

PRESENTATION  
TO  
OFF-SHORE HELICOPTER SAFETY INQUIRY

Honourable Robert Wells, Q.C., Commissioner

Presentation: November 25, 2009

Jack Harris, Q.C., M.P.

St. John's East

**Mr. Commissioner**

I am pleased and honoured to have the opportunity to make a presentation today in the early part in Phase One of your hearings, which I understand is addressed, in part at least, to establishing the current facts and circumstances and preparing for the investigative part of this phase of your undertaking, and considering what aspects of helicopter safety should be included for further detailed study.

Firstly, I wish to join with others in expressing my own deep sympathy for the loss of the passengers and crew of Cougar Flight 491, and offer my condolences to all their spouses, children, family and friends who continue to endure the pain of their loss.

And, Mr. Commissioner, I wish to add that my own efforts with respect to participation in this Inquiry are dedicated to their memory, as I am sure is the case for many and perhaps all those participating in this important work, whether as parties, counsel, witnesses or staff. A tragedy like this encompasses the whole community. That is why we are all here.

Also, I would like to express my appreciation to Mr. Robert Decker for his testimony and his contribution to this inquiry, and also condolences to him for the loss of his friends and co-workers. His participation as the sole survivor was a testament to the indomitability of the human spirit and will, I am sure, be most helpful to the work of the inquiry. I wish to Mr. Decker best wishes for a full recovery from his injuries.

My own presentation is based on my experience as one who has spent many years as a lawyer with an extensive practice in administrative and labour

law, including representing offshore workers and their union for about 10 years, and as an active, practicing politician, now serving as Member of Parliament for St. John's East. As you are aware my riding includes the operations base of Cougar Helicopters. I also have special responsibilities as a Member of the Standing Committee on National Defence, which is the lead department of the Government of Canada responsible for search and rescue.

I would be pleased to make my presentation and answer questions from the commission or counsel present.

I want to focus on 4 issues.

- 1) The place of search and rescue in the offshore context
- 2) The vital importance of response times
- 3) The terms of reference of the Commission
- 4) What the Commission can do.

1) Offshore Context

In my submission, this Commission cannot effectively carry out its mandate without, at the very least, examining what the Department of National Defence does in the provision of search and rescue services in Canada, in the case of Newfoundland and Labrador, from Greenwood, Nova Scotia, and Gander, NL and through the Joint Rescue Coordinating Centre in Halifax.

I will detail the reasons for this shortly but first wish to state my perspective on search and rescue in the offshore. Firstly I don't think we are anymore dealing

with both search and rescue, primarily it is rescue. Helicopters and offshore platforms or drilling rigs are in constant radio communication with land based owners and operators and there is little doubt about their location. If there is an emergency there is little doubt about where to look. It's a question of how fast you can get there to effect a rescue when necessary, or an evacuation from an offshore facility.

It is obvious that we are no longer dealing only with vessels transiting through the offshore, doing seismic work or temporary exploratory drilling, perhaps on location for a month or more at a time. This was the circumstance when the Ocean Ranger Inquiry took place in the early 1980's.

The offshore now consists of permanent facilities (Hibernia) or fixed production and storage facilities that are to be in place for a decade or more (Terra Nova and Sea Rose Floating Platforms). Working with these facilities on an ongoing basis are drill ships engaged in drilling production wells, such as the Henry Goodrich and the Glomar Grand Banks. And more development is to come, starting with the Hebron Ben Nevis project.

But the implications for classic search and rescue capabilities are not yet, I believe, fully appreciated. What we now have is a workforce of up to 600 workers on a regular basis working and living offshore, and during some periods, such as what's called turnaround or maintenance shutdown, hundreds more. It is effectively an eastward extension beyond land of our workplaces, with significant numbers of people working and living several hundred kilometers from land, in a dangerous and often hostile environment. I don't think this is well understood by those setting standards for search and rescue in Canada.

In fact it is just that — the standards for search and rescue — that ought to be a major focus, in my view, of this Commission's work. What standard of

search and rescue capability ought to be in place to protect our offshore workforce? What standard are they entitled to?

## 2) Response Times

The biggest issue in responding to an emergency, whether it be a fire, an accident or incident at sea, is the response time. How long it takes to get there after the emergency is reported. Coupled with that is of course is the question of what you respond with, what equipment and crew is available to do the job.

Response time was important even in the March 12<sup>th</sup> crash of Cougar Flight 491. The lone survivor, Mr. Decker just made it. When he arrived at hospital his body temperature was so low as to be dangerous. He was rescued by the Cougar helicopter assigned to search and rescue, while the DND Cormorants and their crews, normally stationed in Gander, were in Sydney, Nova Scotia on training.

We have been told by Laurie Hawn, Parliamentary Secretary to the Minister of Defence, during debate in the House of Commons on a Motion by Judy Foote, M.P. for Random-Burin-St. Georges, that Cougar is the first responder in such an incident and also that, since the crash was "non-survivable" it wouldn't have made any difference even if an aircraft was overhead at the time. He also said that search and rescue aircraft were available "24/7", with a 30 minute response time on weekdays and a 2 hour response time on weekends.

Aside from the obvious, that the crash was clearly not "non-survivable" and of course you have already heard from Mr. Decker, what would have been the circumstances if all eighteen survived the crash? Perhaps that scenario would be

just as likely if there was a controlled ditching as opposed to a crash. The first responder would not have been able to handle the situation given the fact that the Comorants are fully equipped with all the equipment and crew to handle a larger emergency. Secondly, the Cougar craft was not configured for search and rescue and therefore had to be reconfigured before the helicopter was able to take off.

This raises the obvious question as to whether, under current circumstances, with the first response mandated to Cougar Helicopters, offshore workers are being provided with second class coverage as compared to other users of search and rescue. A less than fully equipped helicopter, not configured for search and rescue, with a crew that, however valiant and well trained for search and rescue, does not have the day to day experience of effecting search and rescue missions, and does not have the greater capability and equipment available though the Cormorant Service. (I must add that this is no reflection on the professional crew and trained search and rescue technicians working for Cougar who effected the rescue of Mr. Decker. It is simply the case that the SAR-Techs working for DND are performing their duties in real life emergencies virtually every day of the year.)

The second question is what is the response time needed to provide the level of search and rescue capability needed in the offshore. Mr. Hawn, in Parliament suggested that the DND response time was 30 minutes on weekdays and 2 hours on weekends. Actually the standards in use are 30 minutes between 8:00 a.m. to 4:00 p.m. on regular working days, Monday to Friday and 2 hours for all other times. This was confirmed in the background document forwarded to the commission by the Department of National Defence. The National Search and Rescue Manual referres to these hours outside of the regular work day as "quiet times".

It has to be asked whether this standard is adequate, whether the service is ultimately provided by private industry or government. A review of Search and Rescue Response Services in Canada prepared and issued by the Director of Program Review of the National Search and Rescue Secretariat was completed and approved by the Interdepartmental Committee on Search and Rescue of the Government of Canada in June of 1999. In it what I am calling response time is referred to as "readiness-standby posture" which is important in understanding the conclusions of this study. Among its "Key Findings", contained in summary near the beginning of the Report is item 14 on page 7, which states:

"The federal readiness-standby posture is determined primarily by resource availability, not by user demand."

Paragraphs 40 to 43 of the report set out the findings, conclusions and recommendations on the SAR response issues of standby posture. The information is said to be derived from extensive interviews; document, literature and file searches; case studies; and an Expert Opinion Panel. I will set out the relevant paragraphs here but will only touch on the highlights.

## **"READINESS — STANDBY POSTURE**

40. The standby postures of SAR departments were reviewed and it was found that there are significant variations among departments. DND has prescribed a 30 minute readiness capability during "working hours" and a two hour readiness capability during "quiet hours"v. DFO/CCG maintains a 30- minute response standard 24/7/365 for primary SAR vessels. Parks Canada readiness levels are site- specific. RCMP SAR posture is no different from their police posture - 24/7/365 coverage. Given the vastness of and differences in the Canadian geography, climate and environment and the various types of SAR incidents that occur, a common standby posture may not be appropriate.

### **Findings:**

41. The Team found that:

- a. resource availability is the primary driver that determines the standby postures for all NSP departments;
- b. DND usually meets the standby/readiness target. However, working hours do not necessarily coincide with the days or times of peak SAR activity;
- c. DFO/CCG met standby/readiness targets a high percentage of the time in 1997, but expected a substantial decrease in 1998 vi;
- d. Parks Canada standby/readiness is determined through historical operational requirements, available resources and through visitor risk management analysis. However, although more than 70% of parks have public safety plans in place, many have not conducted the analysis for standby/readiness posture.
- e. RCMP meet targets for receiving SAR reports; there are no data on their performance;
- f. for critical SAR missions, all departments occasionally task resources that do not meet their training or equipment standards, thereby putting their staff at increased risk.
- g. along with the Parks Canada efforts to develop risk assessments, in the past year DND has attempted to study standby postures for two of its squadron. In the past year, DFO/CCG has utilized the International Maritime Organization (IMO) Formal Safety Assessment Guidelines to assess SAR coverage within its area of responsibility. However, there is a lack of an overall indicator(s) for what should be a standby posture (or postures) for combined efforts of the federal SAR program. The result is that no assurance can be given that the program is responding as it should.

## **Conclusion:**

42. A lack of strategic management within the SAR program has resulted in each department developing standby postures in isolation, without consultation with other SAR departments. As a result, there is no common rationale driving standby postures.



## **Recommendations:**

43. The Review Team recommends that:

- a. the standby postures of primary SAR resources should be determined principally through an analysis of demand for services; and
- b. federal primary resources that fail to meet training, equipment or delivery standards, as described in a federal SAR Plan, should not be viewed as primary resources and should likely not be tasked."

It is my submission that this Commission should heed the spirit of the Recommendation set forth above in paragraph 43 a. above and determine a standard for readiness and response time for service in the Newfoundland and Labrador Offshore through an analysis based on the need and demand for service and based on a thorough assessment of the risks including the presence of a large number of people in a high risk environment.

### 3. Terms of Reference

However, there is a real question as to whether the Commission can effectively do that, given the potential constraints of the Terms of Reference. The commission is specifically mandated in Paragraph 5 of the Terms of Reference inquire into, report on, and make recommendations in respect of search and rescue obligations of helicopter operators by way of contractual undertakings or legislative or regulatory requirements.

Paragraph 6, however, places a limitation on the Commissioner's mandate in that it does not include an examination of the provision by the Government of Canada

(Department of National Defence) of Search and Rescue facilities for all marine incidents and the location of such facilities within the Province of Newfoundland and Labrador

As stated earlier, I believe this Commission cannot effectively carry out its mandate without, at the very least, examining what the Department of National Defence does in the provision of search and rescue services to Newfoundland and Labrador. The provision of search and rescue services by, in the current case, Cougar Helicopters, on contract to the operator of the oil production facilities, is but one piece of a larger puzzle, which includes the services provided by Department of National Defence, the Canadian Coast Guard and others who are involved in the whole Search and Rescue establishment. How can one possibly make effective recommendations without examining the status quo, the "lay of the land." You haven't even had an effective presentation from **DND**, only a backgrounder, without any witness to answer questions.

What exactly is the relationship between Cougar and the Joint Rescue Coordinating Centre in Halifax, operated by the Department of National Defence? It is obviously important to know, yet the Terms of Reference arguably prevent you from even asking. What is the current relationship between Cougar and DND regarding search and rescue training and assessment?

The Ocean Ranger Royal Commission discussed this in the context of its Recommendation 56, which reads as follows:

*"That there be required a full-time search and rescue dedicated helicopter, provided by either government or industry, fully equipped to search and rescue standards, stationed at the airport nearest to ongoing offshore drilling operations, and that it be readily available with a trained crew able to perform all aspects of the rescue."*

Since the March 12, 2009 crash there has been a lot of talk about this recommendation. However, there is a nuance to this recommendation that I think needs to be further explored.

In the preamble to the recommendation, the Royal Commission report refers to the December 1983 *Guidelines to Operators – East Coast* of COGLA (Canada Oil and Gas Lands Administration), the predecessor of the C-NLOPB.

Included in these guidelines is the following:

*"... operators on the Grand Banks shall, on a joint and continuing basis, maintain a helicopter dedicated to search and rescue with personnel trained and qualified in the use of such equipment ..."*

According to the Royal Commission Report:

*"The communiqué accompanying the guideline elaborated that this would be a full-time dedicated search and rescue helicopter, that the Department of National Defence (DND) would assess and the search and rescue programs of the operators on a continuing basis, and that DND would provide search and rescue training for industry personnel."* (emphasis added)

In the April 1985 Summary of Action Taken by the Government of Canada in relation to the Recommendation of the Royal Commission on the *Ocean Ranger* Marine Disaster, the implementation status to recommendation 56 from COLGA/DND states that "Initial training was provided by DND SAR specialists and further training is available on a continuing basis."

While recommendation 56 calls for the full-time SAR dedicated helicopter to be "provided by either government or industry," there is a clear acknowledgement of a responsibility of DND to ensure at least continuing

oversight of the SAR capabilities servicing the offshore. The 1985 action report from government establishes that there was an acknowledgement of this responsibility on the part of DND.

This information shows that at least it was intended that there be a close relationship between the services to be offered by industry and the activities of the Department of National Defence. The Commission should clearly be able to investigate this relationship.

I believe it is preposterous that the Terms of Reference are drawn narrowly so as to arguably prevent this. This is preposterous situation and I urge the Canada-Newfoundland and Labrador Offshore Petroleum Board to amend its Terms of Reference to allow this Commission to do its job.

The people of this province and especially those who work in the offshore deserve to have confidence in the provision of search and rescue facilities available to them in times of emergency.

##### 5) What the Commission can do.

There may be an interpretation that the Terms of Reference should only limit this Commission from examining the maritime aspects of the DND SAR Operations, and that it is perfectly satisfactory to examine the aeronautical aspects that DND is specifically tasked to do. That is, the provision of aeronautical services through the Cormorants and fixed wing aircraft. It is not certain what the drafters of the Terms of Reference intended.

However, it is clear that they do not want the Commission making recommendations on the location of DND facilities in Newfoundland and Labrador.

I would urge this Commission to establish standards and requirements for Search and Rescue in the Newfoundland and Labrador Offshore, the ensure those at work in our oil and gas industry have first class protection, which they deserve. This may result in a political debate as to who should provide the service, and who should pay for it, and how it is to be provided. However, this debate is for a later date and in other places.

Thank you for this opportunity and I look forward with interest to the continuation of the Commission's work, hopefully with an expanded and clarified mandate.