

Rules of Practice and Procedure

INTRODUCTION

The Inquiry will be divided into two phases.

Phase I of the Inquiry is to determine and recommend to the C-NLOPB, improvements to the safety regime which in the opinion of the Commissioner would improve offshore helicopter safety to ensure that the risks of helicopter transportation of offshore workers is as low as is reasonably practicable in the Newfoundland and Labrador Offshore Area. This Phase will involve 4 sections: the first (a) will be to identify the current safety regime and the issues which may lead to opportunity for improvement; the second (b) will be to study and analyze the opportunities for improvement; the third (c) will be to allow for responses to those issues which may lead to recommendations for improvement; the fourth (d) will be the preparation and delivery of the Report to the C-NLOPB.

Phase II of the Inquiry shall proceed upon completion of the Transportation Safety Board of Canada Investigation into Cougar Helicopter Sikorsky S92-A Crash and the Commissioner shall advise the C-NLOPB on which findings should result in actions being recommended to be undertaken by C-NLOPB, how they should be implemented, and which findings should result in actions being recommended to be undertaken by other legislative or regulatory agencies. The protocols for this Phase will be developed once Phase 1 is completed.

RULE I. Standing and Funding

A. General

1. Pursuant to the Terms of Reference, the Commissioner shall grant standing to persons or groups to participate in the Inquiry hearings as a party, after determining that the person or group has a professional and commercial interest in helicopter transport to the Newfoundland and Labrador Offshore Area. The Commissioner may also grant standing to other persons or groups that can demonstrate that they can contribute to the objectives of the Inquiry as set forth in the Terms of Reference.

2. In determining standing, whether full or limited, the Commissioner shall consider:
 - (a) whether the person's interest may be adversely affected by the findings of the Commissioner;
 - (b) whether the person's participation would further the conduct of the Inquiry; and
 - (c) whether the person's participation would contribute to the openness and fairness of the Inquiry.
3. The term "Party" is used to convey the grant of standing and is not intended to convey the suggestion of an adversarial proceeding.
4. Inquiry Counsel, who will assist the Commissioner throughout the Inquiry and are to ensure the orderly conduct of the Inquiry, have standing throughout the Inquiry. Inquiry Counsel have the primary responsibility for representing the public interest at the Inquiry, including the responsibility to ensure that all relevant matters that bear on the public interest are brought to the Commissioner's attention.
5. In order to avoid duplication, and thereby promote time and cost efficiencies, persons or groups of similar interest are encouraged to seek joint standing.
6. The Commissioner will determine the extent to which a party granted standing may participate in Phase I of the Inquiry. Issues of standing and participation in Phase II of the Inquiry will be addressed, if necessary, prior to the commencement of Phase II.
7. Counsel representing any witness called to testify before the Inquiry may participate during the hearing of such evidence.
8. The ability or desire of a person or group to apply for or obtain standing does not affect the right of that person or group to submit views in writing to the Commissioner with respect to helicopter transportation safety in the offshore.
9. Applications for standing shall be made in writing, via facsimile, regular mail or by hand delivery addressed to the Inquiry and shall provide the following information:
 - (a) that standing is being sought for Phase I of the Inquiry; and

- (b) a statement as to how the applicant satisfies the criteria for standing set out in Rule I;

There may also be questions asked of the applicant at the standing hearings.

- 10. The Commissioner may or may not make recommendations to the Canada Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) regarding funding for counsel and other expenses of any Party who has been granted standing.
- 11. Applications for funding shall be made in writing via facsimile, regular mail or by hand delivery addressed to the Commissioner and shall contain the following:
 - (a) an affidavit stating whether an applicant would be able to participate without such funding, supported by relevant documentation, which may include financial information and, for organizations, financial statements, operating budgets, the number of members and membership fee structure. Applicants should also indicate whether they have contacted other groups for the purpose of seeking standing and/or funding, and the results of any such contacts;
 - (b) a description of the purposes for which the funds are required, how the funds will be disbursed, and how they will be accounted for;
 - (c) a statement of the extent to which the applicant will contribute its own funds and personnel to participate in the Inquiry; and
 - (d) the name, address, telephone number and position of the individual(s) who would be responsible for administering the funds, and a description of the financial controls that would be put in place to ensure that any funding provided is disbursed for the purposes of the Inquiry.
- 12. The status of “Standing” will entitle a Party to receive all relevant information, including, but not limited to: (a) all evidence, reports and information that could be used by the Commissioner in the preparation of his Report, (b) copies of all summaries of the evidence expected to be provided by all witnesses during the public hearings and (c) the proposed exhibits which are expected to be entered at the public hearings.
- 13. A Party may be granted full or limited standing by the Commissioner. A Party granted full standing is expected to be present at all times during the hearings, unless otherwise excused by the Commissioner, and that party

would have the right to examine all witnesses and present evidence. A Party with limited standing would have the right to participate in the hearings only when issues relevant to that Party's interest were being dealt with by a particular witness or in particular exhibits, provided that the Party with limited standing gives Inquiry Counsel at least 48 hours prior notice of when that Party intends to participate in the public hearings.

RULE II. Pertinent to Phase 1 and Production of Evidence at Hearings

A. General

14. Public hearings will be convened at 31 Peet Street, St. John's and such other locations as the Commissioner designates to address issues related to Phase I of the Inquiry.
15. In the ordinary course, Parties granted standing in Rule I will participate in the public hearings by attendance in person and/or by their counsel. However, in appropriate circumstances, as determined by the Commissioner, a Party may be permitted to participate in the public hearings by way of videoconference.
16. All Parties and their counsel shall be deemed to undertake to adhere to these Rules, which may be amended or dispensed with by the Commissioner as he sees fit to ensure fairness. Any party may raise any issue of non-compliance with the Commissioner.
17. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a Party or imposing restrictions on the further participation in or attendance at the hearings by any Party, counsel, individual, or members of the media.
18. The Commissioner is empowered by the Terms of Reference to gather information in a variety of ways, including formal and informal hearings. Formal hearings will be public. However, applications may be made to proceed *in camera* in accordance with s. 6(2) of the Public Inquiries Act, 2006. Such applications should be made in writing at the earliest possible opportunity pursuant to the provisions of Rule II-46.
19. The conduct of and the procedure to be followed on the Inquiry are under the control and discretion of the Commissioner.
20. The Commissioner may extend or abridge any time prescribed by the Rules.

B. Disclosure and Production of Information and Documents.

21. All relevant information shall be disclosed and all relevant records, documents or other things within the possession, control or power of a Party shall be produced to the Inquiry Counsel by that Party within thirty (30) days of that Party having been granted standing. This obligation shall be ongoing and continuing throughout the course of the Inquiry.
22. Where a Party objects to the disclosure of information or the production of any record, document or thing, it shall in any event be produced in its original unedited form to Inquiry Counsel who will review and determine the validity of the objection. The Party and/or that Party's counsel may be present during the review process. In the event the Party objecting disagrees with Inquiry Counsel's determination, the Party may cause an application to be brought before the Commissioner to have the issue resolved.
23. The term "relevant" is intended to have a broad meaning and includes anything that touches or concerns the subject matter of the Inquiry or that may directly or indirectly lead to other information that touches or concerns the subject matter of the Inquiry.
24. The terms "documents" and "records" are intended to have a broad meaning, and include the following mediums: written, electronic, audiotape, videotape, digital reproductions, photographs, films, slides, maps, graphs, microfiche and any data and information recorded or stored by means of any device.
25. The originals of relevant documents, records or other things are to be provided to Inquiry Counsel upon request.
26. Counsel to Parties and witnesses will be provided with documents, records and information, including statements of anticipated evidence, only upon giving an undertaking that all such documents, records or information will be used solely for the purpose of the Inquiry, and where the Commissioner considers it appropriate, an undertaking that its disclosure will be further restricted. The Inquiry may require that documents or records provided, and all copies made, be returned to the Commissioner if not tendered in evidence. Legal counsel are entitled to provide such documents, records or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document, record or information once it has become part of the public record. The Commissioner may, upon application, exempt from the provisions of the undertaking any document, record or information, in whole or in part.

27. Documents, records or things received from a Party, or any other organization or individual, shall be treated as confidential by the Inquiry unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commissioner from producing a document, record or other thing to a proposed witness prior to the witness giving his or her testimony or as part of the investigation being conducted.
28. Subject to Rule II-33, Inquiry Counsel will endeavour to provide (in advance both to the witness and to the Parties with standing relevant to matters in respect of which the witness is expected to testify) documents, records or other things that will likely be referred to during the course of the testimony of that witness, and a copy of any statement provided by that witness to Inquiry Counsel.
29. Parties shall at the earliest opportunity provide to Inquiry Counsel a copy of any documents, records or other things that they intend to file as exhibits or to otherwise refer to during the hearings, and in any event shall provide same no later than 72 hours prior to the day the intended exhibit will be referred to or filed at the hearings.
30. A Party who believes that Inquiry Counsel has not provided copies of relevant documents or records must bring this to the attention of Inquiry counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document or record that they have not had an opportunity to examine prior to their testimony. If Inquiry Counsel decides the document or record is not relevant, it shall not be produced. This does not preclude the document or record from being used in examination by any of the Parties. Before such a document or record may be used for the purposes of such examination, a copy must be made available to all Parties by counsel or the Party intending to use it not later than 72 hours prior to the testimony of that witness, subject to the discretion of the Commissioner.

C. Evidence and Witnesses

31. The Inquiry is entitled to receive any relevant evidence at the hearings which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
32. In the ordinary course of the hearings, Inquiry Counsel will call and first question all witnesses who testify at the hearings. Counsel for a Party may apply to the Commissioner to lead a particular witness' evidence-in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.

33. Witnesses shall give their evidence at a hearing under oath or affirmation, although the Commissioner may admit evidence not given under oath or affirmation as he shall determine appropriate.
34. Evidence may be given by more than one witness at the same time, at the discretion of the Commissioner.
35. By September 15, 2009, Parties are required to provide Inquiry Counsel with the names and addresses of all witnesses they believe ought to be heard, together with a brief statement as to the information the witness can provide that is relevant to the Terms of Reference.
36. When Inquiry Counsel calls a witness in relation to a particular issue, a Party may then apply to the Commissioner for leave to call a witness whom the Party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness is necessary, Inquiry Counsel shall call that witness to testify.
37. Any person interviewed by or on behalf of Inquiry Counsel is entitled, but not required, to have personal legal counsel present for the interview to represent his or her interests.
38. In the ordinary course, witnesses will give evidence at a hearing in person, but in appropriate circumstances, as determined by the Commissioner, a witness may be permitted to give evidence via videoconference.
39. If special arrangements are desired by a witness in order to facilitate testifying, a request for accommodation shall be made to the Commissioner sufficiently in advance of the scheduled appearance of the witness to reasonably facilitate such a request. While the Commissioner will make reasonable efforts to accommodate such requests, the Commissioner retains the ultimate discretion as to whether, and to what extent, such requests will be accommodated.
40. Witnesses may be called to give evidence on more than one occasion during the hearings.
41. Witnesses who are summoned by the Commissioner are entitled to be paid the same personal allowances for their attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Supreme Court of Newfoundland and Labrador, Trial Division.
42. The order of examination of any witness will be as follows:
 - (a) Subject to Rule II-29, Inquiry Counsel will first adduce the evidence from the witness;

- (b) Parties granted standing to examine witnesses will then have an opportunity to examine the witness to the extent of their interest. The order of examination will be determined by the Parties and, should they be unable to reach agreement, by the Commissioner;
- (c) Counsel for a witness, regardless of whether or not counsel is also representing a Party, will examine last, unless that Counsel has conducted examination-in-chief of that witness, in which case there will be a right to re-examine the witness; and
- (d) Inquiry Counsel will have the right to re-examine.
- (e) Witnesses shall not be cross-examined in the ordinary course, except to the extent permitted by the Commissioner.

D. Access to Evidence

- 43. All transcripts of public hearings and exhibits entered at public hearings shall be categorized and marked “P-#” for public or “C-#” for either a) transcripts of hearings and exhibits held *in camera*, or b) exhibits where limited disclosure because of confidentiality or proprietary concerns is sought and granted under these Rules.
- 44. Transcripts and exhibits marked “P” will be posted to the Inquiry’s website to be fully accessible to all Parties, the media and the public.
- 45. One copy of the “P” exhibits will be available to be shared by the media in the media room.
- 46. Only those persons authorized in writing by the Commissioner shall have access to transcripts and exhibits marked “C”. Except as authorized, transcripts and exhibits marked “C” will not be copied, reproduced, distributed or broadcast and will not be posted to the Inquiry’s website.

E. Confidentiality

- 47. If the hearings are to be televised or broadcast by some other medium, applications may be made to the Commissioner for a decision that the testimony of a person or any exhibit or a portion of an exhibit not be televised or broadcast because of confidentiality or proprietary concerns.
- 48. a) A witness may apply to the Commissioner for measures aimed at protecting from disclosure, for a compelling reason as determined in the

sole discretion of the Commissioner, a person's identity or proprietary information

b) Without limiting the application of s. 6 of the *Public Inquiries Act*, 2006, the Commissioner may, in his discretion and in appropriate circumstances, exclude the public from a hearing or from a portion of it, or exclude any testimony or exhibits from being copied, reproduced, distributed or broadcast, where the Commissioner decides that the public interest in holding that portion of the hearing in public and without restrictions is outweighed by other considerations, including but not limited to, a) the consequences of possible disclosure of personal or proprietary information, b) public security, c) the right of a person or entity to due process, d) a disclosure regarding criminal or civil responsibility, or e) any other consideration which the Commissioner considers appropriate to the circumstances.

49. Upon a successful application to the Commissioner, the person or the information (sometimes referred to hereafter as "confidential information") may be granted the status of "Confidentiality". For the purposes of the Inquiry, Confidentiality includes the right to have the identity or confidential information disclosed only by way of non-identifying marks. If the person so wishes, this may also include the right to testify or to disclose the confidential information before the Inquiry *in camera*, together with any other confidentiality measures that the party may request and the Commissioner, in his discretion, may grant. Subject further to the discretion of the Commissioner, only the Commissioner, Inquiry staff, Inquiry Counsel and counsel for the witness who has been granted Confidentiality may be present during testimony being heard *in camera*.
50. A person or information granted Confidentiality shall be identified in the public records, transcripts of the hearing and any reports of the Commissioner in a manner so as to preserve the confidentiality intended.
51. Media reports shall avoid references that might reveal the identity of the person or information granted Confidentiality. No photographic, audio, visual or other reproduction of the persons or confidential information shall be made either during that person's testimony or upon that person entering and leaving the site of the Inquiry.
52. Any witness who is granted Confidentiality will reveal his or her name to the Commissioner and Inquiry Counsel in order that the Commissioner and Inquiry Counsel can prepare to question the witness. The Inquiry shall maintain as confidential the names and confidential information revealed. Such information shall not be used for any other purpose either during or after the completion of the Commissioner's mandate.

53. Any witness who is granted Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying marks given for the purpose of the testimony of the witness.
54. All Parties, their counsel, Inquiry Counsel and staff, contracted service providers and media representatives shall be deemed to undertake to adhere to the rules respecting confidentiality.

Rule III. Pertinent to Research, Submissions and Public Meetings

A. General

55. Due to the policy nature of the issues in Phase I, the Inquiry may utilize a range of research and policy development processes upon which to base the Commissioner's recommendations. The objectives of Phase I are to promote an informed discussion and analysis of the issues raised by the Terms of Reference, and to ensure that Parties and the public have a meaningful and ongoing opportunity to participate. Amongst the various initiatives which may be adopted under Phase I, the Inquiry may:
 - (a) commission a range of research and policy papers (the "Research and Policy Papers") from experts or consultants on a broad range of relevant topics. The structure and format of the Research and Policy Papers may vary, but will generally include a description of current practices, an analysis of relevant issues, potential options (if applicable);
 - (b) invite written and/or oral submissions from Parties and the public about any matter relevant to Phase I, including the Research and Policy Papers;
 - (c) convene meetings or additional hearings (the format of which may vary) to discuss issues raised by the Research and Policy Papers; and
 - (e) post on the Inquiry website the Research and Policy Papers and other relevant research materials and submissions upon which the Commissioner intends to rely in his recommendations.

B. Public Submissions

56. Any interested person or group may make a written submission to the Commissioner dealing with any matter related to Phase I or II of the

Inquiry and, in doing so, may include a response to any matters raised in the Research and Policy Papers.

57. The Commissioner will set and publish a deadline by which all public submissions related to Phase 1 and II must be received. All such submissions will be made available for public review either on the Inquiry website or at the Inquiry offices, unless the Commissioner otherwise determines that a submission should not be made public.

C. Pertinent to Phase 1b of the Inquiry

58. In determining the issues to be investigated for improvements, the Commissioner shall consult with the Parties prior to his making the final determination on what issues (the “Issues”) are to be considered by him in this Phase. A list of the Issues will be made public by the Inquiry.
59. The Commissioner may consult with any person or group at any time. When such consultations provide information which may be material to any Issue, the Commissioner will promptly advise the Parties and provide a written synopsis of the materials, including contact information on its source. If requested by any Party, the Inquiry will use its best efforts to ensure full cooperation of that person or group with the Parties. The Commissioner at his discretion may invite all parties to a meeting to be held in St. John’s to discuss the provided material.
60. The Commissioner shall decide which consultants, if any, he intends to retain for the purposes of obtaining a written report (a “report”) on any of the Issues, and will provide the Parties on a timely basis the identity of the consultant, the nature of the report requested, and the anticipated timeline for a report.
61. Any Party who believes that an Issue should be examined by a consultant whom the Commissioner has not retained is entitled to either retain such consultant on the Party’s behalf or to recommend to the Commissioner that he retain the consultant. The Commissioner shall be under no obligation to retain any consultant so recommended.
62. Consultants will be expected to come to their conclusions independently, without influence from the Commissioner, Inquiry Counsel, or any of the Parties or their counsel. All parties are entitled to retain their own consultants and distribute any of their reports that they are relying on to the Commissioner and other Parties once they have been received.
63. Any consultant’s report which the Commissioner or any Party wishes to rely upon for the purposes of Phase 1c shall be provided to all Parties and to the Commissioner not later than May 31, 2010 for reports obtained by

the Commissioner and not later than June 14, 2010 for reports obtained by the Parties.

64. Not all Issues will be the subject of a consultant's report. The Commissioner retains the right to make recommendations on any Issue which has been identified, even if it has not been made the subject of a report.
65. The Commissioner will advise the Parties of material which he reads and considers to be relevant to the Issues, but will not necessarily advise of general or background material. The Commissioner may also advise the Parties of any other material which he thinks the Parties may find interesting. The Commissioner will express no opinion with respect to any materials, prior to reporting to the C-NLOPB.
66. Parties may submit any materials, names of experts, third parties, committees or processes for consideration by the Commissioner; however, the Commissioner gives no undertakings with respect to the use of such information or reliance on it.
67. If during the course of investigation, or at any time prior to submission of his report to the C-NLOPB, the Commissioner becomes aware of any new issue which was not included in the list referred to in Rule 58 but which should be investigated, the Commissioner shall promptly advise the Parties of his intention to consider the issue and give the Parties a reasonable opportunity to comment on it prior to any public hearings in Phase 1c.
68. The Commissioner retains the right to make or not make recommendations about any one or more of the Issues.

D. Pertinent to Phase 1c of the Inquiry

69. Any Party which intends to examine a consultant about the report of that consultant shall advise Inquiry Counsel of that intention on or before June 17, 2010.
70. If a request is made under rule 69 for the examination of a consultant, the Commissioner shall provide an opportunity for such examination in public hearing on June 28, 29 and 30, 2010 and continue on every business day thereafter until concluded. Such consultants can be examined by each of the Parties who so desires. All authors of reports shall be required to make themselves available for examination under oath or affirmation in such hearings, unless the Commissioner otherwise determines an alternative process for questions to be asked of and answered by the consultant.

71. A hearing conducted under this Rule D shall be conducted in the same manner and under the same rules as those hearings in Phase 1a, with such changes in procedure as may be necessary to ensure full disclosure and scrutiny of consultants' reports by the Parties.
72. On or before July 30, 2010, all Parties shall be entitled to submit to the Commissioner written submissions on any or all of the Issues. Such submissions shall at the same time be copied to all of the other Parties.
73. The Inquiry shall provide an opportunity in public hearings on September 8, 9 and 10, 2010 for all Parties to make final oral submissions in order to either expand upon their written submissions to the Commissioner on any of the Issues or to respond to the written submissions of other Parties.

E. Pertinent to Phase 1d of the Inquiry

74. Once all hearings under Phase 1c are completed, the Commissioner shall draft and submit his report to the C-NLOPB on a timely basis as required by the Terms of Reference as amended. The Commissioner will not circulate a draft of his recommendations report to anyone prior to submitting his report to the C-NLOPB.

(Additional Rule III rules may be added.)

Rule IV Pertinent to Phase II of the Inquiry

75. Upon the public release of the findings of the Transportation Safety Board (TSB) into the crash of Cougar Flight 491, the Commissioner will determine the extent to which input by the Parties or the public may be appropriate to enable him to respond to such findings.

(Additional Rule IV rules may be added.)

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