

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

- v -

**TERRY RICKY DON KAYOTUK**

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Transcript of the Reasons for Sentence delivered by The Honourable Justice A.M. Mahar, sitting in Inuvik, in the Northwest Territories, on the 30th day of August, 2016.

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**APPEARANCES:**

Mr. A. Godfrey: Counsel for the Crown  
Ms. M. Tordoff: Counsel for the Accused

(Charges under s. 255(3), 255(3.1), 249(4), 255(2.1), 255(2), 249(3), 253(1)(a), 253(1)(b), 249(1), and 220(b), of the *Criminal Code of Canada*)

1 THE COURT: On July the 6th, 2014, Ricky  
2 Kayotuk was driving a pickup truck with five  
3 passengers in the early morning hours. The truck  
4 was proceeding at a high rate of speed, estimated  
5 between 160 and 170 kilometers an hour in a  
6 50-kilometer-an-hour posted speed zone.

7 Shortly before the accident scene, there are  
8 three caution signs on the roadway indicating  
9 "use extreme caution" and "uneven road" and  
10 "travel slowly". The vehicle struck a pole. Two  
11 of the passengers were ejected from the vehicle.  
12 Sasha Larocque-Firth was an occupant of the  
13 vehicle. She was one of the parties ejected.  
14 She was approximately 24 years old, and she was  
15 fatally injured. She died.

16 Kristen Elias was 20 years old at the time.  
17 She suffered severe injuries as a result. She  
18 had to be resuscitated at the scene. There was a  
19 fear that extensive brain damage may have  
20 occurred. This was, thankfully, not borne out.  
21 She suffered a number of fractured bones in the  
22 area of her pelvis, as well as her arm, and a  
23 ruptured bladder. She has, thankfully,  
24 recovered, although the recovery took a  
25 significant period of time.

26 Darci Frost was 19 years old. She suffered  
27 relatively minor injuries, although she did

1 require sutures on her forehead. She was kept in  
2 the hospital for tests. She suffered pain for a  
3 number of weeks, as did Lucy Jane Thrasher, who  
4 was also an occupant of the vehicle.

5 The other parties, including Mr. Kayotuk, do  
6 not appear to have been injured.

7 Mr. Kayotuk entered a guilty plea on the  
8 last occasion before the Court on a single count  
9 of impaired causing death, three counts of  
10 impaired causing bodily harm, and one count of  
11 dangerous diving.

12 While his guilty plea was not at the first  
13 instance, I am giving him credit for the guilty  
14 plea, because it appears that once he got himself  
15 properly aligned with current defence counsel,  
16 there was very little hesitation involved.  
17 Mr. Kayotuk has shown remorse by entering a  
18 guilty plea to these charges.

19 I have been provided by both counsel with  
20 significant case law, which I will refer to at  
21 this point. There has been some discussion about  
22 the appropriate range for these sorts of  
23 offences. This Court takes the view that this  
24 range has been moving upwards, as society becomes  
25 more and more willing to display its abhorrence  
26 at the carnage caused by drinking and driving.

27 The range suggested by the cases provided is

1            somewhere between two and eight years, depending  
2            on the circumstances. It is clear that cases of  
3            this sort depend very heavily on their  
4            circumstances, on the aggravating and mitigating  
5            factors that the Court must consider in coming to  
6            a determination of a fit sentence.

7            Counsel has suggested that the appropriate  
8            range in this case is between two and a half and  
9            three and a half years. While this is not,  
10           technically speaking, a joint submission for a  
11           particular sentence, it is a well thought out  
12           position taken after extensive negotiation, and  
13           the Court must give it some deference. There is  
14           also a recommendation that the period of  
15           prohibition be between five and seven years.

16           Ricky Kayotuk is 35 years old. Prior to  
17           this event, he had a single count on his criminal  
18           record. That was for impaired driving back in  
19           2010. The existence of a related record is a  
20           significant aggravating factor. The  
21           circumstances of the offence are also  
22           significantly aggravating. Mr. Kayotuk's blood  
23           alcohol readings were 170 and 190, taken some two  
24           hours after the incident. This is in excess of  
25           two times the legal limit and is also an  
26           aggravating factor.

27           Getting back to the specifics of the

1 driving. Mr. Kayotuk will be sentenced in a  
2 concurrent way for the dangerous charge, but I  
3 take the circumstances of the driving into  
4 account in assessing the gravity of this offence.  
5 This is not a situation of momentary loss of  
6 control due to alcohol consumption. Driving at  
7 that rate of speed, at 110 or 120 kilometres over  
8 the limit, is extremely dangerous and takes this  
9 case out of the usual situation of drunken  
10 inadvertence resulting in an accident. So I take  
11 it into account in an aggravating way.

12 In my view, the appropriate range in this  
13 case, not taking into account some of the  
14 mitigating factors, is between four and  
15 six years.

16 Mr. Kayotuk is of indigenous decent. He  
17 comes from a small community. His formative  
18 years were plagued by alcohol abuse. I take this  
19 into account, as I must, pursuant to section  
20 718.2(b) and as directed by the Supreme Court of  
21 Canada in *Ipeelee*. There are no cases in which  
22 these circumstances should not be considered by  
23 the Court and I take that into account.

24 I take it as given as well, that counsel has  
25 taken these circumstances into account in coming  
26 to their recommendation with respect to range. I  
27 am willing to impose a sentence within the range,

1           somewhat reluctantly. I do not fault counsel for  
2           this.

3           The sentencing regime with respect to  
4           impaired driving, specifically impaired driving  
5           causing death and impaired driving causing  
6           injury, has, as I have indicated, been a moving  
7           landscape. And this Court must and does embrace  
8           that movement upwards. So while I am willing to  
9           accept the range, Mr. Kayotuk's case will fall  
10          into the upper end of that range, as will his  
11          period of prohibition.

12          Referring now to the case of *R. v. Lacasse*,  
13          2015 SCC 64, [2015] 3 S.C.R. 1089, in  
14          paragraph 73, and I quote:

15  
16                 While it is true that the  
17                 objectives of deterrence and  
18                 denunciation apply in most cases,  
19                 they are particularly relevant to  
20                 offences that might be committed  
21                 by ordinarily law-abiding people.  
22                 It is such people, more than  
23                 chronic offenders, who will be  
24                 sensitive to harsh sentences.  
25                 Impaired driving offences are an  
26                 obvious example of this type of  
27                 offence, as this Court noted in  
                *Proulx*.

28  
29                 They then quote the *R. v. Proulx*, [2000] 1  
30                 S.C.R. 61 decision within their decision:

31  
32                         ...dangerous driving and impaired  
                               driving may be offences for which

1 harsh sentences plausibly provide  
2 general deterrence. These crimes  
3 are often committed by otherwise  
4 law-abiding persons, with good  
5 employment records and families.  
6 Arguably, such persons are the  
7 ones most likely to be deterred by  
8 the threat of severe penalties.

9 We heard from a number of members of the  
10 public who have been tragically affected by this  
11 incident. Cases involving a death are always  
12 heartbreaking for the Court, especially when that  
13 death was entirely pointless and unnecessary. It  
14 is very difficult not to be blinded by anger in  
15 circumstances like this. I did not even know the  
16 deceased, and I found myself struggling with this  
17 yesterday. A lovely young woman has been taken  
18 from her friends and family by a criminal act, so  
19 I struggled with how to proceed in this case last  
20 night and this morning.

21 We have, collectively, an extreme reaction  
22 to these sorts of incidents. There is a need for  
23 a strong deterrent message to be sent by the  
24 Courts, especially when people are severely  
25 injured or killed.

26 I agree, as I must, with the Supreme Court  
27 of Canada and with appellate decisions with  
28 respect to the need for extremely deterrent and  
29 denunciatory sentences in cases like this.

30 I do, however, take some issue with a bit of

1 the logic. We all know someone who has gotten  
2 heavily intoxicated and driven. There is nothing  
3 unusual about people who take this kind of  
4 outrageous risk, and yet the Court is limited in  
5 terms of the steps that it can take to try to  
6 address that risk.

7 It is easy to forget that Ricky Kayotuk did  
8 not intend to hurt anyone that night. People who  
9 commit this sort of offence never do. And when  
10 they do, it is not an impaired causing death; it  
11 is a different offence, and it is dealt with  
12 differently. It is hard to keep that in mind.  
13 It is hard to keep that in mind when I see the  
14 picture of the deceased.

15 If Parliament and the Courts are serious  
16 about stopping the carnage on the roads other  
17 steps will have to be taken as well. I agree  
18 that a strong deterrent message has to be sent in  
19 cases where a death or bodily harm has ensued as  
20 a result of drinking and driving. But by  
21 definition people who drink and drive are not  
22 exercising good judgement when they get behind  
23 the wheel. The number of times that grossly  
24 reckless behaviour takes place and it does not  
25 result in a serious injury or death are legion.  
26 I am simply guessing, but what if it is one in a  
27 hundred times that somebody who takes the kind of



1 risk Mr. Kayotuk took actually ends up either  
2 hurting or killing somebody? If we are serious  
3 about stopping drinking and driving, then we have  
4 to address the problem at the point of decision  
5 and apply meaningful consequences to somebody who  
6 decides to turn their vehicle into a weapon.

7 I was struck by the comments of Justice  
8 Fuerst in the *R. v. Muzzo, 2016 ONSC 2068*  
9 decision. She was echoing earlier comments as  
10 well:

11  
12 Everybody who decides to drink and  
13 drive is essentially taking the  
14 risk of killing somebody.

15 The guilty mind involved in this case is no  
16 different than anybody else who gets highly  
17 intoxicated and gets behind the wheel. Be that  
18 as it may, we are dealing with this case today.

19 With respect to the charge of impaired  
20 causing death, the sentence of the Court is three  
21 and a half years at a rate of 365 days per year.  
22 I give Mr. Kayotuk credit for 285 days,  
23 essentially, that he has served, giving him  
24 credit on 1.5 credit for 1 basis for the 190 days  
25 that he served, which leaves 992.5 days  
26 remaining.

27 With respect to the other charges, time will

1           be served concurrently. It will be two years on  
2           each charge concurrent to the charge on which he  
3           is more substantially sentenced.

4           There will be a driving prohibition for  
5           seven years commencing the day of the completion  
6           of his sentence.

7           DNA order is mandatory. It is made, as is a  
8           firearms prohibition, under section 109, for ten  
9           years. There will be a section 113 exemption  
10          allowing him to apply for a limited permit for  
11          the purposes of hunting for sustenance or  
12          employment.

13          To the family and friends of Sasha  
14          Larocque-Firth, I extend my deepest sympathies.  
15          There is nothing that this Court can do to undue  
16          what was done. Circumstances like this, it is,  
17          at best, a clumsy tool; we simply wield it the  
18          best we can.

19          Counsel, is there anything that I have  
20          neglected?

21          MS. TORDOFF:                   That would be the victim fine  
22          surcharge, sir.

23          THE COURT:                   Victim fine surcharge of \$200  
24          on each charge, as I have been mandated to do,  
25          totalling a thousand dollars. There will be five  
26          years to pay.

27          Mr. Godfrey, anything?

1 MR. GODFREY: Yes. The remaining charges,  
2 Your Honour, I believe the Crown can indicate  
3 they will be stayed, and I will file a written  
4 stay once I get back to Yellowknife.

5 THE COURT: Anything else?

6 MR. GODFREY: I don't believe so, Your  
7 Honour.

8 MS. TORDOFF: No, sir.

9 THE COURT: Thank you, both.

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11 **CERTIFICATE OF TRANSCRIPT**


12 I, the undersigned, hereby certify that the  
13 foregoing pages are a complete and accurate  
14 transcript of the proceedings taken down by me in  
15 shorthand and transcribed from my shorthand notes  
16 to the best of my skill and ability.

17 Dated at the City of Edmonton, Province of  
18 Alberta, this 30th day of September, 2016.

19 Certified Pursuant to Rule 723  
20 of the Rules of Court.

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Jenna Mearns

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Court Reporter

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