



Standing Committee on Crown Corporations

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

The Chair: — I'd like to call the meeting to order now. If I could please have the committee members' attention and quietness.

Good morning. We will reconvene our hearings into the Channel Lake circumstances now. We have before us the witness, Mr. Gerry Gerrand, and we will shortly be entertaining questions of Mr. Gerrand.

I would like to inform committee members that I have received a letter from Mr. Gantefer of the Saskatchewan Party dated May 21, regarding a suggestion for a line of inquiry the committee may wish to pursue regarding corporate governance. And we will be dealing with that shortly before noon as a procedural item.

Do any other committee members have any procedural items that they're aware of at this time? No.

All right then, I will simply announce one procedural matter. I had indicated to committee members last week that it was my intention, following consultation with all parties, to call today Mr. Gerry Gerrand and then Mr. Daryl Bogdasavich of the Department of Justice. And then tomorrow, complete the testimony of those two gentlemen and move to hearing testimony from the accounting firm, Deloitte Touche.

When we checked out witness availability it turns out that the two people who were intimately involved with the investigation from Deloitte Touche, a gentleman from Regina and a woman from Winnipeg, that neither one of them were available for tomorrow, so we will be calling them next week rather than this week. So our two witnesses for the next two days are Mr. Gerry Gerrand and Mr. Daryl Bogdasavich.

And I apologize to committee members for any inconvenience this may have caused in terms of establishing a line of questioning.

Good morning, Mr. Gerrand, and welcome to the Crown Corporations Committee.

Mr. Gerrand: — Thank you, Madam Chairperson.

The Chair: — I realize that these circumstances are probably rather unusual for you and hopefully it will be as painless as possible, and indeed maybe even pleasurable to see the inside workings of the political process.

Mr. Gerrand: — I heard a line like that from my dentist once, as well.

The Chair: — Mr. Gerrand, I was trying to put you at ease and I will no longer make any attempts in that direction.

Mr. Gerrand: — Oh it was fine. It was fine.

The Chair: — This will only hurt for a little while, Mr. Gerrand. Before I begin I have a statement that I will read to you that we read to all witnesses. It's regarding your rights, and

it goes as follows:

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 a 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 your comments through the Chair. Thank you.

And I will now administer the oath. I understand, Mr. Gerrand, you wish to swear?

Mr. Gerrand: — I will swear.

The Chair: — 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. Gerrand: — I do so swear.

The Chair: — Thank you, Mr. Gerrand. Mr. Gerrand, it is the committee's established procedure to move in blocks of time rotating amongst the parties beginning with the Saskatchewan Party, moving then to the Liberal Party, and then finally the New Democratic Party.

By agreement of all parties this morning, rather than having the questioning proceed in the customary 30-minute blocks, we will have 45-minutes of blocks of questioning. And we will open the proceedings with Mr. Gantefer from the Saskatchewan Party till approximately 10 o'clock.

Mr. Gantefer: — Thank you very much, Madam Chair, and I was wondering before I start, did Mr. Gerrand have any opening remarks that he'd care to make?

Mr. Gerrand: — Well I certainly have no prepared printed statement. I can introduce myself to the members of the committee. I'm a practising lawyer in the city of Regina. In December of last year I was approached by officials of CIC (Crown Investments Corporation of Saskatchewan) to inquire if I would be prepared to assist them in conducting an inquiry into the acquisition, management, and sale of Channel Lake by SaskPower, and I agreed to do that.

Deloitte Touche was approached at the same time, and the instructions to myself and Deloitte Touche were that I would

assist CIC with regard to legal matters — the legal implications of what we determined had occurred from the documents and information made available to us — and that Deloitte Touche would direct their attention to matters of management, accountancy, and governance. And we proceeded to do that.

I had the assistance of a lawyer in our office, Mrs. Denise Batters, and she and I are the authors of the review that most of you have probably read. If in the course of answering questions I refer to myself or speak in terms of “I” you’ll understand that I’m intending to speak as “we” on behalf of Mrs. Batters as well.

Additional to the preparation of the review, after the conducting of the review of documents and interviewing of individuals, we were asked to prepare an opinion as to whether or not Mr. Messer could be discharged from his position as president of SPC (Saskatchewan Power Corporation) for cause. That opinion was prepared under the signature of Denise Batters. I was absent from the city at the time but the draft of the opinion was reviewed by me where I was, and it has my approval. It is the work product of Denise Batters, E.R. Gritzfeld, Q.C. (Queen’s Counsel), David Gerrand, and myself.

I am here because my client has waived solicitor and client privilege, and had it not done that, I would not be here. I’m here as well because your counsel, Mr. Priel, asked me to come. Thank you.

The Chair: — Thank you very much, Mr. Gerrand. And, Mr. Gantefer, if you will now proceed with your questioning.

Mr. Gantefer: — Thank you very much, Madam Chair, and good morning, Mr. Gerrand. Welcome.

I want to ask you . . . of course your report was very instrumental in providing a great deal of information and insight into the circumstances surrounding the Channel Lake issue. Have you been following in any detail, or if in some detail what detail, the proceedings of the committee and the testimony that’s been transmitted to the committee since the beginning of this inquiry?

Mr. Gerrand: — Partially. I have only seen very rare snippets of what has occurred in this room on television. I have been provided with transcripts of what has gone on. I have not read the totality of those transcripts. I have had Mrs. Batters read them and have had her highlight the portions that related to the work that we did. So I may have read half of the testimony of the individuals that have come before you.

Mr. Gantefer: — Is there anything that you heard or was highlighted from Ms. Batters from the testimony that’s been before the committee that would lead you to question any of the conclusions or issues you’ve identified in your report?

Mr. Gerrand: — The conclusions that are stated affirmatively, I think I would not alter. There are aspects of the report where we raise questions in certain areas because there was insufficient information for us, such as the possibility of Mr. Portugal being in a conflict position. And the concern that I indicated in the report has been somewhat heightened by the things that I have read.

Mr. Gantefer: — In some of the testimony that we’ve heard from various witnesses would certainly at least question some of your conclusions, and indicate that they questioned as well the completeness, perhaps, of your investigation and consequently some of the conclusions that you wanted to draw.

I want to spend a little time going through some of your conclusions to verify your opinion and to perhaps focus them a little closer. I think it’s fair to say that you concluded that senior officials in SaskPower were negligent in their handling of the Channel Lake transaction, specifically starting with Mr. Messer. Do you think that his conduct in monitoring the work of Mr. Portugal in the operation of Channel Lake was negligent?

Mr. Gerrand: — Mr. Messer relied upon his officials that he had charged with the responsibility of overseeing this sale to deal with Mr. Portugal, as I understand it. And I think he was entitled to rely on them.

Things occurred during the first few days of April that may have constituted an oversight on the part of Mr. Messer, when he either did not read or did not understand or did not react to the memoranda that came to him from Portugal indicating that Portugal was doing things that appeared to be directly contrary to the instructions that had been previously given to him. I did not regard his treatment of his relationship with Portugal as anything more than an oversight.

Mr. Gantefer: — In terms of keeping himself aware, and in briefing the SaskPower board on the operation of Channel Lake, how would you rate his performance in terms of keeping the board updated and aware of the operations of Channel Lake?

Mr. Gerrand: — Well that is the area where we concluded Mr. Messer was . . . greatly failed. We concluded that he had good reason to form the view that some serious errors had occurred in various quarters, and indeed he had received affirmative indications from consultants that that had occurred. And he did not convey that information to the board.

The steps to ratify the sale of Channel Lake proceeded with some considerable speed following the receipt of the Tavender opinions. And this was all done in a short period of time. And the information provided to the board as a basis for the decision that they were obliged to make was quite deficient and in some respects was incorrect.

Mr. Gantefer: — In his reporting to the board in terms of the ongoing operation of Channel Lake, including their forays into arbitrage and trading that exceeded the authority limits that the board had established, how would you rate his conduct in that aspect of the operation of . . . ongoing operation prior to the sale of Channel Lake?

Mr. Gerrand: — We remarked on those aspects of it in some detail in the review, but we did not comment on it. We felt that that was an aspect of the inquiry that fell into the area of Deloitte Touche, and that it was for them to comment on it. And I believe they did.

Mr. Gantefer: — When a number of witnesses were before us, they indicated that in various ways and with various

terminologies, that there was a very short time line that was clearly set much stronger than a vague target for the completion of the sale of March 31. In your conversations and from your notes, would you care to comment on the March 31 deadline?

Mr. Gerrand: — Well of course the report does comment on it, Mr. Gantefer, and as does the report of Deloitte Touche, both factually as to what was told to us by employees of SPC, and I think of Mr. Spelliscy and Mr. Kozole in that regard, and indeed Mr. Christensen. And we remark on it by way of a conclusion drawn from the facts, in the report, that the deal seemed to be motivated and driven by a time frame that was March 31, 1997. But again that was a matter of governance that Deloitte Touche I think has dealt with more than we have.

Mr. Gantefer: — In your conversations and in your interviews, was there an indication where that decision originated from, of saying we have to have this transaction completed by March 31?

Mr. Gerrand: — We were never able to pinpoint an individual as having spawned that idea. However it seemed to be a universally embraced approach by those that were in charge of the sale. Certainly Mr. Christensen and Mr. Kram pointed in that direction. But we couldn't pinpoint, I don't think, an individual that said this is the way it's going to be. It grew a bit like Topsy.

Mr. Gantefer: — Was it your opinion then that it was just one of those things that go bump in the night and all of a sudden everybody woke up to the fact that potentially there was going to be a reporting problem that was going to occur, given the unsubstantiated, at that time, trading losses that were potentially or realistically there, varying anywhere from 8 to \$20 million. And that because of the reporting requirements, if they could have this all happen before the March 31 deadline, it might end up being a summarized line item. Would that not be something that would potentially occur by discussion rather than somehow filtering into everybody's consciousness simultaneously?

Mr. Gerrand: — Well I'm sure that it must have been discussed, but the detail of that discussion wasn't conveyed to us. We did not draw it out in the interviews that we conducted. We did learn that there was this time line that was being aimed for. But you'll have to appreciate that the interviews we conducted were of individuals not under oath. They were there voluntarily, speaking not under oath.

So that's the extent of the information we received. I notice in the listing of inferences drawn from factual matters that appears in our review, item 3, we remark on that aspect of it.

Mr. Gantefer: — It indicates in there, is that few persons as possible, including the board of SPC, learn the details of the trading losses. Do I infer from what you're saying there that there was a deliberateness in the decision to make this happen by March 31?

Mr. Gerrand: — That is importing an intention on the part of individuals that we had no basis to conclude existed. We just know that as a fact, a minimum of information found its way to the board and there was a propelling of the sale to be completed by March 31. And we concluded that this was the reason for it.

Mr. Gantefer: — Was Mr. Messer negligent in first, making himself . . . was there a responsibility to make himself, firstly, fully aware of all of the circumstances involved with this sale? And second of all, was he negligent in transmitting accurate information to the board.

Mr. Gerrand: — Well I think . . . (inaudible) . . . partly answered that question. Mr. Messer did make an effort to obtain information as to what happened. He's described to us, that is Mr. Grossman and I, at some length the efforts that he went to. And I think that he's described that to you as well.

He obtained some of the information. He did it over a very short period of time. He requested hastily prepared opinions prepared over a weekend and based on only a portion of the facts, because the time frame was such that all the facts couldn't be assessed.

And of the information he did obtain in that brief period of time, he provided some of it to the board, and some of it he did not provide. And I have indicated previously that we have concluded that that was a breach of his duty as president to the extent which he provided the information that he had.

Mr. Gantefer: — In testimony we've heard that after the information came to light after the April closing, that there was very little effort that was made by SaskPower or Mr. Messer or those in charge, which seriously I think, in the opinion of Mr. Tavender, diminished the possibilities of overturning the sale or pursuing legal remedies. Was Mr. Messer negligent in allowing that two-month period to happen where essentially it seemed as if SaskPower went to sleep on the issue?

Mr. Gerrand: — Again Mr. Messer was relying on those officers responsible for those areas of activity at SaskPower to do whatever was appropriate in the concluding of the sale. Mr. Messer had available to him a copy of the purchase agreement. He did not read it. In fact no one read it for about a two-month period.

That I regarded as an oversight, but simply an oversight. I felt that more serious mistakes were made by those upon whom he relied.

Mr. Gantefer: — Moving to the role of those other officials I guess, and I would think in terms of Mr. Kram, Christensen, and Patrick in sort of a group description.

I guess that your report seems to not only imply but pretty directly point to a fair bit of negligence on their part, and certainly your statements this morning seem to indicate that you feel that they very clearly let Mr. Messer down. Would their conduct be construed as negligence?

Mr. Gerrand: — What I've clearly stated in the review, that it was our conclusion that the actions and inactions of those individuals who you've mentioned, to varying degrees constituted breaches of section 47 of The Crown Corporations Act. It's, in some detail, spelled out.

Mr. Gantefer: — When Mr. Messer learned of those breaches, should he have initiated termination against those individuals in addition to the termination of Mr. Portugal?

Mr. Gerrand: — I was not asked that question by my client. I was simply asked to express a view as to whether or not the sale matters had been handled properly or if there were elements of neglect. My client specifically asked me not to express that view.

Mr. Gantefer: — Can I ask you to express that view?

Mr. Gerrand: — You can ask me, certainly. I would be reluctant at this stage to offer a legal opinion on that point. I have not studied the totality of the evidence and the explanations given by the individuals. I simply know what they told me at the time of the interviews and the documents that were available to us.

Mr. Gantefer: — But I believe you said that they were clearly in breach . . .

Mr. Gerrand: — That's right.

Mr. Gantefer: — . . . of a section of that Act.

Mr. Gerrand: — But of course you've got to realize that there are jurisprudential guides as to what constitutes grounds for dismissing senior officers of a corporation. And to answer your question, I would have to apply those legal principles to the facts as we found them; we found the facts to amount to a series of neglectful acts on the part of some of these individuals. But we were not asked to apply the legal principles to those acts.

Mr. Gantefer: — In his testimony, Mr. Messer indicated that he was given a pretty clear choice of either resign with the promise of severance or be fired. Do you believe . . . do you have an opinion if Mr. Messer could have been fired with cause and without severance or was the board legally obligated to pay him severance?

Mr. Gerrand: — My belief is set forth in the legal opinion I have provided to CIC. Our office was asked to provide an opinion and we did. I know nothing more about what transpired regarding the termination of Mr. Messer. I have no firsthand information as to the details of what occurred. We simply provided the report to CIC and the matters unfolded as they did.

Mr. Gantefer: — In the mandate by CIC were you . . . was it included in your mandate to investigate the role played by the SaskPower board itself?

Mr. Gerrand: — Inferentially, I think it was, and to the extent that we attempted to determine what happened and why did it happen. And clearly the SaskPower board was one of the role-players, but we regarded it as a minor role-player by reason of the paucity of information that was apparently provided to it in the making of the decisions that it made.

Mr. Gantefer: — In your mandate as well, did you investigate the role of the audit and finance committee of the board?

Mr. Gerrand: — Yes, the members of the audit and finance committee were interviewed. They were interviewed by Mr. Grossman and his . . . The results of that interview were made available to me.

Mr. Gantefer: — The audit and finance committee is made up of, I believe, three members. Mr. Mintz is the Chair. Would it be fair to say that the board set up the audit and finance committee to act as a conduit to the Channel Lake subsidiary?

Mr. Gerrand: — Well I did not personally interview Mr. Mintz or the members of the board. They have a function of course as a liaison and a sounding board for the board generally. Now how it works in detail, I'm not sure. That might be a better question to ask of Mr. Grossman who dealt with governance principally.

Mr. Gantefer: — There is evidence at least that the audit committee members had knowledge of the arbitrage activities and the trading losses at Channel Lake. But it's not clear whether they communicated this information to the rest of the board. Was anything coming out of your interviews that would indicate the level of knowledge they had and the methodology of communication?

Mr. Gerrand: — I don't recall the detail of that aspect of it — regarding the interview done by Mr. Grossman of the members of the committee; you might ask that of him. But I think that arbitrage was a subject of discussion with that committee by Mr. Grossman.

Mr. Gantefer: — The SaskPower board basically reports to the board of directors of the Crown Investments Corporation, representing the shareholder. Did you do any work investigating the role of senior staff and the board of directors of CIC in the operation and sale of Channel Lake?

Mr. Gerrand: — No.

Mr. Gantefer: — Did you do any work reporting the relationship between SaskPower board, the CIC board, and the provincial cabinet in the overseeing of the management . . . any of those relationships?

Mr. Gerrand: — No.

Mr. Gantefer: — So your investigation was totally focused on the SaskPower board and officials and . . . (inaudible) . . .

Mr. Gerrand: — The officers and officials and the lawyers that represented the interests and the parties that dealt with SaskPower and the purchase of Channel Lake.

Mr. Gantefer: — I would like to turn briefly to the role of Mr. Portigal. You indicated in the opening question that I had, that from your review of the testimony that you've heard subsequent to your report, I believe you said you had a heightened concern about the potential conflict of interest of Mr. Portigal. Would you care to elaborate?

Mr. Gerrand: — I think I said that. I don't think that I could say anything additional to it. I have heard what he's had to say; I can see the activities in which he was engaged. I usually provide an opinion in the course of civil litigation, which is my area of activity, after proceedings are under way and documents have been produced and examined and I have conducted an examination for discovery of the opposite parties.

And not having had the opportunity of doing that in this instance I have formed no view. I simply have that heightened concern that I expressed to you. And I'm sure that that's something that this committee will be looking at — this group that is charged with the responsibility of concluding whatever should be concluded in that regard.

Mr. Gantefer: — So I believe in your report you concluded that there was no conflict of interest. So this would somewhat change the opinion rendered in your report.

Mr. Gerrand: — No. I did not say that, Mr. Gantefer, in my report.

Mr. Gantefer: — Can you tell me exactly what you said in your report about the potential of conflict of interest? For the record.

Mr. Gerrand: — With regard to Portugal at item 7 I said, the fact Portugal became employed by DEML (Direct Energy Marketing Limited) after the initial closing of the transaction probably had no bearing on the events as they unfolded.

That's the view I expressed at that time, sir.

Mr. Gantefer: — Is that not a conclusion that there's no conflict of interest?

Mr. Gerrand: — No. No, it is not. I have previously said in the report that I have concerns that there may be a conflict of interest in the treatment of the activities of Mr. Portugal.

But we had no factual basis to conclude there was because we hadn't had an opportunity to interview Mr. Portugal, and indeed the information we obtained from the principles of DEML was as a result of unsworn comments. And as I observe in the report the information was somewhat conflicting — that is the information given to me in the interview with the officials of DEML — so that we were left with question marks in our mind. And that's the way the report leaves it as well.

Mr. Gantefer: — Is it fair to say that the report concludes that there was no conspiracy to commit fraud?

Mr. Gerrand: — That is correct.

Mr. Gantefer: — Is there anything that you have heard, or from testimony, that would lead you to alter that position?

Mr. Gerrand: — No.

Mr. Gantefer: — I am sure that there are individuals who will get into the details of time and that issue in terms of questioning further the issue of conflict. I would like to move on to the issue of the apparent change in price, if you like, and Mr. Portugal's role in that.

I'm sure, as you're aware, that from the initial letter of offer from Mr. Dufresne which talked about \$28 million or 27-plus million dollars, that in draft . . . that then from the letter of intent was translated into an initial draft which clearly, in the minds of various witnesses from SaskPower particularly, indicated in their minds that the initial price was in that

magnitude of 26 or \$27 million, from which it was understood documented trading losses would be deducted, resulting in a net price, if you like, somewhere in the magnitude of the 20-plus million dollars. In your report did you draw any conclusion about the fact that that information was clearly the intent of the initial first and second drafts?

Mr. Gerrand: — Well yes, it's in the report, Mr. Gantefer.

Mr. Gantefer: — Thank you. I'm trying to move some of this into the record as you can appreciate, and I know that for intents and purposes the thousands of pages of documents are officially in the record but it tends to get diluted when it becomes just extras pages.

When it moved to draft no. 3, would it be your interpretation that this was a clear change in price rather than a change in interpretation of what the price may be?

Mr. Gerrand: — You use the word interpretation. I deal largely in facts. The change in the figure for the selling price of the Channel Lake shares of note from draft 2 to draft 3 was a clear change in price. It was recognized as a clear change in price by the officials of SPC when they ultimately read the agreement some month and a half after they signed it.

And Mr. Hurst, counsel for SPC, recognized it as a clear change in price and described to me the events that occurred when that change took place, which events were set out in some detail in the review. Mr. Hurst, when learning of the change in price, said that he found the change to be, I think the word he used was curious. But he recognized it as a 25 per cent decrease in price.

So I can give it no other interpretation or characterization other than that — a change in price of some considerable significance.

Mr. Gantefer: — Do you feel that Mr. Portugal transmitted that change in price information appropriately?

Mr. Gerrand: — He could have done it better. He conveyed it to Mr. Hurst and discussed it with Mr. Hurst and told Mr. Hurst that that was the way it was going to be. And of course Mr. Hurst was retained as counsel for SPC.

He delivered the documents that set out the change for execution by the officials of SPC on April 1, 1997. He sent a memoranda, indicating in the memoranda that the price had been changed to \$20.8 million. He could have been more explicit as to how it had been changed and why it had been changed; he simply says it's been changed.

He certainly could have discussed at some length at the meeting, the signing meeting of April 1, the significance of the change, the fact he'd referred to it in his memoranda, the things leading up to it. But he didn't do any of those things. But there were clear signals that the change had taken place as set out in the memoranda, as set out in the documents, as conveyed to Mr. Hurst.

Mr. Gantefer: — The information seems to pretty clearly have gone missing from SaskPower officials; the significance

of the fact that there was indeed this change of price.

Mr. Gerrand: — If that had not happened I would not have had the pleasure of meeting you, sir. We wouldn't be here.

Mr. Gantefer: — Not necessarily. Thank you. Thank you, Mr. Gerrand. I think that at this stage it completes my line of questions, Madam Chair.

The Chair: — Thank you Mr. Gantefer. We will now move to questioning by Mr. Hillson till approximately 10:30 at which point we will take a break or when you've concluded your line of questioning, Mr. Hillson, if it's earlier than 10:30.

Mr. Hillson: — Yes, good morning, Mr. Gerrand.

Mr. Gerrand: — Good morning, Mr. Hillson.

Mr. Hillson: — Did you in your work identify or come by information that would suggest there had been earlier attempts to dismiss Mr. Messer?

Mr. Gerrand: — I don't recollect running across that. Our efforts were restricted to the Channel Lake matter and if it did come up it just came up by the by, but I don't remember hearing that. I remember hearing about it after I filed the review but not before.

Mr. Hillson: — So what did you hear about earlier attempts to dismiss Mr. Messer after you say you filed your review?

Mr. Gerrand: — I think I read in the paper that there had been attempts by the board and discussions by certain individuals about an attempt to bring the relationship to an end two or three years previously.

Mr. Hillson: — Now I want to focus in for a few moments on the June 20 meeting of the SaskPower board that gave the final approval for the sale agreement.

In your view, sir, was there approval for this sale agreement prior to June 20? Had there been a meeting of the minds prior to June 20?

Mr. Gerrand: — There had been a motion passed on March 27, 1997 . . .

Mr. Hillson: — Correct.

Mr. Gerrand: — . . . the wording of which is in the material approving . . . authorizing the sale of the Channel Lake asset for \$20.8 million, and that was the authorization that the parties apparently relied on, that March 27 resolution.

Mr. Hillson: — Yes, but what I'm getting at, sir, in your view does that authorization of March 27 cover what happened or is that authorization in fact in conflict with the agreement then that was executed?

Mr. Gerrand: — I think that's arguable. The wording of the motion regrettably is not very specific. It doesn't indicate with clarity whether it's a net or a gross price.

Strangely enough the topic summary that had been prepared by Mr. Portigal himself and which did not find its way apparently to the March 27 meeting had greater clarity in it with regard to the detail of the price, than the wording of the motion that was eventually passed.

Mr. Hillson: — So you say it is arguable that the March 27 motion of the board does not cover the sale agreement.

Mr. Gerrand: — Does not spell out the terms and the detail of sale as universally understood by all of the persons at SPC, other than Portigal, that were involved in the negotiation of it. It's interesting to note, Mr. Hillson, and I remark on this in my review, on the very day that SPC passed the motion we're discussing, a motion in similar words was passed by the board of directors of DEML.

Mr. Hillson: — This same motion was passed by Direct Energy?

Mr. Gerrand: — A motion in similar words was passed by the board of directors of DEML on the same day, March 27.

Mr. Hillson: — Now for the June 20 meeting, did you review the documents that were actually circulated to the board members? Did you see the package that they had before them when they had . . . it was a telephone meeting I believe?

Mr. Gerrand: — No. I received that information from Mr. Messer . . . not Mr. Messer, from Mr. Grossman, who interviewed one or two of the board members and the members of the audit and finance committee. And I was told the nature of the documents that were provided.

Mr. Hillson: — Okay. And so you didn't actually see the documents that were circulated to the board members prior to June 28 meeting?

Mr. Gerrand: — No.

Mr. Hillson: — And were the board members told that Mr. Portigal had been fired?

Mr. Gerrand: — I think they were. I'm not sure about that; I think they were. Although the detail of the firing and the reasons for it were not given by Mr. Messer to the board.

Mr. Hillson: — Were the board members told that Mr. Portigal was working for Direct Energy?

Mr. Gerrand: — I don't know. I don't think they were. I don't know that that information was conveyed to them.

Mr. Hillson: — What about the minister? Did you interview him to see if he had that information at that time?

Mr. Gerrand: — No, I did not interview the minister.

Mr. Hillson: — So do you know what information the minister would have had at that time?

Mr. Gerrand: — None at all.

Mr. Hillson: — Okay. In a number of the paragraphs in your report there is reference to the question as to whether Mr. Portigal may have been exceeding his authority, whether or not he was acting with authority. I want to ask you, sir, assuming he did not have full authority to do what he did, is that issue killed by virtue of the fact that there was no repudiation of his actions by Saskatchewan Power?

Mr. Gerrand: — I concluded that the actions of SaskPower would result in a likely defence of estoppel. And that is, learning as they did of what occurred and the apparent excess of authority that took place in the early days of April 1997 in the negotiations by Mr. Portigal, SaskPower took no steps to correct any misimpression that had been laid. Nor did they take any steps to set aside the agreement or attempt to set aside the agreement.

And estoppel would likely be argued by those that were defending any challenge to the transaction. And just as importantly and perhaps more importantly the passing of the motion ratifying the transaction, in my view, brought to an end any prospect of questioning his activities.

The Chair: — And excuse me, Mr. Gerrand. I realize that we have two lawyers talking with each other. I wonder if you could for the record and for the purposes of educating the other committee members and anyone else who may be interested, could you give us a brief explanation of the term “estoppel” as you’re using it.

Mr. Gerrand: — Yes. When you’re engaged in commercial transactions, and in this case, a certain individual asserts that he has authority to do something on your behalf and you know he is doing that or has done it on your behalf and you take no steps to stop that activity or to convey to the other side that that person has no authority, then the other side acts to its detriment, very likely, in relying upon that. And your silence is viewed as estoppel and prevents you from later challenging the lack of authority on the part of the individual acting on your behalf.

The Chair: — Thank you.

Mr. Hillson: — . . . Madam Chair. So basically you’re saying, if it is Saskatchewan Power’s position that Portigal exceeded his authority, then there was an onus on Saskatchewan Power to communicate that timely to Direct Energy and to say that they were not in agreement with what Portigal had done and they had not authorized him to take the steps he had taken.

Mr. Gerrand: — That’s my view, Mr. Hillson. We had about a seven-week period between the completing of the documents, which SPC officials thought were final documents — and until the other day I thought were final documents — until the final closing and the process of escrow was entered into.

During that period of time SPC officials learned of the true state of affairs, and not only did they not take steps to attempt to set aside the agreement or challenge it, they authorized Mr. Portigal to go to the closing as their agent, as their representative. And at that time they were clothed with knowledge of all of the activities that we’ve been discussing.

Mr. Hillson: — So you’re saying that if Saskatchewan Power

had not been aware of what Mr. Portigal was doing, say in April, they certainly knew on June 2, and he was still authorized to attend final closing.

Mr. Gerrand: — That’s correct.

Mr. Hillson: — So that act of sending Mr. Portigal to final closing to you is a clear holding out that Mr. Portigal is our man and is acting on our behalf.

Mr. Gerrand: — Well that’s just part of the story. There had been no real effort to legally set aside what he had done on the basis of his lack of authorization. Indeed two weeks after the closing, or a little more, there was a formal ratification of what he had done.

Mr. Hillson: — Now if I can turn to the date of March 31, you’ve already told us this morning that you couldn’t identify any one single person in Saskatchewan Power who had zeroed in on March 31 as being key to the sale. It was a matter of general consensus within the Saskatchewan Power leadership.

Mr. Gerrand: — That’s correct.

Mr. Hillson: — Can you however, or did you find any reason for the significance of March 31 other than an attempt to try and prevent the trading losses from becoming public knowledge?

Mr. Gerrand: — I think the impression that I developed and I outline it not as a conclusion but as an inference drawn from the factual matters, the inference I drew was that that date was a date that all of the individuals concerned were aiming to see as the completion date for reasons that included the likelihood that there would be less prospect of the figures finding their way, the details finding their way, to a number of sources including the obligation to report the financial results in various quarters. That’s the inference that I drew.

Mr. Hillson: — But is that the only explanation for March 31 that satisfies your mind? Did you discover any other explanation for March 31 other than the one you have just given us?

Mr. Gerrand: — No, not really.

Mr. Hillson: — Now in your letter of transmittal you say that you have not made recommendations because that was your instructions, not to make recommendations.

Mr. Gerrand: — That’s correct.

Mr. Hillson: — And can you expand on that, sir, as to why you were asked not to make recommendations as to what we may have learned by the Channel Lake experience?

Mr. Gerrand: — No. I prepared a draft report that preceded the final report by about seven days, and provided it to my client. And the final report is simply a replication of the draft report with a couple of additions. I made mention of the fact, at the suggestion of my client, that my efforts to interview Mr. Portigal were fruitless. I had not included that in the draft report, I don’t think.

I had not set out the conclusions that I had come to in the draft report, and my client invited me to outline my conclusions, which I did. But at the same time my client asked me not to make any recommendations, and I didn't.

Mr. Hillson: — So it's simply a case, those were your instructions — not to make recommendations — and therefore you followed them.

Mr. Gerrand: — Yes.

Mr. Hillson: — Now this may be going beyond where you feel comfortable answering, sir, but I'm going to ask it in any event. You know that one of the larger issues we are looking at is the contention that our Crown corporations can incorporate subsidiaries who can then do things that the Crown corporation itself cannot do, in terms of reporting, and in terms of acquisitions without cabinet approval. Do you have any comment on the issue of Crown corporations setting up subsidiary companies to do those things that the Crown corporation itself cannot do?

Mr. Gerrand: — I didn't go there at all, Mr. Hillson. I never considered that aspect of it.

Mr. Hillson: — And it's not something you would care to comment on this morning?

Mr. Gerrand: — No. That has implications beyond the legal aspects that I looked at solely.

Mr. Hillson: — Now we have already discussed the June 20 meeting and you've already given the opinion that even if Mr. Portigal exceeded his authority, that's by the by because the fact is, SaskPower did nothing, even when the whole story came out. Can I ask you if your work uncovered any reasons for the lack of reaction from Saskatchewan Power even after the full story had come out?

Mr. Gerrand: — I can't describe motives, reasons, to the activities or lack of activities by the individuals involved. I've simply attempted to identify what actually occurred — the timing of it, what was said, what documents were available, and what was done or not done. And I have not attempted, nor am I qualified, to look into the minds of the individuals as to what motivated them to these acts.

Mr. Hillson: — You're aware, sir, that the evidence we have before us is that at the end of May, the first week of June, there is enormous upset in Saskatchewan Power when they find out exactly what's happened. And then all of a sudden that upset and concern seems to dissipate, and the board quietly approves the sale and pays the Milner Fenerty bill and the file is closed.

This seems to be, you know, somehow out of sync. There seems to be a gap here that I don't understand. Is there anything you can tell me that would assist me to understand why, you know, Saskatchewan Power gets knowledge, they're very upset, they're very concerned, fires are burning, and then — nothing.

Mr. Gerrand: — All of the factual matters that you've related are to be found in the review that we did.

Mr. Hillson: — Yes. But the question of why . . .

Mr. Gerrand: — . . . I have not attempted to answer. And I wish you luck in answering it.

Mr. Hillson: — Thank you, sir.

Another gap in your report that I hope you can help us with — maybe you can't — but you have of course mentioned in your report, early November, Mr. Messer sends Portigal a letter advising him of his termination. And that is in November of '96.

The next reference we have is a month later when Portigal sends Messer a letter saying, I think we should sell Channel Lake. You're nodding your head, just for the record, sir.

Mr. Gerrand: — Yes, I know those facts.

Mr. Hillson: — Yes. Now again, there's obviously a gap there. We have two incongruous events a month apart. They just don't fit. I mean there's something connecting those two events, some other piece of evidence we don't have that explains the inconsistency between, you know, he's terminated in November and in December he sends a letter, I think you should authorize me to sell Channel Lake.

Can you give any explanation for the incongruity of those two pieces of evidence?

Mr. Gerrand: — No. We noticed those events. And of course the letter terminating the agency was remarked on in the review. And the letter and the efforts by Mr. Portigal to institute some interest in the sale of Channel Lake is remarked on.

The detail as to why that occurred was never satisfactorily explained. I can only conclude, and did conclude, that after the letter was written a period of time went by and the decision was made to explore the prospects of selling Channel Lake. And the best individual to represent the interest of SPC in Channel Lake, and exploring that sale prospect, was Mr. Portigal.

And as you know, Mr. Messer proceeded to ultimately write a letter appointing Portigal as the representative for the carrying out of the negotiations and sale. And that's the only conclusion I could come to, although it's not based in fact.

Mr. Hillson: — But how we get from one month firing the guy to the next month authorizing him to sell the company. You can't shed any . . .

Mr. Gerrand: — Yes. I can not assist you with that.

Mr. Hillson: — But it left you scratching your head as well.

Mr. Gerrand: — Yes. And there's no remark made of it in the review because there is no answer that came to us.

Mr. Hillson: — Well I guess that's probably as much as you can tell us then.

You did of course in your review mention that Channel Lake was set up and purchased Dynex assets to guarantee supply of

natural gas to Saskatchewan Power. Were you aware, sir, that the Dynex gas, the Channel Lake gas, was in fact not sold to SaskPower throughout the life of the company?

Mr. Gerrand: — No.

Mr. Hillson: — You didn't know that.

Mr. Gerrand: — No.

Mr. Hillson: — The reason I asked that, and I'm certainly not implying anything against you, sir, but the report seems to suggest that your assumption was that Dynex supplied Saskatchewan Power.

Mr. Gerrand: — Yes. If that was reflected in the hundreds of documents we reviewed, I didn't notice it.

Mr. Hillson: — So when it came out that in fact although Dynex was purchased to supply Saskatchewan Power that didn't happen, that's news to you. That's not something you were aware of when you wrote this report?

Mr. Gerrand: — Now that you dwell on that I have a recollection of Mr. Grossman making that observation early on perhaps. I don't think we regarded it as of great significance. We were more concerned, I think, with the other activities than the failure to supply the natural gas. We were more concerned about the arbitrage activities.

Mr. Hillson: — Yes, quite rightly so. But in a sense they had started from day one when, say, ostensibly Dynex was purchased to supply Saskatchewan Power, but that's not what happened.

Mr. Gerrand: — Yes.

Mr. Hillson: — So in a sense we're already into arbitrage there, are we not?

Mr. Gerrand: — If that's the way it was — I did not focus in on that.

Mr. Hillson: — Sure. Okay.

Mr. Gerrand: — I was more concerned, quite frankly, in my activities with general management and the steps taken to sell.

Mr. Hillson: — That's fine. There's just a notation here. You mention on paragraph 66 that Portigal met with Owen Mitchell.

The Chair: — For the record, Mr. Hillson, will you indicate what page that is on?

Mr. Hillson: — No. 31.

The Chair: — Thank you.

Mr. Hillson: — Is that . . . that's correct?

Mr. Gerrand: — Yes.

Mr. Hillson: — And so Owen Mitchell at that time was

representing Direct Energy?

Mr. Gerrand: — He had an interest as an agent, I think, in the sale that ultimately came to pass. He had communications with Portigal and DEML, I think as a facilitator of the sale. Mr. Grossman and I interviewed Owen Mitchell by a telephone conference call and he told us those things, including the fact that he had a recollection of meeting Mr. Messer on the airplane and sitting with him and introducing the subject some time prior to the initiation of the sale discussions.

Mr. Hillson: — In your view, sir, were other offers for the purchase of Channel Lake seriously reviewed and considered by Mr. Portigal or was he . . . did it appear from you that from day one he was dealing with Direct Energy and Direct Energy alone?

Mr. Gerrand: — We knew of the existence of the other offers because they were in the documents and we outlined in the review the particulars of the offers that were made. Not having had the opportunity of interviewing Mr. Portigal, we had to leave it at that because all we could conclude was that the offers were made, as reflected by the documents, and the DEML deal was the one that was proceeded with.

We did not know until we heard the evidence of Mr. Portigal that Stampeder had made an offer of \$500,000 higher than any outstanding offer. That information did not come to our attention when we did our review. We learned that from the testimony given at this hearing.

But to specifically answer your question, we couldn't form a view as to whether or not he was — he, Portigal and/or SPC — were directed solely to the sale to DEML or how seriously they considered the other offers. We couldn't form a view on that.

Mr. Hillson: — And what about the Shiningbank offer. Do you consider that one also to be more attractive than what we ultimately accepted?

Mr. Gerrand: — The figures as reflected in the review show a dollar figure that was greater than what was finalized, that's correct.

Mr. Hillson: — Well let me change . . . I appreciate the answer you've given, sir, so let me change the question somewhat. Are you satisfied from the documentation you saw that other offers for Channel Lake were seriously reviewed and considered and not summarily dismissed?

Mr. Gerrand: — I don't know. And nor did we comment on it in the review. We think that it would have been necessary to question in some detail the person in charge of those negotiations, which was Mr. Portigal, and we never had the opportunity of doing it.

Mr. Hillson: — In your review, sir, do you believe it is possible that there has been breach of trust involved in the sale of Channel Lake?

Mr. Gerrand: — We did not express an opinion in that regard in the review and . . . I'm just trying to review the elements of information that's come to us since.

Mr. Hillson: — If I can interrupt you for a moment, sir, and just remind you of one thing I don't think you would have been aware of, is that Saskatchewan Power has told us that three pages were substituted after they had signed. And they were not subsequently notified of those three pages. In fact some of them only came to their attention shortly before they testified.

Mr. Gerrand: — Well if your question is directed to those events, I would . . . we were aware that there had been a change of pages because that was alluded to, in fact specifically referred to in the Tavender report. And SPC had that brought to their attention by June 10 or 12 by Mr. Tavender.

The changes were done with the knowledge of Mr. Hurst, I understand. The changes were a subject of communication by way of letter from Mr. DeLuca to Mr. Hurst and done with the approval and consent of Hurst.

The changes relate to the mechanics for identifying the trading loss amount and don't relate to the purchase price as I understand. And although SPC may not have learned of the specifics of the changes, they were aware that there were changes to the pages before they ratified the transaction.

Mr. Tavender very correctly pointed out in his opinion to them, that despite the existence of these changes, the only document that would be enforceable would be the documents that they had signed. And if changes occurred with regard to price — which did not happen, selling price — then those in my view would be ineffectual.

What happened was there were changes with regard to the trading losses, almost all of which was alluded to in the memoranda sent by Portugal to Mr. Messer with copies to the officers, and what occurred by way of changed pages could have been reasonably anticipated because of the information he gave.

Mr. Hillson: — So you do not think that points to possible breach of trust.

Mr. Gerrand: — Well I don't think I'd like to express an opinion to you on it, Mr. Hillson. I just point out these qualifying facts that one would want to look at very carefully.

Mr. Hillson: — Well I should preface my remarks by saying I certainly would not expect you to give a final unqualified view of something like breach of trust, but I do want to ask you if say, the date on which Mr. Portugal formed a relationship with Direct Energy, is that significant in deciding whether or not a breach of trust has occurred here.

Mr. Gerrand: — I don't know enough about that aspect to make a comment, except to repeat what I said earlier — that as a result of the testimony I've heard, my concerns as expressed in the review are somewhat heightened.

Mr. Hillson: — Okay. So breach of trust is a different . . . You answered Mr. Gantefer in terms of you see no evidence of a conspiracy to commit fraud.

Mr. Gerrand: — That's correct.

Mr. Hillson: — Breach of trust may be another issue.

Mr. Gerrand: — That may be another issue, but in considering that issue one must bear in mind those very important facts that I have just related as to what was within the knowledge of SPC and its counsel with regard to those replacement pages.

Mr. Hillson: — Okay. Thank you, sir. Now on page 42, paragraph 112, Madam Chair . . . No, no. I'm sorry. Page 43, 118. You use the phrase "adjustment twice."

Mr. Gerrand: — Well I quote what was said to me by another in using the phrase "adjustment twice."

Mr. Hillson: — What I want to ask you though, Mr. Gerrand, is that seems to point to what some must have said, that the way the math comes out here is that we start at 27.7 million, we deducted the trading losses and then we deducted the trading losses all over again. Is that what you mean by the phrase "adjustment twice"?

Mr. Gerrand: — I am quoting what was said to me by Mr. Drummond at the meeting that I had with him in Calgary. I went to visit him and met with a group of individuals from DEML, whose names appear in the report, and asked for an explanation for this reduction in price — what I regarded, and still do regard, as a reduction in price.

And he proceeded to give me the explanation that I outlined at 118. And the expression "adjustment twice" is in quotation marks purposely because I'm quoting Mr. Drummond.

Mr. Hillson: — So those are Mr. Drummond's words?

Mr. Gerrand: — Those are Mr. Drummond's words.

Mr. Hillson: — And I realize that you've already told us it's not up to you to speculate what's going on in someone else's mind, but do you understand that to mean we took the trading losses off twice?

Mr. Gerrand: — Well if you proceed to read further in the report, you'll see that I questioned Mr. Drummond about this. I told him I had difficulty understanding why this adjustment had to be made twice and would he please explain it to me because I'm just a simple prairie lawyer. And he never was able to explain it to me to my satisfaction. And that was the way it was left until I received a letter the next day from Mr. Drummond which is appended to the report, where an explanation for the change in price is given different from adjustment twice, you'll see. There's no mention made of the double adjustment in that letter. So I was puzzled by that.

Mr. Hillson: — Well of course you're now aware, sir, that the position of Direct Energy is that in fact the agreements never did change, that from day one this is what was supposed to happen and there was no alteration as the agreement proceeded.

Mr. Gerrand: — I'm aware of that because I've read the evidence of the individuals that testified.

Mr. Hillson: — And that is in conflict with your reading of the materials.

Mr. Gerrand: — It is at variance with the explanation given to me by Mr. Drummond when I met with him, and the explanation given to me the next day when he wrote the letter providing me with a further explanation.

Mr. Hillson: — You are also no doubt aware, sir, that we heard from Direct Energy reference to a cash account of several millions of dollars that would be available to Direct Energy when they took over and that . . . that's how you explain the high purchase price — that they were expecting several millions of dollars to be in the account of Channel Lake when they took over the company.

Did you in your discussions with them hear any reference to this?

Mr. Gerrand: — If I had heard any such reference I would have included it in my recitation of what I was told. The first I heard of the existence of this account of \$5 million was when I read the transcript of the evidence of Mr. Dufresne.

Mr. Hillson: — That was the first you learned that there was supposed to be these millions of dollars sitting around.

Mr. Gerrand: — That's the first I heard of it.

Mr. Hillson: — So Mr. Drummond made no reference to that to you.

Mr. Gerrand: — Nor did Mr. Dufresne who was at the meeting when I met with Mr. Drummond.

Mr. Hillson: — So apparently this 5 or \$7 million had slipped Mr. Dufresne's mind when he was talking to you.

Mr. Gerrand: — I don't know. I can just tell you what he told me.

Mr. Hillson: — And he didn't tell you about 5 or \$7 million.

Mr. Gerrand: — No, he didn't.

Mr. Hillson: — And Mr. Drummond told you about an adjustment twice.

Mr. Gerrand: — He told me that during the course of the meeting when he orally described the reduction in price. Then as I have pointed out, he wrote me a letter the next day providing me with a further explanation for the reduction of price, which letter is appended to my review.

Mr. Hillson: — I gather from your report, sir, that the original price of 27.7 million is one that you simply were not able to find any satisfactory explanation for.

Mr. Gerrand: — In what respect, Mr. Hillson? The offer was made in those terms in February; it was declined by SaskPower by reason of the letter written by Mr. Messer shortly after its receipt. But the figure found its way into the first draft, so I had no difficulty in understanding the presence of that figure of \$27.7 million.

Mr. Hillson: — No, I'm sorry, I wasn't making myself clear.

The figure is clear, but where it comes from.

Mr. Gerrand: — Well it comes from the offer made by DEML in the letter of, I believe, February 28.

Mr. Hillson: — But how we then get from 27.7 down to where we eventually sold the company . . .

Mr. Gerrand: — That has always been a mystery to me. I have never received a satisfactory explanation; an explanation I understand as to how that happened.

Mr. Hillson: — If you just play with the arithmetic though, sir — and we come back to this adjustment twice — does the arithmetic come out for you if you'd in fact deduct the trading losses twice?

Mr. Gerrand: — Well perhaps it does. But if that was the reason for it, why wasn't that explanation given to me by Mr. Drummond the next day, when he wrote me the letter?

Mr. Hillson: — Well an excellent question, but I'm going to ask you . . . (inaudible) . . . does the arithmetic come out any other way other than by deducting the trading losses twice? Have you been given any explanation that works through 27.7 down to — is it 15.2? — in any other way other than by deducting the trading losses twice?

Mr. Gerrand: — Well I really hadn't been given any explanation. It may be that the mathematics works out that way, but if that's the explanation for it I still fail to understand why the trading losses have to be deducted twice.

Mr. Hillson: — Again, I think that's why we're here this morning, but I appreciate your comments, sir. You are aware that when Mr. Drummond was asked to explain why there would be the initial offer of 27.7 his answer was, it was pulled out of thin air, I think was the testimony we heard. I'm just wondering if you heard anything else from Mr. Drummond that sheds more light on the initial offer, than it being pulled out of thin air?

Mr. Gerrand: — Well, Mr. Hillson, the report identifies the reason for the level of the offer from the perspective of Mr. Drummond, as related to me. He orally advised me that he was invited by Mr. Portigal, on behalf of SPC, to make an offer for a higher than acceptable figure for the selling price, with the understanding that it would be later reduced. And you'll see in the letter that he wrote me the next day, he repeated that.

I of course identified the source of this request, and he told me it was Mr. Portigal. In our interviews with representatives of SPC, they had no knowledge of such a suggestion. And I notice that that suggestion, as to the reason for the price of 27.7, was not given in evidence by any of the individuals from DEML, whose evidence . . . the evidence I read. So that there was a reason given for the 27.7, and it's reflected in the review.

Mr. Hillson: — Whether or not it holds water is another matter.

Mr. Gerrand: — That's correct.

Mr. Hillson: — I'm sorry, Madam Chair, I . . .

The Chair: — You have about four minutes more in your time. Have you reached the end of your questioning, Mr. Hillson?

Mr. Hillson: — No. I do have more questions. I just want some guidance from you. I'm prepared to call the break and defer to the other caucus. I haven't finished though.

The Chair: — You would wish to go to a different line of questioning, is that what you're indicating?

Mr. Hillson: — Yes, I'm . . .

The Chair: — Okay. I think then at this time it's probably wisest if we call a break. We'll then — after the break — we will resume at about quarter to 11 and I will recognize the New Democratic Party and then any time remaining will be used by either Mr. Gantfoer or yourself for questioning of Mr. Gerrand today.

The committee is now recessed until approximately 10:45.

The committee recessed for a period of time.

The Chair: — Ladies and gentlemen, committee members, I believe that we do have some business to conduct this morning so perhaps we could reconvene the hearings of Crown Corporations Committee . . . (inaudible interjection) . . . Mr. Thomson, I would remind you that you are to be recognized by the Chair before you make your gratuitous comments, thank you.

A Member: — Make him behave.

The Chair: — Mr. Hillson, ditto to you.

We will start again. I will recognize the New Democratic Party to pursue a line of questioning until approximately 11:35 at which time I have an indication from at least Mr. Hillson that he wishes to put further questions to Mr. Gerrand. Who will be beginning the line of questioning for the New Democratic Party?

Hon. Mr. Shillington: — Thank you very much. I'm not sure I'll take 45 minutes. Some of the questions which I would have gone into have been covered in one fashion or another by those who have preceded me.

Mr. Gerrand, you may or may not have read in the transcript, both Mr. Portigal and I think the officials of DEML, stated that they did not see a conflict in Mr. Portigal going to work for DEML at the same time that he was still handling the sale on behalf of SPC because they saw no essential conflict between the two parties of the sale. I think they said that the sale agreement had been signed; all matters had been resolved in the sale agreement. They saw no conflict in him going to work for DEML after the events of April 2, I guess it was, without making SPC fully aware of it. Can you comment on that.

Mr. Gerrand: — I don't think I can add to the answer that I gave to a previous questioner, nor to what appears in the report. The information we received was that Mr. Messer had asked the DEML to employ the people that had been employed by Channel Lake when they took over, and the employing of

Portigal was just a natural follow-up on that request.

I think as well that Mr. Drummond told us that he had instructed Portigal to tell Mr. Messer that he had become employed towards I think the end of April 1997, but the information we received was that Mr. Portigal had not so advised Mr. Messer. I expressed the view in the report that there are concerns as to whether or not a conflict arose at that time.

We pointed to the documentation that was signed by Mr. Portigal at a time that he was on the payroll of SaskPower and continued to be on the payroll of SaskPower, and I think in fact he was elected a member of the board of directors of Channel . . . of DEML.

Now I would not like to go any further than that without having myself question Mr. Portigal about this matter, which I didn't have the opportunity of doing.

Hon. Mr. Shillington: — On page 9 of your report you stated that you were unable to interview Mr. Portigal and then went on to state that Mr. Dufresne advised you there was an ongoing dispute between DEML and SPC respecting trading losses.

It's true, isn't it, that that ongoing dispute existed right up to June when SPC found out about the difference. That dispute continued, did it not?

Mr. Gerrand: — Are you speaking of June of '97? I presume you are.

Hon. Mr. Shillington: — Yes, June of '97.

Mr. Gerrand: — As far as I know, the dispute regarding trading losses was continuing at the time I prepared . . . we prepared our review. One of the last persons we interviewed was Mr. Christensen prior to the finalization of our review. And I think he told us that the issue of trading losses and how much was going to have to be paid by SPC remained to be resolved. And I think he told us that those losses might amount to \$8 million.

Hon. Mr. Shillington: — Doesn't that in itself create a conflict of interest — the fact that the trading losses were outstanding?

Mr. Gerrand: — Well it may. As I say, it may. But I did not have the opportunity of examining that aspect of it or particularly examining, questioning Mr. Portigal about those matters.

Hon. Mr. Shillington: — On page . . . Let me find the page number for you here, if I can, of your report. Perhaps I'll get it in a minute.

I want to turn if I can to the fact that there were other offers which seemed to be higher than the offer which was DEML. You referred to three of them and dealt with them in your report.

Stampeder Exploration said that they would better any offer by \$500,000. Were you aware of that when you prepared your report? Did you have an opportunity to talk to them, and did they . . .

Mr. Gerrand: — When I was answering a question I think of Mr. Hillson, I indicated that I firstly learned of that matter when I reviewed the testimony of Mr. Portigal. I had not, nor to my knowledge had any of the other individuals who were conducting the interviews, heard that that situation apparently prevailed.

Hon. Mr. Shillington: — Okay. Did you have the opportunity to interview the other prospective purchasers?

Mr. Gerrand: — No.

Hon. Mr. Shillington: — I see.

Mr. Gerrand: — The individuals that we interviewed are the individuals that are listed in the review, at pages 5 through 9.

Hon. Mr. Shillington: — Your report was very thorough, the most thorough I think of the initial reports which we received. So I'm not in any sense suggesting your report wasn't thorough. I'm just curious about why the other purchasers weren't interviewed in a report that was otherwise, as I say, complete and thorough.

Mr. Gerrand: — I interpreted our instructions to analyse what in fact had occurred by way of sale. And I did not view it as my chore to investigate what other avenues might have been pursued by way of sale, but to find out what actually happened in the sale that did occur.

Hon. Mr. Shillington: — In paragraph 70, you've also touched upon this, but I want to phrase the question in a slightly different fashion. Paragraph 70 says:

Further in his letter of March 12, 1997, Mr. Messer said, if you're willing to proceed on this basis, I would ask that you contact Lawrie Portigal. I've directed Lawrie Portigal and other Saskatchewan officials to proceed with these negotiations and hopefully completion of an agreement as expeditiously as possible.

Christensen, Patrick, and Kram were the other SPC officials directed by Messer to assist in the proposed sale transaction.

What did you conclude from that with respect to Mr. Portigal's authority to negotiate and sign documents and so on?

Mr. Gerrand: — I concluded that he was given authority to negotiate. I think it's an open question as to whether or not he had authority to complete documents. I concluded that he did not have authority; that the only persons that could sign documents and affix the seal of SPC were the officers of SPC, which in fact is precisely what happened on April 1.

Mr. Portigal and others gathered in a room while the documents were signed over a period of approximately 40 minutes. And there was no indication that Portigal had authority to sign on behalf of SPC. Whether or not the letter written by Mr. Messer held out Mr. Portigal as an individual that could not only negotiate but sign on behalf of SPC is arguable.

The fact of the matter is that the purchasers would have known

that all of the documents that came to them following April 1 were signed by persons other than Portigal.

Hon. Mr. Shillington: — Of course not having an opportunity to interview Mr. Portigal, you would be unable to assist the committee in trying to ascertain what Mr. Portigal understood his authority to be.

Mr. Gerrand: — Well we express in the review that there is little doubt as to what Mr. Portigal understood or should have understood his authority to be with regard to the purchase price.

He met with officers of the corporation on several occasions where the sale was discussed. Messrs. Kram, Christensen, Kozole, Spelliscy all have told us of those meetings and that each was totally satisfied that Mr. Portigal understood that the sale was for a gross price of \$27 million approximately.

Mr. Portigal's memoranda to the board, which he admittedly himself prepared, describes the selling price in those terms, and there's little doubt as to the meaning of that document. So that we concluded that Mr. Portigal knew the limits of his authority, and when he agreed to this reduced price that he was doing so without authorization.

Hon. Mr. Shillington: — Thank you. In a somewhat related question then, perhaps you can assist the committee in trying to interpret the authority granted by the SPC board of directors with respect of trading. When the Channel Lake properties were bought, the SPC board passed a minute in which they authorized trading in gas but prohibited trading other than for the purposes of securing . . . other than for the purposes of providing security of supply to SPC, and prohibited trading in options and derivatives.

When Mr. Portigal was here, he interpreted that as being broad enough to include arbitrage. I wonder if you can assist the committee in interpreting that authority from the board.

Clearly, I think Deloitte Touche interpreted the authority narrower than Mr. Portigal had. I wonder if you could assist us in trying to ascertain what that minute might be reasonably said to have authorized in terms of trading activities at Channel Lake?

Mr. Gerrand: — At page 110 of our review we set out this inference drawn from the facts:

Those responsible for the operation of Channel Lake allowed Portigal to involve Channel Lake in trading activities related to natural gas despite directives and advice not to engage in such activities, or to at least engage in such activities subject to trading guidelines.

And that conclusion or inference was based on the resolutions and directives and suggestions that are reflected in the minutes of both Channel Lake and SPC as you've referred to.

I have not studied in any detail what Mr. Portigal has said about that, but we do know that there is a clear and marked distinction between arbitrage and the selling of natural gas itself. Arbitrage dealings . . . the definition of arbitrage is set out in the report. There's elements of risk and gambling connected to it. And if

Mr. Portigal concluded that he had authority to engage in that activity on the basis of the resolutions, I have some serious doubts that that is correct.

Hon. Mr. Shillington: — Okay. Thank you.

Mr. Messer in his evidence specifically stated he did not give Lawrie Portigal authority to reduce the purchase price by \$5.2 million. I gather from what you've told us that nothing in your review of the documents and nothing coming out of the people you interviewed would . . . nor did you . . . so you didn't hear or see anything that would authorize Mr. Portigal to sign a document which would alter the purchase price. Nothing you saw or heard would authorize that.

Mr. Gerrand: — Of course, Mr. Shillington, Mr. Portigal did not sign a document that altered the purchase price; he was not a signatory to that document. His signature appeared on the acknowledgement that related to some trading losses.

No. But I think I know the precise point that you're querying me on. I did not find out the reason for Mr. Portigal apparently agreeing to the reduction in the purchase price by 25 per cent.

In the review I remark on the information given to me by Mr. Hurst. Mr. Hurst, although I conclude was neglectful in respect of the advice he gave to SPC, is a very fine, honourable practitioner of the law. And he learned of the reduction in the purchase price by a phone call from DeLuca towards the end of March, just prior to receipt of the third draft. And DeLuca told him that the price was going to be reduced by \$5.2 million.

As the report indicates, he, Hurst, immediately phoned Portigal and said: what's this I hear about the price being reduced by \$5.2 million? And Portigal advised him that that's the way it's going to be. He gave him no further explanation, no indication that he was going to convey this formally to the people at SPC that were in control of these discussions. And then came the third draft with the alteration in the price, which came to Hurst as no surprise by reason of the telephone conversation he had.

What motivated that, I don't know.

Hon. Mr. Shillington: — Mr. Gerrand, that leads me to another question. You made a comment which was intriguing. I wonder if you'd expand on it. In answer I think to a question from Mr. Gantefer, I think you said that you saw no evidence of . . . I think the phrase used was criminal conspiracy.

As I say, it was an intriguing comment. I wonder if you'd expand on that for the benefit of the committee.

Mr. Gerrand: — I don't think I used the expression "evidence" because I wasn't dealing with evidence. I was dealing with factual matters and unsworn interviews. And what I said, and what I have said in the report, is that I found no fact to support a conclusion that there was a plot or conspiracy to defraud SPC. And if you'd like me to tell you why I concluded that, I'd be happy to.

Hon. Mr. Shillington: — . . . (inaudible) . . . as a matter of interest.

Mr. Gerrand: — The purchase price was reduced by \$5.2 million. Just as importantly, and having as much or a greater effect dollar wise, was the alteration in the arrangements for the treating of the trading losses and who would be responsible for them. That aspect of it was understood by the officers of SPC. Each of them indicated to me that they understood those aspects of the memoranda of April 2, 3 and 4 as they related to trading losses.

And principally Mr. Christensen and Mr. Kram indicated to me that — and to Mr. Grossman — that those changes that were reflected in those memoranda were simply indications to them of the negotiating efforts of Mr. Portigal to bring this problem to an end. And of course he outlines with some clarity the 6.3 paragraph that ultimately appears in the final document and the acknowledgement that he signs.

The other aspect to the selling price, dollar wise, was the selling price itself reduced from 27 to the \$20.8 million. For there to have been a conspiracy or a plot to defraud SPC of that amount of money, it had to anticipate (a) that four or five officers of SPC would not read the agreement that reflected it when it was before them to read.

The plotters and conspirators would have to assume that Mr. Hurst would not do the thing that he had undertaken to do, to convey these documents and series of documents that reflected this, to the officers of SPC. And that Mr. Portigal would not convey this information, which I think he did convey — not in a very complete and accurate manner — but did convey by means of the memoranda.

So that there could not in my view have been a plot or conspiracy to do that because all of these individuals would have had to have been involved. And I certainly believe the officers of SPC when they say that they learned of the reduction of this price for the sale of Channel Lake with distress and surprise. That I do accept.

Hon. Mr. Shillington: — One thing that struck me as unusual in this, if I could be forgiven for making a personal comment, one thing that struck me as unusual in this is the first statement of adjustments — and I think we now have the files from all the lawyers — the first statement of adjustments appears in June. From your experience in practising law, is it not common to have statements of adjustments provided early and revise them? There are no statements of adjustments at all, it appears, until the final documents were sent to SPC in June. It struck me as an unusual way to handle a sale of such complexity.

Mr. Gerrand: — Well let me officially say that I do not practise conveyance in law. I'm not involved in that aspect of the practice of law. From time to time friends of mine entrust me with the sale of their house for \$75,000 and that's the maximum of the exposure that I have to that sort of activity.

Yes, statements of adjustments are usually furnished, in fact they're calculated often by a paralegal, in advance of the conclusion of the transaction, and they're provided upon the conclusion of the transaction. It didn't happen in this case until some time later. And as I have observed in the review, counsel acting on behalf of SPC did not send any correspondence or copies of documents at any time during the critical period and

indeed did not even send the Closing Book until requested by Mr. Kram at a later time.

Hon. Mr. Shillington: — Mr. Hurst's comment was that he felt at the time, his client was Mr. Portigal and he was reporting to Mr. Portigal and that was the extent of his obligation. I gather it is your view that a more considered appraisal of his responsibilities should have suggested to him that he should have been keeping SPC officials informed.

Mr. Gerrand: — Well from my interview from Mr. Hurst, there was never any doubt in his mind who his client was, and his client was SPC. And he did view Mr. Portigal as the main representative of that client.

The fact that Portigal was the man on the scene in no way altered, in my view, which view I continue to hold, that Mr. Hurst and the firm Milner Fenerty were obliged to carry out the terms of the retainer agreement which specifically provide that despite the fact he can take instructions from Portigal, he must provide, and I think it should be interpreted to mean on a timely basis, he must provide to Mr. Kram copies of all correspondence and documents and drafts that come into his possession.

Hon. Mr. Shillington: — He admitted that he did not.

If I can turn to another subject now — I'm conscious of the time — Mr. Portigal sent to Mr. Messer, I don't actually have a document number . . . oh thank you. It is not a series of scratchings, the document no. is 1111, eleven hundred and eleven. It is a document dated April 1 on the letterhead of Channel Lake Petroleum, from Portigal to Messer. It is the memorandum in which he outlines and notifies SPC of the changes to which I think you've referred. Are you familiar . . . you've got the document?

Mr. Gerrand: — It's appended to the review.

Hon. Mr. Shillington: — Yes, yes.

Mr. Gerrand: — It's item (i) in the appendix of our review.

Hon. Mr. Shillington: — The letter was sent — March 31 was Good Friday — the letter was sent on April 1 and the sequence of events was, later that same day the documents were executed. I wonder if it is in any way an adequate notice to your principal to notify them in writing on the day the office is closed, or fax it to them. It strikes me as an unusual form of notice to rely on, to fax them on a day the office . . . on a long weekend none the less. Not only when the office is closed, on a long weekend none the less.

Mr. Gerrand: — Well you're speaking of the memo dated April 1, 1997.

Hon. Mr. Shillington: — Yes, I am.

Mr. Gerrand: — The copy I have before me has a receipt stamp that same day, April 1, in the office of the general counsel, which was Mr. Kram. I had opportunities to review the files of Messrs. Messer, Kram, Christensen, and Patrick, and each one of them received that memo with a date stamp April 1.

I can't recall now what day of the week April 1 was, but that was the day, was it not, that the documents were signed by the parties.

Hon. Mr. Shillington: — Yes. But it was on a day when the offices were closed. It was on a long weekend.

Mr. Gerrand: — Well it may be, but the parties, the officers, gathered together to sign the documents.

Hon. Mr. Shillington: — Then Mr. Portigal went to . . . travelled, as he said he was going to in the memo: a meeting to execute the documents has been scheduled for Mr. Christensen's office today. And he went there, had a cordial and brief meeting, had the documents signed, and it did not apparently occur to him to inform the officials about the changes which were set out in the memo. Even although I think it is common ground to Mr. Portigal and everyone else that the only notice they had was this memo sent on a long weekend to the offices.

He then travelled there, had the documents signed, and left without ever raising the subject of the changes with them. It strikes me . . . I'm wondering if you can assist us in interpreting this behaviour. It strikes me as most unusual behaviour to notify them by memo on a long weekend and never mention it in a meeting.

Mr. Gerrand: — Well I don't know if it was a long weekend. I know that the parties gathered at least for an hour on the fourth floor signing office to sign the documents. And there were five or six people at the meeting.

What transpired at that meeting, yes, I find rather unusual. Not only did Mr. Portigal come to the meeting with the documents and not discuss what was in them, what they reflected, and the significant change he knew that had taken place in the documents, no one asked him what was in the documents. No one asked him, what are we signing? And the memo fairly succinctly outlines what the changes are.

A review of the recollections of those that attended the meeting indicates that they either read this memorandum before they signed the documents or they read it shortly afterwards. And if they read it before, they should have been saying to Mr. Portigal, what about all these changes that your memo reflects?

If they read it after they signed it and he had gone away with the documents, they should have been going to look at the documents that they had copied, which they had signed, and said to themselves, where are these changes that this memo reflects? But they did none of those things.

Hon. Mr. Shillington: — As I think proof of your comment, I note at the top there's a handwritten note. I don't recognize the signature but the writing's fairly legible: K.C., April 2, may we discuss? J.R.M. — Thursday if possible.

I suggest one can conclude K.C. is Ken Christensen; J.R.M. is very likely to be John R. Messer.

Mr. Gerrand: — Well, Mr. Shillington . . .

Hon. Mr. Shillington: — So it appears that Mr. Messer at least had the memo.

Mr. Gerrand: — That particular copy of the memo was remarked on in the review. It is Mr. Messer's handwriting and it was Mr. Christensen he intended to speak with. And that particular copy you're looking at comes from the file of either Mr. Christensen or Mr. Messer.

Mr. Messer acknowledges that he made the note. He has no recollection of having discussed it with Mr. Christensen nor does Mr. Christensen. But the review points out that Mr. Patrick has a recollection of all of the officers discussing these memos and expressing concern over what appeared in them. But the officers, other than Mr. Patrick, do not have that recollection. Now that sort of detail is set out in the review.

Hon. Mr. Shillington: — In paragraphs . . . what have I got, about seven minutes left do I, Madam Chair?

The Chair: — No, about 10 minutes.

Hon. Mr. Shillington: — All right. Paragraphs 93 and — well there we go — yes, paragraphs 93 and 94 on March 24, '97 a topic . . . we're just reading into the record on 93. On March 24, '97 a topic summary respecting the sale of Channel Lake was prepared by Portigal for presentation to the board of directors of SPC at its March 27 meeting. A description of the transaction in that document read as follows:

The agreement provides for a sale price of 26 million effective from January 1, '97 after adjustment for the trading losses of \$5.2 million. The asset value equivalent price is 20.8 million, which is supported by the independent engineering evaluation prepared by Gilbert Laustsen. A copy of this document is prepared.

A topic summary prepared by Christensen and Kram submitted by Christensen to the board of directors meeting on March 26, '97 recommended a sale of the shares of Channel Lake to DEML for a total purchase price of 20.8. Also contained in the topic summary is a heading "Background," a calculation of the anticipated gain.

In reading this it strikes one that Mr. Portigal's topic summary is the more detailed and the more precise, but I gather it wasn't presented to the board of directors from your report. I gather the less precise — if I may so characterize it — topic summary of Christensen and Kram was presented. Is there any explanation provided as to why the detail was . . . why the more precise memorandum of Mr. Portigal was not presented to the board?

Mr. Gerrand: — No, Mr. Shillington, in paragraph 95 we make that observation that the topic summary prepared by Christensen and Kram was submitted to the board. None of those interviewed could give an explanation as to why the topic summary prepared by Portigal, which was more precise as to the sale price detail, was not submitted to the board.

No one could give us an explanation for that.

Hon. Mr. Shillington: — And I gather there was no suggestion at this point in time at all that the 5.2 million might be deducted

from the purchase price of 20.8, which is what I think was alleged. I think that Mr. Portigal let that . . .

Mr. Gerrand: — Well we saw no document that indicated that nor the results of any meeting that indicated that.

Hon. Mr. Shillington: — Thank you. I'm running short of time here and there's . . .

The Chair: — Mr. Shillington, I don't know how much more questioning other members from other parties may have, but it would be my hope that we could finish questioning of Mr. Gerrand today so that he doesn't have to be inconvenienced to come back tomorrow.

Hon. Mr. Shillington: — Yes. Yes, I agree. I want to go to, as a final matter then, the June 20 board meeting. I gather in forming your opinion that Mr. Messer might have been dismissed with cause, his failure to adequately and fully inform the board is a key part of that judgement. I think you said in your comments to Mr. Gantefer that his report to the board was not adequate and in some respects was not accurate. I wonder if you could elaborate on that comment.

Mr. Gerrand: — Well the reasons are set out in some detail in the letter of opinion dated March 4, 1998. The conclusion expressed at page 8 of that opinion is this:

The grounds for such dismissal consist of his (and this is Messer) misdescription to the board of directors of SPC of the factual information and opinions made available to him regarding the conduct of SPC officials and the prospects of SPC commencing legal proceedings regarding the events which had transpired.

Mr. Messer, in his memorandum for the board meeting, indicated that he'd made inquiries and that there was no indication of neglect on the part of SPC officials or reasonable prospect of pursuing any legal action.

Our review of the materials indicate that he had proceeded to dismiss Portigal for what he regarded as good reasons, and that it was incorrect for him to advise the board that Portigal had not been neglectful. He had exceeded his authority in the view of Mr. Messer.

He had been informed in a very quickly prepared opinion by Mr. Kenny, based on only the information made available to Mr. Kenny, that a court very likely would conclude that the actions of the officers constituted contributory negligence. And in the first draft of the report of Milner Fenerty, that view is expressed as well. And the assertion was made to the board that there was no act of neglect on the part of the officers.

The opinion provided by Mr. Tavender was to the effect that: although we do not know what results may flow from an action that may go to court over this issue, it is my recommendation that you immediately commence proceedings and instruct us to prepare a statement of claim now for that purpose.

Contrary information was given to the board, contrary to that advice.

Hon. Mr. Shillington: — Thank you very much. I think I can leave it at that, Madam Chair.

The Chair: — I'm sorry. You've completed your line of questioning, Mr. Shillington?

Hon. Mr. Shillington: — Yes.

The Chair: — Thank you. Mr. Gantefer, did you have any further questions at this time, or shall I . . .

Mr. Gantefer: — No, Madam Chair.

The Chair: — Thank you. Then I will move to Mr. Hillson. And if you could put your questions, Mr. Hillson.

Mr. Hillson: — Yes, Mr. Gerrand, you do note in your report of course that on April 9 of last year Saskatchewan Power announced to the public via news release that the company had been sold for 25 million with a profit of 5 million. Apparently after the truth came out, the company found no need to issue a correction to that news release.

Now in terms of accountability to the public, who we are told are the shareholders, does that raise any concerns with you that Saskatchewan Power saw no need to correct what turned out to be a false news release?

Mr. Gerrand: — We did not comment in the report on those series of events that were public relations efforts. We concluded that when SaskPower public relations officials allowed that release to go forward that they genuinely believe that to be the case, based on false information.

We did not turn our mind to what should have been done at a later time nor were we instructed to that. We were concerned with the ingredients of sale and the activities of those responsible for the sale as opposed to the public relations utterances that obviously had taken place.

Mr. Hillson: — Yes. But I'd ask you to address your mind now to, what does that say about the accountability of the company to the board, to the members of the legislature, and to the people of Saskatchewan, who they say are their shareholders?

Mr. Gerrand: — Well I don't think that's really a legal question. I think there's elements of small "p" political considerations that are beyond my competence to comment on. I don't know that any successful proceedings could be commenced in court against anyone by reason of any alleged oversight to correct that statement. What effect it has in society is a matter, I think, for this committee to turn its mind to.

Mr. Hillson: — Okay. Now you make note in your report that towards the end of May, as Saskatchewan Power became aware of the full circumstances, that the corporate counsel for Saskatchewan Power recommended the board be convened immediately in order to discuss and apprise them of exactly what had happened. Apparently that didn't happen.

Did you conduct any inquiry as to why the board wasn't convened as Mr. Kram recommended?

Mr. Gerrand: — Which paragraph are you speaking of, Mr. Hillson?

Mr. Hillson: — That's page 53, page 149, sir . . . Paragraph 149.

Mr. Gerrand: — Yes, I'm just reading it. No. We did not determine why a board meeting was not called to deal with that matter itself.

Mr. Hillson: — Do you think it ought to have been?

Mr. Gerrand: — I don't know. I don't know.

Mr. Hillson: — You are aware that when the board was convened on June 20 that Mr. Messer reported to the board at that time that there was no evidence of negligence on the part of Mr. Portugal or other SaskPower officials.

Mr. Gerrand: — That is correct.

Mr. Hillson: — Do you have any explanation at all for that startling statement?

Mr. Gerrand: — All I can tell you, Mr. Hillson, is the conclusion that Mrs. Batters and I came to regarding the factual situation that applied during the early part of April and the latter part of April regarding this transaction.

That factual situation is highlighted by a group of officers of a corporation failing to read documents respecting the sale of an asset of a value of \$25 million approximately, failing to read and understand memoranda that related to that transaction, failing to receive reports from counsel that was employed and retained to advise and carry out that transaction, and not questioning counsel as to why we're not getting any reports.

And we concluded that a corporation of this nature can operate only by the signals it receives orally and in writing from those that are responsible for this sort of activity. And that the officers apparently closed their eyes and their ears and their intellect to all of those signals for a substantial period of time. With a result in the loss of dollars to the corporation, and that that was a breach of section 47 of The Crown Corporations Act.

And why that was not dealt with in detail by the board, I am not certain. But I concluded that very likely it was because of the intention of the chief executive officer of the corporation to bring the matter to a speedy conclusion without litigation or without further inquiry.

Mr. Hillson: — Do you have any reason to believe that the minister in charge would have had any more information than the board? And being — this is reference to the board's information — being there was no negligence on the part of Portugal or other SaskPower officials?

Mr. Gerrand: — I have no knowledge as to what information the minister may or may not have had.

Mr. Hillson: — Now I believe you are aware that in the March meeting of the board, one board member asked the question whether Mr. Portugal had any personal interest in the

transaction.

Mr. Gerrand: — Yes.

Mr. Hillson: — Did you do any inquiries as to where a question like that would have come from?

Mr. Gerrand: — No. There was no factual basis for us to make any such inquiries, and of course we never did get to interview Mr. Portigal at any time.

Mr. Hillson: — But the mere fact of that question must have raised your eyebrows?

Mr. Gerrand: — Well many questions are asked. Sometimes they have a factual basis or a reason, or sometimes they're pulled out of the air. We didn't see any factual basis for the asking of the question or attempting to find any further information about it.

Mr. Hillson: — Now if we accept that the March 31 deadline was so the public would not find out what had been going on in Channel Lake, do you have any concern that Saskatchewan Power's decision on June 20 not to litigate this matter is directly related to the potential embarrassment that if there had been a court case, then obviously the whole story would have become public.

Mr. Gerrand: — I expressed some element of concern in my conclusions in that regard. They're in the report.

Mr. Hillson: — So you are worried that that may have been part of what motivated the decision not to take any remedies.

Mr. Gerrand: — I wasn't worried. I never get worried over litigation or matters which I'm providing professional advice. But it did occur to me that there was a basis for such a conclusion or inference.

Mr. Hillson: — So again that relates back to the reason for the sale in the first place, was to hit the March 31 deadline, to bury the company. And on June 20, if we're going to bury the company, we obviously can't go to court to set aside the agreement.

Mr. Gerrand: — Well those are your words, Mr. Hillson. Mr. Hillson, the motivating factor that we concluded was the sale by March 31 coupled with an objective of let's accept what has happened; there are indications that we got what the value of the company was and let's not stir up the waters any further and get on with other more important matters. That's the impression we, Mr. Grossman and I, developed.

Mr. Hillson: — You have pointed out in your testimony this morning that the initial statements in the Milner Fenerty, the Tavender opinion, seemed to point to a clear recommendation that we attempt to set aside the sale agreement. And then there appears to have been some second thoughts on that.

Do you have any concern at all that Milner Fenerty may have been concerned that legal action would bring to light that copies of all documents had not been forwarded by Mr. Hurst to the corporate solicitor of SaskPower as required by the retainer

letter?

Mr. Gerrand: — No, I have no concerns about that at all. I'm satisfied that Mr. Tavender gave the best advice he could, that it was soundly researched; and if and when it had come to the attention of Mr. Tavender that there had been this perception or in actual fact a breach of the retainer agreement, that Milner Fenerty would not be the law firm that would carry forward that lawsuit. It would have had to have been another law firm. They would have been in a conflict position.

Mr. Hillson: — So you're quite satisfied. Actually I think now you say it, I think that's the testimony for us — Mr. Tavender was not aware of that fact when he wrote his report.

A Member: — No.

Mr. Hillson: — And you're saying as respected senior council, he in fact would not have accepted to conduct the report if he had known that.

Mr. Gerrand: — He would not have agreed to conduct the litigation through that law office when that information came to his attention, if it would have been any other law firm that was independent of the events.

Mr. Hillson: — Okay, thank you, sir. Now you made reference, of course again, that Saskatchewan Power in a number of reports before us have jumped on the explanation that, well, actually we really didn't get taken to the cleaners here after all because basically we sold the company for what it was worth.

However all of that ignores the 10-year supply contract, doesn't it? That's leaving the 10-year supply contract right out of the picture.

Mr. Gerrand: — You've asked a couple of questions there.

Mr. Hillson: — Okay, well you've already told us that Saskatchewan Power in, as I say, some of the other reports before us, they seized on the explanation: well we don't have to do anything here because we got what we should have for the company.

The Chair: — Mr. Hillson, you will give the witness time to answer all your questions please.

Mr. Hillson: — Oh absolutely. I think he asked me for the — I didn't interrupt him — he asked me for the . . .

Mr. Gerrand: — No, no. That's fine.

Mr. Hillson: — I wasn't trying to interrupt Mr. Gerrand.

Mr. Gerrand: — No, no, not at all.

You will recall that we expressed the view that one of the defences that would be raised and may be a successful defence to actions against other persons was the fact that SPC would have difficulty in establishing a financial loss. We didn't say that because we came to the conclusion that SPC did not have a financial loss. They would have difficulty establishing it because of the utterances of their officials that they felt that they

may have got fair value. And in any litigation that flowed from those events those words would be used forcefully against SPC.

Whether or not they suffered a financial loss is speculative. And it may, in my mind, it may be something that you are going to have to answer. But the proceedings that might have been taken, would have been concluded very likely by reason of the passing of the resolution approving of the sale, and that that would have been the final nail in the coffin to any action SPC might have brought.

We don't express a view in our report that SPC got value in the end result. We simply say that by reason of the utterances of its officers they would have difficulty establishing a loss.

Mr. Hillson: — So that wasn't that you were satisfied there was value, but rather the fact that some officials had said we got full value.

Mr. Gerrand: — Well we don't know. We do speculate in our report, in the inferences drawn, that if SaskPower had carried out its business affairs as suggested by Mr. Tavender, they may well have been able to negotiate a beneficial settlement having regard to the admitted value placed on the gas supply agreement by DEML, and they may well have used that as a ploy in negotiating something beneficial by way of settlement.

Mr. Hillson: — But would you agree with me, sir, that when we get to the question — I realize you didn't answer it — but when we do get to the question of whether or not we got value for the sale of Channel Lake, you can't answer that without considering the 10-year supply contract.

Mr. Gerrand: — No, I think that's a fact. Certainly the motivation for DEML in entering into the purchase agreement in the first place was the prospect of having the supply contract . . . that's remarked on in the review, it's commented by Mr. Portugal early on, and I believe it was a remark made by Mr. Owen Mitchell.

Mr. Hillson: — You say that Owen Mitchell also said this is a requirement before there will be a purchase of Channel Lake.

Mr. Gerrand: — No, I don't think he put it that way.

Mr. Hillson: — Okay.

Mr. Gerrand: — The words are to be found in the review. I think that he said that it was regarded as an impetus to enter into the sale agreement — or words to that effect.

Mr. Hillson: — Okay, I guess paragraph 66, yes:

Mitchell emphasized that Direct Energy's main motivation in making the offer is the proposed supply contract.

Mr. Gerrand: — Yes.

Mr. Hillson: — Okay, thank you for drawing that to my attention. And so in terms again of whether or not we got value for the sale of Channel Lake, we have to know if this supply agreement is worth 5 million, 10 million. We have to put a figure on that and then we can make our final decision as to

whether or not we got value.

Mr. Gerrand: — Is that a question?

Mr. Hillson: — Yes, do you agree with that statement, sir?

Mr. Gerrand: — I don't know. There's too many words involved in that; I'd want to study that for awhile.

Mr. Hillson: — Okay, you're a careful man.

Mr. Gerrand: — I don't think I can say much more than what I have said in the report.

Mr. Hillson: — Very good. The last area I want to turn to, and this is the conclusion of your law firm that dismissal for cause exists in the case of Mr. Messer, and I want to refer to you the statements of the Deputy Premier in the House on December 17. Are you familiar with those statements, sir?

Mr. Gerrand: — If you read them to me, I'll tell you if I remember hearing them before.

Mr. Hillson: — Yes, if I may read just a brief excerpt:

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

Do you recall that, sir.

Mr. Gerrand: — I don't recall that statement.

Mr. Hillson: — What I want to put to you then, sir, do you consider it part and parcel of the question on Mr. Messer as to whether or not he kept the minister properly informed so the minister in turn could properly inform the House. Is that . . . do you see that as part of Mr. Messer's duties?

Mr. Gerrand: — That was not included in our opinion nor was it a subject of our inquiry.

Mr. Hillson: — Do you now, in looking back, consider that an important issue as to whether Mr. Messer made sure that the House was properly informed?

Mr. Gerrand: — I couldn't answer that question because I don't have enough factual background even to think about it. I thought that we had quite a chore in considering all of the facts that surrounded the sale of Channel Lake — the jurisprudence that would be the basis for applying the facts to the law — to do the job that we did. So we did not turn our mind to what you're speaking of.

Mr. Hillson: — Okay. Perhaps I'm not being clear enough here, Mr. Gerrand, but the cases you refer to are in private business, I believe. Is that not correct?

Mr. Gerrand: — I think that's right.

Mr. Hillson: — Yes. Now it seems to me when we're dealing

with a public corporation, there is the additional element that the civil servant, if you will, must make sure that the minister is properly informed so the minister can in turn properly inform the House. Do you agree with that statement?

Mr. Gerrand: — I don't know that I can agree with that, Mr. Hillson. I haven't turned my mind to it. The instructions we received did not include an investigation of Mr. Messer's activities in respect to reporting to the minister, being responsible to the minister, accounting to the minister. We did not look at those facts nor consider those matters.

Mr. Hillson: — Okay. So when you answered that, you thought just cause existed. You treated Saskatchewan Power as you would a private corporation.

Mr. Gerrand: — I think that's a fair statement. The jurisprudence that we applied to the facts is the jurisprudence that relates to cause for an individual in a superior position of a major corporation.

Mr. Hillson: — And you concluded that cause for dismissal was present?

Mr. Gerrand: — We concluded that the probability was that a court would conclude that there had been a sufficient breach of employment obligation in this regard to warrant dismissal for cause.

Mr. Hillson: — Now do you think that the principles involved in Saskatchewan Power are identical to a private corporation or do you think there is an additional element because Saskatchewan Power is a public corporation?

Mr. Gerrand: — Well certainly the principles that . . . principles of law that apply to governance in business generally, apply to SaskPower. Whether or not there are some other principles that you allude to, we did not turn our mind to and I do not know the answer to that question.

Mr. Hillson: — Could you now, sir, express some opinion as to whether, because it is a private corporation, there is a broader responsibility to the House and ultimately of course then to the public as a whole because the public as a whole are the shareholders.

Mr. Gerrand: — No, I couldn't express an opinion on that without giving it some fairly extensive thought and research.

Mr. Hillson: — Thank you, sir.

The Chair: — Mr. Hillson, have you concluded your line of questioning?

Mr. Hillson: — I have, madam.

The Chair: — Thank you. I would then at this time ask if there are any other members of the committee from any party that have any further questions of Mr. Gerrand at this time.

Mr. Tchorzewski: — No, we have no other questions other than to thank Mr. Gerrand for his attendance and his input.

The Chair: — Mr. Gantefer, do you have any further questions?

Mr. Gantefer: — No, Madam Chair. I agree to thank Mr. Gerrand.

A Member: — Thank you.

Mr. Hillson: — I echo the comments of Mr. Tchorzewski.

The Chair: — Mr. Gerrand, you will have heard but I will repeat it for the record — all parties are thanking you for your contribution today. I would also remind you that the committee has determined that we will afford all witnesses before this committee the privilege of making both an opening and a closing statement.

Your closing statement can either be in written form or if there is anything that you would like to emphasize today or to expand upon, I would encourage you to make a closing statement verbally now as well.

Mr. Gerrand: — I have no closing statement to make. I wish the committee well. I want you to know that I've practised law for a number of years and I've never had an experience like this previously. And we're never too old to continue to learn, and I've learned a great deal today. Thank you.

The Chair: — So have we, Mr. Gerrand. If I just may make a personal comment, I hope that your five-year-old grandson has enjoyed watching the televised proceedings.

Mr. Thomson: — . . . not picked up any bad habits from Mr. Hillson.

The Chair: — Or Mr. Thomson.

Mr. Gerrand, you are excused, and thank you very much.

Committee members, it is now 5 to 12. I would suggest . . . We do have a letter from the Saskatchewan Party. I believe copies have been made available to all parties. But I would think that rather than deal with that matter today that it might be easier if we dealt with it . . . if we deviated from our usual custom and dealt with it first off tomorrow morning before we begin hearing evidence from another witness. Is that agreed to? Okay.

Secondly, I would suggest we do have one witness called tomorrow. Again, I apologize to committee members that I was unable to secure the attendance of Deloitte & Touche tomorrow so our only witness will be Mr. Bogdasavich from the Department of Justice.

I would like committee members to take a moment now and consider whether it might not be reasonable to instead of beginning our proceedings tomorrow at 9 a.m., instead to start at 10 a.m. and to meet for only two hours tomorrow. How do committee members feel about that?

Hon. Mr. Shillington: — I'd sooner start at 9 and finish at 11.

The Chair: — All right. I was just trying to give people an opportunity to have a little extra shut-eye tomorrow. But if you

want to start at 9, that's what we will do.

Again, I will remind committee members you don't have to expand to fill the available time, so we may adjourn at 11 rather than 12 tomorrow. But for right now, the hour being 12 o'clock, we will now stand adjourned until tomorrow . . . (inaudible interjection) . . . Oh, Mr. Shillington.

Hon. Mr. Shillington: — A simple matter of courtesy to Mr. Bogdasavich, and this is not a big deal. Why are we dealing with the procedural motion first rather than let him get his testimony off and be gone? It doesn't matter. It's just . . .

Mr. Tchorzewski: — It's just a short day. We shouldn't . . .

Hon. Mr. Shillington: — It's just a courtesy to the witnesses that they get their testimony off and be gone.

Mr. Gantefer: — As long as we have the assurance that we're going to get to it tomorrow because I think it's . . . (inaudible) . . . that they do it this week.

The Chair: — Okay, I was simply trying to be courteous to the Saskatchewan Party who had given me more than ample notice that they wished to deal with this tomorrow. But if committee members feel okay about it, we'll deal with Mr. Bogdasavich's testimony and then we will deal with the notice from the Saskatchewan Party.

That being the case now, the hour being past 12 o'clock, we will stand adjourned until tomorrow morning at 9 a.m.

The committee adjourned at 12 p.m.