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## Proportional Sentencing for Impaired Driving Causing Death: The Tragic Death of Brandon Thomas

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Case Commented On: *R v Gibson*, [2015 ABCA 41](#)

On the evening of December 6, 2012, Ryan Gibson was intoxicated and driving a truck on highway 22 south of Cochrane. He moved into the northbound lane to pass 2 semi tractor-trailers and after passing them he did not move back into the southbound lane. He continued to travel at highway speed on the wrong side of the highway, and subsequently struck 3 oncoming vehicles. After side swiping and striking the first 2 vehicles, Gibson's truck collided head-on with the car being driven by 17 year-old Brandon Thomas who lived in Cochrane. Brandon Thomas died at the scene as a result of the collision. Gibson pled guilty to impaired driving causing death and one count of impaired driving causing bodily harm. In May 2014 the sentencing judge rejected a joint submission by the Crown and defence for a 2 year custodial sentence and instead imposed a sentence of 2 years and 8 months imprisonment. In *R v Gibson*, [2015 ABCA 41](#), the Alberta Court of Appeal has dismissed an appeal by Gibson who argued the sentencing judge erred by rejecting the joint submission on sentencing.

The determination of an appropriate sentence in a case like this has to be one of the more difficult aspects of being a judge. A young man has been killed and his family and friends devastated. No words can truly explain their loss, and no penalty imposed by the legal system will bring back Brandon Thomas. The man to be sentenced accepts full responsibility for his conduct and has no prior criminal history. Ryan Gibson was only 22 years old in December 2012 and has expressed sincere remorse for his actions.

Sentencing has been the topic of previous comments on ABlawg (for recent comments by Joshua Sealy-Harrington and Professor Jennifer Koshan see [here](#) and [here](#) respectively) and scholarship in recent years (Julian Roberts discusses the scholarship in "Sentencing Scholarship and Sentencing Reform in Canada" (2001) 46 McGill LJ 1163). A good place to find Canadian literature on criminal sentencing would be the *Criminal Law Quarterly* published by Carswell. In the context of impaired driving specifically, a quick search of this journal revealed at least one article directly on point: Tammy Law, "Sentencing of Impaired Driving Cases: Should Harm be Considered?" (2004) 49(2) Criminal LQ 198.

Principles of sentencing are closely informed by theories of justification for punishment by the State. Such theories are generally categorized into 2 groups. One group justifies punishment based on its effects. For example, punishment for crimes is justified because it removes a dangerous offender from society or the imposition of such punishment on the offender deters others from committing a similar offence. The other group justifies punishment based on the principle of *just deserts* – the commission of the criminal act itself justifies the punishment or the offender is punished because they deserve such. This group argues that the effects-based theories can perhaps be too lenient in imposing a penalty (see generally Mark Tebbit, *Philosophy of Law* (Routledge, 2000) c 10). In his 2001 review of sentencing decisions by the Supreme Court of Canada in the context of legislated mandatory minimum sentences, Professor Kent Roach observed a trend of increasing reliance on *just deserts* in sentencing decisions by the Court (see Kent Roach, “Searching for Smith: The Constitutionality of Mandatory Sentences” (2001) 39 Osgoode Hall LJ 367 at 395-399).

Principles and factors to consider in criminal sentencing are set out in sections 718 to 718.21 of the *Criminal Code*, [RSC 1985, c C-46](#). These sections appear to incorporate all the various theories justifying punishment. Section 718.1 in particular stands out as the section states the fundamental principle in sentencing is that “[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.” Parliament added this section to the *Criminal Code* in 1996 and it has been considered by some as evidence of an intention by Parliament to assert a *just deserts* approach over other principles such as deterrence (see e.g., Roach above at 395).

In *Gibson*, the Court of Appeal refers explicitly to section 718.1 in asserting the proportionality principle to rule that the sentencing judge was correct to reject the joint submission on sentencing by the Crown and defence counsel. The Court further rules that the sentencing judge was not bound to follow a joint submission which was not proportionate to the crime. The Court clearly asserts that it is the role of the court – not counsel – to decide on the appropriate sentence in a given case (see generally paras 14 – 19). The Court of Appeal also seems to strongly endorse *just deserts* as the fundamental principle of criminal sentencing.

In the circumstances of this crime, the Court states that the 2 year sentence proposed by the Crown and defence counsel would be “profoundly unfit” because (1) the gravity of this offence was on the high end of the spectrum – Gibson was driving on the wrong side of a highway at highway speeds and took no evasive action to avoid collisions; and (2) Gibson drove his vehicle while impaired at more than twice the legal limit (at paras 21-24). The Court concludes that a fit sentence in this case would be no less than 4 years imprisonment (at para 26). However, the Court declines to interfere with the decision of the sentencing judge to impose a sentence of 2 year 8 months because the Crown did not give prior notice of an intention to seek an increased sentence (at para 27, citing *R v Holloway*, [2014 ABCA 87](#)).

The Court of Appeal has corrected the error in these proceedings for future application, but ruled it was precluded from addressing the problem here. There is perhaps no greater sorrow than that experienced by a grieving parent who outlives her child. The Court’s confirmation that *just deserts* were not implemented in this case likely serves only to accentuate this grief for Brandon’s family.

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