

OFFSHORE HELICOPTER SAFETY INQUIRY

October 20, 2009

Tara Place, Suite 213, 31 Peet Street

St. John's, NL

October 20, 2009

PRESENT:

**John F. Roil, Q.C./
Anne Fagan.....Inquiry Counsel**

**Amy Crosbie/ Canada-Newfoundland and Labrador Offshore
John Andrews..... Petroleum Board (C-NLOPB)**

**Cecily Strickland/Ian Wallace..... Hibernia Management and
..... Development Company (HMDC)**

Denis Mahoney/D. Blair Pritchett.....Suncor (Petro-Canada)

**Alexander C. MacDonald, Q.C./
Stephanie Hickman Husky Oil Operations Ltd.**

Jonathan Tarlton/Mark FreemanDepartment of Transport Canada

Norman J. Whalen, Q.C.....Cougar Helicopters Inc.

Rolf Pritchard.....Government of Newfoundland and Labrador

Jamie Martin.....Families of Deceased Passengers

**Kate O'Brien.....Davis Estate (Pilot) and
..... agent on behalf of Douglas A. Latto for Lanouette Estate (Co-pilot)**

Karen HollettOffshore Safety & Survival Centre, Marine Institute, MUN

Paul Barnes Canadian Association of Petroleum Producers (CAPP)

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1 October 20, 2009
 2 COMMISSIONER:
 3 Q. Good morning, ladies and gentlemen, Mr. Roil.
 4 ROIL, Q.C.:
 5 Q. Thank you, Commissioner, good morning to you.
 6 COMMISSIONER:
 7 Q. Just a couple of opening remarks from me about
 8 the evidence for today. As you were told
 9 yesterday, the first presenter is the C-NLOPB,
 10 the Canada Newfoundland and Labrador Offshore
 11 Petroleum Board. There are two witnesses who
 12 will be appearing for the Board, John Andrews,
 13 who is the Manager of Legal and Land
 14 Department, and Howard Pike, who is the Chief
 15 Safety Officer. They will be more
 16 appropriately identified to you later. We had
 17 originally planned for there to be panel right
 18 from the outset with respect to this
 19 particular entity. However the two
 20 presentations are a bit separate so it just as
 21 easy for us to do it with them sitting there
 22 individually. The table is a little small for
 23 two, so I think when it gets to questioning
 24 from others later in the day or tomorrow,
 25 we'll arrange a slightly larger table for them

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1 to have a little more comfort. This is the
 2 first of the so-called jurisdictional
 3 entities, those that set up for you and for
 4 the public an understanding of who is
 5 responsible for what with respect to safety,
 6 travelling into the offshore. At this point
 7 in time, the C-NLOPB will give a relatively
 8 high overview of what they do and how they do
 9 it. There will no particular reference to any
 10 of the operators, the three that we have
 11 chosen today, other than a passing reference.
 12 The desire is twofold. One is to make sure we
 13 stay in the jurisdictional area, and the other
 14 is to make sure we don't get down into the
 15 details too early on. There will be a time
 16 when we will come to the oil companies and to
 17 their safety plans and their operational
 18 decisions, and at that point in time the C-
 19 NLOPB will be able to come back from time to
 20 time if necessary to talk about their
 21 engagement with particular operators, but
 22 right now it is just a painting of the
 23 overview, if you will. The first thing that I
 24 have to do, I believe--again this is the first
 25 one we've done so bear with me while we

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1 struggle through the procedures. There's a
 2 proposed list of exhibits for the C-NLOPB in
 3 their presentation I will not be referring to
 4 other than the two PowerPoint presentations
 5 and the legislation. I have alerted the
 6 registrar to that, but I would ask that the
 7 proposed list of exhibits for the C-NLOPB,
 8 which includes the two PowerPoint
 9 presentations of the two individuals, the
 10 Atlantic Accord, the federal and provincial
 11 Implementation Acts and regulations, and the
 12 C-NLOPB guidelines be admitted as exhibits in
 13 these proceedings. During a break we will
 14 have a listing of them for counsel and other
 15 parties present if that is deemed necessary
 16 and appropriate for the proceedings. As I
 17 say, we're going to stay fairly closely
 18 focused on the presentation that is in the
 19 PowerPoints with some references to
 20 legislation, at least initially. Okay, I'll
 21 first ask Mr. John P. Andrews to come up,
 22 please, to the witness's table.
 23 MR. JOHN PETERS ANDREWS, (SWORN) EXAMINATION-IN-CHIEF BY
 24 JOHN ROIL, Q.C.
 25 REPORTER:

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1 Q. State your name, please.
 2 MR. ANDREWS:
 3 Q. John Peters Andrews.
 4 ROIL, Q.C.:
 5 Q. Mr. Andrews, you are the Manager of Legal and
 6 Land Department of the C-NLOPB.
 7 MR. ANDREWS:
 8 Q. Yes, I am. That's the position I accepted in
 9 the year 2000 with the Board.
 10 ROIL, Q.C.:
 11 Q. Okay.
 12 MR. ANDREWS:
 13 Q. I was also at that point in time appointed as
 14 the Registrar of Interests, so I am in charge
 15 of the land registry, the land registration
 16 and tenure system at the Board, and in the
 17 year 2006, I was appointed Corporate Secretary
 18 of the Board. I have been continuously
 19 employed at the Canada Newfoundland and
 20 Labrador Offshore Petroleum Board since 2000.
 21 ROIL, Q.C.:
 22 Q. I know you as a lawyer. I know something of
 23 your background, but perhaps you could just
 24 give to the Commissioner and to those present
 25 a little background on your involvement in law

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1 and in the oil industry prior to that time
 2 when you joined the Board.
 3 MR. ANDREWS:
 4 Q. I am a lawyer by profession. I'm a graduate
 5 of Dalhousie University Law School in 1980. I
 6 was admitted to the Law Society of
 7 Newfoundland in 1981. I spent some time in
 8 private practice in St. John's, and thereafter
 9 accepted employment with Mobil Oil Canada
 10 Properties. I spent six years in their employ
 11 in St. John's, Calgary, with some temporary
 12 assignments in New Orleans and Lagos, Nigeria.
 13 Thereafter, I accepted employment in 1989 with
 14 the Province of Newfoundland and Labrador. I
 15 served with the Department of Justice there
 16 mainly advising the Department of Natural
 17 Resources in respect of mining operations and
 18 offshore oil and gas operations.
 19 ROIL, Q.C.:
 20 Q. During your engagement with Mobil Oil
 21 internationally, what sort of things were you
 22 involved in, just briefly, in terms of the oil
 23 industry so that we understand your
 24 familiarity with it.
 25 MR. ANDREWS:

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1 Q. Within Mobil Oil Canada Properties when I was
 2 working St. John's and Calgary, I was engaged
 3 with the promotion of the Hibernia Project and
 4 with the drafting of documents to proceed with
 5 the development of that project. On
 6 assignments that I took with Mobil outside of
 7 St. John's and outside of Canada, it was
 8 generally dealing with contractual matters and
 9 with joint operations, contracting matters
 10 with other operators.
 11 ROIL, Q.C.:
 12 Q. Thank you. Mr. Commissioner, it's not my
 13 purpose to put Mr. Andrews forward as an
 14 expert as you would in a court of law perhaps,
 15 but simply to provide some background on his
 16 knowledge and familiarity with the issues that
 17 he's going to speak about.
 18 COMMISSIONER:
 19 Q. I think that's helpful, yes.
 20 ROIL, Q.C.:
 21 Q. Yes. Okay, Mr. Andrews, I understand that you
 22 have prepared a PowerPoint-type presentation
 23 to guide you and us through your evidence
 24 today.
 25 MR. ANDREWS:

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1 Q. I have indeed.
 2 ROIL, Q.C.:
 3 Q. Okay. Is it your wish that you control that?
 4 MR. ANDREWS:
 5 Q. Yes, as a matter of fact, as long as my slides
 6 come up as I expect them to on the screen,
 7 obviously, I will control it.
 8 ROIL, Q.C.:
 9 Q. That's right, well, you are the guinea pig
 10 here today. You are the first person to use
 11 the technology. We have practised with it.
 12 It works in practice, but inevitably in the
 13 real world some glitches will appear from time
 14 to time.
 15 MR. ANDREWS:
 16 Q. Well, I will say it's probably not
 17 inappropriate that I am a guinea pig with this
 18 system as in fact immediately following the
 19 loss of Cougar Helicopter 491, we, at the
 20 Board, focused on our particular role in
 21 dealing with that circumstance and, of course,
 22 fairly early on in our deliberations the
 23 provisions of Section 165 of the Atlantic
 24 Accord Implementation Act came to our
 25 attention. It provides for inquiries where a

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1 spill or debris or an accident or incident
 2 related to any activity of our legislation
 3 occurred, and the calling of an inquiry in
 4 respect thereof. I, fairly early on in the
 5 process, engaged in determining whether it
 6 would be appropriate for the Board to proceed
 7 with an inquiry, and what the terms of that
 8 inquiry would be. I did spend considerable
 9 time looking at other investigations that may
 10 be undertaken in respect of that particular
 11 incident.
 12 ROIL, Q.C.:
 13 Q. By "other investigations" you mean by other
 14 persons or by other entities?
 15 MR. ANDREWS:
 16 Q. Certainly specifically the immediate
 17 engagement of the Transportation Safety Board,
 18 and Coast Guard and Transport Canada in
 19 respect of the actual activities of the rescue
 20 and the dealing with the raising of the
 21 helicopter and the recovery of those who lost
 22 their lives, but certainly the TSB
 23 investigation was foremost in our mind as it
 24 focused directly on the incident itself and
 25 whether there would be a determination of the

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1 cause for the incident. We determined that
 2 the legislation, the Atlantic Accord
 3 Implementation legislation, which I will tell
 4 you more than once probably this morning is
 5 really very robust legislation. It provides a
 6 lot of answers to questions that you ask it
 7 about regulatory authority jurisdiction and
 8 particular procedures to undertake. This very
 9 robust legislation, I think, required the
 10 holding of an inquiry following the loss of
 11 the helicopter. It did not appear to us, to
 12 the Board, that undertaking a duplicative
 13 investigation or inquiry of that undertaken by
 14 the TSB would be of value. We did focus on
 15 our the Board's ability to tailor the inquiry
 16 to focus on a forward-looking basis on how
 17 transportation by helicopter in the offshore
 18 area could be enhanced, and that was the focus
 19 that the Board determined early on that this
 20 inquiry would take. I have to say that I
 21 along with outside counsel and other managers
 22 of the Board, the executive of the Board, the
 23 Board itself spent considerable time working
 24 on a prospective Terms of Reference for this
 25 inquiry. I do have to say that prior to

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1 completion of the Terms of References for this
 2 inquiry we did engage the services of the
 3 Honourable Mr. Wells, Q.C., as Commissioner.
 4 He was engaged as well in review of draft
 5 Terms of Reference to determine where this
 6 inquiry would go, what would be the inputs,
 7 and what did we presume would be the outputs
 8 as the deliverables from this inquiry, so
 9 while you -
 10 ROIL, Q.C.:
 11 Q. I'm just going to stop you there. Did you
 12 have an earlier incident and inquiry that you
 13 had as a precedent or as a guide to lead you
 14 on, or was this the first one?
 15 MR. ANDREWS:
 16 Q. This is the first inquiry that we had called
 17 under our legislation. We have--and Mr. Pike
 18 will speak more to this later in the day, the
 19 Board and the Board staff are empowered in
 20 specific instances to undertake
 21 investigations, audits, and we do direct the
 22 undertaking of enforcement actions and have
 23 been engaged in prosecutions pursuant to this
 24 Act but, no, this was the first inquiry that
 25 we felt the legislation directed us to engage

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1 in, so to say that I had a protocol file to go
 2 to on how to set up a Section 165 inquiry, I
 3 will tell you that I did not have a protocol
 4 file. We worked on an ad hoc basis. With the
 5 circumstances we found ourselves in with other
 6 investigation efforts being undertaken,
 7 focused very much on how we could most make
 8 the recommendations and conclusions of an
 9 inquiry focus on our future activities, and it
 10 was on that basis that we focused very early
 11 on on the Terms of Reference that you read
 12 into the record yesterday.
 13 ROIL, Q.C.:
 14 Q. And, I take it, there are no regulations that
 15 come to play in that particular part of the
 16 legislation.
 17 MR. ANDREWS:
 18 Q. There are none that bear directly on the set-
 19 up of the inquiry. I have to say we did find
 20 benefit in reviewing the Terms of Reference
 21 and outcomes of other inquiries, and the
 22 structure, the ability to have powers under
 23 Public Inquiries Acts, for example, as to
 24 whether those would make the inquiry
 25 commissioned by the Board of greater value,

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1 and all of these thoughts and analysis went
 2 into the drafting of the Terms of Reference
 3 that you read into the record yesterday.
 4 ROIL, Q.C.:
 5 Q. Okay, well, I think perhaps that's a nice way
 6 to introduce the whole concept of the Board
 7 legislation and whatnot, and I'm going to ask
 8 you to take us through your presentation, and
 9 I guess I'm going to caution you that while
 10 you, I and the Commissioner and perhaps others
 11 in this room have a given a lot of thought to
 12 what the Board does and to its legislation,
 13 there are some who will be watching and
 14 listening to this who will need to be
 15 informed, so I may take you in some smaller
 16 steps than you would normally take, but we'll
 17 see how it works as we go along.
 18 MR. ANDREWS:
 19 Q. I'm very conscious of the Commissioner's
 20 statement yesterday that while I sit here at
 21 this table, you know, addressing the 30 people
 22 in this room, there is a very wide audience
 23 for this inquiry. There are some particular
 24 publics and the public at large, and I am also
 25 cognitive of his thoughts that there are

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1 regulators and operators outside of our
 2 jurisdictions that are interested in the
 3 outcome of this inquiry too. To the extent
 4 that I can speak to issues that I think will
 5 be of assistance to them, I will try as well,
 6 although my focus is obviously on this inquiry
 7 and the purpose as set out in the Terms of
 8 Reference. I will try and give a 10,000-foot
 9 view of the Board. I have entitled this
 10 presentation, Role of the Canada Newfoundland
 11 and Labrador Offshore Petroleum Board. It
 12 will be at a fairly high level, and to some
 13 extent it will provide a road map which I hope
 14 will assist the particular parties in the
 15 room, and the special publics and the larger
 16 public in understanding exactly what the
 17 Canada Newfoundland and Labrador Offshore
 18 Petroleum Board does day to day and in
 19 particular circumstances and, as well and with
 20 an important focus what the Canada
 21 Newfoundland and Labrador Offshore Petroleum
 22 Board does not do, and that will be dealt with
 23 later in my presentation where obviously our
 24 interaction with other regulators is dealt
 25 with in a manner that will hopefully avoid

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1 duplication and afford co-operation between
 2 regulatory agencies.
 3 ROIL, Q.C.:
 4 Q. Okay, you can perhaps take your -
 5 MR. ANDREWS:
 6 Q. Am I going to be driving here?
 7 ROIL, Q.C.:
 8 Q. Yes, and see how the mouse works, and all the
 9 screens in the room should move.
 10 MR. ANDREWS:
 11 Q. Okay.
 12 ROIL, Q.C.:
 13 Q. And they do so far.
 14 MR. ANDREWS:
 15 Q. And I thank you very much, and I have noted
 16 that my name and my page numbers were not on
 17 the first page, but they are showing up now so
 18 that the number down in the bottom corner is
 19 what I refer to as my slide number, and if we
 20 do need to go back that will be the number
 21 I'll be referring to. As an overview of the
 22 presentation, I will speak to the territorial
 23 jurisdiction of the Canada Newfoundland and
 24 Labrador Offshore Petroleum Board, which I
 25 will start now calling "the Board," but if

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1 there is any confusion on that I will go back
 2 to the full nomenclature to ensure that you
 3 know I'm talking about my employer. We'll
 4 look at the legislative jurisdiction, the
 5 organization of the Board, how they have
 6 structured themselves to do the work that
 7 they're required to do. I will spend some
 8 time focusing on the mandate role and
 9 objectives of the Board as we have seen it in
 10 a review of what we have available to us by
 11 way of territorial jurisdiction, legislative
 12 jurisdiction, and organization structure. I
 13 will speak somewhat about the method of
 14 decision-making at the Board level and within
 15 the Board, so that it can be clear what
 16 decisions the Board can make and implement,
 17 and what other processes may overlay the
 18 decision-making process at the Board, and I
 19 will introduce the concept of work
 20 authorizations. Mr. Pike, who is our Manager
 21 of Safety and Operations, and the Chief Safety
 22 Officer at the Board will speak in more detail
 23 about work authorizations, and the entire
 24 protocol of activity that comes into place
 25 once an authorization is granted by the Board.

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1 ROIL, Q.C.:
 2 Q. Thank you. These expressions of
 3 authorization, we'll define them as we go
 4 through, I take it.
 5 MR. ANDREWS:
 6 Q. We will indeed.
 7 ROIL, Q.C.:
 8 Q. Good. Okay.
 9 MR. ANDREWS:
 10 Q. In respect of our territorial jurisdiction, I
 11 have put up a map here which shows the
 12 province of Newfoundland and Labrador. I have
 13 much the same map placed on an easel here
 14 nearby. The map on the easel identifies a
 15 number of particular offshore areas, which in
 16 the offshore oil and gas industry we refer to
 17 as basins or sub-basins, and the ones
 18 identified on this map are the ones that have
 19 been and continue to be of interest to those
 20 who hold interests by way of exploration,
 21 license, significant discovery license, or
 22 production license in the offshore area of
 23 Newfoundland and Labrador. The offshore area
 24 itself, the territorial jurisdiction is
 25 defined in Section II of the Atlantic Accord

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1 Implementation legislation. It means those
 2 sub-marine areas lying seaward of the lower
 3 water mark of the province and extending at
 4 any location as far as (A) in a prescribed
 5 line or (B) where no line is prescribed at
 6 that location, the outer edge of the
 7 continental margin or a distance of 200
 8 nautical miles from the baselines from which
 9 the breadth of the territorial sea of Canada
 10 is measured, whichever is the greater.
 11 ROIL, Q.C.:
 12 Q. Okay, well, lawyers will understand that. How
 13 will other people understand that, generally?
 14 MR. ANDREWS:
 15 Q. I'll take you through the concept of seaward
 16 of the low water mark. While there is some
 17 law around seaward of the low water mark, I
 18 think most would understand that the water
 19 rushes up onto beaches around Newfoundland,
 20 and that would be considered the low water
 21 mark. Legally, there may be an exclusion from
 22 these area for those parts of the province
 23 which might be considered historic bays and
 24 might be cut by baselines as being in fact
 25 inland waters, but I think as a general rule

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1 we should look at the low water mark as being
 2 the low end of the beach.
 3 ROIL, Q.C.:
 4 Q. Okay, so anything that takes place above the
 5 low end is not considered to be the offshore?
 6 MR. ANDREWS:
 7 Q. It's not considered to be the offshore area.
 8 That is not to say that because operations may
 9 continue in respect of onshore activities that
 10 the Board would not claim subject matter
 11 jurisdiction over that. I'll take you through
 12 "A" and "B." On the map that we have on our
 13 screens you will note that there are no
 14 prescribed lines drawn. The map that you'll
 15 see on the easel will show one prescribed
 16 line, and I'll move away from the mic just to
 17 point it out.
 18 ROIL, Q.C.:
 19 Q. Yes, the line that lies between what we would
 20 know as Newfoundland and Cape Breton.
 21 MR. ANDREWS:
 22 Q. That is in fact a line that was determined
 23 pursuant again to the very robust provisions
 24 of the Atlantic Accord Implementation
 25 legislation. Under international maritime

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1 arbitration, the line was established, I
 2 believe, in 2002, and it defines the maritime
 3 boundary between the province of Newfoundland
 4 and Labrador and Nova Scotia for purposes only
 5 of offshore oil and gas exploration pursuant
 6 to the Nova Scotia legislation and the
 7 Newfoundland legislation prescribed by the
 8 federal governments and the two provincial
 9 governments.
 10 ROIL, Q.C.:
 11 Q. So you are aware, I gather, that there is a
 12 similar organization to yours that has
 13 responsibility for the jurisdiction in Nova
 14 Scotia?
 15 MR. ANDREWS:
 16 Q. I am.
 17 ROIL, Q.C.:
 18 Q. And that's called the CNS, or the Canada Nova
 19 Scotia Offshore Petroleum Board?
 20 MR. ANDREWS:
 21 Q. Canada Nova Scotia Offshore Petroleum Board.
 22 ROIL, Q.C.:
 23 Q. Okay.
 24 MR. ANDREWS:
 25 Q. They are actually described and empowered

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1 pursuant to legislation very similar to the
 2 Atlantic Accord Implementation legislation.
 3 They were granted their powers in a similar
 4 timeframe to the powers granted under the
 5 Accord Implementation legislation. They run a
 6 very similar operation organizationally in
 7 Nova Scotia, and they are, as we are, engaged
 8 in the regulation of exploration matters,
 9 production matters, and the regulation of
 10 safety and environmental protection within
 11 what is described as their offshore area,
 12 which obviously is under their legislation
 13 prescribed by the other side of the line I
 14 just identified.
 15 ROIL, Q.C.:
 16 Q. Right.
 17 MR. ANDREWS:
 18 Q. There's also an area surrounding St. Pierre
 19 and Miquelon that is coloured differently in
 20 each of the maps that are in front of us.
 21 That again is an area that pursuant to
 22 international maritime arbitration has been
 23 determined to be extraterritorial to the
 24 country of Canada. This is in fact
 25 territorial jurisdiction of the Republic of

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1 France, of which St. Pierre and Miquelon is a
 2 part.
 3 ROIL, Q.C.:
 4 Q. Yes.
 5 MR. ANDREWS:
 6 Q. There is a draft, I believe, proposed treaty
 7 legislation between the Republic of France and
 8 Canada in respect of that area. The
 9 international arbitration obviously dealt with
 10 ownership and jurisdiction, but a treaty may
 11 well deal with issues of co-operation and
 12 shared jurisdiction which is a result of that
 13 arbitration decision in the early years of
 14 this decade.
 15 ROIL, Q.C.:
 16 Q. Right. Okay, because I think we will
 17 ultimately be talking about various structures
 18 that are within the various basins, perhaps a
 19 few more minutes talking about the basins,
 20 where they lie. One, for example, is called
 21 the Sydney Basin, but by name it seems to
 22 associate itself with Nova Scotia, but by
 23 location on the line it appears to be within
 24 the province of Newfoundland, so perhaps you
 25 can just tell us a little bit about what

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1 structures and what activity lie in these
 2 various areas.
 3 MR. ANDREWS:
 4 Q. I'm just going to finish firstly dealing with
 5 my definition.
 6 ROIL, Q.C.:
 7 Q. Okay, your definition, I'm sorry.
 8 MR. ANDREWS:
 9 Q. "A" provided for a prescribed line, and I have
 10 indicated that there is a prescribed line. It
 11 has a start point. It's not clear legally
 12 whether it has an end point, but the drafting
 13 of that line pursuant to meets and bounds of a
 14 property description would place the line now
 15 where you see it on that map. You would note
 16 that there is not an equivalent line which
 17 goes back to an area which you would think of
 18 as the low water mark of the province, and
 19 starts up again and concludes at another
 20 point. There are no prescribed lines in
 21 respect of the offshore area for Newfoundland
 22 other than the one indicated, which is a
 23 divergence in fact from the way the Nova
 24 Scotian Offshore Petroleum Board has been
 25 granted territorial jurisdiction. Their

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1 offshore area is defined by meets and bounds
 2 and by prescribed lines at any particular
 3 point. Ours has not been, which would in fact
 4 then take you to a consideration of the outer
 5 edge of the continental margin, or a distance
 6 of 200 nautical miles from the baseline from
 7 which the breadth of the territorial sea is
 8 measured. In territorial jurisdictional
 9 terms, there are a number of things to
 10 consider there. What is the breadth of the
 11 territorial sea of Canada, and in fact whether
 12 there is a territorial sea of Canada.
 13 ROIL, Q.C.:
 14 Q. When you say "breadth," you mean how far out
 15 does it go?
 16 MR. ANDREWS:
 17 Q. Yes. There is some legal uncertainty about
 18 that in a particular point in time which
 19 would, of course, leave you with some concern
 20 about where to commence the drafting of a 200
 21 nautical mile distance from baselines
 22 determined thereby, but I guess the major
 23 unknown about the territorial jurisdiction of
 24 the Offshore Petroleum Board would be the
 25 outer edge of the continental margin. While

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1 we have as a fishing-based culture identified
 2 the continental shelf as a prolific fishing
 3 area and certainly identified in many parts of
 4 what's generically known as the Grand Banks as
 5 being territory which have been the subject of
 6 commercial enterprise by Newfoundlanders and
 7 by Canadians, the outer edge of the
 8 continental margin is not a line that has yet
 9 been drafted in domestic law or in
 10 international law. That is presently the
 11 subject of the United Nations Convention on
 12 Law of the Sea, and there being timelines in
 13 which countries are being required to identify
 14 the disputed or undisputed outer edge of their
 15 continental margin, and that is a process that
 16 will unfold within the next decade to
 17 potentially identify the continental margin of
 18 Canada in the area around the province of
 19 Newfoundland and Labrador.
 20 ROIL, Q.C.:
 21 Q. So, I take it though, that the C-NLOPB has
 22 exercised its territorial jurisdiction with
 23 respect to each of the identified basins that
 24 are shown on this map?
 25 MR. ANDREWS:

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1 Q. We have carried out our regulatory authority
 2 within what we believe entirely enclosed
 3 within the defined area of the offshore area
 4 under the legislation. While we may find it
 5 at any particular point in time to identify
 6 the full extent of the offshore area
 7 identified by that definition, we do in all
 8 instances believe that areas where we have
 9 exercised a territorial jurisdiction are
 10 within the area defined as the offshore area.
 11 ROIL, Q.C.:
 12 Q. Within the legislation.
 13 MR. ANDREWS:
 14 Q. Within the legislation.
 15 ROIL, Q.C.:
 16 Q. Okay, if we finished with the definition,
 17 perhaps now we can go to the identification of
 18 the various areas and the structures, either
 19 the exploration or the production structures,
 20 that we are familiar with that we would have
 21 heard in the media, that sort of thing.
 22 MR. ANDREWS:
 23 Q. Sure. The areas identified as basins on the
 24 map that we have on the easel represent the
 25 basins that have been brought to the Board's

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1 attention by industry, oil and gas companies,
 2 as areas in which they have an interest in
 3 pursuing their industry, and pursuing it
 4 hopefully to commercial success. The majority
 5 of the green box that you will see identified
 6 near where the basins are identified are in
 7 the main exploration licenses which have been
 8 issued by the Board in respect of those areas
 9 largely as a result of interest expressed by
 10 industry in the initial instance that these
 11 lands be made available to them for the
 12 pursuit of their industrial, commercial
 13 activities. I guess if we go from north to
 14 south -
 15 ROIL, Q.C.:
 16 Q. If we take the top one, and again for those
 17 that are not in the room but have the screen
 18 in front of you, perhaps the top box off the
 19 coast of Labrador would be the first one we
 20 will speak of, and then move around whichever
 21 way you choose from there. Simply, each time
 22 we move identify which box will be on the
 23 screen on television.
 24 MR. ANDREWS:
 25 Q. Yes. The northern-most area identified

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1 generically as the Hopedale Basin, there are a
 2 series of licenses there. The large green
 3 ones that you see on the map are in fact
 4 exploration licenses, and they have been
 5 issued within the past three years. They were
 6 issued as a result of a competitive bid
 7 situation and a call from bids from industry.
 8 There are other licenses up there which are
 9 smaller and not clear to see, but they are
 10 licenses described as significant discovery
 11 licenses. They are areas where there has been
 12 a test which has shown that hydrocarbons exist
 13 in the area, but at this stage whether they
 14 are of commercial value would be the subject
 15 of further consideration by the owners of
 16 those licenses. You would note, I think, that
 17 the Hopedale Basin and the licenses there are
 18 obviously much closer to land bases in the
 19 Labrador part of the province than they would
 20 be to the Avalon Peninsula part of the
 21 province where the majority of shore bases
 22 exist, and where transportation in respect of
 23 passenger travel would ordinarily take place.
 24 The licenses that resulted in significant
 25 discovery licenses in the Hopedale Basin were

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1 drilled in the 1980's. The activity in that
 2 area on those licenses concluded in many
 3 instances almost 30 years ago. They were
 4 serviced by transportation modalities, some
 5 from Labrador, some from the island, more
 6 often by marine transport, and the facilities
 7 that actually worked in those areas back in
 8 those days would have to the extent they could
 9 maintained the residency of the workers within
 10 the facility itself or nearby, so I'm not
 11 going to speak about--and I don't believe it's
 12 particularly relevant to the inquiry, the
 13 transportation. In respect of those licenses,
 14 I will say that obviously with exploration
 15 licenses in that area having been issued
 16 within the past three years, issues of
 17 transportation of facilities, and personnel to
 18 these areas to complete the obligations of
 19 those licenses, which in all cases include the
 20 drilling of a well, will be matters that the
 21 Board--well, the operators in the first
 22 instance and the Board in a regulatory view
 23 will be dealing with in years to come.
 24 ROIL, Q.C.:
 25 Q. There is no current activity in that basin

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1 right now, or is there?
 2 MR. ANDREWS:
 3 Q. There has over the past number of years as a
 4 precursor to drilling activity being
 5 undertaken in those areas. The Board has
 6 authorized certain geophysical operations in
 7 those areas, and the recording of seismic
 8 information in those areas.
 9 ROIL, Q.C.:
 10 Q. "Geophysical" would be to the layperson -
 11 MR. ANDREWS:
 12 Q. We generally think of seismic operations, the
 13 mapping of the actual sea floor in that area,
 14 and as well by use of seismic waves an
 15 analysis of the bedrock layers that underlay
 16 the surface of the sea bed in those areas. So
 17 there has been what we consider to be
 18 exploratory activity undertaken in this area
 19 over the past--in fact, over the past five
 20 years, and potentially longer. That activity
 21 has not involved significant--has not involved
 22 the location of drilling facilities, for
 23 example, in that area, or production
 24 facilities. The exploration activity has been
 25 taken from ship-based and ship-shaped

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1 facilities which travel with their own crew,
 2 and has not engaged the use of helicopter
 3 transit on a regular basis down to any
 4 operator working in that area.
 5 ROIL, Q.C.:
 6 Q. Okay. Okay, I think that's enough on that
 7 one. Perhaps we'll now move along the map in
 8 whichever way you choose.
 9 MR. ANDREWS:
 10 Q. Okay, let's go clockwise. The next one we
 11 would come to would be the Orphan Basin.
 12 ROIL, Q.C.:
 13 Q. That's contained within the box on the far
 14 right of the video screen?
 15 MR. ANDREWS:
 16 Q. Yes, it is. It would be the upper area.
 17 These are fairly large exploration licenses.
 18 They have been outstanding now for some five
 19 years. They have obligations as a result of
 20 the competitiveness bidding situation that
 21 wells be drilled on these licenses. There has
 22 been one significant well drilled in the
 23 Orphan Basin three years ago. The Orphan
 24 Basin may well, to meet the terms and
 25 conditions of licenses outstanding, see

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1 further drilling activity within the
 2 foreseeable future. You would note that that
 3 and the Flemish Pass where there are as well a
 4 number of licenses outstanding -
 5 ROIL, Q.C.:
 6 Q. The Flemish Pass would be the most easterly
 7 area, the smaller area, yes.
 8 MR. ANDREWS:
 9 Q. The smaller area within that box as well would
 10 represent some of the lands that are most
 11 distant geographically from what we would
 12 consider to be the historic supply base for
 13 exploration in this area of the province,
 14 which would be on the Avalon Peninsula. So
 15 the Orphan Basin and the Flemish Pass Basin
 16 would be likely within the outer range of the
 17 offshore area, and likely areas which are also
 18 the furthest from what we consider to be the
 19 traditional shore bases for the oil and gas
 20 industry.
 21 ROIL, Q.C.:
 22 Q. Okay, so the outer part of those basins in
 23 terms of either miles or kilometres, whichever
 24 you are more comfortable with, how far would
 25 they be from the Avalon Peninsula?

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1 MR. ANDREWS:
 2 Q. They would be in excess of 300 kilometres.
 3 ROIL, Q.C.:
 4 Q. Three hundred kilometres plus.
 5 MR. ANDREWS:
 6 Q. Yes.
 7 ROIL, Q.C.:
 8 Q. Okay.
 9 MR. ANDREWS:
 10 Q. Within the box on the screen and to the south
 11 we see the Jeanne d'Arc Basin. It would
 12 certainly be the area that most in this room
 13 would be most familiar with, and likely the
 14 general public as well. The Jeanne d'Arc
 15 Basin is the area where early exploration in
 16 the 80's produced an indication of commercial
 17 hydrocarbons which could lead to production,
 18 and which has in fact led to production in a
 19 number of projects identified--I will identify
 20 them now as the Hibernia project, the Terra
 21 Nova Project, the White Rose Project, and a
 22 project that feeds the White Rose Project,
 23 called the North Amethyst Project.
 24 ROIL, Q.C.:
 25 Q. And they are all within the Jeanne d'Arc

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1 Basin.
 2 MR. ANDREWS:
 3 Q. They are all within that Jeanne d’Arc Basin.
 4 You will note as well that--and this is
 5 difficult to see on a map and I’m not here to
 6 give a geological interpretation of these
 7 areas, but there are some different colours
 8 showing in this particular area. Again there
 9 are significant discovery licenses in there,
 10 i.e. areas where there has been a test which
 11 has shown that hydrocarbons are present, but
 12 those are areas which have not perhaps been
 13 proposed for production.
 14 ROIL, Q.C.:
 15 Q. At this point.
 16 MR. ANDREWS:
 17 Q. I.e the commerciality would still be unknown.
 18 ROIL, Q.C.:
 19 Q. Yes.
 20 MR. ANDREWS:
 21 Q. But there are also areas which are very
 22 difficult to see but are easier to see perhaps
 23 on the map on the easel, which are orange,
 24 which are in fact production licenses, and
 25 those are the areas where the Hibernia, Terra

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1 Nova, White Rose and North Amethyst Projects
 2 are to be found, and I will say that these
 3 three facilities, which are moored either
 4 permanently or quasi-permanently in the area
 5 producing oil and gas, really are fixed points
 6 that the industry focuses on in looking at
 7 their transportation objectives for personnel
 8 and equipment. The Hibernia platform is in
 9 fact a fixed platform which is resting on the
 10 sea bed. The other two facilities are
 11 attached to particular points either by
 12 dynamic positioning or by anchors and are
 13 long-term residents of a particular area of
 14 the offshore area.
 15 ROIL, Q.C.:
 16 Q. So while those two other facilities, and we’ll
 17 hear more about them later, while they look
 18 like ships they’re really attached by some
 19 mechanical means to the bottom of the sea bed
 20 for production purposes?
 21 MR. ANDREWS:
 22 Q. Certainly they are fixed in location because
 23 they are in fact receiving produced oil and
 24 gas by way of flow lines from the reservoirs
 25 which are in fact thousands of metres below

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1 the ocean and below the surface of the sea
 2 floor, so they are in fact very much fixed in
 3 a particular location. While they are ship-
 4 shaped facilities and they may rise and fall
 5 with wave action, and they may swivel on their
 6 particular location as a result of wind or
 7 their own propulsion, they are in fact at a
 8 specific location at all times where they can
 9 be identified, you know, on anybody’s radar
 10 screen as being a fixed point where they are,
 11 yes.
 12 ROIL, Q.C.:
 13 Q. So on the map that is on our screen, those
 14 darker spots in the box to the far east,
 15 that’s the areas that we’re speaking of. We
 16 can’t see the colours, but they appear to be a
 17 more dense area.
 18 MR. ANDREWS:
 19 Q. They’re orange on the map here, and if anybody
 20 wants to come and at a break have a closer
 21 look at the map to get their bearings on that,
 22 that map will be left here with the Inquiry.
 23 ROIL, Q.C.:
 24 Q. Okay. If we continue to move around the coast
 25 of Newfoundland, we come to the Laurentian

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1 Sub-Basin.
 2 MR. ANDREWS:
 3 Q. The Laurentian Sub-Basin, yes.
 4 ROIL, Q.C.:
 5 Q. And that is the one that has the line from St.
 6 Pierre going through it?
 7 MR. ANDREWS:
 8 Q. That is bisected by what is called the
 9 Baguette which is the territorial access limit
 10 attached to -
 11 ROIL, Q.C.:
 12 Q. So that’s called the baguette, is it?
 13 MR. ANDREWS:
 14 Q. The Baguette, yes. Yes, the particular
 15 description of the territory under the
 16 authority of the Republic of France in that
 17 area does contain an elongated area which
 18 extends to a particular point as determined by
 19 international arbitration and that, I guess,
 20 you could anticipate that that was included to
 21 provide access from the closer-to-shore areas
 22 to an area called potentially, you know, the
 23 area outside the continental margin or 200
 24 nautical miles from baselines. The Laurentian
 25 Sub-Basin itself, you will note that there are

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1 green areas described on the map, which would
 2 be exploration licenses which are presently
 3 extent in that area. Those interests do not
 4 continue through the area that I've just
 5 described as the Baguette, but there may be
 6 interests having been granted by the Republic
 7 of France in respect of those areas. The
 8 licenses themselves, as all licenses in our
 9 area do, carry with them drilling obligations.
 10 That these licenses are still existent means
 11 that they are within a period of time
 12 described in those licenses, but I can't say
 13 that there has to date been no drilling
 14 activity in this area, but again as with the
 15 Hopedale Basin and in fact with the other
 16 basins that I have referred to there may at
 17 anytime be what we characterize as exploration
 18 activity being undertaken in the area, and
 19 that may be by way of site surveys, i.e. the
 20 surveys of the actual sea floor to determine
 21 its nature and obstruction and grades, and as
 22 well seismic activity which may determine by
 23 the use of sonic waves or electromagnetic
 24 waves the composition of the layers of soil,
 25 rock, shale, hopefully oil and gas, that lie

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1 under these licenses. The important thing, I
 2 think, here to note and why I'm spending
 3 particular time on this one is--I am not a
 4 geoscientist, but I think the important point
 5 to note is again the location of this basin in
 6 relation to the land mass and the areas that
 7 we would consider to be the historical,
 8 traditional shore bases for the oil and gas
 9 industry, and while I've referred to a number
 10 I should say the Avalon Peninsula has been and
 11 continues to be the location of the shore
 12 bases for activities which support those
 13 activities that we know are going to continue
 14 in our area, being the production projects,
 15 Hibernia, Terra Nova, White Rose, and North
 16 Amethyst.

17 ROIL, Q.C.:
 18 Q. But they are all serviced out of the St.
 19 John's, Avalon Peninsula area.

20 MR. ANDREWS:
 21 A. While there have--you know, I think that the
 22 companies, the companies have certainly
 23 serviced those projects out of St. John's
 24 shorebases to date. I am aware that the
 25 companies have investigated other areas, but

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1 mainly on the Avalon Peninsula where
 2 shorebases may be better or more efficiently
 3 situated, but I am not aware that the main
 4 supply bases are other than St. John's. I
 5 will say that, because I have a house on the
 6 Southern Shore, I do drive by Bay Bulls fairly
 7 regularly and I do see activity that is
 8 related to the offshore being conducted out of
 9 that port as well.

10 ROIL, Q.C.:
 11 Q. Yes.

12 MR. ANDREWS:
 13 A. I think that that is mainly the transport of
 14 certain heavy equipment that perhaps may not
 15 be best serviced out of the supply base in St.
 16 John's, but I would say -

17 ROIL, Q.C.:
 18 Q. But the focus is on helicopters though.
 19 Helicopters are all out of St. John's at this
 20 point?

21 MR. ANDREWS:
 22 A. The helicopter base is located near St. John's
 23 International Airport, which is just outside
 24 of St. John's and I am not aware that the base
 25 for helicopter transport has any other

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1 location within the province. I would
 2 conclude that they do have alternate landing
 3 sites potentially where they--with weather
 4 precludes in the St. John's area, they may use
 5 other landing facilities, but I'm certainly
 6 not aware that the permanent facility for
 7 helicopter transport for the offshore oil and
 8 gas industry is anywhere but in the St. John's
 9 area.

10 So again, just to go back to my point,
 11 I'm speaking about these basins so that you
 12 can see the distance and the geographic
 13 location of these areas from what we consider
 14 to be the traditional supply base by vessel
 15 and helicopter, which would be the Avalon
 16 Peninsula.

17 ROIL, Q.C.:
 18 Q. I'm told, while you were speaking, that the
 19 PowerPoint presentation does not get on the
 20 television or in the web broadcast, that all
 21 that is seen there is either you, me or the
 22 Commissioner, based on the three cameras here.
 23 So as we continue, we'll talk about these
 24 things in terms of their distance from land or
 25 some other way to identify it for people who

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1 are watching on television.
 2 MR. ANDREWS:
 3 A. Okay. I'm hoping that's not going to apply to
 4 the rest of my presentation, but -
 5 ROIL, Q.C.:
 6 Q. No. Well, the -
 7 MR. ANDREWS:
 8 A. The presentation itself does not show?
 9 ROIL, Q.C.:
 10 Q. Does not show.
 11 MR. ANDREWS:
 12 A. All right.
 13 ROIL, Q.C.:
 14 Q. So we'll use that to guide us through, but
 15 you're doing very well in describing things,
 16 so we'll keep on going. How far is the far
 17 end of the Laurentian subbasin? What is that
 18 distance from the Avalon Peninsula area?
 19 MR. ANDREWS:
 20 A. Again, you would look at it being from the St.
 21 John's area would be in excess of 300
 22 kilometres.
 23 ROIL, Q.C.:
 24 Q. Okay.
 25 MR. ANDREWS:

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1 A. But you would note that there are other land
 2 masses of the Province of Newfoundland and
 3 Labrador which may be closer to that
 4 particular area.
 5 ROIL, Q.C.:
 6 Q. Yes, so for example, the boot of the Burin
 7 Peninsula might be physically closer to the
 8 Laurentian subbasin than St. John's?
 9 MR. ANDREWS:
 10 A. It certainly would be, yes.
 11 ROIL, Q.C.:
 12 Q. Yes, okay, again just for--so that people who
 13 are listening would be able to have an
 14 understanding of where the Laurentian subbasin
 15 is located.
 16 MR. ANDREWS:
 17 A. And again, coming again clockwise, the Sydney
 18 basin, again this is an area with an
 19 exploration license outstanding and you can
 20 see in the green on the map on the easel.
 21 ROIL, Q.C.:
 22 Q. It lies much closer to the land mass of
 23 Newfoundland and close to what communities, so
 24 that people can understand?
 25 MR. ANDREWS:

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1 A. It is the south coast of the province, the
 2 Burgeo area, might in fact be down that way.
 3 It would be, I believe, an area, I'd describe
 4 it being within 150 kilometres certainly of
 5 land at the full extent. The Sydney basin has
 6 not been significantly explored. Again, there
 7 may have been seismic or specific seabed
 8 survey work done in that area, but that is not
 9 an area that has seen exploration drilling as
 10 is a condition of the license granted in that
 11 area. That license has been outstanding now
 12 for about two years, I believe. It would have
 13 a requirement that a well be drilled on that
 14 license within the first five or six years of
 15 the license, depending on terms, in order to
 16 maintain tenure of that license.
 17 ROIL, Q.C.:
 18 Q. Right.
 19 MR. ANDREWS:
 20 A. And then coming around to the Anticosti basin,
 21 which we refer to often as the Western
 22 Newfoundland and Labrador region. These
 23 would, you would note that the licenses in
 24 green run right up to what we would, as
 25 laymen, think of as the low water mark. So

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1 here, you get some indication of how the
 2 territorial jurisdiction works when it gets
 3 close to land. There are, I believe, eight
 4 licenses outstanding on the west coast. These
 5 are in the offshore area, i.e. the licenses
 6 that are granted by the Offshore Petroleum
 7 Board run from the low water mark seaward.
 8 You would perhaps be aware that that is an
 9 area on the west coast of the province where
 10 some onshore oil and gas activity has taken
 11 place. Some of the onshore licenses, which
 12 are granted by the Province of Newfoundland
 13 and Labrador itself proper, without reference
 14 to the Board, about the low water mark of the
 15 licenses which have been granted in the
 16 offshore area.
 17 We have not seen drilling in the offshore
 18 area, i.e. by a drilling facility located
 19 seaward of the low water mark in some years,
 20 although there has been some activity in this
 21 area. We have seen some drilling which has
 22 commenced in the onshore area and by way of
 23 deviation of the drill string, I don't want to
 24 get too technical here.
 25 ROIL, Q.C.:

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1 Q. No. The pipe doesn't go down in a straight
 2 line?
 3 MR. ANDREWS:
 4 A. The bit at the end of the drill would end up
 5 in an area that we would consider to be
 6 vertical distance from the surface of the sea,
 7 as opposed to the surface of the land. So the
 8 bit would end up some hundreds or thousands of
 9 meters down into the earth but under a block
 10 of land which would be covered by seawater as
 11 opposed to air.
 12 So in that area, it's safe to say that
 13 the majority of the drilling that we have seen
 14 in recent years has been by what the general
 15 public would know more as conventional drill
 16 rigs, drill rigs that sit on a concrete
 17 platform on land and would pump up and down in
 18 a production mode or drill with a vertical
 19 derrick directly into the ground as you would--
 20 -as possibly many people would have seen in
 21 the western sedimentary basin in the
 22 Alberta/Saskatchewan area. This would be
 23 traditional technology for drilling. We've
 24 had no production, but hopefully one day there
 25 will be. It does not carry with it,

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1 obviously, the helicopter transportation
 2 issues for personnel that the operations which
 3 are more separated from land structures would
 4 entail.
 5 So while there has been, and you could
 6 see some locations on the west coast where
 7 drilling by the use of a floating production--
 8 a floating drilling unit would better serve
 9 tapping of a reservoir, we have not seen that
 10 type of operation in some years.
 11 ROIL, Q.C.:
 12 Q. Okay. I think that takes us then pretty much
 13 through the geographical jurisdiction of the
 14 Board and the various structures that you are
 15 either currently regulating or able to.
 16 MR. ANDREWS:
 17 A. Yes. While I've identified these basins, I do
 18 have to say that if industry were to propose
 19 to us that they would like to be able to
 20 explore in any other area that is within the
 21 defined term of the offshore area, the Board
 22 would consider that representation. So while
 23 I've identified these basins as the basins
 24 which have presently been opened to
 25 exploration, that is not to say that there are

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1 not other basins or in fact deep water
 2 locations where industry might like to see
 3 interest, to see licenses made available for
 4 them to conduct their exploration activities.
 5 ROIL, Q.C.:
 6 Q. So these basins are the identified
 7 opportunities. There may be other
 8 opportunities that have not yet been
 9 identified?
 10 MR. ANDREWS:
 11 A. These are the opportunities that are presently
 12 being availed of. As we go forward, as
 13 technology expands, as our knowledge of the
 14 world's ecosystem expands, we may well see
 15 other areas which may or may not be shallower
 16 water basins opened up for exploration, and
 17 those areas, even in unidentified basins,
 18 would be within the territorial jurisdiction
 19 of the Canada Newfoundland and Labrador
 20 Offshore Petroleum Board.
 21 ROIL, Q.C.:
 22 Q. Good, okay. Perhaps we'll move on to the next
 23 slide and the next issue, which is the
 24 legislative jurisdiction.
 25 MR. ANDREWS:

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1 A. The Board itself, the Canada Newfoundland and
 2 Labrador Offshore Petroleum Board, is first
 3 really spoken of in a document called the
 4 Atlantic Accord Memorandum of Agreement in
 5 1985. That Memorandum of Agreement between
 6 the Federal Government of Canada and the
 7 Provincial Government of Newfoundland and
 8 Labrador set out a regime which they intended
 9 to put in place to jointly manage the oil and
 10 gas industry in, what was identified in that
 11 agreement as the offshore area, and set aside
 12 issues of sole jurisdiction and ownership.
 13 So that Memorandum was a significant
 14 moment in time for the creation of a single
 15 regulator for the oil and gas industry in the
 16 offshore area off Newfoundland and Labrador.
 17 The Memorandum of Agreement itself stated that
 18 legislation would be put in place for the
 19 creation of a joint management board. The
 20 Memorandum itself dealt with the methods that
 21 that board would use for the granting of oil
 22 and gas rights and also set out the regime
 23 that that board would use for regulation of
 24 operations in exploitation of those rights
 25 which were granted. It was a fairly robust

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1 memorandum of agreement. It is available on
 2 the website here at the Inquiry and at the
 3 Offshore Petroleum Board, and while its main
 4 purpose was to set out what the Governments
 5 intended to do by way of legislation, and did
 6 ultimately do by way of legislation in 1985
 7 and 1986, the Accord itself remains a live
 8 document.

9 Pursuant to Section 17.1 of the
 10 legislation, the Canada Newfoundland and
 11 Labrador Offshore Petroleum Board is to carry
 12 on its activities pursuant both to the
 13 legislation and to the terms of the Memorandum
 14 of Agreement. So that was a particular moment
 15 in time. It set out what the Governments
 16 intended to do by way of legislation and I can
 17 tell you that in fact within two years, well a
 18 little more than two years of the signing of
 19 that Memorandum of Understanding, Memorandum
 20 of Agreement, the two pieces of legislation,
 21 the Canada Newfoundland Atlantic Accord
 22 Implementation Act and the Canada Newfoundland
 23 and Labrador Atlantic Accord Implementation
 24 Newfoundland and Labrador Act were put in
 25 place by the Federal Government and the

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1 Provincial Government respectively.
 2 ROIL, Q.C.:
 3 Q. Okay. Just to take you back for a moment, if
 4 I can paraphrase I hope, what I think I've
 5 heard you say is that the jurisdiction of
 6 Newfoundland as a province and the
 7 jurisdiction of Canada as a country, the two
 8 entities decided not to answer the question as
 9 to who owns it, but rather to work together to
 10 develop it? Is that close to what you have
 11 said?
 12 MR. ANDREWS:
 13 A. Yes. The two governments agreed, you know, I
 14 won't speculate on why, but they did agree
 15 that a single regulatory agency and a single
 16 jurisdiction to look at developing an oil and
 17 gas industry in this area was the best way to
 18 proceed and they documented that in the
 19 Atlantic Accord Memorandum and ultimately
 20 brought it to pass with their legislation.
 21 ROIL, Q.C.:
 22 Q. Okay, and do I take from what you said that
 23 instead of having one piece of legislation
 24 that governs it entirely, there are two, one
 25 provincial and one federal?

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1 MR. ANDREWS:
 2 A. That's very clearly a methodology that was
 3 chosen to, in a very real way, set aside the
 4 issue of exclusive jurisdiction or ownership
 5 in this area. The legislation is, in fact,
 6 what was termed at the time "mirror
 7 legislation." The terms of the Canada--of
 8 the--and just for ease now, I'm going to refer
 9 to the Federal Act and the Provincial Act,
 10 rather than go to the name.
 11 ROIL, Q.C.:
 12 Q. Yes.
 13 MR. ANDREWS:
 14 A. The Federal and the Provincial Acts were, in
 15 fact, drafted by a drafting team composed of
 16 representatives from both Canada and the
 17 Province. It was based, to some extent, on
 18 oil and gas legislation that was then
 19 outstanding in Canada and the Province, but in
 20 fact the creation of these new acts was the
 21 result of drafting in parallel Federal
 22 legislation and Provincial legislation. The
 23 terminology is much the same. The index, and
 24 I use as a very useful instrument and I know
 25 you have found as well, the index to these

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1 Acts run in parallel and do mirror each other.
 2 The same provisions are found in the same part
 3 or the same division of the legislation and to
 4 all--in all intent and respect, they are the
 5 same legislation.
 6 ROIL, Q.C.:
 7 Q. Although if one compared word for word, there
 8 might be word differences here and there?
 9 MR. ANDREWS:
 10 A. One will find that there is some wording
 11 differences, and in fact, you will find that
 12 in the Federal, the piece of Federal
 13 legislation, there were some other pieces
 14 added in. There were provisions dealing with
 15 corporate income tax. There were provisions
 16 dealing with equalization and there were
 17 provisions dealing with payment mechanisms for
 18 royalties. Those provisions are not found in
 19 the Provincial Act for constitutional reasons
 20 in many respects. So you will find, you know,
 21 if you look at the thickness of the two
 22 documents, you'll find that one is thicker
 23 than the other. I have not found any instance
 24 where a provision of the Provincial Act is not
 25 found within the Federal legislation. So the

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1 Provincial Act certainly mirrors the Federal
 2 Act, as does the reverse for any substantive
 3 section. You would find potentially some
 4 difference in wording, but certainly no
 5 expressed intent that any meaning be attached
 6 to any divergence of wording. The regime was
 7 to be identical.
 8 ROIL, Q.C.:
 9 Q. So just to take a brief example from what we
 10 spoke of earlier, the section that created the
 11 opportunity and obligation for this Inquiry,
 12 did you read from or did you refer to--I don't
 13 know think you read from, but were you
 14 referring to the Federal or Provincial? I
 15 think the number 165 came up.
 16 MR. ANDREWS:
 17 A. 165 is a provision of the Federal legislation,
 18 and I believe at this, when you compare the
 19 legislation at this stage, there may be a
 20 difference of two section numbers. Am I
 21 right?
 22 ROIL, Q.C.:
 23 Q. I won't hold you to not having lunch if you
 24 get it wrong.
 25 MR. ANDREWS:

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1 A. There is an equivalent provision in the
 2 Provincial legislation. I referred to Section
 3 165. I think that there may be a difference
 4 in numbering, but the provision of 165, which
 5 runs for five subsections, about a page of
 6 text, that section would again be found in the
 7 Provincial Accord legislation, as would the
 8 definition of the offshore area, which we
 9 looked at in the previous map. That
 10 definition would be the same, contained in
 11 Section 2 of both pieces of legislation.
 12 ROIL, Q.C.:
 13 Q. So can I take it then that to all intents and
 14 purposes, for the sake of our investigation
 15 and our Inquiry, there is nothing materially
 16 different from one Act to the other?
 17 MR. ANDREWS:
 18 A. Yes, I would say that that's the case.
 19 ROIL, Q.C.:
 20 Q. Okay.
 21 COMMISSIONER:
 22 Q. Mr. Roil, might this be a good time to take
 23 the break?
 24 ROIL, Q.C.:
 25 Q. I think it might be. Is there--I think if we

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1 look at the slide, I just want to make sure
 2 that Mr. Andrews has covered the various items
 3 that he wanted to cover.
 4 MR. ANDREWS:
 5 A. I've got a number, just five minutes maybe to
 6 finish this slide.
 7 ROIL, Q.C.:
 8 Q. Okay, yeah, I think that would perhaps be a
 9 good time then. So if you'd keep that in
 10 mind, just continue through this slide. We
 11 won't go to the next one.
 12 MR. ANDREWS:
 13 A. Okay. The consequence of enacting mirror
 14 legislation, and it was a fairly new concept
 15 at the time, was that the parties put in place
 16 the same legislation and agree as well to
 17 maintain that legislation equivalent in both
 18 jurisdictions. So the Atlantic Accord
 19 Memorandum of Agreement provides that neither
 20 the Federal Act nor the Provincial Act can be
 21 amended in isolation. Both Acts would have to
 22 be amended at the same time and in the same
 23 manner, so that the mirror -
 24 ROIL, Q.C.:
 25 Q. Continues.

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1 MR. ANDREWS:
 2 A. - has the same image. So that amendment, that
 3 is again reflected in the legislation itself,
 4 that amendments of the legislation are not
 5 effective until the same amendment has been
 6 made in the equivalent legislation, either
 7 provincially or federally. The legislation
 8 itself, and both these Acts are on your
 9 website as well as the website at the Board,
 10 they are, you know, printed double-sided.
 11 They're both about an inch thick. It's a
 12 fairly extensive piece of legislation, but
 13 again, and I'll say it again, this is very
 14 robust legislation. There's rarely a question
 15 you can ask it about what you do here or who
 16 can do what that it doesn't give you an
 17 answer. The legislation itself contains
 18 significant and extensive regulation making
 19 powers, and those are powers that are granted
 20 to the Governments. I will say first off that
 21 there is again a provision that regulations
 22 can only be effective and implemented when
 23 promulgated, legal term, under the regimes of
 24 both the country of Canada and the Province of
 25 Newfoundland and Labrador. So again, the

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1 mirror is maintained in respect of the full
 2 suite of regulatory powers.
 3 ROIL, Q.C.:
 4 Q. The regulations are for Government, not for
 5 the Board, to pass?
 6 MR. ANDREWS:
 7 A. Clearly regulations are a Government power.
 8 The legislation provides specifically that the
 9 Governor-in-Council or the Lieutenant
 10 Governor-in-Council may promulgate
 11 regulations, and I think if you count them up,
 12 there are potentially over 40 opportunities
 13 for regulation making under this legislation.
 14 Many have been taken up, and there are
 15 certainly more than ten sets of regulations
 16 that the Governments, acting together, have
 17 proposed within the jurisdiction of the
 18 legislation and promulgated. Now they
 19 promulgate separately, but the regulation
 20 again can be read side by side as the
 21 legislation can, and the legislation itself
 22 provides that no regulation can be amended--no
 23 implementation of an amended regulation can be
 24 undertaken until the equivalent amendment has
 25 been made to the regulation under the other

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1 legislation.
 2 The Board has no regulation making power
 3 itself. There are regimes which provide--
 4 well, and there are regimes within our own
 5 country which enable regulatory agencies to
 6 publish documents which they call regulations
 7 which have consequences for those that they
 8 regulate. There is no power within this
 9 legislation for this Board to make
 10 regulations. What we are empowered to do is
 11 implement on an ongoing basis the terms and
 12 conditions of the regulations as they are
 13 provided to us.
 14 You will notice that people at the Board
 15 carry around with them, many of them, a binder
 16 equivalent to this. This is a copy of the
 17 legislation and the back two inches of that
 18 would be the regulations that have been
 19 proposed under this--that have been
 20 promulgated under this legislation.
 21 ROIL, Q.C.:
 22 Q. And that three-inch binder is only one book.
 23 There would be an equivalent for the other
 24 jurisdiction?
 25 MR. ANDREWS:

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1 A. This is my Federal book and there is an
 2 equivalent Provincial book, and as I say, it's
 3 the mirror image. So while the Board has no
 4 regulation making power, of course regulations
 5 are probably the most--are clearly one of the
 6 most important instruments that the Board has
 7 to be aware of and that those we regulate have
 8 to be aware of. The day-to-day business of
 9 what the Canada Newfoundland and Labrador
 10 Offshore Petroleum Board does is implement the
 11 legislation and the regulations as they have
 12 been provided to us by the two Governments.
 13 ROIL, Q.C.:
 14 Q. That sounds like a really good place to call
 15 for a break.
 16 COMMISSIONER:
 17 Q. All right. Okay then, thank you. We'll take
 18 about 15 minutes.
 19 (BREAK)
 20 COMMISSIONER:
 21 Q. Mr. Roil, before you start, one brief
 22 formality. The exhibits that you tendered
 23 this morning have now been entered and they
 24 are part of the record.
 25 ROIL, Q.C.:

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1 Q. Thank you, Commissioner. Okay, I think we're
 2 on the record now. You have indicated that
 3 the List of Exhibits that I circulated this
 4 morning are now part of the record?
 5 COMMISSIONER:
 6 Q. Yes.
 7 ROIL, Q.C.:
 8 Q. Thank you, sir. Mr. Andrews, before we go on
 9 to the next slide, just one question arising
 10 from the piece, the legislative piece. Is
 11 there any other jurisdiction that you're aware
 12 of that has a similar regime to the C-NLOPB in
 13 terms of dual legislation and dual regulatory
 14 regimes?
 15 MR. ANDREWS:
 16 A. Within Canada, Nova Scotia would have the same
 17 format of mirror legislation, and within
 18 Canada as well, I have to say, as a regulator
 19 who attends conferences every now and then,
 20 you do hear of things like the Quebec Offshore
 21 Accord or the British Columbia Offshore
 22 Accord, which might in fact be a similar type
 23 of legislative arrangement where enable to--in
 24 order to enable a single regulator for the
 25 industry and the territorial jurisdiction that

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1 potentially ownership or authority issues
 2 might be put aside. But I think that, you
 3 know, if you would look at a country like
 4 Australia which has much the same type of
 5 governance style as we do, they clearly have
 6 states equivalent to our provinces and a
 7 federal government and there obviously must be
 8 some accommodation between those governments
 9 in respect of regulation.
 10 ROIL, Q.C.:
 11 Q. You have no specific knowledge of those ones?
 12 MR. ANDREWS:
 13 A. No, I don't.
 14 ROIL, Q.C.:
 15 Q. Okay. We can check that if it becomes
 16 appropriate for us. Okay, let's move to then
 17 the next slide, which is slide number five.
 18 MR. ANDREWS:
 19 A. I just had a couple of points on this last
 20 slide, if we can just finish off on. Sorry.
 21 ROIL, Q.C.:
 22 Q. Oh, okay, yeah. No, I thought I had ticked
 23 off everything.
 24 MR. ANDREWS:
 25 A. Ticked off everything on your list. I did

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1 want to say that there are a full suite of
 2 regulations which have been made under these
 3 two pieces of legislation. They're
 4 significant. They are robust like the
 5 legislation, and -
 6 ROIL, Q.C.:
 7 Q. You use the expression "robust." I'm not sure
 8 that everybody would understand that. Can I
 9 use the word "comprehensive"?
 10 MR. ANDREWS:
 11 A. Comprehensive would be fine, yeah.
 12 ROIL, Q.C.:
 13 Q. Yes, okay.
 14 MR. ANDREWS:
 15 A. And the regulations that have been made under
 16 this legislation I would characterize in the
 17 main as being quite prescriptive, and I think
 18 that's language that you will, as a
 19 Commission, hear going on into the further
 20 witnesses. The regulations -
 21 ROIL, Q.C.:
 22 Q. Prescriptive means?
 23 MR. ANDREWS:
 24 A. Prescribe that something has to be done and it
 25 has to be done in a particular way.

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1 ROIL, Q.C.:
 2 Q. Okay.
 3 MR. ANDREWS:
 4 A. Some would characterize a prescriptive
 5 regulatory format as being almost like a
 6 checklist, that you--if you go to a particular
 7 section and you're trying to figure out what
 8 it is, you have--if you tick all the boxes,
 9 you've met all the criteria. An alternate
 10 form of regulation is called performance-based
 11 or goal-oriented regulation, and it is, in
 12 fact, quite popular in some jurisdictions, and
 13 in fact, would match up with what has been
 14 called smart regulation within the Canadian
 15 Federal Government system, as you know, a
 16 model for regulation making, which potentially
 17 leaves it to those who are regulated to apply
 18 innovation and find the best way to accomplish
 19 an objective, i.e. goal-oriented focus on a
 20 goal, as opposed to a prescriptive model,
 21 which would focus on all the steps that have
 22 to be made, whether the goal is achieved or
 23 not. I would describe the regulations under
 24 the Accord legislation as being quite
 25 prescriptive in nature. That has enabled the

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1 Board to run a fairly close monitoring of the
 2 offshore workplaces, to ensure that all of the
 3 steps that are agreed to be undertaken in a
 4 prescriptive regime and all of the tick boxes
 5 continue to be ticked. It also enables us,
 6 because of the check box system, to identify
 7 very quickly where a non-compliance has
 8 occurred. Because in fact a specific thing
 9 that was supposed to be done may not have been
 10 done or may have been done in a different
 11 manner. Whereas under the performance or
 12 goal-oriented system, one would find that on
 13 the way to achieving the objective that is
 14 regulated under the regulation there is not
 15 that checklist or step-by-step operation and
 16 in that way, there is really no non-compliance
 17 unless there's an irregularity, unless
 18 something goes wrong. The step towards the
 19 objective, towards the goal, does not carry
 20 with it particular actions which are non-
 21 compliant. So I would describe the
 22 regulations that have been provided under our
 23 legislation as being, in the main, quite
 24 prescriptive. When you read down through the
 25 regulation, you can see what it's about and

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1 what is required in order to bring oneself
 2 within that regulation. You'll be able to
 3 tick off the items that need to be done.
 4 ROIL, Q.C.:
 5 Q. So I take it that once we start to speak to
 6 Mr. Pike, that that will become more obvious
 7 in terms of examples through him?
 8 MR. ANDREWS:
 9 A. Um-hm.
 10 ROIL, Q.C.:
 11 Q. Okay.
 12 MR. ANDREWS:
 13 A. As well, there has been one substantive
 14 amendment to the Accord legislation, the two
 15 Acts, and that was done in 1992. Those are
 16 changes that are made to what we consider to
 17 be the operating provisions of the Act and for
 18 those who are familiar with the Act, the
 19 changes were made mainly in part three of the
 20 Act, which is the petroleum operations
 21 section, some changes in petroleum resources
 22 which is part two of the legislation. But
 23 that is the only amendment that has been made
 24 to the mirror legislation that's of any
 25 substance.

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1 ROIL, Q.C.:
 2 Q. Since its outset in 1986?
 3 MR. ANDREWS:
 4 A. To today, 2009.
 5 ROIL, Q.C.:
 6 Q. Okay.
 7 MR. ANDREWS:
 8 A. There have been amendments to the royalty and
 9 equalization sections of the Federal
 10 legislation and I think in the news perhaps,
 11 we've heard about the new Accord or a new
 12 Accord having been struck at some point in
 13 time. Those are provisions that deal with
 14 royalties and equalization and are not a part
 15 of what I refer to as the operating sections
 16 of the Atlantic Accord, the parts that affect
 17 the Board's operations as a regulator, which
 18 are ordinarily parts two and part three.
 19 ROIL, Q.C.:
 20 Q. And those are the parts, the unamended parts
 21 are the parts that we would be more focused on
 22 in our Inquiry?
 23 MR. ANDREWS:
 24 A. You will be focused on part three in the main,
 25 which was amended by the 1992 amendment, but

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1 would not have been any amendment since that
 2 time of substantive nature. The legislative
 3 jurisdiction of the two Acts provides some
 4 jurisdiction in respect to environmental
 5 assessment, obviously jurisdiction in respect
 6 of inquiries and investigations. I don't
 7 think it would be a surprise if in examining
 8 the four corners of our legislative
 9 jurisdiction that we come upon other
 10 administrative agencies who may have some
 11 equivalent or overlapping jurisdiction. I
 12 would speak--you know, I guess if you look at
 13 165, our Inquiry into the incident of the
 14 crash of Cougar 491, you would find, whether
 15 you call it overlapping or conflicting or
 16 perhaps just overlapping jurisdiction
 17 potentially at Transport Canada, potentially
 18 at the Transportation Safety Board.
 19 ROIL, Q.C.:
 20 Q. Which are the other two bodies that we'll be
 21 hearing from shortly.
 22 MR. ANDREWS:
 23 A. Yeah. But I think that you would also realize
 24 that in fulfilling the mandate of our
 25 environmental assessment jurisdiction under

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1 our legislation, we might come upon an
 2 overlapping jurisdiction with the
 3 environmental assessment department of the
 4 Federal Government or of the Provincial
 5 Government, and the same when you look at our
 6 authority in respect of occupational health
 7 and safety. You might well see that there is
 8 encroaching or overlapping jurisdiction with
 9 Provincial or Federal authorities with the
 10 same--with many of the same objectives in
 11 mind. Section 46.1 of the legislation
 12 provides that to avoid duplication of effort
 13 and to coordinate activities, the Board and
 14 governments can enter into memorandums of
 15 understanding with other government agencies,
 16 and that is a mechanism that the Board has
 17 engaged to ensure--well, two things really,
 18 one, that we do fill all corners of the
 19 mandate that we're required to fill by the
 20 legislation, but secondly, that overlap,
 21 duplication of effort and coordination of
 22 effort with other agencies is accommodated at
 23 the corners of our jurisdiction, where they
 24 may have similar objectives and similar
 25 authority.

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1 ROIL, Q.C.:

2 Q. So the objective being--again, I'm restating

3 what I'm hearing you say, I think. The

4 objective being that there be no voids, but

5 also that there be no conflicts?

6 MR. ANDREWS:

7 A. That is exactly the case, and you know, there

8 are a number of memorandum of understanding

9 that have been entered into by the Board and

10 the governments with other agencies.

11 ROIL, Q.C.:

12 Q. Okay. The next slide is the organizational

13 chart, and again, we have to remember, for

14 purpose of our evidence, that there are people

15 who do not get to see this, in terms of your

16 current presentation.

17 MR. ANDREWS:

18 A. The Board itself has seven members, and this

19 is provided in Part One of the Act, which is

20 entitled Joint Management, and it provides--I

21 think it goes up to sections somewhere in the

22 40s. It provides for the set up of the Board

23 and the way the Board is to structure itself.

24 Of those Board members, three are to be

25 appointed by the Provincial Government, three

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1 are to be appointed by the Federal Government,

2 and one, who is to be the chairman, and in our

3 instance, the chairman and the chief executive

4 officer, is to be appointed jointly by both

5 governments. Again, you can see the mirror

6 provisions of the legislation being reflected

7 in some of the mechanisms that are even

8 incorporated into the two pieces of

9 legislation. So the Board has seven members.

10 It meets at least monthly, by the legislation,

11 and does meet more regularly than that.

12 ROIL, Q.C.:

13 Q. So would the Board be akin to a board of

14 directors for a corporation?

15 MR. ANDREWS:

16 A. It is very akin to a board of directors. They

17 certainly, by meeting monthly or even more

18 frequently, are not familiar with, and need

19 not be familiar with the day-to-day, the

20 routine activities of the Board's regulatory

21 activities. But certainly in respect of

22 policy and in respect of anything in the

23 legislation that it says the Board can do this

24 or must do this, the Board is engaged on those

25 issues.

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1 ROIL, Q.C.:

2 Q. Give me perhaps a quick example of where the

3 legislation said the Board shall do something.

4 MR. ANDREWS:

5 A. The Board's decisions are described as final,

6 but for instance, in approving, in the context

7 of a project, a benefits plan. The benefits

8 plan would be a matter of great significance

9 under the mandate of the Board, dealing with

10 industrial benefits which would result to the

11 Province and to Canada, pursuant to a

12 development being undertaken. That benefits

13 plan would be provided to the Chairman of the

14 Board by the operator who proposes the plan

15 and indicates that he will abide by it. That

16 plan itself, the benefits plan, would be

17 analyzed by staff at the Board, who would

18 prepare a staff analysis, potentially make

19 recommendations, potentially have interaction

20 with the operator in respect of deficiencies

21 or incompleteness within the benefits plan.

22 That benefits plan, along with the staff

23 analysis, would be then provided to the Board

24 because the legislation says the Board shall

25 approve a development, a benefits plan. A

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1 benefits plan, for example, may be approved,

2 and I think in all cases have been approved

3 conditionally, and that means that the Board

4 receives the benefits plan itself, the staff

5 analysis that goes along with it, and there

6 would read and understand both documents and

7 at some point in time, approve of the benefits

8 plan, subject to terms and conditions, which

9 may be terms and conditions which are

10 described in the staff analysis, may be terms

11 and conditions that they as a Board determine

12 need to be imposed on the benefits plan in

13 order to achieve the objective that the

14 legislation points out.

15 ROIL, Q.C.:

16 Q. Do I take it from that the fact that there are

17 certain things that the legislation says the

18 Board shall do, there are, by implications,

19 some things that staff or certain staff can do

20 without necessarily engaging the Board?

21 MR. ANDREWS:

22 A. There are. The Board is--does have the powers

23 of a corporation under the Federal or

24 Provincial corporations legislation. That has

25 enabled the Board to--well, in the main, that

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1 enables the Board to, you know, have a
 2 jurisdiction to be sued, be able to undertake
 3 legal actions, to operate bank accounts. But
 4 I guess on the other side of that, we have
 5 been able to, in fact, put in place bylaws
 6 which govern the organization and decision
 7 making process within the Board. So those
 8 bylaws would, in fact, provide, in many
 9 instances, for the type of decision making and
 10 the authority to implement decisions taken at
 11 the Board level.

12 ROIL, Q.C.:

13 Q. I take it that the Board does engage staff,
 14 including yourself?

15 MR. ANDREWS:

16 A. The Board does engage staff.

17 ROIL, Q.C.:

18 Q. Yes. Tell us a little bit about the office
 19 set up, in terms of the kind of support staff
 20 that the Board has engaged and what areas of
 21 responsibility the various sections have.

22 MR. ANDREWS:

23 A. As the screen is not available, I will note
 24 that the staff of the Board operate within
 25 seven departments, some of which in parlance

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1 you'd consider line departments, other
 2 advisory departments. They are support
 3 services, legal and land, operations and
 4 safety, environmental affairs, exploration and
 5 resource management, industrial benefits,
 6 policy and regulatory coordination, and public
 7 relations. The seven departments employs some
 8 70 staff. We occupy offices in St. John's,
 9 and as well, we occupy a scientific analysis
 10 and storage building which is remote from the
 11 downtown. So we have these two facilities
 12 with 70 employees undertaking the duties that
 13 the Board members, after prescribing policies
 14 that are supposed to be implemented at the
 15 Board, instruct us to undertake. Many of the
 16 regulations, by way of their prescriptive
 17 nature, allow staff to, without doubt, be able
 18 to tick a box when something is done. The
 19 prescriptive nature of the regulations would
 20 allow that.

21 As we are presently structured, the Board
 22 has two full-time--two Board members who are
 23 considered full-time employees at the Board.
 24 That would be the Chairman, who is also the
 25 chief executive officer, and the vice-chairman

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1 of the Board. The vice-chairman is a
 2 provincial appointee to the Board, but his
 3 appointment thereafter as a full-time vice-
 4 chair was endorsed by the Provincial
 5 Government. So again, you see the mirror
 6 provision of the legislation actually being
 7 put in place within the processes identified
 8 within the Act.

9 ROIL, Q.C.:

10 Q. So that we can put a face on the Board and
 11 associate with public statements and whatnot
 12 of various individuals, who is currently
 13 serving as Chair and CEO?

14 MR. ANDREWS:

15 A. The Chair and CEO of the Board is Max
 16 Ruelokke, who is an engineer, who has been in
 17 that position now for some three years.

18 ROIL, Q.C.:

19 Q. And the vice-chair is?

20 MR. ANDREWS:

21 A. The vice-chair is Fred Way, who is a former
 22 deputy minister within the Provincial
 23 Government system and was a Provincial
 24 appointee.

25 ROIL, Q.C.:

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1 Q. Now of those seven departments, you named two,
 2 one called legal and land and one called
 3 operations and safety. I take it that you are
 4 the manager of the legal and land department?

5 MR. ANDREWS:

6 A. I am the manager of the legal and land
 7 department. The legal side is providing legal
 8 advice to the Board and to the staff as they
 9 need it. The land side is, in fact, the
 10 management of the land tenure system, which is
 11 the licensing transfers and development of the
 12 lands consistent with licenses.

13 ROIL, Q.C.:

14 Q. Okay, and the operations and safety department
 15 is Mr. Pike's department?

16 MR. ANDREWS:

17 A. Is Mr. Pike's department. He is the manager
 18 of that department, as well as the chief
 19 safety officer at the Board. He will talk to
 20 you in more detail about his staff and who's
 21 available to him.

22 These departments, if we can just go back
 23 to the example perhaps of the benefits plan
 24 approval at a Board level, one would find a
 25 task force for Board analysis of a document,

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1 such as a benefits plan, which may well--which
 2 would likely include someone from each of
 3 these departments. The task force method of
 4 review is a methodology that the Board has
 5 endorsed for some time. So while a benefits
 6 plan is clearly a document which is of great
 7 interest to the industrial benefits policy and
 8 regulatory coordination group, as they will be
 9 the ongoing party responsible for that, a
 10 lawyer from my department might well be a part
 11 of the task force because of legal
 12 implications. There may well be environmental
 13 affairs implications of certain of a company's
 14 representations in respect of industrial
 15 benefits and as well, exploration and resource
 16 management are likely going to be involved in
 17 all decisions that the Board undertakes. So
 18 you know, a multi-departmental task force
 19 would, in that instance and in others, be the
 20 methodology the Board would choose to have
 21 staff analysis prior to Board decisions being
 22 undertaken.

23 ROIL, Q.C.:

24 Q. So while our little chart shows lines going
 25 down from the Board to these various

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1 departments, I take it that through the task
 2 force approach, there's a lot of interaction
 3 between the departments on any particular
 4 assignment that comes to the C-NLOPB?

5 MR. ANDREWS:

6 A. Yes, that would be fair, and that's provided
 7 for again in the legislation. The Board is to
 8 hire the staff that it needs to do the job
 9 that it believes it has to do. Those same
 10 provisions would be in the Nova Scotia
 11 legislation, which is similar, but they have
 12 chosen a somewhat different departmental set
 13 up, but again, the Board is authorized in Part
 14 one, the joint management section, of the
 15 legislation to hire the appropriate staff that
 16 it needs to advise it in taking its decisions.

17 ROIL, Q.C.:

18 Q. Okay, whenever you're ready to move on. We
 19 have the next slide entitled mandate.

20 MR. ANDREWS:

21 A. These next slides deal with the mandate role
 22 and objectives and in the Board's view, it is
 23 necessary that the Board, its staff, its
 24 clients, and the general public understand the
 25 mandate, the role and the objectives of the

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1 Board, and that includes, as I referred to
 2 before, what the Board does do, how it does it
 3 and what it does not do. The Board has spent
 4 considerable effort in the past three years
 5 making a clear statement in respect of its
 6 mandate, role and objectives, to ensure
 7 exactly that, that the staff and the clients,
 8 as focus groups, understand what the Board
 9 does. This is a large piece of legislation.
 10 I have to tell you that every time I read the
 11 legislation that we implement, I find a nuance
 12 that I didn't see there before, I find a
 13 section that I have not had to avail of and
 14 wasn't even aware existed. What we have done
 15 is try to, at a very high level, identify the
 16 mandate and the mandate, as you might with
 17 that preamble have determined, is to interpret
 18 and apply the provisions of both the Atlantic
 19 Accord and the Atlantic Accord Implementation
 20 Acts to all activities of operators in the
 21 Newfoundland and Labrador offshore area, and
 22 to oversee operator compliance with those
 23 statutory provisions.

24 ROIL, Q.C.:

25 Q. Now what you've just read, which is stated

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1 before me as the mandate, do I take it that
 2 that actually comes from a decision of the
 3 Board? This is not your interpretation of
 4 these words?

5 MR. ANDREWS:

6 A. That language is a decision of the Board taken
 7 in 2007, and reflected in our annual reports
 8 since that time. It's a very important
 9 statement that our staff and our clients need
 10 to understand and I think is reflective of the
 11 presentation that I've given here so far
 12 today. It is important to understand the
 13 legislative jurisdiction, the territorial
 14 jurisdiction, and the subject matter
 15 jurisdiction of the Board. What we have here
 16 is the maintenance of the Atlantic Accord and
 17 the Atlantic Accord Implementation Acts, which
 18 are robust, comprehensive, very detailed
 19 legislation. Included then in the legislative
 20 suite is a comprehensive, prescriptive set of
 21 regulations. The Board's role, the Board's
 22 mandate, pardon me, is to interpret that stack
 23 of paper, those words, that information and
 24 apply it to the activities of the operators in
 25 the Newfoundland and Labrador offshore area.

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1 That is our subject matter.
 2 And then, in applying that, oversee
 3 operator compliance with those statutory
 4 provisions, and I think you need to realize
 5 that it is not a set of other documents that
 6 are applying in this regard. We know the full
 7 suite of legislation and regulations that we
 8 are to interpret and to apply in the offshore
 9 area and to these regulators and operator in
 10 this context is the holder of an authorization
 11 issued by the Board. So you would think of
 12 that as someone who is actually operating a
 13 facility in the offshore area.
 14 ROIL, Q.C.:
 15 Q. Now that becomes, I think, a term of art for
 16 you, the expression "operator"?
 17 MR. ANDREWS:
 18 A. It does, and I will speak as you and I have
 19 about the confusion which may result.
 20 ROIL, Q.C.:
 21 Q. That's right, because we have--I think you
 22 will find that within this Inquiry, Cougar
 23 will call itself an operator. Husky will call
 24 itself an operator, and so I think it's
 25 important that we understand your use of the

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1 expression "operator" in the context of your
 2 evidence. If somebody else talks and uses an
 3 expression, they'll have to define it for
 4 theirs.
 5 MR. ANDREWS:
 6 A. An operator would be the holder of an
 7 authorization issued by the Board. An
 8 authorization is a document that the Board
 9 issues and is required by a party before they
 10 can undertake any activity or work in the
 11 offshore area in respect of oil and gas
 12 exploration, development, production. So to
 13 the extent that a party comes to us looking to
 14 undertake an activity, and by that I might
 15 mean seismic activity, seabed surface survey,
 16 drilling program, production program, diving
 17 program, any one of those activities would
 18 require an authorization before it could be
 19 undertaken. But the party who gets the
 20 authorization is in fact the operator.
 21 In respect of a drilling operation, where
 22 there might be an operator who has an
 23 authorization to drill a well -
 24 ROIL, Q.C.:
 25 Q. Let's take, for example, ABC Oil Company comes

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1 and makes an application to drill a well.
 2 MR. ANDREWS:
 3 A. Their application for an authorization would
 4 include a detailed description of the work
 5 that they were going to undertake and how they
 6 were going to undertake it. It would describe
 7 a drilling unit, which would be on location to
 8 undertake that. It would also then
 9 necessarily describe the contracting strategy
 10 for the provision of services to that
 11 operation and as you indicated, one of those
 12 would likely be transportation of personnel to
 13 and from the facilities and for that, they
 14 would engage what we at the office all call a
 15 helicopter contractor. But in ordinary
 16 parlance, I think Cougar refers to itself as a
 17 helicopter operator. Cougar is not the holder
 18 of an authorization from the Board. That's
 19 not to say if they wanted to take--if they
 20 wanted to become an explorer, they couldn't
 21 apply for an authorization, but as a
 22 contractor to, in fact, all of the operators
 23 that I have seen in the offshore area, they
 24 are exactly that, a contractor to the person
 25 that I consider to be the operator, the person

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1 who has the authorization from the Board to
 2 undertake the task, the activity, the work
 3 that they applied to do.
 4 ROIL, Q.C.:
 5 Q. And the operator is more likely to be a
 6 company or an entity tied to the activity of
 7 either drilling, seismic, that kind of thing,
 8 production?
 9 MR. ANDREWS:
 10 A. Yes, that's the case.
 11 ROIL, Q.C.:
 12 Q. Okay. Okay, I think that the point has been
 13 made and we'll see as we go through now how
 14 other people use the expression, but I just
 15 wanted to understand right from the outset
 16 what an operator was in the context of the C-
 17 NLOPB.
 18 MR. ANDREWS:
 19 A. Yeah, so what we've got here is that the Board
 20 is not directly activities, other than in
 21 unique emergency situations perhaps. But what
 22 you see here is that we apply these
 23 interpretations to the activities of
 24 operators, not the activities--you know, the
 25 Board's activities are determined, but what

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1 we're doing is applying the legislation and
 2 the regulation to the activities of the
 3 operators. That is the focus, and in the
 4 respective and approved authorization, our
 5 role is then to oversee the operator's
 6 compliance with the authorization and with the
 7 statutory and regulatory provisions. That is
 8 the role of the Board as a regulatory
 9 administrative agency.

10 ROIL, Q.C.:

11 Q. So if I want to undertake an activity, I have
 12 to have an authorization from the Board and
 13 then the Board would oversee my activity to
 14 make sure I did it in a way that was
 15 consistent with what I said?

16 MR. ANDREWS:

17 A. You would go through a process to have your
 18 application for an authorization approved,
 19 whereby it would become an authorization and
 20 likely have conditions incorporated or imposed
 21 upon it, and then the role of the Board is to
 22 oversee compliance with that authorization and
 23 with the regulations.

24 ROIL, Q.C.:

25 Q. And with the conditions, if any.

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1 MR. ANDREWS:

2 A. So you know, to the extent that an
 3 authorization for a drilling program includes
 4 a description of transportation of employees
 5 to their work site, the helicopter operations
 6 part of the authorization would, in an
 7 approved authorization, then be overseen by
 8 the Board to ensure that the operator, i.e.
 9 the party doing the drilling program, is
 10 complying with its representations in respect
 11 to the helicopter operations.

12 ROIL, Q.C.:

13 Q. Okay, I think that's--it's clear to me.

14 MR. ANDREWS:

15 A. Okay. Oversight really defines the activities
 16 of the operational departments of the Board.
 17 That's really what we do.

18 ROIL, Q.C.:

19 Q. And I think Mr. Pike and his more detailed
 20 evidence of the safety regime will talk a lot
 21 about oversight.

22 MR. ANDREWS:

23 A. Yes. The role of the Board, and again, this
 24 is--the mandate was to implement the
 25 legislation. The role is to implement the

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1 mandate. So we are to be the facilitators of
 2 exploration for and development of the
 3 hydrocarbons, hydrocarbon resources in the
 4 Newfoundland and Labrador offshore area in a
 5 manner that conforms to the statutory
 6 provisions. Again, you would note that our
 7 role is in fact operator driven. We
 8 facilitate the exploration for and development
 9 of the resources. We do not direct that it be
 10 undertaken. We do not, in the ordinary
 11 instance, order that somebody drill a well.
 12 What we are doing is implementing our mandate
 13 in respect of the legislation to the plans of
 14 a party who comes forward to us wanting to
 15 explore and develop the hydrocarbon resources
 16 of the Newfoundland and Labrador offshore
 17 area. So our role, the implementation of the
 18 mandate, is to be responsive to the plans, the
 19 applications of parties who want to explore
 20 and develop those resources. Particularly,
 21 and in the statement of our role, we focus on
 22 what our five pillars of the legislative
 23 jurisdiction, primarily worker safety,
 24 environmental protection and safety, effective
 25 management of land tenure, maximum hydrocarbon

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1 recovery and value, and Canada Newfoundland
 2 and Labrador benefits, the industrial benefits
 3 part.

4 ROIL, Q.C.:

5 Q. Now are those listed in a particular order, or
 6 can they be reorganized in another
 7 presentation?

8 MR. ANDREWS:

9 A. The concluding statement of our role is that
 10 while the legislation does not prioritize
 11 these mandates, worker safety and
 12 environmental protection would be paramount in
 13 all Board decisions, and that is a statement
 14 within our statement of our role.

15 ROIL, Q.C.:

16 Q. Yeah, so the entire slide is the entire role
 17 as defined by the Board itself?

18 MR. ANDREWS:

19 A. Yes, it is. So you see there, our role as a
 20 facilitator, the five key components that we
 21 consider to be the statutory provisions with
 22 which an operator must comply and you see
 23 paramountcy that I think can be seen to
 24 somewhat define a culture at the Board, and I
 25 think you'll see that further from Mr. Pike.

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1 Worker safety and environmental protection and
 2 safety are our paramount issues in respect of
 3 considering any issue at the Board or at staff
 4 level, and that is a cultural definition at
 5 the Board, and I think Mr. Pike refers to it,
 6 but there is also a provision of our
 7 legislation that provides where the safety
 8 officer and the conservation officer or the
 9 environmental officer are making decisions
 10 that may encroach upon each other, the
 11 decisions in respect of safety again are
 12 paramount over those of environment or
 13 conservation. So we do see a hierarchy within
 14 these statutory provisions, these areas of the
 15 mandate. Worker safety, you know, as a stated
 16 piece and as a cultural piece is of paramount
 17 importance at the Board.
 18 ROIL, Q.C.:
 19 Q. Okay. The next slide is called objectives.
 20 MR. ANDREWS:
 21 A. The objectives and these three sides are a
 22 suite of information that the Board has
 23 provided to its public that it spend a
 24 considerable amount of time developing. I'm
 25 going to focus, in the objectives piece, on

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1 safety.
 2 ROIL, Q.C.:
 3 Q. Yes.
 4 MR. ANDREWS:
 5 A. Noting that from the previous slide, our role
 6 identifies safety and environment as being of
 7 paramount interest. In this instance, I'm
 8 going to focus on the safety. And again, the
 9 objectives are really the implementation or
 10 the--we are describing here the objects of the
 11 implementation of our role from the previous
 12 slide, the oversight that we saw as part of
 13 our mandate. The key word in respect of our
 14 safety objectives is verification and you will
 15 see that in the language and I will now read
 16 the objectives for safety: to verify that
 17 operators have appropriate safety plans in
 18 place; to verify, through audits and
 19 inspections, that operators follow their
 20 safety plans and applicable statutory
 21 requirements; and to verify, through
 22 compliance actions, that deviations from
 23 approved plans and applicable statutory
 24 requirements are corrected. So we move from
 25 oversight to verification.

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1 In this instance, our objective in
 2 respect of safety is, in the initial instance,
 3 and certainly the safety plans are very
 4 important at the authorization stage to verify
 5 that appropriate safety plans are in place.
 6 These are not the Board's safety plans. These
 7 are the operators' safety plans. We are
 8 verifying that appropriate safety plans are in
 9 place.
 10 ROIL, Q.C.:
 11 Q. And would I take it then that because the
 12 safety plans are generated by the operators
 13 that they would not necessarily all look
 14 exactly the same?
 15 MR. ANDREWS:
 16 A. That's very much the case. One would think
 17 that certain components of any safety plan
 18 would be universal, but certainly the risk
 19 assessment and the risk management provisions
 20 of a safety plan, and Mr. Pike will talk more
 21 about those aspects of it, they would reflect
 22 an operator's corporate culture and
 23 philosophy, something else that, you know, you
 24 will hear more about as this Inquiry goes on.
 25 But the safety plan obviously would be a

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1 document that would be subject of staff review
 2 and analysis.
 3 ROIL, Q.C.:
 4 Q. By staff, you mean the Board's staff?
 5 MR. ANDREWS:
 6 A. The Board's staff. It would be--the safety
 7 plan that's in place would be an approved part
 8 of the authorization that would be granted by
 9 the Board and at the time that the
 10 authorization is granted, we would--the Board
 11 would have verified that an appropriate safety
 12 plan is in place. Whether that's subject of
 13 conditions or whether it has had deficiencies
 14 identified and corrected or whether there were
 15 gaps originally in the safety plan at the time
 16 that the authorization is issued, our
 17 objective would have been to verify that the
 18 operator had an appropriate safety plan in
 19 place. And thereafter during the undertaking
 20 of the activity authorized by the
 21 authorization, we would verify, through audits
 22 and inspections, that the operators follow
 23 their safety plans and the applicable
 24 statutory requirements. So that is an ongoing
 25 role for certainly Mr. Pike's department of

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1 operations and safety, but oft times that role
 2 is fulfilled, that objective is met in concert
 3 with other technical experts at the Board.
 4 Sometimes safety audits and inspections are
 5 conducted in coordination with our
 6 environmental affairs department, for example.
 7 But the audits and inspections, our
 8 objective in that, in this safety role, is to
 9 verify, by actually comparing the activity
 10 undertaken by the operator to the activity
 11 described in the authorization application,
 12 and in this instance, let's talk about the
 13 safety plan. We would audit and inspect back
 14 to the safety plan that we had reviewed and
 15 told the operator was appropriate in this
 16 instance.
 17 ROIL, Q.C.:
 18 Q. Okay. So you measure--the operator says "I
 19 will do it this way." You then measure to see
 20 that the operator is doing it that way?
 21 MR. ANDREWS:
 22 A. The inspection and audit process would cause
 23 us to look at the actual--the actions
 24 undertaken by the operator and ensure that
 25 they are consistent with what he said he was

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1 going to do in the safety plan. And then
 2 further, to verify, by taking appropriate
 3 action, that any deviations from approved
 4 plans and applicable statutory requirements
 5 are corrected, and I would note that the
 6 documentation supporting an authorization is
 7 very detailed in nature and as the
 8 Commissioner noted yesterday in his
 9 introduction, things don't always go according
 10 to plan. Accidents and incidents do happen.
 11 Our verification here is that when things are
 12 not consistent with safety plans, as an
 13 example, where there have been deviations,
 14 that corrective actions are put in place, that
 15 compliance actions are undertaken. Compliance
 16 action tool kit that the Board has at its
 17 disposal is notices to operators, orders to
 18 operators, enforcement actions, prosecution
 19 actions which could be undertaken. But our
 20 objective here is--you can see the sequence
 21 going on--ensure that it's going to be done
 22 right in the first place by way of an
 23 appropriate safety plan. Then go back and
 24 check and make sure it is being done in
 25 compliance with the safety plan, and anything

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1 that's done being done in compliance with the
 2 safety plan, ensure that actions are in place
 3 to bring it back to being in compliance with
 4 the safety plan.
 5 ROIL, Q.C.:
 6 Q. I think the objectives for the other -
 7 MR. ANDREWS:
 8 A. They are, I would note that environmental
 9 assessment is very much a verification process
 10 as well and runs much along the same model as
 11 the operations and safety department works in
 12 reviewing plans, verifying compliance with the
 13 plans.
 14 ROIL, Q.C.:
 15 Q. Okay. The next slide is entitled the C-NLOPB
 16 does not.
 17 MR. ANDREWS:
 18 A. As part of describing the mandate role and
 19 objectives of the Board, we felt it was
 20 important that our staff, special publics and
 21 clients understood what it was we were not
 22 doing, and I think I focused on some of these
 23 things in the previous slides. The Board is
 24 not directing that a drilling operation be
 25 undertaken. The Board is responding and

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1 facilitating to the proposal of a drilling
 2 operation by an operator through the
 3 authorization process, and again, in looking
 4 at the safety aspect of the request to, in
 5 this example, undertake a drilling program, we
 6 are reviewing the operator's safety plans, and
 7 making sure that an appropriate safety plan by
 8 the operator is in place that can be audited
 9 back to. So this slide, and again, this is a
 10 Board issued documentation of its view of what
 11 it does not do.
 12 ROIL, Q.C.:
 13 Q. Again, the words here are taken from the
 14 Board, not from John Andrews?
 15 MR. ANDREWS:
 16 A. These are the Board's words and these can be
 17 found in our annual report. The C-NLOPB does
 18 not have responsibility for safety of workers
 19 or the environment. Worker safety and
 20 environmental protection are the
 21 responsibility of the operators. That is
 22 reflective of our oversight role, as described
 23 in the mandate, and certainly reflective of
 24 the consequence of that, that the safety plan
 25 is prepared by the operator, submitted to the

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1 Board and then approved when its in an
 2 appropriate fashion. So our view remains that
 3 worker safety is the responsibility of the
 4 operator, the party who holds the
 5 authorization.
 6 ROIL, Q.C.:
 7 Q. And when you use the expression or when the
 8 Board uses the expression "does not have the
 9 responsibility for safety of workers," I take
 10 it that that word "responsibility" does not
 11 mean that it does not have an interest in the
 12 safety of workers?
 13 MR. ANDREWS:
 14 A. I don't know if I can go back on my slides,
 15 but the words that I focused on is the
 16 oversight and the verification. Clearly we
 17 have an interest in all matters in respect to
 18 safety, risk assessment, risk management.
 19 But, the primary responsibility for worker
 20 safety is the operator of the facility on
 21 which the worker is to be found.
 22 Moving on to the next one. The C-NLOPB
 23 does not manage reservoirs or production.
 24 That's the role of the operator within the
 25 context of an approved development plan.

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1 Again, I've spoken to this. When a program of
 2 work in the offshore area is to be undertaken,
 3 it's not at the direction of the Board. We've
 4 become the facilitators. It is at the request
 5 of the operator, the party who's going to get
 6 the operation--the authorization that he wants
 7 to manage reservoirs and production. So
 8 again, our role is one of oversight and
 9 verification back to operators' authorization
 10 plans.
 11 The next one deals with industrial
 12 benefits. The C-NLOPB does not guarantee the
 13 participation of Canadian and Newfoundland and
 14 Labrador workers or businesses, but our
 15 legislation does provide that there is to be,
 16 in a competitive situation, a fair opportunity
 17 for Canadians and Newfoundland workers and
 18 businesses to be involved in this industry.
 19 And then again, we do not have any role beyond
 20 the provision of required data and information
 21 to governments in the establishment or
 22 administrative of fiscal regime, royalties and
 23 taxes for the activity, and again, that's
 24 reflected in the sections of the Act that I
 25 have indicated we should be focusing on, parts

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1 one, two and three of the legislation. These
 2 are matters that are, in many respects,
 3 addressed, I think in part six and seven of
 4 the Federal legislation.
 5 But again, I think the top statement is
 6 something that needs to be made very clear,
 7 that the Board does not have the
 8 responsibility for safety. It has an interest
 9 in safety of workers, by way of its oversight
 10 role and its verification role, but worker
 11 safety is the responsibility of operators.
 12 ROIL, Q.C.:
 13 Q. Thank you, I think that position is quite
 14 clear. Again, just by comparison, would other
 15 regulators have similar statements with
 16 respect to their level or is the engagement in
 17 different areas to a different level of
 18 responsibility, engagement, oversight,
 19 interest, chose whichever word is the right
 20 way to answer the question.
 21 MR. ANDREWS:
 22 A. I wouldn't want to speak to characterizing
 23 another jurisdiction's role. I can tell you
 24 that the Norwegian Petroleum Directorate, for
 25 example, are familiar with these documents and

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1 have told us that they endorse the way that we
 2 have stated our role in respect to our
 3 legislation, but I think you would have to
 4 appreciate that the mandate role objectives
 5 and do not do list, are prescribed by the
 6 legislation. They are our--the Board's
 7 interpretation of what this legislation is
 8 telling us about our mandate, about our role,
 9 about our objectives and about what we are not
 10 responsible for.
 11 ROIL, Q.C.:
 12 Q. So it makes its own decisions based on its own
 13 assessment of the documentation, rather than
 14 seeking to do what other people do?
 15 MR. ANDREWS:
 16 A. We are very much driven by our legislative
 17 mandate.
 18 ROIL, Q.C.:
 19 Q. Okay.
 20 MR. ANDREWS:
 21 A. And that includes the regulatory mandate,
 22 yeah.
 23 ROIL, Q.C.:
 24 Q. Okay, your next slide is entitled "Board's
 25 Activities" and I take it now when you talk

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1 about the Board now, are we talking in the
 2 broader sense, the Board including -
 3 MR. ANDREWS:
 4 A. The Board as an organization.
 5 ROIL, Q.C.:
 6 Q. As an organization, as opposed to the seven
 7 members.
 8 MR. ANDREWS:
 9 A. Yes. I just wanted to indicate here that
 10 while safety and environmental protection are
 11 obviously paramount issues, the Board's
 12 activities are limited by their offshore--by
 13 the territorial jurisdiction and the
 14 legislative jurisdiction, is more encompassing
 15 than just focusing on authorizations. We do
 16 authorize activities as described here for
 17 exploration, drilling, production,
 18 conservation, et cetera, and that's kind of a
 19 subject matter, jurisdiction which is
 20 described in Section 136 of the Act. We do
 21 authorize or approve development plans and
 22 industrial benefits plans which are somewhat
 23 outside of what we've already been talking
 24 about. We do issue and administer petroleum
 25 rights and I again refer you back to the map

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1 that is a part of the Board, but again, that's
 2 an activity of the Board that again perhaps
 3 does not bear directly on the interests
 4 represented here at the Inquiry. And we are
 5 the body authorized to curate and store
 6 technical samples and materials and
 7 information about all of the reservoirs, the
 8 basins that are located within the offshore
 9 area. So we do have a significant role in
 10 these areas as well.
 11 ROIL, Q.C.:
 12 Q. The technical samples and materials, that was
 13 the other location, I think that you said -
 14 MR. ANDREWS:
 15 A. Yes. So we have, you know, among our 70
 16 employees, technical expertise to address all
 17 of these issues: information technology,
 18 information management, curation of actual
 19 core samples or digital information about
 20 reservoirs.
 21 ROIL, Q.C.:
 22 Q. Now you've moved on to a slide called
 23 "Decision-making by the Board."
 24 MR. ANDREWS:
 25 A. I have.

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1 ROIL, Q.C.:
 2 Q. It's a series of references to sections, what
 3 are you taking us to here?
 4 MR. ANDREWS:
 5 A. I'm taking your firstly to Section 30 of the
 6 Act and this is--these are the words of
 7 Section 30 of the Act. "Subject to this Act,
 8 the exercise of a power or the performance of
 9 a duty by the Board pursuant to this Act is
 10 final and not subject to review or approval of
 11 either government or either minister." And
 12 that's a list as well from the Atlantic Accord
 13 memorandum, right from the start for
 14 consideration by the Board, and it was a very
 15 important milestone in the establishment of
 16 the Board to say that the decisions of the
 17 Board are final and not subject to review by
 18 governments or either minister. That had not
 19 been the case up to that time. In
 20 Newfoundland there was a petroleum
 21 directorate, in the Federal regime there was a
 22 group called COAGLA, Canada Oil and Gas Lands
 23 Administration group, and they did not have
 24 the decision-making power that this Board did.
 25 The agency's decisions were taken at the

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1 departmental level within governments. Our
 2 legislation did, right from 1987, '86 and '87,
 3 say that the exercise of a power by the Board
 4 is final. Decisions are final and not subject
 5 to review.
 6 ROIL, Q.C.:
 7 Q. So when the Board issues an authorization,
 8 that is a final decision with respect to that
 9 particular entity -
 10 MR. ANDREWS:
 11 A. That is exactly the case and that's the
 12 example I would take you to. There are
 13 issuance of an authorization to an operator
 14 for a particular activity if a decision taken
 15 by the Board, which is not subject to override
 16 or review by governments. We advise
 17 governments that we have taken this decision
 18 in respect of a particular authorization.
 19 ROIL, Q.C.:
 20 Q. And they are required to accept your decision
 21 as final.
 22 MR. ANDREWS:
 23 A. Well they are required to do nothing in
 24 respect of a decision, we provide them with
 25 advice that we have taken a decision. And

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1 while I describe that as a milestone, of
 2 course, there are going to be exceptions to
 3 that statement as a general rule. So I would
 4 then refer you to subsection 31(1).
 5 ROIL, Q.C.:
 6 Q. So the first four words that say "Subject to
 7 this Act", there are some exceptions?
 8 MR. ANDREWS:
 9 A. There are some exceptions.
 10 ROIL, Q.C.:
 11 Q. And I take it you're taking us now to where
 12 you would find some of those exceptions?
 13 MR. ANDREWS:
 14 A. I am. Section 31(1), I believe I have most of
 15 the complete words here. I think this is a
 16 list from the legislation. "Where a
 17 fundamental decision is made by the Board, the
 18 Board shall forthwith after making the
 19 decision give written notice of that decision
 20 to the Federal minister and the Provincial
 21 minister and then subsection 32(1) would tell
 22 you that a fundamental decision shall not be
 23 implemented unless the Board is advised in
 24 writing that--and I'll just summarize the
 25 balance of it, "it has been approved by

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1 governments pursuant to a process." So what
 2 we've got here is Section 30 saying that
 3 decisions by the Board are final, unless it
 4 says otherwise, and then Section 31 saying
 5 those that are otherwise are called
 6 fundamental decisions and they can, while the
 7 Board can make a fundamental decision, it
 8 cannot implement that decision until the
 9 decision has been approved by governments
 10 pursuant to a mechanism described in the
 11 legislation.
 12 ROIL, Q.C.:
 13 Q. Can you give us an example of something that
 14 would be a fundamental decision so that the
 15 approval by both levels of government would be
 16 required?
 17 MR. ANDREWS:
 18 A. There are key words in the legislation that
 19 identify those decisions that are, in fact,
 20 fundamental decisions and I've noted that here
 21 on my slide. Where one sees the words
 22 "subject to Sections 31 to 40" and I'm
 23 speaking in the Federal legislation now, those
 24 words would identify that the decision being
 25 taken in that instance is one that is

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1 fundamental and therefore must be approved by
 2 governments pursuant to a process prior to
 3 implementation. I'll just run through a
 4 couple of examples. In subsection 58(2) of
 5 the Federal Accord legislation would provide
 6 that a call for bids, i.e. initiating the
 7 process to issue new licenses in the offshore
 8 area is a fundamental decision. Determining
 9 the terms and conditions that go on a license,
 10 an exploration license, a significant
 11 discovery license or a production license,
 12 those terms are decided by the Board but can
 13 only be implemented as terms and conditions
 14 once they have been approved by governments
 15 through the process identified. Approval of a
 16 development plan and I'll speak to a
 17 development plan later, is a fundamental
 18 decision. The Board makes a decision, we
 19 spoke about it earlier, the Board makes a
 20 decision on the benefits plan and that
 21 decision is final. That one is not described
 22 as having been subject to Sections 31 to 40
 23 and the benefits plan goes along with the
 24 development plan. The development plan,
 25 however, is singled out as being a decision,

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1 the approval, being a decision which is
 2 subject to Sections 31 to 40 and therefore,
 3 must be ratified or approved by governments
 4 pursuant to a process. In fact, paragraph
 5 56(1)(a) of the legislation would provide that
 6 an order from the Board prohibiting activity
 7 in the offshore area, in the case of
 8 environmental or social problem of a serious
 9 nature, and that's the language from the
 10 legislation, that is in fact a fundamental
 11 decision. The Board can make a decision to
 12 prohibit activity in the case of an
 13 environmental or social problem of a serious
 14 nature. But that's a decision that could not
 15 be implemented until it had been approved by
 16 governments through the process described in
 17 the legislation.
 18 ROIL, Q.C.:
 19 Q. Would any of those types of decisions involve
 20 the approval by the Board of a safety plan
 21 from an operator? Is it that a, you said a
 22 development plan--describe for a layperson
 23 what a development plan is?
 24 MR. ANDREWS:
 25 A. The first activity undertaken by an operator

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1 in respect of a license in the offshore area
 2 would be exploratory activity.
 3 ROIL, Q.C.:
 4 Q. Yes.
 5 MR. ANDREWS:
 6 Q. And that exploratory activity may even involve
 7 what's called delineation activity, i.e. once
 8 you find something try and figure out better
 9 what it is. Once one gets to a point in time
 10 where one wants to develop the property, i.e.
 11 move it from exploration and delineation into
 12 production, one would need to have a fulsome
 13 development plan prepared, submit it to the
 14 Board for decision prior to being authorized
 15 to undertake any of that development activity,
 16 so that development plan, it comes between the
 17 exploratory and the production piece,
 18 somewhere in there. You cannot do the
 19 activities described as developing the
 20 production without having a development plan
 21 approved. That approval comes at a particular
 22 point in time after exploratory drilling, for
 23 example. If one were to drill a production
 24 well, one would have to have had a development
 25 plan approved. Again the drilling of a

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1 production well could only be done pursuant to
 2 an authorization granted by the Board, but the
 3 legislation provides that the Board could not
 4 grant that authorization until an approved
 5 development plan was in place.
 6 ROIL, Q.C.:
 7 Q. And the development plan is a fundamental
 8 decision?
 9 MR. ANDREWS:
 10 Q. The development plan is a fundamental
 11 decision, and it is a fulsome description of
 12 the development of the project from start to
 13 finish. It deals with, for instance, the
 14 information that has been accumulated during
 15 the exploration stage. It deals with the
 16 building of facilities and the installation of
 17 facilities. It would deal with production,
 18 production rates, reservoir control. It would
 19 deal with transportation of workers, as an
 20 example. It would deal with transportation of
 21 product, and it would ultimately deal with
 22 decommissioning and abandonment of facility
 23 and the closure, suspension, abandonment of
 24 wells that have been made in the offshore
 25 area.

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1 ROIL, Q.C.:
 2 Q. So each one of these hydrocarbon resources are
 3 a finite resource, and so the development plan
 4 takes it from prior to development to the
 5 grave of that particular project.
 6 MR. ANDREWS:
 7 Q. Cradle to grave, and I think, you know, we're
 8 talking about an approval process that, I
 9 believe, certain people in this room, and
 10 perhaps the general public are more familiar
 11 with than the process I've been talking about
 12 earlier, being the authorization process. The
 13 development plan is related a development
 14 project, and as I described before we have
 15 four development plans approved, the Hibernia,
 16 Terra Nova, White Rose, and the North Amethyst
 17 approval, which feeds into the White Rose
 18 Project. So those four development plan
 19 decisions fall within this Sub-section 32(1)
 20 provision, that this decision, while it's made
 21 by the Board to approve a development plan,
 22 must be then provided to ministers for
 23 ratification prior to being implemented, and
 24 implemented is what the operator wants.
 25 Implemented, presumably, at that stage is what

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1 the Board wants, and what happens as a result
 2 of passing to the approved development plan
 3 stage is that the operator can now go back to
 4 looking for authorizations, the instrument I
 5 was referring to earlier, to carry out the
 6 work described in the development plan. The
 7 development plan does not give authority to
 8 undertake any of the activities described in
 9 the development plan. Those are still subject
 10 to a specific authorization.
 11 ROIL, Q.C.:
 12 Q. Yes, so even though I have an approved
 13 development plan, the particular activities
 14 that are sub-sets of that plan still require
 15 authorizations from the Board.
 16 MR. ANDREWS:
 17 Q. They do, and a development plan would include,
 18 you know, sections--for example, on an
 19 environmental assessment protection safety,
 20 you know, risk assessment, risk management,
 21 they would be at a high level and they would
 22 be approved at that high level in the
 23 development plan, but again all of these
 24 matters then must be addressed specifically in
 25 the authorization application process, which

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1 leads to the authorization being granted to
 2 the operator once he's got that authorization
 3 to actually undertake the work, and we have
 4 skipped ahead here in my presentation slides
 5 here. Counting slides, we've done a little
 6 bit more then at this stage than perhaps we
 7 thought we were.

8 ROIL, Q.C.:

9 Q. Yes, that's fine. Yes, no, so I think the
 10 thought process is comprehensive, and I think
 11 I understand it. I hope others in the room
 12 do, and we'll see where it leads us in terms
 13 of the questions that make come from others
 14 later on.

15 MR. ANDREWS:

16 Q. Okay. I am not going to talk in detail about
 17 how the decision is made at governmental
 18 level. I will only tell you that there is a
 19 period of 30 days allowed for that decision,
 20 that process to come to a conclusion, and at
 21 the end in respect to a fundamental decision
 22 taken by the Board the decision stands. At
 23 the end of the 30-day period the Board knows
 24 whether it can implement that decision, or
 25 whether it's a decision that will stand in

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1 isolation being unable to be implemented
 2 because it was not approved by governments.

3 ROIL, Q.C.:

4 Q. And if the plan is not approved, the various
 5 activities under the plan cannot be authorized
 6 by the Board?

7 MR. ANDREWS:

8 Q. That is true.

9 ROIL, Q.C.:

10 Q. Thank you. Okay, perhaps then we can jump
 11 ahead to the slide that is involving decision-
 12 making?

13 MR. ANDREWS:

14 Q. This is a continuation of the slide.

15 ROIL, Q.C.:

16 Q. Yes, okay.

17 MR. ANDREWS:

18 Q. And again while we're told the rule in the
 19 main is that decisions by the Board are final,
 20 if they're fundamental decisions they go
 21 through a different process, and we're also
 22 told that the federal and provincial minister
 23 can in some instances make decisions on our
 24 behalf. Sub-section 42(1) provides that the
 25 ministers, the federal minister and the

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1 provincial minister, and these are the
 2 Ministers of Natural Resources in both
 3 instances, may jointly issue to the Board
 4 written directives. Now these are limited in
 5 nature and scope, but they again provide an
 6 instance where decisions are taken in respect
 7 of boards in respect of activities and works
 8 perhaps in the offshore area or within the
 9 legislative jurisdiction of the Board, which
 10 are taken by parties other than the Board.

11 ROIL, Q.C.:

12 Q. Yes.

13 MR. ANDREWS:

14 Q. In the this case though, two ministers can
 15 provide written directives, and that does not
 16 mean that one of them can write a directive.
 17 They must both give the same directive in
 18 respect of -

19 ROIL, Q.C.:

20 Q. Both do it, yes.

21 MR. ANDREWS:

22 Q. And we'll just skip ahead on the slide to the
 23 Sub-section 42(2) says that the Board shall
 24 comply with a directive issued under Sub-
 25 section 1.

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1 ROIL, Q.C.:

2 Q. So if the two minister jointly make a
 3 decision, the Board has to comply with that
 4 decision.

5 MR. ANDREWS:

6 Q. Uh-hm.

7 ROIL, Q.C.:

8 Q. Yes, okay.

9 MR. ANDREWS:

10 Q. And the things in respect of which a written
 11 directive can be given--this gets a little
 12 circular here, is fundamental decisions, which
 13 are the decisions that are made by the Board
 14 in the first instance but then must be
 15 approved by ministers, so I believe that this
 16 section really provides the ministers to
 17 provide some directive to the Board into how
 18 to ensure that a fundamental decision does
 19 meet the test set by the government and can be
 20 implemented. Decisions by the board
 21 respecting the exercise of a power pursuant to
 22 Paragraph 56(1)B, and those are orders in
 23 respect of operations during dangerous or
 24 extreme weather conditions. You will note
 25 earlier I referred to an order prohibiting

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1 activity for an environmental or social
 2 problem of a serious nature is a fundamental
 3 decision. The decision in respect of orders
 4 in respect of operations during dangerous or
 5 extreme weather conditions is not a
 6 fundamental decision, but it is in fact a
 7 decision in respect of which the two ministers
 8 may give a written directive to the Board.
 9 ROIL, Q.C.:
 10 Q. Have the two ministers ever given a direction
 11 with respect to dangerous or extreme weather
 12 conditions?
 13 MR. ANDREWS:
 14 Q. No, they have not, no.
 15 ROIL, Q.C.:
 16 Q. Do you understand what the legislation means
 17 when it refers to dangerous or extreme weather
 18 conditions?
 19 MR. ANDREWS:
 20 Q. Again it's the Board's job to interpret this
 21 legislation, yes.
 22 ROIL, Q.C.:
 23 Q. Yes.
 24 MR. ANDREWS:
 25 Q. We do have an interpretation of what dangerous

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1 or extreme weather conditions would be. It is
 2 a fairly high-level interpretation perhaps.
 3 Mr. Pike may be able to speak to it later in
 4 terms of the particular instances, but again
 5 you would have to realize that a dangerous or
 6 extreme weather condition may in fact be of a
 7 different nature for something like the
 8 Hibernia structure resting on the sea floor
 9 and a ship-shaped vessel conducting seismic
 10 operations at the surface so -
 11 ROIL, Q.C.:
 12 Q. The ship-shaped seismic being much smaller
 13 generally than the production facilities?
 14 MR. ANDREWS:
 15 Q. And not fixed in place.
 16 ROIL, Q.C.:
 17 Q. And not fixed in place, yes.
 18 MR. ANDREWS:
 19 Q. So we would have certain interpretations
 20 available to us about dangerous or extreme
 21 weather conditions, but I would have to tell
 22 you that in respect of the implications of the
 23 decision, that would likely be ad hoc, ad
 24 referendumed, depending on the circumstances
 25 one finds oneself in.

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1 ROIL, Q.C.:
 2 Q. But, I take it, something like a hurricane
 3 would be the kind of thing that is spoken of
 4 here?
 5 MR. ANDREWS:
 6 Q. That makes a lot of sense, yes.
 7 ROIL, Q.C.:
 8 Q. Okay, but that has not happened, to your
 9 knowledge?
 10 MR. ANDREWS:
 11 Q. I'm not aware that the Board has made an order
 12 in respect of dangerous or extreme weather
 13 conditions, or that the federal or provincial
 14 minister has made a joint directive in that
 15 regard.
 16 ROIL, Q.C.:
 17 Q. Okay, but that would not -
 18 MR. ANDREWS:
 19 Q. But that is not to say that we have not had
 20 dangerous or extreme weather conditions.
 21 ROIL, Q.C.:
 22 Q. Or that an operator might not take decisions
 23 himself.
 24 MR. ANDREWS:
 25 Q. Well, that is exactly the case. The

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1 authorization process itself would have
 2 involved the operator describing its own
 3 parameters for dangerous or extreme weather
 4 conditions, and likely taking the appropriate
 5 action in the case of dangerous or extreme
 6 weather conditions such that the Board does
 7 not have to make an order, or that the
 8 ministers would not have to make such a
 9 directive to the Board to make such an order.
 10 ROIL, Q.C.:
 11 Q. Right. Okay.
 12 MR. ANDREWS:
 13 Q. Just going on down through the list, public
 14 reviews conducted pursuant to Section 44, that
 15 again ties back to public reviews of
 16 development plans and benefits plans,
 17 something that we have undergone in four
 18 instances and people in this room and perhaps
 19 the general public are fairly familiar with
 20 the public review process for a development
 21 plan and a benefits plan. "D" deals with the
 22 benefits plan specifically and any of the
 23 provisions thereof, so the federal minister
 24 and the provincial minister, while the
 25 approval of a benefits plan is not a

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1 fundamental decision they may give written
 2 directives in respect of that decision. That
 3 may sound like a distinction without a
 4 difference, but in fact what it means is that
 5 the ministers, and this is our interpretation
 6 of this, the ministers can be helpful to the
 7 Board by the way of written directives to
 8 ensure that fundamental decisions are approved
 9 in a fashion which can be implemented, and
 10 then the balance of that Section "E" being
 11 studies to be conducted with respect to policy
 12 issues which the Board would provide to
 13 ministers. So in fact this provides an
 14 opportunity for ministers to direct the Board
 15 to conduct certain studies to support policy
 16 decisions that the governments may want to
 17 take.
 18 ROIL, Q.C.:
 19 Q. So the reference to policy issue is government
 20 policy rather than Board policy.
 21 MR. ANDREWS:
 22 Q. Yes.
 23 ROIL, Q.C.:
 24 Q. Yes.
 25 MR. ANDREWS:

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1 Q. So what I've done here--we're operating from
 2 the rule which is that decisions of the Board
 3 are final, to describing the types of decision
 4 that the Board makes but cannot be implemented
 5 until approved, to those decisions that can be
 6 taken by governmental parties and provided to
 7 the Board to direct and to make decisions in a
 8 particular way, so the rule is the decisions
 9 are final. Unless it falls into these other
 10 two categories, a decision by the Board is
 11 final in respect of its legislative authority
 12 within the territorial jurisdiction.
 13 ROIL, Q.C.:
 14 Q. Now the next slide takes us to the next
 15 section and, Commissioner, we are now
 16 beginning the introduction into the safety
 17 officer and his role. If it is convenient for
 18 you, this is probably a good place to stop for
 19 our lunchtime break.
 20 COMMISSIONER:
 21 Q. Yes, and it is 12:30. We would come back at 2
 22 o'clock.
 23 ROIL, Q.C.:
 24 Q. At 2 o'clock.
 25 COMMISSIONER:

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1 Q. Yes, that's excellent. All right then, fine,
 2 we'll adjourn until 2 o'clock.
 3 (BREAK FOR LUNCH)
 4 COMMISSIONER:
 5 Q. Mr. Roil.
 6 ROIL, Q.C.:
 7 Q. Thank you, Commissioner. Mr. Andrews, we were
 8 going to move on, but just before we do that,
 9 during the lunch period, an issue troubled me,
 10 and I guess I needed to ask you the question,
 11 so I'll ask it. You explained that the Board
 12 has primary and exclusive jurisdiction on a
 13 lot of decisions, except those that are
 14 fundamental and in some other cases where
 15 government approval is required, and I guess I
 16 would ask you two questions. One is has
 17 Government ever, or the Ministers ever, not
 18 given the sign off that is necessary under the
 19 legislation? And the second part of the
 20 question is would that in any way have
 21 impacted on a safety plan or a safety regime
 22 of an operator?
 23 MR. ANDREWS:
 24 A. I'll answer the first part of your question--
 25 the second part of your question first. No, I

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1 would not think of any fundamental decisions
 2 that were forwarded to Government for
 3 ratification that affected safety in any
 4 fashion that has not been approved, pursuant
 5 to the process and the legislation, but
 6 fundamental decisions, by their nature, are
 7 decisions that are important and the Board has
 8 taken decisions that are described as
 9 fundamental, taken the decision, forwarded it
 10 to Governments and Governments have not
 11 approved the decision itself.
 12 ROIL, Q.C.:
 13 Q. Is there any recent example of that that the
 14 public might be aware of or that you would be
 15 able to recall for us?
 16 MR. ANDREWS:
 17 A. The Board a little over a year ago approved a
 18 development plan amendment for a project known
 19 as the Hibernia Southern Extension and
 20 forwarded that decision to governments. That
 21 decision was not ratified by governments and
 22 the decision was not implemented by the Board.
 23 We have also, just as another example of one
 24 that I discussed this morning in respect of
 25 terms and conditions that would be placed on

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1 an exploration license. The Board has
 2 determined that certain terms and conditions
 3 ought to be placed on a license before it's
 4 issued. Decisions of that nature have been
 5 forwarded to governments and in some instances
 6 a ratification, there was no ratification
 7 decision and the decision therefore, while it
 8 remains a decision of the Board, cannot be
 9 implemented.

10 ROIL, Q.C.:

11 Q. So that an authorization cannot be
 12 subsequently issued, no work can proceed in
 13 terms of that development?

14 MR. ANDREWS:

15 A. In terms of that development.

16 ROIL, Q.C.:

17 Q. Okay, thank you. That's just a last item
 18 dealing with the slide that we had been
 19 dealing with. I think we now move to the
 20 slide number 13, where you begin to introduce
 21 and speak a little bit about your colleague,
 22 Mr. Pike.

23 MR. ANDREWS:

24 A. I do. Section 188 and again, I'm speaking of
 25 the Federal legislation, provides that safety

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1 officers and conservation officers necessary
 2 for the administration and enforcement of this
 3 part, being part three, and the regulations
 4 shall be appointed by the Board. Conservation
 5 officers in our language include those who are
 6 concerned with reservoir management, as well
 7 as those who are concerned with environmental
 8 protection. But the safety officers are those
 9 officers that are appointed by the Board, and
 10 as well, one of the officers is appointed as
 11 chief safety officer and Mr. Pike is the chief
 12 safety officer at the Newfoundland Board.

13 Just move on, I've put this under
 14 decision making because in the hierarchy of
 15 decisions, we've gone through decisions that
 16 the Board make by themselves, decisions that
 17 need to be ratified by other parties and
 18 decisions that must be made because they're
 19 directed to be made by other parties. Within
 20 the Board context, there is then a separate
 21 category of decisions which can be made by the
 22 chief safety officer without authorization of
 23 the Board. That speaks to the paramountcy
 24 with which we consider safety matters to be
 25 within the industry that we work. The chief

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1 safety officer and other officers at the
 2 Board, just for example, by Section 189, have
 3 considerable powers to enter facilities, take
 4 away evidence, require production of books and
 5 records, take samples and require persons to
 6 provide evidence, information, either orally,
 7 in writing or in a form requested. The chief
 8 safety officer position is one that is very
 9 important at the Board and is very much a
 10 reflection and defines the culture at the
 11 Board dealing with safety issues.

12 ROIL, Q.C.:

13 Q. By comparison, you, as the manager of legal
 14 and lands, would not have similar powers, I
 15 take it?

16 MR. ANDREWS:

17 A. I would not, no. I would consider mine to be
 18 an advisory position, whereas Mr. Pike's is a
 19 decision making position, and just to move on
 20 a little bit, in Section 193.1, "where a
 21 safety officer or the chief safety officer, on
 22 reasonable grounds, is of the opinion that
 23 continuation of an operation in relation to
 24 the exploration or drilling for or the
 25 production, conservation, processing or

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1 transportation of petroleum in any portion of
 2 the offshore area is likely to result in
 3 serious bodily injury, that officer, as the
 4 case may be, may order that the operation
 5 cease or be continued only in accordance with
 6 the terms of the order." Again, this is very
 7 significant power that resides with the chief
 8 safety officer, not with the Board.

9 ROIL, Q.C.:

10 Q. And the safety officer would not require any
 11 prior approval from the Board to take this
 12 step?

13 MR. ANDREWS:

14 A. No, that would not--that would be a decision
 15 that the chief safety officer could take in
 16 his own behalf. I will say, of course, that
 17 the culture in our office determines that we
 18 cooperate at all times.

19 ROIL, Q.C.:

20 Q. Of course.

21 MR. ANDREWS:

22 A. And decisions likely taken by the chief safety
 23 officer would be in consultation with other
 24 technical experts at the Board and perhaps at
 25 the executive level, but one could conceive of

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1 an instance where the decision making power by
 2 the chief safety officer would be exercised in
 3 this case and may not always accord with the
 4 opinions of others who may be working on other
 5 aspects of an authorization, for example.
 6 Again, a reflection of a culture, the Section
 7 193.1, an order by a safety officer prevails
 8 over an order made by a conservation officer
 9 or the chief conservation officer to the
 10 extent of any inconsistency between the
 11 orders. As I say, conservation officers deal
 12 with reservoir management and environmental
 13 protection, but an order of the chief safety
 14 officer would prevail in an instance where
 15 there was any inconsistency.
 16 ROIL, Q.C.:
 17 Q. And I think you actually referred to that
 18 without actually having the section number in
 19 your evidence this morning.
 20 MR. ANDREWS:
 21 A. So on the decision making within the Board, as
 22 legal counsel and as corporate secretary, it's
 23 always an interesting excursion when one goes
 24 down the road to decision making at the Board
 25 level, the rule being that decisions by the

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1 Board are final. The caveats being that
 2 they're final unless somebody else has to
 3 ratify them or unless somebody else has
 4 directed that they be made in another way or
 5 unless another party has made a decision which
 6 may make your decision unable to be
 7 implemented. So the decision making process,
 8 while complex at the Board, is hierarchal, but
 9 the rule to be observed is that decisions
 10 taken by the Board are final.
 11 I'm going to introduce just a little bit
 12 about the process for work or activity
 13 authorization, but Mr. Pike is going to speak
 14 in detail about the Board's role in this
 15 process. I've put on the screen Section 137,
 16 again from the Federal legislation. "No
 17 person shall carry on any work or activity
 18 related to the exploration or drilling for or
 19 the production, conservation, processing or
 20 transportation of petroleum in the offshore
 21 area unless" and then there are three
 22 conditions. Firstly, that the person is the
 23 holder of an operating license issued under
 24 paragraph 138.1(a) and I will just go to that
 25 now. An operating license can only be

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1 acquired by a corporation that's registered
 2 under Federal or Provincial corporations
 3 legislation. That license is an annual
 4 license. It provides the Board with
 5 information about the location and address of
 6 the party who is electing to become an
 7 operator. As I say, it's annual. That
 8 expires March 31st each year and it's non-
 9 transferable. We would normally have in the
 10 range of 10 to 15 operating licenses
 11 outstanding in any particular year.
 12 ROIL, Q.C.:
 13 Q. Now an operating license, it says "no person."
 14 So the word "person" there has its legal
 15 meaning, no entity?
 16 MR. ANDREWS:
 17 A. No entity. It would mean an individual person
 18 as well as a corporate person.
 19 ROIL, Q.C.:
 20 Q. So an individual person could also obtain an
 21 operating license?
 22 MR. ANDREWS:
 23 A. Yes.
 24 ROIL, Q.C.:
 25 Q. But typically it is a corporate entity of some

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1 sort?
 2 MR. ANDREWS:
 3 A. Yes, typically it is, yes. I can't think that
 4 we've had an individual acquire an operating
 5 license.
 6 ROIL, Q.C.:
 7 Q. What is the purpose of the operating license?
 8 \$25 doesn't generate enough revenue to go very
 9 far. Is there a philosophical reason why you
 10 have to have a license first?
 11 MR. ANDREWS:
 12 A. I would have to say that there are operations
 13 regulations which prescribe the form for the
 14 operating license. I think that the main
 15 legislative purpose was to ensure that we are
 16 dealing with corporations with a Canadian
 17 identity when we are dealing with licenses and
 18 operations. I will say that, from a practical
 19 position, those who apply for an operating
 20 license in March of any particular year are
 21 those who are likely to be undertaking
 22 operations within the offshore area of
 23 Newfoundland and Labrador during the upcoming
 24 year. The information is valuable to the
 25 Board. And I guess the other valuable piece

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1 is that having that license is really a
 2 requirement prior to applying for an
 3 authorization.
 4 Then we go to B. That person is the
 5 holder of an authorization issued before the
 6 commencement of operations under paragraph
 7 138.1(b) for such work or activity. So the
 8 second of the three things to enable one to
 9 carry on the operation being exploration or
 10 drilling or the production, processing,
 11 transportation of petroleum is the acquiring
 12 of an authorization from the Board, and the
 13 third piece is, again, repeating the provision
 14 of the operations regulations, that that
 15 person is authorized or entitled to carry on
 16 business in the place where that person
 17 proposes to carry on the work or activity.
 18 ROIL, Q.C.:
 19 Q. Okay. So if we can take an example, so that
 20 XYZ Company operating out of the United States
 21 would have to first find a way that it can
 22 obtain an operating license by registering in
 23 Canada?
 24 MR. ANDREWS:
 25 A. Yes.

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1 ROIL, Q.C.:
 2 Q. Paying the \$25. They would then have to seek
 3 or hold an authorization and they would also
 4 have to be a company doing business in the
 5 place where that person proposes to carry out
 6 the work and activity?
 7 MR. ANDREWS:
 8 A. Yes.
 9 ROIL, Q.C.:
 10 Q. What is that place?
 11 MR. ANDREWS:
 12 A. I believe that place would likely be
 13 Newfoundland and Labrador in the instance with
 14 the Offshore Petroleum Board, but again, with
 15 the joint management regime, that has not been
 16 an issue that we have had to address.
 17 ROIL, Q.C.:
 18 Q. Okay. So it could be anywhere in Canada
 19 perhaps?
 20 MR. ANDREWS:
 21 A. Yes, although I believe that maybe the
 22 operating license would address that and we
 23 would require in that an address for service
 24 within the province.
 25 ROIL, Q.C.:

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1 Q. Within the province, I see.
 2 MR. ANDREWS:
 3 A. So those conditions must be met before any
 4 work or activity can be undertaken, and we
 5 think of work or activity as ranging from the
 6 earliest stages of exploration, which would
 7 likely be seismic work or seabed survey work
 8 or electromagnetic work or aerial magnetic
 9 observation, these activities, perhaps not the
 10 aerial to the extent that it is not in the
 11 offshore area. But the other activities would
 12 certainly require an authorization from the
 13 Board prior to the commencement of the
 14 operations, and I think with my next slide,
 15 the authorization is a particular form. It's
 16 a template which the Board provides to
 17 operators and is on our website and requires
 18 certain information to be provided. Section
 19 138(4) provides for some of these
 20 requirements, so that the application for an
 21 authorization must include those requirements
 22 related to liability for loss, damage, costs
 23 or expenses, requirements for carrying out
 24 environmental programs or studies, and
 25 requires requirements for the payment of

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1 expenses incurred by the Board in approving
 2 the design, construction, and operation of
 3 facilities, platforms, as those terms are
 4 defined. Those are some of the absolute
 5 requirements of the authorization. The
 6 regulations would provide other requirements
 7 that must be made with the application for an
 8 authorization.
 9 Then we get to Section 138.2 which
 10 provides that the Board shall, before issuing
 11 an authorization for work or activity referred
 12 to, consider the safety of the work or
 13 activity by reviewing, in consultation with
 14 the chief safety officer, the system as a
 15 whole and its components, including its
 16 structures, facilities, equipment, operating
 17 procedures and personnel. This is a very
 18 powerful section for the Board and is observed
 19 and is engrained in our culture. The viewing
 20 of any authorization application, as a whole
 21 in respect of safety of all things that you
 22 would think of associated with an activity,
 23 from the structures, facilities, equipment,
 24 procedures and personnel, these are all
 25 calculated into the view of safety as a whole

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1 prior to the work or activity being
 2 authorized.
 3 ROIL, Q.C.:
 4 Q. So if that work or activity is a small piece
 5 of work, such as a seismic operation that's
 6 going on for a month or so in the summer, then
 7 what would the system as a whole be there?
 8 MR. ANDREWS:
 9 A. The system as a whole would be as determined
 10 by the Board, in consultation with the chief
 11 safety officer.
 12 ROIL, Q.C.:
 13 Q. So the use of a vessel, the use of -
 14 MR. ANDREWS:
 15 A. Well, in that instance of a seismic vessel,
 16 one would have structures, which would be the
 17 vessel itself, the facilities would be perhaps
 18 the infrastructure to make it a ship, the
 19 equipment that would be used for actually
 20 carrying out the seismic work, the operating
 21 procedures for both the marine installation
 22 and the technical information collection, and
 23 the personnel who were going to run all those
 24 previous pieces. So I would, in respect of a
 25 seismic operation, I believe that the whole

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1 would include the entirety of the operation.
 2 ROIL, Q.C.:
 3 Q. Okay, and as compared to that, if it were a
 4 production facility, such as an FPSO, a
 5 floating platform, then I take it the same
 6 things would be there. They would perhaps all
 7 look larger because it's a bigger piece of
 8 work?
 9 MR. ANDREWS:
 10 A. Well, they would, and just for an example, a
 11 platform would require transportation access
 12 for individuals from the platform, whereas a
 13 seismic vessel likely might not. So you know,
 14 as a very relevant example perhaps we could
 15 take that one.
 16 ROIL, Q.C.:
 17 Q. Yes.
 18 MR. ANDREWS:
 19 A. But certainly structures, facilities,
 20 equipment, operating procedures and personnel,
 21 we consider to be fairly broadly based
 22 language, which would enable all those factors
 23 which may affect safety in respect of any
 24 authorized activity would be subject of review
 25 as a whole, prior to the issuance of the

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1 authorization.
 2 So this is kind of a summary. Every work
 3 or activity is conducted pursuant to an
 4 authorization from the Board and in compliance
 5 with the regulations. The authorization is
 6 the main instrument of the Board in allowing
 7 activity to be undertaken in our jurisdiction
 8 and we devote a considerable percentage of our
 9 time to the authorization process, to the
 10 receiving of authorizations, reviewing the
 11 authorization for completeness.
 12 ROIL, Q.C.:
 13 Q. When you say you "receive the authorization,"
 14 you receive the application?
 15 MR. ANDREWS:
 16 A. Well, we receive the form that is the
 17 application.
 18 ROIL, Q.C.:
 19 Q. It's called an authorization?
 20 MR. ANDREWS:
 21 A. Which is ultimately signed and becomes the
 22 operation (sic), because the application
 23 document itself incorporates many of the
 24 documents that the operator would be providing
 25 to the Board, for example, the safety plan.

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1 It may be attached to the application. It may
 2 be incorporated by reference in the
 3 application, but ultimately it is that form
 4 which is the form originally provided by the
 5 operator with the documents attached that
 6 ultimately--that will thereafter be reviewed
 7 by the Board, assessed by the Board and
 8 ultimately approved, likely with conditions by
 9 the Board, that becomes the document that is
 10 the authorization.
 11 ROIL, Q.C.:
 12 Q. And so I take it that one operator from the
 13 beginning of the project with the seismic work
 14 to the end, would that operator just get one
 15 authorization or many authorizations?
 16 MR. ANDREWS:
 17 A. Certainly in practice to date, it would be a
 18 series of authorization. The geotechnical,
 19 geophysical and geological program in effect
 20 may be granted to an operator of, for example,
 21 a seismic vessel, who is not even an oil and
 22 gas company, if this was to speculative
 23 seismic work, and we would consider oft times
 24 drilling--diving programs to be stand-alone
 25 programs that would perhaps be conducted by an

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1 operator other than an oil and gas company.
 2 But operations including drilling,
 3 construction, production, authorizations for
 4 abandonment and decommissioning, these would
 5 all be authorizations that an operator who is
 6 developing a project would need at some stage
 7 of the development process. To the extent
 8 that we can, we coordinate these efforts and
 9 we issue a document called an operations
 10 authorization, which would roll up a number of
 11 the individual authorizations that the party
 12 might need into a single authorization called
 13 the operations authorization, and I have that
 14 noted here on the screen. It may well include
 15 a drilling program authorization as within it,
 16 as well a production operations authorization
 17 and authorizations in advance for abandonment
 18 of wells, for example, or workovers of wells.
 19 There is, you know, considerable logic to this
 20 when you recall that the Board has to look at
 21 the terms of an authorization as a whole when
 22 evaluating safety. So to the extent that an
 23 operator is going to be undertaking drilling
 24 activity, production activity, well suspension
 25 activity, workover activity and construction

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1 activity, to have that all contained in a
 2 single operations authorization would allow
 3 the Board a very fulsome view of the overall
 4 safety picture for the number of different
 5 operations included in the single
 6 authorization.
 7 ROIL, Q.C.:
 8 Q. I guess I'm trying to get an understanding and
 9 a clear one for everybody, those that aren't
 10 working in it daily as you are, it says "every
 11 work or activity." I take it that something
 12 as relatively narrow as a seismic program
 13 could be considered a work or activity which
 14 requires an authorization, but a
 15 transportation link in and of itself wouldn't
 16 be something that would attract the
 17 authorization. It would be a part of the
 18 drilling or something that was requiring the
 19 transportation as a portion thereof?
 20 MR. ANDREWS:
 21 A. Well, helicopter transport in and of itself
 22 would not within the subject matter
 23 jurisdiction, for example, of, you know, oil
 24 and gas production.
 25 ROIL, Q.C.:

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1 Q. Right.
 2 MR. ANDREWS:
 3 A. But certainly, it is a part and would have to
 4 be considered by any operator in an
 5 application for an authorization. Without that
 6 as a part of the authorization, which would
 7 need to be reviewed and assessed by the Board,
 8 the safety picture of the authorization could
 9 not be viewed by the Board. That is one more
 10 aspect of the activity itself that would have
 11 to be reviewed.
 12 ROIL, Q.C.:
 13 Q. But the air operator, the helicopter operator,
 14 the Cougar type company, that would not be an
 15 operator that would apply for work
 16 authorization in accordance with your rules?
 17 It would become part of the other overall
 18 operation of the oil operator, as I call it?
 19 MR. ANDREWS:
 20 A. He would be the helicopter operator, the
 21 helicopter contractor retained by the
 22 operator.
 23 ROIL, Q.C.:
 24 Q. And the authorization is issued to the
 25 operator, not to the helicopter contractor?

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1 MR. ANDREWS:
 2 A. The authorization is issued to the operator,
 3 not the helicopter contractor.
 4 ROIL, Q.C.:
 5 Q. Okay.
 6 MR. ANDREWS:
 7 A. And you know, I could envisage an instance
 8 where in the initial application for an
 9 authorization, you know, there may still be
 10 uncertainty as to who the helicopter
 11 contractor might be. It may be that the
 12 authorization application might come in and
 13 thereafter the transportation plan would be
 14 appended to the authorization prior to it
 15 being issued, understanding that no activity
 16 can be undertaken prior to the issuance of the
 17 authorization.
 18 ROIL, Q.C.:
 19 Q. And the plan or the activity of the helicopter
 20 contractor would have to be in and a part of
 21 that before the authorization was given?
 22 MR. ANDREWS:
 23 A. Very clearly, and a part of the safety
 24 assessment, the safety as a whole assessment
 25 that is undertaken by the Board in

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1 consultation with the chief safety officer.
 2 Once the application is complete from the
 3 operator and assessments are undertaken, the
 4 Board still retains onto itself the ability to
 5 place conditions on the authorization before
 6 it is executed and issued. Conditions that
 7 would ordinarily be placed on an authorization
 8 are conditions in respect of occupational
 9 health and safety, industrial benefits,
 10 financial responsibility, certification of
 11 installations, compliance with standards and
 12 procedures and environmental protection, and
 13 these would--some of these conditions would be
 14 tailored to the particular operation that is
 15 being undertaken. Some would be applied in
 16 respect of any authorization that were to come
 17 in and could almost be described as a standard
 18 condition, although obviously in the review as
 19 a whole, all of these things are taken into
 20 consideration. But even with a complete
 21 application with the assessment made by the
 22 Board, the ability of the Board to further
 23 condition the authorization before it's signed
 24 and executed and issued is reserved by--within
 25 Section 139, I believe, and you would note,

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1 from my screen, non-compliance with a
 2 condition of an authorization is an offence
 3 under Section 194. It can also be the subject
 4 of a--in the right instance, an order from the
 5 chief safety officer, and as we've seen
 6 earlier, decisions by the Board, taken in
 7 respect of, for example, social condition
 8 could again affect an authorization once it's
 9 issued.
 10 ROIL, Q.C.:
 11 Q. Are these conditions actually written into the
 12 authorization as it is issued? You know,
 13 subject to, is that the kind of language that
 14 gets there?
 15 MR. ANDREWS:
 16 A. Yes, that would be the language. An
 17 authorization starts out as a template which
 18 is, I believe, a single page on our website.
 19 An authorization, as it goes out of the door
 20 approved, would be an accumulation of an
 21 significant amount of information, the
 22 majority of which has been provided by the
 23 operator for assessment by the Board and then
 24 approved either outright or conditionally
 25 prior to the issuance of the authorization.

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1 ROIL, Q.C.:
 2 Q. So going back to your earlier evidence, this
 3 verification process can come back as "yes,
 4 everything you said is verified, but these are
 5 conditions that we are adding as well"?
 6 MR. ANDREWS:
 7 A. Well, the verification process is, you know,
 8 as we will be referring to it in our role, is
 9 verification that all--it spoke specifically
 10 to the safety plan, that there is an
 11 appropriate safety plan. But thereafter that
 12 there is compliance and the verification, if
 13 we had gone through the balance of that
 14 screen, we would have seen what we verify back
 15 to is all of these provisions of the
 16 authorization, the provisions which are
 17 potentially standard terms, which are included
 18 in the template, those provisions which are
 19 part of the application made by the operator,
 20 their undertaking as to how they will do
 21 things. Other things as result of a
 22 completeness review, there may be further
 23 undertakings come forward from the operator,
 24 and thereafter conditions that the Board may
 25 place on the authorization prior to its

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1 execution and issuance. These would all be
 2 the factors that Howard's department will
 3 verify back to. The audit and inspection
 4 process is a matter of confirming and
 5 monitoring back to a stated document and it
 6 would be this approved authorization that
 7 would form the base for the verification work
 8 that Howard's department would undertake on
 9 the Board's behalf.
 10 ROIL, Q.C.:
 11 Q. This is the document against which the audit
 12 and inspection is performed?
 13 MR. ANDREWS:
 14 A. This is the significant document that defines
 15 the scope of the work and the conditions under
 16 which it may be undertaken and by its
 17 issuance, the Board has viewed the safety of
 18 the application as a whole and pursuant to its
 19 risk assessment and review of the risk
 20 management by the operator determine that its
 21 an appropriate authorization to issue.
 22 ROIL, Q.C.:
 23 Q. Okay, the last couple of slides, I think.
 24 MR. ANDREWS:
 25 A. The last two slides really deal with a matter

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1 that we've already spoken about.
 2 ROIL, Q.C.:
 3 Q. Yes.
 4 MR. ANDREWS:
 5 A. You've got me a little ahead of myself, but I
 6 did want--and really the purpose of these two
 7 slides were that I believe the public in
 8 general and likely the people in this room are
 9 more familiar with the development plan
 10 approval process than they are with the
 11 authorization process. The development plan
 12 approval process has led us to, directly to
 13 projects such as the Hibernia, Terra Nova,
 14 White Rose and North Amethyst projects, but
 15 even with the approval by way of development
 16 plan, which is a high level view of the method
 17 of developing a project, all activities must
 18 still be brought--must still be undertaken
 19 pursuant to an authorization issued by the
 20 Board, and that was really the only point that
 21 I wanted to make with these slides is that
 22 even with the development plan being a very
 23 public process and more perhaps directly
 24 linked to the production of hydrocarbon in the
 25 public's mind, any of the activities which

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1 lead to that must still be undertaken with
 2 the--by going through the process of making
 3 the application for an authorization, having
 4 it reviewed by the Board, conditioned by the
 5 Board, assessed by the Board, approved by the
 6 Board prior to any of those operations being
 7 undertaken.
 8 I do note, on the slide, I do advise that
 9 there are development plan guidelines which
 10 were issued in February of 2006, which deal
 11 with the development plan piece and with which
 12 most people here would be familiar. But
 13 again, those development plan guidelines would
 14 note that activities, even once approved at a
 15 high level in a development plan, can only be
 16 undertaken pursuant to an authorization.
 17 ROIL, Q.C.:
 18 Q. That leads me perhaps to one of the issues
 19 that we skipped over a bit, but will obviously
 20 come out more in Mr. Pike's presentation. I
 21 think you've told us that the legislation and
 22 the regulations are made by government, that
 23 the Board has no role to play in drafting
 24 those documents. I gather though that there
 25 is a body of documents which falls below them

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1 called guidance or guidelines, and that the
 2 Board does have some involvement in those. Can
 3 you just speak briefly about that area of
 4 responsibility, please?
 5 MR. ANDREWS:
 6 A. I would refer--I don't have this on a screen--
 7 to Section 151.1(1) of the Federal
 8 legislation. It is entitled "Guidelines and
 9 Interpretation Notes."
 10 ROIL, Q.C.:
 11 Q. Well perhaps--I don't know if we can get the
 12 Registrar to pull up the Federal legislation.
 13 Section 151?
 14 MR. ANDREWS:
 15 A. 151.1. I don't know if Mr. Pike has this
 16 particular one on a slide.
 17 ROIL, Q.C.:
 18 Q. He may very well, but because it's in the
 19 nature of the legal regime -
 20 MR. ANDREWS:
 21 A. Well, this is a good exercise of the
 22 technology as well.
 23 ROIL, Q.C.:
 24 Q. Yeah, it's also good for us to--okay, now he
 25 needs to scan to Section 151, so it'll take a

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1 moment for it to go down there, unless we have
 2 a faster way to -
 3 MR. ANDREWS:
 4 A. Grab the bar and pull it down, I think.
 5 ROIL, Q.C.:
 6 Q. Yeah. There we go. Page 60, somewhere around
 7 there. Keep going, yeah. The only way we can
 8 do these things is to try them the first time.
 9 MR. ANDREWS:
 10 A. Thank you. I can--can I work it from there?
 11 ROIL, Q.C.:
 12 Q. Can you control it? I think you can.
 13 MS. FAGAN:
 14 Q. Yeah.
 15 MR. ANDREWS:
 16 A. You will note it is not Section 151. It is
 17 Section 151.1.
 18 ROIL, Q.C.:
 19 Q. Yes, okay.
 20 MR. ANDREWS:
 21 A. Sub 1 says "the Board may issue and publish,
 22 in such manner as the Board deems appropriate,
 23 guidelines and interpretation notes with
 24 respect to the application and administration
 25 of Sections 45, 138, 139 or any regulations

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1 made under Section 149," and that's a fairly
 2 broadly based regulatory making power. So in
 3 the hierarchy of -
 4 ROIL, Q.C.:
 5 Q. Governance?
 6 MR. ANDREWS:
 7 A. - of jurisdiction, I would say, that we look
 8 at the legislation, regulations under the
 9 legislation and the Board takes it upon itself
 10 then to interpret the application of and
 11 administration of certain parts of the Act and
 12 have issued guidelines and interpretation
 13 notes in that regard. Not unlike, some may be
 14 more familiar with interpretation notes under
 15 the Income Tax Act. That is again what the
 16 Revenue Agency would consider a primary
 17 responsibility of it to interpret the
 18 legislative jurisdiction that it's been given
 19 for application purposes, and that is very
 20 much what we do as well.
 21 ROIL, Q.C.:
 22 Q. So there is guidance given by the Board?
 23 MR. ANDREWS:
 24 A. There are a series of guidelines which are
 25 available on our website which would

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1 constitute our interpretation of how certain
 2 provisions of the legislation and the
 3 regulations are to be applied and
 4 administered.
 5 ROIL, Q.C.:
 6 Q. And do I take it that some, but not perhaps
 7 all of those might have impacts on safety?
 8 MR. ANDREWS:
 9 A. Some, yes.
 10 ROIL, Q.C.:
 11 Q. Yes, okay. We'll have Mr. Pike deal with
 12 those more specifically. Those are all the
 13 questions, I believe, that I have for Mr.
 14 Andrews, Mr. Commissioner. What we had
 15 anticipated, because one presentation leads
 16 into the other and it's really a continuum,
 17 that Mr. Andrews would come back after Mr.
 18 Pike's evidence is complete and as a panel,
 19 they would be available to answer questions of
 20 other parties in the room.
 21 COMMISSIONER:
 22 Q. I see. You've discussed this with other
 23 counsel, I presume?
 24 ROIL, Q.C.:
 25 Q. No, I haven't actually. I think, in

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1 principle, it was discussed. It wasn't
 2 actually--we had anticipated Mr. Pike and Mr.
 3 Andrews being up there at the same time from
 4 the beginning.
 5 COMMISSIONER:
 6 Q. Oh yes, okay.
 7 ROIL, Q.C.:
 8 Q. But clearly questions would go to -
 9 COMMISSIONER:
 10 Q. Well, ladies and gentlemen -
 11 ROIL, Q.C.:
 12 Q. They aren't taken by surprise.
 13 COMMISSIONER:
 14 Q. - you've heard what Mr. Roil is saying. It
 15 seems to me to be a good idea that you save
 16 your questions until after Mr. Pike gives his
 17 evidence and then you can question both Mr.
 18 Pike and Mr. Andrews, if you have questions.
 19 So if that's agreeable then, we'll ask Mr.--
 20 thank you, Mr. Andrews. We'll ask Mr. Pike to
 21 come forward.
 22 MR. HOWARD PIKE, SWORN, EXAMINATION-IN-CHIEF BY JOHN
 23 ROIL, Q.C.
 24 REGISTRAR:
 25 Q. Would you please state your name?

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1 MR. PIKE:
 2 A. Howard Leslie Pike.
 3 REGISTRAR:
 4 Q. Thank you.
 5 ROIL, Q.C.:
 6 Q. Mr. Pike, you have been previously identified
 7 as the manager operations and safety and the
 8 chief safety officer for the C-NLOPB.
 9 MR. PIKE:
 10 A. Yes.
 11 ROIL, Q.C.:
 12 Q. That is correct?
 13 MR. PIKE:
 14 A. That is correct.
 15 ROIL, Q.C.:
 16 Q. Okay. Would you perhaps tell us something
 17 about your experience and exposure with the
 18 Board and your other background that leads to
 19 your appointment and your responsibilities?
 20 MR. PIKE:
 21 A. I am a registered professional engineer in the
 22 Province of Newfoundland and have been since
 23 1985 when I transferred that registration from
 24 Alberta. I'm a graduate of the engineering
 25 program at Memorial University with a degree

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1 in Bachelor of Engineering, with a discipline
 2 of mechanical engineering. Upon graduation, I
 3 went to work for what was then known as Gulf
 4 Canada Resources in Alberta. I spent four
 5 years as a plant engineer in a sour gas plant
 6 and then a year and a half, two years as a
 7 project engineer in their projects group in
 8 Calgary, and then in 1985, early 1985, I moved
 9 back to work with the province in what was
 10 then the Petroleum Directorate and when the
 11 Board was established in 1986, I moved over
 12 and started work with the Board. At the end
 13 of the '80s, I became an engineering
 14 supervisor with the Board and then in 1996, I
 15 became the manager of operations and safety,
 16 and then in 2000, I took over the role as
 17 chief safety officer.

18 ROIL, Q.C.:
 19 Q. And you've been in that role ever since 19 -
 20 MR. PIKE:
 21 A. I've been there since, yes, every since.
 22 ROIL, Q.C.:
 23 Q. 2000?
 24 MR. PIKE:
 25 A. As the chief safety officer, yes.

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1 ROIL, Q.C.:
 2 Q. Okay. So there are two responsibilities or
 3 two duties, are they?
 4 MR. PIKE:
 5 A. Yes.
 6 ROIL, Q.C.:
 7 Q. So the operations and safety manager does not
 8 have to be the chief safety officer?
 9 MR. PIKE:
 10 A. No.
 11 ROIL, Q.C.:
 12 Q. Okay. Okay, well in your role as either one
 13 of those persons, probably more as your chief
 14 safety officer, what can you tell the
 15 Commissioner and all of us here about the
 16 operations of that department and the
 17 functions of the chief safety officer that can
 18 assist us in our undertaking?
 19 MR. PIKE:
 20 A. Well, I will take you from the general
 21 overview of the Board provided by Mr. Andrews
 22 and focus my presentation on safety. I will
 23 provide a general introduction to the safety
 24 regime used by the Canada Newfoundland and
 25 Labrador Offshore Petroleum Board, and I will

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1 refer to them as the Board and that's the
 2 general sense there. I will talk about the
 3 importance of the authorization of an offshore
 4 activity, how we use it to ensure compliance,
 5 my use of the statutory power to grant
 6 regulatory equivalencies, the process we use
 7 to assess an application for an authorization
 8 of all offshore activities, the level and
 9 detail of reporting we require of the operator
 10 conducting any activity in the offshore, and
 11 the compliance and enforcement regime used by
 12 the Board.

13 ROIL, Q.C.:
 14 Q. Okay. So in the course of your presentation,
 15 we will deal with these five different areas
 16 of responsibility?
 17 MR. PIKE:
 18 A. That would be my intention, yes.
 19 ROIL, Q.C.:
 20 Q. Good, okay.
 21 MR. PIKE:
 22 A. And I will use the convention as Mr. Andrews
 23 and references to the Acts will be to the
 24 Federal Act.
 25 ROIL, Q.C.:

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1 Q. Yes, thank you.
 2 MR. PIKE:
 3 A. My provincial colleagues don't necessarily
 4 appreciate that.
 5 ROIL, Q.C.:
 6 Q. We'll have to put that aside for the time
 7 being. We will, for the purposes of your
 8 presentation, all use the Federal legislation.
 9 MR. PIKE:
 10 A. What is it that the C-NLOPB does within the
 11 safety regime? Our department, operations and
 12 safety has an established safety assessment
 13 process. We review the operator's application
 14 to conduct an activity in a systematic manner
 15 prior to the Board issuing any authorization
 16 for that activity. Remember, the Board's
 17 legislative authority is over the operator and
 18 we're referring there normally to the
 19 petroleum operator, the holder of that
 20 authorization.
 21 ROIL, Q.C.:
 22 Q. Okay, so you adopt the same lexicon, if you
 23 will, or jargon that Mr. Andrews used?
 24 MR. PIKE:
 25 A. Yes.

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1 ROIL, Q.C.:

2 Q. The operator is the petroleum operator

3 normally, although it could be, I think he

4 said, in a seismic operation, there could be a

5 company that -

6 MR. PIKE:

7 A. A seismic contractor themselves may be

8 conducting an operation, spec seismic, which

9 would be seismic they would expect to sell to

10 an petroleum company.

11 ROIL, Q.C.:

12 Q. In the overall, let's say you have a hundred

13 authorizations, or sorry, a hundred operators,

14 or take a number, 50, how many would be non-

15 oil company related?

16 MR. PIKE:

17 A. Very few of them would be non-oil companies.

18 ROIL, Q.C.:

19 Q. Yeah, okay.

20 MR. PIKE:

21 A. This process considers the safety of the

22 activity as a whole. It breaks it down--it

23 then breaks down the activity into its

24 component parts, that includes the

25 installation, its facilities, the people and

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1 the processes. The operator presents this in

2 the form of a plan for safety, a safety plan,

3 if you will. It includes not only the

4 operator's activities, but also the activities

5 of its contractors.

6 ROIL, Q.C.:

7 Q. Now is a safety plan a document that I could

8 go onto the web and just pull it off and you

9 know, Google the word "safety plan" and I'll

10 pull up a stock safety plan or are safety

11 plans very different?

12 MR. PIKE:

13 A. They would tend to be very different,

14 depending on the operator and how they've

15 structured their business.

16 ROIL, Q.C.:

17 Q. Okay. But what do they have in common?

18 MR. PIKE:

19 A. I have a slide later on that will talk in

20 terms of what the requirements are of the

21 safety plan, when we get to that.

22 ROIL, Q.C.:

23 Q. Okay, yes. Yeah, absolutely.

24 MR. PIKE:

25 A. We're talking there about the activities as

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1 contractors and that's whether it's food

2 services or helicopter services. So there's

3 the process of reviewing a safety plan--so in

4 the process of reviewing a safety plan, we

5 review the helicopter operations. That

6 includes the helicopter systems and equipment,

7 emergency response, training and how the

8 operator supervises such contracts. So our

9 safety objectives are to verify that operators

10 have appropriate safety plans in place. We

11 verify that operators follow those plans and

12 the applicable statutory requirements, and we

13 verify that deviations from approved plans are

14 corrected.

15 ROIL, Q.C.:

16 Q. So again, I think that's consistent with the

17 information that Mr. Andrews brought to us

18 this morning. So you are now beginning to

19 focus on naturally the helicopter portion of

20 that safety plan?

21 MR. PIKE:

22 A. We will, and maybe just talk a little bit more

23 about what all these means. Simply put,

24 safety is about risk management, but there's

25 nothing simple about it. There are many

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1 books, reports, studies, that talk about

2 safety and risk management, but perhaps it was

3 never so well explained than in a very

4 important report written here in Newfoundland

5 and Labrador, the report of the Royal

6 Commission on the Ocean Ranger Marine

7 Disaster. It asks and answers the question

8 "what is safety? What is safety?" The term

9 in its human context has no meaning except in

10 relation to the potential risk of harm. It is

11 essentially a relative term, the complement of

12 risk. Risk is not new to our times and place.

13 It has been a pervasive and persistent factor

14 of man's condition since the beginning of

15 life. To put it into context of our everyday

16 lives, let's take a look of driving across the

17 island on the Trans Canada Highway.

18 ROIL, Q.C.:

19 Q. Something that some of us do on a regular

20 basis.

21 MR. PIKE:

22 A. Some of you would be very familiar with that,

23 I believe, Mr. Roil. Is it safe? Obviously

24 there is a risk because people are killed

25 every year in accidents on that highway. So

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1 what do we do to manage that risk?
 2 ROIL, Q.C.:
 3 Q. And that "we" I take it this is not the Board.
 4 This is what does society do?
 5 MR. PIKE:
 6 A. What does society do to manage that risk,
 7 correct. There are certain laws and
 8 regulations that have been put in place by the
 9 responsible authorities based on safety
 10 measures, reports and experience. They
 11 include the speed limit, when you can pass and
 12 when you can't pass. We have a responsibility
 13 as well as a traveller. It includes making
 14 sure that your vehicle is in good running
 15 order, it has enough fuel, that it has a
 16 licensed driver and that that driver obeys the
 17 rules of the road along the way.
 18 So it is for us in the offshore. We
 19 cannot guarantee the safety of workers any
 20 more than authorities can guarantee the safety
 21 of a driver on the highway. We can though,
 22 and we do verify the processes an operator has
 23 in place to manage risk for the protection and
 24 safety of the people working offshore. How do
 25 we look at that risk? What are the elements

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1 that we should be looking at?
 2 Again, I have found the explanation of
 3 safety in the Report of the Royal Commission
 4 on the Ocean Ranger to be very informative.
 5 High standards of safety in the workplace are
 6 achieved when well designed equipment is
 7 operated properly by well managed and trained
 8 persons. Occupational safety is maintained by
 9 keeping these factors in a state of positive
 10 balance in what is normally a highly dynamic
 11 situation. A highly dynamic situation, when
 12 considering offshore Newfoundland and Labrador
 13 may be a bit of an understatement. It is
 14 definitely a highly dynamic environment, and
 15 in order to manage risk in such an
 16 environment, operators need a plan for safety.
 17 We require a safety plan for all activities.
 18 We review and verify all safety plans before
 19 any work authorization is issued. Safety of
 20 an activity involves three elements: the
 21 appropriate equipment; the proper procedures;
 22 and competent personnel.
 23 Before issuing an authorization, the
 24 Board shall consider the safety of the work or
 25 activity. We do this by reviewing the system

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1 as a whole and its components, including the
 2 structures, facilities, equipment, operating
 3 procedures and personnel. Understanding what
 4 we do is important. Sometimes equally
 5 important is understanding what we don't do.
 6 In the winter of 2006, representatives
 7 from Norway, the Petroleum Safety Authority
 8 and the Norwegian Petroleum Directorate
 9 performed a peer review of our safety,
 10 environmental protection and resource
 11 management functions.
 12 ROIL, Q.C.:
 13 Q. Just stop you there for a moment. Is that
 14 something that you sought or that is by some
 15 convention?
 16 MR. PIKE:
 17 A. We asked if they would be willing to perform
 18 the peer review and they agreed to our
 19 request.
 20 ROIL, Q.C.:
 21 Q. Okay.
 22 MR. PIKE:
 23 A. The first recommendation related to the role
 24 of the Board and we'll read from that
 25 recommendation which is posed as a question

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1 that has a major bearing on the rest of their
 2 report, and I read "is it the view of the
 3 Board that its role is really to guarantee the
 4 prudent conduct of the Newfoundland and
 5 Labrador offshore operations, including
 6 avoiding waste"--and that would be waste of
 7 petroleum.
 8 ROIL, Q.C.:
 9 Q. Yes.
 10 MR. PIKE:
 11 A. - securing the safety of offshore workers,
 12 protecting the environment and the industry's
 13 assets, or is it its role to be there to
 14 oversee the operators do their best to perform
 15 prudently in accordance with the legislative
 16 requirements and not to take the
 17 responsibility that is vested with industry?"
 18 They were squarely in the second option, and
 19 that is the way they operate.
 20 ROIL, Q.C.:
 21 Q. So you're saying to us that the Petroleum
 22 Directorate -
 23 MR. PIKE:
 24 A. The Petroleum Safety Authority in Norway very
 25 much acts in that second part of that

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1 question.

2 ROIL, Q.C.:

3 Q. They suggested you go there or they asked you

4 the question and the Board answered it or how

5 did it come about?

6 MR. PIKE:

7 A. The Norwegians were very diplomatic.

8 ROIL, Q.C.:

9 Q. Okay.

10 MR. PIKE:

11 A. I will not say there were suggestions in

12 there, but that was certainly the gist of what

13 they had written.

14 ROIL, Q.C.:

15 Q. Okay.

16 MR. PIKE:

17 A. But that view is not inconsistent with the law

18 in Canada. That view is entirely consistent

19 with the basis of occupational health and

20 safety law in Canada. The internal

21 responsibility system, a system that has been

22 established for the last number of years and

23 is the basis for all occupational health and

24 safety law in Canada.

25 ROIL, Q.C.:

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1 Q. And the basis is what, internal

2 responsibility?

3 MR. PIKE:

4 A. The concept of internal workplace

5 responsibilities suggests that it is the

6 workplace stakeholders who are most

7 effectively able to assess and determine the

8 particular workplace hazards and health and

9 safety of workers. They are the ones who are

10 most effectively able to provide the most

11 localized, specific and effective solutions to

12 reducing workplace hazards, risk to workers,

13 injuries and accidents, and to quote again

14 from the Ocean Ranger Commission, "a mode of

15 enhancing safety that is likely to be more

16 effective than regulations is a more rigorous

17 enforcement of the principle of

18 accountability."

19 ROIL, Q.C.:

20 Q. And so accountability, I take it, is the

21 principle that says that the oil operator, the

22 person with the authorization has the first

23 and primary responsibility?

24 MR. PIKE:

25 A. Responsibility, yes.

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1 ROIL, Q.C.:

2 Q. Okay.

3 MR. PIKE:

4 A. That would be correct. Just as authorities do

5 not guarantee your safety when you take a trip

6 on the Trans Canada Highway, the Board does

7 not guarantee the safety of workers in the

8 offshore. The operators are responsible for

9 the protection and safety of workers and the

10 environment. It is their duty. The Board's

11 role is not to assume responsibility for

12 creating and maintaining safe and healthy

13 workplace. It does though make sure that the

14 operator creates and maintains such an

15 environment. The Board's role is to establish

16 and clarify responsibilities of the parties

17 under law, to oversee those parties carry out

18 their responsibilities and to intervene

19 appropriately when those responsibilities are

20 not carried out.

21 ROIL, Q.C.:

22 Q. And that is what your department is all about?

23 MR. PIKE:

24 A. That's what our department is all about. So

25 how does the Board provide that oversight?

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1 Under the legislation, any offshore activity

2 requires prior authorization of the Board.

3 It's interesting to note this is phrased in

4 terms of what the operator cannot do. Again,

5 we look sometimes at things we can't do as

6 opposed to the things we can do. In the

7 context of our drive across the island, that

8 means that before you even set out, you have

9 to have permission from the authorities to

10 make the trip.

11 ROIL, Q.C.:

12 Q. Now in Newfoundland right now, I can get in

13 the car and drive away and don't need

14 anybody's permission.

15 MR. PIKE:

16 A. Provided you have--your car is licensed and

17 you are a licensed driver, yes.

18 ROIL, Q.C.:

19 Q. Okay.

20 MR. PIKE:

21 A. In this regime, that would not be sufficient

22 for you to drive across the island.

23 ROIL, Q.C.:

24 Q. Okay. If I would make the analogy to the

25 offshore, I would need what?

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1 MR. PIKE:
 2 A. You would need -
 3 ROIL, Q.C.:
 4 Q. Specific approval to drive across?
 5 MR. PIKE:
 6 A. That's correct, permission to make the drive
 7 across the island. For the offshore, that
 8 permission is the work authorization. An
 9 operator has to make an application and it
 10 isn't as simple as saying "we want to do this
 11 work. Please give us permission." A work
 12 authorization application has to be supported
 13 by various documents. Among those documents
 14 and among those requirements is a safety plan.
 15 ROIL, Q.C.:
 16 Q. I think Mr. Andrews read to us or also
 17 referred to Section 137 of the legislation.
 18 MR. PIKE:
 19 A. He did, yes. And if we move to Section 138.2
 20 of the Atlantic Accord Acts, establishes a
 21 duty on the Board and the Chief Safety Officer
 22 to review the activity as a whole as well as
 23 its components. To fulfil that legislative
 24 duty, we established our safety assessment
 25 process which I mentioned earlier. This

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1 process ensures a detailed and consistent
 2 review of all safety plans. It provides
 3 confidence that each operator has an
 4 appropriate system in place to manage risks to
 5 people, both from major hazards and from day
 6 to day occupational hazards. As part of that
 7 process, the safety officers may and do visit
 8 the installations to conduct pre-authorization
 9 safety audits.
 10 ROIL, Q.C.
 11 Q. And I take it you will, as these slides
 12 continue, you will get into the detail of
 13 that.
 14 MR. PIKE:
 15 A. Yes.
 16 ROIL, Q.C.
 17 Q. Good.
 18 MR. PIKE:
 19 A. Again, the legislative authority under Section
 20 138, when an operator has made an application,
 21 the Board reviews it and assesses it. The
 22 legislation clearly states that that Board may
 23 issue the authorization after reviewing the
 24 application, not that it shall, but that it
 25 may. In addition, the Board has authority to

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1 add conditions or requirements to an
 2 operations authorization. Failure to comply
 3 with such conditions can result in
 4 cancellation of the authorization or
 5 constitutes an offence under the Act, meaning
 6 the operator can be prosecuted. And who does
 7 all this work?
 8 ROIL, Q.C.
 9 Q. I take it you have some people within your
 10 organization and it isn't Howard by himself?
 11 MR. PIKE:
 12 A. No. The Operations and Safety Department of
 13 the Board has ten positions, two of which we
 14 are currently recruiting. We also have one
 15 administrative assistant and normally we would
 16 have the services of engineering co-op
 17 student. All officers hold post secondary
 18 degrees.
 19 ROIL, Q.C.
 20 Q. And by officers -
 21 MR. PIKE:
 22 A. They would be safety officers.
 23 ROIL, Q.C.
 24 Q. Safety officers, so they're on the right hand
 25 side of our slide, yes?

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1 MR. PIKE:
 2 A. Yes.
 3 ROIL, Q.C.
 4 Q. Okay.
 5 MR. PIKE:
 6 A. The safety officers and the senior structures
 7 engineer, the senior safety advisor and the
 8 well operations engineer would also be
 9 considered safety officers as well.
 10 ROIL, Q.C.
 11 Q. Oh, are they? Okay.
 12 MR. PIKE:
 13 A. And all officers hold post secondary degrees.
 14 Five are professional engineers, six are
 15 registered safety professionals. Four of us
 16 have been with the Board since its inception
 17 in 1986. This not a case where we simply hire
 18 a person and dub them a safety officer.
 19 Extensive training is required to become a
 20 safety officer for the Newfoundland and
 21 Labrador Offshore. There are both technical
 22 requirements as well as specific courses
 23 including the law enforcement investigation
 24 course conducted by the RCMP. I have a
 25 dedicated professional staff in whom I have

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1 great faith. It is through their teamwork
 2 that we are able to get the job done.
 3 The legislation is not enough. Operators
 4 also have to comply with regulations that are
 5 established and approved by governments. The
 6 current regulations include the certificate of
 7 fitness. This introduces a third party
 8 verification of installations. The
 9 regulations define who can act as a certifying
 10 authority and the process of obtaining a
 11 certificate of fitness. In addition, it will
 12 define installations. And they would include
 13 a production installation, a drilling
 14 installation, a diving installation and an
 15 accommodations installation.
 16 ROIL, Q.C.
 17 Q. Now, you've used the expression third party
 18 verification. Who would the third parties be
 19 or the third party be that you would seek
 20 verification from, by way of examples?
 21 MR. PIKE:
 22 A. There are four currently identified and they
 23 would be the major class societies; Norsk
 24 Veritas, the Norwegian class society.
 25 ROIL, Q.C.

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1 Q. You're talking really fast. Det Norsk
 2 Veritas, we would also know as DNV?
 3 MR. PIKE:
 4 A. DNV, you're right. That's the Norwegian
 5 classification society.
 6 ROIL, Q.C.
 7 Q. They are a classification society that also
 8 has to do with shipping, for example?
 9 MR. PIKE:
 10 A. Yes.
 11 ROIL, Q.C.
 12 Q. Yes, okay.
 13 MR. PIKE:
 14 A. Their principle business would be shipping.
 15 ROIL, Q.C.
 16 Q. Yes, exactly. Okay, so, DNV is one?
 17 MR. PIKE:
 18 A. Lloyd's Register of Shipping which is the UK
 19 based -
 20 ROIL, Q.C.
 21 Q. Yes.
 22 MR. PIKE:
 23 A. - ship classification. Bureau Veritas which
 24 is the French based ship classification
 25 society and the American Bureau of Shipping.

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1 ROIL, Q.C.
 2 Q. Which is also known as ABS sometimes?
 3 MR. PIKE:
 4 A. Yes, you would know them as ABS.
 5 ROIL, Q.C.
 6 Q. Okay. So, what is it that you were seeking
 7 from these third party classification
 8 societies by way of example?
 9 MR. PIKE:
 10 A. They would be issuing a certificate of fitness
 11 attesting to the fact that the installation
 12 meets some of the regulatory requirements.
 13 The engineering specifications that would
 14 occur in the next regulation, the petroleum
 15 installations regulation.
 16 ROIL, Q.C.
 17 Q. You mentioned installation. What would an
 18 installation be? Would a drilling platform be
 19 an installation?
 20 MR. PIKE:
 21 A. Yes.
 22 ROIL, Q.C.
 23 Q. Okay. That jargon is perhaps not known to us
 24 as well as it is known to you.
 25 MR. PIKE:

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1 A. Certainly.
 2 ROIL, Q.C.
 3 Q. So, I just want to take baby steps.
 4 MR. PIKE:
 5 A. The Hibernia platform would be considered a
 6 production installation. It also has drilling
 7 facilities. A production installation can
 8 include facilities to produce oil, facilities
 9 to drill for the oil, to accommodate people as
 10 well. So, that would be the production
 11 installation and Hibernia would be an example
 12 of that with all three.
 13 ROIL, Q.C.
 14 Q. Right.
 15 MR. PIKE:
 16 A. In the case of the Terra Nova FPSO, that would
 17 be a production installation, but it only
 18 contains the accommodations and the facilities
 19 to produce oil. There is no drilling
 20 capability on the Terra Nova FPSO. In that
 21 case, that field uses a separate drilling
 22 installation; one of the mobile offshore
 23 drilling units.
 24 ROIL, Q.C.
 25 Q. The so-called semi-submersibles?

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1 MR. PIKE:
 2 A. Semi-submersibles would be the major one used
 3 in this jurisdiction.
 4 ROIL, Q.C.
 5 Q. Right. So, to go back to Mr. Andrews'
 6 example, if it were a seismic vessel, it would
 7 -
 8 MR. PIKE:
 9 A. It would not require a certificate of fitness.
 10 ROIL, Q.C.
 11 Q. It would not?
 12 MR. PIKE:
 13 A. It would not.
 14 ROIL, Q.C.
 15 Q. Okay. So, certificates of fitness are
 16 required for installations?
 17 MR. PIKE:
 18 A. Yes, those defined in that particular
 19 regulation.
 20 ROIL, Q.C.
 21 Q. Okay. And installations -
 22 MR. PIKE:
 23 A. The other one that would be there is there was
 24 a diving program the summer for the
 25 construction activity of North Amethyst. That

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1 was a diving installation and required a
 2 certificate of fitness.
 3 ROIL, Q.C.
 4 Q. Okay. So, what you're saying here, I take it,
 5 is that you look to third parties who are in
 6 the business of verifying the fitness of this
 7 equipment?
 8 MR. PIKE:
 9 A. Yes.
 10 ROIL, Q.C.
 11 Q. Okay. And does your department have regular
 12 ongoing liaison with these people? Do you
 13 have people you talk to you at these agencies?
 14 MR. PIKE:
 15 A. The senior structures engineer listed in the
 16 organizational chart has responsibilities to
 17 co-ordinate with the certifying authorities.
 18 ROIL, Q.C.
 19 Q. Okay. Okay, I think then I've dealt as much
 20 as I need to with the certificate of fitness
 21 for the third party verification agencies.
 22 MR. PIKE:
 23 A. Okay. Petroleum installations, I refer to
 24 those simply as the engineering regulations.
 25 They really contain the engineering standards

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1 applied to offshore installations including
 2 the requirements for helidecks. The standards
 3 and specification for helidecks would be
 4 included in those regulations.
 5 ROIL, Q.C.
 6 Q. Okay. And we need to come back to that, I'm
 7 not sure if we come back to it later, with
 8 respect to helidecks, is there another place
 9 that you go seeking guidance or third party
 10 verification there?
 11 MR. PIKE:
 12 A. If we're doing a variation from what's in the
 13 actual regulation, we would usually consult
 14 with Transport Aviation on Helideck
 15 installations, depending on what aspects of it
 16 we're dealing with.
 17 ROIL, Q.C.
 18 Q. Okay.
 19 MR. PIKE:
 20 A. The Petroleum Drilling Regulations govern the
 21 drilling of offshore wells.
 22 ROIL, Q.C.
 23 Q. Um-hm.
 24 MR. PIKE:
 25 A. Petroleum Production and Conservation

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1 Regulations governs the actual production of
 2 petroleum offshore. Petroleum Diving
 3 Regulations govern the diving activities. The
 4 Draft Petroleum Occupational Health and Safety
 5 Regulations are attached as a condition of
 6 each authorization.
 7 ROIL, Q.C.
 8 Q. Okay. I'll stop you there for a moment. You
 9 used the word draft in relation to these
 10 regulations. Do I take it that these are not
 11 yet passed into law?
 12 MR. PIKE:
 13 A. The governments have not approved the
 14 Occupational Health and Safety Regulations.
 15 ROIL, Q.C.
 16 Q. But they are in draft form?
 17 MR. PIKE:
 18 A. They are in draft form.
 19 ROIL, Q.C.
 20 Q. Okay. And how you do you, if at all, use
 21 those draft regulations in your protocols?
 22 MR. PIKE:
 23 A. We would use them the same as a regulation.
 24 They are a condition of the authorization.
 25 So, we would tend to treat them the same as a

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1 regulation. They have requirements on
 2 lighting level, sound levels, the electrical
 3 systems. A number of those are included in
 4 that regulation and we would use those.
 5 ROIL, Q.C.
 6 Q. So, as an operator, would you get an
 7 authorization, would it have to comply with
 8 the Petroleum Occupational Safety and Health
 9 regulations that are in draft?
 10 MR. PIKE:
 11 A. Yes, as a condition of the authorization, they
 12 must comply with those, again, or it would be
 13 an offence under the Act.
 14 ROIL, Q.C.
 15 Q. Yes.
 16 MR. PIKE:
 17 A. The Petroleum Geophysical operations covers
 18 the seismic programs that we referred to
 19 before. Most seismics would not include
 20 helicopter operations, but the occasional
 21 large seismic vessel may have a helideck and
 22 may conduct helicopter operations. We have
 23 had a few that have had helicopter operations,
 24 but not many.
 25 ROIL, Q.C.

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1 Q. So, do I take it then that whether or not a
 2 helicopter transport regime is required does
 3 not necessarily depend on the activity going
 4 on, does it tie more perhaps to the permanence
 5 or the length of time that the installation is
 6 in place?
 7 MR. PIKE:
 8 A. It's certainly one of the operational options
 9 on a larger seismic vessel that has that
 10 helideck option that they could potentially do
 11 crew changes using a helicopter. Sometimes
 12 they'll just schedule it so they do the crew
 13 change and come back into shore. It depends
 14 on the nature of the operation they're
 15 conducting as to whether or not they would
 16 want to stop what they were doing and come
 17 into shore and do the crew change. There
 18 would also usually be a logistical piece where
 19 they need to fuel up and provisions would also
 20 be required. So, sometimes they'll do that by
 21 coming into shore; sometimes they'll do that
 22 offshore, depending on the size and the scope
 23 of the program.
 24 ROIL, Q.C.
 25 Q. So, we know, I think, by virtue of the fact

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1 that we live in this community that there are
 2 helicopter transport operations associated
 3 with production facilities.
 4 MR. PIKE:
 5 A. Yes.
 6 ROIL, Q.C.
 7 Q. The three that are principle ones that are out
 8 there now or the four, I guess, if you include
 9 the Amethyst. Have there been other
 10 activities undertaken offshore in the nature
 11 of drilling seismic and whatever that have had
 12 helicopter transits associated with them in
 13 the past?
 14 MR. PIKE:
 15 A. Diving installations would normally also have
 16 a helideck.
 17 ROIL, Q.C.
 18 Q. Yes.
 19 MR. PIKE:
 20 A. And sometimes again if the operations warrant,
 21 they will do crew changes by helicopter. The
 22 diving installation that was operating this
 23 summer did do crew changes by helicopter.
 24 ROIL, Q.C.
 25 Q. What kind of an installation did the diving

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1 take place from?
 2 MR. PIKE:
 3 A. It's a ship shape, a rather large ship which
 4 would be dynamically positioned and they would
 5 have divers operating from that vessel.
 6 ROIL, Q.C.
 7 Q. Yes. And so by image comparison, it would be
 8 more like an FPSO than it would be like the
 9 Hibernia platform -
 10 MR. PIKE:
 11 A. Probably mid way between the two.
 12 ROIL, Q.C.
 13 Q. Okay.
 14 MR. PIKE:
 15 A. It would be larger than what we would see in
 16 the harbour as a supply boat, but not as big
 17 as a FPSO or one of the shuttle tankers.
 18 ROIL, Q.C.
 19 Q. Okay.
 20 MR. PIKE:
 21 A. Somewhere in between those.
 22 ROIL, Q.C.
 23 Q. Yes.
 24 MR. PIKE:
 25 A. After reviewing the report from the

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1 independent review team from Norway, managers
 2 took time to focus on an implementation plan.
 3 We reviewed all of the Board's programs and
 4 activities. We took a fresh look at the
 5 regulations to see if there were better
 6 methods of attending to the Board's role as a
 7 regulator. We made recommendations to a
 8 steering committee of the Board, made up of
 9 five Board members. The Board had, prior to
 10 this, eight different authorizations relating
 11 to offshore oil and gas activities. We merged
 12 six of these authorizations into a single new
 13 operations authorization. That absorbed the
 14 elements of the other authorization without
 15 reducing our oversight.

16 ROIL, Q.C.
 17 Q. Yes, if I can stop you there. So, do I take
 18 it that this Norwegian Peer Review led the
 19 Board to refocus some of its -

20 MR. PIKE:
 21 A. We looked at some of the ways we had
 22 administered those regulations. They felt
 23 that a lot of what we did was driving us to do
 24 a lot of administrative work, and the
 25 regulations called up discrete authorization.

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1 The Production and Conservation Regulations
 2 actually references a production operations
 3 authorization and a well operations
 4 authorization. Drilling--Petroleum Drilling
 5 Regulations call up a drilling program
 6 authorization. So in the case of the Hibernia
 7 Platform, they would currently have or they
 8 have three authorizations. When it comes up
 9 for renewal at the end of the month, they will
 10 have one authorization, an operations
 11 authorization, but that will administratively
 12 combine what the regulations currently require
 13 in the way of three authorizations.

14 ROIL, Q.C.:
 15 Q. Mr. Pike, can I ask you as Chief Safety
 16 Officer on behalf of the Board, are you
 17 satisfied that that change in working protocol
 18 or working process, are you satisfied that it
 19 has not negatively impacted your ability to be
 20 an effective oversight in terms of safety?

21 MR. PIKE:
 22 A. It has not diminished our ability, our
 23 oversight of those operations.

24 ROIL, Q.C.:
 25 Q. You're quite comfortable with that?

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1 MR. PIKE:
 2 A. Yes.

3 ROIL, Q.C.:
 4 Q. Okay, good.

5 MR. PIKE:
 6 A. Likewise we have done the same with our
 7 approvals. In addition to the authorizations,
 8 there were some discrete approvals, also
 9 referenced in the regulations. We reduced the
 10 number of individual approvals from 26 to 8.
 11 We merged 19 approvals into other applications
 12 and created one called a well approval, which
 13 captures the essential components of several
 14 approvals, again bringing things together
 15 without the loss of oversight but packaging
 16 them together so administratively they were
 17 easier to manage. This has reduced the
 18 administrative burden without the reduction in
 19 our oversight. So the key here was not to
 20 lose the regulatory role but to reduce some of
 21 the administrative burden that was taking
 22 place. Under the Frontier and Offshore
 23 Regulatory Renewal Initiative, the governments
 24 have begun working to combine the Petroleum
 25 Drilling and the Production and Conservation

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1 Regulations into one regulation.

2 ROIL, Q.C.:
 3 Q. Okay, so on the slide that we have in front of
 4 you, the third and fourth regulations, is it,
 5 are being combined into one?

6 MR. PIKE:
 7 A. Are being combined into one, yes.

8 ROIL, Q.C.:
 9 Q. But that's being done by government?

10 MR. PIKE:
 11 A. That's being done by government.

12 ROIL, Q.C.:
 13 Q. Does your--does the C-NLOPB or does your
 14 department have any input or any say in that
 15 process?

16 MR. PIKE:
 17 A. We have been asked for advice and we have
 18 given that advice to government when
 19 requested, so we have participated in the
 20 development of those regulations. They have
 21 adopted a goal-oriented regulatory style, so
 22 that's a blend of what we've referred to as
 23 the performance or goal-oriented and
 24 prescriptive. There are still some
 25 prescriptive elements in there but there are

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1 many pieces that are goal oriented.
 2 ROIL, Q.C.:
 3 Q. And in this way you're adopting the same
 4 meanings as John Andrews had in his
 5 presentation this morning where he -
 6 MR. PIKE:
 7 A. Yes, we are.
 8 ROIL, Q.C.:
 9 Q. - talked about prescriptive versus goal-
 10 oriented or performance?
 11 MR. PIKE:
 12 A. Yes.
 13 ROIL, Q.C.:
 14 Q. Yeah.
 15 MR. PIKE:
 16 A. Those new drilling and production regulations
 17 are scheduled to come into force by the end of
 18 the year but that's totally under the purview
 19 of the government, so pending that, we are,
 20 the current schedule would be having those
 21 coming into force at the end of the year.
 22 With our own review, our program review, we
 23 are well on our way to being able to implement
 24 those new regulations.
 25 ROIL, Q.C.:

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1 Q. Just before you go on there, I asked him, and
 2 I'm not sure whether it comes out anywhere
 3 else in your presentation, but there is, we
 4 know, a similar, although perhaps not
 5 identical, regime going on in the Province of
 6 Nova Scotia. Does your department, is it
 7 aware of the activities of the Safety and
 8 Operations Department in the Nova Scotia -
 9 MR. PIKE:
 10 A. Yes.
 11 ROIL, Q.C.:
 12 Q. - Board?
 13 MR. PIKE:
 14 A. We interact very regularly with the Nova
 15 Scotia Board and they were also participants
 16 because the similar legislation will be coming
 17 into force in Nova Scotia as well, so they
 18 were part of the same group that helped the
 19 governments develop those regulations.
 20 ROIL, Q.C.:
 21 Q. So the combining of the regulations here might
 22 very well be found to be also happening within
 23 their regime?
 24 MR. PIKE:
 25 A. And I guess I will in a minute talk about the

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1 guidance, and there is some guidance being
 2 developed to go along with these new
 3 regulations. In a goal-oriented regime, the
 4 guidance can play an important role as well.
 5 ROIL, Q.C.:
 6 Q. Okay.
 7 MR. PIKE:
 8 A. And that guidance is being developed jointly
 9 with the Nova Scotia Board and with the
 10 National Energy Board. We attach as a
 11 condition of each of our authorizations the
 12 other requirements respecting occupational
 13 health and safety. Again, failure to comply
 14 with such conditions can result in
 15 cancellation of the authorization, in other
 16 words, the operator has to stop work, or it is
 17 considered an offence under the Act and the
 18 operator can be prosecuted. In other words,
 19 we can take them to court.
 20 ROIL, Q.C.:
 21 Q. Has the Board ever been required to do that in
 22 your experience in the Newfoundland offshore?
 23 MR. PIKE:
 24 A. No.
 25 ROIL, Q.C.:

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1 Q. There has never been an operator taken to
 2 court for non-compliance?
 3 MR. PIKE:
 4 A. Not on the safety side.
 5 ROIL, Q.C.:
 6 Q. Not--that's what I'm focusing on is -
 7 MR. PIKE:
 8 A. Yes.
 9 ROIL, Q.C.:
 10 Q. - the safety side, yeah.
 11 MR. PIKE:
 12 A. These requirements mirror the provisions of
 13 the provincial Occupational Health and Safety
 14 Act. Employer duties--it includes employer
 15 duties, some of which include the duty to
 16 maintain a safe workplace and the necessary
 17 equipment, systems and tools that are safe and
 18 without risk to the health and safety of their
 19 workers; the duty to provide the information,
 20 instruction, training, supervision and
 21 facilities that are necessary to ensure the
 22 health, safety and welfare of their workers;
 23 the duty to ensure their workers, and
 24 particularly their supervisors, are familiar
 25 with health and safety hazards that may be met

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1 by them in the workplace. In addition, there
 2 are duties for the workers and they include
 3 the duty to protect their own health and
 4 safety and the duty to protect the health and
 5 safety of other workers. Imminent danger,
 6 there's a provision that the worker shall not
 7 carry out work where there exists an imminent
 8 danger to their or another worker's health and
 9 safety. Requirements for a health and safety
 10 program and a health and safety policy; the
 11 requirement for a Joint Occupational Health
 12 and Safety Committee, another key ingredient
 13 in the internal responsibility system. It
 14 includes provisions of the membership for
 15 those committees, the committee training
 16 required, the duties of the committee and the
 17 meetings of the committee. It also includes
 18 the right to refuse work, the right to refuse
 19 dangerous work, we would know it as. So there
 20 is a process for that.
 21 ROIL, Q.C.:
 22 Q. Sorry, go ahead.
 23 MR. PIKE:
 24 A. And that would include, the first stage of
 25 that process would be reporting it to the

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1 supervisor, and if the worker cannot resolve
 2 it with that, at that level, then it would be
 3 referred to the Joint Occupational Health and
 4 Safety Committee for investigation, and if the
 5 worker is still not satisfied, then it would
 6 be referred to, for investigation, by a safety
 7 officer of the Board.
 8 ROIL, Q.C.:
 9 Q. Just going around the point of joint
 10 occupational health and safety committees,
 11 it's my understanding that on these offshore
 12 facilities, that there are many employers.
 13 How is the occupational health and safety
 14 regime set up in the offshore with respect to
 15 the fact that there are many employers? I
 16 know that on land every employer has to have a
 17 committee. How does it work in the offshore?
 18 MR. PIKE:
 19 A. Again, as you indicate, the provincial
 20 legislation would refer to an employers' joint
 21 occupational health and safety committee. In
 22 the offshore, each installation requires a
 23 joint occupational health and safety
 24 committee, so it's workplace based and not
 25 employer based.

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1 ROIL, Q.C.:
 2 Q. Okay. So the word, "joint," does that refer
 3 to employer and employee?
 4 MR. PIKE:
 5 A. Yes, it would refer to employer-employee
 6 relationship. There is a slide a little bit
 7 further on in the presentation that talks
 8 about the Joint Occupational -
 9 ROIL, Q.C.:
 10 Q. Okay. So we will get into detail on that.
 11 MR. PIKE:
 12 A. We will get into detail on that.
 13 ROIL, Q.C.:
 14 Q. Excellent. Okay, I'm just looking for an
 15 opportunity to take a break here. It's about
 16 quarter past three.
 17 COMMISSIONER:
 18 Q. It is time. We'll take 15 minutes.
 19 (BREAK)
 20 ROIL, Q.C.:
 21 Q. Thank you, Commissioner. Commissioner and Mr.
 22 Pike, during the break there, I became aware
 23 of a document that is not on our List of
 24 Documents. It comes up in the course of Mr.
 25 Pike's evidence and I'll deal with it very

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1 shortly or deal with it now by asking a couple
 2 of questions. With respect to the slide that
 3 is in front of you, I think you were telling
 4 us that there are in the first instance, there
 5 are the draft Occupational Health and Safety
 6 Regulations that are not yet passed into
 7 regulatory law, if you will, but that are
 8 incorporated, I think you said, by the Board
 9 in its authorizations.
 10 MR. PIKE:
 11 A. They are referenced as a condition on the
 12 authorizations.
 13 ROIL, Q.C.:
 14 Q. Yes.
 15 MR. PIKE:
 16 A. But in addition to those requirements are the
 17 ones we have up on the screen now, the other
 18 requirements respecting occupational health
 19 and safety.
 20 ROIL, Q.C.:
 21 Q. And the other requirements, there is a
 22 guidance document on that as well?
 23 MR. PIKE:
 24 A. There's a document that outlines those and
 25 they would be appended to the authorizations

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1 of the document themselves. In the case of
 2 the Occupational Health and Safety
 3 Regulations, those are referenced as a
 4 condition and put in that way, and again the
 5 other ones are usually appended or they can be
 6 referenced as well and they show up on our
 7 website as a document.
 8 ROIL, Q.C.:
 9 Q. I want to, I guess, apologize to the parties,
 10 but to make clear, Commissioner, there is
 11 another document which we will need to add to
 12 the list of exhibits for the C-NLOPB. It is
 13 being uploaded now and will be available for
 14 parties through our file bridge system by
 15 tomorrow or by later on this evening actually,
 16 but in the meantime, if anybody wants to get
 17 access to it, it is on the website for the C-
 18 NLOPB under the legislation and guidance page,
 19 if you will, and just below the draft
 20 Occupational Health and Safety Regulations are
 21 the other occupational health and safety
 22 requirements. That is the document to which
 23 you refer.
 24 MR. PIKE:
 25 A. Yes, that is the document to which -

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1 COMMISSIONER:
 2 Q. Do you intend to enter that, what you have
 3 now?
 4 ROIL, Q.C.:
 5 Q. I would simply ask leave to have it, to have
 6 it electronically entered this evening and to
 7 become part of the proposed list of exhibits.
 8 COMMISSIONER:
 9 Q. Yes, I see. And that's fine and leave is
 10 granted, but are you going to deal with it now
 11 with Mr. Pike?
 12 ROIL, Q.C.:
 13 Q. No, I'm not going to -
 14 COMMISSIONER:
 15 Q. Oh, I see.
 16 ROIL, Q.C.:
 17 Q. - ask him any specific questions with respect
 18 to it, no. I think he spoke around it and I
 19 think in fairness to the parties that if they
 20 were looking to see where this comes from,
 21 they would have to have access to that
 22 document.
 23 COMMISSIONER:
 24 Q. Yes, okay then.
 25 ROIL, Q.C.:

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1 Q. Okay. The next item that you have on your
 2 list, Mr. Pike, is something called,
 3 "Regulatory Equivalencies." What are they,
 4 please?
 5 MR. PIKE:
 6 A. And again Mr. Andrews referenced them.
 7 They're Section 151 of the Act, which allows,
 8 "The Chief Safety Officer may authorize the
 9 use of equipment, methods, measures or
 10 standards in lieu of any required by
 11 regulation where those officers, or the
 12 officer is satisfied that the use of the other
 13 equipment or those methods, measures or
 14 standards would provide a level of safety
 15 equivalent to that provided with compliance to
 16 the regulations, or to grant an exemption from
 17 any regulatory requirement in respect of
 18 equipment, methods, measures or standards
 19 where those, where the officer is satisfied
 20 that the level of safety that will be achieved
 21 without compliance is equivalent to that with"
 22 -
 23 ROIL, Q.C.:
 24 Q. Perhaps the best way for us to understand that
 25 would be perhaps by a couple of example. Do

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1 you have any that you can bring to our
 2 attention that will make us understand what
 3 would be an equivalency to a requirement?
 4 MR. PIKE:
 5 A. Certainly. The offshore industry is a dynamic
 6 industry. New and better technology is
 7 constantly evolving and improving. Regulatory
 8 equivalencies provide an avenue to capture and
 9 adopt some of those improvements, and the
 10 prime example could be in the drilling area.
 11 When the Hibernia Platform was being designed,
 12 the idea of directional drilling was a dream,
 13 it was not a reality, and as the platform was
 14 built and went into operations, they have been
 15 able to directionally drill such that if we
 16 were sitting on the drill floor of the
 17 Hibernia Platform, we would be able to drill
 18 and hit a target that would be the Cabot Tower
 19 set some distance hence.
 20 ROIL, Q.C.:
 21 Q. Well hopefully don't hit Cabot Tower.
 22 MR. PIKE:
 23 A. They could if they wanted to.
 24 ROIL, Q.C.:
 25 Q. Okay.

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1 MR. PIKE:
 2 A. When the original design was going through,
 3 they had envisioned more subsea wells but with
 4 this use of directional drilling technology,
 5 they've been able to drill most of their wells
 6 from the actual platform. Even as Terra Nova
 7 came along, there was another evolution in the
 8 use of drilling technologies to the extent,
 9 even as we hit White Rose and they've started
 10 to use horizontal drilling technologies. So
 11 these technologies have progressed
 12 considerably in the last number of years.
 13 When you're dealing with the prescriptive
 14 requirements in those drilling regulations,
 15 some of those prescriptive requirements would
 16 not allow you to be able to use some of those
 17 technologies. So that's where we see some of
 18 those equivalencies coming through.
 19 ROIL, Q.C.:
 20 Q. When you are reviewing those equivalencies, do
 21 you look at the issue of safety of personnel -
 22 MR. PIKE:
 23 A. We would -
 24 ROIL, Q.C.:

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1 Q. - in that process?
 2 MR. PIKE:
 3 A. Yes.
 4 ROIL, Q.C.:
 5 Q. I take it that, I shouldn't take it, I guess.
 6 I'll ask the question, are you aware of any
 7 equivalencies that relate to helicopter
 8 transport or is it something that wouldn't be
 9 in that area?
 10 MR. PIKE:
 11 A. Just to maybe--this is not a carte blanche.
 12 The operator or owner must apply on a case-by-
 13 case basis for one of these equivalencies. We
 14 do not grant blanket equivalencies, nor is
 15 there scope for blanket equivalencies in the
 16 legislation. There is a process for
 17 evaluating any equivalency and it's reviewed
 18 with the same rigour as the work authorization
 19 application. Since 2000, we have processed
 20 some 721 regulatory equivalencies. Nineteen
 21 of them involved some aspect of helicopter
 22 operations. All of them involved some element
 23 of the helicopter deck, the landing area for
 24 the helicopters on the offshore installations.
 25 The majority were using equivalent standard to

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1 UK Civil Aviation Authority's CAP 437 in lieu
 2 of the standard that's called up in the
 3 regulation, which is Transport Canada's TP
 4 4414, Guidelines Respecting Helicopter
 5 Facilities on Ships.
 6 ROIL, Q.C.:
 7 Q. Okay. So if I can stop you there, the
 8 guidelines that you currently have within your
 9 regime are Transport Canada ones?
 10 MR. PIKE:
 11 A. Yes.
 12 ROIL, Q.C.:
 13 Q. Okay. I a drilling rig comes from the North
 14 Sea, by way of example, would that necessarily
 15 comply with the Transport Canada guidelines?
 16 MR. PIKE:
 17 A. That may not comply with the Transport Canada
 18 guidelines but would comply with the standards
 19 in the North Sea, an example being the UK
 20 Civil Aviation Authority ones, CAP 437. More
 21 than likely, any installation that is
 22 operating in the North Sea would comply with
 23 those UK regulations. In granting those
 24 equivalencies, we have consulted with
 25 Transport Canada Aviation on the level of

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1 equivalency of those standards and they have
 2 accepted those standards for helicopter decks.
 3 ROIL, Q.C.:
 4 Q. Okay.
 5 MR. PIKE:
 6 A. This authority also applies to environmental
 7 protection and resource conservation where the
 8 Chief Conservation Officer has the authority
 9 to grant equivalencies in that case.
 10 ROIL, Q.C.:
 11 Q. So it -
 12 MR. PIKE:
 13 A. Any exercise taken is only for, I've taken it
 14 out specific to the Chief Safety Officer.
 15 ROIL, Q.C.:
 16 Q. So when you say it's not blanket, you mean
 17 each time that a particular facility would
 18 come back it would have to seek the
 19 equivalency determination?
 20 MR. PIKE:
 21 A. If another facility were to come along with a
 22 similar request, they wouldn't automatically
 23 get that equivalency. Each of these--if an
 24 installation came back and we'd already

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1 granted it, it would fly again to that
 2 installation, but if a new installation came
 3 back with a similar issue, that installation
 4 would have to make an application. We also
 5 revisit on occasion some of those
 6 equivalencies as well.
 7 ROIL, Q.C.:
 8 Q. So something that might be accepted one year
 9 might not be accepted in a subsequent year?
 10 MR. PIKE:
 11 A. That's a possibility. It's rarely occurred
 12 but that would be a possibility, and
 13 occasionally if an installation, a drilling, a
 14 MODU, mobile offshore drilling unit, were to
 15 leave the jurisdiction and come back later, we
 16 may revisit some of the equivalencies that
 17 were granted previously.
 18 ROIL, Q.C.:
 19 Q. Now, I think Mr. Andrews dealt with public
 20 guidelines a little bit but perhaps you should
 21 tell us about guidelines from the perspective
 22 of the safety officer and the Safety
 23 Department.
 24 MR. PIKE:
 25 A. As he's noted, the Board has the authority

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1 under the Act to provide guidance for
 2 regulatory and legislative requirements. This
 3 is done by issuing or publishing guidelines
 4 and interpretation notes for the operator to
 5 assist them as they make their way through the
 6 work authorization application process.
 7 ROIL, Q.C.:
 8 Q. I've been told that you and I are a bit too
 9 fast and that we're providing writer's cramp
 10 for some people in the room, so I caution you
 11 to go a little more slowly, please.
 12 MR. PIKE:
 13 A. Okay. Of particular interest to our
 14 Operations and Safety Department are the
 15 guidelines for the safety plan. These
 16 guidelines are actually currently under review
 17 as part of the guidance for the new drilling
 18 and production regulations. We hope to have
 19 the revised guidelines published when the new
 20 regulations come into force at the end of the
 21 year. The drilling program, these guidelines
 22 are also being updated as part of the guidance
 23 for the new drilling and production
 24 regulations. Of note in the drilling program
 25 authorization there is an appendix that deals

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1 with some of the other requirements, and they
 2 include helicopter operations. Within there,
 3 there is some of our expectations with regard
 4 to the supply of helicopter services, that
 5 helicopters would be of twin engine design,
 6 that they be certified to Transport Canada,
 7 the airframes would be certified by Transport
 8 Canada, that the pilots would be licensed by
 9 Transport Canada, that the passenger areas
 10 would have adequate egress, that there be
 11 upper torso restraints, meaning high-back
 12 chairs and four-point harnesses, that the life
 13 rafts be externally mounted. None of these
 14 are explicit requirements under Transport
 15 Canada but the minute you put any of these on
 16 the airframe they would have to be certified
 17 by Transport Canada.
 18 ROIL, Q.C.:
 19 Q. So the C-NLOPB can say it wants certain
 20 things, for example the upper torso
 21 restraints. Do I take that to be more like a
 22 four-point harness?
 23 MR. PIKE:
 24 A. That would be a chair with a higher back and
 25 then a four-point harness.

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1 ROIL, Q.C.:
 2 Q. Okay. Now, if the C-NLOPB says it wants that
 3 on an airframe, on a helicopter, what has to
 4 happen in addition to you wanting it there?
 5 MR. PIKE:
 6 A. In order for the helicopter contractor to
 7 provide those seats in the helicopter, they
 8 would have to be approved by Transport Canada
 9 Aviation, again, all part of the air frame
 10 certification. Since the requirements came
 11 out of incidents that occurred in the mid '90s
 12 in the North Sea, where recommendations were
 13 made for higher probability of survival if
 14 there was upper torso restraint. Many
 15 helicopters of the day had lower back seats
 16 and lap belts, so by providing the upper torso
 17 restraints it provided a better chance for
 18 people to survive a helicopter incident.
 19 ROIL, Q.C.:
 20 Q. Okay. You indicated as you spoke through
 21 there a number of things, and we'll just take
 22 them because they relate to helicopters
 23 particularly, and let's just look at them for
 24 a moment. One, I think you said, about twin
 25 engine or twin turbine. I'm not sure -

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1 MR. PIKE:
 2 A. Twin engine.
 3 ROIL, Q.C.:
 4 Q. This is a requirement for the use of a
 5 helicopter in the offshore -
 6 MR. PIKE:
 7 A. If an operator is going to use a helicopter in
 8 their program, our expectation that that
 9 airframe would have twin engines.
 10 ROIL, Q.C.:
 11 Q. Okay.
 12 MR. PIKE:
 13 A. And that's for redundancy purposes. Again
 14 we're flying great distances over water.
 15 ROIL, Q.C.:
 16 Q. Okay. Something else you mentioned, I
 17 believe, was the upper torso restraint, and we
 18 have spoken of that briefly. You also
 19 mentioned something to do with flotation or
 20 life rafts.
 21 MR. PIKE:
 22 A. Externally mounted life rafts.
 23 ROIL, Q.C.:
 24 Q. Externally mounted life--okay. And this is a
 25 part of the C-NLOPB guidance?

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1 MR. PIKE:
 2 A. Yes.
 3 ROIL, Q.C.:
 4 Q. Okay. And again, where would the C-NLOPB get
 5 the impetus or the drive or the reason to put
 6 in that kind of a requirement?
 7 MR. PIKE:
 8 A. That came from investigations of incidents
 9 that had occurred in the North Sea.
 10 ROIL, Q.C.:
 11 Q. Okay. Are there other items that you require
 12 with respect to helicopter flight -
 13 MR. PIKE:
 14 A. Flight following requirements.
 15 ROIL, Q.C.:
 16 Q. Flight following? And for those that are not
 17 as involved in -
 18 MR. PIKE:
 19 A. That would be -
 20 ROIL, Q.C.:
 21 Q. - helicopters as -
 22 MR. PIKE:
 23 A. - tracking -
 24 ROIL, Q.C.:
 25 Q. - as you would be -

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1 MR. PIKE:
 2 A. That would be tracking the flight as it leaves
 3 the heliport out to the installations, so
 4 along its path it would be tracked.
 5 ROIL, Q.C.:
 6 Q. So that's an electronic tracking of the -
 7 MR. PIKE:
 8 A. Well, these days -
 9 ROIL, Q.C.:
 10 Q. - helicopter?
 11 MR. PIKE:
 12 A. - it's electronic. When we first introduced
 13 it, it would have been checking in by the
 14 pilots every 15 minutes with their location,
 15 or half hour.
 16 ROIL, Q.C.:
 17 Q. Okay. So even this technology evolves with
 18 time.
 19 MR. PIKE:
 20 A. It does.
 21 ROIL, Q.C.:
 22 Q. Okay. So a flight following plan is a way to
 23 follow the aircraft out to the installation
 24 and back?
 25 MR. PIKE:

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1 A. And back.
 2 ROIL, Q.C.:
 3 Q. Okay.
 4 MR. PIKE:
 5 A. It also includes vessels. We would expect
 6 that vessels would also be tracked as well.
 7 ROIL, Q.C.:
 8 Q. Are there any other -
 9 MR. PIKE:
 10 A. We also require a first response helicopter to
 11 be available.
 12 ROIL, Q.C.:
 13 Q. And by first response, what do you understand
 14 that to mean?
 15 MR. PIKE:
 16 A. They would generally be equipped with search
 17 and rescue technicians and hoisting and other
 18 rescue equipment, so that it's capable of
 19 being launched. Normally the current criteria
 20 is within an hour of an incident, and that's
 21 indeed what happened on March the 12th.
 22 ROIL, Q.C.:
 23 Q. That was indeed the response that was made on
 24 March the 12th?
 25 MR. PIKE:

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1 A. Yes.
 2 ROIL, Q.C.:
 3 Q. Anything else that occurs to you just off the
 4 top of your head? I won't hold you to this if
 5 you've forgotten something, but is there any
 6 other -
 7 MR. PIKE:
 8 A. Helicopter -
 9 ROIL, Q.C.:
 10 Q. - diligence -
 11 MR. PIKE:
 12 A. The industry name is HUMS, helicopter -
 13 ROIL, Q.C.:
 14 Q. Health Usage and Monitoring?
 15 MR. PIKE:
 16 A. Yes, exactly.
 17 ROIL, Q.C.:
 18 Q. HUMS, Health Usage and Monitoring System.
 19 MR. PIKE:
 20 A. That's also mentioned in that piece.
 21 ROIL, Q.C.:
 22 Q. And what to the uninitiated would that be?
 23 MR. PIKE:
 24 A. That's a system that monitors the condition of
 25 the helicopter, so it would have sensors

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1 located, you know, in the engines, in the gear
 2 box, and a number of other points that would
 3 monitor activity, and that would then be
 4 checked, and in Cougar's case it's checked
 5 after each flight. Each return actually to
 6 the heliport, the HUMS information would be
 7 reviewed to see if there's any abnormalities.
 8 The analogy would be in process equipment
 9 there's vibration monitoring, and if you see
 10 vibrations going out of the norm, it's an
 11 indication potentially of a problem, so they
 12 would be monitoring those type of things to
 13 see if there's some abnormality happening in
 14 the equipment. That's a simple example but
 15 the HUM System is a little more complex.
 16 ROIL, Q.C.:
 17 Q. Yes. Well, I suspect that others who will
 18 come before us will probably have a far more
 19 sophisticated definition but I think that
 20 gives us an understanding of the kind of
 21 diligence issue it is. So all of these
 22 things, are these all contained within one
 23 place or are they in various places with
 24 respect to your -
 25 MR. PIKE:

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1 A. They're mainly within the drilling, the
 2 drilling program guidelines in one of the
 3 appendices, located there. You'll also find
 4 them under the geophysical, geological,
 5 environmental and geotechnical guidelines in
 6 Canada. I mentioned on occasions they will
 7 use the helideck or helicopter operations for
 8 seismic programs. It's not often done but it
 9 is done on occasion on a larger ship, a larger
 10 program.
 11 ROIL, Q.C.:
 12 Q. So this guidance is in the places where it
 13 needs to be if you're looking for the kind of
 14 program approval/authorization that would
 15 require transportation of personnel by
 16 helicopter?
 17 MR. PIKE:
 18 A. Yes. The other guidance we have is Reporting
 19 and Investigation of Incidents. These
 20 guidelines are published in June of this year
 21 as a joint document with the Canada Nova
 22 Scotia Offshore Petroleum Board, and include
 23 the reporting of environmental incidents.
 24 Previously they were reported as safety
 25 related incidents. They're now published and

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1 their correct name would be Reporting and
 2 Investigation of Incidents, including both
 3 safety and environmental related incidents.
 4 There are guidelines respecting physical
 5 environmental programs. These are jointly
 6 issued by ourselves, the Canada Nova Scotia
 7 Offshore Petroleum Board, and the National
 8 Energy Board, which simply put are the weather
 9 forecasting, including the requirements of
 10 weather forecasting and data collection,
 11 including requirements for helicopter flights.
 12 So some of the specifications on weather
 13 forecasting and data for helicopter flights
 14 are included in those guidelines as well.
 15 ROIL, Q.C.:
 16 Q. Who dictates the weather limits and
 17 responsibilities with respect to taking off
 18 and landing?
 19 MR. PIKE:
 20 A. That would be Transport Canada Aviation.
 21 ROIL, Q.C.:
 22 Q. That would not be the C-NLOPB?
 23 MR. PIKE:
 24 A. No. These guidance do help operators when
 25 they're looking to put equipment on board

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1 installations to be able to produce the
 2 weather forecast and the weather data needed
 3 for helicopter operations. So it summarizes
 4 and pulls together where that particular
 5 information would be located.
 6 ROIL, Q.C.:
 7 Q. But weather --
 8 MR. PIKE:
 9 A. What requirements are for the certification of
 10 weather forecasters to do that kind of work.
 11 ROIL, Q.C.:
 12 Q. But weather reporting would also have other
 13 operational uses to the operator, would they?
 14 MR. PIKE:
 15 A. It would, yes, and these are of particular
 16 interest because they include safety issues
 17 applicable to people who work offshore. The
 18 guidance for the new drilling and production
 19 regulations will be jointly issued by again
 20 ourselves, the Canada Nova Scotia Offshore
 21 Petroleum Board, and the National Energy
 22 Board. Parts of the draft guideline are
 23 currently out under consultation with
 24 stakeholders.
 25 ROIL, Q.C.:

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1 Q. The engagement, or the uniformity, or the
 2 consistency, with the Nova Scotia Offshore
 3 Petroleum Board, is that increasing or has it
 4 always been there as between your organization
 5 and theirs from a health and safety --
 6 MR. PIKE:
 7 A. I characterize it as increasing. We certainly
 8 always made some efforts to try to coordinate
 9 with our colleagues in Nova Scotia, but it's
 10 been a more concerted effort in more recent
 11 years to consolidate some of our guidance and
 12 work more closely together with them.
 13 ROIL, Q.C.:
 14 Q. Yes. Okay, if we could move on to a slide
 15 called "Other Guidance". Now what are you
 16 telling us about here?
 17 MR. PIKE:
 18 A. The Board's published guidelines are not the
 19 only guidance for operators. There are many
 20 specific to certain activities gathered from
 21 regulators across the country, and indeed
 22 around the world. For this Inquiry, of
 23 particular interest are the Helicopter
 24 Passenger Transportation Suit System Standard
 25 issued by the Canada General Standards Board.

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1 ROIL, Q.C.:
 2 Q. Okay, now just before we go on, what is the
 3 Canada General Standards Board as you
 4 understand it?
 5 MR. PIKE:
 6 A. They established the national standards for
 7 Canada.
 8 ROIL, Q.C.:
 9 Q. Okay, and do they then define the standards of
 10 a helicopter passenger transportation suit?
 11 MR. PIKE:
 12 A. They're the ones that have taken on that
 13 particular standard. The other example is CSA
 14 standard would not become a national standard
 15 of Canada unless it was certified by the
 16 Canada General Standards Board. It would have
 17 to -- even in the case of a CSA standard, in
 18 order for it to become a national standard,
 19 and you'll usually see the CAN in front of a
 20 CSA standard, and that's a National Standard
 21 of Canada, and that would be the standard, the
 22 Canada General Standards Board responsibility.
 23 So CSA would be working in conjunction with
 24 the Canada General Standards Board to get a
 25 national standard. They do some of their own,

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1 and in other instances, as I've indicated, a
 2 CSA standard would be recognized as a national
 3 standard, and that would also be the
 4 responsibility of that Board.
 5 ROIL, Q.C.:
 6 Q. So I take it then that again the C-NLOPB does
 7 not design the standard for the suit, that is
 8 done by others and you adopt it?
 9 MR. PIKE:
 10 A. It would be a committee, not unlike the CSA
 11 Committee, with a group of different
 12 stakeholders.
 13 ROIL, Q.C.:
 14 Q. Yes.
 15 MR. PIKE:
 16 A. And the C-NLOPB has been a representative on
 17 that particular -- for that particular
 18 standard. There would be representatives and
 19 regulators from operators, users, from the
 20 manufacturers, and from training.
 21 ROIL, Q.C.:
 22 Q. So the C-NLOPB has a seat on the Committee
 23 that is involved in that?
 24 MR. PIKE:
 25 A. There is a seat on that committee, yes.

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1 ROIL, Q.C.:

2 Q. And the other people are whom, generally

3 speaking?

4 MR. PIKE:

5 A. Stakeholders would potentially be the

6 operators. You'd also see representatives

7 from manufacturers and from training

8 institutes.

9 ROIL, Q.C.:

10 Q. Okay, we'll hear from others about this.

11 MR. PIKE:

12 A. It's a consensus standard that tends to be

13 used in Canada. So by consensus, they go to

14 different stakeholders to develop the

15 standard.

16 ROIL, Q.C.:

17 Q. Yes.

18 MR. PIKE:

19 A. In some jurisdictions, the standards tend to

20 be by a more concentrated stakeholder versus a

21 wide group of stakeholders. The other one

22 that I referenced before is the United Kingdom

23 Civil Aviation Authority, Offshore Helicopter

24 Landing Area Guidance on Standards used here

25 as one of the equivalencies we've granted.

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1 The Atlantic Canada Offshore Petroleum

2 Industry Standard Practice for Training and

3 Qualification of Personnel is produced by the

4 Canadian Association of Petroleum Producers.

5 The Terms of Reference for this standard

6 include the provision that membership include

7 representatives from both the Canada

8 Newfoundland and Labrador Offshore Petroleum

9 Board and the Canada Nova Scotia Offshore

10 Petroleum Board, and the Boards need to ratify

11 the practice before it will be applied to all

12 offshore petroleum operations. The Committee

13 will endeavour to incorporate the best

14 industry practice in developing and

15 maintenance of the standard. So that's the

16 benchmark we use to measure the training and

17 qualifications of offshore personnel.

18 ROIL, Q.C.:

19 Q. Okay, so again other people will come and

20 speak on behalf of CAPP, and we heard Ms.

21 Fagan's description of it yesterday as a

22 representation or an association of petroleum

23 producers in Canada called the Canadian

24 Association of Petroleum Producers. They

25 actually undertake, do they, the design of the

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1 training and qualifications for personnel?

2 MR. PIKE:

3 A. They produce the standard and establish the

4 criteria for the courses. The courses would

5 be run by individual institutions, and I can

6 give you some examples. Training to work on

7 the offshore and to even visit is fairly

8 extensive. One of the examples is the

9 Offshore Safety Induction. For those spending

10 less than seven days offshore, that's a one

11 day training course, and I think Mr.

12 Commissioner, you'd be familiar with that

13 particular course, and I trust you weren't

14 planning to spend more than seven days

15 offshore.

16 COMMISSIONER:

17 Q. I've wondered.

18 MR. PIKE:

19 A. Then the normal then, we would have a little

20 chat, I think.

21 ROIL, Q.C.:

22 Q. He would get a visit from the Safety Officer?

23 MR. PIKE:

24 A. He would get a visit from the Safety Officer.

25 Normal people that would be working regular

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1 shifts offshore would have to have the Basic

2 Survival Training and that's a five day course

3 that must be renewed every three years with a

4 two day course. The BST provides the basic

5 understanding of the hazards associated with

6 working in an offshore environment, the

7 knowledge and skills necessary to react

8 effectively to offshore emergencies, and the

9 ability to care for themselves and others in a

10 survival condition. It includes helicopter

11 underwater escape training, and more recently,

12 the helicopter underwater escape breathing

13 apparatus training.

14 ROIL, Q.C.:

15 Q. And again other witnesses will bring us more

16 detail on those points.

17 MR. PIKE:

18 A. The other one we would take from that that

19 would be applicable to this Inquiry would be

20 the Offshore Fire Team Training. It's also a

21 five day course that's required to be renewed

22 every three years with a two day course. It

23 provides designated workers with an

24 understanding of the chemistry and the

25 associated hazards of fire, and with the

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1 practical skills and team training in fire
 2 suppression, rescue, and personal protection.
 3 This course as well includes helicopter fire
 4 fighting and rescue. There's also training
 5 for the helicopter landing officer. This
 6 course provides designated personnel with the
 7 knowledge and skills necessary to safely and
 8 effectively coordinate helicopter operations.
 9 It requires a worker to have an offshore fire
 10 fighter training, and at least six months
 11 experience in helideck operations.
 12 ROIL, Q.C.:
 13 Q. So I take it that if I were seeking an
 14 authorization from the C-NLOPB, and I had a
 15 safety plan and I had a transportation plan,
 16 that you would be requiring as a part of my
 17 application or my authorization seeking, that
 18 I would be using the transportation suit
 19 system, the criteria for which is designed by
 20 the CGSB?
 21 MR. PIKE:
 22 A. Yes.
 23 ROIL, Q.C.:
 24 Q. And with respect to helicopter facilities,
 25 you'd look at the Transport Canada standards

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1 and measure me against that?
 2 MR. PIKE:
 3 A. It would.
 4 ROIL, Q.C.:
 5 Q. Okay, and with respect to guidance on UKCAA
 6 Offshore Helicopter Landing Areas, that's a
 7 United Kingdom standard?
 8 MR. PIKE:
 9 A. Yes.
 10 ROIL, Q.C.:
 11 Q. That can be used.
 12 MR. PIKE:
 13 A. Which can be used in the offshore. There
 14 would have to be a regulatory equivalency
 15 granted on that one.
 16 ROIL, Q.C.:
 17 Q. Right.
 18 MR. PIKE:
 19 A. The markings are slightly different between
 20 the two standards, and there are a number of
 21 other differences.
 22 ROIL, Q.C.:
 23 Q. Yeah, but is that where the equivalencies
 24 comes in, is that part of that?
 25 MR. PIKE:

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1 A. Yes. We would generally accept that standard
 2 in lieu of the other one, but there's a number
 3 of criteria to those standards that are
 4 different between the two standards, but are
 5 equally acceptable to Transport Canada
 6 Aviation.
 7 ROIL, Q.C.:
 8 Q. And if I had a helicopter landing officer --
 9 well, if I had a helicopter, would I have to
 10 have a helicopter landing officer?
 11 MR. PIKE:
 12 A. If you were going to conduct helicopter
 13 operations, you would expect that you would
 14 have personnel on board trained as helicopter
 15 landing officers, and they would be so
 16 certified.
 17 ROIL, Q.C.:
 18 Q. And their training would have to be consistent
 19 with the CAPP standard?
 20 MR. PIKE:
 21 A. The curriculum outlined are the CAPP
 22 guidelines. It includes some of the minimum
 23 information to be included in the helicopter
 24 safety briefings. So again we would check
 25 that the briefings are provided at the

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1 heliport before they're transport offshore.
 2 ROIL, Q.C.:
 3 Q. Yes. Now you have all this information from
 4 me. I've asked for an authorization. What do
 5 you then do?
 6 MR. PIKE:
 7 A. We develop a safety assessment process to
 8 ensure thorough and complete assessment of all
 9 the safety aspects of an application for an
 10 operations authorization. It is tailored to
 11 each type of authorization with regard to the
 12 legislation, the hazards, and the risk levels.
 13 The safety assessment for a seismic program is
 14 much simpler than a safety assessment for a
 15 production program. It is completed prior to
 16 the issuance of any authorization, and that
 17 authorization is not issued unless the
 18 application passes the safety assessment. The
 19 assessment includes a complete document
 20 review, from the safety plan, to the emergency
 21 response plan, to the training plan. We will
 22 also consult with other regulatory agencies
 23 about the application that is specific to
 24 their authority. For instance, with
 25 helicopters we could consult with Transport

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1 Canada Aviation; for vessels and
 2 installations, Transport Canada Marine Safety.
 3 ROIL, Q.C.:
 4 Q. So you don't keep -- with respect to your
 5 safety officers and the staff at the Board, do
 6 you have specialists in ships and specialists
 7 in aircraft and specialists in all these
 8 different disciplines?
 9 MR. PIKE:
 10 A. We've tended to go with a more general person
 11 as opposed to specific skillsets.
 12 ROIL, Q.C.:
 13 Q. And if you need particular knowledge of a
 14 particular area, do you have the ability or
 15 the right or the responsibility to consult
 16 someone else?
 17 MR. PIKE:
 18 A. We have a MOU with Transport Canada Marine
 19 Safety for them to provide us advice with
 20 regard to marine vessels. There's also the
 21 certifying authority. We can get advice from
 22 them as well on the detailed aspects of an
 23 installation. There are other agencies that
 24 we could rely on for some additional
 25 information if we needed it.

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1 ROIL, Q.C.:
 2 Q. Right.
 3 MR. PIKE:
 4 A. A pre-authorization safety audit may be
 5 performed on the installation involved in work
 6 authorization. This is to ensure that the
 7 installation meets the higher standards
 8 required to work offshore Newfoundland and
 9 Labrador.
 10 ROIL, Q.C.:
 11 Q. Okay, so how would one perform a pre-
 12 authorization safety audit? What does that
 13 mean? I'm coming from the North Sea, I have
 14 the Global Challenger as my semi-submersible
 15 rig, I want to come and drill in offshore
 16 Newfoundland. What would you do, or what
 17 could you do with respect to audits?
 18 MR. PIKE:
 19 A. We have in the past gone to take a look at
 20 those drilling installations while they are
 21 operating in another jurisdiction. We would
 22 use a generic checklist for the audit, and
 23 review it generically. If we have the actual
 24 application documents from the operator, we'll
 25 use some of the processes they have in their

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1 documentation, but if we don't have a full
 2 application in front of us, we'll use the more
 3 general information that we have, and that
 4 will give the operator a general view as to
 5 what the status of that particular
 6 installation is before it enters our
 7 jurisdiction. Once the document review is
 8 complete, a meeting is held with the operator
 9 and major contractors to discuss any issues
 10 that come to light during that review.
 11 Communications is a key step in the safety
 12 assessment process. For any operator, no
 13 matter what activity, we endeavour to meet
 14 with them early in their planning stage, so
 15 they understand the requirements to work in
 16 our offshore. This actually starts 12 to 24
 17 months before an application is received. It
 18 is when the operator is in the early stages of
 19 planning and activity. It is when an operator
 20 is investigating potential contractors, for
 21 everything from supply vessels, to drilling
 22 units, to helicopters. This is important to
 23 ensure compliance. It is important because
 24 the standards expected in our offshore may
 25 exceed those of other jurisdictions.

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1 Operators may have to spend additional money
 2 and time to bring an installation up to our
 3 standards. Some of these requirements are
 4 included in Appendix "E" of the guidance on
 5 specific regulatory requirements of the
 6 drilling program guidelines. They include
 7 aspects of the drilling, the evacuation
 8 systems, and the maintenance of those systems,
 9 the training of the lifeboat coxswains.
 10 Materials handling would be the logistic
 11 operations, and the freight containers that
 12 are used to transport personnel by crane
 13 basket, helicopter operations, helideck
 14 operations, the requirements for joint
 15 Occupational Health and Safety Committees, the
 16 right to refuse work provisions,
 17 qualifications and certification of personnel,
 18 the control of work or permit to work systems,
 19 inspection, testing, and maintenance of the
 20 installation, light, sound, hygiene surveys,
 21 and a failure mode and effect analysis of a
 22 ballast control system if it's a floating
 23 unit.
 24 ROIL, Q.C.:
 25 Q. Uh-hm.

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1 MR. PIKE:
 2 A. A quote I like to use, "The key to achieving
 3 compliance with regulatory requirements is to
 4 ensure that they are well understood at the
 5 early planning stages".
 6 ROIL, Q.C.:
 7 Q. So I take it, your engagement with an operator
 8 can happen as much as two years before it is
 9 their intention to come on site?
 10 MR. PIKE:
 11 A. Yes, and the earlier we get together with them
 12 and outline some of our requirements, the
 13 better the compliance we see. It would be a
 14 bigger problem if they had already contracted
 15 a rig only to find out that it doesn't meet
 16 the standards for our offshore.
 17 ROIL, Q.C.:
 18 Q. What's the period of time can that be done?
 19 If somebody comes in and says I want to start
 20 drilling three months from now, is it possible
 21 to do all that diligence in that period of
 22 time?
 23 MR. PIKE:
 24 A. That's a difficult question to answer, and
 25 will depend on many factors. If it's a

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1 drilling unit that we're familiar with, if
 2 it's an operator we're familiar with, that
 3 becomes a much different proposition than if
 4 it's a brand new drilling rig and a brand new
 5 operator.
 6 ROIL, Q.C.:
 7 Q. Yes.
 8 MR. PIKE:
 9 A. I would tend to say a new operator and a new
 10 rig, three months would be a--would not be
 11 possible. But if it's an operator we're
 12 familiar with and if it's a drilling unit
 13 we're familiar with, three months is possible.
 14 It would be a lot of work, but it would be
 15 possible.
 16 ROIL, Q.C.:
 17 Q. Now we finally come to the safety plan, which
 18 we've heard so much about from other witnesses
 19 or from Mr. Andrews, so tell us what you can
 20 tell us and what you know about safety plans,
 21 please.
 22 MR. PIKE:
 23 A. As you know, and I've mentioned it several
 24 times, it is in fact not one plan, but a
 25 document made up of many components. You

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1 could call it the road map that viewed as a
 2 whole shows how the operator intends to safely
 3 manage their activity, demonstrating how they
 4 have accounted for the risks associated with
 5 their activity, describing the preventative
 6 measures taken to either eliminate the hazards
 7 leading to those risks or the measures to
 8 reduce their risks presented by the hazards,
 9 or finally, if the risk can't be eliminated or
 10 reduced, what protective measures are taken,
 11 all with a goal of demonstrating how they are
 12 ensuring the health and safety of workers.
 13 The plan needs to define the roles of and
 14 relationships between the operator's executive
 15 level management personnel and the various
 16 line and staff functions in order to achieve
 17 safety related goals and objectives.
 18 ROIL, Q.C.:
 19 Q. Now you've a series of bullets here. So
 20 perhaps you can just give us a little more
 21 detail on each one of those as you go through
 22 them?
 23 MR. PIKE:
 24 A. The safety management system would include, as
 25 we noted in the other requirements for OHS,

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1 the safety, health and safety policy and the
 2 health and safety program. It would be the
 3 management system that they put in place to
 4 manage safety. The risk assessment, we've
 5 made several references to the risks and
 6 hazards involved. So it would involve how
 7 they've assessed those risks, what hazards
 8 they represent--what risks those hazards
 9 represent and how the plan is to manage those.
 10 The design features, the things that they've
 11 incorporated into their installation or part
 12 of their installation, again to manage the
 13 risks that are involved. The operation and
 14 maintenance of a facility, so those are the
 15 operating procedures and maintenance
 16 procedures that would be used for the
 17 facility. Training qualification and
 18 competency of workers. The command structure
 19 onshore and offshore, that was a key one that
 20 came out of the Ocean Ranger Commission
 21 recommendations, making sure we know who's in
 22 charge, and it is very clear to everybody
 23 who's in charge. Contingency plans, again the
 24 emergency response plans, and the weather
 25 forecasting.

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1 ROIL, Q.C.:

2 Q. So each one of these areas, you know, are they

3 a page or are they normally a big document or

4 is there any pattern to how these are

5 presented by the various operators as they

6 come from other parts of the world or other

7 parts of Canada to work in our offshore?

8 MR. PIKE:

9 A. They vary depending on the operator and the

10 operator's management systems. One of our

11 operators has what they refer to as an

12 operations plan. It's an integral piece of

13 how they manage their operation and includes

14 both the safety aspects and the environmental

15 aspects, and they combine those into one plan.

16 We would look at it from the standpoint of the

17 safety plan requirements, but they presented

18 it as an operational plan. Other operators

19 may present it in different forms. We would

20 expect it to be the higher level commitments

21 to some of these requirements and potentially

22 referencing and that road map to the more

23 detailed procedures and processes that they

24 have in place to manage those.

25 ROIL, Q.C.:

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1 Q. With respect to helicopter transport, is there

2 any way that you can sort of bring us--bring

3 this down to the kinds of things that you're

4 looking for with respect to the use of

5 helicopters by an operator in its offshore

6 installation?

7 MR. PIKE:

8 A. One of the operating procedures we would look

9 for would be the helicopter operations

10 procedure or manual. They may be referenced

11 differently by different operators, but some

12 form of manual that represents their

13 helicopter operations. Equally, they would

14 have one for their marine operations. So the

15 management of their supply vessels. They

16 would sometimes be used also for the transfer

17 of personnel. All personnel would actually go

18 through the heliport, even if they're being

19 transported by marine, by ship. They would go

20 through the heliport first and then be

21 transported to the ship.

22 ROIL, Q.C.:

23 Q. Okay. So the heliport becomes a port of entry

24 for all personnel going offshore?

25 MR. PIKE:

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1 A. It would be a port of entry for all personnel

2 going offshore.

3 ROIL, Q.C.:

4 Q. Okay, and if you're going to a ship to go

5 offshore, you would go from the heliport?

6 MR. PIKE:

7 A. Workers would start at the heliport and be

8 transported down to the ship, yes.

9 ROIL, Q.C.:

10 Q. Okay.

11 MR. PIKE:

12 A. That actually starts to show up in some of the

13 security provisions, which I'll talk about a

14 little bit later.

15 ROIL, Q.C.:

16 Q. Okay.

17 MR. PIKE:

18 A. You could see the elements, the training and

19 qualifications of workers. We'd see certain

20 elements showing up in there as well, the

21 basic training, the basic survival training

22 for everybody, the helicopter underwater

23 escape training. Some of the more detailed

24 trainings we've mentioned, the helicopter

25 landing officer. We would expect to see those

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1 provisions in there as well. So you'd see the

2 helicopter operations covered in several

3 different areas, in addition to a dedicated

4 helicopter operations manual or procedure.

5 ROIL, Q.C.:

6 Q. And all of this becomes part of the safety

7 plan of the operator?

8 MR. PIKE:

9 A. That would become part of the safety plan of

10 the operator.

11 ROIL, Q.C.:

12 Q. And the safety plan gets incorporated into

13 what document?

14 MR. PIKE:

15 A. The work authorization.

16 ROIL, Q.C.:

17 Q. The authorization.

18 MR. PIKE:

19 A. It would become part of the work

20 authorization. The safety assessment

21 essentially begins when the safety officer is

22 assigned to a new application. The safety

23 officer reviews the application form and

24 supporting documentation. This ensures the

25 scope of the put forward proposed work is

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1 clearly defined. The safety officer
 2 determines which documents are part of the
 3 application and which documents are supplied
 4 to support the application. Documents forming
 5 part of the application would require approval
 6 when amended. Whereas documents supporting
 7 the application could be amended as part of
 8 normal business practice. We would actually
 9 expect those to be covered by a management of
 10 change process, but we would not expect to
 11 have to approve the documents that are
 12 supporting the application. Documents that
 13 form part of the application would require
 14 approval to amend because they become part of
 15 the authorization.
 16 ROIL, Q.C.:
 17 Q. So the safety plan is part of the application?
 18 MR. PIKE:
 19 A. That's right.
 20 ROIL, Q.C.:
 21 Q. That can't be changed, can't be amended
 22 without -
 23 MR. PIKE:
 24 A. Without the approval--actually the legislation
 25 for production operations says by the chief

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1 safety officer.
 2 ROIL, Q.C.:
 3 Q. Yes. But some of the ancillary documents that
 4 are giving support to that can be changed?
 5 MR. PIKE:
 6 A. Can be changed. If we were looking, say, at
 7 the helicopter operations piece as a
 8 supporting documentation, it could be amended
 9 without prior approval, but the commitments
 10 that you would expect in such a document would
 11 be in the safety plan. So the goals, as you
 12 were, would be shown in the safety plan with
 13 the more detail coming in the operating
 14 procedure.
 15 ROIL, Q.C.:
 16 Q. But the helicopter briefing, for example,
 17 that's in some of your guidance, is it not?
 18 The fact that there must be a briefing at the
 19 airport?
 20 MR. PIKE:
 21 A. It's in our guidance and it would show up in
 22 their commitments. The actual detail in some
 23 of those will vary depending on the equipment
 24 that they're using.
 25 ROIL, Q.C.:

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1 Q. Okay.
 2 MR. PIKE:
 3 A. It would not be necessarily appropriate for us
 4 to--for them to continue to use a Super Puma
 5 briefing if what they were using were S-92
 6 helicopters.
 7 ROIL, Q.C.:
 8 Q. So the commitment to give a briefing cannot be
 9 eliminated?
 10 MR. PIKE:
 11 A. No.
 12 ROIL, Q.C.:
 13 Q. The content of that briefing may change?
 14 MR. PIKE:
 15 A. Could be adjusted depending on what equipment
 16 is being used. That's not to say that they
 17 would not brief us on the notion that they
 18 were changing some of those equipment.
 19 ROIL, Q.C.:
 20 Q. Sure.
 21 MR. PIKE:
 22 A. But it would not require the approval. The
 23 safety officer determines which documents--
 24 okay, we've--the safety officer then
 25 determines the appropriate checklist for the

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1 review of the application. This checklist is
 2 a tool used to help ensure comprehensive
 3 safety assessment. It is not an end in and of
 4 itself. It is merely a tool to help the
 5 safety officer work through the detail of the
 6 application and it is based on the criteria
 7 that we would have established as part of that
 8 application and on the legislative
 9 requirements.
 10 By the way, since 2000, the operations
 11 and safety department has conducted 120 safety
 12 assessments. Of the 120 safety assessments
 13 completed, 62 included helicopter operations
 14 in the scope of that authorization.
 15 ROIL, Q.C.:
 16 Q. These are safety assessments? These are not
 17 audits and inspections? This is the
 18 assessment process upfront?
 19 MR. PIKE:
 20 A. Yes.
 21 ROIL, Q.C.:
 22 Q. So there's been 120 assessments done and 62,
 23 approximately half of them, have included
 24 helicopter operations?
 25 MR. PIKE:

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1 A. That is correct.

2 ROIL, Q.C.:

3 Q. Okay.

4 MR. PIKE:

5 A. Safety assessment checklists are organized

6 according to what we call elements. These

7 elements include leadership, coordination,

8 administration, the competency of personnel,

9 operational procedures, facilities and

10 equipment and the risk management systems.

11 The leadership coordination and administration

12 includes the safety policy and safety system

13 overview, the health and safety program, as

14 you will, or the health and safety policy,

15 hazard identification and risk assessment,

16 quality assurance as required by Section 4 of

17 the installation regulations.

18 ROIL, Q.C.:

19 Q. What is quality assurance?

20 MR. PIKE:

21 A. We would look to see that if there are some

22 modifications being done to the installation,

23 that they would follow quality assurance

24 principles. In particular, the regulation

25 currently calls Z-299 which has been

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1 superseded by the ISO 9000 series, you'd

2 understand. Most people understand the ISO

3 9000 quality system.

4 ROIL, Q.C.:

5 Q. Yeah. Well, the ISO 9000 is a quality system?

6 MR. PIKE:

7 A. Yes.

8 ROIL, Q.C.:

9 Q. Okay.

10 MR. PIKE:

11 A. And that's essentially what's being called up

12 there.

13 ROIL, Q.C.:

14 Q. Okay.

15 MR. PIKE:

16 A. And that it is used appropriately. Contractor

17 selection and integration into their

18 operations is not simply that you select a

19 good contractor. You also have to integrate

20 them into your operations. Worker rights and

21 responsibilities and the competency of

22 personnel, which includes hiring and

23 placement, qualifications and training, safety

24 and emergency response training and I

25 distinguish between training, qualifications

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1 and competency. I can be trained to drive

2 that car, but that doesn't mean that I'm

3 qualified or competent. I can be qualified

4 once I receive the valid driver's license, but

5 it doesn't necessarily mean I'm competent to

6 drive all cars. I could become competent

7 quite quickly, but if you put me behind the

8 wheel of some of the higher end modern cars

9 with all their electronic gizmos, I might not

10 be competent to drive it. I could be in a

11 short time. So we distinguish between the

12 training, qualifications and competency.

13 Operational procedures, as appropriate,

14 which can include the drilling operations. So

15 we would expect to see the manuals associated

16 with the drilling operation. Production

17 operations, how they propose to operate the

18 production process. Geophysical operations,

19 some of the interesting pieces there is

20 they're using high pressure air as one of

21 their sound sources. So we would be

22 interested in seeing what provisions they've

23 put in place because it is a high pressure

24 system. Diving operations, considered a

25 highly hazardous occupation, and we would

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1 expect to see some of the procedures

2 associated with any of the diving programs.

3 Helicopter operations, materials handling and

4 logistical operations and marine operations.

5 Facilities and equipment, the programs in

6 place, the planned inspection programs, the

7 testing of safety systems, the preventative

8 and planned maintenance programs. Some of

9 this would be done in conjunction with the

10 certifying authority.

11 ROIL, Q.C.:

12 Q. So would you actually get down and look at, by

13 way of example, the maintenance regime with

14 respect to the helicopter contractor?

15 MR. PIKE:

16 A. We would not look at the--we have not looked

17 at the helicopter contractor's maintenance

18 regime in any detail, other than sort of a

19 walk-through of their facilities and some

20 discussion with them, but no detail. We would

21 look at more detail of the offshore

22 installations and their maintenance programs.

23 ROIL, Q.C.:

24 Q. Okay. Do you rely on others to provide that

25 oversight with respect to maintenance in the

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1 helicopter side of the operation?
 2 MR. PIKE:
 3 A. We would. We would be looking to Transport
 4 Canada Aviation for certification there that
 5 it is a certified program.
 6 ROIL, Q.C.:
 7 Q. Okay.
 8 MR. PIKE:
 9 A. Our focus would be more on the offshore
 10 installation with regard to the maintenance
 11 programs.
 12 ROIL, Q.C.:
 13 Q. That's right, for the maintenance issue, yeah.
 14 MR. PIKE:
 15 A. Yeah. And the risk management systems, which
 16 would include the control of work, the work
 17 permit systems as people would sometimes know
 18 them, incident investigation follow up and
 19 analysis, the management of change and
 20 emergency response planning and drills.
 21 ROIL, Q.C.:
 22 Q. And who are the people that perform these
 23 safety assessments?
 24 MR. PIKE:
 25 A. The safety officers.

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1 ROIL, Q.C.:
 2 Q. The safety officers, okay, within your
 3 department?
 4 MR. PIKE:
 5 A. Within my department.
 6 ROIL, Q.C.:
 7 Q. Yes.
 8 MR. PIKE:
 9 A. So in summary, step one is to establish the
 10 criteria and make the operator aware of the
 11 criteria. From the criteria, determine the
 12 checklist. Step two is to go through the
 13 application and supporting documentations and
 14 identify non-conformance with our regulations
 15 and criteria. Then there's comments and
 16 questions to be addressed with the operator.
 17 Step three, generate what we refer to as a
 18 punchlist, which is a list of the things that
 19 are not complete or not in compliance. This
 20 punchlist is communicated to the operator.
 21 There's going to be a lot going on at this
 22 stage of the process and it is helpful for
 23 both the operator and the Board to have a
 24 common understanding of what is outstanding in
 25 the application. Step four is to work through

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1 the punchlist with the operator and resolve
 2 issues until we are satisfied that the
 3 application meets our standards and an
 4 authorization can be issued.
 5 The safety assessment process can take
 6 from weeks to months, depending on the
 7 complexity of the program or activity, and to
 8 be quite truthful, depending on how complete
 9 and comprehensive the operator's application.
 10 Once they have the authorization, they can
 11 start their activity, but our job is only
 12 beginning.
 13 ROIL, Q.C.:
 14 Q. Okay. So all of what you have described to us
 15 so far relates to things that your department
 16 does before anybody starts any work?
 17 MR. PIKE:
 18 A. Yes, that is correct.
 19 ROIL, Q.C.:
 20 Q. Now, Mr. Commissioner, it's 25 after 4. The
 21 next thing gets us into a different phase. We
 22 can continue for the next five minutes, if
 23 you'd like, or we can--that's a logical place
 24 to stop, if you're -
 25 COMMISSIONER:

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1 Q. It probably is, yes. All right then. Thank
 2 you. We'll adjourn now until 9:30 tomorrow
 3 morning.
 4 ROIL, Q.C.:
 5 Q. 9:30 in the morning, thank you.
 6 ADJOURNED UNTIL OCTOBER 21, 2009 AT 9:30 A.M.

1 CERTIFICATE

2 We, the undersigned, do hereby certify that
3 the foregoing is a true and correct transcript of a
4 hearing heard on the 20th day of October, 2009 at
5 Tara Place, 31 Peet Street, Suite 213, St. John's
6 Newfoundland and Labrador and was transcribed by us
7 to the best of our ability by means of a sound
8 apparatus.

9 Dated at St. John's, NL this
10 20th day of October, 2009

11 Cindy Sooley
12 Discoveries Unlimited Inc.
13 Judy Moss
14 Discoveries Unlimited Inc.

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