



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, everyone. We will reconvene the special hearings of the Crown Corporations Committee to inquire into the Channel Lake circumstances and also the payment of severance to Mr. Jack Messer.

I would like to table a couple of items, first of all, with committee members. You will have on your desks in front of you an indexed binder of the . . . an index indicating the numbers and a number of the binder for all the documents that have been tabled thus far. This should facilitate referencing of documents. And so I would ask — I understand that the three different party caucuses have been using their own idiosyncratic way of identifying documents — I would ask that you now start to refer to the documents in the manner in which the Clerk has indexed them because this will be the official record.

Secondly, I would like to advise committee members, and you will have before you — it will be distributed right now, I'm sorry — a letter that was received dated April 21 from the McDougall Ready law firm regarding various documents that SaskPower is releasing today.

This is an important document that you have before you, ladies and gentlemen. I am going to ask for two things. I will ask first of all for the . . . yes, I'm going to deviate from my normal procedure and ask Mr. Milani to speak to us directly with committee's concurrence.

He would like to give a brief explanation of the nature of this document, and if the committee concurs, I would ask that he would speak to us directly. After he's finished, I will ask Mr. Priel to make a comment and then I'm suggesting we will have a 10-minute recess so that committee members have an opportunity to read this document and to digest its contents before we proceed with further testimony. So do the committee members concur that we will hear directly from Mr. Milani?

A Member: — Agreed.

The Chair: — That's agreed.

Mr. Milani: — Thank you, Madam Chair. Madam Chair, I think for the record it would probably facilitate matters if I read into the record the letter from Mr. Kuski of my office, and then I have one other brief, explanatory note.

This was a letter that I delivered to Mr. Don McKillop, Q.C. (Queen's Counsel).

The Chair: — Excuse me, Mr. Milani. Before you proceed, would you move the microphone over in front of you. It's fairly sensitive but it's pretty directional as well.

Mr. Milani: — Thank you, Madam Chair. It was a letter that our office delivered to Mr. McKillop, Q.C. last evening:

We are writing to you in our capacity as solicitors for Saskatchewan Power Corporation ("SaskPower"), in furtherance of our telephone conversation of 5:30 p.m. this afternoon.

As you know, the records of SaskPower with respect to Channel Lake were examined, resulting in the preparation of a number of binders which were previously furnished to you, and which have now been tabled with the Committee.

At 4:30 p.m. this afternoon we were advised by SaskPower that an unlabelled file folder had been located earlier this afternoon. The folder was not stored with the Channel Lake documents, but rather was with a number of binders, including empty binders, miscellaneous office supplies and unrelated materials. A SaskPower employee looked at the contents of the unlabelled folder, and noted that the materials related to Channel Lake. It is the understanding of SaskPower that the file folder was Mr. Portigal's.

I enclose twenty-five copies of each of the documents which can be described as follows:

1. April 3, 1997 fax from Dino DeLuca of Burnet, Duckworth & Palmer to Mr. Louis Dufresne of DEML with a copy to each of Lawrence Portigal at Channel Lake in Calgary and Michael Hurst of Milner Fenerty, enclosing blacklined pages to the Purchase Agreement, and the draft Acknowledgement;
2. Fax cover sheet dated April 3, 1997 from DEML to Mr. Portigal with marked-up page 7 of the Gas Supply Management Agreement;
3. Four non-marked pages of page 7 of the Gas Supply Management Agreement;
4. Four photocopies of unsigned Gas Supply Management Agreement. Please note that we have only made 25 copies of one of these enclosures (as they are identical).

In SaskPower's opening statement (delivered by Mr. Kram to the Committee this morning) SaskPower noted that the version of the Purchase Agreement in the Closing Book was modified from the version that had been signed on April 1, 1997 by SaskPower. The opening statement did not speculate as to how that may have occurred, but rather noted that SaskPower was not advised of the changes, nor consented to them.

You will see that the enclosed documents include a facsimile transmission dated April 3, 1997 from DEML's lawyers (Burnet, Duckworth & Palmer) to Mr. Portigal (while he was in Calgary), Mr. Hurst of Milner Fenerty and DEML, to which are appended blacklined pages to the Purchase Agreement. However, this version of the blacklined provisions is not identical to the version of the Purchase Agreement contained in the Closing Book. SaskPower anticipates that this will assist the Committee in its deliberations as to what occurred following the execution by SaskPower of the Purchase Agreement on April 1, 1997.

And then in addition, Madam Chair, at 9:45 yesterday evening Mr. Rick Patrick telephoned me — Mr. Rick Patrick of SaskPower. He had been able to speak with the employee who located the file folder and he'd spoken with her yesterday

evening. And she advised that a couple of weeks ago she was cleaning offices and found a brown . . . a stack of brown accordion files piled up in one of the offices. Most of them were empty and she moved them onto a shelf with some old binders, empty binders, and miscellaneous office supplies — none of which related to Channel Lake.

On April 21, 1998, that is yesterday, the employee wondered, hearing the news reports, whether it was possible that there was anything in the documents unlabelled that she had moved that related to these matters. She looked at the unlabelled file folder, examined its contents, and then immediately contacted people within SaskPower in the fuel supply task . . . sorry, the fuel supply area, and together they determined that the matters might be relevant and advised Mr. Patrick. And of course Mr. Patrick immediately contacted us about 4:30 in the afternoon.

Mr. Patrick of course is here and is under oath, and if the committee wishes, Madam Chair, he can speak to the conversation with the employee. But what I have recounted is what SaskPower people have recounted to me.

The Chair: — Thank you very much, Mr. Milani. I wonder before we proceed, and I won't take questions at this time, could you, for the record — not all of us are lawyers and we certainly are not used to dealing with contracts and changed contracts — could you please explain exactly what you mean or what is meant by the term blacklined?

Mr. Milani: — Yes. Thank you, Madam Chair. Maybe I can start with a little bit of background. My practice is normally as a banking law or a corporate commercial lawyer. I've been in practice for just under 20 years.

What often happens on commercial transactions where there are long and involved contracts is as the contracts are being negotiated, a good way of determining the changes as one goes along is to create different versions of the agreement. So for example, Madam Chair, if Mr. Priel and I were on opposite sides of a file and if I had control of the documents in the sense of they're being on my word processing system, I might provide a first draft to Mr. Priel. And Mr. Priel may say, Mr. Milani, you'll need to change paragraph 3 in this fashion.

The normal practice is that I would make the change and send to Mr. Priel another version of the agreement, or at least the page with the change and underline it, or what's called in the industry, "blackline" it, so those changes are brought to the attention of Mr. Priel. What Mr. Priel then knows from that is that I have listened to his request and that I have made the change in accordance with his direction. Or at least I have made the change as I think appropriate and Mr. Priel can then comment on it.

Part of the reason that's done, Madam Chair, is in commercial transactions the documents are often very lengthy and one couldn't expect Mr. Priel, in my example, to receive from me the agreement and read through 35 pages to see whether in fact I had made the change.

The other thing this committee will notice is that the blacklining in this particular circumstance was done by computer. In other words, there's two ways of blacklining. One is I could take out

a ruler and a felt pen and underling the changes so it would be brought to the attention of the other party. Or computer programs have what they call a blacklining or redlining program that actually make the changes.

And if you look at the document that has been disclosed — and, members of the committee, I'm referring to the first document, which is the Burnet Duckworth & Palmer facsimile cover sheet — if I could invite you to please turn to the page 9 of the agreement, which is the first page behind the letter. You will see it starts at page 9 and then there's a paragraph b and a paragraph c. You will see that in paragraph c there is a couple of arrows or brackets and then an underlined number. If you turn please, to about five pages beyond that, which is the end of the agreement, you'll see a page entitled, DELETIONS, and you'll see the reference no. 1 — 10,874,490. And if you go back to the page I showed you, that was the version immediately before this version that now has 12,375,510.

So I'm assuming that Burnet Duckworth's system is similar to most law firms with which I have experience. And that is, when a change is made, the computer word processing, if properly directed or instructed, generates a copy underlining or highlighting the change and then noting it as note 1; so one can look at the back page in determining exactly what the page . . . what the change was.

The Chair: — Thank you very much, Mr. Milani. Mr. Hillson, did you have a point of order?

Mr. Hillson: — Well, Madam Chair, just on that so all members can understand it. I did want Mr. Milani to explain to us if he could — 6.3 on page 20 is not blacklined, and that is actually . . . of course that's where the change, the real change occurs. That's where the 5.2 million deduction is reduced. And I wonder if he could tell us why that isn't blacklined.

Mr. Milani: — Yes. I can't, Mr. Hillson; that's an excellent question and we asked ourselves the same thing last night. But if you look at two pages on where it says DELETIONS — look at DELETIONS, sir, if you would please — and you see no. 5 there, "In recognition of the Purchaser supporting . . ." What's happened is there's a no. 5 at the end of 6.3 and that sentence, that last sentence, has been removed from the version.

So because there wasn't something added, you won't see underlined words. But the note 5, to my understanding, is to draw the reader to the fact that the sentence that started off "In the recognition of the Purchaser supporting the Corporation . . ." is now out of the version.

The Chair: — Do all members now have sufficient information of how lawyers conduct these . . . do these changes so that you can read the document and familiarize yourself with the contents?

Hon. Mr. Shillington: — To be very clear, Mr. Milani, I take it that what is no. 5 in the deletion was in fact deleted from 6.3. In an earlier version, that sentence was part of 6.3 and was taken out. I see you're nodding your head.

Mr. Milani: — Thank you, Mr. Shillington. Maybe I'll repeat it to make sure I am clear.

My understanding from this is that the version that immediately preceded this document that you ladies and gentlemen are looking at had at the end of section 6.3 the words that begin, "In recognition of the Purchaser supporting the Corporation . . . " — and I'm reading from the deletion page.

And the way I know that, is the highlighted no. 5 appears at the end of 6.3, which tells me that the sentence that was formerly there is there no longer. And the purpose of the no. 5 is to draw the reader to the attention of that change having been made.

The Chair: — Thank you very much. I will remind committee members again that Mr. Milani has indicated Mr. Patrick, who is under oath, is here and is prepared to testify formally about the circumstances of the finding of this document if committee members wish to have that stated on the record.

I also would now ask Mr. Priel to give committee members a caution and then I'm going to call a 10- to 15-minute recess so that committee members have an opportunity to read this new document, and we will then begin the questioning of witnesses.

Mr. Priel: — My remarks this morning are directed really to all of the members of the committee, and in some respects I want to repeat what I said to you yesterday. That notwithstanding that this committee is not a court, notwithstanding that this committee is not conducting a public inquiry as we would know it, this committee does have responsibilities. And those responsibilities include allowing witnesses to make a full answer and explanation of what their actions were.

And it also involves the members of the committee approaching this task with an open mind. And when members of the committee make editorial comments about witnesses' evidence as the evidence is going in, and make comments within and outside this room about the evidence, that can speak to the open-mindedness of the members of the committee.

When you conduct an inquiry such as this, there is what as a trial lawyer I would call the ebb and flow of evidence. You don't know what the evidence is going to be until all of the evidence is in; until you've had a chance to think about it. You certainly don't jump to conclusions about what the facts are until you have heard all of the evidence.

It seems to me that there may still be some questions in the committee's mind about authority and things of that nature. But the evidence that you have before you this morning in some respects explains the matters that were before you yesterday and in some respects suggests to you that the conclusions that some of you came to yesterday could have been more responsible. I'll leave it at that. Thank you.

Hon. Mr. Shillington: — I have one question of Mr. Milani. I always have difficulty with this. The footprint, the fax footprint at the top of the document, is that the fourth . . . is that April 3 or March 4?

Mr. Milani: — April 3.

Hon. Mr. Shillington: — It's April 3.

Mr. Milani: — And, sir, Mr. Shillington, if I may refer you to

the fourth last line of the cover page, they have set out the date in words that you and I would normally understand, sir. So I would assume it is in fact April 3, 1997.

Hon. Mr. Shillington: — Okay, all right, good. I thought that was the case; I just wanted to be sure.

The Chair: — If there are no further questions regarding how to read and interpret this document, I will then call a 10-minute recess. We will reconvene at 9:30 unless I hear from the party caucuses that they require more time.

We are now . . . we'll have a recess for 10 minutes. Thank you.

The committee recessed for a period of time.

The Chair: — Please take your places. If committee members would come to order, please. We will now commence, formally and officially, today's proceedings with the questioning of witnesses.

The witness on the . . . being heard from right now is Mr. Christensen, from SaskPower. And according to our predetermined and agreed-upon order of speaking, I will now recognize the Saskatchewan Party for 30 minutes unless I hear from any committee members that they wish to deviate and question another witness about the document in question.

Mr. Gantefer: — Yes, Madam Chair, I think there are a couple of questions and I think you appreciate that this is something just very new and it's very difficult to, to exactly understand the implications of all of this in an extremely short notice and short time line.

I would like to ask a couple of questions, and I'm not too sure if Mr. Milani could answer them, in regard to the document and discovery of the documents. If he's able to answer them that would be just fine, but . . . and I just don't know how to proceed, Madam Chair, in terms of asking these questions.

The Chair: — And I don't know either because this is an unexpected document. Since it was Mr. Patrick that was the person who communicated with the employee in question who found it, perhaps what we may wish to do is ask Mr. Patrick to take the witness stand.

And then you can ask your questions. If they are factual, if they are questions dealing with process and things that one would reasonably expect an expert such as a lawyer like Mr. Milani might answer, we will ask Mr. Milani to answer them. But if they're questions dealing with matters of opinion or processes that this committee is investigating, I will ask then Mr. Patrick to answer them. Is that satisfactory?

Mr. Gantefer: — That's satisfactory and I would assume that this would be questions related for anyone on the committee to ask and therefore it wouldn't be part of our 30-minute time line.

The Chair: — No, it wouldn't. I think that this, the discovery of this document is, was totally unexpected. And this is totally unprecedented; so until about 10 o'clock, we'll suspend the regular order of questioning and move to a discussion and an examination of the circumstances regarding this document, if

that's agreeable to committee members. Is that agreeable?

I would then ask Mr. Christensen to excuse himself for awhile and ask Mr. Patrick to take the stand. And I'm sure I don't need to give you this reminder, Mr. Patrick, but I will regardless — you are under oath. Thank you.

We'll now then for approximately 20 minutes simply entertain questions from any members of the committee from any party.

Mr. Gantefer: — Thank you. Mr. Patrick, we heard the explanation given to us this morning, on the discovery of these documents, by Mr. Milani. And it was also indicated that you had the detailed conversations with the employee who discovered them. Would you be so kind as to tell us who that employee was, what their job is in SaskPower, and relate the substance of the conversation you had with that employee?

Mr. Patrick: — I will do that. Perhaps I can just relay the entire affair from beginning to end so that everyone can understand how this came to my attention.

In SaskPower's head office building there is an office area which used to be the headquarters of Channel Lake in Regina. That office, when Channel Lake was sold off, became part of my area. It is a sub-office of what we call our fuel supply area and in that office they conduct the business associated with natural gas as is used by SaskPower.

The employee in question was a former Channel Lake employee. Her name is Darcy McFarlen. She is an administrative clerk in the office.

About two weeks ago, I am told, she was doing a general clean-up of the office, which is in considerable disarray because the office filing system, everything's been taken to facilitate the creation of all these binders and they're trying to put the office back together again.

And she discovered on a shelf, not related in any way to the normal filing system . . . It's just . . . I would characterize it — I went down; I looked at it last night — I'd call it a junk shelf. That's really all it is. It's got odds and ends, old binders, and old annual reports and some office supplies and just miscellaneous material on it, including a pile of brown accordion file folders.

And in the course of trying to tidy some she opened all these file folders and apparently most of them were empty. But in one of them, and this was two weeks ago, there were some documents which she recognized as Channel Lake documents. They're so titled and she used to work in Channel Lake so she was well aware what these things look like. But she thought them to be of no particular interest and probably just duplicates of stuff that had otherwise existed in the filing system that had been put into the binders and she just simply set the file folder back on the shelf and thought no more of it.

Yesterday, and I think driven, from what she tells me, by her current knowledge of all of the interest in the post-signing changes that seem to have taken place, she thought again of these documents, pulled them out and drew them to the attention of her supervisor, who saw them, recognized them for

what they were, and he and his supervisor came to my office late yesterday afternoon. I saw them, realized what they were and drew them to the attention of people in SaskPower and to Mr. Milani and his firm.

Mr. Gantefer: — Okay, thank you very much. I think you said that these documents were first discovered two weeks ago?

Mr. Patrick: — Yes.

Mr. Gantefer: — And it was only after reflection I guess, that it was drawn to anyone's attention that they may be relevant.

Mr. Patrick: — Yes.

Mr. Gantefer: — Thank you.

Ms. Hamilton: — I'm wondering, you mentioned that that area was occupied by Channel Lake employees. How many were employed in that area or was that Mr. Portigal's area?

Mr. Patrick: — It was Mr. Portigal's area but his entire office staff was in that area; so there was about six or seven people in the area altogether, and the area is currently populated by three SaskPower employees.

Ms. Hamilton: — Now the request had come for all of the documents to be presented to the binders weeks ago. These were left behind. Is there any reason why they wouldn't have been included or do you know of any reason why they weren't included in the initial sets?

Mr. Patrick: — The reason they wouldn't have been included is the area where these documents were found is not in any way part of a normal filing system, and when the filing system was purged to produce the documents to put into the binders, this was in no way where you'd expect to find any documentation. It was literally a stationery shelf.

Ms. Hamilton: — There's so many questions about Channel Lake now and it's received such a profile, you would leave the cleaning out of that area and looking for any information to the administrative clerk? Or would not someone else have gone in to see if there were any pertinent documents?

Mr. Patrick: — When she was cleaning up the office she's not looking for information. She was just literally tidying up the area. It was a sort of a serendipity thing that this document happened to be . . . Apparently what there is, documents somehow left behind and somehow found their way into this pile of folders.

Ms. Hamilton: — I'm just wondering if it didn't cross anyone's mind that since this is Mr. Portigal's area and these are sensitive documents, that someone would go in and check to see if there had been anything at all that had been left behind.

Mr. Patrick: — When the document package was put together and given to the committee, that's the area where most of the documents came from. That is in fact where the binders largely originated, so that's where in fact it was done. Where this folder was found is in the general office area, not in anybody's office. It's kind of a larger office, subdivided into smaller offices. It's

kind of in the common area in the middle where there's just sort of miscellaneous bookcases and storage shelves and what not and that's where this stuff was found.

Mr. Hillson: — Yes, sir. As I read these documents, this would appear to indicate that the changes — the final changes — were certainly in the knowledge of Mr. Portigal and of the Calgary law firm, Milner Fenerty.

I want to know if you have conducted any inquiries and if you are able to tell us whether you have information which would suggest that anyone else was aware of the contents of these documents?

Mr. Patrick: — No, sir.

Mr. Hillson: — So as far as you are aware, no one else within SaskPower would have known about these until two weeks ago.

Mr. Patrick: — I'm not aware, personally aware, of the circumstances of these documents so my response is, I'm not aware personally of that. I don't know whether there is anybody else who would have known.

Mr. Hillson: — But not to your knowledge?

Mr. Patrick: — Not to my knowledge.

Mr. Hillson: — Thank you. That's all I have.

Mr. Heppner: — Thank you. Did this clerk report the finding of these things to anyone else prior to last night or yesterday?

Mr. Patrick: — Just to her immediate supervisor and within minutes they came to me.

Mr. Heppner: — That was yesterday?

Mr. Patrick: — Yes.

Mr. Heppner: — But not before that?

Mr. Patrick: — No.

Mr. Heppner: — The fact that all Channel Lake documents were called for is basically province-wide information. It seems rather strange and I'd like for you to comment on that. With that knowledge being all across the province, why would this particular employee let it sit, knowing that all these documents were supposed to be coming forward?

Mr. Patrick: — She didn't recognize them as being different from the documents that had already been put in the packages.

Mr. Heppner: — And she wasn't kind of flagged in wondering if this one maybe was a lost one in a corner somewhere?

Mr. Patrick: — I can't . . . I'm not inside her head, sir. I don't know what she was thinking. I can only relay what she told me.

Mr. Heppner: — Okay. Whose documents were these originally?

Mr. Patrick: — Well they belong to the Channel Lake office. I can't speak specifically whose documents they were.

Mr. Heppner: — Okay. So we don't know whether these are Mr. Portigal's documents or . . . I think . . .

Mr. Patrick: — The file folder had been characterized to me as one which the employee, and this is it, recognized as a file folder that Mr. Portigal had had. So I mean, I presume then that's in fact the case, based on what I've been told. I don't know if there's any way specifically to prove that, but that's what I understand.

Mr. Heppner: — Good. Thank you.

The Chair: — Are there further questions?

Mr. Goohsen: — What further searches are you doing to make sure that there aren't some more files sitting around?

Mr. Patrick: — Well I guess the basic problem is there's, like there's a enormous pile of paper associated with Channel Lake. I mean these three feet of binders has been characterized . . . is certainly not all of the total information that exists. I mean much of it is unrelated or duplicates or whatever.

I mean the filing system in an office has feet and feet and feet of paper. I mean literally it could all be brought to the attention . . . I mean literally could give you the entire massive documentation. But the documents were gone through based on the directions of the original inquiry to try and pull forth anything that was pertinent to the issue. And that's what everybody has tried to do to the best of their ability.

I guess there can always be one more piece of paper somewhere, but we've tried very hard to make sure that we've brought forth absolutely everything. In our concern in trying to make sure everything is revealed, is the fact that yesterday having found a few more pieces of paper, we in fact brought it forth as soon as we knew.

Mr. Goohsen: — Well I can appreciate that, but are we to expect in this committee that each time a controversial issue arises that there'll be a new package discovered?

Mr. Patrick: — I would hope not.

Mr. Goohsen: — So would I. I have no further questions.

The Chair: — Thank you, Mr. Goohsen.

Ms. Hamilton: — Okay. I'm assuming, because the file folder was in the general area of Mr. Portigal's office and it was in a file folder that he was carrying, that he would have to bring that with him. Do you know at all when it would have been brought into the office?

Mr. Patrick: — No.

Ms. Hamilton: — Was it shared with anyone when it arrived?

Mr. Patrick: — I don't know. I don't know anything of the circumstances.

The Chair: — I would thank all committee members for the questions, and I think that we do have as complete a disclosure as we can anticipate right now with the circumstances surrounding the discovery of this file. I will ask just one more time: are there any other questions the committee members may have regarding this specific file?

Mr. Patrick, you are excused then. And, Mr. Christensen, if you will once again take the witness chair. And then we will move into the regular round of questioning. Mr. Gantefer, you and the Saskatchewan Party will have until approximately 10:20 to question Mr. Christensen. Thank you.

Mr. Gantefer: — Good morning, Mr. Christensen. Welcome back. I would like to go over some of the results of the comments that were made by Mr. Kram yesterday and deal with the changes that have occurred. And as of first thing this morning we had three documents, now we seem to have four. And I wonder, have you had an opportunity to be briefed with your counsel on the latest document that was tabled with us this morning.

Mr. Christensen: — Yes, a brief briefing would be probably the best way to describe it.

Mr. Gantefer: — Which is the same all of us have had.

Mr. Christensen: — Agreed, sir.

Mr. Gantefer: — Now what I would like to focus on is in Mr. Kram's statement yesterday he highlighted that there were three main areas where changes had been made from dealing first of all . . . and, Madam Chair, I apologize somewhat in that I don't have this reference to the new referencing system completely yet. But I guess for the record I would like to talk about the Channel Lake share note agreement, the draft no. 2. And I believe under the new referencing system, I quickly . . . it's from the Channel Lake Property Sale binder, item 841, and under the new system, CPL 14/16. I think that's the way you want them done.

The other document is under the only SaskPower signatures, item no. 1119, and that's the document that I believe was said that was only the two signatures on it. The other document from the closing book, no. 874, which was the final agreement that was received. And I have no idea how to reference this new document that was received this morning.

The Chair: — No. The Clerk will index it and you will soon be given a number, but for today you can refer to it however you wish.

Mr. Gantefer: — I think you better rephrase that, Madam Chairman, I'm tempted to use unparliamentary language.

The Chair: — Within the limits of parliamentary propriety.

Mr. Gantefer: — And I also would like to refer to the statement by Mr. Kram yesterday, and particularly in the section, I believe, with paragraph 24 of that document.

What I would like to do is ask you, first of all, can you take us through the changes and also explain to us the nature and the

implications of those changes. There were three clauses — where did those changes occur? Now in light of the documents that I have indicated, take us through those three very clearly and focus on those three changes and explain to us what they mean.

Mr. Christensen: — I'll do my best. Madam Chair, through you, does Mr. Gantefer want me to start with draft no. 2, which is document 841? Or does he wish me to start with document 1119, which was the document that Mr. Kram and I signed originally?

Mr. Gantefer: — If I could, what I really want is where these changes came up. You know, it's been highlighted that there were these three substantive changes. I want to understand what those changes were and where do they show up.

The Chair: — I think Mr. Christensen then you would start with document 841. No? Could you read into the record the number of the document you're referring to then.

Mr. Christensen: — Certainly. Madam Chair, the document I'm looking at is 1119, and that is the one that Mr. Kram and I originally signed.

The Chair: — I believe that's in binder 17.

Mr. Christensen: — And I'm going to compare that to tab no. 1, the shares — it's in the binder entitled, Share Sale Closing Book/Document 874.

The Chair: — That would be binder 16.

Mr. Christensen: — I'm looking at page 15 in document 1119. I'm looking also at page 15 under tab 1. I'll read the document 1119 4(gg) on page 15 into the record.

Mr. Gantefer: — If I may, Madam Chairman, I don't want this to be like a legal thing. I want to understand what the nature and substance of this is. I don't want to have it harder to understand; I want it easier to understand.

So without reading all the direct things, I want to understand what was the nature of the change in item (gg) and what were the financial implications, if any, on SaskPower Channel Lake?

The Chair: — And I appreciate what you're asking for, Mr. Gantefer. I also need though for the record to have the numbers of the documents that are being referred to. We're not dealing with just today; this will be a formal, complete, and permanent record. So as much as possible, when witnesses are answering, I would ask that they identify the documents.

Mr. Gantefer: — Let me rephrase the question then, Madam Chairman. What is the significance of Mr. Kram's statement on paragraph 24 that says a clause 6.3, which deals with the adjustment to the purchase price, has been deleted and replaced with a new clause 6.3? What are the implications of that statement, and what if any, were the financial implications?

The Chair: — And Mr. Christensen, I'd remind you the witness can answer the question in the manner he thinks is best as long as it's responsive.

Mr. Christensen: — I think you can depend on me to do that, Madam Chair.

The Chair: — Thank you.

Mr. Christensen: — Madam Chair, as is painfully obvious to everyone here, I'm not a lawyer, but it does have some legal . . . it does relate to legal matters, so I've been conferring with Mr. Milani.

I think the significance of paragraph 24 is these changes were made without our knowledge after we had signed the document, and what wound up in the closing book is different than what we signed. And as I said yesterday that is an unusual commercial practice to say the least.

The change to clause 4.2(gg) adds a representation and warranty by SaskPower that there are no gas trading purchase and sale contracts other than those disclosed in schedule D to the agreement. In terms of financial impact, we don't consider that this particular change is significant as the contracts associated with trading losses were disclosed in schedule D to the agreement.

Mr. Gantefer: — Okay. What about the other two?

Mr. Christensen: — I'm now looking at the section 6.3 entitled, gas supply obligations, and it's on page 19 of document 1119, and it's also on page 19 in document 874. Clause 6.3, that change to it was noted by Mr. Tavender of Milner Fenerty on June 10, 1997. After the May 30, 1997 closing, the changes to clause 6.3 did not appear to be in and of themselves substantive or quantifiable.

Mr. Gantefer: — Does that mean no impact financially?

Mr. Christensen: — It doesn't appear that way. I'm now looking at page 20 of both documents, 1119 and 874. The change to clause 7.1 is the inclusion of paragraph C whereby SaskPower agrees to indemnify DEML (Direct Energy Marketing Limited) and Channel Lake, their directors and officers amongst others, from any claim by a receiver, trustee in bankruptcy, administrator, or manager, or successor of a contracting party against Channel Lake under the trading contracts.

This change is significant only if Channel Lake fails to fulfil their contract obligations under the two remaining agreements from schedule D, and there is a subsequent successful claim against the indemnified parties. SaskPower's liability disappears upon the conclusion of those agreements on November 1, 1998.

Mr. Gantefer: — Are there any changes that would impact in any way on the gas supply contract?

Mr. Christensen: — I don't know.

Mr. Gantefer: — So the changes that have been highlighted, while unusual, have in your opinion insignificant financial implication on SaskPower/Channel Lake?

Mr. Christensen: — I'm sorry, could you repeat the question?

Mr. Gantefer: — So the overall significance of these changes while they're unusual, in your opinion have no likelihood of significant financial implications to SaskPower.

Mr. Christensen: — The change to clause 7.1 because it involves an indemnity, it's a contingent liability that SaskPower faces. So in theory if there's a problem, SaskPower could be required to indemnify the parties listed in that clause.

Mr. Gantefer: — Now in the fact that these changes occurred from the draft you signed. The major financial implication had changed between draft no. 2 and the document you actually signed.

Mr. Christensen: — That's correct. And I believe Mr. Kram pointedly said that in his opening statement.

Mr. Gantefer: — So the fact that the document had been changed, and from the document we read today, some of those changes were made known to some individuals. But were those changes from the document that was tabled this morning — the underlined changes — were they made . . . were you made aware of those changes?

Mr. Christensen: — Are you talking about the documents that were just . . .

Mr. Gantefer: — Tabled today.

Mr. Christensen: — That were tabled today. I became aware of them late yesterday evening.

Mr. Gantefer: — At no time between the time that you believe the documents you signed were going to be the documents that would show up in the closing agreement and the time you actually received the closing agreement documents, you were not made aware of these underlined documents that were tabled today?

Mr. Christensen: — No. Like I said, I first discovered them — not discovered them but was made aware of them — yesterday evening.

Mr. Gantefer: — I appreciate you're not a lawyer but you have legal counsel. And when documents are changed in this nature, does that constitute fraud?

Mr. Christensen: — I can't express an opinion on what is fraud and what isn't. And I suspect, even if I was a lawyer in this case, I wouldn't express any opinion in that regard. All I can say is . . .

The Chair: — Mr. Gantefer, you may wish later to direct that question to our special adviser.

Mr. Christensen: — All I can say is we don't know what happened to the documents between when we signed them on April 1 and when we got the closing book early in June.

And I feel very uncomfortable speculating on anything such as fraud. Mr. Priel, I took his counsel yesterday, and people's reputations are at stake here. And whether it's mine or board members' or Mr. Portigal's, I'm only here to talk about what I

know. That's the only thing I feel comfortable discussing.

Mr. Gantefer: — Okay. You are a director of Channel Lake and you're an officer of SaskPower and you indicated, I believe yesterday, that you became aware of one of these clause changes some time ago, and two more of them as late as a week or so ago. Is that correct?

Mr. Christensen: — First of all I ceased to be a director of Channel Lake somewhere around I believe it was June 1997. When the company changed hands, we resigned as director. I'm still an officer of SaskPower.

I was made aware of the one change — I can't tell you the exact date — and it was in Mr. Tavender's legal opinion. That was in 1997 and the legal opinion was sometime in June.

Mr. Gantefer: — And the other two changes approximately a week ago.

Mr. Christensen: — Roughly a week ago.

Mr. Gantefer: — As an officer of SaskPower, when you were made aware of those changes, did you or do you not have a fiduciary responsibility to ask legal counsel if indeed this issue or these changes would constitute fraud?

Mr. Christensen: — Sir, I think it is indeed the duty of the officers. And this was indeed done not by myself but it was indeed done to seek legal advice. And legal advice was sought from Mr. Tavender, and also from Mr. Kenny of MacPherson Leslie Tyerman.

To be quite honest, the thought of fraud never entered my mind at that time. And I believe we sought legal advice and we got it. I was not party to seeking that legal advice. That's the best I can answer.

Mr. Gantefer: — You're telling us that someone essentially switched a \$20 million contract on you and you found it out in the last week and you haven't even had a thought that there might be some fraud involved? And you haven't sought any legal advice after you found that subsequent to realizing that there was one clause changed, there were two further clause changes in the last week or so. You haven't sought any legal opinion as if there are serious financial implications and potential for overturning of this whole contract, and you haven't sought that advice?

Mr. Christensen: — Sir, what I said was at the time, back in 1997, the thought of fraud never entered my mind. I was not the officer or officers who sought legal counsel. And I believe the legal counsel that was sought at that time was competent. And if they would have felt there was some indication of fraud, I'm certain, given that they're competent legal counsel, that they would have brought that to our attention.

And the last two changes, sir, were discovered in the last week and those were also brought to the attention of . . . In fact one of the changes was discovered by McDougall Ready; the other change was discovered by my finance staff. Again I believe McDougall Ready are competent legal counsel. And again, I'm not a lawyer and I'm not prepared to speculate on fraud.

Mr. Gantefer: — I appreciate that, but I would think that you have a responsibility for the financial affairs and interests of SaskPower and as such, would be an obvious question to be asking the lawyers if indeed these events have the potential of constituting fraud. And second of all if that has an opportunity to be considered fraud, if that matter then should not be turned over for investigation and potential for the overturning of this agreement in the courts.

Mr. Christensen: — Madam Chair, and I think Mr. Priel talked about this yesterday, this matter is before the Crown Corporations Committee. All the evidence is certainly not in. The decision to . . . And when we've heard everything related to this hearing I think all of the material that's been made available will be examined, and a decision made by SaskPower what the next step should be.

Mr. Gantefer: — Well with respect to Mr. Priel and to this legal opinion, it strikes me as that if you come across a dead body in the street with a knife in their heart I would suspect what you do is call the police and not a committee.

Mr. Christensen: — Sir, I would agree if you find a dead body in the middle of the street with a knife in it, you call the police. That however is not what we have here. What we have here is a Crown Corporations Committee. It's a committee of the legislature. I respect that. I think that all the evidence should be in before SaskPower takes any action related to these matters if there's any action to be taken.

Mr. Gantefer: — So you are abrogating your responsibility as an officer of SaskPower to a legislative committee to see if the rights and the properties of SaskPower can be protected.

Mr. Christensen: — I think if you go to the terms of reference, Madam Chair . . .

The Chair: — I was about to point them out to committee members but you may do it if you wish.

Mr. Christensen: — Okay. And I'm not familiar with — I can't recite them. But I believe the committee is going to recommend what action should be taken at the end of all this, and again, I respect what this committee is doing. And I think as an officer of SaskPower and we're obviously a Crown corporation, I think I would probably be called by some people irresponsible if I started recommending to our board of directors or our acting CEO (chief executive officer), let's run off and try and get criminal charges or something to that effect. I think, I mean the decision has been made by the Legislative Assembly; this is handled in Crown Corporations; and I respect that.

Mr. Heppner: — We're talking about irresponsibility, and that was your term. Five million dollars gets switched on a contract and I believe you knew about that before this committee started — came into existence. Why did you not take some action at that point?

Mr. Christensen: — Quick action was taken. Legal opinions were sought and received. A presentation was made to the board of directors of SaskPower. The board of directors decided what action was to be taken and I'd like to point out I was not part of most of the process to determine whether legal action

should be taken or not.

Mr. Heppner: — Someone changed that contract after you signed it. Did you check with your lawyer whether that's grounds to nullify the contract?

Mr. Christensen: — That was one of the matters looked at in the Tavender opinion and I don't know all the details of the Tavender opinion.

Mr. Heppner: — Well what seems interesting to me, I think all of us, if we would have a contract and someone would change it on us, we wouldn't go looking around for a hundred lawyers or ten lawyers for ten opinions. We'd take it immediately to some legal recourse to say, we've been ripped off for \$5 million.

Mr. Christensen: — Well I think, sir, the course of action that SaskPower took was to get competent legal counsel. My understanding is that the president and CEO at the time, Mr. Messer, went to MacPherson Leslie & Tyerman for an opinion, and an opinion was also sought from Milner Fenerty. And to my knowledge, there was no opinion shopping amongst, to use your term, sir, ten lawyers.

Mr. Heppner: — Back to . . . do we have . . . how much time do we have left?

The Chair: — About two and a half minutes left.

Mr. Heppner: — Okay, go ahead.

The Chair: — Approximately.

Mr. Gantefer: — Thank you, Madam Chairman. I would like to quickly refer you to CLP 8/11, which is in the Channel Lake board of directors meeting minutes item no. 208. From the minutes of this Channel Lake board meeting on November 27, the Channel Lake board authorized Channel Lake to exercise its right of first refusal and spend up to \$8 million on certain properties owned by Stampeder Exploration. Did Channel Lake ever complete the purchase?

Mr. Christensen: — Not to my knowledge. Certainly not while it was owned by SaskPower.

Mr. Gantefer: — So the sale price was . . . the direction indicated in this minute was never followed?

Mr. Christensen: — I believe the . . . just let me read it, I want to be clear on this:

It was duly moved and seconded that Channel Lake Petroleum Ltd. be authorized to exercise its right of refusal (etc.).

I believe that right of first refusal was exercised.

Mr. Gantefer: — In other words they did not purchase the property, or they did?

Mr. Christensen: — Up until the end . . . during the time Channel Lake was owned by SaskPower, this transaction was not completed. That is, the purchase of . . . the right of first

refusal was exercised, but the purchase of property interests in Channel Lake and Channel Lake south was not completed. And just to be clear, I don't know if that was completed after Channel Lake became owned by DEML. Remember Channel Lake is a separate legal entity; it was owned by SaskPower and then owned by DEML.

Mr. Gantefer: — So the ownership date change was the April signing, or closing date?

Mr. Christensen: — I think it's June 1.

Mr. Gantefer: — June 1. So you're saying that the right of first refusal was not exercised before that June 1 date.

Mr. Christensen: — No, the right of first refusal I believe, as I recall, was exercised, but the purchase did not take place.

Mr. Gantefer: — So was the property part of the Gilbert valuation of the company or not?

Mr. Christensen: — No.

Mr. Gantefer: — Thank you very much.

The Chair: — Thank you, Mr. Gantefer. I appreciate your cooperation. Ladies and gentlemen, I will now call a 10-minute break and we will reconvene at 10:30 exactly, with the Liberal Party questioning the witness.

The committee recessed for a period of time.

The Chair: — I would ask the committee to please come to order. During the break I received an indication from Mr. Gantefer that he had only a few moments of questioning left of Mr. Christensen, and by agreement with Mr. Hillson and Mr. Tchorzewski, I think that what we will do, Mr. Gantefer, is ask you to put your questions, complete your line of questioning, and then we will move to the Liberal Party's block of time.

Mr. Gantefer: — Thank you very much, Madam Chair, committee members. Briefly, Mr. Christensen, I'm told that quite often in the course of minister's being responsible for their specific Crowns that they ask for updates and memos and details on a regular basis from senior officials in the Crown corporations. Were you ever asked by Mr. Lautermilch, either verbally or by memo, on any aspect of the management or sale at Channel Lake?

Mr. Christensen: — I was never directly asked for any information by Mr. Lautermilch on Channel Lake.

Mr. Gantefer: — The only information you ever provided was through Mr. Messer and through the board meetings?

Mr. Christensen: — To Mr. Lautermilch, that's correct.

Mr. Gantefer: — Is that also true of Mr. Lingenfelter after he assumed responsibility for the Crowns? The same kind of question again — was he ever . . . did he ever ask you directly or did you communicate directly with him either by memo or verbally about the issues surrounding Channel Lake?

Mr. Christensen: — I had always communicated to . . . It wasn't through Mr. Messer because he was out of the province at the time. This was in late December, late December of 1997. To put it in perspective, I believe the House had a special sitting in December for . . . to consider something called the Calgary . . . (inaudible interjection) . . . It was the constitution; Mr. Gantfoer has prompted me. So I had helped prepare a briefing note with some of our corporate communications people, and I believe it was Mr. Stobbe.

And it was mainly — I believe it's in the documents — it was mainly related to the sale, the price, and how we went about selling it and the like. After that had been prepared I received a call from Mr. Lingenfelter and he was quite concerned, because nowhere in the briefing note and at no time had I ever communicated to him — and it was never what I call a big object of discussion because I had concentrated obviously on the financial matters — that Mr. Portigal had been terminated. And it was a brief discussion over the phone. And that's the only time.

Mr. Gantfoer: — And the memo or the briefing note that was prepared is one of the documents that we have?

Mr. Christensen: — Right.

Mr. Gantfoer: — I won't ask for you to identify it right now, but if you could into the future, that'd be appreciated. Thank you very much.

Mr. Christensen: — Okay.

The Chair: — Are you complete with your questioning, Mr. Gantfoer? Thank you.

Mr. Hillson: — Yes, binder 17, document 1148. This is Ernst & Young auditor's report, May 9,'97 and it's marked, draft. And there is, there are, on page 3, some handwritten notes. Do you see those?

Mr. Christensen: — I do.

Mr. Hillson: — And whose writing is that, sir?

Mr. Christensen: — That looks like my writing.

Mr. Hillson: — Would you read into the record the first handwritten note, on the top of the page.

Mr. Christensen: — Okay. First I'd like to make sure everybody understands what the document is. It's . . . We have examined the system of internal control of Channel Lake Petroleum Ltd. in effect as at October 31, 1996 and I believe this draft document deals substantively with controls related to the losses that we sustained at Channel Lake because of the bankruptcies of counter-parties.

Mr. Hillson: — Okay. Now, would you please do what I asked.

Mr. Christensen: — Certainly. The first handwritten squiggle is on page . . . I guess it's on page 1.

Mr. Hillson: — No. On page 3, I'm directing you. The page

that starts "because of the inherent limitations in any system . . ."

Mr. Christensen: — Certainly. I have circled the word "fraud" that's typewritten, and I've written, in handwriting, fraud, with a big question mark.

Mr. Hillson: — So would you tell us what you meant by specifically zeroing in and rewriting the word fraud.

Mr. Christensen: — Well when I read — as best as I can recall — it says; I'll start partway through the sentence:

. . . which in our opinion, based on the above criteria, resulted in more than a relatively low risk that errors or fraud in amounts that would be material in relation to Channel Lake may occur and not be detected within a timely period.

Naturally this is standard auditor's language. However I saw the word fraud, I circled it, I wrote the question mark afterwards. I believe I spoke to, it was either Mr. Spelliscy, who's our staff accounting expert, or Ms. Hall or maybe both, asked about this: is there really a big concern about fraud — and I don't recall the discussion — and they informed me — as best I can recall — this is standard auditor's language. They're talking that there could be a potential, more than a small risk of fraud under the circumstances.

However we know that, we know that there were four bankruptcies; it was common knowledge in the industry; and there was no fraud to my knowledge, and it'll be my belief.

Mr. Hillson: — Now were you aware, at the time you wrote this notation in the margin concerning fraud, were you aware that Mr. Portigal had entered into an agreement to work for DEML?

Mr. Christensen: — No, sir.

Mr. Hillson: — When did you learn that?

Mr. Christensen: — That was . . . it would have been sometime when we got the closing book. As I mentioned yesterday, Mr. Kram received the closing book and Mr. Patrick came down and discussed or mentioned to me that Mr. Portigal had gone to work for the other side, if I can put it that way.

Again, sir, this whole audit report relates to the bankruptcy of those counter-parties.

Mr. Hillson: — I'd like to refer you to document 1152 — same binder.

Mr. Christensen: — I have it.

Mr. Hillson: — Now would you read into the record the first notation under no. 2, our concerns.

Mr. Christensen: — Okay. I should give you some background on this document. This was a proposed agenda which we did not hand out. It's probably mislabelled. It probably should read, negotiating tactics. It was prepared by myself and Mr. Kram

and we prepared these notes in discussion with DEML. And as far as the discussions went, they gave us assurances that Mr. Portigal was not employed by them, or no discussions had occurred with them until well after the transaction had been closed, in the first closing of April 1.

Mr. Hillson: — Until after the first closing on April 1?

Mr. Christensen: — That's correct.

Mr. Hillson: — Well after or after?

Mr. Christensen: — I don't recall. And I think I said that yesterday. I don't recall the date but it was after the . . .

Mr. Hillson: — Yes. I believe Mr. Drummond gave you the indication that the agreement to hire Mr. Portigal had occurred in April.

Mr. Christensen: — That's my understanding.

Mr. Hillson: — Very well. Okay. Would you please read into the record then — you say you prepared this document — the first item under no. 2.

Mr. Christensen: — “. . . feel the deal was misrepresented to us by our agent, Lawrie Portigal.”

Mr. Hillson: — And you say you had a hand in preparing that; so does that in fact represent your view of the situation at that time?

Mr. Christensen: — This was a negotiating position. We were concerned about the \$5 million difference.

Mr. Hillson: — Yes. That's not my question, though. I mean was this your honest opinion at the time you wrote it or not?

Mr. Christensen: — Sir, we didn't know. We were conveying this as a negotiating position to DEML.

Mr. Hillson: — I'm sorry, sir, but I find that a strange answer. You've written here: “We feel the deal was misrepresented to us by our agent, Lawrie Portigal.” Now is that a true statement or an untrue statement?

Mr. Christensen: — Yes, that was a negotiating position we were taking with DEML at the time and we were trying to get information from DEML at the time. And, sir, I'm not prepared to make any accusations or . . .

Mr. Hillson: — No, no. I'm asking you if that represents your true feelings at that time. Is that a true statement of your feelings at that time? I'm not asking you to point a finger at anybody. I'm asking you if that statement that you say you prepared represents your view of the situation?

Mr. Christensen: — Again, sir, this was prepared for negotiations and I don't think it would be fair to say . . . I think it would be fair to say, at the time we didn't have enough information to know exactly what happened.

Mr. Hillson: — Well I guess you're not going to answer it so

I'll just pass on then to the next question. Two things . . . At the bottom it says two things in no. 2. Would you read into the record what is written under no. 2.

The Chair: — Perhaps for the record, Mr. Christensen should read both the two things.

Mr. Hillson: — That's fine, Madam Chair.

Mr. Christensen: — Okay. I'll start with:

Two things: anything we can do to alter the transaction.

(2) We are not prepared to deal with Lawrie Portigal.

We're looking at legal recourse.

Not in your best interest to have us suing your president.

Provisional price applied to purchase price.

Trading loss is not really a concern. These will be disclosed.

Mr. Hillson: — Thank you. Now the statement, “We are not prepared to deal with Lawrie Portigal.” Was that in fact your position at the time you wrote this?

Mr. Christensen: — Yes.

Mr. Hillson: — However the situation is that because of the 10-year supply contract, you will now have to continue apparently to deal with Lawrie Portigal for a decade. Is that correct?

Mr. Christensen: — No, sir, what we were saying here is we didn't want to have our staff dealing with Mr. Lawrie Portigal directly.

Mr. Hillson: — So this is not, this is not a reference to the fact that SaskPower will continue for 10 years to have to deal with Mr. Portigal in more . . . in a further business relationship.

Mr. Christensen: — No. This dealt very specifically with staff at SaskPower dealing directly with Mr. Portigal.

Mr. Hillson: — Well in view of what you and Mr. Kram said, does SaskPower have any concern that you're, you're in a decade-long business relationship with this man — this man that you say you're not prepared to deal with, and that he misrepresented the deal to you? Do you have any concerns about going on dealing with him for another 10 years?

Mr. Christensen: — The deal is with Mr. . . . the deal is not with Mr. Portigal, the deal is between SaskPower and Direct Energy.

Mr. Hillson: — And who is the president of Direct Energy?

Mr. Christensen: — I believe it's Mr. Gary Drummond.

Mr. Hillson: — And are you saying that this does not put you into dealing with, with Mr. Portigal?

Mr. Christensen: — To my knowledge, Mr. Portigal is not dealing with us directly. And as far as I know, Mr. Portigal did not administer this contract with us.

Mr. Hillson: — Okay, so you're saying you don't have any problems with, with continuing a 10-year relationship with Direct Energy notwithstanding the allegations and the information that you and Mr. Kram have brought forward.

Mr. Christensen: — All of the information related to Channel Lake is being canvassed. It's before the Crown Corporations Committee.

Mr. Hillson: — That's not my question. I'm asking if you have concerns about continuant in your relationship with Direct Energy in view of all you've told us. It's a very personal question, sir.

Mr. Christensen: — And I'll give you a personal answer. I'm not prepared to make any conclusions until I've seen all of the information related to this hearing and information from the Crown Corporations Committee.

Mr. Hillson: — Okay, I understand your reluctance to answer that. Now I want to . . .

Mr. Christensen: — I'm sorry, sir, I did answer it.

Mr. Hillson: — I don't think you did. I think it calls for an answer. I don't think I got it, but the record speaks for itself in that regard.

Mr. Christensen: — Indeed.

Mr. Hillson: — Would you tell us when the arbitrage gas futures sales began with Channel Lake. When did Channel Lake get into the gas futures trading business?

Yes, Mr. Christensen, you've been consulting some notes there have you?

Mr. Christensen: — I have.

Mr. Hillson: — So can you now tell us when the gas futures trading commenced with Channel Lake? When did they get into that activity?

Mr. Christensen: — What are you asking me about, sir? Is it gas futures contracts or is it arbitrage?

Mr. Hillson: — Gas futures contracts related to third parties as opposed to supply for SaskPower itself. Yesterday you said the terms, gas futures and arbitrage, were used interchangeably. However I'm . . . (inaudible) . . . gas futures contract that are not for the purpose of supplying SaskPower.

Mr. Christensen: — First of all, sir, I have to correct you. I did not say gas futures and arbitrage were the same yesterday. I said market buy/sells was the same as arbitrage, and I want to make it clear that at no time did Channel Lake or SaskPower go out and buy or sell futures on an exchange. Those were specifically prohibited by the Channel Lake board. So at no time was Channel Lake or SaskPower, to my knowledge, ever in the

futures business.

Mr. Hillson: — So you're saying that the gas futures contracts had been forbidden but arbitrage had not?

Mr. Christensen: — Correct.

Mr. Hillson: — That's your position?

Mr. Christensen: — Yes.

Mr. Hillson: — And you're saying that gas futures contracts at no time were undertaken by Channel Lake?

Mr. Christensen: — That's correct. And I want to be clear, you know, when we talk about gas futures we're talking about essentially derivative instruments that are traded on an exchange.

Mr. Hillson: — And that's what you're saying was prohibited?

Mr. Christensen: — Correct.

Mr. Hillson: — But you are saying arbitrage was not prohibited?

Mr. Christensen: — No.

Mr. Hillson: — Even in so far as it related to the buying and selling of gas for purposes other than the supply of SaskPower itself?

Mr. Christensen: — Correct.

Mr. Hillson: — Okay. So when did arbitrage begin with Channel Lake?

Mr. Christensen: — First of all I think it's important that we define arbitrage. And it's any time you're dealing . . . buying in one market and selling into another. And that can be between sort of two physical markets or it can be over time, as Mr. Milne in his report used the term, it was "temporal."

SaskPower . . . the fuel supply task force on behalf of SaskPower, and with very specific authorization at the time, undertook some arbitrage transactions, I believe it was starting in February, February 22, 1994 board meeting. Prior to that, SaskPower had engaged in some — we'd always called them market buy/sells or arbitrage transactions with its own gas. That is it would . . . because SaskPower has erratic gas requirements and it had big storage, it would buy and sell and exchange natural gas. So I would say in terms of SaskPower, it started sometime in early '94, and in terms of Channel Lake, probably late '94.

And in the fall of 1994, SaskPower and Channel Lake entered into a natural gas supply agreement — and that's document no. 201 — which was approved at the October 24, 1994 meeting of the SaskPower board.

Mr. Hillson: — So you are saying . . .

Mr. Christensen: — And that's document . . .

Mr. Hillson: — Pardon me, sir. You're saying, SaskPower was in arbitrage in early '94 and Channel Lake in late '94? Is that, is that . . . I just want to make sure I have your answer.

Mr. Christensen: — Yes. And the topic summary for that meeting of October 24, 1994 described that under the natural gas agreement between SaskPower and Channel Lake, SaskPower at its option may make natural gas not then required by it for its immediate operations available to Channel Lake for its use. And its use obviously was to sell or exchange. Channel Lake will be required to replace such gas at SaskPower's request at a later date.

Now really the only use Channel Lake could have for this gas would be to sell it. The intention of this part of the natural gas supply agreement was for Channel Lake to be able to sell SaskPower's excess gas and buy other gas to replace it, and hopefully at a lower price than it sold it for, thereby deriving a profit.

Mr. Hillson: — Now I realize that you won't have exact figures, but I wonder if you can tell us approximately what percentage of the arbitrage contracts would have involved Direct Energy.

Mr. Christensen: — I would have to look.

Mr. Hillson: — Would you then undertake to supply that information to the committee.

Mr. Christensen: — Sure.

Mr. Hillson: — Thank you.

The Chair: — Mr. Christensen, when you supply the information to the committee, will you table it, attention of the Chair through the Clerk, and provide 15 copies.

Mr. Christensen: — Certainly. I'll probably do it through Mr. Milani.

The Chair: — When you or Mr. Milani provide the information.

Mr. Christensen: — I'm trying to create an obligation on his part here.

Mr. Hillson: — I take it from your answers yesterday, sir, that in your view there was nothing unusual about not reading the closing documents or the escrow agreement prior to signing. And so I would like to ask you whether, in light of what has happened, your practice for future transactions will change, or will you be following the same procedure as before?

Mr. Christensen: — Obviously the problems related to Channel Lake have caused some change in procedures at SaskPower. But I can tell you quite honestly and quite bluntly, I trust the people I work with and I am not going to be rereading every commercial document that I sign. And you have to trust the people you work with, and the usual commercial practice is not to reread these documents at closing. And certainly I think there . . . I think that's about it, sir.

Mr. Hillson: — Okay. Were you present at the board meeting of March 26, when Mr. Portigal was asked point-blank if he had a personal interest in the sale of Channel Lake?

Mr. Christensen: — That is the SaskPower board you're referring to? Yes I was.

Mr. Hillson: — Who asked that question?

Mr. Christensen: — I believe it was Mr. Derk Kok, who was a board member.

Mr. Hillson: — Was the obvious concern expressed at that point by Mr. Kok apparently shared by other persons, including yourself?

Mr. Christensen: — It was not a concern shared by me at the March 26 meeting. And I can't tell you what was in the minds of other board members.

Mr. Hillson: — However this must have made you sit up — like where does a question like that come from. And personally I've never been asked a question like that in any board I've sat on. I doubt you have been. A question like that, I mean that's like a stick of dynamite. It has to have really hit you; that's quite a question to ask someone. It must have raised concern in your mind. Where does a question like that come from?

Mr. Christensen: — Mr. Kok never explained to me why he asked the question. Mr. Portigal answered it.

Mr. Hillson: — And you're saying it just flowed past you.

Mr. Christensen: — I wouldn't say it flowed past me. I was aware of it. It didn't raise any particular concerns to me.

Mr. Hillson: — I understand that of course the origin of Channel Lake was the purchase of the Dynex assets in 1993 for 25 million.

Mr. Christensen: — It wasn't for 25 million, but it was approximately 25 million.

Mr. Hillson: — And I understand that there is litigation currently in the province of Alberta which may increase that purchase price to 30 million.

Mr. Christensen: — I'm not aware of any litigation in Alberta that would increase the purchase price from what it was to \$30 million, the original Dynex.

Mr. Hillson: — Madam Chair, I'm going to refer you to binder no. 9, and I think . . . document 25, and if I may ask the indulgence, I think Mr. Milani may be able to assist here. I suspect he may be of more assistance than the witness. And if he could be allowed perhaps a little bit more latitude than what we've normally given the lawyers.

But my question is, I understand we've got litigation outstanding in the province of Alberta that could increase SaskPower's liability by another 5 million here, and I would like to know if that is correct and what information can be given us.

The Chair: — Is that not a question that you could direct to our special adviser? I'm only trying to ensure that we have witnesses answering questions directly rather than having lawyers speaking for them.

But if it is, Mr. Hillson, a question that you feel can best and only and properly be answered by legal counsel, we'll put it to legal counsel. Otherwise perhaps you could put it to Mr. Kram who is the general counsel for SaskPower.

Mr. Hillson: — Well then, Madam Chair, I abide by that ruling. I'll put the question and if the witness's answer is that it's not appropriate to him, perhaps Mr. Kram will take note of it and we can deal with it next day.

I'd also like to refer if I may to binder no. 3, the binder marked Premier Romanow, and document no. 2. And I would just read into the record a statement there and ask if any light can be shed on this: "Negotiations . . ."

The Chair: — Perhaps we need to deal with your first question first.

Mr. Hillson: — Well it is the first . . . It's the same issue, and I'm sorry for . . .

The Chair: — Thank you. It wasn't clear to me.

Mr. Hillson: — I haven't passed on. No. That's comforting?

The Chair: — That's very noticeable.

Mr. Hillson: — Very reassuring.

Negotiations between Dynex Petroleum Ltd. and Channel Lake Petroleum Ltd. had commenced in January 1993. The purchase price could reach as much as \$30 million depending upon the results of litigation.

And that's a briefing note given to the Premier regarding I say outstanding litigation in the province of Alberta, and I'm wanting to know where that stands. Is there a potential liability of 5 million out there?

Mr. Christensen: — I can't really speak to that. And I've been advised by Mr. Milani and I think he had a brief discussion with Mr. Kram, that Mr. Kram would be a better person to answer that than myself.

Mr. Hillson: — I abide by that and we'll come back to that next week. And I have just one last question. I think I'm short on my time, am I not, Madam Chair?

The Chair: — That's quite all right. Don't feel inspired to use the full 30 minutes each time.

Mr. Hillson: — If I may go back to the question you were on earlier with Mr. Gantefer. Binder no. 17, page 20, the last change that you discussed was the change to 7.1. And you referred to that as a contingent liability. So you've told us there are three changes. Two you've described I believe as insignificant. The third one you've described as a contingent liability.

My question for you, sir, is: what is the maximum potential liability to SaskPower under 7.1?

Mr. Christensen: — I haven't had occasion to make that calculation and I don't even know if it can be done or reasonably determined at this point in time.

Mr. Hillson: — I understand the first but I don't understand the second, as to why you wouldn't be able to tell us what is the potential liability to SaskPower under this clause.

Mr. Christensen: — I'll have to look at the two contracts I believe are left and see if the calculation can be reasonably made.

Mr. Hillson: — Madam Chair, I request that undertaking as well then to provide this committee with the calculation as to the potential liability to SaskPower pursuant to that last alteration.

The Chair: — And again you will provide it as per our usual procedure for providing those.

Mr. Christensen: — Yes, Madam Chair, if I'm able to make the calculation.

The Chair: — Even if you're not able to make the calculation, if you would provide an answer to the question.

Mr. Christensen: — Certainly.

The Chair: — Thank you. Mr. Hillson, you have completed your line of questioning Mr. Christensen at this time? I will now then move to the government side.

Ms. Hamilton: — A few follow-up questions from the line of questioning already taking place this morning. Mr. Christensen, you say you learned Mr. Portigal was working for DEML on or after June 4, and that would be the date after you received the closing?

Mr. Christensen: — That's correct. And to be clear, in the closing book I believe he's an employee of Channel Lake, which is now owned by Direct Energy.

Ms. Hamilton: — Well you knew that Channel Lake was a share sale to DEML, so that said where all assets, including employees, would go with the company, Channel Lake, including Mr. Portigal.

Mr. Christensen: — No. Employees didn't necessarily go with Channel Lake. And in fact some that had been employed did not wind up at Channel Lake, that had been employed by Channel Lake. And in any event, Mr. Portigal was not an employee of Channel Lake. He was a contract employee or a consultant employed by SaskPower. He was never an employee of Channel Lake.

Ms. Hamilton: — Okay. Well what, if anything, occurred between SaskPower and Mr. Portigal that would make you believe that Mr. Portigal wouldn't continue working with Channel Lake after the sale?

Mr. Christensen: — Yes, it really didn't have anything to us. It was a share sale and note purchase agreement.

Ms. Hamilton: — So nothing that you knew about that had occurred between SaskPower and Mr. Portigal would make you believe that he wouldn't continue working for Channel Lake.

Mr. Christensen: — With respect, ma'am, he was not working for Channel Lake, he was working for SaskPower.

Ms. Hamilton: — Okay. Again the three clauses you said you didn't find to be of financial significance. If we go through them, clause 4.2(gg), did you find the change to be then of a material nature?

Mr. Christensen: — Excuse me for a moment while we get the documents.

Ms. Hamilton: — I'd use the example in the final closing agreement, the words "gas trading contracts" has been added. So do you consider those to be material?

Mr. Christensen: — Clause 4.2(gg) was a rep and warranty, saying that we had disclosed all the gas trading contracts. And Mr. Milani advised me this is basically a different way of saying it.

Ms. Hamilton: — So of no material change?

Mr. Christensen: — I think financially there's no material change. But the fact that there was changes between what we signed and the closing book, I think that's a material fact.

Ms. Hamilton: — The change in 6.3, you've said there's no financial consequence, yet would you agree those changes were material?

Mr. Christensen: — Yes, the change to clause 6.3 does not appear to be material from a financial viewpoint. However, again the fact that the change was made without our knowledge or sign-off is material.

Ms. Hamilton: — Milner Fenerty suggests in a document, I think it's document 4, binder 1, it's a legal opinion provided, item 16, that they found the change to be material. Would you agree with that?

Mr. Christensen: — I'll have to look at the opinion. Which paragraph number?

Ms. Hamilton: — Document 4, legal opinion, item 16, page 6. June 10 of '97. Starts on page 5.

Mr. Christensen: — I'll read that into the record, and that's the draft opinion of Milner Fenerty dated June 10, 1997, and it's on page 5, paragraph 16:

The April 4 memorandum from Portigal said that the agreements entered into are essentially the same as were discussed earlier with the modifications outlined in my memorandum of April 3, 1997. We note that the wording in section 6.3 in the version of the April 2 purchase agreement as executed by Christensen and Kram is

materially different from the wording in section 6.3 in the version of April 2 purchase agreement contained in the closing book provided by Burnet Duckworth & Palmer, counsel to Direct Energy.

I don't know what Milner Fenerty means by "materially different." There were wording differences; they weren't just grammatical — it wasn't a comma change. In terms of the question I had been asked earlier in terms of financial significance, I don't believe it was financially significant.

Ms. Hamilton: — Milner Fenerty are in your employ and they say there's a material change here and you know that on June 10. You didn't do follow-up to that? If they're pointing that out to you, you wouldn't feel there's follow-up necessary?

Mr. Christensen: — Okay, I'm looking at the June 12, 1997 draft opinion from Milner Fenerty, which is document 878. And I wasn't personally involved in the legal opinions. But if you look on page 9 of that document, clause 5, it doesn't refer to materiality. So in answer to your question about follow-up, indeed there was follow-up. Another draft legal opinion was issued. And I don't have all the details because I was not involved directly in the legal opinions.

Ms. Hamilton: — Okay. Although this one does say that it appears to have been without advising SaskPower and it is most unusual in our experience.

Mr. Christensen: — We agree with that. And that's the fact of the changes as opposed to the materiality. And I think in my earlier remarks I used similar words. It was an unusual practice to say the least.

Ms. Hamilton: — Okay. I guess I'm a little confused at . . . I mean being someone sort of on the street kind of person, if I get a document, it says to me I'm buying a house, and I read the document, I believe I know what's in that, I sign it, and all of a sudden someone comes along and takes off with the chandeliers. Okay.

I find that a little unusual. It's not in the original document. I go back. I really want to do a thorough search to find out if I'm expecting any more surprises in that final document. Okay.

You've had someone tell you there's one change in June, and you find it unusual, and yet there wasn't any follow-up to or anyone curious enough to take that document and with a fine-tooth comb look and find out if there were any other changes. And I want to know if you felt you owe to the taxpayers of this province to find out if they were going to take off next with fixtures or something else that you weren't aware of. Because it had been identified as a material change.

Mr. Christensen: — Again, I wasn't involved in the legal opinions but we would have expected Milner Fenerty, who were providing us with a legal opinion, to have thoroughly reviewed the documents and brought forward all changes to us. And we had expected that to be done as part of their review.

Ms. Hamilton: — So they brought forward one item that they identified as a change, you were surprised and yet you weren't curious? No one in the organization was curious to say, have

there been other changes? If they made one, are there any others? Because I'm wondering that.

And I also look at the document you presented to us this morning, and there seem to be a number of deletions. There's a number of blacklinings in that document, and granted you only saw that last evening apparently, I'm wondering if this is the final document you saw in the "Closing Book" or it's a totally different document. And if this . . .

The Chair: — Ms. Hamilton, could you ask one question at a time? That's two, and I think you're on the verge of a third.

Ms. Hamilton: — I'm on the verge of a third. I'm just . . . it's beyond my comprehension.

The Chair: — Mr. Christensen, would you please answer question no. 1 from Ms. Hamilton.

Mr. Christensen: — I hope I'm answering the right question. Mr. Milani advises me from his quick review of the documents received last night that there's differences between the blacklined April 3 and the "Closing Book." And he advises me that firstly, the page numbers are different, which isn't that unusual. Secondly, 6.3 is not the same, and thirdly, 7.1(c) is different. And also fourthly, the acknowledgement is different from the "Closing Book."

Ms. Hamilton: — I guess the last question I have is that now you've done a thorough scrutinizing of the final document, the closing document. Are there any other more . . . anything more that we would see disclosed that we don't know about? Is there potential for anything else to come to light?

Mr. Christensen: — Yes, to my belief there's no other changes between what we signed on April 1 in the "Closing Book" that have not been disclosed to you. The way we did the check last week was one staff member read the entire document to the other to come up with any changes. The easiest way to do it obviously is with a blacklined edition, and so to my knowledge there's no other changes in the sale and purchase.

Ms. Hamilton: — I'm just wondering then why you went through . . . was it you left the document from last June until a week ago and then went through it last week? Was it preparing for this committee that you went through the document again and found the other two discrepancies? And if you weren't preparing for a meeting like this would it just have been left in the file?

Mr. Christensen: — We had assumed back in June of 1997 that Milner Fenerty had done a thorough review and had discovered and disclosed all the changes to us. McDougall, Ready started with the documents from the ground up. They discovered the change to 7.1(c), I believe the addition of 7.1(c). After McDougall, Ready disclosed that to us I went and spoke to my staff, a couple of my staff members, and requested that they read the document line by line and we discovered the change to 4.2(gg).

Ms. Hamilton: — Thank you, Madam Chair. I think most of the questions . . . well all of them have been answered. Some of them I'd like to follow up with Mr. Kram.

The Chair: — Are you indicating then, Ms. Hamilton, on behalf of the NDP (New Democratic Party), that you've completed your questioning of Mr. Christensen at this time?

Ms. Hamilton: — Yes, thank you.

The Chair: — Okay. Committee members are aware of course that we can always recall witnesses. Mr. Hillson, you've indicated you've completed your line of questioning with Mr. Christensen?

Mr. Hillson: — That's correct.

The Chair: — Mr. Gantefer, on behalf of the Saskatchewan Party, you've completed your line of questioning with Mr. Christensen?

Mr. Hillson: — That's correct at this time.

The Chair: — Thank you. Mr. Christensen, did you wish to make a closing statement then?

Mr. Christensen: — No.

The Chair: — I'm sorry, I didn't hear you.

Mr. Christensen: — No.

The Chair: — No. Thank you. Mr. Christensen you are excused from the witness chair.

The hour is now 11:25. I have an indication that we probably have procedural items of about 10 minutes to deal with. Would committee members like to begin questioning another witness or deal with procedural matters and then I would accept a motion for early adjournment. We'll deal with procedural matters then now.

I would like to inform committee members officially that following consultation with all three party caucuses who indicated that they would be highly unlikely to require testimony from Mr. Kelly Staudt, acting president and CEO of SaskPower next week — early next week rather — and since he does have business in Toronto on Monday and Tuesday he will not be available to attend to the committee on Tuesday, April 28.

I would also remind committee members that we will be meeting next week on Tuesday the 28th, and Thursday the 30th, and I would like to give notice to the SaskPower officials that, with the exception of Mr. Staudt, I would expect that you will be present on Tuesday, April 28, to continue your testimony.

I have an indication from Mr. Hillson that he wants to deal with a couple of items. One is the tabling of documents by committee members, and the other is the commencement of work on a final report.

Are there any other procedural matters that committee members wish to raise? If not, Mr. Hillson you have the floor.

Mr. Hillson: — Yes, Madam Chair, there are two or three matters I would like to raise. The first matter I wish to raise is

that . . . I don't think we should maybe get into a discussion today, but I think we should be turning our minds to how the committee will conclude its work and report to the legislature. We may have to give directions to Mr. Priel. We'll have to consider whether we want to do the work to attempt to come up with a report that represents the views of all committee members, or whether we are simply going to file three reports.

My concern however, Madam Chair, is that this is not something which can be discussed in the open committee because once, for instance, I take a position in the open committee, that becomes the Liberal's position; and then if I'm convinced by the arguments of my colleagues that maybe another direction would be better, it becomes problematic for me to agree.

So I think we do need some discussions and I would suggest the steering committee, not perhaps from a standpoint of votes but from a standpoint of simply discussing the issue and seeing what ideas come forward as to how we can commence the work on looking towards the final report and what instructions we should be giving to Mr. Priel at this time.

That completes my comments on that particular issue, Madam.

The Chair: — Before we move on to your other issue, Mr. Hillson, I would remind you, as indeed the committee Clerk is reminding me, that this committee can only present one report to the legislature. We cannot be presenting individual reports. In other words, minority reports are not a procedure of this legislature. Committee members do know that of course once I present the report in the legislature, members from all sides can debate and discuss that report in the legislature.

My suggestion that I have for dealing with what I am sure will be dissenting opinions within the report is that we will note those in the report as we are preparing it. So we will have one overall report with perhaps some dissenting opinions or differing suggestions and noting where they're coming from. But again we can deal with the matter of the preparation of the report later.

Mr. Tchorzewski, on the report before we move further? Yes.

Mr. Tchorzewski: — Madam Chair, I think it is appropriate, as Mr. Hillson has raised, that we need to give some thought to the preparation of the report and how it's going to be prepared and so on. And I . . . steering committee is certainly an option. I'm not sure that's the only option or the appropriate option and I think we should take this question into consideration for the time that we're going to be recessed until our next meeting and consider that.

I don't think we should be agreeing on any particular approach at this time, other than knowing that we need to have a process that we understand as to how we're going to conclude the report.

The Chair: — Right now I would suggest committee members can, of course, informally approach the Chair with suggestions for how you want to handle it and I can deal with the suggestions with our special adviser; and at a certain point, I think that we will obviously want to discuss this more fully and

less informally either in the steering committee or in the Committee of the Whole.

Mr. Hillson, if you'd . . .

Mr. Hillson: — I guess though, the only thing I do want to say, and this may come as a surprise to you, Madam Chair, but I am actually interested in hearing the views of other committee members rather than me just simply filing with you how I see the situation. I actually would be interested in knowing what Mr. Tchorzewski and Mr. Gantefer have to say on the subject as well.

The Chair: — I understand that.

Mr. Hillson: — I want to raise the issue of the minutes of Saskatchewan Power board meetings that were introduced last week in questioning by Mr. Tchorzewski. Now my understanding is that one, all relevant documents were supposed to have been in our binders; two, these minutes were not made available to us previously because they are confidential documents that Saskatchewan Power has taken the position are not available to members of the general public, and specifically to members of the opposition.

Now it seems to me it does raise some questions in the process if government members are being given access to privileged documents to which I and other members of the committee are denied access. And so I think, I think this is a serious question as to process, and I think we also have to know if there is another carload of documents in the back room that, as I say, can be drawn on at will by some members but not by others.

And I'm afraid it, as I say, it does raise questions as to the credibility of the process, and I think that while documents may from time to time turn out to be relevant, or to appear as they did this morning that couldn't have been foreseen. Nonetheless, I think I have to ask if the government is acting on a different set of documents than what the Saskatchewan Party and ourselves are acting on.

The Chair: — Thank you, Mr. Hillson. It is my intention as Chair to ensure that this process will be credible and I just give all committee members notice of that right now. Mr. Tchorzewski, I believe the comment is directed to you. Would you make a comment, please?

Mr. Tchorzewski: — I certainly would like to make a comment. Under the mandate of the committee and with the documents that were requested, those documents which were requested or all of those documents which were relevant to Channel Lake and in which there was reference to Channel Lake.

The document that I presented to the committee had no reference to Channel Lake and I undertook to make inquiries and raise it in the committee only because issues were raised by the president, or the former president of the Saskatchewan Power Corporation with regard to Channel Lake which referred to the meeting of the board of SaskPower on that particular date to which the document refers. And I felt it necessary to put the document forward to indicate that in fact there was no relevancy of that document to the whole Channel Lake issue because there

was no reference to Channel Lake in it. And I thought that that point needed to be clarified because of the testimony that was provided.

The Chair: — Thank you, Mr. Tchorzewski. I'm going to ask Mr. Priel to make a comment just on the general nature of how we ought to be proceeding with disclosure of evidence. I will though at this point simply indicate to you, Mr. Tchorzewski, that sometimes absence of information is also information.

Mr. Priel: — Madam Chair, I believe that my initial advice to your committee was that documents that are broadly relevant ought to be tabled. Your comment that at times the absence of information may indeed be informative is well taken.

It seems to me also that there may come points in time when other documents will appear. I would suggest that it would be appropriate that all of the documents upon which all of the members of the committee are operating or basing their questions ought to be shared with the committee. So in other words if a member from this side of the table has a document, that the whole committee ought to have the document.

And I think we had given you an indication that my view was that the witness also ought to have a copy of the document because I think it goes further, it goes further than just the credibility of the process — it's a question of fairness to the witness. I think if the witness is going to be talked to about the document perhaps it ought to be disclosed ahead of time.

The Chair: — Thank you.

Mr. Hillson: — I'm sorry, I do have another matter I wish to raise so I'll defer that if there was a response from someone else on this issue.

The Chair: — Thank you. Does any other committee member wish to add to this? Okay. We'll take it as a general caution to all committee members. Yes, Mr. Hillson, your final point.

Mr. Hillson: — Yes. I do want to make a specific witness request, and I wish address my comments to the NDP members of the committee. I know that the NDP members of the committee have taken the view, and with I think some legitimacy, that we should not put a whole lot of names on the witness list as a mere fishing expedition on the off chance that they may have something to say. However, they did at that time indicate that as it became clear that certain witnesses are highly relevant and material, they would review their position.

In that regard and without simply attempting to reopen the witness list, I want to submit that for three important reasons the name of Derk Kok has to be added. And I'd like to very quickly go through the three very key points that we have reason to believe Mr. Kok has material evidence.

He was of course at all material times a board member. And I think all committee members will agree in view of the testimony of Mr. Messer, we have to know what board members were told at the June 20 meeting. Were they told, as the documents suggest, that Mr. Messer found no negligence on the part of Portugal — period? Or were they told, as Mr. Messer is now testifying, I don't think he was negligent, I think there

was quite possibly something far worse?

Now we have to know what sense the board members got from the president's report of the June 20 meeting. And this can only come from the board members. What did you understand the information you got? Did you understand the information to say that our . . .

The Chair: — Mr. Hillson, I think you're putting your case that you will be asking Mr. Derk Kok. So would you like to confine yourself to a specific . . .

Mr. Hillson: — Well I'm just . . . Oh I think I'm being extremely specific. And I want to be specific that this is not a fishing expedition; these are definite questions which have arisen that have to be answered.

The other one is that were the board members told that we have a legal opinion from the Calgary law firm that we ought to be cancelling the agreement? Were the board members told that?

The other issue that has to be raised of course is that question, apparently from Mr. Kok, as to whether Portugal had person interested in the transaction. Where did that question come from? What's its significance? That has to be put to Mr. Kok.

And finally I am informed that Mr. Kok has some information, may well be able to shed some light on earlier attempts to dismiss Mr. Messer by the board.

So there are three very key matters that it would appear Derk Kok will have relevant evidence. And for that reason, I would request that he be added to the witness list. And I would submit that on the terms of reference that the NDP caucus themselves have set, it is important that his name now be added. Thank you.

The Chair: — Thank you, Mr. Hillson.

Mr. Tchorzewski: — Thank you, Madam Chair. As I recollect the agenda — and I looked at it earlier this morning — we already are calling certain people who will be very familiar with board meetings because they will have attended them in their capacities as members of the board. We are calling the three . . . the two or three ministers who were the Chairs of the board and I think these questions should be directed at them.

We're also calling Mr. Mintz, who is a member of the board and is a member of the finance and audit committee. And I think before we start adding to the list, we should hear from these people and then determine from then whether we need to call other witnesses that are relevant to Mr. Hillson's question.

So I think for now we should stay with our list. We're not suggesting that we shouldn't call these people, as we have always the position which we have always taken. But I think for the time being let's go through our list. Let's see what we find out from the testimony that they provide for us and then make a determination as to who and if we call other people and when we may need to call them.

The Chair: — Thank you. I've heard from both the Liberal Party and the New Democratic Party on this matter. I will

consult with the special adviser to the committee and I will get back to the committee on this specific issue.

Mr. Hillson: — Well yes, I would like to move a motion because I think that it does assist you in scheduling. I'm not saying Mr. Kok has to be called immediately, but I . . .

The Chair: — Mr. Hillson, I'm not wishing to cut you off. I would ask though that you would appreciate that it is extremely difficult at this point to schedule witnesses both in province and out of province.

Mr. Hillson: — Yes.

The Chair: — I simply ask . . . I've heard your points; I've heard Mr. Tchorzewski's points. I ask that you give some courtesy and consideration to the Chair to be able to think this over, to discuss it with the special adviser. I don't want us to get back into another question of procedural wrangling. We can deal with this matter on Tuesday. I don't know that any damage to the natural justice process is going to be caused by waiting until Tuesday to put your motion, or for me to be giving you a final ruling on it.

Could we please have until Tuesday? Could I please have until Tuesday?

Mr. Hillson: — Well the world isn't going to come to an end between now and Tuesday, but I frankly don't think I was being discourteous to the Chair in saying that, you know, that we've had two witnesses say Derk Kok asked Portugal point blank: do you have a personal interest in this transaction? Surely that makes him a material witness. And I just don't think I was showing any discourtesy to you in making what I consider to be a terribly obvious point.

The Chair: — I agree that your point is terribly obvious. I'm simply saying, please give me some time to consult with the special adviser and I will give you a final answer on Tuesday — or definitive answer. I don't want to say final answer.

Mr. Tchorzewski: — As you are considering this question, I wish to remind the committee and you, Madam Chair, that who is called as a witness to the committee is a decision of the committee. And I would like you to keep that in mind while you're thinking about this.

The Chair: — I am certainly keeping it in mind, Mr. Tchorzewski. Right now what I am trying to do is to avoid us getting back into the spectacle of incredible procedural wrangling that marred and marked the first two weeks of this committee's proceedings.

If there are no other procedural matters — but I'm sure that there are . . .

Mr. Hillson: — Madam Chair, I do wish to file with you my motion. If you wish to delay voting on this motion till Tuesday, I will abide by that. However, of course Mr. Tchorzewski's comment is well taken. The witness list is ultimately set by the committee and not by the Chair. And again, I say that with all respect and courtesy to the Chair possible.

The Chair: — Thank you. Thank you very much. I do have your possible motion.

Mr. Hillson: — My motion.

The Chair: — Your motion. Again, I'm hoping that what we can do is deal with all these matters by consensus.

I would now, if there are no further . . . There are further procedural questions.

Mr. Hillson: — Yes. I said I'm moving that motion, Madam Chair. I don't object to . . . I mean, as I understand it, this is the only way his name can be added. I give notice, and if it's not voted on till Tuesday, that's fine by me. But I know of no other mechanism to get this name on the list.

The Chair: — So I will take it then that you are giving me notice that on Tuesday next you will move the following motion:

That the name of Derk Kok be added to the witness list.

Is that correct?

Mr. Hillson: — That's correct.

The Chair: — Thank you, Mr. Hillson. I appreciate you giving me notice on that.

Mr. Gantefer: — Thank you, Madam Chair. A procedural thing coming out of the testimony today, and I think you indicated that we may want to refer the answer to Mr. Priel, and it has to do with trying to ascertain do the changes that were outlined in the document, the closing document, do those changes — and it's been indicated that some were significant and some were material — do they constitute a legal definition of fraud?

The witness was not in a position to be able to answer that. And I think you indicated that it may be the kind of question that should be referred to the legal counsel and I'm asking if we could get an opinion of the legal counsel. In his opinion, do those changes that were made apparently, according to the testimony and the evidence provided, do those constitute a legal definition of fraud?

The Chair: — I would ask Mr. Priel to respond directly to your question. All right, Mr. Tchorzewski, before we hear from Mr. Priel.

Mr. Tchorzewski: — And I will bow to Mr. Priel. But I think I need to make this point that that is really a determination that has to be done by this committee. I don't — maybe this is what Mr. Priel will be telling us — but I suspect that this is not a fair question of our legal adviser. These are questions we need to determine as a committee with whatever advice we may ask later down the road after we have here all the appropriate witnesses. But the bottom line is, I think that this committee has to determine that question.

The Chair: — Before we get into committee members' opinions, while I respect each and every committee member and

each and every opinion that you have, I would ask that we ask our special adviser to respond directly to Mr. Gantefer's question. Mr. Priel.

Mr. Priel: — Mr. Gantefer, an opinion of a lawyer is an opinion that is based on a given set of facts. You're asking, do the facts as they exist, as you see them right now, amount to fraud with respect to SaskPower.

No lawyer is going to be able to give you an opinion on that until all of the facts are in. Until you have heard evidence from all of the parties who were involved in the negotiation and the finalization of this contract, particularly Mr. Portigal, the lawyers that were involved.

Someone is going to be saying . . . is, I suspect, going to be talking about whether or not there was authority to make these changes. Perhaps there was — I don't know. And with the greatest respect, neither does the committee. You won't know that until you hear from all of the parties.

After that, and I suspect once your committee makes a determination of what it sees to be the facts, at the end of the day when you get to dealing with Mr. Hillson's point about how you should come to a conclusion, you may at that point say to someone, will you give us an opinion on the basis of these facts with respect to this, this, and this. You may do that. Then you can decide whether or not you accept the opinion because, of course, lawyers are only lawyers, and an opinion is exactly that -- it's an opinion -- and you can accept it or not accept it.

I'm not sure that that answers your question directly, but it's the best I can do at this point.

Mr. Hillson: — Madam Chair, it strikes me that there is one thing that Mr. Priel can do for Mr. Gantefer and other members of the committee. While he . . . I accept he cannot say yes, this is fraud, or no this isn't. But he could tell us on Tuesday, and I think it would be helpful if he did, what is the definition of fraud, what constitutes fraud, what are the badges of fraud. And I think that that would be of assistance to the committee members. And that is general information as opposed to a yes or no answer about a specific situation, which of course, as Mr. Priel says, we don't have all the facts before us.

So I would request that perhaps at the commencement of Tuesday, he give us a brief, legal definition of fraud.

The Chair: — Now without having to have a motion, and dealing with this matter by consensus, is it agreed that we will ask our special adviser to prepare a document for us indicating what the generally accepted and acceptable definition of fraud is. Is that agreed? Thank you.

Mr. Priel: — I suspect that what you're talking about is both fraud from a civil perspective and criminal perspective. Is that what you want?

Mr. Hillson: — I think that would be helpful.

The Chair: — Are there any other procedural matters that committee members wish to raise at this time? If not, since the

hour is not yet 10 o'clock, I understand that Mr. Trew — or 12 o'clock — has a motion.

Mr. Trew: — I move that we adjourn.

The Chair: — I have a motion from Mr. Trew that we adjourn. Is that agreed? Agreed. The committee will reconvene Tuesday, April 28 at 9 a.m.

The committee adjourned at 11:50 a.m.