



Standing Committee on Crown Corporations

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**STANDING COMMITTEE ON CROWN CORPORATIONS
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Saskatoon Southeast

Kim Trew, Vice-Chair
Regina Coronation Park

Bob Bjornerud
Saltcoats

Doreen Hamilton
Regina Wascana Plains

Ben Heppner
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Lloyd Johnson
Shellbrook-Spiritwood

Lindy Kasperski
Regina Sherwood

Myron Kowalsky
Prince Albert Carlton

Glen McPherson
Wood River

Andy Renaud
Carrot River Valley

Channel Lake Petroleum Ltd.

The Chair: — If the committee members would please come to order, we will reconvene the special hearings of the Crown Corporations Committee.

Good morning, everyone. This morning we will be receiving testimony from SaskPower officials and the first person that we will be hearing from is Mr. Kram. Before we do that though, I would like to table a document. Committee members, if you will check in your binders, CLP 17/12, you will find that there is inadvertently only one page of the Milner Fenerty account. It's document no. 1111. This is a statement of the charges by SaskPower . . . by Milner Fenerty to SaskPower for the work they did for them and a chronological sequencing of events. So the Clerk is now distributing the full account there, and would you please add it to your document binders. It will be CLP 17/12, document 1111.

We will now begin questioning of the witness — Mr. Kram, I would remind you you've been sworn in — and we will begin with the Saskatchewan Party. Mr. Heppner is here this morning representing the Saskatchewan Party. I'm assuming Mr. Gantefoer will be back next week.

Mr. Heppner: — Probably.

The Chair: — Yes. For 30 minutes please, Mr. Heppner.

Mr. Heppner: — Okay. First of all, I think there's . . . most of our procedural work takes place at the end of the morning and I have three procedural things for today, two of which I think we can deal with at the end of the day. There is one though that I think needs to be dealt with at this particular point before we go any further. And I'll explain that and then I'll hand around a package with the three motions and we'll deal with the first one now and the other two can wait for later on.

The first one deals with the removal of Mr. Shillington from the committee for the purpose of the Channel Lake investigation and for this particular set of reasons. From the minutes of CIC (Crown Investments Corporation of Saskatchewan), March 3 and 4; and we're very aware of what took place on those particular meetings.

The Chair: — Would you identify the year, Mr. Heppner?

Mr. Heppner: — 1998. There was a discussion there of Mr. Messer, his longevity with the company, his release from the company, and the discussion of the reports that we're dealing with today.

The Chair: — Is this a point of order, Mr. Shillington . . . or Mr. Tchorzewski?

Mr. Tchorzewski: — It's a point of order, yes. I thought we were of the understanding that procedural motions are to be dealt with at the tail-end of the meetings and it seems to me that what Mr. Heppner is doing is dealing with a procedural motion.

The Chair: — Yes, we have dealt with procedural motions at the end and generally committee members have been courteous

and have given me advance notice of the procedural matters that they wish to raise.

I think right now, Mr. Heppner, please simply state without editorial the nature of the procedural matters that you wish to raise at the end of this meeting.

Mr. Heppner: — Okay. At the end of this meeting, we're going to deal with the addition of Mr. Romanow to the witness list and with the tabling of the Guyana legal options; so we have to deal with this one particularly now, because this deals with the way this committee is functioning. This is information that we didn't have last time when we dealt with some of those things and I think it's critical to the credibility of this committee to deal with this particular one first before we continue throughout the rest of this morning.

The Chair: — Okay. Before I hear from any further speakers, I would like to consult with the special adviser and the Clerk. If committee members will give me a moment.

Would the committee please come to order again, please. I'm going to ask for some cooperation from committee members in the future. When you have procedural matters that you feel you need to raise at the beginning of the meeting, will you please give me advance notice. I'm usually here before — well before — the hearings start. And I would expect that committee members could let me know in advance so that I will have had time to consult and to decide on whether we're going to change the order.

I would also point out to committee members that you have received an April 20 opinion from Mr. Priel regarding Mr. Shillington and Mr. Tchorzewski potentially being called as witnesses, and their membership on this committee. At that time the committee simply received that letter from Mr. Priel and did nothing.

I am advised that it will not do any legal harm to the process if we leave the matter of Mr. Shillington's continued involvement as a committee member until the end of today and deal with it. However, given that we are having a challenge of a committee member, it seems to me it's probably wisest to deal with that now.

So that's what we will do. I will now hear comments from Mr. Heppner. Would you read your motion into the record, Mr. Heppner — just the one; the others we'll deal with at the end of the meeting.

Mr. Heppner: — The motion reads as follows:

That Ned Shillington, as a member of the Crown Investments Corporation board of directors at the time the board made the decision to terminate Jack Messer as president of SaskPower, be removed from the Standing Committee on Crown Corporations for the duration of the investigation into the acquisition, operation, and sale of Channel Lake Petroleum and the termination and payment of the severance to Jack Messer.

The Chair: — I'm going to ask the Clerk to distribute copies of

your motion. Stapled to it are the other two motions that you want to deal with later on this morning. But I will consider that you're putting that motion now?

Mr. Heppner: — Yes.

The Chair: — Mr. Kram, you can just relax because we're going to deal with this procedural matter and I'm not going to call on your opinion on the matter.

Committee members now all have a copy of the motion. I would ask you, Mr. Heppner, to speak to your motion.

Mr. Heppner: — Okay. Briefly, as stated slightly earlier on, this information that we have, the minutes from the March 3 and 4 meeting of the board of directors, and that's in 1998, were not in our possession when the last ruling was made. So this is new information. And because it's new information, the ruling that was made at that point doesn't apply to this particular situation.

Mr. Shillington was present at those meetings of Crown Investments Corporation. At those particular meetings, the employment of Jack Messer was discussed, the termination was discussed, payment of severance was discussed. We cannot, in my opinion, have someone sitting on this particular committee who will in fact and should in fact be a witness as to what took place at those particular meetings as relates to the, as I mentioned, the termination payment and the severance of Jack Messer.

And I think for that reason, it is very important to the credibility of this committee that Mr. Shillington at this point be removed from this particular committee.

The Chair: — Thank you, Mr. Heppner. Mr. Hillson, then Mr. Tchorzewski.

Mr. Hillson: — Madam Chair, I don't wish to prejudge this matter but I do share some of Mr. Heppner's concerns. I think it is common ground, accepted by all of us, that a person can't investigate himself, and I'm sure Mr. Shillington would agree wholeheartedly with that principle. Nor can a person be a witness, a witness on proceedings that he is also sitting as, shall I say, the jury.

And so now we do have new information which I believe makes the legal opinion out of date, and at the very least we would have to hear again from our legal adviser as to whether he stands by the opinion.

But before that, I would say I think we have to hear from Mr. Shillington as to what his involvement . . . and what he recalls of being present at meetings and participating in meetings discussing whether Mr. Messer would leave voluntarily or otherwise and upon what terms.

And I wish to emphasize that point, Madam Chair, because there is still one thing that bothers me about the earlier ruling. And I see Mr. Tchorzewski's hand up and I'm always interested to hear what Mr. Tchorzewski has to say, but I will be concerned if from the other side of the table we hear from third parties. I don't think that's adequate.

I don't think in this case, and I'm not implying any wrongdoing on Mr. Shillington's part, far from it, but I don't think we should hear from third parties. I think we should hear from Mr. Shillington as to what his involvement is, and then after he indicates his involvement, then I think we should hear from legal counsel as to whether he sticks by his earlier opinion or he believes the situation has now changed.

So as I say, the process . . . then in summary, the process I would outline is that I would like to hear from Mr. Shillington as to what his involvement in discussions about Mr. Messer's severance were, and then I would like to hear from the legal counsel as to whether he stands by his earlier opinion or not. Thank you.

The Chair: — I appreciate what you would like, Mr. Hillson; what I'm going to do is recognize . . . (inaudible interjection) . . . That's right, recognize the speaking list. I have Mr. Tchorzewski and then, unless I hear from other committee members, I will ask Mr. Priel to make a comment.

Mr. Tchorzewski: — Madam Chair, first of all it is the decision of this committee — no one else — as to who the membership of the committee is going to be. It is a decision of this committee, which is a legislative committee — not a judicial process — as to how we will dispose of the business and the conclusions which we'll draw from therein.

And the committee on more than one occasion has dealt with this issue and has made it very clear the wishes of the committee. The committee has dealt with not only this motion but with the other two motions, to which I will not speak to because they're not before us, other than to say that they're probably out of order because the committee has once dealt with them.

The Chair: — Mr. Tchorzewski, just deal with the motion on the table.

Mr. Tchorzewski: — I shall do that. Now the member for Rosthern talks about the credibility of the committee. Well let me submit this. If there's anything in this committee that may have had its credibility damaged, it is the actions of the opposition, who consistently come to the committee — rather than doing the work to which they have been assigned by the legislature to do, and that is get the facts of the Channel Lake matter before the committee and before the public — almost on a daily basis choose instead — and I know this is the role of politicians but I submit not in committee — to do some political posturing.

And I don't think members of this committee, in the interests of the public good, should be interested so much in public posturing — political public posturing — as they should be in making sure that this committee gets on with the work that it has been assigned to do by the legislature.

I think, Madam Chair, this issue has been dealt with. The committee has made a decision and the motion that is now before us is no different than a motion that was before us before, even though there may have been some other information here. And the reason I say that, Madam Chair, is because when we are elected to be members of the legislature

we act on committees as members of the legislature, and in that capacity and in no other capacity.

And so I say, Madam Chair, that this committee ought to defeat this motion expeditiously and get on with questioning the witnesses; so that the facts which we need to know so that we can make a report, and which the public has a right to know, can be brought forward.

We're not bringing the facts forward as long as we continue on a daily basis to go through this wrangling which the opposition seem to think is more important.

The Chair: — Thank you, Mr. Tchorzewski. I'm going to just point out to committee members that technically speaking it is the legislature that decides the membership of committees, not the committees themselves. And we will continue with the debate on Mr. Heppner's motion.

But I want committee members to be very much aware that all that will happen is that if this motion is passed, what we would be doing is making a recommendation to the legislature regarding membership. It is the legislature itself that makes determination of the membership of the committees. But we do have this motion on the floor now. We will continue with debate and discussion about it.

Mr. Hillson had earlier asked that he wanted to hear from Mr. Shillington. I now have an indication that Mr. Shillington does wish to speak. So before I ask our legal adviser to make a comment, I will recognize Mr. Shillington.

Hon. Mr. Shillington: — Just very briefly. My first impulse was to thank them for this attempt to free up some of my time. This has certainly taken up more of my time than I anticipated.

On a more serious note however, I actually considered that before I came on the committee. It struck me that I'm an unlikely witness if evidence were wanted as to what was discussed. The Chair and the Vice-Chair, it seems to me . . . struck me were more likely witnesses.

I point out to members of the committee that this is not a judicial proceeding. We don't come as judges swearing to have no preconceived notions as to what the outcome is.

The suggestion that Mr. Heppner comes free of bias and I come with bias, I think defies common sense and observations. We come as members of the legislature to the committee. I agree it might be a little awkward if I were both a witness and a member. As I say, I considered that and thought it most unlikely. But I think we come as members of the legislature. I think I can do as adequate a job as Mr. Heppner can, or anyone else, and I think therefore I am a proper member of the committee, Madam Chair.

The Chair: — Thank you. Are there any other . . .

Hon. Mr. Shillington: — I just want to make one other comment. It's very difficult to respond to Mr. Hillson's questions without in fact becoming a witness for the committee. I intended to say that. His questions as to what went on is really very difficult to respond to without in fact becoming a witness.

The Chair: — Are there other members of the committee who wish to speak who have not yet spoken on this matter? Mr. Heppner, I think it might be more appropriate that we hear from the legal adviser before I ask you to sum up your arguments regarding this motion. So I will now ask Mr. Priel for a comment.

Mr. Priel: — Thank you, Madam Chair. I will do my best not to repeat my earlier opinion that I gave you on April 20 because it was nine pages long. But the point I think is this, that your committee is not a court, it's not an adjudicative body. It's a standing committee of the legislature. The membership of the committee is made up, or is determined, by the legislature.

Because of the fact that your committee is not a court, the obligation that it owes to bring to the process individuals that are looking at the evidence free of bias is less than if it were a court. The obligation that your committee has is to have members that bring to the process an open mind.

The opinion that I gave to you earlier was that because Mr. Tchorzewski and Mr. Shillington were members of the Crown Corporations Committee . . . or Crown Investments Corporation, pardon me, SaskEnergy, and SaskPower boards for various periods of time did not, by that fact alone, disqualify them from continuing as members of the committee. And the reason was that there was no . . . in the circumstances it didn't seem to me that that would automatically say that they brought to the process something other than an open mind.

I had indicated to you that the situation would be different if either one of these gentlemen were called as a witness. The measuring stick, if you will, that your committee might want to use in terms of deciding who should be a witness is whether that witness's evidence would be material and important.

Just because there are cabinet ministers on the boards of directors of these various corporations does not mean to say that every single one of those cabinet ministers ought to be witnesses before your committee. Someone else can come and give evidence and do so just as well as these gentlemen.

Now it may be that at some point along the way your committee will decide that their evidence is material and is important. And if you do, and you decide that they should testify, they can then step down and be replaced. But I suppose to answer Mr. Hillson's query, yes I do stand by my earlier opinion. I don't think anything has changed, Mr. Hillson.

There's another wrinkle in the facts, but the legal principles that you should apply are still the same. The question is, are either of these two gentlemen going to be witnesses? That is, would their evidence be material and important? And if you decide it should be then they should not continue. If you decide that they ought not to be witnesses, they can continue, in my opinion.

The Chair: — Do committee members have any specific questions of Mr. Priel?

Mr. Hillson: — So if I understand Mr. Priel right, Madam Chair, your opinion is that Mr. Shillington can continue, in your view, unless and until we issue an invitation to him to attend as a witness.

Mr. Priel: — Until the committee decides that Mr. Shillington should testify and he testifies, he can continue — in my opinion. Obviously, gentlemen and ladies, this is just an opinion and you've seen dozens of them in this case, but I think my opinion is correct.

Mr. Tchorzewski: — I have no further questions.

The Chair: — No questions for Mr. Priel?

Mr. Tchorzewski: — Just simply to say we appreciate the clarification of it. Because I think it's useful in the committee to have an independent view of the thing, unrelated to those of us who sit on the committee. And I think it's helpful to us in how we should dispose of this motion.

The Chair: — Mr. Heppner, did you want to close debate now, please.

Mr. Heppner: — Yes. Mr. Shillington made a very interesting statement. And that was that if he answers Mr. Hillson's questions he would essentially be functioning as a witness. And I think that speaks very clearly to his own opinion on the fact that the knowledge he has and the part that he's played in what we're investigating right now should essentially make him a witness. So I think from his own testimony on that point — and we all heard that, it's in the record — that, you know, he's basically witness material. And it makes it pretty hard to have someone be involved in the questioning.

And I was talking earlier on about the credibility of this particular committee. Mr. Tchorzewski went on about talking about the politics of this thing. I would suggest that the government side's been dragged kicking and screaming to this position. We've had to fight for every witness we've had. We've had a fight for every document we've had. In fact it's the very document I referred to about having the minutes that showed Mr. Shillington was present was not part of the first bit of information we were given; it was something else again that had to sort of be dug out from some place.

The Chair: — Mr. Heppner, basically you're challenging the Chair on that one. You haven't had to fight for every document. You had 1,100 documents tabled. You haven't had to fight for every witness. There has been debate over some specifics of calling some witnesses. But basically the process has been going along fairly smoothly, so please tone down your hyperbole just a tad. And continue . . .

Mr. Heppner: — Well after that maternal comment, I would suggest that that's probably enough that we've had. . . (inaudible interjection) . . . I can't call her paternal. If you wouldn't object to that we could.

The Chair: — Excuse me, committee members, Mr. Heppner has the floor. Mr. Thomson, please refrain from comment.

Mr. Heppner: — Now to repeat, on what you were saying, we did have to go ahead and force it. It did have to go to the steering committee. We did have to force the government to have the votes there as they were, in order to get the material and the information. I think the record speaks very well for itself — that this stuff was not forthcoming on its own and there

may still be more information coming, as is coming through in dribs and drabs, and I think that speaks very clearly to what I'm saying.

And I think back to the issue at hand and the particular motion that's there, I think it would be very important for the credibility. The public is out there watching this. They know that he served on that particular committee. They know that he's here now, and I have no doubt they're questioning it. And I think we need to go ahead and clarify that so the people out there are saying the work this committee is doing is above reproach.

The Chair: — Are there any other comments from committee members? I hear a call to put the question. We will now deal with the motion by Mr. Heppner:

That Ned Shillington, as a member of the Crown Investments Corporation board of directors at the time the board made the decision to terminate Jack Messer as president of SaskPower, be removed from the Standing Committee on Crown Corporations for the duration of the investigation into the acquisition, operation, and sale of Channel Lake Petroleum and the termination and payment of severance to Jack Messer.

All those in favour of the motion please indicate — Mr. Hillson, Mr. Heppner. Those opposed, please indicate — Mr. Kowalsky, Mr. Thomson, Mr. Tchorzewski, Ms. Hamilton, Mr. Shillington, and Mr. Trew. That motion is negated.

We will now carry on with hearing testimony from the witnesses. Before we do I'm just going to once again remind committee members that we've now had at least two surprise tactics, one from the Saskatchewan Party and one from the New Democratic Party, introducing at least a surprise for the Chair.

And this committee will function much more smoothly if you would once again read Mr. Priel's opinions and also give the Chair advance notice of plans to introduce surprise procedural motions or to find documents. And I again ask for committee members' cooperation.

It is now 9:35. It is the intention, I understand, of committee members to complete their questioning of the SaskPower officials today. I would like to suggest that perhaps in the interests of efficiency, and so that we can deal with the procedural matters that Mr. Heppner is giving notice of at the end, that what we will do is give each party approximately 45 minutes to question, and I would ask you to try to wrap up all your questions in your 45-minute block of time.

It may be that as a result of hearing questions from other committee members, other logical questions spring to mind, but could you try to ask all your questions in one block of time. Is that satisfactory? Thank you.

All right, Mr. Heppner, you will now have the floor till approximately 10:20; so if you could try to wrap up all your questions of the SaskPower officials in that time I would appreciate it.

Mr. Heppner: — Good morning, Mr. Kram, and welcome

here. It's not that your legal opinion wouldn't have been welcomed, because we could have probably added it to the other list of opinions we've had. A bit of a preamble before my first question because it needs a bit of that.

On April 21 you testified at this committee that you first learned of the DEML (Direct Energy Marketing Limited) proposal to buy Channel Lake in, I believe the term you used was early March, when you read a letter from DEML dated February 28. In that letter, DEML was offering 27.7 million less trading losses of 7.1, which left the net price of \$20.6 million.

And I believe you said you were involved in two meetings on March 10 of '97 regarding that particular proposal. And both of those meetings I believe focused on the sale price of \$27 million. Do you recall any discussion at either of those particular meetings as to why DEML would offer \$27.7 million when all of the other proposals came in substantially less, I believe someplace between \$20.5 million and \$24 million? So the offer is considerably higher. Any discussion of why that might have been?

Mr. Kram: — Madam Chair, if I can just correct one matter. I believe there were two meetings on March 10, but I believe I was only at one of them. There may have been other internal meetings at SaskPower. With respect to the question, I don't recall a discussion regarding the other offers at that March 10 meeting.

Mr. Heppner: — Okay, so you only discussed the highest offering. DEML indicated the trading losses of 7.1 would be deducted from that 27.7 million and that would give us a net of 20.6 million. Was there any reason at that particular meeting on March 19 to have a feeling that DEML might be interested in deducting those trading losses twice? — March 10, pardon me.

Mr. Kram: — There was no discussion about a double deduction of trading losses at that meeting or at any point quite frankly.

Mr. Heppner: — A lot of people would wonder why DEML would make an opening bid, then deduct the trading losses and deduct the same trading losses a second time. I mean it's a bit like when you buy a used car and you say I want new tires. We'll take that off the price and then we'll take it off again. I don't think we'd be purchasing too many vehicles. This in essence isn't a whole lot different than the things that people across this province do on a daily basis.

Can you provide this committee with any reason why DEML could believe they could deduct those losses twice?

Mr. Kram: — I have no answer to that.

Mr. Heppner: — Okay, and I probably agree that not too many people would have an answer for that either.

Was there any reason for you to think that the 27.7 million that was the offer was actually some \$7 million higher than it should have been given the market at that particular time for gas properties and gas prices and other sorts of things? So when you look at that price did you sort of say, this is a real good price, I don't know why it's that high.

Mr. Kram: — I didn't speculate as to the why. I mean there was an offer on the table for \$27.1 million and we were proceeding at that point to take a look at that and the deal. But I didn't speculate as to how DEML would have come up with their number.

Mr. Heppner: — So the fact that the price appeared to be substantially above market price didn't sort of flag any kind of interest and say, I wonder exactly what's going here?

Mr. Kram: — It didn't with me.

Mr. Heppner: — So would you agree that it was reasonable to conclude that that offer of 27.7 million, minus the trading losses, was in essence the whole deal with no other things that might be happening down the road. Like in your mind it was 27.7 million minus the trading losses, end of story.

Mr. Kram: — At the time, that's correct.

Mr. Heppner: — Okay. We talked earlier on about some other offers that were made in the vicinity of 20 to 24 million. There were five other offers presented to SaskPower?

Mr. Kram: — I believe that's correct, but I wasn't particularly involved with those offers, in the one that I had the most involvement with was the Direct Energy one.

Mr. Heppner: — You mentioned you weren't that involved with the other offers. To your knowledge, were the other offers given any serious consideration? The details of what was in there or any other fine print that might be there that might make you lead to say that these other offers may be substantially less but they really aren't bad offers.

Mr. Kram: — I'm not particularly aware of what consideration went into the other offers. I mean I . . . obviously they would have been considered, but the detail on that, I'm not aware of it.

Mr. Heppner: — So you weren't asked to review the other offers at all then?

Mr. Kram: — No.

Mr. Heppner: — You first heard of that DEML offer early in March; by the 10th, as we mentioned, you were meeting to consider the sale price. And on March 11, which is a day later, SaskPower signed a confidentiality agreement with DEML. According to deals happening, does that seem as if it was going along fairly rapidly?

Mr. Kram: — I wouldn't say rapidly. It was moving along; it was following a normal course of events. I wouldn't say it was rapid.

Mr. Heppner: — Okay. The other offers that we talked about, did they sort of seem to leave the table when . . . during the time of March 10 and 11?

Mr. Kram: — Again, I wasn't directly involved in the consideration of those other offers, so I'm not aware of what happened to them.

Mr. Heppner: — Okay. So DEML was the only offer that was being considered, I believe is what is you said.

Mr. Kram: — Well it was the only offer that I was really involved with.

Mr. Heppner: — Okay. So other individuals might have been going through those other offers.

Mr. Kram: — They might have been.

Mr. Heppner: — Would it be fair to say that the reason SaskPower was interested in the DEML offer was because it started with an opening bid of 27 million, which was a whole lot higher, and that was the only reason why they were looking at that one?

Mr. Kram: — Well that was obviously an important factor, was price.

Mr. Heppner: — Were there any other factors that were involved in the DEML offer that seemed to sort of say, this looks good. Some other parts of it that said we have to look at this as well and put into the mix of the discussion, besides just the dollar factor?

Mr. Kram: — Not that I'm aware of. The fundamental interest was it was the price.

Mr. Heppner: — In many of the documents that have been given to us — and Deloitte & Touche's is one of them — March 31 seems to come up as if that's a date that needs to sort of be a mark in time that people have to look at when they're working on the deal with Channel Lake. In fact the Deloitte & Touche report concludes that the deal was rushed to meet the 31st deadline and the rush may have been one of the reasons that mistakes were made. What's the significance of March 31?

Mr. Kram: — There wasn't any significance to my knowledge, other than the fact that it was a date that the parties had, at the outset, agreed to to work towards to close a transaction and any transaction should have a closing date. I would also add however, that in fact it was a two-stage closing and stage one occurred early April and the second stage actually occurred on May 30. So it really didn't . . . it wasn't ended certainly at the end of March but it was a date that seemed reasonable and doable if everyone was diligent in efforts in putting together the documentation and what not.

Mr. Heppner: — Did you have any instructions to aim at March 31 as a closing date?

Mr. Kram: — Well it was generally agreed that we were trying to reach an agreement by March 31, so to that extent, yes.

Mr. Heppner: — So there weren't any specific instructions given to say this is the date that you should work at.

Mr. Kram: — It wasn't an all-or-nothing date by any means. It was a target date.

Mr. Heppner: — Okay. In your written statement on April 21 you said that you learned on March 10 that Portigal had already

hired Michael Hurst of Milner Fenerty to advise the Channel Lake deal on DEML. Were you surprised that Portigal had taken this action as quickly as that?

Mr. Kram: — I wasn't surprised. Milner Fenerty had provided the legal advice to Channel Lake through the course of its history so that didn't seem a surprise to me.

Mr. Heppner: — And you, the fact that Portigal had taken that action without checking with anyone else wasn't of concern to you either?

Mr. Kram: — I don't believe he had . . . I don't believe he indicated he had retained Milner Fenerty. He indicated that he had spoken with them and Michael Hurst and that was the gist of it.

Mr. Heppner: — Okay. To your knowledge, had Messer and Portigal concluded by March 10 that DEML was the company they wanted to go with on the Channel Lake deal?

Mr. Kram: — I have no knowledge of that.

Mr. Heppner: — As of March 10, and we discussed this a little bit already, other bids still weren't being considered at all?

Mr. Kram: — Again I'm not aware of other bids. I believe bids were closed or considerations of other offers were closed. The deal had not in fact been concluded with DEML on March 10.

Mr. Heppner: — Also from your written statement, I believe you said that you received the first draft for the purchase agreement on about March 18.

Mr. Kram: — That's correct.

Mr. Heppner: — And the terms of this agreement match the discussions that you were having with Portigal and Christensen and others at SaskPower, which was basically the 27.7 million minus the trading losses?

Mr. Kram: — I believe that's substantially correct.

Mr. Heppner: — Okay. You also mention in your written statement that on March 23, with Christensen and Portigal specifically to discuss . . . that you had a meeting with them to discuss the purchase price. At the time that meeting took place, the term of the sale had changed slightly, and I believe they changed as follows: from 27.7 million minus the trading losses, which is what we've sort of been discussing today to this point, and it changes from that to 26 million minus trading losses, for a net of 20.8 million.

I'm wondering, who negotiated that change? Like, where did it originate from?

Mr. Kram: — Well I recall at the meeting the discussion about the determination of the price. And I would . . . it would have . . . I believe it was conveyed by Lawrie Portigal to us at the meeting, that this was the current state of the negotiations that he was undertaking on behalf of SaskPower with Direct Energy.

Mr. Heppner: — So it was Mr. Portigal that had been doing

that negotiating and brought that change?

Mr. Kram: — That's correct.

Mr. Heppner: — Was there a draft of the sale agreement at that time or was this just verbal discussion?

Mr. Kram: — Well there was only . . . at that point there was only draft 1.

Mr. Heppner: — Okay. Draft 1 of the 27.7 million.

Mr. Kram: — That's . . . Whatever that number was, that's correct.

Mr. Heppner: — I believe there are memos written by people on March 24, such as Ken Christensen to Portigal, to confirm a net price of 20.8, which is the last number I think we've been discussing. Is it reasonable to assume that Portigal would have received and read those memos?

Mr. Kram: — I don't know. You know, it was sent to him.

Mr. Heppner: — So he should have received those?

Mr. Kram: — Well in the normal course he would have.

Mr. Heppner: — Okay. You also said, I believe, that Portigal prepared a topic summary on March 24 for the Channel Lake board on the DEML proposal. You and Christensen then prepared a different topic summary that was eventually presented to the Channel Lake board on March 26. So there's one prepared by Portigal for the 24th and you were involved in preparing a different one for March 26.

Both topic summaries had the sale price of 20.8 million. So I guess the question is, why would you rewrite Mr. Portigal's topic summary?

Mr. Kram: — There was no, there was certainly no intention to change the 20.8 number. It was, it was as I recall, a slightly different way of coming at for the board's, say the allocation of the purchase price. Like if you look at the topic summary that was ultimately submitted, it talks about what is to be done with the 20.8 and the allocation of it. So it was almost, I would call, an accounting but it gave the board slightly different information but the very same bottom line. That was certainly the intention of this, not change that.

Mr. Heppner: — Okay. That March 26 meeting where that topic summary that you were involved in the preparation of was presented to the board, to the Channel Lake board, was Portigal present at that meeting?

Mr. Kram: — Yes he was.

Mr. Heppner: — Did he make a presentation on what was happening with the deal?

Mr. Kram: — Yes he did.

Mr. Heppner: — Could you elaborate a little bit about what he had to say and if it differed in any way from the topic summary

that you had there at that time.

Mr. Kram: — I don't recall the exact words or what exactly was said but there was no deviation from the topic summary presented by Mr. Portigal at the meeting.

Mr. Heppner: — And there was no information given that things might be changing substantially down the road?

Mr. Kram: — That's correct.

Mr. Heppner: — In view of the fact that you were involved in the writing of that last report that was presented on March 24 to the Channel Lake board, is it possible that maybe Mr. Portigal didn't understand that the net price was supposed to be 20.8 million?

Mr. Kram: — I can't answer that, what he would have understood to be the case at the time.

Mr. Heppner: — On March 27, SaskPower board met and approved that particular offer, the DEML offer. Topic summary that went to the SaskPower board clearly indicated a net price, sale price of 20.8, and that's the number we've been discussing now. The board approved the recommendation to sell at that net price. Was Portigal at that meeting?

Mr. Kram: — My understanding was he was at part of that meeting.

Mr. Heppner: — Okay. And I guess as a similar question, in view of the events that happened later on, Mr. Portigal at that point should have still been able to understand what the net price was, which was 20.8 million?

Mr. Kram: — Well again, you know, the documents I think speak for themselves. But what Mr. Portigal understood, I don't know.

Mr. Heppner: — So documentation was adequate that he should have known what was happening.

Mr. Kram: — The same documentation essentially at the SaskPower board meeting as had been presented the day before at the Channel lake board meeting. I was not at that meeting, the SaskPower board meeting.

Mr. Heppner: — In the written statement that you had, you stated that you received a second draft of the sale agreement on March 27. Who forwarded that to you? Who did you get that second draft from?

Mr. Kram: — I don't recall. I believe it was either from the Channel Lake offices at SaskPower . . . That's my recollection. I don't have a note or anything on the file to indicate where it actually came from.

Mr. Heppner: — Is it fair to assume from Mr. Portigal's involvement in the dealings, that he was responsible for negotiating with DEML the second draft and that he clearly understood the net sale terms in that draft?

Mr. Kram: — He was responsible for negotiating with Direct

Energy. And I believe he had met with Direct Energy after the March 23 meeting. And as a result of those meetings, a second draft was produced which reflected the items that had been discussed at the March 23 meeting and had been confirmed in the March 24 memo.

Mr. Heppner: — Okay. You mentioned that at that time the second draft was produced. Who actually created or wrote that second draft of the sale agreement?

Mr. Kram: — The draft documentation for the transaction was prepared by Direct Energy's lawyers, Burnet Duckworth & Palmer.

Mr. Heppner: — Back to the topic summaries. The topic summaries don't discuss the trading losses. I'd like for you to comment on that. That seems rather interesting, that topic summaries wouldn't have that component in there when they're a critical part in the deal. Like they're a major percentage of the deal.

Mr. Kram: — The objective of the board approval was to determine a net price.

Mr. Heppner: — So you didn't feel it was important to have the trading losses mentioned specifically?

Mr. Kram: — Not for purposes of the board approval.

Mr. Heppner: — Okay. So as long as there was a bottom line figure that people could look at and say, it's 20.8 million or 20.7 million and you knew that was the bottom line, people were okay with that.

Mr. Kram: — That was the objective of the approval that we were seeking at the time.

Mr. Heppner: — Okay. On the writing of the drafts, did DEML create all the drafts throughout the whole negotiation?

Mr. Kram: — To my knowledge.

Mr. Heppner: — So they were the writers of all the drafts?

Mr. Kram: — That's correct.

Mr. Heppner: — The sale price in that agreement was 26 million minus a trading net loss for 20.7. That appears to be consistent with the information to the deal to that point.

Was there any reason for you or anyone else at SaskPower to believe that Portugal was discussing reduction in the net sale with DEML between March 27 board meeting and the April 1 board meeting when you signed the final contract?

Mr. Kram: — No, there was no reason to believe that that was . . .

Mr. Heppner: — No little flags went up, saying that we think we may be getting something else in the future.

Mr. Kram: — That's correct.

Mr. Heppner: — Also in your written statement, you indicate the sale agreement that you signed on April 1 and the sale agreement signed by DEML officials a few days later were different. And you say the agreement was changed by removing and inserting pages in the purchase agreement after it had been signed by SaskPower. In your opinion, does the removal of pages and insertion of other pages without the knowledge of some or all of the signatories to the agreement amount to evidence of a fraudulent act?

Mr. Kram: — I'm not in a position to offer an opinion as to what the effect of that was. Clearly our concern was the fact that pages had been removed and substituted from a document that we had signed and sealed. Whether they be significant or insignificant, it is just an unusual practice to . . .

Mr. Heppner: — Well I would hope with most people in this province putting some trust in our legal departments, that it would have raised a few flags. And I would like to repeat that particular question. You had considerable experience in the legal field. How many other times have you had someone take a page out of a contract you've been involved in and wondered what was going on? Is this the first time in your career that someone has done this?

Mr. Kram: — Well I can't recall it happening obviously with respect to my experience, but as to how it happened or why it happened, I think it's been clear from comments made by Mr. Priel previously that — which I entirely agree with as a lawyer — that we have to hear all the evidence here of all the parties.

Mr. Heppner: — I guess if I signed a contract and had those kinds of pages changed, I'd be considerably miffed, to put it very mildly, and more than just miffed. You didn't seem to like the term "fraudulent act." Would you consider that a breach of trust?

Mr. Kram: — Again my answer is the same here. We have to . . . The process that we're involved in, I think the objective of this is to hear from all the parties and then make a determination as to what happened and why. We don't know. We just . . . I don't know what happened.

Mr. Heppner: — I'm not asking what happened. Like we know at the end of the day pages were different. And so at this point no one's being fingered for changing the pages or doing anything else with them. We're just saying at the end of the day the documents differed and somebody — who knows who? — did it.

Now we're not accusing anyone specifically of either breach of trust or fraudulent act. But as a person who's fairly sophisticated in the legal department I think, you know, we would like to know whether you would consider that, if that happened in any other situation, would you consider that fraudulent act or breach of trust?

Mr. Kram: — Well again, I'll repeat the same answer that I gave as, you know, with respect to the conclusion that I would draw here. But I would certainly say that I would have expected that when pages are substituted from a contract or document that anyone has signed, including the officials at SaskPower, that that would have been brought to our attention.

As to the explanation as to what happened, I just don't know all the facts.

Mr. Heppner: — Okay. So you obviously aren't prepared to make a judgement on that. So then I guess if we see that pages have been changed, obviously you on behalf of SaskPower should have been very concerned. The people of Saskatchewan are very concerned what happened here. So did SaskPower report that incident to the police for investigation?

Mr. Kram: — Well obviously we're concerned and I think this process is here for the purpose of answering a number of questions, including those. The question as to whether or not we reported that to the police — no we didn't.

Mr. Heppner: — Okay, we're dealing here now with this particular issue at this time. However I believe, sir, you were aware of what had happened long before this committee started to sit and we started doing our investigation. So at that particular point in time you couldn't say, well I can't comment on it because it's before the committee. If that wasn't reported to the police for investigation, I guess, on behalf of the people of Saskatchewan, why not?

Mr. Kram: — We were aware of a change identified from the signed document in, I guess early June, with the Tavender opinion that we had been provided. We looked at the time at that and the effect of the change and what the change actually did. And it was reflective of the change that had been signed in the acknowledgement that we were aware of at that time. And that was the only change that we were aware of.

The others that you're referring to just came to light, as we indicated, a week or two ago. So we didn't know back a year or so ago that there had been three changes . . . (inaudible interjection) . . . That's right and we also didn't appreciate that those changes had been part of the business decision to go forward with the transaction.

Mr. Heppner: — So were you aware of the change of the deal which basically cost us \$5 million, that that had taken place before this committee was brought into existence?

Mr. Kram: — I'm sorry. Could I just have you repeat that question again, please. I'm sorry.

Mr. Heppner: — Okay, I guess we're running into the question of exactly, you know, who knew what . . . exactly what point of the reference to this committee. With your legal expertise, if you had known what you know now before this committee came into existence, would you have turned this over to the police at that point?

Mr. Kram: — Well again I can't speculate on that. I would have, we would have, done an investigation and looked at what options were available to us. It wouldn't be . . . we wouldn't run out and immediately turn something like this over to the police. I mean we would want to do an investigation, obviously not like this, but determine the circumstances and see if there was an explanation.

Mr. Heppner: — And once you found out, as you know now, that someone had changed the pages on you — which is

something you would have found out through your investigation — would you then have turned it over to the police?

Mr. Kram: — We, again we don't know the precise circumstances that resulted in those pages being changed.

Mr. Heppner: — Well I suggest to you, with the fact that this committee hasn't quite found that out and may never find it out, you haven't found it out, speaks very clearly to my mind, and I would think to your mind as well, that then turn it over to the police and let them answer the questions that you and I don't have.

The Chair: — It is the committee's job to determine those facts and we will be hearing from all the witnesses. And I think that rather than prejudging and coming to snap conclusions, what we ought to do is ask questions of fact of Mr. Kram, ask him to confirm what he knew, when he knew it. And we will then be moving next week to testimony from DEML officials and from Mr. Portugal. So let's try to stick as much as possible to asking questions of fact.

I would once again refer all committee members to the opinion that was requested by Mr. Gantefer regarding civil and criminal fraud, the opinion by Mr. Priel and the warnings contained therein. I simply ask committee members to refresh their awareness of that opinion and to conduct themselves accordingly.

Mr. Heppner: — Thank you for your advice, but I think we're dealing with exactly what we are supposed to be dealing with. This committee's job is to find out what went on with Channel Lake and the people that were involved in it. And that's exactly what we're doing. We are not jumping to any conclusions; we are asking questions. And to that point we will continue to do that.

Is it not the case that if you have reason to suspect fraud in closing of the Channel Lake deal, that as a senior officer you need to take some action or should have taken some action to protect the interest of the shareholder? You did say earlier on that I believe that you had come across some changes in that deal before this committee came to be.

Well I would ask you, when you come across some changes, why wouldn't you go through the whole deal with a fine-tooth comb and say, if someone made some changes let's find out what all the changes were. And do that very quickly before you lose the window of opportunity to recoup some of your losses.

Mr. Kram: — I'm sorry, what's the question?

Mr. Heppner: — The question is, having found some changes to the contract, why wouldn't you have gone through the whole thing with a fine-tooth comb to see if there were any other changes — as there were — to make sure you could take action immediately?

Mr. Kram: — We had engaged Milner Fenerty to provide us with an opinion shortly after the early part of June and they had identified one change. We would have expected they would have identified any others at that point.

And I would also mention that the change that certainly is most significant, if you will, was really between draft no. 2 and the final sale document. The ones that we . . . came to our attention recently were not fundamental — as fundamental, as the purchase price change.

Mr. Heppner: — And dealing with part of what you just brought up, I believe you've testified earlier on that while you did not read the final sale agreement specifically before you signed it, there was no reason for you to believe it was materially different from previous drafts.

You've also said it was not unusual for senior officers not to read the contracts that they signed on behalf of the company. Is it fair to say that in most cases what happens, that someone goes through and initials the various pages to confirm to senior officers no changes have been made and that you're signing the same document, where each page is initialled. I know in the contracts that I've signed — which may not be quite of that magnitude, having dropped a zero or two off the end — that usually seems to be the case where someone initials it just to make sure that we're all aware of what's happening.

Mr. Kram: — That is a practice that some people follow. There's not an absolute requirement that that be done.

I think a number of things were . . . factors, I think, are relevant to this particular circumstance, among others. And I've indicated some of them in my opening statement. I mean Mr. Portugal was in the room with us at the time; he was acting on behalf of SaskPower and the documents were entrusted to him.

Mr. Heppner: — So it was Mr. Portugal's responsibility to make sure that those pages were the same?

Mr. Kram: — Well someone should have brought to our attention the fact that pages in the signed document were ultimately changed.

Mr. Heppner: — And whose responsibility was that? In your organization, who was that someone that should have found that?

Mr. Kram: — That should have found . . .

Mr. Heppner: — The changes.

Mr. Kram: — The changes. Well whoever made the changes should have brought that to our attention.

Mr. Heppner: — Interesting conclusion, that the people who make the changes that are going to cost us the money should inform you of that if, in actual fact from what it appears to have happened, that there was a plan at the outset to have the taxpayers of Saskatchewan lose some money.

But I'd like to move to a little different area at this particular point and that's something that's involved in this as well. Because part of, as you know, what we're dealing with is the termination and severance payment of Mr. Messer and the reasons that have been given in the House for that.

And move to the Guyana deal for a moment as it relates to the

firing and subsequent payment of the severance to Jack Messer. Are you aware of any legal opinion that indicates that SaskPower could be successfully sued for pulling out of the Guyana deal?

Mr. Kram: — I am aware of legal opinions, but the precise contents of them, I'm not commenting on that.

Mr. Heppner: — Okay the part that I think is key here — even though you may not be involved or aware of the precise contents of it and its finest point — but I think the key question is: did those legal opinions give the opinion that Guyana could be successful in the suing, aside from what the details were and how much they might recoup from the Saskatchewan taxpayer?

Mr. Kram: — Madam Chair, those legal opinions, my understanding is they do not . . . they are not included in the waiver of solicitor-client privilege with respect to these proceedings. Plus I may also add that there are presently some very sensitive commercial circumstances, I think, which would be very potentially prejudicial to SaskPower, SaskPower Commercial, if those opinions were discussed or released.

Mr. Heppner: — Madam Chair, could you instruct the witness to answer the question, please, because I think that's why he's here.

The Chair: — Well I think the witness, the witness . . .

A Member: — . . . question of relevance, terms of reference.

Mr. Heppner: — You are not on the floor right now.

The Chair: — Mr. . . . All right, guys. Back off, okay.

A Member: — Yes, Your Honour.

The Chair: — Mr. Thomson, you are not recognized. Mr. Heppner, I am perfectly capable of pointing that fact out to the committee members.

Mr. Heppner: — Good.

The Chair: — Mr. Kram is indicating that solicitor-client privilege was not waived with respect to the Guyana legal opinions, and he's also indicating that commercial sensitivity is involved. This committee has in the past accepted commercial sensitivity as a reason — a legitimate reason — for not answering questions.

I appreciate that you're putting the point that because Guyana was mentioned in a press release regarding the termination . . . or the payment of severance to Mr. Jack Messer, that therefore it ought to be . . . that the questions on that ought to be entertained by the committee.

I would point out, however, that we did deal with this matter already on April 28. Committee members also, as part of their regular business, will be reviewing Guyana when they're reviewing SaskPower '97 annual statements.

I think that what I would prefer that you do, what I'm asking you to do, Mr. Heppner, is to confine your questions today to

the specific issue of Channel Lake — that's what we're dealing with right now — and finishing our line of questioning with respect to Channel Lake.

You do have a motion that you've given us notice of already regarding a request for further documentation on Guyana. I do not feel at this time that Mr. Kram should be required to answer the questions about Guyana. So will you please put other questions to him.

Mr. Heppner: — We are totally on topic and this did not just come from a news release. I believe if you'll check *Hansard*, you will find that it was mentioned in the legislature that part of the reason for the termination and payment of severance to Jack Messer involved the Guyana deal.

And we, as has been stated very often by the NDP (New Democratic Party) in this group, are sort of part of that organization — the legislative body — so we have that information and therefore it is part of that. There's no way you can divorce those two.

That has been stated. Everyone's aware of it. And for the NDP in this particular group to try and decide . . .

A Member: — Point of order, Madam Chair. Point of order.

The Chair: — I'll recognize Mr. Tchorzewski on a point of order.

Mr. Tchorzewski: — It seems to me, Madam Chair, that the Chair has provided a ruling, not any different than in the House. Members do not debate the ruling of the Chair any more than they debate the ruling of the Speaker.

What Mr. Heppner is attempting to do is debate the ruling of the Chair. And therefore he is out of order and once again playing the usual business here of trying to deal more with political posturing than with dealing with the facts regarding Channel Lake.

Your ruling in my view is the correct ruling and I would submit that Mr. Heppner should show enough respect for the procedures of this committee and the legislature to abide by the ruling.

The Chair: — Thank you. Mr. Heppner, again I would ask you to put questions of the witness regarding Channel Lake.

Mr. Heppner: — I was not, Madam Chairperson, questioning your ruling. I was questioning the NDP's effort to control the direction of this committee, which is different.

The Chair: — Mr. Heppner, will you put questions of the witness, please. We deal with procedural matters at the end and you do have a notice of motion already before us on that, so we will be dealing with that at the end. But I'm asking you to ask questions of Mr. Kram regarding the Channel Lake inquiry rather than attempting to expand it to a Guyanese inquiry.

This committee will in due course be dealing with the SaskPower 1997 annual reports. You will have more than ample opportunity to ask questions of SaskPower officials on

the Guyanese matter at that time.

Mr. Heppner: — On a slight clarification of your apparent ruling, Madam Chairperson. You're saying then that no questions on Guyana are eligible at this committee meeting?

The Chair: — You asked me to compel the witness to answer questions. I am saying that I am accepting his statement that he does not wish to answer that question on the grounds of commercial sensitivity and on the grounds that solicitor-client privilege was not waived for that matter. So I am not asking him to answer those questions. Please put other questions.

Mr. Heppner: — Okay, so I will not repeat that question. But I do have another question because you did not answer the question I just asked on your ruling, whether questions on Guyana were not permissible. You haven't answered that, so I'll take from that that they are.

And so my next question is as follows: are you aware of any commitment made by CIC, SaskPower, or any subsidiary in the process of negotiating the purchase of the Guyana electrical company, that would obligate SaskPower to pay any penalty or other kind of payment, charge, or fee as a result of pulling out of that deal?

Mr. Tchorzewski: — Madam Chair, once again the member for Rosthern is showing almost contempt for the procedures of this committee with his actions here today. This is not an inquiry into Guyana. Guyana is a major issue. It's a separate issue. He knows that and the committee knows that. I think his approach is clearly in a contempt of the Chair. He is questioning the ruling of the Chair. He's trying to get around it. And quite frankly, Madam Chair, he is out of order.

Mr. Heppner: — We're dealing with Mr. Messer and his termination and his payment. Guyana was involved in part of that; it's not the whole thing. We have to date basically dealt with only a very small part of that, that's Channel Lake. Guyana is also part of it. We know that from the records that are out there; there is no question on that in anyone's mind. So we have a right and an obligation to bring that information out as well because it does play a part in the termination and the payment of severance of Jack Messer.

The Chair: — Mr. Heppner will you please — since I perceive that you are challenging the Chair — will you repeat again your specific question that you have?

Mr. Heppner: — Okay. The last question that I asked of the witness, that's the one you're asking for?

The Chair: — Yes.

Mr. Heppner: — Okay. It is as follows: are you aware of any commitment made by CIC, SaskPower, or any subsidiary in the process of negotiating the purchase of the Guyana electrical company that would obligate SaskPower to pay any penalty or any other kind of payment, charge, or fee as a result of pulling out of the deal. And that is not referring to any legal opinion, sir.

The Chair: — Mr. Heppner, I am ruling that that question is

not relevant to the point of the inquiry. Please move on on your questions.

Mr. Heppner: — If I can't ask that question I think we've just closed a whole area, and I have no questions at this point for this witness.

The Chair: — Thank you. The hour now being 10:22, you've showed perfect timing. We will now have a break until 10:30, at which time we will resume questioning of Mr. Kram with Mr. Hillson of the Liberal Party leading the questioning.

The committee recessed for a period of time.

The Chair: — Will committee members please take their places. We will begin again. Mr. Hillson you have the floor until . . . for 45 minutes.

Mr. Hillson: — Thank you, Madam Chair. And I would first of all like to congratulate the Chair for noting earlier this morning that the Liberals are the only ones approaching the work of this committee in a mature and responsible manner. I'd like to say I agree with the Chair and congratulate you for making that observation.

Now, Mr. Kram, could you . . .

The Chair: — Mr. Hillson, I want to remind you that I am an equal opportunity chastiser here. All right? So the job of this committee, of the committee members this morning, is to be putting questions to the witnesses. Do that without editorial comment on the comments of the Chair, please.

Mr. Hillson: — I just wanted you to know what a fine job you're doing, Madam Chair. Thank you.

Mr. Kram, would you please briefly outline for us your legal career? You are a member of the Law Society of Saskatchewan are you not?

Mr. Kram: — That's correct.

Mr. Hillson: — Okay. Just briefly outline your legal career for us please.

Mr. Kram: — I've been with SaskPower for approximately nine years. Prior to that I was in private practice in Regina for about nine years as well, and graduated from the University of Saskatchewan law school.

Mr. Hillson: — And what firm were you with prior to joining SaskPower?

Mr. Kram: — The Rendek McCrank firm.

Mr. Hillson: — Now the April 1 memorandum of Mr. Portigal concerning final changes, document 858, when did you first see this document, sir?

Mr. Kram: — This document I would have received probably late in the day April 1. I would have maybe read it in its entirety probably the next day or later that day; I don't recall specifically.

Mr. Hillson: — Okay. So you received it April 1 and you would have read it the same day or the next?

Mr. Kram: — I believe so.

Mr. Hillson: — Was there any covering correspondence with this memorandum?

Mr. Kram: — In addition to the document itself? You mean a . . . to me or . . .

Mr. Hillson: — Anything else.

Mr. Kram: — I don't. No.

Mr. Hillson: — Specifically, do you recall on that date or near that time frame seeing a letter from Mr. DeLuca?

Mr. Kram: — No.

Mr. Hillson: — So you do not recall seeing a letter from Mr. DeLuca or Direct Energy in that time frame?

Mr. Kram: — I don't recall any letter that's from a law firm.

Mr. Hillson: — Now back to this document. I want to draw your attention to the bottom of the first page. And I'll just read a portion here:

The unrealized portion of the 5.2 million (I think we understand of course that's the trading losses) is credited against the amount of the purchase price then payable.

You read that did you, sir?

Mr. Kram: — At the time or now?

Mr. Hillson: — At the time.

Mr. Kram: — I would have read it, yes.

Mr. Hillson: — What did that say to you?

Mr. Kram: — Well the recollection I had is that there was . . . I recall particularly the use of the word "mechanism" in paragraph no. 2. Trading losses were clearly an issue that was being dealt with during the course of negotiations, and this was a discussion or this was a report by Mr. Portigal to the president, with copies to several others of us, where he's talking about the mechanism for dealing with trading losses.

Mr. Hillson: — But specifically this line: the unrealized portion of the trading losses is credited against the amount of the purchase price. What interpretation did you put on that line? What did it mean to you?

Mr. Kram: — I can't recall precisely what it meant to me at the time. It was again he was talking about . . . there was discussion, or at least the memo was talking about how the trading losses were going to be dealt with. But it was not . . . it was more . . . certainly it wasn't an indication that there was any substantial change in the purchase price.

Mr. Hillson: — Did you ask Mr. Portigal what he meant by that line?

Mr. Kram: — I don't recall that.

Mr. Hillson: — What does that line mean to you now?

Mr. Kram: — Now?

Mr. Hillson: — Yes.

Mr. Kram: — With sort of the benefit of hindsight and going back and looking at the documents, is that . . . I'm still not clear as to what it was getting at, what it means.

Mr. Hillson: — So you're saying that the memorandum of April 1, you still have trouble putting any meaning on it.

Mr. Kram: — I believe I indicated that in my opening statement, that there are things, even with benefit of hindsight, that are not clear to me. Certainly there was no indication of this fundamental change in the purchase price.

Mr. Hillson: — When did you first have doubts as to how Mr. Portigal was managing this file?

Mr. Kram: — I'm not sure of your question, managing this file?

Mr. Hillson: — I think it's a very simple and very clear question.

Mr. Kram: — Do you mean the sale transaction?

Mr. Hillson: — Well this file. We're here talking about the Channel Lake acquisition, management, and sale.

Mr. Kram: — I wouldn't have had any questions about Mr. Portigal's management until June 2.

Mr. Hillson: — June 2. Okay. What happened on June 2 then to cause you to be concerned with where Mr. Portigal may have been coming from?

Mr. Kram: — I would have received a telephone call, I recall, from Mr., I believe it was Mr. Christensen, indicating to me that there was some problem with the final payment amount and he and I met shortly after that.

Mr. Hillson: — And then what date did you learn that Mr. Portigal may have a relationship with the purchasers of Channel Lake?

Mr. Kram: — June 3.

Mr. Hillson: — June 3. And was Mr. Portigal still associated with the SaskPower-Channel Lake on June 3?

Mr. Kram: — Yes.

Mr. Hillson: — And you say it was on June 3 that you learned that there was a relationship with the purchasers?

Mr. Kram: — That's correct.

Mr. Hillson: — And how did you learn that, sir?

Mr. Kram: — The "Closing Book" with respect to the sale transaction arrived and I looked at it and noted that Mr. Portigal was director of Channel Lake as of a closing date of June 1.

Mr. Hillson: — The new Channel Lake, if I can call it that.

Mr. Kram: — Well the same Channel Lake, but the recently sold Channel Lake, that's right.

Mr. Hillson: — And so you just noted that he was now a director . . .

Mr. Kram: — Yes.

Mr. Hillson: — . . . for the company under the new ownership. And what did you do as a result of having noted that?

Mr. Kram: — Well I would have reported that — I did report that — to the president. And the other former directors of Channel Lake would have been made aware of that as well that afternoon.

Mr. Hillson: — By yourself.

Mr. Kram: — Yes, sir, they may have already heard from one of the others, but the information was circulated that afternoon.

Mr. Hillson: — And did you have any personal hand then in asking Mr. Portigal what this all meant?

Mr. Kram: — Not with respect to his employment or his becoming a director of Channel Lake.

Mr. Hillson: — What do you mean by that answer? You say that you did . . .

Mr. Kram: — I don't believe I ever met or spoke to Lawrie Portigal after the afternoon of June 3.

Mr. Hillson: — And so you had no direct oral discussions. Any written communication with Mr. Portigal after you learned that he was a director of the company for the new owners?

Mr. Kram: — No.

Mr. Hillson: — Now I take it from what you've already told us, Mr. Kram, that Mr. Portigal had not told you himself that he was working for the new company.

Mr. Kram: — That's correct.

Mr. Hillson: — Nor, to the best of your knowledge, did anyone else in SaskPower know that this was the case.

Mr. Kram: — To the best of my knowledge.

Mr. Hillson: — Now you say that it was, I believe, June 2 when you first became aware that the purchase price was different than what you had understood it to be.

Mr. Kram: — That's correct.

Mr. Hillson: — I assume that you would have contacted our lawyers in Calgary to find out what they knew about this.

Mr. Kram: — I did.

Mr. Hillson: — Were they aware that there was a third draft which had removed 5.2 million from the purchase price?

Mr. Kram: — Yes, they were. They were aware of a third draft.

Mr. Hillson: — Were they aware of the significance of that third draft?

Mr. Kram: — I believe they were aware that there was a significant change between the second and the third draft.

Mr. Hillson: — Who did you speak to at Milner Fenerty?

Mr. Kram: — Michael Hurst.

Mr. Hillson: — Michael Hurst. He was specifically the solicitor assigned to this sale, was he not?

Mr. Kram: — That's correct.

Mr. Hillson: — And did you point out to Mr. Hurst that he had been supposed to supply you with copies of all correspondence and drafts?

Mr. Kram: — I don't believe we had that discussion that day. He was the one that told me though that there was a third draft, when we spoke that day, and sent me a copy of it.

Mr. Hillson: — And that that third draft significantly altered the purchase price?

Mr. Kram: — Yes.

Mr. Hillson: — In fact by over 5 million.

Mr. Kram: — That there was a significant change, that's correct.

Mr. Hillson: — Okay. So you talked to Mr. Hurst some time later about the fact that you had been supposed to receive copies of all drafts and correspondence?

Mr. Kram: — We have had discussions since that time, that's correct.

Mr. Hillson: — And what did Mr. Hurst say about that?

Mr. Kram: — He hasn't . . . we haven't had an . . . I haven't had a direct conversation about why didn't you send me documents. We certainly have made the point that documents were supposed to have been sent and there hasn't been a specific reaction — it's silence, if you will, from him.

Mr. Hillson: — So you simply stated as a fact that his retainer agreement required him to send you copies of all documents

and correspondence and he hadn't done it.

Mr. Kram: — That's correct.

Mr. Hillson: — And he made no response to that at all.

Mr. Kram: — Well he had talked in terms of the third draft and having had a discussion with Lawrie Portigal about that, about the fact that there was a significant change between the second and the third draft. But with respect to his comment as to why he had not sent copies of the drafts, I don't recall specific comments that he provided to me in reply to discussions we have had.

Mr. Hillson: — Did Mr. Hurst acknowledge to you whether he found it rather strange that at the last minute over \$5 million would be taken off the purchase price?

Mr. Kram: — Words to that effect, yes.

Mr. Hillson: — He found it strange?

Mr. Kram: — Curious, yes.

Mr. Hillson: — Curious. However as far as you are aware, did Mr. Hurst review that with anyone else other than Mr. Portigal?

Mr. Kram: — I'm not aware, other than Mr. Portigal and possibly Direct Energy and their lawyers. He may have had communication with them.

Mr. Hillson: — Did you discuss with Mr. Hurst the fact that Mr. Portigal was working for the new owners of Channel Lake?

Mr. Kram: — I would have mentioned that to him.

Mr. Hillson: — Did he react to that?

Mr. Kram: — Something he didn't know. I think he indicated he didn't know that that was the case.

Mr. Hillson: — Did he make any other reaction outside of, well I didn't know that.

Mr. Kram: — I can't recall.

Mr. Hillson: — Can't recall. When you talked to Mr. Hurst after you became aware on June 2 that there were very significant changes, did you also talk to Mr. Hurst about the fact that there had been further changes after you had signed the agreement?

Mr. Kram: — No.

Mr. Hillson: — Have you never discussed with Milner Fenerty the fact that there were other changes post-signing?

Mr. Kram: — We only became aware of . . . other than the change to 6.3, which was identified in Mr. Tavender's opinion, we were not aware of those other changes until very recently.

Mr. Hillson: — And have you discussed those with Milner Fenerty?

Mr. Kram: — I've had very little conversation with respect to those aspects of those changes with Milner Fenerty.

Mr. Hillson: — But have you discussed the fact that there were post-signing changes to the agreement with anyone from Milner Fenerty?

Mr. Kram: — I have referenced that in a conversation with Milner Fenerty, but we haven't had a discussion about it — certainly made the point.

Mr. Hillson: — And did they make any response?

Mr. Kram: — Not . . . no.

Mr. Hillson: — So when you were told in June about the first change, did you contact Milner Fenerty and say, how come there were changes post-signing?

Mr. Kram: — No, I did not have that specific discussion.

Mr. Hillson: — Can you tell us why not, sir?

Mr. Kram: — Well it was a change that was identified in the course of the opinion, and it appeared to track with the change in the acknowledgement. At the time we weren't focusing specifically on, sort of the why that change had occurred, with Milner Fenerty.

Mr. Hillson: — Okay. Did you read the two draft opinions of Milner Fenerty recommending that the agreement should be cancelled and we should commence legal action, unless Direct agree to immediately renegotiate?

Mr. Kram: — Yes, I read those opinions.

Mr. Hillson: — Did you concur on those opinions?

Mr. Kram: — I understood and accepted the advice that was provided in those opinions.

Mr. Hillson: — What was your own view? You are also a lawyer. What was your own view? Did you agree with him or did you disagree with him?

Mr. Kram: — I concurred essentially with what the advice was in those opinions.

Mr. Hillson: — Did you advise Mr. Messer or other senior SaskPower officials that that was your view of what ought to happen?

Mr. Kram: — I can't recall. We would have had discussions about the opinions and about the options available to the corporation in those circumstances.

Mr. Hillson: — I'm not trying to argue with you here, but it seems to me pretty basic that Mr. Messer would say: well, Mr. Kram, you're our corporate solicitor, what do you think we ought to do. Was that question put to you?

Mr. Kram: — It wasn't put to me precisely like that. The discussion would have been, let's look at the circumstances,

look at the advice; the decision ultimately to proceed or not to proceed with legal action was not mine.

Mr. Hillson: — I realize that, but it is your position to advise. The decision of course is made by others; but the advice as to what you think ought to happen — that is your function. Is that not correct?

Mr. Kram: — That's part of my function, that's correct.

Mr. Hillson: — And did you give that advice?

Mr. Kram: — I would have provided some advice with respect to possible courses of action and options available to the corporation.

Mr. Hillson: — And indicated what your recommended course was?

Mr. Kram: — I don't recall specifically putting it that way. We would have had a general discussion about the options; but whether I gave a specific recommendation, I certainly didn't do that in writing. I don't recall doing that verbally.

Mr. Hillson: — And you were never asked: what is your recommendation to us.

Mr. Kram: — I don't recall being asked that.

Mr. Hillson: — And what about the board. Did you provide any advice to the board?

Mr. Kram: — No, I didn't.

Mr. Hillson: — So I guess that also answers the second . . . no advice was requested.

Mr. Kram: — Not from me. I didn't report to the board.

Mr. Hillson: — So you're the corporate solicitor; we just find out there's been a last-minute switch that has been very costly to the corporation, and you're telling us nobody even asks you what your recommendation is here?

Mr. Kram: — No, I don't think I'm saying that. There was a combination of advice if you will that was prepared and provided to the president at the president's request including the Milner Fenerty's opinions, internal audit had done a report, the Brian Kenny MLT (MacPherson Leslie & Tyerman) opinions — all those would have been sort of put into a pool . . .

Mr. Hillson: — I'm not talking about Brian Kenny or Mr. Tavender. I'm talking about you. And I guess if you don't agree with what I just put to you — I thought that's what you testified but I do want to get this on the record very clearly. Were you asked what you recommended be done and did you give a recommendation?

Mr. Kram: — I don't recall that specific question.

Mr. Hillson: — No to both?

Mr. Kram: — That's correct.

Mr. Hillson: — Very well. You were not present at the June 20 meeting?

Mr. Kram: — That's correct.

Mr. Hillson: — So board members would not have had an opportunity to personally question you as to what your view was.

Mr. Kram: — That's correct.

Mr. Hillson: — Now you are aware, of course, that, well, the two draft opinions that you refer to very clearly say that we should cancel the agreement and commence action. Mr. Messer has referred to the opinions as inconclusive and contradictory. And he has apparently said so on the basis of further oral conversations. Did you talk to anyone at Milner Fenerty about those draft opinions?

Mr. Kram: — Yes.

Mr. Hillson: — And when you talked to them did they back down from those opinions or did they stand behind them?

Mr. Kram: — The interpretation I think that I would certainly have of the opinions is, with respect, somewhat different. The advice that was contained in those opinions —that was subsequently discussed orally with Mr. Tavender, was the main party, the main member of Milner Fenerty behind the preparation of those opinions — the opinions, as I read them, certainly provided a balanced view, were trying to give us both sides, and any time you consider litigation you have to look at pros and cons, and again always operating within the confines of really what's in the best interests of the corporation in those circumstances.

The opinions, I think you have characterized them correctly by saying that, you know, subject to Direct Energy's immediate response, what they were saying, in my view, is if you fail to get that immediate response from Direct Energy and legal action is what you want to pursue, here's how we would suggest you go about doing it — commence an action, initiate an injunction, etc.

There's also, if you look in the opinions, there's also many references to the fact that this is a circumstance that they would recommend be resolved by resolution of the parties; they talked about a lot of the real pitfalls that we would be getting into with respect to an action — cost, time, uncertainty about outcome, etc., the difficulty they were having with the facts on both sides, opposing sides. That essentially was confirmed to me in subsequent telephone conversations with Mr. Tavender where he said, look at your chances here are 50/50.

Mr. Hillson: — However, I think you'll agree with me, Mr. Kram, that all lawyers in all cases will always recommend trying to get a negotiated settlement if possible.

Mr. Kram: — I don't know that I would necessarily agree with that.

Mr. Hillson: — It would be standard advice.

Mr. Kram: — Well not necessarily. With respect, I think there may be circumstances where your advice is you are on very solid legal ground.

Mr. Hillson: — And you would agree with me, would you not, that all lawyers would always advise their client that there are pitfalls and risks in commencing legal action and going to court. You're being negligent not to tell your client that.

Mr. Kram: — Well I think it would be prudent on a lawyer to do that. It really is a way, in my view, it's how you're advised that.

Mr. Hillson: — Sure. However I want to read you just one line from the June 12 draft opinion, page 13:

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

You read that?

Mr. Kram: — Yes.

Mr. Hillson: — And you told me earlier you concurred with that as being a sound course of action. Is that correct?

Mr. Kram: — That was a ... I concurred with the reasonableness of the advice, yes.

Mr. Hillson: — Yes. And you would agree with me that that is not an unequivocal legal opinion; it's a very clear one, or as clear as you get from lawyers. You know, they're never going to tell you it's a hundred per cent but that's a pretty clear recommendation.

Mr. Kram: — I read this in the context of the entire letter. And again, I think it's important to do that and look at not only that but certainly the other provisions of the letter as well as the tone of the letter.

Mr. Hillson: — I, of course, read and we all heard your statement to this committee on April 21, 1998, Mr. Kram, and in view of the statements contained in that, I have to ask you if you have contacted the Law Society of Saskatchewan to investigate this matter?

Mr. Kram: — No.

Mr. Hillson: — May I ask why not?

Mr. Kram: — I'm sorry, to investigate this matter in?

Mr. Hillson: — In regards to the very serious allegations you've made about Mr. Portigal in your statement of April 21.

Mr. Kram: — We, I think, were very careful not to make any specific allegations with respect to anyone. We tried to lay out the facts.

Mr. Hillson: — Yes, and these facts raise very serious questions that normally a lawyer would be referring to the law society.

Mr. Kram: — Well I'm not sure that's the case, sir.

Mr. Hillson: — Well, you make it clear that someone switched, switched papers; someone changed terms of a contract and kept you in the dark about it, someone was in an apparent conflict of interest — that's pretty clear that that calls for at least an investigation by the law society. Whereas you don't draw conclusions when you refer to the law society, you also don't draw conclusions when you refer to the police — you are asking for an investigation.

But what you have said in your April 21 memorandum, I'm actually flabbergasted that you would not be writing to the law society. It seems to me it would be standard.

Mr. Kram: — Not at all, sir.

Mr. Hillson: — Well, was Mr. Portigal a member of the Law Society of Saskatchewan?

Mr. Kram: — I don't know that.

Mr. Hillson: — Did you know him as lawyer?

Mr. Kram: — I knew that he was a lawyer.

Mr. Hillson: — Yes, okay. And what about Mr. Hurst, is he a lawyer?

Mr. Kram: — He's a lawyer, yes.

Mr. Hillson: — Is he a member of our law society?

Mr. Kram: — No, I don't believe so.

Mr. Hillson: — Member of the Law Society of Alberta, is that what you're saying?

Mr. Kram: — I believe he is.

Mr. Hillson: — I mean it's your statement that there is evidence of a conflict of interest, that you were kept in the dark about changes, and that even after you had signed the contract someone changed pages. Now are those not matters that do touch on, as the law society calls it, conduct unbecoming?

Mr. Kram: — I haven't indicated that there's any conflict of interest in my statement. I don't believe I've said that here today.

Mr. Hillson: — Well you certainly, in your testimony today you tell us that he was working for SaskPower and the new owners of Channel Lake and that you knew this last June.

Mr. Kram: — Well that is again a statement of fact. I have not made a conclusion as to whether or not that resulted in any specific conflict of interest.

Mr. Hillson: — No, it's for the law society to say whether or

not that is a conflict of interest. Why wouldn't you be asking the law society if that is a conflict of interest?

The Chair: — Mr. Hillson, I'm going to give you the same admonition that I gave to Mr. Heppner. And I'm perfectly prepared to give the New Democratic Party exactly the same admonition if they do the same thing when it's their turn to questioning. Please put to the witness questions of fact.

Mr. Hillson: — Yes.

The Chair: — All right. Attempt as much as possible to avoid asking their opinion about things. What this committee is doing is asking questions of fact of the witnesses. You've asked him whether or not he referred it to the law society. He said no. Move on now to another line of questioning.

Mr. Hillson: — Oh, the significant question is why not. And I think, I think I know why but I want . . . so what I think we have to get this out of the witness. Why not? It's just so obvious here to any lawyer that something calls for an investigation.

Mr. Kram: — Again, we are not aware of all the circumstances with respect to this. And this, you know, is certainly one of the functions of this forum here, as I understand it by its terms of reference.

Mr. Hillson: — Yes. But we're talking about what you knew last June, nearly a year ago. This only just started. We're talking about your knowledge close to a year ago.

Mr. Kram: — Again, sir, what's the question? Why we . . . I'm sorry. We looked at the circumstances of this and dealt with it at the time. And there was no consideration of referring this matter to the Law Society of Saskatchewan.

Mr. Hillson: — Did you recommend that step be taken?

Mr. Kram: — No.

Mr. Hillson: — Did you receive direction from management that you should not do that?

Mr. Kram: — No.

Mr. Hillson: — Was the decision not to refer to this to the law, not to refer this to the law society because a reference to the law society would thereby make these circumstances public?

Mr. Kram: — Absolutely not.

Mr. Hillson: — We were told yesterday that one of the ingredients in the decision not to cancel the sale agreement was because of the publicity that would come by a legal suit. Was that a consideration in not referring to the law society and asking for their opinion?

Mr. Kram: — No.

Mr. Hillson: — That did not cross your mind that if you referred this to the law society, the whole matter would thereby become public.

Mr. Kram: — That's correct.

Mr. Hillson: — So if that didn't weigh on your mind, what did weigh on your mind in deciding this did not necessitate a reference to the law society? What were the factors that weighed on your mind?

Mr. Kram: — It was not considered . . . a reference to the Law Society of Saskatchewan was not considered at the time.

Mr. Hillson: — You're saying you never addressed your mind to that possibility.

Mr. Kram: — That's correct.

Mr. Hillson: — It never even crossed your mind that this might be law society material.

Mr. Kram: — That's correct.

The Chair: — I think you've probably exhausted that particular line of inquiry, Mr. Hillson. Could you now move on to another question of the witness.

Mr. Hillson: — Madam Chair, you are right as always and I will do just that.

The Chair: — Thank you . . . (inaudible interjection) . . . Mr. Thomson, you are not recognized.

Mr. Hillson: — There is litigation I understand concerning the initial purchase of the assets of Channel Lake, and specifically of Dynex. Is that . . .

Mr. Kram: — There . . . again if you could just, sorry . . .

Mr. Hillson: — Are you aware of outstanding litigation regarding the purchase of Dynex — of the Dynex assets?

Mr. Kram: — I believe I'm generally aware of some litigation in Alberta, related.

Mr. Hillson: — My question for you: is there a potential liability to SaskPower depending on the outcome of that litigation?

Mr. Kram: — No, there is not.

Mr. Hillson: — So are you saying no matter how that litigation goes you don't think it has any financial bearing on SaskPower?

Mr. Kram: — That's correct.

Mr. Hillson: — Specifically the last change referred to last week — the 7.1 change — that has no relation to the Dynex litigation?

Mr. Kram: — That's correct.

Mr. Hillson: — So where is the potential liability in the alteration to 7.1? And what is that potential liability?

Mr. Kram: — The potential liability — and again it is potential

liability only — would result in . . . there would have to be a number of circumstances that would have to fall into place before there would ever be a claim and that would . . . to sort of describe it as simply as I can there would have to be a default of some sort on one of the outstanding trading contracts. There's only . . . I believe that there's only two of them remaining, and the last . . . these two both expire or end November this year. And they're both with fairly substantial parties.

There'd have to be a default of some sort; a claim then by . . . of loss by either the receivers, trustees, whatever, of these contracted parties against Channel Lake and Direct Energy and its directors. And then a claim over against SaskPower under the indemnity.

So although the potential is there, the likelihood is fairly, fairly remote.

Mr. Hillson: — So you are reasonably confident that nothing will result from the change to 7.1.

Mr. Kram: — At this point, yes.

Mr. Hillson: — Now, sir, I have one final question. And regarding yourself personally, as a result of your experience with this transaction, do you believe that the procedures of the legal department of Saskatchewan Power require any review? Will you personally be altering your procedures or do you believe that what has been done in the past is satisfactory?

Mr. Kram: — I firmly believe that what we've done in the past and in the practices and procedures of SaskPower, not only the legal department but other departments, are reasonable and we follow a due diligence exercise in the conduct of our business. But having said that, I think it's reasonable that we as a corporation are always looking to improve and do things differently regardless of what department it is.

Mr. Hillson: — Can you be more specific as to what you would say ought to be changed?

Mr. Kram: — With respect to generally what is done in the legal department?

Mr. Hillson: — Yes, as a result of the experience on this file.

Mr. Kram: — There are . . . Again going back to what in fact was done here, I think that we had followed procedures that were place at this time. There are, I guess, additional things one could do — initialling pages, as an example, of every document that's signed in the corporation. It's a possibility of something we could do and make it a standard practice.

Mr. Hillson: — And what about leaving one person and one person alone in charge of a major transaction? Do you think that requires a review?

Mr. Kram: — Again, that is not specifically a legal department function, the direction to individuals to conduct or undertake negotiations.

Mr. Hillson: — And if I can come back . . . this relates to it, Madam Chair. I'm left a little bit speechless that you weren't

even asked to give your opinion in early June as to possible . . . the preferred course of action, the recommended course of action. Is anything being done in the management that, I mean if you're going to have a legal department, it would seem fairly basic to get a legal opinion from them.

Mr. Kram: — Again maybe it was the way I answered. I mean I wasn't specifically asked for a specific recommendation, but I would have been involved in the discussions at the time with respect to options available to the corporation.

Mr. Hillson: — Options available as opposed to what is your recommendation, sir. And that's what disturbs me.

Mr. Kram: — Yes. I don't specifically recall that question. It may have been delivered. It may have come out. But whether that was specifically asked that very pointedly I . . .

Mr. Hillson: — My question isn't about the past. My question is about the future. Are we going to in the future, if we have a legal department, are we going to in similar circumstances say, Mr. Kram, what is your recommendation here?

Mr. Kram: — Well I would hope so.

Mr. Hillson: — Have you recommended that?

Mr. Kram: — I'm always recommending that.

Mr. Hillson: — And last question. Have you reviewed the possibility as to whether Milner Fenerty was professionally negligent in not providing you with copies of all drafts and memoranda.

Mr. Kram: — No.

Mr. Hillson: — You have not addressed your mind to that at all.

Mr. Kram: — No, I haven't.

Mr. Hillson: — And you have not prepared any opinion or memoranda or suggestions to senior officers in that regard?

Mr. Kram: — That's correct.

Mr. Hillson: — Have you been asked by anyone about that within SaskPower?

Mr. Kram: — No.

Mr. Hillson: — Has outside counsel been asked that question?

Mr. Kram: — No.

Mr. Hillson: — Madam Chair, that concludes my line of questioning.

The Chair: — Thank you, Mr. Hillson. I appreciate you using your time most effectively and efficiently. And the hour being now 11:15 I will recognize the New Democratic Party for approximately 35 to 40 minutes, so that we will have about 10 minutes to deal with procedural matters at the end.

Who with the NDP are questioning the witness? Ms. Hamilton, would you please begin your line of questioning.

Ms. Hamilton: — Thank you, Madam Chair, and through you to the witness, I'm going to go back to a time when you would engage Milner Fenerty and the engagement letter, I believe item CLP 14/29, the document number 854.

Milner Fenerty was to report to you, and I think that's common ground in proceedings like that, they were reporting to you if there was any changes within documentation.

Mr. Kram: — Paragraph 3 of the retainer letter provides, and I can read that if you like, but it provides them with direction or instruction to provide us with copies of documentation.

Ms. Hamilton: — Do you feel that then they were not properly complying with that engagement letter?

Mr. Kram: — Well I did not receive copies of all the drafts that Milner Fenerty had.

Ms. Hamilton: — If you didn't receive copies, part of the engagement letter says any correspondence to your legal adviser Milner Fenerty were to be provided to you. Do you feel they didn't properly comply with their engagement letter?

Mr. Kram: — Well I certainly did not receive copies of all the documentation but I haven't . . . I'm not aware and haven't had specific discussions with him as to what explanation there may be from them for this.

Ms. Hamilton: — They didn't provide you with documentation that is part of their engagement letter. Do you feel then they did not comply?

Mr. Kram: — On the face of it, yes, that's correct, they should have. And again I'm not aware of any explanation that they may have at this point.

Ms. Hamilton: — Did you ask for an explanation from them why they wouldn't comply with providing you documentation?

Mr. Kram: — I've had discussions with them, not pointed discussions about this but discussions with them, as I indicated to, I believe, Mr. Hillson.

Ms. Hamilton: — Referring now to the document that was circulated today from Milner Fenerty, their account, and earlier you mentioned that Milner Fenerty had received copies of changes and they did not give those to you. So when you received this document for payment, did you refuse to pay because they had not complied with the engagement letter?

Mr. Kram: — No, we didn't.

Ms. Hamilton: — Why didn't you?

Mr. Kram: — At the time . . . I did not receive this account until June 17, is when it was received. At that point, or about that time when I would have got around to dealing with this, we had effectively closed really all matters with respect to the Channel Lake issue. The board had approved the transaction on

June 20. I did not go back and discuss in detail with Milner Fenerty their . . .

Ms. Hamilton: — Did you . . . I guess following the question that Mr. Hillson put, when you found that there were a number of documents or key documents that they should have shared with you about changes, did you lay a complaint to the Alberta law society because they had not complied with their engagement letter?

Mr. Kram: — No.

Ms. Hamilton: — Why wouldn't you do that? They've obviously not provided you with this. You've found that there's a number of things that have gone awry.

Mr. Kram: — That would not be the initial and normal, necessarily, course of action.

I think the other thing is we just became aware of those changes in the last couple weeks we're involved in this process. And I think it's important to find . . . And Milner Fenerty will certainly be here too. And explanations and what not, I'm assuming with respect to that and other issues, will be forthcoming at that point.

Ms. Hamilton: — Okay. To the Milner Fenerty charges then, and I think probably in conjunction with the April 1 memorandum from Portigal, when you talk about the mechanism changing, that was brought to your attention.

Mr. Kram: — Right.

Ms. Hamilton: — The change in the mechanism and agreement to deal with trading losses. And it says that the unrealized portion of the 5.2 million is credited against the amount of the purchase price then payable. And on the second page it says the purchase price has been modified to \$20.8 million to match the board approvals.

Would that indicate to you that trading losses were now taken from the new price?

Mr. Kram: — No. I didn't realize there was a new price.

Ms. Hamilton: — Well it says the purchase price has been modified to 20.8 million.

Mr. Kram: — The previous net price had been approximately 20.7. So if there's a modification, it would have been a modification up.

Ms. Hamilton: — Okay. And now the unrealized portion of the 5.2 is credited against the amount of the purchase price.

Mr. Kram: — Yes. In that . . .

Ms. Hamilton: — The price on page 2?

Mr. Kram: — Well no, I wouldn't have read it that way. Again the purchase price that they're referring to is the net purchase price.

Ms. Hamilton: — Just in hindsight I read it that way. So I was wondering in hindsight if you took it to read that way, and that's where the differences would be in the change in agreement.

Mr. Kram: — Well again it was clear, the very last point here, in point no. 5 was that there had been a modification to match the board approvals.

Ms. Hamilton: — In the Milner Fenerty accounting and the telephone conversations, they say there was a reviewing of the final versions of the share sale agreement in escrow agreement. And that was a conversation with Mr. Portigal and yourself.

Mr. Kram: — It wouldn't have been a conversation among the three of us. I don't believe we ever had any with the three of us. It would have been two separate conversations.

Ms. Hamilton: — So then in that conversation, there was no indication from Milner Fenerty that there were any changes.

Mr. Kram: — Which specific entry are you looking at? Is it the April 1?

Ms. Hamilton: — April 1.

Mr. Kram: — No, that's correct. There were no specific indications from them that there'd been any change in the purchase price.

Ms. Hamilton: — Okay. How does that tie in then to the April 3 entry in the Milner Fenerty reporting, reviewing revisions to share sale agreement and reviewing acknowledgement with Mr. Portigal?

Mr. Kram: — Again I didn't receive this until June 17, but there appears to have been some further discussion between Mr. Portigal and Mr. Hurst on April 3.

Ms. Hamilton: — Regarding revisions that would take place?

Mr. Kram: — Yes.

Ms. Hamilton: — And again I refer you to the engagement letter. Then would not your lawyer there have to notify you?

Mr. Kram: — That's what we would have expected.

Ms. Hamilton: — So you get a document that says there's now a review on your behalf to the share sale agreement, and an acknowledgement, and a conversation with Mr. Portigal, and you're left out of the picture totally.

Mr. Kram: — With respect to that matter, yes.

Ms. Hamilton: — You weren't annoyed enough to do some follow-up and say, why would I pay this when you haven't fulfilled your agreement?

Mr. Kram: — Again, at that particular point, the matter was essentially over with respect to Channel Lake and we didn't go back and make an issue of it at that point.

Ms. Hamilton: — Well this is a hefty legal bill, in my mind, and you've been cut out of the discussion when the engagement letter you would have looked at says they're to alert you to any changes. And you felt there was no need to follow up with Milner Fenerty on that at all?

Mr. Kram: — We did not follow up with Milner Fenerty in detail on that. That's correct.

Ms. Hamilton: — Okay. In that case, do you feel that from what happened April 1, Mr. Portigal walked in — I guess I'd need more clarification of that — he walks in with the agreement; says here, sign it, I'm in a rush, I'm going to Calgary. Everyone smiles and he leaves. So he feels whatever he needs to do then to conclude an agreement is all right, or he's to be communicating again with you to conclude a deal?

Mr. Kram: — There wasn't . . . I think the characterization, if you will, of what happened at the meeting was not exactly like that. I mean it wasn't a rush, rush by any means. I mean, Mr. Portigal came in, we would have had a discussion, just general, about the progress of the deal, the fact that things had gone well, documents were signed. Mr. Portigal left with instructions clearly to go back to Calgary and close on the basis of the documentation that had been signed.

Ms. Hamilton: — Okay. I guess I'm going to follow up with the same kind of question that I asked Mr. Christensen. When you have an agreement of this magnitude, you wouldn't receive a copy in advance and match them to make certain nothing had changed? Or you were in the room, you said, Mr. Portigal, are there any changes we need to be aware of? Or this is our final agreement, take it and only sign this final agreement? Or were there any instructions to Mr. Portigal — now we've signed this, go away and get whatever you can to have DEML sign it as well?

Mr. Kram: — We had, as I indicated in my opening statement I read on behalf of SaskPower, we had done a number of things up until the April 1 meeting, including reviewing in detail draft no. 2, the agreement. We went into that meeting on the . . . again with the clear understanding that that is what we were effectively signing.

I had had a conversation that morning with Mr. Hurst earlier that day where he had indicated to me that he had given me a bit of an overview and said look, we signed off on the purchase and note share sale agreement and the escrow agreement. So with all those factors, and Mr. Portigal being present in the room, there was no need, in our view, to ask had there been any . . . has there been a \$5.2 million change in the purchase price?

Ms. Hamilton: — Mr. Portigal then would take the agreement away. Obviously by the memorandums there's some changes happening. He's in touch with Milner Fenerty. Did you give him any indication that he could be in touch with them rather than you, and they would act on your behalf?

Mr. Kram: — That was part of the retainer letter is that . . . and that was appropriate, Mr. Portigal was providing instructions to Milner Fenerty with respect to the transaction.

Ms. Hamilton: — Did you receive a copy of the file from

Milner Fenerty, the complete file?

Mr. Kram: — We have recently received a copy of the file.

Ms. Hamilton: — Okay. Could you then provide a copy of that file to the committee?

Mr. Kram: — The file has just been received. Our outside counsel, McDougall, Ready, have it and I understand that it will go through the normal process of making documents available to this committee.

Ms. Hamilton: — Thank you. Since the completion of all of the documentation, and now your reviews in the last few weeks to prepare to come before the committee, have you changed your practices with regards to these kinds of sales, the agreements, those kinds of things? What are some of the measures you've decided you would have in place if you were asked to be legal counsel for this kind of arrangement again?

Mr. Kram: — Again I want to reiterate that we had taken diligent steps to dealing with . . . leading up to the signing of the documentation. Hindsight is worth an awful lot in any instance and I think . . .

Ms. Hamilton: — . . . foresight for the next one, and I guess what are you looking at in that way?

Mr. Kram: — Fair enough, and there are things that we could do that would be different, and Mr. Hillson I think indicated one of them. And whether it's a legal department or a corporate initiative, to ensure that there are more than one person available at negotiations on behalf of the corporation. There could be more specific sign-offs from outside counsel with respect to documentation, things like this.

Mr. Tchorzewski: — Madam Chair, can I continue for a couple of questions?

The Chair: — Yes you can, Mr. Tchorzewski. It's 45 minutes per caucus.

Mr. Tchorzewski: — I don't think we'll need to take that much but . . .

Mr. Kram, you are the legal director . . . or what is your exact title?

Mr. Kram: — General counsel . . .

Mr. Tchorzewski: — General counsel. So you will be responsible for and in charge of the legal department for SPC (Saskatchewan Power Corporation).

Mr. Kram: — That's correct.

Mr. Tchorzewski: — In other words, that's where the buck stops. Can I ask you some questions then related to your position. First question is, is Milner Fenerty still engaged by the Saskatchewan Power Corporation?

Mr. Kram: — Yes they are.

Mr. Tchorzewski: — They are. Now you stated that you have not discussed the contract since you have discovered two weeks ago the changes that were made to the “Closing Book” with Milner Fenerty. Is that correct?

Mr. Kram: — I’m sorry. I haven’t discussed the contract?

Mr. Tchorzewski: — Just clarify so I don’t make . . . so I don’t put words in your mouth.

I understand that earlier you said that since the discovery, as you in Power Corporation say, of changes to certain pages in the closing document from draft 3, that you have not discussed this with Milner Fenerty since that discovery.

Mr. Kram: — I have had a conversation with Milner Fenerty with respect to that. That’s correct . . . discussed it.

Mr. Tchorzewski: — To what purpose what this conversation?

Mr. Kram: — Advising them that there had been additional changes made to the document after it had been signed in addition to the section 6.3.

Mr. Tchorzewski: — Okay. Now in all of this then, whose job would you see it to have been to assure that Milner Fenerty complied with their terms of agreement with SPC?

Mr. Kram: — Well Milner Fenerty would have had an obligation certainly to have complied with the terms.

Mr. Tchorzewski: — Whose job in Saskatchewan Power Corporation would it have been to oversee this to make sure or to identify if in fact there was no complying?

Mr. Kram: — Well if you’re expecting documents, and documents aren’t being sent . . . if there’s an obligation on the part of outside counsel to provide you with documents and you don’t get them, you don’t know what you’re not getting I suppose at that point. But some point obviously we did realize that we didn’t get things that had been prepared.

Mr. Tchorzewski: — But, Mr. Kram, I refer back to the document of Mr. Portugal to Mr. Messer dealing with I think . . . of April 1, 1997 which my colleague referred to awhile ago. It says in no. 2, share and note purchase agreement:

At the time of a second stage closing, the unrealized portion of the \$5.2 million is credited against the amount of the purchase price then payable.

Then in item no. 5 it says:

The purchase price has been modified to \$20.8 million to match the board approvals.

In each case it talks about the purchase price — doesn’t talk about gross, doesn’t talk about net. Surely don’t you think that somebody reading these memos should have been able to identify that there’s something rather peculiar here, as somebody else has said, and therefore deserves some follow-up.

Mr. Kram: — I think that’s the problem with the memo is that

it doesn’t make it clear at all that there is something peculiar or something fundamentally different in the purchase price. It clearly indicates that there has been modification to match the board approval which again was the culmination of several weeks of discussions. And both approvals were clearly . . .

Mr. Tchorzewski: — I mean, I don’t want to argue with anyone who may have read this and had a different view. But I am not a lawyer. Reading this, it does not take a great deal of insight to sort of alert that maybe something needs to be checking, but that’s a decision you people had to make, obviously, and you decided, in your good wisdom, there was nothing wrong.

Mr. Kram: — It was, again, it was a report to the president with a copy to several of us.

Mr. Tchorzewski: — Now since Milner Fenerty seems to have not provided you with all the information they were required to by your agreement with them, you have indicated that, why would you have — and it’s your responsibility to approve the bill, the account, because it’s a legal account — why would it not have seemed the right thing to do to question some of this account because they had not lived up to their agreement?

And I know that the answer has been, well the file was closed. That’s irrelevant. The file may have been closed but Milner Fenerty is still engaged by your corporation directly reporting to you. Why then could you justify the paying of this bill without asking some very hard questions?

Mr. Kram: — Well I think very hard questions or certainly discussions were had with them and I think it’s . . . The engagement of Milner Fenerty now is on quite a different matter — related, but different matter. The transaction and the ratification that took place in June essentially concluded the matter. The transaction was approved and it was brought to an end.

Mr. Tchorzewski: — I have one more question, Mr. Kram. Did you have any association with Mr. Portugal prior to the Channel Lake situation in any way?

Mr. Kram: — I had known Lawrie Portugal really since probably 1989.

Mr. Tchorzewski: — In what capacity?

Mr. Kram: — Well when I first came to SaskPower he was the — into the legal department — he was the senior vice-president of the legal department for a period of about one month or so. And after that I certainly would have bumped shoulders I guess with Lawrie Portugal very infrequently, but just through association with different Crown corporations in the community of Regina. But that’s the extent of my association with him.

Mr. Tchorzewski: — Okay. Thank you.

Hon. Mr. Shillington: — I’m a bit surprised actually at some of the testimony this morning. Let me go back to the question of the signing of the documents, and if we’re not . . . if terminology isn’t the same we’ll just work our way through it.

Mr. Christensen had testified I think that he had . . . that the second draft I think it was, was signed by the officials at SaskPower without having read it first, and that it's not standard practice to read an agreement of that sort end to end before it's signed when it's another draft of a document that's already been seen and approved, is it? Is that accurate?

Mr. Kram: — Draft no. 2 . . . are you saying draft no. 2 was signed? I'm sorry.

Mr. Shillington: — Yes, I believe that you people had signed draft no. 1. Perhaps you can tell me which draft the officials saw and signed?

Mr. Kram: — We did not sign a draft version of the agreement. We signed a final copy but understood it to be draft no. 2.

Hon. Mr. Shillington: — Okay. And there were changes in that draft which were not noted, I gather?

Mr. Kram: — We had reviewed draft no. 2 the week before and identified the changes from draft no. 1 and draft no. 2. I understood on April 1 that what was being signed was essentially draft no. 2.

Hon. Mr. Shillington: — And there were changes which were not known until afterwards?

Mr. Kram: — That's correct, because there was an intermittent draft no. 3 which we did not see.

Hon. Mr. Shillington: — Were there changes in draft 2 which you were not aware of until after you signed?

Mr. Kram: — Again, I'm not . . . I don't believe so. We had reviewed draft no. 2.

Hon. Mr. Shillington: — Okay. Let me then deal with draft no. 3. You now have a copy of it?

Mr. Kram: — That's correct.

Hon. Mr. Shillington: — Okay. Was there a copy in the file which you received, I gather rather recently — was there a copy of draft no. 3 in the file of Milner Fenerty?

Mr. Kram: — I haven't looked at the Milner Fenerty file. We . . . just arrived yesterday. But I did receive draft no. 3 from Milner Fenerty so I'm assuming that they would have had a copy of it . . . in June.

Hon. Mr. Shillington: — Okay. And you received it in June. Was it date-stamped? Was the draft no. 3 date-stamped by Milner Fenerty?

Mr. Kram: — Just going to locate the document.

The Chair: — While Mr. Kram is preparing to answer your question, I would just point out to you that I do have a request from Mr. Hillson. He apparently had one last question that he would like to put to Mr. Kram. So if you can conduct yourself so that there'll be a couple of minutes.

Hon. Mr. Shillington: — And you had thought we'd need about 10 minutes at the end before 12 noon?

The Chair: — To deal with procedural orders, yes.

Mr. Kram: — Document 113 which is the . . . I'm sorry, 113 which is the version of the draft no. 3 which we received from Michael Hurst on June 2 has a date-stamp on the top of it of March 31. I'm sorry, it's a fax; appears to be a fax notation, March 31, from Burnet Duckworth to Milner Fenerty.

Hon. Mr. Shillington: — Are you reading the footprint of the fax machine?

Mr. Kram: — Yes.

Hon. Mr. Shillington: — Is there a date-stamp on the document when Milner Fenerty would have received it? It's a fact, I think, that most law offices do have date-stamps and many law offices have time-stamps as well.

Mr. Kram: — There's not a date-stamp on this one.

Hon. Mr. Shillington: — All right, but there is a fax-stamp in any event of March . . . of, sorry, April . . .

Mr. Kram: — March 31.

Hon. Mr. Shillington: — March 31. And is there a time-stamp on it as well then when Milner Fenerty would have received it?

Mr. Kram: — 10:26 a.m.

Hon. Mr. Shillington: — 10:26 a.m. And they didn't bother, they didn't send that document to you until sometime in June?

Mr. Kram: — That's correct.

Hon. Mr. Shillington: — Did you raise that with Milner Fenerty?

Mr. Kram: — When?

Hon. Mr. Shillington: — When you first became aware of it?

Mr. Kram: — I certainly had a conversation with Mr. Hurst on June 2.

Hon. Mr. Shillington: — And what was his explanation for having failed to send such a pertinent document to you for some weeks?

Mr. Kram: — Well he indicated actually surprise that we didn't have it. He was aware, I believe, that it had gone to the former Channel Lake offices, if you will, at SaskPower. Apparently a copy was faxed to SaskPower's Channel Lake offices, not Lawrie Portigal's office, but not to the legal department or any other department.

Hon. Mr. Shillington: — It was faxed to Channel Lake offices?

Mr. Kram: — I understood that that was the case on the same

date. Again March 31 was a day that the offices of SaskPower were closed. It would have gone to Mr. Portigal's attention.

Hon. Mr. Shillington: — Yes. Was the . . . the offices of Channel Lake I gather are in the SaskPower Building?

Mr. Kram: — That's correct.

Hon. Mr. Shillington: — So was the document in the Channel Lake offices? Is it there now?

Mr. Kram: — Yes, it was faxed to Mr. Portigal's attention. But I'm not aware if it was received in the Channel Lake offices or not.

Hon. Mr. Shillington: — Have you done a thorough search of the Channel Lake offices? Can you tell me that it's not there now?

Mr. Kram: — I might refer you to document 860. I believe there may be another version of draft no. 3 in the documentation here. It shows the fax no. 566-2665, which is Mr. Portigal's offices in the SaskPower Building. That was faxed on March 31. There's a fax stamp again on that date.

This I believe was identified in the Gerrand report, so this document would have been located in the Channel Lake office — former Channel Lake offices in the SaskPower Building. But it was never made available or delivered to the legal department or anyone else.

Hon. Mr. Shillington: — If something of that importance was faxed to the Channel Lake offices, would not the staff of Channel Lake have made such a document available to SaskPower?

Mr. Kram: — It . . .

Hon. Mr. Shillington: — Would it not . . .

Mr. Kram: — It would have gone to Mr. Portigal's attention.

Hon. Mr. Shillington: — Pardon me?

Mr. Kram: — It would have gone to Mr. Portigal's attention.

Hon. Mr. Shillington: — Would you not have expected that the staff at Channel Lake would make a document of that importance available to SaskPower?

Mr. Kram: — I would have expected that they would have been following whatever instructions they have.

Hon. Mr. Shillington: — That wasn't my question. My question is whether or not you would have . . . Would it not have been part of the responsibility of the staff of Channel Lake to make a document of that importance available to the SaskPower officials?

Mr. Kram: — No.

Hon. Mr. Shillington: — Why not?

Mr. Kram: — It was again faxed on a holiday so the staff wouldn't have been there for . . . Mr. Portigal was back in the office, as I understand it the next morning.

Hon. Mr. Shillington: — Okay. How about a Monday morning then? Should they not have made it available to SaskPower officials Monday morning?

Mr. Kram: — Monday morning was a holiday.

Hon. Mr. Shillington: — Let's try Tuesday morning. How about Tuesday morning?

Mr. Kram: — Mr. Portigal was back in the office on Tuesday morning and he would have dealt with it.

Hon. Mr. Shillington: — He obviously didn't bring the document to your attention then.

Mr. Kram: — That's correct.

Hon. Mr. Shillington: — I'm going to leave it. I'm not going to badger you. I just would invite you to respond to my proposition that Channel Lake officials would make such a document available to the officials of SaskPower when it is of direct interest to the SaskPower officials. I'm just surprised that the staff at Channel Lake wouldn't do it.

Mr. Kram: — Well all I can answer is that it was a fax to Mr. Portigal and he was in the office the next morning.

Hon. Mr. Shillington: — Okay, I just want to review very quickly because I want to leave a moment for Mr. Hillson.

The Chair: — Then you'll have to be really quick, Mr. Shillington.

Hon. Mr. Shillington: — I will be very quick. I start with the proposition that it is one of the responsibilities of the legal VP (vice-president) to review bills and take them up with outside counsel where the bills appear to be too much. Is that not one of the things that you do?

Mr. Kram: — Well that's certainly with any account that comes in.

Hon. Mr. Shillington: — Pardon me.

Mr. Kram: — That's with respect to any account in the corporation.

Hon. Mr. Shillington: — But the legal bills you review don't you?

Mr. Kram: — Yes.

Hon. Mr. Shillington: — And you never thought to review the bill of Milner Fenerty when they hadn't sent you the documents? You never thought to take it up with them and say, listen this bill isn't all payable.

Mr. Kram: — We were aware at the time that the bill was received and dealt with, that we had only . . . there had been . . .

Draft no. 3 was the only significant document that we were aware that we hadn't received at that point when that account was paid. I had a discussion with Mr. Hurst with respect as to why we hadn't received that. He had understood that it had either been faxed, as was said here, to Mr. Portigal's attention, and that Mr. Portigal had provided us with draft 1 and 2. And I was not aware at the time that, you know, that there were any other documents.

Hon. Mr. Shillington: — I want to give Mr. Hillson a chance.

The Chair: — Thank you, Mr. Shillington. Mr. Hillson, very quickly please.

Mr. Hillson: — My question's brief but I have to first of all refer you to a few excerpts from your statement to us of April 21. I'm going to read a few brief excerpts:

16. . . . There was never to this point in time, or subsequently, any discussion of any change to that business deal that would have the effect of reducing the net amount payable to SaskPower by \$5.2 million.

19. . . . In neither conversation did he mention that there was a draft #3 of the purchase agreement, or that the price had changed.

20. . . . If Mr. Portigal had said, "By the way, the deal is now \$5.2 million" or any amount less than what we all expected, we would have been astonished.

21. No one brought to our attention the fact that over the weekend in Calgary, a \$5.2 million decrease in the purchase price had been negotiated . . .

22. In any event, Mr. Portigal did not bring any of these matters — casually, formally, directly or indirectly — to our attention . . .

25. At no time were we notified that the signed and sealed purchase agreement had been changed and that pages were substituted . . .

And, finally, we had not been:

27. . . . advised any of us that there had been a fundamental and significant shift in the deal or that the signed document had been changed.

Now my question, Mr. Kram, in view of these very startling statements you have placed before us in all candour— and I thank you for them — does it still not occur to you that there is information here that ought to be referred to the law society or other appropriate authorities?

Mr. Kram: — At this point, no.

Mr. Hillson: — Thank you, Madame Chair.

The Chair: — Thank you, Mr. Hillson. And thank you, Mr. Kram. I believe committee members will now excuse you. Thank you.

We do have some procedural matters to deal with. I have notices of two motions from Mr. Heppner. Mr. Heppner, would you put your first motion now, please.

Mr. Heppner: — The first one is the last one in that package that members of this committee received. I'll read that, and then I'll give a little background to it because I think it relates very specifically to our mandate.

According to the Minister responsible for CIC and the Acting Chair of the SaskPower board, Messer was fired because of Channel Lake, Guyana, and other issues. There is strong reason to believe SaskPower will be sued for pulling out of Guyana and that it'll cost taxpayers millions. If Guyana was part of the reason for Messer's firing and the payment of the severance, and SaskPower may be on the hook for millions in the wake of the Guyana adventure, then we need the documents surrounding the Guyana deal.

We know that at least two legal opinions exist to speak to the potential for litigation in regards to the Guyana deal. This information is of direct interest to the investigation into the payment of severance to Jack Messer and the committee needs access to it. And I would like to . . .

The Chair: — Would you put your motion please, Mr. Heppner.

Mr. Heppner: — Pardon me.

The Chair: — Would you put your motion?

Mr. Heppner: — That was a motion.

The Chair: — Well that's not what I have before me.

Mr. Heppner: — Oh, sorry.

The Chair: — Would you read it into the record, please.

Mr. Heppner: — Yes.

That since the minister responsible for Crown Investments and the Acting Chair of SaskPower directors have indicated the aborted attempt to purchase 50 per cent of the Guyana electric company was part of the reason for the termination of Jack Messer, that documents pertaining to the Guyana deal are relevant to the investigation of the acquisition, operation, and sale of Channel Lake Petroleum, and to the termination payment of Jack Messer, therefore it should be tabled with the committee; and

That any legal opinions obtained and generated by SaskPower, CIC, or subsidiary regarding the Guyana deal should be tabled with the committee immediately.

The Chair: — Thank you, Mr. Heppner. Before you speak to the motion, I'm going to make a ruling on this.

First of all, and this is really just a "by the way" thing, your first paragraph is essentially a whereas clause or a preamble, and those are not permitted in the Saskatchewan Legislative Assembly. So in the future when you're drafting motions,

please be aware that we do not allow preambles that are the form of whereas's.

Secondly, I would advise committee members that I have discussed this with the Clerk of the committee and the committee has already decided essentially the same question at our meeting on Tuesday, April 28 by defeating the motion of Mr. Gantefer. The committee cannot revisit the same question. The original decision must stand as the decision of this committee and I will refer committee members to Beauchesne's, page 172, "Decisions of the House:"

An old rule of parliament reads: "That a question being once made and carried in the affirmative or negative, cannot be questioned again but must stand as the judgement of the House."

He then goes on to say:

Unless such a rule were in existence, the time of the House might be used in the discussion of a motion of the same nature and contradictory decisions would sometimes be arrived at in the course of the same session.

Mr. Heppner, I rule that your motion is out of order. Would you proceed now to your second . . .

Mr. Heppner: — First of all, on our mandate. Now I'd like to read that into the record. Second part of our mandate; there's two parts to it. The first one deals with the management sale of Channel Lake Petroleum and then it says, "and the payment of severance to John Messer when he ceased to serve as president and CEO(chief executive officer) of SaskPower" — that is part of our mandate.

A Member: — Point of order. Point of order.

The Chair: — Thank you. Mr. Heppner, I have a committee member calling a point of order. I have to recognize it.

Mr. Tchorzewski: — I think it is clear, Madam Chair, with the advice of the Clerk's office who knows the rules and procedures of the deliberations of the legislature, you have made a ruling, which is the appropriate thing to do. And I think what is happening here now is that having the ruling been made, the member opposite continues to speak to the issue. And I think that is out of order.

The Chair: — Yes it is out of order. And I've asked you, Mr. Heppner, to put your second motion.

Mr. Heppner: — Second motion deals with a matter of witnesses. And I read that motion:

That Premier Roy Romanow has important information crucial to establishing the facts around the termination and payment of severance to Jack Messer and should therefore be added to the witness list for the investigation into the acquisition, operation, and sale of Channel Lake Petroleum and the termination and payment of severance to Jack Messer.

The Chair: — Mr. Heppner, again I would advise you that I

have consulted with the Clerk and we have reviewed the minutes, and on April 1 with respect to an amendment put by Mr. Gantefer that the following individuals be added as primary witnesses to the witness list: Mr. Romanow, Mr. Lingenfelter, Mr. Goulet, Mr. Nilson, Mr. Wiens, Mr. Calvert. We then had extensive debate and discussion on it and the minutes note the committee resumed the adjourned debate on the proposed motion by Mr. Trew and on the proposed amendment by Mr. Gantefer.

The question being put on the amendment, it was negated. Therefore I rule that your motion is out of order. The reasoning is the same with respect to the Beauchesne rule regarding decisions in the House. Mr. Heppner.

Mr. Heppner: — You have new information though, Madam Chairperson, that arrived since that particular motion was made and for that reason we need to revisit it.

The Chair: — Mr. Heppner, I'm ruling that your motion at this time is out of order.

Mr. Heppner: — We have just had a whitewash, pure and simple.

The Chair: — I would . . . if there are no other procedural matters, I would inform the committee that I have, I am in the process of drafting a letter to go out to the DEML officials and their legal counsel requesting their attendance at this committee next Tuesday and Wednesday, May 5 and 6. I am also asking, if possible, that they arrange their schedule to appear before the committee on Thursday, May 7.

Again, I do not know and I don't want to prejudge how much time the committee members will take with respect to the questioning of the DEML officials and I have every indication that likely you'll be able to complete your questioning in the two days. But in the event that a third day is needed, I would be asking that we would arrange it possibly for May 7.

After that I would expect that the committee will be prepared and will be able to question Mr. Lawrence Portugal, also of DEML, on May 12 and 13.

Do I have any questions about that? . . . (inaudible interjection) . . . Thank you. Are there any other comments or questions by committee members.

Hon. Mr. Shillington: — One. We've been fairly tolerant of Mr. Heppner's attacks on the Chair. They're clearly out of order and the Speaker has spoken to you several times. There is a process for challenging the Chair.

I sat there for some years as chairman of Public Accounts, and the Conservatives of the time often challenged, often went through a challenge. I'm sure Madam Woods could explain the process of challenging the Chair, but it's not by attacks on the Chair. And I really, I'm not going to make a major issue out of it right now, but I really think these attacks on the Chair have got to stop. It is a real abusive process.

The Chair: — Thank you, Mr. Shillington. I just would point out the Chair doesn't feel really particularly threatened or

attacked right now, but I appreciate your comments. If there are no further comments, the hour is now 12 o'clock.

Mr. Hillson: — I would like to just raise things not for a decision today, but perhaps just alert that is something we could all be thinking about down the road if that's satisfactory. If you prefer not, I can do it next day.

The Chair: — The hour is 12 o'clock, Mr. Hillson, will you do it the next day, please?

A Member: — Very well.

The Chair: — Thank you for your cooperation and consideration. I have a . . . the committee now stands adjourned. We don't need a motion.

The committee adjourned at 12 p.m.