PELLEGRINO, J., dissenting. I regret that I do not agree with the opinion of the majority, and respectfully, I feel compelled to file this dissent.

The critical facts, as set forth more fully in the majority's opinion, are not in dispute. Employees of the Department of Transportation of the defendant, state of Connecticut, were in the process of removing a tree. At the beginning of the tree removal operation, the work crew marked off a work zone with traffic cones. One cone was located approximately eighty-five feet to the south of the tree, and the other cone was located approximately one hundred feet to the north of the tree. The decedent, William McDermott, a bystander, walked past the southern cone into the delineated work zone and stood talking with two members of the work crew approximately fifty-five feet from the surface of the tree, which at that point was twenty-five feet tall. There was no evidence that the workers asked the decedent to leave the work zone at any time. While the decedent was standing with the work crew, a segment of the tree trunk was cut from the tree and fell to the ground; upon hitting the ground, it struck a log that previously had been removed from the tree. The log was propelled into the air, and it struck the decedent, causing him to fall backward and hit the back of his head on the sidewalk. After striking the decedent, the log continued in the air approximately another thirty feet and eventually came to rest almost ninety feet from the tree.

I agree with the trial court that the defendant had a duty to protect members of the public from foreseeable harm within the coned work zone it had created, and, accordingly, that the determinative fact in this case is that the decedent was standing within the perimeter of the work zone at the time he was struck by the log. The majority disagrees, holding that notwithstanding the placement of the cones, the defendant only owed a duty to the decedent and other members of the public to keep them a "reasonably safe distance away" from the tree being removed—as informed by industry standards in the field of tree care and removal. The majority, therefore, attaches greater significance to the fact that the decedent was fifty-five feet away from the tree at the time he was struck by the log, or, five feet beyond the prevailing "two tree lengths" standard for persons not directly involved in a tree removal operation.[1] This formulation of the defendant's duty effectively elevates industry custom for workers to a conclusive standard of liability for the general public and renders irrelevant the voluntary actions of the work crew in marking the perimeter for their removal operation.[2] In my view, this result is not in keeping with our precedent and well established principles of negligence law. See, e.g.,

Coburn v. *Lenox Homes, Inc.*, 186 Conn. 370, 381, 441 A.2d 620 (1982) (evidence of custom in trade "may be admitted on the issue of the standard of care, but is not conclusive").

Moreover, I agree with the trial court that the defendant's failure to remove the decedent from the work zone proximately caused the decedent's death.[3] Although the majority characterizes proximate cause in this case as a question of law, our Supreme Court has cautioned that proximate cause "becomes a conclusion of law only when the mind of a fair and reasonable man could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact." (Internal quotation marks omitted.) *Trzcinski* v. *Richey*, 190 Conn. 285, 295, 460 A.2d 1269 (1983). Because I believe that there is room for "reasonable disagreement" here, I would defer to the factual finding of the trial court on proximate cause, which was not clearly erroneous in view of the evidence in the record. See, e.g., *Hernandez* v. *Dawson*, 109 Conn. App. 639, 641–42, 953 A.2d 664 (2008) (In reviewing findings of fact on proximate cause, "our review is limited to deciding whether such findings were clearly erroneous. A finding of fact is clearly erroneous when there is no evidence in the record to support it." [Internal quotation marks omitted.]).

In short, I agree with the trial court that the defendant assumed a duty to the decedent, that the defendant breached that duty, and that the defendant's breach of duty proximately caused the decedent's death. I therefore respectfully dissent, and would affirm the judgment of the trial court.

[1] I note that § 9.5.12 of the American National Standard for Arboricultural Operations, which was approved by the American National Standards Institute, provides that "[w]orkers not directly involved in manual land-clearing operations shall be *at least* two tree lengths away from the tree or trunk being dropped." (Emphasis added.) The decedent, a bystander, was standing a mere five feet beyond this minimum standard for nonworkers at the time of the incident. Furthermore, the trial court never made a finding that the two tree lengths standard established what constitutes a "reasonably safe" distance from the tree—the court simply noted that that two tree lengths is "considered a safe distance according to the safety standard that prevails in the tree removal industry" and found that the decedent was more than two tree lengths away from the tree when he was struck by the log.

[2] I am not swayed by the majority's concern that, by focusing on the placement of the cones instead of on industry safety standards, the "court essentially imposed strict liability on the defendant for any harm that could have occurred within the coned area." The trial court did not hold that the defendant would have been liable for *any* injury occurring within the delineated work zone; rather, the defendant's liability extended only to reasonably foreseeable injuries—those stemming from the tree removal operation and occurring within the marked perimeter of the removal site.

[3] I agree with the majority that the trial court, in a footnote in its memorandum of decision, incorrectly identified "the log"—rather than the defendant's failure to remove the decedent from the coned work zone—as the proximate cause of the decedent's death. I do not, however, agree with the majority's assessment that the trial court did not undertake any further proximate cause analysis in the memorandum of decision. In my view, the trial court appropriately analyzed the causation issues in conjunction with its determination of the scope of the defendant's duty. Indeed, as the majority recog-

nized, the duty and proximate cause inquiries " 'are, in reality, one and the same.' " Furthermore, in its concluding paragraph, the trial court appropriately tied the defendant's conduct to the proximate cause inquiry, stating: "Allowing [the decedent] to stand within [the work] zone for an extended period of time during tree removal operations was a negligent violation of [the defendant's] duty; *a violation that proximately caused* [*the decedent's*] *death*." (Emphasis added.)