



Standing Committee on Crown Corporations

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

The Chair: — If committee members will take their places I'll call the committee to order. We will resume our hearings into the Channel Lake circumstances. Today we have with us a witness from Calgary, Mr. Michael Hurst, a representative of the Milner Fenerty law firm engaged by the Saskatchewan Power Corporation.

Welcome to Regina, Mr. Hurst.

Mr. Hurst: — Thank you, Madam Chair.

The Chair: — Mr. Hurst, I would briefly outline for you the committee's procedures. I have a statement that I will read to you indicating to you the scope of the committee inquiry and so forth and your rights or privileges as the case may be. I will then swear you in, then the . . . we will go in a rotational order with the Saskatchewan Party asking questions first, then the Liberal Party, then the New Democratic Party.

You have the right to make an opening statement and a closing statement and indeed I do have copies of your opening statement and I'll ask the Clerk to circulate them in just a moment. Before I do that though, one matter that I didn't raise with any committee members, so I apologize for catching you unawares on this, it was suggested to me last week that some committee members felt more comfortable with the 45-minute round of questioning rather than the 30-minute round of questioning. And so I would like to know if, by agreement, we would go to 45-minute rounds of questioning. That might make the proceedings a little bit more efficient and effective. Is that generally agreed?

I don't know what questions people have prepared so that's why I'm apologizing that I might be catching you unawares.

Hon. Mr. Shillington: — I'm trying to figure out how that works out in terms of the rotation. Forty-five and 45's an hour and a half, that takes us to 10:30, quarter after 11.

The Chair: — Yes. Everybody will have . . .

A Member: — We all get one shot each and then . . .

The Chair: — Yes. Everyone . . .

Hon. Mr. Shillington: — So I guess we get one shot each and then . . . I guess that's the assumption isn't it, we sort of get one shot each.

The Chair: — Yes. Every party will have one opportunity to question the witness. Of course . . .

Hon. Mr. Shillington: — Okay.

The Chair: — What was pointed out to me was it seemed to be that 30 minutes was not quite time enough to get to ask all the questions and 45 minutes seemed to be ample time. And I would caution or advise committee members you don't have to use your full 45-minutes. This is not talk filling the available space.

So if that is acceptable we will do a 45-minute round of questioning. We won't be doing that tomorrow because we will have two witnesses tomorrow so we'll have to drop back to shorter rounds of questioning. But I will meet with each party representative at the break today and we can work out the details there.

All right, Mr. Hurst, then, I would like to read you the following statement please.

Witnesses should be aware that when appearing before a legislative committee your testimony is entitled to have the protection of parliamentary privilege. The evidence you provide to this committee cannot be used against you as the subject of a civil action.

In addition, I wish to advise you that you are protected by section 13 of the Canadian Charter of Rights and Freedoms which provides that:

A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

A witness must answer all questions put by the committee. You are advised that you may be recalled to appear again before this committee at a later date if the committee so decides. You are reminded to please address all comments through the Chair. Thank you.

And I will now swear you in. I'll just come down there. Did you wish to swear or affirm?

Mr. Hurst: — Swear.

The Chair: — Okay. We'll do it over here. This is all being televised.

Mr. Hurst: — Yes, I'm aware of that.

The Chair: — There you go. So am I. All right, do you swear that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. Hurst: — I do.

The Chair: — Thank you, Mr. Hurst.

The Chair: — I would ask the Clerk then to distribute the opening statements by Mr. Hurst. Mr. Hurst, you may begin.

Mr. Hurst: — Thank you, Madam Chair. Madam Chair, members of the committee, my name is Mike Hurst and I am a partner at the Calgary office of the law firm of Milner Fenerty. Milner Fenerty represented Saskatchewan Power Corporation in connection with the sale by it of the shares of Channel Lake Petroleum to Direct Energy Marketing.

My opening statement is comprised of a summary of significant

events that occurred during my involvement in the sale of the shares of Channel Lake. Milner Fenerty's entire file material respecting the sale of the shares of Channel Lake has previously been delivered to this committee, and there are accordingly no appendices or attachments to copies of the opening statement that have been distributed.

Let me state at the outset that I am aware of the criticisms for my failure to directly forward to Mr. Kram, copies of all draft documents, being draft no. 3 of the share and note purchase agreement, the acknowledgement and the revised pages to the share and note purchase agreement. I acknowledge those oversights. In hindsight I can offer only this explanation: I assumed that Mr. Kram was receiving these documents from Mr. Portigal as part of SaskPower's normal procedures.

On March 12, 1997, I was contacted by Mr. Lawrence Portigal. I understood that Mr. Portigal was a senior employee of SaskPower. Mr. Portigal advised me that SaskPower was intending to sell the shares of Channel Lake to Direct Energy Marketing for an approximate consideration of \$27.7 million. Mr. Portigal told me that he would carry the negotiating and business lead in the transaction and that I would also be reporting to Mr. Larry Kram, the general counsel of SaskPower.

On or about March 18, 1997 I was contacted by Mr. Kram, who requested certain information about Milner Fenerty and the writer, which was provided to him on March 20, 1997. Mr. Kram also indicated that he would prepare in draft form an engagement letter respecting our retainer. Mr. Kram confirmed Mr. Portigal's advice relating to the SaskPower legal and business contacts.

On March 24, 1997 I received, by fax, from Mr. Kram, a first draft of an engagement letter relating to our retainer. On March 31, 1997 I received from Mr. Kram a final version of the SaskPower engagement letter dated March 27, 1997 and signed by Mr. Kram on behalf of SaskPower. This version differed from the March 24 draft in very minor respects, none of which are material to this statement. I executed both copies of the engagement letter on behalf of Milner Fenerty and returned one of the fully executed copies to Mr. Kram on that day.

On March 18, 1997 I received from Mr. Portigal, draft 1 of the share purchase agreement to be entered into by SaskPower and Direct Energy with respect to the shares of Channel Lake. This draft was prepared by Mr. Dino DeLuca of Burnet Duckworth & Palmer, counsel to Direct Energy. A copy of Mr. DeLuca's cover letter to Mr. Portigal was also delivered to me. The purchase price was stated to be \$27.7 million subject to adjustment for certain trading losses incurred by Channel Lake as a result of the bankruptcy of NESI Energy Marketing Canada to a maximum deduction of \$7.1 million from the purchase price.

Mr. DeLuca's cover letter indicated that he was considering replacing the purchase price adjustment provisions contained in section 2.3 of draft 1 with a set of provisions providing for a working capital adjustment. I discussed draft 1 with Mr. Portigal on March 18 and March 21, 1997. On March 23, 1997 I prepared a mark-up of draft 1 indicating the comments that Mr. Portigal and I had agreed would be conveyed to Mr. DeLuca.

On March 24 I sent my marked-up version of draft 1 to Mr. DeLuca, Portigal, and Kram. The marked-up draft was sent to Mr. Kram at Mr. Portigal's request.

On March 25, 1997, Mr. Portigal and I attended a meeting with Mr. DeLuca for the purposes of discussing further the comments and reservations that SaskPower had with respect to draft 1 of the share purchase agreement.

On March 26, 1997 I received, in both blacklined and clean versions, draft 2 of the share purchase agreement from Mr. DeLuca. On March 27, 1997 I received a first draft of an escrow agreement, inasmuch as it was intended that the sale of the Channel Lake shares close in escrow pending resolution of certain conditions.

Draft 2 of the share purchase agreement provided for a share purchase price of \$26 million to be reduced by an amount of \$5.287365 million on account of trading losses.

I reviewed draft 2 of the share purchase agreement on March 27, 1997 and discussed it with Mr. Portigal on March 28, 1997. Mr. Portigal said that there would be a revision in respect of the purchase price so that it would be \$20.8 million and that the price adjustment provision relating to the trading losses would be deleted. He made the observation that there would be \$5.2 million in the company.

After my discussion with Mr. Portigal on March 28, 1997, I reviewed a voice message from Mr. DeLuca which voice message confirmed that Direct Energy was prepared to pay \$20.8 million for the shares of Channel Lake only if there were \$5.2 million in Channel Lake to be applied by it against the aforementioned gas trading losses after the acquisition of its shares by Direct Energy.

Mr. Portigal and I met with Mr. DeLuca on March 29, 1997. During the course of those discussions it was understood that the transaction would have an effective date of January 1, 1997 and that the sale of the shares of Channel Lake would be for a consideration of \$20.8 million as at that date. Mr. Portigal stated that the 5.2 million in gas trading losses were incurred between January 1, 1997 and February 28, 1997 so that there would have to be an adjustment for them. There was some general discussion between Mr. Portigal and Mr. DeLuca about prior discussions relating to the establishment of a trading account.

Draft 3 of the agreement, now entitled share and note purchase agreement, was received by me on March 31, 1997. It contained new provisions in section 6.3, consistent with Mr. DeLuca's voice message and the March 29, 1997 meeting.

Section 6.3 of draft 3 is substantially the same provision as that which is included in the final executed version of the share and note purchase agreement. The further changes that were made to section 6.3 were as a result of comments that I made to Mr. Portigal in a telephone conversation with him on March 31, 1997 and which were passed on by him to Mr. DeLuca.

Later on March 31, 1997 I received a copy of a letter written by Mr. DeLuca to Mr. Portigal which enclosed execution copies of the share and note purchase agreement, a blacklined copy

thereof showing most recent changes, execution copies of the escrow agreement, and a blackline of it. Again these were not forwarded by me to Mr. Kram.

I understand that Mr. Portigal took his copies to Regina and had them executed by SaskPower officers in preparation for closing in escrow. Mr. DeLuca's letter stated that the copies of the share and note purchase agreement were not stapled so that any required replacement pages could be inserted at the closing.

It was intended that the closing in escrow occur on April 2, 1997, and to that end I attended a meeting at the offices of Burnet Duckworth & Palmer with Mr. Portigal, Messrs. McIntosh and Dufresne of Direct Energy, and Mr. DeLuca.

Mr. Dufresne expressed concerns about the open positions that Channel Lake had in respect of its gas trading operations, and specifically that the exposure was greater than that Direct Energy had originally anticipated and would be above \$5.2 million.

Mr. Dufresne stated that Direct Energy was interested only in getting the assets, the tax pools associated with the assets, and the gas services management agreement with SaskPower. Mr. Dufresne stated that now that Direct Energy was aware of the situation, it wanted its exposure to the gas trading losses zeroed. Mr. Portigal stated that SaskPower would not be able to do it.

The closing in escrow did not proceed, and Mr. Portigal and Mr. Dufresne agreed that they would discuss matters further. After the meeting, Mr. Portigal said that he would discuss matters that came up in the meeting with SaskPower officials in Regina.

I understand that further business discussions took place between Mr. Portigal and representatives of Direct Energy on the evening of April 2, and during the day of April 3, 1997. I was not invited to participate in such discussions.

On the morning of April 3, 1997 I received from Mr. DeLuca revised page nos. 9, 10, 16, 17, 20 and 21, and please note that the numbering that I'm referring to is from the blacklined version of the share and note purchase agreement rather than the clean version — sometimes the numbering doesn't show up the same way.

On the same day I also received a form of acknowledgement to be executed by SaskPower and Direct Energy relating to the trading losses. I discussed the revised pages and the acknowledgement with Mr. Portigal on April 3, 1997, and he confirmed to me that they were satisfactory.

I understand that the escrow agreement among SaskPower, Direct Energy, and Burnet Duckworth & Palmer, as escrow agent, was executed and delivered on April 3, 1997. I was not asked to be in attendance at that session.

A final closing and release of closing documents from escrow occurred on June 2, 1997. Mr. Portigal attended on behalf of SaskPower. I was instructed by Mr. Portigal that my attendance was not necessary.

On June 2, 1997 I received a telephone call from Mr. Kram and

Mr. Kenneth Christensen of SaskPower. They expressed concern that Mr. Portigal was closing the transaction at a net consideration less than that sanctioned by the SaskPower and Channel Lake boards.

They indicated that they had understood the transaction was one for a net purchase price to SaskPower of \$20.8 million and indicated that the cash to close, which they stated to be \$15.1 million, was a shock. They indicated that they thought the cash to close would be \$18.8 million. In any event they thought that the trading losses were included in the \$20.8 million number.

A discussion ensued as to whether they could interrupt or suspend the closing to buy a few days, and they indicated that there was on their part a considerable loss of confidence in Mr. Portigal. They indicated to me that they would discuss matters further with Mr. Portigal, who was then at the closing. Mr. Kram requested that I forward to him draft 3 of the share and note purchase agreement, which I did on June 2, 1997.

On June 4, 1997 I had three telephone conversations with Mr. Kram. The first two conversations related to what was going on generally within SaskPower on the Channel Lake matter. During the third call, Mr. Kram requested that we write a letter to Mr. DeLuca in draft for Mr. Kram's review.

I suggested to Mr. Kram that some caution be exercised with respect to whatever allegations might be made in such a letter and that he should give further consideration as to exactly what he would want this letter to achieve.

I had a further telephone conversation with Mr. Kram on June 5, 1997. He indicated that the president of SaskPower was very anxious about the results of the transaction and that he wanted some action undertaken with respect to it that day. Mr. Kram requested a meeting at our offices that afternoon with a senior litigation partner in our firm.

My partner, David Tavender, and I met with Mr. Kram that afternoon. We prepared a draft letter for SaskPower, to be reviewed and sent to Direct Energy.

My involvement with Channel Lake matters from this point forward was limited to consulting with Mr. Tavender on his draft opinions, and I might add — and this is not in the statement — attending to associated and related matters.

Madam Chair, that concludes my opening statement and I would be pleased to answer any questions that members of the committee have.

The Chair: — Thank you very much, Mr. Hurst. I will recognize the Saskatchewan Party. Mr. Gantefer, are you leading the questions?

Mr. Gantefer: — Thank you very much, Madam Chair, and welcome . . .

The Chair: — Until just a little bit before quarter after ten, Mr. Gantefer, and then we will take a break at that point.

Mr. Gantefer: — Thank you. Good morning, Mr. Hurst, welcome to Regina.

Mr. Hurst: — Thank you.

Mr. Gantefer: — Mr. Hurst, you indicate in your statement that you were commissioned by Mr. Portigal initially. Did you do any previous work for SaskPower?

Mr. Hurst: — Yes, I did a bit of work for SaskPower during the course of the acquisition by Channel Lake, which was then the wholly owned subsidiary of SaskPower, of its gas properties.

Mr. Gantefer: — So the fact that Mr. Portigal would seek you out was likely because of some previous work that you had done. Was Mr. Portigal involved with Channel Lake or SaskPower under that previous work?

Mr. Hurst: — Yes, he was.

Mr. Gantefer: — So there was the connection through Mr. Portigal then, and previous experience with Channel Lake . . .

Mr. Hurst: — That's right.

Mr. Gantefer: — . . . would indicate that you would be retained that way.

In your engagement by SaskPower as it came together, I think there's been statements made by other witnesses that regarded you as part of the negotiating team. Would you have considered yourself to be that, or how did you consider your role in this transaction?

Mr. Hurst: — I considered my role in the transaction to be that of legal counsel to SaskPower, to provide legal advice on the various iterations of the share and note purchase agreement and related documents. I did not attend any sessions relating to the resolution of the commercial terms of the transaction. So if by negotiating team that is what is meant, then I would not describe myself as a member of a negotiating team.

Mr. Gantefer: — So your role was to simply make sure that in legal documentation the instructions that were relayed to you by Mr. Portigal were put into proper legal instruments.

Mr. Hurst: — Yes, that's right.

Mr. Gantefer: — In that exercise, was there any discussion by Mr. Portigal with yourself in terms of the background, as to why certain positions were going to be taken by himself on behalf of SaskPower?

Mr. Hurst: — No.

Mr. Gantefer: — So Mr. Portigal never shared with you, for example, anything related to the timing of this deal.

Mr. Hurst: — At the outset he indicated to me that it was on a tight time frame and had to proceed quickly.

Mr. Gantefer: — Nothing more specific in terms of a deadline of March 31 or any other date?

Mr. Hurst: — He may have. I don't think in my first

discussion with him he mentioned the deadline of March 31, but I came to be aware of it very shortly afterwards.

Mr. Gantefer: — He never indicated to you where that deadline came from? Or did he?

Mr. Hurst: — He did. He indicated to me that it had to do with financial reporting requirements of SaskPower.

Mr. Gantefer: — So did you find . . . or did you make any expression to him about — I think one of the adjectives used to describe the deadline was an aggressive timeline or things of that nature — did you express any concerns about the deadline?

Mr. Hurst: — We may have discussed the fact that it was tight, but that's all.

Mr. Gantefer: — Did you at any time, find or feel that it was going to result in you having to perhaps not proceed with the type of diligence you would normally be more comfortable with?

Mr. Hurst: — I don't recall specifically thinking of it in those terms at the time.

Mr. Gantefer: — So as well then, if when he discussed the initial transaction . . . I think you mention in your opening statement that there was a discussion about the value or the beginning prices or the initial value of the company. Did you have any details, in discussion with Mr. Portigal or anyone else, in terms of the initial establishment of value?

Mr. Hurst: — Do you mean how the price was arrived at?

Mr. Gantefer: — Or what it was.

Mr. Hurst: — In his first telephone call to me he indicated that it was going to be \$27.7 million.

Mr. Gantefer: — Did he indicate to you where that number was arrived from?

Mr. Hurst: — No he didn't, he just said that that was the price.

Mr. Gantefer: — Were you aware at that time of a letter from Mr. Dufresne which had set out the 27.7 number as the initial indication of an interest?

Mr. Hurst: — No.

Mr. Gantefer: — Did you see that letter after the fact?

Mr. Hurst: — No.

Mr. Gantefer: — Prior to the drafting of draft 1?

Mr. Hurst: — No.

Mr. Gantefer: — So the first time you heard about the 27.7 was from Mr. Portigal in the conversation.

Mr. Hurst: — On March 12, yes.

Mr. Gantefer: — On March 12. When was the first time you saw that number on paper?

Mr. Hurst: — When I received draft 1, which was March 18, 1997.

Mr. Gantefer: — Did draft 1 confirm the substance of the conversation that you had with Mr. Portugal on March 12?

Mr. Hurst: — It did that and it also contained a provision indicating that there was going to be, in effect, a downward adjustment of the purchase price on account of trading losses incurred by Channel Lake.

Mr. Gantefer: — From the 27.7 initial starting price?

Mr. Hurst: — Yes.

Mr. Gantefer: — There was no indication, at that time, of what those trading losses may be.

Mr. Hurst: — I'm sorry, what they may be?

Mr. Gantefer: — In the dollar amount of the trading losses.

Mr. Hurst: — No.

Mr. Gantefer: — So there was clearly in your mind, an initial starting price of \$27.7 million, from which undisclosed or undetermined, at that time, amounts of trading losses would be deducted.

Mr. Hurst: — Yes, that's right.

Mr. Gantefer: — When was it indicated . . . As part of draft 1, was there also an indication that there would be money in the cash account to offset those trading losses?

Mr. Hurst: — No. My recollection is that it was expressed as a reduction to the purchase price. I can check that if you'd like but that's my recollection.

Mr. Gantefer: — No, that's fine. It indicates in your opening statement, and again, that there would be a provision for a working capital adjustment. Would that be the type of adjustment that would be to the cash account?

Mr. Hurst: — Sorry, the cash account?

Mr. Gantefer: — Well the working capital adjustment is, I think, the words that were used. Is that where an adjustment would be made to reconcile bank balances?

Mr. Hurst: — Well a working capital, which can be a positive or negative number, is the difference between current assets and current liabilities.

Mr. Gantefer: — That would include . . .

Mr. Hurst: — So it's more than just cash in the bank.

Mr. Gantefer: — It would also include payables and receivables?

Mr. Hurst: — That's right.

Mr. Gantefer: — On draft no. 2 there were a couple of changes, as I recall. One happened to do with the minor amount of \$1.7 million because of a different closing date that no longer needed to be required.

Mr. Hurst: — Uh-huh.

Mr. Gantefer: — And then there was the initial indication of an approximation of \$5.2 million in trading losses.

Mr. Hurst: — That's right.

Mr. Gantefer: — That would, in your mind, still clearly result in a net price of approximately \$20.8 million. Is that correct?

Mr. Hurst: — That is the way I read and understood the draft, yes.

Mr. Gantefer: — When the adjustment moved to . . . between that draft, which other than declaration of the trading losses in an amount . . . and a date transaction adjustment, essentially draft 1 and 2 in substance were the same.

Mr. Hurst: — No. The first articulated a trading loss amount of \$7.1 million; the second a trading loss amount of \$5.2 million.

Mr. Gantefer: — I'm sorry, I didn't hear you say that. The first one, I thought we said didn't articulate any amount of trading loss.

Mr. Hurst: — I . . .

Mr. Gantefer: — That's fine. I mean essentially, we're still getting down to, essentially an amount of purchase price in the magnitude of \$20.8 million after trading losses.

Mr. Hurst: — That is the way I read draft 2, yes.

Mr. Gantefer: — When we move to draft no. 3, you indicated that the substance changed. Was that explained to you? Now we were talking about 20.8 starting price. Is that correct?

Mr. Hurst: — Well in my opening statement, I indicate that I discussed draft 2 with Mr. Portugal on March 28, 1997 and I attended a meeting with Mr. Portugal and Mr. DeLuca on March 29, 1997, and it was during the course of those discussions that the change became evident.

Mr. Gantefer: — Who raised the fact that these numbers would now change? Was that discussion at that meeting? That's where it occurred?

Mr. Hurst: — Well no. On March 28 as I . . . I'll just reread my opening statement. Mr. Portugal said that there would be a revision in respect of the purchase price so that it would be \$20.8 million, and that the purchase price adjustment provision relating to the trading losses would be deleted. He made the observation that there would be \$5.2 million in the company.

Mr. Gantefer: — Now did he . . . Going back to that, so he and you discussed this. Or was this at the meeting?

Mr. Hurst: — No, this was the day prior to the meeting.

Mr. Gantefer: — A day prior to the meeting when he discussed this with you.

Mr. Hurst: — And he told me that that was how the agreement was going to change. Yes.

Mr. Gantefer: — Did you ask him why . . . Or first of all, did you see that as a pretty substantial change from the transaction that you understood it to be up to that point?

Mr. Hurst: — I did, because now we saw an undertaking that the owner of the shares would see to it that the amount of \$5.2 million, which had been articulated as the trading losses in draft 2, would be in the company at closing.

Mr. Gantefer: — So potentially Mr. Portigal, on behalf of SaskPower, was indicating that their position had changed by potentially the \$5.2 million.

Mr. Hurst: — Uh-huh. Yes.

Mr. Gantefer: — Did he indicate to you why that position had changed?

Mr. Hurst: — No, he did not.

Mr. Gantefer: — Did at any time in the exercise of your mandate, at such a substantial change in negotiating position, did you feel it necessary or advisable to have a discussion with someone other than Mr. Portigal about what I would think would be a pretty substantial change?

Mr. Hurst: — No, I did not.

Mr. Gantefer: — You never felt that you should get a hold of Mr. Kram at SaskPower and say, do you realize that there seems to be a pretty significant change of position in terms of the bargaining position of SaskPower?

Mr. Hurst: — No.

Mr. Gantefer: — So you accepted Mr. Portigal's authority to revise SaskPower's negotiating position by that amount of money?

Mr. Hurst: — I accepted Mr. Portigal, in accordance with the terms of the engagement letter, as the representative of SaskPower who was to give me instructions on such matters.

Mr. Gantefer: — So it wasn't your place to question his negotiating position or authority?

Mr. Hurst: — Certainly not.

Mr. Gantefer: — So draft 3 then embodied this changed position?

Mr. Hurst: — Yes, with one exception. Rather than stating that there would be \$5.2 million in the company, it provided that the vendor of the shares would establish a \$5.2 million trading account. So rather than leaving the cash in the company when

you move it over, an account was to be established by the vendor for the benefit of the company. That's the one difference.

Mr. Gantefer: — But the essence of that would be similar?

Mr. Hurst: — Yes.

Mr. Gantefer: — It would result in the 20.8 initial price, from which the trading account, if you like . . . or would be deducted, and the net price, if you like, would be something then in the magnitude of \$15 million.

Mr. Hurst: — Depending on the quantum of the trading losses, yes.

Mr. Gantefer: — But identified at that point, or accepted at that point, to be a \$5.2 million . . . that would be the net effect?

Mr. Hurst: — No. Section 6.3 doesn't work quite that way. Up to . . . It deals with trading losses up to \$5.2 million. It doesn't say that that's what they are.

Mr. Gantefer: — Okay, but the conversation or the discussion of a number was a theoretical one at that point because they hadn't been quantified by this tabling of financial statements or documentation of actual trading losses?

Mr. Hurst: — That may be what the people who discussed the number had in mind, yes. I don't know.

Mr. Gantefer: — Okay. Now you indicated at the very . . . and draft no. 3 was the one that the SaskPower officials signed.

Mr. Hurst: — No, draft no. 3 came out nine-ish in the morning on the March 31 by fax. It is not identical in its terms to what was taken to Regina by Mr. Portigal later that day and executed the following day. It's very close, but it's not exactly the same.

Mr. Gantefer: — Were there any substantive differences?

Mr. Hurst: — In my view, no.

Mr. Gantefer: — So essentially, the draft 1 and 2, which embodied an initial price of 26 or \$27 million, adjusted for a date of effective take-over, reduced by the trading losses, would result in SaskPower, and your mind, of a price something in the magnitude of \$20.8 million. Draft 3 changed substantially because we were now only starting with 20.8 and the obligation was by SaskPower to set up a trading loss account of up to \$5.2 million.

Mr. Hurst: — Uh-huh. Yes.

The Chair: — Thank you, Mr. Hurst. Uh huh is not satisfactory.

Mr. Hurst: — Yes, Madam Chair.

The Chair: — Thanks.

Mr. Gantefer: — In your initial statement, you indicated that you, in hindsight I believe, you are aware that you did not

transmit these changes directly to Mr. Kram. That's correct?

Mr. Hurst: — That is correct.

Mr. Gantefer: — Did you transmit any of the documents to Mr. Kram?

Mr. Hurst: — When you say any of the documents . . .

Mr. Gantefer: — Well there's a whole bunch of documents and I . . . We were provided with a binder by Burnet Duckworth & Palmer that detailed an index of transaction documents. And, Madam Chair, I'm sorry, I have no idea how this is referenced.

The Chair: — There is no number. The Burnet Duckworth & Palmer is called the dark blue binder.

Mr. Gantefer: — All right. And inside, at which I've just provided, is the index of transaction documents that were provided by Burnet Duckworth Palmer and they list 16 documents that are: the draft no. 1 of the share purchase agreement; the share note purchase, draft no. 2; the blackline copies, etc. etc.

Mr. Hurst: — Yes.

Mr. Gantefer: — Would you have received all of these documents, to your knowledge?

Mr. Hurst: — I am not certain that I received a share and note purchase agreement identified as draft 4, which is no. 6 on this list, nor the blackline version referred to in item 7 on this list.

I did not receive a share and note purchase agreement identified as draft 5, item no. 8 on this list; or item no. 9 on this list, a blackline of that document comparing it against draft 4. In respect of items 12, 13, and 14 and 15 on the list, I would have to go back to my file and refresh myself as to how many drafts of the escrow agreement I received.

Mr. Gantefer: — Certainly you received the draft no. 3 and the draft . . . the blackline copy comparing 2 to 3.

Mr. Hurst: — Yes, I did.

Mr. Gantefer: — You also received the final agreement.

Mr. Hurst: — Yes, I did.

Mr. Gantefer: — Did you pass any of those on to Mr. Kram?

Mr. Hurst: — No. As my opening statement indicates, I did not.

Mr. Gantefer: — Did Mr. Kram indicate to you that there was an expectation that you do report directly to him about any of those drafts?

Mr. Hurst: — There was an expectation that he receive copies of them.

Mr. Gantefer: — From your firm?

Mr. Hurst: — Yes, it's stated in the engagement letter.

Mr. Gantefer: — So you're acknowledging that you did not do that.

Mr. Hurst: — Yes, I am.

Mr. Gantefer: — Was there any reason why you wouldn't? Is that common practice or . . . I'm sorry, I'm not in the legal profession so I'm kind of curious as to if, number one, that there is the expectation clearly in the engagement — you're acknowledging that it didn't happen — why not?

Mr. Hurst: — I think I addressed that as well as I can in the last two sentences of the third paragraph of my opening statement. Shall I read them again?

Mr. Gantefer: — In that I think you indicated that you expected that Mr. Portugal would deliver copies.

Mr. Hurst: — I assumed.

Mr. Gantefer: — Or assumed.

Mr. Hurst: — Yes.

Mr. Gantefer: — Is that type of an assumption standard in your experience?

Mr. Hurst: — No, it's not.

Mr. Gantefer: — Was there anything in the conversations that you had between yourself and Mr. Portugal that would be an undertaking that he may have given you that said, don't worry about it; I'll make sure that SaskPower gets the copies they need?

Mr. Hurst: — Mr. Portugal instructed me to send draft 1 of the document to Mr. Kram as I had marked it up with comments. That's what I did.

In the case of draft 2, I recall that Mr. Portugal indicated to me that he was going to get it to them himself.

Mr. Gantefer: — So he was covering off clearly draft no. 2. What about no. 3 where we ended up with the significant changes?

Mr. Hurst: — Mr. Portugal and I had no discussion about the transmittal of draft 3.

Mr. Gantefer: — So the conversations were silent on the transmission of either the blackline no. 2 or 3, comparing 2 to 3, or the draft no. 3. It was never then . . . part of the conversation between you and Mr. Portugal never indicated or discussed who should transmit those documents to SaskPower?

Mr. Hurst: — Yes, that's correct.

Mr. Gantefer: — So you made the assumption that he was going to do it.

Mr. Hurst: — That is the explanation that I can offer in

hindsight, thinking back on it.

Mr. Gantefer: — Does that constitute negligence on your part?

Mr. Hurst: — I have not formed an opinion on that question.

Mr. Gantefer: — Again I'm a bit at a disadvantage, because I do not know what would constitute in the legal profession, breach of contract or negligence of duty. If in the retaining document it indicated that you should transmit this information to Mr. Kram and you didn't, how's that defined — or is it?

Mr. Hurst: — As I say, I have not taken the time to form an opinion on that question.

Mr. Gantefer: — I guess you wouldn't. It would be forming an opinion on your own actions; I suppose that wouldn't be appropriate.

The Chair: — Mr. Gantefer, you are aware that we do have a special legal adviser, and also the Milner Fenerty law firm practises in the province of Alberta. It may be at a certain point, that we would ask Mr. Priel to address himself to the specific issue you're raising.

Mr. Gantefer: — Thank you very much, Madam Chairman.

Moving on, then you . . . as the procedure unfolded then, other than details of how this was going to occur, essentially the substance of draft no. 3 is what ended up into the final agreement.

Mr. Hurst: — That's right.

Mr. Gantefer: — Were there any further discussions between yourself and Mr. Portigal in regard to any of the negotiations, or at that juncture where Mr. Portigal informed you that there would be this change, which resulted basically into draft no. 3, from there forward until the closing, were there any further detailed discussions between you and Mr. Portigal about changes of position?

Mr. Hurst: — On the question of price?

Mr. Gantefer: — On the . . . Yes.

Mr. Hurst: — No.

Mr. Gantefer: — So there was the one major shift, and after that it became more of technical detail, of putting in the exact trading losses or establishing accounts and how they'd be calculated, etc.

Mr. Hurst: — That's a fair summary.

Mr. Gantefer: — Thank you. When Mr. Dufresne on April 2 indicated that he was uncomfortable with the 5.2 that was stated in the trading losses and that there had to be a way of zeroing the account if you like, and essentially the deal seemed to back off at that stage, you were at that meeting, I believe.

Mr. Hurst: — Yes I was.

Mr. Gantefer: — Was there an undertaking at that meeting that Mr. Portigal and Mr. Dufresne, or Mr. Portigal and representatives from Direct Energy, would meet to see if a resolution to that issue could be achieved?

Mr. Hurst: — Well at that meeting, Mr. Portigal and Mr. Dufresne agreed with one another that they would take matters up again. I mean the meeting was intended to close the transaction in escrow. That obviously wasn't going to happen. So they agreed, the two of them, that they would discuss matters further at a later time.

Mr. Gantefer: — And you weren't part of either those discussions or a subsequent meeting the next day that seemed to make the deal happen.

Mr. Hurst: — I'm sorry — those discussions?

Mr. Gantefer: — The discussions that would result from that undertaking by Mr. Portigal and Mr. Dufresne to see if they could resolve the issue of the trading losses that prevented the deal from going through on the second.

Mr. Hurst: — No, I have seen neither Mr. Portigal nor Mr. Dufresne since April 2.

Mr. Gantefer: — Okay. On the third then, you received from Mr. DeLuca, changes that you understood were a result of the discussions that Mr. Portigal and Mr. Dufresne had?

Mr. Hurst: — That's right.

Mr. Gantefer: — And you've documented them and numbered according to the blacklined agreement. So then you phoned Mr. Portigal and confirmed with him that those changes were satisfactory?

Mr. Hurst: — That is right.

Mr. Gantefer: — And he confirmed that they were?

Mr. Hurst: — That's right.

Mr. Gantefer: — So you understood then, that from a legal perspective, that then things were as according to what Mr. Portigal had negotiated on behalf of SaskPower?

Mr. Hurst: — Yes I did.

Mr. Gantefer: — And finally, after the final closing date on June 2, did Mr. Portigal . . . did you offer to be in attendance at that meeting, or did Mr. Portigal simply advise you if your attendance was required or not required?

Mr. Hurst: — He just told me that I would not be needed.

Mr. Gantefer: — Is that unusual?

Mr. Hurst: — Yes. Not unheard of, but unusual; it is unusual.

Mr. Gantefer: — Did you raise that with him, that it would be unusual, or did you file any concern or protest or whatever the appropriate legalese is?

Mr. Hurst: — No.

Mr. Gantefer: — You were simply following his instructions, as indicated was your responsibility?

Mr. Hurst: — That's right.

Mr. Gantefer: — So on that same day, from your statement, you said that you received a call from Mr. Kram and Mr. Christensen.

Mr. Hurst: — I did.

Mr. Gantefer: — Would you have any knowledge as to when the final closing meeting was occurring on June 2? Time of day is what I mean.

Mr. Hurst: — No.

Mr. Gantefer: — What time of day did you receive the call from — do you recall? — from Mr. Kram and Mr. Christensen. Morning, afternoon?

Mr. Hurst: — I don't specifically recall — midday.

Mr. Gantefer: — And they were expressing some pretty serious concerns. Was that the first time that they had expressed a concern that, from their perspective, something had gone wrong?

Mr. Hurst: — Yes. To me, yes.

Mr. Gantefer: — To you, yes.

From your statement, you indicate that they had clearly been, right through to that conversation, or shortly before it, of the opinion that they were operating on a purchase price based on either draft 1 or 2. Would that be fair?

Mr. Hurst: — I'm sorry. I didn't follow you all the way through your question. Could you try again please?

Mr. Gantefer: — In the conversation that they had with you on June 2, would it be your impression that up until that moment, or when they found out something was different, they had clearly been of the impression that the purchase price they were going to receive for the assets of Channel Lake were going to be in the approximation that had been indicated in drafts 1 or 2?

Mr. Hurst: — No. They told me that they thought the cash to close was going to be \$18.8 million and that the \$20.8 million purchase price included the trading loss amount.

Mr. Gantefer: — Which in essence were the way the calculations would occur in draft 1 and 2 of the agreements.

Mr. Hurst: — Well, draft 1 and 2 of the agreements don't have a \$20.8 million purchase price. I mean I . . .

Mr. Gantefer: — They've got 27.7 minus 7, or 26 minus 5.2.

Mr. Hurst: — When you say, do the purchase prices more or

less equate . . . is that your question?

Mr. Gantefer: — Yes.

Mr. Hurst: — Yes, they do.

Mr. Gantefer: — So that in your conversation, they were very much unaware of that substantive change in purchase price that we discussed, that occurred between draft 2 and 3.

Mr. Hurst: — I don't know if they were unaware of it or not. They expressed shock, as my opening statement says, during the course of our discussion.

Mr. Gantefer: — Shock would hardly be the right word if they were aware of it.

Mr. Hurst: — I can tell you what they told me.

Mr. Gantefer: — Would you?

Mr. Hurst: — I can't tell you what they thought.

Mr. Gantefer: — Thank you. So they expressed shock. On June 4, now did they indicate . . . they indicated to you, from your opening statement, that they wanted to know if they could buy a few days before this final closing would occur. Is that correct?

Mr. Hurst: — They were thinking about it.

Mr. Gantefer: — Did they get your opinion as to if that would be legally possible?

Mr. Hurst: — No, they didn't.

Mr. Gantefer: — Did the conversation then . . . more of a musing as to what they may do?

Mr. Hurst: — Oh, no. They asked me to think about it and then they rang off and said they would get back to me.

Mr. Gantefer: — When they got back to you, was the next time they got back to you on June 4?

Mr. Hurst: — Yes, I think so.

Mr. Gantefer: — And it indicates you had three telephone conversations with Mr. Kram. Where those like three successive conversations?

Mr. Hurst: — They took . . . Sorry?

Mr. Gantefer: — Well, like, did he phone you in the morning and then you had a discussion and then he hung up, and you had a conversation later on in the day. That kind of a sequencing?

Mr. Hurst: — Sure.

Mr. Gantefer: — You say that the first two conversations as to what was going on generally within SaskPower, as to the Channel Lake matter . . . Can you elaborate?

Mr. Hurst: — Will you permit me to refer to my notes?

Mr. Gantefer: — Absolutely.

The Chair: — Mr. Hurst, you can take as much time as you feel you need.

Mr. Hurst: — Thank you, Madam Chair.

The Chair: — And answer the questions as completely as you wish.

Mr. Hurst: — Thank you, Madam Chair.

Everybody ready? Okay. He told me that they had met with Portigal the preceding day, which would have been the third, that Portigal had explained his position. They asked Portigal for a memo. He indicated that there seemed never to have been a consensus *ad idem* — that's probably the way I wrote it down and not the way he said it — a meeting of minds on the net yield of the transaction. They knew the purchase price was \$20.8 million but they thought that Channel Lake was picking up the trading losses.

Evidently the section 6.3 change had come because Direct Energy had advised Mr. DeLuca that drafts 1 and 2 were not correct on the question of price. An indication to me that Portigal's memo — by that I assume the memo to SaskPower following the change in price — was not clear on the handling of the trading losses; that an internal investigation within the Saskatchewan Power Corporation had been undertaken; that there was a desire on the part of SaskPower business people to go back to Direct Energy. Larry Kram and I agreeing that, on the basis of what we had then, the deal was done and closed. I thought that he might want to take a look at the gas supply management agreement with Direct Energy, from a leverage perspective, if you're going to try to get something out of Direct Energy. It's pretty much verbatim from my notes.

Mr. Gantefer: — Now it says . . . and those are the first two columns?

Mr. Hurst: — No, that's the first one.

Mr. Gantefer: — The first column, okay. The second column?

Mr. Hurst: — An indication from Mr. Kram that Mr. Portigal's contract is over now. Mr. Kram had looked through the Closing Book. He had noted tab 24 in the Closing Book, indicating that Mr. Portigal there appears as a director of Channel Lake. Look at the transaction and provide an opinion of how it works. That's what the note says. I'm not sure, I don't know that he instructed me to do that. That may have been something that was being done inside of SaskPower.

In light of the circumstances is problem internal? My admonition re Milner Fenerty's position.

Those are what my notes say.

Mr. Gantefer: — From your notes . . .

Mr. Hurst: — For the first two, but not the third conversation.

Mr. Gantefer: — Yes. From your notes on that second conversation, if I heard you right, was an indication that Mr. Kram was feeling Mr. Portigal might be in a conflict of interest; that he had noted that Mr. Portigal was now a director of Channel Lake under the new ownership. Is that what was . . . I think that's what you said, that he noted that . . .

Mr. Hurst: — Yes, he had noted that from his review of the Closing Book.

Mr. Gantefer: — Now did he indicate in that conversation that he felt that there . . . that Mr. Portigal may have been in a conflict of interest? Is that what he was implying by that comment?

Mr. Hurst: — I took it from the conversation that I had with him that he considered that circumstance to be suspicious.

Mr. Gantefer: — Was that the first time that there was any comment made about a potential . . . Mr. Portigal being in a potential conflict? Is that the first time you received any indication that Mr. Portigal might be in a conflict?

Mr. Hurst: — Yes.

Mr. Gantefer: — At any time up until that moment, did Mr. Portigal indicate to you that he was taking engagement with Direct Energy, or Channel Lake through Direct Energy — I think the technical employment is with Channel Lake — but did he indicate to you, at any time, that he was going to be staying on with Channel Lake under Direct Energy's ownership?

Mr. Hurst: — No, he did not.

Mr. Gantefer: — Did not. In conversation 3 from your opening statement, you suggest that Mr. Kram used some caution with respect to allegations. Could you elaborate, please?

Mr. Hurst: — Well no more really than to say this — clearly the client and the people to whom Mr. Kram was reporting were most concerned about what had happened. They were demanding a quick action and the preparation of an immediate letter to counsel for the other side. It wasn't clear to me exactly what that letter was supposed to say, what positions it was going to take, and what objectives it was going to seek to achieve.

And it seemed to me that, you know, you don't want to do all of that in the heat of the moment. You want to take your time and make sure you've touched all those bases and you know exactly where you're going with the letter.

Mr. Gantefer: — Was that letter again directing . . . with the suspicion of conflict of interest by Mr. Portigal? Was that the issue that was going to be addressed in the letter?

Mr. Hurst: — That was one of them.

Mr. Gantefer: — What other issues were going to be addressed?

Mr. Hurst: — Just concerns with the deal as finally closed, versus SaskPower's internal commercial expectations of the transaction.

Mr. Gantefer: — Did Mr. Kram then request a meeting at your office?

Mr. Hurst: — Not in that conversation.

Mr. Gantefer: — That would have been then out of the conversation the following day?

Mr. Hurst: — That is correct.

Mr. Gantefer: — Now you indicated to Mr. Kram, on the third conversation on the fourth that, breathe deeply, it takes a moment to consider all your options; and then he phoned you back the next day. Is that correct?

Mr. Hurst: — Yes he did.

Mr. Gantefer: — Do you have your notes from that conversation as well? Can you elaborate? You do mention some of the items discussed. Is there anything else?

Mr. Hurst: — I'll tell you. He told me that the president of SaskPower was very anxious about the way things had turned out. That SaskPower wanted to do something that day. That he was, Mr. Kram, was wanting to come to Calgary that afternoon and visit with me and the senior litigation partner in our firm.

Mr. Gantefer: — Senior litigation partner being Mr. Tavender?

Mr. Hurst: — That's correct.

Mr. Gantefer: — Thank you. In testimony the committee received, there was an indication that pages of the final agreement had been changed. Were you aware of those changes?

Mr. Hurst: — Well my opening statement refers to the April 3 transmission to me from Mr. DeLuca of the revised pages, you know, that package of revised pages. So yes, I was aware of those.

Mr. Gantefer: — And again, you didn't flag them specifically to Mr. Kram?

Mr. Hurst: — That is correct.

Mr. Gantefer: — I think I've covered the general direction, Madam Chair, but I would like to serve notice that — and I'm glad Mr. Priel is here — and I don't know how to totally word this, and it follows out of the question that I put to Mr. Hurst, is that I think that I would like Mr. Priel to provide the committee with a legal opinion as to if Mr. Hurst's failure to provide copies of the documents as required in the retention or the letter of retention of the contract or the services of his firm or himself with the firm, does that constitute negligence or a breach of that contract.

And I appreciate that I'm not aware of the legal necessities or

niceties of how to do that, but I think it's important that this be done for the committee. And so I rely on the advice of Mr. Priel and the Chair in terms of how to do that motion. But I think I certainly would like to serve notice that a motion of that nature would be appropriate when we come to the rest of the business.

The Chair: — And, Mr. Gantefer, we can deal with it at the end of today's proceedings. Before we do though, I would ask Mr. Priel to make a comment.

Mr. Priel: — I didn't realize that you were going to deal with it, Madam Chair, at the end of the day. But the comment that I was going to make, Mr. Gantefer, was that eventually the committee, having heard all of the evidence, will draw some conclusions about facts. Once those conclusions are drawn, there may be a number of issues upon which the committee will want an opinion, and this may be one of them.

And at that point, once you have, once you've come to a conclusion with respect to the facts, then it would seem to me as though it would be at that point appropriate to look at opinions.

Mr. Gantefer: — If I may, Madam Chairman, I didn't detect that the facts were in dispute. I think that was pretty much admitted as to what happened. What I don't understand, does that constitute . . . do those type of actions in the legal profession constitute negligence or breach of contract? I didn't realize, and I believe it would be agreed to, that the facts are not in dispute.

Mr. Hurst indicated both in his opening statement and in response to questioning that his letter of engagement clearly expected that these copies be sent to Mr. Hurst, and he indicated he did not do that. And I'm not disputing that at all, or the reasons why not, I'm asking if those facts as agreed to are before us, does that constitute negligence or breach of contract in the legal profession?

Mr. Priel: — My advice to the committee is to wait until after you have all of the evidence in before you seek an opinion, Mr. Gantefer. Because there are a number of factors that would be taken into account in coming to that kind of a conclusion.

The Chair: — I think, Mr. Gantefer, you've given verbal notice that you would be wanting to do that. That's now on the record. I don't think it will be necessary for you to give us a motion, and we can deal with it with the intent of your implied motion as the proceedings draw to a close if that's satisfactory.

Mr. Gantefer: — I'm not sure, Madam Chair. I'd be interested in listening to the rest of the testimony before I agree to that.

The Chair: — Right. Again, as I say, it is now on the record. You've given us notice and we can deal with it at the time that you, in consultation with Mr. Priel, consider appropriate. Is that satisfactory?

Mr. Gantefer: — I think so.

The Chair: — You think so. Okay. And you finished your line of questioning?

Mr. Gantefer: — Thank you.

The Chair: — The committee will then recess till approximately 10:30.

The committee recessed for a period of time.

The Chair: — Thank you, Mr. Thomson ... (inaudible interjection) ... It's quite all right. We will once again hear testimony from Mr. Hurst. This time Mr. Hillson from the Liberal Party will be leading the questioning. Mr. Hillson, till approximately 11:15 please.

Mr. Hillson: — Mr. Hurst, first I want to ask you about your not attending the June 2 closing. And I should say at the outset I'm not quarrelling with you, but seeing as there is conflict in the testimony this morning, testimony before this committee, I think it's very important for you to tell us as much as possible and in as full a detail as possible the circumstances under which you say you were told not to attend that meeting.

Mr. Hurst: — All I can recall is discussing it with Mr. Portigal and him simply saying, basically all we're doing is coming out of escrow; I'm not going to need you.

Mr. Hillson: — Okay, but where did this meeting occur? Was it on the telephone? Was it personal? Who else was present?

Mr. Hurst: — I recall it as a telephone conversation just between Mr. Portigal and myself.

Mr. Hillson: — And how long before June 2 would that conversation have occurred?

Mr. Hurst: — I'm not exactly sure but I would guess a couple of days.

Mr. Hillson: — Now your position is that there is a substantial change between the first two drafts and draft 3.

Mr. Hurst: — On the question of price?

Mr. Hillson: — Yes.

Mr. Hurst: — Yes.

Mr. Hillson: — Now did you tell Mr. Portigal this was a substantial change to the terms of the agreement?

Mr. Hurst: — No.

Mr. Hillson: — Was there any discussion about the fact that this is not merely a continuation of drafts 1 and 2; this is something quite different?

Mr. Hurst: — No.

Mr. Hillson: — So you never had any discussion with Mr. Portigal that, why is draft 3 so much different than what I have seen previous to this?

Mr. Hurst: — Mr. Portigal instructed me how the price was going to be expressed in the next draft and that was it.

Mr. Hillson: — Okay. But did you express any surprise that this was a change?

Mr. Hurst: — I don't recall expressing surprise to it.

Mr. Hillson: — But your own personal view is that this was a substantial change?

Mr. Hurst: — Based on my review of the drafts, yes.

Mr. Hillson: — And if we were to summarize the change, it would be that 20.8 million had become a gross figure instead of a net figure.

Mr. Hurst: — Yes.

Mr. Hillson: — That's the change.

Mr. Hurst: — Yes.

Mr. Hillson: — And you identified that change?

Mr. Hurst: — Sorry, identified?

Mr. Hillson: — You identified that change, that 20.8 was now a gross figure, not a net figure.

Mr. Hurst: — Yes.

Mr. Hillson: — But did you say anything to Mr. Portigal along those lines?

Mr. Hurst: — Are you talking about after the receipt of draft 3?

Mr. Hillson: — Yes.

Mr. Hurst: — I expected draft 3 to say what it said because of the instructions that Mr. Portigal gave me on the 28th and how those instructions were confirmed in discussions between Mr. Portigal and Mr. DeLuca on the 29th. When I got draft 3 on the 31st it was at that point not a surprise to me at all.

Mr. Hillson: — Okay, I'm sorry. Well then let's go back to ... yes, I do understand what you've told us earlier, sir, that it was in the discussions on March 29, is it?

Mr. Hurst: — 28th and the meeting on the 29th.

Mr. Hillson: — That you became aware there would be a change. But were there discussions that this was in fact a change?

Mr. Hurst: — Well, Mr. Portigal told me what he expected that the next draft would provide for a purchase price of \$20.8 million and that there would be \$5.2 million in the company. We had that discussion.

Mr. Hillson: — Right, but was there any discussion at all about this is a pretty significant change to what we have been talking about to this point in time?

Mr. Hurst: — I don't specifically recall, Mr. Hillson, whether

either of us said that or not.

Mr. Hillson: — But it was certainly your view that this was a big change?

Mr. Hurst: — It was a change, yes. Yes, it was a big change, sure.

Mr. Hillson: — \$5 million may not be big in your world; it is in ours.

Mr. Hurst: — As expressed as a percentage of the size of the transaction, it's a big change.

Mr. Hillson: — It's a big change. Was there any discussion then by Direct Energy or Mr. Portugal that this wasn't a change, this was really just putting into words what was supposed to be from day one? You're aware that's the testimony we've heard?

Mr. Hurst: — No. I do not recall being party to any discussions where that was specifically said.

Mr. Hillson: — So your view was that it was a big change. You did not say that out loud at the meetings, but on the other hand nobody told you that it wasn't a change?

Mr. Hurst: — No one told me that it was not a change. That's right.

Mr. Hillson: — And the first you are aware that other persons at SaskPower were aware of what the agreement was netting out at was June 2 when you started to receive telephone calls?

Mr. Hurst: — Persons other than Mr. Portugal?

Mr. Hillson: — Yes.

Mr. Hurst: — Yes, that's right.

Mr. Hillson: — Now from June 2 to June 5 you had a number of communications from SaskPower.

Mr. Hurst: — Yes.

Mr. Hillson: — And from what you have told us, sir, it seems as if the officials from SaskPower communicate to you that they are in a state of high agitation over what has happened. They're shocked, I guess I believe is the word that's communicated to you.

Mr. Hurst: — On April 2, yes.

Mr. Hillson: — April 2?

Mr. Hurst: — June 2, I'm sorry. Thank you.

Mr. Hillson: — And this state of agitation continues to June 5?

Mr. Hurst: — Yes.

Mr. Hillson: — Now this may not be a proper question for you, Mr. Hurst, and if you can't answer it you can't. But what is puzzling me is on June 2, apparently Saskatchewan Power finds

out how they've been taken. They are, in their words, shocked. We see a great flurry of activity, much upset. And then on June 20, nothing. It just all dies; it's all quietly forgotten. Close the file. Nothing.

Can you help me . . . Can you tell me anything that will help me to understand why we find out in early June what's going on — we're terribly upset, we're angry, we feel betrayed, etc., etc., and then after June 5 to June 20, gone, buried. Is there anything you can tell me that helps me to understand that?

Mr. Hurst: — Madam Chair, the hon. member's question is difficult to deal with. I can relate to you the things that I did and was involved in with respect to the matter between June 2 and June 20, but if I understood you correctly — and I'm not the least bit sure that I did — I don't think that's your question. I think your question may be, you have posited a sea-change in point of view or opinion, and you have asked me whether I saw anything or sensed why that might be.

Mr. Hillson: — Correct.

Mr. Hurst: — No. But the matter did progress. I mean it wasn't as though nothing happened between June 2 and June 20.

Mr. Hillson: — Oh, we're aware what happened. But after all this initial upset, they took the \$15 million cheque and they paid your bill and closed the file. And that seems to be in direct conflict to the state of mind of Saskatchewan Power June 2 to June 5.

Mr. Hurst: — I'm afraid that other than what I've said, I can't help.

Mr. Hillson: — Okay. I understand that. Now your firm prepared a legal opinion June 12, I believe?

The Chair: — Mr. Tavender will be here tomorrow, Mr. Hillson. That may be more appropriately directed to him.

Mr. Hillson: — Well if he can't he can't, but I believe he has said that he was consulted on that.

Mr. Hurst: — I believe the drafts of the opinion were issued on June 10 and June 12.

Mr. Hillson: — Okay. And you had some input into that?

Mr. Hurst: — I reviewed the . . . I believe that I reviewed the drafts of the opinions and had some discussions on them, and I was in attendance at the meeting with Mr. Kram and Mr. Tavender at which the opinion was requisitioned.

Mr. Hillson: — Now the opinions are unequivocal in recommending that Saskatchewan Power take steps to cancel the sale. And we have been told that your firm backtracked from that opinion. And I want to know if you can shed any light on that.

Mr. Hurst: — Backtracked?

Mr. Hillson: — Yes, that's what we've been told. The drafts are unequivocal. We are told that on further discussion the firm

backtracked and said, well actually it . . . a legal suit would have a less than 50 per cent chance of success.

Mr. Hurst: — Are we alleged to have done that verbally at some time?

Mr. Hillson: — Well we don't know the circumstance. All we know is that after the legal opinion we are told that your firm expressed considerably more equivocal view that what we see in the legal opinion drafts.

Mr. Hurst: — Madam Chair, I am not anxious or wanting to duck the hon. member's questions, but I would agree with your going-in observation that perhaps the question is best put to my partner Mr. Tavender when he appears here tomorrow.

Mr. Hillson: — Very well, if I am not . . .

Mr. Hurst: — I am not familiar with the circumstance that the hon. member is describing.

The Chair: — Okay, that's fine. That's satisfactory. Can you direct a different question, Mr. Hillson?

Mr. Hillson: — You yourself did not give any opinion as to the likelihood of the success of legal action?

Mr. Hurst: — No I didn't.

Mr. Hillson: — Were you at any time instructed by Saskatchewan Power to attempt to renegotiate or to be involved in the renegotiation of the terms of the sale?

Mr. Hurst: — No.

Mr. Hillson: — Were you at the June 20 board meeting of Saskatchewan Power?

Mr. Hurst: — No.

Mr. Hillson: — Were you asked to provide anything for that board meeting?

Mr. Hurst: — No.

Mr. Hillson: — Now, Mr. Hurst, can you tell us what your view as a corporate solicitor is concerning the status of the agreement after April 3 when I believe it went into escrow, is that correct?

Mr. Hurst: — Yes it did.

Mr. Hillson: — Now in your view, after the agreement went into escrow on April 3, was the agreement completely concluded or were there still other matters to be worked out between then and final closing of June 2?

Mr. Hurst: — You say, was the agreement completely . . . the agreement was executed and delivered.

Mr. Hillson: — Yes.

Mr. Hurst: — The escrow agreement describes those things

that need to be done and attended to in order for the agreement to come out of escrow and for the transaction to be closed.

Mr. Hillson: — So there is still something to be done between April 3 and June 2 then?

Mr. Hurst: — Yes.

Mr. Hillson: — So it's not a case that everything is over and done with on April 3.

Mr. Hurst: — That is correct.

Mr. Hillson: — So if there can be conflict of interest arising out of this transaction, you would not be of the view, as a corporate solicitor, that there can't be any conflict after April 3 because it's all history. There's still something more to be done.

Mr. Hurst: — Madam Chair, I'm sorry, it's quite a ways from the hon. member's second last question to his last question and I'm not sure I'm with him.

The Chair: — I will agree that it's rather a long stretch. I believe that Mr. Hillson is referring to some testimony that we received earlier, and you will have to determine for yourself whether or not this is a question that you can competently and adequately answer.

Mr. Hurst: — I'm not sure. If the hon. member would be . . . would perhaps try to rephrase the question or break it into shorter questions, I'll do the best I can.

Mr. Hillson: — Okay. Well at any rate, your testimony is that there is still more to be done by the two parties to complete and honour the agreement between April 3 and June 2.

Mr. Hurst: — In order to close the transactions contemplated by the agreement, yes.

Mr. Hillson: — And so it would still be important in that time period to have persons on both sides of the agreement watching for the interests of their respective parties.

Mr. Hurst: — Yes, it would.

Mr. Hillson: — And you would expect that the persons watching for the interests of both parties would be solely dedicated to and loyal to the interests of that party for which they have been retained?

Mr. Hurst: — Questions of that kind have not arisen for me in connection with this matter.

Mr. Hillson: — Well let's put it this way. Could you on April 4 have become a partner with Mr. DeLuca and then completed the transaction for Direct Energy, in your view?

Mr. Hurst: — No, I would not have done that.

Mr. Hillson: — You would consider that to be a conflict?

Mr. Hurst: — Yes.

Mr. Hillson: — Thank you. Were you aware of the March 24 approval by the board of Saskatchewan Power for the sale of Channel Lake?

Mr. Hurst: — I didn't know. I knew that there, I knew that there was a board resolution. I had not seen it and I did not know when it was rendered.

The Chair: — Excuse me, Mr. Hillson. For the record, I believe you're referring to the March 27 board meeting.

Mr. Hillson: — I guess there was a meeting on 24th. Thank you, Madam Chair.

The Chair: — That's all right.

Mr. Hillson: — Have you since reviewed the contents of that resolution?

Mr. Hurst: — Yes.

Mr. Hillson: — In your view, does the sale of Channel Lake conform with that board approval?

Mr. Hurst: — That in my view is a bit of an on-the-line call. I believe the words that are used in the resolution, without looking at it, refer to a total purchase price of \$20.8 million and it is a matter, I guess, of interpretation whether the board resolution . . . whether the sale proceeded within the bounds of the board resolution.

I have not been asked by the client to direct my mind to that question and frankly, Madam Chair, I have not done so in any great detail.

Mr. Hillson: — Well let's put it this way: as a solicitor on the sale, if you had been provided with that resolution from Saskatchewan Power, would you have felt comfortable proceeding with the drafts 3 and 4 as being within the ambit of board approval?

Mr. Hurst: — I'm not sure that I would have.

Mr. Hillson: — Would it have been your view that the board really should be consulted again to see if they were in favour of the sale according to the terms of drafts 3 and 4?

Mr. Hurst: — Haven't thought about that.

Mr. Hillson: — Can you think about it now, sir?

The Chair: — Take your time, Mr. Hurst.

Mr. Hurst: — I would certainly ask the question. It would be an issue to be thought about, in my view.

Mr. Hillson: — But you say you . . . So that is a question you would have as to whether the Saskatchewan Power board has even authorized this sale? That's a very real question in your mind?

Mr. Hurst: — I would prefer to say whether the authorization as evidenced by the resolution matches the terms of the sale.

Mr. Hillson: — Did Mr. Portugal at any time have discussions with you as to the terms of the Saskatchewan Power board resolution authorizing the sale?

Mr. Hurst: — I do recall him offering the observation — and I do not remember whether it was during my meeting with him on the 28th or during the larger meeting at Mr. DeLuca's office on the 29th — that the revised, if I may use that word, purchase price — revised in my view at least — met the requirements of the board resolution.

Mr. Hillson: — He told you it did.

Mr. Hurst: — He told me it did.

Mr. Hillson: — It seems to me that runs directly contrary to what he told us last week, does it not, Mr. Priel?

The Chair: — We'll have to review the record.

Mr. Priel: — I don't know, Mr. Hillson.

Mr. Hillson: — But you did not have any discussions in Mr. Portugal's presence that draft 3 represented a significant change in the terms of the sale. You don't recall that discussion ever taking place?

Mr. Hurst: — You mean, did I tell him that?

Mr. Hillson: — Well, no. Was there any discussion in your presence and Mr. Portugal's presence that draft 3 is a significant departure?

Mr. Hurst: — That specific observation, I don't recall having been made.

Mr. Hillson: — Anything to that effect by anyone while you and Mr. Portugal were in the room?

Mr. Hurst: — No. Mr. Portugal just advised me how the price was going to look in the next draft.

Mr. Hillson: — He simply told you this is the way it's going to be.

Mr. Hurst: — That is correct.

Mr. Hillson: — And you made no comment about why the big change.

Mr. Hurst: — No, I did not.

Mr. Hillson: — And I take it that you did not have discussions with any other officers of Saskatchewan Power besides Mr. Portugal.

Mr. Hurst: — In what time period?

Mr. Hillson: — In the March/April time period, while we're moving from draft 2 to draft 3.

Mr. Hurst: — That is correct.

Mr. Hillson: — Okay. So when was the first time you talked to someone in Saskatchewan Power besides Mr. Portugal after the appearance of draft 3?

Mr. Hurst: — I believe I had a telephone conversation with Mr. Kram on April 1.

Mr. Hillson: — And what did you tell Mr. Kram on April 1?

Mr. Hurst: — May I refer to my notes?

Mr. Hillson: — Yes, please, sir. And maybe, first of all, sir, how long was that conversation?

Mr. Hurst: — I don't recall. I reviewed the document . . . Yes, I reviewed the status of documents for him where we were; that would have probably been within the . . . my understanding that the signing copies of the documents would have arrived at their offices either that day or late the day preceding.

We talked a little bit about the gas supply management agreement. He talked about the financial statements, that cash had been taken out of the company, and that there was therefore a subsequent event note in the financial statements on that; that the Channel Lake . . .

Mr. Hillson: — Pardon me for interrupting you there, Mr. . . . I want to be clear on this. You're saying there was a discussion about the fact that SaskPower had taken cash out of the company?

Mr. Hurst: — Mentioned that cash had been taken out of the company, and therefore there was a . . . He didn't say when. He just mentioned to me that there was a subsequent event note in the financial statements as a result of that.

Mr. Hillson: — Okay. But did that trigger any change to the price in your view?

Mr. Hurst: — No, no.

Mr. Hillson: — No. Okay, that's fine, carry on, carry on then.

Mr. Hurst: — Yes.

The Chair: — Mr. Hurst, for the record you are referring to your handwritten notes which, of course, we've asked to be transcribed because your writing's a little loopy. But what date is it that you're reading off of your . . .

Mr. Hurst: — April 1, 1997.

The Chair: — Thank you.

Mr. Hurst: — It says 1/4/97. It has a double line under it, and then underneath that it says Larry Kram and that's underlined.

The Chair: — Thank you.

Mr. Hurst: — Got that?

The Chair: — We will find it.

Mr. Hurst: — Okay. So we talked a little bit about whether a clarification agreement was needed in respect of the financials. And then there was a second call with Mr. Kram on that date where he raised issues relating to gas supply management agreement. I was not familiar with the existing gas supply management agreement at all and he indicated to me that he would discuss that with Mr. Portugal.

Mr. Hillson: — Okay.

Mr. Hurst: — Those are what my notes say about the discussions that I had with Mr. Kram on that day.

Mr. Hillson: — So was there any discussion on the price?

Mr. Hurst: — I don't think so.

Mr. Hillson: — Did you have any personal meetings with Mr. Kram or other officials of Saskatchewan Power during March and April?

Mr. Hurst: — No. Well except for Mr. Portugal.

Mr. Hillson: — Yes, yes, obviously other than Mr. Portugal.

And you say that you yourself were not aware that there was an agreement for Mr. Portugal to work for the purchasers. You were not aware of that until June?

Mr. Hurst: — That is right.

Mr. Hillson: — Had you been aware of that, would you have conducted yourself somewhat differently Mr. Hurst?

Mr. Hurst: — I don't know.

Mr. Hillson: — Would that have been a significant factor in your view? You've already told us you wouldn't do it.

Mr. Hurst: — Sure. I mean that could be put to a person in any number of ways. It could be timed at any number of times. You just really don't know how you would react to it unless it actually happened, which of course it didn't.

Mr. Hillson: — Has it ever happened to you before? Have you ever been in a situation like this before where the person handling the negotiations for one side apparently has an agreement to go to work for the other side and hasn't told the first party? Are you aware of any situations?

Mr. Hurst: — No. I don't recall that in my practice, no.

Mr. Hillson: — Never happened to you before?

Mr. Hurst: — As far as I can recall, no.

Mr. Hillson: — Now you told us that on March 29 there was some discussion in your presence about 5.2 million in cash being in the Channel Lake account when the purchasers took possession.

Mr. Hurst: — No, I think that discussion was with Mr. Portugal on March 28.

Mr. Hillson: — Twenty-eighth. Okay, thank you. And that's what Mr. Portugal told you.

Mr. Hurst: — Yes.

Mr. Hillson: — Now was this the first you had heard about a large cash balance being in the account on possession, on transfer of possession?

Mr. Hurst: — Yes.

Mr. Hillson: — And had you seen any documents pointing to that prior to March 28?

Mr. Hurst: — No.

Mr. Hillson: — You are aware, Mr. Hurst, that the testimony we have heard from the Direct Energy witnesses is that there really was no change in the agreement from 2 and 3. It is simply a putting into effect . . .

Mr. Hurst: — Excuse me . . .

The Chair: — Excuse me, we don't . . . right now we cannot have any side conversations. If anybody has any conversations they want to carry on could they please go out in the hall.

Mr. Hurst: — Madam Chair, I'm sorry. If Mr. Hillson could perhaps . . .

The Chair: — Mr. Hillson, could you put your question again?

Mr. Hillson: — I'll start again. Yes, I'll start again.

You are aware that all of the witnesses for Direct Energy and Mr. Portugal have testified that there really was no change in the agreement when we moved to draft 3, that this is always what the agreement was supposed to say.

I take it from your testimony this morning that you do not agree with that view.

Mr. Hurst: — No, you cannot take that from my testimony this morning.

Mr. Hillson: — Okay. Then what are you saying?

Mr. Hurst: — My testimony does not touch on what the responsible representatives of Direct Energy or Mr. Portugal thought or . . .

Mr. Hillson: — I'm asking what you think. Did you think that there really is no change between 2 and 3?

Mr. Hurst: — No. Draft 3 on the issue of price is different than draft 2.

Mr. Hillson: — Okay. That's the question. Thank you. And I believe you told us that on March 29 when you met with Mr. Portugal and Mr. DeLuca that Mr. Portugal referred to a revision of the purchase price. Is that true?

Mr. Hurst: — No, I do not know whether Mr. Portugal referred

to it to Mr. DeLuca as a revision to the purchase price.

Mr. Hillson: — Did you hear that? I thought that was what you testified to this morning, that Mr. Portugal referred to a revision of the purchase price.

Mr. Hurst: — He may have referred to that to me on the 28th. I don't know that he described it in those terms with Mr. DeLuca . . .

Mr. Hillson: — Okay.

Mr. Hurst: — . . . on the 29th. Mr. Portugal and Mr. DeLuca were at the meeting on the 29th, clearly on the same page as to what the price was going to be.

Mr. Hillson: — Okay. Well then would you think very carefully, Mr. Hurst, and tell us what you meant by Mr. Portugal saying it was a revision of the purchase price. If you can be as specific as possible as to when and where that was said and the exact words..

Mr. Hurst: — Can you point me, sir . . . Madam Chair, perhaps the hon. member can point me to the use of the word revision to which he is referring.

Mr. Hillson: — I was writing this down while you were testifying so, you know, I could be in error; but that's what I was writing down while you were testifying this morning.

Mr. Hurst: — Because I don't recall frankly whether I said that in connection with the meeting on the twenty . . . the discussion with Mr. Portugal on the 28th or the meeting on the 29th.

Mr. Hillson: — But did you hear that?

Mr. Hurst: — Sorry?

Mr. Hillson: — Did you hear that?

Mr. Hurst: — I think I've said that on the 28th Mr. Portugal told me that the next draft of the agreement would provide for a purchase price of \$20.8 million and that there would be \$5.2 million in the company. And I've been asked, did you view that as a change over what was stated in draft 2? Yes, I did.

Mr. Hillson: — Did he refer to that as a revision of the purchase price?

Mr. Hurst: — I don't specifically recall.

Mr. Hillson: — Thank you. Madam Chair, I think I have one further question of Mr. Hurst. Mr. Hurst, has your firm put your insurers on notice of a potential claim against the firm?

Mr. Hurst: — Yes.

Mr. Hillson: — You have. Before?

Mr. Hurst: — Yes.

Mr. Hillson: — So you have advised your insurers that there is a potential for a claim against the firm in negligence.

Mr. Hurst: — We have notified our insurer of these events. And that's all you're going to hear about that.

Mr. Hillson: — I think that's all we have to. Thank you, Mr. Hurst.

Mr. Hurst: — You're welcome.

The Chair: — Thank you. No further questions then, Mr. Hillson? Okay. We will then move to the New Democratic Party. Who is leading the questioning? Ms. Hamilton.

Ms. Hamilton: — Ms. Lorje, thank you. Good morning, Mr. Hurst.

Mr. Hurst: — Good morning.

Ms. Hamilton: — A lot has been asked this morning. There may be sometimes that I'll repeat those, I think just for some further clarification, and try not to be too repetitious from what I prepared.

But the first question I have is in regard to your engagement letter. You say you reviewed and received, sent back the final copy. And I'd assume that within that engagement letter, Mr. Kram made it known to you that he wanted you to keep him informed every step along the way in this transaction?

Mr. Hurst: — No, that is not correct.

Ms. Hamilton: — So in the engagement letter, what was requested of you? To act with Mr. Portigal in a legal manner for SaskPower?

Mr. Hurst: — I was retained to provide legal services to SaskPower. That's right. And I was to provide Mr. Kram:

... all copies of correspondence, documentation and draft agreements, and agreements that are received or written by me in relation to the matter for which I have been retained.

Which is not the same as suggested by your question.

Ms. Hamilton: — Okay. And this morning you stated you assumed that Mr. Portigal was transmitting the documents that you did not — according to the engagement letter.

Mr. Hurst: — My opening statement ascribes my oversight, with hindsight, to that kind of expectation, yes.

Ms. Hamilton: — Was there something that Mr. Portigal had said to you that made you feel that that was occurring?

Mr. Hurst: — Well as I answered another question earlier today, I do recall a discussion between Mr. Portigal and me wherein he advised that he would arrange for the delivery of draft 2 of the share shale agreement.

Ms. Hamilton: — Were you aware of the April 1, 2, 3, and 4 memos that Mr. Portigal sent to Mr. Messer?

Mr. Hurst: — No, I was not.

Ms. Hamilton: — I am going to move to the documents. Did you feel it was unusual that Mr. Portigal was going to Regina to have documents signed that were not in final form?

Mr. Hurst: — No, I didn't.

Ms. Hamilton: — Is that usual in this kind of a transaction?

Mr. Hurst: — More often than not it does not happen, but anyone who's been doing it for a while will have a number of instances that they could tell you about where it does.

Ms. Hamilton: — There was a statement earlier to committee that the final agreement that was taken to Regina to sign was not stapled to allow for the insertion of the changes. Was that discussed in the April 1 call that you had with Mr. Kram?

Mr. Hurst: — Not that I can recall. The fact that it was not stapled is clearly stated in the Burnet Duckworth & Palmer covering letter accompanying the documents.

Ms. Hamilton: — Did you question the fact that Mr. Portigal would sign the acknowledgement form when he wasn't authorized to sign the other closing documents?

Mr. Hurst: — Mr. Portigal did not share with me the means by which he was going to arrange for signature of the acknowledgement.

Ms. Hamilton: — Mr. Hurst, in your experience as a commercial lawyer, is it not the normal practice that the vendor prepares the draft sale-purchase agreement and other closing documents?

Mr. Hurst: — No. It can be either way.

Ms. Hamilton: — Either way. In general then when documents are being prepared by someone other than the vendor, it's then important that the person who's representing — in this case, SaskPower — would be privy to all of the meetings or the documentation to make sure the changes are reflected in the final document?

Mr. Hurst: — Madam Chair, I'm sorry. I'm not sure to which person the hon. member's question refers.

Ms. Hamilton: — Well I'm just saying that since you were engaged by SaskPower to be their solicitor . . .

Mr. Hurst: — Okay, you're speaking of legal counsel, madam?

Ms. Hamilton: — Yes, legal counsel.

Mr. Hurst: — Thank you.

Ms. Hamilton: — Okay. And as the legal counsel, you would want to be knowledgeable about every step along the way because Burnet Palmer is now doing the documentation on behalf of DEML (Direct Energy Marketing Limited) and you would want to make certain that all the changes reflected in the final agreement. Did you feel it was unusual then that you were not asked to go to some of those meetings?

Mr. Hurst: — I felt that it was unusual that I did not go to the closing into escrow or the closing out of escrow. In so far as the preceding meetings on issues relating to price were concerned, I did not find that so unusual. There are times in transactions when it is best for the business representatives of the parties to meet.

Ms. Hamilton: — The billing that was sent by Milner Fenerty and was dated April 14 — a telephone conversation with Messrs. Kram and Portigal reviewing file material — in that conversation, did you review the changes and the meetings that you were not in attendance?

Mr. Hurst: — Madam Chair, I'm sorry, I'm looking for an account dated April 14 and I'm not finding it.

Ms. Hamilton: — Statement of account dated June 12.

Mr. Hurst: — Oh, fine.

Ms. Hamilton: — Has recorded an April 14 telephone conversation with Messrs. Kram and Portigal and reviewing file material. Could you let us know what material you were reviewing, and if you noted the changes and that you were not present at some of the meetings.

Mr. Hurst: — Given the time at which the time entry is made, I expect the subject matter of the discussions were the progress of the application that had to be made to the Alberta Energy and Utilities Board under Alberta law to permit the transaction to be concluded.

Ms. Hamilton: — Would you know why Mr. Portigal would go to Regina on April 1 to have the so-called draft documents formally signed at that point when there was so much yet to be done. Did you advise, or did you feel that the signing could be put off for a few days?

Mr. Hurst: — I did not advise that. I don't recall thinking of it. And if I may be permitted, Madam Chair, I will answer the hon. member's question with a bit of hindsight.

The March 31 date to get all this done was a SaskPower imperative not a Direct Energy imperative. All of a sudden it's April 1. Maybe there are some things that are yet to be finally nailed down. And then there is also the physical separation between the head office of Saskatchewan Power and the site as at the closing.

Ms. Hamilton: — Thank you. Did the Channel Lake sale transaction, as you documented it, include a form of release provided by SaskPower to DEML?

Mr. Hurst: — What kind of a release?

Ms. Hamilton: — I guess the release that would say if there are bankruptcies or there's some things that would occur subsequent to the sale, there would be a release from that obligation.

Mr. Hurst: — I don't recall that.

Ms. Hamilton: — Do you recall if that final sale transaction

would document an assignment from DEML to SPC (Saskatchewan Power Corporation) of the right to pursue certain claims arising from the bankruptcies that had led to Channel Lake's trading losses?

Mr. Hurst: — Oh that happened, that happened well after the closing of the ... that, I believe that those documents were finalized around about June 18, 19. And of course as you'll recall, the transaction closed out of escrow on June 2. So it's not ... Yes, it follows in the wake of, is consequent upon, in a sense, the transaction, but not part of it.

Ms. Hamilton: — You have an opinion, I believe, on the 15 per cent discount rate. Was that appropriate, an appropriate rate, in your view?

Mr. Hurst: — Madam Chair, I'm sorry ... 15 per cent ... I've seen some of the previous testimony, but I haven't reviewed all of it in agonizing detail. I am not sure what discount rate was in anyone's head, and I as a lawyer, and not as a reservoir engineer, have no opinion on discount rates at all.

The Chair: — So, Ms. Hamilton, you may wish to put that to other people who will be appearing before this committee. We are arranging for at least one expert opinion, if not two.

Ms. Hamilton: — That would conclude the questions that I have, Madam Chair.

The Chair: — Are there any other questions from the New Democratic side?

Mr. Kowalsky: — Thank you. I'd like to zero in on the issue of communications here. You've already mentioned, Mr. Hurst — or accepted some of the responsibility of voluntarily, in your opening statement — that things could have been better communicated. I appreciate that and I want to zero in on that a little more.

Mr. Hurst: — That is not exactly what I said in my opening statement, but by all means go ahead.

Mr. Kowalsky: — Your letter of retainer, you mentioned that one of the articles was, you'll provide to the writer all copies of correspondence, documentation and draft agreements, and agreements that are received or written by you in relation to the matter for which you have been retained. That is true, is it not?

Mr. Hurst: — Yes it is.

Mr. Kowalsky: — Now my interpretation is that a negotiator is to communicate with people he is negotiating with, and a lawyer in particular would be expected to communicate with the lawyers, and in this case, in your case, it would be the DeLuca firm on the one side and Kram representing SaskPower. Did you receive a copy of the escrow agreement on March 27, 1997 from Mr. DeLuca of Burnet & Palmer?

Mr. Hurst: — Yes.

Mr. Kowalsky: — Did you forward it to Mr. Kram?

Mr. Hurst: — No. My opening statement indicates that I did

not.

Mr. Kowalsky: — Why didn't you?

Mr. Hurst: — It was an oversight.

Mr. Kowalsky: — Did you not perceive this to be as part of the conditions of your retainer?

Mr. Hurst: — At the time? Or now?

Mr. Kowalsky: — Well let's take it one at a time — at the time.

Mr. Hurst: — No. I was not recalling what was in the retainer letter at the time.

Mr. Kowalsky: — How about now?

Mr. Hurst: — The retainer letter says I will provide copies of all correspondence, documentation, and draft agreements.

Mr. Kowalsky: — And now you do perceive that this should have been part of the conditions of your retainer.

Mr. Hurst: — It was a term of the retainer, yes.

Mr. Kowalsky: — Thank you. Did you forward draft no. 3 to Mr. Kram — the one that you received from Mr. DeLuca on March 31?

Mr. Hurst: — No, I did not.

Mr. Kowalsky: — Did it contain anything substantially different from draft no. 2? I believe you've already answered that question but perhaps you could answer that again.

Mr. Hurst: — Yes. It contained section 6.3, which was the reference to the establishment of a trading account.

Mr. Kowalsky: — Did you talk to anybody, by voice message or by telephone, about this change in purchase price?

Mr. Hurst: — Mr. Portugal, if anyone.

Mr. Kowalsky: — Do you recall that telephone call?

Mr. Hurst: — I know that Mr. Portugal and I discussed draft 3 on March 31.

Mr. Kowalsky: — Do you recall Mr. Portugal's . . . what Mr. Portugal . . . how he talked or how he sounded? Was he surprised? Was he bewildered? Was he matter of fact about the change in price? Was he defeated? Was he evasive? Or is there any other words to describe it? Was he perplexed about the change in price?

Mr. Hurst: — Very matter of fact.

Mr. Kowalsky: — Very matter of fact. And then you've already said that you did not send Kram a copy. But you did remember to charge SPC 875 for reviewing that document.

Mr. Hurst: — I guess I did.

Mr. Kowalsky: — And you said you did phone Mr. Kram on April 1.

Mr. Hurst: — I did. Well I'm not sure whether I phoned him or he phoned me. We had a telephone conversation.

Mr. Kowalsky: — Well apparently, Mr. Hurst, it was you that called him.

Mr. Hurst: — What is the basis for that?

Mr. Kowalsky: — Because a charge of \$750 was made for a phone call or some services — telephone conversations with Portugal and Kram.

Mr. Hurst: — Okay. That is not dispositive of the question, who made the call. That is a charge for time rendered on that day, which would include that telephone conversation, but he may have made it to me just as easily as I made it to him. I just don't remember.

Mr. Kowalsky: — In earlier testimony today you mentioned that you had spoken with Mr. Kram on April 1. And you would confirm that this was after you had in your possession a copy of the revised figure to 20.8 gross, 20.8 million gross.

Mr. Hurst: — Yes.

Mr. Kowalsky: — Can you explain how it is it did not come up in your conversation to Mr. Kram, that there was a change in the figure?

Mr. Hurst: — I don't know. From his side I can't obviously offer anything to you. From my side, price is essentially a business issue. Certainly, at the time, Mr. Portugal had the appearance of wearing the same colour team jersey as the rest of us. That is who I had the discussions on price with.

Mr. Kowalsky: — Thank you, Madam Chair.

Hon. Mr. Shillington: — I just have a couple of brief questions. I believe, and I'm going from memory here on something so . . . but I believe one of the earlier witnesses told us that your firm had handled the purchase of the assets. You're indicating by a nod of your head that in fact your firm did handle it.

Mr. Hurst: — Yes, yes we did. We represented Channel Lake on the acquisition of those assets.

Hon. Mr. Shillington: — Were you the solicitor who handled the file at the time?

Mr. Hurst: — There were a number of members of the firm who were involved in it because it had a lot of different issues. I was one of those solicitors. It was not my file.

Hon. Mr. Shillington: — I recognize this is going back a very long way and if your . . .

Mr. Hurst: — Yes.

Hon. Mr. Shillington: — If your memory fails you it'd be more than understandable. Had you done any other work for . . . Had your firm . . . So you had an ongoing relationship with SaskPower, I guess at least with respect to these assets.

Mr. Hurst: — Well in my own case not really, because I had some involvement in the original acquisition, and the next time I really had anything to do with these assets was on the occasion of the call from Mr. Portigal on March 12 of last year. Other members in the firm, on my general understanding — I cannot be specific — attended to other matters for Channel Lake in the intervening period.

Hon. Mr. Shillington: — Do you remember whether or not there was a similar obligation to forward to the corporate counsel for SPC, copies of all documents in the purchase of the assets by Channel Lake?

Mr. Hurst: — Gosh, I'm afraid I don't.

Hon. Mr. Shillington: — Okay that's fine. When you saw the clause in the retainer agreement, what did you assume the purpose of forwarding the documents to Sask . . . what did you assume the purpose of that was?

Mr. Hurst: — I'm not sure that I gave a lot of specific thought to it. Do you want me to consider it in hindsight?

Hon. Mr. Shillington: — Yes, I guess that's better than nothing at all. Yes.

Mr. Hurst: — Well, okay. For the completeness of the person's file, obviously, and to give the person the opportunity to read the documents, should they have the time or inclination to do that.

Hon. Mr. Shillington: — So you assumed that you were to forward the documents in order that SaskPower would have a complete file at the head office in case they needed, for some reason or other, to inform themselves about the transactions.

Mr. Hurst: — Uh-huh.

Hon. Mr. Shillington: — And what assumption did you make with respect to the timeliness of the forwarding of documents? Did you assume you were supposed to forward them as and when received, or did you assume you would do this in a batch at the end, or what assumption did you make about the timeliness of that obligation you assumed?

Mr. Hurst: — Again, I'm not sure that I did at the time, but I think the letter is best read as requiring forwarding on of the documents as received.

Hon. Mr. Shillington: — Tell me, were you aware of the obligation in the letter at the time you were doing the work?

Mr. Hurst: — Yes.

Hon. Mr. Shillington: — You were. If you were aware of it, I . . .

Mr. Hurst: — Well, perhaps if you'll allow me to elaborate.

Hon. Mr. Shillington: — Yes, please do.

Mr. Hurst: — Did I have it in my mind at the time that I did not send documents, no. I have in my opening statement ascribed it to oversight. If the thrust of your question is: did I deliberately, in the face of what was in the retainer letter, fail to send the documents? No.

Hon. Mr. Shillington: — No. I was wondering if you had assumed . . . No, I wasn't suggesting you deliberately were renegeing on your obligation. I'll tell you where I was leading to. I was wondering if you had not forwarded the documents because you had assumed that Mr. Portigal was keeping his principals fully informed and therefore there was no need for it, or did you just not think of it?

Mr. Hurst: — As I said, I do recall a conversation with Mr. Portigal wherein he undertook to forward draft 2. And I think the evidence at these proceedings is to the effect that he did, or that it was received. I may have fallen into the habit of assuming that he was going to do that from that point forward.

Hon. Mr. Shillington: — Did Mr. Kram at any time . . . or Mr. Christensen. Did you have any discussions with Mr. Christensen?

Mr. Hurst: — The only discussion I've been involved with Mr. Christensen in was that of April 2 when he and Mr. Kram called me during the course of the closing.

Hon. Mr. Shillington: — Did they raise this oversight with you by way of complaint in your conversations at the time?

Mr. Hurst: — No.

Hon. Mr. Shillington: — Okay. Those are my questions.

The Chair: — Are there any further questions from any member of the government?

Mr. Tchorzewski: — This is fine. Thank you.

The Chair: — If there are no further . . . Does anyone have any follow-up questions to direct to Mr. Hurst? There are no follow-up questions. Don't relax yet, Mr. Hurst. I don't want to send you home to Calgary and then bring you back here the next week.

Mr. Hurst: — I appreciate that, Madam Chair.

Mr. Gantefoer: — If I may? I would like to have some indication about the magnitude of work done. For the record, can you indicate how much money SaskPower was billed for the services related to the disposal of the shares of Channel Lake?

Mr. Hurst: — It would be the sum . . . just bear with me for a second please, while I get these. It would be the sum of \$6,254.42 and \$6,544.28.

Mr. Gantefoer: — That was the total amount of billing for the work that has been undertaken by your firm?

Mr. Hurst: — No, that was not your question either. That is the amount that was billed in respect of the disposition of the shares. Everything that followed that was the subject matter of a separate account.

Mr. Gantefer: — Now to get this all clear. For the work up to and including the closing, the final closing, that amount was the amount you just . . .

Mr. Hurst: — The sum of the two numbers that I gave you.

Mr. Gantefer: — 12,000-odd?

Mr. Hurst: — Twelve seven, twelve eight, yes.

Mr. Gantefer: — Thank you.

Mr. Hurst: — And that is fees and out-of-pocket expenses and GST (goods and services tax).

Mr. Gantefer: — And then for subsequent services?

Mr. Hurst: — The account rendered in respect of subsequent services, again for fees, disbursements, and GST, I can break this out if you want but it is 28,388.24.

Mr. Gantefer: — So that . . . Were there any further billings to SaskPower related to this matter?

Mr. Hurst: — After that?

Mr. Gantefer: — Other than the two totals that you've given me right now.

Mr. Hurst: — Yes.

Mr. Gantefer: — And they being ?

Mr. Hurst: — Very early this year, I was requested by Mr. Kram to review my file and to make myself available for interview by Mr. Gerrand, who I understand is a well-known legal practitioner in this community. I observed to Mr. Kram when he . . . I agreed, and I observed to Mr. Kram that when I did that I would keep track of my time and render an account.

Mr. Gantefer: — And the billing for that has been rendered?

Mr. Hurst: — It has.

Mr. Gantefer: — In the amount?

Mr. Hurst: — I can't recall and I'm sorry I didn't bring it with me.

Mr. Gantefer: — So the two numbers you gave me are the total billings, and other than this subsequent engagement to make yourself available to Mr. Gerrand . . .

Mr. Hurst: — The three numbers I gave you, yes.

Mr. Gantefer: — Three numbers in total. Thank you.

Mr. Hurst: — You're welcome.

The Chair: — Are there any further questions that any committee members have? I have an indication that the questioning is complete with Mr. Hurst. Mr. Hurst, did you wish to make a closing statement or did you wish to send a written closing statement to the committee or do you want to have Mr. Tavender handle it on behalf of your law firm? Choices.

Mr. Hurst: — Well certainly, Madam Chair, I will . . . I have no verbal closing statement to make now. As to a follow-up written statement, I will discuss that matter with my partner, Mr. Tavender, and no doubt defer to his judgement.

The Chair: — Okay, and I will just remind you — and I will probably forget to tell Mr. Tavender, so you can pass it on — all witnesses appearing before this committee have been accorded the privilege of both an opening and a closing statement.

Mr. Hurst: — Yes.

The Chair: — And the committee has already agreed to accept written statements from people. I would appreciate it, just for efficiency sake, if we could have your closing statement as soon as possible.

Mr. Hurst: — Yes, Madam Chair. Thank you.

The Chair: — Thank you. You are excused then, Mr. Hurst.

Mr. Hurst: — Thank you.

The Chair: — Thank you. We will now deal with procedural matters. I have an indication from Mr. Gantefer that he has a series of motions he wishes to put; and I believe Mr. Hillson either has a motion or a comment that he wishes to make. So I will recognize Mr. Gantefer first.

Mr. Gantefer: — Thank you, Madam Chair. I'm firstly sending around some copies of motions to committee members. They are three in number. And if I may, I'll just proceed to read them into the record. The first motion is:

That the Standing Committee on Crown Corporations contract with an oil and gas industry expert to provide an opinion on whether the 15 per cent discount rate used to value Channel Lake Petroleum was the appropriate rate, given the market conditions at the time of the sale; and if the discount rate is not appropriate, provide an opinion on what the appropriate discount rate should have been, given market conditions for gas properties at the time of the sale of Channel Lake Petroleum.

The Chair: — Thank you.

Mr. Gantefer: — I'll have the originals for you, Madam Chair, that are signed; I think you've given all the rest away.

The Chair: — We'll deal with that motion then right now. Did you wish to speak to it?

Mr. Gantefer: — Madam Chair, just very briefly. When the committee discussed this idea, as you recall I asked for two

motions. One discussing the evaluation of the gas supply contract, and that was passed at the time. There was some indication that perhaps this motion should be left till a later date. I believe it's important that this information be received, and that it's appropriate that it be brought forward at this time.

The Chair: — Is there any comment from any other committee members?

Mr. Tchorzewski: — Yes, Madam Chair. We certainly agree with this motion based on the evidence that we have heard. I think it would be useful and helpful to the committee to have this information, in order that we can draw the kind of conclusions that we will be required to draw when we have heard all the evidence. So we're going to support the motion.

The Chair: — Thank you. Are there any other further comments? Okay, the question has been called. All those in favour of the motion please indicate. Hands down. The record will show that was unanimous. Your second motion, Mr. Gantefer.

Mr. Gantefer: — Thank you, Madam Chair. The second motion is a suggestion of a representative:

That a representative of Gilbert Laustsen Jung, namely Mr. Sutton, be called as a witness before the Standing Committee on Crown Corporations.

That's a requirement I believe, in terms of process, as to the methodology of bringing the witness forward.

The Chair: — Thank you, Mr. Gantefer. And just for the record, if you could correct your original copy, I believe Mr. Sutton's initials are D.R. Are there any comments on that motion?

Mr. Tchorzewski: — Once again, this is a regular procedural requirement so I think we should go ahead with it.

The Chair: — Question's been called. All those in favour of the motion please indicate. Hands down. That is unanimous. And finally, Mr. Gantefer . . .

Mr. Gantefer: — Finally, on this issue I believe there is also a requirement that we receive the authorization of the legislature in order to do this, therefore the motion:

That the Standing Committee on Crown Corporations report to the Legislative Assembly requesting authorization to enter into a contract with an oil and gas industry expert who shall be directed to do the following:

(1) Provide an opinion as to whether the 15 per cent discount rate used by SaskPower to determine the value of Channel Lake Petroleum was appropriate, given the market-place at the time of the sale of the company; and

(2) If the 15 per cent discount rate was not appropriate, provide an opinion as to what discount rate should have been used, given the market-place for gas properties at the time of the sale of Channel Lake Petroleum.

The Chair: — That would then form the basis of the sixth report for this session of the Crown Corporations Committee; and if the motion is passed, I will present that report in the House this afternoon. Is there any comment about the motion?

Mr. Tchorzewski: — Madam Chair, we've discussed all of these motions with members opposite and agree with proceeding and therefore I have no further comment to make.

The Chair: — Okay. Thank you. The question has been called. All those in favour? Hands down, thank you. The record will show that was passed unanimously. Thank you very much committee members, that's . . .

Mr. Gantefer: — We've got one more . . . (inaudible) . . . go.

The Chair: — Yes.

Mr. Gantefer: — One more. Madam Chair, I would like to move a motion:

That the Standing Committee on Crown Corporations request legal counsel provide an opinion as to whether the failure of Milner Fenerty lawyer, Mike Hurst, to forward copies of all drafts of the Channel Lake sale agreements to SaskPower legal counsel, as specified in the retainer letter executed by Milner Fenerty, constitutes negligence or breach of contract on the part of Milner Fenerty.

The Chair: — Do you wish to speak to that, Mr. Gantefer?

Mr. Gantefer: — Well I think as indicated in my questioning of Mr. Hurst, is that as lay members of the committee, not being legal members, I think that it's important in order to understand what is a clear determination of . . . the facts are not in dispute.

The facts very clearly indicate that as part of the retainer letter, there was the expectation that documents be provided to SaskPower legal counsel and a clear indication that they were not. What I do not know is, as a non-lawyer, if that action constitutes negligence or breach of contract. And I think that for committee members to understand and to formulate an opinion as to direction and the closing of the report, that that type of knowledge is needed by all of us. And consequently I have asked for that opinion.

The Chair: — Thank you. Before I recognize Mr. Tchorzewski and Mr. Hillson, I will ask Mr. Priel to make a comment. Or did you wish to wait until you've heard . . .

Mr. Priel: — I can make it now or I can make it later, Madam Chair. Whatever you say.

The Chair: — Go ahead now then.

Mr. Priel: — I suppose the only comment that I have to make to the committee is that your obligation is to hear all of the evidence, come to conclusions with respect to the evidence, make a report to the legislature, and give certain recommendations.

I would strongly urge you not to cherry pick the facts as they come in and ask counsel to make comments on them or to draw

conclusions on them or give you opinions on them. I think that the integrity of the process can suffer if your committee does that.

It takes one back to discussions that took place before this committee just a few weeks ago when there were suggestions of fraud. Very similar questions come up in my mind, and I would suggest that it would not be appropriate for the committee to be coming to conclusions at this point in time with respect to facts, and certainly not drawing conclusions with respect to the effect of those facts.

The Chair: — Mr. Tchorzewski and then Mr. Hillson.

Mr. Tchorzewski: — Well, Madam Chair, what Mr. Priel has just said, I do not intend to repeat, but I think it is wise counsel. It is extremely important — and we've had this discussion among us at this committee before — it is extremely important that the integrity of the process is maintained.

And one of the important elements of making sure that the process is credible and has the integrity that is required, because there are many people who we are calling forward here, not only who are inconvenienced — that's life — but who I think in one way or another may, in some way, be implicated rightfully or wrongly . . .

And I think anything we do as a committee, or anything we do as members of the committee outside of the committee, should be based on the fact that we should make sure that we have all of the facts before us, that we know all of the story that we are exploring before we make certain decisions. And this is one of those decisions I think is important that we wait for all of the facts and all of the evidence before we proceed with it.

I'm not saying that to argue that we should not do this. I think maybe this may very well be an important thing for the committee to request for the purposes of assisting us. All I'm saying is this is an inappropriate time for us to be doing this. And I would really hope that Mr. Gantefer, who I know brings this forward because he thinks it's important, would leave the motion on the table as a notice of motion and then we can deal with it when it is the appropriate time, in the interests of the working of the committee so the work is done appropriately.

Because obviously if it has to come to a vote, I for one cannot support the resolution . . . or the motion. Not because it's a bad motion, but because I think, in the interests of a good process and making sure we are judiciously doing . . . carrying out our responsibility, it's not the right time. If it comes forward at another time, we may very well support it. But I don't want to make that judgement until we have heard all the evidence.

We know that to be the case; we've heard it before. We have been advised so on several occasions, and it may be useful to get a media hit out of, but I think our job is far greater than that.

The Chair: — Thank you, Mr. Tchorzewski.

Mr. Hillson: — I think it is a legitimate question and I think that we have heard all of the relevant evidence on the point, and the relevant evidence in fact is not in dispute.

The only thing I would point out to Mr. Gantefer is that I believe the question has really already been answered. Mr. Hurst has advised us that his firm has put their insurers on notice of the potential of a claim. I submit that's the answer.

Mr. Gantefer: — Thank you, Madam Chair. The reason that I posed the motion is not to any way conflict with the final outcome of the committee. It's twofold.

Number one is that in many of the issues coming before this committee, we're dealing with issues of legal definition and legal interpretation. And while I recognize there are a couple of members of our committee who are lawyers by background and profession, many of us are not. And consequently I didn't intend the motion to be a direction for the committee to express an opinion as to if claims should be pursued or anything of that nature.

I, number one, felt it important for those of us who do not have a legal background to clearly understand if the events that are outlined and were not in dispute . . . so because they're not in dispute I didn't feel that there was going to be further conflicting testimony — there is no dispute here — if that type of an action constitutes the questions I asked. It did not indicate that the committee is recommending action be taken or things of that nature. I respect that.

However, if it is the feeling of the committee that at this stage that it's not the appropriate time to bring this forward, rather than have the motion lost, I would leave it as a notice of motion, recognizing that I still feel at a disadvantage because I don't understand all of these legal interpretations and niceties, and I think all committee members have an obligation to understand all of the legal ramifications at some point before we issue a final report.

And that's why I felt, since the items are not in dispute, that this would be an appropriate motion to move. And I think that there is a clear difference between that and the other issue that was referred to, of fraud or things of that nature, because all of the questions have not been asked and all the answers have not been given and testimony could be in dispute. This is a matter where the facts are not in dispute, so I draw that different and pretty substantial difference.

So therefore, Madam Chairman, with that I will leave it as a notice of motion because I think it has to be asked, and if this is not the very best time, then sometime in the very near future.

The Chair: — Mr. Gantefer, I appreciate what you're saying and I appreciate that you do want it on the record that you are going to at some point want to ask for this opinion. I think we do have to listen to our legal counsel regarding process and I would prefer that we leave the egregious errors in the mouth of the Chair rather than the hands of the committee.

You have moved your motion, Mr. Gantefer, so could you formally withdraw that motion, and then you can simply give us notice. Because as you know, we can't table motions before a committee. So if you would withdraw your motion.

Mr. Gantefer: — Thank you, Madam Chair. I withdraw that motion.

The Chair: — Thank you. Now before we close this matter, Mr. Hillson did make a comment that I noticed caused a couple of sets of eyebrows to . . . so I will ask Mr. Priel to comment on that.

Mr. Priel: — Mr. Hillson, in his comment, indicated that because the Milner Fenerty firm had put its insurer on notice, that there was a conclusion that could be drawn from that.

I can tell you that I haven't seen the errors and omissions policy that the Alberta lawyers use. I'm familiar with the one in Saskatchewan. And I can tell you that there is an obligation — I'm assuming that it's similar to the one that we use here — there's an obligation that is on lawyers to give notice to their insurers of a claim that may be made.

It is not an admission of liability. It is not an acknowledgement of negligence. It is not an acknowledgement that there is a breach of contract. It is merely the performance of a contractual obligation with one's insurer — that's all — and nothing should be read into it.

The Chair: — I think that clarifies that issue. We'll now move on to the next issue, which is a notice or a discussion that Mr. Hillson wishes to have.

Mr. Hillson: — Yes. First of all, I would just like to say I did use the word, potential. I put it no stronger than that. And that's, I submit, precisely what it is: the recognition of a potential claim.

Madam Chair, I am somewhat reluctant to raise this, but I think unfortunately in view of the testimony we have had, it has to be raised. We are of common ground that this is not a criminal investigation nor is it an investigation by the law society.

It is also contrary to what was, I think, implied this morning. If we decide to refer to other authorities to investigate, that is not a conclusion on our part; it is an acknowledgement that we are not the people to draw conclusions on some of these fundamental issues. There are other people who are to come to conclusions and that is not us.

So if we now are in the position where referral is important, to say that is not of itself a conclusion. We were told a couple of weeks ago that we should not refer prior to hearing from witnesses for Direct Energy, and specifically, Mr. Portigal. We now see that the witnesses who are coming before us will be taking the committee into other areas of work, and we have heard from the Direct Energy witnesses and the committee is moving now into other issues.

What we are left with is that there have been, I submit, some rather startling differences in evidence on the issues of why Mr. Hurst didn't attend the June 2 closing. Whether or not drafts 2 and 3 represent a significant departure. Whether or not the Saskatchewan Power meeting of the board in March envisaged an agreement such as was signed, or whether the March 27 meeting approved quite a different agreement. And whether there was a potential for conflict arising after April 3, after the signing and after the agreement had gone into escrow.

It seems to me this committee has taken these matters as far as

it can take them. I'm not sure that we should be waiting for a final report, because it is not part, it seems to me, of our final report to draw conclusions.

What I am raising with this committee is, is it now the time when we are saying that we have taken this as far as we can, and other appropriate authorities must investigate some of the issues which have arisen in the course of this hearing. And then this committee inquiry can proceed on to dealing with other issues that are within our mandate.

The question of due diligence on the part of SaskPower, the question of whether or not there was a remedy that should have been pursued and was not — these are very real issues that we can continue to investigate. The issue of the 10-year supply contract, should we continue with it or not?

But the other issues, it seems to me we have now heard the evidence. There are some very real questions which remain on that evidence and it is not for this committee to draw the conclusion, but there are appropriate authorities to investigate and draw conclusions.

The Chair: — Mr. Hillson, were you planning to put a motion, or are you simply making a statement?

Mr. Hillson: — No, I'm making a statement I would invite other members to react to.

The Chair: — And I will be asking other members to react. Before I recognize other committee members though, I'm going to refer the committee once more to the terms of reference. And I would ask you to pay particular attention to those terms of reference which all committee members did agree to, and I'm satisfied you agreed to them paying full and complete attention to all the words that:

The committee interprets that its terms of reference are to undertake a full, open, orderly, and thorough review of the following matters:

The acquisition, management, and sale of Channel Lake Petroleum by SaskPower; and (b) the payment of severance to Mr. John R. Messer when he ceased to serve as president and CEO of SaskPower.

And further — and this is what I'd like to draw committee members' attention to — and further that:

Once the committee is satisfied that it has verified the facts to its satisfaction, the committee will do the following:

(a) Report any pertinent fact not already reported by the Provincial Auditor or the minister to the legislature; (b) report what steps should be taken to learn from and act on mistakes made; (c) report any opportunities the committee may believe exist to recover public funds through civil action; and, if appropriate, recommend that the government undertake such civil action; and (d) in the event the committee believes it has uncovered evidence of criminal wrongdoing, the committee will report this to the House and request that the Department of Justice undertake what action it deems appropriate.

I would ask committee members, in your comments on Mr. Hillson's musings, to keep in mind our terms of reference and satisfy yourself whether or not we have, at this point, satisfied those terms of reference and undertaken a full, open, orderly, and thorough review. Do I have a speaker in the list?

Mr. Tchorzewski: — Thank you, Madam Chair. I think I do not need to take a great deal of time of the committee because our earlier discussion that we just had is . . . I would just only have to repeat that.

Having heard the terms of reference as you have read them to us, it is clear that this committee has yet some work to do before it has completed its mandate and fulfilled its terms of reference. And I think that we should proceed with the work that we're doing, hear the witnesses that we have yet to hear, and then decide within the terms of reference what we ought to be reporting from this committee to the legislature.

And I do not, as I have said before and so have others, think it's appropriate at this time for us to sort of be deviating and drawing some conclusions and doing some other things until we have completed our work.

I hate to sound like a broken record, but that's, I think, the appropriate way to do it, out of fairness to those who have mandated us to carry out our work, but also out of fairness to the people who we are talking about outside of this room, whether they are witnesses or other officials.

Surely I think, Madam Chair, we have some responsibility to be responsible with respect to the implications that may fall upon some of these people. And until we have done all of the interviewing of the people who we are going to interview, I think it's inappropriate to do other than that.

The Chair: — Thank you, Mr. Tchorzewski.

Mr. Gantefer: — Thank you, Madam Chairman. I think that Mr. Hillson makes a good point, because our committee's work clearly is going to shift direction in the next relatively short while.

I think that we have gone over the circumstances and the events regarding all of the transactions and things of that nature that have surrounded the negotiation and sale of Channel Lake. I think that there certainly is the clear indication that there are some unresolved discrepancies in the testimony that we have received so far. I really have felt for some time that this committee is not either mandated or capable of resolving those discrepancies. I think it goes beyond the capacity of this committee. No matter how well-intentioned or how hard we try to get to the bottom of events, I think quite simply it's beyond our ability to cope with those issues. And I've felt for some time that more appropriate authorities should work on those issues and should determine, before the end of this committee's work, if there are any legal improprieties and things of that nature as a result of those discrepancies, and that that type of opinion then becomes the basis of being a part of our report.

I don't think that that is in any way prejudicing the work of this committee. I think it is augmenting it and recognizing our limitations. And therefore I think the general thrust of what Mr.

Hillson talked about this morning, I think that should be turned over to other authorities. And by that, in my opinion, I've believed for some time that the police are more capable of having the wherewithal of resolving those discrepancies.

Perhaps the law society is another body that would resolve those discrepancies. And I would hope that the results of that work would become part of our deliberations, because quite simply, I think we are incapable of dealing with them.

And so in general principle, I think it's thinking we're capable of more than we truly are to think we're going to get to the bottom of all of these affairs, given our resources and our mandate. I think that's beyond what we can do. We have pointed out . . . we have our questioning and the testimony has pointed out those discrepancies, and I think that bodies beyond our capability are the most appropriate ones to determine what legal issues are unresolved.

The Chair: — Thank you, Mr. Gantefer. Mr. Hillson, did you wish to speak again before I recognize Mr. Shillington?

Mr. Hillson: — No, thank you, Madam Chair.

Hon. Mr. Shillington: — I'll be very brief, just to disagree with Mr. Gantefer. I may say with respect to Mr. Hillson's comments, and they were perhaps deliberately so, but they were somewhat opaque in the sense that it wasn't entirely clear, to me at least, precisely what he was going to refer, nor to whom.

That having been said, I return again to Mr. Gantefer's comments. I think in fact the committee has done a pretty good job of ferreting out the facts and I think is seen by the public to be doing a credible job. So I disagree with him that we're not capable. I think the committee has proved itself in fact to be capable.

I do feel that it is essential that we wait until we hear all the evidence, but we haven't heard all the evidence. We have not heard from CIC (Crown Investments Corporation), nor the officials at . . . nor the board. Until we get all of the evidence, it's incumbent upon us to wait and hear all the evidence, and then determine whether or not there's any necessity to refer any issue to any outside body. And the process will no doubt be guided by our counsel; some of these are legal issues. So I just disagree with both Mr. Gantefer, who I think was clear in his views; and Mr. Hillson, who apparently feels there's some issues which now should be referred. I think it's premature.

Mr. Hillson: — Yes, in response to Mr. Shillington. First of all of course, I brought the motion saying I think we have to hear from the board members. The New Democratic members of the committee have been resisting that. Now I hope that the indication we had this morning is that the board members will now be called, to get their understanding of what they had approved and what they had been told, and I hope that that's the case.

If the majority of the board is still . . . majority of this committee is still of the view that even requesting other authorities to look into issues such as whether or not there has been a breach of trust here, that that continues to be premature, then so be it. But I think there is evidence before us on which

conclusions in that direction could be drawn. And I do not think it is for this committee to draw those conclusions, and I've been uncomfortable. And I've been uncomfortable at us being placed in that position. I don't want to be placed in that position, but do I see something here that calls out for investigation? And the answer is yes.

Mr. Tchorzewski: — I would not want the record to show that all of the committee has been jumping to conclusions because that has not been the case. I also want the record to show, because people should not be — and I don't mean this deliberately misled — but people should not be misled by the comments that have been made here, that members of the board will not appear before this committee.

We've already said we're going to hear from Mr. Fair, and we're going to hear from Mr. Mintz, who are board members. We're going to hear from the Chairs of the boards, who can speak for the board — who are the ministers, who were ministers in charge and chairpersons of the board. So we are going to hear from the board.

And that's another reason why I maintain that this is not the right time to be doing some of things being suggested by the members opposite, because we indeed have not heard from all the important witnesses who can yet tell us some things that we may or may not already know. So I think we should leave this where we are at now. And being that it is now exactly 12 o'clock, we probably should adjourn unless you have some other business that you want to present to us.

The Chair: — I do. And I will remind committee members that this has been a discussion. There was no notice . . . there was no motion before us. I think it's been a useful discussion, but just for the sake of completeness, to wrap this up I would ask Mr. Priel to make a comment.

Mr. Priel: — It seems, members of the committee, that every time I speak I seem to be saying the same thing but — and you'll forgive me if I am — but indeed I believe it's very, very important that the committee recognize that it has an obligation to the people who appear before it.

When discussions such as this occur, it doesn't take much observation to recognize that members of the media take copious quantities of notes as these kinds of discussions are going on. And we had a gentleman appearing before us this morning who is a well-respected member of the Alberta bar, and to conclude this morning's evidence with discussions of referral to the law society and referral to the police can lead one to the conclusion that your committee should make some assumptions, from the evidence that you had before, that those are necessary, those kinds of referrals are necessary.

And you may decide, when all of the evidence is in, that there is nothing to refer to anyone. And to have this kind of discussion and leave it hanging is not really fair to the people that you're calling before you. And I strongly urge you not to get into these kinds of discussions until you've come to the conclusions that your process requires you to come to.

The Chair: — That's fine. Thank you, Mr. Priel. I'm not going to recognize any further speakers on this.

I will inform committee members that during the break, I did have discussions with all representatives from all parties in order to expedite the receiving of testimony tomorrow. We will be dealing with 20-minute blocks of questions from each of the parties.

Tomorrow we will hear first of all from Mr. Tavender of Milner Fenerty, and then secondly I've made arrangements for Mr. Sutton of Gilbert Laustsen Jung to appear before the committee.

The committee is now adjourned.

The committee adjourned at 12:04 p.m.