

R. v Stickland, 2016 CanLII 2781 (NL PC)

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**IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND
LABRADOR
JUDICIAL CENTRE OF CORNER BROOK**

Citation: *R. v. Stickland*, 2016 NLPC 1314A000821

Date: January 29, 2016

HER MAJESTY THE QUEEN

V.

JOHN STICKLAND

Place of Hearing: Corner Brook, NL.

Hearing Dates: January 22 and 25, 2016.

Summary: The accused was acquitted of obstructing a fishery officer, contrary to [section 62](#) of the *Fisheries Act*, R.S.C. 1985.

Appearances:

Mr. A. May counsel for Her Majesty the Queen.

Mr. G. Martin Q.C. counsel for Mr. Stickland.

CASES CONSIDERED: *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, [2013 SCC 63 \(CanLII\)](#), *Levis (City) v. Tetreault & Levis (City) v. 2629-4470 Quebec Inc.*, [2006 SCC 12 \(CanLII\)](#), [2006] 1 S.C.R. 420, *R. v. Cross*, [2015] N.J. No. 4 (P.C.), *R. v. Rideout*, [2014 NLCA 29 \(CanLII\)](#), *R. v. Keough* (2006), [2006 NLTD 142 \(CanLII\)](#), 260 Nfld. & P.E.I.R. 278 (N.L.S.C.), *R. v. Rumbolt* (1993), 111 Nfld. & P.E.I.R. 174 (N.L.P.C.), *R. v. Adams*, [2010] A.J. No. 412 (Q.B.), *R. v. Tortola* (1975), 28 C.C.C. (2d) 562 (Ont. C.A.), *R. v. Cole* (1977), 24 N.S.R. (2d) 102 (C.A.), *R. v. Ohara* (1993), 119 N.S.R. (2d) 128 (P.C.), *R. v. Gunn* (1997), 193 A.R. 222 (C.A.), *R. v. Prodromidis*, [2015] N.W.T.J. No. 60 (T.C.), *R. v. Chanyi*, [2016 ABPC 7 \(CanLII\)](#), [2016] A.J. No. 37 (P.C.), *R. v. Vlcko* (1972), 10 C.C.C. (2d) 139 (Ont. C.A.), *R. v. Sanderson*

(2003), [2003 CanLII 20263 \(ON CA\)](#), 174 C.C.C. (3d) 289 (Ont. C.A.), *Figueiras v. Toronto (Police Services Board)*, [2015 ONCA 208 \(CanLII\)](#), *R. v. Noel* (1995), [1995 CanLII 1105 \(BC CA\)](#), 101 C.C.C. (3d) 183 (B.C.C.A.), *R. v. Fitzpatrick*, [1995 CanLII 44 \(SCC\)](#), [1995] 4 S.C.R. 154, *R. v. Rhyno*, [2002] N.S.J. No. 170 (P.C.), *R (on the application of Roberts) (Appellant) v Commissioner of Police of the Metropolis and another (Respondents)* [2015] UKSC 79, *R. v. Wu*, [2015 ONCA 667 \(CanLII\)](#), *R. v. Chehil*, [2013 SCC 49 \(CanLII\)](#), [2013] 3 S.C.R. 220, *R. v. Storrey*, [1990 CanLII 125 \(SCC\)](#), [1990] 1 S.C.R. 241, *R. v. Diamond*, [2015 NLCA 60 \(CanLII\)](#), *R. v. Moore*, [1978 CanLII 160 \(SCC\)](#), [1979] 1 SCR 195, *R. v. Vuozzo*, [2013] A.J. No. 313 (C.A.), *R. v. Paradis*, [2015] A.J. No. 1082 (P.C.), *R. v. Hrvacanin*, [2014] B.C.J. No. 396 (P.C.), *R. v. Mann*, [2004 SCC 52 \(CanLII\)](#), [2004] 3 S.C.R. 59, *R. v. Greaves* (2004), [2004 BCCA 484 \(CanLII\)](#), 189 C.C.C. (3d) 305 (B.C.C.A.), *R. v. Petten*, [1996] N.J. No. 58 (S.C.), *R. v. Lifchus*, [1997 CanLII 319 \(SCC\)](#), [1997] 3 S.C.R. 320, *R. v. Starr*, [2000 SCC 40 \(CanLII\)](#), [2000] 2 S.C.R. 144, *R. v. J.M.H.*, [2011 SCC 45 \(CanLII\)](#), *R. v. Ahmed*, [2013 ONCA 473 \(CanLII\)](#), *R. v. W.(D.)*, [1991 CanLII 93 \(SCC\)](#), [1991] 1 S.C.R. 742, *R. v. Crowley*, [2015 NBCA 61 \(CanLII\)](#), *R. v. Kang-Brown*, [2008 SCC 18 \(CanLII\)](#), [2008] 1 S.C.R. 456, and *Wood v. Schaeffer*, [2013 SCC 71 \(CanLII\)](#), [2013] 3 S.C.R. 1053.

STATUTES CONSIDERED: The *Fisheries Act*, R.S.C. 1985 and the *Criminal Code of Canada* R.S.C 1985.

JUDGMENT OF GORMAN, P.C. J.

INTRODUCTION:

[1] On July 24, 2014, Fishery Officer Sherry Pittman and two fishery guardians (the “officers”) were conducting a routine patrol in the Bay of Islands when they came across Mr. John Stickland. Mr. Stickland was in his dory. Officer Pittman decided to conduct a fishery inspection. She motioned to Mr. Stickland to come over to the fishery vessel, but instead Mr. Stickland headed toward his cabin, which was on nearby Tweed Island and drove his dory on to a beach in front of his cabin. Because of the water depth and the size of the fishery vessel, the officers were unable to follow Mr. Stickland and an inspection was not conducted. As a result of his actions, Mr. Stickland was charged with having obstructed a fishery officer, contrary to [section 62 of *Fisheries Act*](#), R.S.C. 1985.

[2] For the reasons that will follow, I have concluded that the Crown has failed to prove beyond a reasonable doubt that Mr. Stickland committed the *actus reus* of the offence with which he is charged. Let me explain my reasons for this conclusion by commencing with a review of the evidence presented at the trial.

THE EVIDENCE PRESENTED AT THE TRIAL

[3] The evidence presented at the trial established that on July 24, 2014, Fishery Officer Pittman was on a routine patrol in the Bay of Islands. With her were fishery guardians Kevin Bennett and Christine Payne. The recreational ground fish fishery was open.

[4] Fishery Officer Pittman testified that at approximately 10:00 a.m. she saw Mr. Stickland’s dory and approached it. Officer Pittman indicated that Mr. Stickland’s dory was approximately one hundred metres from the fishery vessel when she first saw it. Guardian Payne described the dory being a quarter of a kilometre away at this time. Guardian Bennett estimated the distance as being “a couple hundred metres.”

[5] Fishery Officer Pittman testified that Mr. Stickland, who was “back on” to the fishery vessel, was bent over and was hauling a line from the water. She described the line as being a “thin line” which was placed over the gunnel and dropped straight into the water. Guardian Payne also described seeing Mr. Stickland “bent over”, but she did not see any line. Guardian Bennett described seeing a dark “braided” line. Guardian Bennett also testified that he saw “something” at the end of the line and that it made a “splash” as the line was pulled out of the water. Guardian Bennett concluded that it was a fishing hook that had made the splash.

[6] Officer Pittman concluded that Mr. Stickland was fishing and decided to conduct an inspection. Officer Pittman agreed that she only had a “momentary glance” when she saw the line and that the fishery vessel was “bouncing” on the water.

[7] Officer Pittman described the water conditions as being “moderate.” Guardian Payne described it as being “a bit choppy”, but “not rough.” She said it was “not a stormy day.” Guardian Bennett indicated that there was “a bit of a swell.”

[8] Fishery Officer Pitman testified that she was standing at the stern of the fishery vessel and Guardian Bennett was operating the fishery vessel from inside the vessel’s cabin when she first saw Mr. Stickland’s dory. Officer Pittman indicated that Guardian Payne was also inside the cabin. However, Guardian Payne testified that Officer Pittman was inside the cabin operating the fishery vessel when they first saw Mr. Stickland’s dory. Guardian Bennett testified that he was operating the fishery vessel at this time.

[9] Officer Pittman testified that that when Mr. Stickland saw the fishery vessel (a zodiac) he started his engine and began to steam away from the fishery vessel.

[10] Fishery Officer Pittman testified that the fishery vessel pulled alongside the dory and she motioned and yelled for Mr. Stickland to “stop” and to come over toward the fishery vessel. She indicated that the fishery vessel was approximately fifteen metres from Mr. Stickland’s dory when this occurred. Officer Pittman described Mr. Stickland pointing his finger at his chest and then toward Tweed Island. She did not know if Mr. Stickland heard what she was saying. She could not hear anything Mr. Stickland said. Guardian Bennett suggested that Mr. Stickland shook his head back and forth in a manner indicating he was not going to stop.

[11] Fishery Officer Pittman testified that as the fishery vessel came close to Tweed Island she took over the control of the vessel because she had more experience in operating the zodiac than Guardian Bennett and because there are dangerous shoals near Tweed Island.

[12] Officer Pittman testified that Mr. Stickland steamed toward Tweed Island and beached the dory he was operating. She described Mr. Stickland’s dory as moving “fairly quickly”, but the manner of beaching the dory was in her view “normal.”

[13] Officer Pittman testified that Mr. Stickland got out of the dory and went into a cabin. Officer Pittman agreed that Mr. Stickland did not take anything out of the dory while on Tweed Island. She described seeing Mr. Stickland go into a cabin and leave with a chainsaw that he placed into his dory. Guardian Payne saw Mr. Stickland place a ladder into the dory while on Tweed Island.

[14] Officer Pittman testified that she motioned and yelled to Mr. Stickland for him to come back on to the water where the fishery vessel was, but he did not do so nor did he respond when she asked him his name.

[15] Fishery Officer Pittman testified that because of the size of the fishery vessel and the water depth near Tweed Island the fishery vessel could not safely follow Mr. Stickland on to the

beach nor could she or one of the guardians have left the fishery vessel and have safely entered the water to follow Mr. Stickland.

[16] Fishery Officer Pittman testified that the fishery vessel stayed near Tweed Island for approximately fifteen minutes and then she steered it back to the area where she had originally seen Mr. Stickland, but nothing was found to indicate that Mr. Stickland had been fishing in this location.

[17] Fishery Officer Pittman, Guardian Payne and Guardian Bennett were all of the opinion that Mr. Stickland could have stopped his dory and allowed for an inspection at sea.

MR. STICKLAND'S EVIDENCE

[18] Mr. Stickland testified that on July 24, 2014, he was fishing for mackerel off of Tweed Island. He indicated that he did not catch any and decided to return to his cabin on Tweed Island. Mr. Stickland indicated that on the way back to his cabin he stopped his dory to fill up his outboard motor with gasoline.

[19] Mr. Stickland testified that at approximately 10:00 a.m. he saw a vessel coming toward him. He indicated that at first he did not know it was a fishery vessel, though he conceded that he has never seen a similar vessel being operated by anyone but fishery officers. Mr. Stickland denied that he had a line overboard or that he was fishing in the area where he had stopped to place gasoline in his outboard motor.

[20] Mr. Stickland testified that when he first saw the fishery vessel he had already begun to move his dory toward Tweed Island. He indicated that he was "very close" to the beach when he realized it was a fishery vessel.

[21] Mr. Stickland testified that he saw Officer Pittman motion toward him to stop and he agreed that he pointed his finger toward himself and then toward Tweed Island. Mr. Stickland denied that he was "making a run for it" or that he was attempting to avoid an inspection.

[22] Mr. Stickland testified that there was "a lot of swell." He indicated that the location in which he was when he saw Officer Pittman is an area in which there were reefs and shoals and a strong current. Mr. Stickland testified that he did not feel it was safe to stop there and or to turn his vessel. He indicated that he was concerned his dory would be "swamped." Mr. Stickland testified that he felt that he had "no choice" but to continue on to the beach.

[23] Mr. Stickland testified that he thought the fishery vessel would follow him onto the beach. He indicated that this was why he signaled that that this was where he was heading. Mr. Stickland testified that he had seen a similar fishery vessel come on to that beach. Mr. Stickland testified that he "had nothing to hide."

[24] Mr. Stickland testified that once on Tweed Island he began to place items into his boat. He agreed that he heard Officer Pittman asks him his name and that he refused to provide it to her.

[25] The officers stayed in the area for a period of time. They then left and continued their patrol.

THE LEGISLATION

[26] [Section 62](#) of the *Fisheries Act* states as follows:

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

To Hinder:

[27] The merriam-webster.com/dictionary defines the word “hinder” as “to make slow or difficult the progress of; to hold back; to delay, impede, or prevent action.”

To Obstruct:

[28] The wording of [section 62](#) of the *Fisheries Act* is similar to [section 129\(a\)](#) of the *Criminal Code of Canada*, R.S.C. 1985, which creates the offence of resisting or obstructing a peace officer in the execution of his or her duties.

[29] However, section 62 of the *Fisheries Act* is located in a statute in which the offences contained within the statute are presumptively ones of strict liability. In addition, the *Fisheries Act* contains a provision placing a duty on those being inspected to assist the inspecting officer which has no equivalent in the *Criminal Code* (see [section 43\(1.2\)](#) of the *Fisheries Act*).

However, despite these differences the jurisprudence in relation to the word “obstructs” in [section 129\(a\)](#) of the *Criminal Code* is of use. It can assist in determining if the Crown has proven the *actus reus* of the offence created by [section 62](#) of the *Fisheries Act* because of the similarity of wording between the two provisions.

[30] It has been held that the word “obstruct” in the context of obstructing a peace officer contrary to [section 129\(a\)](#) of the *Criminal Code*, refers to actions which make it more difficult for a peace officer to carry out her or his duties (see *R. v. Rumbolt* (1993), 111 Nfld. & P.E.I.R. 174 (N.L.P.C.) and *R. v. Adams*, [2010] A.J. No. 412 (Q.B.)). In *R. v. Tortola* (1975), 28 C.C.C. (2d) 562, the Ontario Court of Appeal rejected the proposition that “a person cannot be convicted of the offence of obstructing a peace officer unless he wholly prevents the officer from the execution of his duty.” Thus, it is sufficient if the obstruction affected the officer in the execution of a duty (see *R. v. Cole* (1977), 24 N.S.R. (2d) 102 (C.A.)). An obstruction need not be physical but may be verbal (see *R. v. Ohara* (1993), 119 N.S.R. (2d) 128 (P.C.)). It has been held that any obstruction which occurs must be deliberate (see *R. v. Gunn* (1997), 193 A.R. 222 (C.A.), at paragraph 17 and *R. v. Prodromidis*, [2015] N.W.T.J. No. 60 (T.C.), at paragraph 30).

[31] In *R. v. Chanyi*, [2016 ABPC 7 \(CanLII\)](#), [2016] A.J. No. 37 (P.C.), at paragraph 116, it was held that it “is necessary to show something more than mere passive resistance to establish that an accused person has resisted a police officer. The same is not true for obstruction. Obstruction can be proven even if the accused person is passive by, for example, failing to provide identification documents which he had a duty to produce: *R. v. Moore*, [1978 CanLII 160 \(SCC\)](#), [1978] 6 W.W.R. 462 (SCC). Thus, the offence of obstructing a peace officer in the execution of his duties contrary to [section 129\(a\)](#) can be committed either by positive actions of the accused or by an omission to fulfil a legal duty imposed on the accused.”

[32] It has been held, in the context of [sections 129\(a\)](#) and [270\(1\)\(a\)](#) of the *Criminal Code* [assaulting a peace officer engaged in the execution of her or his duty] that it must be proven that the accused was aware or willfully blind to the fact that the person he or she assaulted was a peace officer (see *R. v. Vlcko* (1972), 10 C.C.C. (2d) 139 (Ont. C.A.) and *Chanyi*, at paragraph 112).

[33] It has been pointed out that the “powers and duties of a peace officer emanate from common law and statute” (see *R. v. Sanderson* (2003), [2003 CanLII 20263 \(ON CA\)](#), 174

C.C.C. (3d) 289 (Ont. C.A.), at paragraph 26). In *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208 (CanLII), the Court of Appeal indicated that police powers “arise both from statute...and from the common law itself. In the latter case, this is referred to as the ‘ancillary powers doctrine’, reflecting the fact that police *powers* are ancillary to police *duties*... Police officers are given broad duties to preserve the peace and prevent crime. The powers conferred on them to execute those duties, however, are not correspondingly broad.”

[34] In *R. v. Noel* (1995), 1995 CanLII 1105 (BC CA), 101 C.C.C. (3d) 183, the British Columbia Court of Appeal considered the issue of when a peace officer is acting in the execution of his or her duties, in the context of section 129(a) of the *Criminal Code* and concluded that the concept of duty "is a broad one", but requires more than simply "being on duty" (at paragraphs 14 and 15):

This decision indicates that the concept of "duty", as described in s. 129(a), is a broad one. A peace officer does not have to be involved in the investigation of a specific crime, with an identifiable suspect, in order to be "in the execution of his duty". If, at any given moment in time while on duty, a peace officer's activities fall within those described either generally by Lord Parker in *Rice v. Connolly*, or more specifically by one or more of the statutes detailing the duties and responsibilities of peace officers, then the officer will be engaged in the execution of his or her "duty", as that term is used in s. 129(a).

However, there are limits to the activities which can reasonably be characterized as falling within the term "duty" in that section. It is well established, for example, that the duty there referred to must be a lawful duty. Thus where the activities of a police officer are unlawful, even though undertaken with the specific intent of discharging one or more of the generally recognized duties of a peace officer, they will not amount to a "duty" under s. 129(a). Many of the authorities referred to by counsel discussed this limitation on the meaning of "duty" in s. 129(a). While not directly on point, they assist to the extent they confirm that something more than merely being "on duty", or "at work", is required before a peace officer will be "in the execution of his duty".

Carrying Out Duties or Functions:

[35] In the fisheries context, fishery officers are always on duty while working. But this alone does not provide them with the lawful authority to stop vessels or to conduct searches or inspections. Such authority is prescribed by statute and the officer must be acting in accordance with that statutory authority before his or her directions must be complied with. Thus conducting a fishery patrol does not in and by itself provide fishery officers with any power to search or inspect. Having said this, a lawful fishery inspection does not require grounds to believe that an offence has been committed. The fishery is a highly regulated activity (see *R. v. Fitzpatrick*, 1995 CanLII 44 (SCC), [1995] 4 S.C.R. 154). Thus an inspection designed to check a fishing licence, for instance, would constitute carrying out duties and functions pursuant to the *Fisheries Act*. This, however, does not mean that every person in a boat or vessel can be subjected to inspection or search without reasonable grounds.

[36] In order for a person to be convicted of obstructing or hindering a fisheries officer pursuant to section 62 of the *Fisheries Act*, the officer must be “carrying out duties or functions”

under the *Fisheries Act*. As pointed out in *R. v. Rhyno*, [2002] N.S.J. No. 170 (P.C.), at paragraph 24, the “authority of the fisheries officers is not absolute. There must be vigilance against abuse. Any inspection authorized by section 49(1) must have reasonable grounds to conclude that which is being inspected is connected to the fishery.”

[37] The powers of the police or other investigators are purposely prescribed at common law. As pointed out in *R (on the application of Roberts) (Appellant) v Commissioner of Police of the Metropolis and another (Respondents)* [2015] UKSC 79, by the Supreme Court of the United Kingdom, there are good reasons for limits being placed upon such powers (at paragraph 1):

In this country, we are wary of giving too much power to the police. We believe that we should be free to be out and about in public without being subjected to compulsory powers of the police, at least unless and until they have reasonable grounds to suspect that we are up to no good. We have so far resisted suggestions that we should all have to carry identity cards that the police can demand to see whenever they want. We have unhappy memories of police powers to stop and search “suspected persons” even with reasonable grounds. We are even more suspicious of police powers to stop and search without having reasonable grounds to suspect that we are committing or going to commit a crime.

The Power to Enter and Inspect Contained Within the *Fisheries Act*:

[38] Section 49 of the *Fisheries Act* allows a fisheries officer to enter upon and to inspect a vessel if there are reasonable grounds to believe that there is anything onboard that vessel to which the *Fisheries Act* applies. Section 49(1) of the *Fisheries Act* states:

(1) Subject to subsection (2), for the purpose of ensuring compliance with this Act and the regulations, a fishery officer or fishery guardian may enter and inspect any place, including any premises, vessel or vehicle, in which the officer or guardian believes on reasonable grounds there is any work or undertaking or any fish or other thing in respect of which this Act or the regulations apply and may

(a) open any container that the officer or guardian believes on reasonable grounds contains any fish or other thing in respect of which this Act or the regulations apply;

(b) examine any fish or other thing that the officer or guardian finds and take samples of it;

(c) conduct any tests or analyses and take any measurements; and

(d) require any person to produce for examination or copying any records, books of account or other documents that the officer or guardian believes on reasonable grounds contain information that is relevant to the administration of this Act or the regulations.

(1.1) In carrying out an inspection of a place under subsection (1), a fishery officer or fishery guardian may,

- (a) use or cause to be used any data processing system at the place to examine any data contained in or available to the data processing system;
- (b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and remove the print-out or other output for examination or copying; and
- (c) use or cause to be used any copying equipment at the place to make copies of any record, book of account or other document.

A Subjective-Objective Test:

[39] As can be seen from this wording [section 49\(1\)](#) of the *Fisheries Act* incorporates the traditional subjective and objective test for investigative authority. In *R. v. Wu*, [2015 ONCA 667 \(CanLII\)](#), in the context of the power to arrest, the Ontario Court of Appeal noted, at paragraph 49, that to "establish reasonable and probable grounds for arrest, a police officer must subjectively believe that a person has committed or is about to commit an indictable offence, and the police officer must be able to justify that belief on an objective basis, meaning that a reasonable person placed in the position of the police must be able to conclude that there were reasonable and probable grounds." In *R. v. Chehil*, [2013 SCC 49 \(CanLII\)](#), [2013] 3 S.C.R. 220, at paragraph 26, it was pointed out in the context of assessing a reasonable suspicion that the subjective belief must be grounded in "objectively discernible facts, which can then be subjected to independent judicial scrutiny."

[40] Therefore, in determining whether a fishery officer or guardian was carrying out duties and functions pursuant to [section 49](#) of the *Fisheries Act*, the officer or guardian must have a subjective belief that there is something in the place to be searched in respect of which the *Fisheries Act* or regulations apply. The search must be for the purpose of ensuring compliance with the *Fisheries Act* or regulations. In addition, the officer's or guardian's belief must be objectively reasonable in the circumstances (see *R. v. Storrey*, [1990 CanLII 125 \(SCC\)](#), [1990] 1 S.C.R. 241 and *R. v. Diamond*, [2015 NLCA 60 \(CanLII\)](#), at paragraphs 22 to 26).

All Reasonable Assistance:

[41] In the context of [section 62](#) of the *Fisheries Act* it is important to understand that the *Fisheries Act* places a more onerous responsibility on those subject to a [section 49\(1\)](#) fishery inspection than does the *Criminal Code* in the criminal context. For instance, if officers are engaged in a [section 49\(1\) Fisheries Act](#) inspection the person being inspected must provide "all reasonable assistance." [Section 49\(1.2\)](#) of the *Fisheries Act* states:

(1.2) The owner or person in charge of a place that is inspected by a fishery officer or fishery guardian under subsection (1) and every person found in the place shall

- (a) give the officer or guardian all reasonable assistance to enable the officer or guardian to carry out the inspection and exercise any power conferred by this section; and

(b) provide the officer or guardian with any information relevant to the administration of this Act or the regulations that the officer or guardian may reasonably require.

[42] In *Rhyno*, at paragraph 17, it was held that these provisions set out “a unique comprehensive management scheme vesting the fisheries officers with the obligation to jealously protect the resource and the tools with which to do it.”

[43] The obstruction or hindering can be active or passive. It can also be committed by failing or refusing to provide “all reasonable assistance” to the officer or guardian [but not an inspector] carrying out the inspection.

A Summary:

[44] I would summarize the elements of the *actus reus* of [section 62](#) of the *Fisheries Act* in the following manner:

1. that the accused obstructed or hindered a fishery officer, a guardian, or an inspector; and
2. that the fishery officer, guardian or inspector was carrying out duties or functions under the *Fisheries Act*.

[45] These functions or duties are not limited to investigation of *Fisheries Act* violations, but include actions directed toward regulating the fishery. However, this does not allow for searches or inspections without reasonable grounds.

[46] For an inspection or search to be in compliance with the *Fisheries Act* the guardian or officer must be acting in accordance with [section 49](#) of the *Fisheries Act*. [Section 49](#) limits the power of a guardian or officer to searches or inspections in which there are reasonable grounds to believe that there is anything in the “place” (which includes onboard a vessel) to which the *Fisheries Act* applies. This requires proof of a subjective belief genuinely held which is justifiable on an objective basis.

[47] If the officer or guardian is conducting an inspection in accordance with [section 49\(1\)](#) of the *Fisheries Act*, [section 49\(1.2\)](#) requires that the person being inspected provide “all reasonable assistance.”

[48] The obstruction or hindrance can be based on action or inaction. It can include a refusal to provide information if the request for that information is relevant to the administration of the *Fisheries Act* or regulations and it is information which the officer or guardian may reasonably require.

[49] Finally, refusal to provide assistance can constitute the hindrance or obstruction of an officer or guardian and thus an offence contrary to [section 62](#) of the *Fisheries Act*.

Obstruction by Refusing to Identify Yourself:

[50] There has been much debate as to when a person is under a legal obligation to identify themselves (see *R. v. Moore*, [1978 CanLII 160 \(SCC\)](#), [1979] 1 SCR 195). This issue was briefly canvassed in *R. v. Vuozzo*, [2013] A.J. No. 313 (C.A.), in which at paragraph 64, the Alberta Court of Appeal made reference to whether the law mandates compliance with a request by an officer for a person to identify themselves:

...although it is correct that the appellant might have been entitled to decline to answer. The officer would be in the execution of his duty to ask for the appellant's name: see e.g.

R. v. Moore, 1978 CanLII 160 (SCC), [1979] 1 SCR 195. In *R. v. Guthrie* (1982), 1982 ABCA 201 (CanLII), 39 AR 435 at 438-439, 69 CCC (2d) 216 (CA), this Court explained the distinction by reference to *Rice v. Connolly*, [1966] 2 QB 414, [1966] 2 All ER 649 at 651-652 and other cases which "carefully separated the duty of peace officers to make inquiries and the legal right of a suspect to refuse to answer them in circumstances where the law did not mandate that he do so."

[51] There is nothing wrong with an officer asking a person to identify themselves, particularly when they have reasonable grounds to believe an offence has been committed (see *R. v. Paradis*, [2015] A.J. No. 1082 (P.C.), at paragraph 3) or the person's name is necessary for the officer to preserve the peace (see *R. v. Hrvacanin*, [2014] B.C.J. No. 396 (P.C.), at paragraph 38). However, the power to conduct an investigation "does not impose an obligation on the detained individual to answer questions posed by the police" (*R. v. Mann*, 2004 SCC 52 (CanLII), [2004] 3 S.C.R. 59, at paragraph 45). It was held *R. v. Greaves* (2004), 2004 BCCA 484 (CanLII), 189 C.C.C. (3d) 305 (B.C.C.A.), at paragraph 49, that:

Generally, a person cannot then be convicted of obstructing a police officer in the execution of duty for simply refusing to say or establish who he or she is when asked to do so.

[52] Whether a person's refusal to identify themselves to an officer will constitute an obstruction of that officer depends on the circumstances and the legislation which applies to the encounter. Thus, in *Chanyi* it was held that obstruction "can be proven even if the accused person is passive by, for example, failing to provide identification documents which he had a duty to produce" (at paragraph 116). However, that person's refusal to identify himself must obstruct the officer.

THE NATURE OF FISHERIES ACT OFFENCES

[53] Offences contrary to the *Fisheries Act* and its regulations constitute offences of strict liability (see *R. v. Keough* (2006), 2006 NLTD 142 (CanLII), 260 Nfld. & P.E.I.R. 278 (N.L.S.C.) and *R. v. Rideout*, 2014 NLCA 29 (CanLII), at paragraph 6).

[54] Section 78.6 of the *Fisheries Act* incorporates the defences of due diligence and mistake of fact by indicating:

No person shall be convicted of an offence under this Act if the person establishes that the person

(a) exercised all due diligence to prevent the commission of the offence; or

(b) reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent.

[55] In *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, 2013 SCC 63 (CanLII), the Supreme Court indicated that in the context of a strict liability offence an accused person can "avoid liability by showing that he or she took all reasonable

steps to avoid the particular event (*Sault Ste. Marie*, at p. 1326). The defence of due diligence is based on an objective standard: it requires consideration of what a reasonable person would have done in similar circumstances." Similarly, in *Levis (City) v. Tetreault & Levis (City) v. 2629-4470 Quebec Inc.*, 2006 SCC 12 (CanLII), [2006] 1 S.C.R. 420, the Supreme Court of Canada pointed out that "the accused in fact has both the opportunity to prove due diligence and the burden of doing so. An objective standard is applied under which the conduct of the accused is assessed against that of a reasonable person in similar circumstances."

[56] In *Rideout*, the Court of Appeal noted that if an accused person is charged with a strict liability offence she or he "can avoid liability if he or she establishes that he or she took all reasonable steps to avoid the activity leading to the charge." The Court of Appeal, at paragraph 12 of *Rideout*, referred to the Supreme Court of Canada's decision in *Sault Ste. Marie*, and noted that the Supreme Court has described the due diligence defence as "taking all reasonable steps to avoid the offence" and requiring "proof that [the accused] took all care which a reasonable man might have been expected to take in the circumstances, or in other words, that he was in no way negligent."

[57] In this case the Crown must prove beyond a reasonable doubt that Mr. Stickland (1) obstructed or hindered a fishery officer or guardian and (2) that the officer or guardian was carrying out duties or functions under the *Fisheries Act*. In the context of this case this requires the Crown to prove that the officers had reasonable grounds to believe that there was something in Mr. Stickland's dory to which the *Fisheries Act* or regulations applied. However, because section 62 of the *Fisheries Act* constitutes an offence of strict liability (see *R. v. Petten*, [1996] N.J. No. 58 (S.C.), at paragraph 7) there is no *mens rea* element. As a result, though the act of obstruction or hindrance must be purposely committed to commit the *actus reus* of the offence the Crown does not have to prove that the accused intended his or her act to hinder or obstruct.

[58] If the Crown can prove in this case that Mr. Stickland committed the *actus reus* of section 62 of the *Fisheries Act*, Mr. Stickland must be convicted unless he can establish that he took all reasonable steps to avoid committing the *actus reus* of the offence. In other words that he took all reasonable steps to avoid having obstructed or hindered a fishery officer or guardian. In the context of this case, Mr. Stickland argues that it was too dangerous to stop and thus he took all reasonable steps to comply with the officers directions.

The Reasonable Doubt Standard:

[59] Though strict liability offences do not involve a *mens rea* element this does not mean that the application of the proof beyond a reasonable doubt standard is lessened in relation to proof of the *actus reus*. As pointed out in *R. v. Kennedy*, 2015 NLCA 14 (CanLII), it is important that I apply the reasonable doubt standard "to the cumulative effect of all the evidence" in relation to the *actus reus* of the offence and that I refrain from applying the reasonable doubt standard "to items of evidence in a piecemeal fashion."

[60] In *R. v. Lifchus*, 1997 CanLII 319 (SCC), [1997] 3 S.C.R. 320, the Supreme Court of Canada indicated that proof beyond a reasonable doubt "does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt." In *R. v. Starr*, 2000 SCC 40 (CanLII), [2000] 2 S.C.R. 144, however, the Court pointed out that the burden of proof placed upon the Crown lies "much closer to absolute certainty than to a balance of probabilities." In *R. v. J.M.H.*, 2011 SCC 45 (CanLII), it was pointed out that "a

reasonable doubt does not need to be based on the evidence; it may arise from an absence of evidence or a simple failure of the evidence to persuade the trier of fact to the requisite level of beyond reasonable doubt.” In *R. v. Ahmed*, 2013 ONCA 473 (CanLII), it was noted that “in some circumstances the absence of evidence can give rise to reasonable doubt.”

[61] When an accused person charged with a strict liability offence testifies and denies having committed the *actus reus* of the offence with which she or he is charged, a trial judge must assess the accused person’s evidence by applying the reasonable doubt standard. The judgment of the Supreme Court of Canada in *R. v. W.(D.)*, 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742, supports the adopting of an approach to the assessment of an accused person’s evidence in such a context by using a three step analysis. Those steps are as follows:

(1) in the first step, the trial judge should ask him or herself whether she or he believes the accused’s denial of having committed the *actus reus* of the offence. If so, an acquittal must be entered. If not, then

(2) the second step requires a consideration by the trial judge as to whether the accused person’s evidence causes her or him to have a reasonable doubt concerning whether the accused committed the *actus reus* of the offence. If so, an acquittal must be entered. However, if the answer to the first and second questions is no, then

(3) the final step requires the trial judge to consider the totality of the evidence presented to determine if the Crown has proven beyond a reasonable doubt that the accused committed the *actus reus* of the offence.

[62] In *R. v. Crowley*, 2015 NBCA 61 (CanLII), at paragraph 11, the New Brunswick Court of Appeal indicated that in trials “where there are two versions of the same events, it is not simply a question which version the trial judge favours or believes; rather, the role of the trial judge is to assess the testimony of the accused and to determine whether the exculpatory testimony is believed, whether it raises a reasonable doubt, and failing both, whether the prosecution has proven its case beyond a reasonable doubt.” These words, with the necessary adjustment to a strict liability offence, apply here.

THE POSITIONS OF THE PARTIES

[63] Both parties approached this case from the perspective of whether the officers were acting pursuant to their statutory powers as prescribed by the *Fisheries Act*. Thus, the issue of what ancillary or common law powers a fishery officer may retain or possess is not in issue.

THE CROWN:

[64] The Crown submits that a conviction should be entered. Mr. May argues that based upon the ground fish fishery being open and the observation of Mr. Stickland in a dory bent over with a line coming from his vessel, the officers had reasonable grounds to conduct an inspection.

[65] Mr. May submits that when Mr. Stickland saw the fisheries vessel he immediately started his motor and left the area to avoid the officers. Mr. May suggested that Mr. Stickland purposely steamed to an area in which he knew he could avoid an inspection and then refused to cooperate with the officers once this became apparent.

[66] Mr. May submitted that even if Mr. Stickland was not fleeing from an inspection, he had “ample time” to stop his dory and to proceed to an area in which an inspection could have been safely carried out.

[67] Finally, Mr. May argues that the officers were acting in the execution of their duties when they asked Mr. Stickland his name. Thus Mr. Stickland's refusal to provide it constitutes a violation of [section 62](#) of the *Fisheries Act*.

MR. STICKLAND:

[68] Mr. Stickland submits that an acquittal should be entered. Mr. Martin Q.C. argues that the officers did not have reasonable grounds to conduct an inspection. He referred to the conflicting evidence as to what the officers observed when they first saw Mr. Stickland and the unlikelihood of them being able to see a fishing line at such a distance under such conditions.

[69] Mr. Martin Q.C. also submits that if the officers had reasonable grounds to conduct an inspection, Mr. Stickland took all reasonable steps to comply. Mr. Martin Q.C. referred to Mr. Stickland's evidence that he was close to the beach when signalled by Officer Pittman; that it would have been dangerous to stop or turn; and the lack of evidence that Mr. Stickland had anything to hide. Mr. Martin Q.C. suggested that Mr. Stickland was not required to "risk swamping" his dory and that his decision not to stop was reasonable in the circumstances, particularly considering Mr. Stickland's extensive knowledge of the sea conditions near Tweed Island. Mr. Martin Q.C. suggested it would have been "foolhardy" for Mr. Stickland to have stopped or turned his dory in the manner suggested by the Crown.

[70] Finally, Mr. Martin Q.C. argued that Mr. Stickland's refusal to provide his name did not obstruct the officers in this case. It did not prevent an inspection and the officers did not have reasonable grounds to believe that there was anything in Mr. Stickland's vessel in respect of which the *Fisheries Act* applied.

ANALYSIS

[71] The evidence presented establishes that on July 24, 2014, the officers were on a routine patrol in the Bay of Islands. This patrol involved checking individuals involved in the ground fish fishery. The evidence indicates that the officers' first sighting of Mr. Stickland occurred around 10:00 a.m. off of Tweed Island. It is this observation which led them to decide to check Mr. Stickland's vessel.

[72] The officers immediately concluded that Mr. Stickland was involved in fishing activity and that when he saw them he fled. This led them to conclude that he was involved in illegal fishing. However, what was actually seen by the officers is far from clear. Let me explain.

[73] There are differences in the evidence of the three officers as to what was observed:

Witness:	What the officer testified to having observed:	The distance from Mr. Stickland's dory:	The location of officer at the time:
Officer Pittman	A clear fishing line coming from Mr. Stickland's dory.	One hundred metres	Officer Pittman testified that she was standing on the stern portion of the fishery vessel. She indicated that Guardian Bennett was operating the vessel from inside the cabin.
Guardian Bennett	A dark braided fishin	A couple of hundred	Guardian Bennett tes

	g line coming from Mr. Stickland's dory.	metres.	tified that he was operating the fishery vessel and Officer Pittman was in "the back."
Guardian Payne	Did not see any fishing line.	One-half kilometer.	Guardian Payne testified that Officer Pittman was operating the fishery vessel from inside the cabin.

[74] As can be seen there is some dispute among the officers as to who was operating the fishery vessel when Mr. Stickland's dory was first seen. These differences in description are understandable. However, Officer Pittman referred to having seen what she concluded was Mr. Stickland fishing as a result of a "momentary glance." Thus if she was operating the fishery vessel at this time, this is a factor to be considered in determining whether her evidence is reliable.

[75] In assessing what the officers described seeing when they first saw Mr. Stickland's dory, it must also be considered that the officers were in a vessel which was described as moving up and down in the water. It is not possible from the evidence presented to determine the exact weather and water conditions, but I am satisfied the fishery vessel would have been moving up and down in the water when the officers first saw Mr. Stickland's dory. In addition the opportunity to observe was of a short duration.

[76] Based upon their initial sighting of Mr. Stickland the officers reached two immediate conclusions: (1) Mr. Stickland was fishing; and (2) he was attempting to avoid apprehension. That he did not stop confirmed for them these two conclusions.

[77] The conclusion that Mr. Stickland was fishing was based upon the officers' observation of him bending over and the observation made by Officer Pittman and Guardian Bennett of having seen a fishing line extending from Mr. Stickland's dory into the water. As we have seen, Guardian Payne who had an equal opportunity to observe Mr. Stickland as did the other two officers did not see any fishing line.

[78] Being able to observe a fishing line at the distances described by the two officers while on a vessel which was moving up and down would have been difficult when one considers the size of a fishing line.

[79] Guardian Bennett was insistent in maintaining that from approximately a two hundred metre distance he saw a dark braided line extending from the dory. He was the only officer who made such an observation.

[80] Guardian Bennett did not record this observation in his notes. Guardian Payne did not make any notes at all. In addition, Guardian Payne read two reports prepared by Officer Pittman as to what she observed. One Crown witness should not be reading the written observations of another Crown witness. In *Wood v. Schaeffer*, 2013 SCC 71 (CanLII), [2013] 3 S.C.R. 1053, the Supreme Court of Canada, at paragraph 67, indicated that police officers "have a duty to prepare accurate, detailed, and comprehensive notes as soon as practicable after an investigation." This did not occur in this case.

[81] Guardian Bennett also purported to see, from a distance of two hundred metres, a splash consistent with a hook being withdrawn from the water. Considering the circumstances it is not likely that Guardian Bennett would be able to distinguish between a splash caused by a hook as compared to a splash caused by water hitting the side of Mr. Stickland's dory. I view Guardian Bennett's description of the splash and its cause as an overzealous rationalization of an innocuous occurrence to support a conclusion previously reached.

[82] The officers' conclusion that Mr. Stickland was attempting to flee apprehension was based upon their conclusion that he took off as soon as he saw the fishery vessel. Interestingly, though Mr. Stickland did leave the area in which he had stopped to fill up his motor at around the time the fishery vessel came within sight, he told the officers through gestures exactly where he was heading. This is a rather peculiar thing to do if he was attempting to avoid detection. To say that Mr. Stickland beached his dory outside his cabin because he knew the officers could not follow him there gives Mr. Stickland a degree of insight into the fishery's vessel's capabilities which is unwarranted. It also exaggerates a non-culpable act (returning to where you left from) into evidence of guilt.

[83] The initial question which must be answered is whether the officers were carrying out duties pursuant to the *Fisheries Act*. The officers were conducting a routine patrol for fishery enforcement purposes. However, this is not sufficient. The Crown is not arguing that the officers had the power to make "routine" stops for any reason they wished. The Crown relies on the statutory powers provided to the officers by [section 49](#) of the *Fisheries Act*. Thus the more germane question is whether the officers believed on reasonable grounds that there was anything onboard Mr. Stickland's dory in respect of which the *Fisheries Act* or the regulations applied. If the answer to this question is yes, then the officers had the lawful authority to enter and inspect the dory and Mr. Stickland had an obligation to provide them with reasonable assistance. However, if the answer to this question is no, then Mr. Stickland was under no lawful obligation to stop or assist the officers.

A Subjective Belief:

[84] I accept that Officer Pitman had a subjective belief that Mr. Stickland was fishing and attempting to avoid contact with her. I accept that she believed that Mr. Stickland saw the fishery vessel and immediately took off to avoid detection and/or apprehension. I accept that Officer Pittman thought she saw a fishing line. However, I conclude that she was mistaken on both points.

[85] I do not believe Guardian Bennett's evidence. It was purposely exaggerated to support his conclusion. I do not believe Guardian Payne's evidence is reliable. Her lack of any notes and her having read Officer Pittman's reports causes me to lose confidence in the accuracy of her description of what she saw approximately one and one-half years ago.

[86] Thus, the subjective belief of one of the officers has been established. However, "a sincerely held subjective belief is insufficient" (see *R. v. Kang-Brown*, [2008 SCC 18 \(CanLII\)](#), [2008] 1 S.C.R. 456, at paragraph 75). The subjective belief must be objectively reasonable.

Did the officers have reasonable grounds to believe that there was anything onboard Mr. Stickland's dory in respect of which the *Fisheries Act* or the regulations applied?

[87] If the officers had reasonable grounds to believe that Mr. Stickland was fishing (legally or illegally) or that he was fleeing, the answer to this question would clearly be yes. In determining if reasonable grounds existed I must consider all of the circumstances and not parse each circumstance individually.

[88] When viewed objectively I do not believe that the officers could tell from the distances and under the circumstances described whether Mr. Stickland was bent over in a fishing motion. The nature of the water conditions and the size of the dory make this description and conclusion unreliable. Similarly, I do not believe that the officers would have been able to see Mr. Stickland using a fishing line. The evidence is inconsistent and the opportunity to see was poor. I am not suggesting that Officer Pittman attempted to mislead the Court. Rather I conclude that she was mistaken.

[89] I conclude that the officers believed that Mr. Stickland was fleeing because this was consistent with their initial conclusion, i.e., he was fishing in the area in which he was initially seen. In other words, Mr. Stickland's leaving was viewed as proof of their initial conclusion of his involvement in illegal activity. The officers were not open to the possibility that this was simply a matter of timing.

[90] Thus, I conclude that the officers did not see Mr. Stickland fishing and they misapprehended his leaving the area as they arrived.

[91] I conclude that the officers, at the time that they motioned for Mr. Stickland to stop his vessel and to come to the fishery vessel, did not have reasonable grounds to believe that there was anything in Mr. Stickland's vessel in respect of which the *Fisheries Act* applied. From an objective perspective, the officers' personal belief is not reasonable.

[92] Therefore, I conclude that the officers did not have authority to stop, search or inspect Mr. Stickland's vessel because their actions were not in accordance with the statutory power provided to them by [section 49](#) of the *Fisheries Act*. As a result, Mr. Stickland was under no lawful obligation to stop his dory. He did not obstruct or hinder the officers while they were carrying out duties and functions pursuant to the *Fisheries Act*.

[93] I accept Mr. Stickland's evidence that he was not fishing when initially observed by the officers. I accept his evidence that he was not attempting to avoid them or to flee. I conclude that he was returning to his cabin and expected the officers would follow him. I conclude that this is why he very clearly communicated to the officers exactly where he was headed. I accept Mr. Stickland's evidence that it was too dangerous to stop or turn his vessel.

The Refusal to Provide His Name:

[94] As we have seen, after arriving at his cabin Mr. Stickland refused to identify himself when asked by the officers. [Section 49\(1.2\)\(b\)](#) of the *Fisheries Act* requires a person to "provide" an "officer or guardian with any information relevant to the administration of this Act or the regulations that the officer or guardian may reasonably require", but only if an inspection is being conducted. Thus, this obligation is premised upon the officer or guardian acting pursuant to [section 49\(1\)](#) of the *Fisheries Act*. If an officer is conducting an inspection in accordance with the authority prescribed in [section 49\(1\)](#) then asking the person to whom the inspection relates their name, is information which might be relevant to the administration of the *Fisheries Act* or the regulations and which an officer or guardian may reasonably require. A refusal to answer such a question, if it is established that this hindered or obstructed the officer or guardian in carrying out their duties or functions pursuant to the *Fisheries Act*, would constitute a breach

of [section 62](#) of the *Fisheries Act*. However, if the officer or guardian is not conducting an inspection pursuant to [section 49\(1\)](#) of the *Fisheries Act* then there is no offence as there is no obligation to answer.

[95] In this case, while at the beach the officers did not conduct an inspection. In addition, their overall observations at the beach do not provide an objective basis to conduct a search or inspection or an objective basis to demand [section 49\(1.2\)](#) information. Thus, for these two reasons I conclude that the officers were not carrying out duties and functions pursuant to the *Fisheries Act*. Mr. Stickland's refusal to provide his name does not in these circumstances constitute a violation of [section 62](#) of the *Fisheries Act*.

[96] The Crown having failed to prove that Mr. Stickland committed the *actus reus* of the offence with which he is charged, Mr. Stickland is acquitted of that offence.

CONCLUSION

[97] For the reasons provided, Mr. Stickland is acquitted of the offence of having breached [section 62](#) of the *Fisheries Act*.

[98] Judgment accordingly.