
CANADA / JUDGMENT

R. v. Robertson

2026 ONCA 281

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Robertson

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Tulloch, Michael H.; Huscroft, Grant; Paciocco, David M.

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Tulloch C.J.O., Huscroft and Paciocco JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Brady Robertson

Appellant

Craig Bottomley and Janelle Belton, for the appellant

Patrick Quilty and James V. Palangio, for the respondent

Heard: September 4, 2025

On appeal from the convictions entered by Justice Sandra Caponecchia of the Ontario Court of Justice on November 2, 2021, and from the sentence imposed on May 16, 2022, with reasons reported at 2022 ONCJ 240.

Tulloch C.J.O.:

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A. INTRODUCTION [1] On June 18, 2020, the appellant, Brady Robertson, drove at nearly twice the speed limit through a red light while fleeing police during a high-speed daytime pursuit in a residential neighbourhood. His vehicle collided with a minivan that had the right-of-way. The force of the impact killed Karolina Ciasullo and her three young daughters: Klara (age 6), Lilianna (age 3), and Mila (age 1). Blood samples taken from the appellant at the hospital shortly following the collision and later seized by police established that he had consumed cannabis several hours before driving. Those samples further demonstrated that he had approximately 40 nanograms per millilitre (“ng/mL”) of tetrahydrocannabinol (“THC”) – the primary psychoactive component of cannabis – in his blood, far exceeding the legal limit of 5 ng/mL.

[2] This catastrophic event was not isolated. Just two days earlier, on June 16, the appellant had engaged in similarly dangerous conduct. He appeared to lose consciousness while driving, mounted a sidewalk, and struck objects near a café. When bystanders attempted to assist him, he fled. Shortly thereafter, he led police on a high-speed chase, reaching speeds of up to 130 km/h in a 60 km/h zone before evading capture. These incidents formed part of a disturbing pattern of reckless and dangerous driving that culminated in the fatal collision.

[3] The appellant was charged with nine counts arising from these two events: for the June 18th incident, four counts of dangerous driving causing death, and four drug-related counts of “Operation causing death” under s. 320.14(3) of the Criminal Code, R.S.C. 1985, c. C-46; and, for the June 16th incident, he was charged with one count of dangerous driving.

[4] The case unfolded as a hybrid proceeding that combined guilty pleas, a contested trial, and two significant Charter challenges. The appellant pleaded guilty to the four counts of dangerous driving causing death from June 18th, and proceeded to trial on the other counts, including the drug-related counts. The plea effectively resolved the issue of the appellant’s manner of driving. Pursuant to an agreed statement of fact, the court accepted that the appellant’s conduct was objectively dangerous and a marked departure from the standard of a reasonable driver.

[5] Because the trial judge also convicted the appellant on the count of dangerous driving from the June 16th occurrence, the remainder of the trial focused on the s. 320.14(3) drug-related counts. Those charges required proof that the appellant was either impaired or, regardless of impairment, had a blood THC concentration at or above the 5 ng/mL legal limit within two hours of driving. The appellant challenged the police seizure of the blood samples under s. 8 of the Charter, denied impairment, and argued that the THC limit violated s. 7 of the Charter because it could capture drivers who were not actually impaired.

[6] This s. 7 constitutional challenge became the decisive issue. After rejecting the s. 8 challenge and admitting the blood samples, a ruling which is not contested on appeal, the trial judge drew an important distinction between proof of a high THC concentration and proof of impairment. While she accepted that the Crown had clearly established the former because the admissible blood samples showed that the appellant was eight times over the THC limit,

she was not satisfied beyond a reasonable doubt that his ability to drive was actually impaired by a drug. Thus, he could only be convicted under s. 320.14(3) if the THC limit was constitutional.

- [7] The trial judge rejected the constitutional challenge and, accordingly, entered convictions on the s. 320.14(3) drug-related counts. She ruled that the THC limit is neither arbitrary nor overbroad because, even if it captures some drivers who were not actually impaired, it remains rationally connected to the objective of reducing the risks of driving after consuming cannabis.
- [8] In the end, the trial produced a mixed but legally coherent result – the appellant’s manner of driving on both dates was dangerous, that dangerous driving caused four deaths on June 18, and he caused those deaths while driving in violation of the THC limit even though the Crown could not prove actual impairment. This grave and highly blameworthy conduct, the trial judge determined, warranted a 17-year global sentence.
- [9] On appeal, the appellant renews his constitutional challenge to the THC limit underlying his s. 320.14(3) drug-related convictions. He argues that the 5 ng/mL threshold violates s. 7 of the Charter on the basis that it is arbitrary and overbroad, capturing individuals who may not, in fact, be impaired. The appellant also appeals his sentence, submitting that the 17-year term of imprisonment is demonstrably unfit and excessive when assessed against governing sentencing principles and comparable authorities.
- [10] In my view, the appeal from conviction should be dismissed. The 5 ng/mL THC limit is constitutional. The principles of fundamental justice at issue here, arbitrariness and overbreadth, must be applied with restraint to avoid transforming judicial review into second-guessing legislative policy choices. That caution is especially apt here, where driving and cannabis use are heavily regulated activities. Parliament’s adoption of a THC limit reflects a measured and familiar approach, analogous to longstanding blood alcohol limits, targeting the voluntary and inherently risky conduct of driving after consuming an impairing substance. The resulting legislative line is neither arbitrary nor overbroad.
- [11] The sentence appeal should also be dismissed. The 17-year sentence was not the product of error in principle and is not demonstrably unfit. The trial judge carefully weighed the exceptionally aggravating features of this case: the loss of four lives, the appellant’s profound disregard for public safety, and the pattern of dangerous driving reflected in two separate high-risk police pursuits. While the judge also considered the appellant’s mitigating circumstances, she reasonably concluded that these factors did not outweigh the gravity of the offences. The sentence was justified and consistent with the governing principles of sentencing.

B. Background 1. The Offences [12] On June 16, 2020, the appellant drove dangerously. After appearing to pass out while driving, he rolled through a stop sign with his head swung back and smashed into barriers on a busy sidewalk. Instead of taking responsibility, he reversed and sped away. When a police cruiser attempted to apprehend him, he initiated a high-speed chase. After

accelerating to 130 kilometers per hour, he drove aggressively at more than double the speed limit onto a gravel shoulder and into incoming traffic. The officer broke off pursuit out of concern for public safety.

[13] Two days later, on June 18, the appellant again initiated a high-speed police chase to evade apprehension. He drove at extreme speed through a residential area, ignored a stop sign, drove through a red light, and used the wrong lane. Although his impairment was not proved, the evidence established that he consumed marijuana several hours before driving and was behind the wheel with eight times the legal limit of THC in his blood. Another drug, flubromazolan, was also in his blood, and cannabis and pills, including a fentanyl pill, were within arm's reach of his driver's seat. He was neither licensed nor insured nor driving a registered vehicle.

[14] The appellant's actions resulted in tragedy – a catastrophic collision that killed Karolina Ciasullo and her three young daughters. The impact on Karolina's spouse and the children's father, Michael Ciasullo, was incalculable. The harm to the extended family was severe, and the consequences reverberated across the community.

2. The Convictions and the Constitutional Ruling [15] The appellant pled guilty to and was convicted of the four dangerous driving causing death charges from June 18, 2020. After trial, he was also convicted of the driving dangerously charge from June 16, 2020.

[16] The appellant additionally faced four charges of "Operation causing death" under s. 320.14(3) of the Criminal Code. That provision has two relevant requirements: (1) committing an offence under s. 320.14(1), and (2) causing death while operating a motor vehicle. Section 320.14(1), in turn, creates two potentially applicable offences – impaired operation by drugs under s. 320.14(1)(a), and having a blood drug concentration beyond the legal limit under s. 320.14(1)(c). For THC, that limit is 5 ng/mL: Blood Drug Concentration Regulations, SOR/2018-148, s. 2. These provisions provide:

Criminal Code

Operation while impaired

320.14 (1) Everyone commits an offence who

(a) operates a conveyance while the person's ability to operate it is impaired to any degree by alcohol or a drug or by a combination of alcohol and a drug;

...

(c) subject to subsection (6), has, within two hours after ceasing to operate a conveyance, a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation; or

...

Operation causing death

- (3) Everyone commits an offence who commits an offence under subsection (1) and who, while operating the conveyance, causes the death of another person.

Blood Drug Concentration Regulations

Hybrid offence — drugs

2 For the purpose of paragraph 320.14(1)(c) of the Criminal Code, the prescribed blood drug concentration for each drug set out in column 1 of the table to this section is set out in column 2.

- (1) Tetrahydrocannabinol (THC) 5 ng/mL of blood

- [17] The appellant contested the s. 320.14(3) charges on the basis that he did not commit an offence under s. 320.14(1). He submitted that he was not actually impaired under s. 320.14(1)(a) and challenged the constitutionality of the legal limit for THC under s. 320.14(1)(c). That challenge targeted ss. 320.14(1)(c) and 320.14(3) of the Criminal Code and s. 2 of the Blood Drug Concentration Regulations.
- [18] The trial judge found that the appellant violated the THC limit under s. 320.14(1)(c) but had a reasonable doubt as to whether he was actually impaired under s. 320.14(1)(a). Thus, she deferred her decision on the s. 320.14(3) offences until she addressed his constitutional challenge.
- [19] In that challenge, the appellant did not allege that the THC limit was unconstitutional as applied to him. Instead, he submitted that it was unconstitutional in three hypothetical scenarios – a cancer patient, a naïve or occasional user of marijuana, and a frequent and chronic user. He argued that, in each of these scenarios, a cannabis user could be convicted under s. 320.14(1)(c) for violating the THC limit even though the impairing effects of THC had worn off.
- [20] The trial judge dismissed the appellant's s. 7 challenge: 2022 ONCJ 160, 507 C.R.R. (2d) 137. Thus, she convicted him under s. 320.14(3) of operation causing death while committing an offence contrary to s. 320.14(1)(c) of operating a conveyance while having an illegal blood drug concentration.
- [21] The trial judge made extensive findings in her constitutional ruling. She concluded that blood testing is the most effective way to identify the recent use of THC and that the specific limit chosen correlates strongly to crash risk. She also accepted that recent use is the best sign of impairment, thereby demonstrating a high risk of impairment, and that higher THC concentrations make recent use more likely, although the correlation is imperfect.

- [22] On the hypotheticals, the trial judge found it reasonably foreseeable that a narrow class of frequent or chronic users may register at or above the THC limit yet not be impaired after the waning of acute effects – sometimes days or as much as a week later. However, she rejected the cancer patient and naïve/occasional user scenarios as unsupported or speculative on this record.
- [23] On the s. 7 analysis, the trial judge characterized Parliament’s objective as twofold: to deter cannabis users from driving after consumption and to detect impaired drivers. She held that the THC limit was neither arbitrary nor overbroad in relation to those purposes.
3. Sentencing [24] The Crown sought a global sentence of 23 years’ imprisonment. Crown counsel emphasized the catastrophic harm caused by the appellant’s conduct and his extreme level of moral blameworthiness, pointing in particular to the repeated incidents of dangerous driving, including two high-speed police pursuits in the days leading up to the fatal collision. The Crown also relied on the appellant’s driving history, which included 15 prior convictions over a relatively short period of approximately two and a half years, as further evidence of his persistent disregard for road safety.
- [25] The defence, by contrast, sought a sentence of seven years. It relied heavily on the appellant’s youth, his lack of a prior criminal record, and the application of the principles set out in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433. The appellant, a young Indigenous man who was 20 years old at the time of the offences, had experienced a profoundly difficult upbringing marked by neglect, trauma, abuse, and poverty. The defence submitted that these circumstances contributed to his substance use, mental health challenges, and ultimately his offending behaviour. It also emphasized his expressions of remorse, his guilty pleas to the dangerous driving causing death counts, and his focused litigation of the remaining issues at trial.
- [26] The trial judge imposed a global sentence of 17 years’ imprisonment, falling between the positions advanced by the parties. She concluded that a lengthy penitentiary sentence was necessary to properly reflect the seriousness of the offences and the numerous aggravating factors identified by the Crown, while also giving meaningful effect to the mitigating considerations advanced by the defence.

C. the conviction appeal [27] I would dismiss the conviction appeal because the THC limit is constitutional. Although the law engages the appellant’s liberty interest, any resulting deprivation accords with the principles of fundamental justice and, therefore, does not violate s. 7 of the Charter: *R. v. Ndhlovu*, 2022 SCC 38, [2022] 3 S.C.R. 52, at para. 49. In reaching this conclusion, I first address the purpose of the THC limit and then explain why it is neither arbitrary nor overbroad.

1. Purpose [28] The trial judge correctly identified Parliament’s purpose in enacting the THC limit as twofold: to deter individuals from driving after consuming cannabis, and to enhance the detection of cannabis-impaired drivers. These objectives are supported by the legislative record, including the preamble to the enacting legislation, its declaration of principles, and

ministerial statements. They also align with the purpose of the analogous blood alcohol concentration offence, which the THC limit was designed to mirror: *R. v. Prince*, [1986] 2 S.C.R. 480, at p. 502; *R. v. Suter*, 2018 SCC 34, [2018] 2 S.C.R. 496, at para. 26.

- [29] These dual purposes are consistent with the Supreme Court’s guidance on properly identifying legislative purpose. They are articulated with sufficient precision, are directly tied to the impugned provisions, and remain conceptually distinct from the means chosen to achieve them – namely, blood drug concentration testing. Moreover, they did not merely restate the law itself nor invoke broad social values, but instead reflect concrete legislative objectives: *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485, at paras. 27-29; *R. v. Safarzadeh-Markhali*, 2016 SCC 14, [2016] 1 S.C.R. 180, at paras. 26-28.
2. No Arbitrariness [30] The THC limit is not arbitrary because it is capable of advancing its legislative objectives: *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, at para. 83. As the trial judge found, the use of THC blood concentration thresholds assists in detecting recent cannabis consumption which, in turn, is closely associated with impairment. This enhanced capacity for detection supports Parliament’s deterrence objective, as the increased likelihood of enforcement discourages individuals from engaging in the prohibited conduct: *R. v. Thomsen*, [1988] 1 S.C.R. 640, at p. 655.
3. No Overbreadth [31] The THC limit is not overbroad. I begin by outlining the governing legal principles and then apply those principles to the impugned provisions.
- a. The Principles Governing Overbreadth [32] The threshold for establishing overbreadth is a high one. While a law may be overbroad even if it captures only a single instance of unrelated conduct (*Ndhlovu*, at para. 78), it is not sufficient to show that Parliament could have chosen a less restrictive alternative or opted for a case-by-case standard instead of a bright-line rule. Rather, the claimant must demonstrate that the law captures conduct that bears no connection to its purpose, and in other words, that it extends beyond what is reasonably necessary to achieve its objectives: *Bedford v. Canada (Attorney General)*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 119; *Carter*, at para. 85; *Safarzadeh-Markhali*, at para. 50; *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482, 156 O.R. (3d) 675, at paras. 47-49, leave to appeal refused, [2021] S.C.C.A. No. 350.
- [33] This high bar for overbreadth reflects the need to preserve the separation of powers. Section 7 is concerned with laws that are fundamentally flawed, those that offend core principles of justice, not with inviting courts to second-guess legislative policy choices. As the jurisprudence makes clear, courts must avoid assuming the role of a “super-legislature” by intruding into matters of public policy. Such micromanagement and second-guessing of policy choices impairs legislatures’ ability to govern for the common good: *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at pp. 498, 503, 512-513; *Bedford*, at para. 96; *R. v. Clay*, 2003 SCC 75, [2003] 3 S.C.R. 735, at para. 4; *R. v. Malmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 86; *R. v. A.B.*, 2015 ONCA 803, 333 C.C.C. (3d) 382, at paras. 40-41.

- [34] These considerations are particularly salient where overbreadth is invoked to challenge legislative line-drawing in highly regulated domains. In such contexts, bright-line rules are often a legitimate and practical means of managing risk. Striking down such rules based on isolated or hypothetical instances of imperfect matching between the law's effects and its purpose risks destabilizing entire regulatory regimes and diminishing the significance of the rights protected by s. 7: *R. v. Michaud*, 2015 ONCA 585, 127 O.R. (3d) 81, at paras. 148-149, leave to appeal refused, [2015] S.C.C.A. No. 450; see also *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, at paras. 43-44; *Drover v. Canada (Attorney General)*, 2025 ONCA 468, 177 O.R. (3d) 561, at para. 110, per Miller J.A. (dissenting, but not on this point), leave to appeal requested, [2025] S.C.C.A. No. 392.
- [35] Thus, perfect matching of effects and purpose in legislation is neither expected nor required. The Supreme Court has frequently upheld prospective rules aimed at preventing harm, even if – as is often true – the anticipated risk does not materialize in every case: *R. v. J.J.*, 2022 SCC 28, [2022] 2 S.C.R. 3, at para. 142; *Moriarity*, at paras. 52-53; *Clay*, at para. 40. Similarly, a measure may constitute a “reasonable proxy” for the conduct targeted even if reasonable people disagree with Parliament's chosen means: *R. v. Sharma*, 2022 SCC 39, [2022] 3 S.C.R. 147, at paras. 4, 105-107; see also *A.B.*, at paras. 38-46.
- b. Application: The Limit Is Not Overbroad [36] Against this framework, the appellant has not met the high burden required to establish overbreadth. The THC limit does not extend beyond what is reasonably necessary to achieve Parliament's objectives.
- [37] Parliament set the THC threshold at a level designed to minimize the risk of capturing individuals after the impairing effects of cannabis have dissipated. As the trial judge found, the limit will, in most cases, capture individuals only while they are experiencing these effects. Occasional or infrequent users will not typically register at or above the limit once those effects have worn off. Only a narrow subset of frequent or chronic users – those who consume cannabis daily or multiple times per day – may remain above the limit after impairment subsides. These factual findings are entitled to deference.
- [38] Thus, the trial judge properly rejected the appellant's proposed hypotheticals involving cancer patients and occasional users. As the party challenging the law, the appellant bore the burden of advancing realistic, non-speculative scenarios: *Bedford*, at para. 127; *R. v. Hills*, 2023 SCC 2, [2023] 1 S.C.R. 6, at paras. 91-93. The trial judge found that these two hypotheticals failed to do so. The cancer patient scenario lacked an evidentiary foundation, and the occasional-user scenario was too uncertain and speculative to establish a reasonably foreseeable application of the law.
- [39] The appellant further argues that the law is overbroad based on the reasonable hypothetical that the trial judge accepted, because the law may capture some frequent or chronic users who are not impaired and who may be unaware that they exceed the legal limit. However, accepting this argument would have broader implications, as the established blood alcohol regime similarly does not require proof of actual impairment or knowledge of exceeding the

legal limit. Choosing to drive after voluntarily consuming the substance is the mens rea for the blood drug and alcohol limit offences alike: *R. v. Kelly*, 2025 ONCA 92, 1 C.R. (8th) 144, at para. 47; *R. v. Daynard* (1991), 28 M.V.R. (2d) 42 (Ont. C.A.), leave to appeal refused, [1991] S.C.C.A. No. 179; *R. v. MacCannell* (1980), 54 C.C.C. (2d) 188 (Ont. C.A.), at p. 195.

- [40] I do not accept this submission. The inclusion of this narrow class of users remains consistent with Parliament's objectives. The law is not limited to deterring only those who are demonstrably impaired; rather, it targets the inherently risky activity of driving after consuming cannabis, much like the blood alcohol regime.
- [41] Including frequent and chronic users within the scope of the offence is reasonably necessary to achieve deterrence. As the trial judge found, these individuals pose a heightened risk. They may be less able to accurately assess their own impairment and, in the case of chronic users, may experience lingering cognitive effects even after the acute impairing effects have subsided. As in *Moriarity*, Parliament was entitled to prospectively regulate their risk through a bright-line rule that, like the blood alcohol limit, enhances deterrence: at paras. 52-53. The objective THC limit provides certainty and discourages them from underestimating their risk and either driving after use or consuming before driving.
- [42] Moreover, individualized risk assessment is not feasible in this context. As in *Clay*, there is no practical mechanism to identify, in advance, which drivers pose a risk: at para. 40. Nor can post hoc testing reliably distinguish between recent and residual THC levels. This practical limitation reinforces the need for a bright-line rule.
- [43] The THC limit also functions as a reasonable proxy for the targeted harm. As the trial judge accepted, blood testing for THC is the most reliable available method of assessing impairment, and the chosen threshold is strongly associated with increased crash risk. While the correlation between THC levels and impairment is not exact, the law need not achieve perfect alignment. As the Supreme Court confirmed in *J.J.*, the fact that a risk does not materialize in every instance does not render a law overbroad: at para. 142.
- [44] This conclusion is consistent with existing jurisprudence. In *Clay*, the Supreme Court upheld a broad prohibition on cannabis possession against overbreadth challenge, recognizing that the risks associated with cannabis use –especially impaired driving – justified a wide-reaching measure: at para. 40. A more targeted regime, such as the THC limit is, therefore, even less susceptible to an overbreadth challenge.
- [45] Finally, this analysis accords with the principle of judicial restraint. Parliament enacted the THC limit following extensive study in a highly regulated area, driving, which properly understood is a privilege rather than a right: see *R. v. Orbanski*, 2005 SCC 37, [2005] 2 S.C.R. 3, at paras. 24, 60. The limit is grounded in credible scientific evidence and reflects a measured policy choice analogous to the longstanding blood alcohol framework: *Kelly*, at para. 20. It is a reasonable and legitimate bright-line rule, far removed from the type of fundamentally flawed law that s. 7 is intended to prohibit. Requiring perfect precision in this context would improperly intrude into the legislative domain and hinder Parliament's ability

to protect public safety.

D. the sentence appeal [46] I would also dismiss the sentence appeal. The trial judge, an experienced jurist, was uniquely positioned to assess the sentencing objectives in the community where she presides. She identified a constellation of highly aggravating factors that justified the sentence imposed: the loss of four lives, the appellant's profound disregard for the privilege of driving, the two separate incidents involving dangerous, high-speed police pursuits, and his elevated degree of subjective fault. Her determination is entitled to deference. The sentence is neither demonstrably unfit nor tainted by any error in principle.

1. The Governing Principles [47] Dangerous driving offences attract criminal sanction because they involve the creation of serious and unacceptable risks to public safety, coupled with a significant degree of fault. Such conduct places others in harm's way and, when those risks materialize, can lead to what has been described as "carnage on the highways" and "all too many tragic deaths and disabling injuries": *R. v. Hundal*, [1993] 1 S.C.R. 867, at pp. 886-887. The requisite fault is established where the accused's driving amounts to a marked departure from the standard of care expected of a reasonable driver, a fault requirement which the blameworthy choice to create danger easily meets: *R. v. Roy*, 2012 SCC 26, [2012] 2 S.C.R. 60, at paras. 33-38.

[48] Similarly, the offence of driving with a blood drug concentration level above the legal limit targets a culpable choice: the decision to operate a vehicle after voluntarily consuming intoxicants. This conduct is inherently risky, and the law responds to that risk even in the absence of proven impairment: *Kelly*, at paras. 20, 47.

[49] Where these offences result in death, sentencing must also reflect the gravity of the harm caused. In cases of dangerous driving causing death, the prohibited conduct is, by definition, a significant contributing cause of the fatal outcome. The resulting loss of life is, therefore, a central factor in assessing the seriousness of the offence: *R. v. Perry*, 2025 ONCA 241, at para. 11; *R. v. Romano*, 2017 ONCA 837, 41 C.R. (7th) 305, at para. 19; *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 129.

[50] Sentences for driving causing death offences have evolved in response to both legislative change and a growing societal recognition of their seriousness. More than four decades ago, this court acknowledged the need for increased penalties to protect the public: *R. v. McVeigh* (1985), 22 C.C.C. (3d) 145 (Ont. C.A.), at pp. 149-151. Parliament has since reinforced that direction through successive amendments. In 1985, it established a 14-year maximum penalty for these offences.[1] In 2000, it increased the maximum penalty for impaired driving causing death and driving over the blood alcohol limit causing death to life imprisonment.[2] In 2018, it extended the maximum penalty of life imprisonment to dangerous driving causing death and introduced the same maximum for causing death while driving with excess blood drug concentration.[3] As these statutory maximums have increased, appellate courts have correspondingly recognized the need for higher sentences: see, for example, *R. v. Larocque* (1988), 5 M.V.R. (2d) 221 (Ont. C.A.), at p. 225; *R. v.*

Mascarenhas (2002), 60 O.R. (3d) 465 (C.A.), at paras. 24-25; R. v. Lojovic, 2025 ONCA 319, 177 O.R. (3d) 327, at para. 64.

- [51] These offences encompass a wide range of conduct and offender circumstances. Sentences must, therefore, reflect the “almost infinite variety” of ways in which these offences may be committed: R. v. Altman, 2019 ONCA 511, 56 C.R. (7th) 83, at para. 71; see also Suter, at para. 27.
- [52] Crafting a fit sentence requires a careful balancing of these factors, a task that lies at the heart of the sentencing judge’s discretion. Sentencing judges bring to this exercise their experience and their understanding of the needs and expectations of their communities. Their determinations are entitled to significant deference and should not be disturbed on appeal absent demonstrable unfitness or an error in principle that impacts the sentence: R. v. Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 12, 39, 44, 48-50.
- [53] Given the variability of these offences, this court has not established a rigid sentencing range. Instead, prior decisions serve as guides rather than hard constraints, assisting in assessing whether a sentence is proportionate in light of comparable cases: Altman, at paras. 71, 102-109; Perry, at para. 21. These precedents do not displace the deferential standard of review or prevent sentencing judges from tailoring sentences to the particular circumstances of the case, including in response to legislative changes: Lacasse, at paras. 7, 57-60. Accordingly, this court has upheld sentences exceeding those imposed in earlier cases where warranted by the presence of significant aggravating factors or evolving statutory frameworks: see, for example, see, e.g., Mascarenhas, at paras. 15-29; R. v. Bush, 2012 ONCA 743, 112 O.R. (3d) 626, at paras. 8-11.
2. The Trial Judge Did Not Err in Principle [54] The appellant submits that the trial judge committed errors in principle in two respects. First, he argues that the trial judge improperly suggested that some judges may feel “frustrated” because “sentences have not increased.” Second, he contends that the trial judge erred by observing that an offender in a prior case was less blameworthy due to his employment and educational background, contrary to the principles set out in Ipeelee.
- [55] To succeed on this ground, the appellant must demonstrate an error in law, a failure to consider a relevant factor, or the improper consideration of an aggravating or mitigating factor that had an impact on the sentence: R. v. Friesen, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 26. In my view, he has not met this threshold.
- [56] The trial judge’s reasons disclose a principled and carefully reasoned sentencing analysis, not one driven by frustration. As explained more fully below, she appropriately individualized the sentence by distinguishing prior authorities that involved fewer or less serious aggravating features. In doing so, she followed, rather than departed from this court’s guidance in R. v. Kummer, 2011 ONCA 39, 103 O.R. (3d) 641. There is no basis to infer that her decision was influenced by the concern she noted. On the contrary, sentencing for driving causing death offences has evolved over time, reflecting legislative changes,

increased societal awareness, and appellate direction. Within this framework, sentencing judges are entitled, subject to restraint, to impose fit sentences that emphasize denunciation and deterrence, including sentences that exceed those imposed in earlier cases where warranted.

- [57] Nor did the trial judge contravene the principles set out in Ipeelee. It would indeed have been improper to treat the appellant's lack of educational or employment opportunities as aggravating, given his disadvantaged background: Ipeelee, at para. 67. However, read in context, the impugned comment does not do so. Rather, it reflects the trial judge's recognition that, in *R. v. Muzzo*, 2016 ONSC 2068, 353 C.C.C. (3d) 411, certain personal circumstances diminished the need for specific deterrence in that case. It was not used to justify imposing a harsher sentence on the appellant. This interpretation is reinforced by the trial judge's careful and explicit application of Gladue and Ipeelee elsewhere in her reasons. She acknowledged the appellant's difficult upbringing, recognized its mitigating effect on his moral culpability, and relied on it in rejecting the Crown's request for a higher sentence.
3. The Sentence Is Not Demonstrably Unfit [58] The threshold for establishing that a sentence is demonstrably unfit is exacting. A sentence will only be set aside where it represents a clearly unreasonable departure from the governing sentencing principles. It is not enough that a sentence is unprecedented; a particular combination of aggravating factors may justify a sentence that exceeds prior cases for similar crimes: Lacasse, at paras. 52, 58.
- [59] The appellant submits that this high threshold is met. He argues that the 17-year sentence is disproportionate when compared to the 10-year sentence imposed in Muzzo, another case involving four fatalities, and to the sentences reviewed in Altman, which involved two deaths and two serious injuries. The highest sentence identified in those authorities was the 12-year term imposed in Bush, a single-fatality case from 2012: Altman, at paras. 48-70, citing Bush.
- [60] I do not accept this submission. When viewed in their full context, these comparisons do not establish demonstrable unfitness. As the trial judge reasonably concluded, the exceptional combination of aggravating factors in this case justified a sentence exceeding both Muzzo and the cases summarized in Altman.
- [61] The harm caused by the appellant's conduct was devastating. Karolina Ciasullo and her three young daughters were killed, leaving Michael Ciasullo without his entire immediate family. The trauma he continues to endure is profound. Karolina's parents lost both their daughter and their granddaughters, and the impact of this tragedy has reverberated through their extended family, friends, colleagues, and first responders. As in Muzzo, this case left a "terrible trail of ... heartbreak and destruction" that demands a significant sentence: *R. v. Bernshaw*, [1995] 1 S.C.R. 254, at para. 16, per Cory J. (concurring). This context is central to assessing the fitness of the sentence.

- [62] These catastrophic consequences flowed from highly irresponsible and dangerous conduct. The appellant drove at extreme speeds in an unregistered and uninsured vehicle, without a licence, while suspended, and after consuming intoxicants. His driving record of 15 convictions over a short period demonstrates a persistent and escalating disregard for the law and for public safety. Even more troubling, he continued this behaviour after what should have been a clear warning: a separate incident two days earlier in which he crashed into a sidewalk barrier while in a stupor. Although no one was injured in that earlier episode, it underscores the seriousness of the conduct for which he was ultimately sentenced.
- [63] The appellant's decision to engage in two high-speed police pursuits further aggravates his conduct. On June 16, 2020, he evaded police when an officer abandoned the chase due to safety concerns. Two days later, he repeated this conduct in a residential neighbourhood, with fatal consequences. Sentencing must reflect the need to denounce and deter those who attempt to evade accountability by placing both the public and law enforcement at grave risk: *R. v. McCaskie*, 2006 BCCA 382, 230 B.C.A.C. 74, at paras. 10-13; *R. v. Shore* (1999), 14 M.V.R. (4th) 180 (Ont. C.J. (Prov. Div.)), at paras. 21, 34, *aff'd* (2001), 14 M.V.R. (4th) 177 (Ont. C.A.). In *Shore*, this court upheld a nine-year sentence for strikingly similar conduct even though there was only one fatality and one serious injury.
- [64] The appellant's moral culpability was correspondingly high. As the trial judge found, his decision to drive after consuming intoxicants, particularly in light of the earlier incident, was highly aggravating. His driving record further demonstrated a sustained and flagrant disregard for the safety of others. His actions, especially during the high-speed pursuits, were properly characterized as reckless rather than merely negligent. He appreciated the risks and chose to proceed regardless. This elevated degree of subjective fault is a significant aggravating factor: *Kummer*, at para. 28; *McCaskie*, at paras. 10-13. In *Shore*, a similar level of fault supported a 9-year sentence even though there was only one fatality, and in *Bush* – another one-fatality case – high subjective fault justified a 12-year sentence.
- [65] Taken together, the fact that the appellant was being sentenced for two criminal driving events, his pattern of dangerous conduct, and the extreme manner in which he drove on both occasions justified a sentence exceeding those imposed in *Muzzo* and similar several-death cases involving catastrophic harm: *Kummer*, at paras. 23-28. The trial judge carefully explained why this case was more aggravating. The appellant drove at significantly higher speeds, had a more serious driving record, was unlicensed and uninsured, and had experienced a recent “wake-up call” on the first incident, two days before. Most importantly, the fatal collision occurred during a reckless flight from police pursuit through a residential area – an aggravating feature absent in *Muzzo*. While *Muzzo* involved impairment, the appellant's deliberate evasion of police created an even more acute and immediate danger. In these circumstances, the trial judge's conclusion was well within her discretion.

- [66] Parliament's 2018 sentencing reforms further support this conclusion. These changes direct courts to impose higher sentences than those found in earlier cases decided under lower statutory maximums: *R. v. Georgopoulos*, 2026 ONCA 27, at para. 26, citing *Friesen*, at para. 100. Following those reforms, a 16-year sentence was imposed in *R. v. Légaré*, 2022 QCCQ 1939, a case involving four deaths caused by dangerous and impaired driving. The 17-year sentence imposed here is consistent with that trajectory and is justified by the additional aggravating feature of repeated high-speed police chases.
- [67] Finally, the trial judge appropriately considered the mitigating factors and other sentencing principles. In accordance with *Gladue* and *Ipeelee*, she recognized that the appellant's difficult and disadvantaged upbringing reduced his moral culpability. She also accounted for his youth, lack of a prior criminal record, guilty plea, and expressions of remorse. These considerations led her to reject the Crown's request for a 23-year sentence. Her conclusion that a 17-year sentence was nonetheless required to reflect the gravity of the offences and the appellant's high degree of blameworthiness is entitled to deference.

E. Disposition [68] For these reasons, I would dismiss the conviction appeal and grant leave to appeal sentence but dismiss the sentence appeal.

Released: April 20, 2026 "M.T."

"M. Tulloch C.J.O."

"I agree. Grant Huscroft J.A."

"I agree. David M. Paciocco J.A."

- [1] Criminal Law Amendment Act, 1985, R.S.C. 1985, c. 27 (1st Supp.), s. 36.
- [2] An Act to Amend the Criminal Code (impaired driving causing death and other matters), S.C. 2000, c. 25, s. 2.
- [3] An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts, S.C. 2018, c. 21, s. 15.

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