



# **Standing Committee on Crown Corporations**

## **Hansard Verbatim Report**

**No. 49 – June 25, 1998**



**Legislative Assembly of Saskatchewan**

**Twenty-third Legislature**

**STANDING COMMITTEE ON CROWN CORPORATIONS  
1998**

Pat Lorje, Chair  
Saskatoon Southeast

Kim Trew, Vice-Chair  
Regina Coronation Park

Bob Bjornerud  
Saltcoats

Doreen Hamilton  
Regina Wascana Plains

Ben Heppner  
Rosthern

Jack Hillson  
North Battleford

Lloyd Johnson  
Shellbrook-Spiritwood

Lindy Kasperski  
Regina Sherwood

Myron Kowalsky  
Prince Albert Carlton

Andy Renaud  
Carrot River Valley

**Channel Lake Petroleum Ltd.**

**The Chair:** — If the committee members would take their place, I think that we are ready to start with our usual punctuality.

Good morning, everyone. We have today for our Channel Lake inquiry hearing we have witnesses from SaskPower. I have called Don Mintz, a member of the SaskPower board and a member of the audit and finance committee of SaskPower. As well I have also called Milt Fair, currently the Vice-Chair of the SaskPower board. And the legal counsel that he engaged at the time of the resignation of Jack Messer, Mr. Rob Garden.

We have two issues to decide today before we begin hearing testimony from those three witnesses. Actually we have three issues to decide. The first is the order of witnesses that we wish to have . . . the order of questioning of witnesses.

I had anticipated that what we would likely want to do is to question Mr. Milt Fair and Mr. Rob Garden and then move into hearing testimony from Mr. Don Mintz, to build on the testimony that we will hear tomorrow from the two outside experts that we've engaged for discount rate and long-term gas supply.

But I'm in the committee's hands. If you want to do it the other way around, that's perfectly acceptable as well. What I would propose though is that I will swear in all three witnesses at once this morning. And then we can deal with it from there. So that's the first question to decide: the order of questioning of the witnesses.

Secondly, I do have a request from Mr. Fair that when he gives his testimony, that Mr. Rob Garden also be allowed to give his testimony simultaneously so that they can both answer questions on matters that are pertinent. So I would require committee approval of that if we're going to do it that way.

The third matter of course, that we don't have to decide right away this morning, but you will note when I sent out the notice of meeting that I put that we would possibly be sitting from 7 to 10 this evening. That's to expedite the taking of the testimony. So I think that we probably can just leave that one in abeyance and see how things flow this morning and this afternoon.

But right now I'm proposing that we'll sit from 10 to 12, take a one-hour lunch break, and then sit from 1 until 5 this afternoon. This again is subject to committee approval. I recognize that many of you were likely very actively involved in political events yesterday, so your energy may flag even before mine does.

What I will now do is swear in the three witnesses and then I would ask for a decision from the committee with respect to the order of questioning of witnesses and also whether or not Mr. Fair's request that Mr. Garden and himself testify simultaneously is acceptable.

Before I swear in the witnesses, I have a customary caution to read to all three witnesses. And I would ask that you attend to this statement. It is as follows.

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

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

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

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

Who wishes to be sworn in first? Okay. Mr. Mintz, do you wish to swear or to affirm?

**Mr. Mintz:** — I'll swear.

**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. Mintz:** — I do.

**The Chair:** — Thank you very much.

Mr. Fair, 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. Fair:** — I do.

**The Chair:** — Thank you. Mr. Garden, 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. Garden:** — I do.

**The Chair:** — Thank you very much. Now I would ask for a committee decision. Did you wish to hear testimony from Mr. Fair first, or Mr. Mintz?

**Mr. Tchorzewski:** — I think they're there already. Why don't we proceed with them.

**The Chair:** — Okay. So I take it then there's concurrence that we will first of all question Mr. Fair and Mr. Garden and then we'll move to Mr. Mintz?

**Mr. Hillson:** — Well, Madam Chair, if I may, it seems to me that the natural order would be that Mr. Garden came into the picture last, so I think that the people who were involved previously are Mr. Fair and Mr. Mintz. And it seems to me that

they should come up first and Mr. Garden last. And it would also seem to me that while it may be in order for Mr. Fair to consult with counsel on some questions, I think they should answer individually.

**The Chair:** — I'm in the committee's hands. We have two aspects that we're inquiring into. One is the circumstance surrounding Channel Lake and the other one is the payment of severance to Mr. Messer. So we need to keep them fairly clear and straight, but as long as the giving of testimony can be orderly, it makes no difference to me in what order we do it.

**Mr. Tchorzewski:** — I'm not making a strong point on this but it seems to me that Mr. Fair and Mr. Garden worked together on the decision. So it seems, as we have done in one or two other cases, it would be appropriate if we were able, to for their benefit so that Mr. Fair can consult the lawyer that advised him, we might want to question them together. It seems like the appropriate thing to do.

**Mr. Gantefoer:** — Thank you, Madam Chair. I have no objection to that. I would assume though if we have specific questions we can direct them individually if that's most appropriate. So I don't . . .

**The Chair:** — All three witnesses have been sworn in. I would though again ask committee members to attempt as much as possible to direct your question, your line of questioning to one person at one time. It simply makes it simpler.

If that's agreed, then we will first hear testimony from Mr. Fair and Mr. Garden, and I gather that both gentlemen have an opening statement that they wish to make.

**Mr. Fair:** — Thank you. Good morning, Madam Chair. My name is Milt Fair and I'm Vice-Chair of the board of directors of Saskatchewan Power Corporation.

I was appointed to the Saskatchewan Power board effective January 1, '98, and prior to that time I had had a lengthy career with Saskatchewan Wheat Pool, retiring as its . . .

**The Chair:** — Mr. Fair, before you proceed, did you make copies of your opening statement? I wonder if you could give them to the page to have distributed.

Mr. Fair, you can proceed now.

**Mr. Fair:** — All right. Thanks, Madam Chair.

**The Chair:** — I apologize.

**Mr. Fair:** — Not a problem.

I think you all know now who I am. Point two, I was appointed to the board of Saskatchewan Power effective January 1, 1998. Prior to that time, I had had a lengthy career with Saskatchewan Wheat Pool, retiring as CEO (chief executive officer) December 31, '93.

Prior to my appointment to the board of Saskatchewan Power, I had no involvement with SaskPower or any matters relating to the acquisition, management and sale of Channel Lake

Petroleum — Is this one working okay -- Channel Lake Petroleum Ltd.

I have been made aware of much of the testimony before this committee on matters concerning my involvement in the termination of Mr. Messer's employment and the severance paid to him. I was, of course, directly involved in those matters.

As far as the termination of Mr. Messer's employment, on March 4, 1998 at approximately 3:30 p.m., I was first made aware of the possibility of Mr. Messer being asked to resign his position as president and CEO of SaskPower.

On that date I was asked to attend at Mr. Messer's office to meet with Mr. Messer and Mr. John Wright of Crown Investments Corporation. I was then advised that Mr. Messer had been asked to tender his resignation unconditionally by 6 p.m. that day, failing which he would be dismissed for cause.

I was advised that I, in my capacity as Vice-Chair of the Saskatchewan Power board, was to be charged with determining an appropriate severance package for Mr. Messer with the assistance of an independent adviser of my choosing.

Mr. Messer, Mr. Wright, and I discussed the parameters to be employed should severance be paid. I understood that I was to be governed by the provisions of The Crown Employment Contracts Act, examples of the severance packages paid to Mr. Sojonyk and Mr. Larsen were identified.

I left that meeting. I was advised later that evening that Mr. Messer would be tendering his resignation.

As a consequence, on the evening of March 4, I contacted Mr. Rob Garden of the legal firm MacPherson Leslie & Tyerman, with whom I had worked many times before when I was at Saskatchewan Wheat Pool. Mr. Garden is an expert in the area of employment law.

On March 5, 1998 Saskatchewan Power board met and accepted the resignation tendered by Mr. Messer. The board authorized me to negotiate an appropriate severance package and to consult with an external independent adviser in this task.

I clearly understood that should there be just cause for Mr. Messer's employment terminating, severance would not be appropriate and would not be paid.

Mr. Garden and I set out to consider firstly whether there was just cause. Mr. Garden arrived in Regina on March 6, 1998 and over the next several days he and his associates reviewed all the relevant materials and conducted due diligence inquiries as to Mr. Messer's performance as president of SaskPower, including: speaking to members of the board of directors of SaskPower; reviewing the draft report of Deloitte & Touche; reviewing the legal opinions of Mr. Bogdasavich, and Mrs. Denise Batters, and speaking with each of those individuals; speaking with Mr. John Wright of CIC (Crown Investments Corporation of Saskatchewan); and speaking with senior executives with SaskPower. Just a note that neither senior executives, nor members of the board of SaskPower, nor Mr. Wright knew of any conduct that would constitute just cause for dismissing Mr. Messer.

On March 9, 1998, Mr. Garden verbally advised me of his legal opinion regarding Mr. Messer's termination and possible severance. His opinion was that there was no just cause for dismissing Mr. Messer, and as a result he was entitled to severance in the range of 18 months. Mr. Garden's subsequent written opinion is documented in your files under CLP 1/19.

Mr. Messer had engaged his own counsel and, through a process of negotiation between Mr. Garden, Mr. Messer, and his counsel, a settlement was reached regarding an appropriate severance package. The severance agreement is documented again under document 1346 which is a letter agreement signed by Mr. Messer and myself on March 9, 1998.

On March 12, 1998 I attended a press conference where I confirmed that Mr. Messer had resigned his employment with SaskPower and that he was to be paid severance.

The key factors in my decision to provide a severance package to Mr. Messer were as follows: this was my decision exclusively, parameters as to an appropriate severance package were provided to me, but I was given no directive as to what if any severance package should be paid. I wanted to determine firstly if cause existed for Mr. Messer's termination of employment, for if it did I would not have recommended severance; having received the opinion of Mr. Garden I concluded that no cause existed, and that severance in the range negotiated was appropriate.

I knew that even having resigned unconditionally, Mr. Messer had not waived his right to sue SaskPower for severance, and I determined that it was more appropriate to negotiate a severance package than incur the significant additional costs of litigation, particularly where there was no legal basis to support a dismissal for cause.

Madam Chair, I'd be pleased to respond to questions as they come.

**The Chair:** — Thank you, Mr. Fair. Before I entertain questions of you by committee members, I would ask Mr. Garden to read his opening statement and again, Mr. Garden, do you have sufficient copies for distribution?

**Mr. Garden:** — I do, Madam Chair. Do you wish me to wait while the copies are being circulated?

**The Chair:** — Yes, please. It's not often I get to tell a constituent what to do.

**Mr. Garden:** — We constituents are a difficult bunch.

**The Chair:** — But loyal. Mr. Garden, would you proceed please.

**Mr. Garden:** — Yes. Madam Chair, members of the committee, as you know, my name is Rob Garden. I am a partner with the law firm of MacPherson Leslie & Tyerman. I work out of our firm's Saskatoon office. I graduated from the University of Saskatchewan College of Law in 1973 and I've been with MLT (MacPherson Leslie & Tyerman) ever since.

MLT, as I believe many of you know, has a large labour and

employment law practice. Our labour and employment law group includes six partners and a roughly equivalent number of associates. We routinely act for management and employers in connection with such matters.

My legal practice is principally focused upon labour and employment law. Although I do spend a small percentage of my time doing mining law, my overwhelming focus is labour and employment law. I'm a senior partner with MLT. And our Saskatoon labour and employment law group includes, in addition to me, two other partners and three associates who spend all or substantially all of their time in the labour and employment law field.

On March 4, 1998 — I believe I was at my home, in my den at the time — I received a telephone call from Mr. Milt Fair. I've known Mr. Fair for many years. He informed me that he was calling me in his capacity as Vice-Chair of the board of directors of Saskatchewan Power Corporation. And he further informed me that Mr. Messer had resigned from his position as president and chief executive officer of the corporation and asked me for my assistance in connection with the matter.

From the facts as Mr. Fair explained them to me, I quickly came to the conclusion that Mr. Messer's resignation was not a resignation in the normal sense of that term. I concluded that a court would find in law that Saskatchewan Power Corporation had terminated Mr. Messer as of the date of his resignation and I so advised Mr. Fair.

On March 6, I travelled to Regina. I met with Mr. Fair. He confirmed his instructions to me; namely he wanted me to provide legal advice on the matter of whether just cause existed for the termination of Mr. Messer. I was also requested by Mr. Fair to provide advice to him regarding the quantum of damages which a court might award to Mr. Messer if it was determined that Mr. Messer was terminated without just cause.

Now Mr. Fair had been appointed relatively recently, prior to the early part of March, as the Vice-Chair of the board of Saskatchewan Power Corporation. So the two of us concluded that it would be necessary, in addition to utilizing the knowledge that he had as Vice-Chair — which by the way would be the normal thing in a situation like this - normally I would simply talk to the person who is providing me with instructions, understand the lay of the land, and proceed on the basis of that information to provide advice.

In the circumstances of this case, given that Mr. Fair had not been there for a long time, we decided that in addition to utilizing the information which was known to him, we would conduct our own review of the facts and circumstances leading to Mr. Messer's termination in order to determine whether just cause existed.

So we began then — and by "we" I mean Mr. Fair; we both worked together on this, together with associates of our firm and other partners — we began the investigation. We interviewed persons who might have knowledge of the relevant facts, and we also began to review the documents which were available to us. And as I say here, oftentimes partners and associates of the firm work with me, and this was normal. That happened in this case as well.

I met again with Mr. Fair on March 7. I believe that was a Saturday. I spent a significant amount of time with him on the afternoon of March 7. At that time I advised him that if Mr. Messer had not been terminated for just cause, in our opinion a court would award Mr. Messer somewhere between 12 and 18 months pay in lieu of notice, with the most likely award being toward the top end of that range.

Mr. Fair and I met with Mr. Messer and his solicitor, Mr. Patrick Kelly, of the law firm of Gauley & Co. late that afternoon to discuss terms of settlement on a without prejudice basis. It was made clear to Mr. Messer and Mr. Kelly that any settlement was subject to Mr. Fair and I finalizing our review of the facts and circumstances surrounding his termination. If just cause existed, no severance payment would be made.

In the discussion with Mr. Messer and his solicitor, the basis of Saskatchewan Power's position was 15 months pay in lieu of reasonable notice, with a further three months payable in the event that Mr. Messer had not, during that initial 15-month period, found alternate employment. We, in coming to the position that we took with respect to Mr. Messer's severance package, looked at, were cognizant of, and complied with the provisions of The Crown Employment Contracts Act.

On March 9 we completed our review, our interviews and review of relevant documents. We provided our conclusion to Mr. Fair, namely that just cause did not exist in our opinion for the termination of Mr. Messer. Shortly thereafter a settlement agreement was concluded with Mr. Messer. We delivered our confirmatory written opinion on the issues referred to above to Mr. Fair on April 1, 1998. Mr. Fair referred to the document number that has been assigned to that particular document in these proceedings.

Subsequently Mr. Fair also asked us to review the performance of Messrs. Kram, Christensen, and Patrick in connection with the Channel Lake transaction. We undertook that further review and we concluded that just cause for the termination of those persons did not exist at law and we so informed Mr. Fair.

Thank you, Madam Chair, members of the committee. I'm prepared to answer your questions.

**The Chair:** — Thank you, Mr. Garden. We will now proceed with questioning. Gentlemen, if you've been following these proceedings, as I'm sure you have, we question witnesses in one-half hour blocks; we start with the Saskatchewan Party, then move to the Liberal Party, and then to the New Democratic Party. If there are independent members present, they have the right to question witnesses for up to 15 minutes.

We will now entertain questions from Mr. Gantefer until approximately 11 o'clock.

**Mr. Gantefer:** — Thank you very much, Madam Chair. And good morning, Mr. Fair and Mr. Garden.

If I could, Madam Chair, initially I would like to direct my questions primarily to Mr. Fair, and in a subsequent round perhaps have more questions for Mr. Garden. But I do appreciate if Mr. Fair needs assistance or clarification in answering them, that that's certainly acceptable.

Mr. Fair, by your statement and from the information that's certainly available, you've come to your position with SaskPower relatively recently. I would like to know, sir, in acquiring a position such as yours, what background briefing is given in terms of bringing you up to date with issues that would be before the corporation from a background standpoint?

**Mr. Fair:** — Well, Madam Chair, in response to Mr. Gantefer, I actually began my involvement with SaskPower about this day, because I'd been on vacation from January 1 till the middle of February.

I had in fact taken the opportunity to get annual reports simply to apprise myself of some of the things, so I had reviewed the '95 and '96 annual reports. I had . . . and in fact on March 3 and 4, the training that was being provided for new members . . . or for members of the boards of Crowns, so I was involved in that way. But beyond that, really very little.

**Mr. Gantefer:** — So there was no in-depth briefing on issues that were before the corporation in any specific sense at all?

**Mr. Fair:** — No, there was not.

**Mr. Gantefer:** — Okay. So I would think it would be safe to say that there would be nothing even mentioned on the issue surrounding Channel Lake.

**Mr. Fair:** — Madam Chair, with respect to that, essentially very little. I was aware that there was at that time the work being done by Deloitte & Touche and Gerrard. But of course, even at that stage those materials were not available, so . . . other than the fact that I had also heard via the news media that Channel Lake had become an issue last fall. But you pay little attention to those kinds of things when you have no direct interest in them.

**Mr. Gantefer:** — In terms of the briefing, was there any background information on senior executives? Was there any background, historical background or otherwise, for example, on Mr. Messer's tenure or any of the senior vice-presidents. I guess, you know, to bring you up to speed and say okay, here's who these individuals are, here's their background, here's sort of the historical basis on . . .

**Mr. Fair:** — No.

**Mr. Gantefer:** — None of that. From your written statement and from the information, on March 4 in the afternoon you were made aware that there was a possibility that Mr. Messer would be asked to resign. Who made you aware of that?

**Mr. Fair:** — It was essentially a call that I received at the board training and I was asked to come to Mr. Messer's office . . . that the question of his continuation was something they wanted to discuss with me.

**Mr. Gantefer:** — That was the meeting where Mr. Wright was meeting with Mr. Messer?

**Mr. Fair:** — Correct. The point 6 that I make.

**Mr. Gantefer:** — So you were at a training seminar in the

building — that was the reason you were in the building.

**Mr. Fair:** — No, I was actually at the Hotel Saskatchewan.

**Mr. Gantefer:** — Okay. But that's why you were sort of in proximity to the building.

**Mr. Fair:** — Correct. And, Madam Chair, just for information, that was . . . we had arranged board meetings for SaskPower coincident with the training sessions. And so the training sessions were on the third and fourth, the board meeting was to be on the fifth and sixth. And so that coincided very well and so that's why I was in the area at the time.

**Mr. Gantefer:** — In the discussion from your item 6 on your opening statement, you indicated that it was indicated by Mr. Wright that Mr. Messer would be asked for his resignation and if he failed to produce it unconditionally, he would be terminated for cause. Is that correct?

**Mr. Fair:** — That is correct.

**Mr. Gantefer:** — Was there indication of the basis of that statement that he would be terminated with cause?

**Mr. Fair:** — No.

**Mr. Gantefer:** — So that was never discussed . . . what the cause may be?

**Mr. Fair:** — No.

**Mr. Gantefer:** — In terms of then, the action taken from there, I certainly appreciate that you engaged Mr. Garden to assist you in this regard and I certainly do respect and understand Mr. Garden's background and expertise in these matters.

Clearly from your statements and the information that Mr. Garden provided, there would be a very strong difference of opinion between the statement that was made by Mr. Wright . . . at that meeting that Mr. Messer would either resign or be dismissed with cause and the subsequent findings that there was no cause available. Did you find that strange as you received that further information from Mr. Garden?

**Mr. Fair:** — I'm not sure that I found it strange. It was a determination taken that the relationship between Mr. Messer and SaskPower should be concluded. I don't consider these as a matter of unusual circumstances — presidents and chief executive officers and corporations, it's not unusual for them to part relationships. And if there was anything unusual about it, it might be at the way a parting of the ways was to be negotiated. And it was determined that I was to be asked to consider the severance arrangement and that was the assignment left to me as vice-chair of the board.

**Mr. Gantefer:** — Perhaps you could help me. In some of your experience with, as you said, with boards of directors and chief executive officers, I think it is probably very reasonable that parting of the ways do occur and that certainly does happen. In your experience, is it general that the parting of the ways are on the basis of this nature where instead of just a simple

resignation, there was clearly a termination?

Mr. Messer was told either resign or be fired by 6 o'clock — and is that common?

**Mr. Fair:** — Yes, I believe that is common. A resignation is something that is useful I think in long-term employment. If you have a resignation, it's better than a termination.

**Mr. Gantefer:** — But in fact in this instance it was the same thing.

**Mr. Fair:** — I would suggest, sir, that it is often the same thing.

**Mr. Gantefer:** — Thank you.

In the exercise of receiving the briefing or the training, was there ever the discussion of the role between the Crown Investments Corporation board and the SaskPower board? And what I'm getting at is the lines of authority really that flow down or flow up — I guess it depends which direction you want to look at it. If you look at it from the Channel Lake side, clearly they were accountable to the SaskPower management and board. SaskPower management and board are accountable to the Crown Investments Corporation management and board. And subsequently, the Crown Investments Corporation is answerable to the people of Saskatchewan ultimately I guess.

In that relationship — first of all, I'm assuming you agree with the general description of the relationship — but in that relationship, did you find it strange that the CIC president, Mr. Wright, directly asked for Mr. Messer's resignation and, it would seem, bypassed the SaskPower board entirely.

**Mr. Fair:** — Well, Madam Chair, first of all from the training standpoint, there was in January a session where that relationship was I think discussed. I was not in attendance at that. I missed the first training session.

But I am aware that The Crown Corporations Act does provide for the shareholder, if you like, to provide certain instruction to the boards of the Crowns. I believe we're in an evolving era and how that will play out is something that time will tell.

But if you look at the facts of the matter, provisions are provided that that can happen. I think it's section 5 or 6 of The Crown Corporations Act. So it does not . . . I guess if you . . . I mean it's not the way that I trust things will happen as we evolve this, but it is a provision that's available.

**Mr. Gantefer:** — In your discussion or in the investigation that you went through then . . . Or first of all, in the conversation that was conducted on the day — on March 4 in Mr. Messer's office I believe is where it happened — the examples of the severance packages to Mr. Sojonky and Mr. Larson were discussed. Were they held out as examples or were they held out as potential severance packages?

**Mr. Fair:** — First of all, you need to understand, Madam Chair, that I did not have any real understanding of what might happen in this kind of an era moving in as I have from the private sector where you don't necessarily have certain rules and regulations around you.

It was my inquiry to say, can you tell me what are my parameters. I was referred to The Crown Employment Contracts Act — I always stumble on that one — which in fact, as I understand it, is common law.

And it was really growing out of that discussion — and nothing held out — that here are some examples of what has happened. But it was certainly nothing held out. It was my inquiry to try to provide myself with some kind of framework in which I needed to begin my thought process.

**Mr. Gantefer:** — So . . . I certainly have an increasing appreciation and empathy for your position, coming from holidays and attending your first two-day training meeting. To be called into the midst of this certainly would be something over and above what you probably expected when you accepted the challenge of being on the board.

In the exercise of coming to a decision independently with the assistance of Mr. Garden, did you participate in the discussions with other members of the board and things of that nature in terms of getting the background you felt was necessary?

**Mr. Fair:** — I participated in some — not necessarily all. But certainly — excuse me — but certainly any discussions that were held by Mr. Garden and/or his associates I was briefed on so that I knew what was going on all the time.

**Mr. Gantefer:** — In that briefing I believe you indicated you had talked to other members of the board, and senior management, and people that may have more of a historical perspective. Were there issues raised in terms of Mr. Messer's style of management in terms of how he conducted the affairs of the corporation?

**Mr. Fair:** — Nothing specific that I would say - no. I mean, I think once you get in to style and so on that becomes a matter of "in the eye of the beholder."

**Mr. Gantefer:** — Was there comments that in the past previous boards had some difficulties with Mr. Messer's style or Mr. Messer's methodology of management?

**Mr. Fair:** — I was not aware of that until some time later, and I can't tell you precisely when I became aware. Certainly I know before this committee there's been some reference to an earlier date. But I was not party to any of that, and I'm not aware of . . . of anything specific in that area.

**Mr. Gantefer:** — And it wasn't addressed in terms of your inquiries about the appropriateness of severance in this instant?

**Mr. Fair:** — No. Perhaps parenthetically . . . I don't think necessarily style is a cause issue.

**Mr. Gantefer:** — I'm not sure of the specific circumstances surrounding the dissatisfaction with Mr. Messer in the past, only to indicate that the Premier himself had indicated that the minister of the day, Mr. Anguish, had come to him indicating there were problems. And the Premier had instructed Mr. Anguish to fix it. So if that was style or substance, I'm not sure. I'm taking the Premier at his word.

**Mr. Fair:** — I have no view on that, sir.

**Mr. Gantefer:** — Thank you. In terms of looking at the appropriateness of severance, was this done primarily from a legalistic standpoint as opposed to a general consideration or even a small "p" political consideration for the corporation?

**Mr. Fair:** — From my standpoint and from my experience, when you move into something of this nature, you need to . . . I guess I would say personal feelings and law are two different things. And in my mind what I was looking at was what are the issues at law because those are the areas that in the end are going to have to be determined. And so if I can put it that way, I was really more concerned with what are the issues I'm going to be faced with at law. And as it came out in the discussions that Mr. Garden and I had and contained in his opinion, the issue really for the employer is to be very clear on what cause is. And in our judgement, my judgement with his counsel, we did not find that.

**Mr. Gantefer:** — Before you arrived at the decision, was it a requirement that you consult with the full board of SaskPower and brief them on your findings? And how did that process work?

**Mr. Fair:** — In fact on the fifth and sixth we had the board meeting, and Mr. Garden joined me as we discussed this with the board. And I in fact have a resolution of the board on the night of the sixth that appropriate severance was to be considered by myself, and that they concurred that that severance could be in the order of 18 months.

**Mr. Gantefer:** — So as early as the sixth you had the mandate of the SaskPower board to finalize the severance package.

**Mr. Fair:** — We did.

**Mr. Gantefer:** — So the board was party to the discussion that it was unlikely that cause could be shown.

**Mr. Fair:** — No. Madam Chair, that's not the issue. At that stage what we said was, if there is no cause, what are the parameters? And that really is the way we dealt with it.

**Mr. Gantefer:** — So the board . . . through the discussion then, there was no discussion at that point if cause was there or not. It was more a contingency that, if just cause could not be demonstrated, you were given the mandate to negotiate severance within certain parameters.

**Mr. Fair:** — That is correct.

**Mr. Gantefer:** — Okay. Subsequent to that, it was not a requirement then to have any further discussion in terms of the details of the severance as long as it stayed within the parameters established.

**Mr. Fair:** — That is correct.

**Mr. Gantefer:** — In the press conference I think that you referred to — and you can correct me — it certainly indicated that in the discussion of accepting Mr. Messer's resignation, the whole issue of the Channel Lake issue was mentioned as part of



the reason, but there was also reference to the issue of Guyana. Was that part of the investigation and discussion if just cause could be determined?

**Mr. Fair:** — If you go back and read very carefully the press conference, those quotes came directly from the minister's comments when he announced the resignation. They were not, as far as I'm concerned, were not part of our consideration. We were looking for cause. And what I said in that press conference, in his comments the minister identified certain things. And that really was not anything to do with Mr. Garden and myself in our determination.

**Mr. Gantefoer:** — So in determining cause or if cause existed or not, did you stay focused solely on the Channel Lake decisions or did you go beyond that?

**Mr. Fair:** — Mr. Garden just . . . Madam Chair, Mr. Garden just reminds me that in our discussions we broadened it very wide. When we talked with the executive, we talked with Mr. Wright, we said, is there anything that you know? But of course by this time Channel Lake was becoming a fairly major issue and so we did focus a good deal of our attention in that area.

But our questions to all of the participants was a very broad one: do you know of anything that would provide cause for this . . . for such action?

**Mr. Gantefoer:** — So you weren't excluding any other issues in terms of looking for cause?

**Mr. Fair:** — No. That is correct.

**Mr. Gantefoer:** — In the final analysis, Mr. Messer testified that if things had . . . if he knew things were going to turn out as they had, he would likely in retrospect have not resigned. Was there any indication in any of the discussions that Mr. Messer regretted his decision to resign?

**Mr. Fair:** — I have had no discussions with Mr. Messer in that regard.

**Mr. Gantefoer:** — Thank you. Is there anything that . . . I assume you've kept some eye on the proceedings of this committee over the last months. Is there anything in the testimony or anything that you have heard or been made aware of that would lead you to reconsider your decision?

**Mr. Fair:** — Madam Chair, two responses. First of all, I have not watched with rapt attention all of your proceedings. Casually on occasion I have watched them and have even quit reading the newspapers.

But seriously, from what I'm aware, and of course we have kept reasonably close contact with these hearings through Mr. Milani, and I am not aware of anything that would change my opinion.

**Mr. Gantefoer:** — Thank you very much. Thank you, Madam Chair.

**The Chair:** — Thank you, Mr. Gantefoer. We will now . . . It is not my intention to call a break this morning. So we'll work

right through till noon and then have an hour-long break.

I do though, before I begin, before I recognize Mr. Hillson, I would like to inform committee members that there will be a newspaper photographer taking photos at approximately 11 o'clock. Mr. Hillson, I hope that isn't too much of an inconvenience to you and doesn't put you off your stride.

And I'm mostly saying this to give fair warning to the witnesses that the photographer will be present and will be snapping a few photos of you to appear on the front page of a couple of dailies.

Mr. Hillson, till approximately 11:30.

**Mr. Hillson:** — Madam Chair, Mr. Fair, Mr. Garden. First of all to Mr. Fair.

You were aware that, of course, that an opinion on severance for Mr. Messer had already been requested of Gerrand and Batters on March 3.

**Mr. Fair:** — Madam Chair, the exact timing of something of that nature, when we precisely became aware . . . we certainly did over that weekend but I can't tell you precisely. Certainly at the beginning I was not aware that there was such an opinion.

**Mr. Hillson:** — My question though Mr. Fair is, while I certainly don't quarrel with the expertise of Mr. Garden, why did you think another opinion was required when one was already requested of the Gerrand law firm, the firm that of course had been involved in the Channel Lake review?

**Mr. Fair:** — Madam Chair, I was not made aware of any opinions when I was given the assignment to arrange severance. And on the evening of March 4, as I indicated, I called Mr. Garden at his home to . . . as given the freedom to seek counsel of my choice. And in that regard, I went to an individual whom I consider to be one of the prime solicitors in this field in Saskatchewan.

So I was not aware at that time, and it was sometime over that weekend that we became aware, that there was something available. If I might, Madam Chair, just add to that . . . it was sometime again over that weekend that we became aware of a second opinion, namely that of Mr. Bogdasavich, that is I believe on the other side of that question.

**Mr. Hillson:** — So you're saying is that at the time you first contacted Mr. Garden you did not know that the Gerrand law firm had been engaged to provide an opinion on the selfsame subject?

**Mr. Fair:** — That is correct.

**Mr. Hillson:** — And of course the opinion from the Gerrand law firm is dated March 4. When would you have first received it, Mr. Fair?

**Mr. Fair:** — In fact we did not — I speak now of Mr. Garden and myself — did not see that particular document until March 9 and we did not receive a copy of it even at that stage. We simply reviewed it.

**Mr. Hillson:** — Okay. So Mr. Garden was engaged and asked to do this before you knew anything about another opinion on the same topic?

**Mr. Fair:** — That is correct.

**Mr. Hillson:** — And when did you then first know in general terms as to what Ms. Batters and Mr. Gerrand had had to say on the subject?

**Mr. Fair:** — May I, Madam Chair? Madam Chair, Mr. Garden and I don't recall whether it was the Saturday or the Sunday. We do know that Mr. Garden spoke with Ms. Batters late on Sunday, the eighth. Was that the eighth? Whatever the date is.

**Mr. Hillson:** — So the seventh or the eighth would have been the first you would have been aware of this opinion?

**Mr. Fair:** — That is correct.

**Mr. Hillson:** — And the opinion of March 4 of Batters and Gerrand appears to have been forwarded to Mike Shaw, according to the letter of transmission.

**Mr. Fair:** — I don't have it before me, sir, so I can't tell you who it was addressed to.

**Mr. Hillson:** — At any rate it wasn't given to you?

**Mr. Fair:** — We did not ever — until it became material before this committee — we did not have a copy of it, but, as I say, we did review it on March 9.

**Mr. Hillson:** — Okay. So you knew about it at least in general terms on March 9 that . . . this is CLP 1/12, Madam Chair.

**Mr. Fair:** — Sorry?

**Mr. Hillson:** — I'm just putting in the record the document number for our purposes, Mr. Fair. But you're saying that you actually didn't read the document itself until it became a public document.

**Mr. Fair:** — No. I'm saying on March 9 when we attended at CIC, in part of our due diligence, they allowed us access to read them but they were not provided to us. All that my counsel did was make notes from it.

**Mr. Hillson:** — Okay. Then I think you . . .

**Mr. Garden:** — Would it be possible for me to just add a small point here, Mr. Hillson, or, Madam Chair, if that's possible?

When Mr. Fair and I were doing our due diligence, we went to . . . We obviously knew about the existence of the Batters' opinion on Sunday because I phoned Denise Batters late in the afternoon on Sunday to talk to her about the contents of the opinion. I had not seen it.

But I can't remember whether I found out about it on the Saturday. Thinking about it now I don't believe I did. Thinking about it, I believe I found out about it on Sunday afternoon during one of my numerous telephone conversations with Mr.

Fair. But I can't be absolutely certain of that.

In any event, one of the things that Mr. Fair and I and one of my associates did on Monday was to go over to the offices of Crown Investments Corporation and they put us in a board room and we asked for a number of documents. They let us look at those documents but they would not give us the documents to keep. They were holding these documents very closely.

And so we went in — needless to say, we asked for copies of the documents but they would not let us keep them — so we went in, we looked at the documents, and read them and to the extent we felt necessary, made notes on them. But then at the end of the meeting we were required to turn them back over to Crown Investments Corporation when we left.

Actually, during the course of the meeting Mr. Fair and I had done all we could and we left to do other things and my associate, Wally Leis, continued to review some of these documents on his own. We left him at the board room at Crown Investments Corporation. This would have been some time after lunch I think we got over there — or before lunch — but we worked away and we left Mr. Leis there to keep reading.

**Mr. Hillson:** — Follow up on that then. So Mr. Garden, who do mean by they who wouldn't let you take a copy of the Batters, Gerrand opinion with you?

**Mr. Fair:** — It was the Crown Investments executive, Messieurs Wright and Shaw. I mean they were information that I required for my decision but they were not a public document and as such they were — I'm not sure how you solicitors refer to them — but they were of a client-solicitor privilege and therefore were not releasable.

**Mr. Hillson:** — Okay. So then you told us earlier of course that on the night of the sixth, that there was a board resolution authorizing you, Mr. Fair, to negotiate severance in the approximate amount of 18 months. So did the board, when they passed that motion, have access at least in general terms to this opinion from the Gerrand law firm? Were they aware of it?

**Mr. Fair:** — On the sixth I would think no.

**Mr. Hillson:** — So they were not aware of what Gerrand and Batters had said. And I guess you weren't either.

**Mr. Fair:** — No. Nor were they aware of the Bogdasavich opinion.

**Mr. Hillson:** — So at the time the board passed that motion of March 6, the only opinion that would have been placed before them then was the opinion of MacPherson Leslie Tyerman.

**Mr. Fair:** — At that point, Madam Chair, sir, it was the view that if there was no cause, this was the parameters.

**Mr. Hillson:** — Correct. But I'm asking what legal opinions the board would have had access to at that time.

**Mr. Fair:** — Mr. Garden was with me to tell me that that was the parameters, if we found no cause.

**Mr. Garden:** — Madam Chair, with Mr. Hillson's permission, I could perhaps just amplify this.

Whenever I get called in to do something like this, to provide advice — obviously I've done a lot of these kinds of cases before; this is a major part of my practice — and so I don't need to do a lot of legal research to determine what the order of magnitude of the quantum of damages would be in a case like this.

So very early on I would have said to Mr. Fair, look I think the range here is 12 to 18. I haven't done any legal research on this, I haven't looked at any of the cases obviously, because you're sort of feeding me this information and I'm giving you these opinions. But my judgement is that the range would be 12 to 18 months.

So I would have said that to him. I probably said it in front of the board as well when I was in there. I can't honestly remember whether I did or didn't, but I would certainly have said it to Mr. Fair. That was on the sixth.

I knew I was you know servant to a very high probability that that would be the right range. And that was I believe the basis that the board made its decision on. The next day though I did have an opportunity to begin to look at some cases and consult with a couple of my partners. And it just happened that our firm was having a partners' meeting that day so they were handy for me to talk to on the morning of the ... on the Saturday morning, and so I talked to them.

So by the afternoon I was convinced that that was my opinion and gave that opinion much more firmly to Mr. Fair at that time. But from the beginning, knowing Mr. Messer's age and other relevant factors, that was my opinion from the very beginning.

**Mr. Hillson:** — But, Mr. Fair, does it concern you that at the time that you and Mr. Garden went before the board on March 6 there was this opinion from the Gerrand law firm that apparently you and therefore the board were not informed of?

**Mr. Fair:** — I repeat, Madam Chair, and Mr. Hillson, that the board did not make a judgement as to cause or not. That was left in my hands. So the board did not make a judgement around cause or not cause. If there was no cause, then I had the parameters within which I could work.

**Mr. Hillson:** — So it doesn't concern you that on March 6 that this opinion from the Gerrand law firm was not made available to yourself and the board?

**Mr. Fair:** — No.

**Mr. Hillson:** — And this March 4 opinion, it's your testimony that you and Mr. Garden were allowed to read it on March 8.

**Mr. Fair:** — March 9.

**Mr. Hillson:** — March 9. And that's the first you knew of it?

**Mr. Fair:** — We knew of it on I believe the eighth but did not see it until the ninth.

**Mr. Hillson:** — Thank you.

**Mr. Garden:** — Again, if I may, Madam Chair, we knew . . .

**The Chair:** — Mr. Garden, you've been sworn in, so yes of course you may.

**Mr. Garden:** — If I may, in response to Mr. Hillson's question, we knew exactly what the grounds that were being alleged as cause were from the telephone conversation with Denise Batters that I had on the Sunday, which I believe was the eighth.

And she explained to me in some considerable detail what it was that the Gerrand firm had determined would constitute just cause at law. And I remember discussing each of the points in turn with her during the course of that telephone conversation. And I also remember conveying that information to Mr. Fair by telephone on the Sunday evening.

And as I say, he and I were in almost constant contact. I'm sure his wife was quite annoyed by the number of telephone calls I made to him at his home, but we talked a lot. So when we read the opinion on the Monday, it didn't come as any particular surprise to us what it said. We know very clearly what it said.

**Mr. Hillson:** — From the previous . . .

**Mr. Garden:** — From the discussion with Ms. Batters. And then I had a further . . .

**Mr. Hillson:** — On March 8?

**Mr. Garden:** — On March 8. And then I had a further discussion with her on the afternoon of the ninth after I'd actually read it over.

**Mr. Hillson:** — But March 8 was really the first date you or Mr. Fair would have known of the opinion?

**Mr. Garden:** — Yes, and what it said. That's right.

**Mr. Hillson:** — Okay. I take it from what you've already said, Mr. Garden, that you very early came to the conclusion that it would be false to describe Mr. Messer's resignation as voluntary and mutual.

**Mr. Garden:** — That's true. I've encountered a number of these sorts of cases in the past where there is a resignation tendered and normal . . . oftentimes, particularly the higher up the scale you go — vice-president, presidential level — when employers become dissatisfied with vice-presidents or presidents for whatever reason, and normally they have good business reasons which may or may not amount to just cause at law, they will give the CEO or the vice-president an opportunity to resign. And that will help the vice-president or president down the road when looking for other employment.

But they're not real resignations in the sense that I come in and voluntarily tender my resignation to go off and find other work or do something like that. They're clearly . . . there's no free will involved. There's no I'm doing this of my own free will. There's no doubt that Mr. Messer was in a position of either resign or be terminated, period.

**Mr. Hillson:** — Okay. And this was such a case where there was no free will involved, you're saying.

**Mr. Garden:** — I would suggest there was no free will involved. It was a bit of a Hobson's choice.

**Mr. Hillson:** — Or a godfather. And so you would certainly disagree with anyone who would describe this resignation as voluntary and mutual.

**Mr. Garden:** — Our opinion was that it was not voluntary. And I know of nothing that has transpired since that time that would cause me to change my opinion in that regard.

**Mr. Hillson:** — Now, Mr. Garden, when you were discussing, in your opinion, the question of Mr. Messer's handling of the Channel Lake sale, you mentioned that the focus appears to have been on the issue that the company was ultimately sold for something in the neighbourhood of its assessed value. So therefore no money had actually been lost.

**Mr. Garden:** — Well, I didn't know that for a fact. I got that information from the Deloitte & Touche report. And I took that as being correct.

**Mr. Hillson:** — However, of course the sale agreement includes the 10-year exclusive supply contract. You're aware of that?

**Mr. Garden:** — I understand that it does, but I know nothing about the gas supply contract.

**Mr. Hillson:** — Okay. At the time you gave your opinion, Mr. Garden, were you aware that, as well as the sale of the company, there was in addition this 10-year supply contract?

**Mr. Garden:** — Yes. I believe that I was, Mr. Hillson. I'm just trying to remember. Yes, I believe I was aware of that fact, but . . . Yes, I believe I was aware of that fact.

**Mr. Hillson:** — So you knew that there's actually . . . there's two agreements involved here. One is the sale of Channel Lake; two is the exclusive supply contract.

**Mr. Garden:** — I don't believe I was aware that they were two separate documents or two separate contracts. I was aware that the purchase and sale transaction included a long-term arrangement, but I wasn't . . . I didn't read the source documents so I didn't know whether there was one or two or more. I assumed, as in most commercial closings there were numerous documents; there almost always are.

**Mr. Hillson:** — But would you agree with me, sir, though, that in terms of assessing the issue of whether or not fair value was received, you can't really do that without also assessing the 10-year supply contract?

**Mr. Garden:** — You'd have to ask an expert on that; that's beyond my legal expertise. As I say, I simply looked at the Deloitte & Touche report and the conclusion that they had drawn, and said that's what Deloitte & Touche said and I assume that must be correct.

**Mr. Hillson:** — Now when you did your opinion, you did of course address the issue of the contention that Mr. Messer may misdescribe events, I believe was the term you used.

**Mr. Garden:** — I think we adopted the phraseology more or less of Mr. Gerrand in that regard. As Mr. Fair indicated, Madam Chair, in response to Mr. Hillson's question, we cast a fairly broad net at the beginning to try to see if there was any existence or any cause. But we were very quickly driven back to the Channel Lake situation because that was the only . . . from the questions, the answers to the questions that we got, that was the only potential area where just cause existed, based on the discussions that we had with the people that we had talked to.

So yes, we got back to that and we got back to the Gerrand . . . the language in the Gerrand opinion and the events that Gerrand described, or the Gerrand firm described, as being in their opinion, just cause for termination. And this, I think they characterized it as misdescription, in particular with respect to no negligence on the part of SaskPower officials. And Portugal was the line that they had focused in on in the briefing document that was provided to the audit and finance committee on June 20 and ultimately that went to the board meeting of June 20.

**Mr. Hillson:** — And I take it it was . . . you agreed that there had not been a sufficient flow of information to the board for the June 20 meeting, but you simply felt that that failure fell short of just cause for dismissal.

**Mr. Garden:** — Well again, I think that I looked at these documents. And I guess I'm sort of wearing two hats here — I have been a corporate secretary myself and I have been an in-house counsel myself for a period of time, so I'm generally familiar with what you put into books for boards of directors. And when I looked at what I saw here, it looked to me to be kind of the normal summary documents that I would expect to have given to a board myself, if I was doing it.

So I felt that . . . and again I had some basic understanding from Mr. Mintz about what was actually discussed at these meetings. I had read a memorandum that Mr. Messer had prepared in response to the allegations that were made against him in the Deloitte & Touche report — or perhaps it was in the Gerrand report; I don't remember — and I concluded from that there had been reasonable disclosure.

Could there have been more disclosure? Of course there can always be more disclosure. But I concluded that there had been reasonable disclosure and that if the board had wanted further information from Mr. Messer they could have asked; or the audit and finance wanted more disclosure, they could have asked. And in fact I think there was subsequent further disclosure at an audit and finance committee meeting in early July. So my conclusion was that there had been reasonable disclosure made, and that was my opinion on it.

**Mr. Hillson:** — Now did you look at the fact that SaskPower is a public corporation?

**Mr. Garden:** — Other than The Crown Employment Contracts Act, I dealt with SaskPower as I would any other of my clients who are almost exclusively private sector corporations. I simply

applied the same law that I would to any private sector corporation.

**Mr. Hillson:** — So now would you say, Mr. Garden, that there is an additional duty for a public corporation to make sure that not only the board but the minister, and then through the minister, the legislature and people of Saskatchewan receive an accurate and fair disclosure of their affairs?

**Mr. Garden:** — If you tell me that, Mr. Hillson, then I'm assuming it's so, but I don't know that because I've never actual . . . I've never read The Crown Corporations Act. I've never read the Saskatchewan Power Corporation Act. I don't know from my own personal knowledge, but if you tell me that, I'm sure it must be right.

**Mr. Hillson:** — We won't subject that to a vote, thank you.

**The Chair:** — Excuse me. It's nice to have moments of light humour, but I think we're here on very serious public business. We will focus not on Mr. Hillson's knowledge but on the questions that Mr. Hillson wishes to address the witness.

**Mr. Garden:** — I'm sorry, Madam Chair.

**Mr. Hillson:** — But, Mr. Garden, so you say you didn't consider in your assessment the issue as to whether the minister had received proper information and in turn had turned over proper information to the legislature?

**Mr. Garden:** — No, that wasn't part of my mandate at all. I had a very narrow focus. Mr. Fair asked me to answer certain specific questions for him. I did what work was required in order to answer the specific questions Mr. Fair put to me, and that was all I did.

**Mr. Hillson:** — There had of course in the middle of the Channel Lake sale been a change in minister responsible, and the incoming minister has I believe said that he received briefing books on his new portfolio that didn't say anything about Channel Lake. Were you aware of that, or did you consider that?

**Mr. Fair:** — Madam Chair, if I may. Mr. Hillson, I don't think either Mr. Garden or I were there so I don't believe . . . I think those you're asking for an opinion from us on items that were before our time, and now talking about what various members of the board knew or didn't know. And I'm not sure we can comment with any that would be very instructive to this committee.

**Mr. Garden:** — I would agree, Madam Chair, with that. To the best of my recollection prior to getting this telephone call from Mr. Fair, I personally have never done any work for Saskatchewan Power Corporation.

**Mr. Hillson:** — No I think though . . . My point here is that did you consider whether the minister was properly informed so that he could make the appropriate decisions?

**Mr. Garden:** — My answer to that would be no. I did not consider that at all.

**Mr. Hillson:** — And now as you think on it, Mr. Garden, is it an important factor that the CEOs of Crown corporations keep the minister properly informed so that the appropriate decisions can be made?

**Mr. Garden:** — Well again I . . . I mean I guess common sense would dictate that you should brief people on things, but I again have no knowledge that they weren't briefed. So I can't give you a legal opinion on it, but I can say that in my experience common sense would dictate that you should brief people.

**Mr. Hillson:** — Well then let me take it one step further. Would you now say that that is an important factor in determining whether or not just cause existed, i.e., whether or not the chief executive officer kept his minister properly informed?

**Mr. Garden:** — I would . . .

**Mr. Hillson:** — Is that an appropriate factor to assess?

**Mr. Garden:** — Here's what I could say based on the knowledge that I had. I didn't know and I don't to this day know that Mr. Messer had not properly briefed the minister or the board. I don't know that to be a fact.

But I can say that in the course of the review that I did, I discovered that Mr. Messer had received very positive performance evaluations from the board as recently as the previous fall. And I therefore assumed that the board was satisfied with his performance up to the fall of 1996, late fall of 1996, otherwise why would they have given him a positive performance evaluation.

So even if Mr. Messer had failed to provide the proper information, and I don't know that for a fact, but even if he had, obviously the board didn't believe that. They were satisfied with his performance.

Part of the problem in dealing with any kind of performance issue, and this is why it's so difficult in the courts, is that there is no objective standard of good performance. I mean what may be good performance from Mr. Priel's perspective, may be poor performance from your perspective, or adequate performance from other perspectives. And that's why whenever you go into court and you try to argue that someone's performance didn't measure up, you are confronted by, well is this a reasonable standard that one should expect from a senior executive.

And who knows? I mean there is no objective standard. That's why most cases where performance is an issue are lost by the employer, or to put it another way, won by the plaintiff.

**Mr. Hillson:** — Well would you agree with me, Mr. Garden, that if the minister isn't kept fully informed, then the doctrine of ministerial accountability and public responsibility don't mean very much.

**Mr. Garden:** — Again it's beyond the scope of my legal expertise. But common sense I think would dictate that if you don't know something you can't be held responsible for it, would be my sort of common sense answer to that.

**The Chair:** — Mr. Hillson, would you start to wrap up your questioning.

**Mr. Hillson:** — Sure. The one final question, would you now say that that is something that ought to be looked at in determining whether or not just cause existed?

**Mr. Garden:** — I don't believe so, for the reason that if there was any failure in performance by Mr. Messer, it was condoned by the board of directors of Saskatchewan Power. I don't know that there was any failure, but if there was a failure to properly perform prior to the late fall of 1996, that was condoned by the board of Saskatchewan Power Corporation by affording Mr. Messer as they did, a very positive performance evaluation. So that's all I can say from a legal perspective on it.

I would . . . if I had evidence of that, I would have looked into it. But I didn't have any evidence of it. All I had was evidence that the board had made this very positive performance evaluation of Mr. Messer, and I took that as I'm sure any employment law lawyer would, as condonation of any sort of bad or substandard performance prior to that date. I would have had a very hard time as the solicitor for the employer, arguing my way around that sort of evidence.

**Mr. Hillson:** — So you're saying that if the board had a problem with I think what Mr. Wright called Mr. Messer's unique management style, that wasn't reflected in his performance reviews.

**Mr. Garden:** — That's my understanding. And I would also say that in my experience most CEOs tend to be very hard-driving, opinionated people. I don't know whether Mr. Messer fell into that category, but I wouldn't be surprised if he didn't. That's, in my experience, how you get to be a CEO . . . with certain obvious exceptions.

**The Chair:** — And I was about to say perhaps there's a job for all politicians after they're no longer in elected office.

Thank you, Mr. Hillson. We will now turn to the New Democratic Party. Mr. Trew, until 12 o'clock please.

**Mr. Trew:** — Thank you, Madam Chair. I hope I don't have to keep going right until 12 o'clock because the substantive questions have largely been, if not asked, answered in the very thorough opening statement. I can't help but observe it must be a bit frustrating for some committee members when we're looking for something exciting to question about and then only to find it explained in opening statements and answers.

There are a few things I think that I'd like to get tied up. I know in your opening statement, Mr. Fair, you said that you became aware of the CIC board resolution that Mr. Messer was going to be asked to resign or would be ultimately dismissed about 3:30 on March 4. That's in your opening statement.

It also goes on that John Wright attended the SaskPower building in the afternoon of March 4 and met with Jack Messer, and you were asked to attend that meeting. That would be after you were aware of the CIC board minute that said that . . . and quoting from that board minute:

John Wright was to indicate to Milt Fair, Vice-Chair of the SaskPower board of directors . . . would acquire the services of an outside legal adviser, such as a retired judge, to work out any package that would be appropriate in terms of severance.

My question is simple. Did Mr. Wright communicate that to you before you went into the meeting with Mr. Messer?

**Mr. Fair:** — I was informed one and the same time.

**Mr. Trew:** — Before you went in to the meeting?

**Mr. Fair:** — No, no.

**Mr. Trew:** — Oh. In the meeting?

**Mr. Fair:** — In the meeting.

**Mr. Trew:** — Okay.

**Mr. Fair:** — He had, Madam Chair, he had actually had a discussion with Mr. Messer before I arrived.

**Mr. Trew:** — Right.

**Mr. Fair:** — And when I went in he informed me at that stage of the substance of what he had explained to Mr. Messer, including the CIC resolution.

**Mr. Trew:** — Okay. Did you play any other part in that meeting then with Messrs. Wright and Messer, other than receiving information and instruction?

**Mr. Fair:** — No, I did not, other than it was in that same meeting that I asked for information as to parameters.

**Mr. Trew:** — As to your parameters?

**Mr. Fair:** — Yes. What happens, Madam Chair, in this kind of a situation, do I . . . what are the controlling factors around which I'm to work? The Crown contracts Act and then the two examples that were provided of things that had happened. So that was the role I played in that meeting.

**Mr. Trew:** — The one other thing, I'm fairly clear I think, in my mind. You were under the clear understanding that you were to select the independent outside counsel respecting whether severance would be paid or not. That was your choice of legal advice and where you would seek it totally at your call.

**Mr. Fair:** — That's correct. Independent counsel . . .

**Mr. Trew:** — Yes, that's what independent counsel means.

**Mr. Fair:** — Right.

**Mr. Trew:** — Yes, that's interesting. And I think you've covered off why you chose Mr. Garden, having had some considerable years of experience with him in your former existence with the Pool.

**Mr. Fair:** — That is correct. Right.

**Mr. Trew:** — Okay. The final question that I have that I haven't seen covered, and I think it was sort of asked, but I'm not sure I understood. Do you feel today that the severance that was offered and I assume paid to Mr. Messer was negotiated properly, and it's a fair and reasonable conclusion?

The simplest way I can put it in street language is if you had it to do again this week, would you do it? Basically do you think it would be reasonable to expect the same outcome?

**Mr. Fair:** — Yes. Very simply I have no question in the decision that I took, and the advice that I received in arriving at that decision.

**Mr. Trew:** — Thank you, Mr. Fair, Madam Chair.

**The Chair:** — Thank you, Mr. Trew.

**Hon. Mr. Shillington:** — Yes, I just have a couple of questions, more of Mr. Garden than Mr. Fair. I'd like just a little more detail on your background in the employment and labour law, if I could. How long have you been specializing in labour and employment law?

**Mr. Garden:** — I started with the law firm of MacPherson Leslie & Tyerman in the early part of May of 1993, and I think . . . pardon me, 1973, 20 years earlier. And as I recall, I was involved in my first labour and employment law issue with one of my then partners now, Chief Justice Donald MacPherson in about the last week of May. And so I gravitated toward that area in 1993 and I've basically been practising by and large in that area since 1993 — so 25 years.

**The Chair:** — 1973, Mr. Garden?

**Mr. Garden:** — Did I say '73? — '93, pardon me, 25 years. My adding is wrong but it was perhaps a sign of old age. But it was 1973. So May of '73; I've been at it for 25 years.

**Hon. Mr. Shillington:** — All right. And you said you had been corporate secretary. Can you give us a little more detail?

**Mr. Garden:** — Yes, I've been the corporate secretary for two mining corporations. I can't tell you which ones because that would be a violation of solicitor-client privilege. But I've acted as corporate secretary for two corporations.

I began as corporate secretary in 1979 and served as corporate secretary with one of those companies until about 1983 or '84 when that company was bought out, and then became corporate secretary of another corporation and have served in that capacity since 1985.

**Hon. Mr. Shillington:** — All right. I want to raise one other issue as well which was not raised by any of my colleagues but was featured in a newspaper article. And that's the role of Brian Kenny who I understand to be a partner in the law firm.

**Mr. Garden:** — That's correct.

**Hon. Mr. Shillington:** — Can you tell us whether you had access to his work when you did yours, and tell us what went on here.

**Mr. Garden:** — I did. I spoke with Mr. Kenny on the first occasion on the Saturday morning, which whatever date that was — I think it was the 6th or perhaps it was the 7th — the 7th. And Mr. Kenny informed me that he had in fact provided opinions with respect to the Channel Lake matter, and he provided me with copies of those opinions. I believe he provided me with copies of those opinions on that very same afternoon when I was with Mr. Fair in the offices of Saskatchewan Power Corporation.

And I did have an opportunity to review those opinions provided to me by Mr. Kenny. I did not go back however and look at any of the source documents that Mr. Kenny used in order to render his opinions.

**Hon. Mr. Shillington:** — I wonder if you would just, if you could, summarize in a few sentences — I'm not asking you to give us a treatise here on the law — but I wonder if you could summarize in a few sentences how the basis for your view that Mr. Messer . . . there was no just cause to dismiss Mr. Messer.

**Mr. Garden:** — Yes, I could give you just a brief overview on that. It seemed to me there were three issues, two of which kind of meld together.

Let's deal firstly with the issue of the failure to review the memos of April 1 through 4, 1997. I think that was one of the matters that was considered by the Gerrand report and by the Gerrand opinion signed by Ms. Batters.

My view of that . . . or our view, it's our firm that's giving the opinion, not me. I may be the person that's signing the letter, but it's our firm opinion that it was not at all unreasonable for Mr. Messer to rely, as he did, upon the team that he had assigned to deal with the Channel Lake transaction, being a couple of his senior vice-presidents, Mr. Patrick and Mr. Christensen; his in-house manager of legal affairs, Mr. Kram; and his outside negotiator, Mr. Portugal, who had previously been a senior officer of the corporation.

And we felt that he was completely within the scope of his duties as CEO to rely on those people. And in any event, it was clear from a memorandum that he did, in response to the Deloitte & Touche report, that he had read those memoranda over and made comments on them. So our view of it was that that did not constitute just cause, either on its own or in combination with other events.

The other more complicated issue was this issue that Mr. Hillson alluded to in his questions, and that is, did Mr. Messer rush to judgement in getting the board to ratify the revised Channel Lake transaction? And did he, in the course of that rush to judgement, misdescribe to the board?

Based on again our firm's experience in this regard, we felt that reasonable disclosure had been made. If you isolate the one sentence or the one small part of the sentence in the briefing document that he provided to the committee, you can take some . . . or may have some argument with that.

Clearly he was very unhappy with the performance of Mr. Portugal. That was why he fired Mr. Portugal. Clearly he was concerned about the performance of his officials. That's why he

talked to Mr. Kenny and sought Mr. Kenny's opinion.

Could his officials have been more diligent? Yes, they could have been. Was their performance in our view unreasonable in all of the circumstances? We don't think so. You know, having been at a number of commercial closings, I know what it's like. I know people don't read documents at commercial closings.

So our judgement in summary, Mr. Shillington, was that Mr. Messer provided a reasonable degree of information, or a reasonable level of information to a board like the board of SaskPower. And the board had every opportunity to ask more questions if it wanted to. The audit and finance committee reviewed the situation. The board reviewed the situation.

The audit and finance committee subsequently reviewed the situation again on July 3 when they met with the internal audit team at SaskPower. We felt there was reasonable disclosure. And if the board hadn't agreed that there was, it was certainly open to the board to ask for more disclosure. They did not.

And so in our judgement, based on our experience as a business law firm and based on our legal judgement and knowledge, we concluded that just cause didn't exist.

**Hon. Mr. Shillington:** — Am I correct in my understanding that yours is the largest law firm in the province?

**Mr. Garden:** — I believe it is, Mr. Shillington, yes. I'm sorry, I'm supposed to address these to the Chair. Madam Chair, I believe it is the largest firm.

**Hon. Mr. Shillington:** — I have the same question with respect to the amount of severance. Can you briefly summarize the grounds upon which you advised Mr. Fair that . . . SPC (Saskatchewan Power Corporation) I guess.

**Mr. Garden:** — Certainly, There's a case called *Bardal v. Globe & Mail*. It's a case that's been around for a long time. And essentially what *Bardal v. Globe & Mail* says is that there are a number of factors that a court will consider in determining what constitutes reasonable notice in each and every case.

And reasonable notice is always a question of fact in each case. So there's nowhere that you can look to find a completely exhaustive listing of what these facts are. But essentially, we know what they are from the case law.

In this case, what you do — or in any case — what you do is you consider a number of essential points.

Firstly, what level of job was this? Obviously, in this case, it was the most senior job in the corporation. Mr. Messer was the president and chief executive officer. And presidents and chief executive officers get more pay in lieu of notice than, for example, a clerk or indeed anybody else in an organization. So that's the first thing you consider. What was the position occupied? What was the job occupied by the person?

The second thing that you look at is the length of service that the employee has had with the corporation. In this case it was between six and seven years — I think closer to seven than six if my memory serves me correctly.

And then you look at the age of the incumbent in the position. And unfortunately, a fact of life is that the older you get, the more difficult it is to find suitable, alternate employment. And Mr. Messer was on in his late fifties and that would mean that it would be more difficult for him to get a job than, for example, a person who was 42 years of age.

And then you consider a number of other sort of peripheral factors, but those are the three main factors. And ultimately you take a look at those factors, you apply the knowledge of the law that you have in similar cases, and you come up with an order of magnitude. It's not a science. You don't plug these things into an equation, although some people have attempted to do that. But you look at these things and you come up with an order of magnitude.

So the range that we concluded was the appropriate range for a person in Mr. Messer's position would be the 12- to 18-month range with the top end of that range being the most likely.

I should also say, Mr. Shillington, that these things vary from province to province. The settlement awards in our province have tended to be lower than they would be in, say, British Columbia where the maximum awards have been up to 24, in fact in some cases as high as 30 months. In Saskatchewan, no court has ever awarded beyond 20 months pay in lieu of reasonable notice. And in any event, we're constrained by The Crown Employment Contracts Act to a maximum award of 18.

So that's the fundamentals of it. If you have any more specific questions, I'd be happy to try to answer them.

**Hon. Mr. Shillington:** — No that was the question I asked. Thank you very much, Madam Chairperson.

**The Chair:** — Are there any other government members that wish to direct questions at this time? Thank you.

It is now quarter to 12. Mr. Gantfoer, did you want to question the witness for 15 minutes or shall we take a break and resume at 1 o'clock?

**Mr. Gantfoer:** — I would like to direct a few more questions, but I think it may be appropriate to do that after lunch.

**The Chair:** — Right. I think that's a wise decision. We will stand recessed until 1 o'clock. Thank you.

**The committee recessed for a period of time.**

**The Chair:** — Will the committee members please take their places. You know, so far throughout the Channel Lake hearings I have managed successfully without a gavel. Just the power of voice alone has managed to call members to order. Let's carry on with tradition. We will resume our hearings.

When we recessed just shortly before noon the New Democratic Party had finished their questioning. They still had a little bit of time left. I would ask the members of the New Democratic Party did you have any further questions you wished to put?

**Mr. Tchorzewski:** — We'll bow to Mr. Gantfoer for now.



**The Chair:** — Before you bow to Mr. Gantefer then, I would note that we do have an independent member attending the committee. And committee members know that we are according independent members the privilege of questioning witnesses for 15 minutes.

Mr. Goohsen, did you have any questions you wished to put to Mr. Fair or Mr. Garden?

**Mr. Goohsen:** — Oh, I do have a couple.

**The Chair:** — Right. For a maximum of 15 minutes, please, till 10 to 2.

**Mr. Goohsen:** — Oh, I doubt if it will take that long. Mr. Fair, how do you think we could have prevented the fiasco that we're in and that brings us to this table?

**Mr. Fair:** — Madam Chair, your newest member — or not newest member perhaps — but member that has joined us this afternoon has really broadened the subject of the discussion.

It seems to me that what we are talking about in this, in this whole context, is some business decisions that were taken. And how those have been portrayed in the public venue seems to me to be the issue at hand — perhaps even more than the quantum. And I simply use that because I wasn't there, as you're well aware. The discussion that went on with . . . as provided to the committee by Deloitte & Touche, seemed to indicate that within, I think they used the word fair market value or words to that extent. And so it really in my mind tends to be an issue of how it gets portrayed.

I'm not sure I can answer beyond saying that perhaps some different communication might've been, might've been used, in the context of how it has been portrayed.

**Mr. Goohsen:** — Do you think that all the principals involved used due diligence?

**Mr. Fair:** — Madam Chair, are you talking now about staff?

**Mr. Goohsen:** — I'm talking about staff as well as board members, just the broad spectrum of all those principals that have been involved in this?

**Mr. Fair:** — Inasmuch as I wasn't there as a board member, I really can't answer that part of it because that's . . . unless you're actually sitting at the table and being part of that discussion, I have been in enough major transactions to know very well what you do. And I can tell you I've signed enough documents where I never read the last copies. So I don't, I don't find that particularly strange.

I think before this committee you've had a legal firm in Calgary identify that they perhaps erred in some of the things they did or didn't do. And maybe I can put it this way — no matter how many controls you put into place, there is no absolute and complete assurance that something . . . What you do is set up the best internal controls you possibly can and proceed from there. If you want absolute assurance that nothing can ever go wrong in anything, then you won't do anything.

**Mr. Goohsen:** — Well you observed that in many cases you wouldn't have read the final copies of documents that you might sign, so where does the buck stop? When you have a responsible position and you choose not to read the final documents but you sign them, are you still responsible for the actions that you've taken by signing those documents even though somebody else has given you the document that . . . perhaps is not the way you thought it was going to turn out?

**Mr. Fair:** — Well, Madam Chair, again there is no question that responsibility eventually ends with the senior person. The issue at hand in this case in my mind may more appropriately be, and determining future course not from here but the course of action that may have been taken is, was there a real loss? And if I reflect on the Deloitte Touche report, they are saying that in effect appropriate value was achieved.

**Mr. Goohsen:** — Well I would beg to quarrel with them because there was a real loss. It happened in the arbitrage of course. And that is an absolute genuine loss of several millions of dollars which John Wright was the only person that has honestly alluded to and has honestly stated that had these people come to him and his realm of authority, they would have advised not only against that type of transaction but they would have put restrictions on and they would have put caps on the amounts of money that those people would be allowed to use.

So that money definitely is a loss. It's gone. And had the proper procedure been put into place, it wouldn't have been gone if John Wright's observations are correct. Do you agree or not?

**Mr. Fair:** — Madam Chair, I can not even respond to it. I wasn't there. I don't know what was put in place. So I'm sorry, sir, I just can't respond to your . . .

**Mr. Goohsen:** — Well you may want to read the *Hansard* from the Crown Committee because those were statements of course that he made here and are on record. So you can brief yourself later.

There seems to me like you say you have to determine whether or not there were losses. But we also have to determine I think here something for the future as to what kind of policy Crowns are going to use. And I guess from all of this when the dust settles if we gained anything it should be to know how to run the operation so that this sort of thing doesn't happen again. Not that there won't be mistakes probably in other places, but do you see that you can benefit from the experience and put that to some useful process in the future?

**Mr. Fair:** — Again, Madam Chair, the whole issue of governance and the kinds of risk management, the kinds of internal controls that you put into place are the issues that you learn from these kinds of things.

I think the point you make is valid. And I guess it really speaks back to the point I was making, that if we come to the stage where we believe that absolutely no mistakes, errors can ever be made, it is a time when you will do nothing.

**Mr. Goohsen:** — Legal counsel that I visited with over the past few days suggested to me that he would be extremely surprised if there weren't lawsuits that would result after these hearings

are over. Do you agree that that's a probability?

**Mr. Fair:** — Madam Chair, again, in what regard do you mean lawsuits — where?

**Mr. Goohsen:** — Suits to recover money as a result of due diligence not having been fulfilled.

**Mr. Fair:** — If you are talking about SaskPower board or SaskPower taking action, is that what you're referring to?

**Mr. Goohsen:** — Well somebody will have to take the action. I suspect that it would naturally come from those people who are responsible to the taxpayers for the money that was lost. It should start at the board. If it doesn't start there, then it has to start with some authority higher than them.

**Mr. Fair:** — Well, the board of directors have discussed action against Mr. Portigal and/or Milner Fenerty. And we determined in our discussion that we should not take precipitous action that would jeopardize these hearings, and thus we will really await the conclusion of this process.

However, while we may feel that we have a strong desire to take legal action, before we commence any action, we're going to carefully weigh and consider all of the issues. We may well, Madam Chairman, find ourselves spending many tens or hundreds of thousands of dollars pursuing an action which in a business sense, at the end of the day, really doesn't lead to anything.

So I think that's the way the board will look at the question of whether or not further legal action is appropriate, particularly in those two areas. And I'm not sure whether you have a thought further to that.

**Mr. Goohsen:** — Well I'll go back to your original statement which is that it's more or less how you portray things to the public, and that seems to be more important than the actual amount of money lost. And so I guess there, following that up, again would be that question of perception. And if there is no follow-up, the perception will be that there's been a cover-up or an attempt not to pursue monies.

And using the argument that it takes 50,000 for example, to recover 350,000 in the case of the severance that Jack Messer got, people have suggested that it would be a waste of money to spend that much money because you're not guaranteed of a result.

I would suggest to you that in legal matters you're never guaranteed of a result. And therefore public perception would be that you would have to take that route of attempting to recover monies and you would have to invest the money even though you might have a fairly reasonable chance of losing. Because otherwise the public perception will be that we have dusted this under the rug and haven't really fully tried to recover the monies for the taxpayers and for the Crown. Does that make any sense to you?

**Mr. Fair:** — Well, Madam Chair, I take that as a statement rather than a question. I mean I'm not sure I heard what you said, but it becomes a business judgement.

**Mr. Goohsen:** — Do you think this business judgement is one that the board has the right to make at this stage?

**Mr. Fair:** — I think it would . . . Madam Chair, again I think it is appropriate for the board to consider the question that you've raised.

**Mr. Goohsen:** — In other words, you're saying regardless of what this committee suggests or recommends in its final conclusions, you as a board would make your own decision.

**Mr. Fair:** — I said in my statement to you earlier, sir, that we would await the findings of this committee to determine what our future actions would be.

**The Chair:** — Mr. Goohsen, you're wrapping it up now?

**Mr. Goohsen:** — Yes I am. One more question. Do you see yourself and the board making a decision that would go against the recommendation of this group?

**Mr. Fair:** — I think, Madam Chair, that that's a hypothetical question that I would prefer at this stage not to respond to?

**Mr. Goohsen:** — I have no further questions.

**The Chair:** — Thank you, Mr. Goohsen, and thank you, Mr. Fair. We will now move to questioning from the Saskatchewan Party for half an hour . . . I have an indication that there are no more questions from the government side. Mr. Hillson will have a few more questions to put so perhaps Mr. Gantefer, you could simply carry on with your questioning until you have completed your questioning of the two witnesses and then we'll recognize Mr. Hillson.

**Mr. Gantefer:** — Thank you, Madam Chairman. I would like to direct my questions in this round primarily to Mr. Garden. I wasn't ignoring you in the first bout.

So, however, I would like to touch on a number of areas drawing on your expertise which, I agree, is considerable. In the discussions about the process used to dismiss Mr. Messer — clearly, I think you agree it was a dismissal when the resignation is sort of an academic exercise. In the dismissal of Mr. Messer, would the process be fair to be described as that the board of the Crown Investments Corporation made the decision to dismiss Mr. Messer?

**Mr. Garden:** — That is the information that I have. Now I have to say that I didn't go back and look at Crown Investments Corporation minutes. But that was my understanding that it was the board of the Crown Investments Corporation that made the determination that Mr. Messer should either be terminated, or if he was prepared to tender his resignation, he wouldn't be terminated. His resignation would be accepted.

**Mr. Gantefer:** — But I think in your opinion you basically said that still results as a de facto termination?

**Mr. Garden:** — Yes that's correct. Regardless of how you characterize it from a legal perspective, it is a termination.

**Mr. Gantefer:** — Exactly. Now it also has been said and

quoted that no cabinet ministers forced Jack Messer to resign. Given the fact that the members of the board of directors of the Crown Investment Corporation are cabinet ministers, would that be a fair characterization?

**Mr. Garden:** — Well again, I . . . I'm not trying to avoid your question, Mr. Gantefer, but I know that there are cabinet ministers who sit on the board of Crown Investments Corporation. I don't know . . . I mean I know Mr. Lingenfelter is one of them, but other than Mr. Lingenfelter I don't know who else sits on the board of Crown Investments Corporation.

I don't know whether there were other persons that are members of the CIC board other than cabinet ministers, so I can't answer your question in all honesty. But I mean obviously, it was a decision of the board of the Crown Investments Corporation, and whoever was on the board obviously were the people who voted, or some majority of them voted, in favour of the resolution to either accept Mr. Messer's termination or terminate him from his employment as president and CEO of SaskPower.

**Mr. Gantefer:** — In an opinion, I believe it was rendered by Mr. Bogdasavich, it was indicated that it certainly was very appropriate for the Crown Investments Corporation board to give direction to the SaskPower board. But there was some question if it was appropriate for the Crown Investments Corporation board to directly demand the termination of Mr. Messer.

**Mr. Garden:** — I read that in Mr. Bogdasavich's opinion, yes.

**Mr. Gantefer:** — In your question then of just cause, was the process examined at all?

**Mr. Garden:** — No, I made no effort to understand the governance relationship between Crown Investments Corporation and Saskatchewan Power Corporation, I mean other than the fact that I know as a taxpayer that CIC is the shareholder, but I would have to defer to Mr. Bogdasavich's views in that respect. I have no independent knowledge of the governance issues on my own.

**Mr. Gantefer:** — I recall in the House asking a question, and I'm not sure who responded, but I think that the answer was that if you asked a hundred lawyers an opinion you'd get a hundred different opinions.

**Mr. Garden:** — I think that was Eric Cline.

**Mr. Gantefer:** — I think you're right, thank you. And it seems that in this whole exercise we're sort of overwhelmed with legal opinions, not all of them totally agreeing and individual law people finding different nuances that they find more or less relevant.

And I was interested to look at an opinion dated March 10, legal tab 15, Madam Chairman, by McDougall Ready. And they seemed to be commissioned by Mr. Kram of SaskPower to look through the matters that Deloitte Touche and the Gerrand report . . . and I found it interesting in the conclusion it says and I'll quote, and this is by Mr. Gordon Kuski, and his conclusion is, and I quote:

In my view, the Gerrand report and the Deloitte report are incomplete and in many respects incorrect. It would be dangerous to draw any conclusions from the reports or base any actions on the reports.

And yet I heard Mr. Fair this morning and yourself saying that that's largely the reports that you drew on in order to come to the decision about appropriateness of just cause. How do you reconcile those conclusions to the fact that the very reports that Mr. Kuski is saying are perhaps erroneous were almost the major part of the weight of opinion that you used to make your conclusion?

**Mr. Garden:** — Well, Madam Chair, there's a sort of series of questions and I'll try to deal with them one at a time. I think perhaps Mr. Cline was engaging in a bit of hyperbola, if I may say so, with respect to the hundred lawyer/hundred opinions matter.

But I think that it's obvious or ought to be obvious to almost everyone who's ever been involved in litigation that different lawyers, different law firms will come to different opinions. I mean if all of us came to the same opinion we should never have any litigation because everybody would have come to the same conclusion and you would have never ever got to court. So I think it's self evident that different law firms do come to different opinions.

And of course legal opinions . . . Let's put it this way. It's generally fairly easy, sometimes not really easy, but generally you can distil the law from the cases, most of our law is judge made. Generally if you find the right cases, you can distil the law. But most cases are sensitive — and certainly wrongful dismissal cases are sensitive to the facts and the facts of course have to be ascertained in some matter.

Now ultimately when you get to trial in a case, you will have had the benefit of the pleadings, you will have had the benefit of statements as to documents which you come in and you can review, you will have had the benefit of going through examinations for discovery, and ultimately the judge will have had the benefit of hearing the parties that, you know, witnesses that they call to make their case. So you'll have all of that information.

Now most lawyers in the best of all possible worlds would like to research every issue that comes before them and find out every conceivable fact that there is before they render an opinion, but business doesn't work that way. Business wants an opinion at the time they have to make a decision. And I think our firm and most other law firms try to be sensitive to that and give them those kinds of opinions when they want them, otherwise we usually don't get asked to do any work for them again.

So we try our best on the basis of the available facts to come up with an opinion. If there were more facts, sometimes our opinion might change. If there were more facts, sometimes our opinions might not change.

In this case, I think, to kind of then move from there to focus in on Mr. Kuski's opinion, I did read that opinion at some subsequent point in time. I didn't read it prior to rendering my

opinion to Mr. Fair with respect to just cause for Mr. Messer. But I think Mr. Kuski's point was — his principal point, as I recall, was that nobody had talked to Mr. Portigal who was a key player in all of this, and as a consequence there may well have been some factual determinations made that were not correct.

You now, as I understand it — well, I know you have because I read the transcript, not of Mr. Portigal's remarks but read that he had appeared, in the newspaper, before this committee — you will now have had the benefit of having heard Mr. Portigal and will have had the benefit of reading the Deloitte report and the Gerrand report. So you may come ultimately to a different decision.

I did have the benefit, after having rendered our opinion, of looking at other documentation, which I had not seen, such as the Kuski letter. From everything that I have seen, from everything that I have heard — and I haven't read all of the transcripts — I conclude that the opinion that we rendered to Mr. Fair was the correct opinion.

I know it isn't the same as Mr. Gerrand's opinion. I have a lot of respect for Mr. Gerrand, his firm, him personally, and for Denise Batters. I just have a different opinion. He, I'm sure, believes his opinion is correct. I believe that the opinion of our law firm is correct. And I can't say much more than that.

Different lawyers will come to different opinions on the same or virtually the same facts. And you never ever have all of the facts until a trial is over, normally, if you go to litigation. Sometimes even then you may not have all of the facts, but you will have had your best look at them.

**Mr. Gantefer:** — Thank you. And I certainly appreciate that. So we can narrow it down from a hundred lawyers and a hundred opinions to at least two lawyers and two opinions.

**Mr. Garden:** — Right.

**Mr. Gantefer:** — But I'm concerned about . . . and I'm not faulting you on this because I think that was the information you had, the Gerrand report and Deloitte Touche report. And as you indicated, you didn't go back and double-check all the source documents and things of that nature in order to provide the advice that Mr. Fair was needing fairly quickly. And I appreciate that. But it is . . . You know, there really has been shown, not only from Mr. Kuski but also from subsequent testimony, that not all the assumptions that were made in those two reports are necessarily face value.

And I guess the concern that I have is, is that you made the decision based on the information that you had. But potentially that is incomplete information.

**Mr. Garden:** — And that is, Madam Chair, that is virtually always the case. I can't really respond to you except to say this, that with my regular clients I would normally, in the case of the termination of a senior executive, go in, speak to the Chair of the board or the CEO or whoever it is that's giving me the instructions, and we would spend half an hour or an hour, sometimes a couple of hours. Sometimes I would be asked to look at some documents.

But I would say that on this occasion, Mr. Fair's instructions to me were to spend significantly more time than I normally spend in matters like this to make sure that we had covered all of the bases. You know, we could have continued probably until this day to keep looking at issues if we wanted to. But Mr. Fair wanted some advice from us in a timely fashion.

We looked at the documents which we ferreted out through various means. We talked to the people who we ferreted out through various means. And we provided an opinion on that basis and we believe it to be the correct opinion.

But could we have spent more time? Yes. You can always spend more time. You can always go . . . and ultimately you can go through a trial and you'll get most of the information but you still may not ever get it all.

**Mr. Gantefer:** — I appreciate that.

In your opinion, and again based on some of your experience, it strikes me in certainly listening to Mr. Fair's testimony this morning that he got mandated with an incredible load — you know, almost being hauled out of an orientation meeting, from being newly and recently appointed to the board to having to deal with an issue of this magnitude is, I would think, pretty unprecedented.

But in your experience is it generally the case that you get this kind of a challenge dumped on your lap?

**Mr. Garden:** — You are often asked as a counsel, and I have often been asked as counsel, to make, to render opinions in half an hour or an hour on executives that have been with corporations for a quarter of a century. And all you can do is do your best.

I know that Mr. Fair, in his past life as the CEO of Sask Pool, had to make some very difficult decisions on very, very short notice. And I expect while this was a bit of a challenge for him, it wasn't anything that he hadn't had experience in doing in some comparable circumstances in the past.

And so you do your best with the time that's available and the resources that are available and with a little . . . with experience and a little skill and ability you're right significantly more often than you're wrong.

**Mr. Gantefer:** — In terms of — and I don't want to dwell on it but I want to use it as moving on to another point — is that there was an investigation to see if Mr. Messer was dismissed with cause. He was told on the meeting on the third or fourth that he either could resign or be dismissed with cause.

So it was indicated from the CIC direction, Mr. Wright to Mr. Fair, that it's either resignation or dismissal with cause. In your investigation you found that cause did not exist. But it would seem to me that the CIC people who had made that decision felt that cause did exist.

**Mr. Garden:** — I can't speak for them. Certainly they would have had the Gerrand opinion which said that cause existed and they would have, on the other hand, had the Bogdasavich opinion which said that cause did not exist.

Now business people, in my experience, tend to confuse the word “cause” with “good business reasons.” And so I can’t say that that occurred in this circumstance but oftentimes clients will call me and say, you know, we believe that we have cause to fire X employee when what they really mean is, we believe we have good business reasons to fire X.

And you’ll go and you’ll talk to them and almost invariably they will have good business reasons to fire X but those good business reasons oftentimes do not constitute just cause at law. And most business people find it difficult to believe, particularly people in smaller corporations who haven’t gone through a lot of terminations, that just because they have good business reasons doesn’t mean that they have just cause at law.

And they’ll be surprised to hear that, well yes, I can see why you don’t want this fellow here any more, but I’m sorry a judge isn’t going to see that as just cause and you’re going to have to pay X months pay in lieu of reasonable notice. And they’re very upset and disappointed to hear that but that’s just the way it is.

So I don’t really know what the Crown Investments Corporation, or Mr. Wright, meant by resign or we’re going to terminate you for cause. Did they really mean for just cause, or did they really mean we’re going to fire you and you’re going to have to sue us, or we’ve got good business reasons for letting you go? I just don’t know the answer to that, I’m sorry.

**Mr. Gantefer:** — So clearly there’s a difference between business cause, or cause for business reasons, and cause that would stand up under litigation or court.

**Mr. Garden:** — Absolutely there is.

**Mr. Gantefer:** — You also indicated in your opening statement, in the last paragraph, that you were asked to review the performance of Messrs. Kram, Christensen, and Patrick.

**Mr. Garden:** — That’s correct, I was.

**Mr. Gantefer:** — Now again, was that . . . is the view to see if legal cause could be established, or if in your opinion there could be grounds for legal cause?

**Mr. Garden:** — I was asked to, just to generally look at the question. But ultimately I ended up providing Mr. Fair with our opinion as to whether just cause would have existed.

Now I want to just say, if I may, that we did look at, you know, the issues that were set out only in the Gerrand report, and of course the . . . Now I guess I’m not quite right there, excuse me, I misspoke. We looked at all of the documents that we had looked at in respect of Mr. Messer. Plus we, you know, took a very detailed look at the Gerrand report. When we were looking at the Gerrand report and the opinion originally, we were only looking at it as it applied to Mr. Messer. This time we broadened our review and vacuumed our way through it very, very thoroughly.

So we looked at the issues and we ultimately determined that just cause, in our opinion, did not exist for the termination of those three individuals.

**Mr. Gantefer:** — In law, are the standards different for an individual like Mr. Messer as compared to individuals on a lower authority level, as Mr. Kram, Christensen, and Patrick would be? Are there different standards upon which you measure if cause can be justified?

**Mr. Garden:** — Generally speaking, the higher you get in an organization, and a lot of people find this strange, but generally speaking the higher you get in an organization, the more difficult it is to establish cause; the courts will apply a higher standard to an employer.

But once you get to the vice-presidential level, it would be difficult to distinguish between the standard of care that’s imposed upon a vice-president versus a president. But if you compared the standard of care, say, between a clerk and a CEO, there would be a significantly more onerous task for an employer to establish in order to terminate a CEO versus terminating a clerk. It seems strange to most people, but that’s the way it is.

**Mr. Gantefer:** — No, I think I accept that. I’m not quite so sure I would understand the rationale that there would be virtually no difference of standards between vice-presidents and a CEO. I would think that there’d even be a separation of standards between those two levels.

**Mr. Garden:** — Well, you’d be hard-pressed to identify it. I think if you read the textbooks they say that there is, but my reading of the court cases is that that is a distinction without a difference, as lawyers say.

**Mr. Gantefer:** — In looking at vice-presidents where there’s more specific areas of responsibility — accounting, legal opinion — you know, breaking it down into more specific responsibilities, does that require a greater attention to the details of that department than would be the case for Mr. Messer, who would have more of a general overview of those subcategories?

**Mr. Garden:** — If I may, and I’m not trying to duck your question, I’m going to try to answer it in a sort of a generalized way, Madam Chair. The standard that you look to when you’re seeking to establish just cause for the termination of any executive is gross misconduct, serious misconduct, it’s sometimes characterized, or gross negligence are the standards that you have to be able to establish.

So simple negligence won’t do it. You have to have almost gross negligence before you have erred seriously enough — particularly on the basis of a single incident.

Now, if you have someone like an accountant or a lawyer who has a unique specialty, but is a vice-president of law, for example, or vice-president of finance, obviously because of the professional background of that person, that fact, that professional capability will be weighed into the balance in determining whether what happened was serious misconduct or gross negligence.

So I don’t know if that’s helpful, but that’s the test. Those are the tests with respect to a senior executive, particularly for sort of . . . for single incident events of misconduct.

The situation is somewhat different if you have a person who has habitually been in default of their duties or has, you know, not met the standards that you establish. And in those cases, provided you've told, you know, told the employee, warned him or her, attempted to coach them along and improve and explain to them what the standard of care that you want them to achieve is and then you have told them that if they don't meet that standard they'll be terminated, then you're in a bit better position.

But for kind of . . . when you're looking at, focusing on one or two single isolated incidents, it's very, very difficult to prove cause. It's even difficult if you've gone through the rigamarole that I just outlined to terminate a person for cause. Now these are absencing issues like theft or, you know, assault in the workplace or something like that. But just, if we're talking issues of competence, that's the way the courts look at these things.

**Mr. Gantefer:** — Well, I can certainly appreciate, you know, the steps that you indicate in the common workplace. I mean I would understand that.

But it would strike me that you shouldn't have to hold senior executives by the hand so much to expect certain levels of competence; that you would . . . I think you used the example of a clerk, for example. I could see where it would be very important to say, look it, we're not satisfied with your performance and will you please improve in these areas and go through that whole process before you could terminate an individual at that level.

But surely someone at a senior level as a vice-president and people that have backgrounds in accounting responsible for finance, people with backgrounds in law having responsibility for legal affairs, you shouldn't have to lead them around by the hand like that because it would seem to me it would be almost impossible to prove cause if that's the standard.

**Mr. Garden:** — It is very, very difficult from an employer's perspective to prove cause. And essentially the doctrine that I explained to you about how you establish cause in a, you know, with a poor or a substandard performer, those tests apply across the board regardless of whether you're talking about a CEO or a clerk.

Now — and I think I made this point earlier this morning — the problem is, Madam Chair, that there is no objective standard of performance, I mean, if you absent things again like theft. But if you're just talking about performance, performance is not an objective thing. Performance — and I think I said it this morning — good performance to Mr. Priel may be bad performance from Mr. Hillson's perspective.

So what the law essentially says — and I don't know that you can find this written down anywhere — but what the law essentially says, what judges say, is on performance issues if nobody complains about the way you're doing your job, then you should be able to assume that you're doing your job to the satisfaction of the people who have the responsibility to oversee you. Not an unreasonable sort of position.

So if I'm chugging along and I'm doing my job and, if nobody

ever complains about the fact that I'm doing my job badly, I can take it as a given that that standard of performance which I'm rendering to my employer is an acceptable standard of performance. And the employer is not then permitted to come to me one day and say, Mr. Garden, your performance has been substandard for the last three years. We haven't told you about that, but it has been, and you are fired, and we're not going to give you reasonable notice.

I'm entitled to say, well, this comes as a complete shock to me. I thought I was doing a good job, you never told me that I wasn't, and so I believe I'm entitled to pay in lieu of reasonable notice. And I think in that factual situation, I would be entitled to pay in lieu of reasonable notice.

And that's the reason that judges take that approach because the executive or even the clerk has been lulled into believing that they're doing just fine, thank you very much.

**Mr. Gantefer:** — Is there not an expectation that certain levels of performance are like givens? For example, I particularly don't quarrel with the argument that it would be unreasonable to expect that Mr. Messer read every legal document that SaskPower was involved with. That's an unreasonable expectation. I would, however, think that a person in charge of the legal department may have that requirement.

Are there not those types of things that are just reasonable expectation without having to have documented in the past that you have not read documents and I know you haven't read documents, now we caught you on this one so that's just cause?

Is there not a reasonable level of expectation that certain things under your purview are indeed your responsibility?

**Mr. Garden:** — Well, Madam Chair, let me try to answer this in the following fashion, and if you find this answer to be substandard, I'm sure you'll get back to me and I'll try to explain it a little bit farther.

Let's use the specific example of Mr. Kram, because obviously he's the person I think that you're directing this question to. Mr. Kram — and I didn't speak to Mr. Kram in doing my review; I simply reviewed the documents and gave my opinion to, or gave our firm's opinion to Mr. Fair.

Mr. Kram is the manager of legal services. I don't know if that's his title, but that's what he does for Saskatchewan Power Corporation. And he and indeed I believe Saskatchewan Power generally, believed that they had in place a good team to negotiate the Channel Lake transaction. They had Mr. Christensen, they had Mr. Patrick, they had Mr. Kram. They had a top-flight Alberta law firm, Milner Fenerty. They are certainly one of the three best law firms in the province of Alberta.

And they had a very experienced negotiator, a person who had been the vice-president law with Saskatchewan Power Corporation, had been Mr. Kram's boss, was a fellow that they worked with every day. Even though he was engaged on a contract basis, he looked like a fellow employee. Looked like, you know . . . And he was a person who was a member of the law society at least of Alberta, and I believe of Saskatchewan.

So they thought that they had a good arrangement in place to handle these negotiations. Or that would be my perception having done that sort of thing myself as in-house counsel — I would have thought I had a good arrangement in place to handle these negotiations.

They had specifically signed a retainer agreement with the Milner Fenerty law firm that copies of all documents should be forwarded to Mr. Kram for review. And the evidence that I had and I believe you have is that the first two drafts were sent to him and he did review them. And he had therefore every reasonable expectation that future documents, as in when they became . . . as in when they were generated, would be brought to his attention and would be given to him for review. And he had every reasonable expectation that his negotiator, who he used to work for and whom he had trust and confidence in, would tell him if there was a problem.

Now you fast forward to the day the documents were delivered up to him and Mr. Patrick or Mr. Christensen for signature — April 1, I believe it was 1997. Nobody sent him any documents to show that there's been any significant change from the documents that he'd already seen and reviewed in draft 2. His friendly lawyer from Calgary from, you know, one of the three best law firms of Alberta, hasn't phoned him up and said gee, Mr. Kram, there's been a really huge change to the documents; you thought you were going to get, \$20.3 million net, you're now going to get 20.3 million gross.

His trusted co-worker, Mr. Portigal, shows up, doesn't say gee, Mr. Kram, there's really been a big change to this deal; you're going to get \$5.2 million less. Nobody says anything.

I've been there — somebody presents me with those documents, I would have signed them exactly the way he did. I wouldn't have asked. I would have taken . . . I would have trusted these people to do their jobs because I knew them, I knew they were good, and I relied on them.

There's a whole — and if you haven't been there you can't appreciate this — there is a blizzard literally, of things going on in an in-house legal department every day. There are deals going; you're running from pillar to post; you've got 15 voice messages on your voice mail. And you have to rely on the people who have the principal responsibility to do their jobs.

Now it turned out that relying on Milner Fenerty and relying on Mr. Portigal were big mistakes. But in my opinion, it wasn't unreasonable for Mr. Kram to rely on those people, and I would have signed the documents. It's hard to sort of sit back with the knowledge that we have today and come to that conclusion. Your mind says, well how could you ever have been so foolish as to do that?

But if you've been there, you know that that's the way it is. That's exactly what almost any in-house counsel would do. Maybe a few would ask, but I'll bet if you phoned up Calgary and talked to all the big oil companies and talked to their VP (vice-president) law or their senior in-house counsel, 8 out of 10 or 7 out of 10 would say they would have signed the documents in the same circumstances without asking about them. They would have trusted their lawyers, their out-of-house counsel, they would have trusted their negotiator. They have to — they

can't survive without that.

**Mr. Gantefer:** — But I assume that you would make the same argument in Mr. Christensen's situation in terms of looking at the financial and fiscal matters, that the same logic would apply?

**Mr. Garden:** — Well my understanding was that it wasn't a sort of a fiscal issue so much as it was a legal change. And so I had focused principally on that problem, that single problem of sort of . . . where did the 5.2 million go?

And personally, or I shouldn't say personally, our firm's opinion was that that there would actually in that situation, have been again for the reason that I indicated earlier, Mr. Kram's background and training as a lawyer, that there would have actually been a lower standard that I think a court would have held Mr. Christensen and Mr. Patrick to, than the standard which a court would have held Mr. Kram to in the circumstances. Because it was a legal problem, it wasn't an accounting or a treasury problem; it was a legal problem that caused this \$5.2 million to evaporate.

**Mr. Gantefer:** — Okay, thank you very much. Madam Chair, thank you.

**The Chair:** — Thank you. Thank you, Mr. Gantefer. Mr. Hillson, would you like to conclude your questioning of either Mr. Fair or Mr. Garden? And when you're finished we will take a break.

**Mr. Hillson:** — Okay. I don't have very much, thank you, Madam Chair. Mr. Garden, when you are assessing the amount of severance owed to a senior executive, is it relevant as to where he came from to that position, whether or not he was lured away from another very senior position or not. Is that a factor you assess?

**Mr. Garden:** — It is, but generally speaking the issue of having been lured away decreases in importance with the years that the person has been in a position. So, for example, if I lured a person away to come to work in my box factory from a solid employment or solid job that he or she had had for the past 15 years, and after having had the person in my employ for one year I terminated them, I would end . . . that would be a significant factor in determining the amount of pay in lieu of reasonable notice that person would be entitled to.

But as each year passes by that factor becomes less and less. And depending on the length of service with the past employer it begins to completely . . . or it disappears as a significant factor oh, at about three years into the employment relationship. And certainly by the time five years have passed it's utterly irrelevant. But yes it is a factor that one considers in any case you look at. How did the person get into the position particularly if they've been there for a short period of time?

**Mr. Hillson:** — And what about the factor of the anticipated ease with which someone will find a similar employment in the future?

**Mr. Garden:** — That is also a factor.

**Mr. Hillson:** — Is that what you meant by age?

**Mr. Garden:** — Well age is one factor that weighs into that question and it's an important factor because unfortunate . . . Well let's put it this way, particularly employers generally want somebody who's going to be with them for some period of time. And as you approach 60 employers have a reasonable expectation that you're not going to be there for very long. But it's a little bit . . . it's a little broader than that.

You also look at the industry and what, you know if for example you are in Alberta and you are in the oil business and things are booming in the oil patch just to give you an example, and you are fired from a position as the chief operating officer for a company, we know that there are other jobs out there. So that's a factor too. That's one of the more difficult ones to assess particularly in the, for example, the utility business. There simply aren't very many utilities around and that would be one of the issues that would sort of militate in favour in Mr. Messer's case of a longer severance the fact that there aren't many electric utilities around to get work with.

**Mr. Hillson:** — Now, you mentioned that you are familiar with the workings of in-house counsel and the real world, and that you do have to rely on the persons under you who've been assigned to certain tasks. Now we've had testimony that on the signing documents on the last page there was a stamp, which was initialled to show that the documents had been read over and checked.

**Mr. Garden:** — That would be by Burnet Duckworth & Palmer?

**Mr. Hillson:** — That was by Direct Energy.

**Mr. Garden:** — Right.

**Mr. Hillson:** — So that was by the purchasers and I think there was some evidence to the effect that that may have at one time been done by SaskPower but apparently has not been the more recent practice. Are you familiar with that practice, Mr. Garden?

**Mr. Garden:** — I am familiar with that practice and it's a good practice. It's not flawless though. A few weeks ago one of my associates who worked with me on this case brought me in a legal document from a \$300 million U.S. (United States) deal that a very, very large Boston firm did for a client of ours. They were obviously principle counsel; we were simply dealing with this company's Saskatchewan assets. And there was that kind of a mark on the signing page of the document. But it was obvious from a careful review of one page that two paragraphs had got jammed together and half of paragraph 8 . . . and the last half of paragraph 8 and the first half of paragraph of 9 were missing. You had a completely unintelligible paragraph in this document that had been reviewed by this very large — and approved of — by this very large Boston law firm.

So it's a very good practice. It's not perfect but it's a very good practice in my opinion.

**Mr. Hillson:** — I suppose it has to be said that no human system tends to be fail safe.

**Mr. Garden:** — Exactly.

**Mr. Hillson:** — But this is a practice that would be common in the industry and it is one that you would recommend?

**Mr. Garden:** — I would say that I have seen it in less than 50 per cent of the closings that I've been involved in, and I think it's a good practice. It's not universally used though.

**Mr. Hillson:** — Thank you, Madam Chair.

**The Chair:** — And does that conclude your questioning, Mr. Hillson?

**Mr. Hillson:** — Yes it does thank you.

**The Chair:** — Do the members of the New Democratic Party have any further questions of either Mr. Garden or Mr. Fair?

**Mr. Tchorzewski:** — No I think, Madam Chair, the questions have been well asked and the answers have been well given and we've pretty well been informed. So we don't have . . . no further questions.

**The Chair:** — Thank you. Mr. Gantefer, do the members of the Saskatchewan Party have any further questions?

**Mr. Gantefer:** — No, Madam Chair.

**Mr. Hillson:** — Thanks to our witnesses then.

**The Chair:** — Thank you. Mr. Fair and Mr. Garden, we are according all witnesses the opportunity to make both opening and closing statements. Did either of you gentlemen wish to make a closing statement now or would you like to reserve them and give us a written closing statement? If you choose, and if you do, I should inform you that I have sent out letters to all the principal witnesses asking that they have those tabled with the Clerk of this committee by no later than noon of July 6.

So did you want to make a closing statement now or reserve your right?

**Mr. Fair:** — Madam Chair, we will not make a statement now but will file something on behalf of SaskPower.

**The Chair:** — Thank you very much.

**Mr. Garden:** — And I have no intention of filing a final statement, thank you.

**The Chair:** — That's a firm undertaking, is it Mr. Garden?

**Mr. Garden:** — Yes.

**The Chair:** — All right. In that case on behalf of the committee, I would thank you both very much and you are now excused. The committee will now recess until 2:45 p.m. at which point we will hear testimony from Mr. Mintz.

**The committee recessed for a period of time.**

**The Chair:** — Committee members, please take their places.



We will now begin hearing the testimony from Mr. Don Mintz of the SaskPower board and also of the audit and finance committee of the SaskPower board.

Mr. Mintz has already been sworn in and I have read him the customary statement to witnesses so we will begin right away with the questioning. We'll start with . . . (inaudible interjection) . . . Yes, thank you. Mr. Mintz, did you have an opening statement you wish to make?

**Mr. Mintz:** — No, Madam Chair.

**The Chair:** — Thank you. Mr. Gantefer, thank you for reminding me about that. It's very late in the day for me. Mr. Gantefer, will you start questioning please till approximately 3:20.

**Mr. Gantefer:** — Thank you very much, Madam Chair. Good afternoon, Mr. Mintz. First of all, Mr. Mintz, can you tell us when you were appointed to the SaskPower board?

**Mr. Mintz:** — I believe October or November of 1994.

**Mr. Gantefer:** — And at what interval were you appointed to be the head of the audit and finance committee?

**Mr. Mintz:** — At the same time.

**Mr. Gantefer:** — At the same time. So you went right to that position?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — Now in terms of the purchase of Channel Lake, was that reviewed by your committee when the initial purchase was made or was that all completed before your mandate?

**Mr. Mintz:** — That was before I was appointed.

**Mr. Gantefer:** — Then in terms of the operation of Channel Lake, you were aware of the original mandate under which it was established?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — And was it your responsibility as the Chair of the audit and finance committee to make sure that the subsidiary lived up to the mandate established for it by the board?

**Mr. Mintz:** — No.

**Mr. Gantefer:** — What was your mandate in terms of the relationship with Channel Lake then?

**Mr. Mintz:** — Other than it being a subsidiary of SaskPower, there was none.

**Mr. Gantefer:** — There was no responsibility to review the financial reports of the subsidiary?

**Mr. Mintz:** — That was the responsibility of the Channel Lake

board.

**Mr. Gantefer:** — The SaskPower board has no responsibility for its subsidiary?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — Then how were you absolved of responsibility for what happened in the Channel Lake board, or in the Channel Lake corporation?

**Mr. Mintz:** — Madam Chair, I believe the monthly reporting of Channel Lake was covered through SaskPower's monthly financial statements. It being a subsidiary, it would have been consolidated in the monthly financial statements of SaskPower.

**Mr. Gantefer:** — So when were you made aware of the fact that Channel Lake was engaged in gas arbitrage trading?

**Mr. Mintz:** — Could you . . . I guess I'll ask, rephrase by trading. Expand on what your question is.

**Mr. Gantefer:** — I guess I'm not an expert on the technical definition of gas arbitrage trading but I believe it's the buying and selling of natural gas not necessarily for the purposes as specified by SaskPower as to the security of supply and the stability of price.

**Mr. Mintz:** — I believe, Madam Chair, that at the time I came on the SaskPower board, Channel Lake was selling its excess gas into the market-place when it had a surplus and, if needed, would re-buy back natural gas if it had a shortage. So it would be at the same time I was appointed audit and finance chairman.

**Mr. Gantefer:** — Now you indicate in your reply that they were buying . . . or selling their excess gas and purchasing other gas. Are you indicating that it was for their needs?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — Then when were you aware of the fact they got into arbitrage which was certainly not necessarily and specifically to meet their own needs, but buying and selling in order to hopefully realize a profit.

**Mr. Mintz:** — I believe it would be sometime in 1995.

**Mr. Gantefer:** — And did your committee express a concern about the fact that this was beyond the mandate originally given to the subsidiary by the SaskPower board?

**Mr. Mintz:** — I believe, Madam Chair, that I don't think it would have been the responsibility of the audit and finance of SaskPower to look at that. I think that would have been the responsibility of the Channel Lake board to ensure that the company was pursuing activities that it was authorized to do. They would have much better knowledge of it than a SaskPower board member.

**Mr. Gantefer:** — If the SaskPower board clearly gave a mandate that said that the purpose of Channel Lake was to guarantee the security of supply and predictability of price, that that mandate came from the SaskPower board, are you telling

this committee that you feel it is not the responsibility of the board to see to it that its directives were followed?

**Mr. Mintz:** — I believe you asked whether it was my personal involvement and understanding of it rather than the board.

**Mr. Gantefer:** — You're a board member, are you not?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — And you're also Chair of the audit and finance committee, are you not?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — Is it not the mandate of the audit and finance committee to make sure that the financial directives as set out by the board are adhered to?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — So I go back to my question then. Is it not your responsibility to see to it that the subsidiary lived up to its financial mandate as set out by the board of directors of SaskPower?

**Mr. Mintz:** — I believe when I came on board, SaskPower's board, it was not my mandate to go back and review previous transactions which Channel Lake had done, since it was already in business at that point in time. And as a result, I did not.

**Mr. Gantefer:** — When you came on board, was Channel Lake engaging in gas trading activities that went beyond the original mandate?

**Mr. Mintz:** — I have no knowledge as to whether they were or weren't.

**Mr. Gantefer:** — You're suggesting to me that you didn't know that they were . . . or your committee was not aware of the fact that they were engaged in gas trading activities?

**Mr. Mintz:** — Yes, they were engaged in gas trading.

**Mr. Gantefer:** — And that they expanded to be as much as \$80 million a year?

**Mr. Mintz:** — Madam Chair, I have no knowledge as to the total dollar figure. It's my understanding that any contracts they entered into would change on a day-to-day basis, based on completion and/or new contracts.

**Mr. Gantefer:** — Isn't that your responsibility to understand what dollar and financial transactions are occurring within SaskPower and its subsidiaries as the Chair of the audit and finance committee?

**Mr. Mintz:** — I believe that is the responsibility of the board of directors of Channel Lake and its executives. There is a fine line as to what a board's responsibilities are vis-a-vis meddling in management decisions.

**Mr. Gantefer:** — Is not the mandate of the audit and finance

committee to assure itself on behalf of the board that the financial directions of the board are indeed being adhered to by the company?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — Then is that not your responsibility to assure yourself that the activities that were occurring within the subsidiaries are, as well, adhering to those directives from the board?

**Mr. Mintz:** — At the time I believe there was no suggestion that Channel Lake was doing anything other than what it was authorized to do.

**Mr. Gantefer:** — Would it not be contrary to what the minister has said? For example, Mr. Lingenfelter has indicated on many occasions that he believed that those tradings were outside of the Channel Lake's mandate. Are you saying that you are unaware of that fact?

**Mr. Mintz:** — I have no knowledge of what you are referring to.

**Mr. Gantefer:** — The Deloitte Touche report indicated that the trading activities were beyond the mandate of what had been given to SaskPower by the board. And you as the chairman of the audit and finance committee, acting on behalf of that board, are saying you weren't aware of this?

**Mr. Mintz:** — I have not read the Deloitte Touche report, so I can't comment on it.

**Mr. Gantefer:** — I'm trying to understand how you see the role of the audit and finance committee and what your responsibilities are to the board. You haven't read the Deloitte Touche report and you didn't understand there was gas trading activities occurring beyond what the mandate was. What is your responsibility to the board?

**Mr. Mintz:** — Madam Chair, I'll reiterate. At the time I came on board the audit and finance committee, Channel Lake was in the business of trading gas and/or selling surplus gas and repurchasing if needed.

As I said before, I had not gone back and reviewed previous documents as related to Channel Lake. And, in my opinion, I felt that the trading had been authorized and that the directors of Channel Lake and/or their executives would have been following the mandate that was given to them.

**Mr. Gantefer:** — Did you not review the fact that the Channel Lake board on two occasions increased the dollar value of what trading was authorized under after the fact? Was that not reviewed as part of your due diligence process of observing what was happening in the subsidiary on behalf the board?

**Mr. Mintz:** — I believe that's not part of the audit and finance committee for SaskPower's job.

**Mr. Gantefer:** — It's not part of your responsibility to review if a subsidiary is retroactively changing the authorization levels on two occasions that exceeded the original mandate by the

board, and you're saying that was not your responsibility?

**Mr. Mintz:** — Yes, that's not audit and finance responsibility; that would be the responsibility of the board.

**Mr. Gantefer:** — And how does the board act if not through the audit and finance committee to act on their behalf in that direction. What is the responsibility of audit and finance?

**Mr. Mintz:** — The board received as part of their financial statements for SaskPower the monthly results of Channel Lake. Since it is a consolidated financial statement, if the board felt that they needed to ask additional questions or information, i.e., the activities of Channel Lake, they had the opportunity to do so at any board meeting.

**Mr. Gantefer:** — So it was not the responsibility of the audit and finance committee, or yourself as Chair of the audit finance committee, to assure the board of directors of SaskPower that the mandates and the directives as set out by the board through resolution were indeed being followed.

**Mr. Mintz:** — I guess . . . Madam Chair, I'll repeat. I am not the chairman of the audit and finance committee for Channel Lake. I'm the audit and finance chairman for SaskPower.

**Mr. Gantefer:** — Who owns Channel Lake?

**Mr. Mintz:** — SaskPower.

**Mr. Gantefer:** — Under whose authority was it set up?

**Mr. Mintz:** — Madam Chair, I have no knowledge as to the legalities of the question.

**Mr. Gantefer:** — The question was, who authorized the establishment of Channel Lake?

**Mr. Mintz:** — I would assume the Saskatchewan legislature through Saskatchewan Power corporations Act.

**Mr. Gantefer:** — By resolution, would you think it would be reasonable to assume that it would be by resolution of the SaskPower board of directors?

**Mr. Mintz:** — I wasn't a member of SaskPower's board at that time.

**Mr. Gantefer:** — And so you feel no responsibility to a decision made prior to your appointment as part of your responsibility of the audit and finance committee for SaskPower to see to it that directives set up by SaskPower are indeed being followed?

**Mr. Mintz:** — I believe the main responsibility for that would be the management of Channel Lake and its board, of which the CEO of SaskPower was a member of that board.

**Mr. Gantefer:** — And who does the board turn to to see to it that their authorizations are indeed followed? And if it is not the audit and finance committee, then what in the world is the purpose of the audit and finance committee?

**Mr. Mintz:** — Which board are you referring to?

**Mr. Gantefer:** — SaskPower board. Channel Lake board were all employees of SaskPower. That's a legal entity set up in order to have that corporation structure there. SaskPower set up Channel Lake. The SaskPower board set up Channel Lake.

What is the function of the SaskPower audit and finance committee?

**Mr. Mintz:** — It is to ensure that SaskPower's assets and activities are . . . and the monitoring of the financial well-being of the corporation.

**Mr. Gantefer:** — And that would include their subsidiaries, would it not?

**Mr. Mintz:** — Madam Chair, I believe that the responsibility of the audit and finance committee of SaskPower's board would be primarily as it relates to SaskPower's activities. And that if there were a subsidiary it owned, that that board of directors and, specifically in this case for Channel Lake, the employees, would do their due diligence and their responsibilities by informing the board of SaskPower of any activities they are carrying out to ensure that they comply with the mandate and any board resolutions that had previously been passed.

**Mr. Gantefer:** — Can you tell me, did the SaskPower board assign the audit and finance committee the responsibility to oversee the month-to-month operations of the Channel Lake subsidiary? And I am searching for the resolution but I believe it's there.

Was the audit and finance committee of SaskPower, were they assigned the responsibility of overseeing the operation of the subsidiary Channel Lake?

**Mr. Mintz:** — Madam Chair, could you refer the document being referred to? I believe . . . I presume he has a number or whatever.

**Mr. Gantefer:** — I'm sorry, I don't have. I'm asking the question, was the audit and finance committee assigned the responsibility by the SaskPower board of directors to oversee the operation of the Channel Lake subsidiary?

**The Chair:** — We'll just take a moment, Mr. Gantefer, while Mr. Mintz and his counsel find the document in question.

**Mr. Mintz:** — Madam Chair, the document, I would assume, and correct me if I'm wrong, is CLP 7/3. That is an audit and finance committee at which I requested to receive monthly financial statements for Channel Lake in order to assist the committee in gathering a better understanding of what Channel Lake was doing and the activities that it carried on.

**Mr. Gantefer:** — The purpose of gathering that information of the activities of the subsidiary would be to report to the SaskPower board the results of that information?

**Mr. Mintz:** — I believe, Madam Chair, the . . . I might as well just read this:

It was duly moved and seconded, resolved to direct management to provide to the committee monthly financial statements of Channel Lake. Further, that the committee be informed as to how management will be determining costing of Channel Lake.

At that point in time Channel Lake was having some difficulties as to the proper costing of the gas which it extracted from its wells and that they were in the process of trying to maintain a consistent costing policy which the finance department of SaskPower . . . or the accounting department would concur with.

**Mr. Gantefer:** — So you felt the responsibility to have Channel Lake report that information to the audit and finance committee so that you would be able to report the results of that information to the SaskPower board. Would that be correct?

**Mr. Mintz:** — It was to expand our knowledge as to how the sub was progressing on a month-to-month basis.

**Mr. Gantefer:** — Did you feel any responsibility to report the results of that knowledge you would gather to the SaskPower board?

**Mr. Mintz:** — I believe the financial statements, Madam Chair, which are part of SaskPower's monthly reporting, indicate how Channel Lake was progressing on a month-to-month basis.

**Mr. Gantefer:** — I am quite surprised that you are reluctant to admit that the audit and finance committee did not have a responsibility to the SaskPower board of directors to see to it that the financial directives of the board were indeed being followed. And yet you are indicating that you wanted to have knowledge about the fact if Channel Lake was pricing its gas assets appropriately.

Why would you only be interested in some of the technical workings of the corporation, and you would be totally disinterested in seeing to it that the corporation is indeed even attempting to follow the original mandate given to it by the SaskPower board of directors that you're a part of?

**Mr. Mintz:** — I believe that responsibility, Madam Chair, would rest with the board of Channel Lake.

**Mr. Gantefer:** — The board of Channel Lake being employees of SaskPower?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — And that the SaskPower board then would have no responsibility at all. Is that what you're saying?

**Mr. Mintz:** — I believe, I believe it is the . . . would be the responsibility of any board of directors of a subsidiary to bring to its parent any transactions which it felt would be needed for approval. And that as Mr. Messer was the CEO of SaskPower and a member of that board, that it would be his responsibility to ensure that SaskPower was kept abreast of any activities that may affect Channel Lake.

**Mr. Gantefer:** — You indicated, I believe that you said you

didn't read the Deloitte Touche report?

**Mr. Mintz:** — That is correct.

**Mr. Gantefer:** — I suspect that almost every MLA (Member of the Legislative Assembly) in this House have read the Deloitte Touche report. And you as the chairman of the audit and finance committee and a member of the board of directors of SaskPower would not see it of any interest to read it?

**Mr. Mintz:** — Madam Chair, I don't get paid by the legislature as the gentleman is. I do have a business to run. I have . . . I participated in the questioning by Deloitte so I know what I said in that report. And I stand by what I said.

**Mr. Gantefer:** — I'd like to quote from the report. On page 6 it says, and I'm quoting:

The governance of Channel Lake involved the Channel Lake Board, the SaskPower Board, and the SaskPower Board's Audit and Finance Committee. As a subsidiary of SaskPower, Channel Lake required its own Board of Directors. The Audit and Finance Committee of the SaskPower Board played a delegated oversight role on all SaskPower subsidiaries, focusing on effective reporting of financial results.

Where did Deloitte Touche get that illusion?

**Mr. Mintz:** — I don't believe it was illusion. I believe that Channel Lake did report their financial results to SaskPower.

**Mr. Gantefer:** — And that you did not find it necessary to see to it that those financial activities were within the scope and mandate of the original assignment of the mandate by the SaskPower board?

**Mr. Mintz:** — I believe the report, Madam Chairman, refers to financial results, which is exactly what the audit and finance committee requested.

**Mr. Gantefer:** — So you found no responsibility to raise any red flags to the board of directors that would indicate that the Channel Lake subsidiary had exceeded its mandate?

**Mr. Mintz:** — I believe that the monthly financial statements that Channel Lake provided to us indicated that it was functioning properly and was making modest profits, and that as a result, there were no flags raised.

**Mr. Gantefer:** — It seems strange that from the very beginning the board indicated that it didn't want the corporation to get into the gas business beyond the requirements to meet its own needs. And that when it moved into that activity, that that clearly would be if financial implications were involved. Clearly that's what led to the financial losses, and clearly the audit and finance committee had a responsibility to flag that as a concern. And you don't agree that that would be part of your responsibility?

**Mr. Mintz:** — I believe that, Madam Chair, that the financial statement as produced by Channel Lake and consolidated in with SaskPower's financial statements indicated that the

company was functioning and making a reasonable profit. And that as a result, the audit and finance committee felt that Channel Lake's board of directors were overseeing it properly and that the executives of Channel Lake were administering and having the company operate on a reasonable basis.

**Mr. Gantefer:** — Clearly from your reluctance to accept any responsibility, or your committee's responsibility, for anything other than the consolidated comment on the financial statement, the board of SaskPower relied heavily on the audit and finance committee to give it advice, relied on it to flag potential concerns, not only in the gas trading which resulted in significant losses and seemed to have panicked the corporation into a sale of the asset.

Were you involved in any way about the discussion about the sale of the Channel Lake assets?

**Mr. Mintz:** — Madam Chair, I disagree with the inference that the board was panicked into the sale of Channel Lake because of the losses.

**Mr. Gantefer:** — Who would have told them about the losses? You hadn't flagged them.

**Mr. Mintz:** — The losses, Madam Chair, I believe resulted in the bankruptcy of two of our . . . of Channel Lake's suppliers, and that the board was informed of these bankruptcies.

**Mr. Gantefer:** — If the board had not been informed of the fact that Channel Lake was engaged in gas arbitrage trading over and above its original mandate, then if it hadn't been . . . if the red flags had been raised by your committee that this was going on, would not the board have been able to stop those activities and potentially take action to avoid those losses?

**Mr. Mintz:** — I believe the responsibility, Madam Chair, for the day-to-day operation was that of Channel Lake executive and that their board which consisted of the CEO of SaskPower had the responsibility to ensure that Channel Lake fulfilled its mandate as dictated to it.

**Mr. Gantefer:** — I want to ask you one final question. Do you understand what fiduciary responsibility is for directors of a corporation?

**Mr. Mintz:** — Yes.

**Mr. Gantefer:** — Does it mean that you have to use your best efforts and exercise to maintain the assets and the financial viability of the corporation you're sitting as a director of?

**Mr. Mintz:** — Absolutely, Madam Chair.

**Mr. Gantefer:** — Can you indicate to me how you would feel that you've exercised your fiduciary responsibility to SaskPower board by simply indicating that this wasn't my responsibility as the chairman of the audit and finance committee but that it was just the Channel Lake subsidiary?

**Mr. Mintz:** — I believe, Madam Chair, that as a board member of SaskPower that the responsibility was fulfilled with the presentation of the financial statements. And that every board

member did have the opportunity to question the activities of the sub on a regular basis, and that based on the information provided by Channel Lake's executives and the board . . . their board, that there were quote, "no red flags raised."

**Mr. Gantefer:** — I realize there were no red flags raised. I submit it would have been your responsibility to raise them. Thank you.

**The Chair:** — Thank you, Mr. Gantefer. Mr. Hillson, are you ready to go with your questions now?

**Mr. Hillson:** — Thank you, Madam Chair, and Mr. Mintz. I would like to first read to you from the minutes of Saskatchewan Power, CLP 6/2, April 22, 1993 — and I realize this predates your coming to the board, sir — but paragraph no. 86, I'll just read in part there:

The board does not want SaskPower to enter the gas business beyond activity necessary to provide security of supply and predictability of price. Therefore the board agreed the corporation should dispose of any excess Dynex assets with deliberate haste.

And it goes on to say that, therefore, they are authorizing Channel Lake to buy these gas assets but it's on condition . . . to say that they are not to enter into the gas business beyond activities necessary to provide security of supply and predictability of price.

Now, sir, were you aware of that motion of the board?

**Mr. Mintz:** — No.

**Mr. Hillson:** — So you didn't know that that was the policy adopted by the SaskPower board?

**Mr. Mintz:** — I was not on the board at the time that was passed.

**Mr. Hillson:** — I realize that, but after you came to the board, you didn't find out that that was the position of the board in terms of gas trading?

**Mr. Mintz:** — I believe, Madam Chair, that that motion relates to the purchase of the Dynex.

**Mr. Hillson:** — Correct. Which was . . . I think it's common ground that that is in fact what was the core and substance of Channel Lake. I think the Dynex assets — that was Channel Lake. Is that not correct?

**Mr. Mintz:** — Yes. However, Madam Chair, I believe that because it was related to the purchase, I would have had no reason to go backwards and review something that had been passed prior to my coming on the board.

**Mr. Hillson:** — Were you then aware, sir, that that policy had been exceeded, that gas trading was going quite a bit beyond that necessary to provide security of supply and predictability of price?

**Mr. Mintz:** — Madam Chair, I do not believe I was aware of

that.

**Mr. Hillson:** — So you did not know that Channel Lake had gone beyond this authorization?

**Mr. Mintz:** — Since I didn't read or since I did not know of this particular board minute, then it's just common sense that I would not know that they were exceeding what this particular resolution said.

**Mr. Hillson:** — Well, okay, then leave the motion aside. Did you know that Channel Lake was involved in gas trading and arbitrage activities beyond that necessary to supply SaskPower with its needs?

**Mr. Mintz:** — Madam Chair, I believe I knew that Channel Lake was selling excess gas and purchasing gas back as required.

**Mr. Hillson:** — As required for SaskPower or as required for other activities?

**Mr. Mintz:** — I don't believe the distinction was ever given to us.

**Mr. Hillson:** — And in your own mind, sir, was it important to know whether Channel Lake was involved in gas trading simply to supply SaskPower with its needs or whether it was independently involved in arbitrage and gas trading?

**Mr. Mintz:** — I believe, Madam Chair, that the information provided to us indicated that Channel Lake was on a monthly basis financially producing reasonable profits based on its activities and that included the buying and selling of the gas that it produced.

**Mr. Hillson:** — So was that a yes or a no? I was asking were you aware they were involved in gas trading and arbitrage beyond supplying SaskPower with its needs? Were you aware of that?

**Mr. Mintz:** — I believe that did come to the attention of the audit and finance committee.

**Mr. Hillson:** — And do you recall when that would be, sir? Approximately, I don't think we expect exact dates here.

**Mr. Mintz:** — I would suggest, Madam Chair, that it would be in 1995.

**Mr. Hillson:** — Was any action taken by the audit and finance committee or by the board when that information came to you?

**Mr. Mintz:** — Madam Chair, I believe that the board of Channel Lake had authorized Channel Lake to enter into the trading of gas.

**Mr. Hillson:** — So you're saying you took it as authorized and that was the end of that?

**Mr. Mintz:** — I believe that the board of Channel Lake has a responsibility to authorize those transactions.

**Mr. Hillson:** — Okay. I'm going to read to again just one sentence from the Deloitte Touche report that says:

The audit and finance committee of the SaskPower board played a delegated oversight role on all SaskPower subsidiaries focusing on effective reporting of financial results.

Now do you agree with that statement or disagree with it? I take it that some of your earlier testimony was to the effect that you do not agree with that statement.

**Mr. Mintz:** — Madam Chair, I believe the statement refers to the overview of financial statements.

**Mr. Hillson:** — Do you agree with that statement, that that is what was to happen and that was what was happening?

**Mr. Mintz:** — Madam Chair, I believe you should . . . Could I have that reread just to clarify something?

**Mr. Hillson:** —

The audit and finance committee of the SaskPower board played a delegated oversight role on all SaskPower subsidiaries focusing on effective reporting of financial results.

**Mr. Mintz:** — I believe, Madam Chair, that the audit and finance committee did oversee the financial results of Channel Lake on a timely basis with the financial statements of Channel Lake being consolidated into SaskPower.

**Mr. Hillson:** — Okay. Another from the CIC report on page 3 says that:

The Channel Lake board was subordinated to the SaskPower board with specific oversight responsibilities being assigned to the audit and finance committee of that board.

Do you agree with that statement?

**Mr. Mintz:** — I believe, Madam Chair, that the CIC inference there relates to the financial results of Channel Lake, and our audit committee did review those results.

**Mr. Hillson:** — But do you agree that the Channel Lake board was subordinated to the SaskPower board? That's what the CIC report says.

**Mr. Mintz:** — I have no knowledge of that.

**Mr. Hillson:** — That's news to you?

**Mr. Mintz:** — I believe, Madam Chair, that that's not news to me but it's perhaps a legal way of describing something that I knew perhaps in a layman's way.

**Mr. Hillson:** — Okay. And it also says that while the Channel Lake board was subordinate to the SaskPower board specific oversight responsibilities were assigned to the audit and finance committee. Was that your understanding?

**Mr. Mintz:** — Madam Chair, I believe that that report refers to specific items, and those specific items were the financial results of Channel Lake and that we did in fact carry out our due diligence as it relates to the financial results of Channel Lake.

**Mr. Hillson:** — Now you said a few minutes ago that you didn't think there was any panic to sell the Channel Lake company, or something to that effect. And I'm going to say what would be your understanding . . . was behind the decision to sell Channel Lake?

**Mr. Mintz:** — Madam Chair, I believe at the time the board considered selling Channel Lake that the price of natural gas was at a — I won't use the word, its highest point — but at a very lucrative dollar figure and that the assets of Channel Lake, if sold, would probably garner the maximum value one could get on its sale and that SaskPower could acquire its natural gas needs in a more efficient manner.

**Mr. Hillson:** — So your understanding was simply that it was a good time to sell.

**Mr. Mintz:** — Yes, Madam Chair.

**Mr. Hillson:** — And, Mr. Mintz, was there any discussion at the board level concerning the need to sell to prevent gas trading losses from being made public?

**Mr. Mintz:** — Absolutely not, Madam Chair. That would be — if I could speak as an accountant and a CA (chartered accountant) — that could never happen. I believe the previous testimony of Mr. Rupert James from Ernst & Young has already clarified that that would not happen in a financial statement presentation by SaskPower.

**Mr. Hillson:** — And of course others have said that that was a strong motivating factor behind the decision to sell. But you're saying you heard no discussion to that effect.

**Mr. Mintz:** — I believe, Madam Chair, that at the board level the discussion was to maximize the dollar return that we could get from Channel Lake assets at that time.

**Mr. Hillson:** — The decision to release Mr. Portigal in November of 1996 — was the board involved in that decision at all?

**Mr. Mintz:** — Madam Chair, can I get a clarification on the time, the date?

**Mr. Hillson:** — November of 1996. I guess, Mr. Mintz, if this is something you're not aware of, then that answers the question. But in November of 1996 Mr. Messer sent Mr. Portigal a letter advising him that he would be dismissed, and a month later Mr. Portigal said in response to your memo, I suggest we sell Channel Lake. And everyone's been quite mystified as to what the connection between those two memos is.

**Mr. Mintz:** — Yes. I have no knowledge of those memos, Madam Chair.

**Mr. Hillson:** — So the board was not involved in any way in those decisions?

**Mr. Mintz:** — No, Madam Chair.

**Mr. Hillson:** — Okay, thank you.

Now at the March meeting of the board we have been told that the question was asked as to whether Mr. Portigal had a personal interest in the transaction being proposed. Do you recall any discussion to that effect?

**Mr. Mintz:** — Madam Chair, I believe one of the board members asked that specific question of Mr. Messer and the answer was no.

**Mr. Hillson:** — Do you have any idea where that question would have come from?

**Mr. Mintz:** — Another board member.

**Mr. Hillson:** — Do you have any idea what may have motivated that question?

**Mr. Mintz:** — No.

**Mr. Hillson:** — Was there any follow-up discussion concerning it? Was there anything more to the discussion than simply the question being posed and the answer being given, no?

**Mr. Mintz:** — Not to my recollection, no. In the sense of perhaps . . . I mean the answer may not have been a precise no and that was it. I think there may have been, you know, a few sentences, whatever the case may be, but the gist of it is no.

**Mr. Hillson:** — And do you recall who would have put that question?

**Mr. Mintz:** — Excuse me?

**The Chair:** — Do you recall who would have put the question, Mr. Mintz?

**Mr. Mintz:** — I believe the board member would have been Larry Braun.

**Mr. Hillson:** — And who was asked that question?

**Mr. Mintz:** — I believe, Madam Chair, the question that would have been asked of the Chair who in turn had our CEO answer it.

**Mr. Hillson:** — It was Mr. Messer.

**Mr. Mintz:** — Right.

**Mr. Hillson:** — Now at that same meeting of course there was the approval to sell for quote "a total purchase price of 20.8 million." How did you interpret or understand that phrase "a total purchase price of 20.8 million?"

**Mr. Mintz:** — I believe, Madam Chair, that all discussions we had which included the possibility of selling Channel Lake

through a trust, that at no time was there any discussion other than a 27 point million for the assets less losses, for a net of 20.1 or within reason. In fact Mr. Christensen, vice-president of the finance, actually worked out some journal entries for accounting purposes. Hopefully the members will understand what that means and passed them on to me just to show me what the entries would look like and the profit, etc., and that the board at all times was fully aware that the net selling price would be 20. . .

**Mr. Hillson:** — 20.8 is correct.

**Mr. Mintz:** — Okay, 20.8 million. And the final discussion and approval was I believe for that amount of money and Mr. Portigal, although not at the table, was in the room sitting off to the side similar to the gentleman behind you.

**Mr. Hillson:** — So you're saying that it was quite clear in your mind and you think to anyone in the room that the phrase "a total purchase price of 20.8 million" meant 20.8 million net.

**Mr. Mintz:** — Well, Madam Chair, only an idiot could figure . . . would take it any differently.

**Mr. Hillson:** — So there was no mistaking in your mind that that meant 20.8 million cash in hand after all the bills were paid and the liabilities covered.

**Mr. Mintz:** — Well, Madam Chair, that meant SaskPower would get a cheque for \$20.8 million.

**Mr. Hillson:** — Okay. When then, sir, did you first become aware that that wasn't quite the way things were washing out?

**Mr. Mintz:** — Madam Chair, I believe it would be June 2.

**Mr. Hillson:** — And how did you become aware of the fact that we were not netting 20.8 million?

**Mr. Mintz:** — I received a phone call, Madam Chair, from Mr. Messer's office asking whether I would come over and visit him at which time it was explained the circumstances that everybody has heard already, and that in fact the price had changed in the document from the 20.8 to 15.1 . . . 2.

**Mr. Hillson:** — And what was your reaction to learning that the 5 million was gone?

**Mr. Mintz:** — Madam Chair, probably you could knock me off the chair with a feather after I heard about it. Mr. Messer explained the circumstances that happened. He also explained the fact that he had asked for an internal audit by SaskPower's internal auditor, Mr. Ron Bruce, as to the circumstances and that we would be receiving his report. It just shocked me.

**Mr. Hillson:** — Were you informed that the lawyers in Calgary recommended that a statement of claim be issued and litigation be commenced to attempt to cancel the sale?

**Mr. Mintz:** — Madam Chair, I believe that the board meeting held the next day discussed the letter from the Calgary legal firm and that the letter indicated that we could sue DEML (Direct Energy Marketing Limited) but that the likelihood of

success, given that we had received fair market value for the assets . . . the ability to recover any money in a legal sense would probably be minimal or would not probably succeed.

**Mr. Hillson:** — Now I think as far as we're aware, the first board meeting was June 20. Was there some other meeting you're referring to here, sir?

**Mr. Mintz:** — Clarification, Madam Chair. I believe the board meeting is the 20th and I would have learned the day prior to.

**Mr. Hillson:** — Okay. So when you said June 2, it should been June 19. Is that your testimony?

**Mr. Mintz:** — Yes, Madam Chair.

**Mr. Hillson:** — Okay. Very good. So it's June 19 and 20 then we're speaking of.

**Mr. Mintz:** — Yes, Madam Chair.

**Mr. Hillson:** — Okay. And did you actually have access to the legal opinion from Calgary or simply a verbal summary of it?

**Mr. Mintz:** — Madam Chair, I believe we had access to it, although I can't be 100 per cent sure. However, we did receive a verbal report that the board would certainly rely upon. The extent of the letter was explained in full as to, yes we could sue and what grounds we thought we could sue on. However, because we got fair market, the chances of receiving any remuneration would be — in a court of law — basically would be nil.

**Mr. Hillson:** — Was there any discussion of the fact that the purchase of Channel Lake by Direct Energy also included of course the 10-year supply contract?

**Mr. Mintz:** — The 10-year contract, Madam Chair, was discussed at the same time.

**Mr. Hillson:** — And was there any consideration of the fact that when you're assessing whether or not we got full value for selling the company, you also have to consider what value that 10-year supply contract has?

**Mr. Mintz:** — Madam Chair, I believe . . . As a matter of fact, I was the board member who asked whether in fact that this was a package deal, and could we sell DEML without also agreeing to the 10-year management contract, i.e. for SaskPower's natural gas. To which the response was no, it was a package deal.

The discussion then went further as to whether or not the 10-year supply contract, management contract, was in fact fair market as to the rates they would charge us. To which Mr. Patrick indicated that in the gas supply department that it was the normal rates charged within the industry.

**Mr. Hillson:** — Okay, so the information before the board on June 20 was that the . . . I think it's 3 per cent fee for purchase was a standard rate in the industry.

**Mr. Mintz:** — I believe, Madam Chair, that there was a sliding



scale given — that the rate charged slides down as the volume increases but that the overall rate charged based on the volume that SaskPower would require was within industry standards.

**Mr. Hillson:** — That was what you were told.

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — And what ... (inaudible) ... say, were you given examples of what other industries' rates would be or were just simply told this is within the standards?

**Mr. Mintz:** — I believe, Madam Chair, that Mr. Patrick, Vice-Chair of power production, indicated that they had consulted the industry and had concluded that this was an industry norm as far as this type of contract.

**Mr. Hillson:** — An industry norm.

**Mr. Mintz:** — Right.

**Mr. Hillson:** — At any rate, given what you've told me, that the 10-year supply contract was part of a package deal; it could not be separated out. The question of whether or not we receive fair market value for the assets of Channel Lake can't be separated from the question of the value of that 10-year supply contract. The value of the 10-year supply contract is part of the considerations here, is it not?

**Mr. Mintz:** — I believe, Madam Chair, that the value received for Channel Lake's assets were based on an independent appraisal which we discussed at the board meeting. And that the second contract for the gas supply was normal business standards, rate-wise within the industry. So that we received fair market value for the assets disposed of. We paid a fair administrative fee for the purchase of SaskPower's gas needs.

**Mr. Hillson:** — But I think it's clear though, that when the assets of Channel Lake were evaluated, that the 10-year supply contract was not part of that evaluation, was it?

**Mr. Mintz:** — I believe that the asset evaluation was strictly related to the assets of which Channel Lake owned at that point in time.

**Mr. Hillson:** — Right. And I believe that the material we have before us from Direct Energy is that they have placed a value on the 10-year supply contract of, I think it's \$500,000 per year.

**Mr. Mintz:** — I don't have that.

**Mr. Hillson:** — So that would be \$5 million according to their evaluation.

**Mr. Mintz:** — I believe at the time of the deliberation of the board of directors that the consideration for the sale of the Channel Lake assets was dealt with and that the board came to the conclusion that it had received fair market value for those assets. Upon that conclusion, we then dealt with the management contract for the supply of natural gas for SaskPower and that it was felt that we would be paying fair value for that contract. And it subsequently was then approved.

It is no different than the board dealing with many items during the course of a board meeting and each item is dealt with individually and you can't couple one to the other. Since the board makes a proper evaluation, it does its due diligence as to each individual contract.

**Mr. Hillson:** — Now in the telephone call you had on June 19 and then the board meeting of June 20, were you told that Mr. Portugal was working for the new Channel Lake?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — That was information before the board?

**Mr. Mintz:** — I believe that the board was informed that Mr. Portugal was no longer working for Channel ... or for Channel Lake — if I could use the term, the old Channel Lake; that he subsequently showed up on the directors' registrar, that he was a director for, I'll use the word, the new Channel Lake, and that as a result his services were terminated.

**Mr. Hillson:** — So that was information before the board of the June 20 meeting.

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — Was there any discussion of the board on June 20 or in your conversation on June 19 to the effect that if there was litigation to try and cancel the sale, that that might subject the corporation to negative publicity?

**Mr. Mintz:** — I believe that the discussion as to the possible termination of the sale was discussed in full and that all aspects of the possible ramifications of that cancellation were discussed. And that would have included, i.e., the cost of litigation, the prospect of winning, and most certainly if we had pursued that, given the past history of newspaper coverages within the province, it certainly would have hit the newspaper.

**Mr. Hillson:** — So the prospect of negative publicity was one of the issues raised?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — And was that prospect of negative publicity related to SaskPower's then attempts to enter into a deal in Guyana, that this would be a very poor backdrop to successfully negotiate an investment in Guyana?

**Mr. Mintz:** — Madam Chair, I don't believe that. I believe the meeting of the 20th, which I think was a conference call, dealt specifically with the sale of Channel Lake.

**Mr. Hillson:** — Okay. So while the issue of negative publicity was raised, you don't recall that being in the context of Guyana?

**Mr. Mintz:** — No.

**Mr. Hillson:** — Now I wanted to ask you, have you as a board member been a party to any discussions about the possibility of terminating Mr. Messer as chief executive officer and president?

**Mr. Mintz:** — I believe, Madam Chair, that the responsibilities of hiring and firing the executive officers of all the Crown corporations rests with CIC and that the Saskatchewan Power board received the resignation of Mr. Messer, and it was accepted.

**Mr. Hillson:** — Yes, but my question was, have you been any party to any discussions about the termination of Mr. Messer prior to that date, prior to March of 1998?

**Mr. Mintz:** — No.

**Mr. Hillson:** — Was there, at any time, any board motion of SaskPower to seek the resignation of Mr. Messer?

**Mr. Mintz:** — From the time I joined the board, no.

**Mr. Hillson:** — Are you aware of any motions to that effect?

**Mr. Mintz:** — From the time period I was on the board, no.

**Mr. Hillson:** — Yes, and are you aware of any such motion prior to you becoming a board member?

**Mr. Mintz:** — No.

**Mr. Hillson:** — So as far as you are aware, no such motion was ever made at the board level?

**Mr. Mintz:** — Not to my knowledge.

**Mr. Hillson:** — And do you know if any committee of the board made such a recommendation or discussed such a possibility?

**Mr. Mintz:** — No, Madam Chair.

**Mr. Hillson:** — So you have no information that there were ever previous attempts by the board or a committee to seek the resignation of Mr. Messer?

**Mr. Mintz:** — I believe, Madam Chair, . . . I do read the paper. I did hear what the Premier had indicated. That would be the extent of the knowledge I have as to that particular question.

**Mr. Hillson:** — And is that the first you were aware of that, from reading the press reports of this spring?

**Mr. Mintz:** — I believe that is.

**Mr. Hillson:** — Thank you. What ministers participated in the June 20 board meeting that decided to ratify the sale agreement?

**Mr. Mintz:** — I believe, Madam Chair, it's the Honourable Eldon Lautermilch.

**Mr. Hillson:** — And did Mr. Lautermilch make a recommendation at that time?

**Mr. Mintz:** — I believe he chaired the meeting, Madam Chair.

**Mr. Hillson:** — And did he make a recommendation to the board?

**Mr. Mintz:** — I believe the audit and finance committee, having reviewed the information prior to the board meeting, recommended to the board that the sale take place.

**Mr. Hillson:** — Pardon me?

**Mr. Mintz:** — I believe that the audit and finance committee's previous meeting, prior to this board meeting, presented to SaskPower's board of directors a recommendation that they conclude the sale of Channel Lake.

**Mr. Hillson:** — And that was at 7:30 that same morning?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — You met before the full board?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — Okay. And who was at that audit and finance committee meeting, sir?

**Mr. Mintz:** — Madam Chair, myself as chairman, Daryl Kuchinka, and Colleen Bailey, and as the corporate representative, the CEO, John Messer.

**Mr. Hillson:** — So no member of the government was present at that meeting then?

**Mr. Mintz:** — No.

**The Chair:** — Mr. Hillson, would you like to conclude your questioning.

**Mr. Hillson:** — So at the full board meeting they had before it a recommendation of audit and finance committee that the sale be ratified?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — Notwithstanding the fact that it was considerably different than the sale agreement that had been approved at the March meeting?

**Mr. Mintz:** — Madam Chair, my recollection is that at that meeting of June 20 of the full board at 9 a.m. that the subject was fully aired. All board members had the opportunity to ask any questions of anybody, i.e. management, as to what happened, the process as to where we ended up, and if my memory is right, at the . . . Prior to the vote on the motion, that each member was polled for a final time as to whether they had any further questions, and subsequent to that then the vote was taken.

**Mr. Hillson:** — How long did the board meeting last?

**Mr. Mintz:** — Madam Chair, I didn't have a clock on so I can't tell you. It was a reasonable time frame in which every member had the opportunity to ask any questions they wished.

**Mr. Hillson:** — Well did it go past noon?

**Mr. Mintz:** — No, Madam Chair.

**Mr. Hillson:** — Would it have been over by 11?

**Mr. Mintz:** — Madam Chair, I can't pick a time . . . between 9 and noon.

**Mr. Hillson:** — Okay. And how long was the audit and finance committee meeting?

**Mr. Mintz:** — Well, Madam Chair, the minutes indicated we had it at 7:30 and I believe the board meeting was at 9, so an hour and a half.

**Mr. Hillson:** — Thank you, Madam Chair.

**The Chair:** — Thank you, Mr. Hillson. We'll now move to the government side till approximately 4:25. Who is questioning from the government side — Mr. Tchorzewski?

**Mr. Tchorzewski:** — Shall do that. Good afternoon, Mr. Mintz. I hope not to repeat some of the questions already asked but I wanted to begin just to clarify some of the comments that have been made here for my own clarification, but also for the record.

I know that you were appointed to the board on October in 1994. And is it correct to say that you were then and did not become familiar with the SaskPower board minute respecting the purchase of the Dynex assets, which became Channel Lake? That's what . . . You indicated that?

**Mr. Mintz:** — Yes that's correct.

**Mr. Tchorzewski:** — And similar to the February 1994 board meeting wherein the trading of surplus gas to facilitate a supply of natural gas and the predictability of price was discussed, you were not familiar with that one either, because that came before you came on the board?

**Mr. Mintz:** — Yes. Can I clarify? Do I still say, Madam Chair?

**The Vice-Chair:** — I'm reluctant with that address to allow it. But go ahead.

**Mr. Tchorzewski:** — I'm glad you alerted me to this because I was not looking that way. Another question is, is it . . . do I understand that you were saying under I think questions, under questions of both Mr. Gantefoer and Mr. Hillson, that the Channel Lake board reported directly to the Saskatchewan Power Corporation board? And it did not report though the audit and finance committee, but it reported to the SPC board?

**Mr. Mintz:** — Mr. Chair, since Mr. Messer was a member of the Channel Lake board, it was the audit and finance committee's view that if Channel Lake was discussed he was there as a member of Channel Lake's board, as well as CEO of SaskPower. So it would I guess in essence be both.

**Mr. Tchorzewski:** — Thank you. The other thing because if you just look without looking at all of the words carefully on the Deloitte & Touche report which has been quoted here, it speaks to delegated oversight, but it also speaks to focusing on effective reporting of financial resource . . . results.

Is that the only focus that was the responsibility of the audit committee?

**Mr. Mintz:** — It is my understanding that that is the . . . was the request of the SaskPower board that we monitor the financial results of Channel Lake on behalf of the SaskPower board. The board felt that the Channel Lake board and our CEO, who was a member of that board, would ensure that any required information as it related to Channel Lake and its activities would be brought forward on a timely basis as part of their responsibility.

**Mr. Tchorzewski:** — The other question that I just wanted to clear before I went into my other line of questioning is . . . And I think I know the answer but I would like it for clarification on the record. At all times it was the Channel Lake or Channel Lake Petroleum Ltd. that was involved with the trading with regard to natural gas and not SaskPower itself, but strictly the subsidiary

**Mr. Mintz:** — Yes.

**Mr. Tchorzewski:** — Is it correct to say that the trading of natural gas was specifically — even though that was the case — that the trading of natural gas was specifically discussed at the SaskPower board meetings? And was it on a regular basis?

**Mr. Mintz:** — No. It would not have been discussed on a specific or on a regular basis. I believe that what was discussed was the financial results of Channel Lake; how it was progressing from month to month, whether it was making a profit, whether it was breaking even, whether it had sustained a loss, and the overall results of its operations.

**Mr. Tchorzewski:** — Sir, I think you've answered my next question which was going to deal with whether it was just over . . . whether it concerned itself with overall activities such as the making of the profit and that's basically what it was mainly concerned with.

**Mr. Mintz:** — Yes.

**Mr. Tchorzewski:** — When the SPC board began considering sale of the Channel Lake assets, I believe their intention was focused on whether the sale could be achieved through a royalty trust. That's initially what they were trying to do. Is that correct?

**Mr. Mintz:** — Yes initially, Mr. Chair, Mr. Christensen brought forward the idea that as tax laws have changed, there would be a possibility . . . This is a reasonably new method of disposing of gas and oil properties and allowing the purchaser of the royalties to perhaps defer some tax or get a favourable return on their investment rather than . . . But the brokerage house who we approached indicated that it was much too small for any brokerage house to consider marketing; the cost would be too prohibitive.

**Mr. Tchorzewski:** — So was it thought then when they decided to not use a royalty trust that other methods would get a better price? Was that the main reason for that decision?

**Mr. Mintz:** — Mr. Chair, at the time when the information

came back that the trust was not a viable option that . . . we then discussed the five prospective inquiries as to the sale of Channel Lake. And we obviously then pursued the DEML one because it was the highest.

**Mr. Tchorzewski:** — Thank you. There was a meeting of the SaskPower board on March 27, 1997. You were present at that meeting?

**Mr. Mintz:** — Yes.

**Mr. Tchorzewski:** — Was Mr. Lawrie or Lawrence Portigal also present at that meeting or a portion of it?

**Mr. Mintz:** — Mr. Chair, the minutes indicate that Mr. Portigal was there for part of the meeting.

**Mr. Tchorzewski:** — Just part of the meeting.

**Mr. Mintz:** — Yes.

**Mr. Tchorzewski:** — But he would have been there during the discussion on Channel Lake, the DEML offer, everything related to Channel Lake.

**Mr. Mintz:** — I believe, Mr. Chair, that the support people, when they do attend board meetings, attend for the specific time frame that we are discussing matters that concern them. And in this case Mr. Portigal would have attended during the proposed sale of Channel Lake.

**Mr. Tchorzewski:** — Thank you. I think you indicated that — correct me if I misinterpret what was said here earlier — but I understood you to say, in answering Mr. Hillson, that the SaskPower board members were quite satisfied with the DEML or DEML offer which they understood to be \$26 million, from which trading losses would then be deducted.

**Mr. Mintz:** — Mr. Chair, I believe that at no time did the SaskPower board discuss anything other than a 27 roughly million dollar transaction, less the trading losses for a net of 20.8.

**Mr. Tchorzewski:** — So that was the clear understanding and it was some discussion that would indicate that.

**Mr. Mintz:** — I believe, Mr. Chair, that the discussions at that board meeting were very specific as to the intent, the net dollar figure of 20.8. And that there should be no one, and I mean absolutely no one in that room, even the janitor if he was there, would understand that this was not a net 20.8 in SaskPower's pocket.

**Mr. Tchorzewski:** — Thank you. There was also a report by Gilbert Laustsen for . . . an appraisal report of \$20.8 million. Were the board members aware of that appraisal report by Gilbert Laustsen?

**Mr. Mintz:** — Yes. Mr. Chair, I believe that that was one of the main topics of discussion, is if we are going to sell Channel Lake, what is its value. In order for us to do our proper due diligence of the board, we need to know the fair market value of what we are selling and that was discussed.

**Mr. Tchorzewski:** — Thank you. You indicated that, earlier, that Mr. Portigal was present in the room during this discussion. My question then is, did he make any comment on the DEML offer, one way or the other, that it was 26, \$27 million, or that there were some other possibilities. Did he speak to this at any time?

**Mr. Mintz:** — Mr. Chair, I believe that Mr. Christensen provided the information on behalf of the possible sale of Channel Lake and its financial results to SaskPower. But Mr. Portigal was there as an additional resource person but he did not speak directly to the board.

**Mr. Tchorzewski:** — And the report presented by Mr. Christensen would have, in the board's opinion and certainly in your opinion, made it clear that the expectation was 26, \$27 million less trading losses.

**Mr. Mintz:** — At no time, Madam Chair, did the board ever consider anything less than net to SaskPower of 20.8 million. That's as clear as I can make it.

**Mr. Tchorzewski:** — And I appreciate that. What I'm trying to do is whether Mr. Portigal at any time during this discussion — I think you've answered the question — intervened to point out that there was something not quite accurate in that presentation.

**Mr. Mintz:** — Madam Chair, at no time did he intervene and at no time did he mention or ask to be heard and to clarify that if in fact that isn't what we were dealing with. I felt that in hindsight, if he felt that we weren't dealing with the right number, that it would be his responsibility as one of the negotiators to come forward and say, excuse me, gentlemen, we're not dealing with the right number. At no time did that happen.

**Mr. Tchorzewski:** — Thank you. Let me ask about something else here. During the deliberations of this committee and in some of the reports that we have all had access to, it is pointed out that Ernst & Young were the external auditors for SaskPower in 1994, and that . . . and the important thing is that they issued a letter to SaskPower management which mentioned the risk management policies of Channel Lake. Were you aware of that letter?

**Mr. Mintz:** — Yes, I believe it was discussed at the audit and finance committee as part of our due diligence. And that I also believe the following year that after the audit that they felt that this had been dealt with, and that as a result, they did not issue a management letter that indicated that this problem had continued. Therefore it was the audit and finance committee's view that . . . And our external auditor would have a responsibility to tell us if in fact that type of a problem had continued. They indicated that it had been corrected.

**Mr. Tchorzewski:** — The 1994 letter, it was before the audit and finance committee. Was it just because it was there that action was taken for 1995, or that the audit and finance committee actually give some instruction that it be corrected?

**Mr. Mintz:** — I believe that the external auditor has a responsibility to bring any particular concerns they have to the audit and finance committee. And that at the time of discussing

the audit and finance ... the management letter, Mr. Christensen had indicated that the risk management was, in fact, being worked on; that the accounting reporting that Channel Lake was providing was being improved, i.e., the costing of the natural gas coming out of the wells, etc.

And there was an ongoing process in that there were steps being taken to ensure that proper risk management and financial reporting was being improved. And that the subsequent year, 1995, since the external auditor indicated that these had been corrected, the audit and finance committee felt that the board of directors of Channel Lake and their executive had met the external auditors' requirements.

**Mr. Tchorzewski:** — Thank you. You referred earlier in the discussions, and I'm trying to avoid asking the same questions here again, but I think there was some reference here that it was on the June 20 board meeting that the board members were made aware that Lawrence Portigal had been dismissed from his duties at SaskPower.

The question I want to ask that comes from that is was there any discussion at the board meeting about Mr. Portigal potentially being in a conflict of interest prior to this because of the situation?

**Mr. Mintz:** — Madam Chair, are you saying prior to the June 20 meeting?

**Mr. Tchorzewski:** — Yes. Or at any time was it thought by the board, or was there discussion of the board about the potential conflict of interest that may have existed?

**Mr. Mintz:** — Madam Chair, I don't recall the specific date. However there was a discussion as to when we learned that Mr. Portigal was now a director of Channel Lake — new one — that we certainly had a great deal of discussion as to the possible conflict of interest and/or possible suit we could start against him. It was discussed fully.

**Mr. Tchorzewski:** — And it was decided ... it was a decision that there would be no suit pursued?

**Mr. Mintz:** — No, I believe that it was simply stated at that point in time until, in this case, this inquiry is concluded.

**Mr. Tchorzewski:** — Okay. I think Mr. Fair referred to that earlier this morning.

**Mr. Mintz:** — Yes.

**Mr. Tchorzewski:** — And I understand that. One other thing that was raised in this committee earlier was the question of the legal opinions — one by the Calgary firm, which you indicated, was presented in some detail verbally and discussed at the board. There was also a legal opinion by Mr. Brian Kenny of MacPherson Leslie & Tyerman. Was that also brought to the board and discussed in detail?

**Mr. Mintz:** — My only recollection, Madam Chair, would be the legal opinion by the Calgary firm. There may have been the other one brought but from my personal knowledge the Calgary one sticks out.

**Mr. Tchorzewski:** — And I think just so that I understand clearly the answer, you weren't sure or ... You indicated there was a detailed verbal report presented on the Calgary firm, but I'm not sure whether I recall what comment you made about whether there was the written form of the report provided to the board.

**Mr. Mintz:** — I believe, Madam Chair, that I did see the written report of the Calgary firm although I did not keep a copy of it, but I was allowed to read it. And that the presentation given to us by SaskPower executives concurred precisely with what was written.

**Mr. Tchorzewski:** — Thank you. I think Mr. Kowalsky wanted to ask one or two questions.

**Mr. Kowalsky:** — Thank you. Good afternoon, Mr. Mintz. Could you tell us, in your own professional experience who you are working with currently and what is the nature of your job.

**Mr. Mintz:** — Presently I'm the senior partner with my own public practice, chartered accountants firm of Mintz & Wallace. And I've been a CA for 31 years.

**Mr. Kowalsky:** — Thank you. And in your job you mentioned it is the duty as chair of the audit committee to review the bottom line figures on a monthly and annual basis. Is that correct?

**Mr. Mintz:** — Yes.

**Mr. Kowalsky:** — Of Channel Lake?

**Mr. Mintz:** — Yes.

**Mr. Kowalsky:** — Could you tell me what the bottom line is for Channel Lake in your opinion, now that it's been bought and sold? And in the end, how much is it costing the taxpayer of Saskatchewan?

**Mr. Mintz:** — Madam Chair, I believe the numbers extrapolated by SaskPower executives of finance indicated an overall ... from start to finish, of owning and selling Channel Lake, indicated an overall net profit of \$4 million.

**Mr. Kowalsky:** — And do you concur with that?

**Mr. Mintz:** — Madam Chair, I did not go through the detailed numbers to verify it. That wouldn't be my responsibility.

**Mr. Kowalsky:** — You don't have any reason to question that figure?

**Mr. Mintz:** — No, I would not question that figure.

**Mr. Kowalsky:** — So the overall experience of Channel Lake did not cost the taxpayers any money. In fact, Channel Lake turned a profit to SaskPower.

**Mr. Mintz:** — Based on the information available to me, yes.

**Mr. Kowalsky:** — And despite all the talk about losses, which has received far more press than anything about profits, the net

bottom line is approximately a \$4 million profit to SaskPower and to the province or to the taxpayers of Saskatchewan.

**Mr. Mintz:** — Based on the information I have, yes.

**Mr. Kowalsky:** — Thank you very much.

**The Chair:** — Thank you. Are there any further questions from any members of the government side? No. We'll then . . . I will ask Mr. Goohsen if you have any questions. Proceed.

**Mr. Goohsen:** — I just wanted to follow up on your numbers here. If Channel Lake made \$4 million in all of their years of experience in the province, and if in fact they lost \$5.2 million as you indicated earlier in your testimony, in the transaction of the sale, then in the end they could have potentially have made \$9.2 million as a profit. So we really did lose \$5 million in the whole scheme of things, even though you sold it for a higher price than what you bought for.

**Mr. Mintz:** — I believe, Madam Chair, that the figures I gave were based on the 15.2 million and as a result that is what the assets were sold for. So as a result, based on the numbers provided to me, we in fact made \$4 million based on the history of owning Channel Lake.

**Mr. Goohsen:** — Now you indicated that, at this meeting that you've been talking about here, that Mr. Portigal sitting in the background said nothing when the \$20.8 million net figure was discussed and presented to the board by Mr. Christensen. And so I guess my question is, at that point, do you think Mr. Christensen knew the difference between the net and the gross?

**Mr. Mintz:** — I believe at no time, Madam Chair, there was any discussion entered into by Mr. Christensen, other than the fact that the gross selling price was 27 and the net was 20.8.

**Mr. Goohsen:** — So following the mandate that is used for the operation of the FBI (Federal Bureau of Investigation) in the United States, which is that you never stop an investigation until you lay blame, if we continue this investigation until we find out who's to blame, who in your opinion will we attach that blame to?

**Mr. Mintz:** — I believe, Madam Chair, that that's the privy of the committee and not of myself.

**Mr. Goohsen:** — Well, I appreciate your answer but I think you've already laid blame by suggesting that Mr. Portigal was in the room and didn't correct the figures. If you want to correct that observation, you may.

Otherwise I would ask you another question about the board of Saskatchewan Power Corporation and the board of Channel Lake — the old Channel Lake, not the new. Who appoints those two boards? Would that be the same persons?

**Mr. Mintz:** — I have no knowledge. I do know, Madam Chair, that the SaskPower board is appointed by order in council of the legislature, I believe.

**Mr. Goohsen:** — Yes, I believe you're correct. But anyway, what about the board of the Channel Lake operation?

**Mr. Mintz:** — I have no knowledge as to who would have appointed them, Madam Chair.

**Mr. Goohsen:** — Well I guess we'll ask somebody else that knows. But I would ask you then, would they not be paid by the same group of people or the same institution?

**Mr. Mintz:** — I think if the board of Channel Lake is paid, it would be paid for their deliberations by Channel Lake, similar to SaskPower's board being paid by SaskPower.

**Mr. Goohsen:** — So as the auditor you would see then that any remuneration they might receive would be accounted for in their yearly statement, theirs being Channel Lake's yearly statement, and that would not be reflected in the SaskPower general accounting.

**Mr. Mintz:** — Madam Chair, I'm not the auditor of Channel Lake.

**Mr. Goohsen:** — So as the auditor of SaskPower, did you ever see a bill related to the payment of anybody in Channel Lake?

**Mr. Mintz:** — Madam Chair, I'm not the auditor of SaskPower.

**Mr. Goohsen:** — Okay, is the auditor . . . let's see, what was your term here. You were the head of the audit committee. In that role, did you ever see that?

**Mr. Mintz:** — Madam Chair, we received financial statements from SaskPower. Given the amount of dollars that would relate to specific board remuneration, it would not show up specifically in the financial statements. It would be in a much larger dollar figure, which would encompass a much larger area of expenditures.

**Mr. Goohsen:** — You're aware that the Provincial Auditor is the one that raised the so-called red flag that brought this committee into existence, and the hearings that we're at? Do you agree with that?

**Mr. Mintz:** — I'm not aware as to who raised the red flags and as to who constituted this committee other than the legislature.

**Mr. Goohsen:** — Well it would be as a result of the findings of the Provincial Auditor that people became aware that there needed to be an investigation. What would he know that you wouldn't know?

**Mr. Mintz:** — Madam Chair, you'll have to ask him.

**Mr. Goohsen:** — I think we already have. I don't think I have any further questions.

**The Chair:** — Thank you very much, Mr. Goohsen. Mr. Gantefer, would you like to put any further questions to Mr. Mintz?

**Mr. Gantefer:** — No, Madam Chair.

**The Chair:** — Thank you. Mr. Hillson do you have further questions for Mr. Mintz?

**Mr. Hillson:** — Yes, just a couple. Thank you, Madam Chair. I believe I heard you say a few minutes ago that the offer of Direct Energy was pursued because it was the highest offer.

**Mr. Mintz:** — Yes, Madam Chair.

**Mr. Hillson:** — So was the board not informed that in fact there were better offers received — what appeared on the face of it to be more attractive offers?

**Mr. Mintz:** — I believe, Madam Chair, that there was a discussion as to five offers and that the DEML offer was the highest.

**Mr. Hillson:** — Is that the sum total of the information the board had, that there had been five offers but the highest was from DEML?

**Mr. Mintz:** — I believe, Madam Chair, that the specific companies and the amounts were discussed. I don't have the specifics, but that the DEML offer was the highest one.

**Mr. Hillson:** — So you weren't told that there was in fact at least one better offer? The Stampeder offer I believe was supposed to be a half million dollars higher.

**Mr. Mintz:** — I believe, Mr. Chair, that having read in the newspaper that there was a so-called another offer which the newspaper article referred to as Mr. Portigal having had received it and had indicated that it was not presented because, for whatever reason, he didn't like the company. But that offer was never presented to the board.

**Mr. Hillson:** — So you as a board member were never aware of that?

**Mr. Mintz:** — No.

**Mr. Hillson:** — Okay. So the only information you or other board members would have had was to the effect that Direct Energy was the best offer that had been received?

**Mr. Mintz:** — The information that the board had to deal with, Mr. Chairman, was that there were five offers and that the DEML offer was the highest and as a result that offer was pursued by management.

**Mr. Hillson:** — And when did you first hear the details of the Stampeder offer being better? Was that only through the press reports this year?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — Okay. Now in terms of the capital side of Channel Lake, my understanding is that we purchased the company for 25 million and sold it for just over 15 million. Is that correct, sir?

**Mr. Mintz:** — I have no knowledge of the original purchase price but I do know of the selling price.

**Mr. Hillson:** — Okay. Well again the minutes I referred to earlier authorized a purchase of the Dynex assets for 25 million.

Does that sound right to you, sir?

**Mr. Mintz:** — Madam Chair, I believe if the purchase price was 25 million, that since the date of purchase to the date of sale, significant reserves of Channel Lake would have been used and/or sold. So that what you originally bought at 25 million, if you used the natural gas out of the various properties for a period of time, that most definitely the price of the assets at the time of the independent evaluation, which I believe was 20.1 million, the property would have decreased in value because of usage.

**Mr. Hillson:** — And the trading . . . So we purchased it for 25 million, sold it for 15, and in the last year of operations we had \$8 million in trading losses. We'd had profits before then but in the last year we had \$8 million in trading losses, I believe.

**Mr. Mintz:** — I believe, Madam Chair, that the \$8 million you refer to is a result of two bankruptcies.

**Mr. Hillson:** — But is that correct? Were those the trading losses — 8 million?

**Mr. Mintz:** — I believe that the information, Madam Chair, is that the final number will not be known until such time as the last contract is fulfilled. But the range is 5 to \$7 million based on the information given to the board at this point in time.

**Mr. Hillson:** — So are you saying the board is still operating under trading losses of 5 to 7 million? That you haven't had that updated to 8 million?

**Mr. Mintz:** — I believe, Madam Chair, that the last contract I do not believe has been finalized. However, that I could find out from Mr. Christensen as there is a detailed listing.

**Mr. Hillson:** — Okay. So are you saying the most up to date information that the board has received is that the trading losses are 5 to 7 million?

**Mr. Mintz:** — Yes.

**Mr. Hillson:** — And you haven't had that figure updated?

**Mr. Mintz:** — I believe that the final number will be provided to us upon completion of the last contract.

**Mr. Hillson:** — Fine. Thank you, Mr. Mintz. I have no further questions.

**The Chair:** — Do any other committee members have any other questions? Are there any further questions for Mr. Mintz? Mr. Mintz, did you wish to make a closing statement now or . . .

**Mr. Mintz:** — No, Madam Chair.

**The Chair:** — No. All right. You may of course reserve your right to table a written closing statement with the committee no later than noon, July 6.

**Mr. Mintz:** — Thank you.

**The Chair:** — Thank you. And thank you very much for your

attendance on the committee.

Do committee members have any procedural matters they wish to raise at this time?

**Mr. Gantefer:** — Madam Chair, there's one issue that may be appropriate at this time. It's the question out of a discussion that you and I had last week in terms of the requirement of the television services into next month. I don't know if that's a procedural issue you wish to discuss at this time or defer it to tomorrow or another day.

**The Chair:** — Well I would just seek committee guidance on this. It appears that we may probably be finished completing all our testimony from witnesses by June 30. The television cameras are extremely expensive to maintain here. I would anticipate that the next public meeting we have after we've finished with testimony from witnesses would be on or about the time that we release the report at which point, if committee members were agreeable, we could simply allow the commercial media outlets to come in and film as they choose.

So I'm in the hands of the committee. My suggestion would be that we could possibly give notice to media services now that we won't require television cameras after June 30.

**Mr. Gantefer:** — Yes, Madam Chair. That certainly follows the discussion that we had. It seemed to me that there's a very high likelihood that the witnesses will be completed at the end of this current month and that it certainly is . . . If there are any further meetings that have to occur in terms of the preparation of the report, all of those events would be covered by *Hansard* so they are on the public record. And I think that that is more than adequate.

So I certainly would be in agreement that we serve notice that the television cameras are no longer required at the end of the receipt of testimony anticipated to be this Tuesday next.

**The Chair:** — Thank you.

**Mr. Tchorzewski:** — I appreciate Mr. Gantefer's comments because putting aside all of the kind of things we do here and everything else, I think we really do have to be cognizant of costs. I mean the taxpayer is paying for this, and I think Mr. Gantefer's comments are appropriate under those circumstances. Since the next meeting after we finish hearing the witnesses may not take place for two, three weeks, it seems not to make sense.

If I was a fellow taxpayer out there looking at it from the other side, I'd wonder why we're paying that kind of extra expenditure. So I would concur with what Mr. Gantefer is saying.

**The Chair:** — Yes that's exactly the point that Mr. Gantefer raised with me when we discussed it. Are there any other comments from any committee members?

**Mr. Hillson:** — I certainly have no objection to releasing the media services, and of course as has been pointed out, there would be a *Hansard* in any event.

But regarding your comment that the witnesses will be finished on June 30, my understanding is that my request that we should hear from some board members and specifically from Derk Kok, that that was not ruled on but was something that was held in abeyance pending, you know, being further down in the testimony so that we could have a further look at what is necessary for the inquiry to complete its work.

**Mr. Tchorzewski:** — Mr. Hillson is correct. We did indicate that as we completed the list of witnesses we had, we would obviously, because it's the right of any committee member to raise for the witnesses, we would need to address that question.

I would suggest that we still stick with that and that we address that question next week when we have disposed of what we've now heard witnesses today and we will hear the experts tomorrow. And we will hear the ministers next week. And at that time I think we should have a serious look at whether we still feel we need further witnesses and consider other requests that no doubt will be coming to the committee.

**Mr. Hillson:** — Very well.

**Mr. Gantefer:** — Madam Chair, for information is the service provided for television by media service, is that a monthly contract or is it a daily contract or is it . . . to understand how that works, how does that contract work?

**The Chair:** — No, we would be . . . We would have to contract them for the full month of July. This is the problem that we have, is we're running into a little bit of a time crunch right now . . . (inaudible interjection) . . . No I don't. As far as I'm aware, it's a monthly contract and there also is the requirement to give proper notice to the camera operators as well, with respect to termination of their contractual employment. So those are some of the factors that are causing a bit of a problem right now. So that's why I'm asking the committee members to make a decision whether or not we would have the live television services during the month of July.

**Mr. Gantefer:** — Madam Chair, I certainly do appreciate the fact that it would be inappropriate for the committee at this stage to preclude that any other witnesses may indeed be called. And it does put us on the horns of a dilemma. I still feel that if in the eventuality there would be a requirement for further witnesses, that since it's covered in *Hansard* that that would be adequate. And so that by the fact of us agreeing to not require the television cameras for the month of July, it in no way precludes the committee's opportunity to either call for the witnesses or recall a witness that's already been there, given the fact that *Hansard* would fully cover it and I would expect that the media would also cover it.

**The Chair:** — Yes, thank you. I think that's very well stated, Mr. Gantefer. Can I take it then that it is the committee's wish that we inform the broadcast services that television coverage is not required past June 30? Thank you.

**A Member:** — Are we adjourned?

**The Chair:** — Mr. Thomson had a matter he wanted . . .

**Mr. Thomson:** — I move that we adjourn.



**The Chair:** — Before I accept your motion for adjournment, Mr. Thomson, we do have some documents to distribute. At various points during the proceedings, various witnesses have made certain undertakings and I did send out letters to them asking them to comply with those undertakings. I do have four documents that will be distributed now. And so I would ask the page to distribute those for committee members.

And we will now stand adjourned until 9 o'clock tomorrow morning, at which point we will hear testimony from the two expert witnesses from Calgary. Committee members, one of the witnesses does have a flight that she has to catch back to Calgary at 2 o'clock, so I would ask your cooperation. We will hear testimony first of all from the representative from Sproule Associates, Nora Stewart; and then we will hear from the other gentleman.

Mr. Thomson, you may put your motion now.

**Mr. Thomson:** — I move that we adjourn.

**The Chair:** — Thank you. Committee is adjourned until 9 a.m. tomorrow morning.

The committee adjourned at 4:35 p.m.