Citation: *R.* v. *Bland*, 2016 YKTC 27

Date: 20160602
Docket: 14-00810
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

MICHAEL STEVEN BLAND

Appearances:
Keith Parkkari — Counsel for the Crown
Vincent Larochelle — Counsel for the Defence

REASONS FOR SENTENCE

[1] Michael Bland is before the Court for sentencing, having pled guilty to one count of operating a motor vehicle while disqualified, contrary to s. 259(4) of the *Criminal Code*.

[2] The facts are not in dispute. Mr. Bland was made subject to a one-year driving prohibition on April 11, 2014 following conviction on an impaired driving offence. He was observed driving a motor vehicle by an RCMP member on April 15, 2014 and was stopped and charged accordingly. Subsequently, on March 26, 2015, Mr. Bland was again observed driving a motor vehicle by an RCMP member and was again stopped and charged accordingly. The one-count information in regard to the March 26, 2015

offence was amended before me and the date particularized as “On or between April 15, 2014 and the 26th day of March, 2015”.

[3] I accepted the guilty plea proffered to the charge as amended and both counsel agreed that the appropriate sentence is 30 days’ jail and a one-year driving prohibition. Counsel for Mr. Bland has asked that he be allowed to serve the 30 day sentence intermittently. He states that he wishes to pursue employment and be able to spend some time with his son who just turned one year old on April 17.

[4] Crown counsel simply points out that the onus is on Mr. Bland to show why he should be allowed to serve the sentence intermittently.

[5] The disagreement between counsel arises on the question about the extent to which Mr. Bland should receive credit for time spent prior to sentencing on a driving prohibition that formed part of a recognizance. Defence counsel submits that Mr. Bland should receive seven months’ credit for this time, while Crown counsel says that there is no basis for this. The defence argument is based on observations made in the relatively recent Supreme Court of Canada decision, ***R.*** v*.* ***Lacasse***, 2015 SCC 64.

[6] In ***Lacasse****,* the Supreme Court was primarily being asked to consider and clarify the standard on which an appellate court reviews a sentence and when such a court may intervene and vary a sentence imposed by a trial judge. There were a number of more peripheral issues also before the Court, including the consideration of whether credit should be given for a pre-sentence driving prohibition as a term of a recognizance.

[7] The offender in ***Lacasse*** had pleaded guilty to two counts of impaired driving causing death, for which he was sentenced to six-and-one-half years of jail and an 11-year driving prohibition that was specifically stated to start on the sentencing date. This was varied by the Quebec Court of Appeal to four years' jail plus a four-year driving prohibition that would start at the end of the offender's imprisonment. A majority of the Supreme Court restored the six years and six months of jail, finding that it was not demonstrably unfit. With respect to the driving prohibition, however, both Wagner J. for the majority and Gascon J. for the dissent found that it was demonstrably unfit, as it failed to take into account the recognizance that prohibited the offender from driving between his release date and his sentencing date.

[8] In ***Lacasse****,* the Supreme Court was considering a prohibition imposed under s. 259(2), while Mr. Bland's prohibition order falls under s. 259(1). Unlike s. 259(1), s. 259(2) provides discretion in terms of the court's obligation to impose a prohibition order and does not set any mandatory minimum length for prohibitions. However, the language of s. 259(2) does not differ from that of s. 259(1) to the extent that it specifies that a prohibition is for a certain length of time "plus any period to which the offender is sentenced to imprisonment". For the purposes of this decision, therefore, I am satisfied that the case law referred to in this decision, insofar as it may be dealing with driving prohibitions made under s. 259(2), is applicable to Mr. Bland's s. 259(1) driving prohibition.

[9] Section 259(1) and (2) of the *Criminal Code* read:

> **Mandatory order of prohibition**
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> **259** (1) When an offender is convicted of an offence committed under section 253 or 254 or this section or discharged under section 730 of an offence committed under section 253 and, at the time the offence was committed or, in the case of an offence committed under section 254, within the three hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be,
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> > (a) for a first offence, during a period of not more than three years plus any period to which the offender is sentenced to imprisonment, and not less than one year;
> >
> > (b) for a second offence, during a period of not more than five years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and
> >
> > (c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment.
>
> **Discretionary order of prohibition**
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> (2) If an offender is convicted or discharged under section 730 of an offence under section 220, 221, 236, 249, 249.1, 250, 251 or 252 or any of subsections 255(2) to (3.2) committed by means of a motor vehicle, a vessel, an aircraft or railway equipment, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel, an aircraft or railway equipment, as the case may be,
>
> > (a) during any period that the court considers proper, if the offender is sentenced to imprisonment for life in respect of that offence;
> >
> > (a.1) during any period that the court considers proper, plus any period to which the offender is sentenced to

> imprisonment, if the offender is liable to imprisonment for life in respect of that offence and if the sentence imposed is other than imprisonment for life;
>
> (b) during any period not exceeding ten years plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for more than five years but less than life in respect of that offence; and
>
> (c) during any period not exceeding three years plus any period to which the offender is sentenced to imprisonment, in any other case.

[10] Wagner J.'s analysis in ***Lacasse*** started with the observation that, prior to being amended, s. 259(2) used to provide that a prohibition be imposed simply "during any period that the court considers proper". At para. 109 and following, he wrote:

> 109 By adding the words "plus any period to which the offender is sentenced to imprisonment", Parliament was making it clear that it intended driving prohibitions to commence at the end of the period of imprisonment, not on the date of sentencing. Section 719(1) provides that a sentence commences when it is imposed, except where an enactment otherwise provides. That is exactly what s. 259(2) does. The Court of Appeal did not err in this regard.
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> 110 What remains is a simple mathematical operation. Judge Couture imposed an 11-year driving prohibition commencing at the time of sentencing. If the term of imprisonment of six years and five months is subtracted, the driving prohibition should have been for four years and seven months commencing at the time of the respondent's release.
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> 111 Another question concerning the driving prohibition arose at the hearing. The respondent submits that, because he entered into a recognizance under which he was not to drive from July 5, 2011, the date he was released on conditions, until October 4, 2013, the date of his sentencing, he should be credited for that period. In the same way as the conditions of pre-trial detention, the length of a presentence driving prohibition can be considered in analyzing the reasonableness of the prohibition: *R. v. Bilodeau*, 2013 QCCA 980, at para. 75 (CanLII); see also *R. v. Williams*, 2009 NBPC 16, 346 N.B.R. (2d) 164.
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> 112 The courts have seemed quite reluctant to grant a credit where the release of the accused was subject to restrictions, given that such restrictive release conditions are not equivalent to actually being in

> custody ("bail is not jail"): *R. v. Downes* (2006), 79 O.R. (3d) 321 (C.A.); *R. v. Ijam*, 2007 ONCA 597, 87 O.R. (3d) 81, at para. 36; *R. v. Panday*, 2007 ONCA 598, 87 O.R. (3d) 1.
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> 113 In the instant case, the driving prohibition has the same effect regardless of whether it was imposed before or after the respondent was sentenced. In *R. v. Sharma*, [1992] 1 S.C.R. 814, Lamer C.J., dissenting, explained that the accused had in fact begun serving his sentence, given that the driving prohibition would have been imposed as part of his sentence had he been tried and found guilty within a reasonable time. In short, where a driving prohibition is not only one of the release conditions imposed on an accused but also part of the sentence imposed upon his or her conviction, the length of the presentence driving prohibition must be subtracted from the prohibition imposed in the context of the sentence.
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> 114 In my view, therefore, the driving prohibition of four years and seven months imposed in this case is demonstrably unfit and must be reduced to two years and four months to take account of the recognizance entered into by the respondent under which he was to refrain from driving from his release date until his sentencing date (two years and three months).

[11] Gascon J. agreed with the majority approach to pre-sentence credit at paras. 176 and 177 of the dissenting reasons.

[12] I note that the amendment to s. 259(1) adding the words “plus any period the offender is sentenced to imprisonment” was not made until after the case of ***R.*** v. ***Johnson***, (1996), 84 BCAC 261, and was in force as of August 1, 1997 (see S.C. 1997, c.17 and SI/97-84). The amendment to s. 259(2) adding (a.1) came into force on October 1, 2008.

[13] While the language in ***Lacasse*** is clear, Crown counters by distinguishing ***Lacasse*** on the basis that it does not address the situation where a minimum duration of prohibition is required. Counsel characterized the defence position as a challenge to a mandatory minimum sentence and argued that it should properly be raised in the

context of a *Charter* challenge. Crown counsel as well observed that driving is a privilege, not a right (***R.*** v*.* ***Kopp*** (1997), 30 M.V.R. (3d) 68 (YKSC) per Vertes J.). To the extent that a driving prohibition is a punitive sanction, it has far less significance than a deprivation of liberty and is less worthy of recognition for the purposes of pre-sentence credit.

[14] In addition to my determination of the credit entitlement, a second issue arises from the dicta in ***Lacasse*** that driving prohibitions "commence at the end of the period of imprisonment, not on the date of sentencing". Where, as here, an offender is seeking an intermittent sentence, there must be a determination of when the prohibition would take effect.

ANALYSIS

Credit for pre-sentence driving prohibition

[15] While it seems to be the only binding precedent on this issue, *Lacasse* is not the first case to determine that credit should be given with respect to a pre-sentence driving prohibition. In ***R.*** v*.* ***Viet Pham***, 2013 ONCJ 635, Paciocco J. reached a similar conclusion with respect to imposing a driving prohibition on an offender who had successfully appealed his first conviction but completed the 15-month driving prohibition of that first sentence in full.

[16] In declining to impose any further driving prohibition, Paciocco J. relied on the Supreme Court of Canada decision in ***R.*** v*.* ***Wust,*** 2000 SCC 18; a case which I raised with counsel when they were in court before me. In ***Wust,*** the Court delivered a

unanimous decision supporting the recognition of pre-sentence credit for detention even when such a sentence results in the court pronouncing a sentence less than a mandatory minimum sentence required by law. ***Wust*** was not a *Charter* case. Rather, Arbour J. relied on principles of statutory interpretation, including the principle that provisions in penal statutes, when ambiguous, should be interpreted in a manner favourable to the accused, and that when a principle is capable of more than one interpretation, the choice should be an interpretation consistent with the *Charter* (para. 34). She also observed at para. 22 that "it is important to interpret legislation which deals, directly and indirectly, with mandatory minimum sentences, in a manner that is consistent with general principles of sentencing, and that does not offend the integrity of the criminal justice system".

[17] Despite Crown's submissions to the contrary, I am satisfied that a s. 259 driving prohibition is a criminal sanction that forms part of a sentence and represents more than just the administrative suspension of a privilege. That interpretation flows from the words of the provision, which speaks of a prohibition as being imposed "in addition to any other punishment". It is also consistent with the impaired driving caselaw (for example see ***R.*** v*.* ***Tabor****,* 2004 BCCA 191 at para. 14). I also note that the Supreme Court of Canada, in ***R.*** v. ***Ladouceur***, [1990] 1 S.C.R. 1257, stated in para. 53 that:

> …It should be remembered that when penalties are imposed for driving offences, the suspension of the driver's license often plays a significant role. In addition, with the suspension of the driver's right to drive, society remains protected when the court decides in appropriate cases to impose a lighter jail term to the benefit of the offender. *In order for license suspensions to be effective as a means of punishment, they must be enforceable.* … (Emphasis added)

[18] The licence suspension considered by Vertes J. in ***Kopp***, and indeed the 90-day roadside suspensions that are imposed pursuant to s. 257 of the Yukon *Motor Vehicles Act*, RSY 2002, c. 153 on the investigation of an impaired driver, derive from territorial legislation with a different purpose that is related to public safety rather than the denunciation and deterrence of criminal conduct. As such, I would not be prepared to grant credit against a s. 259 driving prohibition for the loss of the ability to drive pursuant to a Yukon *Motor Vehicle Act* suspension or disqualification.

[19] Based on ***Wust***, I am satisfied that the reasoning in ***Lacasse*** applies to the circumstances of Mr. Bland. An interpretation of s. 259 in a manner that is consistent with the *Charter*, the general principles of sentencing and the integrity of the criminal justice system require that the seven months Mr. Bland was prohibited from driving while on a recognizance of bail be credited towards the mandatory one-year driving prohibition.

[20] I note the same conclusion was reached in similar circumstances post-***Lacasse*** by Linehan J. of the Newfoundland Provincial Court in ***R.*** v*.* ***Edwards***, [2016] N.J. No. 165 (Prov. Ct.). In this case the Court was dealing with the issue of whether the offender should receive credit against a mandatory minimum driving prohibition, for time spent on the terms of a recognizance prior to sentencing that prohibited him from operating a motor vehicle.

[21] In paras. 22 and 24 Linehan J. stated:

> 22 The direction of the Court in ***R. v. Lacasse*** is clear that the length of presentence driving prohibitions must be subtracted from a s. 259(2) prohibition. The Court did not address s. 259(1) prohibitions, but to hold

> that in such cases offenders would be treated differently, would be unjust and not in accordance with how the Supreme Court of Canada dealt with mandatory minimum sentences in ***R. v. W.(L.W.),*** 2000 CarswellBC 749 (SCC).
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> **…**
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> 24 As such, I see no reason to distinguish between mandatory driving prohibitions and discretionary driving prohibitions in terms of accounting for any credit that must be given to reflect the presence of a presentence driving prohibition.

[22] I agree with the reasoning of Linehan J. in ***Edwards***.

Commencement of the s. 259 prohibition

[23] The majority of the Supreme Court in ***Lacasse*** determined that the s. 259 language that a prohibition is for the stated period "plus" any period to which the offender is sentenced to imprisonment means a prohibition starts on the date a period of imprisonment ends, rather than on the date a sentence is imposed.

[24] Prior to the August 1997 amendment, the language of s. 259 was generally interpreted as meaning that a driving prohibition started when the sentence was imposed (see ***R.*** v. ***Laycock*** (1989), 51 C.C.C. (3rd) 65 (Ont.C.A.) and ***Johnson***).

[25] Following the 1997 amendment which added the words "plus any period the offender is sentenced to imprisonment", the prohibition, although still commencing immediately, was considered to be effectively extended by a period equivalent to the offender's time in custody: see e.g. ***R.*** v. ***Menhem,*** 2013 ABQB 414 at para. 55, ***R.*** v. ***Parent,*** 2013 BCCA 429 at para. 16.

[26] The decision in ***Lacasse*** has changed the landscape once again by stating that the prohibition does not commence until the period of imprisonment is concluded.

[27] Following the decision in ***Lacasse***, we are now faced with the same problematic situations as described in ***Laycock*** and ***Johnson***. In ***Laycock***, the Court stated at p. 7 (QL):

> Aside from the technicalities of legal interpretation, I am of the view it is much more sensible that it be mandatory that the period of prohibition from driving commence on the day the order is made. The order made in the present case illustrates the difficulties which may arise if a different date of commencement could be ordered. The sentencing judge ordered that the appellant be prohibited from driving anywhere in Canada for a period of two years after his release. The question immediately arises as to the meaning of the word "release". Does it mean when he is released on day parole, on early parole, on mandatory supervision, or upon expiration of his sentence? If "release" means "release on parole", what happens if an offender breaches his parole and is re-incarcerated? Does the period of prohibition which commenced to run upon his release cease to run upon his re-incarceration? That these are not frivolous considerations is borne out by the provisions of s. 100(1) and (3) set forth above. Parliament deemed it necessary to define in s. 100(3) the term "release from imprisonment" as used in s. 100(1).
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> If a sentencing judge ordered that the period of prohibition commence upon the expiration of the sentence of the offender, the danger exists that; the offender might not be prohibited from driving during the times he may have been released on parole.

[28] In ***Johnson,*** the Court, in rejecting the reasoning of the Alberta Court of Appeal in ***R.*** v. ***Atkinson*** (1989), 16 M.V.R. (2d) 4, that the driving prohibition could be fixed to start upon the offender's release from custody, stated in para. 55:

> As the Laycock decision points out, the real problem, given the operation of unescorted temporary absences, day parole, full parole and statutory release under what is now the Corrections and Conditional Release Act, is that keeping track of a prisoner's "release date", and thus the date the prohibition begins and ends, would be next to impossible. Enforcement

> would be unmanageable. For the sake of certainty and fairness to both the offender and the community, s. 259(2) should be interpreted as providing that the prohibition order take effect on the date it is imposed.

[29] In the context of intermittent and conditional sentence orders, there are further complications. An intermittent sentence of imprisonment includes time where the offender is living in the community, which creates some issues with respect to sentence calculation. According to the reasoning of ***Lacasse***, it would appear that the driving disqualification would not commence until after the conclusion of the intermittent sentence. Therefore, no s. 259 driving disqualification is in force during the period the offender is in the community on the probation order that attaches itself to the intermittent sentence. While the probation order can prohibit the offender from driving, the offender can only be charged with having committed a s. 733.1(1) offence if found driving in contravention of the probation order, but not with having committed an offence contrary to s. 259(4).

[30] It would also appear that a s. 259 driving prohibition would not take effect until the conclusion of a conditional sentence of imprisonment, notwithstanding that the offender is serving his or her sentence in the community. As such, there would need to be a prohibition against driving as one of the terms of the conditional sentence order, otherwise the offender would be entitled to drive, unless suspended by way of territorial or provincial legislation. In the event that the offender is found driving contrary to a term of the conditional sentence order, the offender could not be charged with having committed a s. 259(4) offence but with having breached the term in the conditional sentence order prohibiting him or her from driving. Thus the offender would be dealt

with under s. 742.6 setting out the procedure for dealing with an allegation of a breach of a conditional sentence order.

Sentence to be imposed in this case

[31] For the s. 259(4) charge, I impose a sentence of 30 days in custody. I am satisfied that, although Mr. Bland does not yet have employment, that it appropriate to allow him the opportunity to seek employment by way of an intermittent sentence. The sentence is to be served as follows: Mr. Bland is to attend at the Whitehorse Correctional Centre, 25 College Road, Whitehorse, Yukon on Friday, the 17th day of June, 2016 at 7 p.m. for release on Monday, the 20th day of June, 2016 at 7 a.m. and to attend thereafter on Fridays at 7:00 p.m. for release on Mondays at 7:00 a.m. until the sentence is served in full.

[32] Mr. Bland will be bound by a probation order on the following terms for the period of time during the intermittent sentence that he is not in custody at the Whitehorse Correctional Centre:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Notify the court, in advance, of any change of name or address and, promptly, of any change of employment or occupation;

4. Remain within the Yukon unless you obtain written permission from the court;

5. Do not consume alcohol during the twenty-four hour period immediately preceding the time that you are to report to the Whitehorse Correctional Centre; and

6. Not operate a motor vehicle on any street, road, highway or other public place.

[33] Pursuant to s. 259(1)(a), I also impose a driving prohibition of one year on Mr. Bland. However, because he was on a recognizance between March 26, 2015 and October 26, 2015 that included a driving prohibition, I will credit him as having served 7 months of this prohibition.

[34] Counsel for Mr. Bland has made submissions that, as per ***Lacasse***, I could further deduct time for when Mr. Bland will be prohibited from driving while in the community during his intermittent sentence.

[35] I find that I cannot agree with this submission. To do so would require me to look into the future and predict that Mr. Bland would serve the entirety of his intermittent sentence without it being varied or collapsed. In the event that, for whatever reason, the intermittent sentence was collapsed, Mr. Bland would end up having been credited with a reduction in time from the mandatory minimum driving prohibition, for time in which he was, in fact, not in the community and being deprived of his driving privileges. This could result in him being disqualified from driving for a period of time that is less than the mandatory minimum, thus making the prohibition imposed contrary to that required by law.

[36] As an aside, I note that Mr. Bland will be credited for a full day of custody on the Fridays and Mondays when, in fact, he will be in the community for approximately 19 hours on a Friday and 17 hours on a Monday. So while counting as a day in custody, in practical terms, Mr. Bland is primarily out in the community. If credit in advance were to be given for his time in the community this would result in an additional one and one-half days' credit towards his driving prohibition, for time that is also technically calculated as being time in custody.

[37] I find that the prohibition against driving in the probation order attached to the intermittent sentence order, while having an impact similar to that identified in ***Lacasse*** for which credit was given in reducing the court-imposed driving prohibition, does not allow for credit to be applied to the mandatory minimum driving prohibition. An intermittent sentence is a jail sentence, not an undertaking or recognizance, and there is a difference between being prohibited from driving prior to being sentenced and being prohibited from driving afterwards. There is also an acceptable degree of certainty in respect of the conclusion of an intermittent sentence, which allows it to be dealt with differently as compared to issues of parole for example.

[38] It would be an error to credit an offender for the loss of a driving privilege that has not yet occurred, as circumstances could be such that credit could be given for a time that no loss of any driving privilege in fact occurred.

[39] A similar form of reasoning applies when considering how a driving prohibition works in conjunction with a conditional sentence of imprisonment. In my opinion it would be wrong to credit an offender with a reduction in a driving disqualification order

for time the offender is going to be serving a period of imprisonment in the community and for which the offender will be prohibited from operating a motor vehicle. There is no certainty that the conditional sentence will be served in its entirety as, in the event of a breach or breaches of any of the terms of the conditional sentence order, the sentence could be collapsed in its entirety or portions of it could be served in custody. This could again result in a driving disqualification being less than a mandatory minimum.

[40] It is worth noting that the impact of the loss of a driving privilege could be greater in a conditional sentence order, as the length of such an order could be up to two years less a day as compared to the maximum of 90 days that an intermittent sentence could be imposed. Therefore the actual time an offender is prohibited from driving could be significantly longer in the case of a conditional sentence order than an intermittent sentence.

[41] Further, an offender serving time in a custodial facility would generally be granted statutory release and thus have his or her driving disqualification start and end earlier than an offender serving a conditional sentence.

[42] This said, a conditional sentence order is a period of imprisonment. If the offender was incarcerated in a custodial facility rather than being allowed to serve his or her sentence in the community, he or she would not be driving in any event. Neither would an individual generally be allowed to drive if the offender was on a house arrest condition as part of a conditional sentence order. Both of these factors militate in favour of not counting any time subject to a driving prohibition on a conditional sentence order against a driving prohibition, in particular a mandatory minimum one.

[43] With respect to a mandatory minimum driving disqualification, there is no discretion to impose a lesser driving disqualification. One way to alleviate against perceived unfairness, should the circumstances present themselves as such, when a conditional or intermittent sentence is imposed, would be to not impose a driving prohibition on the probation order attached to an intermittent sentence, or as a term of a conditional sentence order.

[44] This would, of course, require that not doing so accords with the purpose, objectives and principles of sentencing. It may even be that in appropriate circumstances the ability to drive, for work purposes for example, would work well with the circumstances of an offender serving an intermittent or conditional sentence order, particularly in regard to the sentencing purpose of rehabilitation, and yet still accord with the remaining purposes, objectives and principles of sentencing.

[45] This said, there does appear, however, to be somewhat of a disconnect between being allowed to drive for a period of time and then have the ability to drive taken away once the driving disqualification comes into effect. Regardless, each case and associated circumstances need to be dealt with on their own merits.

[46] There is also the issue that, regardless of what the court does, the territorial or provincial authorities have a say in the matter of whether a driving license is issued to the offender.

[47] The issue of the actual commencement date of a s. 259 driving disqualification is, as it was at the time ***Johnson*** and ***Laycock*** were decided, complex and difficult to resolve. Even a life sentence, which allows for the offender to be in the community on

parole, with the ever-present possibility of revocation of the release on parole, allows for the imposition of a driving prohibition for a period of time, even though the sentence never actually ends. Through the same logic, it would appear that an offender serving a fixed sentence, who is released on parole, would have a driving disqualification commence upon release, even though the sentence is not yet completed and the possibility of the revocation of parole remains. As pointed out in ***Laycock*** and ***Johnson***, there are difficulties associated with whether the driving prohibition should be suspended or not upon revocation of release on parole and whether that is even feasible to administer.

[48] In the end, these, and other related issues I have not discussed herein, are a matter for the legislature to address, should they choose to do so.

[49] Therefore, pursuant to s. 259(1), the mandatory minimum one-year driving prohibition I have imposed on Mr. Bland, after being reduced by seven months credit for his time prohibited from operating a motor vehicle on the terms of a recognizance, leaves him with five months remaining for which he is prohibited from operating a motor vehicle on any street, road, highway or other public place.

[50] Section 259(1) requires that the record reflect that the one-year minimum driving prohibition was imposed and it shall. However, there will be only five months remaining to be served on the driving prohibition, commencing on the date that Mr. Bland's intermittent sentence is concluded.

[51] There is a mandatory minimum victim surcharge of $100. I will allow six months time to pay.

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COZENS T.C.J.