



PUBLIC INQUIRY RESPECTING GROUND SEARCH AND RESCUE FOR
LOST AND MISSING PERSONS

Transcript

Volume 4

Commissioner: Honourable Justice James Igloliorte

Wednesday

8 September 2021

CLERK (Mulrooney): All rise.

This commission of inquiry is now open.

Commissioner James Igloliorte presiding.

Please be seated.

THE COMMISSIONER: Even though Ms. Steele has mentioned it to you, she's asking that because of the sensitivity of the microphones, if you finish speaking move the microphone back, but when you are speaking move it towards you.

I'll ask Mr. Budden to lay out our day, please.

G. BUDDEN: Thank you.

Thank you, Mr. Commissioner.

Our plan for today, Mr. Commissioner, is that the – is Mr. Mark Freeman, counsel for the federal government agencies, will, we anticipate, be most of today in his direct examination of the witnesses who are here on behalf of the various federal agencies. I will leave it to him to introduce those witnesses.

As well, as per our discussions and practice, we do not intend to swear in these witnesses. They're all sworn officers and we believe that to be appropriate in the circumstances.

THE COMMISSIONER: Thank you very much.

Please proceed, Sir.

M. FREEMAN: Thank you, Mr. Commissioner. Thank you, Inquiry Counsel.

Good morning. Yes, my name is Mark Freeman. I'm a lawyer with the Department of Justice Canada. And we're representing the federal departments here, as I said yesterday.

In particular, today, we have representatives from the Canadian Armed Forces, that is Lieutenant Colonel James Marshall, and representatives from the Royal Canadian Mounted Police, that is Sergeant Danny Williams and Sergeant Kimball Vardy.

A couple of preliminary matters with respect to our witness panel. We made every effort to have Corporal Steve Howlett attend here today as well. It was our desire – a very strong desire – to have him here. Unfortunately, the weather has not co-operated and he wasn't able to arrive yesterday or yet today. He was set to come in on a commercial flight this morning, but if he does come, we will add him.

I'm going to focus on the JRCC, the DND or the Canadian Armed Forces side of things first in the hopes that Steve can arrive before we dig into the RCMP side of things.

I'll also add that Lieutenant Colonel Marshall would normally be in his uniform; however, his uniform, garment bag got lost in transit and Corporal Howlett was going to deliver it, so it's also with him. So Lieutenant Colonel Marshall was planning to be here in his uniform today but he's here in his business attire.

THE COMMISSIONER: No issue, we'll fix that. I'll take off my jacket, then we'll all look alike.

M. FREEMAN: Thank you; appreciate that.

THE COMMISSIONER: Okay. Please continue, Sir.

M. FREEMAN: Thank you.

As I said, I have Lieutenant Colonel James Marshall from the Canadian Armed Forces. And, James, if you could just tell us who you are and what you do, please.

J. MARSHALL: Good morning, everyone.

My name is Lieutenant Colonel James Marshall. I work in the Canadian Joint Operations Command in Ottawa. What we do there is we run all operations for the Canadian Armed Forces, whether it's within Canada or international. I'm the search and rescue representative for the commander there and his advisor. A lot of the work I do is based on policy and how we apply policy across the Canadian Forces with respect to search and rescue. The JRCCs are not under my command but I oversee them and in constant communication with them.

For search and rescue, my background, when I was a major, I was the flight commander of a search and rescue training flight in Trenton responsible for training all the young aviators in search and rescue. Then from 2015 to 2017, I was the commanding officer 413 squadron in Greenwood, Nova Scotia, where we had Cormorants and Hercules doing search and rescue.

I'm an air navigator by trade, but I understand aviation, especially what the pilots do. I have 2,500 hours on board the C-130 as an air navigator.

M. FREEMAN: Thank you, Lieutenant Colonel Marshall.

Next, we have Sergeant Danny Williams from the RCMP. Sergeant Williams, maybe you can tell us a little bit about who you are and what you do.

D. WILLIAMS: As stated, my name is Sergeant Danny Williams. I'm with the RCMP based out of B Division, which is Newfoundland and Labrador, based out of the headquarters building in St. John's. My role there is I'm in charge of the emergency management section. Part of that portfolio involves overseeing search and rescue operation teams throughout the province in RCMP jurisdictions.

M. FREEMAN: So that's the RCMP support services?

D. WILLIAMS: Yes, that's the branch that I'm under, RCMP operational support services.

M. FREEMAN: Just to put your role in context, you are in a similar seat – although things have changed over a decade – a similar seat that Sergeant Lloyd Youden would've been in in 2012 at the time of Burton's death?

D. WILLIAMS: Yes, so as you see Sergeant Youden's name arise in the reports and what have you, that's currently the role that I hold. So if something were to happen today search and rescue related, that would be the role I would be in.

M. FREEMAN: Okay, thank you.

And Sergeant Kimball Vardy, if you would introduce yourself for the record as well, please, and tell us who you are and what you do.

K. VARDY: Yes, Sergeant Kimball Vardy. I'm currently with operations NCO in Clarenville detachment in Clarenville-Bonavista district on the Island. I was the NCOIC or Non-Commissioned Officer in Charge of Makkovik detachment during the time that Burton went missing.

M. FREEMAN: So you were the detachment commander of RCMP Makkovik in 2012?

K. VARDY: That's correct.

M. FREEMAN: And Corporal Stephen Howlett, what was his role at the time here in Makkovik?

K. VARDY: He was the constable here as well. There were two of us here, myself as the NCO in Charge, and Stephen Howlett was the constable that was with me. We also had Barry Andersen. He was a community constable. Three of us worked together in one detachment here in Makkovik.

M. FREEMAN: Thank you.

Again, Constable Howlett is going to do his best to – or, excuse me, Corporal Howlett now – be here as soon as he can.

So what I intend to do – and I will mention for the record, I know we were passing the microphone and wiping the microphone between witnesses yesterday. We have Kimball and Danny sharing a microphone there today. Just for everyone's benefit, we've all been living essentially in the same house here in Makkovik as a team in a bubble. So I just want to mention that in case anybody was concerned about that microphone there. In the circumstances, I thought that was sufficient.

THE COMMISSIONER: Yes, I'll agree with that. And for the most part, if you're going to be handing the mic back and forth, feel free to keep your masks off so that you're not simply taking them off and taking them on the whole time. So that won't be an issue.

M. FREEMAN: Okay, thank you, Mr. Commissioner.

So given that Corporal Howlett is not with us yet, I'm going to focus on the Canadian Armed Forces for the moment. So we talked a lot yesterday – and educational purpose of this inquiry is a big one. Lieutenant Colonel Marshall, I want to talk a little bit about jurisdiction. This is what us lawyers would call a legal question, usually, but there's a lot of confusion around jurisdiction and search and rescue. I'm wondering if you can fill in the Commissioner and the parties here as to how these things fit together. And I can call up the *National Search and Rescue Manual* if you wish.

J. MARSHALL: Lieutenant Colonel Marshall.

Absolutely. The federal mandate for search and rescue in Canada involves aeronautical and maritime SAR; aeronautical being anything involving an airplane and maritime SAR being anything involving a vessel in federal waterways, which are defined by any of the oceans, the Great Lakes and Lake Melville.

With respect to inland lakes, that's considered ground SAR. We do respond to ground SAR on occasion if we can, and that's considered humanitarian assistance and it's not a part of the federal mandate.

M. FREEMAN: Right.

So I want to slow her down a little bit, because it is very important that we try to clarify some things. So if I could see Exhibit 102, please?

Lieutenant Colonel, are you able to see that –

J. MARSHALL: Yes.

M. FREEMAN: – from there? So what is that document, Sir?

J. MARSHALL: This is the *National Search and Rescue Manual*. It's what would've been our policy at the time in 2012. It has since changed. It's now called the CAMSAR, Canadian search and rescue manual.

M. FREEMAN: The CAMSAR?

J. MARSHALL: Yes, that's the new document, but at the time in 2012, we would've been going under this document. Very little difference between the two documents, to be honest, but it was changed in 2014.

M. FREEMAN: Okay. So in 2012, the sort of operative document is this one –

J. MARSHALL: Correct.

M. FREEMAN: – the *National Search and Rescue Manual*?

And there is a table of amendments. If we scroll down that exhibit to page number 2, I believe it is.

CLERK: Sorry, page number?

M. FREEMAN: I'm sorry, Madam Clerk. So page 2 of Exhibit 102, please.

And, Lieutenant Colonel, you mentioned that this was the document that would've been in force in 2012.

J. MARSHALL: Yes.

M. FREEMAN: There is maybe some small doubt about that, but very almost certain – we're almost certain that the ground search and rescue section in particular is the – this is the correct version for that. You can see the amendments coming forward from '96, is it, or '98 when this started, all the way forward.

J. MARSHALL: Yes.

So I tried to find the documents in place in 2012, but this was the best I could do based on our records. We're only obligated to keep records seven years into the past. But I did confirm and check the difference between this document and our current CAMSAR, and with respect to the ground search and rescue, the paragraphs were pretty identical. So I would assume, filling in the blanks, that in 2012, under this manual, that what is written there would've been the same in 2012. I think it's a fair assumption to make.

M. FREEMAN: So the decision-making process in 2012, from a Canadian Armed Forces

perspective, would've been partly dictated by this document?

J. MARSHALL: Correct.

M. FREEMAN: Okay. Thank you.

So if we carry on in this document we get into some definitions. So I will take us to page 24, please, Madam Clerk.

CLERK: Page 34?

M. FREEMAN: Twenty-four, please.

And at the bottom of that page 24, there should be a definition of vessel. And, Lieutenant Colonel, perhaps you can tell us about that.

J. MARSHALL: The definition for vessel comes from when we talk about maritime SAR and how to define what is a maritime event. So in that definition uses the word "vessel," and this is just defining what a vessel is. A "displacement or non-displacement vehicle that uses water as a means of navigation."

M. FREEMAN: So perhaps I should go to the definition of maritime –

J. MARSHALL: I would, yes.

M. FREEMAN: – first.

Okay. Bear with me.

So at the top of page 21 of Exhibit 102, Madam Clerk, please.

Okay, so maritime incident, is this what you are referring to?

J. MARSHALL: Yes.

M. FREEMAN: Okay.

So it – and perhaps you can just read it out for the benefit of everybody here.

J. MARSHALL: "A Maritime incident is a search and rescue ... incident on the water involving a vessel or person(s) from a vessel, including the medical evacuation ... of persons(s) from a vessel."

M. FREEMAN: Okay. And so that's where the operative word "vessel" we talked about –

J. MARSHALL: Yes.

M. FREEMAN: – a moment ago comes from. So we'll go back to the bottom of page 24, Madam Clerk, please – back to that definition of vessel. And so as you can see there, Lieutenant Colonel, that definition of vessel that we saw above is there and so it is the – I don't know if – I would say the lawyers would say it's the conveyance that dictates whether it is maritime or not, if you follow me.

J. MARSHALL: Yeah.

M. FREEMAN: But maybe you tell us a little about how you see vessel and maritime search incident fitting together.

J. MARSHALL: I mean this definition is pretty broad; it's basically anything that floats. We have incidences where we will respond to a floating unicorn that has drift off from shore, and that's also considered a vessel, although not many people would consider that a vessel. But within this definition, it is something that floats and it is the primary means of navigation.

To define the difference whether or not something is considered ground search and rescue or a maritime event – if somebody walks of a pier into the water, that would be considered ground search and rescue because they weren't in a vessel. But if someone is 50 metres offshore, walking off of a boat into the water and needs rescue, that would be considered a maritime event. Although, what seems very similar, if you have to draw a line between the two, that is how we would draw it.

M. FREEMAN: Okay, thank you.

And so, again, this is an analogy I have been using trying to understand this and explain it and learn it myself, frankly. So if a – let's say a jet skier on a Jet Ski were to go missing off Makkovik in June, would the primary response likely be federal SAR response?

J. MARSHALL: That would be federal.

M. FREEMAN: Okay. However, if a Ski-Doo goes missing off of Makkovik in January, the primary response would be what?

J. MARSHALL: It would be provincial.

M. FREEMAN: Okay. I don't intend to get into why it's that way; I just wanted to make it clear for the record and from our perspective and the federal perspective that it is that way. That's the way things are organized.

What can you say about the importance of having those definitions?

J. MARSHALL: When it comes to search and rescue, search and rescue is a system with a lot of different players in it. How we define who is the lead agency is who takes control of that search and rescue. If JRCC or the federal or the Canadian Armed Forces is in charge of a maritime or aeronautical event, that just means we're the lead agency. We would still reach back and use ground SAR in the event that we would need it. Say, if an airplane crashed, we might use our ground SAR partners to help us find that incident or rescue anybody in the ground.

In the same vein, something that is the provincial mandate, where RCMP or the EMO of that province would be the lead agency, they can still reach back into the federal system and use some of our assets if required. So, when we talk about whether something is a ground event, maritime event, aeronautical event, provincial responsibility or federal responsibility, we're just talking about lead agency. We still work as a team. For the most part, you have any asset available to you.

M. FREEMAN: Would you ever – again, I don't want to get into too many hypotheticals because if you do, we can go down a path that never ends. But, in your experience, would a search ever switch lead agencies midstream?

J. MARSHALL: Very rarely. To be honest and frank upfront, I've never worked in a JRCC. I do understand what the work they do, but I'm certainly not someone that's gone through a lot of cases that can fall back upon my memory of things. But, in general, the lead agency remains the same for the duration of the rescue.

There might be instances where it would change, if we have evidence that the event has changed. Say, for instance, if we find a vessel that's washed up on shore, it is a vessel, there's nobody on board, we don't know how it got there – we would consider that a maritime event initially, because it is a vessel on the water and we might be looking for a person in the water who fell off the vessel. But if there's some type of evidence to say, okay, it looks like they're on shore – for whatever reason, if we have evidence, we could hand over jurisdiction to the provincial authorities in that case.

But that is a rare event and it's not the norm. Usually whoever is the lead agency maintains that responsibility just because it makes it easier and cleaner because they have all the information, all the background and history. And to hand over to another agency to take the lead could cause mistakes to be made and information to be missed, and I wouldn't recommend that in normal circumstances.

M. FREEMAN: So if it's a ground search and the lead agency is the RCMP, they can call on, and did call on, federal assets, JRCC, as needed, in accordance with policy.

J. MARSHALL: Correct.

M. FREEMAN: And contrarily – and, again, it's not for this inquiry, but I'm trying to explain this as best we can – contrarily, if it's an airplane that crashes and JRCC or CAF is the lead – has the lead, they can call on provincial folks, as needed, to go out to that plane, potentially, or boat. Well, let's say plane because it would've – be more likely ground. But to go to a plane that had crashed, you're the lead agency, but you can call on NLSARA or FES-NL or (inaudible). Is that right?

J. MARSHALL: That's correct.

M. FREEMAN: Thanks. Okay.

Is there anything else that you want to share with us about this National SAR Manual at this time, or is that –?

J. MARSHALL: No, everything – I've touched on everything necessary for this.

M. FREEMAN: Okay. So hopefully – and the other counsel will have a chance to ask questions, as well the Commissioner, about this and, hopefully, that’s helpful, at least to set the stage and answer some of the questions from yesterday. So thank you for that.

Let’s just talk about the assets that are – we’ve talked about jurisdictional. Let’s talk about assets. So federal air assets in the neighbourhood, in the region, if you will, could you just give us a description of that, please?

J. MARSHALL: So in the Halifax search and rescue region, which includes all the Maritimes, about half of Quebec, half of Baffin Island and the Atlantic Ocean, halfway across, which is that region here. In that region, we have 413 Squadron, which is in Greenwood. Typically, we would have two to three Hercules there at any point in time and approximately three Cormorants in Greenwood. We also do maintenance in Greenwood.

UNIDENTIFIED MALE SPEAKER: Sorry, excuse me.

I’m having trouble with keeping up in terms of (inaudible).

M. FREEMAN: Okay, yeah. I’ll try.

UNIDENTIFIED MALE SPEAKER: Okay.

M. FREEMAN: Sure.

So, Lieutenant Colonel Marshall, you know this stuff like breathing, by the sounds of it, it comes out very quickly. So if we could – we’ll do our best to slow it down a little bit for everybody’s benefit.

J. MARSHALL: Okay.

M. FREEMAN: The 413 – four, one, three – Squadron out of Greenwood, Nova Scotia, is that what you were talking about?

J. MARSHALL: Yes, yes.

M. FREEMAN: And they have certain search and rescue assets. And, again, we’re going to get into the difference between primary and

secondary search and rescue assets, but let’s talk a little bit about Greenwood, as you were.

J. MARSHALL: Okay. Greenwood is a primary search and rescue squadron. We would have between two and three C-130 Hercules stationed there and approximately three Cormorants at any given time.

In – sorry, go head.

M. FREEMAN: Sorry. No, that’s okay, carry on.

J. MARSHALL: In Gander, it’s 103 Squadron, which is a primary search and rescue squadron and it only has Cormorants there. On a given day we would have approximately three there as well.

G. BUDDEN: How many? I never heard that number, sorry.

J. MARSHALL: Three.

The number of assets on a given squadron varies with maintenance, need, but on average I would say three in each squadron.

M. FREEMAN: Okay, thank you.

Madam Clerk, could we please call up Exhibit 098. If we could see page 43, please.

Exhibit 098, Lieutenant Colonel, is the February 7, 2012, investigation report by the Canadian Armed Forces. Do you recognize that document as that?

J. MARSHALL: Yes.

M. FREEMAN: This is an annex to that document. It shows a map – and I’m hoping that this helps with this conversation – Greenwood, as you just described in Nova Scotia, is the furthest left on that screen there. Is that correct?

J. MARSHALL: That’s correct.

M. FREEMAN: Okay.

And you were saying there’s primary SAR assets there?

J. MARSHALL: Yes.

M. FREEMAN: And secondary SAR assets there?

J. MARSHALL: Yes, there are secondary SAR assets there, when we talk about the CP-140, which is an Aurora. It's a surveillance aircraft, fishery patrols, anti-submarine, basically anything Maritime, but they are a backup plan. They're not primary SAR; they're not trained for search and rescue but they can assist if we need them.

M. FREEMAN: So let's take a step back and try to work through primary search and rescue assets. When we say SAR, it's search and rescue, obviously.

J. MARSHALL: Mm-hmm.

M. FREEMAN: Primary search and rescue asset versus a secondary search and rescue asset, these are federal CAF assets that we're talking about. Can you just describe the primary and secondary difference again for everybody?

J. MARSHALL: Primary SAR would mean that our main mission is to do search and rescue. We are required to have on – if we're talking about Greenwood, we are required to have one C-130 and one –

M. FREEMAN: Okay so, one C-130, that is a ...?

J. MARSHALL: C-130 is the Hercules.

M. FREEMAN: Okay.

J. MARSHALL: I'll use the name Hercules from now on.

M. FREEMAN: Sure.

J. MARSHALL: We're required to have one Hercules on 30-minutes or two-hour standby. That depends on the time of day and what day of the week it is.

M. FREEMAN: Are we talking just about Greenwood?

J. MARSHALL: I can get to the other squadrons –

M. FREEMAN: Okay.

J. MARSHALL: – as well.

M. FREEMAN: Yeah.

J. MARSHALL: But the standby posture remains the same.

M. FREEMAN: A primary SAR asset is on 30-minutes standby or two hour. Can you explain that a little bit –

J. MARSHALL: Yeah.

M. FREEMAN: – a primary SAR asset?

J. MARSHALL: We're on 30-minute standby during the day on weekdays, which means the crew is on the squadron, possibly training or waiting for a mission to happen. Typically, they can take off within 20 to 25 minutes once a SAR is called and they're on squadron. But also, because they're working and on squadron, sometimes they are training in the area so that we can get some of that training done, which is required.

M. FREEMAN: If –

J. MARSHALL: Sorry.

M. FREEMAN: (Inaudible.)

J. MARSHALL: If they're on two-hours notice to move, that would be after hours or on weekends. And in that case, they wouldn't be in a squadron waiting for a call; they would be at home on a pager or cellphone. And, typically, they can take off between one hour and 10 minutes, one hour and 20 minutes during a two-hour standby. Two hours is what's required, but in a search and rescue event, the crew moves as fast as possible.

M. FREEMAN: So we're talking about an incident in 2012 at this round table, but we're talking about ground search and search and supports that got called into it, so it's hard sometimes to say what assets were where then versus what ones are there now.

J. MARSHALL: Mm-hmm.

M. FREEMAN: But for – we’re talking about Greenwood to start. Primary SAR assets in Greenwood are the Hercules ...

J. MARSHALL: And the Cormorant.

M. FREEMAN: And the Cormorant. And there could be multiple of those aircraft.

J. MARSHALL: Yes. There’s multiple, but only one is dedicated to a search and rescue mission for that given day.

M. FREEMAN: And has a – and the crew plays into that?

J. MARSHALL: And the crew, correct.

M. FREEMAN: So there’s a – you may have three assets – three Cormorants, for example – that are primary SAR assets, but one crew who’s on 30-minutes notice during on hours and two-hours notice during off-hours?

J. MARSHALL: Correct.

M. FREEMAN: That would’ve been the same in 2012 as it is today.

J. MARSHALL: Yes.

M. FREEMAN: Okay.

So we’re talking about primary and secondary SAR assets. And Greenwood, as an example, the primary SAR assets are Hercules and Cormorant. What is a secondary SAR asset in Greenwood?

J. MARSHALL: In Greenwood, the secondary SAR asset would be the other Hercules and Cormorants. So one from each would be the primary and the others would be secondary. And also, the CP-140 Aurora is also a secondary asset.

When we talk about secondary asset, it just means that for search and rescue the SRR commander – search and rescue region commander – which would be the admiral in Halifax – he has, at his disposal, for search and rescue, the primary aircraft. If a SAR becomes

large that we need multiple assets, he could then use those secondary assets. But they’re not his to use, initially. He would then ask permission from the commander of the Air Force for extra assets for a SAR. That typically happens with larger search and rescues if they’re going for a large mission.

M. FREEMAN: Okay, thank you.

I’m being told by our technical advisors for me to speak up, so I will. It may be a little louder in here than it needs to be, but loud enough for the hockey arena down below where people are hearing me. So bear with me.

So that’s primary and secondary SAR assets in Greenwood. How far, by flight, is Greenwood from Makkovik? Time-wise, just for understanding.

J. MARSHALL: So it’s 1,200 kilometres. I would say, for a Hercules, they could probably get there – I’m sorry, did you say (inaudible)?

M. FREEMAN: From Greenwood to Makkovik.

J. MARSHALL: A Hercules would probably be a minimum of 2½ hours from takeoff to overtop. And a Cormorant would have to fuel at least once on the way. So, to get on scene, would be realistically six to seven hours.

M. FREEMAN: So that long line from Greenwood to Makkovik, that’s the – at page 43 – that indicates the distance from Makkovik – sorry, from Greenwood to Makkovik.

J. MARSHALL: Yes.

M. FREEMAN: The longest yellow line we’re seeing.

So let’s talk about other primary and secondary SAR assets in Atlantic Canada. Which would you like to talk about first? Goose Bay or Gander?

J. MARSHALL: Oh, Gander. Gander would make more sense because it’s also primary.

M. FREEMAN: Okay, thank you.

So tell us about Gander and primary and secondary SAR assets and distances as we just discussed with Greenwood, please?

J. MARSHALL: Gander only has Cormorants. So they have one primary Cormorant. And any other Cormorants would be considered a secondary asset.

M. FREEMAN: So, in normal circumstances, a crew on call for 30 minutes during normal hours, two hours during off-hours, similarly to the description of Greenwood – is that –?

J. MARSHALL: Correct, yeah.

M. FREEMAN: These are primary SAR assets in Gander: Cormorants?

J. MARSHALL: Correct.

M. FREEMAN: Or a Cormorant, because one Cormorant crew.

Okay. Anything else you want to tell us about Gander? The distance from – the time from Gander to Makkovik on a Cormorant?

J. MARSHALL: With fuel stop, to get overtop, would be five hours.

M. FREEMAN: A fuel stop would be done in Goose?

J. MARSHALL: Probably – possibly St. Anthony, whatever would make more sense. That would be up to the crew.

M. FREEMAN: Okay.

Got anything else you want to tell us about Gander from the perspective of this inquiry, this round table at this time?

J. MARSHALL: Nothing in particular. One thing I wanted to note is, during this mission, both Hercules in Greenwood were unserviceable. So they were not available, and that's what we would consider ourselves red for a fixed-wing SAR. Backup for that plan would have been one Hercules out of Trenton, and Trenton has to cover a large region for search and rescue, all the way up to the northern regions and towards the North Pole. So that asset

can cover the Atlantic region in the event of a SAR, but it's not ideal because of the distance, but it's what we had as backup.

M. FREEMAN: Okay, so there's a lot of information there. We are going – we'll dig into the search incident log and try and walk through the serviceability of the various Hercules and how that fits together with what occurred here, but thank you for that.

So we've talked about Greenwood; we've talked about Gander. Those are primary search and rescue assets. I see two other points on this map. It may be just because this has to do with this search, but there's nothing in St. Anthony in particular that I need to pay attention to or on top of the Great Northern Peninsula there.

J. MARSHALL: No, what you're seeing there is the location of the Aurora surveillance airplane.

M. FREEMAN: Okay, thanks.

J. MARSHALL: And that comes in later on the third day when it was retasked for this mission.

M. FREEMAN: The Aurora is a secondary SAR asset based out of Greenwood.

J. MARSHALL: Correct.

M. FREEMAN: Okay. And so we've talked about Greenwood, we've talked about Gander, so let's now talk about Goose Bay. What kind of assets does the Canadian Armed Forces have there?

J. MARSHALL: Goose Bay has two Griffon helicopters. Their primary mission is combat support. We have three combat support squadrons in Canada, and they're co-located where fighter jets would typically operate. So their primary job is to support fighter operations, which is inherently more dangerous, so we'd like to have a helicopter asset there to support them, which could be in a rescue scenario in the event of an ejection or accident, but also to go to the remote regions to put down targets so that they can practise their aim.

M. FREEMAN: So how many Griffons are there in Goose Bay?

J. MARSHALL: Two.

M. FREEMAN: And their primary mission is fighter support?

J. MARSHALL: Correct.

M. FREEMAN: And their secondary mission – one of their secondary missions is search and rescue or their only secondary mission I guess.

J. MARSHALL: I would say their only secondary mission is search and rescue.

M. FREEMAN: So they're a secondary asset that can be called upon and, in fact, were called upon in this case.

J. MARSHALL: Yes.

M. FREEMAN: What's the travel time from Goose Bay to Makkovik aboard a Griffon?

J. MARSHALL: I would say one hour.

M. FREEMAN: One hour. Okay.

What can you tell us about the capabilities when it comes to weather of the Cormorants versus the Griffons?

J. MARSHALL: There's no difference between the two for what they're allowed to fly in. Their minimums for search and rescue would be 300-foot ceilings and one-mile visibility.

M. FREEMAN: So their 300-foot ceilings is what? Can you tell us –?

J. MARSHALL: Sorry, I'm going to correct that. It's half a mile.

M. FREEMAN: Six hundred (inaudible) –

J. MARSHALL: Three hundred and half a mile of visibility.

M. FREEMAN: Okay.
Let's get the – so the Griffons versus the Cormorants from a weather perspective.

J. MARSHALL: They're the exact same with respect to what weather they're allowed to fly in.

M. FREEMAN: Right. And the weather – tell us a little – I'm trying to get into – I'm trying to pivot from the assets to the weather and their functionality a little bit just to explain this for everybody. So the – tell us about what kind of weather the Griffons and Cormorants can operate in. I think you're saying they're the same.

J. MARSHALL: They're the same. The only difference between the two is that the Cormorant has anti-icing capabilities, so they're able to fly in moderate icing conditions because they can get rid of the ice while they're flying. The Griffon doesn't have that capability. So if there's any icing in cloud, it's completely forbidden for the Griffon to enter cloud in icy conditions.

M. FREEMAN: And so was that a factor in this search, icing conditions?

J. MARSHALL: I didn't see any evidence that pointed to their concerns about icing. The temperature at the time was minus five. So with active precipitation, what we saw during the first two days, it's possible that there was icing in the cloud. Icing typically occurs in the vicinity of minus five to plus five depending on the conditions. But I don't know if it was a factor. I didn't see anything in any of the logs or transcripts that they talk about icing as a concern.

M. FREEMAN: Nothing in the records and discussions you had about icing being – stopping the Griffons on the 20 – on the 30th or after.

J. MARSHALL: Correct.

M. FREEMAN: Okay. And so they're operating on the same rules, the Cormorants and the Griffons, weather-wise.

So when you say a 300 ceiling, is that 300 feet?

J. MARSHALL: Correct, yeah.

M. FREEMAN: Okay. And what's one NM, or one nautical mile, you said?

J. MARSHALL: Yeah (inaudible) –

M. FREEMAN: Or one statute mile. Excuse me. Yeah, so carry on – tell me.

J. MARSHALL: Half a mile – statute mile, which is like the American mile. That’s sort of a – so it’s 300 feet above the ground for ceilings and half a mile of visibility.

M. FREEMAN: Okay.

So explain – we’re going to get into the SAR incident log eventually, but explain the weather and aviation a little bit for the inquiry. And while – you know, how does – people will see reference to 600 and one –

J. MARSHALL: Mm-hmm.

M. FREEMAN: – in this case; 600 and one meaning 600 ceiling, I think, and one nautical mile of visibility. So can you fit this together for us?

J. MARSHALL: Six hundred is the ceiling above the airport where they take the readings for the weather here in Makkovik. So that’s how – what the weather reader will read as the ceiling. That may apply to the rest of the area as well, but the reading is only done at the airport. Also, they have instruments where they can see and one mile is how far – whoever was reading the weather would say: Okay, I can see that marker which is one mile away, so that’s our weather at that time.

M. FREEMAN: Okay.

So is it as simple as saying the weather in Makkovik on the 30th was 600 and one? Can you say that or does that make any sense?

J. MARSHALL: Yes, that’s what the reading was at the time, so that’s what the weather was.

M. FREEMAN: On the 30th?

J. MARSHALL: Yes.

M. FREEMAN: Okay. I’m going to the SAR incident log at this time, unless there’s anything you want to say about the assets.

J. MARSHALL: Well, I’d like to touch a little bit more on the weather, because on the surface it would seem – well, if our weather limits are 300 and a half, yet the reading was 600 and one that it would’ve been okay to fly. But I think it’s important to explain in more detail about that and what’s going through the pilot and RCC’s mind at the time. Because as you know from looking outside, this is a mountainous region. So a ceiling of 600 over top of the airfield doesn’t mean the same, because as soon as you hit the mountains, that 600 quickly becomes zero. It’s a narrow bay here. You need turnaround space.

It’s – in a mountainous region with 600 ceilings, knowing that some of those – as we see today – some of those mountains are under cloud completely. So it’s not so easy just to say: Well, your limits are 300 and a half; you can go. Because it’s a mountainous region, it’s dangerous and it’s dangerous to be underneath the clouds. And we don’t want to put our crews at unnecessary risk.

The second thing I need to explain is the aircraft also need an opportunity to get underneath the clouds to hit that 300 and a half. So one of the methods we can do that with is to fly an instrument approach at the airfield, that gives us navigation aids to set down altitudes. That will enable the aircraft to get lower and lower based on the safety.

The minimums here, current data – I don’t know about 2012 but it would have been higher based on technology. But the minimums here is, I think, it was 1,100 feet. So the lowest that an aircraft can get into Makkovik on an instrument approach right today would be 1,200 and that’s based on a GPS-type approach, which I don’t know if it was established in 2012. If not, it would have been higher than 1,100 feet. So there is zero chance for any aircraft to use the airport to get underneath the cloud depth.

The other way that we can get underneath the cloud depth is if there are some holes in the weather so if it’s not completely overcast and you can see the ground, they can then transition down to get underneath that 600 foot and then find that 300-foot altitude, which is our limits, but the weather was overcast at the time with snow. So there’s no possibility for the helicopters to use ground features to try to get

below that 600-foot ceiling to do a search and rescue.

On the surface, it looks like the weather was good enough to do search and rescue, but it's much more complicated than that.

M. FREEMAN: Okay, thank you.

I think there'll be a lot more questions about this and I appreciate you trying to explain it. It is a complicated expert area, that, you know, I don't know, you're really the expert. So anything you want to share with us on that is good. It sounds to me – I'll try to summarize what you said and tell me if I've caught it. The Griffons and the Cormorants can operate in the 300 and one-half, if they're taking off from below the cloud already.

J. MARSHALL: Correct.

M. FREEMAN: So if there just so happened to be a Cormorant based in Makkovik on the 30th and it was 600 and one, 600 ceiling and one nautical mile –

THE COMMISSIONER: I think the reference is to statute mile.

M. FREEMAN: Statute miles, excuse me. Thank you, Mr. Commissioner.

One statute mile, that Cormorant, again, hypothetically may have been able to take off and stay under the clouds.

J. MARSHALL: Hypothetically, but again, because of the mountains that would be crew decision whether or not they'd feel like it would be safe. Because even though the weather is at 600, you know, it doesn't stay at 600, it's going to go up and down a couple hundred feet.

M. FREEMAN: Six-hundred and one is at the airfield.

J. MARSHALL: Yes, at the airfield.

So a crew might decide that it's not safe to fly, even though they have the minimums, because in a mountainous region you need to have outs, that if you do get into trouble, that if the snow makes it – the visibility less than a half a mile,

you need to be able to get back and land. So the crew would make a decision at that point.

If a Cormorant was parked in Makkovik at the time, I can't say whether or not they would've taken off. I would guess that they would. But, again, that's a crew decision based on safety of flight.

M. FREEMAN: And we're getting into multiple layers of hypothetical possibilities, so I know just leave it there, but –

J. MARSHALL: In my experience, being a commanding officer of a squadron with helicopter pilots, they always like to try. So I would say that they would at least take off, but the weather might drive them back. That's hard to say and it is a hypothetical.

M. FREEMAN: Are there places around the area of Makkovik where the mountains are higher than 600?

J. MARSHALL: Yes.

M. FREEMAN: Is that what you're essentially driving at when you say there are mountains around?

J. MARSHALL: There are and I saw some peaks at 1,200 in the region.

We have another thing on the approach we call the sector height. So it's your safe instrument altitude within 25 nautical miles of the airport, and the sector height here is 3,200 feet. So you're in IFR – IFR is instrument flight rules – so if you're in whiteout conditions where you're not being – you're not able to see the ground, you're flying off the instruments, the lowest you can go in this region without being on an approach, so actively trying to get in to the airport or seeing the ground, would be 3,200 feet.

M. FREEMAN: Okay, thank you.

JRCC was called on the 30th – January 30 – for the first time.

J. MARSHALL: Yes.

M. FREEMAN: And so your records, the JRCC records, they don't have the weather on the 29th, to your knowledge.

J. MARSHALL: That's correct. We only have it as of the 30th.

M. FREEMAN: Right. And so JRCC wasn't called on the night of the 29th. Mind you, there is some information at – I'm going to ask, Madam Clerk, if you could take us to Exhibit 042, please. And if we can, please, look at page 7. Page 7 of Exhibit 042, please.

CLERK: There are only five pages.

M. FREEMAN: Oh, I must have the wrong number. Bear with me, please. Exhibit 044, page 7.

So, Lieutenant Colonel Marshall, can you tell me what you see here?

J. MARSHALL: Okay, so which – I mean, there's a lot of data there. Which time do you want?

M. FREEMAN: Well, I see at the top it says: Weather from Makkovik.

J. MARSHALL: Yeah.

M. FREEMAN: What I want to talk about first – again, bearing in mind that hypotheticals are of limited value, but I think it's important that we try to run down some of this information. So following data –

J. MARSHALL: Okay.

M. FREEMAN: – from Sunday, 29, 2012. So JRCC was not called on the 29th. Mind you, we have an entry here about weather on the 29th.

J. MARSHALL: Okay, so I'll decode that for everybody.

M. FREEMAN: Please do, because this is somewhat alphabet soup, as they say (inaudible).

J. MARSHALL: So the METAR is the actual report (inaudible).

M. FREEMAN: M-E-T-A-R, METAR, what is that?

J. MARSHALL: That's the meteorological actual report. So that's the reading that they have at the airfield.

M. FREEMAN: And this is whose reading?

J. MARSHALL: Whoever does it here at the airport.

M. FREEMAN: Would you think it's the airport or Environment Canada? Can you tell the source of this?

J. MARSHALL: I don't know what they do in Makkovik.

M. FREEMAN: Okay.

J. MARSHALL: But somebody is responsible to read the weather.

M. FREEMAN: Okay, and this looks like an official weather reading from the airport from your perspective?

J. MARSHALL: Yes.

M. FREEMAN: Okay, and carry on then, please.

J. MARSHALL: So that's taken on the 29th at 21Z. 21Z at that time of year would've been four hours difference. So that would be 21 minus four.

M. FREEMAN: So you told us what METAR is. What is – CYFT is ...?

J. MARSHALL: Oh, apologies for that.

M. FREEMAN: That's okay.

J. MARSHALL: CYFT is the airport identifier for Makkovik.

M. FREEMAN: CYFT is Makkovik.

J. MARSHALL: Yes.

M. FREEMAN: And 292100Z, I believe, is the time?

J. MARSHALL: Yeah, that's the daytime group, which is the 29th.

M. FREEMAN: Yes.

J. MARSHALL: At 2100Z on the 24-hour clock system.

M. FREEMAN: 2100Z, is that the same as Greenwich Mean Time?

J. MARSHALL: Yes.

M. FREEMAN: So, in January, the difference between Zulu and Makkovik time is what?

J. MARSHALL: Four hours.

M. FREEMAN: Four hours. So if we see 2100Z, what time is it in Makkovik?

J. MARSHALL: 17, which is 5 o'clock p.m.

M. FREEMAN: So it's supertime, around dark from the evidence we heard yesterday from Mr. Andersen.

J. MARSHALL: Yes.

M. FREEMAN: Okay, thanks.

Okay, and carry on. 13005 – the next part of this that's important, I guess. I'll leave it to you, because I don't know what's important and what's not in that script.

J. MARSHALL: The 13005KT, that would be winds, which is the direction of the winds with the 130 by the compass, and 5 knots. So that's not very strong.

M. FREEMAN: And what else do we have there of interest?

J. MARSHALL: Six statute miles is the visibility, which is anything at six would – is what we consider unlimited visibility; they don't read further than six.

M. FREEMAN: Okay, and carry on.

J. MARSHALL: In light snow – the negative sign on the SN indicates light snow. And the overcast – I can't really read it, is it six or eight?

CLERK: Six.

J. MARSHALL: Six. So that would be overcast at 600 feet.

M. FREEMAN: And anything else there that we should know?

J. MARSHALL: The next is the temperature; the M is minus. So minus nine is the temperature, minus 11 is the dew point. Dew point is not significant here but if the dew point was minus nine, we'd be in fog. So when the dew point and the temperature equals, that means you're in fog.

M. FREEMAN: Anything else there in that – that would illuminate the situation on the night of the 29th from a weather perspective?

J. MARSHALL: Not necessarily. The next one is the altimeter setting. That just says that it is low – a little bit low, which usually low pressure means poorer weather. And then the next one is remark, stratus eight, which is the type of cloud that you are experiencing. So an eight – we divide the sky up into eight oktas. So stratus eight would mean that there are stratus clouds in all eight oktas.

M. FREEMAN: Thank you. And anything else there in that –?

THE COMMISSIONER: Can I just ask what that last word was and if you can spell it?

J. MARSHALL: Okta, I believe it is O-C-T-A. It is basically just dividing the sky into eight different quadrants.

THE COMMISSIONER: Fine.

J. MARSHALL: The last – I'm having difficulty reading that. Oh, what it says is last observation.

M. FREEMAN: LAST OB/?

J. MARSHALL: Yeah, last observation. Next at 3010 Zulu. So you would stop observing for the day, probably because it's dark.

M. FREEMAN: So we don't have –

G. BUDDEN: If I may, the witness does have the exhibit book. It might be – I am going to be reading off that or off the screen. But the exhibit book might –

J. MARSHALL: I'm not sure if I have this one.

M. FREEMAN: I don't think he has this one because it is coming from a provincial record, but if you're having a hard time seeing it, I can certainly get you the paper.

J. MARSHALL: I can stand up as well if that is permitted.

M. FREEMAN: Of course, yeah. I would think, Mr. Commissioner, that would be okay.

J. MARSHALL: So just the last – it's not – it's really not significant, to be honest. So it is last observation is what they are telling aviators, that this will be the last observation for the night and the next will be the next day at 10 Zulu.

M. FREEMAN: Great, thank you.

J. MARSHALL: Like I said, it's probably because it was dark and you can't observe the weather because he's not using instruments, he's using his eyeballs.

M. FREEMAN: Okay. And below that you see a string of January 30th measurements.

J. MARSHALL: I'll stand up again.

M. FREEMAN: Sorry about that.

J. MARSHALL: That's fine.

So the next one is all of the readings on the 30th. If you look into the third block of numbers, the 30 at 10 Zulu, then 11, 12, 13. So basically, every reading throughout the day is included there.

M. FREEMAN: Okay, thank you. And are they – where's the first one? At the bottom or the top?

J. MARSHALL: The top at 10 Zulu.

M. FREEMAN: And that would be the start of the day for that observation?

J. MARSHALL: Correct.

M. FREEMAN: All right, thank you.

Okay, so back to the – what are the implications of the weather on the 29th, from a search and rescue perspective?

J. MARSHALL: I'm not going to go through every line.

M. FREEMAN: No, on the 29th, Lieutenant Colonel.

J. MARSHALL: Oh, sorry, on the 29th?

M. FREEMAN: Mm-hmm. The JRCC were not called on the 29th, mind you. In a hypothetical world where someone had been called on the night of the 29th, this is what they're facing.

J. MARSHALL: Yes, and I would say that the overcast 600 would be the limiting factor for air operations that night. It would've been very difficult – especially at night – for anybody to fly with 600-foot ceilings.

M. FREEMAN: Thank you.

I don't intend to go into the weather all through the 30th at the moment, so you probably can –

J. MARSHALL: Okay.

M. FREEMAN: – take your seat, and I'll have you stand up again in two seconds.

Madam Clerk, if we could please take a look at Exhibit 096.

So what is this, Lieutenant Colonel?

J. MARSHALL: This is the incident log that JRCC keeps for every search and rescue mission. It's done on a software that we use called a SARMaster and it's at all the JRCCs.

M. FREEMAN: And so if someone – like this inquiry – is trying to look back at a search and rescue mission, they can look at a SAR incident log – is that what you call it? SAR instant log or SAR incident log?

J. MARSHALL: Yes. SAR incident log.

M. FREEMAN: SAR incident log. And this is the SAR incident log from the Burton Winters matter.

J. MARSHALL: Correct.

M. FREEMAN: And there's also transcriptions in our documents – I don't need to go to those right now – but transcriptions of telephone calls. So can you explain that to us as well?

J. MARSHALL: Yeah, we keep all audio records for a certain period of time and it was transcribed at some point, and that's what we have.

M. FREEMAN: So, to your knowledge, Canadian Armed Forces didn't transcribe those transcripts, but they have been transcribed and you've read them.

J. MARSHALL: Yes, I have read them. I don't know who transcribed them, though.

M. FREEMAN: Okay, thank you.

So you can see – maybe you can explain this document for the purposes of the inquiry, please. We see Incident Log on the top left. Are you able to see that okay or should we get you book?

J. MARSHALL: Yeah, I can see it and I also have (inaudible) –

M. FREEMAN: You have a copy of this one, of course, okay.

Criteria: Incident H2012-001 – what's that all about?

J. MARSHALL: That's just the serial number of this incident. So if we refer to this incident and find another other documentation, that would become – that would help us also retrieve it from the software by putting into that number.

M. FREEMAN: So if we wanted to look at the SAR incident log for the Corner Brook portion of the round tables or the Grand Falls portion of the round tables, they would have a different incident –

J. MARSHALL: Correct.

M. FREEMAN: That's all that is. There's nothing of value there in terms of analysis.

J. MARSHALL: No.

M. FREEMAN: Okay, thanks.

“30JAN2012” – I'm reading from the top left corner of page 1 of Exhibit 096.

J. MARSHALL: Mm-hmm.

M. FREEMAN: “30JAN2012 1309Z.”

J. MARSHALL: That is the daytime group of when that entry was entered; Z being Greenwich Mean Time. So if you want to translate into Atlantic Time, just subtract four hours.

M. FREEMAN: Okay, and –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

M. FREEMAN: Sorry, go ahead.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

M. FREEMAN: You make it four hours earlier than ...?

J. MARSHALL: You make it earlier so – Zulu – Greenwich Mean Time is in England, so we're four hours earlier.

M. FREEMAN: And that varies based off of daylight savings time, but we've put our heads together and come up with January –

J. MARSHALL: Yes.

M. FREEMAN: – of, with the daylight saving adjustment and the Zulu adjustment – 1312 Zulu would be what Makkovik time?

J. MARSHALL: 9:12.

M. FREEMAN: 9:12 Makkovik time. Sure.

Just for the purposes of this conversation, I want to try and get some of the language straight before we dig into the SAR incident log. The person who's answering the phones at JRCC, for

the most part, is that – I see here a MacDonald C, on the right-hand side.

J. MARSHALL: Yes.

M. FREEMAN: That's the controller.

J. MARSHALL: He's the controller.

M. FREEMAN: And the controller can change depending on the time of day or whatever.

J. MARSHALL: With a shift change.

M. FREEMAN: Okay.

So it's safe – for the purpose of this conversation best to refer to the phone answerer at JRCC, for the most part, as the controller.

J. MARSHALL: Correct.

M. FREEMAN: Okay. So we have the controller who's typing this log?

J. MARSHALL: Yeah, so this would be a summary of the phone conversations so that it becomes a record within the log. Especially when something extends beyond one shift –

M. FREEMAN: Mm-hmm.

J. MARSHALL: – whoever he hands over to will at least have a history because the log is open.

M. FREEMAN: Okay.

And who does the controller liaise with when a search is unfolding or when a file is unfolding?

J. MARSHALL: Well, it depends on the type of search. In this instance, because it was a ground search, a humanitarian response, then the province's EMO – in this case, the Fire and Emergency Services in Newfoundland and Labrador.

M. FREEMAN: Right. So let's slow down for one second. So there's an organization in Newfoundland and Labrador called Fire and Emergency Services.

J. MARSHALL: Correct.

M. FREEMAN: In 2012, that's what they were called.

J. MARSHALL: Yes. And they – they're what we consider the EMO: emergency management office.

M. FREEMAN: Okay. And their name has changed over time and we'll learn about that, but at the time, they were called Fire and Emergency Services – Newfoundland and Labrador. People commonly refer to them as FES-NL.

J. MARSHALL: Correct.

M. FREEMAN: And so I'll try to use FES-NL. When they're talking – when the controller is talking to FES-NL, they're talking to the province, essentially.

Who else is the controller talking to in this incident? I know there were a lot, so I can –

J. MARSHALL: At this time, it was only with the province's rep from FES-NL.

M. FREEMAN: The first call is from – the controller types NFLD EMO.

J. MARSHALL: Mm-hmm.

M. FREEMAN: That's colloquial, I guess. In other provinces, they may be EMO offices.

J. MARSHALL: Correct, yeah.

M. FREEMAN: Okay.

J. MARSHALL: So we're used to using terminology EMO. It's not significant that we would call it EMO instead of FES-NL. It's – we know what it represents.

M. FREEMAN: Right. Okay.

Later on in this document, we get into the controller talking to some other people. And instead of stopping then and trying to explain that, I'm trying to get it out now. So the controller needs to get help. They want to check and see if there's assets available. They need to check with certain people. Who are some of those people that you'd have to go out to, other

than FES-NL? Federally, who's the controller going to?

J. MARSHALL: So we don't have to call the primary SAR squadrons in this case because we already know their status. They're responsible for reporting their aircraft status to JRCC and any changes to it. So, at this time, he would've known that there were no Hercs available but there were Cormorants available because that is what was already reported.

Now, he does call 444 Squadron in Goose Bay because Goose Bay is not a primary search and rescue unit. They're not obligated to report their serviceability of their status and they have no search and rescue standby posture. So we would call – in this case, JRCC would call 444 Squadron to find out whether or not they're capable of doing a SAR mission and whether or not they're serviceable.

M. FREEMAN: So FES-NL calls JRCC, the controller is sitting in Halifax at JRCC and that controller is reaching out to any number of possible places. In this case, the controller talks to the officer in charge – is where I am going with this –

J. MARSHALL: Okay.

M. FREEMAN: – for example. So the controller talks to the OIC, also known as the office in charge. Who's that at this time?

J. MARSHALL: The OIC would be the major who is in charge of JRCC, and he is responsible for approving, or not, any missions that are not a part of the primary SAR mandate, so any humanitarian assistance missions. The controller has the ability to task the primary SAR aircraft for search and rescue – air, nautical or maritime search and rescue missions. But the authority to use one of our SAR assets for a secondary mission, a humanitarian mission, would be at the OIC level.

M. FREEMAN: Okay. So the controller receives a call on this case, in the Winters's case, and it's a ground search and rescue, so it's a humanitarian – because it's not a vessel, it's not a boat or an airplane, and the decision is made to seek secondary – primary or secondary SAR assets. But if you're going to go to – to go

to primary you don't need to go to the OIC, is that what I'm hearing?

J. MARSHALL: No, no. So, excuse me, I'll repeat that.

M. FREEMAN: Okay, so what's the controller doing, again? Break it down for us.

J. MARSHALL: Because this is not an air, nautical or maritime, the OIC is the authority in this case.

M. FREEMAN: I see.

J. MARSHALL: So to use any asset – sorry, to use the primary SAR assets. To use the secondary SAR asset we would then have to ask the air force if we can use that, which is, I would say, almost always approved.

M. FREEMAN: Okay.

And who would the person at the air – like, we have the OIC in JRCC –

J. MARSHALL: Yes.

M. FREEMAN: – in Halifax, the officer in charge. But we also could, if we need a secondary asset, call the air force, you said.

J. MARSHALL: Yeah, in Winnipeg. They would call the director of the operations in Winnipeg to get approval.

M. FREEMAN: The director of operations.

J. MARSHALL: Yeah, the director of air operations. I don't want to go into too many acronyms.

M. FREEMAN: I hear you. No, I'm trying to limit it but also get it all understood.

J. MARSHALL: Mm-hmm.

M. FREEMAN: The controller at JRCC may also call the flight captain, the captain of an air asset, is that right?

J. MARSHALL: They can but they would generally talk to the operations officer who would be the primary contact in a squadron. In

this case, he was talking to the captain – 444 Squadron is very small so they’re not going to be as staffed as a large squadron with an operations officer. So, in this case, he spoke directly to the aircraft captain.

M. FREEMAN: That was Captain Gillis?

J. MARSHALL: Captain Gillis, which is not abnormal because he’s the one who’s – he was the only aircraft captain at the time in Goose Bay. So he’s the one who would have the most information about the status of the aircraft.

M. FREEMAN: So, in this case, on the 30th, it was a secondary SAR asset that was ultimately tasked, a Griffon from Goose Bay, is that right?

J. MARSHALL: Was asked but it wasn’t tasked.

M. FREEMAN: Was asked but was engaged, I guess. My point only being for the purposes of getting the language straight, the controller would, for a secondary SAR asset, call the air force?

J. MARSHALL: Yes. The controller may not call the air force directly. Who calls is not really relevant –

M. FREEMAN: Okay.

J. MARSHALL: – but it is something that needs to be asked from the JRCC. So it could be at the controller level or at the OIC level or even higher with the admiral of SRR commander level. But I don’t think it’s relevant who calls. Like I said, it’s almost always approved especially for search and rescue.

M. FREEMAN: I understand. Above the OIC, is there another layer of command that gets drawn into this search?

J. MARSHALL: Yes, the SRR commander.

M. FREEMAN: SRR?

J. MARSHALL: Search and rescue region commander. So the admiral in Halifax is in charge. He is the search and rescue region commander for the Atlantic region.

M. FREEMAN: And that’s Rear Admiral Gardam –

J. MARSHALL: Correct, yes.

M. FREEMAN: – at the time in 2012.

Okay.

UNIDENTIFIED MALE SPEAKER: What’s the last name?

M. FREEMAN: I think it’s Rear Admiral Gardam?

J. MARSHALL: Gardam.

M. FREEMAN: Rear Admiral Gardam gave the press conference.

All right. So diving into – Mr. Commissioner, am I okay to just carry on?

I’m looking at the second entry here: 30Jan2012 1312 Z. So that is what time in Makkovik?

J. MARSHALL: 9:12.

M. FREEMAN: NFLD EMO which is FES-NL?

J. MARSHALL: Yes.

M. FREEMAN: Calls JRCC in Halifax and says “Requesting our assistance in the search for a 14” –

J. MARSHALL: Year-old male.

M. FREEMAN: – year old male – “who left on his skidoo ...” and then it carries on to the second line, the third line. The third paragraph I’ll say: “They have searched the community and can not locate him.” Do you see the third line there?

J. MARSHALL: Correct, yes.

M. FREEMAN: “On scene Cpl Kimbel Vardy ...” – and he’s on the panel with you today – “weather in the area will not permit launch of local helo or aircraft ... I will discuss with OIC and get back to EMO.”

So that's a lot of letters there again and I think we've done our best to identify most of them. So the controller is hearing from FES-NL at this time?

J. MARSHALL: Yes.

M. FREEMAN: What is he hearing, from your perspective?

J. MARSHALL: They're just – FES-NL is calling to find out if RCC can assist in the search.

M. FREEMAN: So what is the point of him saying, "weather in area will not permit launch of local helo or aircraft"?

J. MARSHALL: So when the EMO calls RCC, one of the things that we look for is to make sure that they have explored other options before they call search and rescue because we are supposed to be the last resort for assistance in ground search and rescue.

M. FREEMAN: I think that's important, I just want you to make that point and I want to make sure it's understood because it was surprising to me as I learned this. I think – you just tell me again, you said we're a last resort when it comes to ground search and rescue. So explain how that fits together with: "weather in the area will not permit launch of local helo"

J. MARSHALL: Right. So the province is responsible for responding to ground search and rescue with the resources that they have at their ability. So some provinces might have their own aircraft, some provinces would have a contract with certain companies that could respond in ground search and rescue for assistance in that way.

M. FREEMAN: Hmm.

J. MARSHALL: If for – what we like to see from EMO is that they have done their due diligence, have looked at other options and because the other options are not available for whatever reason, whether it is weather, availability, then they would come to the federal resources and use us. That is because our resources are finite, we don't have a whole lot of aircraft or crew to do search and rescue and we

have enough resources to do the federal mandates – aeronautical and maritime SAR.

If we are going to give assistance in a humanitarian capacity, it is taking above and beyond what we are resourced to do. And the second part of that is because it is a provincial responsibility, the federal government cannot compete against private industry. So we got to make sure that those private industries in Newfoundland and Labrador have the ability to get hired by the province before they come to the federal government.

M. FREEMAN: So from your perspective on this first entry between the controller and FES-NL, FES-NL has done what they are expected to do: They're confirming for you that the local – it would be Universal Helicopters; you wouldn't have known that at the time, but you know now – that Universal wasn't able to operate at that moment.

J. MARSHALL: Right.

So when they call and they say: We can't do it, we don't have the resources. At that point, that's when we would get involved.

M. FREEMAN: All right.

And just for clarification, this is the morning of the 30th?

J. MARSHALL: Yes.

M. FREEMAN: So this is the first full day of searching. So they've been searching for Burton all the night on the 29th, and now it's the morning of the 30th.

J. MARSHALL: Yes.

M. FREEMAN: Is that your understanding?

J. MARSHALL: Correct.

M. FREEMAN: Thank you.

Okay –

THE COMMISSIONER: So let me interrupt you at this stage and say to the public: Welcome to the world of judges and commissioners and

lawyers. It's a plodding, tedious pace that we follow, but never uninteresting. And I should let people know that we have to allow the witnesses to speak and then lawyers to cross-examine. So it's a long process and we never make any final comments until all the evidence is in.

So all I'm saying is that I think at this pace, it's quite hard to keep up, so time for a 15-minute break and we'll see you back at 10:30.

Madam.

CLERK: All rise.

M. FREEMAN: Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you.

Recess

CLERK: All rise.

This commission of inquiry is now in session.

Please be seated.

THE COMMISSIONER: (Inaudible) I'm sorry about that.

G. BUDDEN: Thank you, Mr. Commissioner.

One housekeeping matter that I should have thought of at the end of yesterday, but the map that was used yesterday and which has been annotated at various points by – primarily by Barry Andersen, or at his direction, and which is present here on the easel, we would like to enter that as an exhibit.

I understand, Madam Clerk, the number would be –

CLERK: P-0169.

G. BUDDEN: Thank you.

So, Mr. Commissioner, perhaps we can enter that as Exhibit P-0169 and perhaps we'll leave it in place if witnesses, over the course of today, wish to refer to it.

Thank you.

THE COMMISSIONER: Go ahead, Sir.

M. FREEMAN: Thank you, Mr. Commissioner.

Lieutenant Colonel Marshall, when we left off we were looking at the SAR incident log, Exhibit 096, and we were just finishing with the second box there – that's still up on the screen – and the last line of that box says: "I will discuss with OIC and get back to EMO."

So this is the controller at JRCC saying that he is going to talk to the officer in charge; is that right?

J. MARSHALL: Correct.

M. FREEMAN: And who is that?

J. MARSHALL: That's the major who's in charge of JRCC –

M. FREEMAN: JRCC in Halifax.

J. MARSHALL: In Halifax.

M. FREEMAN: And "get back to EMO," which is FES-NL.

J. MARSHALL: Yes.

M. FREEMAN: Okay.

And that is at 1312 Zulu, which in Makkovik is –

J. MARSHALL: 9:12.

M. FREEMAN: 9:12.

And this is the first request for JRCC support on the 30th, which is the second day that Burton is missing.

J. MARSHALL: Yes.

M. FREEMAN: So moving on to the next box. The controller is making another entry. Again, this is all supplemented by transcripts; is that correct?

J. MARSHALL: Yes.

M. FREEMAN: Yeah, you could listen to these phone calls if you were so inclined or read the transcripts of them.

J. MARSHALL: Yeah, the log is more of a summary. The transcripts would have a lot more detail, obviously.

M. FREEMAN: Okay. And if at any time –

P. RALPH: (Inaudible) those were exhibited, as well as the recordings.

M. FREEMAN: Yes, thank you, Mr. Ralph.

So if at any time, James, you want to supplement these sort of short-form entries, we can call up the transcripts of the actual call between anybody calling out of JRCC, is my understanding.

J. MARSHALL: Yes.

M. FREEMAN: Okay, thank you. Or into JRCC –

J. MARSHALL: Mm-hmm.

M. FREEMAN: – for that matter. Okay.

So I'm now at the top of this box here that says "30JAN2012 1318Z" and the letters "NTF."

J. MARSHALL: Yes, that's note to file.

M. FREEMAN: So this is the controller again typing: note to file.

"Discussed with OIC" – discussed with officer in charge – "and based on no serv Herc

"he would only be willing to commit 444 Sq

"I will investigate."

So can you explain that to me? Obviously, this is a critical piece of information that has – needs some explanation.

J. MARSHALL: Yeah, and on the surface I had to do some digging as well, because the first time I read that I didn't understand the connection between the Hercules and any other asset, the Gander Cormorant.

We do have some procedures where the Cormorant has to be escorted by the Hercules. That's if the Cormorant goes 50 nautical miles offshore for a rescue, for safety reasons, we would have – what we call – top cover. The second reason would be night. If the Cormorant needs night illumination, the Hercules can drop night flares so that they can execute their rescue under light instead of in the dark.

But neither one of those strategies applied to this rescue here because it wasn't 50 nautical miles out and, at the time, it wasn't night. So it confused me at first but, digging in and speaking with people, what I discovered was is the logic behind not sending assets without the Hercules being serviceable is because with one Cormorant in Gander available for SAR, once we sent it, then there would be no assets left to do any type of search and rescue in that region.

Now, that doesn't always play into it – a factor in a rescue because, even with one asset, we're still going to launch it on a rescue. But when you combine that with the poor weather and the fact that any asset that we did send here on that day, on that morning, would have had zero – little to zero chance of actually effecting any search, we would have been sending our one asset in the North Atlantic region to a search that had little possibility of actually working because they would have been looking on top of the clouds and not underneath the clouds, based on what I discussed earlier.

In all likelihood, if JRCC at this time sent the Gander Cormorant, they would have come, realized the search was futile, gone to Goose Bay and wait the weather out. Then they would have run out of crew day, because our maximum crew day would have been 15 hours for SAR, and then have to spend the night in Goose Bay.

So, if we dig back – if we would have sent the Gander Cormorant, in all likelihood, it would not have been able to do any searching. Then we would have had that asset in Goose Bay for 27 hours of not being available to the search and rescue region for a search that would not have been effective. So that's why the Hercules being unserviceable played into this because they were – we would have been leaving that region with zero search and rescue resources for 27 hours. So it's not an easy question to answer but I

think, when you stack all of those factors in, that's what came to the OIC's decision to hold the Gander Cormorant back.

M. FREEMAN: So that's a lot of information coming out of those four little lines, James, and we're going to break it down and try to explain it. Because I think you're right; it does cause confusion to you, to me, to anybody who reads it or hears it. Because it says, in the short-form entry: "... based on no serv Herc." What you're saying is that – again, maybe break this down. When I read this first, it made it sound to me like a Cormorant and a Herc were like a pair, a couple that had to be together at all times or something. But is that not the case?

J. MARSHALL: Not all the times. Like I said, there are a couple missions that they would have to be, but it wasn't at play here.

M. FREEMAN: Because of the location?

J. MARSHALL: Yes.

M. FREEMAN: Close enough to land.

J. MARSHALL: Mm-hmm.

M. FREEMAN: Hypothetically.

J. MARSHALL: Correct.

M. FREEMAN: Yeah. Okay.

So the Cormorant can go places without a Herc following it around.

J. MARSHALL: Yes.

M. FREEMAN: Okay.

So the fact that there was no serviceable Herc is not that the couple wasn't able to be together and so they couldn't come and do the work, it was something else. Is that right?

J. MARSHALL: Yeah, it was the fact that the risk was we would've been leaving the whole region without any type of asset to do any type of rescue if we had sent it here.

M. FREEMAN: So – and I think if we – I don't want to go too much into the transcripts right off

the bat, but we certainly can. So the decision of the OIC to say no – because the word "no" is there: no serviceable Herc, doesn't want to send, "willing to commit 444 Sqn." So we're looking at this same entry here. So just tell me what the OIC's thinking was from your perspective. It was no serviceable Herc and weather. Is that what you're saying?

J. MARSHALL: Yeah. I think weather played a huge factor in the decision that he made not to send the Gander Cormorant. Without speaking on his behalf, I think – but I will –

M. FREEMAN: Yes.

J. MARSHALL: – I think I can confidently say that if the weather was good enough for a search in this area, the answer would've been different at this time. We would've sent that Gander Cormorant to look for Burton if we felt like there was any chance of the search actually being productive. But the – combined with the fact that search would not have been productive, and that's why the Cormorant was held back, because, like I said, that would've been 27 hours without any capability in that region.

M. FREEMAN: So it's – is it a combination of the two?

J. MARSHALL: Yes.

M. FREEMAN: Because, you know, and I think – I don't want to speak for anyone, and the family is represented and the public is being spoken for by the commission, but you know, it's hard to hear no, obviously. And so you're saying that no, and Canadian Armed Forces is saying that no is based on the combination of those two things that – as you just described them. Is that correct?

J. MARSHALL: That's correct.

I mean, it is a decision that is very hard to make. And I know after every rescue where it's not successful, the search and rescue community takes it very hard and it certainly affected us and made us second-guess our decisions. But when we look back on it and you combine the weather with the assets that we had at the time, the decision was the right decision with those factors. But it's not an easy decision.

I happen to know that people involved in the decision, forever we will regret it because it wasn't on a successful mission. Any time we have an unsuccessful mission, it's very hard to take in for the search and rescue community. Our job is to rescue people. It's in our DNA to want to go to missions and it's very hard to say no unless sometimes it's necessary.

M. FREEMAN: So the OIC – the Officer in Charge – is saying "... based on no serv Herc," they would commit something. They're going to attempt to commit something to this. What is that?

J. MARSHALL: That's the Griffon out of Goose Bay. The logic behind that is because it's not a primary SAR aircraft we could then attempt a mission. Although unlikely to be successful, we can at least try and without jeopardizing the primary mission – the primary SAR mandate mission.

M. FREEMAN: So, at this point, the controller is investigating the availability of the 444 Sqn. So 444 Sqn is what?

J. MARSHALL: 444 Squadron is the Griffon squadron out of Goose Bay.

M. FREEMAN: And so that's what the controller now sets off to investigate?

J. MARSHALL: Yes.

M. FREEMAN: And at 1319 Zulu – this is 9:19 a.m. in Makkovik?

J. MARSHALL: Yes.

M. FREEMAN: The next box is Goose Bay Ops. They are reporting SAR ready. And we carry on down to the next box. The equal sign means call back or call –

J. MARSHALL: Called.

M. FREEMAN: Called.

J. MARSHALL: So we called Captain Gillis. If the equal sign was after Captain Gillis, that means he called us.

M. FREEMAN: Okay. So equal sign Captain Gillis. He is who? Who is he?

J. MARSHALL: Captain Gillis is the aircraft commander in Goose Bay.

M. FREEMAN: And it says here: "He is on the way to work ..." – and, Madam Clerk, I'm sorry, I'm staring at my own screen. Are you able to follow me? If I ever lose you, please do let me know. I know you will.

Captain Gillis: "He is on the way to work ..." – this is Captain Gillis speaking now to the controller. We were calling Captain Gillis – the proper way to refer to him for the purposes of this is the pilot or what was the officer –

J. MARSHALL: You could call him the pilot.

M. FREEMAN: The pilot – talking to the pilot, the pilot says: He's on his way to work "but the AC is US and he will call me when he gets to Sqn." Can you explain that for people, please?

J. MARSHALL: The aircraft is unserviceable and he'll call him when he gets to the squadron. So, especially in the winter, because oil is thicker in cold temperatures, once you start warming up the aircraft, you start the engines, you get it going –

M. FREEMAN: Mm-hmm.

J. MARSHALL: – and once that oil warms up, the viscosity gets thinner and that's when you'll notice leaks. So what happened in this case is once they warmed up the aircraft and started the engine they noticed that there is an oil leak.

M. FREEMAN: And if the Cormorant – we talked about this earlier but I'll revisit it now. If the Cormorant were to come from Gander, that transit, the amount of time to get here from Gander is what?

J. MARSHALL: With a fuel stop, five hours.

M. FREEMAN: Okay.

So the next box here is: note to file. "Discussed weather 600/1" – or 600 and one. Do you see that entry there?

J. MARSHALL: Yes.

M. FREEMAN: “And aircraft status for the fleet with the” officer in charge. “At this point he does not want to commit resources other than 444 and they are US.”

So above we saw that the OIC was going to try to use the Griffons out of Goose Bay.

J. MARSHALL: Yes.

M. FREEMAN: And now we find out the Griffons out of Goose Bay are not available because they are US, unserviceable.

Tell us about that box and what would go into that decision-making process, because it’s still saying he does not want to commit.

J. MARSHALL: Yeah, and that goes back to what his decision was before. The fact that the Griffons were US didn’t factor in his decision earlier to not send the Cormorant. So the fact that the Griffons are not available now at this point didn’t change anything.

M. FREEMAN: And this line – the second line of that box, the 1330 box: “Discussed weather 600/1 and aircraft status” So is that what you’re talking about?

J. MARSHALL: Correct.

M. FREEMAN: So –

J. MARSHALL: So the weather being so poor. And the aircraft status, he could be referring to the Hercules being unserviceable in Greenwood or – and/or the Griffon now being unserviceable in Goose Bay.

M. FREEMAN: And just play out again for me what happens in your – it’s hypothetical, obviously, but based on the evidence you’ve seen, what happens if the Cormorant is dispatched from Gander at 1330 Zulu at 9:30 a.m. on the 30th?

J. MARSHALL: If the Cormorant was dispatched, in my opinion, he would’ve gone to Goose Bay to get fuel, try to come up a plan –

M. FREEMAN: It would’ve taken him five hours to get there.

J. MARSHALL: Probably four hours for Goose Bay and then a fuel stop and then one more hour to get here. But, in my opinion, they would have tried to come up with a plan from Goose Bay to see how they could get in. But I don’t believe they could have conducted any type of searching with that weather.

M. FREEMAN: Okay. The seat couldn’t have gotten below the ceiling is what you’re saying.

J. MARSHALL: Right.

M. FREEMAN: Couldn’t have gotten below 600, they’d be flying above the clouds if they had come at that moment.

J. MARSHALL: They couldn’t fly direct from Goose Bay to Makkovik based on the 600-foot ceilings. Even though the Goose Bay weather would have been better, at some point they’re going to be entering cloud in a mountainous region – obviously, again, unsafe. If they flew at a safe altitude and then came over top of Makkovik at 3,200 feet, which was the safe sector altitude at the time, they had no ability to get down low enough to get underneath that cloud deck.

The other option that they could have done was fly low over the coastline, so to try and stay underneath that 600 feet the whole way. I did speak recently with the officer in charge of 103 Squadron in Gander to see if that would’ve been possible as one strategy to do that, and he said although that is possible, it is not recommended. It is a lot of S-turns. It basically means you’re extending that distance, so even if they made it here, they would have had to turn around because they would’ve been fuel critical. So they would’ve had to turn around and go back to Goose to get more fuel. So it wouldn’t have been a feasible option for doing that search because the distance to follow the coastline would have been too long.

M. FREEMAN: And in the best-case scenario from a crew time perspective, what’s the maximum amount of time they can operate that Cormorant from the moment that they are activated from Gander?

J. MARSHALL: We're talking about crew day?

M. FREEMAN: Sure.

J. MARSHALL: Yeah. According to our regulations, 15 hours is the maximum crew day for search and rescue.

M. FREEMAN: That includes the five hours up to –

J. MARSHALL: It includes everything because they would have been on the squadron already because it was during the day. So they would have arrived on squadron probably around 8 o'clock.

M. FREEMAN: Mm-hmm.

J. MARSHALL: And that's in Newfoundland, so you're going to have to add 30 minutes to that. So they would have been on squadron for an hour and a half, so they would have had 13½ hours of time left on their crew day.

M. FREEMAN: Okay. And if that search – if they weren't able to get above the clouds, you surmise that they would have then done what?

J. MARSHALL: To get below the clouds?

M. FREEMAN: If they could not get below the clouds? When they – again, hypothetical, hypothetical, hypothetical.

J. MARSHALL: Hypothetical, it depends on the aircraft commander whether or not he accepts the mission for the safety of the crew. I would suspect he would go to Goose Bay and try to come up with a strategy there or to wait out the weather.

M. FREEMAN: Is it –

THE COMMISSIONER: Can I just ask you to clarify if you're talking about above clouds or below clouds because you said both.

M. FREEMAN: Oh, excuse me, Mr. Commissioner. Thank you.

So if the Cormorant, hypothetically, had come and could not get below the clouds –

THE COMMISSIONER: Okay, thank you.

M. FREEMAN: Thank you, Mr. Commissioner.

What would he have done? I think you're saying, likely, would have gone to Goose Bay.

J. MARSHALL: He would have gone to Goose Bay to wait.

M. FREEMAN: And is his crew clock running while he's waiting?

J. MARSHALL: Yeah, it runs until they go to rest.

So our rules are 12 hours at rest. So, at the 15-hour point, they would have had to get a hotel in Goose Bay or stay on the base, whatever they would have decided to do, to get their 12 hours of rest to start the next day full. They don't have to wait until the 15th hour to declare that. They could have declared it earlier to go to rest and they'd be available for the next day.

Again, this is a hypothetical scenario. A lot of these options would have been explored by the aircraft commander and RCC, should they have been launched.

M. FREEMAN: Okay.

So the next entry in the SAR incident log says: called FES-NL – called EMO, if you see that?

J. MARSHALL: Mm-hmm.

M. FREEMAN: “=EMO and advised based on weather and aircraft status” So is that in keeping with what you are telling us?

J. MARSHALL: Yes.

M. FREEMAN: “... we cannot support at this time.” So Cormorants know, the Griffons know it's 9:30 a.m. in Makkovik. “We may be able to support in the future if required and aircraft/Wx situations improve.” Can you explain that?

J. MARSHALL: Yeah, Wx is weather. It's a short form for weather that we use. So, at that point, we're saying we can't do it right now but if things improve, then we can support.

M. FREEMAN: And tell us about – this is where we get into the callback protocol that has been the topic of much conversation, rightly so.

J. MARSHALL: Mm-hmm.

M. FREEMAN: Can you explain that to us at this point? So if JRCC – and they did – says no, essentially for now, to FES-NL, what does that mean for communications purposes?

J. MARSHALL: So what happened was, once the decision was made that we can't support this mission, the controller from RCC told FES-NL that we can't support now; call us back if the weather improves is what the – we can go through the transcript if you need, but that is what was said.

At the time, we didn't have any type of procedures to call them at a later time or date. That it was up to the lead agency, which would have been EMO, to initiate a call to us if weather had changed, if weather improved. Then FES-NL could have called us and said: Hey, the weather picked up and we still don't have assets. Can you try? But that call never happened.

M. FREEMAN: On the 30th?

J. MARSHALL: Correct.

M. FREEMAN: And is your understanding by 10 – so again, it's 1330 Zulu, is 9:30 a.m. in Makkovik.

J. MARSHALL: Yes.

M. FREEMAN: JRCC has said no, for now, to FES-NL. Our understanding, based on Mr. Andersen's information yesterday, was that the Woodward's helicopter does get in the air –

J. MARSHALL: Mm-hmm.

M. FREEMAN: – by – around 10 – in the hour of 10 on the 30th, sometime after 10 a.m.

J. MARSHALL: Yeah, that's what I understand.

M. FREEMAN: Okay.

J. MARSHALL: But, you know, if I can talk on that, I don't know – the Woodward aircraft was local.

M. FREEMAN: We can get that – if you don't have that information yourself, I can say I believe Mr. Andersen said it would've been based in Hopedale –

J. MARSHALL: Right.

M. FREEMAN: – which is nearby.

P. RALPH: It came from Postville (inaudible).

M. FREEMAN: Postville –

J. MARSHALL: Postville.

M. FREEMAN: – excuse me, yeah. Thank you, Peter.

J. MARSHALL: So because they were local, they would've been able to take off and stay below the cloud deck, which we wouldn't have had that ability because we were not local.

M. FREEMAN: So that's why Woodward – again, you're speaking for –

J. MARSHALL: Potentially, yeah.

M. FREEMAN: Yeah. Thank you.

And we'll leave it to others to maybe speak to that as well, but as a navigator, that's your take on things?

J. MARSHALL: Judging on the map, I would say that he could have stayed below the cloud and over top of water for the entire duration to get to where he needed to go.

M. FREEMAN: Okay.

So moving on through the search and rescue incident log, unless you want to add anything else on that box –

J. MARSHALL: Nothing to add.

M. FREEMAN: – Lieutenant Colonel.

Next box is “444 Sqn=,” meaning they called JRCC?

J. MARSHALL: Yes.

M. FREEMAN: “They are US” – unserviceable – “until 1800Z,” which is what time in Makkovik, again.

J. MARSHALL: That would’ve been 15 – or, no, sorry, 1400, which is 2 local.

M. FREEMAN: They’re going to be unserviceable until 2 local time. By this time, it’s 1452 Zulu. What time is that in Makkovik?

J. MARSHALL: 10:52.

M. FREEMAN: 10:52, so again, Woodward’s may have been in the air around this time, I think is your understanding.

J. MARSHALL: Yeah.

M. FREEMAN: So we’ll move on to the next page, page 2 of the incident log.

This is another piece of information that obviously has been in the public and needs some explanation. The first line here the controller puts in: Incident such and such closed by the controller. What is the significance of that? The incident log is closed. What that’s all about? Can you tell us about that, please?

J. MARSHALL: So that was seven hours later. So after some time, because his previous conversation with EMO was: Call me back if the weather improves, and he closed the file. But this, in itself, is not very significant to close the file. It’s a piece of software.

You’re just closing – it’s like closing an Excel spreadsheet. You can still enter things onto it after the file is closed. You can enter notes or you can reopen the file. It’s an administrative task. It’s clerical. It’s by no way an indication that we have closed that incident, because we don’t know anything about the incident. For all we knew at the time in JRCC, Burton could’ve been found; they had assets in the air. We don’t know. But it’s just a clerical closing of the file on the software.

M. FREEMAN: So the policy was a callback policy and having no callback had come, the file was marked closed.

J. MARSHALL: Right.

M. FREEMAN: But later reopened as we see the log entry.

J. MARSHALL: And it’s very – always easy to reopen. It’s the click of a button. It’s not a big deal to reopen a file.

M. FREEMAN: Okay.

So tell me about the callback procedure, if you can. What’s the thinking behind having it structured in a way where FES-NL, if they get a negative answer from JRCC, then has to call back instead of JRCC calling back hourly to check in, or every two or something? Can you talk about that?

J. MARSHALL: Sure.

So as the lead agency for the search, FES-NL was in charge. They had all the information; they know what assets that they were calling upon, who they could potentially call upon. So they’re the ones who were running the search. If they wanted us, again, they could’ve called us, but we don’t know what the situation was. So, at the time, we didn’t have a policy to call them, and also because they’re in an active search, they don’t really want extra phone calls to interrupt their process and their thinking.

But we’ve changed our policy since then, after this incident, because of this incident. This is something we do in the Canadian Forces is every operation and exercise we do lessons learned to see how we can fix our processes. And in this case, we thought: Do you know what? We can call back before we close a file; we’ll make sure that we talk to the original agency to find out if they still don’t need our help and if we can close the file. It’s not a large task, but it’s something that we changed to say, you know, who knows what’s going on, on the other end of this search. If EMO was saturated, forgot about JRCC, a callback after a couple of hours can just tweak their memory. So we did change our processes based on this case.

M. FREEMAN: Would you like to see that document now? Is that something you'd like to share with the commission?

J. MARSHALL: If you want to share it –

M. FREEMAN: Sure.

J. MARSHALL: – yeah, I can speak to it.

M. FREEMAN: Okay, so that policy change is at Exhibit 088, please.

And perhaps, James, you can talk us through this, please – sorry, Lieutenant Colonel, excuse me.

J. MARSHALL: Yeah. The important part of this document really is paragraph 2, a to g. It basically summarizes –

M. FREEMAN: Can you say that part again just for the record?

J. MARSHALL: Yeah, paragraph 2, subparas a to g.

M. FREEMAN: A to g.

Thank you.

J. MARSHALL: Yeah.

And with this document, this is signed in the 30th of March 2012, based on our analysis of what happened on this mission and how we can fix some of our processes. And so what we did in this case was we established this procedure as of this date and then we would update our publications to apply the change in procedure.

So what we would do is the controllers, after an applicable period of time, would call back to the original agency to see if support was still needed or not. And the second part of this change in protocol was we would not close a file until we got confirmation from the lead agency that they had as well closed the file and they no longer needed us.

M. FREEMAN: Thank you.

And so the callback procedure at the time, or lack thereof, in terms of JRCC calling out, did

that have any impact on the search in this case from your perspective?

J. MARSHALL: In my opinion, I don't believe so. Even if we had this procedure in place for the search, if we called back –

M. FREEMAN: If JRCC called FES-NL.

J. MARSHALL: If JRCC called FES-NL, one of two things would've occurred in this case. One is the weather was still poor, too bad – too poor for us to be able to fly into. But if the weather had improved, based on the timeline of events, they already had air assets in the air so they – again, they wouldn't need our support if they already had air assets.

M. FREEMAN: And if they did, they could call you and ask for it?

J. MARSHALL: Right. And they did later on, on the next day, when they needed night searching.

M. FREEMAN: Right.

So by – but by noon, roughly, on the day of the 30th, the weather does lift and Universal is in the air.

J. MARSHALL: Right.

M. FREEMAN: And JRCC does not get called again to come and – why not send two – this is something – why not send two helicopters? Why not send 10 helicopters? This is a –

J. MARSHALL: Yeah.

M. FREEMAN: – 14-year-old, you know. Explain that to us.

J. MARSHALL: I understand. And so our – FES-NL had air assets in the air. They were doing it within their provincial capabilities and there was no need to ask for federal resources, which is probably why we weren't called when the weather improved.

M. FREEMAN: We can let RCMP and Universal – or sorry, or FES-NL talk about it as well. But I'm just trying to get to the bottom of it with you.

J. MARSHALL: As an aviator, because the search area was very small, Burton was on foot at this time and we didn't have a large area to search, Having too many assets in the air is not necessarily a good thing because of deconfliction and the possibility of hitting each other. So having too many is not always a good thing, especially with a small search area. The pilots would end up using a lot of brainpower deconflicting themselves from hitting each other and not concentrating on the search.

M. FREEMAN: Okay. And just to correct I think – they wouldn't have known he was on foot on the 30th yet.

J. MARSHALL: Okay.

M. FREEMAN: But the search area was small, I think, was your point.

We can talk to the RCMP and others about why the search area was as it was, and Mr. Andersen talked about it yesterday. Unless you have anything else to add on that –so why not send extra helicopters, to wrap that issue up for us?

J. MARSHALL: I mean, we weren't in charge of this, so I can't really say why we didn't – why FES-NL didn't send extra helicopters or ask for extra. But all we know is we weren't asked at that time.

M. FREEMAN: Okay.

So if we could please, Madam Clerk, go back to the SAR incident log, so Exhibit 096. We're at the top of page 2 where the file was closed.

J. MARSHALL: Mm-hmm.

M. FREEMAN: The next entry is a day – a full 24 hours, but the file is closed on the 30th, which is the second day of the search, I'll call it – 31st of January 2012, 2043 Zulu, which is what time in Makkovik again?

J. MARSHALL: That would be 4:43 p.m.

M. FREEMAN: Thank you.

I'm going to do that to you over and over again. So 4:43 you said?

J. MARSHALL: Yes.

M. FREEMAN: So 4:43 – and, your understanding, is that getting around dark in Makkovik, based on what we heard yesterday?

J. MARSHALL: From what I heard yesterday, yeah.

M. FREEMAN: Okay.

“LForces Northern D201=,” can you explain that?

J. MARSHALL: So Land Forces Northern D201 is probably their unit, and they called.

M. FREEMAN: What is that? Who is LForces Northern D201?

J. MARSHALL: It's the Army that is based in this area.

M. FREEMAN: So the Army is calling –

J. MARSHALL: The Army headquarters –

M. FREEMAN: Excuse me, sorry, go ahead.

J. MARSHALL: The Army headquarters in this region would have called us.

M. FREEMAN: Where are they?

J. MARSHALL: I don't know. I'm sorry.

M. FREEMAN: Not testing you. It's Army, okay, sorry.

But the Army calls JRCC. Not FES-NL calling JRCC, the Army calls JRCC.

J. MARSHALL: Correct.

M. FREEMAN: JRCC asks – excuse me, the Army calls and says: “They are requesting the procedure for helo support for the Makkovik missing teen.” Now, this is, again, the evening of the 31st, so this is the third day of –

J. MARSHALL: Yes.

M. FREEMAN: – Burton being missing. And this is JRCC being reactivated – well, no, it isn't. Excuse me. This is the Army calling.

J. MARSHALL: Yeah, the Army called because there's a link between the Rangers in Makkovik and the Army. The Rangers work for the Army. So they – I assume they would've called the Army to say: Hey, how do we get this done? So that's a backdoor way of getting into RCC.

The controller at the time said: Okay, we understand. Here's the process; this is how it has to work. It has to go through the provincial EMO because they're the ones who are authorized to ask for federal resources. We can't use a backdoor channel here.

It didn't take a long time, but what you'll see in the next line is the controller, after hearing this call from the Army, said: Okay, this is going – this is still happening. So he reopened the log.

M. FREEMAN: Okay. So the Army is told by JRCC: If you want to talk to me, you have to talk – somebody has to talk to FES-NL –

J. MARSHALL: Right.

M. FREEMAN: – and FES-NL has to call me.

And that's saying, basically, "Explained the procedure to him" is the third sentence there in that box.

J. MARSHALL: Yes.

M. FREEMAN: Yeah. "There is no request at this junction."

And, as you said, the file is reopened. As you talked about before, this is a simple clerical task.

J. MARSHALL: Yes.

M. FREEMAN: Thirty-first of January 2012, 2047 Zulu, they call Goose Bay ops looking for serviceability. So what is the – the controller actually hasn't heard from FES-NL yet, but the controller is sort of jumping ahead a step, maybe.

J. MARSHALL: Yeah, he's doing his job; he's being proactive. He knows something is going to be coming. So rather than waste the time waiting for the call from EMO, he decided to check on the serviceability of the Griffons.

M. FREEMAN: And we know from yesterday's information from Mr. Andersen that it was the Ski-Doo being found and the darkness descending that –

J. MARSHALL: Yes.

M. FREEMAN: – this was the time frame that we're in.

So he goes ahead – the controller goes ahead and checks on Goose Bay again and they say: "Grif doing ground run now, will get back to us." What does Grif doing ground run now mean?

J. MARSHALL: So the repairs on the Griffon were complete, the ground run is running the engines without flying so that you get the temperature up and you see whether or not any leaks occur from that ground run.

M. FREEMAN: And then: will get back to us. Then the call comes from FES-NL at 2054 Zulu, which is four hours earlier so that's 6:54?

J. MARSHALL: Yes.

M. FREEMAN: 6:54.

J. MARSHALL: 1654.

M. FREEMAN: Oh, excuse me, 4 –

J. MARSHALL: So 4:54, my mistake, sorry.

M. FREEMAN: I'm not even going to try anymore.

Okay, thank you.

So 4:54?

J. MARSHALL: 4:54.

M. FREEMAN: 4:54 local time, FES-NL calls JRCC, this is the second official JRCC request from FES-NL.

J. MARSHALL: Yes.

M. FREEMAN: And what happens here?

J. MARSHALL: At this point, they're basically getting more information from EMO. And the controller said they'll discuss with the OIC because it's still the OIC's call whether or not to send resources for humanitarian. That's just an authority, the controller didn't have the authority to do it on his own; he has to call his boss.

M. FREEMAN: And so there is some more information in this box. It says: "Requesting air support to do search of the region." FES-NL is the proper person to be calling JRCC as this time?

J. MARSHALL: Yes.

M. FREEMAN: "Snow machine was found underwater and they believe it is possible to make it to shore from there." So that's inaccurate as far as you know now?

J. MARSHALL: Yeah, and that was corrected later on.

M. FREEMAN: And "Explained we have no Herc at this time and our 412 in Goose Bay is US." Can you re-explain that to me?

J. MARSHALL: So the logic behind the explanation earlier still applied, with no Hercules serviceable and the Griffon in Goose Bay was still US. But they're doing a ground run which means it's probably close to being fixed.

M. FREEMAN: And Goose Bay is how far for the Griffon to fly?

J. MARSHALL: One hour.

M. FREEMAN: And Cormorant is how far – the Cormorant to fly from Gander at that time?

J. MARSHALL: Five hours.

M. FREEMAN: Five hours. So getting to the Ski-Doo is new information. Getting there from Goose Bay is one hour for the Griffon and five for the Cormorant?

J. MARSHALL: Yes.

M. FREEMAN: "He will call me back with Lat/Long." Meaning FES-NL will call JRCC?

J. MARSHALL: Yes.

So FES-NL will call JRCC with more information, the lat. and long. of where the snow machine was found.

M. FREEMAN: Just for the public's purposes, lat./long. is ...?

J. MARSHALL: Oh, latitude and longitude, position.

M. FREEMAN: Coordinates of the search that they're contemplating.

J. MARSHALL: Yeah, so it would be the last known position of the search object. So the snowmobile, the last known position would have been given to us.

M. FREEMAN: All right.

And the next box down then is 31Jan2012 2059 Zulu, so ...

J. MARSHALL: 5 o'clock.

M. FREEMAN: 5 o'clock-ish local time. And we know it is getting dark, so to slowdown for a moment. Again, it's not written here but Universal can't operate in the dark is our understanding.

J. MARSHALL: Correct.

M. FREEMAN: And so that's why the call now in the dark from FES-NL – the answer isn't: Talk to Universal. The answer is: We're your guys.

J. MARSHALL: Right. So the next call is giving us the position and FES-NL would have said: Okay, we don't have assets anymore because it is dark, can you help us?

M. FREEMAN: And JRCC are gathering more – so Paul Peddle calls – Paul Peddle=.

J. MARSHALL: Yes, so he called us to give us the position.

M. FREEMAN: Right.

And now it says – as you said was corrected: “Skidoo was found on top of the ice and they feel there is a realistic chance” – he – “could still be alive.” They “requested local wx” – is weather?

J. MARSHALL: Yes.

M. FREEMAN: Requested local weather, “he will call us back momentarily. They cannot search due to darkness.” I guess this is what I was just talking about – I should have gone right to the document. “Advised him I am waiting to hear back from my OIC” – again, this is the officer in charge.

J. MARSHALL: Yes.

M. FREEMAN: “And will let him know.”

So JRCC now has the coordinates of the snowmobile – Ski-Doo.

J. MARSHALL: Yes.

M. FREEMAN: And it is dark so JRCC is seeing what they can send.

So the next entry says =OIC. So the controller calls his officer in charge.

J. MARSHALL: Yes.

M. FREEMAN: “Discussed options. He wants 444 to go if they are” – serviceable – “in the next hour or so and if not send Aurora. He does not want to send the Corm with no serv Herc in the region.” So, again, this is the same answer on that front, and maybe just talk about this box for us – explain it.

J. MARSHALL: So because of the time difference and how fast that Cormorant could get there or the Griffon, he still wanted to wait for the Griffon to be fixed and to send it because it would have been faster than sending the Cormorant.

I also want to say there is no difference in the capability of the Cormorant or the Griffon. Despite the fact that the Cormorant is a primary SAR unit, the Griffon still has a SAR tech on

board, still has the same capability for night searches as the Cormorant. So the capability at this point were equal for them.

M. FREEMAN: And in terms of night vision did you say?

J. MARSHALL: Yeah, they use night-vision goggles to fly at night so it amplifies any ambient lights and makes it a lot easier to see things.

M. FREEMAN: Both the Griffon and the Hercules –

J. MARSHALL: Cormorant.

M. FREEMAN: Both the Griffon and the Cormorant had that capability?

J. MARSHALL: Yes.

M. FREEMAN: Okay.

So at this time the weather probably could’ve used a – he probably could’ve used a Cormorant?

J. MARSHALL: He could have.

M. FREEMAN: Could have. But is – again, going back to this “no serv Herc” issue, so is that – do you have anything more to say on that topic or shall we move on?

J. MARSHALL: You know, it’s one of those things where you’re trying to get into the head of the individual. He still had that idea of not wanting to leave the region without any resources, but also the fact that the Griffon would’ve been faster. So it was a combination of all the information. The Griffon was still the best option to do the search at this time.

M. FREEMAN: Okay.

And so on page 3 of the SAR incident log, the first box is “444 Sqn AC=.”

J. MARSHALL: Yes, aircraft commander.

M. FREEMAN: So the 444 Squadron, again, is Goose Bay?

J. MARSHALL: Yes.

M. FREEMAN: That's where the Griffons are or the Griffon is?

J. MARSHALL: Yeah.

M. FREEMAN: AC is ...?

J. MARSHALL: Aircraft captain or commander.

M. FREEMAN: And he is calling, because of the equal sign there?

J. MARSHALL: Yes.

M. FREEMAN: And they say what?

J. MARSHALL: So during that ground run that we spoke about earlier, there was still some oil leaking, so they just had to do some adjustments. The fact that it said serviceable by 22 Zulu, which is only 45 minutes later, would indicate to me that it was minor and they – probably the technicians would've had to do some minor repairs to make it serviceable.

M. FREEMAN: And it's 2113 Zulu, and that is in Makkovik ...?

J. MARSHALL: So that would've been 1713, so 5:13 local.

M. FREEMAN: All right.

“They have found an oil leak on a line and should be serv by 2200Z; We will be tasking if serv.”

J. MARSHALL: Right.

M. FREEMAN: So explain that a little bit.

J. MARSHALL: So the estimated time of repair was 22 Zulu, so only 45 minutes later, and once they were serviceable then we would be tasking the crew to do that mission.

M. FREEMAN: All right.

And next box is equals, call to FES-NL – “EMO to advise.” Do you see that?

J. MARSHALL: Yes.

M. FREEMAN: “He wanted to pass better position but was unsure of the format.” Anything about that?

J. MARSHALL: It's not significant.

M. FREEMAN: Okay.

J. MARSHALL: There's two different ways to take lat. and long., so we just want to make sure that we're working on the same.

M. FREEMAN: All right.

And the next entry is a call with Corporal Vardy directly, so let's talk about that. Is it normal procedure for JRCC to be talking with the police?

J. MARSHALL: Yes. So once the mission is going, once we know that EMO wants to use federal resources, then liaising with the person on the ground is a completely normal procedure because they have the best information and there's no point of talking through EMO because information would become inaccurate, not timely. So to call directly, to get the real, good information of where we need to search, this is something that happens almost on every search if we have the ability to talk to somebody local, because they'll have a great – a better idea of the high probability search areas.

And if we were simply to take a look at the area and try to plan a search without talking with somebody on the ground that's local, we could be searching in a low-probability area instead of a high-probability area, and that's – that would be the – Corporal Vardy who would have the best information for that.

M. FREEMAN: Okay.

And so Corporal Vardy, at the time – now Sergeant Vardy – it says here: “He passed better position” This is the position of the Ski-Doo.

J. MARSHALL: Yes.

M. FREEMAN: And Corporal Vardy felt that Burton may have gotten lost and he would – wanted “us to search Cape Strawberry” and

Ford's – it says "Frods Bight," but that's Ford's Bight –

J. MARSHALL: Mm-hmm.

M. FREEMAN: – "toward Makkovik."

"I will call when 412" Again, 412 is ...?

J. MARSHALL: 412 is the Griffon, it's the number – it's a Bell 412.

M. FREEMAN: All right.

So sometimes we hear 444, that's Goose Bay.

J. MARSHALL: That's a squadron number.

M. FREEMAN: Sometimes we hear 412, that's the Griffon.

J. MARSHALL: That's the – like, a C-130 is a Hercules; a 412 is the Griffon.

M. FREEMAN: Okay.

The controller carries on here, converts the latitude and longitude.

"=AOC" is the next entry I want to talk about.

J. MARSHALL: AOC is – before when I spoke about us calling the Air Force to get permission to use their asset, because only the primary SAR aircraft are the JRCC's assets, because we're using 444 Squadron we have to get the permission from the Air Force and that's AOC. So, as you can see, they would task the Griffon on our behalf.

M. FREEMAN: And this is the – these are technical entries about tasking the Griffon. Is there anything of value here to share?

J. MARSHALL: No, nothing of value. It just means that they're being tasked.

M. FREEMAN: All right.

And we're moving on to page 4 of the search incident log. This is JRCC calling Corporal Vardy?

J. MARSHALL: Yes.

M. FREEMAN: And we're trying now to do what here? What is JRCC trying to do with this call?

J. MARSHALL: Just more information. Whatever they can pass on to the crews is going to help them: the clothing that they're wearing, any type of details, the colour of the snowmobile. All these things are going – the snowmobile wasn't a factor here because they had already found it, so I'll correct that. But we're just looking to see so that we can have a better idea.

M. FREEMAN: What does this mean briefed – what does the last line there mean, "Briefed him ..."? Meaning JRCC briefed Sergeant Vardy – "Briefed him on 444 Sqn and likely only 1 tank of gas due to crew issues." What's that all about?

J. MARSHALL: Because this is at night, the crew would've been – because they were – it was a weekday, they would've been on squadron. So that 15 hours that I spoke about would've been at play here.

M. FREEMAN: Anything in the next box of value? "NT" – note to file – "sent fax," et cetera, et cetera. Where's the next entry –?

J. MARSHALL: That's just administrative.

M. FREEMAN: This is the – who's – so "PARKERJ" is just part of JRCC?

J. MARSHALL: He would've been the controller's assistant.

M. FREEMAN: Controller's assistant, okay, thank you.

And it's now the 31st still. It's getting to 2236 Zulu, and so we're looking at about what time in Makkovik?

J. MARSHALL: Twenty-two Zulu is 18.

M. FREEMAN: Okay.

J. MARSHALL: So 6.

M. FREEMAN: So it's certainly dark in Makkovik by this time. And JRCC calls Corporal Vardy looking for more information.

J. MARSHALL: Yes.

M. FREEMAN: And we can perhaps let Corporal Vardy speak to the details of the search and to what direction they were to go in, but can you tell us a little bit about that maybe more generally? You know, what is it that a Griffon pilot wants from Corporal Vardy at this point?

J. MARSHALL: Well, he wants to know what type of search they're going to do, so all that information of what they're looking for – their tracks, in what direction the tracks are headed – so that we can try to focus on what search is the best search to do. If we know the direction that Burton would've been walking, then we would try to follow that direction and try to use some logic. Of course, the pilot is not somebody who lives here; he wouldn't know the terrain. So what would've been logical for Burton to be walking, where would he logically have gone.

And that would've been a call with Corporal Vardy to find out what is the best search to do. If we don't have any information, then the best search might be an expanding square. So you start on the – his last known position and then just keep going in a square further and further out. But if we know more information, we can actually pinpoint and try to eliminate some of the low-probability areas so we can focus more on the high-probability areas so that we can do a better search.

M. FREEMAN: And so Corporal Vardy, at the time – Sergeant Vardy now – is feeding that information to the controller in the last box on this page. Is that right?

J. MARSHALL: Yes, he would've been speaking with the controller.

M. FREEMAN: This box.

And he's here, so we will let him – I don't need to read off everything that Corporal Vardy conferred to the controller, but, of course, I'll just commend to the Commissioner to look to the SAR incident log for that information from JRCC's perspective of what Mr. Vardy – of

what Sergeant Vardy said in terms of looking and searching.

Any – what's next here? The 20 – the next valuable piece, Lieutenant Colonel, in the SAR incident log. We see "Capt Gillis. Is your TL with you?"

J. MARSHALL: Team lead is the head SAR tech, so he would've been making decisions about –

M. FREEMAN: So these are calls in the vein of activating the Griffon still.

J. MARSHALL: Yes.

M. FREEMAN: And –

J. MARSHALL: So a lot of what's going on here is just trying to pinpoint the best search that we can do, talk to the experts, the SAR tech, the captain –

M. FREEMAN: Mm-hmm.

J. MARSHALL: – the local on-scene leader, which would've been Corporal Vardy at the time. All of this information is really just us trying to effect a good search.

M. FREEMAN: The decision to send them has already been made.

J. MARSHALL: Yes.

M. FREEMAN: And so the top of page 5 of this document, Exhibit 096, we see a call to 444 Squadron, and this is the controller briefing, I believe, the captain.

J. MARSHALL: Yeah, so then we called 444 Squadron with the information that Corporal Vardy would've given the controller, then he's calling the AC to give him his tasking, because RCC is the one who controls the search.

M. FREEMAN: Mm-hmm.

J. MARSHALL: So they're saying: Okay, this is what I want you to do. Because, at that point, the air controller is the one who is in charge of that helicopter. So he's tasking him and telling the aircraft commander what to do.

M. FREEMAN: And it says: “Amended tasking,” as you see there.

J. MARSHALL: Yes.

M. FREEMAN: Based on – amended based on information being observed from –?

J. MARSHALL: Right. So it’s just they didn’t change the tasking; they’re just fine-tuning the tasking.

M. FREEMAN: Okay.

And here are the instructions from (inaudible) instructions, but the information from JRCC to the captain, to the pilot.

J. MARSHALL: Yeah.

M. FREEMAN: “Search a 1 mile radius around the incident position” Is that the Ski-Doo?

J. MARSHALL: Yes.

M. FREEMAN: “... then conduct a shore crawl from Cape Strawberry”

J. MARSHALL: Yeah, so from what we got before they said it’s possible that he would’ve walked, so they tasked them to do a shore crawl because that would’ve been the logical direction, was going along the shore.

M. FREEMAN: “... South down the West shore until the end of Fords Bight.”

So do you want to show us some of this on – or is that not, maybe, your comfort zone?

J. MARSHALL: I’m not real familiar –

M. FREEMAN: I think we’ll leave that.

J. MARSHALL: – with the map, but –

M. FREEMAN: Yeah, I’ll leave that for Corporal Vardy.

J. MARSHALL: I think he would probably be better to describe –

M. FREEMAN: He’s going to go through.

Thank you. Okay, that makes sense.

Anything else from that description of what the crew is being told to do that you want to highlight for the commission at this time?

J. MARSHALL: I don’t think so. I think it’s pretty explanatory there. We tasked the Griffon and they’re doing – now doing what they’ve been tasked to do.

M. FREEMAN: Okay.

Griffon begins its sortie, on page 5 of the SAR incident log, Exhibit 096.

J. MARSHALL: Mm-hmm.

M. FREEMAN: What is a sortie?

J. MARSHALL: A mission. It’s just the flight.

M. FREEMAN: And the box below the sortie says “1hr to search site.”

J. MARSHALL: Yes.

M. FREEMAN: So that’s what you’ve been talking about, the Griffon’s time to Makkovik.

J. MARSHALL: Yeah, MACS Trenton is the communication centre so they would have called from the helicopter to the communication centre in Trenton who would then relay it to other RCC. It’s not significant, that’s just the way we speak to the controllers because the radio is on board.

M. FREEMAN: Okay.

So it’s getting later and the Griffon is en route. We’re following through the SAR incident log.

J. MARSHALL: Mm-hmm.

M. FREEMAN: You can see at the top of page 6 the controller is talking to Corporal Vardy again.

J. MARSHALL: Mm-hmm.

M. FREEMAN: And this is arranging for possibly more support the next day. Is that what I’m seeing?

J. MARSHALL: Yes.

M. FREEMAN: Because once it's morning, it might be that this search goes back to Universal Helicopters again, is that fair?

J. MARSHALL: It's possible.

M. FREEMAN: I'm just going through the SAR log. So, ultimately, the Griffons arrive on the scene at the bottom of page 6 at 0045 Zulu.

J. MARSHALL: Yes.

M. FREEMAN: And we're – excuse me – moving on to page 7. What is this “=EMO” – second box – “Passed contact info for CASARA Goose Bay.” Can you tell me about that?

J. MARSHALL: Yeah, CASARA is a civilian volunteer association that – like volunteer ground search and rescue. We have volunteer air search and rescue, which is CASARA. Sometimes they have their own airplanes, but the significance here is that they have trained spotters. So we work with CASARA to train their spotters on the proper techniques for looking and also for communicating with the airplane because we would take them on board and they would help us search through various windows.

It's not an easy task and it does need training because the way they communicate with the pilots to make sure the pilots will turn if the CASARA volunteer sees something on the ground. So that is something that we had notified EMO and said: Hey, you have another resource here that you can use and that's CASARA.

From what I understand from the transcripts, EMO didn't know about CASARA at the time.

M. FREEMAN: Okay. And I'm scrolling down through this page at 0135 Zulu.

J. MARSHALL: Okay.

M. FREEMAN: Do you have that?

J. MARSHALL: Yes.

M. FREEMAN: Searched – so there is some more alphabet here that you can help us out with: Hfx AGA= R40, all this, what is this? Can you explain a little bit?

J. MARSHALL: Hfx is Halifax. I'm unaware what AGA is to be honest.

M. FREEMAN: What is searched LKP?

J. MARSHALL: Searched last known position.

M. FREEMAN: Last known position would be the Ski-Doo at this point?

J. MARSHALL: Yes.

M. FREEMAN: And so this is the Griffon in the air on the night of the –

J. MARSHALL: Mm-hmm.

M. FREEMAN: I guess it's the night of the 31st into the early morning Zulu time.

J. MARSHALL: Yes.

M. FREEMAN: So this is really the night of the 31st, Makkovik time.

J. MARSHALL: Yes, somewhere around 9:30, I think that would be.

M. FREEMAN: “Gas can on the ice behind snowmobile. We are searching down Fords Bight now...” – asking the search – the incident commander would've been Corporal Vardy – “... requested that you also search Wild Bight. Your flight plan is Tx'd.” What is that?

J. MARSHALL: Transmitted.

M. FREEMAN: Okay. And so your understanding is that – what happens with that Griffon search?

J. MARSHALL: My understanding is they conducted the search and went to Makkovik for fuel.

M. FREEMAN: And did they locate anything of value during that search?

J. MARSHALL: I don't believe so here on this search. It would've been in the log if they had.

M. FREEMAN: I see a conversation here where the Griffon is speaking to Corporal Vardy at the bottom of that page 7: "Briefed findings of R40. They were aware. We both agree that it looks like he walked away from the machine."

So is it possible then that they did see –

J. MARSHALL: Yeah, perhaps that is where they saw the footprints. That's in the transcripts; it might be.

M. FREEMAN: Okay, at the bottom of page 7, it seems like the Griffon picks up Burton's tracks from the Ski-Doo –

J. MARSHALL: That's right.

M. FREEMAN: – with night vision, presumably.

J. MARSHALL: Yes.

M. FREEMAN: And that information is given to Corporal Vardy there and then – so the other part of the search that JRCC did do on that night of the 31st is the Aurora; is that right?

J. MARSHALL: Correct.

M. FREEMAN: So that is a secondary SAR asset.

J. MARSHALL: It is and it was airborne at the time on another mission, and so we had asked the air force to retask it so they could do the search – to aid in the search. They don't have night vision, but they have electro-optical IR, which is basically picking up a heat signature. It is not the greatest search tool, but it is good because it will pick up heat signatures.

M. FREEMAN: So the Aurora is a fixed-wing aircraft – meaning an airplane, essentially?

J. MARSHALL: Yes, it is a large aircraft that does surveillance over our territorial waters.

M. FREEMAN: And for the public's purposes, what's the difference between searching with a plane and searching with a helicopter?

J. MARSHALL: Mostly speed. The plane can cover more area but if you're looking in a small search area, a helicopter might be a better resource. But, in general, we use fixed-wing planes for search and helicopters for rescue.

M. FREEMAN: And so JRCC eventually – here in the SAR log, again – tasks an Aurora. Is that correct?

J. MARSHALL: Yeah, so the controller knew that there was an Aurora airborne and he talked to the air force to see if it can be retasked by taking it off the mission it was currently on and retasking it for this mission, and that's what happened.

M. FREEMAN: We can see that unfolding at the top of page 9, I think –

J. MARSHALL: Yes.

M. FREEMAN: – of Exhibit 096.

So the Griffon found the footprints or the track but wasn't able to keep up with it; is that your understanding?

J. MARSHALL: Yeah, they did find them leaving the snowmobile, but they couldn't continue – they lost the tracks.

M. FREEMAN: And the Aurora wasn't able to – from my reading, able to offer any results or assistance, leads or anything like that.

J. MARSHALL: Yeah, I mean the Griffon would have been better because they would have been lower to actually see any footprints. The Aurora was there really to see if they could find Burton's heat signature with their IR capability.

M. FREEMAN: And that was – I am seeing that partway down the page where it says "began sortie." That would be the Aurora beginning its sortie at 0248 Zulu on the 1st.

J. MARSHALL: Yes.

M. FREEMAN: All right. Is there anything else in the SAR incident log, Lieutenant Colonel, that you want to highlight for us, for the inquiry?

J. MARSHALL: No, I think we've captured everything.

M. FREEMAN: Thank you.

There were some questions yesterday from my friend Mr. Williams about fixed-wing aircraft operating in this region on the 29th. I think maybe we can let him follow up on that, but that's something that – are you able to talk about that from a navigator's perspective?

J. MARSHALL: I can try.

M. FREEMAN: You can try, okay, thanks.

Would there have been fixed-wing aircraft – commercial fixed-wing aircraft operating, to your knowledge, in the weather that you know from the 29th and 30th that we've looked at – can you talk about what could have been going on in the air here on the 29th and 30th, by midday on the 30th?

J. MARSHALL: Well, on the 30th before the weather improved, I couldn't imagine any aircraft being able to get in to the airport for a fixed-wing based on the weather limits that I had spoke about earlier with safe IFR altitude. So I don't know about the possibility. We definitely could not have sent either a helicopter or a fixed-wing the night of the 29th or the morning of the 30th.

M. FREEMAN: Is landing at the airport easier or harder than flying around Cape Strawberry, for example?

J. MARSHALL: Well, it depends on the weather and where it's lower. What the advantage of flying to the airport is is that you have navigation aids that will assist you in getting lower to try to get under the weather, because the way that it approaches work is, with each different position on that approach, it's going to permit you to step down to a lower altitude until you get to a low enough altitude that you're still safe on that path and, hopefully, you can see the runway visually and that's how you can land.

But if you get to the – what we called a missed approach point, so the last position on the approach and that altitude, which would have

been around 1,100, once you get to that missed approach point, you have to make a decision: You either land or you do a missed approach procedure. So you continue and you climb, and you make sure you're in a safe procedure. So there's a procedure for that, too, with every airport.

M. FREEMAN: Okay, thank you.

Canadian Armed Forces has provided the search incident log and a number of other policies and records. There's a review. Is there anything else that you'd want to get into in terms of documents right now from Canadian Armed Forces' perspective to explain this search?

J. MARSHALL: I mean, there are documents that talk about how we respond to ground search and rescue that we – you know, it is a secondary role for the federal search and rescue program and that we will respond to ground search and rescue humanitarian calls on a case-by-case basis, if it doesn't impact our primary search and rescue mission. With that, I have to say that we almost always say yes. And I know that gives little comfort to the community and family, the sense that we almost always say yes, but didn't say yes initially here, and I do understand that.

But with humanitarian calls, we talk about ground search and rescue, hospital-to-hospital transfers or medevacs – for the medevacs from ground search and rescues. We respond to approximately 200 of those per year in the Halifax search and rescue region. So almost every other day, the Canadian Forces is doing search and rescue in a humanitarian role, not in a federal mandate. So it's not something that we continually say no to; we do it a lot.

I ran some statistics before I came and, prior to COVID, identified your average, and 80 per cent of the calls in Newfoundland and Labrador that we respond in search and rescue are humanitarian calls. So it is not a small task and we do, do it a lot.

M. FREEMAN: Okay, thank you.

I just want to ask my witnesses, we – I would like to check and see of the status of Stephen Howlett before I begin to really dig into the RCMP search, Mr. Commissioner. I think the

answer, from looking out the window here, is that it's likely he's not been able to get in. And if it's necessary, I will proceed to start to turn this away from JRCC, or whatever structure you wish, or the other counsel wish, to use here.

THE COMMISSIONER: Yeah, well, it's a good time to break for lunch anyway.

And recognizing that other counsel will be wanting to question this witness, why don't you sort out – the lawyers sort out – who goes next during our lunch break and we can be back here, I suspect, without overtasking the hotel, just after 1 o'clock – aim for 1 o'clock. Is that okay with you?

M. FREEMAN: Yes, Mr. Commissioner, thank you. That's fine.

THE COMMISSIONER: Mr. Budden, how about that? Is that all right?

G. BUDDEN: Yes. I would just suggest again, though, that the counsel have discussed this and I think our preference – I'll speak again over lunch – is to finish the entirety of Mr. Freeman's witnesses and then commence our examinations. That's what I think the lawyers had anticipated.

THE COMMISSIONER: Yeah, you decide the order. I got no problem with that.

G. BUDDEN: Thank you.

T. WILLIAMS: Can I speak (inaudible)? Sorry.

I think it would be – just where the evidence is so fresh and relevant, I think it would be – my personal preference is that if we do them one at a time or the next two witnesses are a group, just where we don't – you know, Lieutenant Colonel Marshall and everybody has heard the evidence. To go through all of it and then start to come back, my preference would be – I'm not particular on the order, but my preference would be this afternoon if we could finish the lieutenant colonel and then move to the next

M. RALPH: (Inaudible.)

G. BUDDEN: Sure. I said we can always discuss this among ourselves, but –

P. RALPH: Yeah, because I think if Mr. Williams wants to go first, that will be fine with me because I could – in terms of the technical aspects of (inaudible) Lieutenant Colonel Marshall's evidence, I'd just like to be able to discuss that, perhaps at length, overnight with Mitch Rumbolt and Paul Carter. Again, this is just some (inaudible) beyond my understanding.

But, I mean, certainly, if Mr. Williams wants to go first and start, that's fine with me. But I would – certainly before I finish my cross-examination of Lieutenant Colonel Marshall, today I'd like to have the opportunity to, like I said, discuss in length (inaudible).

THE COMMISSIONER: Yeah, we can circle back to witnesses and, yes, I'll let you lawyers work out whether you want to concentrate on this witness when the federal counsel is finished. And, naturally, opportunity to say that we're not done yet until we're satisfied that we've asked all the questions we want. So that's fine. We have to wait for another witness by the sound of it anyway.

So, yeah, let's have a break. Come back again at 1 o'clock-ish. I'm happy with that.

CLERK: All rise.

Recess

CLERK: All rise.

This commission of inquiry is now in session.

Please be seated.

THE COMMISSIONER: Mr. Budden, please.

G. BUDDEN: Yes, Commissioner, what we have in mind for this afternoon – I've discussed it with all counsel – is that Mr. Williams will now have some questions for the officer, and at the conclusion of that, myself and Mr. Ralph may also have a few questions. The idea is that this will not preclude us returning to question this particular witness in due course, perhaps as the evidence of the other federal witnesses gets in.

I should also note that, unfortunately, Officer Howlett has not been able to make it in and it is

the wish of Mr. Freeman, to which other counsel concur as a reasonable request, that we hold off on the continuance of the examination of the RCMP witnesses or agree to begin the examination of those witnesses until tomorrow in the hope that Officer Howlett does make it in.

So, really, I guess, to tighten it up a bit, we're going to go ahead this afternoon with this witness, not precluding us returning to him with further questions later but to make the best use of time. And then, in all likelihood, we will end the day early.

If that suits you?

THE COMMISSIONER: That's fine.

If counsel agree, no problem.

G. BUDDEN: So that means, I guess, this is Mr. Williams's witness as of right now.

T. WILLIAMS: Okay, thank you. Thank you, Mr. Budden.

Good afternoon, Lieutenant Colonel.

Lieutenant, just as a way of introduction, as you know, I represent the family of Burton Winters who are present here today.

So this is a very important process for them because, obviously, the matter has been ongoing for so long. I may do a little bit of jumping around. I appreciate that you're going to be called back again to probably speak in depth at some other issues of a larger nature. But while they have the opportunity to be here in presence, the way I've been trying to conduct my examinations and some questions that I have that are probably more technical and legal in nature and some questions that the family have asked to me to ask on their behalf because they've lingered, you know, for so long and they'd like to have them addressed. So bear with me as I kind of move around a little bit.

I guess I'll start off with, you know, something that they raised and, as you know, I just met you shortly beforehand, but I guess from an application perspective it's hard for them to sit back. In your evidence this morning, and it was very early in your evidence, we spoke about –

we were trying to distinguish as between when provincial resources are used and when federal resources are used, and you spoke about ground-based search and rescue, and marine and aviation. Well, obviously, aviation is not relevant to the proceedings today. But with marine-based search and rescue, which would entail – what we'll call – DND for purposes of this discussion.

So it's hard for the family to reconcile how a 14-year-old boy could leave here in June on a Sea-Doo, as we described this morning, and if lost and didn't return, federal resources would come in. And rightly or wrongly – and I mean this in no disparaging way – the federal resources seem to have so much more. They have the big Cormorants; they have the night-vision goggles; they have, you know, the heat sensors. So there's a feeling that, you know, it's bigger and better, to use a layman's term, and yet a 14-year-old boy can leave in the middle of January on a Ski-Doo over the same waters and those resources aren't being brought in unless they're requested by the province.

Can you help explain the logic of that to the family, to provide some background and understanding?

J. MARSHALL: No, I completely understand and it's something that I had to wrap my head around as well to really understand the policy.

And you want me to explain the logic to it, but it's really hard to explain the logic to it, other than to say that is what the policy is. It's a jurisdiction question. That was never questioned during this search of who had jurisdiction. It was always a provincial responsibility. At no point during the search did anybody question whether or not this should be handed over to JRCC and made this into a federal rescue as opposed to a provincial rescue. Even early in the search, it was unknown if it was over what we would call federal waterways.

So although it's hard to reconcile and I understand, you know, we do have some of those larger assets that can do some of those searches. But I don't think that that – the assets changed the policy, and what occurred on the search was well in line with the division of responsibilities between the provincial

government and the federal government. And this was always a provincial search, despite where Burton might have gone during his – when he was lost.

T. WILLIAMS: Okay.

So one of the other areas, which we'll move into in some of my questions after that, you know, there was issues identified through this whole process for which even DND have acknowledged they've changed protocols and policies, and part of the function and the purpose of this inquiry is not just to examine what's happened in the past but to try to make recommendations for improvements in the future.

Would you agree with me that the whole issue of jurisdiction, that if marine is marine – you know, and to the layperson, they think, you know, where the shoreline stops it's federal, and where the shoreline moves inland it's provincial – that that kind of issue should be looked at further so that, you know, the scenario that I painted for you at the outset could be more clear and addressed so people could understand that?

J. MARSHALL: I mean, what you're asking for is my opinion whether or not we can change federal-provincial policy, and I can't really comment on that. But what I will say to explain it further is usually for a marine rescue, the primary resource that you use is the Coast Guard. So if we declare anything over ice on federal waterways as a marine rescue, the Coast Guard really doesn't have that capability to enact that rescue.

Yes, we do have – the Canadian Forces does have the aircraft, but we're also talking about the Coast Guard who has the primary responsibility for marine rescues and the Canadian Forces being the primary for the aeronautical rescues. So when you – if you want to change that policy to declare anybody over ice on federal waterways as a marine rescue, you're actually handcuffing because we're probably going to be using the ground search and rescue resources to do that job.

So I can't really comment, from Lieutenant Colonel Marshall's point of view, whether or not federal and provincial governments need to get

together to change that policy. I'm not sure that would make any difference in the type of rescue that we would do. Whereas, snowmobile rescues would be better served by ground search and rescue people.

T. WILLIAMS: Okay.

So when you do get involved – and, as you acknowledged, frequently you do – it's on a basis of a humanitarian interest, right, or an incident? Let's call it a humanitarian –

J. MARSHALL: Yeah, that's how we classify that rescue.

T. WILLIAMS: Okay.

And so would it be – would that be then, you know, once a call comes in, if you receive a call from the province saying that we have, you know, somebody lost or we require your services, so the minute that you make that determination that you will deploy resources, that would then be considered a humanitarian incident?

J. MARSHALL: Yes.

T. WILLIAMS: Okay.

So if I look at the incident report, and maybe we can bring it up. It's up, is it? Yeah, that's it. If we can go back to page 1 on that and that takes us through the events of January 30. And as we know this – the incident commenced on the 29th, but you didn't receive a call until the 30th.

And then the second entry there – the first entry speaks of requesting our assistance, so at – the hour I think was 9:32, if I'm correct –

J. MARSHALL: Yup.

T. WILLIAMS: – in what it was.

J. MARSHALL: (Inaudible.)

T. WILLIAMS: There was a request for assistance in the search for a 14-year-old young male who left on a Ski-Doo after an incident. So you got that call and then within – I'm just looking at the time. So within six minutes, the next entry, the second entry, that means your

controller then received a call, six minutes. He spoke with somebody; you may know him more than I as to specifically who. It was the OIC, I think, the officer in charge.

J. MARSHALL: Yes.

T. WILLIAMS: And then the officer in charge discussed – it was discussed with him, based on servicing Hercs, he would only be willing to commit 444 Squadron. So what resource would come out of 444 Squadron?

J. MARSHALL: That's the Griffon.

T. WILLIAMS: The Griffon.

J. MARSHALL: Yes.

T. WILLIAMS: So he was prepared, at that point, to dispatch the Griffon, but he couldn't dispatch anything else.

J. MARSHALL: Correct.

T. WILLIAMS: Okay.

So my point being that on the morning of January 30 at 9:30 or shortly – 9:40 – before 10 a.m., let's say, this matter was – DND were contacted, JRCC, they considered it and the minute that the OIC makes a determination that he's prepared to dispatch resources, this then becomes a humanitarian incident.

J. MARSHALL: Yes.

T. WILLIAMS: So does that not then make it fall under DND's auspices because you're now committing to resources, and we'll chat over whatever was available. But the minute the OIC says, okay, I'm prepared to send out, you know, whatever is coming out of 444, then you're involved. You only get involved if it's humanitarian. Then it falls under the auspices of the Department of National Defence.

J. MARSHALL: No, the province is still the lead agency for this. When we talk about humanitarian, it's how we're assisting the province in – around search and rescue, where we are providing resources to help the lead agency execute their search. So it's not – once we get involved, we don't take over; we don't

become the lead agency. We are now supporting the lead agency if we are able to.

T. WILLIAMS: So on humanitarian incidents you're never the lead agency?

J. MARSHALL: No, we're not.

T. WILLIAMS: It's always the province.

J. MARSHALL: Yes, it should be the province (inaudible).

T. WILLIAMS: (Inaudible) you do make a commitment at that point to support the province.

J. MARSHALL: Yes.

T. WILLIAMS: Okay.

And so, I guess the most troubling aspect for the family is that once DND says okay, we're here, we're going to serve as backup to the province – we know, from your evidence this morning, the resources that were not available, but there was one resource available and that was the Cormorant, correct?

J. MARSHALL: Correct.

T. WILLIAMS: So, as of 10 o'clock on Monday morning, that Cormorant helicopter was able to fly and could be dispatched.

J. MARSHALL: That's correct.

T. WILLIAMS: And we know furthermore that there was a decision made that they would not fly for two reasons: one being weather that had been described – there's some discussion over that – and the second was deployment of resources.

J. MARSHALL: Yes.

T. WILLIAMS: Okay.

So if I could just deal with the first one: incident of weather. And we went through timing and I know that Mr. Freeman brought you to how long it takes. So while the weather – could not get into Makkovik, despite the fact – and there's some debate and I don't think we're going to

resolve this today because there were other helicopters flying and there was fixed-wing aircraft that landed. So I don't want to get into a debate about it. But there was no other calls gone into JRCC that morning, I trust, in relation to the search and rescue operations requiring the Cormorant?

J. MARSHALL: Yeah, there were no other rescues – ongoing rescues at the time; you're correct.

T. WILLIAMS: So as of 10 o'clock Monday morning, the OIC made a determination that he was going to leave the chopper on the ground as opposed to deploy it for an ongoing search operation that we knew was happening off the Coast of Labrador.

J. MARSHALL: That's correct.

T. WILLIAMS: Okay.

And the decision was also made that they would not even dispatch that – despite the weather concerns, they would not even dispatch that helicopter because – and we know that it would take five hours to get to Makkovik, correct?

J. MARSHALL: Yes.

T. WILLIAMS: But they could've dispatched it to Goose Bay, which would have saved four hours so that even if the weather broke, as we know how it happens here, you can look out the window one minute and you can't see a mountain and another minute everything is clear – it comes in and out, as we've discussed. They didn't dispatch that helicopter and leave it in Goose Bay so that if the weather broke, they could get out and do a search.

J. MARSHALL: But, as I said before, the Cormorant is no more capable than the Griffon. So we already had helicopters in Goose Bay ready to do the search. Yes, we did have mechanical problems, but prepositioning the Cormorant when we had other helicopters that could do the search wouldn't have achieved anything above what we were willing to do at that time.

T. WILLIAMS: But in all honestly now, you know – I'm not trying to make semantics here –

we didn't have other resources. We had nothing available because all the other resources were broken. They were down.

J. MARSHALL: Yes, that is what happened, except that we didn't know the Griffon was broken at that time.

T. WILLIAMS: But (inaudible) let's go through what resources were available for support backup in Greenwood and in Gander and in Happy Valley. Can you run through the list of ...?

J. MARSHALL: We would've had one Cormorant in Gander available and then one Griffon in Goose Bay.

T. WILLIAMS: Okay. But let's go through what wasn't working in Goose Bay. The Griffon wasn't working.

J. MARSHALL: Initially, we didn't know it wasn't working –

T. WILLIAMS: But it wasn't working. I mean, let's talk facts here.

J. MARSHALL: Yeah, that's –

T. WILLIAMS: The Griffon couldn't fly, that had to be – that had to have maintenance, right?

J. MARSHALL: Correct.

T. WILLIAMS: Okay.

And what resources were in Greenwood that could not be dispatched? Let's – give me the list of equipment that was down that day.

J. MARSHALL: There was – the Hercules was down that day.

T. WILLIAMS: Yeah.

J. MARSHALL: But the Cormorant was on.

T. WILLIAMS: Okay. And was there any other machinery down that day?

J. MARSHALL: Not that I'm aware of. But those are the search and rescue assets that we have.

T. WILLIAMS: Okay. So those – the only thing that could go that day was the Cormorant.

J. MARSHALL: Correct.

T. WILLIAMS: Correct. And the decision was made not to bring that any closer to where the search was undertaken in the event that there could be a break in the weather.

J. MARSHALL: Yes.

And I fully understand how this appears. It certainly does appear that it's insensitive that we wouldn't at least preposition at Gander. And I completely understand why this community and his family would feel that way. But it was – the OIC in Halifax had to weigh a lot of options of what to send. And knowing that the weather was bad and the – and putting the Cormorant in Gander and if it wasn't able to do a search that day, we would've had to put that crew down to rest and wait another 12 hours, which meant that a total of 27 hours we would've had the primary SAR aircraft in that region away from the home base.

Because if they were in Gander, once the crew's day was done, then the night crew would've taken over. But that night crew is in Gander so you can't bring that crew with you to Goose Bay to keep that helicopter ongoing 24-7. That can only be done on the main base in Gander. So in my opinion, what the OIC had to weigh was all of those possibilities of if I send that Cormorant there, it wouldn't have been able to search, and then I'm losing that asset –

T. WILLIAMS: But –

J. MARSHALL: – for at least 27 hours.

T. WILLIAMS: I have to take issue with you on that, because we talked timing this morning. We said that the crew came in – the crew for the Cormorant came in at 8:30. They got the call at 9:30. They could've been dispatched – they got a 15-hour work window, right? So they could've been dispatched. Would've left 13½ hours – I was doing the calculations this morning – less four hours to travel to Goose Bay. That aircraft could've been available for 9.5 hours to search. If the weather – we'll talk about weather after – if the weather wasn't there, that Cormorant

could've been searching for 9½ hours off the coast of Makkovik. Correct?

J. MARSHALL: Yes.

T. WILLIAMS: And so I need to go – because this is probably one of the biggest and most fundamental concerns of not only the Winters's family but the public at large, is that the system is set up such that an individual sitting in Halifax can leave a Cormorant helicopter on the pad in Gander while a boy is lost on the ice off the Coast of Labrador because he might get a call at another time for somewhere else.

J. MARSHALL: Except that the only reason that the EMO had asked us for support was because the weather was too bad for Universal to fly. Once the weather picked up, that would've enabled the EMO to contract Universal to do the search and they would no longer need our assistance. Because the province is supposed to use other resources before they come to us. We're the last resort when they can't go.

T. WILLIAMS: But they had called you and you had accepted because you were going to deploy, you know, the other resources at that time, so we're past that stage. They don't call out if they didn't need you, obviously, right?

J. MARSHALL: Right.

T. WILLIAMS: So the call went in at 9:30 because they needed you. And you were prepared – and I don't mean you; I'm talking (inaudible) –

J. MARSHALL: No, I understand.

T. WILLIAMS: I'm not trying to make this personal. Is that they were prepared to dispatch resources, only there was nothing working. So we were down to one resource left and that resource was left on the ground in the event that something else happened while you had an event. I mean, it doesn't seem to me to make sense that a resource is kept on the ground while there is a potential emergency.

And we talked about the possibilities of weather, but the weather fluctuates so much. And as described, two fixed planes got in, an air

ambulance got in, another fixed wing got in here, and the Universal – both the Universal and the Woodward's helicopter were – now, I know there was difficult conditions. It's not clear skies. I don't try to paint –

J. MARSHALL: No, I know.

T. WILLIAMS: – that picture but –

J. MARSHALL: But the Universal only got in when the weather improved and, at that point, the province no longer needed our support because Universal was there because the weather improved.

I would suggest that if the province had called at 9 o'clock and said: Look, we called Universal, they're busy or they're broken, you know; the weather is good enough, we need your help, the answer probably would've been different. But the fact is, is that when the weather improved, they had another resource is why the province didn't call us again.

T. WILLIAMS: But the province called that morning – 9:30 that morning they called looking for assistance.

J. MARSHALL: And Universal couldn't do any searching at the time and neither could we.

T. WILLIAMS: Right.

But the issue is – and I'm not going to belabour this – but the issue is, is that there was no intent to do anything in the sense that, you know, rightly or wrongly the servicing was never done on the aircrafts that has the other ones available. The only one resource that was available wasn't dispatched and wasn't even brought up close enough to the location of the incident so that if the event of weather – and surely DND knows weather in Labrador as well as anybody – that it could break and an opportunity could arise that that could be dispatched. Right? That's the inaccurate –

J. MARSHALL: Yeah, that is one of the possibilities that could've happened.

T. WILLIAMS: In terms of the file being closed, there's been a change of protocol, you mentioned, in respect of those matters, so that I

trust – after the early discussions and the notation – I don't have it directly in front of me, but it's in this exhibit, the change in protocol arose because there was no actual protocol in place prior to this, right?

J. MARSHALL: There was nothing codified.

T. WILLIAMS: Yeah, there's nothing written.

J. MARSHALL: Correct.

T. WILLIAMS: Okay. And this is, again, a sensitive topic for the family in that, you know, to have somebody say: Well, we didn't come because you didn't call us again. That obviously doesn't wash, right?

J. MARSHALL: Yeah, absolutely and I understand why that also doesn't look very good on DND.

And all I can say to that, and it's certainly not an excuse, it's just that it is the lead agency's responsibility to ask for assets. We don't – at the time, we didn't need to call back to find out if they still needed us. It wasn't our search; it was the province's search. And we – our initial response was we can't support you because of weather and aircraft issues.

At that point, we don't know what's going on in the search. We don't know if he was found, we don't know if it continues, we don't know if other resources have been found; we just don't if we're needed. And at the time, there was no need to reach back. And if the province had wanted us when the weather improved and Universal wasn't able to respond for whatever reason, that would've prompted EMO to call us again and the answer could have been different at that time.

T. WILLIAMS: But if that had to be a fishing vessel off the coast of Makkovik and you couldn't dispatch the Cormorant, you wouldn't have closed your file, the file would stay open (inaudible).

J. MARSHALL: (Inaudible) lead agency.

T. WILLIAMS: Yeah, so, again, we're into nuances of, you know, you were not the lead

agency but you had declared it a humanitarian response, yet you closed the file.

J. MARSHALL: Again, closing the file isn't what you think it is. It's simply a clerical issue with the software that we were using.

T. WILLIAMS: I need to take issue with you on that.

J. MARSHALL: I take issue with it, too. And that is why we have changed our policy because – not because it changes any actions that we would take, whether the file was open or closed on the software we're using, but obviously, the optics of it looks poor when there isn't – when there is a search open that we don't know the search is closed because we haven't been in contact with them and we closed the file on our SAR log. So we've recognized that, that this isn't the best policy and we've changed it.

T. WILLIAMS: But the file was not active, correct? I mean, there's nothing entered into that log 'til the following day.

J. MARSHALL: Right, and –

T. WILLIAMS: So the file didn't remain active – the Winters's file was not active.

J. MARSHALL: No, even if the incident log is closed, we can still add notes to it. I think – and you do see it here, as we close the file and then we can add notes afterwards. So it's still readily available on our software.

T. WILLIAMS: So one of the issues that has come up here – and, again, it's a bit more of a generic nature than anything – is the communications. Exactly what we're talking about here: Communication that's between the province and the feds on files like this. So I hate to say that this file has so many examples of what can go wrong, because it's obviously a tragedy, but it may be an opportunity to fix things in the future –

J. MARSHALL: Mm-hmm.

T. WILLIAMS: So that's a part of our mandate here.

So in terms of protocols in respect to communications, has there been any efforts used by – between the province and the federal government, or the DND, to readdress issues and protocols in terms of communications? Like, I know you mentioned –

J. MARSHALL: Yeah.

T. WILLIAMS: – you changed your protocol, but was that just done by DND, or was that done in consultation with the province?

J. MARSHALL: I don't know if we – if in 2012 if we consulted the provinces to change our protocol, because it was an internal issue at the JRCC that we would change our protocol so that we would reach back to the provinces during an open mission to see if we could help again. So I don't know if we had to communicate that to the provinces, because their policies wouldn't change. They would still be in charge of the mission, be the lead agency. And if things changed and they called us, they were still open to do that before 2012 and after.

T. WILLIAMS: Would you think, in your position as a, you know, lieutenant colonel with DND, that it would be a worthy consideration for this inquiry to recommend more consultation between the federal government and the province on issues such as communications in these type of instances?

J. MARSHALL: Absolutely. We are always trying to do internal checks and balances to make sure that we are effecting any type of search and rescue policies and partnerships with our provinces. So to say that it – a recommendation that we increase communication, I would not disagree with that.

T. WILLIAMS: And to your knowledge, do there exist any protocols as between the province and DND with respect to search and rescue practices and communications at the present time?

J. MARSHALL: With the exception of the one change that we did, I'm not aware of any changes since then.

T. WILLIAMS: But now that's – that would be an internal DND protocol as opposed to a joint

protocol as between the province and the federal government.

J. MARSHALL: I'm not aware of any changes.

T. WILLIAMS: Okay.

And the only reason I ask is because in preparation for the proceedings – obviously another very, very tragic incident that happened here was the Cougar helicopter crash in 2009. I'm sure you're familiar with that matter. I'm not going to get into that in any detail, but that obviously was a very tragic incident as well which involved a helicopter being lost off the coast.

And one of the recommendations that came out of that inquiry – there was an inquiry held by the Hon. Justice Robert Wells. And one of the recommendations that came out of that inquiry was a “formal protocol” to “be entered between DND and the helicopter operator(s) so that each will know what the other's aviation resources are, know how response efforts will be deployed and in what circumstances, and clarify their respective roles.” That was a recommendation that Mr. Justice Wells made.

And I don't have the dates of the inquiry, but I think it was shortly after, maybe in 2010. And probably a year or two after, there was actually a protocol adopted between Cougar Helicopters and DND. And it's – and I'm not going to go through the detail, but there was a formal protocol actually put in place as between DND and the private helicopter operator. And I'll just read out the objectives – the objective. It says: “Clarify the relationship between Cougar Helicopters and the Department of National Defence relative to Search and Rescue activity. Outline the resources available to each party, function and method of deployment of individual/joint response efforts and clarification of their respective roles.”

Do you think such a policy or protocol would be a good idea as between the federal government and the province? Such as – and I know you haven't had the benefit of reading through all of that.

J. MARSHALL: Yeah.

T. WILLIAMS: So I'm talking in a generic sense. But such a protocol be a good idea, as between the province and the federal government, so that these kind of issues that deal here, the deployment of resources, communications could all be ironed out?

J. MARSHALL: It's really hard for me to answer that other than to say it sounds like a good idea and I don't disagree with the principle. I don't know if something like that currently exists. We do work with the provinces across Canada very tightly. So I don't know if those specific recommendations exist. It's something that I could attempt to find out maybe by –

T. WILLIAMS: And, like I said, I'm not aware of any such protocol that exists.

J. MARSHALL: Yeah.

T. WILLIAMS: I was just thinking it seems to mirror a lot of fact scenarios that have arisen here for purposes of illustration.

The last –

THE COMMISSIONER: I think the commission will note that, on the one hand, it appears that, Mr. Williams, you're making reference to what seems to be entirely military, DND, aeronautic and marine rescue, and then we're wondering if that same kind of protocol can be established for ground search and rescue and aeronautic and marine.

T. WILLIAMS: I just wonder if there are any similarities as between the protocol that's used in – obviously that's a marine scenario, but if there's anything that could be adopted from that in terms of the communication lines, the sharing of resources, things of that nature.

THE COMMISSIONER: Okay, fine.

Naturally, all counsel will be able to speak to that point or at least to make recommendations or observe the discussion paper we have and apply that kind of thinking, if it would work, to the recommendations that all eyes are going to see anyway at the end of the day.

So thank you for that point. Please continue.

T. WILLIAMS: Okay.

The only other point I'd like to raise is whether or not there has been any further work done by DND with respect to – there was a standing committee of – the federal government had a Senate committee that did a report, *When Every Minute Counts*, and it was maritime now. And, again, we're dealing with ground search and rescue, so I don't want to go – Mr. Commissioner, I'm not going to go too far down this road. But there were a number of recommendations that arose from that study that was specifically related to search and rescue and, in particular, there was a number of references to search and rescue for Indigenous communities.

Can you tell me as to whether or not DND has taken any efforts to review, implement or consider any of those recommendations?

J. MARSHALL: I'm unaware of any changes that might have occurred. If there was a Senate recommendation, I'm confident that we definitely would have taken that to heart and implemented any changes.

With respect to search and rescue for Indigenous communities, we don't have any different policies or procedures for search and rescue, whether it's Indigenous communities or not. Every case is treated equally.

T. WILLIAMS: And my reference to Indigenous communities, some of the – I don't want to get into all the recommendations here – but, you know, it spoke to, you know, expanding training and awareness and some issues like that. That's the only reason why I make reference to Indigenous communities.

That's all the questions I have, Lieutenant.

Thank you.

J. MARSHALL: Thank you.

THE COMMISSIONER: Thank you.

Your last point was an interesting one. And I'm wondering, Mr. Smith, do you have opinions to offer to the question made by Mr. Williams,

simply because you've studied this particular area?

R. SMITH: Commissioner, thank you very much.

I believe that the National SAR Plan should be revised and updated through the Public Safety Canada and that would take care of a lot of inoperability that exactly has been spoken to this afternoon.

THE COMMISSIONER: Thank you.

You'll be able to follow up with this later on.

T. WILLIAMS: That's fine.

G. BUDDEN: Do you wish to go ahead, Mr. Ralph?

P. RALPH: That's fine, Mr. Budden.

My plan is just to briefly examine Lieutenant Colonel Marshall this afternoon and I'll conclude my examination tomorrow morning after we've heard from the entire panel from the federal government.

If we could go to Exhibit 164, Madam Clerk. And I just want to ask you to look at this document. My friend was asking if there was any kind of consultation after the search for Burton. And this is an email, it's Exhibit 164 and it's from David McCormack who is a provincial official. And I'll use the expression FES-NL; right now, it's Emergency Services Division, we'll call it FES-NL. And he says, the first line – this was April 2, 2012, and it says: "Please see the message from Maj. ..." – can you pronounce that name?

J. MARSHALL: That's Major Laaouan.

P. RALPH: And do you know who that is?

J. MARSHALL: That would have been the OIC, JRCC Halifax during this case.

P. RALPH: Okay. And so I'll read the message here: "Please see the message from Maj. Laaouan regarding JRCC protocol. It is in line with our discussions with them in February and feedback we provided. I did call Maj. Laaouan

to clarify the Requesting Authority ... especially as it pertains to the second bullet – he confirmed that JRCC will still consider the lead police force to be the source of the detailed information and as such FES-NL will just facilitate the link between JRCC and the lead police force as we have always done. Maj. Laaouan will be in the St. John's area in mid-April and FES-NL will be meeting with him on ... April 16th at 1400 ... and you are welcome to participate”

Perhaps we can go down below here. I guess the blue ink would be the message from Major Laaouan. And again: “Please take note of the amended protocol when dealing with Provincial/Territorial Authorities when dealing with a GSAR case. These changes are directed from the Commander of Canada Command and take effect immediately.”

Are you familiar with this exhibit?

J. MARSHALL: Not 100 per cent familiar, but I have something similar to this and everything that he is writing in this is exactly stemming from the GSAR changes that we made in March of 2012. So I believe what he was doing here was taking Canada Command's direction in – I'm not sure which exhibit it is, but the direction that Canada Command gave to the JRCCs, the change in policy and then he's communicating that change of policy with (inaudible).

P. RALPH: Right.

UNIDENTIFIED MALE SPEAKER: I think it's Exhibit 088, if you're looking for it.

P. RALPH: Sorry?

UNIDENTIFIED MALE SPEAKER: I said I think it's Exhibit 088, if you're looking for it.

P. RALPH: 088, that's what you were referring to earlier today, then the –

J. MARSHALL: Yeah.

P. RALPH: – in terms of JRCC policy.

So, I guess, correct me if I'm wrong, it looks like that's happening here – after the search for Burton there is a discussion, I guess JRCC is

changing its policy but it's doing so in consultation with the province.

J. MARSHALL: Yes.

P. RALPH: Is that –?

J. MARSHALL: Yeah. And the OICs of all the JRCCs would be in contact with their emergency counterparts in the provinces at all times.

P. RALPH: Right.

But number two here, paragraph 2 in this, it says: “You are to initiate contact with Provincial and Territorial GSAR leads within your SRR AORs” What's that again? That's –

J. MARSHALL: I'm just going to have to come up and –

P. RALPH: Okay, that's fine.

J. MARSHALL: So where are you referring –?

P. RALPH: Paragraph 2, or bullet 2 there. “You are to initiate contact with Provincial and Territorial GSAR leads”

THE COMMISSIONER: We're wondering what SRR AORs stands for.

P. RALPH: Yes.

J. MARSHALL: Yeah. SRR is the search and rescue region. So in this region that would include New Brunswick, Nova Scotia, a part of Quebec, a part of Baffin Island and Newfoundland and Labrador.

P. RALPH: Okay.

And, I guess, the actual amended protocol starts: “When a request for assistance from a Provincial or Territorial Requesting Authority ... is received, the appropriate JRCC will automatically open a case file.

“The JRCC will obtain from the RA all possible information on the case in order to establish clear situational awareness and the severity/urgency of the incident. For example, the search model being used by GSAR operators

would provide the JRCC with detailed information with which to make decisions.”

Now, again, I’m going to stop there and just – GSAR operators, now who would you consider the GSAR operators? The lead police force, do you think that –?

J. MARSHALL: I would say so, yes.

P. RALPH: Right. So that would not be FES-NL?

J. MARSHALL: No, FES-NL is not the GSAR operator. They’re the step in between the GSAR operators and JRCC.

P. RALPH: Right.

“The JRCC will record what assets the Province has committed or will commit to the incident. After reviewing this information a needs assessment will be made as to what SAR asset could be best suited to assist the Provincial authority.”

J. MARSHALL: Mm-hmm.

P. RALPH: “The RA will be advised whether or not the CF can assist, and if so, how.”

Anyway, we don’t have to go on. I guess my point is there was consultation after this incident, and the protocols that were adopted by JRCC were done in consultation with the province.

J. MARSHALL: Yes, that certainly appears so.

P. RALPH: That’s fine. You can sit down there now.

J. MARSHALL: Okay, thank you.

P. RALPH: Thank you.

Now, you used the word “lead agency” – or the words “lead agency” – a few times, and at one point you said that – you called FES-NL the lead agency. And, again, I’m just asking questions about your understanding and the JRCC’s understanding of how a GSAR operation is sort of structured and operated.

And I’m going to start with Exhibit 018, page 26.

THE COMMISSIONER: I just see some people masked on the back. I don’t want to discourage you from wearing your mask, but we’ve indicated that within the room, feel free to have your mask off. So just if you’re wondering why we’re not masked, that’s the reason.

P. RALPH: Now, I understand –

M. FREEMAN: Peter, sorry, I don’t – pardon me, Peter, sorry, I don’t want to interrupt you too badly –

P. RALPH: That’s okay.

M. FREEMAN: – but I want to take you maybe to – this is a version of this letter that comes out of the RCMP file, and I’m wondering if we can use the one that’s from the DND file.

P. RALPH: That’s fine, absolutely. That’s perfectly fine.

If you can identify the exhibit number.

M. FREEMAN: And I will, yes. Give me one moment.

It’s 098, I believe.

P. RALPH: Exhibit 098.

And I’m going to guess that this – Lieutenant Colonel Marshall are you familiar with this document?

J. MARSHALL: Yes, I am.

P. RALPH: And so I understand this was a report that was done after Burton’s death and it was done, I understand, for the chief defence staff by Major General Vance. Is that your understanding?

J. MARSHALL: Yes. Just making sure that he was CDS at the time.

P. RALPH: What’s that?

J. MARSHALL: So I'm just making sure he was the Chief of Defence. I don't believe he was.

P. RALPH: That was the gentleman who did the report. You look on page 10 of that.

J. MARSHALL: Right. Yeah, so he is –

P. RALPH: It says Major General Vance.

J. MARSHALL: He was working for the Chief of Defence at the time.

P. RALPH: Right. And so that was a report that he drafted for the benefit of the chief of staff.

J. MARSHALL: Yes.

P. RALPH: And that is basically an investigation into what happened with the search for Burton.

J. MARSHALL: Yes.

P. RALPH: And page 9 or 10, I'm not sure, I had it (inaudible) – go back a page, please. So this is a section of the report that he called Findings. And he says: "In accordance with its aims set out in para 2 a through d, the investigations finds as follows:" and a section called Establish the Facts. "The timeline in Annex A provided a detailed account of the facts of this incident. The initial response by FES-NL was to call for a ground search and rescue, operations led by the RCMP in the local community."

I find that a bit confusing because, I mean, it seems to be suggesting that FES-NL would get the call and then call the RCMP, and I don't think that's how it works.

J. MARSHALL: No, that wasn't the case.

P. RALPH: And so that's not an accurate description of how this works.

J. MARSHALL: No, the RCMP was definitely leading that.

P. RALPH: Right. And as I understand it, in this instance and in normal instances of a search and rescue, the call goes to the police first and

they're the lead agency in a ground search and rescue.

J. MARSHALL: Yes, and I think perhaps the reason – the confusion that might occur is because we don't deal with requests – with respect to requests we don't deal with the RCMP, the local RCMP that way. We go through FES-NL.

P. RALPH: Yeah. Again, I'm not, you know, criticizing the Department of National Defence leading this wrong. Perhaps this is our fault as much as, you know, anyone else's. There might be this misunderstanding, but clearly, this is a misunderstanding of how the system works.

J. MARSHALL: Mm-hmm.

P. RALPH: Let's see if you understand it the same way I do. The police get a call and at some point, they will enlist the volunteers, the ground search and rescue volunteers. You're familiar with that system?

J. MARSHALL: Yes.

P. RALPH: And then at some point, they may decide that they need air support and at that point, that's when they would call FES-NL.

J. MARSHALL: Yes.

P. RALPH: Is that right? Because, in fact, they can't call directly to get the assets, they have to go through FES-NL.

J. MARSHALL: That's correct.

P. RALPH: That's your understanding?

J. MARSHALL: Yes.

P. RALPH: And so, really, the role of FES-NL is just to try and get air support up in some fashion. Is that your understanding of FES-NL's role?

J. MARSHALL: I can't say for sure all of FES-NL's role, but, yes, in this instance, how the liaison happens between the RCMP, the local detachment in enacting the search and JRCC, is through FES-NL.

P. RALPH: Right.

And I guess we saw that – you’re familiar with the transcripts of the – the recordings with the JRCC?

J. MARSHALL: Yes, I am.

P. RALPH: Because what you – and actually we heard some evidence yesterday from Barry Andersen and he was a community constable here in Makkovik, but he also was the search incident commander in the search for Burton. And, basically, the Woodward’s helicopter came here and he directed Woodward where to search for Burton. So it is the people on the ground that would have the most knowledge in terms of how to direct a helicopter where to search.

J. MARSHALL: Yes.

P. RALPH: So, obviously, someone in St. John’s who’s working for FES-NL, that’s not where you want to get your information or how to figure out where to search for someone.

J. MARSHALL: No, and, as you saw, I think with the incident log and also with the transcript, once that connection was made through FES-NL then we’re able to talk directly and you have the control – the air controller talk directly with, then, Corporal Vardy –

P. RALPH: Right.

J. MARSHALL: – to talk specifically about this search and how to enable the best search.

D. WILLIAMS: Sergeant Danny Williams here.

Mr. Ralph, to speak to the comment above there about outlining the procedures, it is my understanding in other provinces search and rescue can be tasked through the emergency management office, but that’s not the case in Newfoundland and Labrador. It’s the RCMP that works in conjunction with the search and rescue group in that specific area. So that might have been cause for some confusion in that report, where it’s my belief in other provinces that that is the case, but certainly not in Newfoundland and Labrador.

P. RALPH: Right.

So in the province, you know, the role of EMO or FES-NL, whatever we want to call it – right now, it’s the Emergency Services Division – is limited to sort of almost a broker function that you are trying to find a helicopter. Once they find a helicopter, then we withdraw – FES-NL withdraws and there’s a direct communication between the pilot or the agency that’s directing the pilot and the person who’s (inaudible). Is that your understanding?

J. MARSHALL: Correct. So perhaps I misspoke earlier when I said FES-NL was the lead agency; it’s the province. And whether that’s the provincial police or FES-NL, it’s really not my concern too much other than –

P. RALPH: No, fair enough.

J. MARSHALL: – we’re not the lead agency.

P. RALPH: And the fact that it is a federal police force doing, you know –

J. MARSHALL: Yes.

P. RALPH: – provincial police duties also adds a bit more confusion to it, but I appreciate your point. But it is actually in this instance and most instances of ground search and rescue in this province that the lead agency would be the RCMP or the RNC.

J. MARSHALL: Okay.

P. RALPH: And I guess I’ll just talk briefly about CASARA. And I would think that the role in terms of CASARA would be similar; that it wouldn’t be up to Paul Peddle with FES-NL to get spotters in an aircraft in Gander, which would be the Universal aircraft. That one, I would suggest, be a discussion that should take place between the persons in charge of the search in Makkovik and the pilot who’s coming out from Goose Bay.

J. MARSHALL: To be honest, I don’t know whether or not Mr. Peddle would have been responsible for making that link. I do know it definitely wouldn’t have been us because we weren’t involved at that point. But if we were to – as soon as we start contributing to the search,

then JRCC would then use CASARA if required for spotters if –

P. RALPH: Right.

J. MARSHALL: – we thought we needed them.

P. RALPH: Right.

J. MARSHALL: It's –

P. RALPH: Do you know if they were used – do you know if the Griffon used when it came up?

J. MARSHALL: No. The Griffon is a little different because of the weight limitations.

P. RALPH: Right.

J. MARSHALL: I do know the RCMP had asked to put people on the Griffon, but it just wasn't possible because the cost is – if you take a 200-pound man on board, that means 200 pounds less of gas.

P. RALPH: Right.

J. MARSHALL: So less time on scene. So unless somebody's a trained spotter, we don't want to waste 200 pounds of gas –

P. RALPH: Right.

J. MARSHALL: – for a 200-pound person who's not trained at spotting.

P. RALPH: Okay, fair enough. Thank you.

Those are all the questions I have for now.

G. BUDDEN: Mr. Commissioner, I'm going to swing by – my chair around a little bit so I can make eye contact with the witness.

THE COMMISSIONER: It's all (inaudible) microphone.

G. BUDDEN: Lieutenant Colonel Marshall, I only have a handful of questions.

The first one, the – let's assume that the Griffons had been available and had been dispatched that morning of the 30th, and from Goose Bay and

with the start-up time and so forth, they probably would have arrived here more or less the same time the other helicopters did. So say they arrived here at around the time the snowmobile tracks were discovered leading into the open water and in similar weather conditions that we've heard evidence about. That's a bit of background. I have a couple of questions on that.

The first one is – I think we've already heard evidence, but correct me if I'm wrong, but my understanding is that the helicopter pilot would take directions from the RCMP or other ground resources, such as the GSAR team on the ground as to where to conduct the grid search. Am I correct on that?

J. MARSHALL: That's correct.

So what we would do in a lot of circumstances is, if there's time permitted and weather permitted, the Griffon would've come here, possibly landed and spoke directly with the on-scene commander, whoever is in charge of that search at the time, to figure out the best probability of search. Because also the RCMP officer is not necessarily going to know the capability of the aircraft coming in, so it's going to be a joint effort to determine what is the best possible search pattern.

G. BUDDEN: And by capability, you're probably thinking of things like how long would they have in the air, how – it's capacity –

J. MARSHALL: That's right.

G. BUDDEN: – to offer –

J. MARSHALL: That's right. The speed, how much –

G. BUDDEN: Altitude and so forth.

J. MARSHALL: Yeah.

G. BUDDEN: And there's a dynamic here, I would assume, between the knowledgeable people on the plane and the knowledgeable people on the ground, the RCMP. So the pilot, I would think – and, again, I'm looking to you for answers here – the pilot would not just necessarily be a passive actor. He or she would

be a trained officer, would have SAR experience – no doubt, significant SAR experience.

What kind of dynamic would there be there in your experience? Would the pilot have suggestions? Might the pilot say: Look, there's a whole area here beyond the lead we should look at? Or would the pilot typically more rely on the resources of the people on the ground?

J. MARSHALL: I wouldn't say they'd 100 per cent rely on the source on the ground. They would definitely be putting in some effort to come up with a best solution. But we would never overstep whoever is on the ground and their knowledge. They have local knowledge; they know about the individual who's lost; they know about what's been searched already, patterns with where they might travel.

So we're not going to overstep and say: Well, I think we should go there because we're probably going to be wrong, you know. So we're going to rely on, in this case, Corporal Vardy to say: Hey, this is where I want you to go because it's the high-probability search area. Because that's what we want to hit. We don't want to go to the low-probability areas.

So, yes, my suggestion would be in a normal search with good weather and, you know, partnership, we would land, discuss and then take off from there.

G. BUDDEN: Are you able to tell us, say, if there's an hour of flying time in the conditions such as they were that day, what kind of ground could they cover? I guess, I'm using ground in a descriptive sense, not in a technical sense. Are we talking 100 square kilometres, 500 square kilometres? Have you any idea?

J. MARSHALL: I'd have to go and do some mathematics, but 100 square kilometres, you know, that's probably – I wouldn't say that's – I would say that's doable within that one-hour time frame. Again, without having my resources because we do have charts for these type of things–

G. BUDDEN: Right.

J. MARSHALL: – and also, I'm not a helicopter guy, so just off the top of my head.

But usually, in this case, rather than doing a square search, we would try to do things like we did with (inaudible) –

G. BUDDEN: Coastline or whatever, yeah.

J. MARSHALL: – or try to retrace his steps. If he was walking in a certain direction and we had those footprints, we would extend those, you know, assuming he was still on a straight line, which, you know, it's not a very good assumption but it is something to go on. So those are the type of things we would look at but, of course, we'd always be in consultation with whoever is on the ground.

G. BUDDEN: Sure.

I may follow this thread a little bit further tomorrow, so you may want to, perhaps, think a little bit tonight and once we heard the evidence of the officers, the RCMP officers, I may return to this, because it is a concern obviously just to be upfront here. There's obviously questions that have been asked for years what difference might it have made if the RCMP – or rather if the JRCC had dispatched a Griffon or a Cormorant, and where I'm going with my questions is to try and get a sense of what possible difference that might have made. So we can park that for now but you can reflect on that; I'll probably return to it.

J. MARSHALL: So the one thing that was missing is that we haven't really discussed, because it never occurred in the search, is the RCC would then task the – or talk to the aircraft commander to task them. The aircraft commander at that point then also has a decision to make whether to accept the tasking or not, and that's based on safety of flight.

G. BUDDEN: Of course.

J. MARSHALL: So it's possible that the Griffon, even if tasked, would have said I can't fly in those conditions and turned down that mission.

G. BUDDEN: I understand.

J. MARSHALL: But that didn't occur here because we didn't get to the tasking portion on the 30th.

G. BUDDEN: Yes.

To switch tack completely, if I understand correctly – and I may not but if I understand correctly, on the morning of January 30th, 2012, the crucial time frame here, at least a crucial time frame, was it really only one Cormorant was the only primary SAR resource available?

J. MARSHALL: The other Cormorant would have been in Greenwood.

G. BUDDEN: Okay.

J. MARSHALL: Which would have been not – it wouldn't have made sense to send that one; it was further away.

G. BUDDEN: Okay. So in the entire region, which we heard was Newfoundland, the other Maritime provinces, part of Baffin Island and an enormous area of the North Atlantic, there were only two Cormorants available?

J. MARSHALL: That's always the case.

G. BUDDEN: Okay.

J. MARSHALL: Yeah, so we are – our search and rescue obligation is two Cormorants, one Herc in this region.

G. BUDDEN: Okay. This, of course, is a ground search and rescue inquiry. The marine information is interesting, but that's obviously not our concern of what the resources – only insofar as, I guess, as where I'm going with my next couple of questions.

If I understood your evidence correctly, you said something to the effect there was a couple of hundred calls a year for your humanitarian assistance, one every other day. Do you know how many of those calls would typically be from Newfoundland?

J. MARSHALL: I can get those for tomorrow.

G. BUDDEN: Okay.

J. MARSHALL: I don't know exactly how many are from Newfoundland.

THE COMMISSIONER: You mean the province or do you mean the Island?

G. BUDDEN: I mean the Province of Newfoundland and Labrador. I apologize.

J. MARSHALL: I don't know and I don't really want to speculate without actually having the stats, but I can get them for a particular year or an average over five years. It would just require a callback to one of my subordinates. We keep all those stats and we can provide them.

I do know we use a lot of humanitarian responses in Newfoundland and Labrador, especially with hospital-to-hospital patient transfers, which we consider a humanitarian case. So we are – 103 Squadron Gander is used a lot by the province.

G. BUDDEN: Okay.

In the course of a year, would we be talking (inaudible) – I'm trying to adjust the microphone here. I'm either too close or too far. How many SAR calls would there be – not the hospital to hospital, the actual search and rescue calls, approximate? Ten a year, five a year?

J. MARSHALL: In Newfoundland and Labrador?

G. BUDDEN: Correct.

J. MARSHALL: Give me one second. I have some stats here; I'll see if I have that exact answer.

I don't have the numbers; I just have a bunch of dots on a map, which is not going to help, but it's all the cases that we responded to in Newfoundland and Labrador for a particular date range.

M. FREEMAN: We're happy to go away, Geoff, and try to answer that.

J. MARSHALL: Yeah.

G. BUDDEN: Okay.

I guess, my – I just have one or two more questions, but under what circumstance would – I'm just wondering now – if weather – if it's

impossible to get the Universal helicopters off the ground because of weather, would it usually, sometimes or almost always also be impossible to get the Cormorants or Griffons off the ground?

J. MARSHALL: Yes, we follow the same rules as them for – with respect to IFR and VFR. IFR is instrument flight rules and VFR are visual flight rules. Those regulations from Canadian Aviation Regulations would remain the same.

G. BUDDEN: So under what circumstances would a request be made for humanitarian assistance or last resort if it's not generally weather related, I guess would it be night flights? Would it be something else entirely?

J. MARSHALL: Yeah, night flights, or if Universal or whoever else is used is not available, then that's when they would then go to RCC to ask for helicopter support.

G. BUDDEN: Okay.

And even with just two Cormorants available, ground search and rescue, generally, – or I guess I'm asking you, does it ever, has it ever occurred that a call has been made saying, look, our resources are tapped out, we have several operations on at once, or whatever, and there are no federal resources available so that a call goes completely unanswered?

J. MARSHALL: It does happen, but it's not common. So what we'll see in the next round table is where we were actually on a ground search and rescue assisting the Province of Newfoundland and Labrador and we had to pull that asset away to respond to – it was a marine case where there was a heart attack on a ship.

G. BUDDEN: Yes.

J. MARSHALL: So we pulled that asset off the ground search and rescue because our policy says we can assist in ground search and rescue as long as it doesn't impact our primary mandate of aviation and maritime search and rescue.

In the next case we're going to talk about, and I don't want to get too far ahead, but we actually did pull that asset off that search in able to do our job.

G. BUDDEN: Okay.

So if ground search and rescue is relying on the federal government for, I guess, as a last resort, there may be cases where that last resort is removed because your primary mission, which is marine search and rescue, takes precedence over your humanitarian role in ground search and rescue.

J. MARSHALL: Yeah, and that does happen.

G. BUDDEN: Okay.

Thank you.

I will have more questions for you tomorrow, as I said, but for today that's all I have, unless the Commissioner directs other questions.

J. MARSHALL: All right, thank you.

THE COMMISSIONER: No.

Redirect, please.

M. FREEMAN: Thank you.

I have no redirect at this time.

And thank you for your indulgence to arrange the witnesses as you have. I appreciate that.

THE COMMISSIONER: Well, no, thanks to you as the individual responsible for bringing in the co-operation of the federal government, the RCMP, DND, JRCC. Because I think we all know if we were to have – wish to have an open commission of inquiry we would look really strange talking only to ground search and rescue.

So without adding any kind of weight to what the witnesses have said or relying on them for a final report, I simply want to say that your co-operation here adds a great deal to the comfort level of the people listening in and who are able to follow us.

M. FREEMAN: Thank you, Mr. Commissioner, very much.

THE COMMISSIONER: All right, Sir, what's up now?

G. BUDDEN: We can go no further with the federal government witnesses today for reasons we've discussed, Mr. Commissioner. There is one other witness, Mr. Barry Andersen, who I will have a handful of other questions about, but my preference, rather than do that now, is that we do it later on in the week because I would like to meet with him in a more – a less-rushed fashion. He wasn't expecting this today.

THE COMMISSIONER: Okay. So really, we need to know that your next witness to support the other testimonies here will determine when we sit again.

G. BUDDEN: Yes, we – and if I can speak here and perhaps Mr. Freeman can join in when I'm done. Our preference, our strong preference, is to have Officer Howlett here in person. That's been a preference of all witnesses. We have explored the possibility of bringing him in by telephone, as we will have to bring another witness in by telephone who was unable to travel here for good reason. Perhaps in the morning we will know more.

So I would suggest we adjourn until tomorrow, perhaps, at 9 o'clock, at which point we'll either have Officer Howlett here in person or we will probably be able to commit to bringing him by telephone.

Does that sound okay to you, Mr. Freeman?

M. FREEMAN: Yes, thank you very much, Inquiry Counsel, that's exactly our thinking. We'll cross our fingers and hope we can get Mr. Howlett here early tomorrow or sometime tomorrow, and as soon as he can get here, he'll be on. If that can't happen, we'll get him in by phone, as the plan is for another witness to do that and it sounds like we might have the technology to do so, so I appreciate that very much.

CLERK: All rise.

This commission of inquiry is concluded for the day.