraser*, 2014 NSSC 391; this case does not support the fine-and-probation sentence advanced by defence counsel, and defence counsel was not able to refer the court to any authority which would support such an outcome.

[35] In fact, there are some good ones. In *R v Martin*, [1996] NSJ No 389 (CA), the Court upheld a suspended sentence imposed upon a youthful, first-time offender with favourable rehabilitative prospects, who had pleaded guilty to two counts of impaired driving causing bodily harm. At the time of the commission of this offence—1994—there was some lack of clarity in § 255 whether a suspended sentence was a legal sentencing outcome; this was resolved in SC 2008, c 18, § 7 (effective October 1, 2008 by SI/2008- 71), which added to § 255 a provision that applied the mandatory-minimum-fine and -jail terms in § 255(1) to all impaired-related cases, including those resulting in bodily harm or death.

[36] Probation or probation-and-fine sentences were imposed or affirmed elsewhere in Canada in a number of bodily-harm-impaired-driving cases:

- *R v Roasting*, 1999 ABCA 52—suspended sentence affirmed for young First-Nation female with no record, but who was on judicial interim release at the time of the offence; presumptive BAC was 200mgEtOH/100ml bld;

- *R v Riddell*, 2011 SKQB 378—$2500 fine, 3-year term of probation, 3-year prohibition imposed on young male with chronic physical- and mental-health conditions; significant victim impact; presumptive BAC of 190 mgsEtOH/100ml bld;

- *R v Harris*, [2002] QJ No 8684 (CQ)—29-year-old drove while impaired at excessive speeds, resulting in a head-on collision; significant injuries suffered by innocent motorist; full cooperation with police; presumptive BAC of 200 mgsEtOH/100 ml bld; sentenced to $2000 fine, 14-months' probation, 180 hours of community service, one-year prohibition;

- *R v Rowan*, [2003] OJ No 5922 (OCJ)—fine of $1200, 2-year term of probation and 3-year prohibition imposed on 53-year-old remorseful male who drove with a presumptive BAC of 210 mgEtOH/100ml bld; no record;

defence appeal from driving-prohibition term dismissed, [2004] OJ No 3719 (CA);

- *R v Weisgerber*, 2009 SKPC 107—curative discharge not granted, $2000 fine and 3-year terms of probation and prohibition imposed on 67-year-old First-Nation male with impaired and refusal priors;

- *R v Audy*, 2010 MBPC 55—fine of $1000, 18-months' probation and 2-year driving prohibition imposed on 29-year-old First-Nation female with no record; extreme social-support insecurity and classified as a high risk to reoffend; presumptive reading of 140 mgEtOH/100ml bld;

- see also *R v Banta*, [1996] BCJ No. 1284 (CA), in which the appellate review focussed on the fitness of a community-service-hours component of a suspended sentence, not on the imposition of a suspended sentence itself.

[37] Common to some of these (except for *Weisgerber*, which would appear to be somewhat of an outlier case, and *Rowan*) were circumstances of youthful drivers with no criminal history who were likely to respond well to rehabilitative sentencing.

Analysis

[38] Mr Boudreau's circumstances seem well aligned with those in *Martin*, *Roasting*, *Riddell* and *Harris*. He has a strong family-support network. He is willing to participate in a treatment plan. The presentence report describes him as requiring minimal corrective treatment.

[39] I find it reasonable to infer that Mr Boudreau is unlikely to come into conflict with the law again.

[40] I agree with the proposition advanced in *Martin* at ¶ 7 that probation with conditions can operate as an effective deterrent; this has regained currency since the decision in *R v Rushton*, 2017 NSPC 2 at ¶ 95, and *R v Barrons*, 2017 NSSC 216 at ¶¶ 44-46.

[41] There is also an element of criminal justice that can be derived from the experience of the court.

[42] Compliance with the law—including the criminal law—does not come from the exercise of the coercive power of the state but from what have been described as patterns of obedience—of course, not everyone agrees with this: see Frederick

Shauer, *The Force of Law* (Cambridge: Harvard University Press, 2015) *passim*. This is an observation that does not need academic interpretation or mediation, as the fact of the matter is that we do not need police officers on every street corner to ensure compliance with the law. Most people—including those we encounter in court who have run into difficulties because of singular instances of bad judgment—regard civil society as a shared project.

[43] It seems to me that evidence of such a pattern being well integrated into a person's character will be observed in circumstances such as limited offending history, consistent employment record, satisfactory scholastic performance, honest self-concept, and acceptance of responsibility for misconduct. These characteristics are alive and well in Mr Boudreau's biography.

[44] The success-failure binary is not real life. Rather, the best metric of rehabilitation is, in my view, improvement. Mr Boudreau has made significant strides toward self improvement since 2016. A fit and proper sentence should foster those good developments, as it will, among other things, enhance public safety by helping build in Mr Boudreau his already well established commitment to conducting himself responsibly in the community.

[45] Accordingly, the sentence of the court will be as follows:

- A fine of $2000 due by 03 December 2020; no victim-surcharge amount is exigible as the provisions of s 737 in force at the time of this offence were declared unconstitutional in *R v Boudreault*, 2018 SCC 58;
- A 24-month prohibition order;
- A term of probation for 24 months which, in addition to the statutory conditions, will set out a number of rehabilitative conditions, including:
    - 100 hours of community service to be completed by 25 May 2021; the service is to focus on safe, impaired-free driving and may include public speaking;
    - Not enter premises where alcohol is the primary product for sale;
    - Not have alcohol in your body outside your residence;
    - Not possess or consume controlled drugs except in accordance with a prescription for you;
    - Undergo substance-use assessment and counselling as directed by your probation officer.

[46] This is not to be taken as the court giving Mr Boudreau "a break". It is not the role of the court to dispense breaks; that sort of thing is more aligned with the

prerogative of mercy. Rather, the court is required to impose a fit and proportionate sentence which ought to take into account all sentencing factors: *R v Howell*, 2013 NSCA 67. Based on those principles, Mr Boudreau has received a sentence that is deserved.

JPC