



Standing Committee on Crown Corporations

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

The Chair: — Good morning. The hour now being 9 o'clock, we will begin our special hearings again. Yesterday I received several documents that I would ask the Clerk to circulate right now. The first is a letter from the civil law division, Darryl Bogdasavich to Michael Shaw, dated April 14 regarding the Saskatchewan Power Corporation Channel Lake review.

Second is a letter dated April 13, 1998 to Mike Shaw from the Gerrand law firm clarifying a statement on the Saskatchewan Power Corporation and Channel Lake review.

Third is a letter from Mr. Myron Kowalsky to Mr. Ted Priel outlining his comments regarding Mr. Gantefer's procedural comment from yesterday.

And finally, a letter from Mr. Brian Barrington-Foote regarding the Channel Lake inquiry and Mr. Messer's request for certain documents.

I think the first three letters can simply be received and committee members can add them to the 1,020 that they already have. I require some action with respect to the Barrington-Foote letter; is a request for further documents.

Once committee members have it and have reviewed it, will you please give me guidance on that.

Mr. Hillson: — Yes. No, I'm not expressing an opinion; I haven't read the letter yet. However, it seems to me the procedure that you adopted yesterday is perhaps a good procedure that we ought to maybe adopt on a regular basis, namely, that the last few minutes of each morning will be used to deal with the housekeeping and scheduling matters. And I appreciate your having distributed these now because now sometime during the morning we can make sure we've reviewed the documents. But I would suggest that say, that the procedure you suggested yesterday become a standing procedure, that the last few minutes of each day will be the time when we will deal with these questions that come up.

The Chair: — All right. I appreciate that and I will use that then. I'm not going to set aside 15 minutes or anything because I think that most of the time procedural matters will be fairly minimal.

I did want to make sure though that the Barrington-Foote letter was dealt with because it was referred to a couple of times yesterday, and it is a request for additional documentation to help Mr. Messer prepare for his testimony before this committee.

Again, has anyone read it?

It seems that people are having a bit of difficulty digesting the contents of Mr. Barrington-Foote's letter. I would suggest there are two requests. One is for the CEO (chief executive officer) evaluations for Mr. Messer and certain CIC (Crown Investments Corporation) board minutes. Perhaps if it's agreed, we could simply ask Mr. McKillop to organize the tabling of those.

A Member: — Agreed.

The Chair: — Okay. The second is a request for personal notes kept by CIC board members. Perhaps at the end of the day in the last few minutes, once committee members have had a chance to digest this request, we can deal with that then.

And we will move now to direct questioning of Mr. Messer. When we left off yesterday the NDP had 20 minutes left on their questioning, so I would ask the government members to begin their questioning, please.

Hon. Mr. Shillington: — Thank you very much, Madam Chairperson. When we left off yesterday we were . . . when I left off yesterday, we were dealing with the Channel Lake board of directors. A couple of the letters this morning actually, both from Mr. Gerrand and from Mr. Bogdasavich, make reference to a report done by Mr. Dombowsky for SaskPower and I assume, therefore, in a direct way for yourself as CEO.

Further, the report recommended there be added to the Channel Lake board a person experienced in the natural gas industry. Are you familiar with this report and that recommendation?

Mr. Messer: — Yes I am. I commissioned Mr. Dombowsky to do the report to help facilitate the business of Channel Lake.

Hon. Mr. Shillington: — Was an outside director added to the board?

Mr. Messer: — No, the board remained as it was initially constituted.

Hon. Mr. Shillington: — Why not?

Mr. Messer: — I don't think that there was any deliberateness in not appointing. It was something that just did not happen. In fact I believe the documents that are available to you will show that Mr. Portugal, who had some knowledge in regard to this given his experience in the past, was sent to various seminars and the like of that to enhance and further inform him in regard to the whole business of gas trading, but that wasn't in any way to offset the representation of the board that was recommended by the Dombowsky report.

Hon. Mr. Shillington: — Mr. Portugal wasn't a member of the board.

Mr. Messer: — No, but he was sort of managing the company and felt that anything that might enhance his knowledge or bring him to a more current status as to what was going on in the business was going to be facilitative to the corporation overall.

Hon. Mr. Shillington: — But wasn't it the essence of Mr. Dombowsky's recommendation that the Channel Lake board, which exercises a sort of a supervisory role over Mr. Portugal, needed someone who had experience in the gas industry and someone who could broaden the understanding and the work of the board? Was Mr. Dombowsky's recommendation that the board needed to be broadened, not that Mr. Portugal was in some way lacking in his experience?

Mr. Messer: — As I said, there was no, in my view, deliberateness in not adding to the board. It just didn't happen.

But I think what should be noted here is that I am the Chair of that board appointed by the SaskPower board. It's not my power to appoint people to the Channel Lake board. This was a decision of the parent company. And for whatever reason — and I'm not suggesting that the blame lies anywhere — it just did not happen.

Hon. Mr. Shillington: — Did you take that recommendation of Mr. Dombowsky's to the board of directors of SPC (Saskatchewan Power Corporation) then so that they might act upon it?

Mr. Messer: — I don't recall taking it directly to them, nor do I know whether the SaskPower board in fact have had access to the Dombowsky report. One would have to go back and take a look to see. Primarily the report was commissioned by myself to facilitate the business of Channel Lake. It may or may not have been made available. I'd like to go back and look. I can't say positively one way or the other.

Hon. Mr. Shillington: — So you're not sure whether or not you took . . . whether or not management took to the board the essence of that report and the recommendation that the board of directors be expanded?

Mr. Messer: — Yes, I'd like to defer, to go back to see whether or not it was a matter of discussion at a board meeting or whether in fact the report was in any way conveyed to the board of directors.

Hon. Mr. Shillington: — Okay. Let me . . . before . . . We'll return to that then, I guess, at another time.

Mr. Tchorzewski: — Madam Chair, can I ask one little question?

Mr. Messer, you say that you engaged Mr. Dombowsky to facilitate the business management and operation of Channel Lake, which report was received. In that report there clearly was a recommendation that a board of Channel Lake, consisting only of management people, seems to me in Mr. Dombowsky's view was inappropriate, and that he recommended that there be somebody from the industry and somebody from the SaskPower board appointed. Doesn't that seem reasonable, and why would you not have thought that important enough to recommend to the board?

Mr. Messer: — I can't recall. I don't think that there was ever any intent not to do it. In fact on reflection, I would have preferred to have somebody there. Obviously I'm managing a larger business at that time.

As I said, and I'm not in any way suggesting that blame should lie elsewhere, but the board of directors of SaskPower is a responsible body overseeing the business of not only SaskPower but Channel Lake. They are knowledgeable people and concerned people and aware of what's going on in Channel Lake. If they did not think that this was a significant problem, whether they had the report or not, I think would indicate that they weren't concerned in regard to the make-up of the board of

directors.

I think what is also important here is that the board of directors of SaskPower provided to me, as president of SaskPower and chairman of Channel Lake, sole responsibility for carrying out at least the business of Channel Lake as the sole shareholder. So I think they were indicating not only the management but the structure of Channel Lake was appropriate to them in order to facilitate transferring those kind of powers to myself and to Channel Lake.

Mr. Tchorzewski: — But the board would rely, as any board would, on the recommendations brought to the board by their management, by their chief executive officer. To the best of your recollection, that recommendation was not brought there. And it would seem to me that if Mr. Dombowsky's recommendation had been followed — although there's no guarantee of this — the chances are that maybe some of the difficulties that have seemed to cause us to have to consider this may not have been created if there had been some outside people on the board.

Mr. Messer: — I hear what the member of the committee is saying but I don't believe that there is any evidence that any additional membership to the board may have facilitated in changing the circumstance that exist today.

I will table an opinion in respect of the buying and selling of gas which indicates that we, by and large, were no different from any other company in respect of how we went about doing that business. I would see an additional member on the board of Channel Lake in no way changing the circumstance in respect of the sale of Channel Lake.

Having said that, I had no desire . . . there was no willing undertaking on behalf of myself to not have a member there. It just did not happen.

And I think that members will know that on a related subject in respect of the change that's taking place in the Crown corporations, I have been a strong advocate in regard to putting knowledgeable, strong, independent people on the boards of directors of Crown corporations and that's a matter of record in a number of instances.

In fact shortly after I was appointed president of SaskPower, I prepared a very significant presentation to the Crown Investments Corporation about the need to change the way Crown corporations were being administered. And one of them dealt specifically with the structuring of the board of directors in a fashion that's more appropriate to what exists today.

Hon. Mr. Shillington: — Just a follow-up to that. There is a strong suggestion in the report done by Deloitte Touche, and to some extent by Mr. Gerrand, that in dealing in gas, in the trading of gas — what I think is referred to as arbitration — that Channel Lake was in beyond its depth and that's why the losses occurred.

Surely, Mr. Messer, an outside director familiar with these activities would have been exactly what was needed. Someone who had the experience and who might have been able to guide Channel Lake around the difficulties which it got into. Surely

an outside director was exactly what Channel Lake needed, someone with a broader experience.

Mr. Messer: — Well if I might, I think that there is no, in my view, factual evidence that would indicate that another director or an outside director would have been able to contribute in a meaningful way that might have altered the circumstance that exist today. I believe the board of directors of Channel Lake were cognizant of the business of Channel Lake; the records will show that they were sensitive to and very much involved, especially in the case of Mr. Ken Christensen, in bringing Channel Lake up to the standards that SaskPower wanted it to operate under.

And if I may, I said that I had asked for and would table with this committee an expert, third-party opinion in regard to the trading of gas, and I have that now and I would like to table it with you. I'd like to make some particular reference because I think it's very relevant in regard to what you're now saying about whether a directorship change on Channel Lake would have made things differently.

I think that this document, which was prepared by Peter J. Milne associates of Calgary, who is a respected consultant and knows the gas industry quite thoroughly, by and large supports the operation and management of Channel Lake. Let me just read to you some of the excerpts . . . or let me take some of the content of this and put it into the record of this committee.

In respect of issues:

What is arbitrage trading and how are profits earned through this activity?

Arbitrage is the activity of identifying and taking advantage of price differentials between two points either geographic or temporal.

Meaning that we could also . . . we were selling gas that we had in storage and that this is a natural activity of arbitrage.

As a result of arbitrage these opportunities are short-lived due to the large number of players in today's gas market including end-users, local distribution companies, power generation companies, and gas producers and marketers. These players scrutinize the market constantly looking for profitable opportunities to utilize their resources (gas supplies, pipeline, and storage capacity) effectively.

In today's marketplace (He asks another question.) . . .

Is arbitrage trading a normal course or extension of the business activities of large end-users of their gas affiliates?

Keeping mindful that SaskPower is the second largest consumer of gas in Saskatchewan and we are still of the mind that we could be very well the largest consumer of gas in Saskatchewan.

In answer to that question he says:

In today's marketplace most large end-users (and most local distribution companies), particularly those with

variable and unpredictable supply requirements or those that the capability to readily switch to alternate energy supplies (e.g. coal, fuel oil or hydro in the case of power generators) would expect that their energy traders or supply affiliates to engage in physical arbitrage activities, (i.e., take advantage of the market or profit opportunities) as part of their normal course of business.

Arbitrage continues to be a routine activity of companies engaged in the purchase, sale and trading of natural gas today.

Most organizations engaged in the buying, selling and trading gas prior to late 1996 were aware of counterparty risk, that is the risk that the seller under a contract can not or does not deliver gas at the negotiated price at the prescribed time and place, or that a buyer can not or does not purchase gas at the agreed price.

However, there had not been a major failure of a buyer or seller to fulfil its obligations prior to 1996 and in the early stages of the Canadian gas market (1992 to 1996) many companies including producers and end-users placed as much, if not more, importance on a trader's reputation as letters of credit or depth of the trader's financial resources.

In this period, there were several small traders with . . . no financial resources or backing that were able to operate successfully on the strength of their reputations. Other small traders engaged limited financial backing from large financial institutions such as banks as a means to broaden their client base.

When and why did these practises change?

In the late fall of 1996, there was an unexpected price inversion and three gas marketers declared bankruptcy and hence, were unable to fulfil their contractual obligations.

The industry response to this event was immediate. Overnight, most companies demanded letters of credit to cover all or part of their risk of contract failure from all companies which they traded with despite corporate reputations. Almost as quickly, small traders disappeared from the marketplace. Many financial institutions that were backstopping (these) small traders withdrew their support forcing them out of the market as well.

And the records will show here that the board of directors and the management of Channel Lake, on receipt of a significant loss, terminated immediately all arbitrage activity. And I think that was due diligence not only on the behalf of the management but the board of directors, which is being subject to some question here.

Did many parties in the natural gas industries suffer losses in late 1996?

There were many companies affected by the failure of the three marketing companies in the fall of 1996 some of which incurred large losses. Some of these companies were large sophisticated marketers themselves. However, it is not possible to know precisely how many companies were

affected or who was impacted. Most companies do not make their involvement in these circumstances public.

I do bring to your attention information that was made available to both Deloitte Touche and the Gerrand report from news releases indicating some of the companies that lost in the arbitrage activities. They included AEC Oil, Amoco Canada, Murphy Oil, Petro-Canada, Ranger Oil, Shell Canada, Suncor Resources Inc., Talisman Energy, and our own company that was here in Saskatchewan at that time, Wascana, and yes, Channel Lake. By comparison to the losses that these companies suffered, ours was marginal.

What caused the bankruptcies?

November 1996 will register as the “wildest” trade month of 1996 by far and perhaps with the most unexpected results since November 1992.

“No one in the gas business was predicting the huge jump in prices.”

And I emphasize, no one. And if we’re talking here about one member of the board who happened to have more knowledge in the gas business facilitating Channel Lake not getting into this trouble, it certainly wasn’t affecting major oil companies who, one would assume, have significant representation from the oil and gas industry.

“On the contrary, most traders were expecting prices to fall in November just like they did last year,” a marketer said.

“There have been lots of casualties as a result of the unexpected price jump . . .”

“We haven’t seen the worst yet. I’ve heard rumours that some large marketers are in serious trouble and may be going down,” a gas trader commented.

I think that this is particular relevant information for this committee to have, especially when we’re suggesting that the problems of Channel Lake might have been resolved if we had an additional member, which I did not in any way deliberately not appoint. It just did not happen. But I think this evidence shows that every major gas company who was in the arbitrage business lost money.

And if we want to go to see what the make-up of those boards of directors are, I think that you’ll find a majority of them are active in the oil and gas industry. I so table, Madam Chairperson.

Hon. Mr. Shillington: — I thank you for the information. It wasn’t . . . it doesn’t answer the question I asked though. The question was not the appropriateness of arbitrage — I’m going to return to that when I’ve a little more time; the clock’s almost run out — my question was the ability of the board to supervise the conduct of arbitrage by the employees of the corporation. I return to my suggestion to you that Mr. Dombowsky’s suggestion that the board be broadened to include someone who is experienced in the industry might have strengthened the board’s ability to supervise and manage Mr. Portigal. I suggest that whether or not arbitrage was appropriate, Mr.

Dombowsky’s suggestion was sound.

Mr. Messer: — I guess with all due respect, I’m not clear in respect to what the member is suggesting here. Is there evidence that he has in respect of the management of Channel Lake that wasn’t being attended to in a businesslike fashion during Mr. Portigal’s tenure?

Hon. Mr. Shillington: — Well I would suggest to the witness that there’s plenty of evidence to suggest that the board of directors was having some difficulty managing Mr. Portigal. He exceeded his authority set out by the board of directors of SPC and losses did ensue. I suggest there is evidence in the fact that the board was having difficulty riding herd on Mr. Portigal in the business of arbitrage.

Mr. Messer: — Well I guess one can put their interpretation on it. I simply reiterate that we’re talking about arbitrage. Obviously directorship made no difference in regard to significant other companies that got into it in respect of the other businesses of Channel Lake which Mr. Portigal was the manager over.

The records I believe speak for themselves, that not only SaskPower management but the board were knowledgeable of those and action was taken in order to facilitate their improvement to the extent that we brought in outside counsel and outside contractual help to do that. So it was an ongoing matter of improvement; so that it was, in my view, not something that an enhancement of the board would have been able to improve. Actions were undertaken when evidence was clear that there should be something done by way of better facilitating the operation of Channel Lake.

The Chair: — Thank you. Mr. Shillington, have you finished that line of questioning?

Hon. Mr. Shillington: — Yes, I appreciate the Chair’s reminder that time is up so we’ll leave it at that.

The Chair: — Yes. I’m trying to stick roughly to the 30 minutes per party but I do not wish to cut off any member when they’re pursuing a particular line of questioning.

Hon. Mr. Shillington: — No, I think we’ve pursued this . . .

The Chair: — So I just want to make sure that you’ve finished that line of questioning and you’ve received an answer from Mr. Messer.

Hon. Mr. Shillington: — Yes, we received his response. Yes.

The Chair: — I will then move for 15 minutes to the independent.

Mr. Goosen: — Thank you, Madam Chairperson. Mr. Messer, it was very interesting to listen to the report you give, even if it wasn’t the direct answer that the minister was asking for.

I don’t pretend for a minute to be a stockbroker, and so some of my questions might be the kind of things you might hear from people at coffee row. So maybe those are people that need to be answered as well.

A very simple question coming from the statements you've made I guess would be, could SaskPower operate without being involved in such things as arbitrage?

Mr. Messer: — I think the answer is that yes, but it would not be advantageous to the company, because buying and selling — as the opinion that I've just tabled before you indicates — it's a natural activity of a large gas consumer. It also points out that it includes temporal trading, which is in fact the trading of surplus gas.

For those of you that have gone through the documents and know that I made reference in my earlier comments about SaskEnergy and SaskPower's relationship, one of the reasons that drove the decision to get into the gas business was that we had significantly large quantities of gas; we weren't consuming them. We were paying high storage costs. When we did need it, we couldn't get it delivered to us and had to buy on the spot market at higher prices when we had gas that we were paying storage on.

When Channel Lake got into the business, they undertook to trade that gas so that it created revenue and profit for SaskPower when it wasn't able to use it. So that even though the answer is yes, we would have been a very high cost consumer of gas. So we were looking at mechanisms to facilitate not only better servicing us, but creating value for the gas that we had and the circumstance that we were in.

And so it not only applied to gas, it applied to infrastructure and it applied to expertise that were able to do that for us. So we were just fully deploying the resources that we had in order to better facilitate profitability in Channel Lake, and ultimately cheaper and more reliable gas supplied for the parent itself, SaskPower.

Mr. Goohsen: — Well I understand that the reasoning behind the purchase of Channel Lake in the first place was to provide SaskPower with reasonably priced gas. And you just said you also did the arbitrage in order to get reasonably priced gas.

So I guess, was SaskEnergy informed that SaskPower's proposal to purchase natural gas in a natural gas company, through the purchase of a natural gas company in Saskatchewan prior to this transaction . . .

Mr. Messer: — If your question is was SaskEnergy aware of this, the answer is yes. In fact we asked them, as I think I have already testified before this committee, as to whether or not they wished to purchase gas reserves on our behalf and administer them rather than setting up an independent company, or SaskPower purchasing it and then undertaking to have the option of setting up an independent company. And the then, I believe it was, acting president indicated that SaskEnergy was not interested in such an acquisition.

Mr. Goohsen: — So you had contact with them. They weren't interested. I mean it's kind of mind-boggling, this whole process, to try to understand from my perspective, not so much who knew what, when, or who's to blame, but I guess the thing that comes to my mind is that we should attempt here to find out what started this problem and avoid it happening again. If we could accomplish that, perhaps we'd have accomplished

more than by having somebody fired.

So I want to go back to the beginning of who decided that it would be better to own a company and have that company operated as a subsidiary rather than to simply go into the market-place and buy gas as everybody else that would be a consumer would have to do. And if arbitrage is the normal way that you buy and sell gas, fine; so be it. But who made the decision then to buy a company to operate this?

Mr. Messer: — It was based on a study that was undertaken by myself. The group that carried this out for me was the fuel supply task force. Also Mr. Dombowsky's consultative work facilitated not only the acquisition but the management of Channel Lake.

Once the fuel supply task force had completed its deliberations and made its recommendations, management first dealt with whether or not it should conclude that an acquisition of a gas company would in fact facilitate resolving SaskPower's problem. That was undertaken, and the executive of SaskPower concluded that this was a good management decision to make.

It was then taken by way of a recommendation to the board of directors of SaskPower, who agreed with it. And I believe in this instance it was also taken to CIC and ultimately to the Executive Council of the Government of Saskatchewan.

And I think to better give you more detailed information, not taking the time of the committee to do it now, document 2, which is the document dealing with the board of directors meeting on April 22, 1993, and the topic summary goes into some more detail than I've gone into here, giving the logic for such a recommended purchase.

Mr. Goohsen: — Well I guess I would have to wonder . . . First of all, let me ask you, did you enter into with Channel Lake, primary production, the drilling of gas wells?

Mr. Messer: — No. This was low-pressure gas . . . of a low-pressure gas field that by and large had been fully tapped. So from our point of view it was a more attractive acquisition because we weren't wanting to get into the gas business in the sense of exploration and development. What we wanted was a secure reserve of gas that was transportable; so that it was proven, it had pipeline access, and that gave us the first needed component of facilitating what we thought Channel Lake would provide to us.

Mr. Goohsen: — Where is this gas field located?

Mr. Messer: — It's not far out of Edmonton . . . or Medicine Hat. It's in southern Alberta.

Mr. Goohsen: — This is an Alberta gas field?

Mr. Messer: — It is an Alberta gas field.

Mr. Goohsen: — It's fully developed that you were bringing gas into Saskatchewan from.

Mr. Messer: — Well again, this wasn't . . . it wasn't conceived that we would literally use that gas. What this would do for us

would give us the opportunity, if we needed gas and weren't able to get it, we had options. Because we could look forward and have either sold gas and made profits on it in order to pay spot prices and offset the higher cost of those, we might be able to trade, which we obviously did. We sold gas in reserve and made arrangements in order to facilitate gas from some other source.

So I think that there were a whole host of options that were available to us that we didn't have previous to having an actual reserve of gas. Not unlike, I guess, farmers who are in the market-place, when they've got their grain they've got other options in respect of how they might want to go about selling it that others don't have who play the market — they don't have the commodity. I mean that the commodity gives you a leg-up over anybody else.

Mr. Goohsen: — Now that's a pretty debatable thing among people with different philosophies but . . .

Mr. Messer: — Depends how well you manage it.

Mr. Goohsen: — Well obviously we hope the farmers do a better job than Channel Lake did with its gas trading. So this gas field then actually never had any physical, direct use for Saskatchewan consumers. It was probably sold into a pipeline, went to Toronto or some place like that. So it was really a company that was designed to play the markets, not to actually give security of gas supply.

Mr. Messer: — No, it was very much the latter. And I don't know whether it's fair to get hung up on whose gas you're consuming. I mean it's a deregulated environment. Gas goes into a pipeline and it comes out the other end, and there may be a producer putting gas into that pipeline who is a consumer at the other end. You don't know whose gas you're using. What counts is that you're getting value for the gas and you establish security in respect of the undertakings that you commit yourself to in regard to how you put that gas in the pipeline and when you put it in the pipeline.

And in respect to your earlier comments in regard to gas trading, I mean our gas trading was profitable up until the losses hit us and nobody predicted those. It was facilitative in a very significant way in enhancing and improving the parent company, SaskPower's, requirement and needs for gas.

Mr. Goohsen: — Could not SaskEnergy have done all of this trading and all of this speculating through its mechanism and its existing structure?

Mr. Messer: — I mean you may best ask that of SaskEnergy. My answer would be that one would assume they could, but at this particular point in time, as I said, we approached them in regard to the acquisition of the gas reserve. They were not interested. The documents will already show as well that we had significant and vast quantities of gas in reservoir that they were holding for us, paying higher than market price for storage. And when we needed that gas we couldn't get it into the system and were buying gas at a higher price.

In fact I think the records will show that the then president, Mr. Bill Baker, when we were trying to negotiate a reduction and a

solution to this, said that they were not interested in any kind of negotiation that was going to be loss of revenue to them.

Our position was — and it can be debatable — our position was that we were hamstrung in regard to the obligations that we had with SaskEnergy. Large quantities of gas, high storage costs, no ability to get it into the pipeline when we needed it, having to buy spot market — as a responsible administer of SaskPower, I had to find a solution. We weren't able to negotiate at that time.

We ultimately did, and the relationship between SaskEnergy and SaskPower is now very much improved. But we had to arbitrarily do some things on our own in order to, I think help facilitate that.

So here were two companies that were, one, wanting to get a better deal in order to give security and more reasonable pricing for their consumption. Another one who had a contractual arrangement with us who was getting significant revenue and not wanting to reduce it. I don't think that one should be unduly critical about those. I mean it was a business deal that was good for one and bad for the other, and we being the bad end of it tried to negotiate a different arrangement and we went about it in a businesslike manner.

The Chair: — Mr. Goohsen, would you start to wrap up your line of questioning now, please.

Mr. Goohsen: — Yes, I certainly will. Well okay, I guess we don't have very much time and I want to follow this some more, but I think I have to ask you this question in fairness to yourself: where did this thing go wrong? Who should accept blame, if there is blame, and how would we prevent this in the future?

Mr. Messer: — Are you making reference to the sale of property?

Mr. Goohsen: — No, the entire fiasco of why we're here. Where did it originally go wrong? Why did it go wrong? Should we blame any individual, and how can we prevent it in the future?

You wanted the question; you got one. I didn't say it couldn't be a big one.

Mr. Messer: — Well I appreciate the question. I guess if I could give you the answer in the time that's left to you, the inquiry could simply adjourn, because that's what the whole process is about here. And so in my view, as we continue this deliberation, I think that the documents and the evidence will show that this was a well-managed company.

One thing went wrong. The arbitrage, yes we lost. But I mean we . . . What is difficult to communicate — and I said this yesterday — to the community at large and perhaps even to this committee and the media is that it's fine if you're in the private sector; you can lose money. I listed these all off. Nobody said anything about it. They lost tens and tens of millions of dollars. And I know it's a private company, but they can lose money.

We're there doing and managing every bit as good as they are and we lose some money in arbitrage and it's a provincial

circumstance that led us to this. I think fundamentally we have to ask ourselves: if we can't deal with this kind of circumstance, then there should be a different circumstance entirely.

Is it really fair that these companies can lose money; they continue to do business. In our instance we lost money. We manage as well and I would say better than some of these companies. Yet we find ourselves in this kind of circumstance in respect of the arbitrage. We take risk and we generate, hopefully, more times than not, revenue and profit on that.

And SaskPower, standing as the parent, has demonstrated that better than any electric utility in Canada in the last couple of years. I think that has to be relevant to what we do when we go through this process.

In regard to the sale, my view is and I think the evidence shows that we exercised due diligence — I and my executive. And when people, I think I said yesterday, say no SaskPower officials read the document, Mr. Portigal was a contracted employee of SaskPower. He read the documents. He knew the documents. There was something wrong in respect to the communication of those documents to the rest of the people. And there are legal opinions here from Mr. Kenny who says it wasn't unreasonable for our people to assume that we were honest and forthright in regard to what was happening.

And that's where something went wrong, but it wasn't because of negligence. It wasn't because we didn't have one other member on the board of directors of Channel Lake. Something went wrong and you're going to have the opportunity to question some persons at a later time in respect of why. Was it deliberate? I think that's the question that you people have to conclude.

I made my decisions as the responsible chief executive officer as to, in that environment, what had to be done. And I stand by what I did as being proper and right and minimizing the effect of whatever went wrong on that sale. That that's what I think we have to focus on here — not the politics or the headlines in the paper.

The Chair: — Thank you, Mr. Messer. Thank you, Mr. Goohsen. I will now turn to the Saskatchewan Party for 30 minutes.

Mr. Gantefer: — Thank you very much, Madam Chairman. Well I think, Mr. Messer, you gave me an excellent opportunity to talk about indeed the headlines in the paper, because I read with interest and I quote from today's *Leader-Post* where it says and I quote, "Lingenfelter insisted the testimony Messer gave under oath before a legislative committee is erroneous."

I think that if you extract the kind of weasel words out of there you know that basically what's happening is Mr. Lingenfelter is saying that you lied under oath, Mr. Messer. And that I think is a pretty serious allegation that reflects on testimony you've given to this committee.

And I want to go back from the period . . . or go back to the period after the June 20 board meeting. As I recall, about a week later on June 27, there was a major reorganization of the Romanow cabinet and Mr. Lingenfelter became minister

responsible for SaskPower and all of the Crowns. And I would assume that with that change you would have given Mr. Lingenfelter a complete briefing. Would that be a safe assumption?

Mr. Messer: — No, that's not a safe assumption.

Mr. Gantefer: — Are you saying that you didn't give him a briefing on his responsibilities as the new minister responsible?

Mr. Messer: — No I did not.

Mr. Gantefer: — Why not?

Mr. Messer: — I wasn't asked to. I mean the minister, when he was appointed the Chair of SaskPower, was replacing a minister who I felt if there were outstanding circumstances, might have conveyed that to that minister. He was also a board of . . . a member of the board of directors of CIC prior to his being appointed the minister in charge of Crown Investments Corporations. All of the information in respect of this was a matter of record with the Crown Investments Corporation. He was, after all, their minister.

I assumed that he would be given a briefing by the Crown Investments Corporation, and if there was need for any additional follow-up, then we would undertake to provide that to him. I had no reason to believe that this matter wasn't known by most ministers at that time, and that indeed if it was a significant issue, that the Crown Investments Corporation would have undertaken to brief him and we'd been called in if there was need for more detail. And so that was the case at that time.

Mr. Gantefer: — Was it your recollection that you had provided a full and complete briefing about the Channel Lake issues to the CIC board when Mr. Lingenfelter was a member of it?

Mr. Messer: — No, I did not. I did what I'm responsible to do and that is make the executive management decisions; those that I think need to be known by the board or need board facility or approval, I take it to the board.

And I have testified here earlier that I undertook to convey, in advance of that board meeting, the circumstances of my recommendation that would be made at the June 20 board meeting to the then Chair of SaskPower, to also the Chair of the audit finance committee, and to the two other board members who constitute the audit finance committee; and then at the June 20 board meeting fully discussed and disclosed to the extent the board wanted and/or was satisfied with the information behind the recommendation, which ultimately led to their approval of that.

I might suggest to you that that topic agenda was made available to the secretary of the SaskPower board, who was a CIC employee, so that CIC would have had this information well in advance of the board meeting. I assume that there's a purpose behind that — so that they can scrutinize items that come up if they think that there is reason for CIC involvement and/or further information or deliberation or some other action, they would undertake to do it. At the end of that board meeting,

the minute and the decision of the board is the secretary's property and again goes back to the Crown Investments Corporation.

I don't pretend to, with precision, understand what CIC does with that but I assume because there is a secretary appointed by CIC, it is to have a direct link with the Crown corporations that fall under their umbrella; so that there is a communication of information and decision making.

And I also believe — I stand to be corrected, but I think I'm correct — that my Chair of SaskPower at that time was also a member of the Crown Investments Corporation board.

Mr. Gantefer: — So if there was a breakdown in communication, from your point of view, it wasn't your responsibility.

Mr. Messer: — I don't believe so. I don't think that my job is to go beyond the realm of my responsibility in SaskPower and report to my board. I think it would be inappropriate of me to supersede that and go to either the cabinet or to Crown Investments Corporation. I think that we have an arrangement of operating mechanisms and I believe that I was operating properly within them.

Mr. Gantefer: — Were you ever asked by the minister responsible in the turnover, I believe it is Minister Lautermilch, to prepare briefing information that he would then transmit to the new minister responsible, Mr. Lingenfelter, after the 27th change?

Mr. Messer: — No I was not.

Mr. Gantefer: — At the subsequent . . . from the turnover on June 27 and leading through the September and November board meetings, were there any direct briefings by yourself to Mr. Lingenfelter on these matters in that time period?

Mr. Messer: — No, there was no . . . I felt that there was no reason to do it. We had dealt with the matter in what I felt was a legitimate fashion. The board had made a decision to the extent that there was a circumstance that was a carry-over on the September 10 board meeting.

As I have noted, the board did not adopt the Channel Lake minute from the minute of June 20. There was a general discussion among the board that the minute did not accurately reflect the amount of time and discussion which took place with respect to that matter, and Minister Lingenfelter was in attendance at that.

I do not know whether that minute was amended at that September 10 board meeting or whether it was subsequently amended at the November 6 meeting. But I can say at the November 6 meeting that as part of the president's report, I provided to the board an update which I hoped would bring closure to Channel Lake Petroleum sale.

And the minister was available at that meeting and I think you have a document. I don't know what a number is, but it was an item that I took to the board which says the following:

A summary, an update of the outstanding issues pertaining to the sale of SaskPower to Direct Energy Marketing Ltd. of Channel Lake shares.

(1) SaskPower has exercised its option to take an assignment of legal action commenced by Channel Lake to recover some of the trading losses, undertaking due diligence to see if we can recover some of these losses. This action is still at a very preliminary stage and we're currently waiting for the report and recommendation by outside counsel in handling the matter.

I'm not going to read all of this to you.

(2) Based on our assessment of the circumstances as confirmed by advice from outside counsel, no legal action against Lawrie Portigal is proposed. As well, Lawrie Portigal would be considered a key witness for Channel Lake in the foregoing lawsuit. An action by SaskPower against him could certainly jeopardize his willingness to cooperate in those circumstances.

Clearly I'm bringing to the board's attention Lawrie Portigal and the circumstance that existed at that time. He was fired, obviously for cause. We're now dealing with another matter in respect of what we should do about Lawrie Portigal. The minister was in attendance at this board meeting.

(3) The staff and administrative transfer subsequent to the sale of Channel Lake has been ongoing, a new structure has been finalized.

There's more about that.

(4) Through DEML we've been able to finalize the trading losses up to the end of 1997 gas year.

We're talking about the trading losses and where they stand at that particular point in time. I go on to talk about where they are. The trading losses at that time were valued at \$5.605 million.

(5) The gain on the sale of Channel Lake has been finalized.

And I go on to identify that and then at that time the total gain realized on the sale of Channel Lake investment therefore amounts to about \$2,284,602. This was an attempt . . .

The Chair: — Mr. Messer, I'm sorry.

Mr. Messer: — This is document number . . .

The Chair: — That's right, we need the document number.

Mr. Messer: — 900.

The Chair: — Committee members are having difficulty following it. Would committee members please refer to document no. 900, please.

Mr. Messer: — I'm sorry about that, Madam Chairperson. But I mean, this . . .

The Chair: — Which binder is it, Mr. Messer?

Mr. Barrington-Foote: — It's in Channel Lake Petroleum Ltd. Property Sale & L.S. Portugal Consulting.

Mr. Messer: — Now I'm only conveying to this committee, by and large, what was made available to the board of directors on September 10 and on November 6.

Mr. Gantefer: — The document you refer to, was that document tabled with the board or was that your notes or part of your report?

Mr. Messer: — This is an information item that would have been circulated to the board members, I would assume. And I have . . . This is my copy. I have — as I tend to do — marked what I want to give emphasis on in respect of what I convey to the board.

Mr. Gantefer: — So you presented that document to the CIC board meeting.

Mr. Messer: — No, to the SaskPower.

Mr. Gantefer: — SaskPower board meeting.

Mr. Messer: — Yes. I'm sorry, my counsel tells me that we have asked for this material but we have not yet received it. This is in the book. We have asked for other related material and the minute of the discussion; we have not received that.

Mr. Gantefer: — Okay, and Minister Lingenfelter was present at that meeting.

Mr. Messer: — I believe I'm correct in saying that he was the Chair of both the September 10 and the November 6 meeting.

Mr. Gantefer: — Do you recall that the minutes will show the reaction of the minister or of the board to your report, or was there discussion in detail to your report?

Mr. Messer: — I do not recall whether there was extensive discussion in respect of the amended minute that was raised by a board member on the September 10 board meeting. I mean that was raised by a board member saying, I don't believe the current minute sufficiently communicates the level of attention we gave to this matter; we should rewrite it.

At the September 10 and November 6 meetings, I don't know to what extent there was discussion but I do know that the board agreed that it should be amended and that there should be a different intent in the minute. And I can't recall to what extent or whether that minute was ever really approved, and you may want to question other witnesses in respect of that.

In regard to this, I have no reason to believe that after the discussion it wasn't accepted, because we moved on as per the information that I gave, available here.

This didn't require a decision of the board. It was bringing the board up to speed in respect of what had happened since they had made their decisions. There was no real new actions here. I mean we had already made our decisions in respect of litigation

and the like of that.

So I was bringing them up. In my mind this would bring closure as an information item, as to where things stood. There would obviously be some discussion in respect of that. I do not know to what extent. I do not know whether the minister participated. I cannot recall.

Mr. Gantefer: — This September meeting, was this the first meeting of the SaskPower board after the June 20 meeting?

Mr. Messer: — Yes. We did not deal with this matter at the September 10. This was the November 7 meeting in regard to the information item. The minute was brought up at the September 10 meeting. Yes, it was the first meeting after the June 20 board meeting.

Mr. Gantefer: — At the September meeting, was there any discussion . . .

Mr. Messer: — Let me . . . I think I'm sure of that, but my counsel says maybe I shouldn't be so speedy here.

We do have evidence here that there could have been board meetings on August 1, 16, and 26, but we don't have . . . it's not part of the documents that I have available to me. So I may stand to be corrected in respect to whether there were other board meetings. The binders do not show it, but this indicates that there could have been board meetings on August 1, 16, and 26. And it indicates that two of them would have been by conference call; so they might have been dealing with specific subject matter because of dollar limits or something the board would have had to approve it. I do not want to comment beyond that until I get the documents to refresh my memory.

Mr. Gantefer: — So if our request for documentation has been honoured, then it is likely that the topics on those August meetings had nothing to do at all with Channel Lake? Would that be your recollection?

Mr. Messer: — I mean I do not want to have the record show that I'm positive about that, but my tendency would be to say that it was likely very focused need for board meetings because of the three of them being in August, which is unusual. But I think that I will take notice and try to recall, once I see the matters that constituted the agenda, as to whether or not there was any discussion about Channel Lake.

The Chair: — Mr. Gantefer, I believe that your original letter requesting certain documents asked for all documents and board minutes from SaskPower relating to Channel Lake, so we're just checking that now to see.

Mr. Gantefer: — Thank you, Madam Chairman. I think if the witness recalls the details of this, then perhaps that's sufficient. However, I think it may be worth the review of the agenda items on those meetings to make sure that there was nothing related to Channel Lake discussed.

Minister, following up or continuing on on the whole issue of Mr. Lingenfelter's reaction, if there was some discussion in September, and certainly you're indicating that there was detailed discussion in November, about the fact that all of the

issues surrounding Channel Lake were discussed, can you say that, after that, was there any requests from the minister to you for additional information. And I'm thinking additional internal reports or additional information that may lead the minister back to the circumstances surrounding why those final decisions or recommendations and updates that you indicate you've given to the board in November were given. Was there any request by him of SaskPower to provide background information as to why we came to that point, if you like?

Mr. Messer: — I don't believe I said that there was detailed discussion here. I said I didn't recall whether there was detail. Certainly there was some discussion with respect to the information item that I put forward.

The answer to your question is I know of no request from the minister or his office in respect of further information pertaining to this subject matter.

Mr. Gantefer: — So you then had no conversations, you said, with Mr. Lingenfelter. Were there any conversations with any of his staff members asking SaskPower to provide that background information?

Mr. Messer: — Up to including what dates?

Mr. Gantefer: — Up to and including at the end of November or following the November meeting. I guess what I'm getting at, does it ring any alarm bells in the minister's office?

Mr. Messer: — I know of no such communications up to and including the November board meeting.

Mr. Gantefer: — Was there, following the revelations that occurred in the discussion at the November meeting, were there any representations from the Premier's staff or the Premier's office in terms of asking for further information of what had happened with the Channel Lake issue?

Mr. Messer: — None whatsoever

Mr. Gantefer: — At any time between the June 20 meeting and the year end virtually, was there any requests for information about the events surrounding Channel Lake from the Premier's office?

Mr. Messer: — I believe that the information that has been tabled will indicate that there were some meetings that the Premier might have been privy to in December. I do not know of any direct requests from the Premier's office.

I think what was stated yesterday, that there was a request on December 7 by the Deputy Premier to CIC raising concerns based on an article in the *Leader-Post* — that he wanted a detailed report. And again on December 15 to Mr. Wright at CIC, that he wanted — I think he says there's some confusion and criticism in respect of Channel Lake — wanting detailed information. And then on December 16 the document shows Mr. Wright provided to the Deputy Premier the information that he had requested prior to his statement in the House on December 17.

Unless there's other documentation that I'm not aware of, this

was all the Crown Investments Corporation; none of this was copied to SaskPower, nor was SaskPower, to my knowledge, asked. I do believe however, that sometime in the latter part of December there were some requests for information from the minister's office, or somebody representing the minister, for information. I believe that involved Mr. Ken Christensen. It could have involved some other people.

My recollection is that this happened in the latter part of December. And I guess as a note, when I look at the member from North Battleford, in respect of why I didn't respond to the 17th statement, I was . . . perhaps I took them early, but I left on my Christmas holidays prior to the 17th. And I was at my son's in Grand Cayman, which was much more enjoyable than it is here right now.

So I was not truly aware of it and did not respond in that respect. But I do believe that when I returned, Mr. Christensen, in a conversation, indicated that there were requests for information during the latter part of December. And I cannot be more specific about how that was conveyed or to whom.

Mr. Gantefer: — Were those requests as a result of the Provincial Auditor's report or the information that had been tabled at the SaskPower board in November?

Mr. Messer: — I can only go by what the document says and obviously it indicates that the Provincial Auditor is well aware of what happened in Channel Lake because it was a matter of record for him at the year end of 1996. And he would have access, I imagine, to our audit committee's reports, which had this information on a monthly basis, and perhaps even the board of directors' quarterly reports. But the minister's first communiqué of December 9 said . . . makes reference to the Provincial Auditor but it looks like his source is from the *Leader-Post*.

Mr. Gantefer: — Thank you. I'd like to move back to the June 20 board meeting and this is a meeting where essentially you withheld important information from the board and deliberately misled the board about the legal opinions you received, according to the Gerrard report.

You received the first version of the internal audit committee's review of the sale of Channel Lake on June 16 and yet you never provided this report to the board at its June 20 meeting. Why not?

Mr. Messer: — If you're talking about the internal audit that I instructed to be carried out in regard to the sale of Channel Lake, the records will show that the Chair of the audit finance committee had access to that and I believe that other members likewise could have looked at it if they wanted to, but it was not a document that was circulated to every member of the board.

Mr. Gantefer: — Was that report not very damaging . . . or very damaging to SaskPower officials and indicated less than a very much pleasure in the way the whole thing had been conducted, and did you withhold that from the board? How would they know to ask for this kind of information where it certainly wasn't in your topic summary?

Mr. Messer: — I think, firstly, I believe we have a copy here.

The internal auditor's report is not damaging. In fact I think its first paragraph commends the executive of SaskPower in regard to its deliberations in dealing with this. It does not find negligence, as some people have suggested.

Mr. Gantefer: — The first version or the final modified draft?

Mr. Messer: — Well, and this was a matter that was, I think, deficient in Mr. Gerrand's report. It is the responsibility, I believe, of the internal auditor or any reporting officer to the board to give the final report, not the working document. I don't think boards function if there happens to be 50 or 60 pages of working documents that may ultimately conclude with a two- or three-page final report. That is the way the system works.

And if the board of directors are conscientious and knowledgeable and they need more information, then we will have to provide it. But I think it would be unfair and a board would not be able to operate if we give a two- or three-page final report and give all of the working documents with it. Nothing works like that. So that I disagree with Mr. Gerrand when he says you give a final report but you should have given the working documents.

I think it's an interesting note that we had, when this undertaking was conveyed to us, the opportunity by letter that we would see the draft reports of Mr. Gerrand and the Deloitte Touche. We had no opportunity to have access to Mr. Gerrand's working documents. He gave a final report, and it was his final report, which is somewhat of a contradiction when he says that the board of directors should have the working documents of the audit finance committee. But when one looks at his report, we have no opportunity to look at the working drafts.

And so I think that there is a startling contradiction in respect of how he goes about conducting his business. That's my view.

The Deloitte Touche was brought to my office at 3:45 or thereabouts on Friday. I was at a board meeting outside of the province, didn't get back until about 9:20 Monday evening. We were to have in CIC's hands our comments on that draft report by 12 noon. I don't think that was fair nor was it accommodating in respect of being able to adequately respond to a quite voluminous document that Deloitte Touche had put together. I was subsequently given until 5 or 6 o'clock on Tuesday to do it, and I conveyed that if this was going to be done properly it should have been at least a week in order to properly facilitate responses.

And I think the documents that you have in front of you now would be significantly more accurate and significantly more telling if we would have had the opportunity to respond to the errors that they include and that hopefully this process might be able to identify some of those. But my own personal view is this was not facilitative nor was it fair to SaskPower in respect of trying to put together conclusive end documents. The time was not there for one, and we just simply weren't given the opportunity to respond to the other.

Mr. Gantefer: — There was a fair significant difference between the first draft of the internal audit committee's review and the final draft. Was that done and changed because of direction given to you, that you found the first draft

unacceptable?

Mr. Messer: — No. I've certainly talked to the internal auditor. But the internal auditor is independent, and I mean there would be no value in my undertaking to commission the internal auditor to facilitate me in looking at these views if he didn't have the opportunity to report what he felt he should.

I think if I could bring your attention to a couple of documents that . . .

The Chair: — Mr. Messer, for the record and in the future — I will be asking all witnesses this — when you're referring to documents will you please identify them, identify the binder and the number of the document.

Mr. Messer: — I was just about to identify the number.

The Chair: — Thank you.

Mr. Messer: — The binder is Channel Lake Property Sale, documents 860 to 953, 1001 to 1005. And document 882 is a memo to file where I state in the second paragraph:

I told Ron I did not want a rubber stamp but he was to look at what occurred, why, and what, if any, corrective measures should be in place within a reasonable time frame. I reviewed the three-page document and outlined my confusion with the reference to SaskPower officials being reviewed then the inclusion of omissions by Portugal in the text. Ron indicated that I was supposed to receive only page 1 and page 3 of the report, and that page 2 was a follow-up list. (I think there was some confusion there.)

If I take you then to document 885 in respect of the report from the internal audit committee, on page 2 of two pages, under executive summary, summary and conclusions, he says:

We conclude that generally SaskPower officials exercised due diligence and spent countless hours of work in a very constricted time frame in their efforts to consummate the deal surrounding the sale of Channel Lake while protecting the interests of the corporation. We were unable to find an explanation for the price change from 26 million gross to 20.8 million gross, given that SaskPower consistently expected to receive net proceeds of 20.8 million.

We did not see evidence to indicate where the key financial clauses contained in the final share and note purchase agreement were reviewed and approved. We found evidence that draft 1, dated March 18, 1997, had been reviewed in detail. There was also evidence that draft 2, dated March 26, 1997, was reviewed. Draft 3, dated March 31, 1997, was not circulated to SaskPower officials. SaskPower officials signed the final agreement April 1, 1997. DEML signed April 3, 1997.

And of course this is what was the genesis of the whole reason we're here. My officials had no knowledge of the third draft. Having reviewed the first and second, there was no reason for them to believe that they weren't signing what in effect was the second draft.

Mr. Gantefer: — If I'm correct, in your June 20 topic summary, really clearly you misrepresented the legal opinions provided by Brian Kenny. You said, and I quote:

The reviews found no negligence on the part of SaskPower officials or Mr. Portigal.

That's really a flat out misrepresentation, a lie, Mr. Messer. Because Mr. Portigal clearly was not only negligent, he acted in direct defiance of the instructions that were given to him before he closed the deal on June 2. It's in the Kenny report.

Kenny goes on to say:

As we see it, a court would conclude that there was contributory negligence on the part of SaskPower by failing to carefully review the documents before execution on behalf of the corporation.

Brian Kenny clearly stated that he believed the court would find the actions of SaskPower officials to be negligent. Yet your topic summary said the reviews found no negligence. Why the difference?

Mr. Messer: — In respect of Mr. Portigal — I think that negligence is by and large an act of carelessness — obviously with Mr. Portigal, this was not the case. Mr. Portigal had been dismissed by myself at that time. It may have been a poor choice of words in respect of saying all three were not negligent.

Clearly I conveyed to the board, and by my actions it was conveyed to the board, that Mr. Portigal was beyond negligence. In my view, there was something more here, to the extent that I relieved him of his duties.

And so I don't think that you can say that there's a contradiction here. It might be the interpretation or the wording, which I say on hindsight maybe could have been put better, but certainly I wasn't saying that Mr. Portigal was free of any criticism. He'd been fired by myself, so that I think that that was clear, that I was not holding Portigal negligent; I was holding him for something more responsible than that. And I think that there was some deliberateness here in respect of his actions. And so that was the basis of the dismissal.

In respect of the other employees of SaskPower, as I have already indicated, my internal auditor said that there was no negligence on their behalf. And Mr. Kenny says in one instance, in respect of questions that I put to him:

Were SaskPower personnel in default of their responsibility . . .

Let me first give you the . . . Madam Chairperson, I'll do this. Channel Lake Legal Opinions, document 879, Mr. Kenny to the question:

Were SaskPower personnel in default of their responsibilities by failing to read the contents of the documents which they signed and sealed on behalf of the corporation on April 1, 1997?

He says:

Clearly it's an arguable point, but on balance it is our conclusion that it was not unreasonable to execute the documents that were presented by Mr. Portigal for that purpose without reviewing them in any particular detail.

As we see it, one must assess this conduct in the context of the events and circumstances pertaining at that time.

It goes on to say:

Considering these factors, we do not think that it was unreasonable for your representatives to accept the documents as presented by Mr. Portigal for execution without reading them in detail so as to learn of the precise reduction.

No negligence.

The Chair: — Mr. Gantefer, can you wrap up the questions, please.

Mr. Gantefer: — Thank you. Mr. Kenny also stated that legal action could be taken against Lawrence Portigal. Did you provide that option to the board at the June 20 meeting?

Mr. Messer: — Yes. I mean clearly they were in need of information in respect of what might be available by way of options, and as discussed here earlier, that matter was dealt with at the board meeting.

Mr. Gantefer: — And you recommended that action not be taken?

Mr. Messer: — That is correct.

Mr. Gantefer: — On the basis of the written report or on the basis of the verbal discussion you had?

Mr. Messer: — On the basis . . . Well I think the answer to your question is, and I think it has been a matter that has been brought to the attention of the committee in the course of its earlier deliberations, and that is, by and large at that time and certainly since, with the significant opinions that are around, the majority of those counsels conclude that unless proof of loss could be obtained there would be no significant logic in undertaking legal action. And this is a large part of what drove my decision to recommend that no action be taken.

The property was appraised at half a million dollars more than what it sold for and I think if you look at virtually all the opinions, with the exception of a few, the counsels are concluding that it would be unlikely that you would have any success because you would not be able to prove loss.

Mr. Gantefer: — We'll get into the \$5 million loss at another time, Madam Chairman.

The Chair: — Yes, thank you. We will now take a five-minute break. We'll reconvene at 10:30.

The committee recessed for a period of time.

The Chair: — Excuse me, we will reconvene now. I will now move to Mr. Hillson to pursue 30 minutes of questioning on behalf of the Liberal Party.

Mr. Hillson: — Thank you. Mr. Messer, I want to also review with you the board meetings of September 10 and November 6. You've told us that the Deputy Premier was present for both meetings.

Mr. Messer: — My recollection is that yes, he was there. We do not have the minutes. We've asked for them, to be absolutely positive. I believe in reading the paper this morning, I think it's correct to interpret from his statements that he was there. So that I think I'm reasonably comfortable in saying yes, he was at both meetings.

Mr. Hillson: — I thank you for drawing our attention to document no. 900. But you are saying that clearly and unequivocally the board was made aware at that time that Mr. Portigal had been fired by you.

Mr. Messer: — Yes.

Mr. Hillson: — And that specifically he had been fired because you had information that he was double-dealing.

Mr. Messer: — I don't know whether I used those words, but that he went beyond the powers that were conveyed to him and failed to carry out specific instructions that were given to him by SaskPower staff.

Mr. Hillson: — But specifically that he had a relationship . . . and in fact was on the payroll of Direct Energy. Did you tell the board that, that you had information that he was on two payrolls?

Mr. Messer: — I cannot recall whether that was specifically reported. We had information about that, but I cannot be positive that that was a matter that was conveyed to the board. It may well have been.

Mr. Hillson: — You did tell me yesterday that you learned in May that Mr. Portigal had been hired by Direct Energy.

Mr. Messer: — I believe I said late May or early June. But it was in the last few days of May and those first couple of days of June that there was evidence brought to our attention that in fact he was signing documents on behalf of DEML (Direct Energy Marketing Limited).

Mr. Hillson: — And that he was working for both Direct Energy and us?

Mr. Messer: — That appeared to be the circumstances.

Mr. Hillson: — So this was your information as of the end of May or early June?

Mr. Messer: — That's correct.

Mr. Hillson: — Now what I want to know very specifically, sir, that terribly crucial fact, was that specifically drawn to the attention of any member of the cabinet?

Mr. Messer: — Any member of the cabinet? Not directly by myself.

Mr. Hillson: — I mean, there are these board meetings, the June 20 meeting. Mr. Lautermilch was present, is that correct?

Mr. Messer: — That's correct.

Mr. Hillson: — Okay. At the June 20 meeting did you specifically say, I fired Mr. Portigal. We have evidence that he was working for both sides.

Mr. Messer: — I cannot say with absolute confidence that I said he was working for both sides. Obviously I had dismissed Mr. Portigal and I gave reasons for it. Whether that was included in the reasoning, I'm not specifically sure. But I know that I conveyed to them the other reasons which have already been brought to the attention of this committee and there was certainly no difficulty in the board agreeing with that recommendation — agreeing with that action. It was not taken as a recommendation.

Mr. Hillson: — Okay. So you are telling me that you are very confident in testifying under oath this morning that Mr. Lautermilch was aware Portigal had been fired but you cannot say with certainty that you told Mr. Lautermilch that he was fired for conflict of interest?

Mr. Messer: — Well I think that yes, fired and conflict of interest, but I don't know whether it included the fact that he might have been employed with DEML at the same time he was continuing to represent SaskPower.

I said he obviously did not carry out instructions that were given to him and he superseded the powers that he had empowered in him in regard to consummating the deal.

Mr. Hillson: — Yes, certainly, sir. I don't mean to split hairs with you but there's a difference between not having followed instructions and actually having two masters. That's the conflict of interest. He's working for two parties. Now that's the information you have and I really am very interested in knowing if that information was relayed to Mr. Lautermilch.

Mr. Messer: — Well I again, I apologize if I don't have as good a recollection as some in regard to . . .

Mr. Hillson: — We understand.

Mr. Messer: — But I know that we discussed at that board meeting legal action against Portigal. I would have discussed . . . I would have no reason to withhold information but in this particular instance, I do not know whether that was a matter that was discussed.

I felt I had enough reasoning, certainly in the other which I am quite positive I brought to the board's attention, and we discussed, and that was sufficient in my mind for the action I took, and I think it was sufficient in the mind of the board that I had taken the right action. But I apologize. I cannot be definite as to whether or not I raised the fact that he was concurrently employed with DEML as he was also employed with SaskPower.

Mr. Hillson: — At any rate I assume that at the September 10 and November 6 meetings when you were discussing Mr. Portigal, it would have been common ground for all persons at the meeting that Mr. Portigal was now in the employ of Direct Energy.

Mr. Messer: — I don't know whether we really talked about Mr. Portigal at the September meeting — we talked about the minute — but certainly on the November 6 meeting when I was talking about whether we were going to take action against Portigal, obviously.

Mr. Hillson: — So, sir, are you then testifying this morning that you are confident that on the September 10 meeting the persons at that meeting would have been made aware by yourself that Mr. Portigal was in conflict of interest?

Mr. Messer: — Not at the September 10 meeting. At the September 10 meeting we were dealing with the minute in regard to the June 20 and I don't know whether Portigal was a discussion. There was a conversation around whether the minute was adequate in covering what actually took place on June 20. At the November 6 meeting where I have this information and we're specifically making reference to Portigal, obviously.

Mr. Hillson: — Okay. Thank you. That's what I'm trying to get to. So it's the November 6 meeting. And you have of course referred us to document 900, and are you able to state positively, sir, that at the November 6 meeting the persons at that meeting were made aware by yourself that there was evidence of conflict of interest on Portigal's part?

Mr. Messer: — Well as you know, we have asked for whether or not there might be other information in respect of that November 6 board meeting. I cannot be positive that we specifically discussed conflict of interest in regard to Lawrie Portigal. I felt that we'd already dealt with it. The action had been taken against Portigal. Obviously I was trying to close it and here was some information that I felt should be made available to the board in regard to Portigal and the role he might or might not play in the future.

Mr. Hillson: — But, sir, of course all of the documents and indeed this inquiry is because at the last minute 5 million disappears off the purchase price. Portigal appears to be the man who is in the centre of that. Do you agree with me on that?

Mr. Messer: — Yes I do.

Mr. Hillson: — Surely it is key here, or potentially key, that the fact he has a relationship with the people he's selling the company to just possibly might provide a motive for why 5 million disappeared at the last moment. You're nodding your head, sir.

Mr. Messer: — Yes.

Mr. Hillson: — So that appears to be the link, or least a potential explanation for the link as to why there's a last minute change in the documents?

Mr. Messer: — It could appear to, yes.

Mr. Hillson: — So this is not a minor piece of information. This is the keystone as to what happened and why.

Mr. Messer: — Pardon me. I'm sorry, I didn't hear the question.

Mr. Hillson: — This is potentially the keystone — 5 million has disappeared at the last minute off of the documents. The man we thought was working for us to protect our interests and who assisted with this 5 million disappearing, we now find has a relationship with the other side.

The Chair: — Mr. Messer, I'm sorry. For the record a nod is not sufficient. You'll have to verbalize your response.

Mr. Messer: — Well I believe the answer to the member is that yes, it was part of my reasoning for dismissing Mr. Portigal. I cannot be certain that it was in any way discussed at the board.

Mr. Hillson: — Then as I say, I certainly don't mean to argue with you, sir, but it seems if we have come together to the extent that we are in agreement that this conflict of interest and the disappearance of part of the purchase price at the last minute, this is potentially the key to the whole story. So obviously, it is a terribly significant fact to bring to the attention of the minister responsible. Do you agree with me on that?

Mr. Messer: — Yes, I've said it was an important fact. I cannot recall whether it was part of the information that I conveyed to the minister. Or to the board, for that matter. I mean I believe I gave adequate reasoning behind my actions, but I cannot be certain that is representing both parties at the same time was part of that information, part of that reasoning. And other witnesses may say I did, but I cannot recall.

Mr. Hillson: — Now you had hired Mr. Portigal in the first place. Is that correct, Mr. Messer?

Mr. Messer: — Can you just give me a moment here please, Mr. Hillson?

Well again I can answer, perhaps more satisfying, the board discussed the dismissal of Lawrie Portigal. The legal opinions were discussed as to what action might be undertaken.

Mr. Hillson: — Were they filed with the board members?

Mr. Messer: — I do not believe so, but they were available. There was a board member who suggested that another legal opinion should perhaps be obtained. That was not undertaken. The board made the decision without significant other legal opinions. I can only assume that we were discussing the circumstances in conflict of Mr. Portigal.

But again I do not want to, under oath, say that it was a matter of his being employed by both companies at the same time in addition to the other reasoning behind it. But certainly the conflict was discussed because we talked about the legal opinions and talked about whether it would be facilitative to see yet another legal opinion.

Mr. Hillson: — Although I would suggest while, I mean, I certainly know the value of getting professional advice, when a

guy is working for both sides of a deal and keeping that secret from one side, I mean, you really don't need a high powered legal opinion to see there's a problem here, do you.

Mr. Messer: — No. But I . . . I mean, we had taken action against Portigal and I felt I had sufficient reason to do it. Whether this was something that was additionally needed, I don't know.

Mr. Hillson: — Okay, now were you responsible for the initial hiring of Mr. Portigal?

Mr. Messer: — Yes I was.

Mr. Hillson: — Were you aware when you hired him, that the Tories had previously hired him and then eventually had to fire him and pay him 327,000 to get rid of him? Were you aware of that fact?

Mr. Messer: — I'm not aware of the facts as you present them. I knew he was hired by SaskPower as an executive. He subsequently left SaskPower and went with SaskEnergy and I don't know . . . I believe that was when they severed off the gas portion of SaskPower, created a separate entity.

He went with SaskEnergy as an executive of SaskEnergy. I know that in the process of restructuring SaskEnergy, where there was a very significant breakup of the company into separate entities and a downsizing of executive, that Mr. Portigal was let go. I'm not aware it was a firing. In fact I think I talked to Bill Baker who was the president of SaskEnergy, prior to hiring Mr. Portigal. He did not indicate to me that he was fired, but certainly he was relieved.

I think his position was eliminated and he was given a severance package. And I hired him under a contractual arrangement to specifically look at coal contracts which he was facilitative in drafting on behalf of Manalta Coal and SaskPower, because I felt there were opportunities to open those contracts and negotiate better coal availability at lesser prices per tonne.

Mr. Hillson: — But were you aware that the taxpayers of Saskatchewan had already paid Mr. Portigal over 300,000 in severance?

Mr. Messer: — I don't know whether I was specifically aware, but I think I may very well have been aware of it.

Mr. Hillson: — Okay. Now you've told us you actually hired Mr. Portigal, the man who ended up apparently working for two companies, and over coal. And then we are told that on December 20, 1996, that you had terminated his contract because he had been unable to gain the savings projected for negotiating coal supply contracts. Is that correct, sir?

Mr. Messer: — That was one of the reasons. I think that when I communicated to him that I felt his tenure with SaskPower was no longer needed, I brought to attention what I originally wanted him to carry out for me. He did contribute some time to that.

We felt, over that period of time with his assistance and other,

we virtually had undertaken to do everything we could in respect of enhancing our position in the coal contracts. I felt that we were at the point with Channel Lake that we didn't need his services any more. I felt that he was not being fully deployed and that perhaps it was time to bring this contract to an end.

Mr. Hillson: — Okay. So on December 20, '96, he's let go a second time, but he's still around. Why?

Mr. Messer: — We had been contemplating the sale of Channel Lake for quite some considerable period of time. I think it happened by coincidence more than anything else that we felt that this was an appropriate time to dispose of the property.

I mentioned here earlier that royalty trust was our first interest because we were looking at property that was being sold for significant, significant higher values than it appeared they were worth. There was a lot of cash around trying to find an investment. We had by and large achieved what we felt we needed to achieve with Channel Lake.

I'd also indicated that we had some impediments because we'd made some decisions after the acquisition that we were going to cut back on capital in a very significant way. In fact we established 150 . . .

Mr. Hillson: — I'm sorry, Madam Chair. I know you don't like when I interrupt the witness but I mean, my question is you terminate his services on December 20, 1996. That's the second time we've terminated Mr. Portigal. He keeps popping up. Why is he around after December 20, 1996?

Mr. Messer: — Okay. Simple answer to your question is he was on a contractual arrangement subject to be terminated at any time. I undertake to notify him. I was going to do that. Subsequently I reconsidered it because I felt he could facilitate the sale of Channel Lake.

Mr. Hillson: — Okay. I want to refer you to legal opinions tab 4, page 4. And there's a statement contained there to the effect that at a board meeting March 26, 27 Mr. Portigal was asked point-blank if there was anything in the Channel Lake deal for him personally. Were you present at that meeting, sir?

Mr. Messer: — Yes.

Mr. Hillson: — You recall that being asked?

Mr. Messer: — Yes.

Mr. Hillson: — By whom?

Mr. Messer: — I believe I'm quite certain about this — Mr. Derk Kok, who was a board member at that time.

Mr. Hillson: — Yes. Now, Mr. Messer, I find it cryptic, to use your word, that as early as March board members want to know if Portigal has a personal interest in this, if there's something in this for him. Obviously the question was already there in March. Can you shed any light as to why people's antennas are up as early as March at least as to whether Portigal has a

personal interest in what he's doing?

Mr. Messer: — Firstly I . . . I mean it was a board member I believe, representing himself, asked the question. And I don't think that given the nature of some people, it might not be a reasonable question to ask. He's by and large playing a key role in regard to the negotiation of the sale. Are you in any way going to benefit from this? And Mr. Portigal gave him an answer.

Mr. Hillson: — So at least one board member had some doubts and reservations on this point.

Mr. Messer: — That's correct.

Mr. Hillson: — And yet Mr. Portigal appears to have been given a totally free hand with no checks and balances in spite of the fact you say at least someone had reservations and suspicions way back in March. Who is he working for? What's in it for him?

Mr. Messer: — I think it is somewhat incorrect, with all due respect, to say that he was given a complete free hand. He was instructed to report to Mr. Kram and Mr. Christensen. He was part of a team which had legal counsel which he was to work with in respect of the preparation of the documents. And that legal counsel was to provide Mr. Kram with all of those documents and information. So that he was part of a team. He may have very well been the lead negotiator, but I believe the checks and measures were there. Had he followed them, that the information would have been made available, and obviously it was not.

Mr. Hillson: — Yes, had he followed them, the checks would have been there. However if, as this board member suggests, there's something in it for him personally, then we would of course question whether he would follow the proper checks, now wouldn't we.

Mr. Messer: — Yes, but he did give information to the law firm who in turn were negligent in providing it to us. So that one might assume that the law firm was also involved with this with him, or that there was negligence on behalf of the law firm. But I mean these were the series of circumstances which had some breakdown which didn't bring the information to my officials.

Mr. Hillson: — I guess it comes back though to what we were talking about yesterday, Mr. Messer. You yourself are writing words like cover-up in the margins of your papers. Another official is writing the word fraud in the margin in his own handwriting. And we go way back now to March and we find as early as March board members are saying, is there anything in this for you personally, Mr. Portigal. Obviously the suspicions existed at a very, very early date.

Mr. Messer: — Well I think that that might be your interpretation. I found nothing at that date, nor did I find anything up until we find where information was not being provided to us or he superseded his powers, that he had done anything improper.

If you look at the résumé of Mr. Portigal, he has an impressive

résumé in respect of education, ability, and experience. None of that indicated to me that he was in any way dishonest or not conscientiously working in the best interests of his former employers. So unless there is some evidence that you have that I have missed that indicated that there was some impropriety here, I don't know what we could have done.

I might say that Mr. Portigal, by his nature, was not liked by some of the board members. And I think that's obvious in some of the documentation that exists.

Mr. Hillson: — Well in terms of the information I have, I've already pointed out to you that the taxpayers of Saskatchewan had previously paid \$327,000 to this guy for him to go away. And you apparently knew that when you hired him. I point out to you that the auditors had written years before that Mr. Portigal was exceeding authority and ignoring board resolutions. I take it from the testimony you have given this board of inquiry that you considered that to be a wise and prudent course of action.

Mr. Messer: — I guess I need some clarification in order to facilitate the proper answer as to what auditor's report you are referring to?

Mr. Hillson: — Well both the Provincial Auditor and Ernst & Young, but specifically, sir, the April 22, 1993 minute of the board:

The board does not want SaskPower to enter into the gas business beyond activities necessary to provide security of supply and predictability of price. Therefore, the board agreed that the corporation should dispose of any excess Dynex assets with deliberate haste.

Now you are aware that both the Provincial Auditor and Ernst & Young suggested that that minute was not carried out. I take it from what you've already told us that you think this was prudent and businesslike.

Mr. Messer: — The Dynex excess properties were ultimately disposed of. The minute was being directed to SaskPower officials and to SaskPower as a corporation not to Channel Lake. Channel Lake was structured to facilitate getting into the actions that SaskPower was not to get into.

Mr. Hillson: — But you're aware that both Ernst & Young and the Provincial Auditor were flagging for years that the approval for these gas futures contracts was not in place, the business plan was not in place. I take it you just simply disagree with the auditor's . . .

Mr. Messer: — No. I see what the auditor is doing, but the records here will show that there was concurrent undertaking by officials of SaskPower as well as Ernst & Young to achieve all of those shortcomings. I mean it wasn't that there was a vacuum and nothing was happening. Quite consistently throughout that time there were efforts made to change and improvements were constantly being made.

Mr. Hillson: — Did the Premier ever express concern to you that Mr. Portigal was on the payroll?

Mr. Messer: — I beg your pardon?

Mr. Hillson: — Did the Premier ever express concern to you that Mr. Portigal was on the payroll?

Mr. Messer: — No, not directly to me.

Mr. Hillson: — Could you answer the question more fully?

Mr. Messer: — I know of no communiqué from the Premier to myself in respect to Mr. Portigal's employment.

Mr. Hillson: — You still haven't answered the question. Are you aware of any time the Premier expressed concern about Mr. Portigal being on the payroll?

Mr. Messer: — I seem to recall a document somewhere where somebody says the Premier had raised that. But I mean — and it may be matter of this — but there was never any communiqué to me by the Premier or somebody representing the Premier in respect of Portigal's employment with SaskPower.

Mr. Hillson: — And so you think you read something to that effect but you don't recall specifically?

Mr. Messer: — I seem to recall something in the last — I think it must be related to some of this documentation — where somebody, a third party, had made reference to a comment that the Premier might have made. But I'm not positive about that.

Mr. Hillson: — Can you provide any details on that at all?

Mr. Messer: — No, nothing more than that.

Mr. Hillson: — Okay, and the final question then, sir. The Provincial Auditor's 1997 fall report, it's not the first time it's raised, but again, it says that rules and procedures to safeguard its assets from risks assumed by gas trading activities had not been undertaken, had not been approved.

Mr. Messer: — There's a difference, if I may, between undertaken and approved. The rules and procedures were there and they were being followed. They had not been approved formally by the board, and Ernst & Young was facilitating in exercising those rules and procedures.

So it was a case of not being approved. They were in place and they were being, by and large, followed.

Mr. Hillson: — So you are saying that Mr. Portigal did not exceed his authority. He was following the rules and the rules were in place?

Mr. Messer: — I'm saying that Mr. Portigal was conducting a business on behalf of the board. The board was conscious of what was going on. The board and the other management of SaskPower were concerned in respect of being able to do it better and that there were actions both within the corporation and outside the corporation to facilitate that.

Mr. Hillson: — So you simply disagree with the conclusions of the CIC and Deloitte report on that point.

Mr. Messer: — What is the point you're making?

Mr. Hillson: — Well both the Deloitte and the CIC report say that Mr. Portigal was exceeding authority, the rules were not in place, he was doing things that had not been authorized by the board, and in fact had been specifically told by the board not to do. This is in both reports before us. I take it you simply disagree with those conclusions.

Mr. Messer: — I believe that the board authorized the trading. Mr. Portigal carried it out. There were occasions where he went over the dollar limit and I think that was the nature of the business in respect of on some occasions not being able to stay within that. That was reported to the board. The board undertook action to facilitate dealing with that, but I think beyond that there was no evidence that there was significant deliberateness in regard to carrying out actions that he wasn't authorized to do.

The Chair: — Thank you, Mr. Messer. Thank you, Mr. Hillson. I believe you've . . . I really do have to remind people to try to stick as much as possible to your allotted time so that we can deal with all of these matters with dispatch.

I will now turn to the NDP (New Democratic Party) and will you please pursue a line of questioning for 30 minutes.

Mr. Tchorzewski: — Thank you, Madam Chair. If I may begin. Briefly, Mr. Messer, I want to go back to a document, which is no. 900, which was referred to, I think, two or three times here today and it deals with the sale of Channel Lake shares presented to SaskPower board of directors November 6, 1997.

Was this a document prepared by Larry Kram and submitted by Carole Bryant for consideration of the board, and was it an information item?

Mr. Messer: — It says it was an information item prepared by Kram, submitted by Carole Bryant, as you have to be a vice-president, I guess, to put it on the agenda.

Mr. Tchorzewski: — Was the information item presented to the board?

Mr. Messer: — Yes.

Mr. Tchorzewski: — It was?

Mr. Messer: — Yes.

Mr. Tchorzewski: — So there was an information item presented to the board as is prepared here and which . . .

Mr. Messer: — Which as is prepared here.

Mr. Tchorzewski: — So it was tabled.

Would you agree that in the minutes of board meetings, at least that's the way I see them having read those that have been tabled, there is always a reference in the minutes of documents that are tabled which are information items.

Mr. Messer: — I believe that to be the case.

Mr. Tchorzewski: — Thank you.

I think you spoke, in your presentation earlier today, you spoke to reporting on this to the board as part of your president's report in some detail.

Mr. Messer: — That was my normal course of bringing information items in. I would give my president's report and ask for any questions or other discussion and then deal with additional items that I felt were relevant.

Mr. Tchorzewski: — Would this have been part of your . . . because as I understand it — and you can correct me if I'm wrong — but as I understand it, having served on some boards, the CEOs or the presidents provide a written report. Would this have been part of your written report as well?

Mr. Messer: — I think that I want to convey to the committee that we have asked for additional information with respect to that board meeting. We do not have the minutes of that board meeting.

And we've also asked for any other information including notes that board members might have had in respect of this discussion.

In answer to your question, my recollection is that this was part of my president's report but would not have been circulated in advance. I believe this was . . . it was not something that was available at the time. Information was made available to the board members in advance of the meeting.

Mr. Tchorzewski: — Okay. But certainly the information item was there.

I'd like to share with you copies of the minutes of the SaskPower board meeting of Thursday, November 6, 1997.

The Chair: — Excuse me, Mr. Tchorzewski, do you have 15 copies of that?

Mr. Tchorzewski: — I think I do. I'm sorry, I should have . . .

The Chair: — Thank you. Again I will remind committee members that a document that's being discussed by the committee must be tabled with the Clerk and made available for all committee members.

Mr. Tchorzewski: — Thank you. I just forgot to do that. Thank you very much.

The Chair: — Well I didn't forget to remind you.

Mr. Tchorzewski: — So anyway I have presented, I think, sufficient copies there. Now, Mr. Messer, these are minutes of the board of November 6, 1997, and it starts with 152, notice of meeting and the quorum, notice of an in camera meeting. You would not obviously be attending an in camera meeting as the president.

Mr. Messer: — No.

Mr. Tchorzewski: — Then at 154, it talks to the . . . speaks to the minutes of the board of directors' meetings of June 20, September 10, October 15. Then it refers to the president's report where it gave a report on activities of the corporation since the last board meeting. And if you want to take time to go through it — but I have — and nowhere in these minutes is there a reference to the information item, the sale of Channel Lake shares, as prepared by Mr. Kram.

Now having established that information items usually are recorded in the minutes, I'm somewhat surprised that this would not be in the minutes of that particular meeting since you have said here that it was presented as an information item to the board. Would you care to make some comment on that? Do you need the time to look through that?

Mr. Messer: — No. I mean I take your word for it that if it's not identified separately, then it was simply recorded in the minutes as part of the president's report. And I guess subsequent witnesses will have to help facilitate you in regard to the presence of this document and the discussion that emanated from it.

Mr. Tchorzewski: — And yet it was tabled as an information item.

Mr. Messer: — As part of the president's report, as I've indicated earlier.

Mr. Tchorzewski: — It seems that it is somewhat unusual that an item, and I'm sure that by that time everyone was concerned enough to consider this a pretty important item which would have been tabled at a board meeting, would not also at the same time at least required a minute. And I think it leads to a question — and I know we're all working from memory here and that prevents some difficulty over long periods of time — I just want to establish that could it not be that maybe this was prepared by Mr. Kram but never tabled?

Mr. Messer: — I would find that hard to believe because I have in front of me what I am certain is a copy of an item that I took to the board, and it's my nature to highlight what it is I'm going to speak to, and that this would have then been carried through. I might point out that when I . . . I mean I do not have here the president's report, but it would have covered, I think, some quite considerable number of issues and the minute simply records the report in its entity.

It may very well be that that's how this was recorded as well, even though it might be more substantive. And all I can, I guess, ask of the committee is to provide what we have asked for by way of other written information or notes that might help substantiate to the extent this was discussed and/or the recall of other witnesses that come forward that were in attendance at that board meeting.

Mr. Tchorzewski: — Thank you. I guess finally it is clear from the minutes that the written record does not show that this document was tabled. And that's all I have for questions.

The Chair: — Thank you. Do the government members have any other questions?

Hon. Mr. Shillington: — I was waiting until you had . . . Mr. Messer, I don't understand either. If it was presented as an information . . . if it was prepared as an information item by Mr. Kram, why wasn't it presented as an information item to the board? Or are you suggesting the minutes are not complete?

Mr. Messer: — You know the minutes may not be complete, but I'm suggesting that, to the extent that my memory is accurate, it was presented as part of my president's report as an informational item, assuming that this would be a facilitative time to do it.

Hon. Mr. Shillington: — In fairness, Mr. Messer, you haven't had the minutes heretofore. I think to refresh your memory: is it not possible you're mistaken about whether or not this was presented to the board?

Mr. Messer: — If we looked at the minute that is dealing with the president's report, it says that the president gave verbal and written reports on the activities of the corporation, which very well could include this informational item here.

Hon. Mr. Shillington: — Okay.

Back to Mr. Portigal then, if I may for a moment. Your internal audit and the external audit done by Ernst & Young both suggested that there should have been some checks and balances with respect to the sale of Channel Lake property; that a single individual should not have had sole responsibility end to end with respect to the sale.

Are you aware of those comments?

Mr. Messer: — Yes, I'm aware of those comments.

Hon. Mr. Shillington: — Do you care to comment on them?

Mr. Messer: — My comment would be that on reflection, we would . . . I would appoint perhaps two people instead of just Portigal.

But again I reiterate that when the sale was undertaken I appointed Mr. Portigal, I appointed Mr. Christensen, I appointed Mr. Kram, and I also had them solicit the firm of Milner Fenerty to, as a team, pursue the sale. And it was clear that all information should be given to Mr. Kram, either directly or through Milner Fenerty, so that I think that this was proper due diligence.

One might have put, as I said, on hindsight, safeguard in putting two people as the lead negotiators. But at this point in time there was no reason to believe that Mr. Portigal would do nothing other than act in the best interests of the corporation.

Hon. Mr. Shillington: — Prudent management though, it's not fair to say, Mr. Messer, that prudent management would not leave a single individual sole control of all of the details, and that as a matter of prudent management you'd normally have some checks and balances so that this kind of thing couldn't occur without some conspiracy between two individuals.

Mr. Messer: — I think that this is not a fair recollection of what happened. There are documents here and we may be able

to identify and pull them, but it was a Sunday, March 23 meeting, which has been made reference to here previously, where Mr. Portigal met with Mr. Christensen and a number of other people from Finance, where they clearly went through the sale agreement and asked him specifically, is the price \$20.8 million net? and the assurance was given that this was the sale price.

So that I think that there was certainly diligence to facilitate in respect of what the true circumstance was. If the individual chose not to tell the truth, I don't know what we could have done about it at that time.

But I might say that I have some association with the oil and gas industry and I can tell you that sales of this value and size of property are done within days without any such kind of due diligence; where one person would be given the responsibility to undertake such a transaction. So that if you wish to, I think you could inquire of the private sector and find that there are transactions like this that happen frequently and in much shorter periods of time and with less due diligence in respect of process or persons that are involved in it.

Now that's no excuse for this having happened. And I said, in hindsight, we would certainly put two people into a position to undertake negotiations.

Hon. Mr. Shillington: — Just one more . . . just another couple of questions then with respect to Mr. Portigal. It is I think common ground that the information provided by Mr. Portigal at the time of the closing on the first few days in April was not complete. It was glaringly incomplete. That's common ground, I take it.

Mr. Messer: — I believe that to be correct.

Hon. Mr. Shillington: — And that no explanation appears for that. There's no explanation that's apparent for that chain of events, is there? The question is, has Mr. Portigal offered you any explanation as to how that might have occurred?

Mr. Messer: — I believe we have a document in respect of his response and it might facilitate answering your question.

This is a property sale and Lawrie Portigal Consulting, document 872 as well 873 where Portigal has responded, where he undertakes to explain his position in respect of this. And he says in regard to . . . This is on the 872 document, page 2, item 6, and if I may read:

The accounting for SaskPower's interest in Channel Lake is very complex. I noted that neither document dealt with the trading losses one way or another. I mistakenly did not recognize the inconsistency between the two memoranda and my understanding that the transaction for an asset equivalent of 20.8 million.

Which is significantly different than what Mr. Christensen's memo and those who were with him at that meeting on Sunday concluded, and in my recollection, quite directly asked him in regard to this price — the board's figure of \$20.8 million net.

Hon. Mr. Shillington: — Do you agree it's a little hard to

accept his comment that he mistakenly overlooked a detail of this significance?

Mr. Messer: — Yes.

Hon. Mr. Shillington: — Did you ever follow up and ask him how he could have overlooked, how he could have forgotten this trifle? Did you ever follow up with him?

Mr. Messer: — I did not specifically, but certainly, I mean verbally. But again the document that I made reference to in company with this other one, 873, he undertakes to provide further information. This is obviously not adequate to myself because this is the day I dismiss him.

Hon. Mr. Shillington: — Turning then if I might, in the time that remains, to the Milner Fenerty law firm. Can you tell us the relationship between SaskPower and Milner Fenerty. Do you . . . have you had a long relationship with this firm? Was it chosen specifically to handle this sale?

Mr. Messer: — I do not believe we had a long relationship with them but they did play a role in the acquisition of the properties initially. And this might have been a reason that we would go back to them, because they had some knowledge of Channel Lake. I'm not saying that was the factor; I wasn't personally involved with the choice of the firm.

Hon. Mr. Shillington: — Do you . . . The documents, the report by Deloitte Touche and also I think the report by Mr. Gerrand, or Ms. Batters as the case may be, suggested that the Milner Fenerty did not properly report to your officials. Do you agree with that?

Mr. Messer: — I believe one of the documents, perhaps both, indicate that. But certainly one. Yes, I agree, if you're asking whether Milner Fenerty carried out the instructions that they were given in regard to information to Mr. Kram.

Hon. Mr. Shillington: — Did Mr. Kram ever raise this with Milner Fenerty, wasn't getting the documents? Was he aware that he wasn't getting documents? Did he raise this with them? Are you . . . do you know?

Mr. Messer: — I don't believe he raised it with them until it became obvious that the deal had gone wrong. There was . . . He had no evidence of the — if we're talking about the third draft — that there was such a draft. So he was not able to raise anything with Milner Fenerty, not being knowledgeable of what might be missing.

Hon. Mr. Shillington: — Is it not fair, is it not a fair comment that Mr. Kram might have been more diligent in ensuring that lines of communication with Milner Fenerty were open and functioning?

Mr. Messer: — Well I have no reason to believe that he didn't think they were. And this may be an appropriate question to direct to Mr. Kram.

Hon. Mr. Shillington: — Have you raised with Milner Fenerty, since that point in time, their discharge of their duties? Have you had any occasion to discuss with them since then?

Mr. Messer: — I have not directly had any discussion with them to my recollection, not certainly verbal, and I don't believe I had any written communiqué with them.

Hon. Mr. Shillington: — I think that probably will do for the day.

The Chair: — Thank you, Mr. Shillington. I appreciate that, since we do want to adjourn at 12 noon and each party should have roughly 30 minutes. So you've had about 20, 25 and that would leave you about 20, 25 minutes, Mr. Gantefer. So would you resume questioning please?

Mr. Gantefer: — Thank you very much, Madam Chair. And I think there are a few procedural things that we need to deal with, so I'll try to even keep it briefer than that so that the total time is available.

Mr. Minister, I want to pick up where we left off in the first session in terms of talking about the \$5 million loss or apparent loss, in your opinion. And I believe it was yesterday you said that if a house is appraised at a certain value and you get more than that value, then certainly you're just simply happy.

I submit to you, Mr. Minister, that if someone was willing to give you a bona fide offer at a higher level, that that indeed is then the value that the market has dictated that this property is worth. And appraisals are relatively imperfect vehicles because they only would reflect an individual's opinion on what it's worth.

Clearly from the documentation that we have before us is that in the first two drafts of the sale agreement, and by your testimony this morning, you were saying that SaskPower clearly expected to receive \$20.8 million net. How in the world can you possibly say that, and recommend to the board that the DEML deal still remained a good one even at 16.6 when you've got snookered for \$5 million between the second and third draft of the agreement. How could you possibly dismiss it that lightly?

Mr. Messer: — It was not dismissed lightly. The fact of the matter is that I'd communicated with DEML. They told me that I unless I went through with the deal they were going to undertake action themselves at the price they said they were prepared to pay. And the records will show, and you may have the opportunity when you call representatives of DEML here, that they had no intention from the outset to pay anything other than \$20.8 million gross.

We weren't aware of that. Perhaps Mr. Portugal was. But I believe the evidence is clear here that they were not prepared to do that. In fact after the signing of the deal they delayed their signings to undertake further negotiation in respect to the price because they felt that it was too high for them.

So that, you know, in hindsight it is now more clear that DEML were not prepared to pay that higher price. And I mean the appraisal is still, I think, a factor. Obviously any litigation that might be undertaken, by most opinions, is not going to be successful because you can't prove loss. So I think that's very substantive.

We also have to look at the other offers, and they fell within

either something below or something modestly above the appraised price indicating that was the true market value.

So I had to make a decision based on the circumstances that were available to me at that time, including DEML, saying we were never prepared to pay more than that and if you want to make a case out of it, we'll take you to court over it.

Mr. Gantefer: — So was the DEML initial bid then a sucker bid just to get you on the hook?

Mr. Messer: — I don't know that.

Mr. Gantefer: — Well it seemed to have worked.

Mr. Messer: — Well it seemed that we got what I guess the property was really worth. And it might have been more facilitative here if we base a lot of these opinions on the Gerry Gerrand report and the Deloitte Touche report if they had had some opportunity to interview Mr. Portigal. And we wouldn't have to then be going through what my hypothetical and assumed circumstances are in regard to Mr. Portigal and the role he played. I think we'll never really know until we have Mr. Portigal here in front of you. And if he honestly answers the questions, then I think then you truly know what happened. I still don't.

The Chair: — Mr. Gantefer, before you question one more time. Mr. Messer, I do have to caution you. A couple of answers back you indicated in response to Mr. Gantefer that if he believes, or if he said something, that you would then take him to court. I have to remind all witnesses that anything that's said in this committee hearing has the same privilege as if it were in the legislature.

Mr. Gantefer: — Thank you. But it strikes me, Mr. Messer, is that you had very good reason to expect, the board members clearly expected, you expected, senior manager expected, that the 20.8 net was a bona fide offer. Is that not true?

Mr. Messer: — Could you repeat the question for me.

Mr. Gantefer: — You had reason — you, the board, senior management, officials at SaskPower, clearly had reason to expect that the 20.8 net was a bona fide offer. Is that not true?

Mr. Messer: — That's correct.

Mr. Gantefer: — Then when the decision . . . or it was then reported to the board that we still got a good deal at \$5 million less, how can you possibly say, well that isn't bad under the circumstances?

Mr. Messer: — Well I think one has to address what are the alternatives. We got a half a million dollars more than the property was appraised for. It's about the medium of all the other offers. At that time . . . I'm not a lawyer, but I believe the deal was signed. They have the assets. I don't have the assets any more so I have to make a decision. Am I going to let them sue me or am I going to sue them?

And I'm back again to what seems to be an overwhelming opinion that unless you can prove loss, you're not going to be

successful. I have to represent to the board, given where we are, is this a good deal? Royalty trusts are falling off the table; gas prices are going down. If you look back you'll see we sold the property at a peak. We're making what the property is worth.

Is it a good deal given the circumstances I'm in? Yes. Because I am not prepared to undertake action when my advice is, you won't win the court case, and we could be sitting with a circumstance that we have no control over for years because they have the asset — not me at that time.

Mr. Gantefer: — Were you in undue haste to get this deal transacted before March 31 to cover up the trading losses that already occurred without authorization?

Mr. Messer: — The trading losses were authorized.

But in respect of whether there was a cover-up, the fact of the matter is — I made mention here earlier — if you're in the business these kinds of transactions are done regularly within a significantly shorter period of time. The March 31 was nothing magical. If the deal was done by March 31, it would facilitate a tabling process.

The trading losses were reported. The Provincial Auditor knew about them. They were a matter of record. CIC knew about them, my audit finance, the board of directors. All of this was properly reported. There was no cover-up. It was there. What we were trying to do was facilitate a deal within a closing date.

If you go back to the letter that DEML sent to me, they said we can do this deal by March 31. I think like any kind of transaction if you set a date, unless you try to hold people to it you're not likely going to be able to meet it.

There was nothing that was hurried about it. I think they had ample time. We started to talk about the sale almost four months in advance of that, and we ultimately ended up undertaking a transaction trying to meet a March 31 date. We didn't do it.

But we wanted to hold them to it. If we could have got more money by extending it or there were other circumstances, we would have extended it, but there didn't appear to be any.

Mr. Gantefer: — Are you trying to tell this committee that it's a mere coincidence that the March 31 is also the year end for government activity and reporting?

Mr. Messer: — No, not at all. I mean it could be a factor. I mean, I think that there was nothing wrong if you've got a sale that might be able to be consummated by March 31. It would accommodate a tabling. If you had trading losses or something that were part of that, why wouldn't you want to report this as a package if you could.

And I'm reminding you that the Channel Lake year end is December 31, not March 31.

Mr. Gantefer: — SaskPower's year end is what?

Mr. Messer: — December 31.

Mr. Gantefer: — On the reporting to the government, if it all had been wrapped into one transaction, would it have been reported in detail or simply as a line item?

Mr. Messer: — I don't know what you mean by detail but there would have been full disclosure. And as I said, if there's a suggestion here, would we have tried to hide something, we obviously hadn't tried to hide it up to that point in time because we'd followed the normal reporting process. The Provincial Auditor knew about it. Knowing the Provincial Auditor, I'm sure he would have had some comment to make about it.

So it doesn't seem like it would make any kind of sense to hide, and that's a bothersome circumstance in my mind that people continue to say we tried to hide something here when the actual evidence is all of the losses were being reported in an orderly and properly fashion.

Mr. Gantefer: — It seems as if the whole process marched inexorably towards that March 31 deadline in undue haste that not only resulted in the \$5.2 million being botched, but then you also undertook as part of this deal because I'm sure DEML was just laughing on the other side of the table at the fact that they had you clearly over the barrel. And then you undertook a 10-year long-term gas supply contract that seems to be inappropriate as well. How do those things come together?

Mr. Messer: — Well as I've tried to explain, I don't believe that there was undue haste in respect of doing the deal. We didn't know about what obviously turned the deal to be substantively different. If it had went on another two weeks or another month, might it have been any different? I don't think there's any evidence to show that it would have been. And the market dictates, I think you have to keep mindful.

I can't stop the circumstances around this deal. And unless people can show otherwise, were royalty trusts coming to an end, and were they cooling off? I think the answer is yes. And if you review it, that can be substantiated. Were we at a peak of the market at that particular time? The answer is yes, and I think that can be substantiated.

As a responsible officer of the corporation, I had to take that into consideration as to whether is it satisfactory to sell for half a million dollars more than the appraised value or is it going to be more beneficial in the end result to undertake an action which most people say you're not going to win, trying to reacquire a piece of property that is no longer yours.

Mr. Gantefer: — I think that the focus should be as how you recover the \$5 million you've been suckered out of and then more so is try to justify why you entered into unheard of 10-year contract for gas supply with the same company. Someone clearly benefited, not only in the fact that there was clearly a \$2.8 million deal on the table, net, on the table at the second draft of the agreement for sale that suddenly evaporated, and in addition there came onto the table a 10-year gas supply contract.

Somebody benefited pretty materially out of these whole events leading up to the rush that people were pushing through for that March 31 deadline.

Mr. Messer: — Again, in my view, there was not a rush. You may want to ask DEML whether they think they got a substantial benefit in respect to the purchase of the property. The evidence we have show that they were not prepared to pay more than what they paid for it at the outset.

The 10-year deal, even though it was part of the sale of property, had not a satisfactory 10-year gas agreement been negotiated, we would not have signed. If that was a condition on their behalf, it may very well have created the deal. But there was a separation between the sale of the property and the negotiation of the 10-year gas supply contract.

And I think you will be questioning witnesses in the future as to the benefit of that deal. The fuel supply people, when the first proposed 10-year deal was given to them, was significantly unacceptable and there was a deliberate negotiation that took place which ultimately ended with a deal that was satisfactory to the fuel supply people.

Mr. Gantefer: — I don't want to get into a debate about the events because I think we are pretty substantially differing in terms of the results of that agreement.

Final thing before I take all of the time that may be required this morning. This morning you mentioned that you were on holiday in the Grand Cayman Islands in December when this whole issue broke out. Yesterday when we asked, and you said that you personally were not part of any company that benefited materially from this. Are there companies that close relatives of yours perhaps have on the offshore islands that would be in that same circumstance? Would there be any personal benefit not necessarily by yourself or companies that you control, but any business relationships in the Grand Cayman Islands that potentially would be at conflict over this issue?

Mr. Messer: — I know of none. My reason to be in the Grand Cayman Islands is that my son lives there and we spent Christmas with him. But I have no knowledge of any relative or close associate of mine that in any way is connected with this deal, or benefits from this deal.

Mr. Gantefer: — Do you have any offshore banking relationships that potentially would have relevance to this deal?

Mr. Messer: — No.

Mr. Gantefer: — Do you have access to record of business expenses for '96 and '97? Would you table those records with the committee?

Mr. Messer: — I mean, are you talking about as my . . . as president of SaskPower?

Mr. Gantefer: — Exactly.

Mr. Messer: — I mean, it's not up to me to provide them. I can't tell SaskPower to do anything. I guess if you want to direct to SaskPower and they feel it is relevant to this, that's something that the committee and the corporation would have to consider.

Mr. Gantefer: — I'm concerned about the due diligence that

you were able to spend on these issues given the fact that you seem to be minimizing the significance of this whole issue, and certainly we know there was the whole Guyana issue and things of that nature that were going on at the same time. And I'm trying to ascertain if you were spending the time in diligence on this whole issue to give it the attention that it deserved.

Mr. Messer: — I think that in my view I certainly did. If it is to be interpreted that I should have been integral to all of this, obviously that won't work given the responsibility that I have for the overall corporation — or had for the overall corporation at that time — and that's why I delegated to two senior vice-presidents in-house counsel and a reputable law firm to facilitate this transaction. And I think that if that was in the private sector world, no such due diligence would have been carried out.

By comparison, I think that we were significantly more sensitive in regard to the effort and the manpower that we put in to this transaction.

Mr. Gantefer: — Thank you, Madam Chair.

The Chair: — Thank you, Mr. Gantefer. We'll quickly move then to some procedural items. As I understand it, there may be requests for additional documents.

Mr. Tchorzewski: — Can you put me on the list somewhere to raise a point?

The Chair: — Thank you.

Mr. Hillson: — There's nothing . . . (inaudible) . . .

The Chair: — Everybody's lining up to get on the speaking list but nobody's speaking right now. Perhaps then while people are getting their procedural questions in order, I would ask, Mr. Messer . . .

Mr. Messer: — Pardon me?

The Chair: — Are you and your counsel available next week?

Mr. Messer: — I am not available next week.

The Chair: — Is that both the Tuesday and the Wednesday?

Mr. Messer: — That's correct . . . (inaudible) . . . to try and look at my agenda but as it stands now.

The Chair: — As it stands now you're not available for the . . .

Mr. Messer: — I believe you're talking about the 21st and 22nd.

The Chair: — Yes, the 21st and 22nd.

Mr. Messer: — That's correct. But I would take a look at my agenda . . . I'm sorry, my counsel is not available and cannot correct his commitments.

The Chair: — All right. And will you please look at your agenda for the week after? We will be meeting on the 28 and

30th.

Mr. Messer: — The 28th and 30th, the Tuesday and Thursday?

The Chair: — That's correct.

Mr. Messer: — And as my calendar stands, I'm not available at that time. But I've indicated to your counsel that I would look at the probability of being able to restructure those commitments.

Mr. Tchorzewski: — Madam Chair, my point was related to this. Would it be appropriate for me to raise it now?

The Chair: — Yes.

Mr. Tchorzewski: — The point I want to raise out of sort of the interests of people planning their schedules, Mr. Messer and his counsel, is I think we may be at the point — and I can't speak for other members; they'll have to speak for themselves — where we may be beginning to become repetitive as a committee and some of the questioning.

And I think from our point of view, although always we can recall witnesses, another day may be sufficient and we can get on to other witnesses. But other members may have another view. But can we get an indication to help people plan their agendas from others as to what . . .

The Chair: — You're indicating that you would see that one more day would be sufficient with Mr. Messer. Is that correct?

Mr. Tchorzewski: — For now.

The Chair: — What about representatives from the Saskatchewan Party and the Liberal Party?

Mr. Gantefer: — That's possible.

The Chair: — Please bear in mind, Mr. Gantefer, we have already indicated we can always recall witnesses.

Mr. Gantefer: — Well I guess that for timing and practical purposes at this stage, I think that it's reasonable that . . . that that's a reasonable expectation at this stage.

Mr. Hillson: — I certainly think I have more than half an hour. May I put out that we may be at a point though at which, if we adopted the normal counsel procedure in a trial, it would actually go quicker. By that I mean, Madam Chair, that the repetition that Mr. Tchorzewski has spoken of may come about by virtue of these half-hour segments.

Normally of course at a trial one counsel finishes with a witness then another counsel proceeds, and basically when a counsel concludes questioning, he is finished. And I am wondering if — and this may be for the steering committee to discuss more fully — but I'm wondering if that might not prove to be a better procedure in order to finish with Mr. Messer.

The Chair: — I'll take that suggestion under advisement, Mr. Hillson. And right now what I'm trying to do is ascertain the availability of witnesses for next week. What I would indicate to the members of the committee right now is that I will be

calling the SaskPower officials then given that Mr. Messer is unavailable next week. I will be calling SaskPower officials for Tuesday.

Mr. Gantefer: — Madam Chairman, in the interest of time and perhaps to facilitate some more discussion on the suggestion that Mr. Hillson has made and also the issue of some documents, would it be appropriate to call a steering committee meeting later this day to go over some of those issues to deal with some of the documentation issues and have some of that happen?

I don't know that we need the concurrence of this whole committee to call witnesses on the next day. I think that that's been a discretionary item, and consequently, the steering committee may be empowered to be able to put together some agreement on that?

The Chair: — Well it's not just a question of agreement amongst the steering committee, it's also availability of witnesses. I hope committee members appreciate that I have been scrambling trying to get the witnesses on the already agreed upon list.

Hon. Mr. Shillington: — The steering committee meetings have proved to be . . . to make fairly generous use of my time at least. I'm not entirely sure we need it here. It may be, Madam Chairperson, that you could simply consult with us. Offhand, without having given it lot of thought and discussed it with my colleagues, Mr. Hillson's suggestion may make sense as we're finishing up.

In the beginning I think we each want a half-hour period. As we're coming to conclusion, it may now make sense to let each side complete it without time constraints and . . . I'm not sure we need a steering committee meeting actually.

The Chair: — Excuse me. You're saying as we're concluding with any particular witness?

Hon. Mr. Shillington: — Certainly this one. And I think . . .

The Chair: — We're going to get bogged down here and not be able to deal with documentation. So what I would suggest is I will meet informally with representatives from all three parties in the next couple of days. Right now I will call the SaskPower officials for Tuesday and we'll deal with other things as they arise.

Mr. Hillson: — Yes. Before we adjourn and this may be not for a final decision this morning, but there's something else I'd like to put on the table for the consideration of all members, and that is a general procedure for documents and our use of our special counsel.

As you know I agree that there is . . . we're trying to balance public and private interests here, the need for this inquiry to get all the information, but not to unnecessarily air people's private and personal business in this forum.

And I've also said in regards to potentially sensitive cabinet documents and that, that personally I do not want to review a confidential document that is held to be confidential. I don't

want to be burdened with that obligation. So what I see I take to be public information that I can speak of in a public forum. So I say I don't want to be part of vetting confidential documents.

And again coming back to the question that arose yesterday concerning Mr. Messer's personal business interests, I understand his private interests here that should not be violated unnecessarily. On the other hand, in terms of the statement he made yesterday — I say this with some reluctance — but the reality is we have legal opinions before us saying he should have been fired because he mis-describes events. Those are not my words — those are the legal opinions we have before us.

So the suggestion I would like to make is that we adopt what would be the normal court procedure — that the judge would review a document and decide whether or not it's admissible. It doesn't become public unless the judge so rules. We don't have a judge, of course, but I would suggest that our special counsel could fulfil that role. So that I think we're going to get into the area now of confidential cabinet documents and as I said, I personally don't want to see them unless they are ruled admissible.

And I respectfully submit, and I would ask members to consider that it may be appropriate for matters such as Mr. Messer's personal business interests, matters such as potentially confidential documents, be referred to Mr. Priel if he is comfortable with that. Let him rule on them and then that way of course if he rules that they are admissible, then everybody has access to them. If they are ruled inadmissible, then there is never any suggestion that I or Mr. Gantefer may have used confidential information.

So I don't know if Mr. Priel's able to respond to that now or not but I throw that out for the consideration of all members.

The Chair: — I thank you for your suggestion. I think that it is at this stage a suggestion only and it's now stated on the public record. Rather than have any further debate about it, I've already indicated that I will be speaking with all representatives on an informal basis within the next few days. And we'll deal with this one again on Tuesday.

Mr. Gantefer, before I recognize you Mr. Tchorzewski, did you have some requests for specific documents that deal with items that we've dealt with today?

Mr. Gantefer: — Well certainly there's something in terms of the requests that Mr. Messer had in terms of documents to be released. I think the committee has to deal with those at the very least today.

The Chair: — I've already indicated that we'll ask Mr. McKillop to undertake to obtain the documents.

Mr. Gantefer: — All of the documents? Is that clear including the notes and everything Mr. Messer asked for?

The Chair: — Yes, unless he comes back and indicates that there's an impediment.

Mr. Gantefer: — I think at this stage I'm interested in discussing Mr. Hillson's suggestion. And the further requests

for documents we may have I think I'm prepared to put into the context of the discussion of the suggestion that Mr. Hillson just made.

The Chair: — Thank you. Are there any other documents that committee members feel that they need now?

Mr. Tchorzewski: — Just quickly two points. One, on the procedure for tabling of documents, I think it's an interesting suggestion but I think we'd like to take some time to sort of think about that.

And secondly, and this is not to in any way cause a debate because I think the proceedings have been going fairly well now that we're done to work; I think we're getting the work done. But, and I know that as people in our trade we sometimes tend to lapse into things that probably are not appropriate here and, Madam Chair, without being critical, I noticed that today from time to time it was almost debate with the use of words such as snooker, and I think the word lie was used a few times. And I just wonder if you might take that under consideration as well.

The Chair: — I'll certainly undertake to be the arbiter of good judgement and good words here. I didn't . . .

Mr. Tchorzewski: — This is parliamentary procedures . . .

The Chair: — Yes. Thank you. The committee then now stands adjourned until Tuesday, April 21 at 9 a.m.

The committee adjourned at 12 p.m.