



# **Standing Committee on Crown Corporations**

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**STANDING COMMITTEE ON CROWN CORPORATIONS  
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The committee met at 09:37.

**The Chair:** — Good morning, everyone. Before we get to the main agenda item of the day, I wonder if we can deal with a housekeeping matter. It's the Dutch in me to do the housekeeping first. And that's with respect to the otherwise regularly scheduled meeting of next week where we are scheduled to meet at 9:30, from 9:30 until 11:30, but the Earl of Wessex, the Prince Edward, will be at the Legislative Building at 10 o'clock.

So I want to ask the members whether the members want to just cancel the meeting, want to change the time of the meeting to earlier that day, as an example, or to another day, and what your wish might be in that regard.

We certainly would be in a position to meet at 8 o'clock in the morning as an example and adjourn at, say, 5 to 10 to allow us to participate in the ceremonies. Or the Vice-Chair and Mr. Wall and I could certainly sit down and look for an alternate date to have the meeting. So I want to throw that out.

**Mr. Wall:** — Well I think what you've . . . I mean you've laid out all the options, Mr. Chairman, and I think we would support rescheduling the meeting, at least having it earlier in the, maybe earlier in the day or just not losing the meeting. We started late and I think our committee of late has made good progress on a backlog of annual reports that were to be dealt with and we've caught up. And we shouldn't fall further behind than we need to.

And so for those reasons we'd sure support working on an alternative date or time.

**The Chair:** — Any thoughts from any of the other members on this question?

**Ms. Atkinson:** — I prefer that we sit down and pursue some alternative dates. Earlier that date doesn't work for some members on this . . .

**The Chair:** — Okay, so let's leave it then that Mr. Wall, Ms. Atkinson, and I will convene after this meeting to find some appropriate meeting time. Thank you.

Now with respect to our agenda item, Ms. Atkinson has given me a motion but I'm wondering if we can hold off from that. The matter of disclosure of payee information is something that's been raised by the auditor in a number of reports in the past and certainly is something that is of obvious interest to CIC (Crown Investments Corporation of Saskatchewan) and the various Crowns.

And I'm going to propose that we entertain a brief statement from the auditor on this matter and that the . . . if there are any questions of the auditor, that we put those questions; that we then turn it over to Mr. Hart and for Mr. Hart to call forward any of the Crown representatives that are here with him for any comments they might want to make and any questions that we may want to put to them. And then I'll go back to entertain your motion, Ms. Atkinson.

Is that acceptable that we proceed in that fashion? Then having said that, I'd like to turn it over to Mr. Wendel to see if he has any comments that you haven't made over all these years, Mr. Wendel, or to emphasize some key points. And we look forward to your presentation.

**Mr. Wendel:** — Thank you, Mr. Chair. A few months ago, or over a year ago, your committee asked our office to meet with CIC and explore alternatives as to what information could or could not be disclosed by Crown corporations. And we explored that and we prepared a report. And I have Ed Montgomery with me today who was instrumental in preparing this report, and I'm going to ask him to explain the report briefly to you. And with that, Mr. Chair, I'll ask Ed to do that.

**Mr. Montgomery:** — Thank you, Fred. Good morning. In preparing our report we wanted to provide a process that the committee could follow. Our objective is to ensure legislators receive the information they need to hold the government accountable for its spending. Legislators have a right to know who received public money. This information should be available to legislators, either in public or in private.

In our Spring 2001 Report we recommended a process for deciding what payee information government agencies should disclose and to whom. Disclosure by the government of information about its use of public money is important because it serves to remind all government officials that spending money that is . . . that they are spending money that is entrusted to them by the public. It adds rigour to decision making as it ensures those who spend public money know their use of that money will be public. It ensures that the public knows who has received their money.

The Assembly's objectives for requiring public disclosure of payee information can be summarized as follows: MLAs (Member of the Legislative Assembly) want to monitor who gives money to political parties and who gets money from government agencies; MLAs want to ensure that government agencies spend money objectively; and MLAs want to build public confidence by ensuring that the use of public money is transparent.

In December 2001, the committee reviewed our recommendation and asked both CIC and our office to review the matters raised in our recommended process with respect to its application in the CIC sector.

Both CIC and our office have prepared reports for consideration of the committee. As I said before, our objective is to ensure legislators receive the information they need to hold the government accountable for its spending. Also CIC corporations had concerns about making additional payee information public, that it might impair personal privacy or the economic interests of the government or a third party.

We do not support disclosure of payee information that impairs personal privacy, as set out in the law, either publicly or privately to legislators. Also we do not support public disclosure of payee information that will impair the economic interests of the government or a third party.

Where public disclosure of payee information would impair the government's economic interests or those of a third party, we want to ensure that legislators still receive the necessary information, but privately, in camera, to hold the government accountable. Because the committee may have difficulty deciding what information would impair personal privacy or the economic interests of a Crown corporation or a third party, the committee should seek independent legal advice. We expect in camera reports to be rare.

Our review of the law and practices in other provinces revealed that disclosing aggregated summaries of historical payments rarely impairs economic interests. For example, British Columbia has similar laws to Saskatchewan which exempt Crown corporations from having to disclose information which could harm its economic interests. Yet all Crown corporations in BC (British Columbia) provide lists of virtually all payments above the required threshold. If these lists impaired economic interests, they would not be published.

For BC we were told that most contracts with service suppliers and contractors included confidentiality clauses. However a BC Hydro official told us that the Act had been consistently interpreted by BC Hydro and the Information and Privacy Commissioner of BC as overriding any confidentiality clauses.

In Saskatchewan, entities that report to Treasury Board also enter into contracts, some of which contain confidentiality clauses. Although contracts are kept confidential, total payments are reported publicly. Also, currently Crown corporations disclose payee information for contracts with consultants. Some of those contracts also include confidentiality clauses. Furthermore, disclosing salary payments does not violate any law or contract.

In Saskatchewan, the Legislative Assembly has passed a Crown Employment Contracts Act. This Act makes all Crown employment contracts public documents and available for public disclosure.

We've also discussed this with the Information and Privacy Commissioner. The commissioner told us that aggregated summaries, historical payments would rarely impair economic interests and that employee salaries are not personal information and can be made public under The Freedom of Information and Protection of Privacy Act.

The process we recommend is set out in alternative 4 on pages 19 to 23 of our report and also in appendix 1 on page 23. The process is as follows. If the name of the payee and the amount paid cannot be made public under existing laws, the Crown corporation should report the legislative authority reference and the total number and value of payments made under that authority. There should be no disclosure of individual payees.

For all other payments, we recommend that each Crown corporation provide the Assembly with a list of persons who received money and the amounts they received, unless public disclosure would impair personal privacy or the economic interests of the corporation or a third party. The onus is on the corporation to convince the committee if public disclosure would impair personal privacy or the economic interests of the corporation or a third party.

The committee should seek independent legal advice to help it decide what information would impair personal privacy or the economic interests of the Crown corporation or a third party. We think that the Information and Privacy Commissioner is the best person to assist the committee because he is a lawyer and an independent officer of the legislature. He has experience in deciding if public disclosure of information could impair personal privacy or the economic interests of a Crown corporation or a third party.

The committee should request that the commissioner provide his advice and recommendations by calling him to appear before the committee. In all cases, the committee should decide whether the need for public disclosure overrides the reasons given for not disclosing the information publicly. For example, will a decision not to publicly disclose payee information adversely affect the MLAs' objectives for public disclosure?

Where public disclosure of payee information would impair a Crown corporation's or a third party's economic interests, we recommend that the corporation disclose the information privately, in camera, to the committee.

For all other payee information that does not impair personal privacy or the economic interests of the government or a third party, we recommend public disclosure of payee information.

This public disclosure would be in the same format as that disclosed by the rest of the government. That is, the payee list would contain the name of the payee and the total amount received by the payee for that year. We recommend the committee set a minimum threshold for including payees in the list.

Also the committee could set exemptions for the entity from publicly disclosing certain types of payments, for example, payments made under universal entitlement programs where the Crown, where the Crown has no discretion in making the payments. Examples could include SGI (Saskatchewan Government Insurance) claim payments to individuals or pension payments to retired employees.

The legislators have decided the benefits of providing payee lists exceed the costs of doing so. The government provides payee lists for all entities that report to Treasury Board. The legislators have set minimum thresholds to help control costs.

In arriving at this process we have sought to address several key issues. First is the issue of the protection of personal information. We do not recommend disclosing any information that would impair personal privacy as set out in the law.

Second is the concern that making payee information public would impair the economic interests of a Crown corporation or a third party. We recommend the committee seek the advice of the Information and Privacy Commissioner.

Third, as with payee lists for Crown corporations that report to Treasury Board there is a need to control costs for payee lists for the CIC sector. We recommend that the committee should set minimum thresholds to help control costs.

Finally, legislators have a right to know who received public

money. This information should be available to legislators either in public or in private. Therefore the Assembly needs to receive sufficient information to hold the government accountable for its spending.

That ends my remarks to the committee.

**The Chair:** — Thank you very much. Are there any questions of Mr. Montgomery or Mr. Wendel?

**Mr. Prebble:** — Yes. With respect to in camera information, information that's provided in camera, I assume this is done in some other jurisdictions, is it? Could you point to other jurisdictions where this is done?

**Mr. Montgomery:** — We are not aware of that being done in other jurisdictions, the in camera. But we wanted to protect the Crown corporations from disclosure of any information that might cause it economic harm.

**Mr. Prebble:** — But you're not aware of any other jurisdiction that provides this kind of information in camera?

**Mr. Montgomery:** — No. In British Columbia when we talked to the officials of BC Hydro, we have the view there that the disclosure of aggregated information — name and payee amount — does not really impair the economic interests of the corporation. It's out of date. It's difficult to derive any pricing information at all from that and therefore doesn't seem to be an issue.

**Mr. Prebble:** — Okay. Thanks.

**Ms. Atkinson:** — If we were to have disclosure in camera, is there anything in legislation that would provide penalties for individuals who receive this information in camera but then disclosed it later?

**Mr. Kaczowski:** — Perhaps I might be able to shed a little information on that.

Any information that's given to a member of the Legislative Assembly at a committee in camera, if that information is released that is considered a breach of privilege. So it'd be an issue for the legislature as a whole to deal with.

Now of course it'd be very difficult to prove one way or another, depending on the circumstances, where the document came from. So that is the biggest obstacle there but it is certainly a breach of privilege if anything was to be leaked out.

**Ms. Atkinson:** — Okay. And are there any other penalties in terms of fines, jail terms?

**Mr. Kaczowski:** — First of all, breaches of privilege have actually very rarely been . . .

**Ms. Atkinson:** — No, I'm talking about . . . Yes. I'm talking about breach of information, confidential information.

**Mr. Kaczowski:** — But as far as, other than something that's in the Act, in the freedom of information Act, I'm not aware of any . . . From the legislative point of view, sometimes members

are restricted from attendance in the House and it's rare, and even then I really don't have a huge background on that because I've just not experienced that circumstance. But that's usually been the case where members have been excluded.

But as far as any legal issues or legal penalties, you'd probably have to go to the . . . Is there anything in the freedom of information Act that might address this?

**Mr. Rendek:** — Not really. There are certain penalties if you breach the freedom of information Act but I don't think that is the case here with what the example you gave me.

I think, myself, that the situation you're talking about is similar to a breach of cabinet confidentiality. It's a breach . . . This is a breach of in camera confidentiality and has to be dealt with by the legislature. And the legislature, in my view, would assess whatever penalty they felt was necessary.

**Ms. Atkinson:** — I'm just thinking, we're talking about . . . We may be talking about competitive information that could jeopardize someone's business. And I'm just thinking well what protection would we have if someone inside the committee breached this information?

Yes, there could be a case of privilege but what protection would we have against legal suits that might arise from those companies that may have had their information breached? And I'm not necessarily talking about Crown corporations; I'm talking about corporations or companies that Crowns may do business with.

**Mr. Kaczowski:** — Because we assume that all members are honourable, really the whole issue of punitive measures has never really been addressed to any great degree, certainly not in Saskatchewan, to my knowledge.

**Ms. Atkinson:** — The thing is that this has never been done anywhere.

**Mr. Kaczowski:** — Right. So we have to rely on the integrity of the members themselves.

**The Chair:** — Can we just on that, just follow-up, Mr. Wendel? This is all very hypothetical but we're dealing with something that hasn't been put into place anywhere else.

If it were to be the case that information were to be provided to this committee in camera, that committee . . . or that information was subsequently released to the public or made public or made available to some interests, and if it were to then be determined that that leak was the responsibility of a specific member and that member were then to be held accountable in terms of privileges, would that member then be susceptible to civil action if there was economic impairment?

**Mr. Wendel:** — Certainly.

**The Chair:** — Yes.

**Mr. Wendel:** — Just one other comment on the in camera information just to maybe protect people a little more is, when you receive the information in camera, you might just get a list

of names and you might receive the amount verbally so there is the chance of a leaked document.

I think you could do it a number of ways to make sure somebody doesn't inadvertently leave a document laying around. You might just get some information written — a group of people got this much money. You could then ask questions, if you felt, who got how much, verbally, in this committee, and then there's no leaked documents.

So that might be something you could consider.

**Mr. Trew:** — Thank you. Mr. Montgomery, you talked a bit about the confidentiality clauses in BC Hydro. And if I understood you correctly, you said it was very difficult to discern any pricing information, that sort of thing.

And it leads me to my next question. How do British Columbia residents, or BC Hydro or any company, private company, you know, doing business with BC Hydro, how do any of the above benefit from this disclosure?

**Mr. Montgomery:** — Who benefits from the disclosure that we're advocating is the members of the Assembly, the legislators who are charged with holding Crown corporations accountable.

With respect to confidentiality clauses, as I mentioned, already you have disclosure by Crown corporations of contracts with consultants. My understanding is a number of those contracts would also have confidentiality clauses. But when they provide you that information, the aggregated information, that's not deemed to be a breach of the confidentiality clause. It's just a total and a name and it's no details of the contract or pricing. And that's how British Columbia interpreted that too. I mean, it's happening here and it's happening . . .

**Mr. Trew:** — Because there's no volume, for instance, in a natural gas purchase?

**Mr. Montgomery:** — Pardon?

**Mr. Trew:** — Here's where I'm coming from. You could have a single contract, you know. Company A has one contract with — and we're talking SaskPower, I guess, here or BC Hydro, take your pick — but to deliver natural gas and you disclose the price. Is your premise that there's no pricing information because it doesn't say how many gigajoules of gas they sold or . . .

**Mr. Montgomery:** — On the one hand, all you'd get from the payee list would be the name and the amount. You would have no indication of the volume.

And secondly, if there was a situation, you know, that could cause economic harm, then the Crown corporation would have the ability to identify that as an item that could cause them harm and bring that one forth in camera.

**Mr. Trew:** — And refer it, yes.

**The Chair:** — Any further questions? If not, then I'd like to move to Mr. Hart. Can I just ask that if any officials are called

forward, that they at that point identify themselves for the record here.

**Mr. Hart:** — Okay. You don't want me to introduce them then, I take it.

**The Chair:** — No, that's okay.

**Mr. Hart:** — Okay. Good. Thank you.

**The Chair:** — Just if they're called upon.

**Mr. Hart:** — Yes. Okay. I have tried to commit to memory the names of all 9,000 Crown employees, but so far I'm not very far along, I must admit. Although I do know the people in the room, I think.

And just to begin, Mr. Chairman, thank you for the opportunity, Chairman, and committee members, to come before you today on this topic. I hadn't realized that accounting and legal matters would generate such interest but I suspect we won't see another crowd like this until Mr. Clark gets the Saskatchewan Roughriders into the Grey Cup this year.

But I would like to begin by acknowledging the good working relationship we've had with the Provincial Auditor on this issue over the last significant amount of time.

And what I'm going to suggest, Mr. Chairman, is turn it over to the chief financial officer for Crown Investments Corporation, Sheldon Schwartz, who has a presentation that has been circulated and will take 10 minutes or a little longer to go through that sets, I think, a framework for how the Crown corporations and CIC look at this issue, which will be, I think, useful information for committee members. And then I think we'll leave it in your hands to ask the questions that you like to ask.

And with your indulgence, Mr. Chairman, I think I will leave as there's more brain power in the room now than I think I can possibly add to. So you have lots of experts here who are more than willing to answer your questions. So I'll leave it at that and turn it over to Mr. Schwartz, if I can.

**Mr. Schwartz:** — Thank you. As Frank said, I'm Sheldon Schwartz. I'm the chief financial officer of Crown Investments Corporation.

The presentation before you, if you'd just flip to page 2, is a summary of the survey that CIC did, in conjunction with the Provincial Auditor, of the Crowns, regarding the Provincial Auditor's recommendation in the Spring 2001 Report and alternate recommendations regarding public disclosure of payee information in the Crown sector.

If you'd just flip to page 4, as Mr. Montgomery indicated, the Provincial Auditor has noted for a number of years that government departments provide the Legislative Assembly with a list of persons who receive public money and that this in turn allows the Assembly to question those payments. The Provincial Auditor believes that since Crown corporations don't provide the Assembly with a full list of people who receive public money, then there is not full accountability.

In terms of a little background, on December — on page . . . slide 5 — on December 2, 1998, this committee formally set out its information requirements for payee disclosure in the Crown sector and resolved as follows: that each Crown corporation appearing before this committee would provide the information for the year under review relating to out-of-province travel expenses by ministers and ministerial staff related to Crown corporation business; honoraria; and out-of-province travel expenses for each member of the board of directors; salary and out-of-province travel expenses for senior management executives; and consultant fees over \$10,000 a year.

On slide 6, as Mr. Montgomery indicated, there were two recommendations on public disclosure contained in the Spring 2001 Provincial Auditor's Report. First, that CIC and subsidiaries should publish a list of persons who have received money from them and the amounts they received, either following the Assembly's current disclosure requirements — I think those are the ones that relate to government departments — or to seek directions from Crown Corporations Committee and alternative disclosure requirements that will achieve legislators' objectives.

And secondly, that the Crown Corporations Committee follow the process that Ed described in deciding what information government agencies should provide and to whom it should be provided to.

On slide 7, catching up in history here a bit. On December 10, 2001 this committee considered the Provincial Auditor's spring 2001 recommendations in this regard and recommended that CIC continue to provide the information requested by the committee, when requested. And secondly, referred the Provincial Auditor's recommendation back to CIC and the Provincial Auditor for preparation of a report back to the committee.

And as Frank mentioned, that was a very collegial process. In the end we didn't end up agreeing but we disagreed without at any time being disagreeable to each other.

On slide 8, as I indicated, there was a survey prepared, a series of surveys actually, for the Crowns regarding the Provincial Auditor's original recommendation and alternatives that were identified, those being in camera disclosure of very sensitive information, and in camera with the involvement of the Information and Privacy Commissioner. I wanted to make sure that there was no question of bias or a spin or any kind of an ambiguity in the questions.

And that is part of the collaborative process we . . . our team's worked on at the Provincial Auditor and at CIC. Those questions were reviewed in advance before they were sent out to the Crowns.

There are four main areas in that survey. The impacts of the Provincial Auditor's proposal on confidentiality agreements, competitive considerations, strategic business considerations, and industry practice.

On February 13 we, with input from and on behalf of the Crowns, provided the report and recommendations to this Crown Corporations Committee. And the Provincial Auditor I

believe filed their report on or about the same day.

On slide 10, summary of the responses, there was significant concerns identified, as Ed mentioned, with the process. And these are the items that Ed also alluded to. As with private sector companies, confidentiality clauses are necessary and desirable to the effective conduct of the Crown's businesses. They believe that such disclosure, whether in public or in camera, would be in breach of these commitments.

Secondly, a disclosure either publicly or in camera would negatively impact their competitive position vis-à-vis private sector companies that aren't required to and do not provide such information.

And thirdly, that disclosure publicly or in camera could hinder their relationships with partners, suppliers, and customers; that being that they could choose to do business elsewhere, which in turn would hinder the Crown's ability to fulfill its business objectives and could result in increased costs with that reduced base of people bidding for its business and reduce competition thereof . . . therefrom.

On slide 13 . . . On slide 5 we didn't have room on the table to put Saskatchewan in, but that's all on slide 5. Here's an interprovincial comparison. What it shows is that many provinces do not provide any kind of payee disclosure, including the territories, other than Nunavut that didn't respond, and the Government of Canada. And basically Ontario west, there is public disclosure of certain forms of payee information that vary quite substantially. Saskatchewan ranked, in terms of the current disclosure, less than BC but most . . . higher than most other provinces.

On slide 15, in summary, the Crown response has indicated they don't feel that the proposed process by the Provincial Auditor is appropriate to the commercial needs and circumstances; that disclosure of this information whether publicly or in camera would put them in breach of contractual commitments, negatively impact their strategic opportunities and alliances and long-term profitability. And secondly, that disclosure would negatively impact their competitive position and alienate suppliers.

In summary, CIC believes that the public interest is best served by balancing disclosure, which is a necessary and desirable thing to hold the Crowns accountable, with the need to protect their business integrity and competitive interests so that they may continue to operate effectively in a commercial environment.

All concerned that looked at this issue, at the officials' level, believe that the Crown Corporations Committee, this committee, is the appropriate forum for making a determination of what information it requires, including the form and threshold. It's basically a policy decision. The survey results are offered as an input to this committee to assist it in making a fully informed decision.

And we acknowledge and respect this committee's need for access to information to ensure proper accountability. And we have provided and will continue to provide anything that the Crown Corporations requests, and we will comply with any

decision this committee makes.

In terms of, on slide 18, in terms of the alternatives and recommendations, CIC's . . . And this is just a summary of what was in the report tabled in February, as is this whole presentation. The recommendation was to continue to provide publicly the information requested by the Crown Corporations Committee. Pros of that, from our perspective, would be that it protects payee information that if disclosed publicly would put the affected Crowns at a competitive disadvantage, and maintains the flexibility to provide such other payee information that may be requested from time to time by the committee.

The cons are that the Provincial Auditor believes that MLAs' objectives may not be met. CIC believes that the definition of what your objectives are, are defined by the information that this committee requests.

In terms of the alternative recommendation, CIC has, in the February report, another recommendation if enhanced disclosure is required and that is to publicly disclose payee information according to the following general categories, and according to thresholds that are decided by this committee, those being: salaries and other remuneration in accordance with The Crown Employment Contracts Act; payments for goods and services, all goods and services except — and I stress except — where there's a legitimate need for confidentiality in order to protect commercially sensitive information where bound by confidentiality agreements or excluded by legislation; all transfers such as grants, contributions, donations, sponsorships, and that kind of thing; and other information such as honorary and travel expenses.

Pros, from our perspective, are that the Crown Corporations Committee would continue to receive everything it has requested and expanded information for salaries, other remuneration, and payments to suppliers, where disclosure wouldn't jeopardize their confidentiality agreements, compliance with legislation, or competitive or strategic position. And it maintains the flexibility to provide any other information that may be requested from time to time by this committee.

The cons are that the Provincial Auditor believes that MLAs' objectives may not be met, and again we believe that MLAs' objectives are defined by the information that MLAs request.

In terms of the revised recommendation that the Provincial Auditor presented to the committee in the February report, is to publicly disclose information to the committee and to ask the Crown Corporations Committee to seek the advice of the Information and Privacy Commissioner to help it determine whether payee information can be disclosed publicly. If that determination is that it shouldn't, there would be in camera disclosure upon determination that the reasons for not disclosing information publicly override the need for public disclosure.

Pros from our perspective are that Crown Corporations Committee would continue to receive all the information it's requested and expanded information for salaries, other remuneration, and payments to suppliers for goods and services,

and that the Provincial Auditor believes that MLAs' objectives may be met.

The cons are the Crowns have indicated, and I'll let them . . . They're in the best position to respond to those questions of the committee directly, and I'd recommend that if you have any questions in terms of specific impacts you direct them to the officials here today . . . that it would put them in a disadvantage and may result in litigation due to breach of confidentiality agreements.

And the second one is that it's inconsistent with certain exclusion provisions in the FOI Act, that being The Freedom of Information and Protection of Privacy Act, relating to the release of third party information.

And that's the end of my presentation.

**The Chair:** — Are there any questions for Mr. Schwartz at this point?

**Mr. Wall:** — Thank you, Mr. Schwartz, for your presentation. Thank you, Mr. Chairman. The questions that I have relate to I guess the nature of, for example, let's begin with this year, the year under review that we've been going through the last couple of weeks.

How many payees, for example this year, that weren't disclosed under the current guidelines to this committee and to members of the legislature would have to be disclosed if the Provincial Auditor's recommendations were accepted, either in camera or just in a normal fashion? Were there any for example, that would have to have been disclosed this year if we were under the Provincial Auditor's recommendations rather than the current policy?

**Mr. Schwartz:** — As a holding company I can give you a very quick answer to that. The only information in addition to what you're receiving I believe you'd get would be a full list of salaries at CIC.

**Mr. Wall:** — Mr. Chairman, I wonder if there are . . . How about we do it this way perhaps to save time. We have several representatives of the major Crown corporations here, which is appreciated. If any of them can think of, or their officials have specific third party payee items that was not disclosed to this committee in the documents we've already received and that we'll be talking about when this committee meets, that were not disclosed but would have to be disclosed if we adopted the Provincial Auditor's recommendations, could they inform members of the committee how many . . . Not the nature of them obviously because we're under the old policy, but how many of them were there?

**A Member:** — Thousands, tens of thousands.

**Mr. Wall:** — Not the salaries though.

**The Chair:** — If we're, maybe just in terms of process, if we're going to put questions to the heads or representatives of the individual Crowns, then let's first ask Mr. Schwartz, if there's any further questions, and then go to the Crown heads in each case and ask them how they feel they will be impacted by the



policy. And if they have reservations let them articulate those.

**Mr. Wall:** — Sure. I have one final question then for Mr. Schwartz if that's okay, on the same sort of vein. And that is, can he give us a concrete example? We're trying hard to see how the economic interests of either the parent or subs can be impaired if a general listing of the payees is provided for to the members of this committee under the recommendations, including the possibility that those could be in camera disclosures.

**Mr. Schwartz:** — I think that as a holding company itself, very, I guess, on a micro level, as I said it really wouldn't have much effect on the holding company. Where it would have an effect on the holding company is through the impacts, in a macro sense, on the subsidiary Crowns for which this proposal would significantly change the nature and form of the information disclosed. And they'd be in the best position to answer that.

**The Chair:** — Are there any further questions of Mr. Schwartz? If not, thank you very much, Mr. Schwartz. I hope you'll hang in there in case there are questions that come up for you.

Now as to representative of the Crowns, I don't know if CIC or the Crowns have among them any preferred order of appearance. Do you go by seniority or do you go by size? I guess that would then be Mr. Fogg in terms of seniority. So Mr. Fogg, of SGI. Good morning, Mr. Fogg.

**Mr. Fogg:** — Good morning.

**The Chair:** — Do you have any comments that you want to make, brief comments, that you want to make to the committee prior to entertaining questions on this matter?

**Mr. Fogg:** — Maybe I could just make a few comments on some of the concerns we have.

If you look at the expenses of SGI CANADA or the Auto Fund, we have a number of types of expenses — some of which we have no problem providing; some of which we do.

The first one we have is claims, claims expenses. Those are payments to individuals that are protected under the freedom of information and we would be reluctant to provide information on payments to claimants or on behalf of claimants.

The second one is broker commissions. Broker commissions, for the most part, aren't technically paid. The broker is . . . Although an expense of the company, the broker collects the money from their customer and remits the SGI CANADA portion to SGI CANADA. They retain the balance. So in a true sense, those aren't payees. We make no payment to them.

There are some payments to brokers, however. We pay bonuses to brokers who are our best and most profitable brokers. We wouldn't want that information made public so that our competitors would know which are our best and most profitable brokers.

The remainder is administrative expenses — safety, traffic

safety expenses. We have for the most part no problem providing information on that.

There is the one instance as far as reinsurance is concerned. While it is really an allocation of premium and not an expense in that sense, we have to disclose our reinsurance program in the financial statements, and we would be reluctant to disclose how much we pay for that reinsurance program and to what reinsurers because there are very few reinsurers out there and other companies would like to know what we're paying for a reinsurance program. It would put us at a competitive disadvantage to make that public. That would be it.

**The Chair:** — Are there any questions for Mr. Fogg?

I have one just with respect to reinsurance. Your position is that if it were to be made public how much you in fact are paying for reinsurance, that other potential reinsurers would then use that to establish a benchmark for any future tendering you might do for reinsurance and therefore it would increase your costs? Or would it not, if it were made public would it not sort of provide other insurance with some sense of what has been paid so if I go lower than that then I might get the contract?

**Mr. Fogg:** — It's mainly the second part. It's mainly our concern with what our competitors, other insurers, would know what we paid for the reinsurance program.

It's a pretty select group of people that are now providing reinsurance and each insurer tries to make the best deal they can with the reinsurers, and the reinsurers always like to tell you that they're giving you the best deal. But if another insurer knew what we were paying and saw the reinsurers giving us a better deal than perhaps our competitor, then there's pressure put on that reinsurer to provide similar treatment to that other company. So it would be something we wouldn't want to disclose publicly.

As far as if you said it . . . if something we could disclose in camera to this group, I don't think I'd have a problem with that. But I wouldn't want to make it public.

**The Chair:** — But you have no idea what other insurance companies are paying for their reinsurance . . .

**Mr. Fogg:** — No, but I'd like to know but I don't know.

**The Chair:** — Are there any other questions of Mr. Fogg?

Can I just maybe on the questions of claimants, are they in fact . . . is that in fact protected by freedom of information?

**Mr. Rendek:** — Yes.

**The Chair:** — They are? Okay.

**Mr. Rendek:** — So is . . . Currently also, there's an exemption if there is a competitive disadvantage.

**Mr. Fogg:** — There can be a competitive disadvantage as well because other insurance companies are obviously not providing a list of claimants, and if we provided a list and people didn't want that information disclosed, they'd simply insure with

somebody else.

**The Chair:** — Any other questions? Thank you very much, Mr. Fogg.

Who would be next in terms of seniority? Would it be SaskPower or would it be SaskTel? It would not be SaskEnergy that . . . SaskTel.

**Mr. Meldrum:** — Mr. Chairman, my name is John Meldrum. I'm here to fill in for Don Ching, our president, who is sick in bed today and would otherwise be here.

I've been asked to address SaskTel's primary concern with respect to disclosure of payee information. That concern is with respect to payments that SaskTel makes to its dealers who sell products and services on our behalf throughout the province. We have over 140 dealers in 50 locations in the province selling high-speed Internet, cellular, FleetNet, DIV (digital interactive video), and security services. Those commission payments totalled \$18 million last year and we have disclosed that number publicly.

Our concern is that our competitors would love to have a list of our dealer payments so that they could target the most successful ones. Dealers are approached from time to time to change affiliations to our competitors, and to have a list that effectively gave our competitors the relative ranking of all of our dealers would be very helpful to our competitors. Releasing amounts paid to dealers would, in our view, significantly aid our competitors both in targeting the dealers that they wanted to try and change over and in developing any proposals that they might be making as well as the negotiations that might ensue.

We've also looked at the issue of release of supplier payee information and we would want to contact all of our suppliers and contractors via a letter asking for their input on whether release would impair their economic interests. We have over 4,200 suppliers and contractors that perform services on behalf of SaskTel and we believe the only way to determine the effect on that third party would be to ask for their input on that particular issue.

**The Chair:** — For the record, Mr. Meldrum, what is your title with SaskTel?

**Mr. Meldrum:** — I'm the vice-president, corporate counsel and regulatory affairs.

**The Chair:** — Are there any questions of Mr. Meldrum?

**Mr. Wall:** — How does Mr. Meldrum feel about the provision of that information on an in camera basis to members of this committee, whoever that may be?

**Mr. Meldrum:** — Well as I was sitting listening to the discussion, my thoughts are that it's always a real tough question of proof when information becomes released to the public.

We've been involved in the past in some situations where we've been accused of releasing or abusing information that's been released to the public. And the other side just . . . Like for

us we don't even, can't even tell if it's released.

It's an impossibility, I think, from an evidentiary point of view, to try and nail somebody unless you catch them with the document in their hand or the microphone in their face, as to how the information's actually has been released.

**Mr. Wall:** — What about the verbal . . . the suggestion from the auditor with respect to verbal briefings then of members of this committee?

**Mr. Meldrum:** — I think that comes fairly close to providing a certain level of protection, yes.

**The Chair:** — Any other questions for Mr. Meldrum?

**Mr. Prebble:** — Yes, a question. I very much understand what the problem is with respect to dealers . . . with respect to suppliers. I understand why there could be a problem if you had a single contract supplier.

But for the vast bulk of the 4,200 suppliers who are . . . who maybe are supplying a number of, an array of things to your Crown, what would be the difficulty with releasing that information? Maybe you could just clarify that a little bit more.

**Mr. Meldrum:** — Well my sense is that there wouldn't be a problem with releasing that information. But we think good business practice would be to make our suppliers and contractors aware that it's going to be released so that they can provide us with any input that they might have as to how it might affect their economic interests.

**Mr. Prebble:** — Right. So in other words the need for some advance notice and also some potential consultation in some cases.

**Mr. Meldrum:** — Right. I would think it would be a very small percentage.

**Mr. Prebble:** — A small percentage where they would think it would be a problem. Right.

**Mr. Meldrum:** — Less than 1 per cent I think that would actually come forward and say, this causes us a problem.

**Mr. Prebble:** — Okay. That's good to have that clarified. Thank you. Thanks, Mr. Meldrum.

**The Chair:** — Are there any other questions of Mr. Meldrum? Thank you very much, Mr. Meldrum. And I think now, Mr. Wright.

**Mr. Wright:** — Thank you very much, Mr. Chairman. My name is John Wright. I'm the president and CEO (chief executive officer) of SaskPower.

A couple of comments, Mr. Chair, that you might want to and the committee members might want to think about.

One deals with existing contracts. In many contracts SaskPower has entered into, we have confidentiality clauses as they currently stand. It would be our preference — and strong

preference — not to reveal to the committee of the suppliers in those circumstances. We're concerned that the disclosure of payments to many of these suppliers may subject the corporation to legal action, may contribute to the dissolution of existing contracts — and particularly those that are favourable to the company and the counter party would desperately love to get out of that contract. They may use this a breach of confidentiality and force us into a situation of attempting to get out of it.

And finally, we believe that existing contracts would impair the corporation's reputation. There is of course the go-forward aspect and we're very open to . . . and of course we'll comply with the committee. On that though, we do have a number of very large purchases where there are single suppliers from time to time. A good example would be the wind power project out in Gull Lake where we purchased seven turbines from a single-source supplier. It's quite clear others would know and could discern very quickly what we are paying per turbine from that supplier.

Similarly, another example may be we're looking at some proprietary technology on the environmental side, a wood gasifier. It's a single purchase. The purchaser may not want revealed how much we paid for that.

So there are circumstances dealing with what I'll call single suppliers and single purchasers that are very important. It may be the case that an in camera disclosure would not be acceptable to these folks as well. That could prove to be problematic.

Of course, Mr. Chair, one must consider the reaction of the counter parties as well. I think many of the counter parties out there would not view this as business friendly and would see this as an impediment to smooth business that they do with others in the private sector.

A final comment from our side deals with not only the large power purchase agreements that we're into today, but also potentially into tomorrow; disclosure could be problematic.

On a daily basis, we enter into confidentiality arrangements with counter parties to buy and sell electricity daily. It's the industry norm out there — regardless if you're a Crown corporation or a corporation owned by a municipality or if you're a private sector — that there are confidentiality clauses. What we would be concerned about is that certain counter parties may not be interested in doing business with us if they were to be . . . the amounts that we are purchasing from them at any point in time were to be disclosed.

So, Mr. Chair, you have to struggle with, I think, or deal with existing contracts versus new ones. You have to deal with single, large purchases and we have many examples over the course of a year. You have to deal with counter party perceptions, and perception is the reality. We don't want to be cut out of a business segment or a market segment in dealing with many other companies that we do in the purchase and sale of electricity, for example.

We're also concerned about joint ventures, both new and existing, that we enter into the arrangement as equals with a private sector partner. Cory is a good example that, we're

compelled to release this information, ATCO, our partner there, may question this. It may impair us as we go forward, for example — I'm not saying it will — but it may impair us as we go forward to choose a private sector partner, as we currently are for our 150 megawatt wind power project.

So those are some of the things that you think about. Otherwise, Mr. Chair, we will certainly take direction from this committee, and we will do everything to implement that on a dutiful basis.

Oh, and with respect, if I may, Mr. Chair, to Mr. Wall's question how many disclosures. We deal with thousands of suppliers each and every year. As a consequence, the list would expand from perhaps the 100 that we provide to the Crown Corps Committee upon their request to thousands of disclosures each and every year.

**The Chair:** — Can I just ask, with respect to existing contracts, so you're saying that if there were to be a change then to do it on a go-forward basis so that you then make it clear with any contractual arrangement that this is the arrangement that will govern?

**Mr. Wright:** — That's correct.

**The Chair:** — Okay.

**Mr. Wright:** — People, Mr. Chair, and suppliers have entered into contracts with us on a good faith basis. They've entered into it with confidentiality requirements. That's what they thought the business was going to be.

There is a very specific circumstance where we know that a supplier would dearly love to get out of multi-million-dollar contract with us because it's extremely favourable to the corporation, and should it become public in any form, format — including in camera — it is our full expectation that they would attempt to get out of the contract because of the confidentiality clause.

And that's but what one example. Go-forward is different. People then know what the new rules of the game are.

**The Chair:** — Okay. Can I just ask: with respect to the power purchase agreements, you are required to submit applications for rate changes to the rate review panel. Would they not ask you for this type of information as to what you are paying for electricity, what revenues you get from the sale of electricity? And would you not be disclosing that to them?

**Mr. Wright:** — Oh, absolutely. They ask for that information and in certain circumstances we have said, no, we cannot disclose to you — for example, the Meridian project — we cannot disclose to you because of the confidentiality arrangements around that, the commercial agreements, what it is that we're paying per megawatt of electricity coming from that facility.

In other ways they are not interested in the specific firms and we provide very global amounts. For example in 2001 and 2002, we imported and exported more than \$100 million worth of electricity. That's what they're interested in. They're not interested in was it Vista, Split Rock Energy, TransAlta,

Manitoba Hydro, or whom. They're interested in the quantums.

**The Chair:** — Okay.

**Mr. Wall:** — Well I wonder if the president could comment on whether or not what would be different with BC Hydro, in terms of their situation. The Provincial Auditor mentioned them specifically and obviously . . . Would they not be facing the same issues? Maybe they're not and maybe you're aware that they're not.

**Mr. Wright:** — Mr. Chair, I'm sorry, I simply do not know what the situation is with BC Hydro. And I'd be delighted to review it with BC Hydro staff and see what the situation is. But I'm sorry; I just don't know.

**Mr. Wall:** — Another question, Mr. Chairman, is related to this whole concept of verbal briefings of committee, and you know, the president raised the Meridian project and the purchase agreements for electricity, for power. You know, there's . . . it's arguably in the interests of the corporation itself, I would think, that members of the committee on the opposition and the government side are aware, at least on a verbal basis, you know, that the taxpayers aren't overpaying for any purchase agreement. And I wonder if you'd comment on the possibility of verbal briefings for members of the committee.

**Mr. Wright:** — In some circumstances I'm sure that many corporations would . . . It would raise eyebrows. They would have a series of questions around this because quite frankly many of them simply don't know who the members are, the Crown Corps Committee, or what the role or the function is. So there'd be an education process.

However in some circumstances, it would be my advice and recommendation to you that some of these counter parties or third parties would take that as an opportunity to attempt to get out of some of these contracts that may be favourable to the corporation and not to them.

Another example of a PPA, or power purchase agreement, that we do have is of course with the federal government and with SunBridge, and that has confidentiality clauses there. We have two — well actually three — parties involved: Suncor, Enbridge, and the federal government. We would want to consult with them. Nobody wants to be sued. That is always a possibility, especially when the third party wants to get out of the contract for whatever reason.

Other circumstances I would have no problems.

**Ms. Atkinson:** — Mr. Wright, I know that in previous positions in government that you have briefed ministers, premiers, deputies. Has there ever been a time that as a result of contractual obligations, competitive reasons, so on and so forth, that you were not able to give . . . you could give the generalities about certain contracts, but you were disallowed under your own obligations of giving the specifics?

**Mr. Wright:** — I cannot think of a specific example, but it would be my view that there were times certainly when I was at, in different positions, that we were not in a position to disclose outside of a very small circle, including the existing

employees and officers of the company or the department, and with specific requests that went to the individuals or the companies to cabinet ministers. And we, at one time I do recall, were denied permission under a certain arrangement to disclose it to caucus members, but they felt the cabinet was acceptable. But that was a long time ago.

**Ms. Atkinson:** — Thank you.

**The Chair:** — Are there any further questions for Mr. Wright? Thank you very much then, Mr. Wright.

**Mr. Wright:** — Thank you very much, Mr. Chair.

**The Chair:** — And now the youngest, I guess the company with the least seniority, Mr. Clark of SaskEnergy. Could be the youngest too.

**Mr. Clark:** — I wish I was. Mr. Chairman, members of the committee, thank you for the opportunity to be here. My name is Ron Clark. I'm the president and CEO of SaskEnergy and according to Frank Hart, a hopeful Grey Cup attendee with the Roughriders playing. Ken From is with me on my left, who is the senior vice-president for gas supply.

Mr. Chairman, we only have one particular area that is quite . . . we think is quite sensitive, both to our company and I think would be of interest to the members because of its sensitivity for the people of Saskatchewan. But if I could just maybe perhaps indicate at the outset, Mr. Chairman, we certainly totally support meaningful transparency and disclosure in terms of the public interest.

We have a fiduciary responsibility for about \$1.4 billion in assets, of which the shareholders are the people of Saskatchewan, by and large. And that it is important that they appreciate how those assets are performing. Are those assets imperilled by competition, by changes in the dynamics of our industry in the basin or in North America, globally perhaps with respect to LNG in the future, liquefied natural gas?

So I think it's very, very important that in the performance of these assets that there's a great deal of what I might call useful and meaningful information available to the public in terms of those assets. And I'm delighted, and I hope Mr. Wendel will not take exception, but I'm pleased to quote from the Provincial Auditor of about 10 days ago when the Provincial Auditor said, quote; stated, quote:

SaskEnergy leads the way with its disclosure practices and that government agencies should look to SaskEnergy's annual report as a guide to improve their practices.

And I think Mr. Wendel was referring to issues around targets and performance, whether they're investments or whatever.

I only say with respect, Mr. Chairman, that as Mr. Wright has indicated we will respond to whatever the committee or the legislature wants. But I have to say with respect, that revealing the salary of my service technician in Unity is hardly a very relevant issue, I would contend. It makes great titillation, as do my travel expenses, once a year, but I'm not so sure that's really very important in the context of the billions of dollars of

assets which we should really be concerned about in terms of their efficacy of their performance and their future.

The issue, Mr. Chairman, specifically that we would have concern, I would like to communicate to the committee, is the area of our gas supply contracts. We operate in a competitive environment; CEG Energy Options exists within our province in Saskatoon. Mr. Magnuson runs a wonderful company and he doesn't need to know about how much gas we buy from whom or how much we pay for it. I would argue that that would not be in the public interest. In fact we've been advised that if that information were in some way publicly disclosed that we would have suppliers in the province who would not supply gas to us, either with respect to price or volume.

I think the committee is aware . . . You were pursuing that, Mr. Chairman, with Mr. Wright, about the regulator. We do supply in camera — getting back to the point of the Provincial Auditor — in confidence I guess is the word, not in camera, because we don't physically show up to speak about it, but we'd supply the information so that the rate review panel can do the arithmetic on our commodity applications with respect to the volumes that we purchase. The names are removed so that no one knows who we're buying it from, but the math can be done to assure the public that the rate applied for is in fact based on the contracts that we've entered into. We have about 50 or 60 I think — Ken? — contracts annually for a supply of about 65 billion cubic feet of gas.

As much as we provide that to the provincial rate review panel without the names, if it was directed that we do that here in camera, I suspect . . . I guess we could do that. Again, I think we'd prefer not to.

With all due respect, no one questions the integrity of the legislature, the members, or of any of the committees, but I think we all know it's a small province, inadvertently things get out there. And I don't think that would be helpful for our business at all.

And if we are for some reason imperilled to buy more gas in Alberta or from some other source than a Saskatchewan-based source, where we incur additional transportation costs, it would be reflected in rates. And I just, again I don't know that that would be in any way in the public interest. But I leave it for the committee to deliberate on that.

**The Chair:** — Thank you, Mr. Clark. Are there any questions for Mr. Clark?

**Mr. Wall:** — Thank you, Mr. Clark. And I think there would be agreement with respect to both energy and power that in terms of the cost of the product that you're supplying and the disclosure of that, there would be some concerns, I think. I think that the auditor's recommendations and the role, the potential role of the freedom of information commissioner might solve some of that because I think that sort of common sense would prevail.

Although I must say that it's my understanding that although the service technician's salary in Unity might not have a lot to do with what we deliberate here at this committee, and it's not disclosed currently, you know, neither would the secretary for

the Department of Highways, her wage at Unity, and my understanding is that that's a matter of disclosure too.

So I accept what . . . You know I understand the point you're making. I'm not sure that it makes sense when you . . . or that it makes as much sense when you compare what happens in other departments of government. So you can, you know, I invite you to comment on that and also if you'd . . . I think you touched on it briefly, but do you have any other concerns if this committee went the direction of what the auditor's talking about by the way of verbal briefings to members of the committee?

**Mr. Clark:** — No, Mr. Chairman. So we're at the . . . We'll accept the direction of the committee in the legislature. We were only trying to provide information for you so that you make informed decisions about what will truly enhance the performance of the legislature and members of the opposition or members of the government in terms of where public disclosure may create an adverse circumstance for the people of Saskatchewan. And we leave it for you to find the balance between what is meaningful public information and what would in some ways impair the performance of these entities, and I don't think anybody would want to do that.

My only comment, Mr. Chairman, you certainly . . . Mr. Wall, caught me on the secretary in Unity. I only make the point to Mr. Montgomery that the rationale is largely flawed when he talks about provincial departments. We are not a provincial department. We do not have taxpayers' money. We have ratepayers' money. There is a difference and I would argue that the disclosure circumstances are different. The public has a right to know about the performance of the Crowns and how they're doing, but I don't think the salaries are particularly relevant.

And I know we heard a lot about BC, but we didn't hear anything about Alberta, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland. And they don't do some of these things there. That, my reaction, Mr. Wall, to why the service technician might be different than the secretary.

**Mr. Wall:** — Well just for final comment I guess, Mr. Chairman, and not to be argumentative. But to the extent that your activities and the salaries that you're paying and whatnot at all the Crowns impacts how much you can turn over in dividends to the General Revenue Fund, I would suggest to you that taxpayers — or at least every citizen in the province, not just customers of SaskEnergy — have a stake. And that's what disclosure is all about, because we all represent those taxpayers or the public. It's not just the ratepayers of SaskEnergy that's at concern . . . that's of concern here.

So again, not to be you know argumentative. We can agree to disagree and I have . . . I don't have any other questions for SaskEnergy but I don't want to preclude your answer to that . . .

**Mr. Clark:** — We will happily provide — all I was indicating, Mr. Chairman — we will happily provide that information. I'm just saying I'm not sure that it's particularly useful.

**The Chair:** — And I might just say, and we'll get into this, I'm not sure that the highway clerk's salary is widely published

either. I'm not sure that that forms a part of the main volumes of the Public Accounts or if that's an addendum which is distributed only to the members of the Public Accounts Committee . . . (inaudible) . . . members of the legislature . . . (inaudible interjection) . . . It's on the Internet now, too? There you go.

Any further questions of Mr. Clark? If not, thank you very much, Mr. Clark.

**Mr. Clark:** — Thank you, Mr. Chairman, members of the committee.

**The Chair:** — I have a motion by Ms. Atkinson but I'm wondering if we can take a five-minute break before we get into that. And you want to distribute that? Okay.

**The committee recessed for a period of time.**

**The Chair:** — We're ready to reconvene, and Ms. Atkinson.

**Ms. Atkinson:** — That the following recommendation on payee disclosure be adopted by the committee. And the recommendation is as follows:

That the CIC Crown Corporations publicly disclose the following payee information to the Standing Committee on Crown Corporations:

Board expenses: a list of amounts paid to and on behalf of each person on the board of a Crown corporation or a subsidiary Crown corporation including base retainer, all other remuneration and benefits, and out-of-province travel costs;

Ministerial expenses: out-of-province travel expenses for the ministers and ministerial staff undertaken on behalf of the Crown corporation;

Employee remuneration: a list of all employees and the amounts they were paid for salaries, and other expenses with a minimum threshold of \$50,000 as recommended by the Provincial Auditor;

A list of all grants, contributions, donations, and sponsorships with a minimum threshold of \$5,000, currently consistent with Public Accounts;

Payments to consultants, including legal and advertising fees, totalling over \$10,000;

A list of payments for goods and services with a minimum threshold of \$50,000, threshold recommended by the Provincial Auditor, except those items and categories where: (1) there is a legitimate need to protect commercially sensitive information; (2) disclosure could reasonably be expected to prejudice the competitive position of or interfere with the contractual obligations of the Crown corporation or a third party; or (3) disclosure is prohibited by law.

I so move.

**The Chair:** — Have any comments you want to make in support of the motion?

**Ms. Atkinson:** — Well we have paid attention to the observations of the Provincial Auditor for the last several years, as well as the information that was provided to us by the Privacy Commissioner.

As members currently know, board expenses, ministerial expenses, and payments to consultants over \$10,000 is currently provided as information to this committee and we regularly . . . or not regularly, but we do receive a copy of that information. That of course has become, as was pointed out by one of the Crown heads, it can become fodder for question period.

We believe that it's now time to move on in terms of additional transparency for the Crowns. And the employer remuneration is something that is currently provided through Public Accounts for those employees who are paid by the General Revenue Fund. And it's not unreasonable to expect that this information should be available for other public entities, particularly the various Crowns.

We also think it's appropriate that grants, contributions, donations, and sponsorships also be made available to the committee. And while, as I understand it, certain concerns have been made by some of the Crowns with regard to certain high profile sponsorships and that it could mean that someone else could come forward with . . . A private sector company could come forward and take over, for example, maybe the Saskatchewan Jazz Festival. We believe that that information could . . . would be available through the board of directors and the association of the jazz festival, for example.

So it's just, in terms of public transparency, let's just make that available to the public in a way that's easy to access.

We realize that payments to consultants are currently provided to the committee if they're, if those payments total over \$10,000. Now a list of payments for goods and services with a minimum threshold of \$50,000 was recommended by the Provincial Auditor. And we have listened very carefully to the CEOs and other people who are involved currently in managing and running those Crown entities. And I think that they have made a compelling argument as to why it might be necessary for certain payments not be disclosed to this committee, and the argument has to do with competition, competitive contracts, competitive positions.

All of these Crowns are now either in a competitive environment or moving to a competitive environment and we think that it is important — given that these Crowns do provide revenues to the General Revenue Fund to pay for health, education, public transportation, and so on — that we do nothing as a legislature to impede their competitive position. We also think that there is commercially sensitive information that, if it was shared, could become a problem for those Crowns in terms of their competitive environment; and we also realize that there are contractual obligations that the Crowns have entered into.

Now we realize that they could go forward on a go-forward basis and provide some of that information to the committee.

And we expect that the Crowns won't unnecessarily enter into contracts that would prevent them from disclosing that information to this committee. And we also realize that there is disclosure that's prohibited by law, and we're thinking in particular some of the information around SGI and so on.

So those are basically our arguments. We have listened carefully to what the Provincial Auditor and others have said about disclosing this information in camera to this committee. And I think it's quite — from our point of view — it's quite clear that there are some legal difficulties in terms of disclosing information. In particular if information were to, for some reason, leave this committee it would place certain committee members in jeopardy when it comes to privilege. And I think that our committee — our side of this committee — is not yet prepared to risk a question of privilege, and we certainly aren't prepared to risk the notion of one of us being put in a position where we would be dealt with through a civil action should information leave this committee.

So we are . . . And given that this has not been done in any other jurisdiction where this type of confidential information is shared in camera, we're not ready yet to go down that road. We think we've come some way in providing . . . being prepared to provide this information to the committee, certainly in terms of employee remuneration. I think this has been an issue for some time. That is new. We think we've come some way in terms of suppliers and other payments, recognizing that there will be three exceptions to providing that information.

So with that, Mr. Chair, those are the arguments for the recommendation and also the reason why we have at this time determined that we are not prepared to have this information disclosed in private.

**Mr. Wall:** — Thank you, Mr. Chairman. We can support a lot of what's in this recommendation that Ms. Atkinson has presented. The truth be told, I think members on this side of the committee were comfortable with the auditor's recommendations. If they were to be adopted in totality, we believe that members of the committee would be able to understand the importance of respecting what ought to stay in this room in the case of in camera and verbal briefings, and that the recommendations could have been made to work; and also that the discretion of the officers of the legislature involved would have been brought to bear on deciding what information shouldn't . . . should perhaps not be even included in a verbal briefing.

And having said that, we think that what's been proposed by Ms. Atkinson is at least a step in the right direction. We would want to strengthen the motion and would propose a friendly, what we think is, what I think is a friendly amendment — and maybe it isn't; we can have that discussion — and it would go something like this, Mr. Chairman: that the motion on payee disclosure be amended to substitute the last word of the narrative under the supplier and other payments.

Let me characterize the amendment first and then read how I've tried to write it formally, and probably failed at properly writing it formally. But the last paragraph, the last recommendation is, as Ms. Atkinson points out, one that is, you know, is going to be of, I think, the most interest to members of the committee and

the Crowns — supplier and other payments. And so what we're suggesting is that we insert the appropriate officer of the legislature into this process, the freedom of information and privacy commissioner, into this process.

So that the new paragraph would read something like: a list of payments for goods and services with a minimum threshold of \$50,000, as recommended by the Provincial Auditor, except those items in categories that the freedom of information and privacy commissioner has concurred that there is . . . or where I should say — that should still be where — where the freedom of information and privacy commissioner has concurred that there is a legitimate need to protect commercially sensitive . . . And then the list continues on intact.

And so what the amendment does is simply insert . . . It simply allows members of this committee, government and opposition, to rely on the freedom of information . . . or the Privacy Commissioner as a third party to say, you know what, we agree with the Crown corporation. The Crown is telling you, members of the committee, that this information is going to hurt their ability to compete, it's going to be damaging to their interests and therefore the interests of taxpayers in the province, and we don't think this information ought to be disclosed. Or conversely, the freedom of information commissioner might propose instead that, no, in his view that this information can be shared with members of the committee, either on an in camera basis or some other way.

In that way we're trusting an officer of the legislature that we have in place to make these kinds of decisions to offer the committee recommendations and indeed what is truly fits into these three categories as Ms. Atkinson's motion depicts.

So the amendment, the official amendment then, Mr. Chairman, moved by myself would be that, and again I accept sort of some . . . if we can word it better, that's great. That the amendment would be worded such that it would be amended to substitute the last word of the narrative under suppliers and other payments, be replaced with the word, be replaced with the words, where the freedom of information and privacy commissioner has concurred that.

That is grammar up with which we should not put, Mr. Chairman. I don't know if you have any suggestions. . . . It's actually just adding this phrase.

**The Chair:** — Can I just clarify myself. So you're saying that if a Crown wants to have an exemption or an exception to the rule, that it then must make a case to the Privacy Commissioner and then that would be it. Or would the Privacy Commissioner then make a recommendation to the committee and the committee would make the ultimate determination? That's the question I guess I would have.

**Mr. Rendek:** — Mr. Chair, if I might. I think that's very important because under the Act I don't have the jurisdiction to make a decision. I can only make recommendations under the Act. So I think it's very important.

I was concerned that there is no decision-making mechanism in this motion as it is to who makes that decision. But I think that under the current authority that I'm given under the Act, all I

can do is recommend and then the committee would have to make that final decision.

**Mr. Wall:** — Well you know I . . . And I obviously won't want to make an amendment that isn't . . . that doesn't fit current legislation. So I think that I would accept some changes so that the appropriate wording would be used.

**A Member:** — As recommended that.

**Mr. Wall:** — As recommended that . . . Yes. But even then, does it tie the committee . . . Yes. Well, that's right.

So that it would read, a list of payments for goods and services with a minimum threshold of \$50,000 except those items and categories where the freedom of information and privacy commissioner has recommended . . .

**Mr. Rendek:** — To the committee.

**Mr. Wall:** — To the committee.

**Mr. Rendek:** — To the committee.

**Mr. Wall:** — So at least there's been a recommendation either way and the committee has made its decision.

**Mr. Rendek:** — That's right. If I might, Mr. Chair, the only other suggestion I might make with regard to the motion is that rather than just list the three items that are indicated, that it might be better if the motion read except those items and categories where public disclosure is prohibited by The Freedom of Information and Protection of Privacy Act.

The reason I say that is there are several others besides the three mentioned that could have some effect in this area such as, in the Act it says trade secrets, other things.

And there are two forms of third party . . . of the disclosure under the Act, sections 18 and 19. Section 18 deals with disclosure which would adversely affect that particular Crown corporation. Section 19 deals with where the disclosure would adversely affect the third party and, under section 19, the non-disclosure is mandatory. It's not discretionary. So I think it's sort of important to bring the motion back to the Act, if you understand.

**Ms. Atkinson:** — Thank you. Mr. Chair, before we're prepared to disclose . . . to consider this amendment, I would like to understand from the Privacy Commissioner how many employees he has at present, and how many employees you would anticipate you would require to handle this added work, and what would the budget implications be for your office?

**Mr. Rendek:** — Well I should tell you that I made a presentation to the Board of Internal Economy two or three months ago after I was in the position for about six or seven months and had viewed what happens in other jurisdictions, where for instance Manitoba has nine people in the office and Alberta has 18.

I am a part-time commissioner. I have no staff whatsoever. I contract out secretarial services, so . . . And with the

mushrooming of privacy issues mainly I made this presentation to the Board of Internal Economy that you had to have a full-time commissioner, you had to have a full-time what I describe as a privacy officer, and you have to have a full-time secretary treasurer. And I'm just giving you this as background.

They approved that proposal. The budget was tripled and we're now in the process of advertising for a new full-time commissioner. I might say that I think I was successful in getting the motion through by indicating that I was not empire building because I would not apply for the job. So I think that with the new commissioner and the staff that the budget has been approved for, I think that they can handle this.

**Ms. Atkinson:** — Okay. You think they could handle this, but do you have any sort of sense of what kind of workload this amendment might mean for your office?

**Mr. Rendek:** — Well I have to guess at the situations where the services of the commissioner's office would be required. Frankly I don't think, I don't think the way the motion reads, I don't think that it's going to be . . . there's going to be that many instances. I think they're going to be rather rare instances where we're going to have to make that decision, that decision as to whether or not disclosure should or should not be made under the Act.

The difficulty right now is that the motion doesn't have any decision-making mechanism. And so when you look . . . You know, the key paragraph in the motion is the last item.

And what happens right now? If somebody makes an application to me under the Act right now, what happens is I review, I review the documents in question and listen to the arguments of the parties in question, and then make a recommendation as to whether or not, whether or not the information should be disclosed. That's what happens currently under the Act.

If the government agency decides that they don't want to follow my recommendation, they don't have to. Then the matter is appealed to the court. So if an application was made under the current Act, you'd be having a judge decide this matter eventually, and I don't think you want that.

**Ms. Atkinson:** — Mr. Chair, before we vote on this amendment, I would like to suggest that our . . . that certainly our committee members have an opportunity to consider the implications of this amendment and gain some further information. So I would like to suggest that we not vote on this amendment today and that we reserve our right to vote on this for a future committee meeting.

**The Chair:** — We can always table that. We can always table it or it may well be that the press of time will in any way dictate we'll deal with this at the next meeting.

But can I just on this ask a question that if we adopt this recommendation with respect to supplier and other payments — and recognizing that Mr. Rendek had some comments about . . . might suggest that some wording needs to be improved in that, I'm not sure — but putting aside the question of process that Mr. Wall has raised, and if it were adopted and on the face of it



would then be up to the Crowns themselves to determine if there is a legitimate need or disclosure could reasonably be expected . . . disclosure is prohibited, my question would be, would the Provincial Auditor not be commenting in his reports as he reports to us now where the Crowns are or are not meeting the standards put down for them by the Legislative Assembly?

Would you, if for example Mr. Fogg purchases \$60,000 worth of desks for his staff, and it's not I think by anyone's standards a commercially sensitive issue, would this not be information that the auditors would be expected to know and be able to comment on and draw to the attention of the committee?

**Mr. Wendel:** — Yes, Mr. Chair. We would look to the categories and see if this information was being reported, as to whether or not the key . . . the three key things here really deal with legal matters.

So our recommendation to this committee was that you should seek the commissioner's advice on that. Now we could do that — ask the commissioner's advice — but we would have to get that kind of advice. I don't have a team of lawyers in my office to . . .

**The Chair:** — But you do, you have access to legal advice if you need it and . . .

**Mr. Wendel:** — Yes, I do, and I would try and make use of the commissioner to do that.

**The Chair:** — And some things would be clear. I mean if Mr. Fogg purchases \$60,000 worth of furniture, I think might quickly clear up that that's not a commercially sensitive issue. It doesn't deal with the sale of insurance products or broker agreements and the like.

**Mr. Wendel:** — I agree, Mr. Chair. I think, though, some of these are legal questions and I think I would have to consult with a lawyer with expertise in this. And my suggestion was I would use the freedom of information commissioner for that and he's charged with making those kinds of decisions on other matters like this.

But yes, I could bring that forward to the committee when that wasn't being complied with.

**Ms. Jones:** — Thank you. I don't know if we'll have all of these officials present or not, but I wanted to ask this question. I assume that the motion will be tabled.

But I'd like to ask Mr. Rendek, what type of decision do you think the Crowns could expect when they ask for an exemption, given the conclusion that you've already reached in your opinion — the reply from you to the members of the standing committee where you pretty emphatically say that you believe that they should disclose all their information?

**Mr. Rendek:** — My opinion obviously is biased because I am the freedom of information commissioner, and I believe in, wherever possible, that the spirit of the Act should be honoured. I also believe, however, that there are some very specific exemptions in the Act and put there for a purpose, and that those exemptions would have to be followed.

And I would say that just dealing with and looking back on the eight or nine months that I've been in office, is that I would say that at least 80 to 85 per cent of the time I've found that the exemptions that were claimed by the particular government institution were very valid exemptions and I've therefore recommended that they continue to not disclose that particular information, notwithstanding as I say the spirit of the Act which is, if I might quote the justice, "the government shouldn't have any secrets." And that is the spirit of the Act but obviously you have to have some secrets. There are trade secrets. There are things that the various Crowns have talked about today that are sensitive information.

Notwithstanding my own particular bias, I have to follow the Act in the way they act. And that's what I would do in these instances, do the same thing.

**The Chair:** — Mr. Prebble. And can I just say that after Mr. Prebble, might I suggest that we entertain a motion to adjourn and then by definition then we will be deferring consideration of this to the next meeting?

**Mr. Wall:** — . . . I've been on the list for some time and I just have a quick question. Mr. Prebble. . . . (inaudible interjection) . . . Or maybe I'm not but I'm just trying to be, just a quick question.

I don't want to table this indefinitely. I mean, we're talking about dealing with it next meeting then. Is that right? Okay. Good, thank you.

**Mr. Prebble:** — What I was going to suggest, Mr. Wall, if there's consensus, is that rather than tabling it, we simply continue the discussion the next meeting. And then, you know, and then there's not a sense that it's being tabled. There's a sense that we're continuing the discussion beginning at the next meeting. That continues to be the agenda.

But I think we need an opportunity to assess the legal implications of what's being proposed and to consult on what other implications there might be, and also to assess whether there might be costs that we haven't had an opportunity to think about yet.

So those are some of the reasons why . . . Rather than a tabling motion which then there's uncertainty about when it would come off the table, I'd like to just continue the discussion the next time.

**The Chair:** — . . . to be concerned about costs and things.

**Mr. Prebble:** — Just as a matter of clarification if I could to the auditor, I'd also just like to be clear about, has the auditor had the opportunity to consult with each of the Crowns on their particular concerns, some of which we heard today, or has the consultation been with CIC? Just so that I can have some clarity on that.

**Mr. Wendel:** — The people that did the work, Mr. Chair, we'll have them . . .

**Mr. Prebble:** — Yes of course, Mr. Wendel, I understand.

**Mr. Montgomery:** — The survey was conducted jointly with CIC and what we've done is, to each of those surveys that were sent out to the Crowns, they responded their concerns. There were more concerns than released today but they responded to that. And we've looked through those concerns.

**Mr. Prebble:** — I guess what I'm trying to determine is have you had an opportunity to sit down with each of the Crowns, individually, and discuss their concerns sort of person to person.

**Mr. Montgomery:** — We have not done that, no. We have relied upon CIC and the survey.

**Mr. Prebble:** — Okay. So that sort of a really detailed examination of some of the specific problems that the Crowns are raising, that hasn't, you know, an in-person exploration of that hasn't occurred.

**Mr. Montgomery:** — We have not met with the Crowns on the particular items, yes.

**Mr. Prebble:** — Yes, okay. Okay.

**Ms. Atkinson:** — Mr. Chair, can I . . .

**Mr. Wall:** — Mr. Chair, there's a new motion then. Ms. Atkinson said, indicated that . . . not a new motion, but the motion that we'd like to continue to . . . or the amendment we'd like to discuss next week then. So I'll just read it and then there'll be copies made available? Is that right, Mr. Clerk? Okay.

That the paragraph entitled supplier and other payments be amended by adding the following after the word "where":

public disclosure is prohibited by the provisions of the freedom of information and privacy Act.

And then of course the other three points would also remain. So I'll just . . . And oh yes, what I'll do is just sign it.

Mr. Chair, are we going to have . . . I guess there's a motion to adjourn. I don't know if you called the question, so I have a question. Hopefully next week we'll be able to move on to . . . back to examining the year under review for the Crown Investments Corporation. And certainly we would like to have Mr. Hart and the appropriate officials here for that, whenever we decide to meet.

**Ms. Atkinson:** — Let's discuss it as a committee about what the agenda's going to be because we may want to continue this discussion next week.

**The Chair:** — Well this is on the agenda.

**Ms. Atkinson:** — It is.

**The Chair:** — We will have to talk about how long this might go on and whether we can then carry on with the examination of CIC. I don't know. You know, hopefully we can.

**Mr. Wall:** — And that was sort of indicated that we were going to do that today. It didn't turn out . . .

**The Chair:** — No, no, no . . .

**Mr. Wall:** — It turned out we couldn't because of the . . . No, no. I think if you checked the *Hansard*, Mr. Chairman, you'll see that yes we talked about the possibility of going on with the examination today. Now it turned out we couldn't, fair enough. This is an important discussion; we need to have it.

**The Chair:** — No, no, no, the agenda is very clear as to what we're discussing today . . .

**Mr. Wall:** — We can get *Hansard* out. I mean we . . . Yes, it's clear, Mr. Chairman, but I think the discretion was that . . .

**The Chair:** — Very clear. So there you go, the question of in camera. Anyway, we have a motion to adjourn. Is that agreed? Agreed.

The committee adjourned at 11:30.

