Citation: ☼ R v Luca
2026 BCPC 293

Date: ☼20261102
File No: 72047-1; 72301-1
Registry: North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v

KYLE NICHOLAS LUCA

REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE A. WARD

Counsel for the Crown:	K. Wu
Counsel for the Defendant:	D. Muldoon and C. Muldoon
Place of Hearing:	North Vancouver, B.C.
Date of Hearing:	October 6, 2026
Date of Sentence:	November 2, 2026

Introduction

[1] Mr. Luca is before me today for sentencing. He has entered guilty pleas to:

1. Operating a conveyance while impaired and while doing so, causing bodily harm to C.B.;
2. Failing to remain at the scene after being involved in an accident that resulted in bodily harm to C.B., commonly referred to in plain language as a hit and run; and,
3. Breaching his release order by being in the driver's seat of a motor vehicle.

[2] The Crown and defence take different positions as to what sentence I should impose. The Crown says that the total sentence for these offences should be two-years' jail, 18 months' probation and a three-year driving prohibition. Counsel for Mr. Luca says that I should impose a six-month jail sentence for the impaired driving causing bodily harm, a six-month conditional sentence for the hit and run to be served consecutively, and a shorter concurrent sentence for the breach offence.

[3] Before proceeding further, I pause here to note that counsel for Mr. Luca has spoken very convincingly on his behalf. He has said everything that can be said, raising all the arguments that can be made in a solemn effort to convince the court that a jail sentence in the community should be imposed, at least as part of his sentence.

[4] He has reminded me of the significance of imposing a custodial sentence on a first offender, that it should be done carefully and only after all other available dispositions have been explored. He has asked me to be mindful of the principal of restraint. He has creatively proposed a bifurcated sentence that allows for part of Mr. Luca's sentence to be served in a correctional facility and the remainder in the community. His submissions were helpful and provided me with the necessary guidance required to impose a fit sentence.

[5] Furthermore, I am grateful to both counsel for the way they prepared and presented their positions, the professionalism they demonstrated throughout the hearing and the assistance they provided in what has proven to be a particularly difficult case.

Circumstances of the Offences

[6] The circumstances of the offences are set out in detail in the Agreed Statement of Facts filed at the sentencing hearing [Exhibit 1, Tab A]. I will provide a summary below.

[7] On April 22, 2024, while he was impaired by alcohol, Mr. Luca drove his car through a stop sign and struck C.B. while she was walking across a street in a marked crosswalk. At the time, C.B. was pushing her grandson in a baby carriage. She hit the front windshield of his car with enough force to cause a spider crack in it. She then fell off the car and hit her head on the cement. Meanwhile, the baby stroller she was pushing became attached to Mr. Luca's car. He did not stop at the scene. In fact, he continued driving for five blocks, running two more stop signs with the baby carriage still attached to his car. Neighbours came running out of their homes, two of whom approached him while he sat in his car. One of them detached the baby carriage from the car and grabbed the baby who, thankfully, was not seriously injured. Another bystander stopped his own car in front of Mr. Luca's car, ran over to it, reached inside and turned off the ignition.

[8] The police investigation revealed that Mr. Luca had a blood alcohol concentration of 110 mg of alcohol in 100 mL of blood at the time of driving.

[9] C.B. was taken to hospital directly from the scene. She was discharged a few days later but re-admitted when her symptoms worsened. She suffered a subdural hematoma for which surgery was required. To this day, she suffers physical, emotional, and financial trauma to which she has referred in detail in her victim impact statement.

[10] In September 2025, approximately five months later, Mr. Luca was stopped by the police while driving. An approved screening device test indicated the presence of alcohol in his system. He was issued a 24-hour prohibition and his car was impounded.

[11] In March 2025, charges were laid in relation to the incident involving C.B. Mr. Luca was released on bail terms requiring him to abstain from alcohol and not drive. A few months later, the driving condition was relaxed to permit driving to and from work.

[12] In June 2025, three months after his bail conditions were imposed, Mr. Luca was found driving contrary to his release order. To make matters worse, he was also impaired. He initially denied drinking, claiming six months of sobriety, and resisted a breath demand, citing ketosis. When he eventually did provide samples, they showed a blood alcohol concentration of 100 mg of alcohol in 100 mL of blood. He was charged with new offences and released on $2,500 cash bail with stricter conditions, this time requiring him to attend residential treatment for his alcohol addiction.

[13] In November 2025, Mr. Luca breached his bail conditions for a second time because he suffered a relapse. He was evicted from his recovery house. To his credit, he continued reporting to his bail supervisor, resided with his parents as directed, and later turned himself in. He was released to another recovery house under house arrest and with electronic monitoring. After several months of compliance at this new recovery house, I agreed to relax his house arrest condition and imposed a 7:00 p.m. curfew instead.

[14] In July 2026, Mr. Luca breached bail for a third time by missing his curfew. When his bail supervisor contacted him about his whereabouts, he falsely claimed to be with a recovery house staff member. Electronic monitoring placed him at various Vancouver locations. He returned approximately 17 hours later and tested negative for alcohol on urinalysis. Nevertheless, a warrant was issued for his arrest because he had breached several of his release terms. He entered custody on July 16, 2026, and remains there today.

Circumstances of the Offender

[15] Mr. Luca is a 31-year-old resident of Squamish. He was 29 years old when he committed these offences. He has faced many physical and mental health challenges throughout his life, including diagnoses of dyslexia, ADHD, and chronic anxiety. He has also sustained multiple concussions. He has a serious back condition and a degenerative eye condition, both of which have worsened in custody. More recently, he has developed an alcohol use disorder. Yet, with the support of his family, he graduated from high school, attended post-secondary school and is working towards becoming a

certified electrician. He has maintained steady employment, accumulating almost 4,000 apprenticeship hours towards his electrician certification.

Victim Impact Statements

[16] Nine victim impact statements were filed at the sentencing hearing. They describe the profound and lasting harm suffered by those affected by the events of April 22, 2024. I do not propose to summarise them. Each statement is thoughtful and deeply personal, and each is best understood by being read in its entirety.

[17] I pause here to acknowledge that no sentence I impose can undo the physical, emotional, or financial harm caused by the events of April 22, 2024, nor can it erase the memories carried by those affected. What stood out to me; however, in each of the victim impact statements was the strength, compassion, and support surrounding the victims. Family members, friends, colleagues, and communities have come together to help one another through a profoundly difficult time. That support cannot undo what happened, but it has clearly been an important source of strength. I hope it will continue in the months and years ahead. C.B.'s closing words in her victim impact statement capture that spirit of resilience and hope:

> In general, I'm thankful to be alive and be with my family. I'm thankful that I can walk and talk. I'm thankful that my colleagues took on my patients so my people could get medical care. I'm thankful for the support of my community.

Purpose, Objectives and Principles of Sentencing

[18] Sentencing can be a challenging task.

[19] Before turning to the appropriate sentence, I will briefly address the purpose, principles, and objectives of sentencing as set out in sections 718-718.2 of the *Criminal Code,* RSC 1985, C-46 [*Code*]. In imposing sentence, I must be guided by the framework as set out in these sections and by the common law jurisprudence interpreting, applying, and adding to these provisions.

[20] In doing so, I must recognise the values reflected in the *Code* and the surrounding jurisprudence. That does not mean; however, that the sentence I impose must accord with popular notions of justice. As noted in *R v Doering*, 2020 ONSC 5618 at para 45, public confidence should not be confused with popular justice. Nor does vengeance play any role in sentencing. The sentence I impose must be measured and proportionate. It cannot be driven by emotion, anger, or a desire to retaliate against Mr. Luca for the harm he caused.

[21] I say this because Mr. Luca's conduct was objectively serious and caused significant harm. While it must be denounced, I must also consider the other principles and objectives set out in the *Code*, including restraint and rehabilitation, as well as the mitigating factors, any collateral consequences, and Mr. Luca's personal circumstances. Those considerations inform my analysis and temper the sentence I impose.

[22] With that said, I will begin with the overarching purpose of sentencing. Section 718 of the *Code* states that sentencing serves "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions."

Principle of Proportionality

[23] What is a just sanction? It is one that reflects both the seriousness of the offence and the offender's degree of responsibility for it. This principle is known as proportionality. It is the foundation of sentencing and is codified in section 718.1 of the *Code*, which requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender

[24] Gravity engages the objective of denunciation and requires a sentence that promotes justice for the victims and maintains public confidence in the administration of justice. At the same time, the sentence must not exceed the offender's degree of responsibility or moral blameworthiness. This limiting principle ensures that the sentence is fair and just to the offender: *R v Ipeelee*, 2012 SCC 13 at para 37.

Gravity of Offences

[25] Gravity or seriousness of the offence includes two components – harm to the victim and harm to society and its values. I have already referred to the harm suffered by the victims. When determining the harm caused to society, I must consider what Parliament has designated as the maximum punishment for these offences as that designation reflects its seriousness: *R v Sharma*, 2022 SCC 39 (CanLII), at paras 4 and 105.

[26] Both impaired driving and hit and run causing bodily harm are punishable by up to 14 years' imprisonment where, as here, the Crown proceeds by indictment. In 2018, Parliament introduced new legislation in which it increased the maximum penalty for both offences from 10 to 14 years, signalling its intention that they be punished more harshly: *R v Lacasse*, 2015 SCC 64 [*Lacasse*], at para 7. That legislative response is not surprising as impaired driving offences continue to cause more deaths than any other offence in Canada. The words of Justice Cory in *R v Bernshaw*, 1995 1 SCR 254, at para 16, written more than 20 years ago, remain apt today:

> Every year, drunk driving leaves a terrible trail of death, injury, heartbreak and destruction. From the point of view of numbers alone, it has a far greater impact on Canadian society than any other crime. In terms of the deaths and serious injuries resulting in hospitalization, drunk driving is clearly the crime which causes the most significant social loss to the country.

[27] Also, as the Crown noted, the new legislation includes a "recognition and declaration" section in which there is a recognition that driving is a privilege and a declaration that the protection of society is well served by deterring people from driving while impaired because that conduct poses a threat to the life, health and safety of Canadians: *Code*, s 320.12. That threat materialised in this case.

[28] Suffice it to say that the gravity of the offences for which Mr. Luca is being sentenced is high.

Moral Blameworthiness

[29] The next issue I must address is Mr. Luca's moral blameworthiness. To do this, I must consider the central and substantive elements of the offence, especially the fault component. I must also consider Mr. Luca's conduct and background which can increase or decrease his personal responsibility for the crimes*: R v Kurek,* 2018 SKQB 168, at para 34.

[30] In *R v Johnson*, Justice Huddart provides a helpful explanation of moral culpability in impaired driving cases involving serious injury. She explains that moral culpability turns less on the consequences, which are a risk inherent in every instance of impaired driving, and more on the accused's decision to drive. When a person chooses to drive rather than seek treatment for an alcohol dependency or fails to put safeguards in place to reduce the likelihood of driving while their addiction is active, that person acts irresponsibly. It is that choice that affects moral culpability. Put another way, driving is inherently dangerous. A person who knows that their alcohol dependency or drinking habits make their driving significantly *more* dangerous, yet chooses to drive after drinking anyway, bears moral responsibility for that decision. Such conduct warrants denunciation because it contravenes the values reflected in the *Code*: *R v Johnson*, 112 CCC (3d) 225 (BCCA), at paras 60-61.

[31] On April 22, 2024, Mr. Luca chose to drive while he was impaired by alcohol. At that time, he had neither addressed his alcohol use disorder nor put effective safeguards in place to prevent himself from driving. While he later took steps to address his addiction, his subsequent conduct demonstrates that the protections he should have put in place to guard against alcohol-related driving during a relapse were either absent or ineffective. In these circumstances, I find that his moral culpability for these offences is high, though somewhat attenuated by the mitigating factors to which I will refer.

[32] While the principle of proportionality is fundamental to sentencing, there are other sentencing principles that I must consider.

Principle of Restraint

[33] The principle of restraint requires me to consider all available sentencing options and impose imprisonment only where a non-custodial sentence would not adequately meet the objectives of sentencing.

Principle of Parity

[34] The principle of parity requires me to compare the sentences I impose on Mr. Luca with sentences imposed in similar cases. Counsel for Mr. Luca and the Crown have provided several comparator cases, all of which I have read and carefully considered. No two cases are identical, particularly in the context of impaired driving offences, and sentences therefore vary considerably.

[35] Furthermore, it is well established in common law that determining a proportionate sentence is a highly individualised exercise. Every offence is committed in unique circumstances by an offender with a unique background: *Lacasse*, at para 58. This is why Mr. Luca's counsel devoted a significant portion of his submissions to Mr. Luca's personal history and circumstances.

[36] A proportionate sentence therefore requires a reconciliation of these two principles: individualisation and parity: *Lacasse*, at para 53.

Sentencing Objectives

[37] The objectives of sentencing exist within the legislative framework and are the means through which I can ensure the overarching purpose of sentencing is satisfied. These objectives are denunciation, general and specific deterrence, separation of offenders from society, rehabilitation, reparations for harm done and promoting a sense of responsibility in the offender and an acknowledgment of harm caused to the victim and community. While I must consider all these objectives, for impaired driving causing bodily harm offences, the primary sentencing objectives are denunciation and deterrence: *Lacasse* at para 74.

[38] Denunciation and deterrence must be the primary focus of Mr. Luca's sentence because of the inherent dangers of impaired driving and the harm caused by those who choose to drive while impaired. It is a senseless and entirely avoidable crime. The public expects drivers to use the roads responsibly. People like C.B., who are lawfully crossing the street, should not have to fear being struck by a driver who has needlessly created a risk to others. The community is also entitled to expect that a person who causes an accident will stop, remain at the scene, and assist those who may be injured. The sentence I impose must denounce Mr. Luca's conduct by expressing society's condemnation of it. It must also serve the objective of deterrence by making clear to Mr. Luca and others who might be tempted to engage in similar conduct, that such behaviour carries serious consequences and will not be tolerated.

[39] While denunciation and deterrence are the primary objectives in this case, they must be balanced with the other objectives of sentencing, including rehabilitation. Rehabilitation is "one of the fundamental moral values that distinguishes Canadian society": *Lacasse* at para 4.

[40] Rehabilitation is concerned with an offender's reintegration and future success. Probation and community-based sentences are examples of dispositions that advance that objective. Also, any custodial sentence I impose should not be so lengthy that it significantly undermines Mr. Luca's prospects for rehabilitation. Based on the evidence before me, I am satisfied that Mr. Luca has the capacity for reform. He is a skilled and hardworking young man with positive prospects.

Aggravating Factors

[41] There are several aggravating factors that I must consider in this case:

1. Mr. Luca's conduct continued over a significant period.
2. Mr. Luca was driving in a busy commercial area and struck a pedestrian while she was walking on a marked crosswalk.
3. Mr. Luca's actions had a significant impact on the victims.

4. Mr. Luca has a driving record. While I accept his counsel's submission that it is less aggravated than it may first appear, the number of convictions that he has accumulated are aggravating.
5. Mr. Luca breached his bail on three occasions.

Mitigating Factors

[42] There are also several mitigating factors that I must consider. As I mentioned previously, these factors reduce Mr. Luca's moral culpability.

1. Mr. Luca's guilty pleas are a significant mitigating factor. They are an admission of responsibility, demonstrate remorse, and have saved considerable resources. More importantly, they spared the victims and other witnesses from travelling to British Columbia to testify at what would have been a multi-day trial. I do not accept the Crown's submission that the pleas should be given less weight because they were entered after Mr. Luca was detained and shortly before trial. My notes indicate that, at the pre-trial conference in mid-August 2026, defence counsel advised that resolution discussions were underway. This was approximately two months before trial and shortly after counsel was retained. No witnesses were inconvenienced and no court time was wasted. In these circumstances, I find that Mr. Luca is entitled to the full weight of this mitigating factor.
2. In addition to his guilty pleas, there is further evidence of Mr. Luca's remorse, which I treat as another mitigating factor. I observed that he struggled to contain his emotions as each of the victim impact statements were read in court. He told me that "not a day has gone by" when he has not thought about the harm he caused. I accept that his remorse is genuine. I only wish it had prompted different choices sooner, including refraining from driving after consuming alcohol on two further occasions and complying with the curfew and electronic monitoring conditions imposed to support his recovery and protect the public. I hope that, going forward, his conduct will reflect the remorse he has expressed.
3. Mr. Luca has been an otherwise productive member of his community. For a man who has had significant mental health and physical ailments throughout his life, he has managed to graduate from high school, learn a valuable trade, and maintain steady employment.
4. Mr. Luca has no criminal record.
5. Mr. Luca has the strong support of his family. His parents and siblings have travelled from Squamish to attend many of his court appearances and have supported him throughout his life. They helped him navigate his educational challenges, encouraged him to seek counselling, and supported his career goals. While he has been in custody, they have continued that support by attempting to provide him with his prescription medication, gathering medical records, and writing letters on his behalf. I hope their ongoing support will assist him in continuing to address his addiction when he returns to the community.

6. Mr. Luca's efforts to address his alcohol addiction are also mitigating and deserve recognition. Following the April 22 incident, he began attending AA meetings and later participated in several residential treatment programs. He initially maintained sobriety for approximately three months before relapsing. He then moved to another recovery house and remained sober for a further eight months. Employees from three different recovery houses provided highly supportive letters, and he has also participated in numerous counselling sessions. I recognise that recovery is rarely a linear process and that an alcohol addiction meets real physical and psychological needs. Likewise, abstinence carries genuine physical and psychological costs: *R v Phillips*, 2023 ABCA 210 at para 31. Recovery requires courage, effort, and persistence. Mr. Luca has made meaningful progress, but he remains at an early stage of that process. There is more work ahead. As he continues that work, it is critical that he develop effective safeguards to ensure that, if he relapses, he does not drive.

Mental Health

[43] A medical or mental disorder may be treated as a mitigating factor such that it may reduce the offender's moral culpability and justify a reduction in sentence: *R v Botticelli,* 2022 BCCA 344, at para 21. It can also diminish the importance of specific and general deterrence as sentencing objectives and allow the court to place greater weight on rehabilitation and treatment.

[44] However, before a mental health condition can affect sentence in this way, there must be a causal connection between the condition and the offending conduct: *R v Badhesa*, 2019 BCCA 70 at para 44.

[45] Mr. Luca submits that his anxiety contributed to his decision to flee the scene after striking C.B. and that he was unaware the stroller had become attached to his car. I am unable to accept that submission on the evidence before me.

[46] I accept that Mr. Luca suffers from chronic, and at times debilitating, anxiety. However, his explanation that he did not know the stroller had attached to his car is difficult to reconcile with his statement to a bystander that someone had thrown the baby in front of him. Although anxiety may also explain that lie, when considered together with his denial at the scene of being drunk one may equally conclude that he fled the scene not because he panicked but because he was attempting to avoid personal responsibility. The evidence does not allow me to determine which explanation

accounts for his flight. Absent further evidence linking his anxiety to the offending conduct, I am unable to find the necessary causal connection on a balance of probabilities.

Collateral Factors

[47] Collateral consequences may be considered as personal circumstances of the offender. Their relevance flows from the application of the principles of individualisation and parity: *R v Pham*, 2013 1 SCR 739.

[48] Counsel for Mr. Luca submitted that, because of these convictions, Mr. Luca may face collateral consequences in the form of financial liability to ICBC. It is difficult to assess the extent of these damages as I have no information on their amount or Mr. Luca's ability to pay any debt he accrues as a result. Therefore, I place very little weight on this as a collateral or mitigating factor.

Sentencing Range

[49] For parity, counsel have provided several sentencing cases, all of which I have read and carefully considered.

Defence Cases

[50] A few of the cases relied on by defence counsel in support of a conditional sentence were decided before the 2018 amendments to the *Code*. I exercise some caution in relying on older cases, keeping in mind that Parliament's decision to increase maximum sentences means that sentencing judges must generally impose higher sentences than those imposed before the increase: *R v Friesen*, 2020 SCC 9 [*Friesen*], at paras 100 and 108.

[51] Turning to the more recent authorities relied on by counsel for Mr. Luca, I will address the "non-jail" cases first and then the "jail" cases, as counsel described them, focusing on some that I found distinguishable and others I found most informative.

[52] In *R v Sharma*, 2022 BCPC 333, Mr. Sharma pleaded guilty to impaired driving causing bodily harm. While driving in snowy weather, he entered the oncoming traffic

lane and caused a head-on collision. The victim in the other car sustained fractures to her finger and orbital floor. The sentencing judge imposed a nine-month conditional sentence. The key distinguishing factor in that case is that the Crown proceeded summarily and was only seeking a six-month sentence. When the Crown elects to proceed summarily, it necessarily constrains the range of available sentences and informs the sentencing process. *R v Maslehati,* 2024 BCCA 27 at para 131.

[53] In *R v Smith*, 2023 BCPC 36, Mr. Smith pleaded guilty to dangerous driving causing the death of his passenger who was also his girlfriend. The sentencing judge imposed a two-year conditional sentence. This case is distinguishable from Mr. Luca's in several respects. While there was evidence of alcohol consumption, the degree of impairment was not established. Mr. Smith was also Indigenous, came from a marginalised background, and had experienced significant trauma and abuse throughout his childhood. The sentencing judge placed considerable weight on those circumstances and on Parliament's recent expansion of conditional sentence eligibility, concluding that such sentences should be considered more broadly, particularly for offenders from marginalised communities. These considerations are not present to the same extent in Mr. Luca's case.

[54] Of the "jail cases," I found *R v Fenton*, 2018 BCPC 230 [*Fenton*], to be particularly informative. Mr. Fenton pleaded guilty to impaired driving causing bodily harm and dangerous driving after rolling his truck while attempting to evade police. The victim, his girlfriend, suffered a mild brain injury and soft-tissue injuries. The court imposed an 18-month jail sentence. The case is distinguishable in several respects. The victim was a willing passenger who had asked Mr. Fenton to take over driving, and there was no evidence as to whether her injuries persisted. Those factors tend to make *Fenton* a more favourable case than Mr. Luca's. However, defence counsel points out that, unlike Mr. Luca, Mr. Fenton had previously been involved in an impaired driving incident that resulted in a death, a highly aggravating factor absent here. I find that distinction less significant than it may first appear. Mr. Fenton's prior involvement in a fatal impaired driving incident made it particularly aggravating that he chose to drive while impaired again. Similarly, after causing serious bodily harm to C.B., Mr. Luca also chose to drive again with a blood alcohol content exceeding the legal limit. In both

cases, the offender was not deterred from engaging in the same conduct despite firsthand knowledge of the grave consequences that can result from impaired driving. That shared feature significantly increases both offenders' moral culpability and makes *Fenton* a particularly useful comparator for parity purposes.

[55] *R v Marthinus*, 2016 BCSC 1019, bears a strong factual resemblance to this case. Mr. Marthinus pleaded guilty to impaired driving and hit and run causing bodily harm after striking a pedestrian in the same Squamish intersection. Like Mr. Luca, he failed to remain at the scene, had a similar blood alcohol concentration, and caused comparable injuries. The sentencing judge imposed a six-month jail sentence for the impaired driving and a six-month conditional sentence for the hit and run. While I have considered this case, I must place somewhat less weight on it. Although the decision was released after *Lacasse*, it was rendered only five months later and contains no reference to *Lacasse* or any post-*Lacasse* authorities. It also predates Parliament's 2018 amendments increasing the maximum penalties for these offences. Lastly, there is a material factual distinction. Unlike Mr. Marthinus, Mr. Luca breached core conditions of his release order on more than one occasion. These considerations limit the assistance the case provides in assessing parity.

Crown Cases

[56] The Crown also provided comparable cases. Like the authorities relied on by the defence, each is distinguishable in some respect. I found the most persuasive comparators to be those bearing the closest factual resemblance to Mr. Luca's circumstances and paid particular attention to the cases involving guilty pleas given their significant mitigating effect on sentence.

[57] In *R v Jaison*, 2025 ONSC 3661 [*Jaison*], Mr. Jaison pleaded guilty to impaired and dangerous driving causing bodily harm after rear-ending another vehicle and causing the victim to suffer a brain injury. Like Mr. Luca, he had no criminal record. There are, however, some important distinctions. Mr. Jaison's blood alcohol concentration was lower than Mr. Luca's and, unlike Mr. Luca, he remained abstinent from alcohol for two and a half years following the offence. In my view, those factors tend to make *Jaison* a somewhat more favourable case than Mr. Luca's. Even so, the

court imposed concurrent 16-month sentences on each count. That outcome is helpful in assessing parity.

[58] In *R v Yogalingam*, 2026 ONCJ 69, Mr. Yogalingam pleaded guilty to impaired driving and dangerous driving causing bodily harm after crashing his truck and causing serious, permanent injuries to his passenger, similar to those suffered by C.B. Like Mr. Luca, he had no criminal record. His guilty plea was entered on the day of trial and was therefore arguably less mitigating than Mr. Luca's. On the other hand, he remained at the scene and complied with his bail conditions for approximately four years following the offence while Mr. Luca did not. The court imposed concurrent 24-month jail sentences on each Count. I found this case helpful in assessing parity given the similarities between the cases while remaining mindful of the different aggravating and mitigating factors present in each.

[59] There are limits to the utility of comparing cases. No two cases are ever identical, even when the offence occurs in the very same intersection. Parity is therefore not an exercise in exact comparison, nor is it helpful to place Mr. Luca at a fixed point among the authorities. Sentencing cannot be reduced to a mathematical calculation. Rather, it involves the consideration of many factors that are difficult to define with precision: *Lacasse*, at para 58. Nevertheless, when considered as a whole, the authorities provided by both counsel have been helpful in informing my proportionality analysis.

Preliminary Determination of Sentence

[60] As I indicated previously, I find the gravity of these offences to be high. I also find Mr. Luca's moral culpability to be high though it is somewhat reduced by all the mitigating factors, as well as his personal circumstances.

[61] On a preliminary assessment, and bearing in mind that the Crown does not seek a sentence in excess of two years, I find that a global custodial sentence in the range of 18 months to two years appropriately reflects both the gravity of the offences and Mr. Luca's degree of moral responsibility.

Availability of a Conditional Sentence

[62] Given that Mr. Luca seeks a conditional sentence, I must consider whether one is available to him and should be imposed.

[63] A conditional sentence is a jail sentence served in the community under strict conditions. Parliament has made it available as a sentencing option to give effect to the principle of restraint. It can serve both punitive and rehabilitative objectives. So long as the offender complies with its conditions, the sentence may be served in the community rather than in a correctional setting. However, if a condition is breached, the offender may be ordered to serve the balance of the sentence in prison. The threat of custody looms large throughout the sentence and is intended to encourage compliance. In this way, a conditional sentence seeks to protect the community while promoting the offender's rehabilitation.

[64] The law with respect to imposing a conditional sentence is not in issue. Section 742.1 of the *Code* and *R v Proulx* [2000] 1 SCR 6 [*Proulx*] provide the necessary guidance and direction which I accept and will follow.

[65] There are certain preconditions that must be met for a conditional sentence to be available:

1. The offence must not specifically be excluded from eligibility for a conditional sentence.
2. The preliminary determination of the appropriate range of sentence, as informed by the purpose and principles of sentencing, must exclude probation on one end and a penitentiary sentence on the other.
3. The safety of the community must not be endangered if the offender serves his sentence in the community.

[66] Once these preconditions have been met, the issue then pivots to whether imposing a conditional sentence would be consistent with the fundamental purpose and principles of sentencing in the *Code*.

[67] I am mindful that when the preconditions are satisfied, I must give *serious consideration* to the imposition of a conditional sentence: *Proulx,* supra*,* at para 90.

[68] I am also mindful that although incarceration will usually provide more denunciation than a conditional sentence, a lengthy conditional sentence or one with onerous conditions can still provide a significant amount of denunciation. I do not underestimate the stigma of a conditional sentence with house arrest.

[69] Similarly, incarceration may provide more deterrence than a conditional sentence. However, I am cautious about assigning undue weight to that distinction. The deterrent effect of incarceration is difficult to measure, and a conditional sentence with punitive and restrictive conditions can itself provide significant deterrence.

Is a Conditional Sentence Order Appropriate?

[70] The offences for which Mr. Luca has been convicted have no minimum terms of imprisonment, and I have found that a sentence of less than two years is fit and proportionate. Accordingly, the first two statutory requirements have been satisfied.

[71] With respect to the third precondition, I must assess the risk Mr. Luca would pose to the community if he were permitted to serve his sentence in the community. In doing so, I must first consider the risk of reoffending. If I find that risk to be minimal, I must then consider the seriousness of the harm that could result if he were to reoffend: *R v Proulx*, [2000] 1 SCR 61, paras 66-69.

[72] Having considered the evidence, I find that there is a real risk Mr. Luca will reoffend if permitted to serve his sentence in the community. After April 22, 2024, Mr. Luca knew, or ought to have known, that he was under investigation and facing serious criminal consequences. Despite that, he consumed alcohol and chose to drive on two further occasions, once contrary to his bail conditions. He also breached the conditions of what was effectively a last-chance release.

[73] In my view, his conduct demonstrates not only a lack of insight but a continuing failure to comply with conditions specifically designed to protect the public and prevent further offending. The prospect of criminal sanctions, including incarceration, together with increasingly restrictive release conditions, proved insufficient to secure his compliance. In these circumstances, I am not satisfied that a conditional sentence

order, no matter how stringent its terms, would adequately manage the risk of future offending. Accordingly, I find that the third precondition has not been satisfied.

[74] In light of this finding, it is not necessary for me to consider whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in the *Code*. However, for the sake of completeness, I will do so.

[75] I find that a conditional sentence, even if imposed as part of the bifurcated sentence proposed by counsel for Mr. Luca, would not result in a fit and proportionate sentence. It would not sufficiently reflect the gravity of the offences or Mr. Luca's moral culpability.

[76] I accept that, in some circumstances, a conditional sentence, particularly one with stringent conditions*, can* satisfy the objectives of denunciation and deterrence: *Proulx*, at paras 105–107. However, this is not one of those cases. In my view, only a sentence served in a correctional setting can adequately achieve those objectives.

Length of Custodial Sentence

[77] Although I agree with the Crown that a custodial sentence is required, I find that the Crown's suggested sentence is too high and does not properly account for some of the mitigating factors in this case. It does not give enough weight to Mr. Luca's guilty plea, his lack of a criminal record and the efforts he has made to rehabilitate.

[78] Considering all the circumstances of the offences, the victim impact statements, the sentencing principles and objectives, the comparative cases, Mr. Luca's personal circumstances, and counsels' submissions, I find that a fit and proportionate sentence for each Count is as follows.

[79] On Count 1 of Information 72047, for impaired driving causing bodily harm, there will be a sentence of 12 months' imprisonment.

[80] On Count 4 of Information 72047, for failing to remain at the scene (hit and run), there will be a sentence of six months' imprisonment.

[81] On Count 3 of Information 72301, for breach of a release order, there will be a sentence of three months' imprisonment.

Principle of Totality

[82] The law requires that the sentence for the hit and run offence be served consecutively to the sentence for impaired driving: *R v Gill*, 2010 BCCA 388 at para 16. A sentence for breaching a release order would also ordinarily be served consecutively because it protects a different societal interest than the substantive offences: *R v Robertson*, 2020 BCCA 65 at paras 90-91.

[83] However, before imposing consecutive sentences, I must ensure that the resulting sentence reflects the offender's overall culpability and is not disproportionately long or unduly harsh. This is known as the principle of totality: *Friesen*, at para 157; *Code* at s 718.2.

[84] In Mr. Luca's case, I conclude that making the sentence for the breach offence consecutive would result in a total sentence that is unduly harsh and longer than necessary. To give effect to the principle of totality, the three-month sentence imposed for that offence will be served concurrently.

Sentence Imposed

[85] Mr. Luca, would you please stand?

Jail

[86] On Count 1 of Information 72047, for impaired driving causing bodily harm to C.B., I sentence you to 12 months' jail.

[87] On Count 4 of Information 72047, for failing to remain at the scene (hit and run), I sentence you to six months' jail. This sentence will be served consecutive to your sentences for impaired driving and breaching your release order.

[88] On Count 3 of Information 72301, for breach of a release order, I sentence you to three months' jail. This sentence will be served concurrent to the two other counts.

[89] Globally, you will serve a total sentence of 18 months for all three offences.

[90] I turn now to Mr. Luca's presentence custody. To ensure the sentence is accurately recorded, I will revert to using days rather than months.

[91] Section 719(3) of the *Code* codifies the long-established common law rule that permits me to give credit for time spent in presentence custody. Mr. Luca has spent 120 days in custody. Having regard to his circumstances, I am prepared to grant enhanced credit at a rate of 1.5 days for each day served. As a result, he will receive 180 days of credit.

[92] That credit will be applied to Count 1 of Information 72047, impaired driving causing bodily harm.

[93] After applying that credit, Mr. Luca will serve a further 185 days in custody on the impaired driving charge. He will then serve an additional 180 days on the hit and run charge. The 90-day sentence for breaching his release order will be served concurrently and will not add to the time he spends in custody. In total, Mr. Luca will serve a further 365 days in custody.

Probation

[94] I will also place him on probation for a period of 18 months. The probation order shall attach to both Informations and shall include the following terms:

1. You must keep the peace and be of good behaviour You must appear before the court when required to do so by the court. You must notify the court or your probation officer in advance of any change of name or address and promptly notify the court or the officer of any change in employment or occupation.
2. You must report in person to a probation officer at 38077 Second Ave, Squamish, BC V8B 0B4 within two business days after your release from custody, unless you have obtained before your release from custody, written permission from a probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your probation officer.
3. When first reporting to a probation officer, you must provide them with the address or location where you live and regularly sleep and your phone number if you have one. You must not change them without prior written permission from your probation officer.

4. You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include residential recovery, counselling or any other programming for alcohol or substance use.

Driving Prohibition

[95] Pursuant to s 320.24 of the *Code*, I also prohibit Mr. Luca from operating a motor vehicle for three years. Both counsel agree that this period is appropriate. In arriving at this term, I have considered the comparator cases discussed earlier, in most of which driving prohibitions of between three and five years were imposed. Having regard to those authorities, the seriousness of these offences, Mr. Luca's conduct while on bail, his personal circumstances and the mitigating factors, I am satisfied that a three-year prohibition is the appropriate punishment. It reflects the notion that driving is a privilege that carries with it a responsibility to act lawfully, carefully, and with due regard for the safety of others.

[96] The remaining issue is whether credit should be given for the period during which Mr. Luca was subject to a presentence driving prohibition. There is a common law rule in place that requires a court to take that prohibition into account when imposing a prohibition at sentence, so long as the punishment imposed while on bail is the same as that being imposed at sentence: *Basque*, at paras 43 and 61; *Lacasse*, at para 113. Such credit reflects the same considerations of fairness, justice and aversion to double punishment that underlie the common practice of giving an offender credit for time served in custody before sentencing: *Basque*, at para 9.

[97] Counsel for Mr. Luca argues that I must apply this common law rule and give Mr. Luca credit for the entire time he was absolutely prohibited from driving while on bail. The Crown disagrees and makes two arguments. Primarily, the Crown submits that because the common law rule is discretionary, I should exercise my discretion and not give Mr. Luca any credit for the presentence driving prohibition or only allow for partial credit because Mr. Luca failed to comply with his driving restrictions as well as some of his other bail conditions.

[98] I conclude that denying credit on the basis of Mr. Luca's breaches *in this case* would be inconsistent with one of the rationales underlying the common law rule, the need to avoid double punishment.

[99] Mr. Luca has pleaded guilty to breaching his bail by driving when he was prohibited from doing so, and I have already imposed a sentence for that offence that includes jail, probation, and a lengthy driving prohibition. I have also treated his conduct on bail as an aggravating factor in determining the sentence for all three offences to which he pleaded guilty. To deny credit for the presentence driving prohibition, whether because he drove contrary to his bail conditions or otherwise performed poorly on bail, would, in effect, punish him again for the same conduct. Put another way, denying him credit means he would serve a prohibition *longer* than what I saw fit to impose for his conduct.

[100] Lastly, I will address the Crown's alternative argument that the common law rule may no longer apply following the enactment of s 320.24(5.1) as part of the recent 2026 amendments to the *Code*. That provision was not part of the *Code* when *Lacasse* and *Basque* were decided. Although s 320.24(5.1) does not expressly abolish the common law rule, the Crown submits that it may do so by necessary implication. In support of that position, the Crown relies solely on *R v Reid*, [2026] OJ No. 882, a summary conviction appeal decision of the Ontario Court of Justice. In *Reid*, the Court applied the same analytical approach adopted in *Basque* to determine whether Parliament had displaced the common law, but reached the opposite conclusion, finding that the enactment of s 320.24(5.1) reflected an intention to abolish the rule permitting credit for a presentence driving prohibition. No binding authority, or indeed any other authority, was cited on this issue, and the Crown's submissions were very brief. Indeed, the Crown acknowledged that the law in this area remains unsettled. In those circumstances, and given that *Reid* is not binding authority, I am not persuaded that s 320.24(5.1) has displaced the common law rule permitting credit for a presentence driving prohibition.

[101] Therefore, in accordance with the common law rule referred to in *Lacasse*, I will grant Mr. Luca credit for the entire period during which he was absolutely prohibited

from driving before sentence. By my count, that period is 19 months. He will remain prohibited from operating a motor vehicle for a further 17 months following his release from custody.

Victim Fine Surcharge

[102] Pursuant to s 737(2.1) of the *Code*, I am imposing the victim fine surcharge, as it applies to all three Counts.

DNA Order

[103] Because Mr. Luca has been convicted of secondary designated offences, a DNA order is discretionary. Given the nature of these incidents, the number of offences for which Mr. Luca has been convicted and the breaches Mr. Luca has accumulated while out on bail, I find that it is in the interest of justice for him to provide his DNA for use in the investigation or prosecution of future designated offences. It should be imposed pursuant to s 487.051(3).

_____

The Honourable Judge A. Ward
Provincial Court of British Columbia