



Standing Committee on Crown Corporations

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**STANDING COMMITTEE ON CROWN CORPORATIONS
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Channel Lake Petroleum Ltd.

The Chair: — It seems to me that most of the documents have been wheeled in now so I think we can start our meeting. This is a special meeting of the Crown Corporations Committee to hear the matter of the acquisition, management, and sale of Channel Lake and the payment of severance to Jack Messer at the time he ceased being CEO (chief executive officer) of SaskPower.

I circulated an agenda in the House. Committee members will be aware that we issued a subpoena for Mr. Don McKillop. The purpose of issuing a subpoena was so that he would provide certain documents, certain legal opinions. Those documents have now been tabled with the Clerk and I understand that the committee members do have copies of them. So I think we can safely consider that the subpoena has been returned so I will now call Mr. Messer as a witness.

Mr. Gantefer: — Madam Chairman, if I could, there's a couple of things before that and I'm asking what's the appropriate time to deal with it. I wrote a letter to Mr. Priel on the weekend asking for a ruling or an opinion in regard to a potential conflict of interest of members. And I wondered — in the letter returned to me by Mr. Priel, he indicated he would like to hear perhaps some of those arguments and would return a ruling at a future date — I wondered when the appropriate time to deal with that issue first of all is appropriate, Madam Chairman.

The Chair: — I'm aware of the letter that you sent to Mr. Priel and if I may — I've heard several pronunciations of Mr. Priel's name — it's Priel like in trial. Okay.

Mr. Gantefer: — Thank you.

The Chair: — And so Mr. Priel did provide me with a copy of your letter; has also provided me as the Chair, which I consider most appropriate, a copy of his response to you. And what I'm going to suggest is that we deal with procedural matters at the end of the meeting today; that we set aside half an hour to deal with the procedural matters then. Okay. Were there any other matters you wish to raise, Mr. Gantefer?

Mr. Gantefer: — There were; and I realize that Mr. McKillop was acting as an agent to receive the subpoena. I wonder if there is an opportunity to ask him a couple of questions that I think are relevant to . . . I also believe he indicated that he was the lead in terms of the government assembling all of the documents that we received last week. And I wondered if it would be possible to ask him some questions related to those documents as well.

The Chair: — I think I would ask Mr. Priel to comment on it.

Mr. Priel: — I was working through the documents that Mr. McKillop gave to the committee in the last few days myself and I see that Mr. McKillop authored one of the legal opinions himself. And it may be that the committee, before it's through, will have him before it and those questions could be asked at that point if indeed the committee decides it wants to question Mr. McKillop about the matter that you just raised. His

subpoena is still effective. You could have him come in when Mr. Messer is done and talk to him at that point.

The Chair: — I have him scheduled, Mr. Gantefer, for the week of May 22, there's Darryl Bogdasavich and other lawyers from the Justice department.

Mr. Gantefer: — There is a specific question that I think is important that I ask someone. And since Mr. McKillop, I understood, was the member from Justice that was responsible for the assembling of documents, there seems to be one document that is missing from the sequence. And I think that it would be appropriate to ask Mr. McKillop if this is an oversight or what happened. And perhaps he would be able then to find that document.

The Chair: — I wasn't aware that Mr. McKillop was responsible for assembling the documents. Mr. McKillop was responsible for obtaining the legal opinions. It is a legal opinion document that you think is missing?

Mr. Gantefer: — No, it's a document that was indexed and described in the index but was not in either our set or the Clerk's set of documents. So it may be a simple oversight, which is quite likely. And it's a question of then what's the appropriate way of flagging that this document seems to be missing and who is the appropriate authority to ask to have that document delivered.

Mr. Hillson: — Madam Chair, you've already indicated that the last half-hour today will be used to deal with procedural questions. It seems to me this would be an appropriate thing to add to our agenda this morning at that period of time.

The Chair: — Fine, that's what I'll do. And in the meantime, Mr. Gantefer, when we take a break perhaps you could identify to me the document that seems to be missing and I will do all possible to obtain that.

Mr. Gantefer: — Okay.

The Chair: — So we will now move into questioning of Mr. Messer. It is the government's turn for 30 minutes. Do I have a speaker from the government side?

Hon. Mr. Shillington: — Thank you very much, Madam Chair. Good morning, Mr. Messer. It's our intention to get to a number of specific questions on Channel Lake. First I think it might be useful to generally review the management structure at SaskPower as it existed at the time the Channel Lake properties were acquired. Perhaps first of all we could have Mr. Messer briefly describe when you came on board, the date when you came on board as CEO.

Mr. Messer: — Madam Chairperson, before I answer the specific question, I was asked by the committee previously to provide certain documents. I would like to provide those documents. I'd like to make a short statement in respect to them because I think it will provide some clarification to the members in respect to the content of those documents. If the committee would allow, I'd like to do that and then I'll get into the answer of the question.

The Chair: — I would seek guidance from the committee. I guess I would simply say though, out of fairness, if Mr. Messer is going to be making a statement as he tables the documents, that that won't be considered the 30 minutes that the government has. Agreed.

Mr. Messer: — Thank you very much, committee members, and Madam Chairperson. At the last meeting of the committee I agreed to provide copies of my employment contract with SaskPower. I'm not aware of any such employment contract.

However, details of my compensation were filed with the Clerk of the Executive Council as required by The Crown Employment Contracts Act. SaskPower has provided me with a copy of certain documents which I will table with the committee today, and I have them and my counsel will be distributing them now.

Second, I was asked to provide a copy of my severance contract with SaskPower. My severance agreement is document 1346 in the documents before the committee. That is the only severance contract between SaskPower and myself.

Third, I confirm that I received the documents which have now been tabled before the committee on April 10. My counsel and I have undertaken an initial review of these documents in order to be ready to give testimony today. I will do my best to answer your questions. However we have received over a thousand documents dealing with a complex series of events which occurred over a period of several years.

As I said, I will do my best to answer questions based on these documents, but I think that you would agree that I have not had enough time to deal thoroughly with the documents. I may therefore have to take notice of some questions that I cannot fully answer at this time.

I also note that in order to properly prepare I, like the committee, need access to relevant documents. My concern is that the documents tabled before the committee is not complete. By way of example, I have with me today an indemnity agreement between myself and SaskPower. That agreement says that SaskPower will indemnify me against all costs, expenses, and claims which arise from my having acted as a director or officer of Channel Lake. It is my view that this includes not only my legal expenses for this inquiry, but any claims recommended by this committee. This document is clearly important and relevant to the business of this committee, and I also table this document.

I also have with me a copy of my president and chief executive officer evaluation for the year 1994 which I will also table today. This document demonstrates not only that my performance was being monitored and reviewed by the board but that my performance was judged to be positive. It also contradicts the suggestion that there were attempts made to remove me from my job, at least by the board, and that was saved by the Premier in 1994. This document will show you that the members of the board of directors of SaskPower say that I continued to provide detailed information in respect of carrying out the deliberations of the board of SaskPower.

I have requested copies of these evaluations for 1995, '96, and

'97. I am advised that they're held by CIC (Crown Investments Corporation of Saskatchewan). They are also relevant documents for this inquiry. It is my recollection that they were all positive evaluations but I need these documents to refresh my memory and facilitate the deliberations of this committee.

As a further example I note that much was made in the Gerrand report and in the media of the SaskPower board meeting of June 20, 1997 at which the Channel Lake sale was ratified. It has been suggested that I misled the board. The evidence of this is a two-page topic summary which I presented to the board at that meeting. The topic summary however does not describe that meeting.

There was a discussion of this agenda that took well over an hour. Certain key members of the board had also been fully briefed about these issues prior to the meeting. I'm confident that there is more evidence about the June 20 board meeting and the briefings.

My counsel has identified some of this evidence as well as other materials in a letter to the chairperson. He has also requested the committee's assistance in obtaining these materials. I respectfully request the committee to accommodate his request as well as any similar requests which I may make at this inquiry as it proceeds.

I initially called for a judicial inquiry into these matters. I did so in an attempt to ensure a full, fair, and comprehensive review. It remains my view that that would be the best approach.

I am concerned not only by the procedural difficulties faced by the committee, but by the fact that some committee members appear to have publicly stated conclusions about key issues. I remain hopeful that this process will be fair and comprehensive even though that is a fact.

I would finally also request that the committee give me leave to provide further evidence and to make submissions at these hearings as they proceed. For example, I was asked by this committee to detail my criticisms of the Deloitte and Gerrand reports. I will prepare, I am now preparing, and will submit a detailed critique to the committee as soon as is reasonably possible.

Further, I am in the process of obtaining expert opinion which confirms that arbitrage trading is a normal part of the business of a company such as Channel Lake. This opinion will also confirm that Channel Lake risk-management practices were consistent with industry standards at the time of the trading losses.

I am the first witness and a key participant in these events. My interests and those of my former staff members are directly affected. I am sure that the committee will wish to receive further material from me and will facilitate this work.

I thank you, Madam Chairperson.

The Chair: — Thank you, Mr. Messer. You indicated in your statement that your counsel had provided a letter to me. I'm sorry, I don't have that letter. Was it delivered to my office upstairs over the weekend?

Mr. Barrington-Foote: — It was couriered yesterday to your office.

The Chair: — Yesterday, all right. When we have a break, I will obtain that letter and then I will circulate copies to all members of the committee.

Mr. Messer: — In answer to Mr. Shillington's question, I was appointed as acting president and CEO in 1991.

Hon. Mr. Shillington: — Just with respect to the statement, before we go on, it's my intention this morning to elicit some background information which I think would make the rest of the proceedings a little more understandable. So I'll reserve comment on your statement for a moment, except to say I think one thing that might be noted is the suggestion that we try to withhold judgement until we've heard the facts and the evidence.

As legislators we often breach that. We often seem to make up our minds rather early on matters. But I do think it would be useful to keep that in mind, that we try to keep an open mind until we've heard the facts.

When were you appointed as . . . you said you were appointed acting president in '91. When was that confirmed; when were you appointed on a permanent basis?

Mr. Messer: — I don't know the exact date. It was sometime in 1992. There was a firm hired to undertake an executive search for the president's position. I obviously was a candidate for that, and the process at its end concluded that I would be appointed president if I so desired to accept the job.

Hon. Mr. Shillington: — Could you describe your duties and responsibilities as CEO. And just to put the question in its context, I'm then going to ask you to describe the duties and responsibilities of the vice-president to try to get an idea of your management style. So perhaps you could begin by describing your duties and responsibilities.

Mr. Messer: — I think that in simple terms, my responsibilities were to assume the overall management of the company, to facilitate the big picture of the operation of this electric utility. It was clear at that time that there were changes on the horizon in respect of electric utilities, matters that are still being dealt with at this particular point in time such as deregulation and competition.

In my view, and it was something that I conveyed to the selection process in seeking out a president and chief executive officer, was that the utility was not efficient. It was not being run properly in order to facilitate the kind of investment that the shareholder had in it — something in the neighbour of \$3 billion. It wasn't generating the level of revenues and profits that it should so that there was a major overhaul required by this utility.

In respect of the management, I felt that the management was top heavy and that it should be scaled down and more focus and responsibility given to the executive group in facilitating the change of this corporation. I believe that initially there were — and I'm guessing now — but there were 12 or 13

vice-presidents, I believe. It was reduced to something in the neighbourhood of six or seven with greater focus in regard to their responsibility in reshaping this company.

Shortly after that, there was a major process initiated which brought in representation from the entire workforce, both in scope and out of scope, to facilitate a vision for the corporation in regard to dealing with the future.

In general terms, I hope that that facilitates your answer.

Hon. Mr. Shillington: — It does. Perhaps then I might ask how many vice-presidents are there now?

Mr. Messer: — I think seven. I'd have to go through it.

Hon. Mr. Shillington: — Can you describe . . . can you tell us who they are and what their responsibilities are?

Mr. Messer: — Carole Bryant is the executive vice-president of corporate affairs. I think the title itself describes the responsibilities that she is responsible for. Mr. Ken Christensen is the VP (vice-president) of finance, responsible for all of the financial affairs of the corporation. Mr. Rick Patrick is VP of power production.

I might say that through restructuring of the corporation there were business units established within the corporation. The intent was that they would be better able to carry out the kind of change that the corporation, in my view, had to attain so that you could set goals and better measure those goals, in that kind of structure, than simply an executive sitting around a table. So you had the executive, but they were responsible for business units that had a mechanism of accounting that was more like a private sector commercial entity. So Mr. Patrick was responsible for all of the power production generation of electricity. And that was a business unit.

Mr. Tony Harras was responsible for systems operation and decision support, which was not a business unit as such but was the backbone of the corporation in providing facility to link all of the rest of the business units and other entities of the corporation together.

Mr. Roy Yeske was the VP of transmission and distribution — I think that that speaks for itself — responsible for all the transmission and distribution of power in the province.

Mr. Kelly Staudt, who is now the acting president and CEO, was the vice-president of customer services. This was a business unit and one that was, and I assume is, charged to better facilitate customer service and generate new business entities for the corporation in respect of it being an energy company rather than just a producer and distributor and transmitter of electrons.

We increased the vice-presidency by an additional member later on — I imagine about a year ago now — with the hiring of a VP of human resources, which was under the responsibility of Carole Bryant as executive vice-president of corporate affairs previously.

I think that that gives you a description of all of the executive of

the corporation.

Hon. Mr. Shillington: — All right. We have Bryant, Christensen, Patrick, Harras, Yeske, Staudt, and the human resources VP.

Can you tell us something about Mr. Kram? What was his position and responsibilities?

Mr. Messer: — Mr. Kram was the manager of the in-house legal services to the corporation. It was formerly a VP position, but I felt that with the restructuring of the executive as I wanted it, it didn't warrant a vice president's position and it was somewhat downsized from what it was before, my view being that a corporation of this size could not facilitate nor warrant all of the in-house counsel that you might need. It would be better to go out and hire expertise when needed.

Hon. Mr. Shillington: — I want to return to three of those — two of those people just mentioned, then Mr. Kram. First of all, in the order in which you mentioned them, Mr. Christensen — can you tell us how long he had been in his position?

Mr. Messer: — I believe we hired Mr. Christensen about 1994.

Hon. Mr. Shillington: — Can you tell us something of his background or his qualifications?

Mr. Messer: — He's an engineer as well as a chartered accountant. His experience I think, is exclusively with the utility sector. I hired him from Canadian Utilities out of Edmonton at that time and he has been a major force in respect of the restructuring of the financial affairs of the company.

Hon. Mr. Shillington: — Mr. Patrick?

Mr. Messer: — Mr. Patrick is a lifetime employee of the corporation, somewhere around 25 years if my memory serves me right. Mr. Patrick graduated with an engineering degree out of Saskatoon and went to work for SaskPower and has virtually worked for SaskPower his entire life, approaching 25 years. He was appointed VP of power production. He was an engineer within what was formerly the generation activities of the corporation.

Hon. Mr. Shillington: — And finally Mr. Kram.

Mr. Messer: — I know less about Mr. Kram. Mr. Kram was a lawyer, a graduate of the university of Saskatoon. He was an employee of SaskPower in the legal department of SaskPower when I assumed the presidency, and he was given the responsibility of managing director of that portion of the corporation.

Hon. Mr. Shillington: — You began . . . you touched upon the issue of deregulation and the utility's capacity to operate in that environment. Could you tell the . . . could you describe that in detail, in a little more detail for the committee. What was the situation in 1991 when you commenced your duties? What steps were taken, if any, to adapt to the changing environment?

Mr. Messer: — As I said, I felt that the financial circumstance of the corporation was not sound in the environment that it was

operating in at that time, in that there was no imminent threat of deregulation or a threat of customers leaving the corporation because of, in some rate categories, unconscionably high rates for electricity. Best example I believe, the oil industry, which was paying about 155 per cent of our cost of production.

It soon became apparent that deregulation and competition was on the horizon. As I've already said, it would take significant time in advance to prepare for that because this a significant, somewhat monolithic corporation that had been entrenched in an environment of being able to do whatever it wanted to do and the consequences were simply passed on to the ratepayers. The world does not operate that way any more. Neither does SaskPower. And in the very near future it's going to be imminent.

So there was a need to look at the financial affairs and restructure the company to meet those two concerns. We had a debt of something in excess of \$2 billion. Our asset base was about 3 billion. The debt/equity ratio I believe was around 75:25. This is not a good measurement of a company. Our interest coverage wasn't good; our net profit wasn't high enough. We were spending literally hundreds of thousands of dollars in capital, which was not warranted, simply because engineers like to build. That's not to say it didn't serve some purpose, but it was too expensive for the corporation to maintain.

An example was the underground distribution line for farmers, which was very popular, but which the corporation could not sustain over the long haul, spending 30 or \$40 million a year without one nickel of enhanced revenue. It just couldn't be done.

So there had to be changes in this respect and we undertook as quickly as we could, once we put together what we thought was a reshaping of the corporation, to facilitate changing all of that. And I think that the annual report of this year will show you that we've made some very dramatic improvements in that respect.

In fact if you go to the investment houses of Canada they'll tell you that SaskPower for the third consecutive year has the best bottom line of any electric utility in Canada.

Hon. Mr. Shillington: — Can you give us some detail about the — turning then to the finances of the corporation — can you give us some detail of the finances. You've touched upon the debt/equity ratio. Can you give us additional detail on the finances as you found them in '91 and as they are now.

Mr. Messer: — Well we took . . . there were major undertakings, and this is something that you might get in more detail from obviously Mr. Christensen when he comes as the VP of finance.

But we, in our view, required downsizing of the workforce, and there was some significant downsizing, primarily in the out of scope more so than in the in scope. But there was action taken in both areas, and this was not easy; it was difficult to achieve.

There was some consolidation in respect of its operations throughout rural Saskatchewan. There was a deliberate decision

made that we would not expend more than \$150 million a year in capital expenditures, which was significantly reduced from what it was before.

We cut our OM&A (operating, maintenance and administration) budget back very dramatically in order to get better efficiencies in our operation and maintenance of the . . . (inaudible interjection) . . . yes, operation, maintenance, and administration of the corporation. So that these were primary targets in regard to what we had to achieve early on.

I believe it's correct to say that almost without exception, none of our thermal plants had ever reached nameplate capacity from the time that they were commissioned. We undertook a deliberate effort to improve our production at these thermal plants and I believe . . .

Hon. Mr. Shillington: — Sorry to interrupt you, Mr. Messer. When you say nameplate capacity, what . . .

Mr. Messer: — It would be if we had a thermal generating unit at say Boundary dam that was supposed to generate 155 megawatts, from the date of commissioning of that plant, it had never generated 155 megawatts. This was unacceptable to myself. And I believe that we now have all of those plants up to nameplate capacity and most of them over nameplate capacity now, thereby generating significantly larger amounts of electrons at a cost that was only related to fuel, not to capital.

Hon. Mr. Shillington: — Turning then to the board of directors. Would you describe what you see as the duties and responsibilities of the board of directors in . . . as distinct from that of the management?

Mr. Messer: — The board of directors, in my view, should not undertake to manage the company and should not be involved in the day-to-day operations of the company. I mean it is, in my view, the first and most important responsibility of a board of directors is appointing the president and chief executive officer. And hoping that, in doing that, they will . . . he in turn will appoint the correct executive and manage the company in their best interests in respect of the business of the company.

In my view, secondly, the next most important responsibility of the board of directors is its fiduciary responsibility in acting in the interests of the company first and foremost and carrying out, to the extent that they can, the policy and the objectives of that company. Not only on behalf of the company but on behalf of the shareholder who influences the policy and the objective of the company.

Hon. Mr. Shillington: — Who is the shareholder in this case?

Mr. Messer: — My counsel tells me, and I think it's relevant, that it's important also that the board is responsible for the vision mission of the corporation, keeping mindful that there is an umbrella under which they work in respect to what the shareholders' parameters may be. But in so doing, they also set not only the annual business plans but the long-term business plans. And in the case of SaskPower we had a business plan for ten, five years, and on a rolling average, an annual business plan. And obviously this was a very important part of the board of directors' duties as well.

I'm sorry. If you could repeat the last question.

Hon. Mr. Shillington: — I was just wondering if you could tell us, when you say the shareholder, who's the shareholder in this case.

Mr. Messer: — The government. The people of Saskatchewan; the Government of Saskatchewan. It's wholly owned by the people of Saskatchewan.

Hon. Mr. Shillington: — Would you describe for the committee the relationship which you had with the board of . . . which you and the management had with the board of directors during your period of time as chief executive officer. What was your relationship with that board?

Mr. Messer: — I think that my relationship was a good one in respect of the document that I released today. I think you'll see that obviously we had differences in respect of how we felt the company should operate. I think that was a healthy sign in respect of management and a board of directors dealing with the issues, in respect of what each was responsible for.

Hon. Mr. Shillington: — How many appraisals were done of your . . . You referred to one appraisal in 1994. How many appraisals were done?

Mr. Messer: — I believe . . . Obviously an appraisal was done in 1994. It is my recollection that an appraisal was done in every year after that. I believe — I'm not absolutely certain about this — that there was discussion with the Chair of the audit finance committee and some other board members after the appraisal was done with myself in respect of that appraisal. And I seem to want to recollect that they were done in '95, '96, and '97 but I never, in my mind, received the document. This wasn't something that I was significantly interested in. I felt that if I wasn't performing, the board of directors would undertake to convey that to me either at board of directors' meetings or in some other manner.

Hon. Mr. Shillington: — I just have one more question and then Mr. Tchorzewski has a number of questions. Can you describe the process by which the appraisals were done and who did them?

Mr. Messer: — Well I don't know whether I can be exacting or precise about this but I believe that they were facilitated by Crown Investments Corporation's secretary, and the board having had a format in respect of what was the criteria of a president and chief executive officer's appraisal, and then it went through that to see how I and/or the executive had performed in facilitating that criteria, meeting that criteria.

The Chair: — Mr. Tchorzewski, you have about 10 minutes for questions.

Mr. Messer: — Okay. I'm told that in reality the audit finance committee was the responsible body and that the documents do have — which we have in front of us, the documents that were tabled — the criteria in respect of how they went about carrying that out. It's document 1342. I can list it to you if you want to but it's . . . (inaudible) . . .

Hon. Mr. Shillington: — I think that's fine. If it's in the documents we can inform ourselves.

Mr. Tchorzewski: — Thank you, Madam Chair. Mr. Messer, you spoke the other day when you were before the committee and again today about the role of the board as a policy maker and the role of management as administration. It's maybe a bit of an oversimplification, but generally that's . . . I assume that's the way you see it working.

Mr. Messer: — Yes.

Mr. Tchorzewski: — So if for example Saskatchewan Power Corporation were to, at the board level, decide that they were going to rebuild a major transmission line, that would be a decision on policy of the board and then management would see to it that it's done?

Mr. Messer: — I think that might be somewhat misconstrued. I believe that it would be management who would appraise the need — your example — of a major transmission line, put together a recommendation in respect of those needs with alternative and/or consequences, take it to the board. The board would then, if it was a major decision, decide whether that project should go ahead. Once it was decided, they would empower then management to carry out the construction of that line.

Mr. Tchorzewski: — So in the case of Channel Lake, the board, in the sale of Channel Lake, the management would have done an evaluation and provided to the board a recommendation. The board would have approved the sale with certain guidelines, whatever it may be based on, the recommendation or any changes that may have been made and then it would be up to management to carry out the negotiations and carry out those instructions of the board.

Mr. Messer: — That's correct, and as I mentioned previously at this committee, there was significant concern within SaskPower in regard to the circumstances of future gas requirements. We had the potential, indeed are in many instances, the second largest consumer of natural gas in Saskatchewan. Very unpredictable, because we're driven by climatic circumstances and/or perhaps generating units that might be down because of maintenance or whatever.

We had very significant water problems for the first four years as my tenure as president in both Coronach and Estevan; groundwater was being depleted faster than it was being replenished. There was significant concern within the corporation in regard to whether we could continue to run all those plants if we ran out of cooling water. There were concerns from the United States in regard to also drawing down the water-table in their aquifers as well.

So we were looking at perhaps maybe having to enhance or substitute our generation with more consumption of gas. It could be that we would have to take what would have been thermal coal-fired plants, convert to gas-fired plants, so we could be even a larger consumer of gas.

We felt that there had to be a solution to this. I instructed a group called the fuel task force to review these circumstances

and make recommendations. Their recommendations were to acquire some properties and undertake actions that SaskPower up to that point in time had no experience in, in giving some higher level of comfort in respect of availability of gas and cost of gas to the corporation.

Mr. Tchorzewski: — Thank you. The board having — going back to the sale of Channel Lake — the board having made a decision that it should be sold, it would not be the function of members of the board to seek out potential buyers, whether it's SaskEnergy or other private companies. That would be responsibility of management.

Mr. Messer: — If we're talking about the sale of Channel Lake, yes. I think that board members however, given that some of them come from the business community, would not be denied the opportunity to recommend that parties might be interested. But certainly in a material, responsible way, they would not be in any way involved in the sale other than keeping track of what might be going on.

Hon. Mr. Shillington: — Just one final issue with respect to the board, the board of directors of SaskPower. Could you tell us something about the practice that management adopted, during the period you were chief executive officer, with respect to bringing matters to the board. Were matters, were recommendations and matters brought in writing? Was it done orally? A mixture of both? Did you have a standard format which you used to bring such matters to the board?

Mr. Messer: — Yes. In my view all pertinent matters were brought to the board by way of written communiqué as well as verbal. It was my practice to try and facilitate items being made available to the board a week in advance, including the president's report, but I would bring in significant additional verbal information which perhaps was not available at that time or because the board, like a lot of other board members, want cryptic information rather than voluminous volumes of paper — I would imagine not unlike the way cabinet operates.

In fact board members had asked, we would like to have something contained in one or two pages in respect of the items. If we need more information, a presentation or whatever could be made available to better facilitate us. So that I think that we operated in a proper manner in regard to the written and verbal information.

There was also significant, ongoing information provided to the audit finance committee on a regular basis, who in turn also reported at each of those board meetings as to what subject matter they thought the board should have brought to their attention but might not be on the agenda.

Hon. Mr. Shillington: — Was this the case from the beginning? Did it evolve . . . was this the case in the beginning of your tenure as CEO?

Mr. Messer: — I believe it was. If you will look at the report that I tabled today, there was a concern with the board in respect of some walk-in items that they felt were not appropriate; that they should have, to the best extent possible, information written in advance before they undertook to deal

with decision items of the board. And we undertook to meet that to the extent that we could.

Hon. Mr. Shillington: — I think, Madam Chair, I would next move to the a new topic. By your count, I think I've only got a couple of minutes left so I could leave it and start afresh another time, perhaps later in the day.

The Chair: — Thank you very much, Mr. Shillington. Committee members will be aware that when we agreed to the procedures governing questioning of witnesses, it was agreed that we would allow independent members in total 15 minutes per witness. And I see that we do have an independent member present right now, so I would ask Ms. Haverstock if you would take your place at the table.

Did you have questions that you wish to put to Mr. Messer?

Ms. Haverstock: — I have questions this morning but they're being retyped. I've indicated that I would provide them in writing as well. So I'll just listen in if it's fine.

The Chair: — I'm sorry?

Ms. Haverstock: — I'll wait until they arrive.

The Chair: — You would now be . . . You'll wait till they arrive.

Ms. Haverstock: — Right. I've had them redone so that they can be given to the committee this morning.

The Chair: — Then shall we move to the Saskatchewan Party now, the opposition, for 30 minutes, and then we will take a break. And if it's agreeable then we will revert back to the independent member's time.

Mr. Gantefer: — Thank you very much, Madam Chair. Good morning, Mr. Messer.

A couple of loose-end items, before I begin, that came out of the questioning at your last appearance. It has to do with a question that was asked of you to list all your personal holding companies, and you indicated you were unable to remember all of them. I wondered if you had, in the interval, an opportunity to prepare the complete list to that question that was asked.

Mr. Messer: — I undertook to list those companies, and after talking with my counsel after, we raise the question of relevancy in respect of whether I'm on other boards of directors, as to what value it has to this committee undertaking.

Mr. Gantefer: — Is the question of relevancy a question that the committee should answer, or how does that process work, Mr. Priel?

Mr. Priel: — It's something that the committee will have to make a decision on.

Mr. Gantefer: — Is this the appropriate time for the committee to answer the question of relevancy or . . . I don't want to get into a procedural wrangle again, I'm just asking how this works.

The Chair: — Is it germane to your line of question right now, Mr. Gantefer, or could you hold off on that and give us some time to consult?

Mr. Gantefer: — I certainly can hold off. It was just a loose end in reviewing the information that was before us.

The Chair: — We'll get back to you with an answer on that.

Mr. Gantefer: — Thank you.

Mr. Messer, I'd like to go to the events leading up to the June 20 board meeting. And I think in your opening statements you certainly made some reference to that as well, and it may well be that in some of the questions that the appropriate answers for you to say that this is some of the information that I need to acquire and give answers in that direction.

Certainly over the weekend you know there have been headlines that really are quite accusatory in terms of your relationship with the board. And so I'd really like to get into the background of leading up to the June 20 meeting, which there certainly has been a number of legal opinions that are very critical of your performance and the level of communications that went on between yourself and the board. And I wonder if we could do some background onto the events leading up to the June 20 board meeting.

First of all, when did you find out for the first time that there had been a change in the Channel Lake sale contract which resulted in the deduction of the \$5.2 million as outlined in some of the information?

Mr. Messer: — It would be about May 27 or 28. There was a communiqué to Mr. Christensen in respect of what appeared to be a double accounting of the trading losses. They felt that it was something in error, but when they reviewed that on the following Monday it was clear that it was something more than that. And I was then informed either the Monday or Tuesday. We don't have a record as to specifically when it was, but it would have been about Monday or Tuesday.

Mr. Gantefer: — What were the actions that you took on learning that the sale price had been doubled entered or switched?

Mr. Messer: — I can go through some notes that I have here in respect of that which may . . . and refer to the documentation that's available. So would that be facilitative? Following, I had discussions with Ken Christensen and Larry Kram. There was a letter to Portigal from Kram, document 871, which was seeking an explanation. Portigal at that time was suggesting that there was no mistake. It was always the deal. He admitted that there was some error on his own behalf.

I considered that his explanation was not acceptable and inadequate and undertook to give him notice on June 1 or June 4 that he was terminated because he had given the evidence that I had not carried out the instructions of the corporation and went beyond the powers that were given to him in order to facilitate this deal as a contracted employee of the corporation.

I sought the legal draft opinion of Milner Fenerty. I was

concerned about the Milner Fenerty opinions. The documents will show that there were two draft documents never completed as to what the current . . . what the situation was, and what action we might undertake. They were, as I said, inconclusive and somewhat contradictory.

I was also concerned that at the end of that, there was a telephone conversation between representation from Milner Fenerty and Mr. Kram, who indicated that if we undertook any kind of litigation there was probably less than a 50 per cent chance that we would live, we would win.

Overall I was also concerned in that Milner Fenerty had not, in my view, carried out the instructions in respect of making available certain information and documentation, as instructed, to Mr. Larry Kram. So at the outset I was not all that pleased with the actions of Milner Fenerty, so that their inconclusive draft opinions as to what might be done, I had some problem with.

I also instructed that an internal audit be carried out, as in as reasonably a short period of time as possible, dealing specifically with the circumstances and my officials. I also undertook to acquire outside legal counsel with MacPherson Leslie & Tyerman. The counsel representing that request was Brian Kenny.

I, prior to the board meeting, also had a meeting with Mr. Lautermilch, who was then the minister. I also had a meeting with Mr. Don Mintz, who was the Chair of the audit finance committee. I reviewed the value of the assets sold as compared to the DEML (Direct Energy Marketing Limited) contract. I think that that by and large covers it . . . maybe there is more here.

Documents will show also that I prepared a topic summary in respect of this and took it to the audit finance committee for discussion and action prior to the board meeting June 20.

Mr. Gantefer: — So the actions you outlined occurred from on or about May 27 — it's immaterial what exact date, you said the Monday or Tuesday — leading up through the period of time to the board meeting on June 20.

Mr. Messer: — Correct.

Mr. Gantefer: — The total outline. You indicate that you . . . somewhere in this process, I think your words were, that prior to the board meeting you had a discussion with Eldon Lautermilch. Was Mr. Lautermilch the president of the board at that time?

Mr. Messer: — He was the chairman of the board at that time.

Mr. Gantefer: — And at what part of all of those steps was Mr. Lautermilch first informed about the problem that you identified you first heard about on approximately the 27th?

Mr. Messer: — My recollection is that I had a telephone conversation with Mr. Lautermilch. I do not know the exact time. I had subsequently a discussion with him in his office. The final discussion that I had was — with him — on June 17. It's document 881, where I record by way of memo to file that I

went into greater detail than I had before. Because the previous discussions were, I think, somewhat general as to what was unfolding.

I went into much greater detail and the minister, as my memo to file suggests, agreed with the recommendation that I was proposing but that it should be subject to the approval of the audit finance committee before it went to the board. And I think that the minister at that time was, as I had said earlier, carrying out as a board member would, the administration of the policy of the company and was leaving the matters of administration to the management of the company in dealing with this matter.

Mr. Gantefer: — You indicate that the final briefing was on June 17 and there were two conversations, one on the telephone and one in the minister's office prior to that. Do you recall, first of all in the telephone conversation, was that fairly early on in the process, somewhere early June, or do you recall? It seems that you mentioned that June 4 was the date of termination of Mr. Portigal. Would it have been prior to that decision or informing the minister of that decision, or do you have any recollection of the approximate timing? And again, I'm not asking for exact time or date.

Mr. Messer: — I'm not clear on that but it would seem reasonable to me that it was likely after the dismissal of Mr. Portigal.

Mr. Gantefer: — In both of these instances, the telephone conversation would be likely from your office to the minister's office. Was it your habit when you were informing the minister or members of the board verbal communications of this nature, to diarize those conversations or to keep notes, or things of that nature?

Mr. Messer: — I think a combination of both. Obviously I felt that this was a more significant than routine communication by verbal, so I put a memo to file because it was clear in the discussion with him that he understood what was going on. He felt that management was in control of it. He agreed to a process, which was the audit finance committee first dealing with the matter before it went to the board.

Mr. Gantefer: — But the memo to file was on the June 17 as I recall. That was your third instance.

Mr. Messer: — That is the last recollection that I have in respect of any discussion with him prior to the board meeting. And it seems reasonable, given that I talked to Mr. Mintz the day after, June 18, and then had the board meeting on June 20.

Mr. Gantefer: — The first two conversations, the telephone conversation early on and then the meeting in the minister's office was the second one, I think, that you indicated that occurred before the 17th. Do you have any specific recollection of how much in depth that you informed the minister? It would strike me that if you were having a meeting in his office it would be a fairly detailed briefing; or was it very superficial? Would you recall that, sir?

Mr. Messer: — I wouldn't call it superficial. I believe I discussed other matters with the minister at that time.

And I think it's important to note here that even though this inquiry looks at this by and large in isolation of the rest of the business, that, again I reiterate, this was less than 1 per cent of SaskPower's business. I was still administering a company worth \$3 billion, and the company is, in fact, a company that takes risk on occasion. And we had lost some money on this venture. Channel Lake at that time overall was in a positive position in respect of its management and deliberations on behalf of SaskPower as a subsidiary. So that even though we were looking at losing some money, I don't want to make light of this, but it wasn't earth-shaking.

Some people had gone broke. At that time we were looking at the ability to recover, if we could, those losses. We were not alone in this. Virtually every oil company of any significance, including Wascana Energy, had lost money. We were trapped like the rest in respect of companies who had made obligations to provide gas caught with a cash flow that wasn't able to pay the higher price of gas and went into receivership.

I will give you evidence later on that our policies by and large were no different than any other company that was in the buying and selling of gas. And they also lost. So that I think my discussion with the minister was focused in respect of we have lost some money, we are taking due diligence in respect of first apprising ourselves of the seriousness of it and what might be done by way of being able to recover or recapture any or all of that money. And at that early stage, I think it was premature to give any kind of assurance that we could or could not in a final sense recover what quantity or all of it.

And I think I do want to say, as the memo indicates, that last meeting was a detail of where we were at that time and what I would be recommending to the audit finance committee ultimately through them, given they would approve that without amendment to the board of directors. And I then had the meeting with the chairman of the audit finance committee.

Mr. Gantefer: — Certainly the, you know ... and I appreciate your putting this into some context but I think that the issue is twofold. One is that you obviously thought it was significant enough because on June 4 you terminated Mr. Portigal almost instantly after you received information as to the facts that the contract had changed substantially, which was over and above or separate from any discussion of ongoing trading losses in the buying and selling of the gas. So that seemed to be something that you took very significantly, because by your description of time lines, it didn't take you very long to make a decision that Mr. Portigal should be terminated immediately. So it was a pretty significant event I would think.

The second thing is I'd like you to comment on that. I mean did that whole discussion then, with Mr. Lautermilch ... you indicated happened after the termination of Mr. Portigal. The discussion then, I would think, would be more focused on the fact there seemed to be something amiss in terms of the sale contract rather than the issue of the trading losses.

Mr. Messer: — I think that I want to make it clear here that the action that I took in respect of dismissing Mr. Portigal was not over the trading losses. It had emanated from what had been made obvious to us over that weekend and subsequently

confirmed on the Monday or Tuesday, that in our view, we were misrepresented in respect of what the deal was and that Mr. Portigal was a key player in that. And the evidence that you have in front of you, I think raises questions in regard to the deliberateness of that.

Mr. Heppner: — On those losses being applied several times that you referenced to Mr. Portigal, had that double application of losses, had that been part of the deal all the way through or did that suddenly show up in deal 2 or 3?

Mr. Messer: — Until we found that the deal was not what we had assumed it to be, I had no knowledge of any undertaking to account twice for the trading losses and I believe in the documentation that's available to you, Mr. Portigal says that that indeed was the case. I have no such knowledge of that, had no such knowledge of it at that time.

Mr. Gantefer: — Thank you. You indicated as part of the action that you took, you undertook to get a legal opinion from Brian Kenny. Did you inform Mr. Lautermilch in your detailed briefing on the 17th, I believe, about the legal opinions that were provided by Mr. Kenny to you?

Mr. Messer: — As the documents will show, I instructed Kenny on the 13th to facilitate giving me an outside opinion. He provided me with that opinion on the 16th. It therefore is reasonable to conclude that that was part of the discussion that I had, not only with the minister but with the Chair of the audit finance committee, because it was integral to what I felt was my responsibility in regard to making a recommendation to the board, which I rarely did as president.

Usually and almost with exception, the recommendations came from the VPs responsible for the areas of the corporation that was being dealt with. But in this instance, because it involved executive and other employees of the corporation and we had a significant change in what we had assumed, I undertook the responsibility to seek out what action I could to facilitate a recommendation to the board.

Mr. Gantefer: — In the report, Mr. Kenny, I believe, identified two causes for legal action that could be taken against Mr. Portigal. Did you tell Mr. Lautermilch of those options?

Mr. Messer: — I mean I would believe I gave him a thorough briefing in respect of the circumstances as they stood at that time, because they would be subject matter of discussion at the board meeting later on; so that there was no reason for me to not provide him with all the information that I felt would facilitate the deliberations of the board that he would chair over in a matter of days.

Mr. Gantefer: — Do you recall his reaction to that?

Mr. Messer: — Well I think his reaction was, as I note in my memo, that this seems to be a reasonable course of action for the management. But as far as he was concerned, he was the chairman of the board. He was not involved with the management, nor did he ... and I'm not ... I don't want to put words in his mouth — but my recollection is that: I'm the chairman of the board; you're the management; you have a problem to deal with. I agree with the process, but first it's

going to the audit finance committee and then that recommendation will go to the board.

Mr. Gantefer: — Did you also tell him in that detailed briefing about the Milner Fenerty opinions that there would be the potential for legal action to immediately stop the sale to DEML?

Mr. Messer: — I would expect that I did, but as I said, even more so at that time, I probably was reluctant to give significant credential to Milner Fenerty given that their opinions were not conclusive; they were contradictory; and we hadn't had the performance out of Milner Fenerty that they had obliged to provide us with in respect of the sale transaction itself.

And also again I reiterate that in the telephone conversation subsequent to that written material, it was their opinion that we had less than a 50 per cent chance, which was somewhat of a contradiction in respect of what they were writing about, of winning the case. So there was inconclusiveness and contradiction in Milner Fenerty's opinion . . . draft opinions.

Mr. Gantefer: — Did the minister, in outlining those kind of details about the discrepancies that you felt existed in the Milner Fenerty report, was that part of . . . did the minister comment on that direction or was that discussion held in any detail as you recall?

Mr. Messer: — As I recall it, I don't think the minister was involved in significant, detailed rebuttal to what I was conveying to him. I think he . . . I was there to inform him to the extent I could, given the information that was available at the time, and what my recommended actions were going to be. He absorbed that and agreed with the recommended process.

Mr. Gantefer: — In this time leading up to the June 20 board meeting, did you have any discussions with any other board members in any detail or great detail of the events, similar to what you had with Minister Lautermilch on the 17th?

Mr. Messer: — I don't recall. I mean obviously I had the significant discussion with the minister, the significant discussion with the chairperson of the audit finance committee. I don't recall any discussion with other board members prior to the audit finance committee meeting.

Mr. Gantefer: — Did you have the opportunity to raise this issue in any detail with the Premier?

Mr. Messer: — I did not.

Mr. Gantefer: — Thank you. In light of the fact that the DEM . . . or the Milner Fenerty opinion was in your opinion contradictory to some extent, did the minister at all want you to explore other legal opinions prior to the decision coming down on the 20th?

Mr. Messer: — I do not recall any suggestion, any such suggestion, coming from the minister.

Mr. Gantefer: — Was there any direction that he indicated to you that he felt that there should be some more detailed investigation of the events surrounding the whole sale of

Channel Lake, or did he feel that the board was going to be sufficiently able to make a decision three days later?

Mr. Messer: — I believe that he was satisfied in respect of the action that I had taken, both within the corporation and outside of the corporation, to facilitate my conclusion and my recommended action to the audit finance committee and to the board to deal with this.

I do not recall any discussion that indicated that there was a deficiency in this respect. I mean I gave him, I think, evidence that I carried out, in a responsible way, what should be done in order to deal with this matter. And he supported that and supported it moving on to the board for a decision on June 20.

Mr. Gantefer: — And again without looking at the text but recalling what you said in your opening statement, was something to the effect that key members of the SaskPower board were fully briefed. Did I misunderstand that? Or by key members are you limiting that exclusively to Mr. Lautermilch? Or did I misunderstand your opening statement?

Mr. Messer: — No. When I said that it also went to the audit finance committee members, those members are directors of the board: Mr. Kuchinka and Ms. Bailey. So that at the audit finance committee meeting they also got an in-depth, detailed briefing of the circumstance to facilitate their decision which was then taken to the board.

Mr. Gantefer: — Thank you. At the board meeting now on June 20, was that a board meeting where people were present in person or was it a conference-call board meeting?

Mr. Messer: — It was a combination of both. There were some people present in person. There were some people who were on the conference line.

Mr. Gantefer: — Now there is some inference that the topic summary in the board . . . that the board received, somehow in some respect had the aspect of misleading the board in terms of all of the ramifications surrounding this. I think in your opening statement you said that the board was fully apprised of all of the issues surrounding this. Was the board given a detailed briefing? Was it restricted to your topic summary, which seems to be much more generalized into that two-page category that you indicated?

Mr. Messer: — I believe that the board was given a detailed review of the circumstances and there was significant discussion in respect of seeking further clarification in order to facilitate their ultimate decision. In fact at a later board meeting, I believe it was September, and I think the documents are available here to show that at the request of the board, the original minute was reconstructed to show that there was significant, lengthy and detailed discussion in respect of their decision which the earlier minute did not convey.

And I think that that indicates that even though minutes are cryptic for SaskPower, as they are for any commercial board of directors, they felt in this instance it didn't adequately convey the level of seriousness that they took when they reviewed this matter and came to a decision.

So it's a matter of record that they themselves felt the cryptic minute initially was not sufficient to convey, as a minute, that they had lengthy and significant, in-depth discussion in respect of this matter.

My notes indicate that the discussion took somewhere between one hour and ten and one hour and twenty minutes.

Mr. Gantefer: — So all of the issues that you raised with the minister on the 17th, it's your recollection that all of those issues would have been raised in detail with the entire board three days following.

Mr. Messer: — I believe so. I mean I have no reason . . . There was no undertaking deliberately to withhold any information in respect of the board.

Mr. Gantefer: — Well the topic summary at least says that, and I believe I'm quoting, "... remains a good one for SaskPower." What was the rationale in this detailed discussion that you had with the SaskPower board of directors that would say, after an obvious \$5 million loss in what the sale was intended to be, that it could be still perceived to be a good deal, given the fact that it meant a 20 or 25 per cent decrease in the value of the sale of the asset?

Mr. Messer: — Well I think that first of all one has to assume that the market dictates in respect of what you're going to get for any commercial property that you might be selling. And DEML certainly was higher in their offer than any other offer, and significantly higher than the appraised value of the property, which was \$20.3 million — was one of the reasons that we were facilitating DEML over the other offers. Because it appeared, clearly for reasons that we weren't aware of, they were prepared to pay more money. And that happens.

The loss was in effect a loss of chance, because it certainly was not a loss in respect of what appraisals and other interested purchasers felt the property was worth. And one of the circumstances that is significantly evident in these documents is that when they address whether litigation should have been undertaken, one of the very significant detrimental factors in undertaking to pursue that is that you would have to prove loss.

And as I understand it, in a court of law the loss would likely relate to what was the real value of the property. The real value of the property was likely what it was appraised at, at \$20.3 million. We got \$20.8 million, which was 500,000 — a half a million — more than the value of the property.

I think in real terms one has to ask yourself, what's the big deal? I mean I may put house on sale for \$150,000 when it's appraised at 125. Maybe I'll get it, but the probability is I get something closer to the appraised value.

I had to at that time make a decision as to whether there was any merit, any gain to the corporation, in undertaking litigation against some of these players. Given the advice I had, given largely that any case would rest on what was the fair value of the property and did you sustain real loss, also the factors that royalty trust were cooling off — income and royalty trust were cooling off at that time. The price of gas was going down — the assumption was that gas properties would begin to lose value.

The fact that even though I wrote a very stern letter to DEML in regard to the deal, saying it's substantively different and I think that we should try and change it, hoping that I might be able to negotiate something between their offer and what we had, but their response was, you're big boys and we offered you what we think the property is worth, and if you want to back out we're going to sue you. I had to make a decision whether I was going to allow them to sue me or I'm going to sue them, or is the deal reasonable?

So you ask, is the deal good? In my view it's worth a half a million dollars more than the appraised value. That's what the market says it's worth and the market might diminish. It's a good deal — take it. It's not what we thought we were going to get but it's a good deal.

Mr. Heppner: — You had an offer for \$20 million; you settled for 15; you lost \$5 million.

Mr. Messer: — No. The trading losses were always part of dealing with the property, and the trading losses are separate from the value of the property. Obviously we had to deal with the trading losses. But the property value was 20.3; we got 20.8 subject to the trading losses. So we got, yes, net, \$5.8 million less than that.

Mr. Heppner: — There's \$5 million that were lost that you had at one point if you would have read the contract the second time.

The Chair: — Mr. Messer, if you would answer this question and then we will be taking a break, please.

Mr. Messer: — I think that again the documents will show that what you surmise is in fact incorrect. I mean what we were getting by way of information in regard to what DEML was prepared to pay was different than what DEML were saying, and I think the documents will substantiate that.

When we did do this, the signing of the contract, DEML, the documents will show, reneged, because they felt, given what they thought they were paying, the deal was too rich for them. Not the 26 million, but the 20.8 million. And you will see that there were some negotiations in respect of changing that deal to facilitate them still carrying through with it.

So the evidence will show, from DEML's point of view: we never felt that the property was worth what was being conveyed to you by Mr. Portigal, who was facilitating you in respect of carrying out this deal. And so I had to weigh that against the circumstances of the day, along with the other relevant facts, and make the decisions.

If I'm getting half a million dollars more than the property is evaluated at, it's a good deal. The trading losses were separate from that. They had to be dealt with. The trading losses were a matter of record. The Provincial Auditor knew about them. I mean they had been reported to the audit finance committee on a monthly basis, to the board on a quarterly basis, so there was no cover-up here, but they had to be accounted for.

And if DEML was buying them, we would have to deduct it from the price they felt they were prepared to pay, and it was

substantively different than what we were interpreting the price to be through the information that was being provided to us.

The Chair: — Thank you, Mr. Messer. We will now take a six-minute break. We will reconvene at 10:30, and if the independent member is here, she will have the floor.

The committee recessed for a period of time.

The Chair: — We will start the proceedings. If all the MLAs (Member of Legislative Assembly) would take their places, please. In the absence of an independent member, I will now move to the Liberal Party to question.

Mr. Hillson: — Yes, Madam Chair, first of all, sir, I'm looking at the binder entitled Channel Lake and then the initials of several persons after that. For your convenience, R.P., L.K., J.R.M., K.C. And you said, sir, a minute ago that some of the minutes of SaskPower are written in a rather cryptic manner. And I would refer you to page 1132, document 1132, where there is the word cover-up written and circled. I'd ask you if you know who wrote that, sir.

Mr. Messer: — The memo that you're looking at is my handwriting, perhaps scribbling.

Mr. Hillson: — Okay, and is indeed a cryptic comment. Could you enlighten us on that, sir?

Mr. Messer: — This is, to the best of my recollection, some handwritten notes that I made during the course of discussing this matter at the June 20 board meeting.

Mr. Hillson: — During the June 20 board meeting?

Mr. Messer: — That's correct.

Mr. Hillson: — So what is it in reference to?

Mr. Messer: — The cover-up? My recollection is that it was in respect of whether or not we felt that Mr. Portigal was trying to cover up in regard to his facilitating of this deal until the end of the deal.

Mr. Hillson: — And what was the view of the meeting?

Mr. Messer: — The view of the meeting?

Mr. Hillson: — Yes.

Mr. Messer: — Is that Mr. Portigal had conducted himself in an inappropriate way and in fact agreed with the action that I took, given the evidence that I had when I dismissed Mr. Portigal.

Mr. Hillson: — Okay, so the word cover-up then is yours and it is in reference to Lawrence Portigal?

Mr. Messer: — That's my recollection. Down below it you'll see I think what is lined up, whether we were lined up for this deal in an inappropriate way, and then whether there was cover-up throughout it in respect to what we thought we were going to get, and ultimately what DEML was always prepared

to us, which was substantively less than we anticipated.

Mr. Hillson: — Okay, then if I could ask you, turn to document 1142 in the same binder. Now in this document written by the accounting policy and development branch of SaskPower, it seems as if the entire import of the document is that there has been some request to find out how we can make Channel Lake go away and disappear. Specifically, I refer to with the second paragraph: "I do not think that we can remove Channel Lake from the books as of December 31, 1996."

And I suggest to you and say that the whole document appears to be in reference to a request to make that happen. Where did this request come from and why? Why was it important to make Channel Lake go away, disappear from the books?

Mr. Messer: — I can take notice and respond to the question, but this is not a document that I have been privy to prior to your bringing it to my attention at this time.

Mr. Hillson: — I appreciate that the specific document may be new to you, sir, but obviously one gathers from reading this that there was discussion in SaskPower of how do we bury Channel Lake, how do we keep it from appearing in the subsequent years records.

Mr. Messer: — I think that that, from my point of view and knowledge of what happened, is incorrect in that I have made reference here before that the losses of Channel Lake were a matter of record during this time. The Provincial Auditor had them for the year 1996. They were reported on a monthly basis to the audit finance committee, and the records that you have will show that.

They were reported to the board of directors on a quarterly basis so that from my perspective as president, there was proper ongoing normal reporting of these losses as well as other matters that were pertinent to the corporation, to the right people.

Mr. Hillson: — Well pardon me, sir, but I mean, of course, the record is that Channel Lake was the only subsidiary of SaskPower that was not filing annual reports. That's what the record says. And at any rate, if you tell me you can't shed any light on why SaskPower was anxious apparently in this memo of March 10, 1997, to not have to report on Channel Lake, and to bury it in the preceding year, you simply cannot shed any light as to why that should have been such a big issue with the corporation.

Mr. Messer: — This memo is not one that's directed to me. I do not believe it was within my files in the president's office. As I have already said, this is the first time, even though we've had these documents available, that I have seen this. But I do reiterate that there was no undertaking to cover up the Channel Lake losses.

You will find significant documents throughout what you have available to you that indicates at the outset these documents were properly filed. In fact, when we found the loss of Channel Lake, I instructed the internal audit to do an audit in regard to the Channel Lake proceedings in order to facilitate giving me more thorough information in respect of this.

Mr. Hillson: — Could I ask you to turn to document no. 1148, the draft of Ernst & Young, the auditors of SaskPower, and again there are some more cryptic comments as you put it in the margin. Somebody has circled and then rewritten the word fraud. Are you able to tell us who has written that? There is a question mark after the word fraud after it's rewritten there.

Mr. Messer: — Again, these are documents that I have, when I was president, not been privy to in my office. I have not spent time relating to them. And I can only assume because of how they're recorded in the binder, that they may very well be documents of Mr. Ken Christensen, the vice-president of finance of the corporation.

Mr. Hillson: — Okay. So that's not your writing then in the margin — the word fraud.

Mr. Messer: — None of this is my writing.

Mr. Hillson: — Thank you, sir.

Mr. Messer: — Nor have I seen the documents before.

Mr. Hillson: — Thank you, sir. Document 1152, a proposed agenda for the meeting with DEML and Channel Lake dated June 13, 1997, and this apparently was prepared in SaskPower. And there are just two items on that agenda. Specifically I would draw your attention to: "We feel the deal was misrepresented to us by our agent, Lawrie Portigal." And then near the bottom: "We are not prepared to deal with Lawrie Portigal; we are looking at legal recourse."

Who prepared this document?

Mr. Messer: — Again, I am not certain. It's not a document that I believe I had privilege of seeing as president of SaskPower, but again it appears to be under the Ken Christensen tab, VP of finance.

Mr. Hillson: — So did you have any input at all into the preparation for that meeting between Direct Energy and Channel Lake?

Mr. Messer: — I don't believe there's any record that the meeting actually took place. I mean . . .

Mr. Hillson: — Okay. So this proposed agenda then . . . apparently SaskPower was going to put it to Direct Energy that Portigal had misrepresented and SaskPower was simply not prepared to deal with the man any longer. You say that you don't think that ever happened.

Mr. Messer: — I have no record of it happening.

Mr. Hillson: — Did this represent your view of the situation and your feelings, sir?

Mr. Messer: — I think that if you want my view in respect of Direct Energy, if you went to document 875 where I, on June 6 wrote to Mr. Drummond of Direct Energy, quite succinctly putting my position.

Mr. Hillson: — Now, sir, I believe you told us earlier this

morning that shortly after the June 4, 1997 firing of Mr. Portigal, you did inform the minister responsible that you had taken that action.

Mr. Messer: — Yes. I believe that's correct. Certainly on the June 17 meeting, it would have been raised. As I said, the telephone conversation, earlier meetings were more general.

Mr. Hillson: — But at least by June 17 you are saying the minister responsible was definitely fully apprised that Portigal had been dismissed by you.

Mr. Messer: — Yes.

Mr. Hillson: — Now on December 17 you are aware that the Deputy Premier stood in the House to say that there was absolutely nothing amiss or suspicious in Mr. Portigal's decision to cease his relationship with SaskPower and commence work with the new company. You would have been aware of that statement at the time, received considerable media play.

Mr. Messer: — What was the date that he . . .

Mr. Hillson: — December 17, 1997.

Mr. Messer: — I can't say that I took particular note of it and I would have to check. I don't even know whether I was in Regina at the time.

Mr. Hillson: — Well my question was . . . The minister of course has since explained that he had not been properly briefed. He's apologized to the House for making that statement.

But did you contact the Deputy Premier and say, sorry that's not exactly the way it happened. No, he did not quit, he was fired; and yes, there is something suspicious about it.

I just find it incomprehensible that you would not have been contacting the Deputy Premier to advise him very quickly that his statement to the House was in fact not correct.

Mr. Messer: — May I firstly say that we don't have documents in respect of what might have facilitated the minister in making that statement. I was not aware of the statement and therefore did not respond.

I do though believe that there was information available to the minister by way of, for example, a board meeting on September 10, which I already made mention of, where the minute of the June 20 board meeting was amended to give more emphasis as to the discussion that took place on June 20. That board meeting was chaired by Minister Lingenfelter, so there was discussion at that board meeting in respect of Channel Lake.

On November 7 there was an undertaking to bring to closure the Channel Lake deal. And in fact one of the matters that was raised at that board meeting was that there was going to be no action taken against Mr. Portigal because we didn't feel that we had sufficient evidence that might bring some fruition to such an action. So that I felt that there was a normal transfer of information to the minister at those two board meetings. If there

was need for significant additional information, there would have been a request for one.

I might also say that the information was channelled not only to the board but to Crown Investments Corporation, of which he is the minister in charge, so that if there was some undertaking on behalf of Crown Investments Corporation they could have asked for more information. I mean, I felt I was providing the information as the president and CEO of SaskPower to my board, and that it would be . . .

Mr. Hillson: — Well if I may, sir, I'd like to just read you a very brief statement made by the Deputy Premier on December 17 to the House.

I want to say to the member opposite (meaning myself) that Mr. Portigal, in working for Channel Lake, did work on the negotiations. The company was sold. Mr. Portigal was then without work and the new company hired him. That's about as devious as the plot was.

Now, sir, it is just absolutely inconceivable and incomprehensible that alarm bells didn't go off at SaskPower when the Deputy Premier made that statement. And it is incomprehensible and inconceivable to me that somebody in SaskPower would not have been on the telephone 30 seconds later to say sorry, that statement is not correct.

Are you telling me that after the Deputy Premier made the statement that SaskPower saw absolutely no need or concern whatsoever to tell the Deputy Premier that in fact it was a great deal more complicated than what he had advised the House?

Mr. Messer: — Well the answer to your question is alarm bells did not go off. I mean we run a company that tries to separate the politics from the business of the company. It's one of the reasons that the Crown corporations are somewhat arm's length from the shareholder so that it does facilitate . . .

Mr. Hillson: — The government is the owner.

Mr. Messer: — Madam Chairperson, am I able to answer the question?

The Chair: — Could we try to let the witnesses answer completely before we . . .

Mr. Hillson: — Well I'm sorry, I didn't mean to interrupt the witness, but he just said he's trying to separate it from politics and the government, but he's already told us in fact they're the owners. Here's your owner telling the House a statement that is wrong, and you say no alarm bells, no concern goes off at SaskPower that your owner, your boss is telling the House misstatements.

The Chair: — Mr. Hillson, will you let the witness finish his answer to your first question please.

Mr. Messer: — The answer is I was not aware of it so no alarm bells went off in the president's office.

I want to bring to Mr. Hillson's attention some documentation in regard to what I think he's trying to solicit from myself. I

don't know the document number on this particular one — document no. series 1-100. And it's dated December 9, where there was a communiqué from the minister to Mr. Wright asking him to please bring to his attention information in respect of Channel Lake:

Please see that the proper procedures were followed and give me a detailed report as soon as possible.

I then turn to document dated December 15 where Mr. Wright responds. Mr. Lingenfelter again asked Mr. Wright in respect of the tendering policy in regard to Channel Lake.

I then bring to the attention of the committee member a response from Mr. Wright dated December 16 to Mr. Lingenfelter in respect of the information that he had asked for. I was not in this loop. I was not aware of what the minister said so I did not respond. But there appears to be evidence that the minister was communicating with the holding company, if I may refer to CIC as the holding company, and Mr. Wright, the president of that company, for information, and was provided with information prior to a statement on December 17.

Mr. Hillson: — Did you at any time advise the ministers responsible, in writing, that you had fired Portigal; you had fired him because you had legal opinions to the effect that there were good grounds for believing him to be in conflict of interest.

Mr. Messer: — What minister are you referring to?

Mr. Hillson: — I've left it open. Is there anything in writing you can point to? You choose what minister you want to deal with. But did you at any time advise any minister in writing that you had fired Portigal — no, he didn't quit — and that you had fired him because you had legal opinions to the effect there were good grounds for thinking . . . for believing him to be in conflict?

Mr. Messer: — I do not know . . .

Mr. Hillson: — And is your word cover-up?

Mr. Messer: — I do not know of any written communiqué to any minister in that respect.

Mr. Hillson: — So while you wrote cover-up regarding Mr. Portigal, you did not in fact relay that in writing to the cabinet? To any minister?

Mr. Messer: — No. Nor do I think it is my responsibility to undertake to convey such information as that to the cabinet. I go to my board of directors which is chaired by a minister of the cabinet.

Mr. Hillson: — I thought that you had told me last day, Mr. Messer, that part of your duties as CEO were to make sure that your minister was kept properly informed of developments. I believe you said that was part of your duties.

Mr. Messer: — I have already stated, and there's a memo to my file, that I had a significant in-depth discussion with Mr. Lingenfelter . . . or with Mr. Lautermilch, the then minister who

chaired the SaskPower board, in advance of the board meeting, giving him full details — and again at the board meeting on June 20, which he chaired — full details in facilitating the board which he chaired in making the recommendation . . . in approving the recommendation that I made in respect of Channel Lake.

So I feel that there was full disclosure through the normal channels.

Mr. Hillson: — Sir, I'd like to turn to now the legal opinions binder and tab no. 5. You, a number of times this morning, used the word inconclusive and contradictory to describe the Milner Fenerty legal opinion you received as to whether or not we were stuck with the agreement or whether we should seek legal remedies.

Now I want to read to you just a couple of lines from that report on page 13, but I think it follows the entire tenor of both reports:

Failing an immediate response by Direct Energy, we consider that it would be in SaskPower's best interest to file quickly a statement of claim seeking return of all shares of Channel Lake and a declaration that the purported April 3 acknowledgement and April 2 purchase agreement are not binding on SaskPower and that it still owns the Channel Lake shares.

It goes on to suggest other lawsuits that it recommends.

Now I find this as clear and unequivocal and conclusive as any legal opinion I have ever read. You have several times this morning used the word inconclusive. I find absolutely nothing inconclusive in these documents in tabs 4 and 5.

On the contrary, they are incredibly conclusive. SaskPower should quickly file a statement of claim. If Direct Energy won't renegotiate immediately, then start legal proceedings.

Sir, I'm again absolutely baffled at your use of the word inconclusive, and I would like you to kindly point to me in tabs 4 and 5 some line there that points to this inconclusiveness. I find none.

Mr. Messer: — Are you talking about document 878?

Mr. Hillson: — Yes.

Mr. Messer: — Page 2.

Mr. Hillson: — However, there's also, there's actually the preceding document as well, both from Milner Fenerty. Both say the same thing. Neither one are in the slightest inconclusive, I would suggest to you. Both give a very clear, unequivocal recommendation — let's get out of this deal; we're not bound by it.

Mr. Messer: — Well I think that you can pull excerpts of the document and put whatever interpretation you want on them. The fact remains they are both drafts. There was subsequently a conversation, which I've made reference to earlier, with Mr. Kram where the writer of these documents says there's less than

a 50 per cent chance of winning if we undertake legal action.

On the basis of what you are making reference to here, plus the other circumstances around these as well as Milner Fenerty, by your own I think earlier comments as being somewhat incompetent in carrying out their deliberations on our behalf, I was not enamoured with some of the decisions and some of the recommendations they were making.

Mr. Hillson: — So I think what you're saying is not that there's anything inconclusive about this report, because quite clearly there isn't. I'm not pulling one line out of context. This is the tenure of the entire report — get out of the deal. I'm certainly not, as I say, pulling out one line out of context to distort the report. What you're really saying is you chose to ignore it.

Mr. Messer: — Madam Chairperson, if I could, and relate to what I think the member is talking about on document 878, page 2, top of the paragraph it says:

Based on our limited facts, and in particular not knowing what Portigal or Direct Energy would have to say, as well as our limited opportunity to conduct legal research, the most that we can say at this stage is that it is in our view an open question as to whether or not a court action would conclude that Portigal had the actual, implied, or ostensible authority required to bind SaskPower.

Further, on the next paragraph, there is a second and also difficult question as to whether or not at the June 2, 1997 closing, Portigal had then the authority to bind SaskPower.

Mr. Hillson: — Okay. So no trip to court is ever a certainty. I think we all understand that.

What date did you learn that Portigal had entered into some sort of employment relationship with Direct Energy?

Mr. Messer: — Pardon me?

Mr. Hillson: — When did you first learn that Mr. Portigal had some sort of employment agreement with Direct Energy?

Mr. Messer: — I don't know whether I can give you the precise date, but towards the end of May when we were in the closing proceedings of the contracted sale.

Mr. Hillson: — Now after these legal opinions from Milner Fenerty, which as I say were not inconclusive — they were very conclusive — you went to Brian Kenny of MacPherson Leslie & Tyerman, and that is tab 6 and 7, and I would agree with you that this report is inconclusive. I'm not really clear what they're recommending.

But why did you go to MacPherson Leslie & Tyerman after you already had the report from Milner Fenerty? Was it because you didn't like the Milner Fenerty recommendation and you were, as Eric Cline suggests, lawyer shopping for an opinion more directed to the ends you wished?

Mr. Messer: — Well I suggest that I felt there was a conflict, given what Milner Fenerty was obliged to carry out for us in respect of the sale, and I wanted a second opinion from a

reputable firm to facilitate me in making what I felt would be the right decision.

Mr. Hillson: — Did you inform Brian Kenny of the opinion from Milner Fenerty and did you give him access to it?

Mr. Messer: — They are in document 879 of Mr. Kenny, first paragraph, reference to Milner Fenerty.

Mr. Hillson: — Okay. I thank you; yes that's right.

Mr. Messer: — My instructions to Mr. Kenny was to facilitate . . . the corporation to facilitate him in getting all information required in order for him to give me an opinion.

Mr. Hillson: — And did you make any reference to Mr. Kenny as to the desired conclusion of his report?

Mr. Messer: — Can you please state that again.

Mr. Hillson: — Did you give any information to Mr. Kenny as to what you hoped his conclusions would be?

Mr. Messer: — Absolutely not.

Mr. Hillson: — Thank you, Madam Chair. That concludes this . . . well no it doesn't conclude this section but it concludes my time.

The Chair: — No, that concludes your round of questioning for this time. Thank you, Mr. Hillson.

Ms. Haverstock: — Thank you very much. Now I'm going to leave the questions of detail to other members who have numerous occasions to interview the witness, and given that this 15 minutes this morning, Mr. Messer, is the only time that we will have together. I'm going to provide my questions in writing to you. I'm going to provide my questions in writing to the committee. I'm going to read my questions into the public record.

And I'm going to hope that we will have enough time left after I do my statement today, that we can discuss some of them here this morning. And those questions that are not answered verbally, I will hope we will follow the same procedure as what's transpired in Public Accounts, in that you will be able to give your answers in writing.

The Chair: — Excuse me, Ms. Haverstock. Mr. Messer, if you are providing any written comments to the committee, it does come through the Chair and I would ask for 15 copies, please. So if you can table them with the Clerk.

Ms. Haverstock: — Thank you, now my interest lies specifically in what lessons we have learned to date. And I've divided those questions into three areas. The first begins with how Crown corporations in Saskatchewan work together and I would like you to comment please on the following.

First, since SaskEnergy's expertise is in security of supply and predictability of price for natural gas, why wouldn't SaskPower work more closely with SaskEnergy and utilize their expertise? First of all when deciding to acquire Channel Lake; secondly,

when managing the arbitrage; and thirdly, when disposing of Channel Lake. Of course there's a fourth part to that which I became aware of just a week or so ago, and that's when negotiating the 10-year contract for supply.

Part (b) of the first question is, what is happening appears to be corporations working in isolation from each other. Potentially this is contrary to what is in the best interests of our province as a whole. Would it help if the government put on the table its overall plan so that there's a clear indication to all boards, commissions, Crowns, departments, and agencies as to how they fit into and can contribute to this overall plan. What is in place now that will ensure a more holistic approach is used?

And (c) to part 1 is, given what has transpired, Mr. Messer, what can we learn from it? In your opinion, what is missing that has allowed this to happen?

My second area of questioning deals with public planning: (a) why can I not obtain a summary of your corporate plan, of SaskPower's corporate plan, and why doesn't SaskPower provide the public with a summary corporate plan when every other electric utility across Canada does?

I can go on the Internet when I return to my office this morning and I can get New Brunswick's power plan. I can get Quebec Hydro's five-year plan and so on. In fact the federal government awards are given each year for the best summary plan and annual report provided to parliament. Indeed FCC (Farm Credit Corporation) in this very city won the award for the second year in a row.

So why should the people of Quebec, for example, know more than the citizens of Saskatchewan about their Power corporation?

The third area that I have an interest in that I think will reflect some light on how we can prevent problems in future is the role of the board of directors. What is your view of the responsibilities of the board of directors, and how does this relate to your view of the responsibilities of cabinet, of CIC, and the CEO?

I am going to provide this to you. I don't want you, neither do I want your lawyer to have to be writing ad nauseam as I'm speaking. In fact I will give these to you and you can pass them around. Thank you.

There's a decision-making grid provided to boards which outlines when they assume an advisory role versus when they have decision-making authority. On the following key issues, which of the four groups — the board, CIC, the cabinet, and the CEO — has the decision-making authority and the responsibility for, first, utility rate hikes; and secondly, hiring of the CEO?

And I'd like you to explain, if you will, an overview of the decision-making authority of the board of directors during, first, the acquisition of Channel Lake; second, entering into the natural gas arbitrage business; and third, the sale of Channel Lake.

The next question about boards deals with how does the

advisory role versus the decision-making role authority of the board affect the role of the CEO in this kind of environment.

(d) The SaskPower board of directors seems to be painted with a brush that they were negligent. In your opinion, can the board of directors of a Saskatchewan Crown ever have responsibility for all key decisions when in fact they are cabinet decisions? And should Crown boards be reconstituted and called what they are — advisory boards?

(e) How does all of this affect one's role as a CEO with the board when the Premier and the cabinet make the final decisions? And should we not be moving to a place where cabinet clearly states its ultimate responsibility? If not, should a Crown not then be privatized?

And in conclusion I am going to ask a question that's been raised to me and I hope you will reflect on it. Some have speculated that it is far too coincidental that so much could go so wrong with so many involved with Channel Lake. Indeed there is the view that this situation either reflects profound incompetence or is a deflection away from something more serious. And I want to know what you think.

So let's go back to the beginning since I think we have — Madam Chair, how much time do we have?

The Chair: — We have seven minutes.

Ms. Haverstock: — Seven minutes. And I think perhaps what would be the easiest is if you would begin at the beginning and begin by commenting on the fact that Sask . . . And I know, by the way, that the member for Melfort-Tisdale did ask questions on this a couple of weeks ago regarding SaskEnergy and their whole expertise and security of supply. But I think this is a different approach especially when we're looking at the . . . in the context of what have we learned to date about this and what could we be doing differently.

So if you would attempt to begin with 1(a) I'd be most appreciative.

Mr. Messer: — I want to bring to the member's attention that the documents that have been made available for '92-'93 have significant reference to SaskEnergy, SaskPower, and its relationship, and I think some of what you ask here may be answered there.

I will, however, undertake to give you some cryptic response. I take note that you wanted a more detailed written response at some later time through the Chair to yourself and I will attempt to do that.

I don't want to be too repetitious here, but I have already stated to the committee that when I assumed the responsibility of president and CEO of SaskPower that there was a relationship with SaskEnergy which was not facilitative. I stated at that time that the former government had set up SaskEnergy to be privatized. And in order to facilitate the bottom line to the extent that they could, there were unfair impositions made on SaskPower in regard to storage contracts, in regard to transportation costs, in regard to services that SaskPower provided to SaskEnergy, all to facilitate its bottom line.

This was not in our best interests. I believe the shareholder felt that these should be corrected. However, it should not be a surprise that even though SaskEnergy enjoyed these benefits knowing that they were somewhat padded, they didn't want to give them up easily so there had to be a negotiated process in undertaking to achieve that.

There was some friction in respect of doing that, but I believe that ultimately, by and large, the unfairness of those arrangements were negotiated away. And we have a significant working relationship with SaskEnergy at this particular point in time still, relying on them significantly in regard to the gas need, other services that we carry out jointly.

I think of particular note here is that SaskPower undertakes chimney inspections which doesn't seem to make a lot of sense for an electric utility when we don't have chimneys. I mean that is at our cost. So there are circumstances here that still need to be addressed.

To be more specific when we were addressing Channel Lake, we did have discussions with SaskEnergy in regard to what we should be doing. There is some conflicting opinion from SaskEnergy as to whether we should have bought Channel Lake or not, but SaskEnergy were approached as to whether or not they felt that this might be facilitative in dealing with our problems.

By and large the answer was yes. We had to do something different than what we were doing. When the question of buying gas properties was conveyed to them as to whether it might be more appropriate for them to do this rather than ourselves, they indicated that they were not interested and that would be something that we might want to undertake ourselves.

I think the other point that should be made in regard to the genesis of your discussions here in regard to Crown corporations getting along, I believe that we are not far away from a fully deregulated, competitive environment in Saskatchewan. Therefore you will have to deal with your Crown corporations just like you would any other private sector company that might be providing that service. Otherwise you're not going to be carrying out the business in the best interests of your consumers. It will be a competitive environment.

And the logic that I exercised during the administration of SaskPower is that if that's where we're going to be, we should undertake . . . Even though we are a community of Crown corporations owned by the same shareholder, it isn't like the old days where we could put a wall up around ourselves and do deals between ourselves that might be in our best interest, but not necessarily in the consumers' best interest.

And following that kind of genesis we undertook then to manage our affairs somewhat different than we did before. And in some instances that was in our best interest, in some interests it might have been in SaskEnergy's best interests, in some instances it might have been mutual. But it was from a different outlook in regard to how business has to be conducted.

Ms. Haverstock: — May I just interject for a moment just for clarification. When you state that when you took over at SaskPower as the president and CEO that there was a less than

a comfortable relationship with SaskPower. I'm curious, because perhaps my information's wrong, was the Chair of the board not the same for SaskPower and for SaskEnergy at that time?

Mr. Messer: — I believe it was as it exists today.

Ms. Haverstock: — And how long was it before there was a relationship that could be deemed more positive and collegial between SaskPower and SaskEnergy?

Mr. Messer: — I think it happened reasonably soon after. That wasn't to say that we didn't have differences that we had to iron out, but I believe that within a reasonably short period of time SaskEnergy understood where we were coming from and what drove us to pursue these changes. And then there was a process that undertook to facilitate that.

But I think that by and large they knew this would be in effect costing them. It would be less of a benefit, if a benefit at all, to them but a benefit to SaskPower in a lot of those instances. And that has by and large been achieved. And as I said, I think that there is a good working relationship with SaskEnergy at this point in time.

Ms. Haverstock: — Can I take from what you stated as far as no longer being able to erect walls around Saskatchewan and behave as though somehow we're an island on the globe that my comment and my question — what is in place now that will ensure a more holistic approach is used amongst the Crowns — is this indeed something unrealistic?

Mr. Messer: — I don't know whether I'm in the best position to answer that question. But I do think that there is evidence, current evidence, that there are undertakings to try and facilitate a different management of the Crown corporations that existed in the past. I believe that was a result of the Crown review and the actions that have been taken to somewhat separate, to a greater extent, the politics from the operations of the corporation, whereby we will, I guess after legislation is introduced and passed, have private sector people chairing those boards rather than ministers of the Crown.

And I think that they would then — and there's a whole school of events underway at this point in time — over a period of a couple of months facilitating the education of members of Crown corporations, which I think again if I may use the word, genesis, is that their first fiduciary responsibility is to the management of that Crown corporation not necessarily the will and wish of the shareholder as it exists in other private sector companies. That I think is evidence that things are changing.

Ms. Haverstock: — Well it may be evidence that things are changing, but the bottom line is — and I'm hoping that I have this correct — it is in fact the Cabinet that does make the final decision. So for . . .

The Chair: — Ms. Haverstock, would you wrap up your question.

Ms. Haverstock: — And if in fact that is the case, as much as many people have proclaimed that it makes no sense and it's inappropriate somehow to have members of cabinet sitting on

boards and would prefer that they not be there, I would far rather have an individual be present to share the information as transpiring at the board level if finally that person is going to be party to making the ultimate decision. They may not have to Chair it, but I most certainly would hope that they would be present. And given that I have to wind up, I hope we have a chance to talk some other time.

Mr. Messer: — Could I make a brief response to the . . .

The Chair: — Mr. Messer, you certainly may.

Mr. Messer: — As brief as I can, I think that if the process achieves what I believe it is undertaking to achieve and board members realize that their first and foremost fiduciary responsibility is to the operation of a Crown corporation for which they sit as a director on the board of directors, that if the shareholder gives instruction to them to carry out something that is contrary to their fiduciary responsibility, they will have choices of either resigning or else suffering the consequence like any other private sector company.

If it isn't in the best interests of the company or the consumers that that company serves, they could be held accountable and sued for that.

So I can't conclude as to how the shareholder is going to deal with it and how it is going to work, but I think the shareholders deliberately put in place a process that is going to separate more significantly the operations of the Crowns from the government that exists today.

The Chair: — Thank you, Mr. Messer and thank you, Ms. Haverstock. We will now recognize the New Democratic Party for the second time.

Hon. Mr. Shillington: — I just have a comment about the time first. I'm not sure what you had in mind with respect to the time we had talked about the last . . . dealing with procedural matters the last half hour. I think actually that would be a useful practice if we could make it work.

On the first day I think I'd prefer to have a full half . . . leave a full half hour. I have an item I could deal with in about 10 minutes if that were satisfactory and then go to procedure. But I'm just wondering what you're thinking in terms of time?

The Chair: — Is it agreeable to committee members that we'll recognize the government for 10 to 15 minutes, and then they'll be on again the next time for the 10 to 15 minutes? And then that would give us almost a half hour for procedural issues.

Mr. Ganteofer: — I think, Madam Chair, the procedural issues may not take much time at all, because I think we're asking for . . . (inaudible) . . . rulings that may come in the future so that the whole discussion is, I don't foresee, being very belaboured. So I think the government members could ask their questions in 30 minutes.

Mr. Hillson: — Well I think that we should let Mr. Shillington come up for 10 minutes, switch to procedural; if it turns out we have time left over for him to complete his half hour set, fine. But I agree we should turn to the procedural level at 11:30 and take it from there.

The Chair: — Well it's now 11:25 so my suggestion, Mr. Shillington, is that you will pursue a line of questioning that comes to a logical conclusion within 10 to 15 minutes. And then we will turn to procedural matters. We don't have to stay here till 12 o'clock by the way.

Hon. Mr. Shillington: — In this preliminary period then perhaps we might deal with the background to Channel Lake and why it was set up. Could you give us in a relatively brief fashion the thinking behind Channel Lake, how and when it was set up and why?

Mr. Messer: — As I made reference to earlier, there was a fuel task force committee structured to review the circumstances that SaskPower found itself in. On the basis of those conclusions, what would SaskPower have to do to enhance and facilitate it to a more comfortable position in regard to not only the availability but the price that it might have to pay for natural gas and, to the extent possible, have security that there wouldn't be a deficiency in the generation needs of the corporation.

The task force concluded that it should gain experience in the gas business which it did not have and it should undertake to acquire a property which would give it itself a source of gas which it might be able to, through trading, facilitate its well-being. It was never assumed that the purchase of the gas and that gas would in fact fuel SaskPower's needs. It would require that you would find other sources for it, but those sources then might be able to more appropriately meet your needs.

And so you would have not only the commodity but you would use the mechanisms of being able to trade that commodity to give you the kind of security and enhanced value in price that you otherwise wouldn't have.

Hon. Mr. Shillington: — I want to return to that in a moment and perhaps not before we break for the procedure. I want to return to that.

Let me ask you a question first, again by way of background. Who were the board of directors on Channel Lake.

Mr. Messer: — The board of directors for Channel Lake were myself as chairperson, Mr. Rick Patrick as the VP of power production, and Mr. Ken Christensen as the VP of finance. I believe my memory serves me correct; that was the board of directors. And Mr. Kram served as secretary but not as a director.

Hon. Mr. Shillington: — So the three directors were also VPs at SaskPower.

Mr. Messer: — Executive of SaskPower.

Hon. Mr. Shillington: — How often did the board meet? I'm wondering was this a ... sometimes subsidiary corporations have a nominal board of directors which meets only occasionally. How often did they meet and what function did this board serve?

Mr. Messer: — I think that it was not an unnormal cycle for the board about every two or three months; perhaps more

regular on some occasions if the circumstance dictated.

Hon. Mr. Shillington: — Did any of these individuals have responsibilities beyond their role as directors with Channel Lake? Were any of them involved in the management of Channel Lake?

Mr. Messer: — Certainly Mr. Christensen was given a significantly greater responsibility in regard to Channel Lake's undertakings. There were a number of issues that we wanted dealt with in Channel Lake and he was the conduit from SaskPower to Channel Lake. And the records will show that he was very much involved with, in many instances, a significant number of his people.

Hon. Mr. Shillington: — Who did constitute the management of ... can you tell us who did constitute the management of Channel Lake?

Mr. Messer: — The management of Channel Lake was responsible ... Mr. Lawrie Portigal was responsible for the management of Channel Lake.

Hon. Mr. Shillington: — Was he an employee of Channel Lake?

Mr. Messer: — He was a contracted employee to SaskPower who ultimately ended up assuming the management responsibility of Channel Lake. I indicated earlier in these deliberations that he was hired to undertake other duties but the circumstances of the acquisition of Channel Lake and the expertise that he had drew him to that responsible position.

Hon. Mr. Shillington: — Okay. You made reference to a fuel supply report. Can you tell us when this was prepared, who prepared it.

Mr. Messer: — Two of the key players were Mr. Mickleborough and Mr. Lawrie Portigal, plus all the resources both internal and external that they needed in order to carry out its mandate. I'll look to see if I can find ... It was structured July of '92. There's a document 1307 indicating that I've appointed Mickleborough and Portigal to the task force. And there was a report, an initial report, document 1308 on August 12, '92, and it also indicated significant additional work that had to be carried out.

Hon. Mr. Shillington: — Can you tell us ... can you summarize again briefly the substance of the report?

Mr. Messer: — I think the complete report is part of the documentation. I haven't looked at this report for some time, but simply put, their significant recommendation was that we get into the acquisition of natural gas reserves.

Hon. Mr. Shillington: — All right. What was your expectation with respect to Channel Lake? Did you expect it to make a profit? Did you expect it to operate as kind of a division of SaskPower? What was your expectations with respect to Channel Lake?

Mr. Messer: — It was not to see it operate as a division of SaskPower. There were options; that was one.

But clearly, it was decided that it should be a wholly-owned subsidiary of SaskPower and so that its operations if there were . . . one of the reasons it would have an independence to be able to operate given that the holdings were in Alberta; the activities were by and large in Alberta — most of your trading and/or other related activities would take place in Alberta; that it should be a more commercially oriented company with significant arm's length from SaskPower; and that also as a subsidiary the worst that could happen is that the assets of that company might be put to task at some time.

It was quite deliberate. We didn't want it as part of SaskPower. There were decisions made consciously that it would undertake to do business that SaskPower would not undertake to do. And yes, that it should be a profit-oriented company.

Hon. Mr. Shillington: — With respect to the sale of natural gas from its producing properties, did it have any other customers besides SaskPower?

Mr. Messer: — Could you pose the question again please?

Hon. Mr. Shillington: — Did Channel Lake have any other customers besides SaskPower?

Mr. Messer: — Yes, it did.

Hon. Mr. Shillington: — Numerous? Can you describe its customer base in a couple of sentences?

Mr. Messer: — I can answer that question. I can't now. I mean I was not hands on in respect of that. But obviously there were significant other customers in order to facilitate the trading.

I might also add — to provide further information to your earlier question — when the final task force report was made available, I was not comfortable with it in its conclusions. I hired a Mr. David Dombowsky to facilitate me in giving more conclusion and recommendation as to how the company might operate, so that comprised the sort of final conclusions to this endeavour and influenced the management style and the expectations of what Channel Lake would do.

Hon. Mr. Shillington: — Perhaps I'll leave it there and pick it up again if we have time.

The Chair: — According to my records, Mr. Shillington, you've used approximately 10 minutes of the government's round of time. So if we have . . . Mr. Messer, do you have any pressing necessities, or do you mind staying here for a few moments while we deal with the procedural issues in the event that you could still be on today?

Mr. Messer: — No, that's fine. I guess I can make myself available.

The Chair: — Thank you. I have four procedural issues that I've noted. And I'll just list them and then committee members can let me know if there are other things.

First of all, I would inform the committee that I will be meeting with the media sometime after 3 o'clock this afternoon so that we can work out an acceptable protocol with respect to still

photos and camera shots while the committee is working. I noted that there was some discomfort earlier on today, so I want to ensure that the media can do their proper and professional job, and yet at the same time ensure that members and witnesses are not inconvenienced.

So I will be meeting with them. I would ask if any members of the committee have any comments or suggestions that they wish to make to me to see me in the House this afternoon sometime before 3.

With respect to the question of the missing documents. I did consult with Mr. Gantefer. I gather that it's document no. 1133 that is missing from his set of documents. Mr. Priel and I looked at our set of documents and we have 1133, so obviously that's simply a clerical error; 1133 will be provided to you right after this meeting.

I also would like to point out that I have a memorandum from Mr. McKillop to Gwen Ronyk dated April 15 indicating that there are some other documents that he is providing — 1347, 48, 49 and 1350, as well as 20 copies of a memo from Mr. Shaw to himself dated April 15, 1998. I would ask the Clerk to distribute those now for the committee members so they will form part of the official documentation record.

Another item that we will be dealing with is Mr. Gantefer's question of whether or not members of this committee can also be called as witnesses. And so I would also ask the Clerk to distribute copies of Mr. Gantefer's letter to Mr. Priel and Mr. Priel's response to Mr. Gantefer and then we will deal with that later.

And in the future when there are procedural questions such as this, I would ask the committee members would do me the courtesy of providing with a copy of any correspondence that you have with Mr. Priel.

The question of the letter from Mr. Barrington-Foote to the Chair: I will be distributing that as soon as we adjourn. I don't have it in hand yet, but I will make sure that all members of the committee have it as well as the Clerk.

And then finally there is the question that Mr. Gantefer raised about relevancy issues. And I would remind committee members that this is a legislative inquiry. The rules of evidence and relevance that bind courts do not bind this committee. At the same time we want to ensure that we are dealing with things in a proper and dignified manner so it would seem to me that what we would want would be that questions would be related to the terms of reference of this inquiry.

So, Mr. Gantefer, perhaps if you want to pursue that today you could indicate to us why you would feel that it would be relevant to know all of the boards that Mr. Messer may or may not be on. Bearing in mind that witnesses of course do have the right to a certain amount of privacy as well.

So those are the items, the procedural items that I think we have to deal with. Shall we move to the question of witnesses now, or the question of the members that you've raised with Mr. Priel.

Mr. Gantefer: — Thank you very much, Madam Chairman. In reviewing some of the legal opinions that we received last week, and there was certainly a great deal of opinions, it seemed that there were two opinions that clearly pointed to CIC's role in regard to this whole issue. And they were legal opinion no. 8 and no. 12 by Mr. Bogdasavich . . . (inaudible interjection) . . . Bogdasavich. I'm really having trouble with names today.

And the issue really had surrounded the whole issue around the issue of CIC's role as a board of governance if you like, as the holding company of SaskPower and consequently, through that vehicle, Channel Lake. And the report seemed to indicate that there were some pretty clear responsibilities that CIC had.

First becoming aware of the Channel Lake moved into unauthorized arbitrage trading. And they knew about it at the time and in the report it was indicated that their failure to take action resulted in in essence condoning that decision. And second of all, when CIC became aware of the trading losses that they ordered Channel Lake to start tabling financial reports, and that order was ignored.

Two of the members that served on the CIC board at that time were Mr. Tchorzewski and Mr. Shillington. And it struck me very clearly that there was indeed potential conflict of interest between members serving on this committee and potential people who were involved with some key decision-making processes in regard to this whole issue.

And when we first formed the committee and decided for example that the Provincial Auditor would have standing on the committee, it was indicated quite clearly that the board had felt it was inappropriate for the auditor to have standing at the committee and potentially be a witness as well. It struck me that that same potential conflict could exist in this regard. And on that basis I asked Mr. Priel to make a ruling if indeed there would be that potential conflict.

The Chair: — Thank you, Mr. Gantefer.

Mr. Kowalsky: — Thank you, Madam Chair. I want to make a few brief remarks about the allegations by the Tory caucus and then I'll be providing Mr. Priel with a letter outlining our views in more detail.

Let me make a few brief points. First, as reported in the media today, the only concrete fact advanced by the Tories is false. The 1994 Dombowsky report they hang their whole argument on was commissioned by Mr. John R. Messer for SaskPower and was delivered directly to SaskPower and was used by SaskPower. This is a primary document. The evidence is there in document 1325. It was not commissioned by CIC. Therefore Mr. Gantefer's specific argument regarding Mr. Tchorzewski is without merit.

Second, as is crystal clear from the record, the exchange of correspondence between CIC officials and SaskPower over the filing of annual reports had nothing to do with the hon. member for Regina Northeast, Mr. Shillington. His name does not appear once. All Mr. Gantefer needs to do is read the correspondence and he will see that that is so. Therefore Mr. Gantefer's argument regarding Mr. Shillington is also without

merit.

Third, Mr. Gantefer's claim that these two members of this committee had a direct role in managing Channel Lake is a patent falsehood. Let me make that very clear for the record, Madam Chair. That claim is a patent falsehood.

Channel Lake was a subsidiary of a subsidiary of the Crown Investments Corporation. No responsible observer and no court would find that the sole fact of membership on the board of directors of a holding company constitutes a direct role in management of the subsidiary of a subsidiary, but that is what Mr. Gantefer is arguing.

Madam Chair, I believe that that would be my response and I'm forwarding a letter to Mr. Priel on this. I believe that this committee . . . We as government members on this committee want to get on with the work. The public wants us to get on with the work of the committee. Our duty is to identify the lessons for the mistakes that were made in this file and also to make sure that the governance of Crown corporations is strengthened in the future. That's in the public interest and that, Madam Chair, is what I believe our job is in this committee.

The Chair: — Thank you, Mr. Kowalsky. I don't know that we need to engage in a debate on this. Mr. Gantefer, you were indicating you wanted to say something. Is it a debating point?

Mr. Gantefer: — I think that I want to clarify what the hon. member has just said in two points. Number one, is that I think that the Chair has indicated that she wanted this committee to function with proper respect and decorum, and I would ask the member to withdraw his reference about a Tory caucus. There is no Tory caucus in this legislature and it's unbecoming the member to make political rhetoric.

The Chair: — Thank you. Thank you, Mr. Gantefer.

Mr. Gantefer: — And second of all it . . . second of all we're not making allegations, we're raising concerns about potential conflict of interest, and that's why we went to the legal counsel to rule on it.

The Chair: — Okay. I'm not going to engage in debate. I will . . . it's a point well taken. Mr. Gantefer belongs to a political party that is called the Saskatchewan Party, and hence forward in this committee will members please refer to the official opposition by their correct party name.

I would simply . . . I also think it's incumbent upon me to point out, Mr. Gantefer, a couple of times when you were making your statement you did say that you wanted a ruling from Mr. Priel. Mr. Priel will not be providing a ruling. He's the legal adviser to this committee. He will be providing an opinion. The committee makes rulings, not the legal adviser. So we will be receiving advice from Mr. Priel. He has sent you a letter that indicates he will provide it on or before April 21. So we'll have this matter cleared up at that time.

Did you want now to deal with the question of relevancy of lines of questioning for witnesses? Or shall we move into using up the last of the governing NDP (New Democratic Party) time?

Mr. Gantefer: — If you like, Madam Chair, there was the question raised today about the potential relevancy of asking Mr. Messer to provide information that was requested of him, firstly, by the hon. member from North Battleford on the last day of questioning and was followed up today. Perhaps if that issue could be resolved and Mr. Messer would have direction from the committee.

The Chair: — I would ask Mr. Priel at this point to make a comment on relevancy of questions.

Mr. Priel: — Without dealing directly with the question that you raised, Mr. Gantefer, it seems to me as though the committee should not get hog-tied or bound by the rules of evidence. I believe the Chair correctly assessed whether or not a question ought to be allowed when suggesting that it needed to be somehow related to the terms of reference of the committee, and if I think that that's the measuring stick that should be used.

And it seems to me as though if a question of relevance is raised, as was raised this morning, then there should be a discussion about it by the committee. And the committee will have to make a decision about whether or not there is some, some relationship between the question and the terms of reference. Maybe you could get into that at this point then, Madam Chairman.

The Chair: — Mr. Hillson has indicated he wanted to speak to this.

Mr. Hillson: — Yes. Well I think all members will agree that gratuitous intrusions into Mr. Messer's private life or the private lives of any witnesses appearing before us should be discouraged. The difficulty in this specific question — and I suspect with many more that will come up — is that we simply don't know in advance whether it's relevant or not. I mean, that's the short and simple answer to it.

Now Mr. Messer has already told us that he has shares in a company with significant interests in South America. The question of other companies in which he has interests may or may not have any significance to the inquiry before us, but it strikes me that it would be very difficult for Mr. Priel or anyone else to express an opinion before the answer as to whether this information has a bearing on our work.

It strikes me, it puts us in a bit of a dilemma in that I too, as I don't want to embark on unnecessary intrusions into the private lives of any witness. But on the other hand this specific question and many others, until the answer is given, there's absolutely no way of knowing as to whether it has any relevance. It may be extremely relevant; it may be totally irrelevant. The fact is we don't know. And I see Mr. Priel nodding his head.

The Chair: — Mr. Priel, would you make a comment, please.

Mr. Priel: — There's some merit in what Mr. Hillson says, Madam Chair — that one can't know indeed whether there's any gold in the mine that the question is getting into until you ask and get the answer.

But indeed if the general line of questioning is shown to

somehow relate to the terms of reference, then I think you can with some confidence allow the question to go ahead. And perhaps Mr. Gantefer could indicate where he's headed with the line of questioning and you can then decide whether or not you feel it's related to the terms of reference.

Mr. Gantefer: — Yes, thank you, Madam Chair. And without taking away from the fact that the member from North Battleford raised the issue in the first instance, and I would certainly also be interested in his comments, but it strikes me is that this whole line of direction is not to inquire specifically into the nature of Mr. Messer or his family's holdings but to indicate if there are potential conflicts of interest that could arise by the nature of those holdings and the disposal of assets or the trading that has occurred over this whole matter.

And I certainly would not feel at all comfortable of delving into any detail of those holdings or things of that nature. But I think that in the general sense that it's important, or at least potentially important for the committee to understand what potential conflicts of interest may exist.

The Chair: — Thank you, Mr. Gantefer. Mr. Messer has indicated that he wishes to address the committee. It's a little unusual so I would ask committee members how you feel about that . . . (inaudible interjection) . . . Agreed.

Mr. Messer: — Well, Madam Chairperson, to the extent I understand the logic behind the questioning I think it is to establish whether or not any company that I might have either a personal relationship with that publicly or privately has in any way association or business with the business of this inquiry.

And I am under oath and I can say that any company that I have listed or that I have not listed, and any association that I may have with that company has no material or any other relationship with any of the Channel Lake proceedings or anything that this committee is undertaking to review.

The Chair: — I think that's a very clear statement, and Mr. Messer is reminding us again that he was sworn in and is under oath. So it seems to me we can perhaps drop this matter, but recognize that in the future we're going to have to deal with relevancy of questions on a case-by-case basis.

The hour is now 10 to 12. It would seem to me that it probably would be best if we adjourned now and pick up questioning again tomorrow morning at 9 a.m. I will not be calling any other witnesses. I'm assuming that we will be wanting to deal with Mr. Messer for the full three hours tomorrow. The meeting is now adjourned until tomorrow morning at 9 a.m.

The committee adjourned at 11:52 a.m.