

## STANDING COMMITTEE ON CROWN CORPORATIONS

October 14, 1998

### MINUTE NO. 53

2:00 p.m. - Room 10

1. **PRESENT:** Ms. Lorje in the Chair and Members Boyd\*, Gantefoer\*, Hamilton, Hillson, Kowalsky, Shillington\*, Stanger\*, Tchorzewski\* and Trew.

Mr. Boyd substituting for Mr. Heppner  
Mr. Gantefoer substituting for Mr. Bjornerud  
Mr. Shillington substituting for Mr. Kasperski  
Ms. Stanger substituting for Mr. Renaud  
Mr. Tchorzewski substituting for Mr. Johnson

#### **Other Members**

Mr. Flavel, Mr. Goohsen, Mr. Osika, Mr. Wall.

#### **Staff to the Committee**

Ms. Margaret Woods, Clerk to the Committee  
Mr. Ted Priel, Special Advisor to the Committee

2. The Chair advised the Committee that she had received the following documents, which she then tabled:

**CCC 101/23 - Lawrence S. Portigal:** Closing Statement submitted on behalf of Lawrence Portigal, dated July 6, 1998

**CCC 102/23 - Lawrence S. Portigal:** Statutory Declaration of Lawrence S. Portigal, dated July 3, 1998

**CCC 103/23 – Direct Energy Marketing Ltd.:** Closing Statement submitted on behalf of Direct Energy Marketing Ltd., dated July 6, 1998

**CCC 104/23 - Lawrence S. Portigal:** Responses to undertakings made by Lawrence Portigal at the May 13, 1998 meeting regarding the directorship and offices held by Mr. Portigal, dated July 6, 1998

**CCC 105/23 – KPMG Chartered Accountants:** Correspondence from KPMG (per: Mark J. Lang) to Pat Lorje, Chair, Standing Committee on Crown Corporations, dated July 2, 1998, re: request for information from Direct Energy Marketing Ltd. (confirmation of price paid to purchase shares of and note issued by Channel Lake Petroleum Ltd.)

**CCC 106/23 - Saskatchewan Power Corporation:** Closing Statement submitted on behalf of Saskatchewan Power Corporation, dated July 6, 1998

**CCC 107/23 - John R. Messer:** Closing Statement submitted on behalf of Mr. John R. Messer, dated July 6, 1998

**CCC 108/23 – New Democratic Party Caucus:** Channel Lake Enquiry – Draft Committee Report, dated August 13, 1998

**CCC 109/23 – Saskatchewan Party caucus:** Response of the Official Opposition to the NDP Report on Channel Lake, dated August 18, 1998

**CCC 110/23 – Liberal Party caucus:** Channel Lake Report released by the Liberal Opposition, dated August 19, 1998

**CCC 111/23 – Saskatchewan Party caucus:** Report of the Official Opposition to the Standing Committee on Crown Corporations – the Channel Lake Petroleum Scandal and the Firing of Former SaskPower President Jack Messer, dated September 1998

3. The Chair advised the Committee that the Sub-committee on Drafting had met earlier that morning and had prepared a draft report for the consideration of the full Committee. The Chair invited Mr. Shillington, as chair of the Sub-committee, to identify its membership and to report on its proceedings. Other Members of the Sub-committee made further comments on its proceedings.
4. A discussion ensued regarding the inclusion of all approved recommendations as an appendix in the final report. It was agreed to do so.
5. Mr. Shillington tabled a revised version of the N.D.P. caucus' report into the Channel Lake matter and briefly identified what revisions had been made.

**CCC 112/23 – New Democratic Party Caucus:** Channel Lake Enquiry – Draft Committee Report, dated October 14, 1998

6. The Committee considered the N.D.P. caucus' draft report. A discussion ensued and it was moved by Mr. Shillington:

That the Committee adopt the government's draft report dated October 14, 1998, except for the following recommendations contained in the Findings and Conclusions section in paragraphs 9, 13, 33, 35, 38, 46, 48, 49, 51, 68 to 77 inclusive and 81, which will be voted on separately.

The question being put and a debate arising, the motion was agreed to.

7. The Committee considered recommendation #1, being paragraph 9. It was moved by Mr. Shillington:

Mr. Michael Hurst was negligent in not supplying copies of all drafts of the sale agreement to Mr. Kram, as required by his letter of engagement. It would be appropriate for this fact to be borne in mind should Mr. Hurst be considered for future retention as a lawyer by any arm of government or the crown sector.

The question being put and a debate arising, the motion was agreed to.

8. The Committee considered recommendation #2, being paragraph 13. It was moved by Mr. Shillington:

It would be appropriate for these facts to be borne in mind should Mr. Portugal be considered for a role of any kind in any future transaction, involving any arm of government or the crown sector.

The question being put and a debate arising, the motion was agreed to.

9. The Committee considered recommendation #3, being paragraph 33. It was moved by Mr. Shillington:

We note that the Executive Director of the Civil Law Division of the Department of Justice, Mr. Daryl Bogdasavich, Q.C., was unambiguously clear in his legal opinion that at law, Mr. Messer was due approximately 18 months salary in lieu of notice if terminated. Mr. Fair and the solicitor he consulted arrived at essentially the same conclusion. Ms. Batters demurred. Faced with conflicting legal opinions, in our view it is generally appropriate for government to base legal decisions on the advice of the Department of Justice. Having reviewed the evidence, we see no compelling reason to recommend that Mr. Fair's decision be revisited.

The question being put and a debate arising, the motion was agreed to.

10. The Committee considered recommendation #4, being paragraph 35. It was moved by Mr. Shillington:

Mr. Wright testified that CIC is implementing a substantial new training program for members of Boards of Directors and key Board committees. We also note that the membership of Boards of Directors is undergoing renewal. We have additional recommendations to make below regarding crown governance.

The question being put and a debate arising, the motion was agreed to.

11. The Committee considered recommendation #5, being paragraph 38. It was moved by Mr. Shillington:

As noted above, Mr. Wright testified that CIC is implementing a substantial new training program for the members of Boards of Directors and key Board committees. We also note that the membership of Boards of Directors is undergoing renewal. We have additional recommendations on crown governance to make below.

The question being put and a debate arising, the Committee deferred its decision on this motion until later in the meeting.

12. The Committee considered recommendation #6, being paragraph 46. It was moved by Mr. Shillington:

CIC officials should have acted earlier. Although the information provided was gravely deficient, the Crown Investments Corporation was in possession of sufficient information after the June 20<sup>th</sup> meeting of the SaskPower Board of Directors to know that serious issues had arisen around Channel Lake. CIC should have recommended that the SaskPower Board order an independent review of the issues that had arisen – or undertaken such a review itself if the Board failed to do so.

The question being put and a debate arising, the motion was agreed to.

13. The Committee considered recommendation #7, being paragraph 48. It was moved by Mr. Shillington:

That the President and CEO of Crown Investments Corporation (or a senior CIC Vice-President) should be appointed to the Board of Directors of SaskTel, SaskPower,

SaskEnergy, Saskatchewan Government Insurance and Saskatchewan Transportation Company.

The question being put, the motion was agreed to.

14. The Committee considered recommendation #8, being paragraph 49. It was moved by Mr. Shillington:

The President and CEO of CIC (and the other officers of CIC) should assume a greater role in ensuring that the Minister responsible for the crown sector and the Board of CIC are fully and appropriately briefed on issues; for ensuring that the Boards of Directors of these crowns are provided with the information and resources they require to do their jobs; and for ensuring that management faithfully implements board policy.

The question being put, the motion was agreed to.

15. The Committee considered recommendation #9, being paragraph 51. It was moved by Mr. Shillington:

To assist the President and the CEO of CIC, the corporate secretary of the Boards of each of these Crowns should be an officer or employee of the Crown Investments Corporation. A specific individual should be assigned to each Crown by CIC. This individual should be assigned not only to record Board proceedings, but to analyze and understand the business decisions before the Board, and the manner in which the Board policy is implemented.

The question being put, the motion was agreed to.

16. Mr. Shillington deferred moving recommendation #10, being paragraph 68, in favour of the similar recommendation proposed by the Saskatchewan Party, identified as recommendation 35 on page 6 of their draft report.
17. The Committee considered recommendation #11, being paragraph 69. It was moved by Mr. Shillington:

Each Crown corporation should prepare a strategic plan founded upon the shareholders' objective for that Crown corporation, and which includes specific reference to the role for investment, expansion and divestment and diversification initiatives.

The question being put, the motion was agreed to.

18. The Committee considered recommendation #12, being paragraph 70. It was moved by Mr. Shillington:

Building on current practice, annual approved business plans should be prepared for all controlled subsidiaries, which include performance expectations, resource allocation and capital/operating budgets. These business plans should be approved and regularly monitored by the Board of Directors of the parent Crown corporation.

The question being put, the motion was agreed to.

19. The Committee considered recommendation #13, being paragraph 74. It was moved by Mr. Shillington:

Subsidiaries should only be created and divested after clear, complete, timely prior approval by the Crown Board and the CIC Board.

The question being put and a debate arising, Mr. Hillson moved the following amendment:

That the phrase “and order in council.” be added after the words “CIC Board”

The question being put on the amendment and a debate arising, the amendment was agreed to. The question then being put on the motion as amended, it was agreed to.

20. The Committee considered recommendation #14, being paragraph 72. It was moved by Mr. Shillington:

Subsidiaries should be required to report significant transactions in a clear, unambiguous and timely fashion to their parent Crown Boards. Fundamental transactions involving substantial amounts of money should be reported to CIC Board and to Cabinet in a clear, unambiguous, and timely fashion – and are subject to the significant transactions rules of the Legislature’s Crown Corporations Committee.

The question being put, the motion was agreed to.

21. The Committee considered recommendation #15, being paragraph 73. It was moved by Mr. Shillington:

The Boards of both parent Crown corporations and of subsidiaries should meet regularly and in logical order, in step with key committees. Meetings should be held properly, face-to-face, when dealing with substantive matters.

The question being put and a debate arising, the motion was agreed to.

22. The Committee considered recommendation #16, being paragraph 74. It was moved by Mr. Shillington:

CIC should prepare and table a report before this committee on its efforts to implement an appropriate training program for the Directors of Crown corporations – and suggest further improvements for our review.

The question being put and a debate arising, the motion was agreed to.

23. The Committee considered recommendation #17, being paragraph 75. It was moved by Mr. Shillington:

Management information and monitoring systems should be carefully reviewed by CIC, consistent with the needs of commercial enterprises engaged in increasingly competitive markets. Clear, unambiguous and timely monthly performance reports should be provided to Crown boards. Clear, unambiguous and timely quarterly performance reports should be provided to the Board of CIC.

The question being put, the motion was agreed to.

24. The Committee considered recommendation #18, being paragraph 76. It was moved by Mr. Shillington:

CIC should coordinate regular an appropriate executive management reviews in Crowns and their subsidiaries. Appropriate action should be taken to respond to management which is deficient in meeting in responsibilities.

The question being put, the motion was agreed to.

25. The Committee considered recommendation #19, being paragraph 77. It was moved by Mr. Shillington:

Because the Government of Saskatchewan is a single interest, it is inappropriate for officers of Crown or subsidiaries to use public funds to retain outside consultants or attorneys for the purpose of undermining, frustrating or delaying direction properly given to them by CIC or the Government.

The question being put, the motion was agreed to.

26. The Committee considered recommendation #20, being paragraph 81. It was moved by Mr. Shillington:

As outlined in several opinions rendered by the Civil Law division of the Department of Justice, three factors (the likely difficulty in proving real damages; the contributory negligence of SaskPower officials; and the decision taken by the SaskPower Board on June 20, 1997) make it highly unlikely that the public interest would be served by launching civil actions against any of the parties involved in these events. We have heard no evidence that suggests this is not still true today. We therefore do not recommend that civil action be launched. We do not, of course, preclude civil action if further information comes to light justifying it.

The question being put and a debate arising, the motion was agreed to.

27. The Committee recessed from 3:45 p.m. until 4:10 p.m.

28. The Committee resumed consideration of recommendations 4 and 5, being paragraphs 35 and 38. It was moved by Mr. Shillington:

That recommendation 4, being paragraph 35, earlier adopted, be rescinded and further that it, together with recommendation 5, being paragraph 38, be replaced with the following recommendation:

That CIC implement a substantial new training program for the members of the Board of Directors and key board committees.

The question being put, the motion was agreed to.

29. The Committee directed the Clerk to ensure that all recommendations are redrafted in the customary format to enable them to stand alone. The Chair advised the Committee that she would circulate a copy of the final draft report to all parties and obtain each party's approval prior to having the report printed.

30. The Committee began consideration of the Liberal Party caucus' draft report. The Committee considered recommendation #21. It was moved by Mr. Hillson:

The Committee should recommend that Saskatchewan Justice review the possibility of a claim against the professional negligence of Mr. Michael Hurst.

The question being put and a debate arising, the motion was negatived.

31. The Committee considered recommendation #22. It was moved by Mr. Hillson:

The Committee recommends that the Government of Saskatchewan and its Crown corporations should not, barring exceptional circumstances, seek legal representation from outside the province.

The question being put and a debate arising, the motion was negatived.

32. The Committee considered recommendation #23. It was moved by Mr. Hillson:

That Saskatchewan Justice be asked to review the Channel Lake file with the view to instituting civil action against Lawrence Portigal.

The question being put and a debate arising, the motion was negatived.

33. The Committee considered recommendation #24. It was moved by Mr. Hillson:

The Crown corporations and Government of Saskatchewan develop conflict of interest guidelines for senior employees both during their years of service and upon leaving the public service.

The question being put and a debate arising, the motion was agreed to.

34. Mr. Hillson deferred moving recommendation #25, regarding ministerial responsibility, in favour of the similar recommendation proposed by the Saskatchewan Party, identified as recommendation 35 on page 6 of their draft report.

35. The Committee considered recommendation #26. It was moved by Mr. Hillson:

The Crowns must develop policies which assure the Legislature that information will be delivered accurately and promptly.

The question being put and a debate arising, the motion was agreed to.

36. The Committee considered recommendation #27. It was moved by Mr. Hillson:

It should be standard practice for committees of the Legislature to review reports within one year of their release.

The question being put and a debate arising, the motion was agreed to.

37. The Committee considered recommendation #28. It was moved by Mr. Hillson:

Appointments to Crown corporations must be made on some rational criteria. A proper non-political process must be put in place to ensure that Board appointments have proper qualifications. Political interference must be removed from the Crown corporations. Patronage must be removed from appointments to Crown corporation management and Board positions.

The question being put and a debate arising, the motion was negated.

38. The Clerk was granted the discretion to determine the most appropriate placement within the main report of the adopted opposition recommendations.
39. The Committee began consideration of the Saskatchewan Party caucus' draft report. The Committee considered recommendation #29. It was moved by Mr. Gantefer:

Eldon Lautermilch should immediately accept responsibility for the Channel Lake debacle and resign from cabinet. If Mr. Lautermilch does not resign from cabinet, the Premier should immediately remove him.

The question being put and a debate arising, the motion was negated.

40. The Committee considered recommendation #30. It was moved by Mr. Gantefer:

The SaskPower Board of Directors should immediately initiate legal action to recover the \$300,000 severance package paid to Jack Messer on the grounds that he was fired with cause and therefore no severance is necessary.

The question being put and a debate arising, the motion was negated.

41. The Committee considered recommendation #31. It was moved by Mr. Gantefer:

SaskPower should immediately launch a \$5.2 million civil action against Milner Fenerty for professional negligence because of the firm's failure to provide copies of all drafts of the Channel Lake sale agreement to SaskPower legal counsel according to the retainer agreement between Milner Fenerty and SaskPower.

The question being put and a debate arising, the motion was negated.

42. The Committee considered recommendation #32. It was moved by Mr. Gantefer:

The SaskPower Board of Directors should immediately launch legal action against Lawrence Portgal for Breach of Trust and Conflict of Interest in the sale of Channel Lake Petroleum.

The question being put, the motion was negated.

43. The Committee considered recommendation #33. It was moved by Mr. Gantefer:

Given these circumstances, the SaskPower Board of Directors has a fiduciary responsibility to protect the shareholders' interests by immediately launching civil action to void SaskPower's 10 year gas supply contract with DEML and overturn the



sale of Channel Lake Petroleum resulting in the return of the Channel Lake assets to the Province of Saskatchewan.

The question being put and a debate arising, the motion was negated.

44. The Committee considered recommendation #34. It was moved by Mr. Gantefer:

The Standing Committee on Crown Corporations should refer the complete Channel Lake file to the RCMP Criminal Investigations Unit for review.

The question being put and a debate arising, the motion was negated.

45. The Committee considered recommendation #35. It was moved by Mr. Gantefer:

Legislation should be amended immediately to ensure that subsidiaries of Crown corporations are subject to the same financial reporting requirements and are open to the same Freedom of Information access as the parent Crown corporations.

The question being put, the motion was agreed to.

46. The Committee considered recommendation #36. It was moved by Mr. Gantefer:

Don Mintz, a highly political NDP patronage appointment to the SaskPower Board and chair of the Audit and Finance Committee, should accept responsibility for the Committee's utter failure in monitoring and reporting on the operation of Channel Lake Petroleum and resign from the SaskPower board immediately. If Mintz does not resign, the Minister responsible for the Crown Investments Corporation should remove him from the SaskPower Board.

The question being put and a debate arising, the motion was negated.

47. The Committee considered recommendation #37. It was moved by Mr. Gantefer:

The SaskPower Board of Directors should report the conduct of Mr. Mintz as Chair of the board's Audit and Finance Committee to the Professional Conduct Committee of the Institute of Chartered Accountants of Saskatchewan for review and potential disciplinary action.

The question being put, the motion was negated.

48. The Committee considered recommendation #38. It was moved by Mr. Gantefer:

In order to establish some accountability in the process of appointing crown boards of directors, all potential board appointees should be approved by the Standing Committee on Crown Corporations through confirmation hearings. All members of the Committee would be able to nominate persons for crown board positions. An open application process should also be established through which qualified Saskatchewan residents have an opportunity to apply for board positions. Members of the Committee would have the opportunity to question nominees with respect to their experience and its relevance to the operation of the Crown corporation. Nominees would be approved by the Committee through majority vote.

The question being put and a debate arising, the motion was negatived.

49. The Vice-chair assumed chairmanship of the proceedings.

50. The Committee considered recommendation #39. It was moved by Mr. Gantefoer:

NDP Committee Chair Pat Lorje should accept responsibility for serious NDP misconduct in prematurely releasing the draft Report on Channel Lake in a transparent attempt to protect NDP cabinet ministers and NDP patronage appointments. Lorje should resign as Chairperson effective immediately.

The Vice-chair ruled the motion out of order as it was a challenge to the Chair. The Vice-chair cited *Beauchesne's Parliamentary Rules & Forms*, 6<sup>th</sup> edition, paragraph 820(2), wherein it is stated that:

A committee has no authority to punish one of its members or other persons for an alleged offence committed against it. Only the House can decide that an offence has been committed.

The Vice-chair then invited the member to move a motion to report the matter to the House.

51. It was then moved by Mr. Gantefoer:

That this Committee recommend to the Assembly that the actions of the Chair, in regard to the premature release of the government draft report on Channel Lake, be censured.

The question being put and a debate arising, Mr. Gantefoer was permitted to withdraw the motion.

52. The Chair resumed chairmanship of the proceedings.

53. It was moved by Mr Tchorzewski:

That this Committee do now adjourn.

The question being put, the motion was agreed to.

54. The Committee adjourned at 5:40 p.m. to the call of the Chair.