

Citation: *R. v. Craft*, 2006 YKTC 19

Date: 20060425
Docket: 05-00006
05-00007
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

R e g i n a

v.

Raymond Sidney Craft

Appearances:
Richard Meredith
Elaine Cairns

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] Raymond Sidney Craft is a 51 year old Kwanlin Dun First Nation male who has pled guilty to the following two charges. Firstly, on or about the 9th day of February, 2005, while his ability to operate a motor vehicle was impaired by alcohol or drugs, he did operate a motor vehicle and thereby caused bodily harm to Donna Pendziwol-MacMillan, contrary to s. 255(2) to the *Criminal Code*; and secondly, that on or about the 3rd day of April, 2005, at or near Carcross, Yukon Territory, he did unlawfully commit an offence in that having consumed alcohol in such a quantity that the concentration thereof in his blood exceeded 80 milligrams in 100 millilitres of blood, he did operate a motor vehicle contrary to s. 253(b) of the *Criminal Code*.

Circumstances of the Offences

[2] The circumstances of the February 9, 2005 incident are as follows. At approximately 7:50 p.m., at a time of the evening when it was dark, Mr. Craft was

driving his vehicle along the Alaska Highway heading south. In his vehicle, he had one passenger, a young woman by the name of Jennifer Atlin, who I understood to be his girlfriend at the time.

[3] Prior to the accident, Mr. Craft's vehicle was observed by a citizen to be weaving and crossing over into the oncoming lane repeatedly, over a distance of approximately five km. This person was concerned about this erratic driving and followed the Craft vehicle from a distance in case something happened. Jodie MacMillan, an 18-year-old female, along with two passengers was driving northbound. The front seat passenger was her mother, Donna Pendziwol-MacMillan and her friend, Ainslinn Cornett, was seated in the backseat behind the driver.

[4] As Jodie MacMillan was traveling northbound cresting a hill, she was confronted by Mr. Craft's car coming towards her in her lane. At the last moment, she veered into the other lane to avoid a collision, but unfortunately, at the same time, Mr. Craft veered back into his proper lane, resulting in a head-on collision. The collision occurred just over the centre line in the south-bound lane.

[5] As a result of observations made at the scene of this accident, the police obtained blood samples pursuant to a demand made according to s. 254(3) and s. 253(4) of the *Criminal Code*. On March 21, 2005, the police were informed that the analysis of Mr. Craft's blood revealed that he had a blood alcohol level of 139 milligrams per 100 millilitres of blood. The next day, Mr. Craft was arrested for impaired driving. He was served a promise to appear for an appearance in court on May 4, 2005. In light of the readings obtained, the RCMP made a further request to analyze the blood sample to detect the presence of drugs. Subsequently, a report was received which indicated that Mr. Craft's blood at the time of the accident contained a number of tranquilizer and anti-anxiety or sedative drugs. The common side effects of these drugs are drowsiness, lethargy, motor incoordination and mental impairment. All of the drugs are central nervous system depressants, and as such can impair an individual's ability to

operate a motor vehicle. This impairment is exacerbated when the medications are taken in conjunction with alcohol.

[6] The second charge to which Mr. Craft plead guilty, took place on April 3, 2005. The police noted a vehicle with an expired Yukon licence plate departing the Jennifer Atlin residence at #7 Waterfront Drive in Carcross. The vehicle was stopped and the police found Mr. Craft behind the wheel. The police made observations consistent with impairment and after Mr. Craft failed a roadside screening test, he was arrested and taken to the police detachment. He provided breath samples with readings of 260 milligrams of alcohol per 100 millilitres of blood. Mr. Craft remained in custody until he was released by a Justice of the Peace four days later on an undertaking with a number of conditions. At this time, the police also determined that Mr. Craft was disqualified from operating a motor vehicle, contrary to s. 266 of the *Motor Vehicles Act* and that the vehicle he was driving was unregistered contrary to s. 39(1) of the *Motor Vehicles Act*. Mr. Craft pled guilty to these territorial offences and was sentenced to fines.

Injuries to Victims

[7] Jennifer Atlin, the young woman in Mr. Craft's car at the time of the February 9, 2005 accident, sustained a cracked tailbone and some bruising on her legs and back. She did not participate in this Circle sentencing.

[8] Ms. Jodie MacMillan, the driver of the other car, sustained some bruising that she attributes to the seat belt. She felt some pain and discomfort in her ribs for a few weeks, but sustained no fractures. Her psychological and emotional injuries did not heal as quickly. A year later, she was still affected by guilt, feeling responsibility for the accident and resulting injuries to passengers, including her mother, even though the accident was entirely caused by Mr. Craft.

[9] As for her friend, Ms. Cornett, she also sustained some bruising caused by the seat belt. She also suffered mild whiplash and chest pain for a few weeks. The psychological impact of the accident lasted much longer, not just for her, but

also for her parents. The day of the accident was her mother's birthday. Her mother will never be able to celebrate a birthday again without being reminded of the accident, and what could have happened to her daughter.

[10] The most serious injuries were incurred by Jodie MacMillan's mother, Donna Pendziwol-MacMillan, who was the passenger in the front seat. After the crash, she was unable to get out of her vehicle from the passenger side because the door was jammed, and had to crawl out over the seat, through the driver's side of the vehicle. After exiting the vehicle, Donna sat down on a snow bank and passed out. Emergency medical services were called and she was transported on a stretcher to the hospital by ambulance.

[11] Mrs. Donna Pendziwol-MacMillan sustained serious injuries to her neck, chest and left knee. She had an unstable fracture of her C-2 cervical vertebrae, a contusion sprain of the left knee, a contusion to her left upper chest, a right hip strain and a hematoma on her left leg. She remained hospitalized in Whitehorse for four days, after which she was medevaced to Edmonton where she stayed for approximately one week. Her spine fracture was treated with a halo brace that she was required to wear for a period of two months. A halo brace is a very inconvenient contraption that screws into the patient's head and is strapped to the body with something that looks like an upper body cast. It is readily apparent that simple movements such as sitting, laying down and walking are rendered difficult while wearing this brace. Donna needed assistance from her family members with simple household chores and basic bodily functions, such as going to the bathroom.

[12] After two months she returned to Edmonton for reassessment and removal of her halo brace. She was then fitted with a two-piece rigid neck collar, which she was initially required to wear 24 hours a day. After two months of wearing this brace, she returned to Edmonton for further treatment and x-rays. She was directed to gradually remove her collar, initially for two hours a day, then

for four hours a day and so on. By early July of 2005, she was no longer required to wear the collar.

[13] Since the accident Donna has been undergoing physiotherapy on a regular basis.

[14] At the current time, Donna is not fully recovered from her injuries. She still has persistent neck pain and ongoing stress due to her memories of the accident, as well as dealing with her injuries over the last year. She cannot walk as fast or as confidently as she used to, tending to exhibit significant caution out of fear of falling and re-injuring herself. By Christmas, she had only recovered 50% of her neck rotation capacity. She was unable to drive a car for a period of five months after the accident.

[15] Donna Pendziwol-MacMillan was unable to return to work until the end of August 2005, at which point she began a gradual return to work, initially working six hours a week for the first week, then nine hours the next week, followed by a 12 hour week then 15, 20, 25 up to the point where she was working in a full time capacity of 30 hours a week. This was reached by November 2005. She also sought counseling services to help her deal with the emotional issues related to the accident and the prospect of being involved with the court process.

[16] Although I have focused on the injuries to the people involved in the crash, their immediate family members were also victims. For example, Donna's husband had to completely change his life plans in order to spend more time at home to care for Donna. She needed assistance with everyday activities such as preparing food, eating, sleeping and walking. She needed help with personal hygiene and with normal bodily functions. The screws in the halo brace had to be removed from her head daily and sterilized.

[17] The family also incurred substantial financial losses. The MacMillan's family vehicle was declared a complete loss and had to be replaced at additional cost above the insurance proceeds.

[18] It is apparent from this case that family members and friends of the people injured in this accident were affected emotionally and psychologically and are properly considered “secondary victims” of Mr. Craft’s criminal offence.

Criminal History

[19] Mr. Craft’s criminal record began in 1974; his last offence was in 1996. It is noteworthy that he has five drinking and driving offences on his record. He was sober from 1996 until just before the date of the first incident, early February 2005, when he was experiencing relationship difficulties with his girlfriend, Ms. Atlin.

Family History

[20] Mr. Craft did not have the benefit of a father figure in his family. His father absconded at a very young age. When he was between the ages of five and eight years of age, he attended a Baptist mission school in Porter Creek. While there, he was subjected to significant physical, emotional and sexual abuse by persons in authority at that school. He finally ran away from school at an early age and it is quite understandable why he did not return. Although his formal education is limited, Mr. Craft has completed a number of special certificates and has developed a number of work skills.

[21] Throughout his childhood and early adulthood, Mr. Craft learned to deal with life issues using violence and drinking. This behavior continued throughout his adulthood and is reflected in his criminal record. He spent many years in this lifestyle, including living on the streets of Vancouver for eight years. Upon his return to Whitehorse, Mr. Craft attended and completed the Crossroads Treatment Program and was able to remain sober for about eight years, until his relapse in January 2005, resulting in these charges before the court.

[22] Mr. Craft’s dysfunctional upbringing and victimization do not excuse his behavior and the charges before the court. On the other hand, it is a reality that should not be ignored either. It is important that everyone in the Yukon

community understands what happened to many young aboriginal youth in the Mission School System. Consider the following statement from his pre-sentence report:

He and along with other local children and relatives experienced excessive violence that could be better described as torture. One particular incident involved lining up the boys on one side of the room and the girls on the other, all were naked, and they had to bend over and touch their toes and hold the position. If anyone's fingers came off the toes they would be strapped 50 times. Ray remembers on one occasion the pain so severe that he urinated and this again resulted in more strapping. He reports regular sexual abuse on him and often witnessing other children being abused at night in their beds. On one occasion Ray tried to defend himself from a more serious sexual assault by biting the principal's finger to which he received a strapping so severe that his bottom was raw and he could not sit down. He could not go to school for days and the principal brought homework home telling the other teachers and his family that he had to stay home as he was sick.

(spelling and grammar corrected)

Employment

[23] Although limited in formal education, Mr. Craft has a number of practical skills and as a result, he has not had great difficulty in finding seasonal jobs in construction, as an equipment operator, as a labourer and as a carpenter's helper. He has also worked for his First Nation's Band as an instructor in traditional skills such as hunting, drying meats, skinning and basic bush living. In the past few years, Mr. Craft has hunted, trapped and provided for elders and family in Carcross and Kwanlin Dun. He is a very traditional man and is most comfortable in the bush. In the winter he supplements his income by selling furs from his trapping.

Family Relationship

[24] Mr. Craft had a long-term relationship with Rose Jules and together they have a son who is now 18 years of age with whom Mr. Craft has a good relationship. The relationship with Rose Jules ended four years ago, but they

remain friends and spend a lot of time together. Ms. Jules attended the Circle sentencing in support of Mr. Craft. Prior to the accident he began a relationship with a younger woman in Carcross, Ms. Atlin. That relationship ended shortly after the April incident and charge for impaired driving. He is currently in a relationship with a woman more his age who is supportive of him and is a non-drinker and also enjoys a traditional lifestyle.

Alcohol and Drugs

[25] Mr. Craft has a long history of abusing alcohol, having started to drink in his early teens. His abuse of alcohol is a major factor in his criminal record.

[26] After he was arrested in April for the offence currently before the court, he made arrangements and attended the in-house treatment program at Alcohol and Drug Services from May 2 – 28, 2005. He began seeing an addictions counselor who completed an alcohol assessment and continued ongoing counseling. That counselor feels that he has accessed the appropriate community supports, including Alcoholics Anonymous, and she recommends monthly check-in visits with her. He has also taken a week-long “Path of Self-Discovery Program” offered at Kwanlin Dun. He is currently waiting for Alcohol and Drug Services to put on their relapse prevention workshop that has been re-scheduled several times. According to the probation officer, Mr. Craft is making every effort to maintain his sobriety. He is taking programming, has been involved with Kwanlin Dun Justice, has attended for blood testing with his doctor and has been trying to give back to his community. He hopes one day that he can be a role model for others in his community who are trying to stop drinking.

[27] The court received a report from Mr. Craft’s medical doctor who has been monitoring his liver enzymes. Because of other medication Mr. Craft is taking, the enzyme readings are not absolutely conclusive, but his doctor expressed the opinion that Mr. Craft has abstained from consuming alcohol since last April when he received the second charge currently before the court.

[28] The probation officer also reports that Mr. Craft is very much aware of the harm he has caused the individuals in the other vehicle.

He is not able to be expressive or expand on his remorse other than to say that he is really sorry for what he has done. He states that in watching the news he sees how often drinking and driving causes accidents and loss of life. Ray regularly states that he would do stuff for the victims. His expertise is being in the bush and has stated that he would shoot and bring them a moose or fish or whatever he could if they are willing.

[29] It is the probation officer's opinion that Mr. Craft would do well under community supervision.

Circle Sentencing

[30] Mr. Craft applied to the Kwanlin Dun Community Justice Committee to have his sentencing proceed by way of Circle sentencing. The initial application was made to the Kwanlin Dun Justice Committee. That Committee met with Mr. Craft and established a number of conditions that needed to be met prior to accepting him into this process. One of those conditions was to maintain absolute sobriety. In addition, he was required to work with elders, community counselors and alcohol counselors with respect to his substance abuse problems. He was also required to meet with the Justice Committee regularly, and these meetings have continued to this day.

[31] After meeting the community's requirements, Mr. Craft applied to the court for a Circle sentencing process. The court determined, based on his performance, that he was eligible for a Circle sentencing process. It should be noted that Mr. Craft accepted the facts of the offence as put forward by the Crown and agreed to a joint statement of facts which was filed with the court as an exhibit. The court was also satisfied that the sentencing Circle would be fair and representative. Both the victims and the offender had support people in the Circle. Independent members of the community were also present. Two respected individuals served as Keepers of the Circle.

[32] A very thorough and complete pre-sentence report was made available to the court.

[33] The Circle sentencing was conducted on two separate days. Thirty people were present on the first day, February 6, 2006, including three of the victims in the car driven by Jodie MacMillan, her father and the parents of the third person, Ainslinn Cornett. A number of their close friends were also in the Circle supporting them. Twenty people were in the Circle on the second day, April 19, 2006, including the victims and/or their family members.

[34] The Circle sentencing commenced with Crown counsel summarizing the circumstances of the two offences and the injuries to the victims. He also filed a lengthy agreed statement of facts.

[35] An eagle feather was passed around the Circle in a clockwise direction. The person holding the feather was entitled to speak. Several people in the Circle expressed concern about the frequency of drinking and driving in the Yukon and how people driving to and from work are at risk. It was noted that when a serious accident is reported in the media, because Whitehorse is a small town, everyone worries that someone they know may have been injured.

[36] Others acknowledged that they were aware that close family members would sometimes drink and drive, and that it took courage to call the RCMP in those circumstances. How do we keep others from drinking and driving? How do we keep Roy (Mr. Craft) from drinking and driving in the future? The community and his friends have a responsibility and a role to play, they agreed.

[37] Others apologized for not intervening when Mr. Craft was abusing alcohol and for not taking preventative steps as members of the community or as relatives.

[38] Several people pointed out that jail does not protect people in the long run. The community needs to address the serious problem of substance abuse in the community. One woman, who was in the Circle supporting Mr. Craft, noted that

her grandfather, with whom she was close, was killed as a result of a drunk driver. She said she had mixed emotions – supporting Mr. Craft on the one hand and remembering who killed her grandfather on the other hand.

[39] The most touching and emotional part of the Circle sentencing occurred when Donna Pendizwol-MacMillan spoke at length about the accident, her injuries, her treatment in Whitehorse and Edmonton and her lengthy recuperation. She noted that it was ironic that after the accident, Roy Craft was free in the community while she was “imprisoned” in her home by her injuries and braces. She felt that she has been given a second chance to live life and wondered out loud, what Mr. Craft was going to do with his second chance at life.

[40] Written victim impact statements are often filed with the court, but they do not compare to hearing directly from the victims. Everyone in the Circle was deeply touched by the details of Donna’s story. It was not the pain from her injuries or the humiliation of needing family members to help her to go to the bathroom in the night that caused her the greatest grief. Her greatest concern was her fear – that she might simply trip and fall and be paralyzed for the rest of her life. Or the fear that the next x-ray would indicate a major problem. Or the fear experienced while driving at night and seeing a set of headlights coming towards her. “Does Mr. Craft experience any such fear?” she wondered.

[41] Donna noted that until this Circle sentencing she was also scared of Mr. Craft, because he almost killed her. But everyone was amazed by her lack of animus, by her willingness to forgive. “What do I want from Raymond?” she wondered out loud. “To heal; to ask for help when he needs it; not to drink and drive; that he acknowledge that he hurt us; that he understands that we all have choices; perhaps he can teach others not to drink and drive; and maybe he could help put practical things in place so people don’t have to drive after drinking”.

[42] Donna’s husband, Mike, was not in the accident. But, as the Circle listened to his story it became evident that he, too, was a victim. He described the terror he felt when a friend came to the door and told him that his family had

been in an accident and they needed him. Mike described what he felt when he viewed the destruction at the scene of the accident, what he felt when he saw Mr. Craft there. And when the doctor told him that Donna had suffered a C-2 fracture, Mike knew what that could mean from his first aid training – possible quadriplegia: requiring Donna to communicate by blowing through a straw and a machine to help her to breathe.

[43] Mike talked about cleaning and sterilizing the halo brace pins in Donna's skull daily. He mentioned that he had to change his program at Yukon College and get a job to support the family. He said the accident and injuries created great stress on their relationship. And because Donna was afraid to drive on the highway, they had to give up the house Mike built and lived in for 15 years and move closer to the City.

[44] Jodie MacMillan, Donna's daughter, was the driver of the car when the accident happened. She continues to feel guilt, that she was responsible, that somehow it was her fault. She is still struggling, wondering if there was something she could have done differently to prevent the accident.

[45] Many people in the Circle assured Jodie MacMillan that the accident was not her fault. She had to take evasive action. And to his credit, Mr. Craft, towards the end of the first day, looked straight at Jodie and said "It's not your fault, it was my fault. I shouldn't have been driving". Hearing this directly from Mr. Craft had great meaning for Jodie.

[46] Jodie was injured too. But her physical injuries were minor compared to her emotional injuries. She said her mom was always such a strong person, and it hurt so much to see her weak. Everyone expects parents to look after children, she said, but after the accident, their roles were reversed. She said when her mother fainted in the snow bank after the accident, she thought her mother was dead.

[47] Ainslinn Cornett was in the back seat of the vehicle. She had just celebrated her mother's birthday at home and was on her way to a soccer meeting in town. She said, "What happened was the most traumatic event in my life." She looked at Mr. Craft and said, "Our lives were put in your hands and we were powerless to stop you." Ironically, after the crash, she first ran to the Craft vehicle to see if he was alright. He just looked at her, in a daze, his face covered with blood. Ainslinn's parents were also traumatized by the accident, more by what could have happened than the injuries actually sustained by her.

[48] When the Circle reconvened on April 19, 2006, the victims of the accident spoke eloquently of the impact this process had on them, how it gave them a voice, contributed to their healing and allowed them to move on with their lives. Some of their comments are attached as Appendix A, in part to demonstrate that non-traditional justice processes can have a significant therapeutic impact on victims and offenders and can contribute meaningfully to community development.

The Law

Curative Conditional Discharges

[49] Mr. Craft has applied for a curative discharge, pursuant to s. 255(5) of the *Criminal Code* for both charges before the Court. This is a unique sentencing provision available only for drinking and driving offences. There are two requirements. The court must be satisfied, on the balance of probabilities, that:

- a. he is in need of curative treatment for his alcoholism, and
- b. that a discharge is not contrary to the public interest.

[50] Most individuals in Mr. Craft's position have little difficulty establishing that they are in need of curative treatment for alcoholism. It is the last condition, that a discharge not be contrary to the public interest, that often creates difficulties. A number of reported cases from courts in different jurisdictions are helpful in understanding what is meant by the public interest: *R. v. Ashberry*, [1989] O.J.

No. 101 (Ont. C.A.); *R. v. Beaulieu*, [1980] N.W.T.J. No. 7 (N.W.T.S.C.); *R. v. Storr*, [1995] A.J. No. 764 (Alta. C.A.); *R. v. Moses*, [1995] Y.J. No. 56 (Y.T.C.). Some factors that these courts have considered in determining the public interest include:

- length of record for drinking and driving offences;
- whether the accused is motivated to deal with his alcoholism;
- whether there was an accident, whether someone was hurt, and if so, how badly;
- whether the accused has demonstrated an ability to deal effectively with his addictions;
- that it is unlikely that the accused will ever drive a vehicle under the influence of alcohol again;
- whether the need for a denunciatory sentence overrides the suitability of a discharge on the facts of the case;
- the mode of life, character and personality of the offender;
- the attitude of the offender after the commission of the offence;
- whether the accused was under a driving prohibition at the time of the offence; and
- whether the accused had received the benefit of a prior curative discharge and his performance pursuant to that order.

[51] A number of aggravating factors are present in this case.

- Mr. Craft has five previous convictions for drinking and driving offences;
- The February 2005 offence involved a serious head-on collision which resulted in significant bodily harm to one victim and minor physical injuries (but longer lasting psychological injuries) to two others;

- Judged by his erratic driving, Mr. Craft's driving ability was seriously impaired by a combination of alcohol and prescription drugs;
- Two months later, in April 2005, Mr. Craft was again driving while under the influence of alcohol; and
- His blood-alcohol readings in April were high – 260 milligrams of alcohol in 100 millilitres of blood.

[52] The above circumstances would normally disentitle Mr. Craft to a curative discharge. There are, however, a number of mitigating factors.

- Although Mr. Craft had five prior drinking and driving convictions, he was motivated to attend a number of residential treatment programs and finally stopped drinking (and offending) in 1996. He maintained sobriety until about the time of the February 2005 accident, a period of approximately nine years;
- Mr. Craft relapsed in early 2005 as a result of his relationship with a younger woman who was not committed to sobriety. His inability to control his jealousy was a factor in his resumption of substance abuse;
- Mr. Craft, like many Yukon First Nations people his age, was abused sexually, physically and emotionally while attending a Baptist Mission School in Whitehorse. During his sober years, he sought counseling for his victimization and has made progress in dealing with these past issues;
- Mr. Craft has been clean and sober since the April charge of impaired driving. He completed a residential treatment program in May 2005 and has continued to seek individual counseling with an addictions counselor. He also attends AA meetings;
- Both his probation officer and alcohol counselor believe he has demonstrated remorse for having harmed an individual in an accident caused by his impaired driving. Both believe he is able

and motivated to maintain his sobriety. He has demonstrated his motivation by remaining sober for a year. Based on his participation in the Circle, this Court is satisfied that he is remorseful;

- His probation officer believes he is suitable for and will do well under community supervision;
- By seeking support from the Kwanlin Dun Justice Committee and by participating in a lengthy community based sentencing circle, he has demonstrated both remorse and willingness to be supervised by his community; and
- Mr. Craft accepted responsibility for his offences early on, sparing his victims from the ordeal of a trial. He was also prepared to face his victims and their supporters in a sentencing circle.

Principles of Sentencing in Impaired Driving Cases

[53] The principles of general deterrence and denunciation are of high importance in impaired driving cases, particularly when personal injury or death results. I am prepared to take judicial notice of the large number of motor vehicle accidents in the Yukon resulting in injury or death where alcohol is a contributing factor. It is a fact that the per capita alcohol consumption in the Yukon is one of the highest among all Canadian jurisdictions. As a result, in sentencing for these types of crimes, there is a need to deter similar behaviour in others and to overcome the reckless attitudes that spawn it. The public interest and the safety of the public require both that individual accuseds and the public in general understand that the courts view drinking and driving as a serious criminal offence.

[54] In this jurisdiction, the courts often repeat the statement that every impaired driver is a potential murderer. There is little difference in blameworthiness between an intoxicated individual who uses a car as a weapon and smashes into another and one who points a firearm and pulls the trigger. In this case, Mr. Craft almost killed Ms. Donna Pendziwol–MacMillan. The fact that

she is alive or that she is not permanently paralyzed is nothing less than a stroke of incredible good luck. She is alive and on the mend, but not because of anything Mr. Craft did.

The Sentence

[55] Mr. Craft, through his motivation to seek treatment and maintain sobriety, through his early acceptance of responsibility, through his remorse, through his willingness to work with his community and to confront his victims, has made out a *prima facie* case for a curative discharge. On the other hand, public interest considerations relating to the charge of impaired causing bodily harm on the facts of this case, prevent me from imposing a curative discharge.

[56] Mr. Craft's efforts in seeking treatment, maintaining sobriety and working with the Justice Committee should be recognized. With respect to the April 3, 2005 s. 253(b) offence, there will be a curative discharge along with a three-year probation term with conditions that I will set out later.

[57] With respect to the February 9, 2005 offence, contrary to s. 255(2) of the *Criminal Code*, I find that a discharge would be contrary to the public interest. In particular, the circumstances of the accident and the serious bodily harm to the main victim, Donna Pendziwol–MacMillan, along with the other aggravating factors identified previously, have led me to conclude that a discharge would be inappropriate for that charge.

[58] I have reviewed the following reported cases:

- a. *R. v. McGinnis*, [1998] Y.J. No. 33 (Y.T.C.). The accused had two prior convictions for drinking and driving. Three individuals were injured. A sentence of nine months imprisonment was imposed.
- b. *R. v. I.M.D.S.*, 2000 YTSC 19. The accused had five prior drinking and driving convictions. Prior to sentencing she spent a year at the Adult Resource Centre. Although the elderly victim eventually died,

the death could not be related to the accident. The sentence was fifteen months incarceration served in the community as a conditional sentence.

- c. *R. v. Fletcher*, [1999] Y.J. No. 51 (Y.T.C.). The accused had readings of 330 milligrams of alcohol in 100 millilitres of blood. She had two prior convictions for impaired driving. Three individuals were seriously injured in the accident. She received a sentence of 10 months imprisonment.
- d. *R. v. Campen*, [1998] Y.J. No. 15 (Y.T.C.). The accused did not have any prior drinking and driving offences. The victim was seriously injured. He was sentenced to jail for 4 months.
- e. *R. v. Chapman*, 2000 BCCA 152. The accused had no prior criminal record. The victim was rendered a quadriplegic by the accident. He received a conditional sentence of imprisonment two years less a day.

[59] I also took into account what the victims, members of their families and members of the community stated in the Circle. There was a consensus that Mr. Craft should not actually go to jail, but that he should be closely supervised for a lengthy period of time to ensure that he will not drink and drive in the future. That supervision should involve the continued participation of his support group, the Kwanlin Dun Justice Committee and community and the court. I note that the pre-sentence report concluded that Mr. Craft would be suitable for a community disposition.

[60] The sentence I impose must also take into account the restricted recognizance Mr. Craft has abided by for approximately one year. In addition to a curfew and abstain clause, Mr. Craft was required to reside at the Yukon Adult Resource Centre for a period of time. As indicated earlier, during this time Mr. Craft participated in a number of treatment programs. The recognizance was

not dissimilar to a conditional sentence of imprisonment and in my opinion, should serve to reduce the sentence I impose today.

[61] I do not disagree with Crown counsel's submission that a sentence of two years imprisonment could be imposed in a case such as this. Considering all of the circumstances, including the mitigating ones previously identified and the restrictive terms Mr. Craft has fully complied with for a year, a community disposition in the form of a conditional sentence of imprisonment of 14 months is appropriate for the February 9, 2005 conviction for impaired driving causing bodily harm. This will be followed by a period of probation of three years. The terms of the probation order will be identical to that of the curative discharge.

[62] The terms and conditions of the 14 month conditional sentence of imprisonment are as follows:

- a. Keep the peace and be of good behaviour;
- b. Appear before the court when required to do so by the court;
- c. Report to a Supervisor within two working days; and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
- d. Remain within the Yukon Territory unless you have written permission from your Supervisor;
- e. Notify the Supervisor of any change of name, address, and promptly notify the court or the Supervisor of any change of your employment or occupation;
- f. Reside as approved by your Supervisor and do not change that residence without the prior written permission of your Supervisor;
- g. Abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. daily, except with the

prior written permission of your Supervisor, except in the actual presence of a responsible adult approved in advance by your Supervisor and you must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

- h. Abstain absolutely from the possession or consumption of alcohol;
- i. Provide a sample of your breath, for the purpose of analysis, upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
- j. Continue to meet with your physician for the purpose of testing your blood for liver enzymes as directed by your Supervisor;
- k. Do not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
- l. Take such alcohol counseling or programming as directed by your Supervisor and attend and complete a residential treatment program as directed by your Supervisor;
- m. Report to the Family Violence Prevention Unit to be assessed and, attend and complete the Spousal Abuse Program, as directed by your Supervisor;
- n. Take such other assessment, counseling and programming as directed by your Supervisor;
- o. Provide your Supervisor with consents to release information with regard to your participation in any programming, counseling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order;

- p. Perform 60 hours of community service as directed by your Supervisor or such other person as your Supervisor may designate;
- q. Maintain a support group and meet with that support group as and when directed;
- r. Meet with the Kwanlin Dun Justice Committee as and when directed; and
- s. Do not operate a motor vehicle on any road, highway or public place anywhere in Canada.

[63] The terms and conditions of the three year curative discharge and the three year probation order following the conditional sentence of imprisonment are as follows:

- a. Keep the peace and be of good behaviour;
- b. Appear before the court when required to do so by the court;
- c. Notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
- d. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer;
- e. Report to a Probation Officer immediately upon completion of your conditional sentence, and thereafter, when and in the manner directed by the Probation Officer;
- f. Reside as approved by your Probation Officer, and do not change that residence without the prior written permission of your Probation Officer;
- g. Abstain absolutely from the possession or consumption of alcohol;

- h. Provide a sample of your breath for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
- i. Do not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
- j. Take such alcohol assessment, counseling or programming as directed by your Probation Officer, and having given the court your consent, attend and complete a residential treatment program as directed by your Probation Officer;
- k. Report to the Family Violence Prevention Unit to be assessed and, attend and complete the Spousal Abuse Program, as directed by your Probation Officer;
- l. Take such other assessment, counseling and programming as directed by your Probation Officer;
- m. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counseling, employment or educational activities that you have been directed to do pursuant to this probation order;
- n. Maintain a support group and meet with that support group as directed; and
- o. Meet with the Kwanlin Dun Justice Committee as and when directed.

[64] Pursuant to s. 259 of the *Criminal Code*, Mr. Craft is prohibited from operating a motor vehicle for a period of three years plus the period of the conditional sentence previously imposed. He will be considered eligible to apply for the “interlock” program after he has completed one half of his probation order. I have imposed the minimum prohibition in the circumstances because Mr. Craft

has not been allowed to drive since the first charge in February 2005, a period of over a year. I have also taken into account the progress he has made since these matters occurred as well as the mitigating circumstances previously identified.

[65] I direct the probation officer/supervisor to notify the victims and their families of any future court reviews with a view to facilitating their attendance and to provide them with any written reports filed with the court.

Lilles T.C.J.