

LRB File No. 165-20



**IN THE MATTER OF AN APPEAL OF THE DECISION OF THE OCCUPATIONAL
HEALTH AND SAFETY DIVISION IN REPORT NUMBER 1-00011438 AND
NOTICE OF CONTRAVENTION**

BETWEEN:

WRIGHT CONSTRUCTION WESTERN INC.

The Appellant

AND

DIRECTOR OF OCCUPATIONAL HEALTH AND SAFETY DIVISION

The Respondent

Decision appealed from: Occupational Health Officer, Dylan Holzer, dated October 6, 2020.

Date of Hearing: April 21 and 23, 2020- via Zoom Video

Adjudicator:

Marlene Weston

For the Appellant:

John Agioritis
MLT Aikins LLP
Suite 1201 – 409 3rd Avenue
Saskatoon, SK

For the Respondent:

Steven Wang
Ministry of Justice
1870 Albert St.
Regina, SK

DECISION

I Introduction and Background

1. On January 17, 2021 I received notification that I had been selected as the Adjudicator for the appeal of the written Report and Notice of Contravention issued by the Occupational Health & Safety Officer, Dylan Holzer, dated July 21, 2020. A Notice of Appeal & Written Representations dated August 6, 2020 was filed by Wright Construction Western Inc. on that date.
2. The written Report Number 1-00011438 and Notice of Contravention filed against Wright Construction Western Inc. was a result of an inspection conducted by

Occupational Health & Safety Officers, Dylan Holzer and Beth Stiefel, on July 21, 2020 on a property under construction by Wright Construction Western Inc. located at 600 5th St. N.E., Weyburn, Saskatchewan. The inspection was carried out in accordance with the provisions of ***The Saskatchewan Employment Act Section 3-63*** for compliance with ***The Saskatchewan Employment Act and The Occupational Health & Safety Regulations, 1996***. Wright Construction Western Inc. was the Prime Contractor with regards to the Work Site.

3. The Notice of Contravention stated that the Employer had contravened ***The Occupational Health & Safety Regulations 1996 – Regulation 133 (6) and (7)***. The applicable Regulation reads as follows:

Regulation 133 - Item title: Risk from vehicular traffic

(6) Where there is or may be a hazard to a worker from traffic at a place of employment other than a public highway, an employer or contractor shall develop and implement a traffic control plan to protect the worker from traffic hazards.

(7) A traffic control plan required by subsection (6) must:

(a) be in writing;

(b) be made readily available for reference by workers at the place of employment; and

(c) set out, where appropriate:

(i) the maximum allowable speed of any vehicle or class of vehicles, including powered mobile equipment, in use at the place of employment;

(ii) the maximum operating grades;

(iii) the location and type of control signs;

(iv) the route to be taken by vehicles or powered mobile equipment;

(v) the priority to be established for classes of vehicle;

(vi) the location and type of barriers or restricted areas; and

(vii) the duties of workers and the employer or contractor.

4. On August 6th, 2020, Ryan Campaign, Safety Manager for Wright Construction Western Inc., filed a Notice of Appeal & Written Representations with the Director of the Occupational Health and Safety Division appealing the decision rendered by OHS Officer, Dylan Holzer and the Notice of Contravention. Contained in the Notice of Appeal were:

“II. The Contravention

The Contravention alleges that “the employer did not develop and implement a traffic control plan to protect workers from traffic hazards’ contrary to subsections 133 (6) and (7) of the OHS Regulations.

III. Grounds of Appeal

Wright asserts that it did not contravene subsections 133(6) and (7) of the OHS Regulations and takes this appeal on the following grounds:

- a. Wright had a traffic control plan in place and the requisite administrative controls to ensure the safety of workers working in any high traffic areas throughout the Work Site; and
 - b. The Officer's decision was not based on reasonable, credible or documented evidence. "
5. Ray Anthony, Director of Occupational Health & Safety Division, responded to the Notice of Appeal filed by the Safety Manager, on October 6, 2020. Mr. Anthony noted in his response under the heading of Discussion the following:

" In the Notice the Officer indicates that he reached his conclusion that a traffic control plan was not in place on the basis of his inquiry as to the existence of the plan. The field notes indicated that this inquiry was made of the WCW site superintendent who indicated that no traffic control plan was in place at the site. I note that there is no information in the statements submitted by WCW that contradict this statement in the notes of the Officers. I therefore reject the argument of WCW that the Officer predetermined an outcome prior to issuing the Notice and find that the Officer's decision to issue the Notice was reasonable in these circumstances. "

The Director also noted that the document submitted by WCW as the relevant traffic control plan did not address subclause 133(7)(c)(vii) of the regulations and that the Contravention pursuant to that clause was warranted. In his Conclusion he amended the Notice of Contravention 1-00011438 by noting a contravention pursuant to subclause 133(7)(c)(vii) of the regulations.

6. On October 30, 2020, Ryan Campaign filed a response to the Decision by the Director dated October 6, 2020 on the following grounds:

"First, your decision to amend the Contravention was made without affording Wright the opportunity to make further submissions on the specific issues on which you amended the Contravention. It was procedurally unfair...

Second, it is not a requirement of the OHS Regulations that a traffic control plan be contained in a single document. The only requirements for a traffic control plan, as set out in ss 133(7) (a-b), are that it be in writing and it be readily available for reference by workers at the place of employment. ... As a result, Wright submits that a traffic control plan can be contained in a number of documents provided that the documents are set out in writing and are readily available at the worksite.

Third, it is not Wright's submission that the traffic control plan was contained solely in the document attached as Tab H to our written submission. Rather, a

Wright's traffic control plan for the worksite is contained in this document and our Safe Work Practices ("SWPs") and Safe Job Procedures ("SJPs"), which were attached to our written submissions at Tab F. In essence the traffic control plan is the sum of parts or Wright's overall safety framework."

7. Also on October 30th, 2020, the legal counsel engaged by WCW, John Agioritis, filed a Notice of Appeal of the Decision of the Director of Occupational Health Safety Division. He stated the following grounds for the appeal:
 1. The Director erred in finding that Wright Construction contravened s 133(7)(c)(viii) of **The Occupational Health & Safety Regulations, 1996, RSS, c 0-1.1 Reg 1 ("OHS Regulations")**, which was not specifically raised in the original Contravention, and after amending the Contravention on his own motion, without giving Wright the opportunity to make further submissions in response.
 2. The Director erred in finding that Wright failed to maintain a traffic control plan which set out the duties of workers and the employer or contractor contrary to s 133(7)(c)(vii) of **The Occupational Health & Safety Regulations, 1996, RRS c 0-1.1 Reg 1 ("OHS Regulations")**. In particular, Wright states that:
 - (a) the Director erred in finding that the Contravention was based on reasonable, credible and documented evidence;
 - (b) the Director erred in finding that the traffic control pan had to be contained in a single document;
 - (c) the Director erred because Wright did set out the duties of workers and the employer or contractor in its Safe Work Practices and Safe Job Procedures; and
 - (d) in the alternative the Director erred in finding that a separate statement of the duties of workers and the employer or contractor, apart from the duties of workers and the employer or contractor in its Safe Work Practices and Safe Job Procedures, was "appropriate" or necessary in the circumstances. "
8. The Director then informed the Registrar of the Labour Relations Board that an appeal had been filed and requested that an Arbitrator be appointed to hear the Appeal.
9. Following my appointment as Adjudicator on January 17th, 2021 in accordance with section 3-54 and 4-3 of **The Saskatchewan Employment Act**, I obtained the OHS File compiled in this matter from the Director and provided both parties to the Appeal with a copy of the documents.
10. I arranged a Pre-hearing Meeting with John Agiortis representing WCW and Steven Wang, Legal Counsel for the OHS Division, which was subsequently held on Thursday, February 18, 2021 via ZOOM. The parties agreed that the matter would proceed to a Hearing, the details of which were:
 - Date: April 20,21 and 22, 2021
 - To be held via ZOOM..

I distributed Process Directions to the parties. There were arguments from the parties regarding which process would be used at the hearing. I determined that there would be argument heard at the beginning of the hearing as to whether the Process Directions I had distributed would be used or if the matter was to proceed as a Trial de Novo.

11. Parties exchanged documents on Monday, April 19th, 2021.
12. The Hearing was held on April 21 and 23, 2022.

II Facts

13. The parties hereto did not provide an Agreed Statement of Facts. The facts regarding the progression of events are set out in Section I Introduction and Background in this document.

III Evidence

14. **The Hearing:**

A. Preliminary Statements:

1. ***Is the process to be used that of a Trial de Novo?*** The parties presented arguments as to whether this Hearing was to be held as a Trial de Novo. The Adjudicator's position was that this was to be heard as an appeal rather than a Trial de Novo. However, the Respondent argued that this is a Trial de Novo because original evidence is being heard. On that basis, the Adjudicator ruled that the hearing would be proceed with the Crown presenting evidence first.
2. ***The Respondent wanted to examine a witness that is an employee of Wright Construction*** – Matthew Roy. The Appellant agreed to call Mr. Roy as a witness and the Respondent would have an opportunity to cross examine him.

B. Respondent's Opening Statement

1. Stephen Wong opened with this hearing is to Appeal the October 26, 2020 decision of the Occupational Health & Safety Officer, Dylan Holyk. The issue is whether or not Wright Construction had a Traffic Plan according to Regulation 133(6) and (7). Evidence of witnesses for the Respondent will establish that they did not have a proper traffic plan at the time of the inspection.

C. Appellant's Opening Statement

1. John Agioritis maintains that Wright Construction had a traffic safety plan that complied with all the requirements of Regulation 133 at the time of the inspection by the OHS Officers. The Appellant's case will provide the following:

- The first witness for Wright Construction will go through the plan.
 - The second witness will give evidence that Officer Holzer was prepared to offer a deal 'to look the other way'. Schlosser will speak to the plan and that OHS Holzer was not concerned with the exterior but with the interior.
 - Nelson will testify that orientation given to new employees includes a site orientation including the Traffic Control Plan.
 - Witnesses will testify that the Interior of the site is constantly changing and workers are constantly informed through hazard assessment and tail gate and end gate meetings. All witnesses will say there is constant awareness of safety and control of the traffic on site
 - Witnesses will testify that the traffic safety plan was on the Board at the time of the inspection.
2. According to the OH&S regulations what is required is that the plan be appropriate for the work site. The Director of OH&S understood that there was a traffic control plan in place but it was lacking specificity in only one area. The Respondents disagree with that understanding. Standard operating procedures were provided to the workers on site regarding all areas.

B. Respondent's witnesses

15. OHO Dylan Robert Holzer's Testimony

- a. Officer Holzer attended WCW to conduct a regular inspection along with Officer Beth Getz. Weyburn is in his area. He was asked if he was looking for something in particular. His response was no. He uses a standard inspection.
- b. OHO Holzer was asked what time he arrived at site. He responded he was not sure but before lunch. He recounted the following chain of events:
 - i) He drove in with Officer Getz and parked in the new parking lot and went to the Construction Traylor. He asked the staff for all the paperwork – fire plan, etc.
 - ii) He went with Les Schlosser, General Foreman, to do a general tour. They did a tour during which he noticed that there were multiple pieces of equipment moving about the site. He asked for a Traffic Control Plan. Schlosser asked "what's that?" There was not one readily available. He showed Schlosser Reg. 133. They did not have it.
 - iii) The Safety Professional was called and met with Officer Holzer. Officer Holzer showed him Regulation 133. The Safety Professional handed him a document and it was a Diagram of the site but it was not a traffic control plan. Once again OHO Holzer stated the regulation and made the request. He discussed with them to make sure they were not being blind-sided. He told them they would have a Notice of Contravention and he walked out.

iv) Things that Officer Holzer found were noteworthy: 1) 2 workers not wearing safety glasses, and 2) there was no traffic control plan with heavy equipment moving. It was recorded in his notes along with the following:

- 1) The Site was monstrous. He estimated half a city block in size.
- 2) Officer mentioned power equipment moving in the worksite. He couldn't estimate numbers, but there was more than 1.

v) Holzer testified he was handed a document during the inspection. It was a site document, the same one given to the City of Weyburn. It was one piece of paper, large size, with site shown. This was the only document he was shown. It was a bird's eye view where the construction was. It was just a diagram. Officer Holzer asked for a Traffic Control Plan. What he received was not an accurate representation of what the site looked like that day – entrances, exits, no written policies. He stopped asking at that point because this document was not a Traffic Control Plan. He was shown Exhibit C3 which was a representation of the site when he did the inspection that day.

vi) After the inspection Officer Holzer testified that he issued the Notice of Contravention in his truck and he emailed it to the Employer and the Division.

vii) Wang showed Officer Holzer a document entitled "Section 3 – Safe Work Practices Wright Construction". Officer Holzer did not recognize the document.

16. Cross Examination of Officer Holzer

John Agioritis reviewed OHO Holzer's background as an OHO. OHO Holzer testified as follows:

- a. Holzer was in his 3rd year as an OHO as of May 21, 2021. (Agioritis noted that In July 2020 he would have been in his 2nd year as a field officer.) His area is the southeast Saskatchewan and his specialty is oil and gas. OHO Holzer commented that all officers are trained the same, but he has more training in oil and gas. Agioritis asked if he has to switch gears from oil and gas to a different kind of inspection. Holzer's answer was that inspections don't change. He did not specialize only in oil and gas. In a full year, 2020, he did not have an oil and gas inspection.
- b. Holzer was asked if this was the first site inspection of 2020? Holzer had inspected this site once before in early January. Did he see a Traffic Control Plan? He responded nothing was moving so he does not remember asking for a Traffic Control Plan. He was asked if he requested the Admin policies. He was questioned if he usually asks for a Traffic Control Plan? Holzer responded that it depends on what is being done on the site. It is a snapshot in time. That day he saw vehicles moving and so asked for the Traffic Plan. Agioritis asked if he had issued a contravention for failing to have a TCP in January, would he remember coming back to see if the convention had been met? Holzer said yes.

- c. OHO Holzer was asked if he had a diploma for training in oil and gas? He replied he had a Diploma from University of New Brunswick. He is finishing off his education. He is not yet a member of the Board of Canadian Registered Safety Professionals. He is working on his Bachelor of Occupational and Safety. He works with CRSPs but he is not aware of their standards for doing inspections.
- d. Agioritis cross examined OHO Holzer re Chain of Events to which Officer Holzer had testified in Chief:
- OHO Holzer testified that he drove from Regina in a government truck. He didn't remember any stops. He drove in a separate vehicle from Officer Getz.
 - When reviewing the Screen Share shown earlier, he was asked if he had looked at OHO Getz's notes. Holzer responded that he did not look at her notes. Agioritis commented that in her notes she said she threw her notes on Holzer's desk. OHO Holzer said that when their decisions are appealed, they are supposed to submit their notes for photocopying.
 - Agioritis asked if Officers Holzer and Getz met in Francis? When did they meet at the construction site? OHO Holzer explained that when his notes say that he started his day at 7:00 or 7:30, he sometimes does paperwork before he leaves the office. He did not do any other inspections along with the inspection of WCW.
 - Agioritis noted that It would have taken OHO Holzer 2 to 3 hours to do the inspection. If he left Regina at 7:00 am he would be in Weyburn by 8:30 am. Agioritis asked when he started his inspection. OHO Holzer said he did not record the time he got to the site and when he left. Agioritis asked how long the inspection took because it was a huge site. Where did the tour take him? OHO Holzer noted he initially went to the trailer first. Agioritis asked if OHO Getz was with him. OHO Holzer said he couldn't recall.
 - Agioritis asked, "What did you inspect?" OHO Holzer said he saw a worker without safety glasses. OHO Holzer asked if safety glasses should be worn. The answer from Les Schlosser was yes. The worker got his glasses and put them on.
 - Reviewing the second site plan, Exhibit C2, Agioritis asked if he was in the north side where it says Site Trailers Muster Point. OHO Holzer could not remember which trailer. Agioritis asked, "What path did you take?" OHO Holzer responded, "The brown line in the interior of the school. We went outside only a little. They spent the majority of time explaining what the Traffic Control Plan was - 50% inside the school building and 50% explaining the Traffic Control Plan."
 - Agioritis introduced the blueprint and asked OHO Holzer to point out where they went. OHO Holzer said that he went where the work was taking place. He couldn't confirm the pathway. He could only confirm that he was in the building.
 - Agioritis asked about the safety glasses. OHO Holzer said that the worker that was not wearing his safety glasses was a subcontractor. He did give the sub contractor a Notice of Contravention at the same he did the inspection with Wright Construction.

- Agioritis asked, "Did you see a bob cat or a scissor lift in the building?" The response was no, only outside. Agioritis asked if he took any photographs? The answer was no. Agioritis asked if there was some moving equipment or just stationery equipment? OHO Holzer said there was some was moving equipment. Agioritis asked, "You were not looking at traffic control in the interior?" OHO Holzer responded no, but the Traffic Control Plan is for the whole site, wherever there is moving equipment."
- Agioritis asked, "Where did you ask for the Traffic Control Plan?" Response was, "In the office." Agioritis asked, "This Is the newer plan. Was this the one that was given to you?" OHO Holzer said that whatever was shown to him was in grey scale, not in colours. Agiritisalso asked, "Was the legend on the plan shown on the screen share the same as what is shown to you now?". The response was, "I do not remember what I was shown only that it did not meet the requirement of the Traffic Control Plan."
- Agioritis inquired, "Did you ask them to provide a copy of the safety manual for your review?" The Response was "No, I did not ask for any of the safety manuals, only the Traffic Control Plan." Officer was asked, "Did Schlosser say that they had never heard of an interior Traffic Control Plan because the interior is constantly changing?" OHO Holzer responded, "There was no Traffic Control Plan for the entire site within the Site Fence."
- OHO Holzer was asked about which copy of the Site Plan he was given. He answered that he did not take a photo of the document he was provided. The document did not meet the regulations. The observation was that the plan did not meet the regulations. Agioritis noted that the Notice of Contravention does not have a report of the conversations.
- Agioritis asked whether there was a document that satisfies all the parts of Regulation 133. OHO Holzer stated that it was not in writing and was not readily available for employees. He did not record specifically the deficiencies other than it was not available. Agioritis asked if it was supposed to be a traffic control plan for the entire site? OHO Holzer said yes. The Traffic Control plan is for the whole site. Agioritis said, "You were provided with a map of the site?" The response was, "A map is not a sufficient traffic control plan. Also it was not readily available". A document was presented to him by Agioritis, and he was asked if this was this it? OHO Hozer said no. They called the Safety Professional and it was explained to him. He did not have a document. There was nothing in writing on the OH&S Board.
- Agioritis inquired, "Did you say to Mr. Schlosser that you had to find a contravention here somewhere?" OHO Holzer did not recall the conversation, but he would never have said that. He had found two contraventions, but he only wrote up one. He did say, "Which one are we going to be working with?" Agioritis noted, "One was for a subcontractor?" The response was that Wright Construction had the greatest degree of control on that site so he could write a contravention to WCW for the subcontractor. .
- Agioritis asked, "What were the deficiencies?" The response was: It was not in writing, such as priority of Vehicles were not specified as to right of way. None of these things were available. Agioritis questioned, "You were looking

for something?" Response: Compliance with Regulation 133 (7) (c) where appropriate. He stated, "You are trying to show me something that does not satisfy the requirements. You are trying to show me a document I don't remember seeing." Agioritis asked, "Does this document cover everything that is required?" OHO responded, "Read the regulation. Where there is a hazard to a worker." Agioritis asked, "What is insufficient about the Site map?" Holzer responded, "Deficiencies: 1) priority of vehicles 2) location and control signs. There only needed to have the deficiencies – in writing, and not readily available."

- There was a discussion about what he was shown. Holzer testified that he does not remember what he was shown, but he stopped taking notes when the document did not satisfy the requirements of not in writing and not readily available so there was a contravention. Agioritis commented that looking at the 2 maps – they are almost identical.
- Agioritis noted, that in reference to the Government of Saskatchewan document, Notice of Contravention – page 2 "The opinion must be based on reasonable, credible and documented evidence. You did not take pictures. You cannot say what document you were shown."
- Agioritis asked, "Did you talk to the Safety Professional?" OHO Holzer said that he told him what the deficiencies were. The Appellant asked did he not say that there were tail gate meetings, end gate meetings and other meetings about safety daily. There was no response.

Agioritis asked, "What did you say to Mr. Schlosser? Did you say that there are 2 contraventions, which one are we working with? I will give you a deal? The safety glasses or the Traffic Control Plan. Did you propose to compromise your own opinion on the Traffic Control Plan?" Holzer replied that he can use his officer's workplace discretion to decide what Notice of Contravention is issued. He was trying to work with the Employer. He could give them two Notices or just the Traffic Control Plan Contravention.

- The next question by Agioritis was about Priority Employer being a designation by the OH&S. OHO Holzer replied that the subcontractor was a priority employer, but they are not his priority employer.
- Agioritis asked, "Why did you not issue a Notice of Compliance on the date of the inspection? The response was that the Employer was not present. They usually give it to the employer to make sure that it is received."

17. Redirect Examination of OHO Holzer:

a. Steven Wang then asked a question of OHO Holzer in Redirect as follows:

- Agioritis referred to OHO Holzer's discussion with Les Schlosser. In his testimony the Officer had said that there were 2 contraventions. OHO Holzer responded yes. Schlosser advised that the worker was not WCW's employee. Agioritis asked if OHO Holzer could have issued a Notice of Contravention to WCW for the safety glasses as well as to the subcontractor. The answer was Yes.

18. Officer Beth Getz (Stiefel)'s Testimony

- a. Mr. Wang asked if OHO Getz had a discussion with anyone else about this inspection? She replied yes with Officer Holtzer to refresh her memory.
- b. Wang asked Officer Getz to state her position with OH&S. Response was that she is an Occupational Health & Safety Officer and has been in the position for 2 years.
- c. Wang asked about the events surrounding her inspection which she related as follows:
 - She went to Wright Construction in Weyburn.
 - She got there about 11:00 am.
 - She went to the Trailer and reviewed the OH&S Minutes.
 - She grabbed a subcontractor to do an inspection. She also had the QSI, Officer Holzer and Les Schlosser with her when she went to do the inspection.
 - She acknowledged that all 4 of them were there the entire time.
 - Officer Getz was asked if they had a discussion about the inspection? She answered, yes in the parking lot. She confirmed it was all of them.
- c. Officer Getz was asked if she noticed any unusual things on the site. She said Yes. There was Heavy equipment – scissor lifts, genie lifts, articulating boom lifts, skid steers, telehandlers, trucks, vehicles, a paver with roller. She noted two workers without safety glasses from Southern Interiors, a subtrade.
- d. Wang asked if anything was discussed in the trailer after inspection? She answered that Schlosser said they did not have anything in writing for a Traffic Control Plan but Les said he would see if the Safety Professional had anything. He called the Safety Professional to come to the trailer. They called him the Safety Coordinator.
- e. OHO Getz said they started looking on the computer to see if they could find a document that would be a Traffic Control Plan. They pulled up a Site Map that was originally sent to the City of Weyburn for their information. There was again, no restricted areas, no vehicle designations. She was asked if she remembered how long the document was? She said it was just one page. It was shown on the computer. Wang pulled up Exhibit C2 on the shared screen and asked if this was the document? OHO Getz said no. Exhibit C3 was shown to her and she replied that was not the document either. She described the document as in black and white – no brown and blue travel paths and no other colored writing.
- f. Officer Getz was asked if she saw Exhibit C6 – Wright's Safe Work Practices Polices? She replied she never saw anything like that.
- g. Wang asked what happened next. Officer Getz replied that Officer Holzer said that the document did not satisfy our requirements. Officer Holzer and Les Schlosser continued to talk after she left to do the write up on QSI. She was asked how long did she wait for Officer Holzer? She replied about 5 to 10 minutes.

- h. Officer Getz was asked if she looked at the OH&S Safety Board? She said yes. She was asked if there were any documents that looked like Exhibit C on the Safety Board? She replied, no, not that she recalls.
- i. Officer Getz was asked where did she go after? She replied to her truck. She was asked if she had any further interaction with Wright's employees? Her response was no.
- j. Wang showed Officer Getz her notes and asked when she took them? She replied that she starts her shift, she writes her start time and her destination, and takes the notes as her day progresses.

19. Cross Examination of Beth Getz:

- a. Agioritis asked about Officer Getz's credentials:
 - Officer Getz said that at the time of the inspection she would have been 2 years.
 - She has specialized training as a National and Saskatchewan Certified electrician.
 - Were you specializing in 2020 on construction sites? She replied no. She was doing anything and everything.
- b. Agioritis asked is she went to do an inspection on an employer. Her answer was yes, on a priority employer. She went to see QSI. The Appellant asked how did she know about QSI? She replied, from their system. She did not know what phase they are at.
- c. Agioritis asked about the timing of the event of the inspection:
 - Did she leave home in Regina? No she lives in Balgonie.
 - Did she have anything else to do that day? Not that she recollects.
 - Agioritis showed Officer Getz Exhibit C7 Her notes. They showed that Officers Getz and Holtzer met in Francis. It Took 2.5 hours to get to Weyburn so they would be close to 11:00 am.
 - They were not seeing another Employer that day.
 - The Appellant asked when you did the inspection, did you go to QSI's trailer. She replied no. Les called the Subtrade and they came over to the Wright Construction Trailer. Did you see the exterior as well? She replied, we did .
 - Where was WCW's trailer? The answer was that the trailer was on the north of the school. Agioritis asked, "So you went right from the WCW trailer into the school. Did not go into the shared space?" No.
 - Agioritis asked where she saw the equipment? She said she saw it in the shared space outside. She saw skid steers, vehicles, dozers, packers. She saw lifts in the interior for drywalling. She would not categorize the interior equipment as a hazard for speed.
 - Why was the QSI person accompanying them? A. They were visiting various areas that QSI people were working.

- d. Agioritis asked other questions related to the inspection:
- Were you present when the contravention was spotted re safety glasses? She responded that she was in the hallway in the school.
 - Did you hear officer Holzer say we have got to find a violation somewhere. She replied no she did no, not while she was present.
 - Did she take any photos, document anything else.? She replied no.
- e. Agioritis asked Officer Getz to explain various notations in her notes:
- There was a note that she observed 2 workers w/o safety glasses while mixing mud. She only issued 1 notice of contravention and that was to Integrated Interiors. The other was for another company. 11440 was for Integrated Interiors. 11438 was to Wright Construction. This was Officer Holzer's contravention not hers.
 - She noted that Holzer inquired of Wright Construction if there was a written TCP for workers. Schlosser said no but they talk about traffic safety every morning. That discussion was held outside the trailer.
 - Agioritis said it was clear that the specific issue of where the traffic was was for the exterior. She replied that there was more concern for the exterior because of the larger equipment. But it needs to be for the whole site.
 - What was she shown? She said it was Exhibit C 3, but did not have the colours on it and the lines of traffic. It was on the computer.
 - Regarding the Safety Board that was developed by Wolfcroft signs what was on it? Officer Getz remembers the Board, but it was not full. Was there grading going on? Was it significant enough to be of concern to her? She replied no.
- f. Agioritis asked OHO Getz about what occurred in the trailer. She replied Les Schlosser, Holzer and the Safety Coordinator were with her. They were in the office which was separated from the lunch room so she did not make note of who was coming or going. Exhibit C2, in her notes, Holzer had emailed her the document. She did not remember it. She did not remember it was for the City of Weyburn until Holzer had commented in his email that he thought it was. Exhibit C 4 is an email chain about the document for the Traffic Plan. She asked officer Holter about some of the events to refresh her memory – about the document that they got from Corporate safety and asked for it.
- g. Agioritis asked the rest of the inspection:
- Were there speed signs? No
 - Did you take pictures? She replied no.
 - Did you leave Officer Holzer alone in the trailer at any time? She said yes, at the end.
 - Did you hear Officer Holzer say 'I will make you a deal?' She replied, no
 - Were you asked by one of the WCW staff if Holzer could do that? She replied, no.
 - Did you meet with Shawn Galler when you were there? Response was no.

- Did you meet with Christian Nielsen? She replied yes that he was in the trailer, and he was the Site Manager.
- You had 2 reports to write in your truck by yourself? She said yes. She was by herself in her truck for 30 to 40 minutes to write the Notice of Contravention and the Notice of Compliance.

20. Redirect Examination of Officer Getz

- a. Wang advised that he had no redirect.

21. Matthew Roy's Testimony

- a. Roy has been the Project Manager at WCW for the past seven years. He has a BSC in Engineering. His responsibilities include facilitation of delivery of the project based on the construction documents.
- b. Roy described the site as a new school and recreation centre built on the site of a previously existing school.
- c. Roy had responsibility for a high level of safety on the site ensuring that safe practices are being done. He was involved in setting up a safety and traffic control plan. This was done in January 2019. The document is housed on various servers and a hard copy on the safety board on site located on entering the site office. He described the document as a site plan with fencing, safety, muster point, site trailers and traffic routes on site. It was prepared with his team, reviewed with owners and stakeholders.
- d. The Traffic Control Plan is the Site Map on the Screen Share shown as Exhibit C. There is a safety sign with speed limits and restricted areas. Blue lines denote the quickest way for emergency vehicles to get to areas.
- e. Roy identified a photo of the Safety Board which is a template in all offices and trailers. It is updated every two weeks on average. The Traffic Control plan would be located on the area for the Site Map. The Plan is communicated by orientation when suppliers and contractors come on site.
- f. Exhibit C6 – Section 3 – Safe Work Practices was put on the screen share. Roy identified it as part of orientation for anyone on site. Documents are located on the safety board. The policies are communicated by toolbox meetings, weekly meetings with site crew where they review any current on site issues, near misses, site hazards and any relevant on site work practices. They also cover a site review of Personal Protective Equipment, equipment on site, barriers, potential hazards, powered equipment in use either on site or inside the building.
- g. Roy was asked if he interacted with site crew on July 21, 2020. He replied he was in Saskatoon. He was notified that OH&S was on site. He was requested to supply the site plan to Ryan Compain. He included the email to the site team. It

was the existing Site Plan. They were In the midst of moving the buildings around the site. 12:10 pm is date stamp. The email went to Les Schlosser, and others. The document that was sent with this email was the site plan. The second email delivered to Schlosser had the revised plan attached and contained relocation of site trailers moving from southmost part of site and the Sea Cans as well. It closed the person gate at the south end of the site. No further changes were made. There was 11 minutes between the sending of the two site maps.

22. Cross Examination of Matthew Roy:

- a. Roy confirmed that he was the Project Manager on July 20, 2020.
- b. He also confirmed that Wright Construction had control of the worksite. Workers on site could be numbered from 10 to 100. He could not estimate the number on site on July 20, 2020.
- c. Roy listed the kinds of vehicle on site: work trucks limited to designated parking areas on site; excavators on site when excavation being done. He was not sure if there were skid steers on site, but likely there were. He was asked if there were scissor lifts on site. He couldn't say for sure but there was some sort of lift equipment. Also there are soil compactors on site. Agioritis asked are the work trucks greater than 1 ton. The response was not typically. Typically delivery vehicles would be on site which are over 1 ton. There is power mobile equipment such as skid steers, life equipment, compactors.
- d. Agioritis asked if there are there any signs around the site such as barriers, speed limit signs. Roy said yes, but no traffic signs inside the work site. Ryan Compain contacted him about the traffic control plan. The document provided he referred to as a Site Plan.
- e. Roy was asked If a worker approached him about safety procedures, would he be able to answer his question. If a worker asked for traffic and speed signs where would he send him? Roy answered that he would direct him to the site plan. They use the site plan and traffic control plan interchangeably. That information would also be found in the Safe Work Procedures.
- f. Roy was asked about duties of workers in respect to traffic. Roy responded that it was covered in orientation. If nothing is found in WCW policies, they would be referred to the OH&S regulations which are very detailed. The orientation document includes a video. Then site specific items would be reviewed, and finally they conduct a written examination. Also covered are any documents that supplement the orientation. They review the OH&S Safety Board in the Construction Trailer.
- g. Is there a specific document that outlines the duties of the Employer with respect to traffic. Roy said it would be in OH&S Regulations. He is not 100% fluent in the Safety Manual, but he knows where to find them and where to reference them.
- h. Agioritis asked about the Fall Protection Plan – what is it? Roy responded that it is site specific for a hazard assessment of the work site , procedures and equipment. Fall Protection Plan is on the Safety Board Template. The Plan

would be posted on the Safety Board for their own employees. Workers for contractors would have the subcontractor's plan.

- i. Regarding emails there were only 2 documents provided. Roy was asked when the trailers were moved to the second location. He responded that it was the day before the inspection. Agioritis asked what about the Sea Cans. The response was they were moved the same day.

23. Redirect Examination of Mathew Roy

- a. Agioritis pulled up Exhibit A2 on Screen Share and asked, "Does Wright Construction have varying sizes of jobs?" Roy responded yes. There were no other questions.

B. Appellant's Witnesses

24. Shawn Goller's Testimony

- a. Goller testified that he had been working for WCW for 5.5 years. He was one of the superintendents on July 20, 2020 working on the Weyburn Complex.
- b. He has Safety Training and became a Journeyman Carpenter 2012, OHC Level I First Aid 1, Saskatchewan Construction on line Training. He has certificates for machinery operation.
- c. His Job Description at Weyburn was to oversee the day to day workforce, taking care of safety concerns and doing the paperwork. He dealt with subtrades and their foremen, and consultants. He was second in command on the site. Senior Superintendent was Les Schlosser. Matthew Roy was his boss on site.
- d. Before subtrades come on site, all the safety practices are reviewed. First day on site they view a 20 min video, go through a checklist, and take a short quiz, They would take them for a review of the sites including muster points, bathrooms, smoking areas, and traffic concerns. The foreman usually takes them. If there was a specific concern that related to their area they would orientate the subtrades to that. They were given the safe work practices, Hazard assessments, and and tool box meetings.
- e. Agioritis asked how traffic safety was addressed at the Weyburn site. Goller said he did the site map with Les Schlosser. They laid out a route where traffic would drive around the site. Mathew Roy put their work on paper in a proper form. They consulted with Weyburn Fire Chief to determine what was the best route for fire trucks.
- f. Agioritis asked Goller to describe the site. Goller said it was 2 blocks long x 1.5 blocks wide, all fenced in with locking gates. The building was about ¼ of the site. There was a lot of interior construction going on at first. Work was constantly evolving. July 2020 there would have been drywalling interior and construction of mill work in the school. In the rec centre there was not as much work. They were doing the subbase for the paving. It was completed and they

were waiting for the paving crew to do the paving. Alberta Paving was not on site yet.

- g. Goller advised he spends 14 hours /day. July 20, 2020 he was working at the site.
- h. Goller was asked by Agioritis how would he control traffic? He responded that it starts with the Site Map, and it goes from there. Every day we have a tailgate meeting/end gate meetings to determine what the crew would be doing for the day. They have a list of what every member is doing. After that he points out hazards they may encounter during the day. They will attach names of trades to the lists and what they would be doing. Orientations are done at 7:15 am or when the trade gets there. They hired an Onsite Project Coordinator, Christian Nielson.
- i. Agioritis asked if Exhibit C2 is this the map that he and Les Schlosser would have prepared. Goller answered yes and describe the Site Map. It has:
 - Red Line denoting the chain link fence – west side and north site gates.
 - Blue shading showing predetermined access route that the fire chief wanted them to set out. There is a fire hydrant. If there was an emergency, that area would have to be clear.
 - Pink shading setting out vehicle travel paths.
 - West gate where there are phone numbers for WCW and subtrades, secondary muster point, and a speed sign.
 - Other signage on the site trailer which are the same signs that were outside the fence were on the trailer. Signs are posted on all the doors specifying whether there was work happening outside.
 - Trailers were moved the week prior to the inspection.
- j. Agioritis asked about Exhibit C3 which has changes to C2. There were 2 changes:
 - The trailers were in a different area as well as the Sea Cans. When did he receive this document? Response was July 20, 2020.
 - The jog in the fence was to allow parking for the swimming pool.
- k. Agiorities showed Goller pictures taken of the Site which included:
 - Southwest corner where the fence was jogged in.
 - On the fence are all the signs.
 - Sign at the gate going in setting out PPE requirements, emergency contacts, and speed limit sign.Goller confirmed that the Photos were taken recently.
- l. Packages given to the Subtrades at orientation contained: PPE Requirements, safe work practices re skid steer use, work platforms, working with heavy equipment, working with public around arial platforms.
- m. Agioritis asked if Goller was familiar with Exhibit C6 – Safety Procedures. Where would the procedures be located? Goller replied that they were in our safety

manual. This was given to subtrades. Computer program access to the Safety Procedures was also given to any of the subtrades. The Safety Manual was on the wall in the trailer. Goller gave an example which was "Backing up equipment and vehicles" as explained requiring a backup alarm and having a spotter. No personal vehicles were allowed onto site due to inability to track them.

- n. Goller described SafeWork Practices (SWP) 4 – wherever it is necessary flag off caution area and place a sign to explain caution. Sign shows why it is designated and when it is expected to be removed. Every morning they held end gate meetings, orientations, daily foremen's meetings to tell crew on site, what they are working on, any of the hazards, and any deliveries expected during the week. Also discussed were what adjustments need to be made to traffic patterns and where they are working. There could be an hourly adjustments depending on circumstances.
- o. Goller was shown SWP 39 – Protecting the Public. Agioritis asked how this plays into pedestrian travel. Goller gave an example. When there is a new job they block up the site fence to restrict public access as first thing. Other jobs can set up control zones for public viewing. They monitor and assess daily. Weyburn is high wind so they have to check site fencing to make sure there was no wind damage. A chain link fence in Weyburn was needed.
- p. With Skid Steer Operation they inform other workers that there would be a skid steer working in the area.
- q. Agioritis asked Goller, "Documents say WCW but who do they apply to?" Response was. "Everyone, subtrades and public as well as WCW Workers."
- r. Goller was shown SWP 51 – Trenching and Excavation. Agioritis asked him to expand on how they would apply to traffic safety. Goller responded: 'Sloping back' prevents cave in. If you don't have blocks in place to prevent other equipment coming in, they could fall into the excavation.
- s. SWP 53 – Working in High Traffic Areas could be everywhere. Agioritis asked how you mitigate traffic problems. Goller explained they mitigate it with proper PPE, barricades and signage, proper permits, job specific obstacles, and spotters.
- t. Agioritis referred to Safe Job Procedures Pg 10 – Elevating Work Platform . These are used to work at higher jobs. It moves straight up and down. A snorkel lift has a boom that you can adjust. Pre-use inspection is used when you start with a machine. You check oil level, tires, signals, and then inspects job site to make sure there are no hazards such as a lip you could fall off. Then you set up a control zone.
- u. Goller explained that WCW's Safe Job Procedures are step by step how to do a specific thing, general safety practices. Page 14's procedures applied to Weyburn. They had a fence right away.

- v. Goller was shown Page 16. This procedure would apply at the Weyburn site. It is about the boom bucket lift for pouring concrete. This would be noted in the daily meetings. They would be using it on the 2nd floor. We would tell subtrades a number of days ahead so they are prepared. We would tape off the control zone – flagged off. Route of travel would be discussed in the daily foremen's meeting. Same would go for cranes.
- w. Page 18 describes Securing Construction Area. This is a critical task. It is a milestone that we want to reach for safety. In Weyburn it was setting up the fence.
- x. Agioiritis asked Goller to scroll through the Appellant's document labelled No. 9. Goller said These are hazard assessments. He usually does them himself. He notes who is responsible for dealing with the hazard and the dates. Either he or Les would review the hazards and sign off on them if they are completed. Roy would go through the hazards and sign off on them. Hazard was anything on site that could cause a potential hazard: arial lifts, heavy equipment, anything larger than a truck, e.g. Zoom Boom, forklift, skid steer. These would have right of way.
- y. Goller said Uneven Ground/Excavation Section applies to vehicular traffic such as getting stuck, running into a walking path, posting a sign and flag off an area to alert others. Page 21 of this document – 4. Equipment Traffic requires workers to make eye contact with operator. Everyone is responsible.
- z. Page 33 of the Exhibit is Hazard Assessments. The date of assessment is listed. It is about working with public, heavy equipment, setting up temporary fence before chain link fence was completed. Hazard Assessments are listed in Exhibit A6. Information about the Hazard Assessments done:
 - Hazard Assessment done on July 20,2020 was for the week of the Inspection. Exhibit A7 – Heavy Equipment
 - Hazard Assessment for July 21 week. Heavy Equipment on #2. Stay off south parking lot, and use spotter on tight spots. Christian did the inspection and if it is not completed, there would be a target date for correction. Hazard could last longer than a week.
 - Tail Gate Meeting Minutes– morning meeting at 7:00 am. Oct 2 2019 example. Known hazards were identified: working with power tools, working at heights, heavy equipment (standard on every meeting) overhead work, flagging and tagging. Stay clear of swing.
- aa. Page 17 of Exhibit A9 lists open excavations, pinch point pinching figures.
- bb. Field Level Hazard Assessment is labelled as Exhibit A10. It is an explanation of the work. It was broken down into groups to do the work. One member of each group would fill out the hazard assessment. It could change throughout the day. There were sign offs. Areas with noted hazards:
 - Page 3 - Other Equipment in your Area– other trades, communicate with the other trades. Scissor lift checklist to be signed off.

- Page 5 – Heavy Equipment – denotes proper hand signals when guiding, eye contact, etc.
- Page 7 – Haul and pack dirt – use mirrors, eye contact.
- Page 8 – Handrail build – done inside of building, edge of walkway,
- Page 9 – Other Hazards – other trades, uneven ground heavy equipment, dust. Operator has right of way.
- Page 11 – Alliance Energy Subtrade Hazard Assessment – requires Sub trade to complete.

cc. Exhibit A 11 - OH&S Committee Minutes entire package. Notations were:

- Control zone in place – leaving it to Horizon to clear up the control zone. Required to have the work done by next day.
- Flagging tape not taken down. Any subtrade that has any flagging tape up to remove it so others know if the site is clear or not.
- Be aware of equipment on site.
- Page 10 of document – Meeting June 27th, 2019 (he thinks) Issues raised; congested work area, flag off trenches, take down red tape.
- Somethings cannot be mitigated in the near future so they continuously review them. Sometimes they cannot be mitigated by a specific date. Subtrades are involved in OH&S Meetings.

dd. Goller recounted his recollection of the inspection on July 21, 2020 by OHO Holzer:

- Officers arrived at about 10:30 am. He did not have any contact with them because he was on site doing inspections. Christian Nielsen and Les Schlosser came in.
- They were discussing two possible Notice of Contraventions: safety glasses and traffic control plan. They were talking about an interior TCP which Goller had not heard of. They have always referred to the TCP as the Site Map.
- Holzer and Schlosser were talking about Holzer offering a proposal for a deal to be made. He asked Officer Getz if that could be done. She did not answer. Then went to her truck.
- Schlosser got annoyed and went out for a smoke.
- Goller was asked about an interior TCP by Holzer. Holzer took out the regulations. Holzer asked about Les because he had a deal to make. Goller thought that was unprofessional and left the room.
- Goller said that they were talking about the interior of the building.
- Once Les left the room, Goller called Roy to get a copy of the Site Map.
- Goller said the Site Map was on the OH&S Board. It was pinned to a clip board that was also pinned to the OH&S Board.
- What he got out of the meeting with Les and Holzer was that there were two contraventions.

ee. Agioritis showed Goller Exhibit A12 – Shawn Goller's Statement. The statement was done on July 23, 2020. Agioritis asked why he gave a statement

after the meeting? Goller said he found it odd that Officer Holzer had proposed a deal and it was very unprofessional. Also the conversation that he overheard was discussing a traffic control Plan for the interior which he had never heard of. He said he had heard of Traffic Control.

- ff. Agioritis showed Goller an email from Roy to Christian Neilsen, Exhibit A3. Les Scholler and Shawn Goller received the email at 12:20 am. It had a revised plan attached. Agioritis ask if the Officers were present when you received this? They were still on site. Goller formed that Exhibit C3 is the revised Site Map.

25. Cross Examination of Shawn Goller

- a. Steven Wang asked, "Is it your responsibility about safety practices and procedures." Goller responded that it is one of many. He could not quote each one but he could direct a worker where to find the information.
- b. Wang asked how many vehicles were on the worksite at the time of the inspection. Goller responded that there were maybe 25.
- c. In the documents reviewed there were references to heavy equipment and equipment, Goller was asked to explain the difference. Goller said heavy equipment is loaders, skid steers, and boom cranes. Interior equipment is scissor lifts and other lifts.
- d. Wang asked if there were trucks at the worksite. Goller answered that there were all half ton trucks or vans. Speed limit is 10 mph at the south west entrance. It was initially the only entrance. Wang asked if there is a speed sign at the north entrance. Goller responded Yes. Wang said it was not shown on any of the documents that were looked at. Goller responded that on the first site map it would be accurate to the date of the inspection. The only difference between the documents is that the trailers were moved.
- e. Wang asked if it was his testimony that he referred to the Safety Manual. Goller said yes, he has reviewed it. Wang asked "How many pages is it?" Goller answered about 400.
- f. Wang said that Goller had talked about red tape. Goller said yes it was used at the rec centre and some on the roof.
- g. Wang showed Exhibit C3 (the more recent site map) and asked, "Where is the restricted area?" Goller replied that the ramp at the Rec Centre is not flagged off. Goller answered that they could not change it on the site map or they would be changing the site map hourly.
- h. Wang noted that there was an excavation and asked if there were any open excavations on the date of the inspection. He answered no. He did not believe so.
- i. Wang asked if there are signs documented anywhere. Goller said that it would be in the Safety Manual, in the daily foremen's meetings, and referenced in the safe work practices.

- j. Wang noted that Goller had said that equipment has the right of way. Goller said the heavy equipment has the right of way. They make eye contact and communicate. That is why we only have one route. There is no other route that they would go on.
- k. In the manual Wang noted that it says competent workers are trained to use hand signals. "What does competent mean?" Goller replied that they can understand the hand signals.
- l. How many workers are on the site in total? Response was probably 50.
- m. Wang asked, "Where are the hand signals noted?" Goller responded that they were probably in the manual. He couldn't say for sure. He has a booklet from SIAST, but not sure if there is a Wright Construction booklet. He doesn't know. Wang asked where are they used? Goller replied that they apply to all equipment, but cranes are a different entity.
- n. Wang said there was a reference in OH&S Minutes to 'slow driving speeds'. Goller's response was that it would apply to the interior of the building. The lifts have no speedometers and govern out at 6 km. Therefore there are no speed signs in the interior. Wang asked if on the exterior there are instances where equipment would require a lower speed, Goller said for example where you would not want a fragile piece of equipment damaged so they would not lose it. Wang asked could it be said that it is up to the worker to determine the speed 10 km and under? Goller said it is up to them.
- o. Wang noted Goller was in his office when he heard the conversation between Holzer and Schlosser. Wang asked where is his office. Goller answered that it was about 10 feet away. Wang asked if they could have talked about an exterior plan? Goller said he only heard him say specifically interior. They could have talked about the exterior outside, but he doesn't know.
- p. Wang asked What site plan was posted on the Board the day of the inspection? Goller's response was the first one.
- q. Was the second one posted on the Board? Goller said not at that time because it was being created. It was posted later.
- r. Wang asked Goller if a worker came up to him and asked to see the TCP what would he show him. Goller answered that he would interpret that to be the Site Map. Wang asked if the Site Map is included in the Safety Manual. Goller said that the Safety Manual is not site specific. It is for the company as a whole. Wang said, "So different sites have different hazards?" Goller responded yes. Wang asked if the manual applies to all sites. Goller responded some parts of the Manual don't apply to some sites.
- q. Wang asked if Goller was aware of a Fall Protection Plan? Goller responded yes. It is in the Manual. Wang enquired if it is also kept as a separate document? Response was yes. Wang asked where is the plan located? Goller said it was in the Safety Manual. Wang said then where is the separate plan? Goller corrected his statement. The forms for the Fall Protection Plan are in the

Manual. When someone needs one, they fill in the forms and then post them on the OH&S bulletin board.

26. Re Direct Shawn Goller

- a. Agioritis asked if there is specific training for Crane Operators. Goller said that an employee has to have a journeyman's certificate. They have to provide a copy of their documentation.

27. Les Schlosser's Testimony

- a. Les Schlosser confirmed that he had been employed with WCW for 23 years. Before that he was self-employed in Yellowknife, NWT. He has always been in the construction industry.
- b. Schlosser confirmed that he started with the Weyburn project Feb 1, 2019. His Job duties were he was in charge of the whole site. He ordered materials, dealt with subtrades, dealt with the crew, was involved in people management (HR), and hiring subtrades. He had a large number of responsibilities.
- c. His involvement with safety was that he delegated responsibilities to Shawn Goller as Occupational Health Coordinator. He had to supervise Shawn, check to make sure paperwork is done, coordinate bi-weekly safety meeting with safety management, and follow up with trades. He had a project team from head office to get them involved in safety. Safety was a big part of his day. He identified where safety hazards are going to be.
- d. He dealt with traffic and vehicular traffic safety. He worked with staff to flag off areas where there is traffic. When doing the sewer work outside the site in the street we make sure that there is a fenced area, safe from the public. Inside the site, there were a lot of cranes working overhead so they were flagging off areas so workers are not below cranes. They were working on two buildings. Re working with heavy steel, workers on site were notified about the heavy hoisting. There were lots of pylons. They tried to plan accordingly.
- e. Schlosser was asked if there was a Traffic Control Plan for the building. He replied that on the exterior it was the site map. He had never heard of a traffic control plan for the interior of the building. That would have to change daily. It was delegated to Shawn to supervise traffic in the building. Schlosser dealt more with the crew.
- f. Schlosser advised that they made a site plan with gates. They posted signage at the gates that no personal vehicles were to be on site. Vehicles needed a backup alarm. He would bring it up at the foremen's meetings.
- g. Schlosser confirmed that when he was talking about traffic control he was talking about the exterior. They developed the site map at the very beginning of the project. It was a big part of the plan to bring in the steel trusses so they needed to know about the traffic around bringing in the trusses. They were doing things by pre-planning. There was a lot of planning. They get Field Level Hazard Assessments (FLHA) every morning from the subtrades and review them. They do weekly and sometimes bi-weekly FLHAs.

- h. Schlosser confirmed that Officer Holzer had asked for a Traffic Control Plan and they gave him Exhibit C2. It was the original one. He did it with Shawn and Matt. Schlosser explained that the Plan shows how far from power lines, washrooms, etc. vehicles travel. At the site gate the speed sign was posted (10 Km/hr). On the plan the salmon coloured line was an access route. The Fire Department came out to consult on the Site Map.
- i. Schlosser stated that the legend indicated an area where the bob cats were as they move quickly but have poor visibility so they have to be approached from the front, and use hand signals. It sets out the lay down area. It was a large site. They had places to put supplies and equipment.
- j. Site Map Exhibit C2 was updated to Exhibit C3 because they had moved trailers and sea cans. Christian Neilsen ran off a revised copy of the plan for Officer Holzer.
- k. We showed him the OH&S Board. We pointed out the Site Map area.
- l. Schlosser stated the other policies relating to traffic control. They have meetings all the time. The subtrades get a copy of the Safety Manual. They give an orientation to the workers for 20 minutes. They have a WHMIS video then. Afterwards they do a site specific hazard review. They will take the subtrades out and show them the hazards in a site tour.
- m. Schlosser confirmed that OH&S Officers came for a site visit on July 21, 2020. He said they were not expecting them. They arrived at 10:30 am after coffee. Schlosser recounted what occurred:
- He met with the 2 officers in the Office. Beth wanted to meet with QSI, one of the Subtrades. She met with Tyler for QSI. They all went into the building. But Beth was wanting to look at QSI's work so did not do the tour.
 - Holzer kept saying that he was looking for a contravention today. But in the next breath he said that it was an excellent site. He said it numerous times.
 - They came across two guys that were doing mill work and did not have safety glasses on. The workers went to put their glasses on again.
 - They looked at the Blue print.
 - Re the soccer field building, painters were painting the ceiling. They were on a lift.
 - Holzer kept saying that the site looks great.
 - As far as Schlosser can recall, they did not go outside. They probably looked out the door. They walked for 45 minutes in the interior of the site.
 - The initial interaction was about 10 minutes later in the trailer.
 - When they got to the north end of the gym, they exited out the north end of the building. Holzer asked about a TCP for the interior. Schlosser said that he had never heard of that. They use a lot of pylons. They went to using the red rope and used the red tape as well. They also use yellow and red colours. They change the site every day. They have a meeting every morning and they document this.

- When they returned to the trailer, they looked at the OH&S Board where the site map was. It wasn't what Holzer wanted. It did not show the interior plan.
 - Schlosser went out to use the phone. He contacted Roy for an update of the Site Plan. Goller said Holzer wanted to see him and to make a deal.
 - Schlosser went back into the trailer and was sitting at the table with Holzer. Holzer said he would make Schlosser a deal - the glasses or the traffic control plan. Schlosser said he would take the glasses because that was not his worker. Holzer was annoyed and then gave Les two contraventions: one for WCW for traffic control plan and one for the subtrade for the glasses.
- n. Schlosser advised that he had Safety Training Certificates for every piece of equipment. He also has First Aide, Train the Trainer, Leadership Training.
- o. Holzer's comment about the Site Map was that it was not good enough.
- p. Schlosser confirmed that he made a statement about the inspection on July 23, 2020. He made a statement because he did not feel right about what had happened. Holzer kept saying that he had to give WCW a contravention today.

28. Cross examination of Les Schlosser

- a. Wang asked Schlosser to confirm that during the tour of the worksite, Mr. Holzer said he had to find a contravention today which he did. Wang asked if he made the statement before he saw the worker without the safety glasses. Schlosser said after. Schlosser said he did not comment because he was wondering what he was getting himself into.
- b. Wang asked if Holzer showed him the regulations as to what a Traffic Control Plan was. Schlosser said that they went back to the trailer and he saw the Site Map. Holzer said that he was looking for something for the interior of the building.
- c. Wang asked if Holzer showed and discussed every item in the legislation. Schlosser replied no, not every part of it.
- d. Wang asked if the Revised Site Plan was the document he presented to Holzer. Schlosser said yes. Wang said the Site Plan does not show equipment in the buildings. Schlosser said no. There would be lifts inside the building. Wang said that by looking at this document you would not know if there was equipment inside the building would you. Schlosser said no.
- e. Wang asked what if a worker asked to see a TCP. Schlosser said he would show them the Site Plan for the exterior. For the interior he would tell him what was discussed with the workers and the subtrades for the whole week. Every day they follow up and foremen would bring that information to their workers.
- f. Wang asked if Holzer asked about the right of way of vehicles. Schlosser said that we have the blue line which is for emergency vehicles. It is a shared pathway for emergencies. Wang noted that Heavy equipment has the right of way. Schlosser said correct. Wang questioned if that is indicated on the document. Schlosser said

not on this document, but it is showed in a number of documents. Wang asked if there are any documents that show the duties of the workers and employers in regards to traffic. Schlosser said that it is in the Safety Manual all over.

- g. Wang asked if Schlosser was aware that OH&S requires a Fall Protection Plan. Schlosser said If it is one of my workers, the workers sign on to WCW's Plan. Most of the Employers review and submit a Fall Protection Plan before they come to the job site. The worker would sign on to the subtrades plan. If the subtrade doesn't have a plan, the workers can sign on to WCW's plan. It is written every day in the FLHA's that WCW does and that the subtrades do.

29. Redirect Examination of Les Schlosser's Testimony

- a. There was no redirect.

30. Arthur Bruce Churchwell's Testimony:

- a. Arthur Churchwell testified that he had been in construction for 25 years as Senior Safety Officer, SCSO National Safety Officer, and he holds a Gold Seal journeyman carpenter. He has been a Superintendent for WCW for 10 years. He has operated Heavy Equipment and did so when working for WCW. He did safety audits at the Weyburn Project.
- b. Churchwell described the site. It had been under construction for 2 years. The site was all on one lot with buildings attached. The site is enclosed, a fenced in lot.
- c. He described the state of construction on July 20. The buildings were enclosed, and roofing, interior and exterior dry wall and stonework were underway.
- d. The OH&S Officer determined that we did not have a Traffic Control Plan in place. We do. We have travel routes, shows parking, travel routes for pedestrians, what PPE is necessary, hazard assessment documents, meetings with workers at each morning. Subtrades get together at a designated construction site. There are ongoing hazard assessments by all subtrades, weekly foremen's meetings discussing conflicts or concerns and activities.
- e. Churchwell confirmed that the plans are relayed to the workers every morning. They are told what to watch for on the job and on the way to the job.
- f. Churchwell advised that traffic safety hazards are mitigated on the site. There was an example – a worker on the lift painting. He was there the day of inspection. He tries to come every week to catch the Foremen's meetings.
- g. Churchwell confirmed that there was an update to site plan because of the moving of the trailers and the sea cans.
- h. Churchwell was asked about the speed signs and the Site Plan. He replied that those are maximum. speeds. The Blue lines are allowed to be used but they cannot park there because it is for emergency vehicles if needed. Salmon lines

are where vehicles can move freely. The difference in Site Plans was that the trailers were moved to finish asphalt area at the north end.

- i. Churchwell was asked if WCW has safe work practices and procedures. He confirmed that they do. All subcontractors have a copy of WCW's Safety Manual which meets statutory requirements, and the subcontractors give WCW a copy of theirs which is more stringent for their needs for their jobs. The Safety Manual has Safe Work Procedures, Safe Job Practices and Critical Tasks.
- j. Churchwell was asked about how hazards with vehicles would be handled. He responded at tail gate meetings and end gate meetings. Heavy equipment has the right of way because they can't always see you. There is some orientation for heavy equipment usage but most of the equipment courses have training in hand signals and directing vehicles.
- k. Churchwell was asked if he had an opportunity to interact with OH&S Officers the date of the inspection? He answered not for long. He spoke briefly with OHO Holzer. Holzer said they did not have a TCP for the interior of the building. Churchwell said their process is daily meetings, and training of operators on the equipment. If the equipment is moving there are spotters.
- l. When asked if he prepared a statement Churchwell said yes because this was an unusual situation. He said he had never heard of a traffic plan for construction inside the building. This did not sit right. Within the building equipment is constantly moving so things constantly change. Some areas have finished floors, so they can't put down markers. They have to rely on the competency of the workers in operating the machinery. He didn't see how it could be done.

31. Cross examination of Arthur Bruce Churchwell

- a. Wang asked about the Blue lines on Exhibit C3. Churchwell answered that the access is from the street so deliveries have access. Also they have access to sea cans for storage. It is not a normal route. They can drop things off but cannot park there.
- b. Wang noted that information about use of Blue lanes is not on the Site Map. Is that information conveyed in any documents? Churchwell advised that it would be in the daily meetings or foremen's meetings and Subcontractor meetings. It could be in a subtrades meeting where the superintendent schedule is alerting a delivery,
- c. Wang noted that the Site Map does not indicate where the information can be found. Churchwell said no, but it would be in orientation where to check for information.
- d. Wang asked if he was familiar with the Occupational Health & Safety Regulations. Churchwell answered that all Holzer told him was the information was in the Regs and he looked them up himself. Wang asked if Holzer had reviewed those section with you? Churchwell said no he did not. Wang asked where the Safety Manual is available. Churchwell replied that it was In the Superintendent's Room, and it

is on line. Wang noted there is no indication that there is equipment inside the buildings. Churchwell stated that he reviewed the regs after Holzer left.

- e. Wang did a review of the Regs. Section 133 (7) states what a Traffic control plan required by subsection (6) must set out. Churchwell responded to the points:
- Maximum allowable speed – must be posted on the gate, posted on the board and reviewed with the workers. It is posted on WCW's site gate.
 - Route is on the Site Plan for the exterior and marked for foot traffic away from the equipment.
 - Priority – only equipment used on the interior are the scissor lifts and that equipment has the right of the way. Foot traffic is communicated to stay away from any equipment.
 - Barriers are marked with a visual as you come upon the work area. Barriers are moved with the work that is being performed – tape, cones, etc to alert foot traffic.
 - The duties of the workers and the employer or contractor are provided to the subcontractors upon award of contract. They are posted on the Board with our signed policies.
- f. Wang asked if he was familiar with Fall Protection Plan. Churchwell responded that it was located on the OH&S Safety Board. Wang asked if all the information regarding the Fall Protection Plan is in the document on the Safety Board. Churchwell said they make sure workers and subtrades know where the information is.

32. Christian Nielsen's Testimony:

- a. Christian Nielsen confirmed that he had been employed by WCW since July of 2018. He is the Site based Project Coordinator for the Weyburn site. He was previously employed as an engineer in training. He has a degree in Civil Engineering,
- b. His duties are to coordinate information with head office: 1) change orders 2) quality assurance 3) participating in WCW safety program. Nielsen testified that he is involved in safety through the Site orientation, Tool Box Meetings and tail gate and end gate meetings.
- c. Nielsen was asked if WCW had a Traffic Control Plan? He responded yes. It is an easy to reference document with posted speed limits . 2 different colours show the travel of equipment. Blue is for emergency. Others could travel on this road, but not store anything there.
- d. Nielsen confirmed that the plan was revised. It was revised when the trailers and the SEA Cans were moved. Nielsen said the paths of travel did not change.
- e. Nielsen outlined his role with orientation. He conducted the orientation 50% in the trailer and 50% out on the site. He performed orientations for workers by using: 1) standardized video prepared by WCW; 2) an orientation checklist; and 3) tours of the site. The checklist outlines the main headings in the video. It

includes some traffic references that heavy equipment operators get. There are daily inspections, training documents while operating equipment. There are also Safe Work Practices and Procedures showing how we control hazards, working adjacent to the public spaces. Exhibit A 15.

- f. Nielsen explained the Quiz. It is to verify that the workers have understood the points in the video. The Quiz not in the package. It will be Exhibit A 16
- g. Nielsen explained the Site-Specific Orientation Form. It makes reference to all the items that are completed on the site. It is only completed when a worker transfers from one site to another. It could include the interior or the exterior of the building.
- h. Nielsen confirmed that he filled out Field Level Hazard Assessments when he was shown an example. He explained that information was reviewed with the subtrades during the morning meetings, and it is also posted on the Safety Board.
- i. Nielsen was shown Exhibit A 8 dated July 20, 2020 and asked to describe the process. He explained they were working on the south zone so vehicles were not allowed.
- j. Nielsen confirmed that there was an inspection. He was asked to describe his interaction with the Officers. Nielsen related that he was in his office. Everyone went for a Site Visit. There was a reference to a Regulation. He was working on his computer so was occupied. Schlosser left the trailer. At this point there was a conversation between Goller and Holzer. The Officer said he was going to make a deal with Goller's boss for a contravention either for glasses or for a traffic control plan.
- k. Nielsen was asked if he provided any documentation. He said yes, Les asked for a copy of the Site Plan to be run off. That came from Matt Roy. There was an email to Les, Christian and Shawn with the Site plan that he printed off. Then a few minutes later he received a revised Site Plan. Nielsen confirmed that the time stamps were correct. The officers were still there. Nielsen said the original document was provided to Les Schlosser. He did not witness the 2nd document being given to the Officer.
- l. Nielsen confirmed that he had filed a Statement after the visit. He did so because he felt something was wrong. He did not like the content of the conversation that there could be a deal between two contraventions.

33. Cross Examination of Christian Nielsen

- a. Wang showed Nielsen an Orientation checklist and asked if the items on the Checklist would be part of the policies. Nielsen responded that power mobile equipment use is in WCW's Safety Manual. Safe Procedure and Safe Practices are also in the Manual. Also there is a section relating to training for use of equipment. Nielsen confirmed that all of the items are found in the Safety Manual for WCW.

- b. Wang asked where the Site Map is mentioned. Nielsen said it is covered as part of the Emergency Plan. It is also pointed out in the Site inspection.
- c. Wang asked if they are all found in the Safety Manual. Nielsen said the phrase used is easy access. Wang asked if all information for traffic safety is found in different places. Nielsen said that for some sites it would be better to have it all in one document, but for larger sites maybe not.
- d. Nielsen was asked to explain if information is scattered in different documents why it be referred to as easy access. Nielsen replied that it is easier than having a large manual of 1000 pages. This manual applies to all work sites. It would be true it would be easier to find the material all in one place.
- e. Nielsen was shown Exhibit A 7 Field Level Hazard Assessments which are to be completed daily. Wang noted that July 17, 2020 was the date for this FLHA, there is a note about the target date for the work to be completed. This would be applicable from July 17 to July 22. It says don't walk under equipment. Stay off landscaped areas. Were these areas defined In any way? Were they identified in any documents? Nielsen said yes, on the Site Plan. The Plan flags off high traffic areas. For the exterior they apply.
- f. Wang pointed out that on the Hazard Assessment Form for July 17 heavy equipment was to stay off landscaped area. Nielsen said it was to the west and north of the site. Nielsen was asked if there is anything on the Site Map that indicates that the heavy equipment can't go onto the landscape area. Nielsen said it was directed at workers who did not have any work or tasks in that area. The direction was good until July 22 unless renewed on the next hazard assessment.
- g. Wang referred to Nielsen's interaction with Officer Holzer. He printed off 2 documents and handed them to Schlosser. Nielsen said he did not print off any other documents while the Officers were there.
- h. Wang asked if Nielsen was familiar with the Fall Protection Plan to which Nielsen said yes. Was he aware that this is a requirement of OH&S? Yes. Nielsen was asked where the plan is posted. Nielsen said on the OH&S Board. Wang asked if a worker asked to see a Fall Protection Plan where would he refer to them. Nielsen said he would refer them to the Plan posted on the Bulletin Board, also to other policies regarding sheeting, equipment for rigging etc.

34. Redirect Examination of Christian Nielsen

- a. Wang asked Nielsen how often the interior of the project changes. Nielsen responded daily as we work through the plan and the work progress.

IV Closing Arguments

A. For the Respondent – Steven Wang

35. There is only one Issue – Whether WCW had a Traffic Control Plan in compliance with 133 (6) and (7). Officer Holzer did an inspection. He estimated the worksite to be one city block. He saw multiple vehicles. The following is a review of the testimony heard and Exhibit presented.

1) Summary of Evidence

Officer Holzer asked for a copy of the Traffic Control Plan from Les Schlosser. He did not get anything from Schlosser. Neilsen entered the room and showed him a 1 page document. Holzer explained to Churchwell the regulations and why the site map he was given was not sufficient. In cross examination, Churchwell testified that there were vehicles. Christian produced a document and asked Holzer if this was it. Holzer denied indicating to Schlosser that a Notice of Contravention would be issued before the notice was given.

There was evidence that Getz entered the site, and she observed the heavy equipment – trucks, paver, etc. Gietz estimated the site to be a whole city block. She was conducting an inspection of QSI, but she was also part of the discussion about the WCW traffic control plan. Officer Holzer had made a request, and upon this request being made they waited for 5 min. before a document was produced. It was a site map that was not up to date. The 2 site maps were not posted on the Safety Board at the site.

Matthew Roy testified that the Site Map was the TCP. WCW was the prime contractor and had control of the work site. There could be 10 to 100 workers on the worksite along with soil compactors, trucks, skid steer, truck over 1 ton, and aerial lifts.

Shawn Goller, Superintendent, second in command, said the size of work site was 2 blocks long and 1 block wide. He testified that emergency vehicles would take priority over other vehicles. Equipment has the right of way compared to vehicles. These practices are documented inside the Safety Manual. The entire document would be 400 pages. There was a restricted area on the north side of the site. Speed limit was posted. He testified that he would refer a worker to the Site Map.

Schlosser testified that he did a walking tour with Holzer. There was a conversation where Holzer said that he needed to find a contravention somewhere. When they finished the tour, Holzer asked to see a TCP. Holzer said there were 2 contraventions but would only issue 1 and Schlosser got to pick. Schlosser said that the worker without the glasses was not his worker but worked for a subtrade.

Churchwell explained that the TCP consists of the Site Plan, the minutes of the Tool Box and Assessment meetings. He reviewed the Site Map. Travel on blue path should be minimal as it is for emergency traffic. Regarding the instructions about the blue path, he said that it was in the Foremen's meetings.

Christian Neilsen said that a TCP was made up of Site Plan and portions of the Safety Manual relating to traffic. In Cross Examination, Neilsen agreed that it would be easier if the info was in one document instead of spread out. A7 Item 2 on the Hazard form was a reference to the high traffic area in the interior of the building.

2) Deal proposed by Holzer

Holzer was attempting to reach a compromise. But discussion of this deal is irrelevant. In the end WCW did not have TCP. The Issue at hand is whether WCW had a traffic control plan. The alleged conversation with Schlosser was that Holzer was set on giving a Notice of Contravention. This is also not relevant. It is whether they had a plan or not.

3) Review of Regulations:

- Evidence that this was a large work site.
- Both parties identified power equipment on the worksite.
- On any date there could be 10 – 100 workers.
- No question that when Holzer asked for a TCP he was given a Site Map.
- Holzer and Getz could not say what exactly the documents provided to them were. Others testified that what was given to them was the Site Map C 2 and C3.
- Site Map does have:
 - Speed sign on it so it meets part of the Reg.
 - Maximum operating grades are not applicable
 - Re: (7) © (iii) – location and type of control signs – speed limit sign at the northern gate stated by Churchman was not shown on Site Map. That was not met.
- Exhibit C2 and C3 does not indicate any vehicles in the building and no routes or pathways.
- (v) Priority for Vehicles is not identified on the site maps themselves. They heard testimony about heavy vehicles having right of way, but not on Site Map.
- (vi) Restricted area was not indicated on Site Map.
- (vii) Duties of Employer and Worker are to be on the TCP. Site Plan does not show that.
- (7) (b) Must be readily available at the place of employment. Having information about traffic safety spread out around the worksite is not having info. readily available.

4) Review of Law

Ontario Court of Appeal says that OH&S is a minimum standard for protecting workers. Principle is that the legislation should be given generous interpretation.

Information should be 'readily available for reference by workers at the place of employment'. Christian testified that it would be better if information was all in one place. It makes it more difficult to access the information. The Safety Manual is

400 pages. The reason the legislation has addressed this issue is that it is a serious matter. A TCP in one document would be easier for a worker to find. In this case, the Worker would not be sure if he has all the information because it might be contained elsewhere. Exhibits C2 and C3 do not indicate that further information can be obtained in the safety manuals. A worker would look at the Site Map and would have to figure out for themselves if it contained all the information. If a worker forgets about some information they have something that is readily available in a Traffic Control Plan.

36. In summary – WCW did not have a TCP that conforms with Reg. 133 (6) and (7).

My question: What are the consequences of this Notice of Contravention? Is there a penalty? Information in Section 3 in Act 3-79 subsection 9. If a corporation is convicted where there is a death involved, the penalty would be assessed taking into account the previous Notice of Contravention.

B. For the Appellant – John Agioritis

37. These are the issues:

- 1) Regarding consequences, why we are here? WCW takes their safety reputation very seriously. They could be placed in a review.
- 2) Safety is a regulated industry. They could have a Notice of Contravention. When bidding on jobs that could affect their future reputation.
- 3) WCW is a regulated company. Construction is a regulated industry. The Director's decision is the one that is being appealed. He amended the Notice of Contravention to only Section 133 (7)©(vii) . Under any review of the TCP, WCW's position is the amended contravention that is being appealed. The Arbitrator has the same ability to cancel or overturn the Notice of Contravention as the Director has.

38. What we heard yesterday was the development and implementation of a TCP. After hearing all the evidence from the witnesses, what you have before you is a development and implementation. The Statute as it reads permits some discretion to allow for some leeway where the site is not on a public highway. In 133 (3) regarding public highways, the statute is more stringent. It requires training of employees not in this section. WCW went above and beyond doing training and orientation of every person who came onto the site. The legislation permits a degree of discretion in the documentation requirements.

39. Section 3-80 of the SEA permits an element of reasonably practicable measures in fulfilling the duties i.e. Is it practicable to perform their duties. There are 3 separate defenses:

- Reasonably practicable – a gross disproportion between carrying out the duty and the results. Re an interior plan – it would have been impracticable to have a plan. It would be changing and evolving. Appropriate measures are training and taping

- and using spotters. They were doing what was reasonably practicable. It is not practicable to change a document hourly or at least daily.
 - There was a Site Plan that dealt with the traffic on the exterior of the site. They were mitigating hazards both inside and out.
 - Testimony from employees of WCW should be preferred as opposed to Officers who were there for 1.5 hours. The officers did receive something - Exhibits C2 and C3. Evidence from WCW is to be preferred.
40. The discussion regarding a deal was termed irrelevant according to Mr. Wang. That is not correct. It made the staff who testified uneasy so that they made statements after the inspection.
41. Holzer was questioned but he could not say when he arrived at the site. There was an email in 11 min., readily providing the Site Plan. The Plan was provided and called a Site Plan, but a rose is still a rose. It still satisfies the Regulations. They were still able to provide something readily available. Holzer said once he found that there was no TCP in his mind, he quit listening. He certainly was provided with a document.
42. Holzer's intent lacked objectivity in coming on site. He was determined to find a contravention. Whether his decision was discretionary or not, it was tainted by bias. Holzer in his report does not state Officer Getz was on the tour.
43. On the return from the site Holzer was focused on the interior site where there was no vehicle traffic. There were control signs posted on the doors. It was practically impossible to have a traffic control plan as it would not be reasonably practical in the circumstances.
44. Look at the legislation itself. We heard and saw evidence that there was visual representation on the Board on the Site Plan. There were also meetings regarding hazards. Workers were trained and orientated to the site. Significant hazards were identified and information about mitigation identified. The Site Map was sufficient to provide workers with information. There were meetings and Hazard Assessments. OH&S personnel brought the plan to life. There was no hazard identified in Holzer's report, only that there was traffic.
45. Review of Regulations in sec. 133 (6):
- There were speed signs at the boundaries of the site setting out 10km per hour.
 - Paths of travel were identified on the Site Map.
 - Evidence that the plan was developed with outside agencies – Fire Department was involved.
 - Maximum operating grades were not found in the interior of the building.
 - Workers were trained in the driving of the vehicles – e.g.. Right of way
 - Location of Barriers – there was tape and pylons used according to Exhibits A6, A7 and A8 which were contemplated on a daily basis.
 - Duties were brought home regarding safety control. The listing of duties and responsibilities were available in the trailer and on line.
 - Location of control signs would be posted where there was excavation. Also signs were posted on the doorways to the interior.

46. Nowhere does it say that the entire plan has to be in writing. In the area where they are changing the location and position of equipment hourly, it would not be reasonably practicable.

V. Positions

A For The Respondent – Steven Wang

47. In his Brief of Law filed May 4, 2021, Wang stated:

“The issue is simply “Did Wright have a traffic control plan as required by ss 133(6) and 133(7) of the *Regulations* on July 21, 2020?”

Wang submits that Wright did not have an adequate traffic control plan as required by ss. 133(7)(b), 133(7)(c)(iii), 133(7)(c)(iv), 133(7)(c)(v) 133(7)(c)(vi) and 133(7)(c)(viii).

Wang further submits that “Wright’s safe procedures, practices and various safety meetings are not a reasonable substitute for the deficiencies in its traffic control plan.”

48. In his summary of evidence Wang reviewed each of the witnesses testimonies to provide evidence that during the inspection OH&S Officer Holzer requested to see the Traffic control Plan but was only shown a one page document, and that document identified as a Site Plan was Exhibit C2 with an update numbered C3, neither of which satisfied the *Regulations* 133(7) (b) and (c) in regards to a Traffic Control Plan.

49. In this appeal, Wang submits:

- a. The purpose of the *Regulations* is protecting the occupational health and safety of workers in Saskatchewan, the provisions should be interpreted generously with this purpose in mind:

i. The Saskatchewan legislation here is the OHSA (*The Occupational Health & Safety Act*). “It is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers. When interpreting legislation of this kind, it is important to bear in mind certain guiding principles. Protection legislation designed to promote public health and safety is to be generously interpreted in a manner that is in keeping with the purposes and objectives of the legislative scheme. Narrow or technical interpretations that would interfere with or frustrate the attainment of the legislature’s public welfare objectives are to be avoided.” This principle has been recognized by the courts in Saskatchewan.

ii. The Supreme Court of Canada held that Acts “are to be read in their ordinary context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. “

- b. Section 133(6) and 133(7) of the *Regulations* state:

(6) Where there is or may be a hazard to a worker from traffic at a place of employment other than a public highway an employer or contractor shall develop and implement a traffic control plan to protect the worker from traffic hazards.

(7) A traffic control plan required by subsection (6) must:

(a) be in writing;

(b) be made readily available for reference by workers at the place of employment; and

(c) set out, where appropriate:

(i) the maximum allowable speed of any vehicle or class of vehicles, including powered mobile equipment, in use at the place of employment.

(ii) the minimum operating grades;

(iii) the location and type of control signs;

(iv) the route to be taken by vehicles or powered mobile equipment;

(v) the priority to be established for classes of vehicle;

(vi) the location and type of barriers or restricted areas; and

(vii) the duties of workers and the employer or contractor.

50. Wang's position re the above *Regulations* is that Sections 133 (7) (a) and (b) are mandatory; however, the elements of ss 133 (7)(c) are required only "where appropriate".

- He submits that the phrase "where appropriate" should be interpreted to mean where the situation requires it. If one of the items in section 133 (7) (c) exists then the element should be present in the traffic control plan.
- "Where appropriate" should not be interpreted to mean "reasonably practicable". That phrase is used in numerous provisions throughout the *Regulations*. If the legislation had intended for "where appropriate" to mean "reasonably practicable" in section 133 (7), the legislature would have used those exact words.

51. From the testimony, the site is a large one and there are vehicles and powered mobile equipment on site any given day. Also, there could be between 10 to 100 workers on site. Evidence has established that there is or may be a hazard to a worker from traffic at the site and therefore section 133 (6) is applicable.

52. Wang submits that on July 21, 2020 Wright did not have a sufficient traffic control plan. Witnesses Roy, Goller and Schlosser identified Exhibit C as the traffic control plan and would refer a worker to Exhibit C if they were asked about a traffic control plan. Wang states that Exhibit C does not satisfy the requirements of a traffic control plan set out in ss 133(7)(c) for the following reasons:

- a. It does not set out the location and type of control signs required in ss (7)©(iii). Exhibit C does not set out that there are speed signs at the northern entrance to the site;
 - b. Exhibit C does not indicate all the routes to be taken by vehicles or powered mobile equipment at the site as required in ss(iv). Testimony showed that there was powered mobile equipment in the interior of buildings at the site. Exhibit C does not show any routes for powered mobile equipment inside those buildings or any indication there are powered mobile equipment in the building. Nielsen's testimony indicates that a high traffic area was identified in the hazard assessment form. A high traffic area should have been set out in Exhibit C3.
 - c. Exhibit C3 sets out the different routes to be taken for emergency vehicles and normal vehicles, however it does not set out the priority for classes of vehicles as required in ss.(v)
 - d. Exhibit C3 does not show that there was a restricted area in place at the site on the north side of the recreation centre on July 21, 2020 as required in ss (vi)
 - e. Exhibit C3 does not set out the duties of workers and the employer as required in ss (vii).
53. Wang states the following arguments regarding compilation of the information required by a Traffic Control Plan:
- a. In paragraph 8 of the *Reply on Behalf of the Respondent* the following:

"Wright has not proven that compiling the information required by s 133 (7)© of the OHS Regulations into a single document is not practicable or reasonably practicable. Wright has not proven that spreading the information required by s. 133 (7)© of the OHS Regulations over multiple documents is a better practicable means compared to having all the information in one document. It is clear that having all information required by s. 133 (7)© of the OHS Regulations in a single document is more readily available for reference by workers compared to the same information spread out over multiple documents."
 - b. At paragraph 39 of the *Written Submission on behalf of the Respondent* :

"The Director submits that s. 133(7)(b) requires that a traffic control plan be compiled in a single readily available document. Section 133(7)(b) must be interpreted generously to give full effect to the purpose of the legislation which is to protect the safety workers. The purpose of a traffic control plan is to provide workers a readily available document for reference for all traffic safety concerns. When the information required by 133 (7)(b) is spread across multiple documents some of which are 400 pages long and containing information not relation to traffic, it cannot be considered "available".
54. In conclusion Wang submitted that WCW did not have a traffic control plan as required by section 133 (6) and (7) of the *Regulations*.

55. Wang refers to the following case authorities:

1. *The Saskatchewan Employment Act*, SS 2013, c S-15.1
2. *The Occupational Health and Safety Regulations*, 1996. C.O-1.1 Reg. 1
3. Black's Law Dictionary, 7th Ed.
4. *Chinichian vs. Mamawetan Churchill River Health Region*, 2016 SSKCS 89
5. *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27
6. *Ontario (Ministry of Labour) vs. Hamilton (City)*, 2002 CanLII 16893 (ON CA)
7. *R v Saskatchewan Power Corporation*, 2016 SKPC 2
8. *R v. Nalco*, 2018 SKPC 61

B. For The Appellant - John Agioritis

56. In his *Brief of Law of the Appellant, Wright Construction Western Inc.*, at Section III paragraph 51, Agioritis submits that the Appeal raises the following issues:

- (a) What is the scope of the Appeal?
- (b) Did Wright have a traffic control plan on July 21, 2020 that complied with s 133(6) and (7) of the OHS Regulations?

57. The Nature of the Appeal and Standard of Proof

a. Nature of the Appeal

- In a preliminary issue raised at the beginning of the hearing, the Arbitrator ruled that the appeal would proceed as a hearing *de novo* with respect to the issuance of the Contravention.
- A *de novo* hearing has been defined as "a hearing in which the decision-making authority deals completely afresh with a matter that has already been heard once before either by that or another authority, and a hearing which starts over which wipes the slate clean and begins all over again as if any previous partial or complete hearing had not occurred." (*Keating v Nova Scotia*, 2001 NSSC 85 [2001] NSJ No. 227 at para 36.)
- The appeals to an Adjudicator have been confirmed by cases considered by the Saskatchewan Labour Board (*Nicholson v Domsask Holdings Ltd.*) and the Saskatchewan Court of Appeal (*Chinichian v Mamwetan Churchill River (Health Region)*).

b. Standard of Proof

- Balance of Probabilities
 - In *Stettler v. Ontario (Agriculture, Food & Rural Affairs Appeal Tribunal)* the decision provides that a 'balance of probabilities' is the correct standard of proof in administrative proceedings absent clear statutory language to the contrary. In this instance, the Act does not provide for

the alternate standard of proof, and the administrative nature of these proceedings indicate that the adjudicator is to consider, on a balance of probabilities, whether Wright has complied with the legislation.

○ Reasonable Practicability

- The law in this area does not require perfection in exercising a duty under the Act. Rather pursuant to s. 3-80 of the Act, Wright's conduct in compliance with the Act and OHS Regulations should be measured by a standard of reasonable practicability:
- Onus on accused re duty or requirement:

S. 3-80 In any proceedings for an offence pursuant to this Part or the regulations made pursuant to this Part respecting a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something the onus is on the accused to prove, as the case may be, that:

- (a) it was not practicable or not reasonably practicable to do more than was actually done to satisfy the duty or requirement; or
- (b) there was no better practicable means than was actually used to satisfy the duty or requirement.

3-1(1)(x) "practicable" means possible given current knowledge, technology and invention.

3-1 (1)(z) "reasonably practicable" means unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money of the measures to secure the duty.

- Wrights submits that concepts of practicability and reasonable practicability are very important in measuring its compliance with the legislation, and they are principles that an officer and the employer must contemplate when exercising their duties and assessing compliance with the Act and OHS Regulations.

58. Wright did have a Traffic Control Plan

a. General Submissions

- (i) Agioritis submits that Wright had developed a written multi-faceted Traffic Control Plan in compliance with s. 133 of the OHS Regulations that was adaptable to the dynamic construction process at the Worksite. The Traffic Control Plan was through Wright's orientation, regular site safety meetings and actual practices at the Worksite.
- (ii) Agioritis further submits that the fact Officer Holzer was prepared to offer Wright a 'deal' between the Traffic Control Plan contravention and the safety glasses contravention indicates that he was prepared to compromise his

opinion on the Contravention. His willingness to compromise is evidence of the lack of an objective basis to ground the Contravention. Officer Holzer's improper exercise of discretion and lack of objectivity is evidence of the Crown's inability to prove the Contravention on a balance of probabilities.

- (iii) In addition, the Director of OH&S amended Officer Holzer's decision to particularize the Contravention to the specific ss 133 (7)(c)(vii) relating to the duties of workers and the employer or contractor. The Director was satisfied that upon review, Officer Holzer erred in issuing a blanket contravention concluding that Wright failed to satisfy the requirements of ss 133 (6) and (7).
- (iv) The Contravention does not specify the nature of any hazards observed at the Work site with respect to traffic, nor did Officer Holzer testify to having observed any hazards during his inspection.

b. Review of ss 133 (6) and (7)

(i) The Traffic Control Plan was in writing

As discussed throughout the evidence provided by Wright's employees, the TCP consisted of the Site Plan, the Safety Manual and site safety meetings all of which were put into writing and posted in the construction trailer on the Safety Board.

As summarized by Bruce Churchwell, Wright's Safety Coordinator, Wright uses a multi-faceted approach to implementing its Traffic Control Plan. The Traffic Control Plan consisted of a Site (the "Site Plan") safety documentation, hazard assessments, regular meetings with workers and site foremen, weekly subcontractor meetings and job planning. The use of this multi-layered approach enabled Wright to be adaptable to the changing circumstances at the job site as construction progressed."

(ii) The Traffic Control Plan was readily accessible by workers

All elements of the TCP were clearly posted on the Safety Board and available to workers online. Holzer testified that the TCP was not readily available to workers because it took 5 to 10 minutes for Mr. Schlosser to produce the Site Plan for him. This submission fails: 1) Holzer confused the matter by referring to the interior of the building. If he had asked for the Site Plan he would have been referred to the Safety Board. 2) After realizing what was being requested, The corporate head office provided the documentation within less than 10 minutes. The evidence establishes that the elements of the TCP are readily available to the workers in the construction trailer and online.

(iii) The Traffic Control Plan set out the appropriate elements

The TCP sets out the elements outlined in ss 133 (7)(c) as where appropriate. These are not mandatory elements but only need be set out 'where appropriate'. These elements are addressed below:

- *Maximum speed limit* - The TCP did set out the allowable speed at the Worksite being 10 km/h.
- *Maximum operating grades* - The Crown acknowledged that ss 133(7)©(ii) does not apply to the Worksite as it was level. Therefore it was not necessary to include the operating grades.
- *Location and type of control signs* – The Site Plan clearly indicates that a speed limit sign is posted at the gates to the worksite. The Director in his amendment of the Contravention acknowledged that this requirement had been met by amending the Contravention to be only in respect of the requirement set out in s 133 (7)©(vii).
Furthermore, Churchwell testified that it was *not possible to post traffic control signs inside the building due to the ever changing environment*. The use of barrier tape and barricades as discussed in the Safety manual and implemented through WCW's site safety meetings. It was impossible to accurately capture the location of these temporary barriers because the site map would need to be updated hourly.
- *The route to be taken by vehicles and equipment* - WCW submits that the Site Plan clearly marked the routes to be taken by vehicles and equipment on the exterior of the building.
With respect to the interior of the building, WCW submits that it was not possible to mark the paths of travel because the interior of the building was changing daily if not hourly. WCW submits that it was not 'practicable', reasonably practicable' or appropriate' to have a written plan marking the routes to be taken by equipment inside the building. WCW would be required to re-draft a new site plan on an hourly and daily basis. Vehicle hazards were being mitigated by WCW's Safety Job Practices, Safe Work Procedures, hazard assessments, and foremen's meetings.
WCW marked the paths of travel for vehicles and equipment for the exterior of the worksite, and implemented appropriate controls inside the building where it was impractical to clearly delineate paths of travel.
- *Priority for classes of vehicle*
The TCP satisfied the priority for classes of vehicle by marking priority access route for emergency vehicles on the Site plan and providing information regarding the right of way to its workers through the Safety Manual and hazard assessments. Additionally all equipment operators at the Worksite were required to be competent and trained in the safe operation of equipment.
The Site Plan was only one element of the TCP. The priority of vehicles was addressed elsewhere in its plan.
- *The location and type of barriers and restricted areas*
The Site plan clearly marked the site fence which created the restricted area of the Worksite. Weekly hazard assessments and daily meetings addressed the location and type of barriers and restricted areas in all areas of the Worksite. These barriers were

changing hourly and it was not practical or reasonably practicable for WCW to implement a fixed TCP that marked these barriers. WCW's strategy was to address this element of the TCP through its Safety Manual, hazard assessments and site safety meetings.

- *The duties of workers and the employer or contractor*

WCW submitted that it addressed the duties of workers and the employer through orientation, its Safety Manual, and the site safety meetings. Numerous policies, practices and procedures outlined in the Safety Manual specifically addressed traffic safety. Workers were trained on this material during the orientation and the Safe Manual was made available to workers online and in the construction trailer. Holzer's argument was that they should have been on the Site Plan. This position fails to take into account that the Site Plan is only one facet of the TCP.

59. At paragraph 91 of the Brief of Law on Behalf of the Appellant, Agioritis states:

" In conclusion, Wright submits that it had developed and implemented a Traffic Control Plan that set out all of the appropriate requirements for a Traffic Control Plan at the Worksite. As a result Wright requests that the Occupational Health and Safety Director's Decision be withdrawn and the amended Notice of Contravention be cancelled. "

60. Agioritis refers to the following case authorities:

- a. *AAA Motel Ltd. v Sharilyn Smith*, LRB File No 038-17
- b. *Banff v Arcand*, LRB File No 184-19
- c. *Britto v University of Saskatchewan*, LRB File No. 128-15
- d. *Chinichian v Mamawetan Churchill River (Health Region)*, 2016 SKCA 89 (CanLII)
- e. *F.H. v McDougall*, 2008 SCC 53 [2008] 2 SCR 41
- f. *Keating v Nova Scotia*, 2001 NSSC 85, [2001] NSJ No 227
- g. *Michelle Calow v Cypress Health Region*, LRB File No 221-16
- h. *Nicholson v Domsask Holdings Ltd.*, 2015 Can LII 43771 (Sask LRB)
- i. *Racic v Moose Jaw Family Services Inc.*, 2015 CanLII 60882 (Sask LRB)
- j. *Ryan Ross v Saskatchewan Indian Gaming Authority*, LRB File No 282-19
- k. *Stettler v Ontario (Agriculture, Food & Rural Affairs Appeal Tribunal)*, [2005] OJ No 2817, 141 ACWS (3d) 157 (Ont CA)

- I. David Mullan, *Essentials of Canadian Law; Administrative Law*, (Toronto: Irwin Law Inc., 2001)

VI. The Issues

61. The issues are:
- Should Officer Holzer's comments during the inspection regarding issuing of a Notice of Contravention and proposing a deal have negated the issuance of the Notice of Contravention?
 - Did WCW have a traffic control plan as required by ss. 133(6) and (7) of the *Regulations* on July 21, 2020?

VII. Analysis

A. Should Officer Holzer's conduct during the inspection negate the issuance of the Notice of Contravention?

62. Under *The Saskatchewan Employment Act* :
- 3-38(1) An occupational health officer shall act pursuant to subsection (2) if the occupational health officer is of the opinion that a person:
- is contravening any provision of this Part or the regulations made pursuant to this Part; ...
 - In the circumstances mentioned in subsection (1), the occupational health officer shall:
 - serve a notice of contravention on the person.
63. According to the document issued by the Government of Saskatchewan to provide information to the public regarding the Notice of Contravention provisions:
- "Prior to issuing a notice of contravention, the officer must have formed the opinion that a workplace party has contravened *The Saskatchewan Employment Act* or the regulations and that the issuance of the notice of contravention is in accordance with Part III of the Act and the Division's policies. The opinion must be based on reasonable, credible and documented evidence." [[https://www.saskatchewan.ca/business/safety-in-the workplace/enforcements-prosecutions-ivestigations/compliance-undertakings-and-notice-of-contraventions](https://www.saskatchewan.ca/business/safety-in-the-workplace/enforcements-prosecutions-ivestigations/compliance-undertakings-and-notice-of-contraventions)].
- As testified by Officer Holzer, he asked Schlosser for WCW's traffic control plan. Holzer related that Schlosser's response was "What's that?" Schlosser was shown Regulation 133, and he told Officer Holzer that WCW did not have that.
64. None of the documents that were presented to Officer Holzer were labelled Traffic Control Plan. None of the employees of WCW that were interviewed during the

inspection could produce a document labelled Traffic Control Plan. Exhibit C2 was produced but was labelled Site Plan.

65. WCW's position as stated by Ryan Campaign, Safety Manager, in WCW's Appeal to Director of the Notice of Contravention 1-000011438 addressed to The Director of Occupational Health & Safety Division dated October 6, 2020 was set out as follows:
- "From the onset of the inspection, the officer repeatedly told Wright's site superintendent Les Schlosser, that he would be issuing Wright a contravention. The Officer clearly demonstrated an intention of issuing a contravention from the moment he arrived at the Work Site and without regard for any evidence, let alone reasonable credible or document evidence. Because of this predetermination to issue a contravention, Wright respectfully submits that the Officer cannot reasonably have formed his opinion based on credible or documented evidence."
66. I find that no matter what Officer Holzer's intention was, *Regulation* 133 is mandatory. There shall be a Traffic Control Plan. Even though there was testimony given by several of WCW's Employees that Officer Holzer had said he was going to issue a Notice of Contravention today, the issuing of a Notice of Contravention under this *Regulation* does not depend on intent. If WCW has not complied with the *Regulation*, the intent of the Officer is irrelevant. That being said, the Officer must form his opinion on credible, documented evidence.
67. There was no document labelled Traffic Control Plan produced by WCW's Managers. What was produced was Exhibits C2 and C3 that were the original Site Map and the revised edition neither of which did comply with *Regulation* 133 (6) and (7).
68. I therefore find that Officer Holzer's action in issuing the Notice of Contravention was based on reasonable, credible, and documented evidence.

B. Did WCW have a traffic control plan as required by ss. 133 (6) and (7) of *The Occupational Health & Safety Regulations* on July 21, 2020?

1. Requirements of the Regulations to have a Traffic Control Plan

69. Ss 133 (6) of the *Regulations* reads:

(6) Where there is or may be hazard to a worker from traffic at a place of employment other than a public highway, an employer or contractor shall develop and implement a traffic control plan to protect the worker from traffic hazards.

As the Work Site in this case was a construction site with vehicles and equipment moving within it, there was or could be a hazard to a worker from traffic at this place of employment. Therefore, ss. 133(6) of the *Regulations* applies to WCW's Work Site and a traffic control plan to protect the worker shall be developed and implemented to protect the worker from traffic hazards.

2. Requirements of the Traffic Control Plan

(i) be in writing

70. Ss. 133 (7) of the *Regulations* reads:

(7) A traffic control plan required by subsection (6) **must:**

(a) **be in writing:**

In the Notice of Contravention, Officer Holzer stated the following observation:

“During the inspection I observed that where there is or may be a hazard to a worker from traffic at a place of employment other than a public highway the employer did not develop and implement a traffic control plan to protect the workers from traffic hazards. I enquired if they had a traffic control plan that had everything set out in subsection (7). They did not.”

71. WCW argued that they did have a traffic control plan. In WCW's *Brief of Law of the Appellant*, Agioritis stated in paragraph 7:

“ As summarized by Bruce Churchwell, Wright's Safety Coordinator, Wright used a **multi-faceted approach** to implementing its Traffic Control Plan. The Traffic Control Plan consisted of a site plan (the “**Site Plan**”), safety documentation, hazard assessments, regular meeting with workers and site foremen, weekly subcontractor meetings and job planning. The use of this multi-layered approach enabled Wright to be adaptable to the changing circumstances at the job site as construction progressed.”

In Regulation 133(7) (a) I find that words ‘in writing’ are not to be interpreted that it requires the traffic control plan to be in one document containing everything relating to the *Regulation*. The documents that were described to Officer Holzer met the requirements of the *Regulation* in respect to a traffic control plan being in writing. Those documents included the Site Map, the Safety Manual, Safety Work Practices, Safe Job Procedures and Critical Tasks, the Safety Board, and the Minutes of various meetings (Tail gate and End Gate meetings and Foremen's meetings).

72. I therefore find that the requirement of a traffic control plan being in writing as required by *Regulation* 133 (7) (a).

b. be made readily available for reference by workers at the place of employment

73. The above being said, I find that that WCW was **not** compliant with *Regulation* 133 (7) (b). During testimony from various WCW Managers, it was evident that the information necessary to satisfy a Traffic Control Plan was in the various documents that were produced. However, the written information that pertained to traffic control plan was not *readily available for workers at the place of employment*.
74. At the time of inspection, WCW produced a Site Map (Exhibits C2 and C3) where paths of travel were marked. However, not all information regarding the paths of travel was on the Site Map. For example, one of the Managers explained that the Blue path denoted on the Site Map could be used by other vehicles when there was no emergency. That information was not on the Site Map.
75. In the testimony given by Shawn Goller, he testified that emergency vehicles would take priority over other vehicles. Equipment had the right of way compared to vehicles. These practices were set out in WCW's Safety Manual.

I find that nowhere is the right of way for equipment set out on the Site Map which sets out the traffic paths. It is located in the Safety Manual, but there is no link to guide the worker to the Safety Manual on the Site Map.

76. In the Cross Examination of Les Schlosser at paragraph 27 d. of this Decision, Wang pointed out that the Site Map does not show any equipment in the buildings. Schlosser agreed. Wang noted that there would be lifts inside the building, but by looking at the document you would not know if there was equipment inside the building. In paragraph 27 e. Wang asked Schlosser what if a worker asked to see a TCP. Schlosser said he would show him the Site Map for the exterior. For the interior he would tell him what was discussed with the workers and subtrades for the whole week.

I find that unless Schlosser or another Manager was present when the worker asked for the information about the interior of the site, there was no reference available to direct the worker to any references such as the Minutes of the various meetings about the interior job site.

77. Wang asked Schlosser if Holzer had asked about the right of way of vehicles. In paragraph 27 f. of this Decision:

"Schlosser said that we have the blue line which is for emergency vehicles. It is a shared pathway for emergencies. Wang noted that heavy equipment has the right of way. Schlosser said correct. Wang questioned if that is indicated on the document. Schlosser said not on this document but it is shown in a number of documents. Wang asked if there are any documents that show the duties of the workers and employers in regards to traffic. Schlosser said it is in the Safety Manual all over."

I find that there was no notation on the Site Map to guide the worker to find the answer to his question regarding the right of way of equipment or the duties of the workers and employers by looking at the Site Map. The duties of workers and the employer or contractor were laid out in The Safe Work Practices and Safe Job Procedures in the Safety Manual which was developed by WCW. However, there was no reference indicating that in on the Site Map.

78. In Wang's Cross Examination of Christian Nielsen, Wang showed him a Field Level Hazard Assessment for the period from July 17 to 22, 2022.

"FLHA Exhibit A7 was dated July 17, 2020. It would be applicable from July 17 to July 22. It said 'Don't walk under equipment. Stay off landscaped areas.' Nielsen was asked, 'Were the landscaped areas defined in any way? Were they identified in any documents?' Nielsen said they were on the Site Plan. In reviewing Exhibit C2 and 3, I could not identify any landscaped areas, nor could I find any notation about not working under equipment.

79. Testimony from the various Managers described the contents of The Safety Manual developed by the Safety Coordinator which contains WCW's Safe Work Practices, Safe Job Procedures and Critical Tasks. This Safety Manual is available to all staff and sub contractors who are trained in its use and have access to an online copy.

Construction trailers at each end of the project contain computers where staff and/or subcontractors can access the Manuals on line.

In Cross Examination of Christian Nielsen set out in this Decision at paragraph 31 d.:

“Nielsen was asked to explain if information is scattered in different documents why it would be referred to as easy access. Nielsen replied that it is easier than having a large manual of 1000 pages, The manual applies to all work sites. It is true it would be easier to find the material all in one place.”

80. I find that although The Safety Manual was online workers would have to wade through all the documents listed to find answers to their questions. As there was access for workers to The Safety Manual and other relevant documents online a link to the relevant provisions of The Safety Manual relating to traffic control should have been on the Site Map.
81. I find that Wang's position that compiling the information into one document is a better practicable means to have the information in the Traffic Control Plan available to the workers.

c. set out where appropriate:

82. As I have already found that WCW did not meet the mandatory requirement under *Regulation 133 (7) (b)* it is not necessary to review WCW's compliance with *Regulation 133 (7)(c)*.

VIII Conclusion and Remedy

- 82 Section 4-6(1) of the *Act* sets out the adjudicator's powers on appeal:

4-6(1) Subject to subsections (2) to (5,) the adjudicator shall:

(a) do one of the following:

- (i) dismiss the appeal;
- (ii) allow the appeal;
- (iii) vary the decision being appealed; and

(b) provide written reasons for the decision to the board, the director of employment standards or the director of occupational health and safety as the case may be and any other party to the appeal.

71. I have found that Officer Dylan Holzer was correct in issuing Notice of Contravention, Report number 1-00011438 issuing a contravention against Wright Construction Western Inc. relating to an Inspection of Wright's worksite on 600 5thSt. N.E., Weyburn, Sk. My finding is the employer did not develop and implement a traffic control plan to protect the workers from traffic hazards.
72. In conclusion, I therefore dismiss the appeal by Wright Construction Western Inc. The Notice of Contravention Number 1-000-11438 stands.

Issued on February 12th, 2024.

MWeston

Marlene Weston, Arbitrator