

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089 | **Date:** 20151217  **Docket:** 36001 |

Between:

Her Majesty The Queen

Appellant

and

Tommy Lacasse

Respondent

- and -

Attorney General of Alberta

Intervener

**Official English Translation**

**Coram:** McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**  (paras. 1 to 121) | Wagner J. (Abella, Moldaver, Karakatsanis and Côté JJ. concurring) |

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| **Dissenting Reasons:**  (paras. 122 to 183) | Gascon J. (McLachlin C.J. concurring) |

R. *v.* Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089

Her Majesty The Queen Appellant

v.

Tommy Lacasse Respondent

and

Attorney General of Alberta Intervener

**Indexed as:** R. ***v.*** Lacasse

2015 SCC 64

File No.: 36001.

2015: May 15; 2015: December 17.

Present: McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for quebec

*Criminal law — Sentencing — Appeals — Powers of Court of Appeal — Court of Appeal reducing sentence of imprisonment from six and a half to four years — Whether Court of Appeal erred in substituting sentence it considered appropriate for one imposed by trial judge, primarily on basis that trial judge had deviated from sentencing range established by courts for impaired driving offences — Criminal Code, R.S.C. 1985, c. C‑46, s. 687.*

*Criminal law — Sentencing — Considerations — Impaired driving causing death — Whether it was open to trial judge to consider frequency of impaired driving in region where offence was committed as relevant sentencing factor — Whether length and other terms of driving prohibition imposed by trial judge were appropriate — Criminal Code, R.S.C. 1985, c. C‑46, ss. 259(2)(a.1), 718 to 718.2.*

On June 17, 2011, at about 4:00 a.m., L lost control of his vehicle while entering a curve on a country road in the Beauce region. He was speeding, and his ability to drive was impaired by alcohol. Two passengers sitting in the back seat of the vehicle died instantly. Neither the vehicle’s mechanical condition nor the weather contributed to the accident. L is entirely responsible for it, and he pleaded guilty to two counts of impaired driving causing death.

The trial judge sentenced L, on each count, to six years and six months’ imprisonment; the two sentences were to be served concurrently. He also prohibited L from operating a vehicle for a period of 11 years starting from the sentencing date. The Court of Appeal replaced the sentence imposed by the trial judge with one of four years’ imprisonment. It also reduced the length of the driving prohibition to four years commencing at the end of L’s incarceration.

*Held* (McLachlin C.J. and Gascon J. dissenting): The appeal should be allowed and the sentence imposed by the trial judge restored except as regards the driving prohibition, which should be reduced to two years and four months commencing at the end of L’s incarceration.

*Per* Abella, Moldaver, Karakatsanis, Wagner and Côté JJ.: Sentencing remains one of the most delicate stages of the criminal justice process in Canada. Although this task is governed by ss. 718 et seq. of the *Criminal Code*, and although the objectives set out in those sections guide the courts and are clearly defined, it nonetheless involves, by definition, the exercise of a broad discretion by the courts in balancing all the relevant factors in order to meet the objectives being pursued in sentencing.

The Court has on many occasions noted the importance of giving wide latitude to sentencing judges. Since they have, *inter alia*, the advantage of having heard and seen the witnesses, sentencing judges are in the best position to determine, having regard to the circumstances, a just and appropriate sentence that is consistent with the objectives of the *Criminal Code*. Ultimately, except where a sentencing judge makes an error of law or an error in principle that has an impact on the sentence, an appellate court may not vary the sentence unless it is demonstrably unfit.

Proportionality is the cardinal principle that must guide appellate courts in considering the fitness of a sentence imposed on an offender. The more serious the crime and its consequences, or the greater the offender’s degree of responsibility, the heavier the sentence will be. In other words, the severity of a sentence depends not only on the seriousness of the crime’s consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. Both sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice. Moreover, if appellate courts intervene without deference to vary sentences that they consider too lenient or too harsh, their interventions could undermine the credibility of the system and the authority of trial courts.

Although sentencing ranges are used mainly to ensure the parity of sentences, they reflect all the principles and objectives of sentencing. Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, which serve in any given case as guides for the application of all the relevant principles and objectives. However, they should not be considered “averages”, let alone straitjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case.

There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Everything depends on the gravity of the offence, the offender’s degree of responsibility and the specific circumstances of each case. Thus, the fact that a judge deviates from a sentencing range established by the courts does not in itself justify appellate intervention.

In this sense, the Court of Appeal erred in this case in basing its intervention on the fact that the sentence fell outside the sentencing range established by the courts, while disregarding the criteria that are normally applied in the determination of a just and appropriate sentence. Any other conclusion would have the effect of authorizing appellate courts to create categories of offences with no real justification and accordingly intervene without deference to substitute a sentence on appeal. But the power to create categories of offences lies with Parliament, not the courts.

The Court of Appeal also erred in failing to address the factor relating to the local situation, that is, to the frequency of impaired driving in the Beauce region, on which the trial judge had relied. Although the fact that a type of crime occurs frequently in a particular region is not in itself an aggravating factor, there may be circumstances in which a judge might nonetheless consider such a fact in balancing the various sentencing objectives, including the need to denounce the unlawful conduct in question in that place and at the same time to deter anyone else from doing the same thing. In this case, the mere fact that the trial judge found that impaired driving is a scourge in the Beauce district was in itself sufficient for him to consider this factor in determining what would be a just and appropriate sentence. It was inappropriate for the Court of Appeal to disregard this factor in assessing the fitness of the sentence, as that meant that its analysis was incomplete. In the context of offences such as the ones at issue, courts from various parts of the country have in fact held that the objectives of deterrence and denunciation must be emphasized in order to convey society’s condemnation, as such offences are ones that might be committed by ordinarily law‑abiding people.

The Court of Appeal was therefore wrong to reduce the sentence imposed by the trial judge. Even though the trial judge had made an error in principle by considering an element of the offence as an aggravating factor (the fact that L was intoxicated), that error had clearly had no impact on the sentence. The sentence of six years and six months’ imprisonment imposed by the trial judge, although severe, falls within the overall range of sentences normally imposed in Quebec and elsewhere in the country and is not demonstrably unfit. It must therefore be restored.

As to the term of the driving prohibition, the length of the presentence driving prohibition should be subtracted from that of the prohibition imposed in the context of the sentence. In this case, the driving prohibition of four years and seven months is demonstrably unfit and must be reduced to two years and four months to take account of the recognizance entered into by L under which he was to refrain from driving from his release date until his sentencing date (two years and three months).

Finally, the Court of Appeal erred in not admitting the fresh evidence of L’s breaches of his recognizances. That evidence was relevant. It could have affected the weight given to the favourable presentence report and could therefore have affected the final sentencing decision. In particular, the Court of Appeal might have reached a different conclusion if it had admitted that evidence, which would have helped it in assessing the fitness of the sentence that had been imposed at trial.

*Per* McLachlin C.J. and Gascon J. (dissenting): Sentencing judges must take into consideration, *inter alia*, the objectives of deterrence and rehabilitation, any relevant aggravating and mitigating circumstances relating to the offence or the offender, and the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. If a judge fails to individualize a sentence and to consider the relevant mitigating factors while placing undue emphasis on the circumstances of the offence and the objectives of denunciation and deterrence, all that is done is to punish the crime. The reconciliation of the different factors requires that the sentence be consistent with the fundamental principle of proportionality. This principle requires that full consideration be given to each of the factors. Proportionality is a limiting principle that requires that a sentence not exceedwhat is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence. Deterrence can thus work through conditions tailored to fit the offender. This is even more important in the case of a young person with no criminal record.

The standard of intervention to be applied by appellate courts in sentencing matters is well known: a sentence can only be interfered with if it is demonstrably unfit or if it results from an error in principle, the failure to consider a relevant factor or the overemphasis of a relevant factor. If a party shows that the trial judge made an error in principle, failed to consider a relevant factor or overemphasized appropriate factors, there is no requirement that the sentence also be shown to be demonstrably unfit before an appellate court can intervene. Even if none of these three situations exists, however, intervention may be necessary if the sentence is demonstrably unfit.

Where a reviewable error is shown in the reasoning on which a sentence is based, it is appropriate for an appellate court to be able to intervene and assess the fitness of the sentence. The error that is identified thus opens the door to intervention and permits an appellate court to reopen the sentencing analysis. However, the court of appeal’s role in ensuring consistency in sentencing requires it before intervening to ascertain, among other things, that the sentence represents a substantial and marked departure from the sentences customarily imposed for similar offenders who have committed similar crimes. There is no such thing as a uniform sentence for a particular crime, and sentencing is an inherently individualized process. A sentence must reflect a consideration of all the relevant factors, and it is in this sense that the “process” of sentencing is important. It is by correctly repeating the analytical exercise that the court can determine whether the sanction imposed on the offender is just and appropriate or whether it should be varied, and the court need not show deference in such a case.

The sentencing ranges established by appellate courts are only guidelines, and not hard and fast rules. A judge can therefore order a sentence outside the established range as long as it is in accordance with the principles and objectives of sentencing. As a corollary, the mere fact that a sentence falls within the range applicable to a certain type of crime does not necessarily make it fit. It is by analyzing the trial judge’s reasoning or thought process that an appellate court can determine whether a sentence that falls within the proper range is tailored to fit the circumstances of the offender and is therefore individualized and proportionate.

The Court of Appeal properly justified its intervention in this case. The trial judge committed a number of errors, and the sentence that resulted from his analysis was thus neither proportionate nor individualized; it also represented a substantial and marked departure from the sentences customarily imposed on similar offenders who have committed similar crimes in similar circumstances. In his analysis, the trial judge began by identifying some aggravating factors that were not really aggravating factors, namely an element of the offence — the fact that L was intoxicated — and the impact on those close to L. Next, he discounted some relevant factors that are normally characterized as mitigating factors and that must be considered in determining the appropriate sentence — namely the youth of the accused and the facts that he had expressed remorse, that he had no criminal record and that the presentence report was favourable to him. Indeed, the trial judge failed to discuss the presentence report and its positive findings, which represented a mitigating factor that was relevant to and important for the determination of the appropriate sentence. Finally, his failure to consider certain mitigating factors that favoured L’s potential for rehabilitation and the emphasis he placed on exemplarity led him to impose an excessive sentence that departed from the principle of proportionality.

The local situation factor clearly magnified the exemplary focus of the sentence with which the Court of Appeal took issue. When considered in the sentencing context, the frequency of a crime in a given region does not help paint a portrait of the accused, but instead reflects external factors. The degree of censure required to express society’s condemnation of the offence is limited by the principle that an offender’s sentence must be equivalent to his or her moral culpability. Even though courts of appeal have noted that a trial judge can sometimes consider the local situation when imposing a sentence, the judicial notice that judges can take of their communities is not without limits, and caution must be exercised in establishing its scope. Being familiar with the local situation in one’s region is one thing, but claiming to compare that situation with what happens elsewhere in order to draw conclusions or inferences from it is something else. Although a court has wide latitude as to the sources and types of evidence upon which to base the sentence to be imposed, it must never lose sight of the importance of procedural fairness and must bear in mind the importance of the facts in question and the impact on the offender of how they are dealt with. In this case, there is no indication that the trial judge was in a position to take judicial notice of the fact that impaired driving is trivialized in the Beauce region more than elsewhere. Knowing the impact on sentencing of that factor, which he considered to be aggravating, and the particular weight he was going to attach to it in imposing a more severe sanction, he should, in the interest of procedural fairness, have informed L of his concerns on this point and requested submissions from him. But he did not do so, even though the importance he attached to that aggravating factor ultimately led him to impose a sentence that favoured exemplarity at the expense of proportionality.

Given that the trial judge overemphasized the objectives of exemplarity and deterrence while at the same time overlooking the principles of similarity of sentences and individualization in sentencing, the Court of Appeal was justified in intervening and reopening the analytical process in order to determine whether the sentence was just and appropriate. In the name of deterrence and exemplarity, the trial judge focused on the perceived prevalence of the crime in the community and disregarded the individual and contextual factors, which led him to impose a sentence that was excessive in L’s case. In so doing, he disregarded the principle that sentences should be similar to other sentences imposed in similar circumstances, which is the corollary of the principle of proportionality. He provided little if any explanation for the sentence of 78 months’ imprisonment that he ultimately imposed on L, despite the fact that the severity of that sentence is not in any doubt. Although it would also have been preferable for the Court of Appeal to provide a more thorough explanation, the 48‑month sentence it imposed is much more consistent with what can be seen in comparable decisions. Unlike the one imposed by the trial judge, this sentence does not represent a substantial and marked departure from the sentences imposed on similar offenders who committed similar crimes in similar circumstances. Rather, it is consistent with the sentences imposed on offenders with characteristics similar to those of L. Insofar as the Court of Appeal correctly stated the law before intervening, it is not open to the Court to substitute its view for that of the Court of Appeal on the sentence.

On the issue of the driving prohibition, the length of the presentence prohibition is a factor to be considered in analyzing the reasonableness and appropriateness of the prohibition to be imposed under s. 259(3.3)(*b*) of the *Criminal Code*. In light of the length of the presentence prohibition in this case, it is appropriate to reduce the length of L’s driving prohibition to one year and nine months, plus the period of 48 months to which he was sentenced to imprisonment.

Finally, the Court of Appeal did not make an error warranting intervention when it declined to admit the fresh evidence of two breaches by L of his recognizances. Absent an error of law or a palpable and overriding error of fact, the Court should not reconsider the weight attached by the Court of Appeal to those breaches and substitute its view of what would have been relevant.

**Cases Cited**

By Wagner J.

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By Gascon J. (dissenting)

*R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773; *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500; *R. v. Priest* (1996), 30 O.R. (3d) 538; *R. v. Paré*, 2011 QCCA 2047; *R. v. R. (M.)*, 2010 QCCA 16, 73 C.R. (6th) 136; *R. v. J.L.M.A.*, 2010 ABCA 363, 499 A.R. 1; *R. v. Hamilton* (2004), 72 O.R. (3d) 1; *R. v. Hawkins*, 2011 NSCA 7, 298 N.S.R. (2d) 53; *R. v. Wismayer* (1997), 33 O.R. (3d) 225; *R. v. Coffin*, 2006 QCCA 471, 210 C.C.C. (3d) 227; *R. v. Leask* (1996), 113 Man. R. (2d) 265; *R. v. Stone*, [1999] 2 S.C.R. 290; *R. v. Shropshire*, [1995] 4 S.C.R. 227; *R. v. McDonnell*, [1997] 1 S.C.R. 948; *R. v. Gallon*, 2006 NBCA 31, 297 N.B.R. (2d) 317; *R. v. Biancofiore* (1997), 35 O.R. (3d) 782; *R. v. Gagnon* (1998), 130 C.C.C. (3d) 194; *R. v. Gardiner*, [1982] 2 S.C.R. 368; *R. v. Orr*, 2008 BCCA 76, 228 C.C.C. (3d) 432; *R. v. Flight*, 2014 ABCA 380, 584 A.R. 392; *R. v. Stimson*, 2011 ABCA 59, 499 A.R. 185; *R. v. Dass*, 2008 CanLII 13191; *R. v. Dankyi* (1993), 86 C.C.C. (3d) 368; *R. v. Spence*, 2005 SCC 71, [2005] 3 S.C.R. 458; *R. v. Valiquette*, 2004 CanLII 20126; *R. v. Z.Z.*,2013 QCCA 1498; *R. v. Hernandez*, 2009 BCCA 546, 277 B.C.A.C. 120; *R. v. Lévesque*, 2000 SCC 47, [2000] 2 S.C.R. 487; *R. v. Witvoet*, 2015 ABCA 152, 600 A.R. 200; *R. v. Bartlett*, 2005 NLCA 75, 252 Nfld. & P.E.I.R. 154; *R. v. Joseph*, 2012 BCCA 359, 326 B.C.A.C. 312; *R. v. Provost*, 2006 NLCA 30, 256 Nfld. & P.E.I.R. 205; *R. v. Alarie* (1980), 28 C.R. (3d) 73; *R. v. Junkert*, 2010 ONCA 549, 103 O.R. (3d) 284; *R. v. Ruizfuentes*, 2010 MBCA 90, 258 Man. R. (2d) 220; *R. v. Lépine*, 2007 QCCA 70; *R. v. Brutus*, 2009 QCCA 1382; *R. v. Charles*, 2011 BCCA 68, 10 M.V.R. (6th) 177, aff’g 2009 BCSC 1391; *R. v. McIlwrick*, 2008 ABQB 724, 461 A.R. 16; *R. v. Olsen*, 2011 ABCA 308, 515 A.R. 76; *R. v. Pelletier*, 2009 QCCQ 6277; *R. v. Nottebrock*, 2014 ABQB 662, 15 Alta. L.R. (6th) 114; *R. v. Cooper*, 2007 NSSC 115, 255 N.S.R. (2d) 18; *R. v. Kummer*, 2011 ONCA 39, 103 O.R. (3d) 641; *R. v. Cote*, 2007 SKPC 100, 300 Sask. R. 194; *R. v. York*, 2015 ABCA 129, 78 M.V.R. (6th) 4; *R. v. Gravel*, 2013 QCCQ 10482; *R. v. Comeau*, 2008 QCCQ 4804, aff’d 2009 QCCA 1175; *R. v. Côté*, 2002 CanLII 27228; *R. v. Morneau*, 2009 QCCA 1496, aff’g 2009 QCCQ 1271; *R. v. Bois*, 2005 CanLII 10575; *R. v. Wood* (2005), 196 C.C.C. (3d) 155; *R. v. R.N.S.*, 2000 SCC 7, [2000] 1 S.C.R. 149; *R. v. Bilodeau*, 2013 QCCA 980; *R. v. Pellicore*, [1997] O.J. No. 226 (QL); *Palmer v. The Queen*, [1980] 1 S.C.R. 759.

**Statutes and Regulations Cited**

*Act to amend the Criminal Code (impaired driving causing death and other matters)*, S.C. 2000, c. 25.

*Criminal Code*, R.S.C. 1985, c. C‑46, ss. 255(3), 259(2)(*a*), (*a.1*), (3.3)(*b*), 687, 718 to 718.2, 718.1, 718.3(1), 719(1), 721(3)(*b*).

*Highway Safety Code*, CQLR, c. C‑24.2.

*Tackling Violent Crime Act*, S.C. 2008, c. 6.

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APPEAL from a judgment of the Quebec Court of Appeal (Morissette, Gagnon and Bélanger JJ.A.), 2014 QCCA 1061, [2014] AZ‑51076563, [2014] J.Q. no 4929 (QL), 2014 CarswellQue 4930 (WL Can.), varying a sentence imposed by Couture J.C.Q., 2013 QCCQ 11960, [2013] AZ‑51009786, [2013] J.Q. no 13621 (QL), 2013 CarswellQue 10490 (WL Can.). Appeal allowed, McLachlin C.J. and Gascon J. dissenting.

Régis Boisvert and Audrey Roy‑Cloutier, for the appellant.

Alain Dumas and Geneviève Bertrand, for the respondent.

Joanne Dartana, for the intervener.

English version of the judgment of Abella, Moldaver, Karakatsanis, Wagner and Côté JJ. delivered by

Wagner J. —

1. Introduction
2. Sentencing remains one of the most delicate stages of the criminal justice process in Canada. Although this task is governed by ss. 718 et seq. of the *Criminal Code*, R.S.C. 1985, c. C‑46, and although the objectives set out in those sections guide the courts and are clearly defined, it nonetheless involves, by definition, the exercise of a broad discretion by the courts in balancing all the relevant factors in order to meet the objectives being pursued in sentencing.
3. For this purpose, the courts have developed tools over the years to ensure that similar sentences are imposed on similar offenders for similar offences committed in similar circumstances — the principle of parity of sentences — and that sentences are proportionate by guiding the exercise of that discretion, and to prevent any substantial and marked disparities in the sentences imposed on offenders for similar crimes committed in similar circumstances. For example, in Quebec and other provinces, the courts have adopted a system of sentencing ranges and categories designed to achieve these objectives.
4. The credibility of the criminal justice system in the eyes of the public depends on the fitness of sentences imposed on offenders. A sentence that is unfit, whether because it is too harsh or too lenient, could cause the public to question the credibility of the system in light of its objectives.
5. One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate.
6. In the context of offences such as the ones in the case at bar, namely impaired driving causing either bodily harm or death, courts from various parts of the country have held that the objectives of deterrence and denunciation must be emphasized in order to convey society’s condemnation: *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 129; *R. v. Lépine*, 2007 QCCA 70, at para. 21 (CanLII); *R. v. Brutus*, 2009 QCCA 1382, at para. 18 (CanLII); *R. v. Stimson*, 2011 ABCA 59, 499 A.R. 185, at para. 21; *R. v. McIlwrick*, 2008 ABQB 724, 461 A.R. 16, at para. 69; *R. v. Junkert*, 2010 ONCA 549, 103 O.R. (3d) 284, at paras. 46‑47; *R. v. Ruizfuentes*, 2010 MBCA 90, 258 Man. R. (2d) 220, at para. 36.
7. While it is normal for trial judges to consider sentences other than imprisonment in appropriate cases, in the instant case, as in all cases in which general or specific deterrence and denunciation must be emphasized, the courts have very few options other than imprisonment for meeting these objectives, which are essential to the maintenance of a just, peaceful and law‑abiding society.
8. The increase in the minimum and maximum sentences for impaired driving offences shows that Parliament wanted such offences to be punished more harshly. Despite countless awareness campaigns conducted over the years, impaired driving offences still cause more deaths than any other offences in Canada: House of Commons Standing Committee on Justice and Human Rights, *Ending Alcohol‑Impaired Driving: A Common Approach* (2009), at p. 5.
9. This sad situation, which unfortunately continues to prevail today, was denounced by Cory J. more than 20 years ago:

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.

(*R. v. Bernshaw*, [1995] 1 S.C.R. 254, at para. 16)

1. Such is the backdrop to the main issues in the case at bar. The appellant is appealing a Quebec Court of Appeal judgment that reduced from six and a half to four years a term of imprisonment imposed on the respondent by the trial judge after the respondent had pleaded guilty to two counts of impaired driving causing death.
2. This appeal affords this Court, first of all, an occasion to clarify the standard on the basis of which an appellate court may intervene and vary a sentence imposed by a trial judge. The Court must determine, *inter alia*, the extent to which a deviation from a sentencing range that is otherwise established and adhered to may justify appellate intervention.
3. This Court has on many occasions noted the importance of giving wide latitude to sentencing judges. Since they have, *inter alia*, the advantage of having heard and seen the witnesses, sentencing judges are in the best position to determine, having regard to the circumstances, a just and appropriate sentence that is consistent with the objectives and principles set out in the *Criminal Code* in this regard. The fact that a judge deviates from the proper sentencing range does not in itself justify appellate intervention. Ultimately, except where a sentencing judge makes an error of law or an error in principle that has an impact on the sentence, an appellate court may not vary the sentence unless it is demonstrably unfit.
4. In such cases, proportionality is the cardinal principle that must guide appellate courts in considering the fitness of a sentence imposed on an offender. The more serious the crime and its consequences, or the greater the offender’s degree of responsibility, the heavier the sentence will be. In other words, the severity of a sentence depends not only on the seriousness of the crime’s consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. As I mentioned above, both sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice. Moreover, if appellate courts intervene without deference to vary sentences that they consider too lenient or too harsh, their interventions could undermine the credibility of the system and the authority of trial courts. With respect, I am of the opinion that the Court of Appeal was wrong in this case to reduce the sentence imposed by the trial judge by basing its intervention on the fact that he had departed from the established sentencing range.
5. Secondly, this appeal also raises the question whether it is appropriate for a judge to consider the fact that a type of offence occurs with particular frequency in a given region as a relevant factor in determining a just and appropriate sentence. In this case, I am of the opinion that it was open to the trial judge, in balancing the relevant sentencing factors, to consider the frequency of impaired driving offences in the district where the crime was committed. Moreover, the Court of Appeal failed completely to address this question.
6. Another question raised in this appeal relates to the length and other terms of the driving prohibition imposed by the trial judge. In this case, the length of the presentence driving prohibition should be subtracted from that of the prohibition imposed in the context of the sentence. In addition, the driving prohibition of four years and seven months is demonstrably unfit and must be reduced to two years and four months to take account of the recognizance entered into by the respondent under which he was to refrain from driving from his release date until his sentencing date (two years and three months).
7. Finally, the appeal also concerns the admissibility of fresh evidence. In this case, the evidence in question was of two breaches of recognizances the respondent had entered into. The Court of Appeal found that the fresh evidence was inadmissible. Unlike the Court of Appeal, I am of the opinion that the evidence was admissible and that it provided information that was relevant to the determination of a just and appropriate sentence.
8. In short, I respectfully find that the Court of Appeal erred in intervening, without valid grounds, to substitute a sentence it considered appropriate for the one that had been imposed by the trial judge. Even though the trial judge had made an error in principle by considering an element of the offence as an aggravating factor, that error had clearly had no impact on the sentence, which, moreover, was not demonstrably unfit. In this sense, the Court of Appeal erred in basing its intervention on the fact that the sentence fell outside the sentencing range established by the courts, while disregarding the criteria that are normally applied in the determination of a just and appropriate sentence. It also failed completely to address the factor relating to the local situation, that is, to the frequency of the type of offence at issue, on which the trial judge had relied. For these reasons, the appeal should be allowed and the sentence of imprisonment imposed by the trial judge should be restored.
9. Background and Judicial History
   1. Facts
10. The respondent pleaded guilty to two counts of alcohol‑impaired driving causing death, an offence under s. 255(3) of the *Criminal Code*. The parties filed a joint statement of facts. The following facts taken from it are relevant for the purposes of this appeal.
11. On June 17, 2011, at about 4:00 a.m., Tommy Lacasse, the respondent in this appeal, lost control of his vehicle while entering a curve on a country road in Sainte‑Aurélie in the Beauce region. He was speeding, and his ability to drive was impaired by alcohol. Nadia Pruneau, who was celebrating her 18th birthday that night, and Caroline Fortier, aged 17, were in the back seat of the vehicle. They both died instantly. Neither the vehicle’s mechanical condition nor the weather contributed to the accident. The respondent is entirely responsible for it.
12. The respondent admitted to having smoked a joint of cannabis at about 7:00 p.m., after which he had drunk four small beers between 7:30 p.m. and midnight, another between 1:00 and 2:30 a.m. and about 100 mL of a lemonade and vodka mixture between 10:30 and 11:00 p.m. The parties agreed that it was the alcohol and not the cannabis that had impaired the respondent’s ability to drive.
13. The collision investigation report concluded that the vehicle had been travelling at 130 km/h, whereas the recommended speed for taking the curve was 75 km/h. The vehicle skidded more than 60 metres before hitting the bottom of a ditch, lifting off the ground and rolling over several times.
14. The respondent did not testify at the sentencing hearing, although the defence adduced some evidence to show that he had been deeply distressed during the weeks and months following the accident. The evidence also showed that he had become suicidal and had said that he wished he had died instead of the victims.
15. At the time of the sentencing hearing, the respondent was 20 years old. He was living with his parents and working as an autobody repairer in his family’s business. He did not have a criminal record, although he had been convicted of offences under the *Highway Safety Code*, CQLR, c. C‑24.2, including three speeding offences.
    1. Court of Québec, 2013 QCCQ 11960
16. In the Court of Québec, the appellant asked for a sentence of six to eight years’ imprisonment followed by a seven‑year driving prohibition. The respondent suggested a sentence of no more than three years’ imprisonment.
17. Judge Couture began by listing the aggravating factors: the facts that the respondent had been intoxicated and had smoked cannabis, the context in which he had been drinking alcohol, the speed at which he had been driving, his driving record with the Société de l’assurance automobile du Québec, the number of victims and the impact of the accident on the victims’ families. He also identified a few mitigating factors, but he reduced the weight to be attached to them, except as regards the fact that the presentence report was favourable to the respondent.
18. More specifically, Judge Couture attached less weight to the fact that the respondent had pleaded guilty on the ground that he had done so relatively late, long after he was in a position to make decisions about the conduct of his trial. Judge Couture also attached less weight to the fact that the respondent did not have a criminal record, because in his view, the offence was one that was likely to be committed by people who do not have criminal records. He relied in this regard on this Court’s decision in *Proulx*, at para. 129. He also noted that the respondent had sustained injuries, but pointed out that this was merely a consequence of the respondent’s own actions. In addition, Judge Couture reduced the weight attached to the respondent’s youth.
19. After reiterating the principle of proportionality together with the principle of parity of sentences, Judge Couture stressed the importance of individualizing sentences and the need to emphasize the objectives of deterrence and denunciation where crimes involving impaired driving are concerned. He specified that sentencing ranges are only guidelines, and not hard and fast rules. He added that, in the case of impaired driving offences, it is the most law‑abiding citizens who must be targeted in an approach based on deterrence and denunciation.
20. Furthermore, Judge Couture emphasized the particular situation in the Beauce region, where approximately one in five cases involves an impaired driving offence. He even posed the question whether driving while impaired is trivialized more there than elsewhere.
21. In the end, he found that the aggravating circumstances outweighed the mitigating circumstances in this case.
22. For all these reasons, Judge Couture sentenced the respondent, on each count of impaired driving causing death, to six years and six months’ imprisonment minus the period of one month the respondent had spent in pre‑trial detention; the two sentences were to be served concurrently. He also prohibited the respondent from operating a vehicle for a period of 11 years starting from the sentencing date.
    1. Quebec Court of Appeal, 2014 QCCA 1061
23. The Court of Appeal essentially focused its analysis on the application of the sentencing range outlined in *R. v. Comeau*, 2008 QCCQ 4804, which it had confirmed in *R. v. Paré*, 2011 QCCA 2047. According to that range, which is divided into three categories, sentences are to be imposed as follows:
24. lenient sentences varying between 18 months’ and three years’ imprisonment where the predominant factors favour the accused;
25. harsh sentences varying between three and six years’ imprisonment where the factors of deterrence and denunciation outweigh the personal factors of the accused;
26. very harsh sentences varying between six and nine years’ imprisonment where personal factors are unfavourable to the accused, and even more severe sentences are possible [translation] “when circumstances approach the worst‑case situations” (*Paré*, at para. 21 (CanLII)).
27. The Court of Appeal noted that the trial judge had placed the sentence he imposed at the lower end of the sentences in the third category, adding that personal factors unfavourable to the accused are normally what explain a move from the second to the third category. But, it stated, such factors were almost non‑existent in this case.
28. The Court of Appeal found that the sentence of six years and five months was excessive because it departed from the principle of proportionality. In the court’s opinion, the trial judge should have given greater consideration to the respondent’s potential for rehabilitation and placed less emphasis on the objective of making an example of an offender.
29. The Court of Appeal accordingly replaced the sentence imposed by the trial judge with one of four years’ imprisonment minus one month for the period of pre‑trial detention. It also reduced the length of the driving prohibition to four years commencing at the end of the respondent’s incarceration.
30. In addition, the Court of Appeal held that the fresh evidence the appellant wanted to adduce was inadmissible. The record showed that the respondent had breached two recognizances with which he had agreed to comply while awaiting trial. First, he had failed to comply with the terms of a curfew imposed on him by the court and, second, he had contacted Maxime Pruneau, the brother of one of the victims, although he was prohibited from doing so. According to the Court of Appeal, this fresh evidence was inadmissible because the breaches in question had been punished separately, by an additional 15 days’ imprisonment. Moreover, they were not indicative of a risk of the respondent’s reoffending in this case. The Court of Appeal also held that the fresh evidence in question was unlikely to affect the result of the appeal, because the disparity between the sentence imposed at trial and the one that, in the court’s opinion, had to be substituted for it was too great.
31. Issues
32. The appeal raises the following issues:

1. Was it open to the Court of Appeal to substitute the sentence it considered appropriate for the one imposed by the trial judge, primarily on the basis that the trial judge had deviated from the sentencing range established by the courts for impaired driving offences?

2. Was it open to the trial judge to consider the frequency of impaired driving in the region where the offence was committed as a relevant sentencing factor? If so, was it open to the Court of Appeal to disregard this factor in analyzing the fitness of the sentence?

3. Were the length and the other terms of the driving prohibition imposed by the trial judge appropriate?

4. Did the Court of Appeal err in holding that the fresh evidence the appellant wished to file was inadmissible?

1. Analysis
   1. Standard for Intervention on an Appeal From a Sentence
2. Appellate courts generally play a dual role in ensuring the consistency, stability and permanence of the case law in both the criminal and civil law contexts. First, they act as a safeguard against errors made by trial courts and are thus required to rectify errors of law and review the reasonableness of the exercise of discretion. They must ensure that trial courts state the law correctly and apply it uniformly.
3. Second, appellate courts must ensure the coherent development of the law while formulating guiding principles to ensure that it is applied consistently in a given jurisdiction. They must therefore clarify the law where clarification is necessary or where conflicting decisions have been rendered: T. Desjardins, *L’appel en droit criminel et pénal* (2nd ed. 2012), at p. 1. In Quebec, the Court of Appeal has an additional responsibility in civil cases, since it ensures the harmonious interpretation of the distinctive rules of Quebec civil law.
4. In the criminal law context, appellate courts play this dual role in appeals from both verdicts and sentences. In the case of an appeal from a sentence, the power of an appellate court to substitute a sentence for the one imposed by the trial judge is provided for in s. 687 of the *Criminal Code*:

**687.** (1) Where an appeal is taken against sentence, the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive,

(*a*) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or

(*b*) dismiss the appeal.

(2) A judgment of a court of appeal that varies the sentence of an accused who was convicted has the same force and effect as if it were a sentence passed by the trial court.

1. This Court has reiterated on many occasions that appellate courts may not intervene lightly, as trial judges have a broad discretion to impose the sentence they consider appropriate within the limits established by law: s. 718.3(1) of the *Criminal Code*; see also *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 46; *R. v. L.M.*, 2008 SCC 31, [2008] 2 S.C.R. 163, at para. 14; *R. v. L.F.W.*, 2000 SCC 6, [2000] 1 S.C.R. 132, at para. 25; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at paras. 43‑46.
2. In this regard, Iacobucci J. explained in *Shropshire* that consideration of the fitness of a sentence does not justify an appellate court taking an interventionist approach on appeal:

An appellate court should not be given free rein to modify a sentencing order simply because it feels that a different order ought to have been made. The formulation of a sentencing order is a profoundly subjective process; the trial judge has the advantage of having seen and heard all of the witnesses whereas the appellate court can only base itself upon a written record. A variation in the sentence should only be made if the court of appeal is convinced it is not fit. That is to say, that it has found the sentence to be clearly unreasonable. [para. 46]

1. In *Proulx*, this Court, per Lamer C.J., discussed these same principles, which continue to be relevant:

In recent years, this Court has repeatedly stated that the sentence imposed by a trial court is entitled to considerable deference from appellate courts: see *Shropshire*, *supra*, at paras. 46‑50; *M. (C.A.)*, *supra*, at paras. 89‑94; *McDonnell*, *supra*, at paras. 15‑17 (majority); *R*. *v.* *W*. *(G.)*, [1999] 3 S.C.R. 597, at paras. 18‑19. In *M. (C.A.)*, at para. 90, I wrote:

Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the *Criminal Code*. [First emphasis added; second emphasis in original.]

. . .

Although an appellate court might entertain a different opinion as to what objectives should be pursued and the best way to do so, that difference will generally not constitute an error of law justifying interference. Further, minor errors in the sequence of application of s. 742.1 may not warrant intervention by appellate courts. Again, I stress that appellate courts should not second‑guess sentencing judges unless the sentence imposed is demonstrably unfit. [paras. 123 and 125]

These principles have since been reiterated in *L.M.* and *Nasogaluak*.

1. My colleague states that a sentence may be unfit if there is a reviewable error in the thought process or reasoning on which it is based (para. 140). For this reason, in his view, where there is a reviewable error in the trial judge’s reasoning, for example where the judge has characterized an element of the offence as an aggravating factor (para. 146), it is always open to an appellate court to intervene to assess the fitness of the sentence imposed by the trial judge. Having done so, the court can then affirm that sentence if it considers the sentence to be fit, or impose the sentence it considers appropriate without having to show deference (paras. 139 and 142). In other words, any error of law or error in principle in a trial judge’s analysis will open the door to intervention by an appellate court, which can then substitute its own opinion for that of the trial judge.
2. With all due respect for my colleague, I am of the view that his comments on this point need to be qualified. I agree that an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor can justify the intervention of an appellate court and permit that court to inquire into the fitness of the sentence and replace it with the sentence it considers appropriate. However, in my opinion, every such error will not necessarily justify appellate intervention regardless of its impact on the trial judge’s reasoning. If the rule were that strict, its application could undermine the discretion conferred on sentencing judges. It is therefore necessary to avoid a situation in which [translation] “the term ‘error in principle’ is trivialized”: *R. v. Lévesque‑Chaput*, 2010 QCCA 640, at para. 31 (CanLII).
3. In my view, an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention only where it appears from the trial judge’s decision that such an error had an impact on the sentence.
4. For example, in *R. v. Gavin*, 2009 QCCA 1, the Quebec Court of Appeal found, first, that the trial judge had erred in considering a lack of remorse and the manner in which the defence had been conducted as aggravating circumstances (para. 29 (CanLII)). However, it then considered the impact of that error on the sentence and stated the following, at para. 35 :

[translation] I find that the lack of remorse was a secondary factor in the trial judge’s assessment. This is apparent in the wording of the judgment. The judge referred to and considered all of the relevant sentencing factors, and the issue of lack of remorse was nothing more than incidental. . . . Consequently, unless the Court finds that the sentence imposed was harsher because the judge erroneously determined that the defence’s conduct (as in *R. v. Beauchamp*, *supra*) and the lack of remorse were aggravating circumstances, this error in principle had no real effect on the sentence. Essentially, therefore, our task now is to ensure that the sentence is not clearly unreasonable . . . .

Thus, the Court of Appeal, finding that the error in principle made by the trial judge was not determinative and had had no effect on the sentence, rightly concluded that the error in question could not on its own justify the court’s intervention. This ultimately led the court to inquire into whether the sentence was clearly unreasonable having regard to the circumstances.

1. The Quebec Court of Appeal also adopted this reasoning in *R. v. Sidhu*, 2009 QCCA 2441. As in *Gavin*, the trial judge had considered lack of remorse as an aggravating factor (para. 23 (CanLII)), but the Court of Appeal found that this error was not determinative and had had no effect on the sentence (para. 24). Since the sentence the judge imposed would not have been different had there been no mistake in that respect (para. 26), the error was not reviewable (para. 55). Thus, rather than simply substituting its opinion for that of the trial judge because he had made an error in principle, the Court of Appeal limited itself to considering whether, independently of that error, the sentence was unreasonable or demonstrably unfit. On finding that that was not the case, it decided not to intervene (para. 55).
2. On this issue, the impact of two decisions cited by my colleague in support of his opinion that any error of law or error in principle justifies the intervention of a court of appeal needs to be clarified and qualified. In *R. v.* *Flight*, 2014 ABCA 380, 584 A.R. 392, the Alberta Court of Appeal found that the trial judge had erred in considering the consumption of alcohol and the death of a victim as aggravating circumstances where the accused was charged with impaired driving causing death (para. 4). The Court of Appeal therefore intervened to substitute its own opinion for that of the trial judge on the ground that the judge had erred in principle. However, the court explained that it was difficult to determine what weight the trial judge had given to the aggravating factors at issue in her judgment (para. 5). And in *Stimson*, the Alberta Court of Appeal identified at least four errors in principle in the trial judge’s reasons, and there was no doubt that they had affected his analysis (paras. 20‑27). The Court of Appeal’s intervention was therefore clearly warranted.
3. The reminder given by this Court about showing deference to a trial judge’s exercise of discretion is readily understandable. First, the trial judge has the advantage of having observed the witnesses in the course of the trial and having heard the parties’ sentencing submissions. Second, the sentencing judge is usually familiar with the circumstances in the district where he or she sits and therefore with the particular needs of the community in which the crime was committed: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 91. Finally, as Doherty J.A. noted in *R. v. Ramage*, 2010 ONCA 488, 257 C.C.C. (3d) 261, the appropriate use of judicial resources is a consideration that must never be overlooked:

Appellate repetition of the exercise of judicial discretion by the trial judge, without any reason to think that the second effort will improve upon the results of the first, is a misuse of judicial resources. The exercise also delays the final resolution of the criminal process, without any countervailing benefit to the process. [para. 70]

1. For the same reasons, an appellate court may not intervene simply because it would have weighed the relevant factors differently. In *Nasogaluak*, LeBel J. referred to *R. v. McKnight* (1999), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, in this regard:

To suggest that a trial judge commits an error in principle because in an appellate court’s opinion the trial judge gave too much weight to one relevant factor or not enough weight to another is to abandon deference altogether. The weighing of relevant factors, the balancing process is what the exercise of discretion is all about. To maintain deference to the trial judge’s exercise of discretion, the weighing or balancing of relevant factors must be assessed against the reasonableness standard of review. Only if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably should an appellate court interfere with the sentence on the ground the trial judge erred in principle. [para. 46]

1. The Quebec Court of Appeal commented to the same effect in *Lévesque‑Chaput*,at para. 31:

[translation] There is no doubt that he focused on the mitigating circumstances, overemphasizing them in the appellant’s opinion, but that balancing exercise was within his jurisdiction and the reasons he gave make it easy to follow his reasoning.

1. Furthermore, the choice of sentencing range or of a category within a range falls within the trial judge’s discretion and cannot in itself constitute a reviewable error. An appellate court may not therefore intervene on the ground that it would have put the sentence in a different range or category. It may intervene only if the sentence the trial judge imposed is demonstrably unfit.
2. It is possible for a sentence to be demonstrably unfit even if the judge has made no error in imposing it. As Laskin J.A. mentioned, writing for the Ontario Court of Appeal, the courts have used a variety of expressions to describe a sentence that is “demonstrably unfit”: “clearly unreasonable”, “clearly or manifestly excessive”, “clearly excessive or inadequate”, or representing a “substantial and marked departure” (*R. v. Rezaie* (1996), 31 O.R. (3d) 713 (C.A.), at p. 720).All these expressions reflect the very high threshold that applies to appellate courts when determining whether they should intervene after reviewing the fitness of a sentence.
3. This inquiry must be focused on the fundamental principle of proportionality stated in s. 718.1 of the *Criminal Code*, which provides that a sentence must be “proportionate to the gravity of the offence and the degree of responsibility of the offender”. A sentence will therefore be demonstrably unfit if it constitutes an unreasonable departure from this principle. Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(*a*) and (*b*) of the *Criminal Code*.
4. The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken into account. Once again, however, it is up to the trial judge to properly weigh these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed. The principle of parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality. This Court explained this as follows in *M. (C.A.)*:

It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime. . . . Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. [para. 92]

1. This principle of parity of sentences also means that the deference owed to the sentencing judge must be shown except in the circumstances mentioned above. The Court said the following in this regard in *L.M.*:

This exercise of ensuring that sentences are similar could not be given priority over the principle of deference to the trial judge’s exercise of discretion, since the sentence was not vitiated by an error in principle and the trial judge had not imposed a sentence that was clearly unreasonable by failing to give adequate consideration to certain factors or by improperly assessing the evidence (*M. (C.A.)*, at para. 92, quoted in *McDonnell*, at para. 16; *W. (G.)*, at para. 19; see also Ferris, at p. 149, and Manson, at p. 93). [para. 35]

* 1. Sentencing Ranges

1. The principle of parity of sentences has sometimes resulted in the adoption of a system of sentencing ranges and categories. This concern for parity in sentencing did not originate with the codification of the principle in 1996. As early as the 19th century, “tariffs” were being used by the English courts: D. A. Thomas, *Principles of Sentencing* (2nd ed. 1979),at p. 29. The tariffs synthesized, as it were, the relevant principles applicable to each type of crime in order to standardize sentencing for it:

While in certain contexts the Court articulates a principle, or series of principles, in a systematic manner, it is frequently necessary to identify the operative principles from the examination of a considerable number of cases, none of which specifically identifies the relevant criteria, but which, when viewed collectively, clearly conform substantially to a pattern which can be described. This is particularly true of what is conventionally known as “the tariff”, the principles governing the lengths of sentences of imprisonment.

(Thomas, at p. 5)

1. Tariffs differ from sentencing ranges in that tariff‑based sentencing is theoretically the opposite of sentence individualization, which the ranges allow: Thomas, at p. 8. On the other hand, the principle underlying the two approaches is the same: ensuring that offenders who have committed similar crimes in similar circumstances are given similar sentences. The same is true of the starting‑point approach, which is used mainly in Alberta but sometimes also in other Canadian provinces: *R. v. McDonnell*, [1997] 1 S.C.R. 948, at para. 69. Ultimately, whatever mechanism or terminology is used, the principle on which it is based remains the same. Where sentencing ranges are concerned, although they are used mainly to ensure the parity of sentences, they reflect all the principles and objectives of sentencing. Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, which serve in any given case as guides for the application of all the relevant principles and objectives. However, they should not be considered “averages”, let alone straitjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case:

Even when an appellate court has established a range, it may be that a fact pattern will arise, which is sufficiently dissimilar to past decisions that the “range”, as it were, must be expanded. The fundamental point is that a “range” is not a straitjacket to the exercise of discretion of a sentencing judge.

(*R. v. Keepness*, 2010 SKCA 69, 359 Sask. R. 34, at para. 24)

1. There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender’s degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:

A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

(*Nasogaluak*, at para. 44)

1. In *Brutus*, the Quebec Court of Appeal described the limits of the process of ensuring the similarity of sentences as follows:

[translation] There is no doubt that the sentence imposed in this case differs from certain sentences imposed in other cases for the same offence. However, as our colleague Rochon J.A. stated in *Ferland v. R*, 2009 QCCA 1168, with respect to the principle of parity of sentences that is set out in section 718.2(b) *Cr.C.*, it “has some limits because of the individualized nature of the sentencing process” and cannot provide a basis for departing from the principle of deference to the trial judge’s exercise of his or her sentencing discretion (*R. v. L.M.*, *supra*, at para. 35). [para. 12]

1. In other words, sentencing ranges are primarily guidelines, and not hard and fast rules: *Nasogaluak*, at para. 44. As a result, a deviation from a sentencing range is not synonymous with an error of law or an error in principle. Sopinka J. stated this clearly in *McDonnell*, although he was referring in that case to categories of assault:

. . . in my view it can never be an error in principle in itself to fail to place a particular offence within a judicially created category of assault for the purposes of sentencing. . . . If the categories are defined narrowly, and deviations from the categorization are generally reversed, the discretion that should be left in the hands of the trial and sentencing judges is shifted considerably to the appellate courts. [para. 32]

1. Any other conclusion would have the effect of authorizing appellate courts to create categories of offences with no real justification and accordingly intervene without deference to substitute a sentence on appeal. But the power to create categories of offences lies with Parliament, not the courts: *McDonnell*, at para. 33.
2. It should also be noted that Parliament has regularly raised the level of the minimum and maximum sentences applicable to impaired driving offences. For example, in 2000, the maximum sentence for the crime of impaired driving causing death was raised from 14 years to imprisonment for life: *An Act to amend the Criminal Code (impaired driving causing death and other matters)*, S.C. 2000, c. 25.
3. Similarly, in 2008, the minimum sentences for all crimes related to impaired driving were increased to $1,000 for a first offence, imprisonment for 30 days for a second offence and imprisonment for 120 days for any subsequent offence: *Tackling Violent Crime Act*, S.C. 2008, c. 6.
4. The sentences imposed for such crimes in Quebec have also changed. For example, before 2009, the terms of imprisonment imposed for impaired driving causing death varied from one to 10 years: *R. v. Verreault*, 2008 QCCA 2284, at para. 25 (CanLII); *R. v. Morneau*, 2009 QCCA 1496, at para. 21 (CanLII). Since *Comeau*, however, the Quebec courts have used a new sentencing range divided into three categories. As I mentioned above, the Court of Appeal held in *Paré* that it was appropriate for the courts to use that range.
5. The appellant correctly observes that Quebec is the only province in which the courts have subdivided the sentencing range into categories for the crime of impaired driving causing death. Other provinces have also adopted the range system, but without subdividing the ranges into categories. In those provinces, sentences vary from 18 months to two years in the least serious situations and from seven to eight years in the most serious: *R. v. Bear*, 2008 SKCA 172, 320 Sask. R. 12, at para. 59; *R. v. Berner*, 2013 BCCA 188, 297 C.C.C. (3d) 69, at para. 37; *R. v. Smith*, 2013 BCCA 173, 296 C.C.C. (3d) 386, at para. 60; *Stimson*, at para. 18; *Ruizfuentes*, at para. 22.
6. The Ontario Court of Appeal has refused to define a sentencing range for the crime of impaired driving causing death, noting that the crime can be committed in an infinite variety of circumstances: *Junkert*, at para. 40; *R. v. Kummer*, 2011 ONCA 39, 103 O.R. (3d) 641. This is why there is so much variation in the ranges and why penitentiary sentences much longer than six and a half years have been reported almost everywhere in Canada.
7. Like the range itself, the categories it comprises are tools whose purpose is in part to promote parity in sentencing. However, a deviation from such a range or category is not an error in principle and cannot in itself automatically justify appellate intervention unless the sentence that is imposed departs significantly and for no reason from the contemplated sentences. Absent an error in principle, an appellate court may not vary a sentence unless the sentence is demonstrably unfit.
8. My colleague finds that the Court of Appeal’s reasons, read as a whole, show that it did not intervene solely because of a deviation from the sentencing range (para. 144). With respect, I cannot agree with this interpretation. As can be seen from the Court of Appeal’s reasons, it justified its intervention on the basis that it was not open to the trial judge to impose a sentence falling into the third category of the sentencing range, because personal factors unfavourable to the respondent, which would normally support such a sentence rather than one from the second category, were almost non‑existent in this case. It is clear from the Court of Appeal’s reasons that it based its intervention primarily on an erroneous determination of the applicable sentencing category by the trial judge.
9. I believe that the Court of Appeal was wrong to apply the sentencing range rigidly. By saying that the sentence should have been in the second category rather than at the lower end of the sentences in the third category, the Court of Appeal substituted its own assessment for that of the trial judge without first determining that the sentence in question was demonstrably unfit. In doing so, the Court of Appeal erred in applying the sentencing range mechanism as if it were a straitjacket. The sentencing ranges must in all cases remain only one tool among others that are intended to aid trial judges in their work.
10. In this case, even though the sentence fell outside one of the categories of sentences that have been established since *Comeau*, this did not mean that it was manifestly excessive. Terms of imprisonment of six years or more have in fact been imposed on people without criminal records who were convicted of impaired driving causing death. For example, in *Kummer*, the Ontario Court of Appeal upheld an eight‑year prison sentence imposed on a driver with no criminal record who had caused the deaths of three people while driving under the influence of alcohol. In *R. v. Wood* (2005), 196 C.C.C. (3d) 155, the Ontario Court of Appeal upheld a nine‑year sentence imposed on a person who had no criminal record for impaired driving but had caused the deaths of three people and caused permanent injuries to another. In *Morneau*, the Quebec Court of Appeal upheld a six‑year term of imprisonment on a charge of impaired driving causing the death of one person. Although the offender in that case already had a criminal record consisting of three convictions, the convictions all dated back more than 10 years. In light of the foregoing, therefore, the sentence of six and a half years imposed in the instant case on an offender who caused the deaths of two young girls was not disproportionate.
11. Moreover, by justifying its intervention on the basis of the trial judge’s failure to adhere to the categories of sentences, the Court of Appeal was acknowledging that a six‑year sentence was one of the possible results in this case. The six‑month difference between the sentence imposed by the trial judge and the one the Court of Appeal believed should have been imposed on the basis of the category of sentences it chose does not constitute a marked departure that would have authorized it to intervene. In addition, although the sentence imposed at trial departs somewhat from the sentences applicable to the category the Court of Appeal considered the most appropriate, it falls within the overall range established by the Quebec courts, and lies clearly within the range of sentences imposed elsewhere in the country for similar offences.
12. In sum, the sentence imposed by Judge Couture is consistent with the sentencing objectives and principles set out in the *Criminal Code*. Judge Couture properly emphasized the importance of deterrence and denunciation in this case, but he did not overlook the objective of rehabilitation (para. 92 (CanLII)). Indeed, the Court of Appeal acknowledged that [translation] “[t]he trial judge gave extensive reasons for the judgment to which the motion relates, and it is clear that he very carefully weighed the sentencing objectives and principles set out in sections 718 to 718.2 of the *Criminal Code*” (para. 5 (CanLII)). Because Judge Couture did not make a reviewable error in his judgment, and because the sentence he imposed was not demonstrably unfit, it was not open to the Court of Appeal to intervene and substitute its own assessment for his. The Court of Appeal nevertheless reduced the sentence imposed at trial, which was indeed severe, without taking account of the principle that deterrence and denunciation must be emphasized in such cases. In reducing the sentence imposed by Judge Couture on the basis that it departed from the principle of proportionality, the Court of Appeal also disregarded the local reality, thereby itself departing from the objectives of deterrence and denunciation.
    1. Deterrence and Denunciation
13. While it is true that the objectives of deterrence and denunciation apply in most cases, they are particularly relevant to offences that might be committed by ordinarily law‑abiding people. It is such people, more than chronic offenders, who will be sensitive to harsh sentences. Impaired driving offences are an obvious example of this type of offence, as this Court noted in *Proulx*:

. . . dangerous driving and impaired driving may be offences for which harsh sentences plausibly provide general deterrence. These crimes are often committed by otherwise law‑abiding persons, with good employment records and families. Arguably, such persons are the ones most likely to be deterred by the threat of severe penalties: see *R. v. McVeigh* (1985), 22 C.C.C. (3d) 145 (Ont. C.A.), at p. 150; *R. v. Biancofiore* (1997), 119 C.C.C. (3d) 344 (Ont. C.A.), at paras. 18‑24; *R. v. Blakeley* (1998), 40 O.R. (3d) 541 (C.A.), at pp. 542‑43. [para. 129]

1. As I mentioned in the introduction, courts from various parts of the country have adhered to the principle that the objectives of deterrence and denunciation must be emphasized in imposing sentences for this type of offence. For example, the Quebec Court of Appeal made the following comments in *Lépine*:

[translation] Sentences imposed for crimes involving dangerous operation of a motor vehicle while under the influence of alcohol must be aimed at deterring the public generally from driving in that manner. This Court has therefore upheld significant custodial sentences for such offences: *R. v. Kelly*, J.E. 97‑1570 (C.A.).

Very often, the objective gravity of such crimes is based more on their consequences and the extent of those consequences than on consciousness of guilt, which is why Parliament has increased the maximum sentences on the basis of the consequences of the operation of the vehicle.

A loss of human life caused by the operation of a vehicle while impaired is a consequence that cannot be remedied, which is why it is important for the courts to convey a message of denunciation to those who put themselves in potentially dangerous situations, even if the offender does not have a criminal record and did not wish to cause the tragic accident. [paras. 19‑21]

1. Along the same lines, the Quebec Court of Appeal said the following in *Brutus*:

[translation] In closing, it should be borne in mind that the courts have long been sharply critical in discussing the commission of driving offences of this nature and have asserted that the objectives of denunciation and deterrence must be emphasized in order to convey their wish to give expression to society’s condemnation of such crimes by means of exemplary sentences, particularly in cases (like this one) involving serious consequences for the victims. Society’s condemnation may be reflected in longer terms of imprisonment, which have a deterrent effect both on the offender and on all those who might be tempted to imitate the offender. The sentence imposed in this case is not unreasonable in light of this objective, nor is it unreasonable in light of all the circumstances of the case. [para. 18]

1. The Quebec Court of Appeal was right to note the importance of the objectives of deterrence and denunciation. With respect, however, it erred in the instant case in departing from those objectives and intervening.
2. My colleague is of the opinion that Judge Couture overemphasized the objective of deterrence (para. 145). He also maintains that Judge Couture made several errors of law by considering aggravating factors that were not really aggravating factors and by failing to consider some important mitigating factors, such as the respondent’s youth and the facts that he had expressed remorse, that he had no criminal record and that the presentence report was favourable to him (*ibid.*). For these reasons, my colleague “believe[s] the Court of Appeal was justified in intervening and reopening the analytical process in order to determine whether the sentence was just and appropriate” (para. 164).
3. Here again, I find that my colleague’s comments need to be qualified. Judge Couture did not fail to consider the mitigating factors in question (para. 33), but instead attached less weight to them because of the nature of the offence at issue, as the respondent himself acknowledges (at para. 29 of his factum). In short, what is being criticized is the weight the trial judge attached to those factors. As I mentioned above, however, determining the weight to be given to aggravating or mitigating circumstances falls strictly within the sentencing judge’s discretion. The decision to weigh such factors in a given way is not in itself an error that opens the door to appellate intervention unless the weighing is unreasonable.
4. This being said, the trial judge was justified in attaching less weight to the mitigating factors in this case. Although an offender’s youth is often an important mitigating factor to consider, it should be noted that it is young people who are affected the most by motor vehicle accidents that result from impaired driving. In light of the importance that must be attributed to the objectives of deterrence and denunciation in such cases as well as the dire consequences of the accident in the instant case, for which the respondent is entirely responsible, the trial judge was right to reduce the weight attached to his youth as a mitigating factor.
5. As to the fact that the respondent did not have a criminal record, Judge Couture was right to point out that his driving record was not clean. He had been convicted three times for speeding. This showed that he was irresponsible when behind the wheel, and his convictions under the *Highway Safety Code* were all the more relevant given that speeding had played a part in the accident in this case. The respondent repeatedly and frequently drove irresponsibly.
6. The trial judge was also right to attach less weight to the remorse expressed by the respondent and to his guilty plea because of the lateness of that plea. A plea entered at the last minute before the trial is not deserving of as much consideration as one that was entered promptly: *R. v. O. (C.)*, 2008 ONCA 518, 91 O.R. (3d) 528, at paras. 16‑17; *R. v. Wright*, 2013 ABCA 428, 566 A.R. 192, at para. 12.
7. I would also point out that the trial judge considered the presentence report, which was favourable to the respondent, as well as the latter’s prospects for rehabilitation. At para. 92 of his judgment, he stated that [translation] “[t]he objective of separation implies that the sentence should not be so long as to hamper the rehabilitation of the accused.” However, for the reasons given above, the trial judge cannot be criticized for having discounted this factor.
8. My colleague is also of the opinion that Judge Couture erred in identifying certain elements of the offence, including the fact that the respondent was intoxicated, as aggravating factors (para. 146) and that this constitutes a reviewable error warranting the intervention of the Court of Appeal. As I mentioned above, however, the erroneous consideration of an aggravating or mitigating factor warrants appellate intervention only if it can be seen from the trial judge’s decision that the error had an actual impact on the sentence. In the instant case, I agree with my colleague that the fact that the accused was intoxicated should not have been mentioned as an aggravating factor, since being intoxicated is one of the elements of the offence. However, this is a non‑determinative error that did not unduly affect the sentence, given that Judge Couture identified other aggravating factors (para. 32). Unlike the situation in *Flight*, in which it was difficult to determine what weight the judge had attached to what she had erroneously identified as an aggravating factor, it is apparent from the decision of Judge Couture in the instant case that he attached no real weight to this factor in his judgment; rather, he simply included it in the list of aggravating factors.
9. Incidentally, I note that this enumeration of aggravating factors also includes the fact that the respondent had consumed cannabis. I agree with Judge Couture that even if the consumption of cannabis played no role in the accident, it is nevertheless evidence of the respondent’s irresponsibility.
10. My colleague also states that “the impact on those close to the accused cannot be considered an aggravating factor that would justify a harsher sentence for the accused” (para. 147). He cites s. 718.2 of the *Criminal Code* in support of this assertion. But the list of aggravating factors in that section is not exhaustive. Also, this factor, like that of intoxication, played a secondary role in the determination of the sentence. Moreover, contrary to the respondent’s contention, the impact on those close to the victim can be an aggravating factor: *R. v.* *J.B.*, 2015 QCCQ 1884, at para. 59 (CanLII); *R. v.* *Tang*, 2010 QCCS 5009, at para. 23 (CanLII).
11. In any event, the Court of Appeal justified its decision not on the basis of these supposed errors by the trial judge but, rather, by finding that the judge had departed from the sentencing range established by the courts for impaired driving offences and that the sentence he had imposed departed from the principle of proportionality. In short, the arguments to the effect that the trial judge made errors in respect of the mitigating and aggravating factors must fail.
    1. Local Situation
12. In conducting his sentencing analysis, the trial judge also referred to the [translation] “local situation” factor (para. 73) and stressed the need to convey a strong message of general deterrence and denunciation. The Court of Appeal completely overlooked this in its decision. With all due respect, I find that in so doing, the Court of Appeal made another error.
13. I note in this regard that the respondent submits that the trial judge erred in considering the particular situation in the Beauce region with regard to impaired driving offences. In my view, the respondent is wrong.
14. Even though the *Criminal Code* applies everywhere in the country, local characteristics in a given region may explain certain differences in the sentences imposed on offenders by the courts. The frequency of a type of offence in a particular region can certainly be a relevant factor for a sentencing judge. In *M. (C.A.)*, Lamer C.J. stated the following:

The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. [Emphasis added; para. 91.]

He then added the following in the next paragraph:

As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the “just and appropriate” mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred. [para. 92]

1. Although the fact that a type of crime occurs frequently in a particular region is not in itself an aggravating factor, there may be circumstances in which a judge might nonetheless consider such a fact in balancing the various sentencing objectives, including the need to denounce the unlawful conduct in question in that place and at the same time to deter anyone else from doing the same thing. It goes without saying, however, that the consideration of this factor must not lead to a sentence that is demonstrably unfit.
2. The Quebec Court of Appeal has played an important role in the development of the Canadian case law on this subject. For example, in *R. v. Valiquette*, 2004 CanLII 20126, at paras. 48‑50, it affirmed the decision of the trial judge, who had considered an upsurge in crimes involving the production of drugs in the Joliette district in order to emphasize the objectives of denunciation and general deterrence in the determination of a just and reasonable sentence.
3. Similarly, the Quebec Court of Appeal found in *R. v.* *Nguyen*, 2007 QCCA 1500, at para. 7 (CanLII), that, in determining the sentence, the trial judge had been right to take into account the fact that there had been a large number of offences involving the cultivation of cannabis in certain parts of the Basses‑Laurentides region, as well as the existence of a well‑developed narcotics trafficking network there. In the Court of Appeal’s view, the trial judge had not therefore been wrong to impose a sentence that would be harsh enough to deter individuals who might be tempted by the lure of gain to commit such offences.
4. Other Canadian courts of appeal have also referred to the principle that the local situation may be one of the relevant factors to consider in determining a just and appropriate sentence: *R. v. Morrissette* (1970), 1 C.C.C. (2d) 307 (Sask. C.A.), at p. 310; *R. v. Laurila*, 2010 BCCA 535, 296 B.C.A.C. 139, at para. 6; *R. v. Woghiren*, 2004 CanLII 46649 (Ont. C.A.), at para. 3.
5. It is true that considerations of procedural fairness will generally require that a judge who intends to attach weight to the local reality and to the frequency of a crime in a given region offer the parties an opportunity to make representations on the subject. However, this was not an issue in the case at bar, given that the local reality was not in dispute. The record shows that the point about the local reality was raised by the appellant in argument in a timely fashion and that the respondent therefore had all the information he needed in deciding to say nothing in this regard: transcript from September 14, 2013, A.R., vol. II, at p. 91.
6. In any event, I am of the view that it was open to Judge Couture to take judicial notice of the evil represented by the large number of offences related to drinking and driving that are committed in the Beauce district. Judge Couture was the resident judge in that district. He was therefore in a position to observe and assess the magnitude of the problem in his region, especially given that it is well established in our law that judges can take judicial notice of the contexts in which they perform the duties of their offices: *R. v. Z.Z.*, 2013 QCCA 1498, at para. 68 (CanLII); *R. v. Hernandez*, 2009 BCCA 546, 277 B.C.A.C. 120, at para. 29. This Court stated in *R. v.* *MacDougall*, [1998] 3 S.C.R. 45, at para. 63, per McLachlin J., that trial judges and provincial courts of appeal are in the best position to know the particular circumstances in their jurisdictions. In the case at bar, the frequency of impaired driving offences is something that can be determined objectively by consulting the court rolls. In short, it is public information that is known and uncontroversial, and the local reality was not in dispute in the instant case.
7. In the circumstances, requiring the preparation and filing of additional evidence to establish that prosecutions for impaired driving offences were regularly on the penal or criminal roll in the Beauce district is in my opinion pointless. It is the trial judge who is in the best position to know the nature of the cases before his or her court.
8. My colleague agrees that, in the circumstances, Judge Couture cannot be criticized for the comments he made on the situation in his region in referring (at para. 72) to [translation] “this scourge” in his district. Having said this, my colleague states that Judge Couture was not in a position to take judicial notice of the fact that impaired driving is trivialized in the Beauce region more than elsewhere in Quebec. Yet that is not what Judge Couture did. Rather, he merely asked out loud whether, given the large number of criminal charges involving impaired driving that have been laid in the Beauce district, driving in such a state is trivialized there more than elsewhere.
9. In any case, it would have been open to the trial judge, as the resident judge in the Beauce district and one who was required to sit in other judicial districts, to compare the hearing rolls in the Beauce district with the rolls of other districts had he in fact done so. In *R. v.* *Dumais*, 2010 QCCA 1030, at para. 7 (CanLII), the Quebec Court of Appeal affirmed the sentence that had been imposed by the trial judge, which was based, in part, on his having taken judicial notice of a scourge of drug trafficking in the Baie‑Comeau area. Even though the trial judge did not reside in Baie‑Comeau, he was familiar with the community, where he sat regularly and where he had previously presided over a trial concerning a major drug trafficking network that had taken several weeks to complete.
10. At any rate, I am of the opinion that the mere fact that the trial judge found that impaired driving is a scourge in the Beauce district was in itself sufficient for him to consider this factor in determining what would be a just and appropriate sentence.
11. The case law of the Quebec Court of Appeal supports this conclusion. For example, in *Valiquette*, that court found that it had been open to the trial judge to consider an upsurge in crimes involving the production of narcotics in the Joliette district as a relevant factor in the sentencing process. It did not require the trial judge to compare the local situation with the situation elsewhere before emphasizing the objectives of general deterrence and denunciation, as it merely stated that [translation] “the judge [had] not err[ed] in taking the local situation and the upsurge in this type of crime in the Joliette area into account”: *Valiquette*, at para. 48.
12. And in a recent case, *R. v. St‑Germain*, 2015 QCCA 1108, at paras. 38 and 47 (CanLII), the Quebec Court of Appeal affirmed a decision in which the trial judge had emphasized the objectives of deterrence and denunciation because of the upsurge in crimes involving the production of drugs in the Joliette district. No comparative analysis was necessary, nor was one required by the Court of Appeal, in support of that conclusion.
13. Moreover, the fact that trial judges normally preside in or near the communities that have borne the consequences of the crimes in question is one of the factors in support of deferring to their sentencing decisions, and it is not necessary for them to have knowledge of the situations in other judicial districts. They are accordingly aware of the frequency of various offences in their communities, and for that reason in particular, they are in the best position to determine what weight to attach to this and [translation] “to properly assess the particular combination of sentencing objectives that is just and appropriate for the protection of [the] community”: *R. v. Pelletier*, 2008 QCCA 1616, at para. 3 (CanLII).
14. For the reasons set out above, I am of the opinion that Judge Couture did not make an error in principle by referring in his decision to the particular situation in the Beauce region as one of the relevant factors to consider in imposing an exemplary or deterrent sentence.
15. For the same reasons, I respectfully find that the Court of Appeal erred in principle by failing to consider the local situation factor in its decision despite the fact that it had previously found this factor to be legitimate in other cases. Given that Judge Couture had stressed the relevance of the local situation in the circumstances of this case, it was inappropriate for the Court of Appeal to disregard this factor in assessing the fitness of the sentence, as that meant that its analysis was incomplete.
16. In conclusion, it is my opinion that the sentence of six years and six months’ imprisonment imposed by Judge Couture, although severe, falls within the overall range of sentences normally imposed in Quebec and elsewhere in the country and is not demonstrably unfit. It must therefore be restored.
    1. Driving Prohibition
17. The appellant submits on the basis of s. 719(1) of the *Criminal Code* that a sentence must commence when it is imposed and that the Court of Appeal erred in imposing a four‑year driving prohibition on the respondent at the end of his term of incarceration.
18. In my view, the appellant is wrong on this point. The case on which the appellant relies for this, *R. v. Laycock* (1989), 51 C.C.C. (3d) 65 (Ont. C.A.), was decided in 1989, at which time s. 259(2)(*a*) of the *Criminal Code* was worded as follows:

**259.** . . .

(2) Where an offender is convicted or discharged under section 736 of an offence under section 220, 221, 236, 249, 250, 251, 252 or this section or subsection 255(2) or (3) committed by means of a motor vehicle, vessel or aircraft, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, a vessel or an aircraft, as the case may be,

(*a*) during any period that the court considers proper, if the offender is liable to imprisonment for life in respect of that offence;

1. This provision was subsequently amended. The relevant paragraph currently reads as follows:

(*a.1*) during any period that the court considers proper, plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for life in respect of that offence and if the sentence imposed is other than imprisonment for life;

1. By adding the words “plus any period to which the offender is sentenced to imprisonment”, Parliament was making it clear that it intended driving prohibitions to commence at the end of the period of imprisonment, not on the date of sentencing. Section 719(1) provides that a sentence commences when it is imposed, except where an enactment otherwise provides. That is exactly what s. 259(2) does. The Court of Appeal did not err in this regard.
2. What remains is a simple mathematical operation. Judge Couture imposed an 11‑year driving prohibition commencing at the time of sentencing. If the term of imprisonment of six years and five months is subtracted, the driving prohibition should have been for four years and seven months commencing at the time of the respondent’s release.
3. Another question concerning the driving prohibition arose at the hearing. The respondent submits that, because he entered into a recognizance under which he was not to drive from July 5, 2011, the date he was released on conditions, until October 4, 2013, the date of his sentencing, he should be credited for that period. In the same way as the conditions of pre‑trial detention, the length of a presentence driving prohibition can be considered in analyzing the reasonableness of the prohibition: *R. v. Bilodeau*, 2013 QCCA 980, at para. 75 (CanLII); see also *R. v. Williams*, 2009 NBPC 16, 346 N.B.R. (2d) 164.
4. The courts have seemed quite reluctant to grant a credit where the release of the accused was subject to restrictions, given that such restrictive release conditions are not equivalent to actually being in custody (“bail is not jail”): *R. v. Downes* (2006), 79 O.R. (3d) 321 (C.A.); *R. v. Ijam*, 2007 ONCA 597, 87 O.R. (3d) 81, at para. 36; *R. v. Panday*, 2007 ONCA 598, 87 O.R. (3d) 1.
5. In the instant case, the driving prohibition has the same effect regardless of whether it was imposed before or after the respondent was sentenced. In *R. v. Sharma*, [1992] 1 S.C.R. 814, Lamer C.J., dissenting, explained that the accused had in fact begun serving his sentence, given that the driving prohibition would have been imposed as part of his sentence had he been tried and found guilty within a reasonable time. In short, where a driving prohibition is not only one of the release conditions imposed on an accused but also part of the sentence imposed upon his or her conviction, the length of the presentence driving prohibition must be subtracted from the prohibition imposed in the context of the sentence.
6. In my view, therefore, the driving prohibition of four years and seven months imposed in this case is demonstrably unfit and must be reduced to two years and four months to take account of the recognizance entered into by the respondent under which he was to refrain from driving from his release date until his sentencing date (two years and three months).
   1. Fresh Evidence
7. The criteria that apply to a court of appeal’s decision whether to receive fresh evidence were articulated in *Palmer v. The Queen*, [1980] 1 S.C.R. 759:

(1) The evidence should generally not be admit­ted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases . . . .

(2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.

(3) The evidence must be credible in the sense that it is reasonably capable of belief, and

(4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result. [Citation omitted; p. 775.]

1. Although that case involved an appeal from a verdict, this Court has confirmed that the same criteria apply under s. 687(1) of the *Criminal Code* when a court of appeal determines whether it thinks “fit” to receive fresh evidence to decide an appeal against a sentence: *R. v. Lévesque*, 2000 SCC 47, [2000] 2 S.C.R. 487. As Charron J. noted in *R. v. Angelillo*, 2006 SCC 55, [2006] 2 S.C.R. 728, “[w]hat must guide the court of appeal in assessing the admissibility of fresh evidence [are] the interests of justice” (para. 12).
2. In the case at bar, only the fourth criterion is problematic. The appellant submits that the evidence of the respondent’s two breaches of his recognizances would have affected the trial judge’s decision, since those breaches relate to the respondent’s potential for rehabilitation. The respondent argues that the two breaches were essentially minor and that the Court of Appeal was not wrong to find that the evidence regarding them would have been unlikely to affect the final result.
3. In my opinion, the fresh evidence was relevant. Although the two breaches in question are not actually related to the operation of a motor vehicle, they are evidence of a lack of respect on the respondent’s part for court orders and for the law, which relates directly to the conditions for his rehabilitation.
4. In *Lees v. The Queen*, [1979] 2 S.C.R. 749, McIntyre J. found that evidence of potential but untried charges was admissible on the issue of “the appellant’s character, conduct, and attitude, all proper factors to be taken into consideration on sentencing” (p. 754). In the instant case, the respondent pleaded guilty to two counts of failure to comply with a recognizance. If made earlier, those guilty pleas would certainly have been included in the presentence report in accordance with s. 721(3)(*b*) of the *Criminal Code*.
5. From this perspective, the evidence of the two breaches of the recognizances could have affected the weight given to the favourable presentence report and could therefore have affected the final sentencing decision. In particular, the Court of Appeal might have reached a different conclusion if it had admitted that evidence, which would have helped it in assessing the fitness of the sentence that had been imposed at trial.
6. Disposition
7. For these reasons, I would allow the appeal and restore the sentence imposed by the trial judge except as regards the driving prohibition, which is reduced to two years and four months commencing at the end of the respondent’s incarceration.

English version of the reasons of McLachlin C.J. and Gascon J. delivered by

Gascon J. (dissenting) —

1. Introduction
2. I have read the reasons of Wagner J., and I will defer to his summary of the facts and of the decisions rendered by the courts below. With respect, however, I disagree with my colleague’s disposition of the issues. I am fully aware of the devastating consequences of the offences in question for the victims and their families, but I nonetheless believe that the Quebec Court of Appeal was right to intervene in this case. Although that court’s comments about the application of the sentencing ranges may, if considered in isolation, suggest that it adopted an overly rigid approach, I am satisfied from its reasons as a whole that it correctly stated the law on the criteria for intervention in this regard.
3. The degree of censure required to express society’s condemnation of an offence is always subject to the principle that an offender’s sentence must be equivalent to his or her moral culpability, and not greater than it. In the instant case, the trial judge placed undue emphasis on the factors related to the objectives of general deterrence and exemplarity (i.e. the fact of making an example of an offender). This led him to err, first, in disregarding this fundamental principle of proportionality and, second, in imposing a sentence that represented a substantial and marked departure from the sentences customarily imposed on similar offenders who have committed similar offences in similar circumstances. By varying the sentence from 78 to 48 months, the Court of Appeal reduced it by more than a third, which was certainly a significant reduction. Insofar as the Court of Appeal correctly stated the law and as its intervention was therefore warranted, this Court should not interfere with its conclusions as to the sentence it imposed on the respondent, which is in fact just and appropriate.
4. On the other hand, I agree with my colleague that the courts below erred in failing to take into account the length of the respondent’s presentence driving prohibition. Indeed, the appellant conceded this at the hearing in this Court. The driving prohibition imposed by the Court of Appeal should therefore be varied accordingly. I would retain the wording it used with respect to this prohibition, however.
5. Finally, the Court of Appeal held that fresh evidence of breaches by the accused of two recognizances was not reasonably capable of tipping the scales in favour of a harsher sentence for the purpose of protecting society. On this point, too, it correctly applied the law. I see no error that justifies this Court in interfering with that conclusion.
6. Accordingly, I would have allowed the appeal for the sole purpose of reducing the respondent’s driving prohibition to one year and nine months, plus the period of 48 months to which he was sentenced to imprisonment.
7. Analysis
   1. Sentence
      1. Sentencing Principles and Objectives
8. Sentencing judges must take into consideration, *inter alia*, the objectives of deterrence and rehabilitation, any relevant aggravating and mitigating circumstances relating to the offence or the offender, and the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: ss. 718 and 718.2(*a*) and (*b*) of the *Criminal Code*, R.S.C. 1985, c. C‑46(“*Cr. C.*”). The reconciliation of these different factors requires that the sentence be consistent with the fundamental principle of sentencing, set out in s. 718.1 *Cr. C.*, that “[it] must be proportionate to the gravity of the offence and the degree of responsibility of the offender”: *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 42; see also *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 82; *R. v. Gladue*, [1999] 1 S.C.R. 688.
9. The principle of proportionality has a long history as a guiding principle in sentencing, and it has a constitutional dimension: *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 41; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 41. A person cannot be made to suffer a disproportionate punishment simply to send a message to discourage others from offending: *Nur*, at para. 45. As Rosenberg J.A. wrote in *R. v. Priest* (1996), 30 O.R. (3d) 538 (C.A.), at pp. 546‑47:

The principle of proportionality is rooted in notions of fairness and justice. For the sentencing court to do justice to the particular offender, the sentence imposed must reflect the seriousness of the offence, the degree of culpability of the offender, and the harm occasioned by the offence. The court must have regard to the aggravating and mitigating factors in the particular case. Careful adherence to the proportionality principle ensures that this offender is not unjustly dealt with for the sake of the common good. [Footnote omitted.]

Although a court can, in pursuit of the objective of general deterrence, impose a harsher sentence in order to send a message with a view to deterring others, the offender must still deserve that sentence: *R. v. Paré*, 2011 QCCA 2047; G. Renaud, *The Sentencing Code of Canada: Principles and Objectives* (2009), at para. 3.13. If a judge fails to individualize a sentence and to consider the relevant mitigating factors while placing undue emphasis on the circumstances of the offence and the objectives of denunciation and deterrence, all that is done is to punish the crime: *R. v. R. (M.)*, 2010 QCCA 16, 73 C.R. (6th) 136. Proportionality requires that a sentence not exceedwhat is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence. From this perspective, it serves as a limiting principle: *Nasogaluak*, at para. 42.

1. My colleague states that the principle of proportionality means that the more serious the crime and its consequences, or the greater the offender’s degree of responsibility, the heavier the sentence will be (para. 12). I would qualify this statement somewhat. In my view, an offender’s degree of responsibility does not flow inevitably and solely from the gravity of the offence. The gravity of the offence and the moral blameworthiness of the offender are two separate factors, and the principle of proportionality requires that full consideration be given to each of them: *Proulx*, at para. 83. As s. 718.1 *Cr. C.* provides, “[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”
2. Whereas the gravity of the offence concerns the harm caused by the offender to the victim as well as to society and its values, the other aspect of the principle of proportionality involves factors that relate to the offender’s moral culpability:

The “degree of responsibility of the offender” as used in s. 718.1 certainly includes the mens rea level of intent, recklessness or wilful blindness associated with the actus reus of the crime committed. For this assessment, courts are able to draw extensively on criminal justice principles. The greater the harm intended or the greater the degree of recklessness or wilful blindness, the greater the moral culpability. However, the reference in s. 718.1 is not simply to the “mens rea degree of responsibility of the offender” at the time of commission of the crime. Parliament evidently intended “degree of responsibility of the offender” to include other factors affecting culpability. These might relate, for example, to the offender’s personal circumstances, mental capacity or motive for committing the crime. Where else does the *Code* provide for an offender’s degree of responsibility generally to be taken into account? Here, too, the answer takes us to s. 718.2.

Section 718.2 directs the sentencing judge to take into consideration a number of principles. All are either components of the proportionality principle or properly influence its interpretation and application. Either way, all are relevant in determining a just sanction that satisfies the proportionality principle. [Citation omitted.]

(*R. v. J.L.M.A.*, 2010 ABCA 363, 499 A.R. 1, at paras. 58‑59; see also *Nasogaluak*, at para. 42; *M. (C.A.)*, at para. 40.)

1. The application of the proportionality principle may therefore cause the two factors to conflict, particularly where the gravity of the offence points strongly to a sentence at one end of the range while the moral culpability of the offender points in the other direction: *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.), at para. 93, quoted in C. C. Ruby, G. J. Chan and N. R. Hasan, *Sentencing* (8th ed. 2012), at pp. 26‑27. In short, although it is true that the gravity of the crime is a relevant factor, it must nevertheless be considered in conjunction with the offender’s degree of responsibility, a factor that is unrelated to the gravity of the offence.
2. I would also qualify my colleague’s statement that the courts have “very few options other than imprisonment” (para. 6) for meeting the objectives of general or specific deterrence and denunciation in cases in which they must be emphasized. In my view, the courts should not automatically assume that imprisonment is always the preferred sanction for the purpose of meeting these objectives. To do so would be contrary to other sentencing principles. Rather, a court must consider “all available sanctions, other than imprisonment”, that are reasonable in the circumstances: s. 718.2(*e*) *Cr. C.*; *Gladue*, at para. 36.
3. The common law principle that even where a term of imprisonment is necessary, it should be the lightest possible sanction in the circumstances is codified in s. 718.2(*d*) *Cr. C.*: Ruby, Chan and Hasan, at p. 510. This Court has noted Parliament’s desire to give increased prominence, for all offenders, to this principle of restraint in the use of prison as a sanction: *Proulx*, at para. 17. A court that emphasizes general deterrence must therefore always be mindful of both the principle of restraint and that of proportionality: Ruby, Chan and Hasan, at p. 15, citing *R. v. Hawkins*, 2011 NSCA 7, 298 N.S.R. (2d) 53, at paras. 42 and 47; see also *R. v. Wismayer* (1997), 33 O.R. (3d) 225 (C.A.); *R. v. Coffin*, 2006 QCCA 471, 210 C.C.C. (3d) 227; F. Dadour, *De la détermination de la peine: Principes et applications* (2007), at p. 8.
4. Furthermore, [translation] “the objective of general and even specific deterrence does not relate exclusively to the severity of a sentence considered in the abstract. Deterrence can work through conditions tailored to fit the offender or the circumstances of the offender, as the . . . Court noted in *Proulx*”: Dadour, at p. 8 (footnote omitted). This principle is even more important in the case of a young person with no criminal record: *Priest*. As Twaddle J.A. observed in *R. v. Leask* (1996), 113 Man. R. (2d) 265 (C.A.), at para. 3, “the transition from statutorily defined young person to adult should not be marked by an immediate abandonment of rehabilitation as the primary goal in cases where the prospect of successful rehabilitation is real”.
   * 1. Standard of Intervention Applicable to Sentencing Decisions
5. My colleague states that this appeal affords the Court an opportunity to clarify the standard on the basis of which an appellate court may intervene in sentencing decisions (para. 10). In my opinion, there is no reason to believe that this is necessary. The applicable standard is well known, and when all is said and done, the appeal before us concerns only how it should be applied in the circumstances of this case.
6. In *Nasogaluak*, this Court summarized the applicable law as follows: “. . . a sentence [can] only be interfered with if it [is] ‘demonstrably unfit’ or if it reflect[s] an error in principle, the failure to consider a relevant factor, or the over‑emphasis of a relevant factor” (para. 46 (emphasis added), citing *M. (C.A.)*, at para. 90). In *Paré*, a case that was referred to in the decisions of the courts below, the Quebec Court of Appeal reiterated the principles established in those cases and wrote the following:

[translation] . . . a court of appeal may intervene only in circumstances indicating an error in principle, an overemphasis of an appropriate factor, or a failure to consider a relevant factor, unless the sentence is quite simply demonstrably unfit or, in other words, clearly unreasonable. Thus, appellate courts retain the power to ensure that sentences are consistent with those imposed “for similar offences committed in similar circumstances”; indeed, this is set out in subsection 718.2(*b*) *Cr. C.* [Emphasis added; para. 38 (CanLII).]

1. If a party shows that the trial judge made an error in principle, failed to consider a relevant factor or overemphasized appropriate factors, I do not think it can be said that the judge acted within the limits of his or her discretion in sentencing matters. In such cases, the relevant decisions of this Court do not require that the sentence also be shown to be demonstrably unfit before an appellate court can intervene. The effect of such a requirement would be to raise the recognized standard of intervention.
2. In my opinion, the current approach is neither incongruous nor unfair. The highly deferential standard of appellate review must be adhered to as long as the trial judge did not err in principle, fail to consider a relevant factor or overemphasize appropriate factors: *R. v. Stone*, [1999] 2 S.C.R. 290, at para. 230. Even if none of these three situations exists, however, intervention may be necessary if the sentence is demonstrably unfit. This other ground for intervention has been described in several ways: a court of appeal can still vary a sentence if it is convinced that the sentence is “not fit” or “clearly unreasonable” (*R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 46), that it is “[u]nreasonabl[e]” or “fall[s] outside the ‘acceptable range’” (*Shropshire*, at para. 50), or that it is “demonstrably unfit” (*R. v. McDonnell*, [1997] 1 S.C.R. 948, at para. 17; *M. (C.A.)*, at para. 90).
3. Therefore, where a reviewable error is shown in the reasoning on which a sentence is based, it is appropriate for an appellate court to be able to intervene and assess the fitness of the sentence. This does not necessarily mean that the court will automatically vary the sentence. As the passage from *Paré* quoted above indicates, the court’s role in ensuring consistency in sentencing requires it before intervening to ascertain, among other things, that the sentence represents a “substantial and marked departure from the sentences customarily imposed for similar offenders committing similar crimes”: *M. (C.A.)*,atpara. 92; see also *Stone*, at para. 230. An error merely opens the door to intervention and permits an appellate court to reopen the sentencing analysis. Only by correctly repeating the analytical exercise can the court determine whether the sanction imposed on the offender is just and appropriate or whether it should be varied. In other words, the court can then impose the sentence it considers appropriate without having to show deference: T. Desjardins, *L’appel en droit criminel et pénal* (2nd ed. 2012), at p. 217, citing, *inter alia*, *R. v. Gallon*, 2006 NBCA 31, 297 N.B.R. (2d) 317; *R. v. Biancofiore* (1997), 35 O.R. (3d) 782 (C.A.), at p. 789; and *R. v. Gagnon* (1998), 130 C.C.C. (3d) 194 (Que. C.A.), at p. 199.
4. In this regard, it seems to me that this Court’s decisions reflect a careful reading of s. 687 *Cr. C.* What emerges from the Court’s remarks is that the fitness of a sentence is not assessed in the abstract. There is no such thing as a uniform sentence for a particular crime, and sentencing is an inherently individualized process: *M. (C.A.)*, at para. 92. A sentence must reflect a consideration of all the relevant factors, and it is in this sense that the “process” of sentencing is important. In the words of Dickson J. in *R. v. Gardiner*, [1982] 2 S.C.R. 368, “[i]f policy considerations are to enter the picture, as they often do, there would appear to me to be every reason why this Court should remain available to adjudicate upon difficult and important questions of law in the sentencing process”: p. 404. The fitness of a sentence is determined on the basis of several relevant principles, objectives and factors, and a sanction may be unfit if there is a reviewable error in the thought process or reasoning on which it is based. However, it is only by assessing that process or reasoning that an appellate court can determine whether the identified errors make the sentence unfit.
5. I note that my colleague seems to detect a certain absoluteness in my words that is quite simply not there (paras. 42‑43). I am not saying that a sentence cannot be fit if there is a reviewable error in the reasoning process on which it is based. Rather, I am saying that a sanction may be unfit in such a case, which is very different. The first of these wordings would be absolute. The second depends on the appellate court’s assessment of the sanction in question, which is in fact made in accordance with the principles set out in my reasons.
6. Therefore, although I agree that, as Hall J.A. stated in *R. v. Orr*, 2008 BCCA 76, 228 C.C.C. (3d) 432, at para. 7, an appellate court should not vary a sentence that is fit, I consider it imperative that that court retain its ability to rule on the trial court’s analysis and to intervene where there is an error warranting its intervention.
7. Finally, I agree with my colleague that it is accepted that the ranges established by appellate courts are in fact only guidelines, and not hard and fast rules (para. 60). A judge can therefore order a sentence outside the established range as long as it is in accordance with the principles and objectives of sentencing. Regard must be had not only to the circumstances of the offence and the needs of the community in which the offence occurred, but also to the circumstances of the offender: *Nasogaluak*, at para. 44. As a corollary, the mere fact that a sentence falls within the range applicable to a certain type of crime does not necessarily make it fit, since the judge may, in determining the sentence, have failed to take account of the particular circumstances of the offender. It is by analyzing the trial judge’s reasoning or thought process that an appellate court can determine whether a sentence that falls within the proper range is tailored to fit the circumstances of the offender and is therefore individualized and proportionate.
   * 1. Intervention of the Court of Appeal
8. In light of the above, I find that the Court of Appeal properly justified its intervention in this case. Although the comments it made in para. 15 (CanLII) of its reasons might at first glance suggest that it took an inflexible view of the sentencing ranges, I believe that the substance of the court’s reasoning can instead be found at paras. 16‑17: 2014 QCCA 1061. I do not agree with my colleague that the Court of Appeal intervened solely because the trial judge had deviated from the proper sentencing range (para. 11) or because the sentence fell outside the accepted sentencing range (para. 16), or that it essentially focused its analysis on the application of the sentencing range (para. 30) or applied that range mechanically (para. 69). Rather, its reasons, read as a whole, show that its analysis went much further than that. I think it will be helpful to reproduce the entirety of paras. 15‑17, which I find to be enlightening in this regard:

[translation] By imposing a sentence of 77 months’ imprisonment (six years and six months minus one month because of the time spent by the applicant in pre‑trial custody), the trial judge unquestionably placed the sentence at the lower end of the third category of sentences, the most severe ones. The respondent argued at the hearing that the sentence was actually in the second category, increased slightly because of the serious consequences of the offence, which had claimed two victims. But that argument must be rejected, because “personal factors of the accused” that are unfavourable to the accused are normally what justify a move from the second to the third category. This can be seen from the breakdown of sentences in recent cases.

However, such factors are almost non‑existent in this case, as is clear from the report prepared by a probation officer for sentencing purposes and from the testimony given by the psychologist and the social worker who attended the applicant following the accident. The applicant has strong support from his family. There is virtually no possibility of him reoffending. It is likely that, once he has served his sentence, he will be able to find a job in an autobody repair business owned by his mother. There is no doubt that he is aware of the extreme seriousness of the consequences of his wrongdoing: he was and still is tortured by remorse, so much so that the professionals around him became concerned about possible suicidal tendencies and took preventive action accordingly.

In light of the foregoing, the sentence imposed on October 4, 2013 is excessive because it departs from the principle of proportionality. In individualizing the sentence in this case, the judge should have given greater consideration to the applicant’s potential for rehabilitation, which is substantial, and reduced the emphasis he placed on exemplarity. A sentence that is severe without being draconian will be more than sufficient for the purposes of this last factor in the case of individuals who, like the applicant, have no record (despite a few *Highway Safety Code* offences in his case), are law‑abiding and are capable of understanding the magnitude, for all those close to the victims, of a tragedy like the one that occurred on June 17, 2011. [Emphasis added; footnote omitted.]

1. By justifying its intervention as it did, the Court of Appeal complied with the principles laid down by this Court for such cases. As it noted, and as I will explain in the next section, the sanction imposed in this case was not consistent with the principles and objectives of sentencing. The trial judge considered some aggravating factors that were not really aggravating factors, rejected or failed to consider some relevant and important mitigating factors, and placed undue emphasis on the objective of deterrence. The sentence that resulted from his analysis was thus neither proportionate nor individualized; it also represented a substantial and marked departure from the sentences customarily imposed on similar offenders who have committed similar crimes in similar circumstances.
   * 1. Trial Judge’s Errors
        1. Aggravating Factors That Were Not Really Aggravating Factors
2. In his analysis, the trial judge began by identifying some aggravating factors that were not really aggravating factors: 2013 QCCQ 11960, at para. 32 (CanLII). In principle, s. 718.2 *Cr. C.* lists a number of what are considered to be aggravating factors. An element of the offence cannot in itself constitute such a factor. A judge who characterizes an element of the offence as an aggravating factor thus makes an error of law that opens the door to appellate intervention: *R. v. Flight*, 2014 ABCA 380, 584 A.R. 392, at para. 4; *R. v. Stimson*, 2011 ABCA 59, 499 A.R. 185, at para. 20; *R. v. Dass*, 2008 CanLII 13191 (Ont. S.C.J.), at pp. 59-60; *R. v. Dankyi* (1993), 86 C.C.C. (3d) 368 (Que. C.A.), at p. 372.
3. In the instant case, the accused being intoxicated was in itself already an element of the offence. Incidentally, the record does not indicate what his blood alcohol level was. Similarly, the consumption of alcohol or drugs before driving was already part of the offence, so the fact that the accused drank alcohol cannot be an aggravating factor in the absence of some more blameworthy conduct. Moreover, the parties agreed that it was the alcohol alone that had impaired the ability of the accused to drive; his consumption of cannabis had not contributed to the accident, and this is confirmed by the record. The accused had consumed cannabis (taking three puffs on a joint) at about 7:00 p.m., and the accident occurred shortly before 4:00 a.m. the next day: trial, at para. 2; R.F., at para. 7. Finally, the impact on those close to the accused cannot be considered an aggravating factor that would justify a harsher sentence for the accused: s. 718.2 *Cr. C.*
   * + 1. Discounted Mitigating Factors
4. Next, the trial judge discounted some relevant factors that are normally characterized as mitigating factors and that must be considered in determining the appropriate sentence — namely the youth of the accused and the facts that he had expressed remorse, that he had no criminal record and that the presentence report was favourable to him. The Court of Appeal discussed the last three of these factors at paras. 16‑17 of its reasons. By contrast, although the trial judge listed them at para. 33, he actually ended up discounting all of them except the presentence report, which he simply failed to discuss. He even discounted the youth of the accused to favour exemplarity and deterrence (para. 39), despite the principle that “the general rule for most offences is that a sentence should not be imposed on a youthful offender for the purpose of general deterrence, but should rather be directed at rehabilitation”: Ruby, Chan and Hasan, at p. 263.
   * + 1. Failure to Discuss an Important Mitigating Factor
5. Furthermore, the trial judge initially referred to the favourable presentence report and the positive conclusions reached in it: paras. 18‑19. After that, he mentioned that the report was one of the relevant mitigating factors: para. 33. But he did not discuss this important factor further in his analysis. As the Court of Appeal noted, he in fact disregarded the report and the following findings:

[translation] The applicant has strong support from his family. There is virtually no possibility of him reoffending. It is likely that, once he has served his sentence, he will be able to find a job in an autobody repair business owned by his mother. There is no doubt that he is aware of the extreme seriousness of the consequences of his wrongdoing: he was and still is tortured by remorse, so much so that the professionals around him became concerned about possible suicidal tendencies and took preventive action accordingly. [para. 16]

1. That report and those positive findings represented a mitigating factor that was relevant to and important for the determination of the appropriate sentence. Yet the trial judge referred only very briefly to the rehabilitation of the accused in para. 92, in which he merely said: [translation] “The objective of separation implies that the sentence should not be so long as to hamper the rehabilitation of the accused.” I must agree with the Court of Appeal that this does not show that he really considered this important factor. Instead, a review of his reasons as a whole leads to the opposite conclusion, that is, that he conducted no analysis in respect of the objective of rehabilitation and its impact on the circumstances of the case. Unlike my colleague, I find that the trial judge’s reasons do not support a conclusion that he considered the respondent’s prospects for rehabilitation (para. 82). As the Court of Appeal found, the trial judge’s failure to consider this factor constituted a failure to take the offender’s potential for rehabilitation, which is significant, into account in the individualization of the sentence.
   * + 1. Disproportionate Emphasis on Exemplarity
2. Finally, as the Court of Appeal noted, the trial judge’s failure to consider certain mitigating factors that favoured the potential for rehabilitation of the accused and the emphasis he placed on exemplarity led him to impose an excessive sentence that departed from the principle of proportionality. Although the Court of Appeal found that the trial judge had gone too far in emphasizing exemplarity, it is true that it did not deal specifically with the local situation factor. I agree with my colleague that it would have been preferable for the court to do so (para. 87). In the instant case, the local situation factor clearly magnified the exemplary focus of the sentence with which the Court of Appeal took issue. I will just make three comments about what my colleague says in this regard.
3. First, the views expressed by the authors and the courts do not seem to me to be so uniform on the question whether judges can rely on their own perceptions of the frequency of particular crimes in their regions in order to justify imposing harsher sentences. For instance, I note the following remarks by Ruby, Chan and Hasan, at p. 124:

Since the sentencing hearing is merely part of a criminal trial, there is no reason for thinking that the doctrine of judicial notice would not apply in the ordinary way. But the distinction between facts that are sufficiently certain to notice judicially and those that are not is one that must be borne in mind, as excessive reliance on matters not proved in evidence can be destructive of the fairness of the sentencing process. The incidence of crime in a jurisdiction is not a matter that can be the subject matter of judicial notice. [Emphasis added; footnotes omitted.]

1. When considered in the sentencing context, the frequency of a crime in a given region does not help paint a portrait of the accused, but instead reflects external factors:

The contradiction inherent in such sentences is that the exemplary sentence is imposed on a particular offender who becomes the scapegoat for others who have committed similar crimes, but who have not been caught or who have not been singled out for the calling of the requisite evidence. This is utterly impermissible. This action requires reliance upon a deterrence theory, which has little, if any, statistical base upon which to stand, and is not self‑proving. It is, nevertheless, a popular theory.

The use of evidence of increased prevalence of a particular crime in the community as a factor aggravating the appropriate sentence for a particular offender must rest on the theory that higher penalties will deter offenders from committing that particular kind of offence. The truth of this theory is not self‑evident, and deterrence theories in general have suffered from criticism, though deterrence remains a principle of sentencing. [Emphasis added; footnotes omitted.]

(Ruby, Chan and Hasan, at p. 256)

1. It is true that in *M. (C.A.)*,Lamer C.J. stated that the needs of and current conditions in the community are a factor to be considered in sentencing. A sentencing judge normally has a strong sense of the blend of sentencing goals that will be “just and appropriate” for the protection of the community where he or she presides: *M. (C.A.)*, at para. 91. However, although these remarks do support the view that the frequency of a crime in the community can be considered in the sentencing process, it should be borne in mind that Lamer C.J. also stated that, the community’s needs notwithstanding, it is always necessary to carefully balance the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence: *M. (C.A.)*, at para. 91. Thus, whatever weight a judge may wish to accord to the needs of the community and the objective of deterrence, the resulting sentence must always be consistent with the fundamental principle of proportionality. The degree of censure required to express society’s condemnation of the offence is limited by the principle that an offender’s sentence must be equivalent to his or her moral culpability: *Nasogaluak*, at paras. 40‑42. In the case at bar, the Court of Appeal properly emphasized factors relating to the accused himself that the trial judge had disregarded.
2. Second, the views expressed by the authors and the courts also do not seem to me to be so uniform on the question whether it is appropriate for a judge to take judicial notice of the frequency of a crime in his or her community during sentencing.
3. This Court considered the application of the doctrine of judicial notice in *R. v. Spence*, 2005 SCC 71, [2005] 3 S.C.R. 458. Ultimately, the permissible scope of judicial notice should vary according to the nature of the issue under consideration: *Spence*, at para. 60. Thus, the closer a fact approaches the dispositive issue, the more stringent is the test for its admissibility: *Spence*, at paras. 60‑61; P. Béliveau and M. Vauclair, *Traité général de preuve et de procédure pénales* (22nd ed. 2015), at para. 2366. When a fact falls between an adjudicative fact (one that is at the centre of the controversy between the parties) and a background fact (one that is only at the periphery of the controversy, and that the court will assume to be uncontroversial), the court must ask itself

whether such “fact” would be accepted by reasonable people who have taken the trouble to inform themselves on the topic as not being the subject of reasonable dispute *for the particular purpose for which it is to be used*, keeping in mind that the need for reliability and trustworthiness increases directly with the centrality of the “fact” to the disposition of the controversy. [Emphasis in original.]

(*Spence*, at para. 65)

This is why a court may take judicial notice of a “fact” in one case but decline to do so in another case in which the issue is dispositive: *Spence*, at para. 65.

1. My colleague refers to some cases in support of the proposition that judges can take judicial notice of the conditions that exist in a region. In only one of those cases did the sentencing judge take judicial notice of the local situation: *R. v. Valiquette*, 2004 CanLII 20126 (Que. C.A.), at paras. 48‑50. In the other cases, the courts of appeal did note that a trial judge could consider the local situation when imposing a sentence, but there was no indication that they agreed that judicial notice could be taken of such evidence.
2. In the case at bar, the trial judge referred to the situation in his district, but he also suggested that impaired driving is trivialized there more than elsewhere (para. 72). However, the judicial notice that judges can take of their communities is not without limits. In my view, caution must be exercised in establishing its scope. According to my colleague, judicial notice in this regard is not limited to the magnitude of the problem observed by the judge in his region, but can also be extended to a comparison of the local situation with situations in other places as well as to information gathered from the hearing rolls of courts (paras. 95 and 98). This seems to me to go much farther than judicial notice of the fact that a city has a francophone majority or of recent unlawful conduct in a particular community, to which reference was made in the cases cited by my colleague in support of his remarks (para. 95; *R. v. Z.Z.*, 2013 QCCA 1498, at para. 68 (CanLII); *R. v. Hernandez*, 2009 BCCA 546, 277 B.C.A.C. 120, at para. 29). Being familiar with the local situation in one’s region is one thing, but claiming to compare that situation with what happens elsewhere in order to draw conclusions or inferences from it is something else.
3. Third, and finally, I agree that the sentencing process differs considerably from a trial in that it is more informal. As Dickson J. noted in *Gardiner*, “the strict rules which govern at trial do not apply at a sentencing hearing and it would be undesirable to have the formalities and technicalities characteristic of the normal adversary proceeding prevail”: p. 414; see also *R. v. Lévesque*, 2000 SCC 47, [2000] 2 S.C.R. 487, at para. 30. A court has wide latitude as to the sources and types of evidence upon which to base the sentence to be imposed. It can rely on counsel’s submissions and arguments, and mere assertions by counsel may sometimes suffice to found factual decisions by the court: *R. v. Witvoet*, 2015 ABCA 152, 600 A.R. 200; see also *R. v. Bartlett*, 2005 NLCA 75, 252 Nfld. & P.E.I.R. 154; *R. v. Joseph*, 2012 BCCA 359, 326 B.C.A.C. 312, at para. 32.
4. Still, despite the latitude judges have in sentencing hearings, they must never lose sight of the importance of procedural fairness. Professor Davis explains this as follows:

The basic principle is that extra‑record facts should be assumed whenever it is convenient to assume them, except that convenience should always yield to the requirement of procedural fairness that parties should have opportunity to meet in the appropriate fashion all facts that influence the disposition of the case. [Emphasis added; emphasis in original deleted.]

(K. C. Davis, *Administrative Law Text* (3rd ed. 1972), at p. 314, quoted in R. J. Delisle, D. Stuart and D. M. Tanovich, *Evidence: Principles* *and Problems* (9th ed. 2010), at p. 357.)

1. One decision that illustrates this principle is *R. v. Provost*, 2006 NLCA 30, 256 Nfld. & P.E.I.R. 205, in which the Court of Appeal stressed that arguments about the prevalence of a crime in a community must be dealt with in ways that are consistent with the principles of procedural fairness:

In para. 15 of his sentencing decision, the Provincial Court Judge wrote:

. . . considering the number of trafficking offences that are coming before the courts, it is obvious that conditional periods of imprisonment have failed to have a deterrent effect. Those who are involved in significant criminal enterprises must be made to understand that their criminal activity will not be tolerated and that if caught and convicted, they will receive significant periods of incarceration.

It is good when judges are mindful of developments in their communities and of patterns of offences that come before the courts. That being said, such considerations need to be dealt with in ways that maintain procedural fairness; as well, they must not be used so as to detract from proper application of recognized principles of sentencing. [Emphasis added; paras. 13‑14.]

1. In the instant case, it is true that the prosecution referred to the number of impaired driving cases in the region, and defence counsel did not dispute that fact. With this in mind, I agree with my colleague that the judge cannot be criticized for his comments on the situation in his region, such as his reference at para. 72 to [translation] “this scourge” in his district. However, I find that the opposite is true for his question: “Might it be that driving in such a state is trivialized here more than elsewhere?” (para. 72). Sentencing has high stakes both for the individual and for society. For the respondent, as for many accused — the vast majority of whom plead guilty, as Dickson J. noted in *Gardiner* — the sentence is the most important decision the criminal justice system will have to make about them. Although judges should not be denied an opportunity to obtain relevant information by requiring compliance with all the evidential rules common to a trial, “the obtaining and weighing of such evidence should be fair. A substantial liberty interest of the offender is involved and the information obtained should be accurate and reliable”: *Gardiner*, at p. 414. In exercising their discretion in conducting the proceedings to choose the information on which they will rely in order to impose a just sentence, judges must bear in mind the importance of the facts in question and the impact on the offender of how they are dealt with: Ruby, Chan and Hasan,at pp. 100‑101, citing *R. v. Alarie* (1980), 28 C.R. (3d) 73 (Que. Ct. Sess. P.).
2. In my opinion, there is no indication that the trial judge in the case at bar was in a position to take judicial notice of the fact that impaired driving is trivialized in the Beauce region more than elsewhere. In this regard, knowing the impact on sentencing of that factor, which he considered to be aggravating, and the particular weight he was going to attach to it in imposing a more severe sanction, he should, in the interest of procedural fairness, have informed the respondent of his concerns on this point and requested submissions from him. But he did not do so, even though the importance he attached to that aggravating factor ultimately led him to impose a sentence that favoured exemplarity at the expense of proportionality.
   * 1. Just and Appropriate Sentence
3. In light of all the above, I agree with the Court of Appeal that the trial judge overemphasized the objectives of exemplarity and deterrence while at the same time overlooking the principles of similarity of sentences and individualization in sentencing. Having regard to the sentencing judge’s failure to consider a relevant and important mitigating factor, namely the favourable presentence report, and to the excessive emphasis he placed on aggravating factors that were not really aggravating factors, I believe the Court of Appeal was justified in intervening and reopening the analytical process in order to determine whether the sentence was just and appropriate. With respect, these were not non‑determinative errors by the trial judge, nor did they amount to a mere failure to properly weigh the aggravating or mitigating factors he analyzed. In my opinion, it was open to the Court of Appeal to find, on the contrary, that they were reviewable errors that, viewed as a whole and given their determinative impact on sentencing principles, warranted its intervention.
4. On the one hand, in the name of deterrence and exemplarity, the trial judge focused on the perceived prevalence of the crime in the community and disregarded the individual and contextual factors, which led him to impose a sentence that was excessive in the respondent’s case. It can be seen from his reasons that he placed emphasis on deterrence, to the detriment of other penological objectives. At paras. 76‑86, he discussed several decisions in which reference had been made to the primacy of the deterrence factor. However, in most of those decisions, the courts had discussed deterrence as a factor in addition to other serious aggravating circumstances that existed in the cases before them, which does not reflect the situation in the case at bar.
5. For example, in *R. v. Junkert*, 2010 ONCA 549, 103 O.R. (3d) 284, the Ontario Court of Appeal acknowledged that a five‑year sentence for impaired driving causing death was at the high end of the sentences that are normally imposed. However, it upheld the sentence in light of a number of aggravating factors, including a very high blood alcohol level and the reckless way the accused had been driving. In *R. v. Ruizfuentes*, 2010 MBCA 90, 258 Man. R. (2d) 220, the Manitoba Court of Appeal referred to the trend toward higher sentences in recent years and stressed the importance of denunciation and deterrence. It nevertheless intervened to reduce the sentence despite the fact that there were a number of aggravating factors. In *R. v. Lépine*, 2007 QCCA 70, the Quebec Court of Appeal considered the particular circumstances of the accused and stated that [translation] “the judge based his decision on well‑supported reasons that led him to conclude that a term of imprisonment was necessary both for general deterrence and for specific deterrence”: para. 17 (CanLII) (emphasis added). The sentence imposed on each of the two counts of impaired driving causing death was three years’ imprisonment. Finally, in *R. v. Brutus*, 2009 QCCA 1382, while the Quebec Court of Appeal stressed the importance of denunciation and deterrence in impaired driving cases, it added that [translation] “[t]he sentence imposed in this case is not unreasonable in light of [the objective of deterrence], nor is it unreasonable in light of all the circumstances of the case”: para. 18 (CanLII) (emphasis added). In that case, the court found that there were several aggravating factors, including a high blood alcohol level, the fact that the accused had been driving with a suspended driver’s licence and the fact that she had done nothing concrete to turn her situation around.
6. On the other hand, the trial judge’s errors also had another consequence: the violation of the principle that sentences should be similar to other sentences imposed in similar circumstances, which is the corollary of the principle of proportionality (see G. Renaud, *Principes de la détermination de la peine* (2004), at p. 37). He determined the sentence by referring, *inter alia*, to the two victims, to the importance of the local situation in this case, to the importance of the objectives of denunciation and deterrence, and to *Paré*, which he distinguished. Although the trial judge referred to several decisions in his reasons, he provided little if any explanation for the sentence of 78 months’ imprisonment that he ultimately imposed on the respondent, despite the fact that the severity of that sentence is not in any doubt. In my view, however, a review of the cases concerning offenders who committed similar crimes in similar circumstances does not bring any comparable case to light in which so severe a sentence was imposed. This being so, I am of the opinion that it was open to the Court of Appeal to intervene to reassess the fitness of the sentence. In this regard, although it would also have been preferable for the Court of Appeal to provide a more thorough explanation, the 48‑month sentence it imposed seems much more consistent with what can be seen in comparable decisions. I will focus my analysis on some recent cases that, like the respondent’s case, involved two counts of impaired driving causing death.
7. In *R. v. Charles*, 2011 BCCA 68, 10 M.V.R. (6th) 177, aff’g 2009 BCSC 1391, the British Columbia Court of Appeal upheld a sentence of three years’ imprisonment on two counts of impaired driving causing death for a 21‑year‑old Aboriginal accused with no criminal record. His alcohol consumption had been excessive and, although he did have family support, he had displayed a lack of remorse.
8. In *R. v. McIlwrick*, 2008 ABQB 724, 461 A.R. 16, the accused was convicted of two counts of impaired driving causing death and two counts of impaired driving causing bodily harm. He had been smoking marijuana while driving to work and had had a high level of THC in his blood, which had caused his impairment. He had a criminal record (assault, drug possession, possession for the purpose of trafficking). Although he had expressed remorse, the judge and the probation officer had concluded that he had failed to take full responsibility for his actions. The accused had nonetheless been co‑operative with the police, had support from his family and required medical care. The judge sentenced him to 48 months’ imprisonment.
9. In *R. v. Olsen*, 2011 ABCA 308, 515 A.R. 76, the accused pleaded guilty to two counts of impaired driving causing death; the victims were the parents of five children. He had been 22 years old at the time of the offence; his blood alcohol level had been 226 mg/100 mL, and he had been driving in excess of the speed limit. He had a lengthy record of driving offences, including in particular 16 convictions in the five years before the incident, some of them for speeding. His licence had been suspended four times. He had no criminal record, and he had expressed remorse in a letter written to the victims’ children and family. He had the support of his family and was employed. The Alberta Court of Appeal sentenced him to 42 months’ imprisonment.
10. In *R. v. Pelletier*, 2009 QCCQ 6277, the accused pleaded guilty to two counts: one of having operated a vehicle while his ability to do so was impaired by alcohol and having caused the deaths of two persons as a result, and the second of having, in the same circumstances, caused bodily harm to a third person. He had a criminal record with convictions for attempting to commit an indictable offence and breaking and entering with intent, and for drug possession, but none involving the operation of a motor vehicle. After drinking for several hours [translation] “while visiting friends and also at a bar, he drove his vehicle from place to place and, finally, still behind the wheel of his vehicle, headed for a convenience store to buy beer”: para. 22 (CanLII). His blood alcohol level was 182 mg/100 mL, and he was driving at 120 km/h in a 90 km/h zone at the time of the accident. The victims were 15 and 16 years old. He had been convicted of three speeding offences under the Quebec *Highway Safety Code*, CQLR, c. C‑24.2, between 2004 and 2007. The mitigating factors identified by the court included his age and the facts that he had pleaded guilty, had expressed remorse to the probation officer, had developed an awareness, had obtained a new job, had a support network, had been given a favourable presentence report and had complied with his release conditions. The court imposed a sentence of 42 months’ imprisonment.
11. In *R. v. Nottebrock*, 2014 ABQB 662, 15 Alta. L.R. (6th) 114, the accused was convicted of two counts of criminal negligence causing death and two counts of impaired driving causing death. She had had a blood alcohol level between 222 and 227 mg/100 mL and had been driving at between 135 and 145 km/h in an 80 km/h zone when she ran a red light without even braking. She was 28 years old at the time of her sentencing. She was extremely remorseful and took responsibility for her actions. The risk of her reoffending was low. The court sentenced her to 54 months’ imprisonment.
12. By comparison, the cases of impaired driving causing death in which sentences of between six and nine years have been imposed have involved significant aggravating circumstances that are not present in the case at bar, such as a criminal record for similar offences (impaired driving or driving with a blood alcohol level over the limit), a larger number of victims, driving with children in the vehicle, refusal to listen to other people’s warnings, driving without a licence or while disqualified from driving or prohibited from consuming alcohol, an extremely high blood alcohol level, an untreated alcohol dependence, a risk of reoffending, or a negative presentence report: see, for example, *R. v. Cooper*, 2007 NSSC 115, 255 N.S.R. (2d) 18; *R. v. Kummer*, 2011 ONCA 39, 103 O.R. (3d) 641; *R. v. Cote*, 2007 SKPC 100, 300 Sask. R. 194; *R. v. York*, 2015 ABCA 129, 78 M.V.R. (6th) 4; *R. v. Gravel*, 2013 QCCQ 10482; *R. v. Comeau*, 2008 QCCQ 4804, aff’d 2009 QCCA 1175; *R. v. Côté*, 2002 CanLII 27228 (C.Q.); *R. v. Morneau*, 2009 QCCA 1496; *R. v. Bois*, 2005 CanLII 10575 (C.Q.).
13. In particular, the three cases on which my colleague relies at para. 70 in support of his conclusion that a term of imprisonment of six years or more is clearly not excessive all involved circumstances very different from those of the respondent. In two of the three cases, there were three victims rather than two; this is a factor that creates a significant disparity in the sentences in question. In *R. v. Wood* (2005), 196 C.C.C. (3d) 155 (Ont. C.A.), for example, the accused, who had a long criminal record, had killed three people while driving on the wrong side of the road and without a licence, and while severely intoxicated: his blood alcohol level had been more than twice the legal limit. In *Kummer*, too, the appellant had caused the deaths of three people and bodily harm to two others, and his blood alcohol level had been more than twice the legal limit. In *Morneau*, the third case cited, the accused had three prior convictions for impaired driving, he had done nothing to obtain treatment for his drinking problem, his blood alcohol level had been three times the legal limit and, despite the fact that he had pleaded guilty, he had shown [translation] “great immaturity” and recklessness: 2009 QCCQ 1271, at para. 15 (CanLII). With respect, I do not consider these to be proper parallels to justify the sentence the Court of Appeal found to be excessive in the respondent’s circumstances.
14. In my view, this analysis leads to two observations. First, the Court of Appeal did not intervene lightly: by varying the sentence imposed by the trial judge from 78 to 48 months, the court reduced it by more than a third. This significant reduction supports the Court of Appeal’s finding that the sentence was excessive. Second, the sentence imposed by the Court of Appeal does not itself represent a substantial and marked departure from the sentences imposed on similar offenders who committed similar crimes in similar circumstances. On the contrary, it is entirely consistent with the sentences imposed on offenders with characteristics similar to those of the respondent. Insofar as the Court of Appeal correctly stated the law before intervening, I am of the opinion that it is not open to this Court to substitute its view for that of the Court of Appeal on the sentence. The Court of Appeal considered the relevant sentencing principles and took the specific features of the case into account. Although sentences imposed by provincial appellate courts are not entitled to the same level of deference as is accorded to sentences imposed by trial judges, they are nonetheless entitled to deference, since those courts hear appeals against sentence more often than this Court, which rarely hears them: *R. v. R.N.S.*, 2000 SCC 7, [2000] 1 S.C.R. 149, at para. 23; *Proulx*, at para. 2.
    1. Driving Prohibition
15. Turning to the issue of the driving prohibition, I agree with my colleague that the Court of Appeal and the trial judge both erred in failing to take into account the length of the presentence driving prohibition. In their defence, the issue was not raised until the hearing in this Court, at which the appellant in fact agreed that it was a relevant consideration.
16. In *R. v. Bilodeau*, 2013 QCCA 980, I expressed the opinion that [translation] “[a]lthough the length of the presentence driving prohibition need not be subtracted in equal measure, it is nonetheless a factor to be considered in analyzing the reasonableness and appropriateness of the prohibition to be imposed under section 259(3.3)(b) *Cr. C.*”: para. 75 (CanLII). The Ontario Court of Appeal had already expressed a similar view in *R. v. Pellicore*, [1997] O.J. No. 226 (QL), at para. 1. The same reasoning also applies under s. 259(2)(*a.1*) *Cr. C.* In the instant case, I therefore consider it appropriate to reduce the length of the driving prohibition as my colleague suggests, that is, by the entire period during which the respondent was subject to a prohibition as part of his release conditions before being sentenced.
17. Having said this, I believe that the wording chosen by the Court of Appeal in determining the length of the prohibition is consistent with that used by Parliament in s. 259(2)(*a.1*) *Cr. C.* I would retain that wording. My colleague refers either to a period “commencing at the time of the respondent’s release” (para. 110) or to one “commencing at the end of the respondent’s incarceration” (para. 121). However, the “time of the offender’s release” or “the end of the offender’s incarceration” could sometimes be confusing and could also differ from the “period to which [an] offender [was] sentenced to imprisonment”, which is the one specifically referred to in the relevant provisions of the *Cr. C.* In my opinion, it would be more prudent to stick to the words chosen by Parliament, as the Court of Appeal did in its judgment.
18. In this case, the Court of Appeal [translation] “[prohibited the respondent] from operating any motor vehicle in Canada for a period of four years, plus the period to which he [had been] sentenced to imprisonment”: para. 24. If the length of the presentence driving prohibition (two years and three months) is taken into account in recalculating the prohibition, the result is instead a period of one year and nine months (four years minus two years and three months). This is what I would retain for this aspect of the sentence.
    1. Fresh Evidence
19. Finally, I am of the view that the Court of Appeal did not make an error warranting the intervention of this Court when it declined to admit the fresh evidence of the respondent’s two breaches of his recognizances. Those breaches were a failure on his part to be at his residence as required between 9:00 p.m. and 7:00 a.m. on November 26, 2011, and the fact that he contacted the brother of one of the victims despite being prohibited from doing so: para. 19.
20. The Court of Appeal held that the evidence in question did not satisfy the fourth condition from *Lévesque* and *Palmer v. The Queen*, [1980] 1 S.C.R. 759, since, in the court’s estimation, it was unlikely to affect the result: para. 19. It was appropriate for the Court of Appeal to distinguish the circumstances of this case from those of *Bilodeau*. In that case, the appellant had been convicted of two counts of dangerous driving causing death, and the fresh evidence concerned a breach of a recognizance according to which he was not to operate a motor vehicle. As the Court of Appeal stated in its analysis, that evidence was capable of shedding light on the risk of his reoffending. The two breaches identified in the case at bar are very different.
21. Of course, no breach of a recognizance should be taken lightly. However, the breaches that the Court of Appeal had to consider in this case were, all in all, relatively minor, especially when all the relevant factors are taken into account. It was open to the Court of Appeal to conclude that the additional evidence was irrelevant in this context. Absent an error of law or a palpable and overriding error of fact warranting intervention, this Court should not reconsider the weight attached by the Court of Appeal to those breaches and substitute its view of what would have been relevant.
22. Disposition
23. For these reasons, I would allow the appeal for the sole purpose of reducing the respondent’s driving prohibition to one year and nine months, plus the period of four years to which he was sentenced to imprisonment.

*Appeal allowed,* McLachlin C.J. *and* Gascon J. *dissenting.*

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