PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Parker*, 2024 NSPC 10

Date: 20240202
Docket: 8641793-8641798
Registry: Truro

Between:

His Majesty the King

v

Lindsay Anne Parker

SENTENCING DECISION

Judge:	The Honourable Judge Del W Atwood
Heard:	2024: 19 January, 2 February in Truro, Nova Scotia
Charge:	320.14(2) of the *Criminal Code of Canada*
Counsel:	Thomas Kayter III for the Nova Scotia Public Prosecution Service David S Green for Lindsay Anne Parker

This decision has been corrected according to the attached Erratum dated March 1, 2024.

By the Court:

Synopsis

[1] Lindsay Anne Parker elected trial in this Court and pleaded guilty on 3 October 2023 to six indictable counts of operating a conveyance with a prohibited blood-alcohol level and causing bodily harm contrary to § 320.14(2) of the *Criminal Code* [*Code*]. There was one count for each injured victim. The Court heard sentencing submissions on 19 January 2024, and received additional written material from counsel after that. Ms Parker is before the Court today for the imposition of sentence. The Court will refer to the victims by their initials in order to protect the privacy of their health information.

Sources of information

[2] The Court has access to the following sources of information:

- Sentencing Exhibit No 1: An agreed statement of facts which was filed with the Court the day the guilty pleas were entered.
- Sentencing Exhibit No 2: A victim-impact statement prepared by ML; ML and her life partner, RL, were passengers in the vehicle struck by Ms

Parker; they sustained serious injuries; for RL, the injuries have been catastrophic and life altering.

- Sentencing Exhibit No 3: A thumb drive with video files which accompanied ML's victim-impact statement; the video recordings offer brief glimpses into RL's life before and after 24 July 2022.
- Sentencing Exhibit No 4: A medical certificate for RL from the Centre for Long Term Care in the French language. A French-language translator recited the contents of the document during the sentencing hearing.
- Sentencing Exhibit No 5: Letters of reference submitted by defence counsel attesting to the character of Ms Parker.
- Sentencing Exhibit No 6: A letter of apology from Ms Parker.
- Sentencing Exhibit No 7: Ms Parker's curriculum vitae.
- A sentencing brief from the prosecution.
- A sentencing brief from defence counsel, along with a letter from Ms Parker's clinical therapist.
- A defence brief outlining the personal circumstances of Ms Parker.

- A presentence report dated 15 January 2024.

Finding of guilt

[3] The facts set out in the agreed statement of fact support the guilty pleas, and the Court records findings of guilt on each count (cases 8641793-8641798). The circumstances of the offences will be reviewed under that heading.

Sentencing submissions of counsel

Prosecution submissions

[4] The prosecution seeks a term of imprisonment of two years less a day for the charge involving RL (case 8641793), followed by a three-year term of probation, and one-year concurrent terms for each remaining count (cases 8641794-8641798). The prosecution seeks a secondary-designated-offence DNA collection order and a 5-year driving-prohibition order. The prosecution does not oppose the imposition of a conditional-sentence order [CSO]; however, the prosecution asserts that a CSO would be unfit.

Defence submissions

[5] Defence counsel asks that the Court impose a two-year-less-one-day CSO, followed by a 3-year term of probation. Defence counsel advocates alternatively for a bare federal sentence of two years, should the Court find a

CSO not be consistent with the fundamental purpose and principles of sentencing.

Circumstances of the offences

[6] There was a form of agreed statement of fact [ASF] tendered as Exhibit No 1 before the presiding judge who took Ms Parker's guilty pleas on 3 October 2023. The ASF is irregular as it appears to be an extract from a policing-service-prepared occurrence report containing summaries of statements taken from witnesses, as well as a synopsis of policing operations and specialist analytical results. It is problematic that some of the witness-statement summaries offer conflicting accounts of pertinent events shortly preceding the tragedy that led to the charges against Ms Parker. Without hearing from those witnesses, the Court is not able to resolve those conflicts. As ASFs are generally treated as formal admissions and conclusive of the facts contained in them without further proof (see *R v Falconer*, 2016 NSCA 22 at ¶ 45) - ASFs that contain contradictory or inconsistent statements are best avoided. Nevertheless, there remain enough undisputed facts for the Court to make the following pertinent findings:

- On 24 July 2022 shortly before 1545 hrs, Ms Parker drove away from her home following an intense argument with one of her parents who was visiting at the time.
- She had her two children, HP and LP—then ages 4 and 6—in the conveyance she was driving (a 2005 Buick LeSabre); the children were not secured in child-safety seats.
- Ms Parker exited the laneway of her home and turned onto Highway 2, a two-lane undivided route with an 80 km/hr posted speed limit.
- Shortly after entering Highway, Ms Parker's conveyance entered the lane for opposing traffic, and collided with a conveyance (a 2021 Hyundai Kona) operated by PJ.
- There were three passengers in the conveyance operated by PJ: ML (front-passenger seat), RL (rear-driver's-side seat), MP (rear-passenger-side seat).
- Seven persons were seriously injured in the collision.
    - Ms Parker: multiple acute fractures; according to the Brief of Personal Circumstances prepared by defence counsel, Ms

Parker's right foot was nearly severed and she uses a knee scooter for mobility

- HP: open humerus fracture and femur fracture. The personal-circumstances brief informs the Court that HP has limited use of his right arm.
- LP: abrasions and bruising in neck and chest area; pelvic bruising.
- PJ: left clavicle fracture; left transverse fracture of L5 vertebra.
- MP: two splenic lacerations; laceration of liver; rib fractures; pelvic fracture.
- ML fracture of the right hand.
- RL: comatose; severe craniocerebral trauma.

- The driving conditions described by witnesses were that the roads were clear and dry and the visibility was good.
- A report by a collision analyst concluded that:
  - There was insufficient evidence to determine whether HP or LP were wearing seatbelts; they were not secured in child-safety seats.

- The cause of the collision was Ms Parker failing to maintain her path of travel in the proper lane and encroaching into the path of travel of opposing traffic.
- The conveyance operated by Ms Parker had a velocity of 86 km/hr 1 second prior to the collision.
- The conveyance operated by PJ had a velocity of 76 km/hr 1 second prior to the collision; however, the analyst believed that there had been hard braking action.
- Based on the physical evidence, the analyst believed that RL was not wearing a seatbelt at the time of the collision.

- Police seized diagnostic blood specimens that had been collected from Ms Parker; her measured blood-alcohol concentration extrapolated back to her last time of driving was148 mg alcohol in 100 mL of blood.

[7] Sentencing Exhibit No 4, the report from the Centre for Long-Term Care, establishes that RL suffered catastrophic injuries due to Ms Parker's decision to operate a conveyance with a high level of blood-alcohol concentration in her body. RL exhibits serious behavioral disorders, marked by aggression, impulsivity and incontinence, requiring around-the-clock care. For his own

safety and the safety of his family, he will remain confined in a closed environment for the remainder of his now reduced life expectancy.

[8] The ASF included an account offered by a witness who had observed Ms Parker operating an off-road vehicle earlier in the day. The summary of the statement taken from that witness records Ms Parker as driving "uncontrollably," "moving the handlebars from side to side, fishtailing on the road." "did a donut on the road", and "going through the bush and not the trail". The prosecution invites the Court to draw the inference that the evidence of the off-road-vehicle use, combined with the Ms Parker's driving that led to the collision, be taken as evidence of "sustained, irrational driving behaviour not just limited to the driving of the Buick LeSabre"; the prosecution alleges that Ms Parker's driving of her conveyance leading up to the collision was a "spillover of earlier reckless and irrational conduct on another form of motor vehicle, namely the ATV." I believe that it would be unsafe for the Court to draw what I would consider to be an extravagant inference based on Ms Parker's operation of an off-road vehicle that occurred an undetermined time prior to the offence. There are sufficient proven aggravating factors in this case without the Court having to clutch at things that are tenuous.

Victim impact

[9] ML read her victim-impact statement (Sentencing Exhibit No 2) in open court. One cannot have heard her passionate, eloquent—and yet humane—testimony and escape becoming acutely aware of the devastating impact Ms Parker's actions have had on RL, ML and their family. A life partner who was, prior to 24 July 2022, a vital, outgoing, energetic and loving family member, has been lost—emotionally, physically, in almost every way that human lives normally thrive and grow. ML has seen her family life disintegrate. She is now faced with care choices for herself and RL which are bound to inflict continuing trauma, and that will last well beyond any time-limited sentence imposed today by the Court.

Personal circumstances of Ms Parker and related mitigating factors

Circumstances of Ms Parker

[10] The letters of reference, the presentence report, and the biographical brief of Ms Parker's personal circumstances satisfy the Court that her decision to operate a conveyance with a high level of alcohol in her body was completely out of character.

[11] The presentence report and the brief of Ms Parker's personal circumstances inform the Court of the following:

- She has been in a stable and caring relationship with her husband for over a decade.
- Ms Parker completed high school and went on to receive a post-secondary diploma. She worked until 2016 when she chose to devote full-time attention to the care of her children.
- She began experiencing symptoms of depression following a miscarriage and resorted to beverage alcohol as a coping mechanism. Since being charged, Ms Parker has sought appropriate clinical services; she is receptive to counselling and attends her appointments dutifully. She no longer consumes alcohol and it is no longer kept in her home.
- In 2013, Ms Parker was discovered to have a tumor on her pituitary gland, which requires ongoing monitoring. The condition may affect her emotional judgment when she is upset.

[12] The five character-reference letters presented to the Court by defence counsel (Exhibit No 5) describe a loving and caring parent who has been deeply impacted by her decision to drive on 24 July 2022 and the ensuing tragic consequences. Although three of the letters appeared to stray somewhat from the pertinent topic of character, and offered opinions on adverse effects of possible sentencing outcomes, I took this as an expression of the concern these

writers feel for someone whom they care for and whose friendship they value. The letters satisfy the Court that, although Ms Parker might feel disowned by the community (an assertion made in the defence brief summarizing Ms Parker's personal circumstances) she has a reliable network of community support.

[13] Ms Parker is authentically remorseful for her actions. Her letter of apology (Exhibit No 6) is powerful evidence of this. There is one caveat arising from something said by Ms Parker in her letter: it was not allowing herself to be distracted by her youngest that was the fault factor in this case; rather, it was the decision to drive at all. I do not intend to give outsized effect to this point, as Ms Parker made clear that she understands it was wrong getting behind the wheel of a car after drinking alcohol.

Mitigating circumstances

[14] "Mitigating circumstances," as the term is used in ¶ 718.2(a) of the *Code*, refers to factors that militate in favour of a lesser sentence, but which do not lessen offence seriousness.

[15] Ms Parker entered early guilty pleas; in this case, the pleas represent an acceptance of responsibility and are an authentic expression of remorse. They

demonstrate that the sentencing function described in ¶ 718(f) of the *Code*—promoting a sense of responsibility in offenders—has been advanced by Ms Parker, even prior to the imposition of a sentence. Although the case for the prosecution appears to be strong, Ms Parker's guilty pleas have saved vulnerable witnesses from having to testify; this, too, is a mitigating factor: *R v Doucette*, 2015 PECA 5 at ¶20-22. Failure to consider a guilty plea as a mitigating factor can be an error in principle: *R v Friesen*, 2020 SCC 9 at ¶ 164 [*Friesen*]. While it has been suggested that a guilty plea offered in the face of overwhelming evidence will not necessarily attract so great a discount of sentence as one tendered in other circumstances (*R v Layte*, [1983] OJ No 2415 at ¶ 8 (Co Ct)), in my view, guilty pleas in cases involving warranted searches or vulnerable victims must be accorded significant weight.

[16] Ms Parker has been subject to stringent terms of bail since the time she was arrested (loosened to allow out-of-province medical treatment), and has been bail compliant. While the Court has not been presented with an evidentiary basis that would support an earned-through-bail reduction of sentence—*R v Knockwood*, 2009 NSCA 98 at ¶ 36 [*Knockwood*]—I have, in a limited way, factored it into the mix in accepting a lower-end-of-the-range sentence as

recommended by counsel—*Knockwood* at ¶ 29 and 33; *R v Kennedy*, 2021 NSSC 322 at ¶ 26.

Circumstances of reduced or no mitigating effect

[17] The Court accepts that Ms Parker's conduct on 24 July 2022 was out of character; she is well regarded in the community; significantly, she has no record of offending conduct.

[18] Nevertheless, the consistent direction arising from appellate review is that good character and lack of prior record are common characteristics of persons who commit alcohol-related conveyance offences, which lessens mitigating effect: *R v Gomes*, 2022 ONCA 247 at ¶ 35 [*Gomes*].

[19] Ms Parker's tumor is described as affecting her emotional judgment when she is upset. However, there is no medical evidence before the Court that this condition affected her judgment in her decision to drive on 24 July 2022. This stands in contrast to *R v Hood*, 2016 NSPC 78 (esp at ¶ 55-58), aff'd 2018 NSCA 18, which recognized the mitigating effect of a mental-health condition when there was a substantial body of opinion evidence linking the condition to the offending conduct. See also *R v Prioriello*, 2012 ONCA 63 at ¶ 11.

[20] Injuries sustained by the impaired operator of a conveyance are not reckoned as a mitigating factor: *R v Stennet*, 2018 ONCJ 466 at ¶ 8. Nevertheless, I take into account the fact that Ms Parker's own injuries have provided her with insight into the impact her conduct had on those who were harmed by her decision to drive with a prohibited level of alcohol in her body; it renders her expression of remorse as authentic and informed.

[21] Finally, it was argued by defence counsel that the absence of evidence of erratic driving leading up to the collision be given mitigating effect. I am unable to accept this proposition. Absence of evidence is not evidence of absence. Based on the witness summaries contained in the ASF, it is clear that Ms Parker swerved into the opposite lane very shortly after she had left her own driveway: there was no time for her to have accumulated a pattern of driving, and, in any event, it was erratic enough, and occurred at a time when the blood-alcohol concentration in her body was well into the statutorily aggravating range.

The mitigating effect of RL not wearing a seatbelt

[22] Defence counsel argues that the fact that the person who was most seriously injured on 24 July 2022, RL, was not wearing a seatbelt ought to have a

mitigating effect on sentence. The proposition is that RL would not have been as badly injured had he been securely belted. Should this lead to a discounting of the seriousness of the offence involving RL, or of the moral responsibility of Ms Parker?

[23] While some level of judicial notice has been taken of the mechanical workings of seatbelts (see *eg R v Nelson*, 2020 BCCA 204 at ¶ 55, which observes that notice does not extend to making findings about the causes of injuries) I find that I am unable to take judicial notice of the connection between the use or non-use of seatbelts and the severity of injuries in collisions. I am neither an accident reconstructionist, nor am I a medical clinician. Further, there is no evidence before the Court other than that RL was not wearing a seatbelt when the car in which he was a passenger was struck by Ms Parker when she veered into the wrong lane. It is an error for a court to draw inferences based, supposedly, on common sense when the inference is not grounded in evidence: *R v DC*, 2024 NSPC 1 at ¶ 41; *R v JC*, 2021 ONCA 131 at ¶ 58; *R v Pastro*, 2021 BCCA 149 at ¶ 4-6.

[24] The scientific-journal article submitted by defence counsel to the Court following the conclusion of the sentencing hearing—which analyzes the effectiveness of seatbelts in mitigating traumatic brain injury severity—is

placed before the Court purportedly as an expert opinion, but without a qualified expert before the Court who would adopt it. Furthermore, the article is uninformative: it deals with aggregates of data, and does not tell the Court anything about the mechanism of the injuries sustained by RJ in this particular case.

[25] Ms Parker pleaded guilty to operation causing bodily harm. The main criterion for establishing causation is an act that is "a significant contributing cause": *R v Maybin*, 2012 SCC 24 at ¶ 5. Ms Parker's decision to drive with a high level of blood-alcohol concentration, which led to the collision, was a significant contributing cause of all of the injuries suffered by RL, who would have been uninjured but for Ms Parker's driving.

[26] I agree with the proposition in *R v Butler*, [2002] OJ No 5335 at ¶ 15-16 (OCJ) that the failure of an injured victim to wear a seatbelt in a case such as this does not lessen the moral culpability of a motorist who choses to operate a conveyance with a high level of blood-alcohol concentration in the body. Furthermore, it is inappropriate to pass part of the responsibility for an offence over to a victim.

[27] If this putative mitigating principle were to be given effect, where would it end? Would a sentence for dangerous driving be lessened because an injured pedestrian walked too slowly through the crosswalk? What about the shooting victim who could have ducked? Consider a more egregious example of a victim who has assumed a big risk of harm: a criminal-gang actor who becomes the target of retaliatory or opportunistic violence at the hands of an adversary. That was the case of *R v Winters*, [1974] NSJ No 188 at ¶ 16 (AD): a hashish trafficker was robbed. The Court found that the character and conduct of the victim should have no bearing on the sentence.

Statutory penalties

[28] The *Code* prescribes the following range of penalty for the offences committed by Ms Parker:

> 320.2 Everyone who commits an offence under subsection . . . 320.14(2) . . . is liable on conviction on indictment or on summary conviction
>
> (a) to the following minimum punishment, namely,
>
> (i) for a first offence, a fine of $1,000,
>
> . . .
>
> (b) if the offence is prosecuted by indictment, to imprisonment for a term of not more than 14 years . . . .

[29] A minimum punishment is not a mandatory punishment, and a sentencing court may impose a penalty greater than a statutory mandatory minimum: *R v Denny*, 2017 NSSC 127 at ¶ 36, varied on an unrelated point, 2018 NSCA 11.

[30] The minimum fine in ¶ 320.2(a)(i) applies only when a court decides to impose a fine. It does not apply when a court imposes a term of imprisonment, as a term of imprisonment will be greater than any minimum fine. This is because Parliament has, in general terms, treated imprisonment—of whatever duration—as a more serious punishment than any fine: *R v Hatcher*, 2000 NFCA 38 at ¶ 19-20.

[31] In virtue of SC 2022 c15 s14, in force 17 November 2022 on Royal Assent, these charges are now eligible for a CSO, given the provisions of ¶ 11(i) of the *Charter*.

[32] As a result, the following would be legal penalties for the charges against Ms Parker:

- A fine alone, of a minimum of $1000: § 734, 320.2(a)(i).
- A fine and a period of probation of up to three years: ¶ 731(1)(b).
- A period of imprisonment of up to 14 years: § 718.3 and 320.2(a).

- A period of imprisonment not exceeding two years followed by a term of probation of up to three years: ¶ 731(1)(b).
- A period of imprisonment of up to 14 years and a fine: § 734.
- An intermittent sentence of up to 90 days: § 732.
- A fine, a period of probation and an intermittent sentence: § 732.
- A CSO of less than 2 years: § 742.1.

[33] As each of the counts is subject to a mandatory-minimum fine, suspended sentences or discharges would be illegal sentences.

[34] The Court has the discretion to impose a driving prohibition of up to 10 years, plus any period of imprisonment: § 320.24(4) and 320.24(5)(b).

[35] The offences fall within the classification of "secondary designated offence" under § 487.04 of the *Code* for the purposes of DNA collection.

General sentencing principles

[36] Judges are presumed to know the law and are entitled to focus on the live issues in a case. Accordingly, I find that it is neither necessary nor sufficient to recite the primary and subsidiary principles of sentencing set out in Part XXIII of the *Code*; what is important is that the Court apply them.

[37] There is no real controversy regarding sentence parity, as the sentencing recommendations from prosecution and defence counsel have coalesced around a two-year-less-a-day/two-year period of custody.

[38] The main controversy, which this judgment will address later, is whether the Court should impose a CSO.

The policy judgment of Parliament to address substance-impaired conveyance offences

[39] Although data reveal an array of contributing factors associated with death and injury on Canada's highways (see Transport Canada. Catalogue No T45-3E-PDF. Canadian Motor Vehicle Traffic Collision Statistics: 2021, URL: https://tc.canada.ca/en/road-transportation/statistics-data/canadian-motor-vehicle-traffic-collision-statistics-2021), and while deaths and injuries due to impaired driving have been declining (see Statistics Canada. Table 35-10-0177-01: Incident-based crime statistics, by detailed violations, Canada, provinces, territories, Census Metropolitan Areas and Canadian Forces Military Police, DOI: https://doi.org/10.25318/3510017701-eng) Parliament has consistently moved toward the imposition of higher ranges of penalties to denounce and deter conveyance offences involving the use of impairing substances. This is a rational policy decision, and it is not for sentencing courts to circumvent legislative choices.

[40] Significantly, Parliament introduced the current conveyance-offence provisions of the *Code* by SC 2018, c 21, the relevant portions of which came into force on 18 December 2018 in virtue of § 52 of the *Act* [the 2018 amendments]. The 2018 amendments highlighted aggravating sentencing factors and increased sentencing ranges for conveyance offences. The amending statute included as a preamble a statement of general principles about offences relating to conveyances (now summarized in § 320.12):

> Whereas dangerous driving and impaired driving injure or kill thousands of people in Canada every year;
>
> Whereas dangerous driving and impaired driving are unacceptable at all times and in all circumstances;
>
> Whereas it is important to deter persons from driving while impaired by alcohol or drugs;
>
> . . .
>
> And whereas the Parliament of Canada is committed to adopting a precautionary approach in relation to driving and the consumption of drugs, and to deterring the commission of offences relating to the operation of conveyances, particularly dangerous driving and impaired driving . . . .

[41] The 2018 amendments increased the maximum penalty for impaired-operation-causing-bodily-harm offences from 10 years to 14 years on indictment (now in § 320.2(b)).

[42] An increase in the upper-range of a sentence must be taken into account in the reckoning of proportionality: *Friesen* at ¶ 97; it reflects the judgment of Parliament that a class of offence be regarded as more serious than in the past: see *R v Sinclair*, 2021 MBCA 6 at ¶ 8, and *R v Graham*, 2022 NSPC 42 at ¶ 37. As a result, reported sentencing outcomes imposed prior to the 2018 amendments are of reduced precedential value; this would include my own decision in *R v Boudreau*, 2019 NSPC 69.

[43] Parliament has singled out substance-impaired driving in particular as deserving greater sanction than other conveyance-related offences. Consider that of all of the conveyance-related offences not involving death or bodily harm, only those involving alcohol or other impairing substances attract mandatory-minimum penalties—including prison sentences for reoffending, even with no statutorily aggravating circumstances.

[44] The Supreme Court of Canada and intermediate appellate courts in the country have held consistently that denunciation and deterrence are to be emphasized in imposing sentences for conveyance-related offences which involve the use of impairing substances, particularly when bodily harm or death result: *R v Lacasse*, 2015 SCC 65 at ¶ 5 [*Lacasse*]. Denunciation and deterrence—accompanied by the risk of harsh sentences—are particularly

relevant in alcohol-related conveyance offences: it is often persons who are law abiding, with good employment records and pro-social antecedents, who ended up getting charged; it is they who are most likely to be deterred by the risk of severe penalties: *Lacasse* at ¶ 73; *R v Proulx*, 2000 SCC 5 at ¶ 129 [*Proulx*].

Should a CSO be imposed?

[45] As noted earlier in this decision, a CSO would be a legal sentence in this case, in virtue of SC 2022 c15 s14. The statute began as Bill C-5, 1st Sess, 44th Parl. While the sponsor's speech (*House of Commons Debates*, 44th Parl, 1st Sess, Vol 151, No 016 (13 Dec 2021) at 1033-1035) noted that the bill was aimed in part at addressing systemic discrimination in Canada's criminal-justice system, the sponsor added that another legislative objective was to "increase the availability of conditional sentencing orders in cases where offenders do not pose a risk to public safety." The bill was intended to have broad effect, and restore the first principles of sentencing reform that began 3 September 1996 with SC 1995, c 22, s 6.

[46] A focus on first principles leads the Court to *Proulx*.

[47] In emphasizing the need to distinguish CSOs from probation, the Court in *Proulx* made the broader observation that inadequate sentences undermine respect for the law: ¶ 30.

[48] There is no presumption in favour of the imposition of a CSO: the fact that the prerequisites for a CSO might have been met—and the conditions have been fulfilled in Ms Parker's case—does not lead inevitably to a finding that a CSO would be consistent with the fundamental purpose and principles of sentencing. The particular circumstances of the offender and the offence must be considered in each case: ¶ 85.

[49] *Proulx* held that the need for denunciation and deterrence may in some cases be so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct; moreover, there may be circumstances when the need for deterrence will warrant incarceration, depending, in part, on whether incarceration would have real deterrent effect: ¶ 106-7.

[50] *Proulx* focussed on conveyance-related offences and expressly recognized the importance of deterrence in cases involving dangerous and impaired driving causing death. The principle is applicable to conveyance offences that result in

bodily harm, as the consequences and victim impact in bodily-harm cases can be as great as in cases involving death. As the Court observed, these sorts of offences are often committed by "otherwise law-abiding persons, with good employment records and families." Such persons, it was suggested by the Court, "are the ones most likely to be deterred by the threat of severe penalties": ¶ 129.

[51] Significantly, *Proulx* held that when punitive objectives such as denunciation and deterrence are particularly pressing, as with cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction: ¶ 114. The presence of aggravating factors does not rule out the suitability of a CSO but it does increase the need for denunciation and deterrence: ¶ 105. Incarceration is recognized as generally more denunciatory than a CSO due to the comparative leniency of a CSO when contrasted to a jail term of equivalent duration: ¶ 102.

Three questions

[52] In deciding whether to impose a CSO, the Court must apply § 742.1 of the *Code* and seek to resolve three questions. The first is whether a sentence of less than two years would be appropriate. Next, does Ms Parker pose a danger to the

safety of the community? Finally, would a CSO be consistent with the fundamental purposes and principles of sentencing?

A sentence of less than two years

[53] In this case, the prosecution has advocated for a sentence of incarceration of two years less a day.

[54] Sentencing judges presiding over contested sentencing hearings are required to notify counsel if they are considering imposing a sentence greater than that sought by the prosecution, and should provide counsel an opportunity to make further submissions—*R v Nahanee*, 2022 SCC 37 at ¶ 43. In situating the sentencing recommendation made by the prosecution, I would refer to a recent case which I cited earlier, *Gomes*. The Ontario Court of Appeal upheld a 3-year term of incarceration; the appellant was a first-time offender; he had positive antecedents; he drove with a BAC of 150-185 mg ETOH/100ml bld; he struck two pedestrians who suffered serious injuries; the court observed that federal terms exceeding two years are often appropriate in such cases. It is noteworthy that the offence under appeal in *Gomes* predated the 2018 amendments, and so was subject to a lesser maximum penalty than in Ms Parker's case.

[55] I would find that the recommendation made by the prosecution is at the lower end of the range of proportionate penalties in this case. A complicating factor is that the prosecution informed the Court that it would take no position regarding the imposition of a CSO. However, in oral argument, the prosecutor asserted that a CSO could be seen as unfit and unjust. I find it difficult to reconcile a no-opposition position with an argument that, if the Court were to impose the sentence which is not being opposed, it might not withstand appellate review.

[56] Nevertheless, a sentence of two years less a day would be appropriate in this case. The Court is not considering a penalty greater than that recommended by the prosecution. Going over that by one day—should the Court find a CSO inconsistent with the fundamental purposes of sentencing—would not offend the *Nahanee* principle, as defence counsel has sought a bare-minimum 2-year federal sentence as a backup position and made submissions on the point.

Danger to the safety of the community

[57] Ms Parker poses no danger to the safety of the community. Counsel are unified on this criterion.

Fundamental purposes and principles of sentencing

[58] Would a conditional sentence be consistent with the fundamental purposes and principles of sentencing? In my view, it would not.

[59] There are several statutorily aggravating factors in this case:

- Seven persons (including Ms Parker) were seriously injured: statutorily aggravating under ¶ 320.22(a).
- There were two persons under the age of 16 who were passengers in Ms Parker's vehicle; they were her own children: statutorily aggravating under ¶ 320.22(c);
- Ms Parker's blood-alcohol concentration at the time of the commission of the offences exceeded 120 mg of alcohol in 100 mL of blood—in fact, it was 148 mg alcohol in 100 mL of blood: aggravating under ¶ 320.22(e).
- Finally, the offences have had a significant impact on all of the injured victims, particularly RL: aggravating under ¶ 718.2(a)(iii.1).

[60] There are cases under the 2018 amendments when CSOs have been imposed for alcohol-related conveyance offences involving bodily harm: *eg R v Burns*, 2020 NSPC 48 and *R v Ferguson-Kellum*, 2023 ONCJ 119. In *Burns*, the prosecution elected to proceed summarily (lowering the upper range of penalty), and the only aggravating factor was that two persons were injured,

neither critically; one was the driver. In *Ferguson-Kellum*, there were no statutorily aggravating factors identified by the sentencing judge. These were offences toward the lower end of the spectrum of offence seriousness, which warranted the imposition of community-based sentences.

[61] The Court remains conscious of the fact that Ms Parker should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances. I have considered all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community.

[62] To be sure, Ms Parker poses no risk to the safety of the public. She has been perfectly bail compliant. I recognize—as did the Court in *R v Spencer*, [2004] OJ No 3262 (CA) at ¶ 46—that a sentence of actual imprisonment will have a significant impact on her children.

[63] However, the circumstances of these cases implicate such a significant array of aggravating factors—as recognized Parliament—and the need for denunciation and deterrence is so pressing that incarceration is the only suitable way in which to express society's condemnation of Ms Parker's conduct.

[64] Although the sentence of the Court will exceed the recommendation of the prosecution, it will be by one day only, in accordance with the secondary sentencing recommendation of defence counsel. This would make Ms Parker eligible to serve the sentence in the Nova Institution for Women.

[65] The sentence of the Court is as follows:

- In relation to case 8641793, operating a conveyance with a prohibited blood-alcohol concentration and causing bodily harm to RL, there will be a sentence of two-years' imprisonment. By operation of law, it is served in a federal penitentiary: § 743.1 of the *Code*.
- In relation to all remaining cases to which Ms Parker pleaded guilty, cases 8641794-8641798, there will be sentences of one year to be served concurrently to case 8641793 and concurrently to each other.
- Given Ms Parker's diminished expectation of privacy following conviction, the minimal intrusion into her personal security involved in DNA collection, and the interests served by the DNA bank, I find it in the interests of justice to order a secondary-designated-offence DNA collection order: *R v MacLeod*, 2004 NSCA 31 at ¶ 30; *R v F(PR)*, [2001] OJ No 5084 at ¶ 18 (CA). The order will be applicable to all of the charges before the Court to which Ms Parker pleaded guilty.

- There will be a driving prohibition under applicable to all charges to which Ms Parker pleaded guilty, to take effect immediately and to expire five years after the expiration of the sentence of imprisonment: ¶ 320.23(5)(b).
- Given the duration of the sentence, the Court finds that the imposition of victim surcharge amounts would constitute an undue hardship; surcharges are waived.
- As the sentence imposed by the Court does not exceed two years, a probation order is permissible. The Court imposes a term of probation for three years. The order is applicable to all charges to which Ms Parker pleaded guilty. It does not commence immediately, but commences immediately on the expiration of the sentence of imprisonment. The terms will be as set out in the checklist provided to the clerk of the Court.
- All remaining charges on which no pleas have been taken are recorded as withdrawn.

Atwood, JPC

PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Parker*, 2024 NSPC 10

Date: 20240202
Docket: 8641793-8641798
Registry: Truro

Between:

His Majesty the King

v

Lindsay Anne Parker

ERRATUM

Judge: The Honourable Judge Del W Atwood

Heard: January 19, 2024, and February 2, 2024, Truro, Nova Scotia

Charge: 320.14(2) of the *Criminal Code of Canada*

Counsel: Thomas Kayter III for the Nova Scotia Public Prosecution Service
David S Green for Linsay Anne Parker

Erratum Details: As of March 1, 2024, the following paragraphs have been corrected (noted in italics):

Paragraph 1: “victim’s” changed to “victims”

Paragraph 8: Punctuation of the second sentence corrected to read: “The summary of the statement taken from that witness records Ms Parker as driving “uncontrollably,” “moving the handlebars from side to side, fishtailing on the road,” “did a donut on the road,” and “going through the bush and not the trail”.

Paragraph 13: Second sentence corrected to read: “it was not allowing herself to *be* distracted”.

Paragraph 15: Final sentence corrected to read: “guilty pleas in cases involving warranted searches or vulnerable *victims* must be accorded significant weight”.

Paragraph 18: “conveyancing” changed to “conveyance”.

Paragraph 21: second sentence “position” changed to “*proposition*”.

Paragraph 22: final sentence changed from “Should lead” to “Should *this* lead”.

Paragraph 44: final sentence changed from “who end of getting charged” to “who ended *up* getting charged”.

Paragraph 50: second sentence changed from “as the consequences and victim impact can be as great as in cases involving death” to “as the consequences and victim *impact in bodily-harm cases* can be as great as in cases involving death”.

Paragraph 51: second sentence changed to read “The presence of aggravating factors *does* not rule out”.

Paragraph 55: second sentence changed to read “A complicating factor is that the prosecution informed the Court that it would take no position regarding the imposition of a CSO”.