



Standing Committee on Crown Corporations

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

The Chair: — If the committee would come to attention, please. Thank you.

We will reconvene our hearings, our special Crown Corporations Committee hearings into the Channel Lake circumstances. This morning, committee members, as you're aware, we have Mr. Darryl Bogdasavich from the Department of Justice.

And we also have, at the end of today's proceedings, a motion that was given to me by Mr. Gantefer with respect to a special examination of governance of the Crowns that he wishes us to undertake.

Will committee members have any other procedural matters that they'll be wanting to bring up? Not at least at this time, I gather. All right. Then we'll move directly into the hearing of the evidence and then we'll deal with procedural matters at the end of the day.

Welcome to the Crown Corporations Committee, Mr. Bogdasavich.

Mr. Bogdasavich: — Thank you, Madam Chair.

The Chair: — I understand this is the first time you've had this immense privilege.

Mr. Bogdasavich: — First time I've testified — practised law for almost 30 years — first time I've been a witness.

The Chair: — Well it may make you a more compassionate and humane person.

Mr. Bogdasavich: — Be a better lawyer as a result of it, Madam Chair.

The Chair: — All right. Mr. Bogdasavich, we have some customary procedures that we follow. As you are aware, having spoken with Mr. Priel, you do have the privilege of making an opening and a closing statement.

And we rotate in terms of questioning amongst the three political parties, starting with the opposition, then moving to the third party, and then the government. And then I test to see if the independent members have any questions of you. We go in 30-minute blocks of questioning. And before I swear you in, I have a statement that I read to all witnesses and I will do that now.

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

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

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

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

Mr. Bogdasavich, did you wish to swear or . . .

Mr. Bogdasavich: — 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. Bogdasavich: — I do.

The Chair: — Thank you.

Mr. Bogdasavich, do you have an opening statement you wish to make to the committee?

Mr. Bogdasavich: — No I do not, Madam Chair.

The Chair: — All right. Thank you. Then we will move directly into questioning. Mr. Gantefer for the Saskatchewan Party.

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

Mr. Bogdasavich: — Thank you.

Mr. Gantefer: — I would like to refer you primarily to two reports you made by way of memorandum — the January 21, 1998 report and as well, later, the February 26 report. Madam Chair, I don't have them referenced in all this technical detail. It's the Channel Lake legal opinions, firstly tab 8; and on the 26th report I believe is tab 10.

In the January 21 opinion, you dealt with some of the authority relationships between the Crown Investments Corporation and the SaskPower board and corporation. In paragraph 2 you indicate that CIC (Crown Investments Corporation of Saskatchewan) clearly has the authority to provide directives to SaskPower.

Would that be a simple summary of that paragraph, or would you care to outline exactly the intent of that relationship, the authority relationship between SaskPower and CIC.

Mr. Bogdasavich: — The question posed to me was whether or not CIC had the legal authority to issue a directive to SaskPower not to proceed with the Guyana electric corporation acquisition, and it was my legal opinion that they did have that legal authority.

Mr. Gantefer: — Do they have the legal authority to provide general directives to SaskPower as the prime shareholder or representatives of the prime shareholder?

Mr. Bogdasavich: — Again in my legal opinion, generally they would.

Mr. Gantefer: — Following that authority to do it, would they also have a responsibility?

Mr. Bogdasavich: — Well I think they do. If you take a look at section 5(a) of the Crown investments corporation Act, it provides that:

CIC is the holding company for all subsidiary Crown corporations, and (CIC) shall exercise its supervisory powers granted by this Act in the interests of all Saskatchewan residents;

So as the holding company, they do have a supervisory role over SaskPower.

Mr. Gantefer: — What led CIC to ask you for this opinion? Was SaskPower balking at following directives of CIC, or what motivated them to ask for this legal definition? Was that discussed?

Mr. Bogdasavich: — No, it was not discussed. I really couldn't ask that question. Mr. Gulka-Tiechko, who was the in-house counsel for CIC, had simply phoned me, put these questions to me, and then we met, as I indicated in my memo, at 8 o'clock the morning of the 21st.

Mr. Gantefer: — So there was no background in terms of why you were asked for this opinion; it was pretty much in isolation.

Mr. Bogdasavich: — That's correct. It was really in isolation. He'd asked the questions that are covered in the legal opinion, and I gave him an oral opinion as I recall that morning, and then confirmed it in writing later in the day.

Mr. Gantefer: — In paragraph 3 you talk about the agents — and taking it one step beyond the general corporate structure — that the officers or agents or principals of the SaskPower organization would have the same responsibilities vested on them to comply with CIC directives. Is that the general thrust there?

Mr. Bogdasavich: — Well in paragraph 3 the question that had been put to me was whether or not there was any . . . There had been a suggestion, I think, made to someone at CIC that there may be a conflict of interest in having the same person being the Chair of the SaskPower Board and the CIC Board.

So in paragraph 3 I was simply advising, again Mr. Gulka-Tiechko, that in my opinion there was no such conflict of interest. What's in the interests of CIC automatically becomes in the interests of SaskPower. They are both agents of Her Majesty the Queen.

Mr. Gantefer: — Okay. And then in paragraph 4 it's an indication there that the SaskPower Board and the CEO (chief

executive officer) have a legal obligation to comply with CIC directives.

Mr. Bogdasavich: — In my opinion they do.

Mr. Gantefer: — In some of the information that has been brought before this board, particularly in the case of CIC directing SaskPower to provide financial information in regard to gas trading and things of that nature, and Channel Lake, do you think that the directives of CIC were properly complied with?

Mr. Bogdasavich: — I really couldn't comment on that because I didn't have access to all the board minutes and correspondence between CIC . . . the material that . . . I subsequent, at a later date as you know, the later opinion I had in front of me was the Gerrand review. As of this date on January 21, the only information I had was really the questions that Mr. Gulka-Tiechko was putting to me, and they were general governance questions.

Mr. Gantefer: — And at no time in the mandating or asking you for those opinions did Mr. Gulka-Tiechko indicate the background, and it was pretty much in hypothetical . . .

Mr. Bogdasavich: — Yes.

Mr. Gantefer: — . . . technical kind of question. Thank you.

I'd like to turn then to the February 26 opinion which is tab 10 in the same binder. And in that document one of the initial comments you make is that it's based entirely upon the facts set out in the Gerrand report that you had before you at that point. There were no other investigations or questions or sources of information that you requested or used.

Mr. Bogdasavich: — That's correct. Mr. Shaw asked to meet with me the morning of February 24. He came to my office, I believe it was around 8 o'clock, had with him a copy of the draft Gerrand report, asked me to review it with a view to getting my legal opinion as to whether or not just cause would exist for the termination of the president and chief executive officer based on the contents of that draft report. It's the only document that I reviewed for the purposes of preparing this opinion.

Mr. Gantefer: — When CIC president, David Dombowsky, demanded financial statements from Channel Lake in 1996, none were produced and CIC did not take further action to compel Channel Lake or SaskPower to produce these statements. Would that have been a responsibility of CIC to follow through with . . .

Mr. Bogdasavich: — Well, that's really a decision to be made by the president of CIC. He'd made the demand, and when SaskPower failed to comply with that demand, if the employer, being the Crown, would want to use that as a basis for any disciplinary action . . . They would have had to take further action. It wasn't good enough just to send the two letters demanding the information. They would have to send, in my opinion, a third letter that said either produce this information or you know disciplinary action will follow. There will be some results from your failure to comply.

So again, I was viewing the actions of Mr. Dombowsky with a view towards determining whether or not that would constitute grounds for dismissing Mr. Messer at common law. And in my opinion it wasn't.

Mr. Gantefer: — So from your other opinion you clearly seem to state that CIC had the authority to make such demands and to demand that type of accountability.

One of the old fundamental tenets that I always remember growing up with is — with authority comes responsibility. And in this instance while you clearly indicate the authority is there, it seems to also indicate that CIC didn't live up to its responsibility to exercise that authority in terms of following through and making the proper demands, requests, you know, whatever you want to call it, for the financial information that they were asking for. Is that an abrogation of their authority or their responsibility?

Mr. Bogdasavich: — I really can't answer that question. I don't know enough about the relationship, you know, the working relationship between CIC and SaskPower. What I was asked to do and what I can tell you today is that the failure by SaskPower to produce that information would not constitute just cause for a dismissal with just those two letters.

If there had been a further letter that they wanted this information or disciplinary action would follow, and SaskPower officials did not comply with that, then you would have the basis for disciplinary action.

Mr. Gantefer: — I guess I'm focusing on the other side of it at this moment and not so much saying did SaskPower or Mr. Messer disobey orders. I think I'm focusing more on — did CIC exercise its responsibility appropriately by not following through and indeed issuing, as you say I think, the third letter or make the demands in a clear and concise way.

I see that in paragraph 3, about halfway through, it said: even if those failures did constitute just cause for his dismissal, they have been condoned by CIC who really did not live up to their responsibilities, and I'm focusing more on CIC's responsibility in this exercise as the body that you clearly indicated has the clear authority. With that authority comes the responsibility to exercise the type of supervisory role representing the shareholders that I think your opinion clearly calls for. Was CIC remiss in its duty by not following up and clearly making the demands for that financial information apparent?

Mr. Bogdasavich: — I should point out, Mr. Gantefer, that I have filed a supplementary opinion dated April 14, which reflects upon this issue. As I've already told you, I based my opinion entirely on the Gerrand report. Based on that Gerrand report, I did not see . . . there was very little evidence that there had been information flowing from SaskPower to CIC.

There had been a statement made by Mr. Gerrand in his report that Mr. Dombowsky had been retained by CIC to do a review of the Channel Lake issue and report back. In fact Mr. Gerrand corrected that. He said that was in error, that Mr. Dombowsky had been retained by Mr. Messer and by SaskPower and not by the CIC board. So on April 14 I filed an amended legal opinion — which I have been advised copies of which are being

provided to all the members of the committee — indicating in fact the condonation was not by CIC with respect to the gas trading losses.

With respect to the issue of negligence on the gas trading activities and failing to establish formal policies and procedures, again nothing I reviewed indicated CIC had any information in that regard. It was the SaskPower board. And in my opinion, full disclosure was being made to the SaskPower board.

Mr. Gantefer: — In your opinion was CIC and its board remiss in its duty by not demanding that information be provided to themselves.

Mr. Bogdasavich: — Again I really can't comment on that because I'm not . . . those would be good questions to put, I think, to the officials from CIC. I have no information, no knowledge of the relationship between CIC and the subsidiary Crown corporations. This is not something that would fall normally within the jurisdiction of the civil law division of the Department of Justice in terms of providing information in that regard. CIC has always had their own in-house counsel and corporate secretaries and so we provide little information in that regard.

Mr. Gantefer: — In your opinion you give a number of reasons why you believe that Mr. Messer could not be or should not be dismissed with cause, the first being that because CIC failed to demand the information, and by implication they condoned it.

On paragraph 5 you say there are a number of broader issues that would support the finding and one of them was that the actual price reflected the worth, quote "the worth" of Channel Lake assets. Again, did you accept that evaluation out of the Gerrand report?

Mr. Bogdasavich: — Yes I did. That was taken directly from the Gerrand report, paragraph 50 as amended in paragraph 55 of Gerrand report.

Mr. Gantefer: — So, as you testified in terms of this information, it was taken out of the report and you made no effort to validate its authenticity or its accuracy?

Mr. Bogdasavich: — My opinion was based entirely on the Gerrand report. I had no other facts in front of me.

Mr. Gantefer: — Okay. Now it also indicates in your report that if a dismissal process was to occur, it should not occur on the level of CIC, it should occur on the level of SaskPower.

Mr. Bogdasavich: — That's correct.

Mr. Gantefer: — And I think that you caution and you give some cautionary words in that regard. I think clearly you say that CIC does not have the legal authority itself to dismiss Mr. Messer.

Mr. Bogdasavich: — That's correct.

Mr. Gantefer: — CIC through its authority line could direct

SaskPower to have that undertaking?

Mr. Bogdasavich: — Yes, in my opinion, CIC's board could have given a directive to the SaskPower board that in their opinion Mr. Messer should be removed from his position. They have the legal authority, in my opinion, to do that.

Mr. Gantefer: — And then the CIC board through its Chair would be the appropriate individuals to exercise that decision.

Mr. Bogdasavich: — The appropriate individuals to carry that decision out would be SaskPower's board. And I base that on, I can refer you to the bottom of page 2 of my legal opinion, subsection 9(2) of The Power Corporation Act specifically provides that:

All . . . officers and employees shall be under the control and supervision of the corporation.

Mr. Gantefer: — In paragraph 9 you suggest that if this action is to be taken I believe that the message should be conveyed to him, Mr. Messer, by the chairperson of the SaskPower board.

Mr. Bogdasavich: — That's correct. Or his designate.

Mr. Gantefer: — Or his designate.

Mr. Bogdasavich: — It has to flow from the authority of the SaskPower Chair.

Mr. Gantefer: — In the testimony we heard from Mr. Messer, I believe he said that the ultimatum of either resigning — given to him of either resigning — by supper time or being terminated with cause was delivered to him by Mr. Wright. Did you recall that testimony?

Mr. Bogdasavich: — I have not specifically reviewed the *Hansard* verbatim of that. I was I think — I picked it up either from the newspaper or from coffee talk some place — that that was in fact Mr. Messer's evidence. Certainly Mr. Wright did not consult with me with respect to that.

Mr. Gantefer: — Given your opinion, was Mr. Wright overstepping his authority?

Mr. Bogdasavich: — Not if he had instructions from the Chair of the SaskPower board. As I indicated to you, the authority would flow from the SaskPower board, they could pick their delegate to deliver that message to Mr. Messer. And I'm assuming that Mr. Wright received instructions from the SaskPower board in that regard.

Mr. Gantefer: — If he didn't receive that authority clearly from the SaskPower board — in that hypothetical event — he would be overstepping his authority?

Mr. Bogdasavich: — He'd have no legal authority to do it in my opinion. CIC, and he's the president and chief executive officer of CIC, on his own he does not have that power. Neither does the CIC board. They can issue a directive to the SaskPower board, but that action would have to be carried out under the authority of the SaskPower board and that would be

the Chair of that board.

Mr. Gantefer: — Could the minister direct Mr. Wright to make such a decision?

Mr. Bogdasavich: — On behalf — you're talking about the Chair of the board now?

Mr. Gantefer: — The CIC minister.

Mr. Bogdasavich: — Well in this particular case, the Chair of the CIC board and the Chair of the SaskPower board are one and the same person. So to answer your question shortly, yes, he'd have that authority, but as the Chair of the SaskPower board.

Mr. Gantefer: — Would it have to be . . . in order to have that authority vested in the Chair, would it have to be by resolution of the board?

Mr. Bogdasavich: — He'd certainly have to have the authority of the majority of the board members, with the possible exception that there might have been an executive committee. And in fact you'll note in several of my opinions, I don't know the inner workings of those boards and I suggested that in fact Mr. Shaw go back to his own corporate secretary and find out whether or not authority in that regard — authority to hire or authority to fire in this case — had been delegated to an executive committee of the SaskPower board.

The statutory framework under which SaskPower operates contemplates there being such executive committees. And again it's my general knowledge that that is not uncommon, for executive committees to be set up to handle specific responsibilities. I know SaskPower had several of those executive committees.

Mr. Gantefer: — And they could be constituted in such a way as that they could pass on the appropriate authority, something as significant as the dismissal of the president?

Mr. Bogdasavich: — That's correct, yes. The SaskPower board could, by resolution, appoint an executive committee whose responsibility it was to hire and/or fire any of the corporate officers.

Mr. Gantefer: — Moving on to the March 4 opinion — and that's at tab 12 in the same binder, Madam Chair — in it you say that there is significance in the fact that the SaskPower board failed to launch an investigation.

Mr. Bogdasavich: — You're referring now to paragraph 3?

Mr. Gantefer: — Yes. Instead of doing that, the board ratified the deal. Now is that significant in so far as that it further makes the case against dismissal of Mr. Messer with cause unlikely or . . .

Mr. Bogdasavich: — That's the reason that it appears in my opinion because in fact in my opinion it does. If the SaskPower board felt that they did not have sufficient information with respect to this Channel Lake matter in front of it to deal with this issue and to ratify the deal at that June 20 meeting, it was

incumbent upon the board to ask for further information.

Today, knowing what I know because of access to other information I've seen or heard or read, I probably would be frankly a little less hard on the board than I was. When I wrote this opinion I did not have in front of me any of the minutes of any of the board meetings and, in particular, the audit and finance committee board meetings.

Subsequent to this, writing this opinion, SaskPower in fact disclosed voluminous documents which have been provided to the board. And I did have access to those, Mr. Gantefer, and reviewed them, particularly with a view to determining what information SaskPower's board either had in front of it or would be deemed to have through that audit and finance committee. And I think today, I probably would be . . . if I was writing this on today's date with the knowledge I have today, I might be a little less hard on the SaskPower board than I was in my March 4 memo.

But again I would reiterate to you that I was viewing this from a perspective of Mr. Messer's lawyer, looking at the reasons that had been put forward for his dismissal. And in fact SaskPower's board couldn't ratify this deal; and then in February of 1998 come along and say gee, we didn't have enough information in front of us on that date. It was incumbent upon them that day to ask for it — adjourn the meeting and request further information from officials from SaskPower.

Mr. Gantefer: — There's been a number of witnesses testify, and they've used different words to describe the significance of the March 31 deadline that this deal was to be consummated by. In any of the information that you had before you, was the significance of this deal and its subsequent impact on the haste at which the transaction occurred, was that ever discussed as to where that originated from?

Mr. Bogdasavich: — No, other than the information that I had from the Gerrand review. And I was aware, when I was preparing my opinions, that time was of the essence in terms of disposition of Channel Lake. That appears several times in the Gerrand report.

Mr. Gantefer: — In the responsibility of the SaskPower board then, do you believe they exercised their responsibility fully in condoning or allowing that type of hasty decision to occur?

Mr. Bogdasavich: — Well that's really again a question you'd have to put to the board members and what facts they had in front of them.

As I indicated to you, on March 4 when I wrote this opinion, what I had in front of me was the Gerrand report. Subsequent to that — and I believe it was sometime in April that SaskPower produced all the documents — I had access to those documents and one of the few things I looked at was confirmation of this part of my legal opinion. And I did that by reviewing board minutes — SaskPower board minutes, and as I said, in particular the minutes of the audit and finance committee.

Certainly there were members of the SaskPower board that had enough information in front of them to make the decision — in

my opinion. But again that's a question you would have to put to those board members — as to whether or not they felt they had sufficient information to make the decision that they were being asked to make at that meeting of June 20.

Mr. Gantefer: — You testified that in reviewing the testimony and subsequent documents, that you would tend to be perhaps a little kinder or a little easier on the SaskPower board. I would like to direct your attention to the role of Mr. Kram, Christensen, and Patrick.

On paragraph 7 of your report you again quote the Gerrand report and you go on to say that, in about the third line, Gerrand correctly states that this failure constituted a breach of clause 46(1) of The Crown Corporations Act, which statutorily imposes on every officer of SaskPower a duty to:

exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances;

Would you first of all indicate to me an explanation of the impact of that clause 46(1)?

Mr. Bogdasavich: — Well I agreed. My statement and my opinion was simply I was agreeing with Mr. Gerrand's comments that in his opinion those officials had breached that pact. In my opinion, based again on the facts that I saw here — and there may have been other mitigating circumstances that I am not aware of, but certainly based on the facts as reviewed in the Gerrand report — my conclusion was that those officials were negligent. I was simply agreeing with his statements that are set out in his report.

And in fact I think it starts at about paragraph 242 of his report that I specifically was referring to and confirming with my client — just give me a moment please, Madam Chair.

The Chair: — Take as much time as you wish, Mr. Bogdasavich, as long as you can answer the question completely and fully.

Mr. Bogdasavich: — Yes, starting on page 87 of the Gerrand report, my comment in my March 4 opinion was simply a confirmation of the comments made by Mr. Gerrand on pages 87 and 88 with respect to the conduct of those officials.

Mr. Gantefer: — In your opinion, what is the down side or the consequences of negligence under this section? Is that grounds for dismissal with cause? Or how does negligence under this section . . . you know, what's the penalty for non-compliance?

Mr. Bogdasavich: — I did not and have not formed a legal opinion as to whether or not there would be just cause for dismissing these officials, but in my opinion they clearly were guilty of negligence. Whether or not that negligence constitutes just cause is a question that I have not answered, again because I feel that I didn't have enough information in front of me to come to that conclusion. I must add I wasn't asked to give an opinion with respect to whether or not this cause existed.

The question put to me was whether or not there was just cause

to dismiss Mr. Messer, and as you can see from my opinion, I concluded of course that he did not. And he had relied upon those officials and frankly those officials let him down in my opinion.

Mr. Gantefer: — So applying the same standards that you applied to Mr. Messer, I guess if you were asked by the appropriate authorities to supply an opinion as to if there was just cause to dismiss these officials, you could do that?

Mr. Bogdasavich: — Yes. I certainly would want to have my client's interview and get the other side of the story because there usually is one. I've been doing employment law for many, many years and have handled a lot of . . . hundreds of files for three different administrations and there's always another side of the story. So I'd want to find out what those mitigating circumstances were.

Some of them were brought forward to me in an opinion supplied by another lawyer to this committee, again a copy of which was given, and I have reviewed that. So there clearly were some other mitigating circumstances.

But based on this report and their failure to read those documents before signing, I was simply agreeing with Mr. Gerrand's conclusions and comments as they appear, as I said, on pages 87 and 88 of his report.

Mr. Gantefer: — Is this the type of information that the SaskPower board should have . . . or should be asking for in terms of exercising its responsibility of governance of the organization?

Mr. Bogdasavich: — Well I think that's a question, again, very difficult for me to answer. It goes to the internal affairs really of SaskPower and the relationship between management of SaskPower and their board. And I do not feel that I have enough knowledge of sort of those of those internal workings to comment. I think it would be a little unfair of me to draw that sort of a conclusion with the little bit of knowledge that I have.

Mr. Gantefer: — In any of your work I believe that you focused . . . the request is to focus on the severance of Mr. Messer and that whole relationship. Do you feel, in that exercise . . . or was it part of your review to review the communications that were made to Mr. Messer by Mr. Portugal?

Mr. Bogdasavich: — Again I was asked to simply review what was in the Gerrand report and comment on that. I did — I certainly went through again . . . in the appendices to the Gerrand report, there are a series of memoranda from Mr. Portugal to Mr. Messer and the other directors of the Channel Lake corporation and I did review those memoranda prior to forming my opinion.

Mr. Gantefer: — So in indicating that there wasn't the grounds for dismissal with cause for Mr. Messer, I think in your report you also indicated that Mr. Messer had an oversight or something of that nature in not properly following up on a memorandum you know, surrounding the closing on April 1 through 4 to realize the significance of those memorandum. And there's been testimony that maybe they could have been worded better and all the rest of it.

In an oversight again, was that largely the responsibility of Mr. Messer's officials, or do you feel that he had a certain responsibility to follow up on that himself?

Mr. Bogdasavich: — Well in a more general sense he was the chief executive officer of the corporation. He's got responsibility ultimately for everything that occurred. And he paid the price.

Mr. Gantefer: — By him paying the price did that get the SaskPower board off the hook? Where was the level of their responsibility to follow up on this?

Mr. Bogdasavich: — Again the question being put to me was whether or not there was just cause to dismiss Mr. Messer. In my opinion clearly there was not. They had no just cause for the dismissal, notwithstanding that he ultimately is responsible for everything that went on there.

The Chair: — Mr. Gantefer, your time is coming to a close, but I'll test the committee. If you wish to carry on for five minutes more, I think it might be reasonable.

Mr. Gantefer: — I can quit now and see how the rest of the questioning goes and perhaps have some opportunity to follow up.

The Chair: — Thank you, Mr. Gantefer. Before I move to recognize Mr. Hillson from the Liberal Party, I would like to draw committee members' attention to the fact that we have a visitor here today. Committee members will be aware that the Midwestern Legislative Conference is occurring in Saskatchewan right now and we have several politicians from North Dakota visiting Regina.

And one of them is shadowing Mr. Hillson for the day, and we will leave it to him to decide if that's a good or a bad thing, Mr. Hillson. But I would like to introduce to committee members, Representative John Dorso of the Republican Party, from Fargo, North Dakota. He has a very distinguished and impressive biography, including chairing several committees and being the majority leader in the House.

So he will probably want to make sure that you're all on your best behaviour. Will you please welcome Representative Dorso.

All Members: Hear, hear!

Mr. Hillson: — Very good. And, Madam Chair, may I assure you and members of the committee that Mr. Dorso is getting a "liberal" education into Saskatchewan politics.

The Chair: — And coming to the New Democratic caucus tomorrow to find out reality.

Mr. Hillson: — Mr. Bogdasavich, the first documentation we appear to see concerning termination of Mr. Messer is dated February 26 by yourself.

Mr. Bogdasavich: — That's correct.

Mr. Hillson: — Is that the first date you had received instructions to do something regarding termination of Mr.

Messer or had you been party to discussions prior to that date?

Mr. Bogdasavich: — I had not been party to any discussions prior to that date. The first instructions I had on this would have been either the evening of February 23, which would have been a Monday night . . . and I think that's when I had a call from Mr. Shaw asking if he could meet with me as soon as possible. And he didn't even specifically say, as I recall, that it was with respect to the Jack Messer issue. He did tell me it was with respect to a matter arising out of Channel Lake. And I think that was on the evening, Monday evening, February 23 and I met with him at I believe 8:00 a.m. the following morning.

Mr. Hillson: — Okay, so February 23 was the first you knew something was afoot but you didn't have the details.

Mr. Bogdasavich: — That's correct.

Mr. Hillson: — Okay. So who gave you the instructions to do the memo of February 26?

Mr. Bogdasavich: — Mr. Shaw.

Mr. Hillson: — And March 2 you drafted a letter of dismissal for Mr. Messer. Who gave you those instructions?

Mr. Bogdasavich: — Those instructions came from Mr. Gulka-Tiechko in a telephone call again at about five to eight that morning I recall. Just let me refresh my memory by referring to my file if I could please, Madam Chair.

Yes, I received instructions from Mr. Myron Gulka-Tiechko at 8:30 a.m., Monday, March 2.

Mr. Hillson: — And did Mr. Gulka-Tiechko indicate to you where those instructions had come from? I'm assuming that he was not the person who decided to terminate Mr. Messer.

Mr. Bogdasavich: — He told me that he had been requested to do it, I think by John Wright but he might have said it was Mike Shaw. Mike Shaw had been my primary client in this matter and it may have been Mr. Shaw.

Mr. Hillson: — Now I want you to turn to tab 1 of binder 1, if you would, please. And I realize that this is not personally your work but it is a . . .

The Chair: — Would you identify it for the record, please, Mr. Hillson.

Mr. Hillson: — CLP 1/1 I believe it is. Binder 1, tab 1. And it is a memo . . . a legal opinion on Channel Lake Petroleum and its relationships to Saskatchewan Power. And basically what it sets out there of course is that subsidiaries of a Crown corporation are not bound by the rules of the Crown corporation.

Mr. Bogdasavich: — You can appreciate I did not write this legal opinion. It was not even done by a lawyer in our division; it was done by a Department of Justice lawyer.

Mr. Hillson: — Are you familiar with that opinion?

Mr. Bogdasavich: — I'm really not.

Mr. Hillson: — Okay.

Mr. Bogdasavich: — I read it, only because it was in the binder, but I was not aware that this opinion had been written until this binder was delivered to me.

Mr. Hillson: — Are you familiar with the basic point though, that the government takes the position that if Crown corporations set up subsidiaries, those subsidiaries are not bound by the rules of operation or reporting that the Crown corporations themselves are bound by?

Mr. Bogdasavich: — I'm not. That's not something that I've turned my mind to, Mr. Hillson. I'm sorry.

Mr. Hillson: — Okay. So you're not able to make any comments as to whether that is proper operation of our Crown corporations, and whether that amounts to really the sort of operations our Crown corporations should be doing in terms of being bound by the rules and reporting to the people of Saskatchewan?

Mr. Bogdasavich: — I personally cannot because that's not something that I've ever considered or have I ever been requested to provide a legal opinion in that regard.

Mr. Hillson: — Okay. Do you have any views as to whether that ought to be changed and whether all subsidiaries of Crown corporations ought to be bound by the same rules as our Crown corporations?

Mr. Bogdasavich: — I really don't. Had I been corporate secretary over at CIC for a few years, I'm sure I'd have pretty strong opinions about that, but I don't. I just don't operate in this area of the law at all.

Mr. Hillson: — Okay. No, I appreciate that then. Now do you have a view, sir, as to whether there was any approval of the terms of the sale of Channel Lake by the board prior to June 20? We obviously know that there was the March approval to sell, but appears to be of very different terms than what in fact we sold it under.

Mr. Bogdasavich: — Again I mean my review — keep on coming back to this, Mr. Hillson — that my review went through the Gerrand report. I'm aware that the matter was before the SaskPower Board on a number of occasions — March 27, March 13, and I seem to recall one even earlier than that.

Again, if you give me a moment I'll just look at my chronology of events.

Mr. Hillson: — I don't mean to interrupt you here but I mean I think we're . . .

Mr. Bogdasavich: — Yes, yes.

Mr. Hillson: — . . . we're on common grounds that there was some sort of approval on March 27.

Mr. Bogdasavich: — The first approval actually was January 13, 1997.

Mr. Hillson: — Right. And what I want to know is, those earlier approvals in January and March, do they constitute an approval of the agreement as such?

Mr. Bogdasavich: — In my opinion they do not.

Mr. Hillson: — Do not?

Mr. Bogdasavich: — Yes. The final agreement that was signed was certainly not approved by any of either the resolutions of January 13, March 13, or March 27. I think the agreement, the deal that was struck there, represents a deal that was in excess of the authority given by the SaskPower Board.

Mr. Hillson: — Okay. So in view of the fact the agreement does not correspond to the approval, the authorization of the board . . . none of those authorizations prior to April 1?

Mr. Bogdasavich: — Yes. That's the reason I'm assuming they brought it back to the SaskPower Board on June 20 to have them approve the deal, because there was no valid, legal approval prior to that date.

Mr. Hillson: — Okay. So you accept then that there was no approval of the terms of the sale prior to June 20, 1997?

Mr. Bogdasavich: — In my opinion that's correct.

Mr. Hillson: — So it then follows that you believe we may well have had civil remedies to set aside this agreement prior to June 20?

Mr. Bogdasavich: — I am not really in a position to offer an opinion again in that regard. I did not consider the issue of remedies that SaskPower may have had prior to that point in time. There were opinions done, and again they're referred to in the Gerrand report, but I formed no opinion with regard to that.

Mr. Hillson: — Well let me change the question somewhat if I may then. Would you then say that, assuming remedies did exist, they were foreclosed on June 20?

Mr. Bogdasavich: — That may not necessarily be the case. Again . . .

Mr. Hillson: — Okay. But what is the answer?

Mr. Bogdasavich: — I can't offer that opinion. I'm speaking generally as a lawyer.

Mr. Hillson: — Yes.

Mr. Bogdasavich: — That may not be the case. I mean there are many reasons why there may have had to be a ratification of that deal. And some of those at least leave open the possibility that the ratification would not foreclose legal action. But again I have not considered that question. I can only speak generally.

As a legal position, a ratification of that deal does not necessarily foreclose a legal action being taken. For example,

had one of the officials been guilty of fraud or some misrepresentation that the board didn't know anything about, I think that would have the effect of negating the ratification of June 20.

Mr. Hillson: — Okay, so you do not necessarily endorse the view that the June 20 ratification ends the matter.

Mr. Bogdasavich: — In my opinion, there are factual circumstances which could allow an action to proceed subsequent to the ratification. I personally don't know of any, but in law that's a possibility, certainly.

Mr. Hillson: — Are you aware, sir, that in the reports indicating that we got value for the assets of Channel Lake, these reports apparently did not take into consideration the 10-year supply contract we have with the purchaser?

Mr. Bogdasavich: — The only knowledge again I have of that is the comment that appears in the Gerrand report that a valuation report was prepared, that the officials of Channel Lake and of SaskPower, and again ultimately SaskPower's board, accepted that a discount of 15 per cent was reasonable in all the circumstances, and they came up with a value of I think, \$20.3 million.

Mr. Hillson: — The valuation of the assets.

Mr. Bogdasavich: — The natural gas assets as I understand it.

Mr. Hillson: — What I'm getting at though, Mr. Bogdasavich, is that that valuation of the assets totally ignored the fact that part and parcel of the sale agreement is the 10-year supply agreement that we gave to Direct Energy.

Mr. Bogdasavich: — I have no knowledge of that, but again I guess that's possible. Certainly from this report I think Mr. Drummond is quoted as saying — or maybe it's Mr. Dufresne — is quoted in the Gerrand report as saying that the gas deal was the bigger issue. It was the motivating factor behind the purchase of the assets. They were more interested in the gas deal than they were, I think, in the assets of Channel Lake. That's their position as stated in the Gerrand report.

Mr. Hillson: — Right, and they have given us evidence that they consider the contract to be worth 5 million and I believe some others value it even higher. So the valuation of the assets really is simply not the whole story in determining whether or not this is a good deal for Saskatchewan Power.

Mr. Bogdasavich: — It's probably a better question to put to Deloitte Touche than to me, Mr. Hillson.

Mr. Hillson: — Very well. I'll move on to the next point. You've told us that your opinion that just cause for dismissal was based solely on the Gerrand report.

Mr. Bogdasavich: — That's correct.

Mr. Hillson: — I want to put to you that Saskatchewan Power is of course a public corporation. That's correct.

Mr. Bogdasavich: — Correct.

Mr. Hillson: — And as such we are told, or have been told on many occasions, that the shareholders are the people of Saskatchewan.

Mr. Bogdasavich: — Correct.

Mr. Hillson: — The people of Saskatchewan were told by news release in April that we had done very well on this sale. We had sold the company for 25 million, made a \$5 million profit. You're aware of that?

Mr. Bogdasavich: — I am. I think you're referring to there was a news release on April 9, I think Mr. Gerrand refers to in his report.

Mr. Hillson: — Correct. You are aware that when Saskatchewan Power realized a month and a half later that that was not the case, Mr. Messer found no cause to correct that false news release. You're aware of that?

Mr. Bogdasavich: — I'm aware of that. Again from the report and . . .

Mr. Hillson: — Well my question to you, Mr. Bogdasavich, is what effect does that have on the question of severance for Mr. Messer? I mean does he have an obligation to keep the minister, the legislature, and the "shareholders" properly informed?

Mr. Bogdasavich: — That's an issue entirely between Mr. Messer and the SaskPower board in terms of what his obligations are. He has to satisfy the SaskPower board.

Mr. Hillson: — Well what do you say? Is issuing a news release that turns out to be wrong . . . and then we're not going to correct it, we're just going to let the shareholders think they made \$5 million profit when they didn't — are you comfortable with that or do you consider that to be pretty shabby treatment of the "shareholders"?

Mr. Bogdasavich: — Mr. Hillson, I can only really comment on the issue of whether or not there was just cause for Mr. Messer's dismissal. There was not just cause for his dismissal in my mind, quite clearly.

Mr. Hillson: — Well I mean I'm not trying to argue with you here, sir, but to me, leaving this news release out there, not correcting it — this report to the legislature and to the people of Saskatchewan — I think that touches on whether or not there's cause for dismissal.

I mean if he owes a duty to the public, has this duty been discharged by leaving a news release like this out there and not correcting it?

Mr. Bogdasavich: — Again, that's I think a question for the SaskPower board to determine if they were . . . If they felt that was misleading, I suppose that is something they could have dealt with. Subsequent to that, as of the end of May, there was full disclosure being made as to what the real deal was. And I really can't comment any further on that.

I don't see any legal relationship, if you're trying to draw a relationship, between establishing just cause and this news

release. I simply . . . that's not a conclusion that I would draw based on that.

If we were to find just cause every time some misleading news release was issued, I suspect we'd all have to look very carefully in the mirror, Mr. Hillson.

Mr. Hillson: — I assume that . . .

The Chair: — I take it the witness is relaxing just a little. Mr. Hillson, carry on.

Mr. Bogdasavich: — It's a general comment, Madam Chair, as a taxpayer and citizen of the province, not as a lawyer in Justice.

Mr. Hillson: — I take no offence. I assume that remark was directed at the NDP (New Democratic Party).

Mr. Bogdasavich: — In Justice we love you all.

Mr. Hillson: — Well you are aware of course that Mr. Gerrand referred to this news release and he also found that in his view there was just cause for dismissal because, I believe the term is, Mr. Messer misdescribes events.

Mr. Bogdasavich: — Well as I read, Ms. Batters's legal opinion.

Mr. Hillson: — Yes.

Mr. Bogdasavich: — Signed by her.

Mr. Hillson: — Yes. Mr. Gerrand has endorsed it.

Mr. Bogdasavich: — And that he'd read . . . it was in the covering letter he'd been faxed that we have a copy of the opinion. One of the grounds upon which their opinion relies for finding there was in fact just cause was misleading in two contexts. And it was misleading with respect to the negligence of his officials and misleading with respect to failure to adequately disclose the legal opinions to the board on June 20.

Mr. Hillson: — Right.

Mr. Bogdasavich: — So if they refer to that, I have forgotten that, Mr. Hillson. If in fact it's referred to, I'm not aware of it in their legal opinion. Again if I can just refresh my memory I'll take a look at the opinion on paragraph 25.

Mr. Hillson: — Yes.

Mr. Bogdasavich: — I wouldn't read that into their reasons but it may not be unfair to do so. I think that's a reasonable conclusion one could draw.

Mr. Hillson: — Okay. Well I don't want to get into an argument with you but I do put it to you that, although the news release was probably given in good faith at the time, surely if Mr. Messer felt he owed a duty to the shareholders of Saskatchewan Power, then when he realized this news release was false, he had a duty to correct the misinformation to the shareholders did he not? Back to you.

Mr. Bogdasavich: — I can't really comment on that. I mean I don't know enough about what is going on in SaskPower, how much money was made and how much money was lost. I mean I read through the Deloitte Touche report, saw the figures that they referred to, and that I was reading it with review to determine whether or not anything that was contained in the Gerrand report would constitute just cause — and in my opinion that clearly would not.

A burden on the employer to establish just cause for summary dismissal is a very, very heavy one, Mr. Hillson, as you know.

Mr. Hillson: — Yes.

Mr. Bogdasavich: — You've practised law for a long time and you're aware of the fact it is an exceedingly heavy burden that's put on you. If you want to summarily dismiss an employee you're going to have to prove, not just misconduct, but serious misconduct. Incompetence is not good enough.

You and I can be incompetent but that does not justify our employer in summarily dismissing us. Ultimately it could lead to our dismissal. Warnings are given. You know, Mr. Bogdasavich, your standard of performance is not up to that which we expect. Either pick up your socks or you may lose your job in six months. That's quite one thing to do. But it's quite another thing to do, to call an employee into a meeting and say you are summarily dismissed this instant. The courts take a very jaundiced view of employers that do that.

I have reviewed, and I told that to the CIC board when I met with them for my March 4 opinion, over 1,500 dismissal files in the last 25 years. And we do not have a good track record of winning dismissal cases in the courts.

Mr. Hillson: — But Mr. Messer fought them tooth and nail all the way, did he not?

Mr. Bogdasavich: — Pardon me?

Mr. Hillson: — Mr. Messer was generally of the view that they should be fought tooth and nail? No comment?

Mr. Bogdasavich: — Ask Mr. Messer that question.

Mr. Hillson: — Okay.

Mr. Bogdasavich: — I can't get into his mind.

Mr. Hillson: — Very well. I want to go back to the Gerrand report though. The opinions there were, of course, they ultimately found that there was cause for dismissal. But it was based on the private corporate sector and all the opinions referred to there are based on the private corporate model.

Now as we said, Saskatchewan Power is a public corporation.

A Member: — That's correct.

Mr. Hillson: — And I first of all want to ask you, do you think that puts the additional element of the public responsibility into the mix?

Mr. Bogdasavich: — On reviewing all the jurisprudence in the area of employment law and unjust dismissal — and I do that, I read most reports that come out, most case decisions that come out — I am not aware of such a distinction being drawn in the jurisprudence. Sometimes we as government lawyers like to feel that maybe we're a little bit hard done by because we represent the government, and I think the courts are going to probably sympathize with a claimant bringing an action against a government or a large insurance company.

But there's nothing, you know, expressed in any of the jurisprudence to show such a distinction.

Mr. Hillson: — Well specifically, is there not in the public sector the principle that public officials must keep the minister properly informed so that the minister can discharge his duty to the House in making sure the House is in turn properly informed?

Mr. Bogdasavich: — Yes, and I think my analogy in the private sector — chief executive officer, same obligation to keep his or her board of directors informed.

Mr. Hillson: — Okay.

Mr. Bogdasavich: — I do not think there's a distinction in law, Mr. Hillson, to answer your question.

Mr. Hillson: — Okay. But you do accept that one of the fundamental duties of a public official is to make sure that the minister is properly informed so the minister in turn can properly inform the legislature, and of course through the legislature, ultimately the people.

Mr. Bogdasavich: — In this case again, it would be the board of directors. It happened to be a minister because it was . . . the minister was a Chair in that case. But I prefer to draw the responsibility to the board of directors. It may not always be a minister.

Mr. Hillson: — But my question to you refers specifically to the minister, and this may be the same question as the news release, but on December 17 the minister made a statement to the House which he admits to be incorrect, and he says he did it because the information he had was incorrect.

Now my question for you is, in determining whether or not there's just cause for dismissal, is not properly informing the minister a factor that has to be considered? I mean leaving the minister in the position where he is not properly informed and he in turn does not properly inform the House, is that not a serious matter?

Mr. Bogdasavich: — Sure. That's a legitimate factor to take into account.

Mr. Hillson: — Did you take that into account?

Mr. Bogdasavich: — I took into account what is contained in the Gerrand report from page 1 up to and including the end of every one of the appendices that are attached. That formed the basis of my legal opinion in its entirety.

Mr. Hillson: — So the December 17 statements of the Deputy Premier in the House were not taken into account.

Mr. Bogdasavich: — They're not referred to in this report.

Mr. Hillson: — No. Yes, I realize that. So they're not part of your opinion?

Mr. Bogdasavich: — That's correct.

Mr. Hillson: — But you agree with me, they are relevant in determining whether the minister was properly informed and whether there is just cause.

Mr. Bogdasavich: — Well they may be relevant. Of how much use they are to an employer justifying a summary dismissal is an entirely different question. Now it's something I'd look at. If it'd been sent to me as a lawyer and say, examine this, I'd take that into account as one of the factors.

Mr. Hillson: — Well do you agree that our whole system of ministerial responsibility and parliamentary democracy breaks down unless the minister is properly informed and in turn properly informs the House and the people?

Mr. Bogdasavich: — 100 percent agreement with you, Mr. Hillson.

Mr. Hillson: — Thank you.

Mr. Bogdasavich: — That is a very important aspect for any public servant. That lies at the very basis of accountability.

Mr. Hillson: — It's the foundation of our system.

Mr. Bogdasavich: — It's the foundation of accountability in a parliamentary system.

Mr. Hillson: — Then finally, Mr. Bogdasavich, if I may ask you, sir . . . of course you've told us your opinion was based on the Gerrand report.

Mr. Bogdasavich: — Correct.

Mr. Hillson: — You've obviously seen and heard considerably more since then.

Mr. Bogdasavich: — Well in particularly some of the documents — I referred to that already — filed by SaskPower, and what I did was I wanted to review what knowledge the SaskPower board had because it related directly to about three of the actual matters that I had examined with a view towards just cause. And so when those documents were produced, in fact what I was doing was checking my opinion against those minutes.

And frankly, without being asked, had I found something in those minutes which would give me a reason to believe that my opinion should be varied at all, I would have, of my own initiative, submitted a further written opinion without even being requested. Because I think it'd be irresponsible for me to say there's information that the SaskPower board had or did not have and I've got my opinion hanging out there; so that's what I

did do.

Mr. Hillson: — Would you have a somewhat different opinion today if you were asked to write an opinion today on the question of just cause?

Mr. Bogdasavich: — I would not. Based on again, you know, what I've seen. In fact what I saw in the board minutes confirmed the correctness, in my mind, of my opinion. I have been told nothing nor have I read or heard anything that would alter my opinion. In fact what I've heard confirms that my opinion was the correct one.

Mr. Hillson: — So you continue to be of the view that just cause did not exist; therefore if we wish to dismiss Mr. Messer, severance was required.

Mr. Bogdasavich: — That is correct.

Mr. Hillson: — And you are in disagreement with the Gerrand law firm on that point.

Mr. Bogdasavich: — I am in disagreement with the Gerrand law firm on that point.

Mr. Hillson: — Madam Chair, I think that concludes my questioning. However, Mr. Bogdasavich of course said I've practised law nearly as long as him, but my practice was not in the lofty heights of corporate law. I've had somewhat grittier experiences in the practice of law. And I would just ask to consult for a moment to see if I have anything further.

The Chair: — Look what happened to you, Mr. Hillson.

Mr. Hillson: — Thank you, Mr. Bogdasavich.

Mr. Bogdasavich: — Thank you very much, Mr. Hillson.

The Chair: — No further questions then, Mr. Hillson? I would test the committee. The hour is now 10:10. It seems to me it would be appropriate to have a 15-minute break. All right. The committee is recessed for 15 minutes. We will resume with the New Democratic Party questioning Mr. Bogdasavich.

Mr. Bogdasavich: — Thank you, Madam Chair.

The committee recessed for a period of time.

The Chair: — If the committee members would please come to order. We are here today for the purposes of taking evidence rather than making political commentary, Mr. Goohsen . . . (inaudible interjection) . . . It's a common mistake in this committee.

We will now continue with receiving the evidence from Mr. Bogdasavich and I will recognize the New Democratic Party until approximately 10 after 11.

Mr. Tchorzewski: — Thank you, Madam Chair. Good morning, Mr. Bogdasavich.

Mr. Bogdasavich: — Good morning.

Mr. Tchorzewski: — Let me begin by . . . because — the background first — you have obviously told us you have a lot of background and experience . . . earlier to someone's question. Can you elaborate on — because we're talking about here about dismissal, potential severance, all of those issues — your background in your position with respect to these kinds of matters?

Mr. Bogdasavich: — I have been assigned responsibility for employment law matters since — I think it was about February of 1974 — so that's over 24 years, specific responsibility for handling employment law, labour law matters.

One of my clients is the Public Service Commission. I've had them all that time and as a result have been either directly involved, or have been consulted and reviewed, every dismissal that the government has done in those 24 years.

In addition to that I'm frequently consulted, and sometimes even provide the direct legal work as I did indeed here, with respect to dismissals in the Crown corporations.

And I think I indicated in fact to the CIC board that — when they were questioning me with respect to my legal opinion — that I had estimated that I probably had involvement in excess of 1,500 dismissal files. That would be a conservative estimate.

Mr. Tchorzewski: — If I were a citizen out there watching the television screen on the proceedings here on this warm day — and I think that might apply to some of us who are on this committee — when we talk about things like dismissal with cause, all those kinds of things, I'm sure most people would not understand what that means. For the benefit of the committee, can you describe or outline what constitutes cause?

Mr. Bogdasavich: — Well I'd indicated before the break to an earlier question that an employer . . . the common law — this is decided court cases — imposes a very heavy duty on employers who wish to summarily dismiss an employee, that's dismiss an employee with no notice. And there is a long list of reasons that could be given for just cause in any particular case. There are text books on it. I brought one of them with me today and there's a number of chapters listing all the factors that an employer can take into account.

On this particular file, the two factors that were of relevance to me were the issue of misconduct and the issue of incompetence. And with respect to those two factors, in order to justify a summary dismissal an employer must be able to prove in a court of law that the employee was guilty of serious misconduct or gross incompetence.

And as I've already indicated, upon reviewing the Gerrand report it was my unequivocal position that there was neither misconduct — and I've said that in my written opinion — or gross incompetence. And in my mind it was not even a close call.

I've had many files in front of me that I have reviewed that my clients jokingly refer to as — the Bogdasavich on the one hand, but then again on the other hand — sort of an opinion where I'm trying to cover both sides of the fence. This was not one of those files. For me it was open-and-shut, unequivocal opinion

and that's what I gave on February 26 in my written opinion.

Mr. Tchorzewski: — It's obvious then that a decision to dismiss with cause is a very major decision.

Mr. Bogdasavich: — It is indeed.

Mr. Tchorzewski: — It would no doubt have some consequences if a board of any company, private or public, were to decide to dismiss a senior executive officer — whether it's CPR (Canadian Pacific Railway) or SaskPower — and then find that it had not had grounds to do it. Can you describe to the committee what might be some of the consequences of that kind of an action?

Mr. Bogdasavich: — Well the major consequence is the liability for damages, and damages are calculated based on the salary and benefits that would be earned during the notice period. At common law and for most employers — I think university professors are one of the few exceptions that have tenure — other than that an employer may dismiss anyone, at any time, without cause, provided reasonable notice is given.

And in determining what constitutes reasonable notice, again there are a number of factors that a court of law would look at in determining what is a reasonable notice in the circumstances.

Mr. Tchorzewski: — Thank you. So there clearly there could be some major financial consequences beyond what might be a cost if such an action wasn't taken but there was just a dismissal.

Mr. Bogdasavich: — There are many other costs. The legal fees alone in these cases are going to be significant. You fight a lawsuit, and you're going to have significant legal fees. As this committee will probably find out when they get the bills from all the lawyers that are involved, this is an expensive process. Any process is an expensive process when you have professionals.

Mr. Tchorzewski: — It's unfair, and if it's totally unfair you shouldn't feel obligated to answer the question, but can you give us an estimate of what might be the legal fees in such a situation which involves a president of a corporation?

Mr. Bogdasavich: — Lawyers in Saskatchewan are paid an hourly fee of anywhere between about \$140 an hour and about \$225 an hour.

Mr. Tchorzewski: — And a court case like this may take some time.

Mr. Bogdasavich: — On this file you'd have a lot of hours. On a case as complicated as this one you'd have many, many, many hours. In my estimate — it's hard to say — but you certainly were not going to have this case defended for under \$50,000 in legal fees for the corporation.

Mr. Tchorzewski: — Thank you. Let me go on to some of the questions which directly refer to your opinion . . . opinions, because there were two here. Can you briefly comment, or comment on the reason for a second opinion. You gave one in February, and then there was another that you provided finally

on March 4. Was there any particular reason for having these two opinions?

Mr. Bogdasavich: — I was contacted by John Wright, the president of CIC on the afternoon of March 3 asking me to provide an elaboration on my earlier opinion of February 26 — he'd indicated that the board members . . . I can't remember his exact words and I don't want to put words in his mouth — I was left with the impression they needed some reassuring that this was a considered opinion.

My opinion of the 26th is fairly short. The issue dealing with just cause is just a few paragraphs. And I was dealing with a number of other issues — the process they were concerned about, the amount of severance that was concerned about — and he left me with the distinct impression, although he may not have said that himself, he left me with the impression that the CIC board were either surprised by my legal opinion or needed some assurance that this was a considered legal opinion.

And he'd asked me to provide a further written opinion. I told him I was not prepared to do that. My written opinion stood as written. And then he quickly indicated to me, no, that's not really what he was wanting and that what he really wanted was elaboration and it'd be all right as an alternative if I'd be prepared to come to the board meeting and answer questions the board members had.

He'd indicated to me in that same phone call that he would be inviting Denise Batters to attend at that meeting as well, and I anticipated therefore that Ms. Batters and I would be there at the same time having the six members of the board of directors throwing questions at us — justifying our respective legal opinions and why we came to different conclusions.

Mr. Tchorzewski: — That would have not made this your first opportunity to answer questions.

Mr. Bogdasavich: — No. This has happened before. I have been questioned numerous times about legal opinions. They're not always frequently popular.

Mr. Tchorzewski: — In clause 5(3) of your February 26 letter and then again in clause 2 of the March 4 letter, you reference the June 20, 1997 SaskPower board meeting and the fact that the board approved the final sale.

Mr. Bogdasavich: — Correct.

Mr. Tchorzewski: — There's some evidence that's been presented to us here in the committee that Mr. Messer may not have put the full and complete evidence before the board.

Mr. Bogdasavich: — Correct.

Mr. Tchorzewski: — That he may not have provided them with the legal opinions, and he told them that there had been no negligence on the part of SaskPower officials. In the discussions earlier this morning, you pointed out that since you did this opinion of March 4 and February, that you have had the benefit of other documents since they have been tabled that you could study.

My question then is, does this evidence, and in particular any verbal evidence on these points that's been provided in this committee, in any way cause you to reflect differently on your opinion which you gave to CIC?

Mr. Bogdasavich: — I indicated — I believe it was either to Mr. Gantefer, it might have been to Mr. Hillson — that I probably don't feel quite as strongly today about paragraph 3 of my March 4 opinion as I did with the evidence that was in front of me on March 4. But again I was looking at it with a view to determining whether or not there could be a justification for just cause for dismissing Mr. Messer.

And after the documents were filed by SaskPower, as I'd indicated I had an opportunity to review them, I was concerned what the SaskPower board knew or should have known about what was happening in Channel Lake. And upon reviewing those minutes and in particular the information, there was a sub-committee of the SaskPower board set up called the audit and finance committee. Those minutes were of particular interest to me because of the obvious mandate of this committee. They were looking at the financial matters of SaskPower which had to include Channel Lake. So I read through those documents to review what information in fact the SaskPower board would have had.

And having read through them I was satisfied that, for example, on November 23, 1994, the audit and finance committee passed a resolution that they were to be provided with monthly financial statements about Channel Lake. And there's evidence that they received monthly financial statements from January '95 right through up until March 1997. And those monthly financial statements had full disclosure of all the gas trading activities — many of the things that I was looking at to examine as an activity that could be the basis for just cause.

I said well, you know, the question was put to me whether or not the gas trading activities were in excess of the mandate that had been given — yes they were, but the audit and finance committee certainly knew at a very early stage. For example, the Ernst & Young 1994 management letter was presented to the audit and finance committee on May 9, 1995. It was reviewed. Paragraph 5 deals specifically with the gas trading activities of Channel Lake and the recommendation from Ernst & Young was, and I'll read it into the record:

An active gas trading program represents a sensitive and significant activity for Channel Lake to engage in. We recommend that formal policies and procedures be developed, documented, and approved by Channel Lake's board of directors to govern such gas trading activities.

So when the question is put to me as a lawyer would those gas-trading activities — because they looked like they were in excess of the mandate and what Channel Lake was supposed to be doing — on the face of that, would that be just cause to dismiss the chief executive officer? He was doing something he was told not to do. He was told not to do it by the SaskPower board. And in fact the recommendation by cabinet to approve the purchase of Dynex assets way back in the spring of '93 specifically said you're only to secure supply. You're not to do anything else. They were acting in excess of what they'd been told to do by the board and by cabinet.

But there was a record of information with respect to gas-trading activities disclosed at the audit and finance committee and therefore the whole board is deemed to know which would have the effect of condoning that activity. It no longer can be used as a basis for justifying just cause.

Mr. Tchorzewski: — Thank you. In your — and I appreciate that all that you had before you in coming to your report and your conclusions was the Gerrand review — I was going to ask you earlier, you obviously — and I think you've answered that by not referring to it — but you did not have the benefit of the Deloitte & Touche report.

Mr. Bogdasavich: — I did not.

Mr. Tchorzewski: — You did not. This may not have been in your area of consideration, but do you think that Mr. Messer had any responsibility to recommend to the board of SaskPower that it should conduct an outside investigation or that . . . what you feel that the audit and finance committee should have acted upon that?

Mr. Bogdasavich: — I'm sorry, do you want to repeat the question?

Mr. Tchorzewski: — Do you think that Mr. Messer had any responsibility to recommend to the SaskPower board that they should conduct an outside investigation when all this came about? Or that the finance and audit committee might have been obligated to do that?

Mr. Bogdasavich: — No. Based on the information that I've seen . . . and here's the danger, it may well be incomplete, the committee members here know a lot more about this than I do today I think. Based on the information I've looked at, I do not think he had an obligation to do that. That was the Power board's obligation. If they wanted more information done . . . They had enough information in front of them at least to determine whether or not they needed more information. And in terms of justifying a dismissal, that's as far as I reviewed it.

Mr. Tchorzewski: — Thank you. In paragraph 3 of your . . . we referred to earlier of your March 4 letter, you refer to the scantiness of the material placed before the board, and you've talked about that since then.

Mr. Bogdasavich: — Correct.

Mr. Tchorzewski: — Mr. Gerrand found fault with Mr. Messer and he said he was wrong for not putting all the information before the board. Do you still agree with that, as strongly as you said it then, or do you claim . . . some of your earlier comments.

Mr. Bogdasavich: — I think that, and let me state, this is I think a very good report that Mr. Gerrand did. But like all human beings, it has its weaknesses. And one of the weaknesses that I found in this report was for example, I could not find a reference to the reviews and the processes that had been put in place by the audit and finance committee — there's no reference to it.

For example, if you talk about the losses that Channel Lake was engaging in, Mr. Gerrand does — on page 22, paragraph 39 —

he refers to the losses in the financial statements, but he doesn't say that information was in the possession of SaskPower's board and they knew about it. But when you review the chronology of the audit and finance committee's minutes, they have that information.

So had I been writing the report, to me this would have been a very important piece of information that should have been in the Gerrand report in terms of looking at any wrongdoing or any negligence relating to any of the gas trading activities. The board knew it was losing money. On the morning of March 13, they knew exactly how much money that it lost because of those financial statements.

Mr. Tchorzewski: — Now in the discussion here today there's been references made in a general way on a number of occasions to the next question, but I'm going to ask you the question just so that we have it for the record. As I understand it, what you are saying is that, while Mr. Messer was wrong in some cases, his actions were not so severe as to result in just cause and reason for outright dismissal without severance.

Could you, for the record and for our benefit because we're going to have prepare a report, elaborate on that?

Mr. Bogdasavich: — Well, any deputy minister of a government department or chief executive officer of a Crown corporation has ultimate responsibility for everything that goes on. And, you know, employers frequently want to remove presidents of banks and presidents of corporations and deputy ministers of departments when there's something short of just cause.

I may have not given Mr. — based again on what I saw . . . my performance evaluation of Mr. Messer based on the Channel Lake thing — I don't think I would have given him an A. But that doesn't constitute just cause for the dismissal.

Mr. Tchorzewski: — In some cases, well in most cases, there are other methods and procedures available for disciplining employees.

I mean there's issuing a warning, placing the employee on probation, issuing a suspension, discussing and providing reasonable notice or provide severance, dismiss for just cause — which is what we've been talking about here. In your view, are such things as issuing a warning, probation, suspensions available in such a case where it involves a chief executive officer or president?

Mr. Bogdasavich: — In my opinion, again based on all the cases I reviewed and been involved in, it is not. It simply doesn't work. An employer loses confidence in the chief executive officer, that chief executive officer or deputy minister has to be removed. You can't give him warnings and performance evaluations and . . . (inaudible interjection) . . . staff.

That works very well when you're dealing with a management level 5 in government, but with a deputy minister or chief executive officer you have to have the confidence of the people you're serving. And when you lose that confidence, the time comes to move on.

Mr. Tchorzewski: — Thank you. Mr. Messer, in these proceedings, has stated that he was the president and the chief executive officer of a Crown corporation with \$3 billion of assets, and the Channel Lake was just a very small portion of that, something like 1 per cent of the total corporation.

He also referred to personal employment evaluations where his work was found to be satisfactory. And those that have been written have been filed with us, so we have also seen them. And I appreciate that this information may not have been in front of you on February 26 or March 4, but having this information, how does it — or does it in any way — reflect on your opinion?

Mr. Bogdasavich: — Well it would have been relevant and I, you know, I maybe was remiss to a certain extent that I probably should have asked Mr. Shaw — and had we had more time that would be the normal process — I would want to review whether or not there had been performance evaluations done and the overall picture, the performance of the corporation. I would have cast my net a little bit wider, but that's not what I was requested to do by the client. I was requested to review the Gerrand report, and based on the Gerrand report give an opinion as to whether or not just cause existed.

The Chair: — Excuse me, Mr. Tchorzewski, if I could interrupt the proceedings for just a moment. We seem to be having . . . creating lots of precedents here this morning. Earlier this morning I introduced Representative John Dorso as part of the Midwestern Legislative Conference of American politicians who are here in Regina observing and shadowing our various politicians over the next couple of days.

I would like to now introduce yet, for Mr. Goohsen's benefit, yet another Republican and a lawyer, and most importantly, a Senator from Kansas; Senator Keith Schraad is here. He is following Dan D'Autremont around for the day and I would ask committee members to please make him welcome.

All Members: Hear, hear!

The Chair: — And now, Mr. Tchorzewski, if you would continue pursuing your line of questioning.

Mr. Tchorzewski: — Thank you. I have one final question and I know that one or two of my colleagues will want to ask some questions. But certain events unfolded, considerations were taken by the board about whether the issue . . . was dismissal for cause available or whether there wasn't. It was referred to the chairman of the board and to an adviser — in this case he engaged a lawyer — as to determine what is the appropriate action. The result of that was that severance was provided.

If you had a chance to look at that — and I suspect you have but if you haven't you'll tell us — what is your opinion of that severance and the amount of it? Is it appropriate under the circumstances from the background and knowledge that you have? Do you have a view on that?

Mr. Bogdasavich: — Well I'd recommended, Madam Chair, in my opinion of February 26, paragraph 6, I had specifically recommended that if a dismissal was proceeded with, that an appropriate severance would be 18 months severance. And that

was based on a Saskatchewan Court of Appeal decision involving the dismissal of another Crown corporation president, who was provided 18 months severance by the Court of Queen's Bench. That was appealed to the Court of Appeal and the Court of Appeal upheld the decision of the Court of Queen's Bench giving 18 months.

There are several other precedents that I considered at the 18-month level. We sort of consider the 18 months the ceiling. You're not going to get anything more than that. That's the very top of the line; the Cadillac of severance treatment, I guess, for public servants, be they presidents of Crown corporations or whatever. And we have had, I suspect, somewhere close to about half a dozen payments of 18 months, usually based on either a court case compelling the Crown to pay that amount of money or a pre-trial conference where a judge suggested that.

There was a deputy minister to a premier who received 18 months as well, as the result of . . . He started a lawsuit, and at the pre-trial conference the judge recommended to the Crown that we pay 18 months. And I might add, there is, you know, case tables of severance amounts compiled across Canada and the current one for 1998 — and I want to refer the committee to that just to let them know what the average per senior executive is — the average senior executive who's been dismissed without cause — these are court awards now that have been reviewed — for a senior executive with an age over the age of 45 and more than 10 years experience, and I'll comment on that in a moment, the average severance is 20.9 months. So in this case the severance was approximately 3 months less than what the average is based on Canadian jurisprudence.

Mr. Messer was 13 years over the age of 45 and the older you get the higher the severance is going to be. He only had six years, six years of employment, but again the years of employment is not all that relevant a factor and it was commented on again specifically in the Court of Appeal decision that I referred to you earlier. And again I'd like to read this into the record because this is what the Saskatchewan Court of Appeal said with respect to years of service. It stated, and I quote:

In this case we are dealing with the president and chief executive officer of a major Crown corporation. This is not unique employment but it is comparatively rare. There are not many positions of that nature available to persons here or even elsewhere. That being the case, does it much matter whether Mr. X had been at his post for one year rather than for three years, or two instead of five years or even ten years. Does it much matter that is, to the period of time he ought to have had to find comparable employment? We are not suggesting his length of service is of no moment but we are saying that too much can be made of it, viewed in isolation.

So what the Court of Appeal was telling us is that you have to look at all the factors and then distil them down and come up with what you think is a reasonable severance period. And in this particular case in my opinion, Mr. Messer could successfully have sued SaskPower for his dismissal. There was no grounds that would justify it in law, and in my opinion his severance would have been in the neighbourhood of 18 months.

Mr. Tchorzewski: — Thank you.

The Chair: — That was a very definitive answer, Mr. Bogdasavich. Thank you.

Mr. Bogdasavich: — Just don't ask me to put it in writing again because usually they ask me to put these opinions in writing on about six hours notice.

The Chair: — You really are relaxing as a . . . (inaudible) . . .

Mr. Bogdasavich: — Yes.

The Chair: — All right, Mr. Bogdasavich, we have a *Hansard* record of it. You can refer to that and have it transcribed.

Mr. Bogdasavich: — Thank you, Madam Chair.

Mr. Kowalsky: — Thank you very much, Madam Chair. Now, Mr. Bogdasavich, I want to return to the matter of summary dismissal and consequences. I'm thinking of a process that a board member or an official would have to go through in terms of getting advice as to deciding whether or not to go ahead with the summary dismissal.

And one of the pieces of advice I'd want to know if I was to make that decision, is what legal options are open to the dismissed party. In the case of Mr. Messer, if there had of been a summary dismissal, what legal options are open to him?

Mr. Bogdasavich: — Well he would have commenced a lawsuit — instructed his lawyer to commence a lawsuit against the Crown corporation and sue for unjust dismissal.

Mr. Kowalsky: — And from your experience in the court system, how long would it likely take before this was beginning to be heard?

Mr. Bogdasavich: — Very difficult to estimate, but I would think at a minimum of a year to get the matter in at the courts and then you're going to wait . . .

Mr. Kowalsky: — To get it into the courts.

Mr. Bogdasavich: — Into the courts, and then you're going to wait for court decisions and Court of Appeal — probably about two years, two-and-a-half years before the process would have been finished.

Mr. Kowalsky: — And after it's finished, could it be appealed?

Mr. Bogdasavich: — Yes, well they go to the Court of Appeal and that usually is the end of the matter. Occasionally someone applies to the Supreme Court of Canada for leave. It's difficult to get leave on a question like this.

Mr. Kowalsky: — Would the information that would be presented to the court include a large proportion of the information that's presented to this committee?

Mr. Bogdasavich: — It would.

Mr. Kowalsky: — And we know how long that took and is

taking. What do you think would be the consequences to the corporation's morale during this time? Would it improve the morale?

Mr. Bogdasavich: — I think that's a question . . .

Mr. Kowalsky: — Is it anything like the question . . . (inaudible) . . . to improve the morale?

Mr. Bogdasavich: — I can't really comment on that.

Mr. Kowalsky: — Let me rephrase the question in another manner. During this time period, would it be definitive as to who really is in a management position of the corporation?

Mr. Bogdasavich: — Sorry, you want to rephrase the question for me. I don't follow you, sir.

Mr. Kowalsky: — Well could there be questions in employees' mind as to whether or not Mr. Messer would possibly regain his position as a result of the court cases?

Mr. Bogdasavich: — There'd be zero chance of that happening.

Mr. Kowalsky: — Of him regaining the position. And why do you say that?

Mr. Bogdasavich: — Well his remedy would be to seek damages for unjust dismissal. A court would not order him reinstated to the job.

Mr. Kowalsky: — So the damage that would be done would be . . . or the costs would be largely a figure. The amount that would be paid out to the court costs, the costs of operating the courts over the 2-year period of time, the damages that are awarded in lieu of salary and other possible damages, and the cost of paying the lawyers.

Mr. Bogdasavich: — Yes. SaskPower would have to pay legal fees to their lawyers, they'd have to pay the judgement, and they'd also be liable for costs for Mr. Messer's counsel as well. And those costs are not his full legal expenses but they are taxed under a tariff set out in the Queen's Bench rules.

Mr. Kowalsky: — Thank you very much.

The Chair: — I take it you're finished your line of questioning, Mr. Kowalsky.

Mr. Kowalsky: — Thank you.

The Chair: — Do any other members of the New Democratic Party have further questions for Mr. Bogdasavich? No. And the Saskatchewan . . . Oh, thank you very much, the independent member. Mr. Goohsen, did you have questions that you wish to put?

Mr. Goohsen: — I do today, thank you.

The Chair: — Thank you very much. For a maximum of 15 minutes please, Mr. Goohsen.

Mr. Goohsen: — All right, it won't take that long I don't suspect.

I was just wondering, Madam Chair, about a few things that have been talked about here today. What would have happened, or what should have happened, if SaskPower refused a direct order from CIC?

Mr. Bogdasavich: — Well you're asking me to speculate, but again my legal opinion is that CIC has a legal authority to issue directives to SaskPower's board. If they deliberately refuse to follow those directives that would be a matter for cabinet's consideration. Cabinet appoints all members of that board.

Mr. Goohsen: — And of course the recourse for cabinet — their options would be to change the board, is that what I'm hearing?

Mr. Bogdasavich: — That's correct.

Mr. Goohsen: — All right. Would there be any other recourse?

Mr. Bogdasavich: — No.

Mr. Goohsen: — In the event that they made a bad decision and had a directive from CIC to do something directly opposite, would they be found in civil action responsible for the losses — financial losses — if the decision were made counter to CIC?

Mr. Bogdasavich: — I really can't comment on that, Mr. Goohsen. I'm sorry.

Mr. Goohsen: — Who would have the authority to make that kind of a decision?

Mr. Bogdasavich: — Well there are just so many possibilities to that question. It would be entirely dependent upon the facts of any specific situation. And I do not feel competent to be able to answer that question for you.

Mr. Goohsen: — Well I'm afraid that your answer reflects the ability of this entire process to be able to handle this situation in the end. Because there are many specifics — it's a very complex issue — and if we try to break it down to specifics then no one individual is ever going to come to a conclusion. And this will have to be handled by somebody that can take all of the specifics in a broad sense and deal with it.

And you know, that's what I'm finding out from your answer, and if I'm wrong, you're quite welcome to say so.

Mr. Bogdasavich: — I really can't comment on that, Madam Chair.

Mr. Goohsen: — Direct Energy got what is known as the natural gas deal, the contract of course where they supply natural gas to SaskPower, after the fact, for some period of years. This deal was considered to be closed as I understand it by the ratification of the June 20 contract that you alluded to earlier today. In that statement though you said that not necessarily in all cases would that date end any possibility of civil action.

Mr. Bogdasavich: — My comments were directed to the sale of the assets of Channel Lake. And my comment, as I recall, was there are factual circumstances in which it may be possible to proceed with legal action respecting that deal subsequent to the ratification.

What I said was, it was my legal opinion that the ratification does not necessarily foreclose any legal action. And I gave you — I believe the committee — the example of where there may be a subsequent fraud disclosed, or whatever, that could form the basis of a lawsuit that would not be foreclosed by the ratification on June 20 by the board of directors.

And again those are hypotheticals. I have no knowledge of such facts. But as a lawyer it is possible that some legal action could be taken in certain circumstances.

Mr. Goohsen: — What you're really saying is that no contract is absolute and that every contract can be challenged and that every individual can of course be sued in our society.

Mr. Bogdasavich: — If the facts are such, that's correct.

Mr. Goohsen: — Okay. So my other question in this area is, would you have seen in your studies, in your research, any possibility for an escape clause for SaskPower in this contract?

Mr. Bogdasavich: — Again, I can't comment on that. I do not, Madam Chair, have sufficient knowledge of all the contracts. There was escrow agreements and share and note purchase agreements. There are many, many, many commercial documents involved and I do not have sufficient knowledge to comment on that. That would be a question you would have to put, I think, to the lawyers who put the deal together.

Mr. Goohsen: — Well we would, I think, rather take with a grain of salt what the lawyers that put the deal together might tell us in respect to those answers. I think we would have to have someone else with a little more impartiality give us an opinion on that. We're still looking for that group of people or person and quite frankly haven't seen them yet.

In 1995 you suggest that there was disclosure in an auditor's report on the trading activities and that therefore people who should have known, would have known. Who were those people that you were referring to that would've gotten that report, or should have had an interest in finding out about it?

Mr. Bogdasavich: — The audit and finance committee of the SaskPower board of directors met with Ernst & Young on May 9, 1995 to discuss Ernst & Young's management letter for the year ending December 31, 1994. One of the audit observations dealt with the issue of gas trading activities and I've already read into the record their recommendation.

Mr. Goohsen: — Okay. But who in SaskPower or CIC should have known about this in order to be able to apply it to a decision to either stop Mr. Portugal from doing those activities or to encourage him to do more of it or to change the practice in which he was performing that duty?

Mr. Bogdasavich: — Certainly the board of directors of SaskPower would be deemed to have knowledge of everything

that the audit and finance committee — if they set up an audit and finance committee, had that knowledge — that knowledge would be deemed to be shared by all the members of the board.

Factually they may not have known about it but legally, in terms of justifying Mr. Messer's dismissal, they are stuck with that knowledge.

Mr. Goohsen: — Well in this type of a situation where we have everybody that comes to this committee points a finger at somebody else . . . Everybody seems to come to this committee suggesting that there is some sort of guilt somewhere or some kind of responsibility somewhere, but it's not with me; it's got to be them other guys. And at the end of the day, the buck has to stop somewhere.

I seem to hear you saying that the board is the place where the buck should have stopped. Am I hearing that right?

Mr. Bogdasavich: — No, not at all. What I'm saying to you is I was asked to give a legal opinion as to whether or not there was just cause for dismissing Mr. Messer. And one of the factors I considered was whether or not the gas and trading activities of Channel Lake would constitute such just cause. And all I am saying to this committee is that the board of directors of SaskPower — certainly the audit and finance committee — knew of that, trading activities, and that that as such it cannot be used as a basis for unjust dismissal . . . or for just dismissal, I should say.

Mr. Goohsen: — The fact that your employers asked you to do such an investigation and to come up with a report and recommendation, the fact that they asked you to do that must have clearly indicated to you that they believed that something was amiss that needed to be corrected. If the finger weren't pointed at Mr. Messer because there was no just cause to decide that there was wrongdoing enough to fire him, then it had to be the responsibility of somebody else. The very fact that you were asked to do this inquiry tells me that your boss was telling you to look for somebody that was doing something wrong. And you found that it wasn't Mr. Messer.

Now in your preamble you have suggested to me that it was the board. So in the long run are you not saying in the democratic process — and you can correct me if I'm wrong — that the precedent would be that the buck has to stop somewhere, and that therefore at this point the board of directors, the president, and the two ministers in charge of CIC and SaskPower should all resign as a token of their responsibility to the democratic system. Is that true or not?

Mr. Bogdasavich: — It's not something I can comment on.

Mr. Goohsen: — I didn't expect you would. I have no further questions of the witness.

The Chair: — Thank you, Mr. Goohsen. Very succinct.

Are there any further questions? Yes. Mr. Gantefer, I'll recognize you then.

Mr. Gantefer: — Yes, thank you, Madam Chair. Just a couple of items briefly to finish up where I ran out of time in the first

section.

Mr. Bogdasavich, I want to not focus on individuals in terms of Mr. Messer or SaskPower officials, and get sorted out in my head the lines of authority and responsibility. First of all, not being a lawyer, would you explain to me what fiduciary responsibility is by boards.

Mr. Bogdasavich: — Well fiduciary duty is an obligation imposed at law upon the senior officers and the directors of a corporation vis-a-vis their relationship to their employer.

And simply put, I think the simplest definition I could give you is that senior officers have their first obligation to the corporation. They must always act in the best interests of the employer. They can never act in their own self-interests. That's what fiduciary duty is.

Mr. Gantefer: — Is that in essence the responsibility that comes with the authority that's vested in them?

Mr. Bogdasavich: — I think that would be basically correct.

Mr. Gantefer: — Thank you. You said in, I believe, response to a question posed by Mr. Tchorzewski, that the cabinet directed the establishment of Channel Lake for the purpose of guaranteed supply and regulatory . . . or minimizing of price or, you know, a supply and price issue. And I took from your comments that it was your feeling that the SaskPower board exceeded that mandate.

Mr. Bogdasavich: — Well it was actually the board that established the . . . on April 22, 1993 SaskPower's board of directors resolved that the acquisition could go ahead but that it did not want SaskPower to enter the gas business beyond activities necessary to provide security of supply. And that's referred to again in the Gerrand report. I think it's page 13 in that report.

Mr. Gantefer: — Did the SaskPower board require the authority to engage in that activity from CIC as their parent?

Mr. Bogdasavich: — The line of authority would have been, SaskPower's board would have made a recommendation, I believe — and I stand to be corrected. And again, I'd ask you perhaps to put that question to the CIC officials when they're here.

But at least on the statutory provisions, the way I see it working would be that SaskPower's board would have passed that resolution and a recommendation and that would have gone up to CIC's board for consideration — and it did, I believe in this case, the second . . . the day after — and then that recommendation would have been passed to cabinet for a final approval.

Mr. Gantefer: — So the flow of authority — and I'm not asking you to say what did happen. I'm asking more from a legal opinion under your interpretation and vast understanding of the Act — is that for SaskPower to authorize an establishment of a subsidiary company, in essence is what Channel Lake was, they could make the decision and then ratification would be required, moving up one step to the CIC

board for ratification, which in turn would have to be ratified and authorized by the provincial executive, the cabinet.

Mr. Bogdasavich: — The chain of command is correct. I'm not certain in what circumstances they need those approvals. They certainly needed it in this case when they were acquiring the shares of the Dynex corporation. That was a . . . there was a statutory requirement that they get the approval, and in fact I believe there had to be an order in council passed in this case.

Mr. Gantefer: — So in this instance again, that line would have to go all the way up to the SaskPower . . .

Mr. Bogdasavich: — Yes. SaskPower, CIC, cabinet.

Mr. Gantefer: — Okay. In flowing that upwards and downwards, if it was shown that the mandate that was given through that process was deviated from, in this instance where it could be argued or legally an opinion that it went beyond the secure and price authorization which came from SaskPower to Channel Lake, the authority then, theoretically at least, would have been on that mandate going to CIC and to cabinet.

So if the mandate was violated or exceeded or deviated from, whose responsibility would it be to bring that back into line? And I'm thinking in line with the responsibilities of directors and board members as it moves through the process.

Mr. Bogdasavich: — Immediately, if SaskPower's board had a concern with respect to those gas trading activities, they could have directed the officials of SaskPower to cease those activities.

Mr. Gantefer: — When CIC was made aware of the fact that there was . . . Deloitte Touche was saying that reporting of this information was not complete, did the responsibility move up another level then in terms of saying something's not working right here with the subsidiary we approved some time previously?

Mr. Bogdasavich: — Again it would depend on the magnitude of the issue and what the mandate and the reporting responsibilities are specifically established between CIC and SaskPower. And again that's a question you really have to put to the CIC officials.

I'm not aware of, you know, what delegated authorities there were and when they expected them to report back. All I have is the evidence that's in the Gerrand report, and they were . . .

Mr. Gantefer: — I guess I'm asking not so much an operational comment, but is the legal line of responsibility directly tied there?

Mr. Bogdasavich: — In my opinion, as I've indicated several times, yes there is a chain of command.

Mr. Gantefer: — Thank you, Madam Chair.

The Chair: — You've completed your questioning, Mr. Gantefer?

Mr. Gantefer: — Yes. I want to make sure that we have time

and then certainly on the discussion of authority to move the motion that I would like to discuss.

The Chair: — I think we'll have more than ample time but I do want to check and make sure that no other committee members have questions of Mr. Bogdasavich. We would want to avoid calling him back.

Mr. Hillson: — Nothing further, thank you, Madam Chair.

The Chair: — Nothing further. The New Democratic Party?

Mr. Tchorzewski: — No further questions other than to express our gratitude to Mr. Bogdasavich on behalf of the caucus.

The Chair: — Hold off on your gratitude in case Mr. Goohsen has further questions.

Mr. Tchorzewski: — I may not be grateful to Mr. Goohsen.

Mr. Goohsen: — Thank you, Madam Chair. There was a couple of things that I missed as I went through my notes here. I was wondering, when you referred to the fact that you thought in your opinion that it would cost \$50,000 to initiate a civil action in the attempt to recover . . . I'm presuming that you were talking about the 5.2 million that's in controversy here or whatever else you are talking about.

Mr. Bogdasavich: — No, no, I was talking specifically about defending a unjust dismissal allegation by Mr. Messer.

Mr. Goohsen: — Okay, and this would simply be talking then about the \$350,000 severance package or whatever it was.

Mr. Bogdasavich: — I don't know, whatever it was. My recommendation was 289 . . . the severance package.

Mr. Goohsen: — Severance package. Yes, okay. I thought you were referring to an attempt to recover what some people perceive as the general losses of the whole deal.

Mr. Bogdasavich: — No, I'm sorry if I did not make that clear, sir.

Mr. Goohsen: — Because of course you might want to make a comment on what you think it would cost to pursue a civil action in this whole matter if there were grounds for that.

Mr. Bogdasavich: — That I cannot comment on. I simply do not know that.

Mr. Goohsen: — Does fraud or a civil . . . or a criminal action rather, that type of action, if it became a part of this process and that were the follow-up result, would that cost the taxpayers at this level any money other than of course through the legal system?

Mr. Bogdasavich: — Again I really can't comment on that other than to say that I certainly saw nothing here that would require them to be called in.

Mr. Goohsen: — Yes, I understand that.

Mr. Bogdasavich: — In my review of the facts . . .

Mr. Goohsen: — I understand that, but supposing after we have seen all of the witnesses and everybody has reported that this were in fact recommended to go to the RCMP (Royal Canadian Mounted Police) and they took it over, would it then be in their lap to pay for it, or would there still be responsibility for SaskPower or Justice department or somebody in government to make some payments there?

Mr. Bogdasavich: — No, that would be part of the general administration of Justice in the province.

Mr. Goohsen: — Okay. So there's no further cost there that we'd have to worry about.

Before you came here today, as a lawyer of practice, you would have discussed this matter and your testimony with colleagues or department officials. Who would have briefed you before you came here?

Mr. Bogdasavich: — Well I had a discussion with Mr. McKillop certainly, in terms of preparing myself for the testimony that I was going to give today.

Mr. Goohsen: — Would he be the only one?

Mr. Bogdasavich: — That's correct.

Mr. Goohsen: — And who does he work for?

Mr. Bogdasavich: — He is a lawyer of the Department of Justice.

Mr. Goohsen: — And so his boss is the Minister of Justice.

Mr. Bogdasavich: — That's correct.

Mr. Goohsen: — And so your advice today would have been basically to defend the interests of the Department of Justice.

Mr. Bogdasavich: — No, I was here to try to assist this committee with its investigation, and try to answer the questions of this committee as honestly and as candidly as I could as it relates to the issue of just cause.

Mr. Goohsen: — That's good to hear, because I have this feeling always that he who pays the fiddler calls the tune. And I thought that some of your remarks today were an attempt to diffuse what you had earlier put in writing.

Mr. Bogdasavich: — Well I'm sorry if you've come to that conclusion, sir. It certainly was not my intent.

Mr. Goohsen: — I have no further questions.

The Chair: — Thank you very much, Mr. Goohsen. Again I'll test committee members. Do any committee members have any further questions to put of Mr. Bogdasavich? Hearing none, Mr. Bogdasavich, I would thank you for your candour and for your sense of humour on occasion and for the evidence you have given us. You are excused.

Just before I excuse you, do you feel an overwhelming need to make a closing statement?

Mr. Bogdasavich: — Absolutely none, Madam Chair.

The Chair: — Thank you.

Mr. Bogdasavich: — Thank you very much.

The Chair: — Thank you, Mr. Bogdasavich.

Committee members, we will now turn to procedural matters. And I did receive a letter from Mr. Gantefer on May 21 dealing with a motion that he wishes to put to the committee. He has provided copies. I gather you have two motions that you wish to discuss.

Mr. Gantefer: — I have one or the other.

The Chair: — One or the other. So you will not be moving the motion, you will be discussing a possible motion. Is that correct? So we can avoid having to . . .

Mr. Gantefer: — Yes. If that's possible, Madam Chair. The essence of the motion is identical and I think I've passed around copies, and so that isn't the issue. The question is if the committee would like to deal with the motion today or would like to convene a special meeting in order to deal with the motion. It is really the difference in substance between the two motions.

So if the committee would like to deal with the motion today then I'm certainly prepared to just move the motion as it stands. In some discussions I've had some comments from people saying that perhaps it's not appropriate for the committee in today's meeting because it could be construed that this is not a broader Crown Corporations Committee, that its mandate right now is to specifically deal with Channel Lake.

This goes of course beyond that, and if that's the case, then I would ask that we convene a special meeting in order to discuss this motion. But I rely on members' response in terms of how that should proceed.

The Chair: — And I would just, for committee members' information, point out that part of the rationale that Mr. Gantefer has for his motion is that it is important based on the Provincial Auditor's spring report that the Crown Corporations Committee commission an independent analysis of governance and decision-making structures in the five major provincial Crown corporations and their subsidiaries. So that is significantly beyond the scope of these special hearings into the circumstances surrounding Channel Lake.

But I am in the committee's hands with respect to what you wish to do — whether you want to discuss it now or have me call a special meeting, a meeting of the regular Crown Corporations Committee.

I would also like to point out with respect to timing because I note, Mr. Goohsen, on your second motion that you're asking me as Chair to call a meeting for Thursday, May 28. I think that that technically is going to be very difficult because, as you

know, we cannot have standing committees called while the legislature is meeting. So we can't call a meeting for tomorrow afternoon for instance.

And if you're asking me to call the meeting for tomorrow morning, Public Accounts is meeting, Private Bills is meeting, and I believe the Communications Committee may be meeting as well. I'm advised it's not meeting tomorrow but there are two other standing committees that are meeting tomorrow.

So it's going to be a little difficult to call it for tomorrow, but I'm not going to get hung up over the question of the date of calling the meeting. It is the question of how we want to deal with your question, and we will, one way or the other, either through these special hearings or a regular meeting, deal with the motion as expeditiously as possible.

Mr. Gantefer: — Yes, Madam Chair, I recognize where this, the focus of the Crown Corporations Committee in these hearings is a specific Channel Lake issue. However, I think that the legal entity still exists as the Crown Corporations Committee and it would have, by agreement, the ability to consider this today.

So I do not think that we're necessarily limited to only discuss Channel Lake. I think this still would be considered a properly constituted Crown Corporations meeting and as such would have the proper authority to deal with the issue today.

The Chair: — Did you wish to then debate the substance of your motion?

Mr. Gantefer: — Well I particularly didn't want to deal with the . . . If I had the agreement of the committee that we could deal with this properly today, then I would move the motion and then we can discuss the substance. I'm reluctant to discuss the substance . . .

The Chair: — All right, yes. Thanks.

Mr. Gantefer: — I hear that everybody's in agreement that we can proceed today. Therefore, Madam Chairman, I would like to move into the record:

That the Standing Committee on Crown Corporations report to the Legislative Assembly requesting authorization to enter into a contract with Dr. Lawrence G. Tapp, dean of the Richard Ivey School of Business at the University of Western Ontario, who shall be directed to do the following:

Perform an analysis of governance structures, decision-making structures, and accountability in the five major provincial Crown corporations and their subsidiaries with the following terms of reference:

1. Review corporate governance and reporting structures;
2. Review financial reporting structures;
3. Review the decision-making model used by boards of directors;
4. Review the method of appointment of senior officials

and boards of directors;

5. Review the process by which utility rates and services fees are established;

6. Review process for orientation and ongoing education of boards of directors with respect to:

- a) operations and structure of the corporation;
- b) key success factors for the corporation;
- c) industrial background;
- d) identification and analysis of areas of significant business risk; and
- e) the strategic plan for the corporation.

7. Make recommendations with respect to the above with a view of improving decision-making processes, enhancing accountability, decreasing operating costs, and improving the overall performance of the Crown sector.

I so move, Madam Chairman.

And if I may, in speaking to the motion. I think that there are some very key challenges and opportunities before this corporation not limited to the whole Channel Lake affair; but certainly coming out of this investigation there is a clear opportunity even as late as today's testimony about a clear opportunity to have a fresh set of eyes look at the whole issue of chains of command, accountability, and authority in our Crown corporations.

When I first proposed this by letter and raised the issue in the House, I was very, very pleased to hear the Premier say that he felt that there was a great deal of merit to this suggestion that a fresh set of eyes from outside of the province . . . given Dr. Tapp's extensive credentials and his internationally recognized reputation, that it would be an unique opportunity for us to engage this individual to have a real look at this whole issue.

And I think it also may have some real benefit as a parallel process coming out of this whole investigation when we complete our report some time into the relatively near future, that the Assembly could do well to have a report by a gentleman of this eminence to also talk to us about how things could be made better. I think it is an important parallel type of a process that should happen over and above what we are doing.

Certainly in the latest Provincial Auditor's report, he also indicates that this is an opportunity to look at these issues. And he expressed the challenge, I think, to us as legislatures to accept that challenge and to look at it objectively.

I believe that it would be a very worthwhile exercise, that the cost would be reasonable. This is one individual; it's not a whole process of hearings and all the meeting costs and things of that nature. It is, rather than that, relying on Dr. Tapp's extensive experience in the whole issue and his background in the school of business that he is the dean of, and I think it's a wonderful opportunity for we as legislatures to move this process forward.

I think I've outlined fairly well the issues in the letter. And I certainly stand ready for comments. But I think that this

committee would be very remiss not to take this opportunity to provide that kind of expertise to our provincial Crowns and to ourselves as members of the Assembly in exercising our responsibility.

The Chair: — Thank you, Mr. Gantefer. And just for committee members' information, as Chair I do have a responsibility to inform you that the budget for the Crown Corporations Committee has really been overspent already. One month of meetings spent 70 per cent of the total year's budget. But I think . . . And so therefore we will have to go the legislature for this for authorization.

I would encourage members though to consider the motion on its merits, but I do feel a responsibility to inform you of the fiscal situation with respect to this committee.

Mr. Hillson: — Thank you, Madam Chair. I am pleased to see this matter come forward although I do have some questions as to manner we're proceeding. But I certainly agree that up until now what we have done is basically a rehash of what happened with Channel Lake.

And I think it is appropriate for the Crown Corporations Committee to move into the larger issues of: what have we learned in terms of the management of our Crown corporations; how do we balance the need for the Crown corporations to behave according to proper business principles while still respecting public accountability and while still fulfilling legitimate public policy function?

And I think when we do that we have to briefly look at some of the issues that have come to our attention in the course of the inquiry. I mean it is before us that the Crown corporations take the position that they can set up subsidiaries which are not bound by the same rules of operation and reporting; that they can simply avoid reporting and procedures as set out by the legislature by the simple mechanism of setting up a subsidiary.

We know that this particular subsidiary, very quickly after its inception, was undertaking activities without proper authorization, and that in the end it was sold to avoid reporting to the legislature. We know that there was inadequate and misinformation to the board, the minister, the legislature, and ultimately the people of Saskatchewan, who we are told ad nauseam are the shareholders.

We know that we have chosen the head of the Crown corporation on the basis of being a campaign manager for the successful political party. We know the board members have been appointed on the basis of being party supporters, in some cases with few other supporting qualifications to run a utility.

And yet, as of course Mr. Bogdasavich testified today, being a board member of the utility the size of Saskatchewan Power is a serious responsibility.

So I think all of these questions arise and we have to answer them in a larger context, and I hope notwithstanding some of the comments I've made in something more than just a partisan context. These are big businesses. They do fulfil public policy functions and they aren't just simply places to place generous supporters.

Having said that, the question I throw out to Mr. Gantefer, while while Dean Tapp's qualifications are impressive and his résumé certainly establishes that he is very knowledgeable in the field, I am told there may . . . that he would not be a big supporter of public ownership and his strong bias would be against public ownership. I think what this committee . . . that may be an appropriate thing for this committee to look at, but I think what this committee is trying to do is balance the issues of public ownership with proper business principles.

So I just ask if this is merely an attempt to bolster an agenda to sell off the Crowns. If that's not the intention, I mean I ask that as a question, I do not make that as a statement.

Having said that though, there are larger issues than this committee simply doing a rehash as to what went wrong with Channel Lake, and I would very much like to move into that area. And I think that, as I say, if I can just conclude on this, it is not a political hit to say that our Crown corporations issue a false news release; when it is shown to be false, they find no reason at all to correct the misinformation to the people of Saskatchewan. This raises real issues as to whether or not our Crowns feel they are servants of the people of Saskatchewan, and I want to move into those issues.

The Chair: — Before I recognize you, Mr. Gantefer, I'll recognize Mr. Tchorzewski.

Mr. Tchorzewski: — Thank you, Madam Chair. I want to speak to the motion, and not extensively to the comments. But I do want to express some amazement — which one should not be amazed if he is in or she is in this work of politics — at Mr. Hillson's ability to make a partisan speech and then plead for us not, dealing with an issue, not to deal with an issue in a partisan manner but it should be non-partisan.

But I have seen this done before and no doubt have from time to time involved myself in it as well.

The Chair: — Committee members have an amazing number of skills.

Mr. Tchorzewski: — Absolutely. That's why we're here. So I want to go on to make some more substantive comments about the motion and also comments about what we need to be doing as legislators with this question as well as others.

We are here and have been here for several weeks now with a very specific task assigned to us by the legislature. The task is to inquire into the events surrounding the events and circumstances surrounding something called Channel Lake. The purchase of, the disposal of, the dismissal of the president, chief executive officer, whether or not there should have been severance, that was one of the major issues before us today with the witness in the form of Mr. Bogdasavich. That's what we are doing as a Crown Corporations Committee here during these proceedings.

The committee, and most certainly the government, and I hope the legislature, should have a discussion about governance of Crown corporations as a whole, not Saskatchewan Power or Saskatchewan Tel. This is something that I think should be a discussion that should happen from time to time, and is a

discussion that should be reviewed by the Crown Corporations Committee annually when it considers the business of the Crown Corporations Committee.

Times change. Business environments change. Competition in some sectors is here that never used to be here before. And there was certain monopolies that certain Crown corporations had, and it's coming in others. And the Crowns need to review what they are doing and how they do it on an ongoing basis in this very quickly and very rapidly changing economic environment. We all now that.

So there is no question that these are the kinds of issues that need to be addressed. But this is a much broader question than Channel Lake, which deals with a very specific and a very small part of the business of one of the Crown corporations which is SPC (Saskatchewan Power Corporation).

It is not a responsible use of taxpayers' money to keep doing things that have already been done, which elected members are paid to do. I'm listening to some of the comments, and I hear comments of this nature at other times.

And it never ceases to amaze me why people stand for public office to get elected, and then get elected — and I assume that they stand for public offices to get elected because they feel they have something to offer and they're capable to deal with and carry out the people's business — and after having got elected somehow think they're incapable of doing that and they have to find some other people to do it for them.

If I may just throw that one partisan comment in. And I don't do it facetiously, nor do I do it in a critical kind of way; I just express it as a view of public life as I see it.

I think people get elected because they are capable, even members of the opposition. I believe that. And we should accept that responsibility and get on with some of the work that we have to do.

Now in 1996, Madam Chair, something in the area of \$2 million was spent by the treasury on a public review of the future of Crown corporations in Saskatchewan. Three volumes of work was done and there's a lot of other work that has been provided on this question and this issue. It should be emphasized that this was a public review involving Saskatchewan people and Saskatchewan organizations. That's only two years ago.

All of the things, or most of the things that Mr. Gantefer speaks about were addressed. This was a review not carried out by only elected people, but there was a panel of citizens that led the review. A Mr. Wilson Olive, a lawyer, distinguished lawyer; Ray Ahenakew, one of our aboriginal leaders; Frank Proto, who will be known to most people, a very prominent executive in the oil industry; Mr. Gordon Steininger, a representative of the trade union movement.

In this review, Madam Chair, all of the questions that the member opposite talks about were considered and are referenced. Clear policy directions for the Crown corporations was addressed; establishing performance standards for the Crown corporations, as the auditor has said; reviewing the

existing board structure and board appointments, which is actually in the process of happening. I think Mr. Hillson referred to that. Relationship between Crown corporations and the Government of Saskatchewan, the auditor mentions that; ensuring that Crown corporations can be effectively managed in a more competitive environment. And that's just a part of the list.

Much of what we are being asked to approve yet another major expenditure of dollars for, has already been done as early . . . as late as two years ago. And as a result of that some changes . . . it's not as if no action is being taken, because some changes have been announced and some legislation has been introduced in the legislature to follow up on the recommendations and the issues that have been raised.

I might add, Madam Chair, that in this study, what was then the Progressive Conservative . . . the Conservative caucus — who now one might argue are under the new name of the Saskatchewan Party — made a very important recommendation. It is appended to this report. And it says in title, "The Privatization Dividend." And they proceed in their submission to talk about the importance of privatizing our Crown corporations, several pages of it, and in their view what would be the benefit of doing that. So people that had their input.

What we see here today is an attempt to push that privatization agenda that the Conservative Party proposed when that review was undertaken two years ago. And I think, although I do not know the gentleman being proposed, from what I read of the résumé and what I have learned of some of the work that has been done by this individual — and I'm sure of great integrity and believes in what he says — that this agenda in the name of the person being proposed may also be a veiled attempt to push the privatization agenda.

Let there be no doubt — at least there isn't in my mind — what this motion is all about. It is just what I have just spoken to.

Now, Madam Chair, further to this extensive review in 1996 is not . . . this is not the only information available to the government and to the legislation and to the members of this committee. Deloitte & Touche in their report on Channel Lake makes some very important recommendations about how Crowns can improve their business processes in governance. We're going to be hearing from Deloitte & Touche, I hope, next week. I think they're pretty expert in some of these things. That's one of the nature . . . one of the things that they do as a business, to comment on things like that. This report is available and it will be before us.

Thirdly, and this is not just somebody who has an academic view, these are people who in practical terms practise some of what they can talk about as part of their business. And thirdly, Madam Chair, the Provincial Auditor in his most recent report — which is important and we should consider it — makes recommendations about governance and about accountability.

As I understand it, and I did some checking yesterday, the Crown Corporations Committee has expanded its mandate to review the future plans of Crown corporations, which he talks to. As a matter of fact, when I was not that long ago a minister

and chairman in . . . a minister in charge of the Saskatchewan telephone corporation, or SaskTel, I sat at that end of the table for a whole session — in fact I think it was two days — with my officials, the president and others, presenting to the Public Accounts Committee at that time a full explanation of the mandate and the direction of SaskTel and where it was going.

This gets done and if members of the opposition do their work — and I suspect they will because they always have — much of what is being talked about already happens.

So in summary, what we have is an extensive 1996 public review of the future of Crown corporations in Saskatchewan which has already cost around \$2 million; a review and a report by Deloitte & Touche with additional cost; a report by the Provincial Auditor which makes extensive recommendations. And after all that the official opposition — and I'm not sure about the Liberals, because I'm not sure Mr. Hillson was clear — want to have the Saskatchewan taxpayers pay for yet another contract with a consultant from Ontario to do the same work that has already been done.

Now we once heard from some of the parties in the legislature about a certain Texas audit not too long ago. And how somebody from Texas is going to come up and tell us how to operate our health care system is beyond me, but there's some . . . And this is no disrespect to Texas, but we have our way of doing things here. But . . . how that's going to be helpful.

In conclusion, Madam Chair, the proposal we have, I have to accept that it's brought forward with good intent and I'm not going to argue about that. But I think if we as a committee approve this, knowing what we know, we would be acting irresponsibly and not in the best interests of the taxpayers who have already shelled out a lot of money to get done what is being asked for us to do yet a fourth time.

The public expects governments and legislatures to make decisions when decisions are needed. This is where we are, in this review of Channel Lake, learning all of the facts so that we can make some decisions, and hopefully in the decisions and the recommendations make a difference.

And I say again, and I have said this on more than one occasion, let's get on with it and stop wasting the time of this committee with these daily motions to try to get some press. And I don't object to that; that's part of our nature of our business too. But let's get on with doing what we are expected to do in this committee and stop wasting our time and stop wasting, more importantly, the dollar that the taxpayer pays in order for us to do the job that they want us to get done.

So I think the committee should dispose of this motion by defeating it and get on with the work that we should be doing.

The Chair: — Thank you, Mr. Tchorzewski. Mr. Gantefer, before I recognize you I want to point out, it seems to me we have within your motion, two questions. One is whether or not this committee, arising out of our Channel Lake hearings, should engage a consultant to do a special report on governance and reporting structures. And secondly, if it should be the gentleman from . . . the dean of Ivey college.

I would like to draw committee members' attention to the fact that Mr. Goohsen, an independent member and not a member of this committee, would like to enter into the debate. I would rule that all MLAs (Member of the Legislative Assembly) have voice before the committee, and so I'm going to recognize Mr. Goohsen but ask him to try to use some restraint and certainly speak for considerably less time than Mr. Tchorzewski just did so that we can get out of here by about noon.

So with your indulgence, Mr. Gantefer, I'll recognize Mr. Goohsen and then I would ask you to make a closing comment and then we'll put the vote.

Mr. Goohsen: — Thank you, Madam Chair. I guess my reputation goes before me. Sometimes we do talk a little longer than we should about things that we passionately believe in.

I think there needs to be a couple of points corrected though for the record. Obviously the reason why we are here is because the auditor pointed out that he had found certain things that didn't exactly add up. I recall that last year the Minister of Energy and Mines at this time, entered into a rather heated discussion as to whether or not the auditor had any right to look into certain segments of the Crowns.

And of course the auditor has proven that he has the ability to audit in this province and to bring matters to the attention of the public by the fact that we are here. He has proven that he was able to do that and accomplish his goal.

It is the auditor that is referred to in this motion, and the auditor is demanding that something more be done because he obviously sees that the report finished in 1996 has not accomplished the goals that were set out to be accomplished.

And therefore I say that while we may be premature in bringing this motion to fruition today, it has to happen just as surely in analogy as we ended up being here as a result of the auditor's demands to be here in his investigation of Channel Lake.

So I think if you think it through, you must look at the timing, in that your report that Mr. Tchorzewski has referred to was finished in 1996. That report does clearly give recommendations of how to solve problems, but it also very clearly is evident that in 1997 SaskPower turned right around and went into the Channel Lake deal, and they didn't learn one single thing from that report because they never applied what was put into it. And so that demands that we redo the process in order to get this process back on track of how we run our Crowns.

And the fact that the Conservative Party pointed out at that time that there is an alternative and that alternative could be privatization should not be viewed simply as a partisan thing. It is simply, I thought at that time when we were consulted about it, an attempt to show that there's more ways of killing a cat than choking it with butter. In other words you can run things different ways and they will still work. And those alternatives sometimes can be melded together to achieve a better goal.

There! I have said my piece about that.

I think one other important thing I want to add here is that the

interchange of politicians between countries certainly is a valuable thing to have happen. In our coffee break I visited with a representative from the United States, from the Dakotas, and he pointed out to me that Crown corporations would be against the law under the Constitution of the United States of America.

The Chair: — So would medicare.

Mr. Goohsen: — I would openly wonder, I would openly wonder if the Fathers of Confederation in the United States put that into their constitution, if they didn't have some insight into the problems that you get into when you have governments running things instead of other people doing it for them.

And I would just say that probably Canada could look to the Americans for some guidance.

The Chair: — Thank you. And, Mr. Goohsen, I apologize for interrupting you during your . . .

Mr. Goohsen: — Your apology is accepted. I know you couldn't hold that back.

The Chair: — I think we do have to try to keep this as non-partisan as possible, and again I apologize for interrupting you and introducing a partisan level note.

Mr. Gantefer, Mr. Osika, again not a member of the committee, is asking to speak.

Mr. Osika: — Thank you, Madam Chair. I just wanted to make an observation and to pick up on some of the comments that were made and the reference to the legislation that Mr. Tchorzewski referred to.

That new legislation still does not say that subsidiaries of Crown corporations have to follow the same rules. And I believe it's become very significantly clear here that there is a need to ensure that there's a reporting process in place for that to happen. Just merely to sign a document as a subsidiary and then not having to, under any type of a process, properly report, is something that really has to be seriously considered.

And we will recall and all know that while we were out and about talking about Saskatchewan Crowns, this whole Channel Lake fiasco was going on and nobody paid any particular attention to it. So I just want to underline that there is some need and some merit to seriously consider what is being proposed in this committee. Thank you.

The Chair: — Thank you, Mr. Osika. Again, Mr. Gantefer, if I could ask your indulgence. Mr. Johnson has now indicated he wishes to speak. And again, Mr. Johnson, very briefly because the hour is now past 12 o'clock. I want us to deal with this motion.

Mr. Johnson: — Madam Chair, there's been a number of statements made that subsidiary Crowns do not have to report, or subsidiary companies to Crowns do not have to report. That's blatantly wrong in the face of facts that say that if they are not reporting separately, the financial statements have to be consolidated into the report of the holding company and therefore any of their expenditures or purchases and that are

reported.

And I think that the members that are making the statement are simply doing so on their lack of understanding and knowledge of what the auditor is insisting should happen and take place, not only in individual Crowns, but across the whole of the government. And the reason I understand this is that I happen to be the individual arguing with him on exactly how that should be done. Thank you.

The Chair: — We will now have a summary argument from Mr. Gantefer and then we'll put the motion.

Mr. Gantefer: — Thank you, Madam Chair. I'd like to respond primarily to Mr. Hillson first of all, in terms of the implication that this is some type of a smokescreen in terms of rationalizing privatization.

I think, Mr. Hillson, if you look at the motion and the terms of reference you will see that they are very, very clear in terms of what was being asked here and in no way, either directly or indirectly or by inference, is there any request of the appropriateness of public or private ownership in these terms of reference. And that was done very consciously and very deliberately to make sure that that issue was not part of this whole discussion because it is a separate and distinct issue.

What this motion does is exactly what it says by the motion and the terms of reference. It's inviting a specific individual, internationally renowned for his credentials in the issue of corporate governance, to say what is the best way that this could happen.

It deals with the issue of reporting structures including the way subsidiaries would report potentially. It deals with the appointment of senior officials. And the government can sit there and say that it is taking steps to change that. And it deals specifically with the issues coming out of the auditor's report and the challenges put before us.

And so in directing my comment, I think that Mr. Hillson would be in agreement that there is no consideration in this motion or the terms of reference or the mandate that deals with that issue, and I can assure him that it was not the intent that it be so.

In responding to Mr. Tchorzewski, I am really not sure I've ever heard, in the three years I've been an MLA, more nonsense in the light of impartiality in my entire life. I mean he can accuse Mr. Hillson of bringing in a degree of partiality by his comments, and then he goes on to go through this great justification of the government's position. And I find it really quite enlightening, and I think the people watching will find it enlightening as well.

They sit there and say in 1996 they went through a review that cost \$2 million, and then what did we learn? I mean just a year later we took a bath in Channel Lake because no one learned a darn thing. We've taken a bath in Guyana. What other baths are we taking in light of all of the great wisdom and knowledge that this government has learned from their task information. You could go on and list them ad nauseam.

As part of this whole exercise we could say, review the process

of utility rate and service fees, how they're established. Everyone in this province knows that this government does not want to put in process any comparison with the real world in terms of how that is done but would rather do it by fiat on the cabinet.

Madam Chair, this whole process is a challenge to we as a province to look beyond our borders. And not just look within ourselves and say, surely all the knowledge of the world is within the borders of Saskatchewan. There's at least the possibility that there are people outside of this province that know more about how things are done in the international world — in the world of governance and in the world of corporate structures — than what we have within this province.

Here is an individual internationally recognized for his expertise in the whole line of authority in corporate governance and the members opposite, the government, would simply be afraid of learning something that might be very valuable to them.

And I'm sorry, Madam Chair, that I sense that they're going to vote against this because I think the people of this province will be done a great disservice in a few moments. Thank you.

The Chair: — Thank you, Mr. Gantefer.

A Member: — Question.

The Chair: — Thank you. I thought I heard the call for the question.

All those in favour of Mr. Gantefer's motion, please indicate. Mr. Gantefer, Mr. Bjornerud, Mr. Hillson.

Those opposed, please indicate. Mr. Johnson, Mr. Tchorzewski, Ms. Hamilton, Mr. Shillington, and Mr. Trew. That motion is defeated.

I don't need a motion to adjourn. The hour is past 12 o'clock.

Committee members, we will be having another round of hearings beginning next Tuesday. The witnesses that I have managed to arrange so far are the representatives from the Deloitte Touche accounting firm. One of the principals who worked on the report was in Winnipeg. She will be attending as well as the principal from Regina who will be attending. So for next Tuesday and Wednesday the witnesses will be from the Deloitte Touche accounting firm.

The committee now stands adjourned.

The committee adjourned at 12:10 p.m.