

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

BILL PRODROMIDIS

REASONS FOR DECISION
of the
HONOURABLE JUDGE GARTH MALAKOE

Heard at: Inuvik and Yellowknife, Northwest Territories

Date of Decision: October 6, 2015

Date of Trial: April 8, 9 & 10, 2015 and June 18 & 19, 2015

Counsel for the Crown: John D. Cliffe, Q.C.

Counsel for the Accused: Peter Harte

[Section 10(1) *Safety Act* x 2]

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A. INTRODUCTION

A.1 Charges

[1] Bill Prodromidis is charged with two counts of obstructing a safety officer. This is an offence under section 10(1) of the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended. The charges arise from two interactions between the accused and Paul McLaughlin, a safety officer working for the Workers' Safety & Compensation Commission, who was investigating an accident. The first interaction took place on August 28, 2013 in the equipment compound located at the site where the Abraham Francis ferry crosses the Peel River which is eight miles south of Fort McPherson. The second interaction took place on August 29, 2013 in the office of Mr. Prodromidis located in Fort McPherson.

[2] Mr. Prodromidis testified and denied that he obstructed or hindered the safety officer. My decision involves the legal interpretation of section 10(1) and an assessment of the credibility of the witnesses.

A.2 Trial Summary

[3] At the beginning of the trial, there were admissions with respect to the evidence of Cst. Jeff Mackay of the Fort McPherson RCMP. The Crown called two witnesses: Alex Lacroix and Patrick McLaughlin. Their testimony was heard on April 8, 9 and 10, 2015 in Inuvik, Northwest Territories.

[4] The cross-examination of Patrick McLaughlin was completed and Mr. Prodromidis testified on his own behalf on June 18 and 19, 2015 in Yellowknife. Counsel gave their oral submissions on June 19, 2015.

[5] I requested written submissions with respect to two issues and these were received in July, 2015.

[6] In his submissions, counsel for Mr. Prodromidis conceded that there was no issue with respect to identity, time, date and the jurisdiction of the Court to deal with these offences.

A.3 Summary of Facts

[7] On August 10, 2013, a D8 Caterpillar Bulldozer (the “D8 Cat”) ended up partially submerged in the Peel River where the Abraham Francis ferry crosses the river eight miles south of Fort McPherson (the “Abraham Francis Ferry Crossing”). The accident occurred when the D8 Cat was being used to grade the ferry landing area. At the time, Bill Prodromidis was employed by the Department of Transportation (“DOT”) of the Government of the Northwest Territories (“GNWT”) as Manager, Marine Operations and Engineering – North. In this position, he was responsible for the management of the facilities, equipment and ferry at the Abraham Francis Ferry Crossing. He was in Inuvik at the time of the accident involving the D8 Cat (the “D8 Cat Accident”).

[8] During the afternoon of August 15, 2013, Alex Lacroix of the Workers’ Safety and Compensation Commission (“WSCC”) received an anonymous phone call from a member of the public. He was advised that a bulldozer had either driven off the ferry or fallen into the water. As a result, the Abraham Francis ferry could not get to land for a period of time. Mr. Lacroix contacted Patrick McLaughlin who is a WSCC safety officer and asked him to conduct an investigation. Mr. McLaughlin was camping with his family near Whitehorse in the Yukon and was scheduled to return to Inuvik on the Dempster Highway. The Abraham Francis Ferry Crossing is located on the Dempster Highway.

[9] On August 18, 2013, Mr. McLaughlin crossed on the Abraham Francis ferry, disembarked and parked his vehicle and trailer. He spoke with the captain and a deckhand on the ferry with respect to the D8 Cat Accident. He determined the identities of the captain who was operating the ferry at the time of the accident along with the person who was operating the D8 Cat. He determined that they would not be working again for another five days. On August 26, 2013, Mr. McLaughlin issued two orders to DOT, Marine Division. The first required DOT to report the D8 Cat Accident to the chief safety officer immediately. The second required DOT to conduct a full investigation into the causes of this accident and to deliver findings to the safety officer. The required compliance dates for the orders were August 19, 2013 and August 25, 2013, respectively – dates which pre-dated the date of issue of the orders.

[10] On the morning of August 28, 2013, Bill Prodromidis faxed an accident report about the D8 Cat Accident to Patrick McLaughlin in Inuvik. On August 28, 2013, Patrick McLaughlin returned to the Abraham Francis Ferry Crossing. He had not seen Mr. Prodromidis' accident report prior to leaving Inuvik.

[11] Mr. McLaughlin interviewed Charlie Oscar who was the captain of the ferry and Aaron Harrison, who operated the D8 Cat at the time of the D8 Cat Accident. Both Captain Oscar and Mr. Harrison were employees of Grizzly Marine Limited who contracted to the GNWT DOT. Their boss, Dave Kendi, was present during the interviews. Mr. McLaughlin also spoke to Isaac Lennie, a truck driver present at the time of the accident.

[12] Then Mr. McLaughlin went to the equipment compound and met with Mr. Prodromidis in a trailer which was used as a kitchen and for coffee breaks (the "Ferry Crossing Meeting"). Mr. McLaughlin and Mr. Prodromidis describe this meeting differently. Mr. McLaughlin testified that Mr. Prodromidis refused to give him a statement but instead accused Mr. McLaughlin of saying that Mr. Prodromidis was negligent on radio and TV in regard to another incident that had occurred in July of 2012 involving the loosening of a cable clamp (the "Cable Clamp Incident"). Mr. Prodromidis testified that although he did not provide a written statement to Mr. McLaughlin, he told the safety officer that he had faxed him an accident report and that he had answered the questions posed to him by Mr. McLaughlin.

[13] As a result of the Ferry Crossing Meeting, Patrick McLaughlin was of the impression that LJ Contracting had changed the oil and serviced the D8 Cat after the accident. The next morning, on August 29, 2013, he spoke to Leslie Blake, the owner of LJ Contracting, who told him that LJ Contracting had not serviced the D8 Cat.

[14] Mr. McLaughlin then went to the office of Bill Prodromidis. The office is located in the John Tetlich Building in Fort McPherson. According to Mr. McLaughlin, he went to the office to request maintenance records and logbooks for the D8 Cat. It is agreed by both Mr. McLaughlin and Mr. Prodromidis that this meeting lasted less than a minute (the "Office Meeting"). Mr. McLaughlin testified that he was yelled at by Mr. Prodromidis and that Mr. Prodromidis grabbed him by the two arms in the biceps and shoved him out the door. Mr. Prodromidis testified that he asked Mr. McLaughlin to make an appointment and pushed him out of the office after Mr. McLaughlin had shoved his notebook in the chest of Bill Prodromidis.

[15] Right after the meeting, Mr. McLaughlin drove to the RCMP detachment claiming that he had been assaulted. While Mr. McLaughlin was in the RCMP detachment, Bill Prodromidis came in claiming that Patrick McLaughlin was harassing him.

[16] The allegations are that Bill Prodromidis obstructed or hindered Paul McLaughlin, a safety officer, during the Ferry Crossing Meeting and during the Office Meeting.

B. LAW REGARDING OBSTRUCTION AND HINDRANCE

B.1 Relevant Legislation

[17] The charges against Bill Prodromidis are made under the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended (the “*Safety Act*” or the “*Act*”). Where reference is made in this Decision to a section number in the absence of the name of the legislation, then it shall be a reference to the *Safety Act*. The relative sections of the *Safety Act* are as follows:

10. (1) No person shall obstruct or hinder a safety officer engaged in carrying out his or her duties.

9. (1) A safety officer

- (a) shall make the inspections and inquiries and carry out the tests that the safety officer considers necessary to ensure that this Act and the regulations are being complied with;
- (b) may require an employer to make or provide full and correct statements, in the form that may be required, respecting the conditions of work affecting the health or safety of all or any of his or her workers, and the materials and equipment used by them in their equipment; and
- (c) may take or remove for analysis samples of materials and substances used or handled by workers, subject to the employer or his or her representative being notified that the samples or substances are being taken or removed for analysis.

(2) Where a safety officer has reasonable cause to believe that this Act or the regulations are not being complied with, the safety officer may

- (a) inspect, examine and take extracts from or make copies of all books and records relating to conditions of work that may affect the health or safety of any person employed on or in connection with any establishment; and
- (b) require any person employed on or in connection with any establishment to make full disclosure, production and delivery to the safety officer of all records or documents or copies of them, or other information, orally or in writing, that the person has in his or her possession or under his or her

control and that relates to the conditions of work affecting the health or safety of the worker, or of the other workers, in his or her or their employment.

- (3) For the purposes of this Act, a safety officer may at any reasonable time enter on and inspect any property, place or thing used in connection with an establishment and may question any worker apart from his or her employer.
 - (4) Every safety officer shall be provided with a certificate or badge of authority by the Commission and when entering on any property, place or thing used in connection with an establishment shall produce the certificate or badge for inspection if so requested.
 - (5) The person in charge of an establishment and every person employed on or in connection with the establishment shall give a safety officer all reasonable assistance in his or her power to enable the safety officer to carry out his or her duties under this Act and the regulations.
22. (1) Every employer or person acting on behalf of an employer or person in charge of an establishment is guilty of an offence who
- (a) contravenes this Act or the regulations
 - (2) Every employer or person acting on behalf of an employer or person in charge of an establishment who is guilty of an offence under this Act or the regulations is liable on summary conviction to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding one year or to both.

B.2 The Case Law

[18] There are three main components to section 10(1):

- (a) “obstruct or hinder”;
- (b) a safety officer; and
- (c) engaged in carrying out his or her duties.

[19] Let me deal with the last two of these components first. The evidence in the Crown’s case clearly establishes that, in August, 2013, Patrick McLaughlin was a safety officer appointed under section 19 of the *Safety Act*. Mr. McLaughlin asserts that he was conducting an investigation into the D8 Cat Accident and therefore during both the Ferry Crossing Meeting and the Office Meeting, he was engaged in carrying out his duties. Mr. Prodromidis questions whether there was a legitimate reason for Mr. McLaughlin making inquiries of him since Mr. Prodromidis was not at the Abraham Francis Ferry Crossing at the time of the D8 Cat Accident; nor did he have any records that were relative to the investigation. In other words, Mr. Prodromidis disputes that Mr. McLaughlin was “engaged in carrying out his duties.” This issue will be dealt with later in the Decision but, in

my view, for the reasons explained later, Mr. McLaughlin was legitimately engaged in carrying out his duties during both meetings.

[20] In determining whether Mr. Prodromidis contravened section 10(1), it will be necessary to determine if he “obstructed or hindered” Patrick McLaughlin, a safety officer, engaged in carrying out his duties.

[21] While in the process of determining the meaning of the “obstruct or hinder” component of section 10(1), it is instructive to turn to the case law involving obstruction of a peace officer in the *Criminal Code*. Section 129(a) states:

129. Every one who (a) resists or willfully obstructs a public officer or peace officer in the execution of his duty . . .

[22] One must be cautious when applying this case law to section 10(1). There are two obvious differences between section 10(1) of the *Safety Act* and section 129(a) of the *Criminal Code*. First, section 129(a) requires a “willful” obstruction. Second, section 129(1) refers to obstruction of someone in the execution of his duty; whereas section 10(1) refers to obstruction of someone engaged in carrying out his duties.

[23] On the face of it, section 10(1) could be referring to an “obstruction or hindrance” of the person and not of the person in the execution of his duty, i.e., an obstruction of the person only and not the obstruction of the execution of his duty.

[24] This distinction was recognized in *R. v. Westlie*, 2 C.C.C. (2d) 315, where Robertson, J.A. pointed out the difference between obstruction of a peace officer while the peace officer was executing his duties versus obstruction of a peace officer in the execution of his duties.

37. . . . At the outset I must point out that caution should be used in applying the first three of those cases. They were decided upon the words in the *Prevention of Crimes Amendment Act*, 1885 (Imp.), c.75, s.2, “wilfully obstructing any peace officer when in the execution of his duty”. The corresponding words in the *Criminal Code*, 1953-54 (Can.), c.51, have long been and are now in s.110(a), “wilfully obstructing a . . . peace officer in the execution of his duty”. There may be a substantial difference in the meanings of the two sets of words. It might be said that under the words of the 1885 Act the obstruction must be of the constable and at a time when he is engaged in the execution of his duty, while under the words of s.110(a) of the *Criminal Code* the obstruction must be to the execution by the constable of his duty.

[25] In exploring this distinction, one could envision a situation where someone physically stopped an officer who was engaged in an investigation but the obstruction did not result in any sort of impediment to the investigation itself. On the face of it, section 10(1) of the *Safety Act* would capture this behaviour and section 129(a) (formerly section 110(a)) of the *Criminal Code* would not.

[26] As tantalizing as this distinction might be, the case law seems to agree that what is required is an obstruction or hindrance of the investigation, not just the officer. Although there is no case law on this point specifically referring to the *Safety Act*, the *Fisheries Act* uses language similar to the *Safety Act*:

62. No person shall obstruct or hinder a fishery officer, a fishery guardian or an inspector who is carrying out duties or functions under this Act.

[27] In *R. v. Keough*, [2011] N.J. No. 3 (Nfld.P.C.), Gorman J. followed the cases involving obstruction of a “peace officer in the execution of his duty” and did not distinguish between obstruction of an officer in the execution of his duty versus an officer who is executing his duty.

36. The word “obstruction” in the context of obstructing a peace officer refers to actions which make it more difficult for a peace officer to carry out her or his duties (see *R. v. Rumbolt* (1993), 111 Nfld. & P.E.I.R. 174 (N.L.P.C.) and *R. v. Adams*, [2010] A.J. No. 412 (Q.B.)). In *R. v. Tortola* (1975), 28 C.C.C. (2d) 562, the Ontario Court of Appeal rejected the proposition that “a person cannot be convicted of the offence of obstructing a peace officer unless he wholly prevents the officer from the execution of his duty.” Thus, it is sufficient if the obstruction affected the officer in the execution of a duty (see *R. v. Cole* (1977), 24 N.S.R. (2d) 102 (C.A.)). An obstruction need not be physical but may be verbal (see *R. v. Ohara* (1993), 119 N.S.R. (2d) 128 (P.C.)).

[28] I have considered whether “obstructing or hindering a safety officer engaged in carrying out his or her duties” should be interpreted differently than “obstruction or hindering a safety officer in the execution of his or her duties.” One possible difference could be that the first phrase involves a physical obstruction or hindering of the safety officer. The second phrase involves an obstruction or hindering of the progress of the execution of the duties. This distinction was not argued before me. There may be some support for the distinction in the other parts of section 9 and 10 of the *Safety Act*; however, in the end, I am satisfied that section 10(1) refers to an obstruction or hindering of the progress of the safety officer’s execution of his or her duties.

[29] The meaning of this obstruction or hindering can be gleaned from the previous quote from *R. v. Keough* and from the following extract from *R. v. Hale*, 209 BCSC 357:

[17] Here, there is no *Criminal Code* definition of “obstruct”, but the dictionary definition is “**to prevent or to retard the progress of**”. (*The Concise Oxford Dictionary of Current English* (8th ed.))

[18] In my view, the element of wilful obstruction can be founded on a purposeful resistance to a police officer effecting a lawful arrest. Such resistance can be fairly said to be undertaken for the purpose of **preventing the progress of the officer in performing a legitimate duty**. [emphasis added]

[30] Although the word “willful” does not appear in section 10(1) of the *Safety Act* as it does in section 129(a) of the *Criminal Act*, general intent is required. The actions of the accused for an offence to be made out under section 10(1) must be deliberate with the knowledge that the officer is engaged in carrying out his duties. Further, the accused must have intended that his actions would prevent the progress of the investigation. Alternatively, the accused was reckless or was willfully blind that his actions would prevent the progress of the investigation. Further, the effect of the actions of the accused must be a delay or a stop in the progress of the investigation.

C. ISSUES

C.1 Introduction

[31] The descriptions of the Ferry Crossing Meeting and the Office Meeting by Patrick McLaughlin and by Bill Prodromidis differ significantly. A brief description of their testimony will be provided. The burden is on the Crown to prove that an obstruction under section 10(1) occurred with respect to each of these meetings. Because of the differences in testimony, I will assess the credibility and reliability of each witness in the context of the test in *R. v. W.D.*, [1991] 1 SCR 742 for the purpose of establishing whether the Crown has proven beyond a reasonable doubt that Bill Prodromidis obstructed or hindered Patrick McLaughlin, a safety officer engaged in carrying out his duties.

C.2 Differences in Evidence

C.2.1 The Ferry Crossing Meeting

Patrick McLaughlin’s Version

[32] Mr. McLaughlin said that he entered the kitchen-living room area of the trailer where Bill Prodromidis was hand drawing a sign regarding use of DOT equipment and materials. He approached Mr. Prodromidis in an open friendly way and said that he would like to take a statement about the bulldozer incident that took place on August 10th and that he would like Mr. Prodromidis’ input. Mr. Prodromidis was agitated and loud. Instead of speaking about the D8 Cat Accident, he spoke of the July 2012 Cable Clamp Incident, for which he and the GNWT were charged. Mr. Prodromidis accused Mr. McLaughlin of saying on TV and radio that Mr. Prodromidis was negligent; that his equipment was filthy and that his workings were not proper.

[33] Mr. Prodromidis said that he had filled out and sent the accident incident report regarding the D8 Cat Accident. Mr. McLaughlin said that he needed to take Mr. Prodromidis' statement as well. Mr. Prodromidis repeated, "I don't know anything. I was not there." Mr. Prodromidis began to get aggressive, angry, loud and very animated with his hands. He was shouting for 8 to 10 minutes about the Cable Clamp Incident as Mr. McLaughlin repeatedly asked him to return to the subject of the D8 Cat Accident. After Mr. Prodromidis had vented, he responded, without detail, to the questions about what he did since he found out about the accident (he had the D8 Cat checked out by a mechanic); what the basic cause was behind the accident (operation of the D8 Cat by an untrained operator) and what could have been done to prevent this from happening again (Grizzly Marine had to train their operators on how to operate the equipment). Mr. Prodromidis was calmer at this point and Mr. McLaughlin did not ask him any other questions about what had happened. Mr. Prodromidis stood up and they went outside together.

[34] Mr. McLaughlin says that the meeting was approximately 15 minutes long.

Bill Prodromidis' Version

[35] Mr. Prodromidis said that a few minutes before the 3:00 p.m. coffee time, he was working outside of the garage and saw a vehicle pull up outside the compound. It was Patrick McLaughlin and Dave Kendi. Mr. McLaughlin came and asked Bill Prodromidis if he had a few minutes to answer questions. Mr. Prodromidis asked him to check the D8 Cat dozer because Mr. McLaughlin had said in the past that it was filthy dirty. Mr. Prodromidis started the dozer and went back and forwards. Then they went inside.

[36] Inside, Mr. McLaughlin had a big notebook and slid it over and said, "Bill, I want you to write with your hand what happened to the D8." Mr. Prodromidis got upset and raised his voice and said, "I'm not doing no statement and draw what happened because I wasn't there." He said that he had already sent a statement to Mr. McLaughlin's office.

[37] Mr. Prodromidis calmed down and Mr. McLaughlin asked about the preventative maintenance system for the D8 Cat. Mr. Prodromidis said, "Look around you" and a whiteboard with the preventative maintenance schedule was behind Mr. McLaughlin. Mr. Prodromidis thought that Mr. McLaughlin understood that this whiteboard was the extent of the preventative maintenance system. Mr. McLaughlin asked how they were going to prevent such an accident from happening again and Mr. Prodromidis said that Grizzly Marine had to train the people.

[38] Mr. Prodromidis said that it was getting late and asked if Mr. McLaughlin wanted him to stay longer. Mr. McLaughlin said, “No. I know where to get you. I’ll find you.” Mr. Prodromidis said this meeting was two hours long (from about 3:00 p.m. to 5 p.m.)

C.2.2 The Office Meeting

Patrick McLaughlin’s Version

[39] On the morning of August 29, 2013, the owner of LJ Contracting told Mr. McLaughlin that his company had not serviced the D8 Cat after the accident. Mr. McLaughlin went to Bill Prodromidis’ office to “continue to get a statement and maintenance records and training records and logbooks for machinery involved.” Mr. McLaughlin also testified that he wanted to discuss design and project aspects of running a cable ferry. Mr. McLaughlin felt that he had the authority to go to the office under section 9 of the *Safety Act*, dealing with powers and duties of a safety officer.

[40] The door to Mr. Prodromidis’ office was open. Mr. McLaughlin walked up to the door and said, “Good morning Bill. How are you today?” The fax machine was running – making a noise that it was either sending or receiving. Mr. McLaughlin’s demeanor was normal – calm and pleasant. Mr. Prodromidis looked at Mr. McLaughlin and literally screamed, “Why do you guys keep harassing me? . . . If you want to talk to me, you have to make an appointment like everyone else.” Mr. Prodromidis then moved to the door quite quickly. Mr. McLaughlin was standing on the threshold of the door. Mr. Prodromidis’ hands hit Mr. McLaughlin’s biceps and shoved him back. Then Mr. Prodromidis slammed the door in his face. As Mr. Prodromidis was coming to Mr. McLaughlin, Mr. McLaughlin started to say, “I have the authority . . .” but was not able to finish his sentence.

[41] Mr. McLaughlin says that the time between getting to the doorway and being pushed outside of the office was 10 to 15 seconds. This interaction would have occurred at 11:20 in the morning on August 29, 2013.

[42] Mr. McLaughlin immediately went to his truck and documented what had happened; then he drove through the parking lot to the RCMP building. While Mr. McLaughlin was in the RCMP building, Mr. Prodromidis walked in, pointed at Mr. McLaughlin and screamed, “That guy’s harassing you . . . me, me. He’s, he’s harassing me. This guy, I want him charged. He’s harassing me.”

[43] Mr. McLaughlin met with Cst. Jeff MacKay later in the day and phoned Mr. Prodromidis from the RCMP building. There was no answer. Then Cst. MacKay and Mr. McLaughlin went to Mr. Prodromidis' office. The door was locked.

[44] Mr. McLaughlin is 5' 7" or 5' 8" and weighs 178 pounds. In August of 2013, he weighed 230 pounds. At that time, he suffered from a heart condition and was in a very ill state.

Bill Prodromidis' Version

[45] On the morning of August 29, 2013, Mr. Prodromidis was in his office. Every morning, his department depends on a report that they get from both ferries. Mr. Prodromidis speaks to the captain of each of the two ferries for which he is responsible. He then phones a report into Inuvik. He does this as a matter of routine at 9:00 a.m. in the morning.

[46] On August 29, 2013, Mr. Prodromidis was on the phone with the captain of the Mackenzie River Ferry. The door opened and Mr. McLaughlin said, "Good morning, Bill. You have time to answer some questions?" Mr. Prodromidis said, "Can you please wait five minutes? I got to make the report?" At that point, Mr. McLaughlin said, "No, I can come any time I want, anywhere I want, and you guys going to answer the questions. You going to answer the questions right now."

[47] Mr. Prodromidis says that he is 5' 4" and 185 pounds. In August of 2013, he weighed 160 or 165 pounds.

[48] Mr. Prodromidis asked the captain to excuse him and hung up the phone. He said to Mr. McLaughlin, "Why don't you sit down in the waiting room for five minutes. I got to do the report to Inuvik and then I got the whole day." Mr. McLaughlin said, "No. You're going to answer me right now." Mr. McLaughlin then shoved his red book at Mr. Prodromidis' chest area. Mr. Prodromidis grabbed Mr. McLaughlin's hands and pushed him back and closed the door and continued his report.

[49] Mr. Prodromidis says that he had no log book in relation to the D8 Cat; no copies of certificates regarding the qualifications of employees of Grizzly Marine; and no training records for Grizzly Marine employees.

C.3 Application of *R. v. W.D.*

[50] In my view, the test in *R. v. W.D.*, [1991] 1 SCR 742, which was modified by the BC Court of Appeal in *R. v. H. (C.W.)* (1991), 68 CCC (3d) 146 is applicable in this situation:

- (a) if I believe Mr. Prodromidis with respect to what happened in the two meetings, and his version convinces me that he is not guilty, then the Crown has not proven the case beyond a reasonable doubt and he must be acquitted;
- (b) if I do not know whether to believe Mr. Prodromidis or Mr. McLaughlin, and on Mr. Prodromidis' version, he is not guilty, then I must acquit;
- (c) if I do not believe everything that Mr. Prodromidis has said, but his evidence regarding the obstruction at least raises a reasonable doubt, then I must give him the benefit of the doubt; and
- (d) finally, if I do not believe Mr. Prodromidis and his evidence does not raise a reasonable doubt, then I must still consider all of the evidence which I have heard and which I do believe to determine if the Crown has proven beyond a reasonable doubt the case against the accused.

[51] Before dealing with the evidence of these two witnesses, let me deal with the question of whether or not Mr. McLaughlin was engaged in carrying out his duties during the two meetings.

[52] If I understand correctly the position of the defence, it is submitted that Mr. Prodromidis had no further information to provide with respect to the investigation into the D8 Cat Accident. He was not present at the Abraham Francis Ferry Crossing or even in Fort McPherson when the accident occurred. He was in Inuvik, awaiting the birth of a child. He had faxed an accident report to the WSCC on the morning of August 28, 2013. Any information that he had about the accident was obtained through his own investigation and was not first hand.

[53] The person operating the D8 Cat at the time of the accident was a Grizzly Marine employee who was directed by the captain of the ferry, another Grizzly Marine employee. Mr. Prodromidis had no training records for the Grizzly Marine employees; nor did he have access to them. There were no written maintenance records for the D8 Cat. The preventative maintenance schedule was contained on a whiteboard in the kitchen at the compound.

[54] Further, if I understand the submission, Mr. Prodromidis answered the questions as to how he thought the accident occurred and how it could be prevented in the future.

[55] In my view, even if I were to accept that submission that on August 28th and 29th, Mr. Prodromidis had nothing to add to the investigation (which I do not

accept), that does not mean that Mr. McLaughlin was not engaged in carrying out his duties as a safety officer. At the time of the Ferry Crossing Meeting, Mr. McLaughlin had not seen Mr. Prodromidis' accident report. Even though Mr. McLaughlin was told by Mr. Prodromidis that the accident was a result of operator error, the safety officer had a duty to investigate the accident, including the possibility that there had been a problem with the D8 Cat itself. Mr. Prodromidis was the person in charge of the compound and in charge of the equipment. Mr. McLaughlin was under no obligation to accept wholly what Mr. Prodromidis said. He was entitled to seek records and documentation.

[56] On August 29th, Mr. McLaughlin had found a contradiction in what Mr. Prodromidis had told him. In particular, Mr. Prodromidis had said that the D8 Cat was serviced by LJ Contracting after the accident. LJ Contracting had told him that this was not true. Mr. McLaughlin was investigating this discrepancy and looking for records.

[57] Even if it turned out that Mr. Prodromidis had no records, Mr. McLaughlin, in his role as a safety officer, was engaged in his duties on August 28th and 29th.

[58] I have also considered the apparent contradiction concerning the importance of Mr. McLaughlin's investigation and the seriousness of the D8 Cat Accident. Mr. Lacroix testified that he felt that there was no reason to conduct an investigation immediately upon receiving the anonymous telephone call since the event had occurred and was over and no one was injured. Mr. McLaughlin described the D8 Cat Accident as an "accident of a serious nature" since it involved a piece of heavy equipment and the potential for injury to the worker could be substantial. I do not find these two statements to be contradictory; however, I accept that there was no emergent circumstance that required Patrick McLaughlin to immediately obtain access to Mr. Prodromidis' office at the time of the Office Meeting on August 29, 2013. This relates to the reasonableness of Mr. McLaughlin's request to speak to Mr. Prodromidis in his office.

[59] Let me assess the testimony of Mr. Prodromidis and Mr. McLaughlin.

C.4 Testimony of Bill Prodromidis

[60] For a number of reasons, I am unable to accept the version of the two meetings testified to by Mr. Prodromidis.

[61] First, Mr. Prodromidis was an evasive witness. There were many questions which he purposely did not answer. Although he speaks with an accent, I am satisfied that his ability with the English language is fluent and this evasiveness was not a result of him not understanding the questions. Second, Mr. Prodromidis

did not appear to want to take the time to respond to the best of his ability. When documents or photographs were placed in front of him and his attention was directed to them, he would respond without looking at them closely or at all.

[62] Third, his knowledge of dates and times was poor, yet he would purport to repeat word for word what Mr. McLaughlin had said to him during the two meetings. This word for word recollection would change slightly with each telling.

[63] Fourth, Mr. Prodromidis seemed to confuse incidents. For example, he was asked about a time when he was working on a poster when Mr. McLaughlin was in the kitchen. Mr. Prodromidis said this had happened but many months earlier.

[64] Fifth, the basis for Mr. Prodromidis' description of the Office Meeting was that he was busy getting the reports from the captains so that he could transmit them to Inuvik. This happened every day at 9:00 a.m. Yet Mr. McLaughlin made notes immediately after the incident that indicated that the meeting took place at 11:20 a.m. Further, Mr. Prodromidis provided a receipt for Mr. McLaughlin's stay in Fort McPherson which indicates that Mr. McLaughlin checked out of the hotel at 9:35 a.m. This would indicate that the Office Meeting must have occurred after 9:35 a.m.

[65] The timing of Mr. McLaughlin's meeting with the RCMP also indicates that the incident would have occurred later in the morning and not at the 9:00 a.m. time that Mr. Prodromidis refers to.

[66] Sixth, Mr. Prodromidis' description of Paul McLaughlin shoving his note book at his chest does not reconcile with the Court's observations of Mr. McLaughlin and Mr. Prodromidis' own description of Mr. McLaughlin's demeanour. Mr. McLaughlin was described at all times as polite and calm. He testified that he was in ill health at the time, suffering from a heart condition. That he would confront Mr. Prodromidis in the way indicated by Mr. Prodromidis makes no sense.

C.5 Testimony of Patrick McLaughlin

[67] Patrick McLaughlin appeared to be a witness who was doing his best to be truthful and candid with the Court. I have some issues with respect to his ability to remember events. My impression is that he was relying heavily on his notes and there were apparent issues with respect to his notes. The following are issues with respect to his reliability and credibility.

C.5.1 Police Notebook versus Red Logbook

[68] Patrick McLaughlin testified that when he was speaking to Bill Prodromidis on August 28, 2013 in the kitchen area, he made notes of what Mr. Prodromidis was saying in his police notebook. These were verbatim notes. He later made further comments in his red logbook which was referred to as his “investigator’s book”.

[69] The following exchange in cross-examination took place:

Q: I’m going to suggest to you that what happened is you took point-form notes in your investigator’s book and then wrote out the longer version of what took place in your police notebook. You’ve got a chance to compare the two. Does that make sense to you or no?

A: It doesn’t make sense to me, no.

Q: Why does it not make sense to you?

A: Well, it’s my belief or my thoughts that I did the police logbook first and then did the investigation logbook second.

...

Q: What do you say was the purpose for making notes in your investigator’s book about your discussion with Mr. Prodromidis?

A: To capture information.

Q: But if you’d already written it down verbatim in your police notebook, why was it necessary to make an additional set of notes?

A: I have no answer for that. I just did.

[70] Then on June 18, 2015, the following exchange took place:

A: I was --- I am not certain. I thought I was certain that I wrote in my large notebook first – or I wrote in my police notebook first and transcribed them into my large notebook.

Q: Comparing the two, it makes more sense that you made quick notes in your investigator’s book, and then made a detailed account of what happened in your police notebook, right?

A: It’s possible, yes.

[71] In my view, Mr. McLaughlin was confused about which book contained his initial notes and which contained his more expanded notes. Mr. McLaughlin recognized the importance of keeping accurate notes and appears to have done so with respect to both meetings. What is troubling is his refusal to admit the

problem of which were the verbatim notes when it was pointed out to him. My impression is that Mr. McLaughlin has very little retained memory of the meetings but that his notes are accurate, given the proximity in time of their making to the events being recorded.

C.5.2 Staying in Fort McPherson on August 28th, 2013

[72] Mr. McLaughlin was positive that he did not stay in Fort McPherson on the night of August 28, 2013. He was asked, “How are you positive about that?” He responded, “Because I drove back to Inuvik.”

[73] While being cross-examined, he was provided with a copy of a receipt showing “Patrick” staying at the Peel River Inns, with a check-out on August 29th. Then his testimony changed to, “But I’m not certain if I did or not.”

[74] Then the cross-examination on June 18, 2015:

Q: And when you told us when you were last testifying about that issue that you were positive that you had traveled to Fort McPherson from Inuvik, I take it you were telling the truth as you understood it to be at that time?

A: That’s correct.

Q: Clearly that memory was wrong?

A: Clearly.

[75] Again, Mr. McLaughlin presented his initial evidence as a certainty. It was only when he was contradicted with documentary evidence that he admitted the possibility that his memory was wrong.

[76] Although I question Mr. McLaughlin’s independent memory, there is no evidence before me that causes me to question the accuracy of his note taking.

C.5.3 The Reason for the Office Meeting

[77] Mr. McLaughlin testified that one of the reasons for him to go to Mr. Prodromidis’ office was to obtain information about the design and project aspects of running a cable ferry. I found this answer to be contradictory in the face of his handwritten notes and his statement to the RCMP. He was consistent throughout his written material that the reason for the Office Meeting was to “request maintenance records and logbooks for the D8 Cat.”

D. ANALYSIS

[78] In my view, the Crown has not proven that there was a section 10(1) hindrance or obstruction during the Ferry Crossing Meeting. There is insufficient evidence to establish that Mr. Prodromidis' actions or words impeded or delayed the progress of the investigation. It is true that he was loud and aggressive. It is true that he wanted to talk about the Cable Clamp Incident and "vent" as Mr. McLaughlin put it, but in the end, he responded to what he was asked. I do not find that his refusal to provide a written statement or a drawing was in of itself, indication of obstruction or hindrance.

[79] The following cross-examination of Patrick McLaughlin summarizes the responsiveness of Mr. Prodromidis at the Ferry Crossing Meeting:

Q: Okay. So he answered your questions?

A: Not to the detail that was required.

Q: But you didn't ask him any other questions for further detail, did you?

A: No. The conversation was coming to an end. He, he was first – He stood up and grabbed the sign. I stood up. He walked to the door, got to the door.

[80] With respect to the Office Meeting, the Crown has proven, to the degree necessary, that Mr. Prodromidis confronted Mr. McLaughlin, grabbed him by the biceps and pushed him out the door and slammed the door behind him. This occurred before Mr. McLaughlin had the chance to ask any questions. Mr. Prodromidis was aware that Mr. McLaughlin was there to ask him questions about the D8 Cat Accident. In pushing Mr. McLaughlin out the door, Mr. Prodromidis was halting the progress of Mr. McLaughlin's investigation. Mr. McLaughlin's presentation at the door of Mr. Prodromidis' office to ask questions was reasonable in the circumstances.

[81] In accepting the evidence of Mr. McLaughlin with respect to the Office Meeting, I am also taking into account the failure of the Defence to put Mr. Prodromidis' version of events to Mr. McLaughlin. I would have preferred to have heard Mr. McLaughlin respond to the allegations (made by Mr. Prodromidis) that Mr. Prodromidis was on the phone with the captain when Mr. McLaughlin arrived; that Mr. McLaughlin was asked to go sit in the waiting room for 5 minutes or that he shoved his red notebook toward the chest of Mr. Prodromidis. For whatever reason, the Defence chose not to cross-examine Mr. McLaughlin on these issues. As a result of this failure, the Crown asserts that I should give little or no importance to the testimony of Mr. Prodromidis, given the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.). Based on my negative findings of credibility with respect

to Mr. Prodromidis, it is not necessary to consider what other further negative effects on credibility this failure to cross-examine might have.

E. CONCLUSION

[82] At the conclusion of the trial, I asked counsel for submissions regarding the form and content of the two counts before the Court. The first count refers to the two meetings. The second count only refers to the Office Meeting. Both counts refer to “physically accosting” Safety Officer Patrick McLaughlin at the Office Meeting. The first count also alleges “refusing to cooperate with requests” at the Ferry Crossing Meeting.

[83] The counts as they appear on the Information are as follows:

Count #1

On and between the 28th day of August, 2013 and the 29th day of August, 2013, at the Government of the Northwest Territories Department of Transportation maintenance compound at the Abraham Francis Ferry Crossing of the Peel River, near the Hamlet of Fort McPherson, in the Northwest Territories, and its offices, at or near the said Hamlet of Fort McPherson, being a person either acting on behalf of an employer, to wit: the Government of the Northwest Territories, or a person in charge of an establishment, to wit: the said compound and offices, did unlawfully obstruct or hinder a safety officer, to wit: Safety Officer Patrick McLaughlin, engaged in carrying out his duties, to wit: an investigation under the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended, of an incident involving the operation of a D 8 Cat bulldozer at the said Abraham Francis Ferry Crossing, **by refusing to cooperate with requests** by Safety Officer Patrick McLaughlin for information regarding the said incident and **physically accosting** Safety Officer Patrick McLaughlin, in violation of Section 10(1) of the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended, and did thereby commit an offence contrary to section 22(1)(a) of the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended.

Count #2

On and about the 29th day of August, 2013, at the Government of the Northwest Territories Department of Transportation offices, at or near the Hamlet of Fort McPherson, being a person either acting on behalf of an employer, to wit: the Government of the Northwest Territories, or a person in charge of an establishment, to wit: the said offices, did unlawfully obstruct or hinder a safety officer, to wit: Safety Officer Patrick McLaughlin, engaged in carrying out his duties, to wit: an investigation under the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended, of an incident involving the operation of a D 8 Cat bulldozer at the said Abraham Francis Ferry Crossing, near the said Hamlet of Fort McPherson, by **physically accosting** Safety Officer Patrick McLaughlin, in violation of Section 10(1) of the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended, and did thereby commit an offence contrary to section 22(1)(a) of the *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended.

(emphasis added)

[84] I have determined that Mr. Prodromidis' action at the Ferry Crossing Meeting did not amount to a section 10(1) obstruction and that his actions at the Office Meeting did amount to a section 10(1) obstruction. On first reading of count 1, it appears that in order for there to be a conviction under count 1, that there must be a finding of obstruction at the Ferry Crossing Meeting and at the Office Meeting; i.e., the "and" is conjunctive. The Crown submits that I can make a finding of guilt if there was obstruction at only one of the meetings. I will not decide this issue here. Count 2 refers only to the Office Meeting. If there is a finding of guilt, it will occur with respect to count 2. The rule in *R. v. Kienapple* (1975), 15 C.C.C. (2d) 524 (S.C.C.) prevents a finding of guilt with respect to both counts, even if such a finding was available.

[85] "Physically accosting" is imprecise and is not a legal term. It is not defined in the *Safety Act*. "Accosting" refers to approaching and speaking to someone aggressively or to confront them in an inappropriate way. Adding the adverb "physically" does not assist in the interpretation. As imprecise as this term is, I have indicated that Mr. Prodromidis' actions during the Office Meeting constituted an obstruction or hindrance of Mr. McLaughlin who was engaged in his duties as a safety officer. His actions involved a physical pushing by Mr. Prodromidis in addition to his aggressive words.

[86] I find Bill Prodromidis guilty of count 2 on the Information. A temporary judicial stay of proceedings is entered with respect to count 1. It shall become permanent following the appeal period, if an appeal is not filed.

Garth Malakoe
T.C.J.

Dated at Yellowknife, Northwest
Territories, this 6th day of
October, 2015.

**IN THE TERRITORIAL COURT OF THE NORTHWEST
TERRITORIES**

BETWEEN:

HER MAJESTY THE QUEEN

- and -

BILL PRODROMIDIS

REASONS FOR DECISION
of the
HONOURABLE JUDGE GARTH MALAKOE

[Section 10(1) of the *Safety Act* x 2]