

Citation: *R. v. Kuhl*, 2018 YKTC 27

Date: 20180625
Docket: 16-00606
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

MURRAY LLOYD KUHL

Appearances:
Leo Lane
Amy Steele

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Murray Kuhl was convicted after trial of the offences of impaired driving causing bodily harm, contrary to s. 255(2) of the *Criminal Code*, and causing bodily harm while operating a motor vehicle with a blood alcohol concentration in excess of 80 mg%, contrary to s. 255(2.1). The charge under s. 255(2) was conditionally stayed pursuant to the principle in *R. v. Kienapple*, [1975] 1 S.C.R. 729. Mr. Kuhl is being sentenced on the s. 255(2.1) offence.

[2] The circumstances of the offences and convictions are set out in *R. v. Kuhl* 2018, YKTC 11.

[3] In brief, Mr. Kuhl turned his vehicle into the exit lane of the parking lot south of the Whitehorse Westmark hotel. In doing so, he struck June Mather as she was walking through the parking lot on her way back to the Westmark.

[4] Mr. Kuhl provided breath samples of 230 mg% and two further readings of 190 mg%. However, due to the time that had elapsed between the time of the accident and the time that the breath samples were taken, expert evidence was tendered that established Mr. Kuhl's blood alcohol concentration at the time of driving as being between 214 and 237 mg%. For the purposes of sentencing, I will accept that Mr. Kuhl's blood alcohol concentration was 214 mg%.

[5] I stated as follows in para. 59:

I have no difficulty finding that Mr. Kuhl caused the accident. He turned left into a marked DO NOT ENTER laneway into the parking lot. He failed to see Ms. Mather as she was walking through this laneway. There is nothing in the evidence that would support a finding that the accident was unavoidable and/or caused by Ms. Mather. Notwithstanding any moments of possible obstruction of Mr. Kuhl's view of Ms. Mather as she was walking through the parking lot and across this laneway, Mr. Kuhl should have been able to observe Ms. Mather and avoid striking her with his vehicle. He did not and, in not doing so, caused the accident, and this accident resulted in bodily harm to Ms. Mather. In so finding, I am not saying that Mr. Kuhl's manner of driving was particularly reckless or dangerous. To some degree, there was an element of inadvertence or inattention to the circumstances that existed.

Positions of Counsel

[6] Crown counsel submits that the appropriate sentence is a custodial disposition of six to seven months followed by a two-year driving prohibition.

[7] Counsel stresses the objectives of denunciation and deterrence, as well as the harm caused. Counsel notes the lack of mitigation, as Mr. Kuhl entered not guilty pleas and took the matter to trial.

[8] Counsel for Mr. Kuhl submits that a 90-day intermittent sentence and a one-year driving prohibition would be an appropriate disposition.

Victim Impact

[9] Ms. Mather suffered a serious injury to her left knee as a result of being struck by the vehicle being driven by Mr. Kuhl. Her other injuries were more minor in nature but included some significant bruising.

[10] She was admitted to Whitehorse General Hospital (“WGH”) on October 29, 2016 and discharged on November 3, 2016.

[11] She was diagnosed as having a suspected non-displaced fracture at the lateral aspect of the proximal tibial metaphysis and adjacent proximal fibula. There was moderate knee joint and suprapatellar bursal effusion. It was noted that Ms. Mather had a total knee arthroplasty in 2011 with no apparent complications. The surgeon who had performed the knee arthroplasty reviewed the x-ray images and recommended a conservative approach to recovery. No cast or splint was considered to be required and Ms. Mather was not to weight bear on her left knee for a period of six weeks.

[12] Victim Impact Statements were provided by Ms. Mather, her husband Mark Mather, and her daughter Carla Mather. These were read aloud by each of them at the sentencing hearing. It is very clear that the negative impacts upon Ms. Mather and her

family are serious and significant, far beyond what one would perhaps presume from a knee injury, without having the benefit of hearing from the victims.

[13] Ms. Mather was involved in a motor vehicle accident in 2014, in which she suffered a brain injury. The accident caused by Mr. Kuhl did not result in any further brain injury to Ms. Mather, however, the accident and injuries occurred in the context of a vulnerable victim and, much like in consideration of the “thin skull” jurisprudence in civil litigation, the personal circumstances of Ms. Mather are a factor in considering the consequences of the offence upon her, and upon her family.

[14] Ms. Mather states that, due to the sharp and constant pain in her knee, she has lost the ability to participate and enjoy former activities like gardening and antiquing. She states that she lives in fear every day, including of being in and around cars. She cannot work and her ability to express her feelings towards her husband and children is gone. While Ms. Mather attributes her struggles to express her emotions and feelings to her brain injury, she states that Mr. Kuhl’s actions have caused the effects of her brain injury to become worse.

[15] Mr. Mather states that his wife is not the same woman she was before the accident. She has lost the ability to garden and enjoy simple pleasures, not only because of the pain and limits on mobility associated with the knee injury, but also because of the fear she now has of walking outside and being in a motor vehicle.

[16] He states that she has become emotionally unable to experience and express love and other emotions.

[17] He indicates that she suffers from Post-Traumatic-Stress-Syndrome and that there has been a decline in her capacity and her ability to both understand the need to perform simple tasks, and to do them.

[18] Carla Mather spoke of the huge struggle that her mother's injury has caused her parents to have to deal with. She took time off her own work in order to provide care for her mother.

[19] She states that her mother is not the same person that she was. The humour and the energy that she used to bring is not there like it was.

[20] In hearing and reviewing the Victim Impact Statements, I note that the victims are not seeking retribution against Mr. Kuhl. They want him to understand the consequences of his actions, accept responsibility for these actions, and learn from them. As Carla Mather wrote:

I know that no one is perfect and everyone makes mistakes. It's not about any one mistake you make in life, it's about how deal with the mistakes you make in life. It's about how you allow the mistakes you make to change you into a better person from learning from them. I make mistakes every day in my business and personal life. Each day I process them and learn from them and try harder.

...

I hope that Mr. Kuhl will make better decisions in the future and prove to be a better man by accepting the results of today's outcome so we can all move on in our lives.

Circumstances of Mr. Kuhl

[21] A Pre-Sentence Report ("PSR") was provided.

[22] Mr. Kuhl is 35 years old. He has lived in Whitehorse since August 2016.

[23] He comes from a strong and supportive family and a good home. The only sad childhood memory he related was a serious farming accident that resulted in his grandfather being hospitalized for a long period of time.

[24] Mr. Kuhl achieved above-average grades through to his graduation from grade 13 in Ontario. He obtained a degree in Education, making the Dean's list in his final year.

[25] Mr. Kuhl began working on the family farm at a young age. He has been employed in several worker/labourer jobs and, since September 2016, has worked as a substitute teacher in Whitehorse.

[26] Mr. Kuhl is single and does not have any children.

[27] He states that the only stress in his life right now is his involvement in the justice system as a result of this offence.

[28] Mr. Kuhl currently resides in a rental home with three other individuals. He has no intention to re-locate from this residence.

[29] He is financially stable.

[30] Mr. Kuhl first drank alcohol when he was 16 years old. He states that his use of alcohol increased a few years ago and he now drinks alcohol two to three times a week, consuming up to six drinks at a time when he does so. Mr. Kuhl states that he does not believe alcohol is a problem for him. He admits to having been in the "drunk tank" on

one occasion in 2008 and having on rare occasions blacked out while under the influence of alcohol. He has never met with a substance abuse counsellor or attended a support group in relation to his alcohol use.

[31] Mr. Kuhl scores as having no level of problems related to alcohol use through the application of the Problems Related to Drinking assessment tool. I note that this assessment is based upon the 12 months prior to the PSR being prepared. He also scores as having no problems related to drug abuse.

[32] Mr. Kuhl says that he is deeply regretful for his actions and for the harm that he has caused to Ms. Mather and her family. He states that he is ashamed of his behaviour, and feels that it was out-of-character for him. When Mr. Kuhl addressed the Court, he stated that he understands the weight and gravity of what he has done, and that he hopes for some closure for the Mather family. He referred to the Victim Impact Statement of Carla Mather and said that he is trying to make good choices and decisions.

[33] There was some concern raised with respect to Mr. Kuhl having denied that he was driving, and thus avoiding accepting responsibility. Interestingly, notwithstanding the questions asked of Crown witnesses in cross-examination, Mr. Kuhl, when testifying, was forthright and candid that he was driving the vehicle. I am satisfied that Mr. Kuhl is accepting responsibility for his actions, and that he regrets them and the harm that resulted to Ms. Mather and her family.

[34] Mr. Kuhl's sister was very surprised to hear of this incident, as she has not known her brother to have a problem with alcohol and always considered him to be a

responsible drinker. She states that he was a well-adjusted individual when growing up, with many positive relationships. She states that Mr. Kuhl has always been socially responsible.

[35] She says that her parents were devastated to hear of this incident.

[36] Mr. Kuhl's mother confirmed that Mr. Kuhl had a positive upbringing and was well-adjusted, was involved in many sports and was an above-average student who never got into trouble.

[37] She believes that this is his first involvement with the police.

[38] She states that he may have struggled a bit with some depression while attending post-secondary education. She says that Mr. Kuhl has expressed his remorse and embarrassment to her for having committed these offences.

[39] She also notes that, just prior to the incident, Mr. Kuhl had been informed about the failing health of his grandfather and the impending death of his aunt and mentor due to cancer. They passed away November 28 and December 4, 2016.

[40] She noted that despite obtaining his teaching degree, Mr. Kuhl had difficulty landing a full-time job teaching. He moved to Alberta and then to the Yukon in hopes of doing so. She stated that teaching has always been a dream of Mr. Kuhl.

[41] She stated her and her husband's continued love and support for Mr. Kuhl.

[42] Mr. Kuhl scores as having a low criminal-history risk rating, a low criminogenic needs rating and he requires a low level of supervision.

[43] Several letters of support were filed on behalf of Mr. Kuhl. These individuals noted Mr. Kuhl to have been helpful and reliable in their interactions with them, and to be a respectful person. He was also noted to be dedicated and hard-working.

[44] During sentencing submissions, counsel for Mr. Kuhl stated that he has employment for the summer with a landscaping company. During the school year Mr. Kuhl was employed as a substitute teacher, something which he is expecting to be employed at again in the upcoming school year.

[45] Counsel notes that the objective of specific deterrence is less significant in this case, as the shame Mr. Kuhl feels, due to his role as a teacher in the community, has significantly impacted him. She notes that he sold his vehicle after this incident and has not really driven since.

[46] Counsel suggests that the fact that Mr. Kuhl has essentially not driven since the offence could be a factor supporting the imposition of the minimum driving prohibition.

[47] Mr. Kuhl is prepared to do community work service and take counselling pursuant to the terms of a probation order.

Case Law

[48] Crown counsel relies upon the following cases:

R. v. Kloepfer, 2017 YKSC 44;

R. v. Tom Tom, 2014 YKTC 22; and

R. v. Lommerse, 2013 YKCA 13.

[49] In **Kloepfer**, the 60-year-old accused was being sentenced on convictions after trial for a charge of dangerous driving causing bodily harm, in addition to one count of dangerous driving and two counts of leaving the scene of an accident.

[50] The trial judge found that Mr. Kloepfer had:

5 ...reacted to the presence of the four individuals [walking on the road] by accelerating his truck in a manner which caused him to lose control and nearly collided with R.S. He reacted further by correcting the trajectory of his truck excessively to the left or southerly side of the road, where he collided with T.S. He then reacted again by veering to the right or northerly side of the road, where he collided with Mr. Arnold.

[51] Mr. Kloepfer then left the scene in his vehicle without stopping to offer assistance.

[52] There appeared to have been a history between the offender and the victims. His manner of driving prior to the collision with the pedestrians was described as “unsafe”.

[53] Mr. Kloepfer had no criminal record in Canada but had previously been convicted of an offence in the United States.

[54] Gower J. noted the similarity in sentencing in respect of cases involving dangerous driving causing bodily harm and impaired driving causing bodily harm (para. 44).

[55] In paras. 49 and 50 he cited the comments of Finch J. in **R. v. Khosa**, 2003 BCCA 645 (also cited as **R. v. Bhalru**):

47...Courts have repeatedly recognized that general deterrence and denunciation will be “paramount objectives” in sentencing for impaired or dangerous driving offences... Indeed, in *Proulx*... the Supreme Court singled out dangerous driving and impaired driving as types of offences where the inference that harsher sentences effect greater general deterrence may hold true. ...

...

28 The level of moral culpability is determined in part by considering the intentional risks taken by the offenders, the degree of harm that they have caused, and the extent to which their conduct deviates from the acceptable standard of behaviour...

[56] In sentencing Mr. Kloepfer to five months in custody for the offence of dangerous driving causing bodily harm, followed by a two-year driving prohibition, Gower J. stated:

72 Firstly, jail is normally imposed as the sentence for impaired driving or dangerous driving causing bodily harm, absent exceptional circumstances. There are no such circumstances in the case at bar. ...

[57] Gower J. noted the statements of the victims as to Mr. Kloepfer’s habit of intentionally accelerating his vehicle towards them when they were walking and stated that:

75 ...While...he did not intentionally collide with either T.S. or Mr. Arnold, that does little to reduce his moral culpability for intentionally accelerating his pick-up truck towards the group...the offender in the case at bar did make such a deliberate choice, when it was his moral and legal duty to slow down or even stop before passing by the group. By accelerating, he courted a terrible risk to them all. In this regard, I conclude that his level of moral culpability is very high, considering the intentional risk he took, the degree of harm that he caused, and the extent to which his conduct deviated from an acceptable standard of behaviour.

[58] Gower J. also noted the aggravating circumstances of Mr. Kloepfer, knowing that he had struck T.S. and Mr. Arnold, accelerating away from the scene without checking to see if they had been injured and then providing a false report to the police.

[59] In the end, however, Gower J. noted that as the Crown was only seeking a five-month custodial disposition and was not seeking consecutive sentences, the sentences for the remaining offences were made concurrent.

[60] I note that in *Kloepfer*, Gower J. considered the *Lommerse* and *Tom Tom* cases.

[61] In *Lommerse*, a case of impaired driving causing bodily harm, the Court of Appeal substituted a sentence of four months' custody for the probation order and fine that I had imposed as the sentencing judge.

[62] In doing so, in paras. 15 and 16, the Court agreed with my comments that the normal sentencing range for impaired driving causing bodily harm is between four to 10 months' custody. The Court further accepted my comments in regard to the application of the principles of denunciation and deterrence in sentences for impaired driving causing bodily harm.

[63] The Court, however, held that I had underestimated the risks inherent in Mr. Lommerse's decision to drive his ATV in a parking lot while impaired and consequently understated the level of moral culpability involved.

[64] In *Tom Tom*, the 21-year-old Aboriginal offender, while impaired, intentionally drove his ATV into the victim, knocking him to the ground, where another individual severely beat him, causing the victim to suffer severe and life-threatening injuries, including trauma to the brain. In sentencing Mr. Tom Tom to six months' custody, followed by 18 months of probation, Chisholm J. stated:

15 In my view, Mr. Tom Tom's degree of responsibility for these offences is high. He had been consuming alcohol prior to deciding to drive. Although he made a split-second decision to use his all-terrain vehicle to strike the victim, the chances his action would cause bodily harm to the victim were high. His subsequent failure to interrupt the third party attack heightens his level of responsibility. As indicated, the harm suffered by the victim was considerable. Finally, Mr. Tom Tom's conduct deviates substantially from the acceptable standard of behaviour.

[65] Chisholm J. considered the **Gladue** factors that were present, as well as Mr. Tom Tom's impaired driving and driving while disqualified. In distinguishing this case from others, Chisholm J. also noted that Mr. Tom Tom fled the scene of the accident. He was sentenced to four months' custody concurrent for this offence.

[66] In addition, in **Kloepfer**, Gower J. considered the case of **R. v. Schinkel**, 2015 YKCA 2. Ms. Schinkel had entered guilty pleas to charges of dangerous driving causing bodily harm, impaired driving causing bodily harm and refusal to provide a breath sample. The facts were considered to be "rather egregious". Ms. Schinkel had been driving between 130 and 140 km per hour on the Alaska Highway and in Whitehorse. She had been "...all over the road, in the wrong lane, going through stop signs and hitting medians". She struck another vehicle causing the 16-year-old victim to suffer a severe head injury and a concussion, along with significant emotional harm, in addition to further significant financial consequences, including the loss of the family's only car. The victim's injuries and harm suffered had not resolved as of the date of the sentencing hearing.

[67] In **Schinkel**, the Crown, after taking into account the **Gladue** considerations, had sought a global sentence of six months' custody.

[68] The Court of Appeal upheld the sentence imposed of 60 days to be served intermittently in the community concurrent on all offences, a two-year probation order and a one-year driving prohibition. In doing so, the Court stressed the significance of the **Gladue** considerations that were present and the sentencing judge's reliance on them.

[69] In **R. v. Hagwood**, 2017 YKSC 48, Gower J. imposed a sentence of 90 days to be served intermittently on the 24-year-old Aboriginal offender, following a guilty plea, after the preliminary inquiry, to having committed the offence of dangerous driving causing bodily harm. The offender had been driving at a speed of 98 km per hour on a narrow gravel road with no shoulders. He lost control of the vehicle and it crashed into the trees before rolling onto its roof. Two passengers suffered injuries that resolved in a relatively short period of time and the Crown did not allege these to have met the threshold of bodily harm. However, the third victim suffered a skull fracture and was initially thought to be very close to death. He discharged himself from the hospital and continued to experience back and neck issues and memory loss. He was supportive of the offender.

[70] Mr. Hagwood had a single prior conviction for importation of a controlled substance for which he had been sentenced to 11 months' custody in jail in Alaska, and 18 months' probation, which was terminated early due to his success in complying with it. His PSR was positive.

[71] Gower J. considered the **Kloepfer**, **Bhalru**, **Lommerse** and **Schinkel** cases in imposing sentence.

[72] Counsel for Mr. Kuhl provided the case of *R. v. Leung*, 2016 BCSC 214. Mr. Leung was convicted after trial of two counts of impaired driving causing bodily harm. After a night of drinking, Mr. Leung was driving with three passengers when he drove his vehicle into the back of a street sweeper in the Cambie and West Hastings area of Vancouver. He had a blood alcohol level of between 203 and 224 mg% at the time.

[73] Both victims suffered lingering soft tissue injuries, and one of the victims also suffered a traumatic brain injury, which continued to have lasting effects.

[74] There was little evidence of bad driving before the accident and the traffic was light at the time.

[75] The 30-year-old offender had a youth record for possession of a restricted weapon and an adult record for trafficking in a controlled substance. He also had two speeding infractions and two 24 hour roadside suspensions, as well as a conviction for driving against a stop sign.

[76] The sentencing judge noted the statutorily aggravating blood alcohol readings, the dated and unrelated criminal record, and the prior driving prohibitions. He also noted mitigating circumstances, including the four years which had passed since the commission of the offences without incident, other than the stop sign infraction.

[77] He also noted that ICBC had demanded repayment of \$700,000.00 from Mr. Leung, as being a deterrent factor.

[78] The Court stated in para. 53 that simply getting behind the wheel of a vehicle while drunk is a morally blameworthy act that puts innocent people at risk. The Court

went on to state in paras. 58 and 59 that the moral culpability that initially arises from the simple act of driving while drunk: "...can be influenced, perhaps even heightened, by horrific consequences that flow from that basic act of driving while drunk..."

Sentence to be Imposed

[79] Sentencing is a highly individualized process. There is no doubt that the general range of sentences for impaired driving causing bodily harm is between four to 10 months' custody. This is, however, simply a range of generally appropriate sentence, and it should not be said that the starting point for sentencing is four months custody. The four to 10 months accepted as a range does not create a *de facto* minimum sentence that must be adhered to, and departed from only in rare and exceptional circumstances.

[80] As stated in *R. v. Charlie*, 2015 YKCA 3, in the context of a home invasion case:

30 Furthermore, as has been said many times, "ranges" of sentence are merely guidelines and must not distract the sentencing judge from fashioning a sentence that is fit.

...

39 A sentencing judge does not commit an error in principle simply by crafting a sentence that falls outside of the typical range for a particular offence. The appropriate sentence is determined by the circumstances of the offender and the offence, whether aggravating or mitigating. It is for this reason that, as the Supreme Court explains in *C.A.M.* at para. 92, "a court of appeal should only intervene to minimize the disparity of sentences where the sentence imposed by the trial judge is in substantial and marked departure from sentences customarily imposed for similar offenders committing similar crimes..." (Emphasis added).

[81] The sentence to be imposed in a particular case should take into account the generally imposed sentences for similarly situated offenders in similar circumstances, in

order to comply with the principle of parity, but must nonetheless take into account the particular circumstances of the offender and the offence that are before the sentencing judge in order to craft a fit and appropriate sentence. This, of course, includes the harm caused to any victim or victims of the offence.

[82] The moral culpability for deciding to drive while impaired is high to begin with. In some cases, the circumstances will elevate the moral culpability, taking into account factors such as time of day, location, density of vehicular and pedestrian traffic, degree of impairment, risk-taking and the harm caused.

[83] In other cases, bordering on duress and necessity, or involving significant cognitive issues, the underlying moral culpability may diminish somewhat.

Notwithstanding this, there is no minimum period of custody prescribed for impaired driving causing bodily harm. As such, fines and probation orders without custody must be considered too, in particular circumstances, nonetheless be available in order to accomplish the principles of denunciation and deterrence and properly take into account the high level of moral culpability present simply in choosing to drive a motor vehicle while impaired, including occasions when bodily harm results.

[84] I have considered the circumstances and sentences imposed in the cases I have referred to above, as well as the cases referred to within these cases.

[85] I have also considered the circumstances of the offence and of Mr. Kuhl in the present case. I have considered the harm to Ms. Mather and her family.

[86] It is statutorily aggravating that Mr. Kuhl had a blood alcohol level of 214 mg%.

[87] The significant harm caused to Ms. Mather is an aggravating circumstance. The driving is aggravating in the sense that Mr. Kuhl drove into the exit laneway of the parking lot and, in doing so, did not observe Ms. Mather as she was walking, in order to avoid striking her.

[88] Speed was not a factor, nor was there anything in the driving itself that particularly elevated the moral culpability of Mr. Kuhl. The act of driving while impaired is a risky act with significant moral blameworthiness attached to the act. However, there was not anything approaching the level of risk-taking that was present in many of the other cases, including *Schinkel*, nor was there any deliberate intent in the risk taking, such as was present in *Kloepfer* and *Tom Tom*. This is a case in which I attributed the accident more to inadvertence and inattention than to anything approaching egregious driving.

[89] I do not find that the fact that Mr. Kuhl continues to drink alcohol to be an aggravating factor. There is nothing in the PSR or other information provided that indicates alcohol is a problem for him, in particular a problem that puts society at risk. He does not have a history that would support such a concern in this regard.

[90] By taking the matter to trial, Mr. Kuhl is not entitled to the mitigating benefit of having pled guilty. However, I find that he has accepted responsibility for this offence and that he is genuinely remorseful for having harmed Ms. Mather, and by extension, her family.

[91] I find that his lack of a prior criminal or driving record is a mitigating factor.

[92] I also find, based upon the information provided in the PSR and from his supports, that this was an out-of-character offence for him, and that it is unlikely to be repeated. In saying this, I accept that he feels shame for this offence and that this shame acts as a specific deterrent for him.

[93] Sections 718.2(d) and (e) of the *Criminal Code* read as follows:

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

...

- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders. ...

[94] It is important to keep in mind that, when considering the principle of restraint in sentencing and the need to consider the availability of sanctions other than custody, while particular attention is to be paid to the circumstances of Aboriginal offenders, the consideration of sanctions which do not require custody, or if custody is required, the length and nature of that custody, is still a requirement for all offenders.

[95] In the present case, I am satisfied that a custodial imposition is required. As such, I sentence Mr. Kuhl to be sentenced to 90 days' custody, to be imposed intermittently.

[96] For the duration of the intermittent sentence he will be subject to a probation order on the following terms:

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 in employment or occupation;
4. Remain within the Yukon unless you obtain written permission from the court;
5. Have no contact directly or indirectly or communication in any way with June Mather;
6. Do not consume alcohol during the twenty-four hour period immediately preceding the time that you are required to report to the Whitehorse Correctional Centre;
7. Do not drive a motor vehicle at any time.

[97] He will also be placed on a period of probation for 12 months on the following terms:

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 Probation Officer in advance of any change of name or address, and promptly, of any change in employment or occupation;
4. Have no contact directly or indirectly or communication in any way with June Mather except with the prior written permission of your Probation Officer and with consent of June Mather;
5. Report to a Probation Officer immediately upon completion of your intermittent sentence and thereafter, as and when directed by your Probation Officer;
6. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for any issues identified by your Probation Officer, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;
7. Perform 60 hours of community work service as directed by your Probation Officer or such other person as may be designated by your Probation Officer. Any hours spent in programming may be applied to your community service at the discretion of your Probation Officer.

[98] He will be subject to a driving prohibition for a period of 15 months. In determining the length, I take into account the additional period of time that he will be subject to a driving prohibition while he is serving the terms of his intermittent sentence.

[99] There will be a Victim Surcharge of \$200.00, payable forthwith.

COZENS T.C.J.