**SUPREME COURT OF NOVA SCOTIA**
**Citation:** R. v. Polley, 2014 NSSC 283

**Date:** 20140722
**Docket:** CR. Am. 416879
**Registry:** Amherst

**Between:**

Her Majesty the Queen

v.

Charles Henry Polley

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| **Judge:** | The Honourable Justice A. David MacAdam |
| **Heard:** | June 4, 2014, in Amherst, Nova Scotia |
| **Written Decision:** | July 22, 2014 |
| **Counsel:** | Mr. Bruce Baxter, for the Crown<br>Mr. Jim O'Neil, for the Defence |

**By the Court**:

[1] This is the sentencing in the matter of *R. v. Charles Henry Polley*. Mr. Polley has pled guilty that he:

> ...did by criminal negligence in the operation of a motor vehicle cause the death of Stephen Mansford Allen, contrary to section 220(b) of the *Criminal Code*.

[2] The facts that have been agreed to by Mr. Polley constitute an admission pursuant to section 655 of the *Criminal Code*. Essentially, on the 4th day of September 2011, at about 1:45 a.m., Mr. Polley drove his truck while significantly impaired, and in such a manner that he caused the death of his passenger, Stephen Mansford Allen, age 51.

[3] It appears that on the evening of Saturday, September 3, 2011, Brian and Chrissy Purdy were hosting a well-attended pig roast at their house located on the Pugwash Junction Road. There are four residences clustered rather close together at this location, three of them within 20 or 30 feet of the road. Cars were parked on both sides of the road and people were moving about, some retrieving items from their vehicles.

[4] After an initial visit to the party with Stephen Allen, driving his mother's van, Mr. Polley left the party. He later returned, driving his own truck, again with Mr. Allen as his passenger. Both were impaired by alcohol. It is unclear how much, if any, alcohol Mr. Polley drank at the Purdy property, but Mrs. Allen told police the two had been drinking all day while trying to fix a car, and a witness recalled Mr. Allen with a drink on his first visit to the party. (Mr. Polley says he arrived at Mr. Allen's at about 10:00 p.m. and started drinking at about that time.)

[5] At one point in the evening, Mr. Polley asked one of the party-goers if he needed a drive home. The individual declined. At least three witnesses observed Mr. Polley doing power turns or doughnuts in the Purdy driveway, as he was leaving. One witness approached Mr. Polley and told him to drive more carefully, given the large number of people walking around the yard. That same witness saw Stephen Allen in the passenger seat, passed out, and detected a strong odour of liquor emanating from within the vehicle. She saw Mr. Polley drive away westbound at a high rate of speed. A few minutes later she saw Mr. Polley's truck returning eastbound at a higher rate of speed. She then heard the collision. At least two other

witnesses observed Mr. Polley driving when he left and Mr. Allen passed out in the passenger seat.

[6] All witnesses who saw Mr. Allen in the vehicle before the accident, described him as being in an advanced state of intoxication and either passed out or close to it. One said his eyes were rolled back in his head; another said she doubted he could have walked unaided from the truck.

[7] At least one other witness observed the truck drive away at high speed and return moments later, then hearing a collision. Several witnesses saw the return run, all of them describing it as high speed or extremely or excessively fast. One put the speed at well over 120. The time between the initial high-speed departure and the even higher-speed return was estimated by one witness as: "not very long, four to five minutes". And by another as, "I wouldn't say any more than like three minutes".

[8] There is a corner in the road just beyond the Purdy residence. It is marked by a 60 km/hr sign. (The police say it was snapped off by the Polley vehicle but Mr. Polley denies this, saying it was on the other side of the bridge.)

[9] Mr. Polley's vehicle was going at such a speed that it lost traction on the road and proceeded in a more or less straight line towards the guard rail, which it ripped out while maintaining enough momentum to launch itself a further 150 feet across a small creek, hitting the ground and vaulting onto its roof. Mr. Allen was thrown from the vehicle and killed; the cause of death is given as blunt force injuries of chest and abdomen. Mr. Polley remained in the vehicle and was assisted out by Matthew Wilson, who responded to the accident.

[10] Mr. Polley appears to have wandered away from the scene as responders looked for Mr. Allen at the accident scene, which was in almost complete darkness. Mr. Polley was later found passed out in a ditch a short distance away. When discovered by a firefighter he awoke and asked, "Was it my mother's van I smashed?"

[11] Mr. Polley was taken to the hospital for examination and a blood demand was made of him. Police photographed a large round, red abrasion on his chest/abdomen, similar in size and shape to the steering wheel of the truck. No such abrasion was found on the deceased. Medical evidence confirmed the presence of the significant marking, its consistency with a steering wheel, and that such injuries are commonly observed on drivers in motor vehicle accidents.

[12] Blood was finally drawn five and a half hours after the collision. It was analyzed as 75 milligrams of alcohol in 100 millilitres of blood. An expert alcohol analyst extrapolated the reading to the time of driving. Depending on the rate at which Mr. Polley eliminated alcohol, his reading would have been between 140 and 190 milligrams of alcohol in 100 millilitres of blood at the time of driving. The deceased's reading was 208 milligrams.

[13] Blood was found on the driver's side air bag. Mr. Allen was eliminated as a source. A match was made to Mr. Polley.

[14] Mr. Polley gave a statement to police. He said he had no memory of the events, and that his last memory before the accident was being at Mr. Allen's while Mr. Allen worked on his son's car, and that his first memory after the accident was waking up in the ditch and someone telling him not to move.

[15] I have received from crown and defence counsel a joint recommendation as to the appropriate sentence in these circumstances. I have reviewed the authorities provided by counsel, together with their recommendation of the joint sentence. I

would note, however, that as the sentencing judge I have both an absolute discretion and the responsibility to assess the appropriateness of the joint submission. I alone have the duty to impose a fit sentence in this matter.

[16] There is an extensive pre-sentence report filed in reference to Mr. Polley. He is 52 years of age, having been born and raised in Pugwash, Nova Scotia. He was the youngest of six children. His father was a truck driver and his mother worked as a nurse. His youth appears to have been unremarkable, and he indicated he left home at age 17 and moved to Edmonton, Alberta, to live with friends and to work. He lived in Alberta from 1979 until 1982, when he returned to Pugwash. He married in 1985 and he and his wife separated in 1994. They had three children, all of whom are now adults. He commenced a common-law relationship in 1998, and this continued until 2004. There is one child who is presently 14 years of age. Since 2004 he has not been in a serious relationship.

[17] Mr. Polley completed grade 11, at which point he left school to pursue employment in Alberta. Apparently the only other training or education he has undertaken was a heavy equipment operation program in 1980, in which he received a certificate. Most of his work history has been as a labourer. He has experience in

the oil fields, construction, mechanics, woods and farm work. He is presently unemployed, having been on disability for the past two years due to a compressed spine injury.

[18] In her report, the probation officer notes:

> Mr. Polley acknowledged that he was under the influence of alcohol when the offence occurred. He commented that any time he has encountered significant trouble in his life, alcohol has been a contributing factor. He reported that he has three previous impaired driving convictions with the most recent occurring in 2002, although he was sentenced for this offence in 2004. He indicated that he has had to complete substance abuse education programs each time in order to regain his license.

[19] Although stating that apart from his impaired driving convictions he had not considered alcohol to be a problem, he did note that his ex-wife told him she had left him, in part, due to his drinking. He also commented that many of the people he has been friends with throughout his life had drinking habits similar to his own.

[20] The probation officer interviewed two of Mr. Polley's sons, both of whom spoke positively about their father. Each suggested that Mr. Polley does not recall the accident, nor the events leaving up to or following it. Nevertheless, one of his sons indicated that he still feels responsible, regardless of what happened, as he was

the owner of the vehicle involved in the accident, and was in it when the accident occurred. Of concern to this court is the comment by each of them that within Pugwash and the surrounding areas there was a complacent attitude towards impaired driving. One of the sons commented that although Mr. Polley always liked to drink, that excessive drinking was commonplace in the community.

[21] To the extent these comments by Mr. Polley's sons accurately reflect attitudes in the community, they are disturbing, not only in respect to the criminality of Mr. Polley in respect to the charge for which he has pled guilty, but also in respect to the community view of drinking and apparently drinking and driving. One of the sons indicated to the probation officer that in his opinion most people in the community seem to have the attitude that his father and the victim had both got into a vehicle together intoxicated many times with one of them driving and both knew the risks associated with this type of behaviour. In this instance, it was the passenger in the vehicle who died. Notwithstanding the passenger may have been himself intoxicated this does not lessen the criminal responsibility of Mr. Polley who was operating the vehicle at the time of the accident. If the attitude expressed by the son is representative of the community view, then it is extremely disturbing. This type of behaviour is a risk not only for the occupants of the motor vehicle, but other citizens

as well. Whether the opinion of the two sons is reflective of the community attitudes is unknown to this court. However, if it is, I would strongly suggest that the community rethink its attitude towards drinking and driving.

[22] The pre-sentence report concludes:

> Mr. Polley maintains that he has no recollection of the accident associated with the present offences (sic). He noted that he willingly changed his plea to guilty even though he does not recall the events and cannot be sure that he is (sic) committed the offence for which he is being sentenced. He indicated that he feels a sense of responsibility for the death of the victim as the vehicle in which the accident occurred belonged to him and he was participating in irresponsible behaviour on that evening.

[23] Notwithstanding these comments, the Crown originally indicated some concern about Mr. Polley not acknowledging that he was the driver. However, his admissions pursuant to section 655 clearly acknowledge that he was the driver, and the evidence certainly substantiates the same.

[24] The accused has an extensive criminal record, including five impaired or alcohol related offences of which the most recent occurred in September 2004.

[25] Counsel for Mr. Polley, in his pre-sentencing brief, states that although he has a related criminal record, the offences are greater than ten years old and, while generally a consideration in sentencing, the gap principle applies after only five years. He refers to *R. v. Smith*, 2006 NSCA 95, where Oland J.A. said, at paras. 36-37:

> As is apparent from his sentencing decision, the judge focussed solely on the length of the appellant's criminal record, and the variety of offences for which he had been convicted. In *R. v. Stewart*, [2003] O.J. No. 1958 (Ont. C.A.), the court considered a sentencing appeal which involved insufficient facts stated to explain a sentence; a failure to apply the principles of sentencing; and sentencing on the volume of the criminal record rather than the substance of the defendant's past crime:
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> > 9. The appellant had a substantial criminal record [not set out in the decision] and it certainly was an aggravating factor that needed to be considered in imposing sentence. Without knowing what the trial judge thought of this offence, as he gave no reasons, he appears to have sentenced the appellant on his record, without consideration for the particulars of the offence. It must be remembered that the appellant had already paid the price for his earlier convictions. (Emphasis by Oland J.A.)
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> The trial judge here gave no consideration to the fact that considerable time had passed since the appellant had been convicted of any offence, other than driving offences. Clayton Ruby, *Sentencing* (Sixth Edition), (Toronto, Butterworths, 2001), sets out the reasoning behind the "gap principle," and provided illustrations from the case law:
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> > 8.78 Since both sentencing and crime are human endeavours, it is natural for the courts to give credit to someone who has made an honest effort to avoid conflict with the criminal law. In the nature of things, an effort such as this will often not be completely successful, but if a substantial period of time passes without convictions, this is often a matter which will be taken into consideration. As put by

Cross: "Assuming that it is not merely the outcome of lucky non-detection, the trouble-free period shows in these cases that the offender is not a professional criminal, and therefore the public needs less protection from him." It shows that there is some hope of rehabilitation.

....

8.80 In *Kennedy*, the accused was convicted of manslaughter and sentenced to two years less one day. The Crown appealed, bringing forward a record involving jail sentences over a period of years for such crimes as assault, breaking and entering, escape custody, mischief, wilful damage and another breaking and entering. All criminal involvement had ceased for a five-year period prior to the manslaughter conviction. In these circumstances the Court of Appeal determined that: "after having gone five years without involvement in the law, the past record should not be a too material factor in determining an appropriate sentence".

8.81 In *Hodson*, the court had to evaluate a lengthy record, but noted that, though there had been more recent convictions, there had earlier been an eight year period without convictions and indeed "some intervals in which he is known to have got an honest living". The court regarded this interval as "a new start" and was disposed to show leniency. Accordingly a term of five years was reduced to 12 months' imprisonment. This case was approved by the Ontario Court of Appeal in *Harrell*, where an offender with a record for similar offences was sentence to five years' imprisonment. There was a gap of 11 years where he was not convicted of "any serious offence" followed by further convictions for breaking and entering and uttering two forged cheques - uttering being the very offence of which he had been convicted and for which he now stood sentenced. The court, noting this 11 year gap which did not immediately precede the conviction at bar, came to the conclusion that this "long interval, free from serious convictions is entitled to due weight" and noting other factors as well, reduced the sentence to three years. In *Re Morand and Simpson*, the offender, Simpson, had a nine year gap between the present offence and his only previous offence. In the result the three year sentence for breaking and entering was reduced to two years less

> one day. Similarly in *Murray*, the court noted the offender "deserves a credit" for a one-and-a-half-year period free from crime following his marriage, a period which had been interrupted only by the crime under consideration. A "change in lifestyle" over a seven year period is properly reflected in the sentence imposed.
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> 8.82 Not all periods of abstention from crime operate in mitigation of the penalty that might otherwise be imposed....
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> 8.83 For the gap principle to come into effect the period under consideration need not be totally crime free. A nine year period marred only by minor offences, such as causing a disturbance and driving a motor vehicle while disqualified, merited consideration in *Graveline*, *Bezaire* and *Cassidy*. The court concluded "it would appear that since then he has been making some effort to stay out of trouble or at least he has not been in as much trouble since then". Accordingly a one year period was reduced, for this reason among others, to six months. Similarly in *Harnett*, the court gave effect, upon a charge of possession of stolen copper wire, to the gap of 14 years marred only by been a part of them. In the result a sentence of two years with three years' probation was reduced to one year followed by two years' probation." (Emphasis by Oland J.A.)

[26] Oland J.A. was dissenting on this point, but I do not read the majority reasons on the sentence appeal (*per* Saunders J.A. at paras. 41-61) as contradicting her discussion of the law on this point.

[27] Recognizing that the gap principle is a relevant consideration in considering an offender's record, this court is also mindful that one conviction for impaired driving is one too many. The risks are not only to the offender, but also to anyone

who accompanies him, even knowing of his condition, and extends to the many innocent potential victims of such reckless behaviour. An automobile is a weapon, and when it is being operated by someone who is impaired, the risks extend not only to the offender but to members of the community as well.

[28] The disturbing prevalence of offences involving motor vehicles driven by persons impaired by alcohol has prompted the courts in Nova Scotia (and elsewhere) to emphasize the objective of general deterrence and to reflect it in sentencing for such offences. Matthews J.A. noted the significance of general deterrence in sentencing in such cases in *R. v. Buffett* (1989), 93 N.S.R. (2d) 324 (S.C.A.D.). In *Buffett*, *supra,* at para. 7, Justice Matthews, for the Court, referenced the following comments of MacKinnon A.C.J.O. in *R. v. McVeigh* (1985), 22 C.C.C. (3d) 145 (Ont. C.A.), at 150:

> 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

> overemphasizing that individual deterrence is seldom needed once tragedy has resulted from driving.

[29] After noting the accused had "made the judgment call" to operate his motor vehicle after consuming alcohol (para. 8), Justice Matthews continued, at para. 9:

> With this type of case the primary factor in sentencing must be general deterrence. Drinking and driving is a serious problem. Such conduct all too often results in disaster. It is essential that the sentencing process play its role in protecting the public from conduct such as the respondent has here displayed.

[30] In *R. v. Cromwell*, 2005 NSCA 137, Bateman J.A. observed, at paras. 27-29:

> Drunk driving is a crime of distressing proportions. The Courts have consistently recognized that the carnage wrought by drunk drivers is unabating and causes significant social loss. (*R. v. Biancofiore* (1997), 119 C.C.C. (3d) 344 (Ont. C.A.), per Rosenberg, J.A. at para. 22).
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> 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:
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> > [22] This and other courts have repeatedly said that denunciation and general deterrence are extremely weighty considerations in sentencing drunk driving and related offences: 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*, 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.
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> 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....

[31] I have received and considered a victim impact statement from the widow of Mr. Allen. She describes the isolation and stress she has felt by the loss of her husband. She concludes that as a consequence of her husband's death, she has had to leave her home, as she says, she could not maintain it without Mr. Allen.

[32] Section 718 of the *Criminal Code*, to a large extent, codifies the law governing sentencing:

> 718. 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 by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[33] Other provisions of the *Criminal Code* are also relevant to sentencing in this instance. They include the following:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

...

> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
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> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
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> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
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> (e) 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.

[34] In respect to aggravating and mitigating circumstances, the Crown noted the record shows a pattern of like offences, relating to alcohol and driving. Also aggravating are the fact that alcohol and reckless speed were involved, thereby putting others at risk; that Mr. Polley had other options to get home without driving; and that he had originally returned home with his mother's van and then came back to the party driving his own truck. Defence counsel indicated they had no disagreement with the factors noted by Crown.

[35] In reference to mitigating circumstances, the Crown acknowledges that Mr. Polley has pled guilty and thereby avoided the necessity for witnesses to attend, and

to give evidence over a trial that may have encompassed a number of days. He also described as a "slightly" mitigating factor that there had been seven years from the last offence. While also referring to the gap principle as being a mitigating factor, defence counsel essentially indicated he did not disagree with either the mitigating or aggravating factors noted by Crown.

[36] In *R. v. Stephen Daniel Polley*, 2013 NSPC 95, Scovil Prov. Ct. J. provides a useful analysis of many of the cases dealing with impaired driving and other related offences. The offender in that case was Mr. Polley's nephew, and the sentence was a total of five years on three convictions of impaired driving, dangerous driving, and driving while prohibited. However, there were neither extensive injuries nor death involved in that case. Judge Scovil said, at paras. 18-19:

> 18 Below are a number of synopses of drinking and driving cases that are provided to give some background of the variation of sentences related to those before the court.
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> > In *R. v. Naugle* (*supra*) the accused is charged with failing to remain at the scene of an accident, as well as impaired driving and operating a motor vehicle while prohibited. The accused had an atrocious 32 year criminal history, including 22 impaired driving related convictions and over 50 other driving related offences. The offences occurred on a busy highway, 27 days after the accused was released from prison for committing similar offences. Mr. Naugle received eight years six months custodial sentence, together with a lifetime driving prohibition.
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> > *R. v. Morine* 2011 NSSC 46. The accused was charged with failure to comply with a breath demand, impaired driving causing bodily harm, impaired driving causing death and assaulting a police officer. The accused had no

prior record and was driving his own car. He allowed passengers in the vehicle after consuming an excessive amount of alcohol. The accused drove in a manner that caused him to lose control of the vehicle, and fled the scene. He insulted the officers and spit in the officer's face. The accused received five years for impaired driving causing death, nine months for impaired driving causing bodily harm, concurrent, three months for assaulting a police officer, concurrent, and one month for failure to comply with a breath demand, concurrent. He further received a ten year driving prohibition.

*R. v. MacArthur* 2009 NSPC 61. The accused was convicted of impaired driving. He had three previous convictions for impaired driving in the past 20 years. He received 18 months probation, together with a two year driving prohibition, based on a curative treatment discharge.

*R. v. Lohnes* 2007 NSCA 24. The accused was charged with impaired driving and driving while prohibited. His record included 15 Criminal Code matters, consisting of six prior convictions for driving while prohibited, one breathalyzer refusal and one breach of probation. He additionally had ten Motor Vehicle Act convictions, six of which were for driving while disqualified. The accused received six months custody concurrent, together with a 24 month period of probation, and was prohibited from driving for a 44 month period.

*R. v. Hamilton* 2008 NSSC 217. The accused was convicted for impaired driving causing bodily harm. The accused had no prior record. The driving resulted in damage to three separate motor vehicles and various individuals. The accused's blood alcohol level was double the legal limit. The accused received a six month conditional sentence, together with a one year period of probation. He was prohibited from driving for two years.

*R. v. Davison* 2006 NSPC 73. The accused was charged with impaired driving causing bodily harm. The accused had no prior record. He was of a youthful age, had a blood alcohol level of over 0.15 and was driving on the wrong side of the road. The accused received an 18 month conditional sentence, together with six months probation. He was prohibited from driving for five years.

*R. v. Jesso* 2006 NSPC 30. The accused was charged with impaired driving causing bodily harm. He had a high blood alcohol content level, with the victim receiving serious injuries. He had no prior record. He was sentenced to a 20 month conditional sentence order and a one year driving prohibition.

*R. v. Cromwell* 2005 NSCA 137. The accused was charged with impaired driving causing bodily harm, together with a breach of recognizance. She had no related record. There were significant injuries received by the complainant. There were no organized steps taken by the defendant to address ongoing substance abuse issues. The accused's actions showed a continuing insensitivity to the plight of the victims and the failure to appreciate the consequences of her actions. No prior record. Four months custody on the impaired driving charge and one month consecutive on the breach of recognizance charge. The court placed an additional one year probation with a two year driving prohibition.

*R. v. MacLeod* 2004 NSCA 31. The accused was charged with impaired driving causing bodily harm, as well as leaving the scene of an accident. The accused had a record for impaired driving causing death, possession of stolen property and refusal of the breathalyzer. The accused received a two year sentence and a driving prohibition.

*R. v. Morash* 2011 NSSC 99. The accused was convicted of two counts of impaired driving causing bodily harm and one of impaired driving causing death. He received six years for impaired driving causing death and three years for impaired driving causing bodily harm. The accused had four prior alcohol related convictions.

*R. v. Cooper* 2007 NSSC 115. Accused charged with two counts of impaired driving causing death. The accused had dated convictions for impaired driving. He was sentenced to seven years custody on each count to run concurrent. Lifetime driving prohibition was ordered.

*R. v. Dubois* [2011] N.S.J. No. 529. Accused convicted of impaired driving, driving while disqualified, obstruction of justice, impaired operation causing bodily harm and failure to appear. The accused had a criminal record that consisted of related offences. 27 months custody imposed, together with a ten year driving prohibition.

*R. v. Nickerson* (1991) 101 N.S.R. (2d) 243 (NSCA). Accused pled guilty to a charge of impaired driving causing death and a charge of impaired driving causing bodily harm. Favourable pre-sentence report with a youthful offender. The Court of Appeal reaffirmed the principle of general deterrence. Sentence of five years imprisonment.

*R. v. Buffett* (1989) 93 N.S.R. (2d) 324 (NSCA). The accused is charged with impaired driving causing bodily harm. The facts show that he was driving erratically and eventually pulled out, passing another vehicle on the two lane

bridge, colliding head-on with oncoming traffic. The accused had a blood alcohol level of .160 to .170. He had no prior record, with a good education and demonstrated remorse. Sentenced to six months custody on appeal.

*R. v. MacEachern* (1990) 96 N.S.R. (2d) 68 (NSCA). The accused was convicted of criminal negligence causing death. A second count alleging an offence under section 255(3) was stayed. The accused was driving under the influence of alcohol when he struck a nine year old child, causing his death. There was a large amount of vehicle and pedestrian traffic in the area. On appeal the accused was sentenced to five years custody and a ten year driving prohibition.

*R. v. Muise* (1990) 99 N.S.R. (2d) 186 (NSCA). The accused was convicted of criminal negligence causing bodily harm. He drove through a four way stop intersection at a high rate of speed, colliding with another vehicle. The accused was intoxicated at the time and driving a mechanically defective vehicle. He was disqualified from driving at the time of the accident, and his record included other driving offences. On appeal the sentence was increased to six months custody, together with probation.

*R. v. Bear* [2007] S.J. No. 611 (SKCA). The offences involved Bear being in a residential area and striking a snow bank. The accused was found in the vehicle, along with open alcohol in the passenger seat. Breath samples indicated a blood alcohol level of double the legal limit. He had a lengthy criminal record, 75 convictions, including 20 prior convictions for driving while disqualified, and 15 years plus one day imprisonment for impaired driving conviction at the time. The sentence was set at four years imprisonment for the impaired driving, two years concurrent for operating a motor vehicle while disqualified. He had a two year driving prohibition.

The courts regularly recognize that the imposition of a just and appropriate sentence can be an extremely difficult task. It involves imposing a sentence that reflects the circumstances of the specific offence, the individual attributes of the offender before the court, and adherence to both statutory requirements and those precedents set out by the case law. There is no set formula for a court to follow, and in cases such as this, there is a wide range of sentences that may serve as guides. As has been indicated earlier this sentencing is a delicate matter of stressing denunciation, deterrence, totality and proportionality.

[37] I accept Judge Scovil's reasoning as guidance in sentencing in cases of this kind. I have considered the circumstances of the accused, the offence, statutory guidelines and case law. In considering the appropriate sentence, I have recognized and accepted the joint recommendation of counsel. Both counsel are experienced and, in my view, the joint recommendation recognizes the need for both specific and general deterrence.

[38] Accordingly, Mr. Polley will serve a period of four-and-a-half years in custody in a federal institution. He is also prohibited from driving anywhere in Canada, upon his release, for a period of 20 years. There will be a secondary DNA order as well.

MacAdam, J.