R. v. GNWT (DOT) and Grizzly Marine Services Ltd., 2014 NWTTC 17

Date: 2014 06 27
File: T3-CR-2013-000272
Action

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES AS REPRESENTED BY THE DEPARTMENT OF TRANSPORTATION OF THE GOVERNMENT OF THE NORTHWEST TERRITORIES, GRIZZLY MARINE SERVICES LTD. and BILL PRODROMIDIS

REASONS FOR SENTENCE
of the
HONOURABLE JUDGE GARTH MALAKOE

Heard at :	Yellowknife, Northwest Territories June 18 and 19, 2014
Date of Decision:	June 27, 2014
Counsel for the Crown:	John D. Cliffe
Counsel for the Government of the Northwest Territories:	Caroline Wawzonek
Counsel for Grizzly Marine Services Ltd.:	David Myrol

[Section 4(1)(b) of the *Safety Act*]
[Section 35(3) of the *General Safety Regulations*]

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A. INTRODUCTION

A.1 The Workplace Incident

[1] Highway 8 in the Northwest Territories meets the Peel River approximately 13 kilometers south of the Hamlet of Fort McPherson. To cross the Peel River, travellers on the highway must use the Abraham Francis Ferry. The Abraham Francis is a cable ferry which pulls itself across the river along a fixed strand of 1 1/8" steel cable attached to both the north and south sides of the Peel River.

[2] On July 12, 2012, there was a problem with the cable. Driftwood and debris had become entangled in the cable resulting in the Abraham Francis being stranded in the Peel River. To deal with this situation, three workers were instructed to loosen the cable on the south shore of the river. As one of the workers loosened the nuts on the last of three clamps securing the cable, the steel cable suddenly "exploded" and in a wide snaking movement began to quickly whip back and forth.

[3] The cable struck one of the workers, Dwight Snowshoe, causing him to spin up and around and then to land head-first on the ground. As a result he was unconscious for at least five minutes. His co-workers presumed that he had died. Another worker was also struck by the cable in the buttocks. Mr. Snowshoe was taken to the Health Centre in Fort McPherson. He was diagnosed with having suffered a concussion and soft-tissue injuries to his left thigh and lower left leg. In addition, he also suffered a 1 ½" laceration to the base of his skull and abrasions to his face, back and right hip.

[4] The Workers' Safety & Compensation Commission of the Northwest Territories (the "WSCC") first became aware of this incident on July 15th, 2012 upon receipt of a voicemail message from the mother of Dwight Snowshoe.

A.2 The Charges

[5] As a result of this workplace incident, there were a total of 17 charges laid under the *Safety Act* and its regulations against three accused: the Commissioner of the Northwest Territories as represented by the Department of Transportation of the Government of the Northwest Territories ("the GNWT"), Grizzly Marine Services Ltd. ("Grizzly") and William Prodromidis ("Mr. Prodromidis").

[6] The GNWT owns the Abraham Francis Ferry, the landings and the incidental shore equipment at the ferry crossing of the Peel River. The GNWT contracts the operation of the Abraham Francis Ferry to Grizzly. At the time of the incident, Bill Prodromidis was a long-time GNWT employee who had the position of Marine Engineer. He supervised the shore workers at the Abraham Francis Cable Ferry Crossing and reported only to the GNWT. On July 12, 2012, Mr. Prodromidis instructed the three Grizzly employees, one of whom was Dwight Snowshoe, to loosen the cable.

A.3 The Guilty Pleas

[7] On June 17, 2014, the GNWT entered a guilty plea to the following charge:

> On or about the 12th day of July, 2012 at or near the Abraham Francis Cable Ferry Crossing at Peel River near Fort McPherson, in the Northwest Territories, being an employer, did unlawfully fail to take all reasonable precautions and carry out all reasonable techniques and procedures to ensure the health and safety of every person, including Dwight Snowshoe, in its establishment to wit: the Abraham Francis Cable Ferry Crossing, by not ensuring the workers at the said establishment, including Dwight Snowshoe, were properly instructed and supervised, in violation of section 4(1)(b) 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 (the "failure to properly instruct and supervise offence").

[8] On the same date, Grizzly entered a guilty plea to the following charge:

> On or about the 12th day of July, 2012 at or near the Abraham Francis Cable Ferry Crossing at Peel River near Fort McPherson, in the Northwest Territories, being an employer, did unlawfully fail to report to the Chief Safety Officer an accident of a serious nature involving an employee, namely Dwight Snowshoe, occurring at a place of employment, to wit: the Abraham Francis Cable Ferry Crossing, in violation of section 35(3) of the *General Safety Regulations*, R.R.N.W.T. 1990, 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 (the "failure to report offence").

[9] As a result of these guilty pleas, the Crown has indicated that he will direct a stay of proceedings with respect to the charges against Mr. Prodromidis and the remaining charges against the GNWT and Grizzly.

B. POSITION OF THE CROWN AND DEFENCE

[10] The Crown and counsel for Grizzly jointly submit that an appropriate penalty for the failure to report offence is a fine of $7,500 plus the applicable 15% victim of crime surcharge.

[11] The Crown submits that an appropriate penalty for the GNWT for the failure to properly instruct and supervise offence is a fine of $75,000 plus the applicable 15% victim of crime surcharge. Counsel for the GNWT submits that a penalty of $40,000 to $50,000 plus the victim of crime surcharge is appropriate.

C. DESCRIPTION OF APPLICABLE LEGISLATION

[12] The *Safety Act*, R.S.N.W.T. 1988, c.S-1, as amended is Northwest Territories legislation dealing with worker safety. It is binding on the Government of the Northwest Territories (section 3).

[13] Section 1 of the *Safety Act* includes the following definitions relevant to this sentencing:

> "Chief Safety Officer" means the Chief Safety Officer appointed pursuant to subsection 18(1);
>
> "employer" means every partnership, group of persons, corporation, owner, agent, principal contractor, sub-contractor, manager or other authorized person having charge of an establishment in which one or more workers are engaged in work;

"establishment" means any work, undertaking or business carried on in the Northwest Territories;

"worker" means a person engaged in work for an employer, whether working with or without remuneration.

[14] Section 4(1)(b) states that:

4 (1) Every employer shall

(b) take all reasonable precautions and adopt and carry out all reasonable techniques and procedures to ensure the health and safety of every person in his or her establishment.

[15] Section 22 contains the charging and penalty provision:

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.

[16] Section 35 of the *General Safety Regulations*, R.R.N.W.T. 1990, c.S-1, as amended defines an accident of a serious nature as:

35 (1) In this section, "accident of a serious nature" includes

(e) a concussion, major blood loss, serious fracture, unconsciousness or amputation; and

(f) an incident involving heavy equipment.

[17] Subsection 35(3) sets out the reporting requirement for an accident of a serious nature:

35 (3) An employer shall report to the Chief Safety Officer an accident of a serious nature involving any employee occurring at the place of employment, within 24 hours of the accident.

[18] Pursuant to the *Safety Act*, the GNWT was the owner of the establishment known as the Abraham Francis Ferry Crossing. As an "employer", the GNWT was responsible to take all reasonable precautions and adopt and carry out all reasonable techniques and procedures to ensure the health and safety of every person in its establishment; in particular, Dwight Snowshoe and his fellow workers.

[19] Pursuant to subsection 35(3) of the *General Safety Regulations*, Grizzly had a duty to report the accident involving Dwight Snowshoe to the Chief Safety Officer within 24 hours of it happening since it resulted in a loss of consciousness and involved heavy equipment.

[20] Section 22(6) of the *Safety Act* directs that any fine collected goes to the WSCC:

> 22 (6) Every fine imposed under this Act shall, when collected, be paid over to the Commission and form part of the Workers' Protection Fund established under the *Workers' Compensation Act*.

[21] Pursuant to section 12(1)(a) of the *Victims of Crime Act*, R.S.N.W.T. 1988, c.9 (supp.), as amended and section 2 of the *Victims of Crime Regulations*, R-013-92, there is a 15% victim of crime surcharge with respect to each fine imposed under an act of the Northwest Territories.

D. THE PRINCIPLES AND OBJECTIVES OF SENTENCING

[22] The Court's duty is to impose a sentence on the two corporate entities: in one case, the Government of the Northwest Territories as represented by the Department of Transportation; in the other, Grizzly Marine Services Ltd., a small corporation employing twelve seasonal employees and four full-time administrative employees. At the sentencing hearing, the Court was advised that Grizzly is wholly owned by the Gwich'in Tribal Council.

[23] In imposing a sentence for offences under the *Safety Act*, the Court seeks to protect the public, more specifically, workers in the Northwest Territories. Protection of the public is achieved by imposing a penalty which will denounce the offending behaviour; which will deter the GNWT and Grizzly from similar offences in the future (specific deterrence); and which will deter other employers from committing similar offences (general deterrence).

[24] There are many other factors which affect the behaviour of government and private industry when it comes to worker safety. Public opinion, economics, morality of the directing mind and corporate culture all affect how a corporate entity deals with safety. In the context of workers safety legislation, the most practical method of achieving deterrence is through a fine. Since corporate entities are cognizant of justifying their operating expenses and "bottom line" to their constituents, whether they be shareholders or taxpayers, a significant monetary penalty to a corporate entity has the effect of encouraging safety for its workers, if for no other reason than such a positive behaviour will save money for the corporation.

[25] The ultimate goal of workers safety legislation is to create a culture of safety within the organization. Those organizations which incorporate such a culture will avoid breaches of such legislation and the accompanying monetary penalty.

[26] If the purpose of the sentencing process is to promote the protection of the workers through the imposition of a fine which will deter future offences and encourage a culture of safety, the question becomes how to determine the appropriate quantum of fine.

[27] In the context of sentencing individuals for criminal offences, the fundamental purpose of sentencing is that of proportionality, i.e., the sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender. In the context of public welfare legislation such as the *Safety Act*, an offender does not have to have *mens rea* or a "guilty mind" as is required in a criminal offence. An offender can be reckless or negligent or fail to be duly diligent. Although the seriousness of the offence and the responsibility of the offender play a role in sentencing for a *Safety Act* offence, the sentencing goal is not retribution; it is behaviour modification of the corporate entity. This fundamental distinction was discussed by Justice Cory in *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154:

> 125. *R. v. City of Sault Ste. Marie*, [1978] 2 S.C.R. 1299, affirmed the distinction between regulatory offences and true crimes. There, on behalf of a unanimous Court, Justice Dickson (as he then was) recognized public welfare offences as a distinct class. He held (at pp. 1302-3) that such offences, although enforced as penal laws through the machinery of the criminal law, "are in substance of a civil nature and might well be regarded as a branch of administrative law to which traditional principles of criminal law have but limited application."
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> ...
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> 128. It has always been thought that there is a rational basis for distinguishing between crimes and regulatory offences. Acts or actions are criminal when they constitute conduct that is, in itself, so abhorrent to the basic values of human society that it ought to be prohibited completely. Murder, sexual assault, fraud, robbery and theft are all so repugnant to society that they are universally recognized as crimes. At the same time, some conduct is prohibited, not because it is inherently wrongful, but because unregulated activity would result in dangerous conditions being imposed upon members of society, especially those who are particularly vulnerable.
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> 129. The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

> 130. It follows that regulatory offences and crimes embody different concepts of fault. Since regulatory offences are directed primarily not to conduct itself but to the consequences of conduct, conviction of a regulatory offence may be thought to import a significantly lesser degree of culpability than conviction of a true crime. The concept of fault in regulatory offences is based upon a reasonable care standard and, as such, does not imply moral blameworthiness in the same manner as criminal fault. Conviction for breach of a regulatory offence suggests nothing more than that the defendant has failed to meet a prescribed standard of care.
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> ...
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> 132 ... Most recently, in *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, at pp. 510-11, Justice La Forest adopted the following statement of the Law Reform Commission of Canada (*Criminal Responsibility for Group Action*, Working Paper 16, 1976, at p. 12):
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> > [The regulatory offence] is not primarily concerned with values, but with results. While values necessarily underlie all legal prescriptions, the regulatory offence really gives expression to the view that it is expedient for the protection of society and for the orderly use and sharing of society's resources that people act in a prescribed manner in prescribed situations, or that people take prescribed standards of care to avoid risks of injury. The object is to induce compliance with rules for the overall benefit of society.

[28] Given the difference in the aims of sentencing for criminal offences and regulatory offences, there are a series of factors which have been developed as a result of the case law over time and over jurisdictions. These factors determine the quantum of the fine necessary to achieve the objectives of deterrence and public denunciation.

[29] The starting point in the development of these factors is the statement of the Ontario Court of Appeal in *R. v. Cotton Felts*, [1982] O.J. No. 178:

> 19 The *Occupational Health and Safety Act* is part of a large family of statutes creating what are known as public welfare offences. The Act has a proud place in this group of statutes because its progenitors, the *Factory Acts*, were among the first modern public welfare statutes designed to establish standards of health and safety in the work place. Examples of this type of statute are legion and cover all facets of life ranging from safety and consumer protection to ecological conservation. In our complex interdependent modern society such regulatory statutes are accepted as essential in the public interest. They ensure standards of conduct, performance and reliability by various economic groups and make life tolerable for all. To a very large extent the enforcement of such statutes is achieved by fines imposed on offending corporations. The amount of the fine will be determined by a complex of considerations, including the size of the company involved, the scope of the economic activity in issue, the extent of actual and potential harm to the public, and the maximum penalty prescribed by statute. Above all, the amount of the fine will be determined by the need to enforce regulatory standards by deterrence: see *R. v. Ford Motor Company of Canada Limited (1979)*, 49 C.C.C. (2d) 1, per MacKinnon A.C.J.O at p. 26; Nadin-Davis, *Sentencing in Canada*, p. 368 and cases therein cited.

[30] These factors were further developed in cases such as *R. v. General Scrap and Iron Metals Ltd.*, [2003] A.J. No. 13 (ABQB), *R. v. Independent Automatic Sprinkler Ltd.*, 2009 ABQB 264 and *R. v. Westfair Foods Ltd.* [2005] S.J. No. 279 (Sask. P.C.). In my view, these factors should include the following:

(a) What was the nature of the offence? Was the activity risky? Was the result foreseeable? Was the offending action integral to the operations of the enterprise? Did the enterprise profit from the offending action?

(b) What is the nature of the offender? What is the size of the enterprise in terms of number of employees, number of physical locations and economic activity?

(c) What was the degree of blameworthiness of the offender?

(d) What is the ability of the offender to pay a fine? How will a fine affect the enterprise?

(e) What is the maximum fine under the legislation?

(f) What is the range of fines for similar offences and similar offenders in the Northwest Territories?

(g) What is the previous history of the enterprise with respect to this legislation?

(h) What is the extent of injuries, if any, suffered by the workers? What was the potential harm of the offending activity to the workers?

(i) What, if any, is the contributory negligence of the injured worker?

(j) What is the post offence conduct of the enterprise? Were they cooperative with the authorities in investigating the incident? Was there a guilty plea? Were there changes in the operations of the enterprise as a result of the incident? Did high level management of the enterprise attend the sentencing hearing?

E. APPLICATION OF FACTORS TO GRIZZLY

[31] Grizzly is charged with failing to report an accident of a serious nature. Legal counsel for Grizzly indicated that the corporation was not aware of its requirement to report the accident under section 35(3) of the *General Safety Regulations*. The workplace incident occurred on July 12, 2012 and Grizzly had begun to prepare an employer's report for the WSCC on July 14, 2012. Although

it is recognized that this report could not be considered to be compliance with section 35(3), the production of the report is an indication that Grizzly was not trying to hide the accident from the WSCC.

[32] The purpose of the reporting requirement to the Chief Safety Officer under section 35(3) is to allow for a prompt investigation while evidence is still fresh and uncorrupted. A prompt investigation enables the regulator to intervene and prevent further similar accidents in the future.

[33] On the facts of this workplace incident and the failure to report offence, there appears to be no intent to deceive on the part of Grizzly. The investigation of the Chief Safety Officer was not prejudiced by the failure to report. Because the workplace incident occurred in the context of a non-recurring factual situation, there was not a continuing danger to the workers. The failure to report did not expose the workers to continuing risk.

[34] With respect to the nature of the corporation, as indicated earlier, Grizzly is a relatively small corporation which appears to have been incorporated to deal with ferry operations at the Arctic Red River Crossing and the Peel River Crossing. Its main revenue would come from the contract with the GNWT. Grizzly has no previous offences under the *Safety Act*. It acknowledged its guilt early on and undertook to work with the WSSC and GNWT to remedy the lack of knowledge regarding the reporting. The corporation has a plan to send its management to the WSCC supervisor course. A senior member of administration, Terry Peterson, was present during the sentencing hearing.

[35] There is a joint submission for a fine of $7,500. Counsel for the Crown and Grizzly submitted that there were no reported cases of offences under section 35(3) of the *General Safety Regulations* in the Northwest Territories.

[36] I am satisfied that the jointly suggested fine is within the appropriate range for this offence and this offender. Grizzly Marine Services Ltd. is ordered to pay a fine of $7,500 plus a 15% surcharge. It shall have 30 days from the date of this decision to pay the fine.

F. APPLICATION OF FACTORS TO THE GNWT

F.1 Nature of Offence

[37] The three workers were instructed to loosen the saddle clamps on the 1 1/8" steel cable which the cable ferry used to cross the Peel River. Although I accept that the situation was unusual, i.e., debris caught on the cable which could cause it to break, the procedure itself, i.e., the loosening of clamps on the cable seems to be

entirely foreseeable and integral to the operation of a cable ferry. There should have been a safe procedure for a worker to loosen the clamps of the cable while the cable was under pressure. This procedure should have been utilized by the workers. They should have been aware of and trained in the procedure. At the very least, they should have been instructed in the procedure and supervised during its performance.

[38] In my view, the workplace incident was foreseeable. This was a cable which was in danger of breaking because of the strain on it. The effect of loosening or removing the clamps was to allow the cable to move. Given the strain on it, the movement of the cable would be unpredictable. That the clamp "exploded" and the end of the cable moved rapidly and erratically is not surprising. The failure to secure the end of the cable, the failure of the workers to wear protective gear and the failure to instruct and supervise the workers made their task risky from a safety point of view.

[39] The Court is unable to determine whether or not these failures resulted from a decision by the GNWT which was taken for cost reasons. The Court is unaware if safe procedures existed within the establishment. We do know that the three workers were instructed to perform a task which was inherently risky without proper supervision, instruction and training.

F.2 Nature of the Offender

[40] In 1998, the GNWT was the largest employer in the Northwest Territories (see *R. v. GNWT*, unreported decision, NWTTC, March 25, 1998 (referred hereinafter as the "Nanisivik Case")). Although division of the North into Nunavut and the Northwest Territories has occurred since then, there is no reason to think that this status has changed. The Department of Transportation, itself, has 302 employees. It oversees over 300 contracts. Within the GNWT, the mandate of the Department of Transportation at the time of the workplace incident was to plan, design, construct or reconstruct, acquire, operate and maintain public transportation infrastructure in the Northwest Territories, including the highway system, docks and community airports, and to regulate and license individuals and vehicles operating in the Northwest Territories. The Department of Transportation was also responsible for a transportation system that consisted of 2,200 kilometers of all-weather highway, 1,450 kilometers of publicly constructed winter roads, four ferry and ice crossings, including the Abraham Francis Cable Ferry Crossing of the Peel River, and 27 community airports.

[41] In my view, there is a fundamental distinction between a private corporate offender and a government offender. The GNWT has a responsibility to all of the

workers in the Northwest Territories. Part of this responsibility is to ensure that the lawmakers pass laws that protect the workers. The other part of this responsibility is to ensure that the operational departments of the GNWT obey these laws. Because of this twofold responsibility, the GNWT has a heightened responsibility compared to that of a private corporation. As stated by the Court in the Nanisivik Case, "If the Government is not seen to be a safe employer, then how can industry be expected to respect and to obey the law?" Similarly, the Court in *Canada (Environment Canada) v. Canada (Northwest Territories (Commissioner))*, [1995] 1 W.W.R. 17 (N.W.T.S.C.) stated at paragraph 46, "The public deserves to have its laws respected by its governments, and their officials, who owe us all no less than that."

F.3 Degree of Blameworthiness

[42] In assessing the blameworthiness of the GNWT, it is clear that the three workers were put into a risky situation by the instructions of their supervisor. Because there was a contractual relationship between the GNWT and Grizzly which was described in the Agreed Statement of Facts and referred to by counsel for the GNWT, I feel obliged to comment on the effect of this relationship as it relates to the blameworthiness of the GNWT.

[43] The Court was provided with a portion of the Operational Services Contract (the "contract") between the GNWT and Grizzly regarding ferry operations at the Arctic Red River Crossing and the Peel River Crossing. The portion provided to the Court contained the "General Conditions" of the contract. They appear to be "boiler-plate" provisions which purport to make Grizzly responsible for, among other things:

(a) obeying the instructions of the GNWT;

(b) performing the services in the contract in a safe manner;

(c) employing qualified and competent personnel;

(d) employing a superintendent to direct and supervise the performance of the services in the contract; and

(e) complying with all Territorial Acts, Regulations and Measures.

[44] In the contract, Grizzly also provides a blanket indemnity to the Government of the Northwest Territories.

[45] It is difficult to envision how the "truth on the ground" at the ferry crossing could be farther removed from the theory as stated in the contract. On July 12, 2012, it was a GNWT employee supervisor who was supervising and instructing

three Grizzly employees. There was no protective curtain between the GNWT and Grizzly as the contract states.

[46] There may be situations in which the GNWT contracts for specialized services where it has to rely completely on the contractor. The GNWT would only have an obligation to ensure that the contractor was performing the services as required under the contract in compliance with workers safety requirements. That was not the case here. In the context of the real relationship with Grizzly, it is clear that the GNWT was not relying on Grizzly's expertise. The GNWT was instructing Grizzly employees. With this instruction and supervision came the duty of the GNWT to ensure that the work was performed safely. The GNWT cannot now say that it is protected by the contract because the contract puts safety in the hands of Grizzly.

[47] To be fair, the guilty plea of the GNWT is an acknowledgment that the responsibility for supervision and instruction belonged to the GNWT in this case. There may be other contractual situations where the GNWT's obligation for ensuring the safety of workers is different than the case before this Court.

[48] Counsel for the Department of Transportation expressed a concern held by her client. I understand the concern to be as follows. A high fine imposed on the Department would be a signal to contractors of the GNWT that they are able to avoid their safety obligations under the contracts with the GNWT. If this is the result, then it is a misinterpretation of the facts of this case and these reasons for sentence. The requirement of due diligence of the owner or the contractor depends on the reality of the situation in the establishment. In the facts before this Court, the GNWT supervised and instructed the workers. By taking those actions, the GNWT assumed some degree of responsibility for the safety of the workers. The GNWT should not have sent those workers to do the work without ensuring that the workers were adequately instructed and supervised to do the work safely.

F.4 Capacity to Pay a Fine

[49] The GNWT has a large financial capacity to pay a fine. A significant fine has the effect of drawing public attention to the offending behaviour as well as creating an economical effect. The magnitude of the fine is an indication of this Court's assessment of the seriousness of the offending behaviour of the GNWT.

F.5 Maximum Fine under the Legislation and Range of Fines

[50] The maximum fine under the *Safety Act* is $500,000. In the Nanisivik Case, the GNWT received a fine of $220,000 as a result of an accident where a worker was killed when a bulldozer backed over him in the eastern Arctic. In *R. v. Carter*

Industries Ltd., 011 NWTTC 08, a worker's leg had to be amputated after a chain broke and a bridge fell on him. The corporation was fined $55,000 after a joint submission from Crown and counsel for the corporation.

[51] Crown and counsel for the GNWT have filed a number of cases with the Court. For the most part, these cases are helpful for the principles of sentencing which they contain. Since they are sentencing cases, the penalty is normally a fine. Unfortunately, because of the differences in legislation, maximum fines and definitions of offences, the cases are of limited value for determining a fine for this offender and this offence. Counsel for the GNWT suggests that the *Carter* decision is the most comparable to the case before the Court.

[52] In my view, the actions of the GNWT in the case before the Court were more blameworthy than the corporation in *Carter*, given the clear foreseeability of this incident.

F.6 Previous Convictions

[53] In the 1998 Nanisivik Case, the Department of Transportation was convicted under section 4(1) of the *Safety Act*. This conviction is an aggravating factor on sentencing.

F.7 Harm and Potential Harm

[54] The injuries suffered by the two workers are as follows. Dwight Snowshoe suffered a concussion and soft-tissue injuries to his left thigh and lower left leg. In addition, he also suffered a 1 ½" laceration to the base of his skull and abrasions to his face, back and right hip. Dwight Snowshoe has no memory of the incident or of being treated at the health centre. William Snowshoe had been struck in the buttocks by the cable and was observed limping afterwards. He refused treatment.

[55] Without intending to detract from their seriousness, these injuries can be described as significant but not permanent or life-threatening. The potential harm that could have easily occurred, but fortunately did not occur, could have been life-threatening.

F.8 Contributory Negligence

[56] In the fact situation before the Court, I find no contributory negligence on the part of the injured workers.

F.9 Post-Offence Conduct

[57] When reviewing the post offence conduct of the GNWT, I note that the Department was cooperative with the WSCC in the investigation. The GNWT indicated its intention to plead guilty at a relatively early stage and the presence of the Assistant Deputy Minister, Daniel Auger, and his remarks at the sentencing hearing indicate that the Department of Transportation is taking these charges seriously.

[58] Although it has not been charged with the failing to report offence, it is aggravating that the GNWT did not report this accident of a serious nature to the WSCC within the 24 hour time limit.

[59] During the sentencing hearing, the Court was provided with a document dated January 2014, entitled "Contractor Safety Orientation & Information Guideline". This appears to be an initiative by the Department to better monitor the safety responsibilities of its contractors including contractors such as Grizzly under the GNWT's Operational Service Contracts.

[60] I am not satisfied, however, that this initiative, although laudable, would have affected the events of July 12, 2012. There has been no explanation as to why a GNWT employee was directly instructing and supervising Grizzly employees. If the reality on the ground is different from the theory of the contracts, then further intervention has to be made other than simply monitoring contracts. If a GNWT employee can jump in and supervise and instruct the contractor's employees to do something unsafely, then the workers remain in danger regardless of what the contracts say or how they are monitored. I cannot say that this continues to be a problem but there has been no evidence presented to the Court which convinces me otherwise.

F.10 The Balancing of Factors

[61] The balancing of the above-noted factors to determine an appropriate sentence is not a mechanical process. There is an interdependence among the factors. Together, these factors provide the description of the offender and the offence necessary for sentencing. Each factor cannot be considered in isolation from the other factors; nor does one factor override all others. In the end, all of the factors have to be considered to determine a penalty which will satisfy the sentencing objectives of deterrence and public denunciation given the offence and the offender before the Court.

G. SENTENCE

[62] Recognizing the importance of deterrence and public denunciation in sentencing for offences under the *Safety Act* and considering the factors indicated above, the Government of the Northwest Territories shall pay a fine of $75,000 plus the applicable 15% victim of crime surcharge. The GNWT will have 30 days to make the payment.

Garth Malakoe
T.C.J.

Dated at Yellowknife, Northwest Territories, this 27th day of June, 2014.