



Standing Committee on Crown Corporations

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

The Chair: — We will reconvene the special hearings of the Crown Corporations Committee into the Channel Lake circumstances.

Committee members will note that at the conclusion of last week's sessions I indicated that I was going to be arranging some witnesses from various accounting firms. I would like to inform you that I have today and tomorrow representatives from the Deloitte Touche firm available to comment on their special report and next week I will have Ernst & Young representatives in attendance. They have indicated that they can make themselves available for the two days next week.

So I will now proceed with . . . if I could have the statement for witnesses. I would like to introduce to committee members the representatives from Deloitte Touche, Mr. Jack Grossman, who many of the committee members will know since he has attended the Crown Corporations Committee several times in the past. He is from Regina. And we also have Ms. Donna Larsen who at the time of the drafting of the report was stationed in Winnipeg and has now seen the light and has moved to Saskatoon. As Mr. Grossman said to me, it's the pretty city.

We do have . . . I will begin today by swearing in the witnesses but before we do that I need a committee decision. Both Mr. Grossman and Ms. Larsen point out to me that it is the custom in accounting firms to work together on reports. And it's rather a seamless process; it's very difficult to say one person did this amount of work and another person worked on this particular file. So they do work together and they have made a request to both be sworn in at once and to be able to answer, depending on which person has the facts and the expertise at hand for a particular question rather than having one give evidence and then the other.

This is a departure from our usual proceedings and it is a departure from how evidence would be received in a judicial inquiry so I do not want to establish a precedent without the committee members' concurrence. So I would ask you to think it over and let me know in the next few seconds if it's acceptable.

Mr. Hillson: — Yes, Madam Chair, I'd just like to say I do think it's appropriate in these circumstances. My only concern at all is that I wouldn't want to view it as a precedent because I think there's other circumstances where it clearly would not be appropriate.

But I have no objections to this today.

The Chair: — Does anyone else? Okay. Well, and I would not be wanting to establish it as a precedent which is exactly why I'm asking for committee concurrence and if I have a similar request in the future, I will ask again for committee concurrence on this.

Then we will swear in both witnesses at once, and before I do that then I have a statement that I have to read to both of you. It's the usual standard statement. Nothing deviating on this one.

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

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

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

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

Now I'll swear you in. Do you want me to go by seniority or sex? Ms. Larsen did you wish to be sworn in or do you want to affirm.

Ms. Larsen: — 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?

Ms. Larsen: — I do.

The Chair: — Thank you. Mr. Grossman, you wish to swear I take it.

Mr. Grossman: — Yes.

The Chair: — Okay. 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. Grossman: — I do.

The Chair: — Okay. Thank you. So I will now formally welcome you to the committee and I will just briefly outline to you a little bit of the procedure. A witness two weeks ago described it as something like going to the dentist, but it's not nearly that helpful.

What we will be doing is asking for an opening statement from you and either one or both of you may make the opening statement as you choose. We will then be moving in order with questioning from the three political parties. We will start with questions from the opposition party, then the third party, and then the government party, and we will be rotating in that order.

If an independent member comes to the committee and indicates that they wish to put questions to you, that would occur after the government members have questioned and it would only be for 15 minutes in duration. Otherwise the

political parties have up to 30 minutes each go for questioning you. That's including question and answer. And we generally take a break around 10:30. Do you have any questions?

Mr. Grossman: — No.

The Chair: — Okay. All right, then Mr. Grossman, or Ms. Larsen, if one of you would please give us an opening statement we will proceed with questioning.

Mr. Grossman: — Thank you, Madam Chair. We have no printed prepared statement but we would like to just make a couple of comments.

I would like to introduce my colleague. We've met most of you I think as you came in. Donna Larsen is a senior consultant with the consulting firm of Deloitte & Touche.

I'm officially John Grossman but everybody calls me Jack, and that's not to be confused. It's just that's what people refer to me as, but just to I guess put it on the record. I'm the managing partner in the Regina office of Deloitte & Touche, the accounting side of the practice.

Deloitte & Touche was approached in December 1997 by Crown Investments Corporation to assist with a review relating to Saskatchewan Power Corporation's experience with Channel Lake Petroleum. Mr. Gerrand and his colleague, Denise Batters, were approached at the same time, and their efforts were focused on the legal experience aspects of the experience whereas we focused on the financial, the management, and the governance considerations as has been approved by the committee.

And we thank you for approving the issue that we can answer questions to the best of our ability and we will decide which person can best answer the question. And if there's subsequent information to be provided, then the other individual will add to the comments. So that's the only comments that we have to make, Madam Chair, committee members.

The Chair: — Thank you. Ms. Larsen, did you have anything to add to that?

Ms. Larsen: — No, not at this time.

The Chair: — Thank you.

Mr. Gantefer: — Thank you, Madam Chair. Good morning, Mr. Grossman, Ms. Larsen. Welcome to the committee.

I think given the decision we made in terms of allowing each of you to reply, I think I'll just sort of direct the questions generically and leave it to you to decide between yourselves as to who most appropriately could perhaps take the lead on answering them.

In testimony that we've received from Mr. Christensen, Mr. Messer, and Mr. Portigal, they all seem to indicate in their testimony that arbitrage activities were within the mandate of Channel Lake.

I will be referring, Madam Chair, primarily to the Deloitte

Touche review of the Channel Lake experience, the document dated March 9, and in the key issues and learnings section I think is where we move to those summaries. Your report pretty clearly indicates that the move into arbitrage was outside of the mandate that was given. On what basis did you come to that conclusion?

Mr. Grossman: — When Channel Lake acquired the assets of Dynex there were provisions in the early documents that indicated that the corporation was not to involve itself in a number of activities. And while arbitrage wasn't specifically mentioned, we believed that that was outside the mandate that the corporation was set up to operate under.

Mr. Gantefer: — The mandate talked about security of supply and predictability of price. Is that the relevant sections that you referred to?

Mr. Grossman: — Yes.

Mr. Gantefer: — Thank you. Has anything . . . I guess I should ask first of all, have you followed to some degree the testimony that has occurred in front of this committee over the last weeks?

Mr. Grossman: — Yes we have.

Mr. Gantefer: — Thank you. I wanted to determine that. Has anything that you've heard or followed in the testimony made you second guess your opinion in terms of the fact that Channel Lake was operating outside of its mandate?

Ms. Larsen: — No. And I wouldn't say that I've gone through each of the transcripts in detail. But just generally, the information that was provided through the other discussions here at this committee hasn't provided any additional information that would make us change our views on that.

Mr. Gantefer: — So clearly you believe that at the outset the Channel Lake operation was outside of the mandate. Was there anything in what you saw subsequently to indicate that SaskPower authorized that type of activity?

Mr. Grossman: — There were approvals that were concluded by the board at various stages. Generally they were retroactive in nature and the activity was well under way at the time the approvals were given.

I think it's important to remember that when you look at the financial statements of Channel Lake once they've got the accounting in order — and I think testimony previously has indicated that took a little while — but once the accounting was prepared on a monthly basis, there were different activities going on.

I think it's been mentioned that the gas reserves that were producing in Alberta, that gas never found its way to SaskPower directly. But it was a hedge against gas that they would have to buy on the market. So there were market activities of selling that gas and in some cases buying gas and selling gas up until December of 1995 at which time there were some nominal arbitrage activities undertaken. And then they steamed ahead in 1996 until the failure of two companies to

honour their side of the contract, which caused the losses to occur.

So there's two separate types of transactions. On the financial statement there was no differentiation between the arbitrage activities and what they called market sales and market purchases. So I think it's important to understand when arbitrage started.

Mr. Gantefer: — Thank you. In your report you indicate that the SaskPower board relied very heavily on the audit and finance committee to provide the ongoing supervision and monitoring of the Channel Lake activities. Did you, in your search or your investigation, did you find that the audits and finance committee had enough information coming from Channel Lake?

Ms. Larsen: — They had regular information once the financial reporting started on Channel Lake. There was information showing up with respect to the losses as soon as they were incurring. The first report they had was in November and it was the first stage of the losses showing up. So there were reports going to the audit and finance committee on a regular basis.

What's not clear is how extensive the discussions were on that point when it was going to the committee. Clearly the committee had many things on its agenda — Channel Lake was only one of them. So while it was contained within the information that went there it's not clear exactly how much discussion there was.

Mr. Gantefer: — When you said that the information was on a regular basis was that weekly, bi-monthly, monthly?

Ms. Larsen: — It was more in the order of bi-monthly or quarterly. They did not meet that often. I think the report shows the record of meetings for the audit and finance committee as well as the board of Channel Lake.

Mr. Gantefer: — You indicate that there is scant evidence or lacking evidence that the committee did any detailed discussion on this information that they received. Was there any evidence that the committee — the audit and finance committee — expressed concerns about the arbitrage activities in '95, '96, and '97?

Ms. Larsen: — Not specifically in terms of minutes of the committee and reports on that front. There were concerns about the losses but the origin of the losses, namely the arbitrage activity, didn't appear to be a point of major discussion at the audit and finance committee.

Mr. Gantefer: — Part of your mandate, you indicated in the relationship with Gerrand, was to talk about the governance structure as well. If the audit and finance committee received the information in terms of the responsibility and authority lines, did they have a responsibility to see to it that the board of SaskPower was made aware of what was going on?

Ms. Larsen: — I would assume that that would happen in the normal course of events in the context of the audit and finance committee flagging for the board's attention those items that

they thought were critical for the board to pay attention to. So the question is whether or not they did that in the course of the discussions related to Channel Lake's reporting.

There isn't anything on the paper record that indicates that they flagged that as a particular issue so there did not appear to be a major concern on that front.

Mr. Gantefer: — So, if indeed you're saying that they had the information, it's not clear to what level they discussed it or recognized the significance of it. And it's also then unclear if they passed that information on to the full board. Is that correct?

Ms. Larsen: — Correct, correct. And the audit and finance committee got the full report on the losses and the anticipated total of those losses in I believe April, and that report was completed in January. So there was a period of time where the information that they were getting wasn't full and complete and there's nothing on the paper record to say that they saw that full information before April.

Mr. Gantefer: — How lacking in terms of completeness of information ... like how significant was the lack of information?

Ms. Larsen: — Well the issue is, I guess, twofold. One is the information related to the arbitrage activity and the other is the information related to the losses stemming from the bankruptcies and the impact on Channel Lake. The information on the bankruptcies and the impact of the losses starting to grow ... our understanding is that there were major verbal briefings of the audit and finance committee. In terms of major verbal briefings to the board on the losses, we're unaware of those having taken place to any degree until the point of the final conclusion of the sale. There didn't seem to be discussion about the losses when the board was discussing the sale in March.

The Chair: — Mr. Gantefer, excuse me, and Ms. Larsen, I don't want to make you nervous, or you, Mr. Grossman. Some people are having some trouble hearing so I'll have to ... the microphones are really good, they pick up anything and everything including some unintended comments, but they are not amplifiers. So you'll have to speak in a slightly louder than normal voice.

Ms. Larsen: — Sorry.

The Chair: — Thank you.

Mr. Gantefer: — You indicate that there were verbal briefings. Is that verbal briefings of the audit and finance committee?

Ms. Larsen: — Correct.

Mr. Gantefer: — Who made those verbal briefings? Where did they come from?

Ms. Larsen: — From the management of SaskPower.

Mr. Gantefer: — From the management? Would it be from Mr. Messer?

Ms. Larsen: — I believe on the issue of the bankruptcies, Mr. Christensen briefed the audit and finance committee verbally.

Mr. Gantefer: — So he had that information and passed it on to the audit and finance committee?

Ms. Larsen: — Correct.

Mr. Gantefer: — Okay. And there was nothing in your investigation that indicated that the audit and finance committee then passed it on to the board?

Ms. Larsen: — Not in great detail, no.

Mr. Gantefer: — Is there any indication that they gave a verbal briefing to the board as well?

Ms. Larsen: — I don't recall, in the minutes of the SaskPower board, detail with respect to minutes and briefings on Channel Lake specifically — no, not in terms of the losses.

Mr. Gantefer: — So when the board was making the decision about the sale of Channel Lake it would be your sense that they did not know about the trading losses?

Ms. Larsen: — It would be my sense that there was not a discussion about the trading losses in the context of the sale decision, true.

Mr. Gantefer: — But SaskPower management certainly knew?

Ms. Larsen: — Correct.

Mr. Gantefer: — And the audit and finance committee knew?

Ms. Larsen: — Yes.

Mr. Grossman: — On that issue, one interesting document, and I don't know the number but it was after the March 24 or March 23 meeting between Mr. Portigal and Mr. Christensen and I'm not sure who else was in the meeting, but that was a meeting which was held to explain what the deal was to be about. Subsequent to that meeting Mr. Portigal prepared a topic summary which was the way the board received the information. And in that document he talked about a purchase price of \$26 million minus 5.2 for losses; 20.8 net realizable asset value.

So the recognition of losses was detailed in that topic summary but that topic summary was not used. Instead Mr. Christensen and Mr. Kram prepared another topic summary, which you've seen, and they make no reference to the trading losses in that particular topic summary. It just deals with the transaction allocation between shareholder's loan and shares and a net price of the 20.8.

Mr. Gantefer: — Thank you. And that leads me to another topic, and that certainly is the value of the company in terms of what was expected.

I believe it's fair to say that from the initial letter that was received from DEML (Direct Energy Marketing Ltd.) by Mr.

Dufresne indicating an interest in the purchase of the assets of Channel Lake, that there was reason to expect that the value of the company was going to be in that \$28 million range depending on actual acquisition date. Minus anticipated trading losses at that time, while not verified, stated at something in the \$7 million range, for the 20.8 million net price.

You indicated from Mr. Portigal's topic summary that that type of number — the topic summary that wasn't used — that that verified those numbers.

Mr. Grossman: — No, the topic summary which . . . The number we have, and it won't be the same as the number you have, it was no. 848. That was the topic summary that was . . . I'm sorry. That was a letter from Mr. Christensen to Mr. Portigal outlining the transaction for which subsequently then Mr. Portigal prepared the topic summary for the board, the one that was never used.

And in that topic summary that's where he refers to 26 million effective January 1, '97. After an adjustment for trading losses of 5.2 million, the asset value equivalent purchase price — which is unique terminology — but the asset value equivalent purchase price is \$20.8 million which is supported by the independent engineering evaluation, etc.

He says after that that the sale of the Channel Lake shares will result in a net gain to SaskPower of approximately \$4.2 million which is different than the \$5 million that was prepared in the topic summary that was presented to the board. But there is a series of numbers — 26, 5.2, equals 20.8 — that says that's the deal, which is at odds with ultimately what happened. But the 20.8 is referred to as the asset value equivalent purchase price, not the net proceeds.

Mr. Gantefer: — In accounting terms, is there significance in that difference, in that terminology?

Mr. Grossman: — Well normally you would deal with it as net proceeds. You wouldn't deal with it as a net . . . or the asset value equivalent purchase price. You wouldn't normally use that terminology. You would say the net proceeds for the sale of shares is X number of dollars.

And so there seems to be when we read that . . . we thought there's some linkage to the asset value in this documentation. He's saying the assets have a net equivalent value price of \$20.8 million.

Mr. Gantefer: — But he clearly indicates that the trading losses are deducted prior to coming to that 20.8.

Mr. Grossman: — Correct. He says, provides for a share sale price of \$26 million, which is not totally true, because the share price wasn't for \$26 million. The share price . . . or the amount received was broken into two components — a repayment of the loan or note payable, and the remainder was for the share price.

So technically that's not a hundred per cent correct. But he talks about 26 minus 5.2 equals 20.8. So you say, he understood the transaction, except he refers to the 20.8 a little differently than one might normally refer to it in accounting terms.

Mr. Gantefer: — Given that information from an accounting standpoint, would it be reasonable to expect that SaskPower believed that they were going to receive a cheque of \$20.8 million upon the close?

Mr. Grossman: — That's a difficult question to answer because I can't relate to how officials would have thought. But one would have probably come to the conclusion that — without spending a lot of time on the words — and remember these are busy people, they would look at it and say yes, we're supposed to get 20.8. Correct.

Mr. Gantefer: — Okay, thank you. And I appreciate there were adjustments according to take-over date and adjustments of inventory and all the rest of those sorts of things. And I'm not getting hung up about those details.

So clearly from that document, and I believe that that was reflected in the first two drafts of the contract, basically again, not dealing with the details of some of those minor adjustments, but in both of those drafts or in those initial drafts, that what was reflected in that topic summary was basically what was in the agreements, the closed agreements.

Mr. Grossman: — Correct. Correct.

Mr. Gantefer: — Is there any basis in accounting logic that would then explain how suddenly in subsequent drafts the trading losses got deducted again.

Mr. Grossman: — There's no basis for a "double deduction." But there is a basis for — and we asked the question of senior SaskPower officials — how did you expect to sell the company for approximately \$5 million more than it appeared to be worth? If you look at the December 31, 1996 financial statement which has approximately \$2 million of retained earnings at that point in time, but in that financial statement there is no recognition of the losses yet to be incurred. So they haven't booked them.

One would come to the conclusion that the assets which are shown on that balance sheet as approximately \$20.5 million . . . that's a net book value of the assets. This isn't a very sophisticated operating company. It doesn't have a lot of complex types of transactions. It's got a bank account. It's got some receivables. It's got a payable or account receivable from SaskPower and an account payable to SaskPower, a note payable, and some retained earnings. So it's a pretty simple financial statement.

If you looked at that and you said, if you're paying 20.8 for the shares, one would not think you would absorb the losses. And remember they're not on the balance sheet at the point in time that you would deduct for those losses. Because when you buy shares, the vendor always wants to sell shares, the purchaser always wants to buy assets, because the purchaser generally wants to depreciate the value of the assets on their records. You can't depreciate the price of the shares.

So the struggle occurs in negotiation until whoever has the biggest clout wins out in a commercial transaction, or whoever wants to deal the most will determine that aspect.

But if I was looking at that company, and you say the assets that are shown on the financial statements basically appear to reflect the fair market value, and the losses aren't booked on the financial statement at that point in time, one would suggest I'm not going to pay that much for the company.

So we asked SaskPower officials why they thought they were getting this premium, because there was no goodwill in the company. It didn't have any of the components that would suggest you want to pay more. And the answer was we just thought we were going to get \$5 million more. They didn't have an answer.

Mr. Gantefer: — I would suggest there's maybe two components to consider in the answer to your question about why would you. Number one, I think you're assuming that the accepted rate of return or discount rate is 15 per cent, and we've had testimony that that wasn't a hard and fast number but more appropriately probably was a range between 10, 12, and 15. So that if you actually used a lower number then the asset value would be higher. And I think that from the testimony from the Gilbert Laustsen firm that that was clearly identified as one explanation why you potentially could expect more than the actual asset value at 15 per cent discount.

But the other thing that I think is important is the whole 10-year gas contract which wouldn't show up on the Channel Lake's balance sheet that you reviewed and was stated by DEML as being the real underlying reason why they wanted to buy the thing in the first place. Would you think that those two reasons would have an impact on the actual valuation of what the assets of Channel Lake would be worth?

Mr. Grossman: — Yes, they could. What was interesting in that regard is when we looked at the 10-year gas supply agreement, the initial agreement contemplated a flat management fee on all purchases by SaskPower. SaskPower officials reviewed that agreement and decided that they were not prepared to enable DEML to get a windfall because SaskPower, not knowing how much gas it would require, wasn't prepared to allow them to get a windfall.

And they changed that agreement, the management fee that they were going to be paying, and ground it down so that in the numbers that we had looked at it varied from a payment that they would have had to make over the 10-year term assuming certain purchases . . . they ground it down significantly. And so we looked at that and said, okay that has been removed from the negotiations and saw that they brought it probably more into line then with what they considered to be reasonable based on their expertise.

Mr. Gantefer: — When we had the testimony from the Gilbert Laustsen company, the gentleman said that the valuation is really based on an estimate of profits in Channel Lake and taken forward by a multiplier effect to say, okay now based on this it's \$20.8 million, with the 15 per cent discount.

He also said that if a 10-year gas supply contract is a condition of the sale, in other words it isn't arrived at by open competition but it's actually a condition precedent, then what the net value of that contract should also be considered the same as you'd consider the cash flow value of the assets at Channel Lake.

Would that be fair?

Mr. Grossman: — Yes, it would be.

Mr. Gantefer: — And he didn't do that in his valuation of Channel Lake.

Mr. Grossman: — No, not the documents we saw.

Mr. Gantefer: — We heard from DEML and we're going to get the information more objectively, but they volunteered that the 10-year value of this gas supply contract would be at least \$5 million — \$500,000 a year — and I suspect that they would not overstate that position logically.

But even taking that as a starting point that would add significant cash value to Channel Lake because that would represent perhaps a third increase in terms of cash flow profit. Would that not be true?

Mr. Grossman: — It would be true. You have to consider a number of components when you're looking at a 10-year contract. And basically that's the value of a dollar today versus a dollar 10 years out. So you have to discount it as to what the present value would be to get a number for that.

You would also have to consider that they have to provide services and effort to earning that money. But it is a factor in the sense that it enables them to earn that money and so therefore it would have some value, yes.

Mr. Gantefer: — He indicated that that would be the net profit so I mean the costs of earning the money would be deducted already.

Mr. Grossman: — Correct. Correct.

Mr. Gantefer: — That's what net profit is after the efforts you make to earn it.

Mr. Grossman: — Yes.

Mr. Gantefer: — And their offer would be at least that much, which using the same logic as establishing the initial value of Channel Lake would increase the value of Channel Lake by as much as 5 or \$6 million quite conceivably. Is that correct?

Mr. Grossman: — It could.

Mr. Gantefer: — Which may explain why the assumption of increased value for Channel Lake. So going back to the value again, why the double deduction for the trading losses?

Mr. Grossman: — That was a question that we could never get a clear answer to and still do not have a clear answer to.

Mr. Gantefer: — So you would agree that the 20.8 may not indeed be a fair reflection of the true value of Channel Lake given the fact that the issue of the discount rate is in question and given the fact that the cash value of the 10-year supply contract was not considered in the valuation?

Mr. Grossman: — We did not do a valuation, but from talking

to a senior individual from SaskEnergy and asking him the question as to what the value of the gas reserves were . . . and remember these reserves had I think, even when Channel Lake of course acquired them, they had limited life. They weren't going to go on for 50 or 100 years. And I think that they were expected to deplete in value probably 10 years out from say 1997. So they didn't have the value that, as I say, they would be there for 50 years.

The individual in question indicated that, because they were just producing wells and there was no exploration attached to them, the value may not be as high as was reflected in the . . . at the 20.3. He said he wouldn't have been prepared to pay that much for those assets.

So as I say we didn't do a valuation. We looked at the documentation we had in front of us and worked from there. But we didn't do a specific valuation. We're not qualified to do gas valuations or anything like that.

Mr. Gantefer: — Gilbert Laustsen were qualified to do it?

Mr. Grossman: — Absolutely. Absolutely.

Mr. Gantefer: — And they said the assets were 20.3 given a 15 per cent discount rate.

Mr. Grossman: — Yes.

Mr. Gantefer: — Okay. I'm accepting that in terms of the gas evaluation that appropriate discounting for future values and everything were considered.

My point is, is that that 20.3 did not consider either a different discount rate — that was at the 15 per cent — so if a 12 per cent was more appropriate, that would change the absolute value.

And if you considered the cash value, the profit value, of the 10-year gas contract because it was a condition of the sale — it wasn't, you know, a thing arrived at in a fair and open competition subsequent; it was a condition of the sale — and consequently those profits should have been considered as a part of the cash value of the place. That could have significantly changed the value of Channel Lake.

Mr. Grossman: — Correct.

Mr. Gantefer: — Okay. Thank you.

I want to briefly talk about the question of the March 31 deadline and the significance of that deadline. Testimony we've received from the legal community and from a number of people termed the March 31 deadline in a number of ways, and you may have followed that. Some individuals said it was a soft target; other people said it was a very, very definite time-line date, a very aggressive date, something that was going to be hard to meet.

Can you tell me what the significance of March 31 is, from an accounting standpoint?

Mr. Grossman: — We saw various notations in the documents that we examined around the March 31 date and posed that

question to the senior officials at SaskPower when we interviewed them. And Donna probably will want to comment as well because she interviewed some people that dealt with that same issue.

It was a very difficult time line to meet in light of the fact that information was not available to the purchaser around the financial statements because apparently they didn't receive the information till late . . . or March 31, and details of the losses until April 1.

The significance that we learned from the interviews was that it enabled the corporation to match the losses against the proceeds, and in the financial statements of SaskPower, it would be a net effect as either gain or loss on disposition of the shares of the subsidiary. And so you would match the two transactions together.

The other aspect that occurred because of the March 31 date was that the financial statements of Channel Lake were not presented to the legislature. A confidentiality agreement was signed sometime in mid-March with DEML and that precluded the corporation from filing the financial statements with the legislature.

There was documentation from Portigal to Mr. Messer on a rather . . . on a constant basis when he was looking at the various offers indicating that the March 31 date . . . that DEML was the only company who could comply with that date, that they could close by that date. And that seemed to be an overwhelming condition of concluding the deal with DEML, to conclude by March 31.

Mr. Gantefer: — So if SaskPower would have received the 20.8 net that they were assuming they were going to get, they would be able to wrap that in with the losses that they had suffered in arbitrage trading and end up only having to report a line item, for lack of a better word, in SaskPower's financial report that indicated the net result of that whole transaction. That's what you're telling us?

Mr. Grossman: — It would be. Yes, you would net the amount that they had to pay under the terms of the contract against the profit that they made on the sale of the shares and it would just show as one line on the balance sheet.

If you go back to the original letter from DEML regarding the sale and the first draft of the agreement, it went back to September 1, 1996, which is somewhat unusual that you're going to go back that period of time. We saw from the documents that we reviewed, journal entries as to how this would work, and would it work from an accounting point of view. And it was concluded that it would not work to remove the subsidiary from the financial statements of DEML for December 31 of . . . I'm sorry, financial statements of SaskPower for December 31, 1996 . . . that would not, you could not achieve that.

So in the second draft, then it moved to September . . . or I'm sorry, January 1, 1997 as being the purchase date. And so the March 31 date had a bearing on the transaction.

Mr. Gantefer: — So effectively SaskPower or Channel Lake

— I guess SaskPower because they were the ones that would have to make a report on their financial statement on March 31 — they would effectively be able to mask the trading losses against the anticipated increased value of the sale of the shares.

Mr. Grossman: — Well the company would have been sold effective January 1, 1997. There was no requirement for SaskPower to table the financial statements with the legislature because of a confidentiality agreement. The asset had been sold, so there'd be nothing to report to the legislature other than the transaction would be reported through the financial statements of SaskPower Corporation. And it would be a one-line entry.

Mr. Gantefer: — So it would have created . . . they would have been able to hide the fact they had trading losses effectively.

Mr. Grossman: — It would have been netted, yes, against the proceeds, and not referenced in the financial statements.

Mr. Gantefer: — So the significance of the March 31 deadline was allowing SaskPower officials to effectively hide the trading losses from the legislature, and from the sounds of things, even from the board because they were not discussed.

Mr. Grossman: — Well you wouldn't disclose the losses separately. Now what you get into and what you see if you look at the 1997 financial statement of SaskPower is a note around discontinued operations that you have, to indicate that there were operations from January 1 to the date of closing which in this case was deemed to be May 29 or June 1.

And so you have to disclose some of those transactions in the notes of SaskPower and that's what was done. So there will be some information but it would generally be a netted amount, yes.

The Chair: — Mr. Gantefer, excuse me. Do you think you could wind up this line of questioning and we'll move to the Liberals?

Mr. Gantefer: — I will try to wind it up . . . I will try anyway.

So the effect was while there would have to be a note indicating that trading occurred, that there would have been a sale of shares, all that would have had to be reported was the net effect of that all.

Mr. Grossman: — Gain or loss, yes.

Mr. Gantefer: — So there wouldn't have to be a specific note that said there was potentially \$8 million to 20 or whatever it was because I think at that time it wasn't definitively known; it was a range in numbers. It could have been as bad as 20 and maybe 8. There was a great deal of concern and that when SaskPower looked at the 20.8 net, there potentially was an opportunity to wash a great amount of the trading losses into one net figure. Correct?

Mr. Grossman: — Correct.

Mr. Gantefer: — And so the March 31 deadline was critical for that to happen.

Mr. Grossman: — That was the deadline that they were working towards. I don't know if it was exactly along the lines that you're talking about, but the tabling of the financial statements of Channel Lake did not have to occur because they were in negotiations and so they received an exemption not to have to table the financial statements.

Because the company was sold effective January 1, then there's no further transactions in that company that they have to report so it does tend to disappear from the scene, yes.

Mr. Gantefer: — If the deal had been walked away from after March ... or after April 1, what would the reporting requirements have been if the deal had ... if they'd walked away from the deal. If they pulled back from the deal, what would the reporting requirements have been after say the deal collapsed?

Mr. Grossman: — If the deal had collapsed, and I can only make an assumption, the financial statements of Channel Lake would have then been filed with the legislature because they were requested to be filed by Crown Investments Corporation. So the confidentiality provision wouldn't have applied; they would have been free then to disclose the financial statements to the legislature for December 31, 1996.

Mr. Gantefer: — And they would have showed then trading losses.

Mr. Grossman: — The December 31, 1996 audited financial statements make reference by way of note as to what the future trading losses are and they talk about a \$5.2 million number. And they have the trading losses that were actually incurred I guess for the period November and December of 1996 embedded in the body of the financial statements but not specifically identified in the body.

But there are notes to indicate that the trading losses exist, yes.

Mr. Gantefer: — But the flags would have been raised.

Mr. Grossman: — Flags would have been raised, yes.

Mr. Gantefer: — And so effectively, by the fact that this deal was consummated effective March 31, that was avoided.

Mr. Grossman: — That was avoided, yes.

Mr. Gantefer: — And the fact is that even after the board understood that \$5.2 million evaporated from their anticipated price, they still went through with the deal. Is that correct? They accepted the 15 points.

Mr. Grossman: — The board accepted the agreement as signed, yes.

Mr. Gantefer: — And that was on the recommendation of SaskPower management.

Mr. Grossman: — That was in the topic summary that was presented to the board, yes.

Mr. Gantefer: — So effectively, the SaskPower management

was determined to make this deal stick on March 31.

Mr. Grossman: — The series of events of course was that — I believe it was March 27 — that the board approved the sale for \$20.8 million. We know what happened from there. And on June 20 the board ratified the agreement, yes, accepting the agreement as signed.

Mr. Gantefer: — The audit and finance committee understood the trading losses. That was your testimony; they had the information. Is there anything in your investigation that indicated if the Chair of SaskPower understood?

Ms. Larsen: — In terms of the losses?

Mr. Gantefer: — Of the losses and the ... I guess I would add to that the significance of the March 31 reporting methodology that we've just discussed.

Ms. Larsen: — No, there isn't anything that we found in the course of the document review or the interviews that would indicate that.

Mr. Gantefer: — Okay. Thank you, Madam Chair.

The Chair: — Thank you, Mr. Gantefer. And now till about 10:25, Mr. Hillson, and then we'll take a break.

Mr. Hillson: — Thank you, Madam Chair. Good morning.

The Chair: — Again, Mr. Hillson, before you start, I'm going to once again ask the witnesses to please speak a little louder. And I will ask all committee members to avoid as much as possible extraneous side conversations.

Mr. Hillson: — Just on this point of March 31 — you've been discussing the SaskPower management — were you able to identify anyone in particular who had decided on March 31 as being the date that it was important to have concluded Channel Lake?

Ms. Larsen: — It surfaced in the documentation and then we raised it in the course of the interviews. And there was I think a general awareness that that was seen as an important date, but it was inconsistent in terms of the information we were getting.

Some people were saying it was just a general target. Other people were saying it was fairly important in terms of some reporting issues because they wanted to be able to package the sale with the losses so that it was a one-reporting process as opposed to dual. But we didn't hear anything from one specific source. It showed up from a number of different places.

Mr. Hillson: — Okay. So you can't identify for us who was the driver behind March 31?

Ms. Larsen: — No.

Mr. Hillson: — You are familiar with a memo by ... from accounting policy and development, CLP 17/43 for the record, in which SaskPower discusses ... Well I'll just read into the record a quick quote so we'll all know where I'm at. Question:

If the date of the sale is retroactive to September 1, 1996 but the sale agreement is not signed until March 1997, can we eliminate Channel Lake from the SaskPower books as of December 31, 1996?

Are you familiar with that memorandum?

Mr. Grossman: — Yes I am.

Mr. Hillson: — Can you tell us, did you do any inquiries as to where this had come from that . . . you know, can we eliminate Channel Lake from the books as of December 31, 1996? Where did that come from? Who would raise that question?

Mr. Grossman: — I'm not sure I know specifically. I'm aware that there was work done by Mr. Spelliscy around that matter.

Mr. Hillson: — Yes. He was responding to a question.

Mr. Grossman: — He was responding to a question. And I can't say without absolutely looking at the document that I can identify who that individual was. And I don't know if it refers to it in the document that you've just read.

Mr. Hillson: — Well it's Mr. Spelliscy's document.

Mr. Grossman: — Correct.

Mr. Hillson: — But I say, clearly he's responding.

Mr. Grossman: — Yes.

Mr. Hillson: — Someone has said can we get rid of Channel Lake in 1996? Where does that inquiry come from? You can't help us with that.

Mr. Grossman: — It would come from finance I believe.

Mr. Hillson: — From finance. Now in the 1996 annual report of Saskatchewan Power there is a reference on page 21 to Channel Lake Petroleum. And the sum total of the references to Channel Lake in that case . . . There's the headline "Channel Lake Petroleum" and there follows the two lines:

Drawing on marketing expertise, Channel Lake Petroleum continues to purchase natural gas at the lowest possible price for SaskPower's gas powered facilities.

Now my question for you is do you consider that to be adequate reporting as a sum total of reporting on Channel Lake? Or do you think that in an annual report they should be somewhat more forthcoming in terms of telling the shareholders and the general public what is the situation.

Mr. Grossman: — I think what you're talking or what you're addressing is the narrative around the corporation's performance during the year. It's not the actual financial statements. I would refer you to the specific body of the financial statements, the statement of operations, and possibly the notes for more information around Channel Lake.

Mr. Hillson: — . . . weren't made public.

Mr. Grossman: — Well the SaskPower . . . No I'm talking about the SaskPower report. Within the SaskPower report there's probably other sections within the actual financial statements that deal with subsidiaries.

Mr. Hillson: — I don't think in . . . not in the case of Channel Lake there isn't.

Mr. Grossman: — Okay.

Mr. Hillson: — However I'm not going to argue with you.

Mr. Grossman: — No.

Mr. Hillson: — But I think I've just read all you're going to find about Channel Lake in the annual report. And I'm just asking if you consider that to be adequate disclosure?

The Chair: — I would point out that I do have representatives from Ernst Young, who were the auditors of record for SaskPower, coming next week and you may wish to direct that question to Ernst Young officials. Of course it's . . . I'm in the committee's hands. You can ask Mr. Grossman, too.

Mr. Hillson: — Well I guess my point is that Deloitte Touche are consultants. They've answered some of the questions, the larger issues of management, and I just wanted to know from you, do you consider that to be adequate for an annual report or not?

Mr. Grossman: — It's a difficult question to answer. And I did not spend significant time on looking at SaskPower's 1996 financial statement. I'm not trying to duck the question. I would like to look at the statement of operations and I will during the break, and maybe I can get back to you once I've seen that.

Mr. Hillson: — Thank you, Mr. Grossman. Now who interviewed Owen Mitchell?

Ms. Larsen: — I did.

Mr. Hillson: — You did.

Mr. Grossman: — Along with Mr. Gerrand, by a conference call.

Mr. Hillson: — Okay. And was he on the SaskEnergy board at the time that you interviewed him?

Mr. Grossman: — I can't answer that. I don't know. I don't know when he was appointed to the SaskEnergy board so I . . .

Mr. Hillson: — Well December 23, 1997 and resigned in February of 1998 . . .

Mr. Grossman: — He probably . . . Without knowing the exact date, he may not have been on the board then.

Mr. Hillson: — What date did you interview him then?

Mr. Grossman: — I don't have the specific date on . . .

Mr. Hillson: — Would you have that in your materials?

Mr. Grossman: — No, I do not.

Mr. Hillson: — Did you discuss him being on the SaskEnergy board?

Mr. Grossman: — No we did not.

Mr. Hillson: — You did not. Did you discuss the 10-year supply agreement between Direct Energy and Saskatchewan Power?

Mr. Grossman: — Not specifically.

Mr. Hillson: — Now Owen Mitchell I understand was vice-president of First Marathon?

Mr. Grossman: — Correct.

Mr. Hillson: — Who were owners of OPTUS, who in turn were owners . . . the purchasers of Direct . . . owners of Direct Energy who in turn were the purchasers of Channel Lake?

Mr. Grossman: — Without spending a lot of time in the chain of who owns who, I don't believe First Marathon were necessarily the owners of OPTUS. I think that they may have been the investment dealers or bankers for OPTUS.

Mr. Hillson: — The investment banker for OPTUS?

Mr. Grossman: — Yes. He was a trustee of OPTUS, I believe.

Mr. Hillson: — He was a trustee of OPTUS and then OPTUS in turn was the owner of Direct Energy who purchased Channel Lake?

Mr. Grossman: — Correct.

Mr. Hillson: — And you are aware that Mr. Mitchell is a previous Chair of SEDCO (Saskatchewan Economic Development Corporation)?

Mr. Grossman: — Yes.

Mr. Hillson: — And that Mr. Mitchell is a director of YBM Magnex, the company that is making headlines around the world for connections to the Russian mafia?

Mr. Grossman: — I was not aware of that.

Mr. Hillson: — Well it's your company. I realize Deloitte Touche is a very big company, but it's your company that I believe blew the lid off and requested an investigation of YBM because of international money laundering. And it was your company, Deloitte Touche that led to YBM receiving a cease trade order from the Toronto Stock Exchange. Is that not correct?

Mr. Grossman: — That is correct.

Mr. Hillson: — That's correct.

Mr. Grossman: — Yes.

Mr. Hillson: — And the FBI (Federal Bureau of Investigation) investigation now presently going on into YBM . . .

The Chair: — Mr. Hillson, do you think that you can focus on Channel Lake or relate the questions . . . I realize it's the stuff of headlines, but . . .

A Member: — We don't want to brush him off here, this is fascinating.

Mr. Hillson: — Well I mean frankly, Madam Chair, this may sound somewhat lurid but I mean the fact is, it is in newspapers literally around the globe as we speak.

The Chair: — I understand that it's in newspapers around the globe.

Mr. Hillson: — And I think it is connected.

The Chair: — Well can you establish the connection other than that it's in a newspaper and there are also newspapers reporting on the Channel Lake circumstances?

Mr. Hillson: — And that the principals we are dealing with to sell Channel Lake are some of the same principals involved in the FBI investigation of the cease trade order — initiated by the same company Deloitte Touche — that has led to the cease trade order and the FBI investigation because of the . . . in the headlines in *The Globe and Mail*. Russian mobsters owned a third of YBM shares. I mean this is *The Globe and Mail*, which is . . .

The Chair: — Excuse me, Mr. Thomson. Mr. Hillson, I don't know that you have established for me the relevancy of this. Do any other committee members have comment or questions?

Mr. Hillson: — I would just say, Madam Chair, in regards that, that sometimes the relevance of questions can only be established by allowing the question. You can't really determine in advance that this is not connected to Channel Lake. I have established that the company involved has some of the same principals as the company that bought Channel Lake. Now I think that is of some concern.

And I can read into the record a letter from Deloitte Touche in regards this company. A letter to YBM from the company's auditors Deloitte & Touche, which has been turned over to the Ontario Securities Commission, says the auditors are extremely concerned about certain contracts the company signed last year, as well as entities and individuals involved with it.

Deloitte said an in-depth forensic investigation is needed and has asked that company management not be involved. It warns YBM that it may resign as auditor and it may have to remove its name from the statements for 1996. Deloitte is in the process of auditing YBM's 1997 financial statements. Deloitte has indicated that one or more illegal acts may have occurred which may have a material impact on the 1997 financial statements, etc.

The Chair: — Well, Mr. Hillson, you are aware that Deloitte Touche is a major national and international accounting firm and they have a lot of involvements all around the world. It

seems to me that you've only made a very tenuous connection. But, Mr. Grossman, if you wish to answer this question please do so.

Mr. Grossman: — I can't comment. I have no knowledge of YBM and no knowledge of the affairs of what's happened other than what I've read in the paper. And I have no comment.

Mr. Hillson: — But you are aware that it is your firm that initially exposed YBM and led to the cease trade order and the FBI investigation?

Mr. Grossman: — I'm aware of that, yes.

Mr. Hillson: — And you are aware that it is your firm that said that the management of YBM should not be involved in the forensic audit into what your company describes as suspected illegal activities, and that the management of that firm includes some people who are in the management of the firms which ultimately bought Channel Lake?

Mr. Grossman: — I was not aware of that. As the Chair has indicated, we are one of the largest international firms and do clients all over . . . work on clients all over the world. And we're not kept informed as to what is going on with those clients around the world. So I have no knowledge of the affairs of that corporation.

Mr. Hillson: — Do you get internal memos that give you an alert so that you know your company is going to be on the front page of every newspaper on the planet?

Mr. Grossman: — No, because our company is often on the front page on various matters so we don't receive information that is dealt with by the people responsible for those areas wherever they may be in the world so . . .

The Chair: — Thank you, Mr. Grossman. I think that you've established that the line of questioning is not relevant. Mr. Hillson, will you get on with it and pursue a different line of questioning.

Mr. Hillson: — Did you ask Owen Mitchell if he has any continuing ties with the Government of Saskatchewan or the Crown corporations of Saskatchewan?

Mr. Grossman: — No we did not.

Mr. Hillson: — Did you ask if any company in which Owen Mitchell has an interest continues to have outstanding loans or securities with the government or Crown corporations of Saskatchewan?

Mr. Grossman: — No we did not.

Mr. Hillson: — Did you ask Owen Mitchell what other financial dealings he has with the Government of Saskatchewan, the Crown corporations of Saskatchewan, besides his being involved in the ownership of the new Channel Lake and the ten-year supply contract?

Mr. Grossman: — No we did not.

Mr. Hillson: — Did Mr. Mitchell tell you that he was on the board of directors of SaskEnergy? Or were you aware of that fact?

Mr. Grossman: — I was aware that he had been appointed to the board of SaskEnergy. I am not aware of whether he was a board member exactly at the specific time we talked to him by conference call.

Mr. Hillson: — Well can I ask you . . .

The Chair: — Excuse me. Allow the witness to answer as completely as he wishes.

Mr. Hillson: — Oh, I'm sorry, I thought he was . . . I thought you were finished. I wasn't trying to cut you off.

Mr. Grossman: — No, you didn't cut me off because I was just thinking that as . . . The conversation did occur, as I recollect now, in February and he was on the board of SaskEnergy at that time because there was a reference to that when we talked to him, yes. Just recollecting now the timing of the interview . . . but not a discussion.

Mr. Hillson: — Well does it give you any concern . . . I mean I assume that when you did this investigation you were not aware of this story about a company money laundering for the Russian mafia. But now that you do know it, does that give you any concern about our ongoing dealings here?

Mr. Grossman: — I can't comment on that because I don't know what Mr. Mitchell's involvement is with the corporation that you're referring to.

Mr. Hillson: — With YBM.

Mr. Grossman: — YBM.

Mr. Hillson: — You're . . . I mean, you're familiar with YBM.

Mr. Grossman: — I'm familiar with YBM.

Mr. Hillson: — Yes.

Mr. Grossman: — I read the papers. But I'm not . . . I can't comment on what Mr. Mitchell's involvement was so I can't relate that comment into a concern around his involvement with Channel Lake.

Mr. Hillson: — Well obviously you say you didn't know about YBM when you did your report, but you did know about the whole unfolding saga of the sale of Channel Lake? Did that give you any concern at all that for the next 10 years we will be dealing with Direct Energy and these people over the 10-year supply contract?

Mr. Grossman: — It's a difficult question to answer. When you're saying "these people" . . . if you're saying is a 10-year supply agreement unusual. I think if you look at SaskPower's record of operation they will deal with 30-year coal supply agreements. So a 10-year supply agreement on a gas supply contract doesn't seem abnormal.

Mr. Hillson: — No, no, that's not the question.

Mr. Grossman: — Okay.

Mr. Hillson: — With the people that we've had this story of the sale of Channel Lake — dealing with them for 10 years. You're probably aware of all the memos that say that we absolutely refuse to have any contact with Lawrence Portigal, the president of Channel Lake, for this next 10 years. We're going to be dealing with the company for the next 10 years, but we absolutely refuse to have anything to do with the president of the company.

As you read the whole saga would you, if you were in SaskPower, have any concern about a 10-year relationship with the purchasers of Channel Lake?

Ms. Larsen: — I think given what's happened over the last few months, it's clearly going to be an awkward relationship so that's I think obvious.

Mr. Hillson: — Thank you. Yes, I think it is obvious.

The Chair: — Just a little under 10 minutes more, Mr. Hillson, and then we'll have a break.

Mr. Hillson: — Now as I understand it, the initial accounting concern with the arbitrage agreements was that the potential for profit was very, very slim; the potential for loss was enormous. Is that a fair summation?

Mr. Grossman: — I don't know if Channel Lake, when it became involved with arbitrage, understood necessarily what the risk of loss was. But the first part of your statement I concur with, that the profit margin was very slim. But obviously the industry didn't understand the risk associated with someone not honouring their contract.

Mr. Hillson: — That is some of the experts in Ernst & Young were trying to tell Channel Lake and this is what the concern of the Provincial Auditor was, wasn't it?

Mr. Grossman: — But the Provincial Auditor report was after the fact, not before the fact. There was concern expressed around a risk management policy, which hadn't been put into place. But it's difficult to say that everybody understood exactly the risk because of course if they had, they would have never entered the transaction in the first place.

Mr. Hillson: — But can you give us the figures as to where we stood, the potential profits versus the . . . I understand the potential profits were very small; the potential losses were in the tens of millions. Well, it did end up there.

Mr. Grossman: — Correct.

Mr. Hillson: — But they could have in fact been much, much higher in terms of the risk we'd exposed ourselves to.

Ms. Larsen: — I think the issue of risk is a difficult one to deal with, but I don't . . . it's nothing that we saw indicated — that there was a huge multimillion-dollar risk. And certainly the information that we got going through the documentation and

the interviews was that the bankruptcies that did occur were unusual and that wasn't standard in terms of that whole area. And it caught a lot of people in the industry by surprise.

So if you want to talk about the risk that actually led to the losses, I don't think very many people would have anticipated that those losses were potentially that large from that activity.

Mr. Hillson: — Can I ask you, Ms. Larsen, whether in your work, were you satisfied that other bids for purchase of Channel Lake were seriously considered or is it a case from day one we were dealing with Direct Energy and Direct Energy alone, and other bids were merely an attempt to pad the file a bit. Can you express an opinion on that?

Ms. Larsen: — The opinion would be that there were clearly other bids that from our reading were legitimate in terms of the detailed analysis of one against the other. There really was not a significant paper trail in that front so we did not see that. And as you know, we did not interview Mr. Portigal who was the one who did that detailed work.

So whatever significant information there was in terms of comparing those bids one against the other and the legitimacy of one against the other, we don't have information on . . .

Mr. Hillson: — Okay. So I believe you are saying, and correct me if I'm wrong, I believe you're saying that if the other bids besides Direct Energy were given the time of day, you failed to note that in any documentation you saw.

Ms. Larsen: — That's not exactly what I said. I was saying . . .

Mr. Hillson: — You disagree with that summation? That you could find no documentary evidence that the other bids were seriously considered.

Ms. Larsen: — That's fair.

Mr. Hillson: — That's fair. Thank you. Were you aware in your work, Ms. Larsen, that at the time you did the report, were you aware that in fact Channel Lake had not supplied gas to SaskPower as it had been set up to do? Were you aware of that fact?

Ms. Larsen: — Yes.

Mr. Hillson: — You were. Now as I understand it, Channel Lake was set up to supply gas for SaskPower.

Ms. Larsen: — It was set up to provide security of gas supply for SaskPower, which is not precisely the same thing.

Mr. Hillson: — So again if the board and the public — they took it that we'd set up Channel Lake so they could supply SaskPower with gas — that is to say, well that's not the same thing and it's really not a contradiction to be told that that never happened. Channel Lake didn't supply gas to SaskPower. That doesn't strike you as odd?

Ms. Larsen: — No.

Mr. Hillson: — Okay. While Channel Lake was doing

arbitrage, were they involved with Direct Energy at that time?

Mr. Grossman: — I believe there were some contracts, some arbitrage contracts that DEML was a party to. But there were not many that I can recall in looking through the list.

Mr. Hillson: — So they were involved in some, but certainly not all.

Mr. Grossman: — No. And what I would surmise would happen would be that of course the deal is already done the purchase of sale. All you're doing is acting as the facilitators. So there's two parties to it — you take that particular contract and it's dealt with. But DEML was a party, I believe, to some of the transactions.

Mr. Hillson: — So can you tell us then — in approximate terms — then what the value of the contracts would have been that Direct Energy was doing with Channel Lake while SaskPower still owned Channel Lake.

Mr. Grossman: — I can't tell you the dollar amount. I'd have to go through the list but I can't remember. They were significant in the scheme of the dollar amount that they . . . the total dollar value of the contracts.

Mr. Hillson: — If you were doing your report today, would your conclusions be at all different than what they are?

Ms. Larsen: — No, not really.

Mr. Hillson: — You are aware that YBM was initially incorporated and traded on the Alberta Stock Exchange in Calgary and then moved to the Toronto Stock Exchange. Is that correct?

Mr. Grossman: — I was not, no.

Mr. Hillson: — You're not aware of that?

Mr. Grossman: — No.

Mr. Hillson: — And Mr. Mitchell being on the board of directors for YBM is not a cause of concern to you today in terms of our dealings with Channel Lake?

Mr. Grossman: — I can't comment because I don't know what his relationship with YBM is.

Mr. Hillson: — Well he's on the board of directors and your company is on record as saying that there has to be an investigation independent of the management of YBM.

The Chair: — Mr. Hillson, I've already ruled . . .

Mr. Hillson: — No further questions.

The Chair: — Thank you. I'm going to refrain from editorial comment, simply indicate I did make a ruling and I do thank you for finishing your questions two minutes before your allotted time was up.

Mr. Grossman, you have made an undertaking to review the

1996 SaskPower annual report during the break. I will see if Mr. Hillson wants to use up his remaining two minutes to question you about that otherwise, when we resume our hearings at approximately 10:45, the New Democratic Party will be leading the questioning.

The committee recessed for a period of time.

The Chair: — We will now entertain questioning from the New Democratic Party, but before we do that and before I recognize Ms. Hamilton, just before the break Mr. Grossman made an undertaking to review the SaskPower 1996 annual report as a follow-up to a question from Mr. Hillson. Mr. Grossman, did you have an answer at this time?

Mr. Grossman: — I have an answer that there was one other innocuous reference to Channel Lake, and that is just in the notes around consolidation and the fact that it is consolidated. But there's no reference anywhere in the financial statements to the operating results of Channel Lake or the losses of Channel Lake specifically, and that is not specifically identified.

And in part that would be, for example, in the year end December 31, 1996, the audited financial statements of Channel Lake show a loss of almost \$2.5 million. That is deducted from the profits of SaskPower through the consolidation, but there's not a specific line identification.

That would be done on the basis of the magnitude of the loss in relation to the magnitude of the overall profit of SaskPower, which was approximately \$139 million after deducting the two and a half million dollars. So it would be seen as insignificant or immaterial in light of a separate disclosure as far as the year to date, or the results for the year ended December 31, 1996.

The Chair: — Thank you, Mr. Grossman. Mr. Hillson, did that lead to any further questions that are just perching on your lips, unable to restrain themselves? No? Good.

Mr. Hillson: — I shall restrain myself, as usual.

The Chair: — I'm extremely impressed. We will now move to the New Democratic Party.

Ms. Hamilton: — Thank you and good morning. The line of questioning I have is more looking at the areas that you critiqued in your report on governance and governance issues, I think, with a hope to looking also toward the future on how we can do things better and how we can improve based on the knowledge of this situation.

In item no. 7 in your report, you have a few bullets that talk about:

- more consistent and appropriate Board meeting timing (frequently enough and long enough to deal effectively with substantive issues) . . .
- recording of Board discussions and decisions and directions to management; and
- follow-up mechanisms on Board discussions and decisions.

So with that you've indicated that the governance process for

Channel Lake and SaskPower could have been better handled. In particular you state more regular board meetings should have been held. And in the case of Channel Lake, on what basis do you feel board meetings should have been called?

Ms. Larsen: — There are two board levels obviously we're talking about — there's the Channel Lake board and there's the SaskPower board. The SaskPower board meetings did not appear over the life of the Channel Lake experience, from at least what we looked through, to be regular, as in every three months, every two months. Some of them were regular but there was a fair bit of lack of continuity from one meeting to the next.

And in terms of the Channel Lake board, they did not meet very often at all. And particularly through the period of the decision to sell and through the sale process, there were very few meetings of the Channel Lake board, which we would have anticipated there would have been more of. Our understanding is that was largely compensated for the fact by the communication between the management of Channel Lake and the executive of SaskPower, and that they were dealing with that on an informal basis as opposed to formal board meetings.

Ms. Hamilton: — In the case of SaskPower, how do you think they might have better handled their meetings?

Ms. Larsen: — With respect to the issue of Channel Lake, I think what's been obvious over the course of the last few months that this is the kind of issue that is large in the public mind even though it may be small in the corporation's mind. And I think that is pivotal to understanding what we're saying with respect to what the board could have done more effectively and what management could have done in dealing with the board. That being aware of the fact that they were dealing with a \$20 million asset and that they were going to sell it and that there were losses involved; that there should have been more engagement of the board in a process to discuss how to deal with that and deal with the public issue surrounding it.

So it was a question of having more discussion and more open discussion about the losses situation, about the sale itself, about the process of the sale so that there would be satisfaction in the minds of the board and then the public, that due process had been followed.

Ms. Hamilton: — Okay. So in the case of the SaskPower board, in their minds, I assume that Channel Lake was, in financial terms, a small portion of the business that they would undertake in their overall operation. Are you saying that the board meeting should then be structured around the financial matters of this size, and on a more regular basis have a part of the meeting set aside for financial transactions of this nature?

Ms. Larsen: — I think, well there's two sides of it: one is the financial side and the other public perception side. And I think what we're suggesting is that given that we're dealing with a Crown corporation in that environment in a public environment, that there should be constant attention to issues which would be significant in the public's mind and that those issues would be flagged.

They may not be significant financially, but given that there

was going to be a sale of an asset, given the fact that there had been bankruptcies leading to a loss, that that information should have been shared fairly openly with the board so that they were aware of that through the process. Even though it was small financially, it was potentially a large issue in the public mind.

Ms. Hamilton: — Do you not feel that a subsidiary company with an independent board should have been able to primarily conduct its affairs with then just intermittent reports to the parent company? Or that this should have been flagged as one that was or could be in considerable public interest, and have then regularly scheduled meetings with the parent company.

Ms. Larsen: — I think the logic of these meetings when you're dealing with a subsidiary would be that if there was an upcoming meeting of the SaskPower board, before that there should be a meeting of the audit and finance committee of the board; before that meeting there should be a meeting of the subsidiary board so that there's a natural flow of information. If there are issues to be highlighted, if there are things to be shared, that it would gradually move up the line.

Ms. Hamilton: — If Channel Lake had an independent board member and perhaps a board member from the SaskPower audit committee, do you not agree the governance issue would have been much more properly addressed?

Ms. Larsen: — I believe the potential would have been there for it to be much more properly addressed.

Ms. Hamilton: — You also state in your report that the SaskPower board did not spend enough time understanding the issues, and that's on page 20. Is this not a function of having proper reporting and presentations made to the board by management?

Ms. Larsen: — In part that's true. But there's also, I think, a requirement for the board to make sure that it's getting the information that it needs to be fully aware of issues and to actually ask questions and ask for information.

So that it needs to be a proactive situation on both parts so that the board isn't just sitting there and taking what comes in the door, that it actually solicits information as well.

Ms. Hamilton: — So if that board information is not focused and properly presented, there's less of an opportunity for the board members to understand and discuss the issues, and sometimes the significance may be lessened. So you're saying it's a two-way street.

Ms. Larsen: — That's true.

Ms. Hamilton: — One on the part of the management to focus their information and present it clearly, but also are you saying, on behalf of the board members too if that is not being done, to request that to happen?

Ms. Larsen: — I would say that's . . . Yes, that's true.

Ms. Hamilton: — I understand it was your view that the board materials and presentations in this case were often lacking. Could you elaborate on that?

Ms. Larsen: — The material that we looked through was, quite naturally when you go to the board, very summarized. But we believed that in the case of Channel Lake it was probably too summarized and it was too cryptic. And there could have been more value added to the discussion and the understanding of the board level if more information had been shared, particularly with respect to the losses situation and what was happening on that front. That information was not shared fully at the board.

But understand that this is all something that you have to look at in context. And this is something that we emphasized in our report that the SaskPower board, whenever it looked at situations and issues related to Channel Lake, that was one item on the agenda as opposed to everything else they were dealing with related to the corporation's business.

So you have to take that and weigh the time available for the board and how much time they can actually spend dealing with the various issues at hand.

And if you look at the Channel Lake issues that went to the board, that's one piece of the puzzle. But then there's everything else that was on the agenda, and the question is, was the Channel Lake business more important than other things that the board was looking at.

Ms. Hamilton: — There was a witness before us, I believe Mr. Gerrand, who said that there was also . . . and I'd like you to perhaps elaborate on information that was often lacking to the board. Did you find many instances where there should have been information brought to the board and it was not brought forward — either it wasn't brought forward or it wasn't presented in a timely basis.

Ms. Larsen: — We noted a number of specifics, and we really focused in on the key points related to the experience of Channel Lake, the impact of the losses. That that loss information although there was a significant report done on it, that information was not brought forward to the audit and finance committee and the board in a timely manner. It was eventually provided, but it was not provided on a timely basis and was not provided according to the formal record before the decision was made to do the sale in March. So that's one example.

The other issue relates to the aftermath of the sale and the discussion around the June 20 board meeting, and the fact that there was information related to the internal audit report and information related to the legal opinions that had been solicited that did not appear to have been fully shared with the board.

Ms. Hamilton: — In your report, the flow chart which sets out the relationship between Channel Lake Petroleum Ltd. and SaskPower involves the SaskPower audit and finance committee, and you mentioned earlier in your comments, sort of a flowing between those committees and the board. What was the relationship in actual terms?

Ms. Larsen: — In actual . . . I'm not sure I understand the question.

Ms. Hamilton: — Between Channel Lake and the finance and audit committee.

Ms. Larsen: — It was more question of the audit and finance committee being delegated responsibility by the SaskPower board and focus in on the issue of the sale. That they were asked by the SaskPower board to essentially oversee that. In the context of doing that they were logically dealing directly with Channel Lake board who really were the executives of SaskPower.

Ms. Hamilton: — Is there corporate minutes involved in that transaction?

Ms. Larsen: — In terms of the delegated responsibility? There is a minute of the board where the board asked the audit and finance committee to oversee the sale process, yes.

Ms. Hamilton: — Was it the SaskPower board then that had requested that relationship or was it the SaskPower management?

Ms. Larsen: — Not clear from the record. I believe it was a board initiated effort but I'm not certain on that front.

Ms. Hamilton: — Why do you feel it was that the audit and finance committee was not more extensively involved in the process of the Channel Lake sale?

Ms. Larsen: — I think it's difficult for us to answer that. My understanding is that the audit and finance committee had a lot of things on its plate. They were getting information. How regular and how comprehensive is not clear except from the formal record and the recollections of the people involved in those meetings.

But one of the issues probably was the speed with which the sale process went through and how generally infrequently those committees tend to meet, unless you're calling them together specifically. And given that they're not all located in the same place, it's a little difficult I think to do that.

Ms. Hamilton: — In your view, should management have been more extensively involved with the sale of Channel Lake?

Ms. Larsen: — By management, do you mean the executive level?

Ms. Hamilton: — The executive level of SaskPower.

Ms. Larsen: — Yes.

Ms. Hamilton: — In that I would assume that basically it would be Christensen and Kram, Mr. Christensen and Mr. Kram who would have been also part of the finance and audit committee, and in your mind they should have been more extensively involved then.

Ms. Larsen: — Yes. And in terms of the delegated authority and expectation, it was clearly there that both Mr. Christensen and Mr. Kram were expected to be a major part of that sale process while Mr. Portugal was the lead negotiator. But they were supposed to be the other two key members of that team.

Mr. Grossman: — Just to correct something, Christensen and Kram were not members of the audit and finance committee.

Just to clarify that. They were members of management. The audit and finance committee were a group of three people from the board itself that take on this responsibility.

Ms. Hamilton: — So from that, in your mind, the audit and finance committee weren't as extensively involved. They felt . . . or do you feel from your undertakings that they felt it was because Christensen and Kram and Portigal together were going to be more of a unit or a team involved in that process?

Ms. Larsen: — I don't think there's evidence that people were paying that close attention to those specific issues. I think there was a very high level of confidence on the part of the audit and finance committee in the management group who were leading that undertaking. I think there was a high level of confidence of the board in the audit and finance committee and its knowledge and awareness of what was going on.

So I think all the way through the whole process there was a high level of confidence. There was no concern and there wasn't a major effort on anybody's part to go into any detailed oversight of what was happening.

Ms. Hamilton: — Do you believe that Lawrie Portigal should have involved the senior managers more throughout the sale?

Ms. Larsen: — Yes. I think the centrepiece to a lot of our conclusions is around the issue of communication and the process that people used to communicate key pieces of information. And Mr. Portigal was clearly central to that. And the protocol that he usually followed for conveying key information was in written form, you know, if you note the memos of the early days in April.

In our view, given some of the things that were going on, how quickly things were happening, there probably should have been a lot more verbal communication than there appears to have been. That probably would have facilitated better knowledge on the part of a lot of the people involved in the process.

Mr. Grossman: — In the review of the documents, we cannot for the life of us understand why a telephone wasn't picked up, and somebody . . . Portigal to indicate to people that he was reporting to that the deal is changed instead of writing a memo that if you read it carefully, you realize something is happening. But why people wouldn't discuss it verbally, as Donna said, we cannot understand.

Ms. Hamilton: — In what way do you feel that the audit and finance committee might have benefited Mr. Portigal? For example, the working of the finance and audit committee, would they have been of benefit if they were looking at this in detail, have benefited the work that Mr. Portigal was delegated to accomplish?

Ms. Larsen: — I think they could have added value to the process by just giving him another sounding board in terms of the comparison of the various offers and going through the process of making the decision, if there would have been more diligent reporting on that front. And I think they could have added some value from a board perspective with respect to some of the issues. I think that's possible.

Ms. Hamilton: — In your report you state that SaskPower board did not have the full and proper information before them for the June 20, 1997 meeting — for example, the internal audit review and the legal opinions on page 22 of the draft report. Do you agree this was Mr. Messer's responsibility to have this information made available to the board, or was it the responsibility of other SaskPower officials working for Mr. Messer?

Ms. Larsen: — It was clearly the responsibility of SaskPower management as a whole to make sure that that went forward. The process on individual items that went to the board I think varied depending on what the issue was, where some of the things would be championed by the president, some would be championed by the vice-presidents of the specific areas. So it would depend on what the nature of the issue was.

But I think it was a question of a judgement call that somebody had to make with respect to what the board needed to know before they made the decision they were being asked to make. And there was the high level of confidence that process had been gone through, that reviews had been done, and that conclusions had been made, and that the board was getting the key information. I mean that's the information we got in terms of looking through the documentation and the interviews, that people believed that the right information was there.

But in our view it would have added value to the board's knowledge and understanding in this part of their effective decision making to have more of the information than they did have.

Ms. Hamilton: — In your report you state that SaskPower failed to ensure the Channel Lake sale was handled by a well-functioning team. And I think you've highlighted that again that Mr. Messer did establish a team of Lawrie Portigal, Ken Christensen, Larry Kram. And when Mr. Portigal chose the Milner Fenerty law firm, Mr. Kram ensured that engagement letter was put in place.

I take it then that the team that Mr. Messer assembled was appropriate. The problem was the team members did not properly fulfil their obligations. Do you have a comment in regard to that?

Ms. Larsen: — I think the way you put it is probably fair. We would agree.

Ms. Hamilton: — On page 26, clause 3, you say no backup was in place and no sober second thought capability was assured. Yet Portigal was to report to Christensen and Kram, and Hurst was to report to Kram. If the team had functioned properly, would this have not provided a sober and second thought?

Ms. Larsen: — If the team had functioned properly, yes; if they had all been as involved as I think was anticipated at the beginning.

Ms. Hamilton: — If your draft report . . . in your draft report you state that the close of the Channel Lake sale before the 1996 financial statements had to be tabled was done to avoid publicly disclosing the losses from trading activities — I guess

sort of a lumping together of the information.

The trading losses had already been reported on by the Provincial Auditor, had they not?

Mr. Grossman: — Not at the . . . His report I believe came out in late 1997. It was the first time that that had been acknowledged anywhere. And we're dealing with 1996, so there was no disclosure of the losses in any form or substance either in the SaskPower annual statement, and of course Channel Lake wasn't filed.

Ms. Hamilton: — So you're saying it was the subsequent reporting that gave way to our government requesting for you to do the report.

Mr. Grossman: — I don't know what the basis of us being asked to assist but that probably was one of the reasons, yes, yes.

Ms. Hamilton: — So it wouldn't have been sort of an earlier statement of that because you didn't find any evidence of reporting in place to the auditor?

Mr. Grossman: — The external auditor, Ernst & Young, who sign off the SaskPower financial statements, would have known the losses because they audit the financial statement of Channel Lake.

And what is interesting, their auditor's report for December 31, 1996 has two dates on it. One, the report for Channel Lake is the audit report which states that their financial statements present fairly in all material respects their financial position. That's dated January 31, 1997. That would be done to of course enable it to be consolidated into the December 31, 1996 financial statements of SaskPower.

The notes which deal with the losses are signed April 2, 1997. In fact, a subsequent period of time elapsed for them to review the situation with the notes and to then include that as note no. 11(a).

So they knew about the losses. As part of the arrangement with the Provincial Auditor, he would see that in their files. So the Provincial Auditor would have been informed from that source.

Ms. Hamilton: — And then subsequently he would have informed the committees about that, or the people involved that highlight that information.

Mr. Grossman: — I guess so, yes.

Ms. Hamilton: — You stated earlier, and I notice that you didn't interview any of the other prospective purchasers for Channel Lake. Why was that?

Mr. Grossman: — We were dealing with the transaction as it had unfolded. We looked at the documentation that was available around the other purchasers, read it, but it wasn't germane to what happened opposite the Channel Lake experience.

Ms. Hamilton: — And yet in these proceedings Mr. Portugal

acknowledged that Stampeder Exploration were prepared to match the DEML offer. In fact, he stated that Stampeder Exploration would better any offer by \$500,000. Were you aware of that at the time of the report being prepared?

Mr. Grossman: — No we were not. We saw the original . . . There had been a series of activities with Stampeder. There was the issue and lawsuit aspect around the right of first refusal on some joint properties that Stampeder and Channel Lake were involved in. There was the offer from Stampeder which was rejected at, I think it was, \$20.5 million if I'm not mistaken. But we never saw in any documentation the offer that you're talking about, no.

Ms. Hamilton: — Would that fact have made a difference to the report had you known that?

Mr. Grossman: — If we had known that was the fact, we would have commented that that existed, that opportunity existed.

But not knowing how it came about and when it came it about and what the conditions were, you have to assess that to make sure it was valid.

Ms. Larsen: — I think it would have reinforced our conclusions in a number of areas in terms of the role of the audit and finance committee in reviewing offers and those kinds of things, and having a process where there was continuous information flow. It just would have reinforced the conclusions we already made.

Ms. Hamilton: — Stampeder Exploration Management Ventures Inc., TOM Capital, Shiningbank, and DEML expressed interest in pursuing purchase of the Channel Lake properties. From your interviews and assessment of the documents, were you made aware of any reason why Lawrie Portugal pursued the DEML offer to the exclusion of the others?

Mr. Grossman: — No, we weren't aware. You can read in his evidence that he talks about the offer being generous . . . or reasonable but not generous. It was the only deal that he felt could close by March 31. It was a share transaction not an asset transaction. I think some of the companies were interested in acquiring assets rather than shares. So that wasn't of the same interest.

And of course initially the price was \$27 million. So it was higher than anyone else was prepared to offer.

Ms. Hamilton: — So was not one of the reasons for moving forward with the sale in the early months of '97 the fact that the gas prices were high and that they were starting to fall about the middle of April '97?

Mr. Grossman: — That was an issue. As the report also indicates, SaskPower did not have to sell Channel Lake; they were not forced into a position of negotiating a sale. They had incurred losses, yes; they would eventually be disclosed. But the basic premiss for SaskPower owning Channel Lake and the oil . . . or the gas fields that they did own was still available to them; they weren't forced to sell.

They made the decision, it appeared, obviously in late 1996 to pursue the royalty trust because royalty trusts at that point in time were selling at a premium, so people were buying properties at a premium. That disappeared as the 1997 year progressed. But Channel Lake wasn't . . . or SaskPower wasn't forced to sell Channel Lake. That was a decision they made, and then once they made the decision, they seemed to be bent on completing it as quickly as possible.

Ms. Hamilton: — In late May 1997, SaskPower officials became aware of the actual purchase price for the Channel Lake sale. They proceeded to make inquiries and then within a couple of days — I believe May 30 — they allowed Mr. Portigal to attend the final closing. In your investigation, were you able to obtain any explanation why this was allowed to occur?

Mr. Grossman: — No, I don't believe so. I can't think of any explanation around that. Now the closing — and we're not lawyers so we're not meaning to get beyond our expertise — but the closing was just merely a procedure to complete the transaction. It's just a matter of issuing the cheques and completing the deal. If all the terms and conditions that were in the escrow agreement are complied with, it's merely a formality.

Ms. Hamilton: — So they would have seen no reason not just to continue on that course of action then?

Mr. Grossman: — Oh I can't . . . as I say I'm not . . . I don't want to get on the . . . beyond my level of expertise into law. But I think the words that we got . . . or that we received from the interviews was that when Mr. Portigal was asked not to go, he smiled — I mean, it was a done deal: what do you mean not go, it's closing, and we have to close.

Ms. Hamilton: — From your overall summary and conclusions, is it fair to say the major difficulty with Channel Lake sale was the lack of proper attention by personnel?

Mr. Grossman: — Yes. And communication, as Donna has indicated, communication at any one of the levels would have resolved this issue.

Ms. Hamilton: — If assigned officials had fully performed, sale negotiations might not have gone offside then? So what you're saying they just . . . if there'd been opportunities to pick up the phone, clarify the communication, that there were a number of opportunities to pick this back up and put it onside.

Mr. Grossman: — As we indicate in our report if . . . one of the safety nets that were and should have been in place would have identified the issue. What no one can determine is what would have the end result been.

You can renegotiate with the person you're negotiating with, you can renegotiate with other purchasers, you can deal with a 10-year gas supply agreement, you can continue to hold the property. There was no requirement for SaskPower to sell Channel Lake.

So the options would have been available and could have been explored. And what that would have ended up resulting in, no one can say. But they were, they would have been available to

them.

Ms. Hamilton: — You feel if management personnel had properly informed the SaskPower board as well, difficulties at that level might have been avoided?

Ms. Larsen: — I think that the board would have been more effectively informed when it made its decisions and it may have been more aware of the fact that there were options, that there wasn't . . . it wasn't a question of only having one choice.

Ms. Hamilton: — When matters are personnel and performance related as opposed to primarily system or procedure related — because I think what you've outlined is that there was a system in place — there wasn't the flow. There were procedures that could have been utilized so it becomes clear.

What recommendations would you have so that personnel or management problems could be earlier detected?

Ms. Larsen: — I think in terms of our recommendations, we really talk about the fact that there just needs to be better communication and people need to be paying more attention to the details around these kinds of processes. And the problem is that a significant number of people missed one or two details at key points. And it just all added up.

What was obvious to us in the course of the interviews was that the people who did drop those various balls were keenly aware of it. And it is probably unlikely that any of them as professionals would ever let that happen again.

Ms. Hamilton: — Do you or could you recommend any further steps to assist corporations from having this type of problem in the future?

Ms. Larsen: — I think part of it is being addressed on an evolutionary basis as organizations, both public and private sector, are looking at the whole issue of governance and governance-management relationships. And I think as it shifts into a new mode of operation so that you've got more informality built into that relationship and more sharing of information and ideas and more use by management of the board as an advisory function as well as a decision-making body, that there's going to be, I think, shifts and changes that will make these kinds of things work better.

That said, I mean you still have to step back and look at this one in the context in which it happened and the fact that this was not a major event or a major issue in the context of SaskPower's whole operations.

So I think you will always run the risk of small things potentially becoming very large things in the public mind when you're dealing with the public sector. And that's inevitable. It's a question of making sure that people raise the flags at the right time with the right people in the organization and make sure that there's full discussion about that so people can share the information and that the public's aware of what's going on.

The Chair: — Thank you, Ms. Larsen. Ms. Hamilton, your time is over. Sorry. Yes, a half-hour goes rather quickly when

you're having fun, doesn't it.

I would now ask Mr. Goohsen, the independent member, if you have any questions to put of Deloitte Touche.

Mr. Goohsen: — I do, Madam Chair.

The Chair: — Thank you. I will recognize you for a maximum of 15 minutes.

Mr. Goohsen: — Yes. I've listened this morning with some interest and notwithstanding the fact that some of the principals may have in fact been involved, through stories that we have heard about, with the Russian mafia, I think we have reason and cause to be concerned closer to home.

As I looked at the transcripts from previous days and other people's testimonies and listened to your own statements, I've come to the idea that we need to analyse this whole process by looking at it the way investigators do, and that is to examine motives and opportunities.

And I want to ask you in your opinion then, what do you suspect would have motivated the five principal groups that were involved in what some people might refer to as a conspiracy but I think in our terms cause and effect of events, I think as you probably stated it, just a collection of things that have happened.

My first question of course is about the auditor who started this process. What red flags do you think he saw that brought us to this forum?

Mr. Grossman: — You're talking, the Provincial Auditor?

Mr. Goohsen: — Yes.

Mr. Grossman: — He would have seen a report that would have been prepared for him by Ernst & Young. He also reviews in detail all the working papers that Ernst & Young prepares. And within those sets of documents and reports, it would be detailed the issue around the arbitrage losses, the summary of the extent that they may culminate in. So that's where he would get his information from.

Mr. Goohsen: — Okay. So that would then lead us to the next principal group, which would be SaskPower as a corporate entity. And as a corporate entity its motives as I would see it — and I'm going to ask your opinion — would be to have first of all security of supply; secondly, a political agenda. And that political agenda of course would be to cover up those things that would be embarrassing, in order to save face.

Would that be a correct assumption as to what their motives would have been and the opportunities they took by using that March 31 deadline to achieve their goal?

Ms. Larsen: — I think the key issue in terms of the second part of your comment is that the individuals involved were concerned about what was good for the corporation, and that clearly there were concerns about public information of that would be negative, and how that would affect the corporation.

So I think that was the motivating factor in a lot of the behaviours which is, you know, what is going to serve the corporation best in terms of fulfilling its responsibilities. My understanding from the interviews and the material we went through is that there was a lot of concern within the corporation about negative publicity. So I think they were keenly sensitive to how anything like losses could affect that.

Mr. Goohsen: — Okay, the next entity that we would identify of course would be the company and the group of principals that owned the company that sold the Channel Lake assets to SaskPower, what would be their agenda.

Their agenda probably at this point would be seen as the potential to make profit. Do you see anything else that they were motivated by for wanting to sell these assets?

Mr. Grossman: — You're talking now of SaskPower?

Mr. Goohsen: — I'm talking about the company that sold Channel Lake to SaskPower. The assets, the original assets.

Mr. Grossman: — Oh, the Bank of Montreal originally . . .

Mr. Goohsen: — Yes.

Mr. Grossman: — Well they would have been selling the assets because I guess Dynex was in a situation of some financial difficulty, and as a result the Bank of Montreal must have stepped in to secure their loans. And as always happens in the case of receivership or liquidation, you sell the assets to repay the loan as quickly as you can.

So the motivation there was merely to realize cash to pay down the loan that the Bank of Montreal had against the particular company or the assets.

Mr. Goohsen: — So when Mr. Hillson talks about the need to examine corporate structures and to examine who the principal individuals are that are involved with those structures, he may have a valid point that some of the same principals move from company to company as owners of those companies. And unless you identify that, you can't possibly understand their individual thinking and their individual motives. Would that be a fair assumption?

Mr. Grossman: — Are you asking, should the vendor be concerned as to who the purchaser is?

Mr. Goohsen: — Yes of course. Yes. And vice versa.

Mr. Grossman: — Generally where that kind of due diligence enters a transaction or the equation, is at the beginning as to whether or not the vendor has a sufficient wherewithal to effectively pay for the transaction. So you want to understand that as you go through this process which in time . . . which can be very time consuming to work through the deal at times, you want to make sure that you don't end up at the very end and there's no cash because the vendor you were dealing with didn't have sufficient resources to actually buy the particular assets or shares or whatever you're dealing with. But generally that's where the due diligence is done up front.

Mr. Goohsen: — I guess what I'm saying is were the motives of SaskPower so noble as to want to secure supply? Or were they in fact, if you study the principals involved, the actual individuals, were they simply trying to get some people off the hook in terms of representing a company that was now going bankrupt?

Mr. Grossman: — You mean Channel Lake?

Mr. Goohsen: — I'm talking about Dynex still.

Mr. Grossman: — Oh you're still talking . . . I'm sorry, you're still talking about Dynex.

No, I think from our work there was a very extensive due diligence process that SaskPower went through when they acquired Dynex. Those were just gas producing properties that obviously, as I say, the structure that they were housed in, probably a corporation, had incurred some financial difficulty and so they were merely buying assets. They then transferred them into Channel Lake.

So it was just merely like buying a car or buying anything else. They bought assets from an institution being the Bank of Montreal who was owed money against those assets. And once you've done the valuation, it's a fairly simple transaction.

As I said earlier on, purchasers generally want to buy assets, vendors want to sell shares. This share transaction in this situation wouldn't have been viable so they were just disposing of the assets to pay down the loan.

Mr. Goohsen: — So here we have Dynex, a rather mismanaged company with assets, that was going broke, that had to sell them or else have them disposed of some other way through the bank that basically had taken over. They sell them now to SaskPower who in turn now sells them to DEML who also is on the brink of bankruptcy and is in serious financial trouble and needs some kind of a deal in order to stave off bankruptcy for themselves.

So their motive in this deal and their agenda would be not only to make money but to stave off bankruptcy at any cost in order to be survivors in the corporate world.

Mr. Grossman: — We did not at any point in time look at the financial wherewithal that Dynex throughout this . . . or DEML, I'm sorry, throughout this transaction. The share price was paid, the cash was received by SaskPower based on the sale agreement that we didn't go into the financial wherewithal of DEML.

Mr. Goohsen: — And of course that then leads me to the fifth group of individuals that have their own agenda, and that of course is the individuals involved in Dynex, SaskPower, Channel Lake, and DEML.

And of course I will use Mr. Portugal's name as the example because he was here and testified. Now his own agenda as an individual would be to take care of number one and to survive himself to make sure that he still has a reputation and a job, and each individual that's involved in these transactions will naturally have a tendency to take care of themselves as well as the corporate interests.

And so those are the five entities that we would have to study as to motive. So what motives would have driven the individuals to make the mistakes in a broader sense, that you would see?

Ms. Larsen: — I guess I have great difficulty with the line of questioning because to get into making any kind of conclusions with respect to people's motivations is something . . . I think it's just about impossible to do with any degree of certainty. All you can do is speculate and I don't think that's appropriate.

Mr. Goohsen: — And I think you're right and that makes my point. And that's why I think we have to take a very hard look at what Mr. Hillson was doing earlier today, and that is to have somebody study all of the individuals that were concerned in the ownership of all of these companies. Because now it turns out — just from the brief work that we've seen him do here today — it turns out that many of these companies were owned and controlled by the same people, the same individuals who all had their individual motives working in this process.

And it's not so simple as one company selling its assets to another. It becomes a very intense, individual thought process of how to make money and how to save individuals' careers and how to save the political day. And so unless we go into a deeper understanding of who all is involved in these corporate structures, we will never really understand what motivated people to do the things they did. And that of course is the question, did they do things for the proper reasons or did they do them because they were self-motivated?

Ms. Larsen: — But I don't think even if you do do that examination of the corporate structure and look at where individuals were placed at any given point, that you'll necessarily get the answers you're talking about. You're still reaching conclusions without necessarily knowing whether or not they're justified.

Mr. Grossman: — If you're looking at a conspiracy theory . . . and Mr. Gerrand has far more eloquently expressed that there could be no conspiracy because all that had to happen is for one person in this whole process read that agreement. And so you couldn't rely on the whole system was going to fail and therefore the conspiracy could result. And there were enough processes and safeguards set up so that it should have happened.

And you can go back through the whole transaction and just say at that given point in time if a person had just flipped through the agreement and said, let me just . . . I'm not reading the whole agreement again, I'm just looking at that particular section, a very short section, and on and on and on, the deal would have then been looked at in light of it's not as we originally thought; we're renegotiating.

Mr. Goohsen: — Well I think maybe the word conspiracy is too strong a word. And to suggest that there was an overall conspiracy that somebody plotted at the beginning of this whole thing that encompassed the whole thing, probably wouldn't be true. But what there would have been would be a series of plans that were derived as this process unfolded. And of course if you want to use the word conspiracy, then it would be a series of small conspiracies that were put together from time to time as this thing unfolded in order for individuals to achieve their goals, which would be their motives and their agendas.

And it seems to me that just as we sit here now, the government is of course conspiring to extend the hours of the legislature so that we can wind up in a hurry. So the word conspiracy can be used in a lot of different ways.

So probably we should stick to the word, a series of plans that resulted in things not being done exactly right. And I think that even though that those may not be major crimes, people do make choices in the world, and some of these choices seem to me that they were not good choices. And therefore there must be responsibility attached to those choices and that that responsibility perhaps would result in a recovery of monies for the taxpayers. So do you see any place that we should be recovering money for the taxpayers?

Mr. Grossman: — I can't comment on that. I think that's a legal matter dealing with the legal issues of negligence and matters like that. So I can't really comment.

The Chair: — Thank you, Mr. Grossman. I take it, Mr. Goohsen, you've completed your line of questioning?

Mr. Goohsen: — I have, Madam Chair.

The Chair: — Thank you. I will now ask Mr. Gantefoer from the Saskatchewan Party if you have any further questions.

Mr. Gantefoer: — No further questions, Madam Chair.

The Chair: — No further questions, thank you. Mr. Hillson to you have any further questions?

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

The Chair: — No more newspaper clippings?

Mr. Hillson: — Lots more of those, Madam Chair.

The Chair: — Okay. I will now ask the New Democratic Party if you have any further questions.

Hon. Mr. Shillington: — I have one question that occurred to me when my colleague from Melfort raised the issue of the way we receive reports from subsidiaries of Crown corporations. It struck me there may . . . you may be able to assist us in finding some solutions to what is admittedly a problematic file here.

I'd like to begin the questions with a comparison to the way private companies who are publicly traded might report the activities of subsidiaries. And I'm conscious of Ms. Larsen's very apt comment, I think, that public companies have to be more conscious of public perceptions than private companies. Private companies can't ignore public perceptions but perhaps they don't need to be . . . in the scheme of things that they don't need to be quite so sensitive to it. If I can just hold that comment in abeyance just for a moment, I want to return to it.

You're familiar with the reporting requirements, such as they are, by which Crown corporations report . . . You're nodding your head saying you are. Can you compare that to how a private company might report activities of a wholly owned subsidiary. Is it roughly the same? More rigorous? Less rigorous?

Mr. Grossman: — A subsidiary company would not be reported, for example, to a shareholder's meeting. They would deal with a consolidated financial picture of the company. So if General Motors is presenting its financial statements, it would present the consolidated financial statement. It would not go into the detail of presenting the subsidiary companies.

Hon. Mr. Shillington: — Which I guess is more or less what the Crown corporations do here in a way.

Mr. Grossman: — Yes.

Hon. Mr. Shillington: — Again the answer to this may be no, but I'm wondering if you're familiar with how other jurisdictions . . . how other provinces in Canada or the federal government handle this matter of subsidiaries of state owned corporations. I mean there's probably a pattern, there's probably different reporting requirements across Canada.

Mr. Grossman: — Well there may be. There was a . . . Crown Investments Corporation had insisted that the subsidiary report be filed with the legislature. And in fact they had written to Saskatchewan Power asking them to file their financial statements. That was I believe the 1995 subsidiary statement for . . . or the statement for Channel Lake. And that had not been filed, and they wrote again.

And then they created a process where the subsidiaries or the financial statements of those subsidiaries will be filed with the legislature. And that was being undertaken until of course the confidentiality agreement which was signed in mid-March negated those financial statements from being filed.

Hon. Mr. Shillington: — You're saying the process was adequate, it just wasn't followed in this case. Is that what . . .

Mr. Grossman: — Well the process evolved. As Donna had indicated, this is an evolving thing that is happening as a result of the corporate failures that you're well familiar with in the corporate world. The process that was set up by Crown Investments Corporation supported the filing of those financial statements, but that had been something that had just come into place, I believe, in 1996.

And as a result they were now forced to comply with those rules and regulations. It would have been filed except for the confidentiality agreement that said no, you don't have to file. They had written to Crown Investments Corporation and got approval not to file the financial statements because of that reason.

Hon. Mr. Shillington: — Thank you very much.

The Chair: — Mr. Shillington? Then I will recognize Mr. Tchorzewski.

Mr. Tchorzewski: — Thank you, and I only have one question. Mr. Grossman, in the earlier dialogue you had with Mr. Gantefoer about features that may affect the true market value of the Channel Lake asset, things like the appropriate discount rate and a long-term gas supply were factors. But it is also a fact that the gas supply agreement doesn't require SaskPower to purchase any gas at all if it does not need to. And it also is a fact

that Channel Lake gas . . . that DEML doesn't have to sell to SPC (Saskatchewan Power Corporation) — it can market somewhere else.

Is it your view that those two facts would also have to be taken into consideration in determining market value?

Mr. Grossman: — Yes, those are good points. They would have to be considered.

What has to be understood is when you're negotiating a transaction, there really is no value. The value is what a willing purchaser and a willing seller is prepared to negotiate. So you don't start the transaction . . . You can look at all the numbers that you want; you can have all the expert evaluators preparing the documentation that says here's what a particular asset or company is worth, but there is no specific assigned value that dictates that the purchaser must pay this and the vendor must sell for that.

So it's a series of negotiations that occur often over a protracted period of time trying to come to that value. And what it ultimately boils down to is how badly does the buyer want that particular asset or shares of those companies, and how much and how motivated is the seller to get rid of the asset.

And you can look around in your daily life and realize that we do that everyday when we purchase a car, when we purchase a house, etc., etc.

And you cannot quantify to the nth degree that says this is the value of a company. As I say, SaskPower was not forced to sell this asset. If they had said you pay me this or I don't sell, they might not have sold — I don't know. If DEML said at all costs, I want this asset, they may have paid a premium.

It is a fairly easy transaction to look at in one way because you're not dealing with an ongoing business that has goodwill attached to it. And so therefore you're not having to value the goodwill but in a long-winded explanation or answer to your question, but those are factors that you would consider, absolutely.

Mr. Tchorzewski: — I've had to sell two houses. I kind of — after your explanation — get a sense of the accuracy of what you're saying. Thank you very much.

The Chair: — Thank you. Are there any further questions from any members of the New Democratic Party? Okay.

I will now poll the committee members to determine if you have, as a result of any of the testimony you've heard this morning, any further questions of either Ms. Larsen or Mr. Grossman. I'm getting an indication that committee members have no further questions.

I do appreciate that both of you arranged your schedules so that you would be able to be here for both today and tomorrow. You can go back now to your principals and tell them you've got a day off, I guess. Or you could get caught up on all the work that I'm sure you've had to reschedule as a result of these committee hearings.

I do thank you both very much. Do either of you have any closing statements that you wish to make? Any summary or anything that you felt that you were not able to answer completely and you wish to expand upon?

Mr. Grossman: — I don't think so.

The Chair: — Okay. I would remind you that the committee has decided to accord all witnesses the privilege of providing a closing statement. If you leave here and decide that you would want to provide a closing statement, will you please do it in a written form? And I will be setting a date pretty soon for when I want those statements in, but right now I'm still working through the witness list.

So I do thank you both for your cooperation and your assistance with the committee, and you are now excused.

I would now ask committee members if you have any procedural items that you wish to raise today.

Mr. Tchorzewski: — Well it seems that . . . I for one thought that we would need two days with these witnesses. But going through the three pages of questions that I had here, they were all asked and answered and I didn't . . . I mean it would be futile to sort of repeat the same questions over again.

So it appears that tomorrow we have a day which we can do with whatever we wish. And I don't know what . . . You mentioned earlier, Madam Chair, that you have Ernst & Young arranged for next week and it's . . .

The Chair: — I have Ernst & Young arranged for next week and I am not willing to ask them to rearrange their schedule for a fourth time to come tomorrow. They were originally on the witness list to appear before the committee tomorrow. They arranged their schedule to be here. Then we called them for next week. They had to rearrange their schedule. It simply would be inconvenient and discourteous to the witnesses. So right now, at this point, I don't have any witnesses available for tomorrow.

Mr. Tchorzewski: — No, I share your view. I think we owe them that much that since they are scheduled for next week, I think we should stay with that. I would suggest you call them for next week if others agree, but that you also should ask CIC (Crown Investments Corporation of Saskatchewan) to be on stand-by so that if we can proceed quicker, we can.

And that for tomorrow, I know that things are happening in the legislature where there seems to be some more activity on estimates and other things. I'm sure that some members wouldn't mind an extra morning to do some work in preparation on that.

So I think we should just suspend our sittings for tomorrow and start again next week, and that maybe some of our staffs can get together and in consultation with you, Madam Chair, look at the remaining of the witnesses that we want to call and see what we can do about firming up the schedules.

The Chair: — Thank you, Mr. Tchorzewski. One of the matters that you're raising obliquely is the question of how long committee members feel that they might require with Ernst &

Young. I do have them booked for two days, but it appears that one day would be sufficient. Is that correct? Agreed. Thank you. I will then contact Ernst & Young and let them know that we only want them on June 9th.

And is it agreed then that I should also have CIC then available for June 10? I'm seeing a lot of head nodding and again, head nodding doesn't make it into *Hansard* but . . .

Mr. Tchorzewski: — For the record I think it's good.

The Chair: — Okay. For the record then we will call CIC officials for June 10.

It is not necessary to expand our work to fill the time available. We can cancel tomorrow's meeting. Are there any items though that any other committee members might wish to discuss or deal with tomorrow, or anything else?

Mr. Hillson: — Madam Chair, I don't insist we convene tomorrow, but there is a need for a meeting to finalize the witness list. Mr. Tchorzewski has suggested an informal meeting called by the Chair. That's satisfactory to me.

But I think we do need perhaps just an informal discussion but there is still . . . the witness list has not been finalized and I do still think we need some discussion about final report and the issues surrounding final report. And I think some of these issues indeed have to be resolved before the legislature rises.

The committee of course can continue its work even if the legislature has closed, but if we have requests of the House in terms of the format of the final report, that actually has to come before the legislature . . . before it rises. So I'd ask that we do that.

I leave it to the Chair's discretion as to the proper format. But I say there is a witness list, there's a final report, and whether we convene tomorrow morning or whether the Chair has an informal meeting with us, I don't care, but I submit something should be done.

The Chair: — Thank you, Mr. Hillson. I have been working informally, as committee members are aware, with all three parties as well as their staff. And I will continue to do that and ensure that everybody is informed as I am getting the witnesses firmed up and calling them. So I will be speaking with all three party representatives on the floor of the House today or tomorrow about this.

I should also point out that we are still in the process of trying to finalize the expert witness who can comment on both the long-term gas supply contract and the discount rate and the interactive effect of the two.

I haven't, unfortunately, been able to finalize who that expert will be, but I will be discussing that again with all three party members. Mr. Gantefer, do you have any comments?

Mr. Gantefer: — No, Madam Chair.

The Chair: — If there is nothing else then, I require a motion for adjournment since the hour is not 12 o'clock.

Mr. Tchorzewski: — I would very much enjoy moving that motion.

The Chair: — Thank you. I have a motion of adjournment. That is agreed to? Thank you. We will meet again next Tuesday, June 9 at 9 a.m.

The committee adjourned at 11:50 a.m.