
Preventative Safety Culture for Offshore Oil and Gas Industry

Submission to the Wells Inquiry on Helicopter Safety

Submitted by Newfoundland and Labrador
Federation of Labour
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Opening Remarks

Mr. Commissioner, Members of the Families of Flight 491:

On behalf of the 65,000 members of the Newfoundland and Labrador Federation of Labour, working women and men in every sector of our economy, and every community of our province, I would like to thank you and the Commission for allowing us this opportunity to appear before this inquiry.

Mr. Commissioner, I would like to begin by expressing on behalf of myself and the Federation our deepest and sincerest condolences to the families of the 17 working people who lost their lives when Cougar Flight 491 crashed 11 months ago.

I know that this may seem entirely inadequate, but I want to assure the families that our Federation will continue to do what we can to stand up for the health and safety of working people; to fight for better health and safety laws and enforcement; and to ensure as they have done - including with their testimony yesterday - that we never forget what is at stake here. It is people's lives.

And to Robert Decker, I would like to say, again on behalf of our Federation, that your courage and strength as well as your unwavering and thoughtful testimony will make a difference to the future health and safety of those working in our offshore. Indeed, I believe it already has. And we hope that you realize just how important your contributions to this inquiry have been.

I would also like to commend the members of CEP who testified this week. And I would like to recognize the families who bravely shared their grief and with conviction spoke up for their loved ones yesterday and expressed what many in our community of Newfoundland and Labrador are feeling – that more could have been done to prevent this tragedy. That safety is indeed a matter of choices.

The Federation of Labour is an umbrella organization representing nearly 30 affiliated unions and 500 union locals. We are part of the broader labour movement in Canada and in addition to

providing a voice for working people on issues that affect them directly such as pensions, OHS, pay equity, labour laws, and workers compensation.

The Federation also advocates for improved public services, as well as policy and laws that support our principles of social and economic justice, equality and workers' rights – including the overall well-being and welfare of all citizens.

It is my hope that our comments and presentation will help in your deliberations and at the very least provide a critical perspective with respect to occupational health and safety based on the labour movement's long history in the promotion of stronger health and safety laws and practices.

We hope to highlight how rights if they are to have real power must be more than part of a check-list in a legislative framework. They must be given real meaning and include worker involvement.

We do that by ensuring the structures and processes that are in place to support those rights are active and proactive. In fact, we must be careful that we do not diminish and weaken these rights through structures that lack the tools and resources to be effective; that lack the real support of management or regulatory agencies.

Mr. Commissioner, we must ensure Occupational, Health and Safety is more than a matter of checklists or what is known in our world as paper safety - when it should and must be so much more.

We also hope to highlight how a safety culture or a culture of prevention can be created, and I know Mr. Commissioner this is something that you have expressed an interest in during this Inquiry.

Prevention is crucial to ensuring decent work for workers everywhere. Without creating a preventive OHS culture there can be little link between OHS legislation and guidelines and actual workplace practices. Building a preventive culture is critical. It means having strong approaches at the provincial, workplace, industry, and inspection levels. It means worker involvement at those levels.

The first step to building that safety culture is to understand and respect what workers and their unions bring to the table. Workers and their unions must not be viewed as adversaries, but rather as engaged partners in achieving healthy and safe workplaces.

After all, we all should share a common goal: the health and safety of the people who go to work every day, contribute to our economy and advance our society.

Partnership, as we know, is based on a several basic principles – perhaps the most important being respect, equality and trust.

Collective bargaining often puts unions and their employers on opposite sides of the table, but Mr. Commissioner there is absolutely no need for that relationship to interfere with the one we need as workplace partners around issues like OHS. In fact collective bargaining can often lead to improvements to OHS in a workplace and to practices that are above and beyond the legislative or regulatory minimum. Codes of practice are an example of this as are support for full-time union OHS representatives in workplaces.

In order to be successful, a partnership formed in the interest of safety must take into account the inherent imbalance of power between the workplace parties and efforts must be made to temper that imbalance.

We believe the bar for OHS is too low when we refer to managing risk or when we preface our comments with statements such as “this is dangerous work.”

The flipside of that statement is a certain amount of risk is acceptable. From a worker’s perspective no level of risk is acceptable – that is a matter for “risk management” professionals, insurance companies and others. For working people, the only test that matters is that they return home to their families at the end of their work, safe and unharmed.

Mr. Commissioner, in the labour movement we do not view occupational, health and safety as risk management. We view health and safety in terms of prevention. Every accident is preventable – it is

preventable because of strong laws, worker involvement, education and enforcement. It is preventable because we invest enough in safety, in training, in systems and in technology. It is preventable because we put safety first, ahead of production, ahead of profit.

We will speak to the jurisdictional ambiguity that still exists today with respect to laws and regulations governing the offshore and how we might improve the oversight and enforcement of OHS in the offshore oil industry.

And we will make recommendations that we hope will help build a safety culture, or rather promote a culture of prevention which includes activating the rights of workers, building a real workplace partnership based on the social dialogue principles of respect and equality, and enshrining adequate and proper regulatory authority whose mandate is safety first and safety only.

We will endeavour to focus on those areas mandated by the Commission which include the role of the CNLOPB.

Mr. Commissioner, as you know, next week we will mark the 28th year since the drilling rig, the Ocean Ranger, capsized, killing 84 workers. A month from tomorrow, we will mark the one-year anniversary of the crash of Cougar Flight 491, killing 17 people.

I refer to the Ocean Ranger disaster because I believe there are still lessons to be learned from that tragedy and from the recommendations of a commission not unlike this one that delved into the circumstances surrounding the sinking of the Ocean Ranger.

That tragedy happened in the early hours of the morning of February 15, 1982 during a severe winter storm, 166 miles east of St. John's. There were no survivors.

Last year, trade union activist Steve Porter compiled a book of poems and thoughts by his friend Greg Tiller who worked on the Ocean Ranger – one of 56 Newfoundlanders who lost their lives.

Just days before his death, Greg Tiller, just 21 years old, confided to his friend about his experiences working offshore. "It's

unsafe. I'm telling you man something serious is going to happen out there. I increased my life insurance today. I don't have a very good feeling. "

There have been considerable improvements in health and safety since the Ocean Ranger disaster, but there is, we would suggest, more that can and more that must be done.

Our reaction as a people to that preventable tragedy that took the lives of 84 workers that February day in 1982 was not unlike our response to the crash of Cougar Flight 491. These two events will forever be part of our collective psyche.

The joint federal-provincial commission of inquiry report into the Ocean Ranger disaster noted "*the shock wave created by the loss was felt particularly throughout our province. In that tightly knit community there were few who did not discover a link, direct or indirect, to one of those lost in the tragedy.*"

Similar words and sentiments were repeated, including by Premier Danny Williams, following the crash of Flight 491 taking the lives of 16 men and one woman – and changing their families forever.

Mr. Commissioner, as you heard yesterday children are now fatherless. Wives have lost their life partners. Parents will forever feel the acute and lifelong pain of having lost a child. They deserve – at the very least – that we collectively do whatever we can to prevent further tragedy. This means accepting we can and must do more – all of us industry, government, unions, workers. It means we all have a role to play and we all must be allowed to play that role without fear of reprisal, with clear rules and defined authority.

It means understanding how democratic models in our workplaces can make a difference. It means understanding that workers' rights – such as the right to know, the right to participate and the right to refuse – must be more than rights on paper. They must have real meaning. It means viewing workers as more than part of production. It means workers come to the table as true partners in occupational health and safety and prevention, not as tokens because that is the minimum the law requires.

Mr. Commissioner we all have connections to those who died March 12th – died because they went to work that day. One of the men lost was from my home town of Deer Lake (you heard from his widow yesterday); another was the older brother of a young man I went to university with; and another was the dad of a little girl who attends school with my niece. It was his first day on the job.

It is these connections and the closeness of our community of Newfoundland and Labrador that perhaps make the job of this Commission that much more difficult, but of such consequence.

We all have a stake. We need this Commission to make a difference. This is vital work that you do. It is life-saving work.

As a people, we need to know that good will come from this tragedy. As William Shakespeare wrote: **Out of this nettle, danger, we pluck this flower, safety. (Henry IV)**

This is our hope.

Of all the work we do in the labour movement, advocating for enhanced health and safety is the most important. There is nothing, nothing (not profit, not production) - more important than ensuring workers come home to their families at the end of the day or the end of their hitch. And that should be the foundation of every decision we make.

Workers' Rights

Mr. Commissioner, I would now like to take some time to speak about workers' fundamental OHS rights – the minimum standard as outlined by our laws.

The International Labour Organization, a tripartite UN agency that brings together governments, employers and workers in common action to promote decent work throughout the world, has in its 90 year history placed special importance on developing and applying a preventative safety and health culture in workplaces worldwide.

Its constitution, drafted in 1919, refers to the protection of workers against sickness, disease and injury arising out of their employment.

The Universal Declaration of Human Rights states that everyone has the right to life, to work, to free choice of employment, and to just and favourable conditions of work.

The right to safety and health at work has been developed through a number of international instruments since the ILO constitution of 1919 and the Universal Declaration of Human Rights in 1948, including the Occupational Safety and Health Convention of 1981 which refers to employers being required to ensure workplaces, machinery, equipment and processes under their control are safe and without risk to health.

The fact that we are paid for our work – and in some cases such as in the oil and gas industry probably paid well - does not mean that we should face hazards that can be avoided. We have the technology and the know-how to make workplaces safe and healthy.

It is a fundamental duty of an employer to provide a safe and healthy workplace. As workers, it is our fundamental right to work under safe and healthy conditions. Occupational, health and safety is not a bonus or an add-on. Knowing our obligations as employers and our rights as workers means involving everyone in the process of prevention and building a culture of prevention.

According to the ILO, and we agree with this statement, work can only be decent if it is safe and healthy.

I would like to speak to the OHS rights of workers in our province as guaranteed by the Occupational, Health and Safety Act. Those rights are extended to the men and women who work in the offshore, by way of a Memorandum of Understanding, first signed in 1985 (the Atlantic Accord) between the Government of Newfoundland and the Government of Canada.

Section 61 of that MOU refers to provincial laws, including social legislation such as occupation, health and safety legislation. This MOU is on the CNLOPB website.

A more detailed MOU dealing with OHS was signed in 2001 among the federal and provincial governments and the CNLOPB. This MOU basically contracts out to the CNLOPB the administration of portions of the provincial Occupational, Health and Safety Act that are not already covered in the Atlantic Accord Implementation Acts.

This MOU refers to the OHS Act as social legislation and deals with the rights of workers – including the right to know, the right to participate and the right to refuse.

Mr. Pike, the CNLOPB's chief safety officer referred to this Act in his testimony as "other requirements." Indeed this is how it is referred to on their website.

The fact that these fundamental and core worker rights are viewed as "**other requirements**" diminishes, in our opinion, their importance - and perhaps highlights an underlying, troubling and systemic problem – an agency with conflicting mandates : safety and production. I will speak to this later in my comments.

The provincial Occupational, Health and Safety Act guarantees a number of rights for workers – as do health and safety laws across our country. In Canadian occupational, health and safety laws, three rights are emphasized:

- The **right to know** about hazards of the workplace (which speaks to employers' responsibility to ensure workers know of those dangers);
- The **right to participate** in health and safety activities, especially joint worker-management health and safety committees; and
- The **right to refuse** hazardous work.

In addition, there is the right to a healthy and safe workplace and the right to be protected from discrimination or reprisal if you raise a health and safety concern in the workplace.

These rights came about as a result of many years of struggles by working people around the globe. Workers demanded these rights through workplace struggles, strikes, and by lobbying governments. And we continue this work.

We do so because despite advances in OHS laws, practices, enforcement and engagement, an estimated two million women and men die as a result of occupational accidents and work-related disease every year around the world. In our own province, we average between 18 and 25 worked-related deaths annually – whether through a workplace accident or through occupational disease.

As a labour movement we do not accept that injury (death) and disease somehow “go with the job.” That’s because despite the tragedies, we know prevention works. Experience shows that a preventative safety culture is beneficial for workers, employers and governments.

It is building that preventative culture that is the real challenge as it requires strong laws and legislative authority. It means education, inspection, worker involvement and enforcement.

It requires high-quality training including health and safety training that is developed with worker input.

It requires meaningful worker/union involvement at the workplace level through joint-occupational health and safety committees. OHS committees were designed to provide a mechanism for communication to bring issues forward and to have them acted upon.

It means employers must adopt prevention as an integral part of conducting their business; that workers and their representatives are consulted, trained, informed and involved in measures related to their safety and health at work.

According to legislation as workers we are responsible to work safely and to protect ourselves and not endanger others, to know our rights and to participate in implementing preventive measures. But how can we live up to those responsibilities if, for example, workplace practices including communications and decision-making do not allow for this to happen.

The ILO through its Seoul Declaration on Safety and Health at Work stated that a preventive safety and health culture is one in which the right to a safe and healthy working environment is respected at all levels; **where governments, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties and where the principle of prevention is accorded the highest priority.**

According to the ILO, where high safety standards exist they are a direct result of long-term policies encouraging tripartite social dialogue, collective bargaining between trade unions and employers and effective health and safety legislation backed by strong labour inspection.

Social dialogue, a commonplace practice in the European Union, takes many different forms. It is defined by the ILO to include all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.

It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement.

The main goal of social dialogue is to promote consensus building and democratic involvement among the main stakeholders in the world of work. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.

In the labour movement, we believe every worker has the right to a safe and healthy workplace. But in our society it is the employers who control where we work, if we work, how we work, and whether our work is healthy or hazardous.

As we grapple with numerous health and safety concerns, we also face what employers view as “management’s rights” such as the choice of materials, chemicals, the pace of production, shift work, excessive overtime; work cycle times; maintenance frequency, and the entire design and power structure of the workplace and production systems.

In order to build a preventive safety culture, we need to fix the workplace power imbalance so that workers, without fear of reprisal, have more of a say in their workplace, especially with respect to matters of health and safety. Let’s be clear when I refer to workplace in the case of the offshore, that workplace begins at the airport.

It is workers who risk their lives, limbs, and health in the workplace. By contrast, the risk for employers is profit. I do not say this to create controversy, but merely to point out the reality.

Part of fixing this imbalance is through democratic workplace structures and evolved social dialogue at the enterprise or company level and at the industry, provincial and national levels. But that requires a shift in attitudes. It means truly respecting what workers bring to the decision-making table.

For example: the union health and safety committees must develop their own agenda for health and safety improvements before meeting with management as the joint committee; management must be accountable for the recommendations that come from these committees and the regulatory agency must be responsible for the enforcement side of these recommendations. This enforcement may involve issuing directives.

In order for laws to be effective they must be vigorously enforced. They must be part of a proactive regime.

For example, in countries like Norway, worker safety representatives or safety delegates have the power to shutdown

production if there is unsafe work. This authority can help mitigate the inherent imbalance in power in the workplace.

I believe most Newfoundlanders and Labradorians would agree there is something wrong with the regulatory regime when the agency with a mandate for covering worker safety does not see that worker safety is part of its responsibility.

I understand this statement was contained in testimony at this Commission including in a powerpoint presentation by the CNLOPB (page 9) and I quote: “The CNLOPB does not have responsibility for safety of workers....worker safety (is) the responsibility of the operators.”

Mr. Commissioner this statement, in and of itself, implies what we have in the offshore is not much better than self-regulation.

The CNLOPB has also noted that the lack of charges against industry means that the C-NLOPB is doing its job. I would argue that the lack of violations or charges is by no means in and of itself a measure of safety in any industry. It may instead be an indication of inadequate inspection and enforcement.

Jurisdictional ambiguity can lead to self-regulation

Mr. Commissioner, I know this inquiry has already heard considerable testimony regarding the laws and regulations governing the offshore. Some are federal in jurisdiction, others are provincial. Some deal with production, drilling practices, the environment, and others deal with health and safety. Navigating through these numerous acts and regulations can be a complex piece of business.

I understand the provincial government has attempted to make this a little clearer with a submission to this Inquiry, tabled this week.

For the purpose of this inquiry, it is perhaps helpful to zero in on the laws and regulations governing occupational health and safety.

As referred to already, these rights are first mentioned in Section 61 of the Atlantic Accord MOU, signed in 1985 – three years

after the Ocean Ranger disaster. They are referred to in the 1987 Canada-Newfoundland Atlantic Accord Implementation Act - section 46 1. (e) of this Act refers to an MOU being established on the matter of OHS.

These rights are later expanded upon in an MOU among the federal and provincial governments and the CNLOPB signed in 2001.

The Commission has also heard reference to draft OHS regulations (these do not include or encompass those sections of the OHS Act I have referred to above dealing with workers right to know, participate and refuse. As mentioned these rights are covered off in the MOU signed in 2001.)

The draft OHS regulations (which deal with issues such as working in confined spaces, scaffolding and protective clothing) have been – incredibly – been worked on or in draft form, I believe, since 1989. They now need to be reviewed and modernized without ever being enacted.

Your honour, you have already heard from retired labour leader Bill Parsons who spoke of the jurisdictional ambiguity with respect to what level of government is responsible for what aspect of the offshore. He too raised concerns about the competing mandates of the CNLOPB whose main and chief objective is to sell oil and gas land for exploration and development, but also has a responsibility for occupational health and safety.

Mr. Parsons expressed concern that not one ministerial department (federal or provincial) has taken ownership or responsibility legislatively for the occupational health and safety for the offshore workplace, which includes helicopter transport.

Instead the federal and provincial governments contracted out this responsibility to the CNLOPB which does not report to the government department responsible for OHS, but to the government departments responsible for production and the economic development of the offshore oil and gas industry.

Our Federation supports the comments made by Mr. Parsons that the current legislative ambiguity and contracting out of responsibility to an agency whose chief responsibility is to the economic development of the offshore is at best unacceptable and comprises a conflict of interest. This kind of regulatory arrangement was sternly criticized by Lord Cullen in his report on the Piper Alpha explosion in 1988. I will refer in more detail to this later in my comments.

This Commission has heard from the CNLOPB that it is not responsible for safety; that this is the responsibility of the operators. It has been our experience in the labour movement, that sometimes the internal responsibility system (which I believe has been referenced at the inquiry) and is part of our OHS regulatory regime in Canada can be used to weaken the proactive role government must play.

The internal-responsibility system is intended to be part of a larger framework that includes, and I stress, a proactive (not a passive or reactive) regulatory role. I believe Ms. Chynn spoke to the need for proactive safety yesterday.

This IRS is in place in Norway too, but there is a strong regulatory framework to back it up; and strong worker participation at all levels - workplace and state.

Mr. Commissioner, the fact that the CNLOPB does not see itself as being responsible for worker safety is totally unacceptable. While we understand that employers, and in this case the offshore operators, are primarily responsible for the health and safety of their workplace (including helicopter transport), governments and their agencies have a responsibility for legislation, regulation and enforcement.

The role played by government or an agency acting on behalf of government must be more than oversight and verification of safety plans. That Mr. Commissioner, and I repeat, contributes to an environment of self-regulation.

Mr. Justice Cory in 1991, in *Wholesale Travel*, a decision of the Supreme Court of Canada noted:..."Regulation is absolutely essential

for our protection and well-being as individuals, and for effective function in society. It is properly present throughout our lives. The more complex the activity, the greater the need for and the greater our reliance upon regulation and its enforcement...of necessity society relies on government regulation for its safety.”

But laws and regulations are only as strong as the education and enforcement that go with them and how those laws and regulations are practiced in the workplace and enforced by those charged with the protection of our well-being as workers.

We cannot, and I would hope no one is suggesting that we rely totally on employers to make our workplaces safe. Because employers have by their existence a goal that sometimes competes with safety – that is to make a profit.

I do not say this to be controversial or to diminish all of the efforts made over the years by the employer community with respect to OHS. This is merely a statement of fact. It is reality in our world.

We should accept that as a given and build from there. This is why we need vigilant and proactive government and worker involvement – to mitigate that economic reality.

Production versus safety – conflicting goals...

Mr. Commissioner, we ask that in your deliberations you consider the competing mandates of production or profit versus safety.

In the Commission’s report into the sinking of the Ocean Ranger, there was a clear acknowledgment of the often conflicting goals of production (or profit) and safety.

The Commission noted – and I quote - that the oil industry had “faced and overcome the problems associated with exploring for and producing oil and gas under major environmental constraints, because without these solutions, exploration and production could not

take place. Thus when a rig is being built... (it is) worthy of the latest innovations that technology has to offer.”

The Commission found the equipment designed for enhancing safety, had not been given the same attention.

Rather it found that “the (Ocean Ranger) evacuation system did not meet the same criterion of being essential nor did it elicit the same response.” (Chapter 10, page 104)

In addition, the Commission report on the Ocean Ranger warned of the potential conflict of interests between responsibility for safety and for energy policy.

...[the] inherent risk that, in the drive for energy self-sufficiency, particularly under conditions of economic stress, the price to be paid for accelerated production may be a lowered level of safety (Report, Volume 2, page 147)

We would suggest that there have been a number of examples of this conflict provided in testimony at this inquiry including:

- the incredible and unacceptable nine years it took to install helicopter underwater emergency breathing apparatus;
- the length of time it took to respond to repeated concerns by workers regarding the fit of the survival suits;
- the decision when to change studs on helicopter gear boxes;
- the fact that OHS regulations have been in draft form for over two decades;

We must avoid a “father-knows-best” “top-down” management approach to worker safety, but rather we must encourage worker involvement. We must view workers as experts who can contribute to enhanced health and safety because of their very real experience in the workplace.

In May 2009, the International Labour Organization held a Tripartite Meeting on promoting Social Dialogue and Good Industrial Relations from Oil and Gas Exploration and Production to Distribution.

The conclusions from this meeting which included employers, workers and government representatives with a stake in the offshore oil and gas industry included:

- The recognition that social dialogue is “of paramount importance” for addressing a wide-range of workplace issues;
- A collaborative approach between employers and workers’ organizations is central to good industrial relations and that the precondition to good industrial relations is full respect for freedom of association and the right to bargain collectively.
- That decent work involves... ***freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all.***
- That education and training should be viewed as a long-term contribution to sustainability of the oil and gas industry and as an investment in human capital. It should involve governments and social partners – like unions and educational institutions.
- That social dialogue is paramount to good governance in the oil and gas industry. **Good governance also relies on transparency in decision-making and reporting process.**
- That governments play an important role in promoting social dialogue by creating an enabling environment. And governments have a responsibility of facilitating social dialogue through the establishment and enactment of appropriate legislation and institutions.

These recommendations could form part of a new framework for the offshore oil and gas industry in our province.

CNLOPB (Conflicting mandate)

This issue of competing or conflicting mandates with respect to offshore production and safety has been raised several times and by important inquiries such as the one by Lord Cullen into the Piper Alpha disaster.

I believe this tragedy has been referred to already at this Commission. The Piper Alpha was a North Sea oil production platform. An explosion and fire on the platform in July 1988 killed 167

men. It is considered the world's worst offshore oil disaster. The inquiry was critical of the oil platform's operator which was found guilty of having inadequate maintenance and safety procedures.

The Cullen inquiry made a total of 106 recommendations for changes to North Sea safety procedures. One of those recommendations dealt with the conflicting or competing interests of production and safety when a single regulator is responsible for both.

The Inquiry recommended (and this recommendation was acted upon) that the responsibility for enforcing safety should be removed from the Department of Energy and placed with the Health and Safety Executive because having both production and safety overseen by the same agency was viewed as a conflict of interest.

Mr. Commissioner, in 2002, the provincial government, through the department of Mines and Energy conducted a round of consultations concerning the Atlantic Accord. It was an attempt to consolidate legislation dealing with the offshore and incorporate an offshore health and safety regime into that Accord.

At that time, the NLFL, under President Elaine Price, made a submission outlining the Federation's concerns with the proposed amendments. The proposed amendments, the Federation stated at that time, did little to support what was seen as a needed clear separation between occupational, health and safety and production issues.

In its submission, the Federation noted that to begin with all the persons in major health and safety positions, including the Chief Safety Officer (CSO) and all other safety officers, would continue to be employees of the CNLOPB. "And while our federation (she said) does not question the personal integrity of these officers and does not doubt their dedication to carrying out their duties, it nonetheless remains that they are employees of the organization that is responsible for the development of the oil and gas industry."

The CNLOPB reports to the federal and provincial departments of natural resources, whose primary mandates are development and production.

The latest annual report of the CNLOPB highlights this competing mandate. Chairman and CEO Max Ruelokke in his report notes that in 2008-09 the CNLOPB experienced several high points including a banner year for land rights issuance and one billion barrels produced.

He noted that the past year “saw several significant successes and accomplishments; however the year was marred by the tragic crash of Cougar Flight 491.”

And to further point to the legislative ambiguity of who is responsible for what, we have on the one hand the CNLOPB saying it is not responsible for worker safety, but yet it has the power to shutdown an offshore operation. And we have the provincial government in its submission (page 4) stating that the CNLOPB’s responsibilities include operational and occupational health and safety and that this responsibility was enhanced in a MOU signed between the parties in 2001. “The purpose of the MOU (according to the government) was to enhance the CNLOPB’s ability to carry out its responsibility for occupational health and safety.”

These confusing and conflicting messages from the various authorities only add to the ambiguity of who is really responsible for what. It can also add to a culture of self-regulation.

Training...Worker Involvement

As workers we understand the critical importance training is to health and safety. Skilled and trained workers are part of a strong health and safety foundation. In addition to being trained and skilled to do the job workers have been hired to do, health and safety training – both general and workplace specific is also critical.

The issue of training has been raised at this Commission, including by Mr. Robert Decker.

Training was also a matter of considerable discussion and the subject of a number of recommendations by the Commission into the sinking of the Ocean Ranger.

That Commission recommended the establishment of a separate Offshore Petroleum Training Standards Board with authority to determine requirements for training in the offshore industry.

The report said:

“The insight of workers having substantial experience offshore should also be represented. The Board should be authorized to determine, in consultation with industry, training institutions and related government agencies, requirements for training in the offshore. (Report, Volume 2, page 75)”

This is an example of social dialogue or a tripartite model that could be implemented for training workers for the offshore, including OHS training. To be clear, this would involve workers’ engagement including through their union.

When you consider Robert Decker’s testimony, it becomes clear that the training provided is inadequate.

Mr. Decker said (and I quote): “As good as the training is, a couple days of controlled immersion in that pool every few years is not enough to allow anyone to develop the instinctive reactions that they need to have a chance of escaping a helicopter crash like Cougar 491.”

The Federation has been a strong proponent of worker training, including and especially in the area of OHS, but we also recommend that workers and their unions must be involved in the development and delivery of training.

Safer Helicopters

Mr. Commissioner, I would like to take a couple of minutes to speak to the issue of helicopter safety. And I am by no means a helicopter expert.

An important part of the mandate of this Inquiry is to consider the safety of helicopter transport. Given the assertions by the CNLOPB that the operators are responsible for safety, I am assuming that also means safety during transport.

The NLFL is hopeful, as was expressed by Robert Decker in his testimony and by family members yesterday that this inquiry does result in safer helicopter travel. **Mr. Decker said that he would not be flying offshore anymore, but that others continue to do so and deserve to be able to do so safely.**

But there are still a lot of questions with respect to helicopter safety, questions we hope this inquiry in conjunction with the Transportation Safety Board can answer.

In his testimony Mr. Decker stated that training to escape from a crashed helicopter is important. Having good survival suits is important, and having search and rescue capacity nearby is important. But all those things are what you need after there's been a crash into the ocean.

*If we really want to make offshore helicopter travel safe, what we have to do is to make sure that every helicopter does not crash. The best way to keep every offshore worker safe is to keep every helicopter in the air where it belongs. Safety starts with the helicopter and I think everything else is secondary.”

In preparation for this submission, the NLFL has been in contact with a Norwegian trade union which represents 13,000 offshore workers. The Union has spent a lot of time dealing with helicopter safety. According to one of their representatives responsible for health and safety in the offshore, Mr. Karlsen, helicopter transport is one of the largest single contributors to the risk an offshore worker is exposed to.

Helicopter accidents, he reports, are responsible for a large share of the total fatalities in the offshore. The Unions and industry there have been engaged in work on helicopter safety and are currently involved in a third study on this matter. The first such study took place in the early 1990s. The Union has representatives on the steering committee for this work. The main conclusion from the second report on helicopter safety released in 1999 was that it was not pilot error that results in most accidents, but rather technical failure.

During last year's ILO tripartite meeting on promoting social dialogue in the oil and gas industry, the chairperson of the workers' group at this meeting noted that helicopter accidents account for about 25% of fatalities in the offshore oil and gas sector and transportation by helicopter was one of the weakest points of the health and safety chain.

So the question is how do we make helicopter transport safer and what role should the oil and gas industry as an employer who depends on helicopter transportation in order to operate play in that and from our perspective how do we ensure workers are involved in that process, ensuring their rights to know and participate are activated.

Is it simply that we use different helicopters that are more expensive, because they have more technology, such as a dry-run capability?

We know this technology exists because SAR helicopters have this capability. Isn't it responsible and practical to expect helicopters transporting workers everyday one and half hours out to sea also be required to have such technology?

Isn't it responsible and practical that workers have a right to know when there are problems with those helicopters? I believe this speaks to the heart of a worker's right under our OHS Act – and that is the right to know.

We would wholeheartedly agree with Mr Decker's assessment that the best course of action is to keep the helicopters in the air. We also know we must do everything we can to ensure if a helicopter must ditch, that the occupants of that helicopter are given the best possible chance of survival – from the best survival suits available, to appropriate training and adequate, timely and dependable search and research response.

Search and Rescue (What Ocean Ranger recommended; what we didn't get; and what we still need....)

Mr. Commissioner, you have heard a lot about the federal government's so-called commitment to search and rescue and you have heard criticism of Canada's search and rescue resources, including the fact that the response time dramatically increases between 4pm and 8am and on weekends or what are referred to as quiet times according to a DND document provided for the Commission.

I suppose it is stating the obvious, but perhaps that is also necessary: people who work in the offshore (whether it is in the oil and gas or fishing industries) do not work 8 to 4.

This staffing decision is a result of an inadequate financial commitment by the federal government to search and rescue.

It is a result of cutbacks to these services and programs. It is about political choices.

We are a Maritime nation and as such a good deal of economic activity takes place at sea. Government has a responsibility to provide adequate public services in this regard. And it is not.

And I would argue that SAR services are needed more today than ever before given the increased activity on our oceans. Globalization means more and more goods are transported by sea. We have only to walk along St. John's Harbour any day of the week to have this confirmed.

In addition, offshore activity has increased significantly since the Commission Report into the Ocean Ranger sinking made its recommendations with respect to enhanced SAR. At that time the Commission recommended:

That government or industry, provide for a dedicated full-time search and rescue helicopter at the airport nearest the offshore operations.

“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, 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 rescue (p. 155).”

In addition to the increased transportation of goods, and the increased offshore oil activity from installations, transport of workers, oil tankers and supply ships, we have also experienced in the same time frame a dramatic increase in the number of fishing vessels fishing further offshore.

For example in the late 1980s and early 1990s, the nearshore fleet of vessels (greater than 40 feet) in Newfoundland and Labrador caught on average about 10,000 tonnes of snow crab and shrimp.

In 2008, this fleet of about 900 vessels caught about 40,000 tonnes of snow crab and 80,000 tonnes of shrimp. This is about nine times the total of shrimp and snow crab landings as 20 years ago. Much of this increased activity takes place anywhere between 50 and 200 miles offshore.

Today, according to CAPP, NL produces more than 340,000 barrels of crude oil per day or about 36% of Canada's total light crude oil production. In 1997, we had just one oil field producing – Hibernia. Today there are three, with a fourth expected by 2017. In addition, there is significant seismic and other exploration taking place offshore

In the face of this increased economic activity, SAR capabilities have been reduced; including longer response times at night and on weekends.

This is totally unacceptable and irresponsible and the Federation joins others at this inquiry calling for increased and enhanced search and rescue capabilities.

Social dialogue – Tripartism

Throughout our presentation I have referred to this process known as social dialogue.

There are already examples of this approach to problem-solving and engagement in our province. For example, provincially, labour, business and government participate in what is known as the Strategic Partnership Council – a tripartite system of having dialogue on issues in which we share a common interest such as labour market and labour relations.

The Workplace, Health, Safety and Compensation Commission is currently engaged with the Federation of Labour and the Employers Council in a program to develop sector councils in various industries throughout the province. These councils would be responsible for promoting enhanced OHS practices in various sectors of our economy.

The idea behind these kinds of processes and structures is they are an effective means to solve problems; they result in a high level of engagement and input among all the parties. But they require trust and respect.

According to the ILO, which is by its nature a tripartite organization of workers (unions), employers and governments, social dialogue is the ILO's best mechanism in promoting better living and working conditions.

The Federation believes that such a system would be beneficial in the offshore oil and gas industry at a number of levels and in particular with a focus on health and safety.

Certainly Norway operates under such a model and we would recommend that the Commission visit other jurisdictions, as I believe is your plan, to see how the workplace parties talk to each and how health and safety matters are dealt with. I am sure their system is not perfect, but it does appear to be certainly more evolved than ours.

For example the Norwegian Petroleum Safety Authority (an arm of the government) says that collaboration between employers, unions and government as well as worker participation are important cornerstones in efforts to establish and develop health and safety in the petroleum industry.

“From an ethical perspective, it is crucial that people exposed to risk participate in decision-making processes which affect such exposure.”

Norway’s Working Environment Act also contains a number of provisions on the right and duty of workers to participate in ensuring a fully acceptable working environment in an enterprise. The same requirement for participation also applies when government agencies develop risk-based regulations and regulatory regimes. In other words workers and their representatives are included in the making of the decisions and the laws.

It is important, according to the Authority, that workers have the necessary level of involvement before solutions are chosen.

I do not believe we can say that is the case in our oil and gas industry.

Concluding remarks/Recommendations

Mr. Commissioner, in conclusion, I would like to make the following points.

First, I would say that the Federation, in addition to my presentation today, is preparing a second document that will include recommendations. We will also comment on the document dealing with the regulatory regime from the provincial government that was this week posted to the website.

In the meantime, our Federation does recognize and recommend that clearing up the legislative ambiguity, embracing social dialogue in the offshore sector through real and meaningful worker involvement; creating a stand-alone, proactive safety agency with tripartite governance that reports to the provincial and federal departments in charge of OHS as their clearly defined role; and activating worker rights would be a good place to start.

We believe it would be more than helpful if the Commission did visit other jurisdictions and talk to the unions in those jurisdictions when you do. They have a lot to offer and we would be pleased to facilitate that.

We tackle the view that it is only the employers who are responsible for worker safety. This is for all intents and purposes self-self-regulation. We advocate for models that support industrial democracy. And we repeat what Mr. Robert Decker has said, we must keep the helicopters in the air.

We must understand the competing interests of safety and production or profit and put in place the correct structures, laws, and processes to mitigate that conflict.

And we must be proactive – everyone – industry, governments, and workers. We must always put prevention first because when we do, we put people's lives first.

Before closing, I would like to thank the committee of people who helped me with this presentation – they are each of them OHS activists and OHS experts – Dr. Sue Hart, Gail Hickey, Sharon Walsh and the offshore workers who shared their experiences and knowledge with us. They believe, as I do, that we can collectively make a difference.

They believe as I do that every accident is preventable and they like, I am, are hopeful that this Commission of Inquiry will make the recommendations needed and governments will have the political will to act on them.

The families of the 16 men and one woman who died March 12 of last year deserve this to be the least of our efforts. The people who continue to seek their living offshore deserve the same.

Mr. Commissioner, once again thank you for this opportunity and I hope our presentation is helpful in your deliberations.