

STANDING COMMITTEE ON PUBLIC ACCOUNTS
May 9, 1985

Public Hearing: Department of Finance

MR. CHAIRMAN: — Would you take your seat? We would like you to introduce your officials with you. You realize that everything said here is taken down verbatim. We are an extension of the Legislative Assembly, and therefore you have the same protections as is with the Assembly. I believe you've been around long enough, you know what that means. I will turn it over to you to introduce your officials, please.

MR. MEIKLEJOHN: — Yes, Mr. Chairman. On my right I have Barry Petursson, who is the manager of the mortgage and real estate department in the Department of Finance. On my left, Dan Baldwin, who is our manager of corporate services in the Department of Finance. And on my far left, Keith MacKrill, who is the director of administrative services.

MR. CHAIRMAN: — Thank you. Mr. Glauser, I believe you are leading this discussion.

MR. GLAUSER: — Okay. Well I suppose I should start off by saying that throughout the auditor's report, he has named a number of pension funds that have been directed into investments, and perhaps not with absolute authority to do so. And I'll just refer you to one of the statements in here, and he says:

I recommend that, if this type of investment is to be allowed, the statutory authorities for the investment of pension funds be amended to specifically permit such investment.

However, having said that, it seems to me going back through the years here, that Saskatchewan pension funds have participated in a number of pension fund realty projects over the past eight years, and the concept has been copied a number of times. I suppose then what has happened is that with the setting up of the vehicle or the umbrella to do this, it has, in the auditor's words, contravened the authority.

However, I guess it's been recognized many years that, particularly with what's going on at the federal level now, where they say that the insurances Act and the pension funds Act are outmoded, outdated, and perhaps changes that would be made as a result of their looking at those situations, perhaps we may come in line with what the auditor would like.

However, that not being done yet, how do you see the vehicle that you have used now as being safe? And I think that's what we'd have to look at particularly, is the safety of these funds, with the kinds of things you have done.

MR. MEIKLEJOHN: — Well, Mr. Chairman, I think we respect what the Provincial Auditor is saying here with regard to having legislation in a more workable form. And I think, as Mr. Glauser has said, there is some movement at the federal level as a result of the Minister of State for Finance's recent paper, suggesting that some of the investment regulations and legislation that we work under, as well, should be changed to make the investment of funds much more effective and efficient.

In this case, I think we still are of the belief that the method used, that is the setting up of SaskPen, was the proper thing to do and that the investments themselves, without question, are prudent investments. And I think in some sense the "prudent man rule" which is used in the States, and I think we tend to use it here, is a principle that we believe in.

So I believe that the arrangement that we have at this point in time is a good arrangement for the pension funds. It meets a lot of our problems in dealing with mortgages and real estate. It is a proven vehicle, or at least it's a vehicle that has been used in Canada for many years, and the regulators in various parts of Canada have accepted it — at least we've never heard of any

exception to that.

Really, I think I would support some of the suggestions that are being made in the working paper that the federal government has produced at this point in time, that some of the legislation should be changed, and indeed, the concept might be changed. And I think the Provincial Auditor would probably be much happier with those changes as well. It would simplify some of the more technical aspects of trying to do mortgage and real estate deals. There is just no question in my mind.

MR. GLAUSER: — What was the alternative? If you didn't do this, what was the alternative and what would you be looking at? Like, when you go outside, then you're looking at costs. So the alternatives must have had some price tag to it.

MR. MEIKLEJOHN: — Well the alternative to setting up SaskPen was to go with pension fund realty, the other fund that we are a member of and a shareholder of, and which we have used in the past for real estate transactions — some outside of Saskatchewan, some inside of Saskatchewan. That was really the alternative.

At the same time there is a fee involved, and there are ongoing administration costs involved. And we felt in this particular situation for the particular investments that we were looking at that it wouldn't leave much . . . it would be to the benefit of the funds, and is cheaper to go it on our own — to establish a similar vehicle and go it on our own. But the alternative was really to put it into pension fund realty, and have them set it up, have them manage it for us.

MR. GLAUSER: — Is it possible to put a cost on that?

MR. MEIKLEJOHN: — Well I think we've done some figures on it. You know, there . . . I have to say that they're probably rough estimates. We think it's around \$350,000 a year and, you know, over a 10-year period it would be something over a million and a half dollars. That would be a cost, a direct cost to the pension funds themselves, you know, for that service.

MR. GLAUSER: — So really what you're doing is directing money into Saskatchewan investments as opposed to them perhaps going off the Saskatchewan boundaries. Is that . . .

MR. MEIKLEJOHN: — Not entirely. Had we gone with the pension fund realty people . . . that is to say, had we had them purchase a property and put it into pension fund realty and then we ourselves buy the participating bonds and so on, the investment itself in real estate in Saskatchewan would remain in effect. Our investment would be identified with that particular project. There's no question about that. The only difference is that it would be managed by the pension fund realty people, and the costs of setting it up, establishing it in pension fund realty, and the costs of managing it would have to be paid by the pension funds.

MR. GLAUSER: — Then as far as the decision-making process goes as to where these funds would be directed, that is local, that is in your department, regardless of whether you go through the realty or you put them . . . have this other tool. Is that the case?

MR. MEIKLEJOHN: — And in this case there were some other situations. We were dealing with basically local people. Our partners in the project were basically local or western Canada people and we felt it would be much easier to manage it here, or at least it wouldn't be a problem to manage it here rather than have people in Toronto manage it.

MR. GLAUSER: — So there really isn't any question about any difference in the safety of the funds whether you went through them or we'd have our own vehicle here in this province?

MR. MEIKLEJOHN: — No. From that point of view I don't think you can make any particular distinction.

MR. CHAIRMAN: — Mr. Glauser, I gather the lady doing the taping would like you to be a little closer to your mike, or bring the mike closer to you.

MR. GLAUSER: — So there were the six pension funds then that were involved, is that correct — five or six?

MR. MEIKLEJOHN: — There were actually seven pension funds involved. Six have shares in SaskPen. And one other pension fund, the teachers' superannuation fund — Sask Tel — own only participating bonds.

MR. GLAUSER: — Well when I look at that teachers' superannuation, when I think of that — and we've had them in here many times — and the underfunding in the teachers' superannuation, I suppose what we're looking at here . . . There would be only one plan of the teachers' superannuation fund that would be involved here then. Is that correct?

MR. MEIKLEJOHN: — Yes. It's the old fund that defined . . . It was a defined benefit fund that's involved in this one. It's not the new annuity fund.

MR. GLAUSER: — The reason I talk about that one particularly is that I've had a couple of calls by teachers who are approaching retirement age. They are getting word of some sort, I guess, that they've heard about investments of their fund and whether the money would be there for them when they go into their retirement scheme, and questioning whether the province was dealing with their funds in a proper manner. And I pretty well assured them that I felt that the Department of Finance knew what they were doing on their investments and I did not feel that their funds were in jeopardy in any way. However you might put something on record to assure them of that.

MR. MEIKLEJOHN: — Well I think there's two points here. I think the first point is that it is a defined benefit program, plan, and as such their pension is a statutory pension. And whether there's a fund or not a fund, presumably they're going to get a pension. We have other defined benefit plans and other statutory pensions where there isn't a fund at all.

So in the first instance their pension is guaranteed by legislation at this point in time, whether there is or isn't a fund or whether it's being invested properly or not invested properly. At the same time I think we do take responsibility for the investment management of those funds, and hopefully we are managing them in the best possible way and in trying to maximize return for the funds in line with maintaining the security and principal of the funds themselves.

As far as the old plan is concerned, the defined benefit plan, the pension itself is in effect guaranteed by the government or provides a statutory pension to the teachers. It's not contingent on how much money is in the fund at any point in time.

MR. GLAUSER: — Now that brings me probably to the last question I have and that is: you were formed in June of '83?

MR. MEIKLEJOHN: — SaskPen was formed in June of '83.

MR. GLAUSER: — So you must have some kind of a track on this now as to what the fund is earning. Have you got any rate of return that you can identify?

MR. MEIKLEJOHN: — No, I don't think we've got a specific return at this point in time. A good part, in fact the major part of the whole projects, the five different projects, were all developmental. At this point in time the Bank of Montreal building is operating. It's just about fully leased up but, of course, it's not operating at full capacity yet.

The new building that's being constructed at this point in time, the Victoria West building which is just under construction at 12th and Scarth Street at this point in time, of course is not operational at this stage. They're in the process of leasing it up. And it will be completed later this year.

Of course the parking facility on Cornwall is operational and has been operational. And then the other two properties, what we call the old Royal Bank site which is at the corner of 11th and Hamilton, and which has not been developed at this point in time but you've probably read in the paper in recent days that there's some plans for development there by Canada Trust and the Bentalls.

And the other piece of property is, at this point in time, a vacant lot on the corner of Scarth and 12th as well, which has not been developed at this point in time, but will be developed in the future.

So it's not a short-term project. We're talking about, you know, we're talking about 15 years here in terms of before all of the five properties have been fully developed.

MR. GLAUSER: — I think I've got my answers, Mr. Chairman.

MR. ENGEL: — These five properties you're talking about, are they owned by SaskPen?

MR. MEIKLEJOHN: — SaskPen, yes, has an undivided 20 per cent interest in the five properties.

MR. ENGEL: — Oh, a 20 per cent interest.

MR. MEIKLEJOHN: — Yes.

MR. ENGEL: — Who are the other shareholders, or is that public knowledge?

MR. MEIKLEJOHN: — I beg your pardon?

MR. ENGEL: — Is that public knowledge who the other shareholders are?

MR. MEIKLEJOHN: — It's joint venture partners. Well, Harvard Developments of Regina is a 40 per cent owner in all of the properties. The old Royal Bank site is changing at the moment. But originally they were a 40 per cent owner. And Dover Development company, which is a real estate developer out of Calgary, was the other 40 per cent owner — joint venture owner. There has been some change at this point in time, and it's going on at this moment, in the old Royal Bank site. And I said the Canada Trust before — I meant Canada Life is becoming a 40 per cent owner.

MR. ENGEL: — Of the total five, or just in that building?

MR. MEIKLEJOHN: — Just in that building. Victoria Plaza, the new building.

MR. ENGEL: — Now according to page 11, that 2.7 million that's talked about, is the law firm that's dealing with that the same trustee that's involved in the last paragraph? Have you got the 1984 Provincial Auditor's report with you?

The investment from these six plans that are listed here, what do they total? Is that 2.7 million or is the 2.7 million a fee?

MR. MEIKLEJOHN: — At that point in time he's referring to the 2.7. And so the total of six plans, in aggregate, is 2.7 at that point in time.

MR. ENGEL: — Fill me in . . . And I'm just asking this for knowledge; I haven't prepared. This is one area where our chairman, Ned, was going to take more responsibility than I was and he is unfortunately not well this morning. But is that the contribution by the employees, or is that also the share that the government — these are matching plan investments — or is this just the employees' investments?

MR. MEIKLEJOHN: — This is all pension plan money.

MR. ENGEL: — I understand that. But like, as a school teacher I contributed a certain percentage of my cheque into that first plan. Because I taught that long ago it's kind of revealing which plan I was in, but I was in the original one.

Now the school teachers put in a certain amount. And I understood, to build a pension plan or something, that there was a matching amount? Was that plan a matching amount, or were you just investing the funds that the school teachers had invested?

MR. MEIKLEJOHN: — Only investing the funds that are in the teachers' superannuation fund.

MR. ENGEL: — Just the money they contributed and no . . .

MR. MEIKLEJOHN: — Yes. Well the teachers' superannuation fund, at different times over the years different types of contributions have been made. Originally I think it was maintained on the basis of only the teachers contributing to it. I think in recent years there has been contributions by the government itself as well as the teachers' contributions. So you have a mix in there at this point in time, but . . .

MR. ENGEL: — You're looking after all the money from both employer and employees' contributions.

MR. MEIKLEJOHN: — Yes, it's in one fund, whether it was contributed by the government or by the teachers, plus all of the interest that has been earned or the return on investments has been maintained within the fund as well, so . . .

MR. CHAIRMAN: — Mr. Engel, I have one for clarification.

MR. ENGEL: — Just so you don't . . . Okay.

MR. CHAIRMAN: — Mr. Meiklejohn, are you talking about the equity plan that the teachers have when you say that all the money, the interest and so forth, or are you also talking about the old formula plan?

MR. MEIKLEJOHN: — I'm talking basically here about the formula plan, because it's only the formula plan that is involved in this particular investment.

MR. CHAIRMAN: — Thank you. Go ahead, Mr. Engel.

MR. ENGEL: — Yes, okay. Because the new fund — are there three funds? I think the teachers told us yesterday there was two.

MR. MEIKLEJOHN: — Two.

MR. ENGEL: — Two funds, okay. But the new fund is governed by different legislation?

MR. MEIKLEJOHN: — No. Well the fund itself, I guess, is governed by different legislation, but in some respects the investment of it is all handled in the same fashion except that it is a separate fund.

MR. ENGEL: — See, the statement you were making to give an assurance to Mr. Glauser and the teachers that have been coming to us about whether they should take this little bonus and transfer or not, I think is basically the question I've been getting from teachers. And the old fund — if I may call it that one, the original one — if a teacher had earned a certain amount of pension that he'd accumulated by the formula and so on, he was going to get that pension. He was going to get that pension if there was money in the fund or not, by statute.

MR. MEIKLEJOHN: — Right.

MR. ENGEL: — So I don't . . . I understood that right, eh? But under the new plan, the teachers that are in the new plan, their pension will be gauged according to what's in that fund. Is that right?

MR. MEIKLEJOHN: — Yes, mmmm.

MR. ENGEL: — Now that leads me to this question. The trustees of this investment now, the Crown corporation, SaskPen, has grouped and formed a company that handles all six funds and is investing it. Does that Crown corporation group the proceeds of those funds to pay off any one of the six individuals? Are they then becoming a common grouping, or are you just acting as agents on behalf of these six funds? Do you understand my question?

MR. MEIKLEJOHN: — I think I do. Let me say that SaskPen is strictly a vehicle, you know, for doing a particular job here. All of the return, all of the proceeds from this undivided 20 per cent interest in these projects, will flow through SaskPen.

From SaskPen it will all flow, then, to the seven superannuation funds that have an interest in it. And their interest is dependent on how much money they put in it. It will be on a pro rata basis, depending on the amount of money that they have invested in SaskPen. It will be a complete flow-through, though, to the pension funds.

MR. ENGEL: — Will SaskPen charge an administration charge?

MR. MEIKLEJOHN: — No.

MR. ENGEL: — Who funds . . . Where does SaskPen get the funding?

MR. MEIKLEJOHN: — There is no funding involved other than the funds that were put in by the superannuation, which were then reinvested in the properties themselves.

The way in which it's managed is the way in which we manage all funds in Saskatchewan — through the Department of Finance, the investment and financial services branch. We are the investment managers for all of the superannuation funds, and we are managing SaskPen as well, just as a vehicle in managing all of the rest of the pension funds. We are the investment managers.

MR. ENGEL: — Does SaskPen have a board of directors?

MR. MEIKLEJOHN: — Yes.

MR. ENGEL: — And do you serve on that board?

MR. MEIKLEJOHN: — Yes.

MR. ENGEL: — Are you a corporate secretary or a . . .

MR. MEIKLEJOHN: — Well, what we've got is the same people who form the investment committee, that we use on the investment committee . . .

MR. ENGEL: — Crown investments.

MR. MEIKLEJOHN: — No, not Crown investments.

MR. ENGEL: — That's not the same board?

MR. MEIKLEJOHN: — No, no. Investment committee that we use as the committee to recommend investments to the Investment Board of Saskatchewan, which is a cabinet committee, and established under The Department of Finance Act. And so the board of directors is composed of officials at this point in time, in the Department of Finance, who are involved in the investment management of all pension funds.

MR. ENGEL: — Now you say seven, and I only have listed in this book, six.

MR. MEIKLEJOHN: — Yes. That's right.

MR. ENGEL: — Which one is . . .

MR. MEIKLEJOHN: — Sask Tel is not listed because it has no equity in SaskPen. It has purchased though, and has invested in . . .

MR. ENGEL: — But Sask Tel is listed on top of page 11, the Sask Telecommunications superannuation fund.

MR. MEIKLEJOHN: — Yes, but it says specifically that it did not purchase common shares in SaskPen.

MR. ENGEL: — But there must be a seventh one, if you're talking about seven, because Crown investments pension fund, municipal employees' superannuation fund, power corporation, Sask. Government Insurance, Sask Tel, and the teachers' superannuation. I was wondering which was the seventh one.

MR. MEIKLEJOHN: — Public employees.

MR. ENGEL: — Public employees' superannuation — that would be actually your largest fund then.

MR. MEIKLEJOHN: — No, no.

MR. ENGEL: — Now according to information we have here in the auditor's report, I'd like your comment on that.

It is my opinion that the provisions of the governing authorities for these pension funds would not permit the pension funds to directly purchase these properties.

Is there a explanation that you'd have from your area that would explain the actions you've done as far as the investments that were made by SaskPen in these five properties, or how do you relate that in relationship to the auditor's statement there?

MR. MEIKLEJOHN: — Well I alluded to it, I think, earlier when I said that rather than invest under a section that the Provincial Auditor has alluded to here, a section that provides specifically for real estate investments, because of the complications in doing that, we did it in a different way. We created a vehicle, SaskPen, which is similar in all respects to pension fund

realty which has been in effect for many years in Canada, and we put our money or invested our money in that vehicle which in turn then invested in the real estate itself. I think pension funds in Canada generally have had a problem dealing with real estate and mortgages and with the legislation that governs the investment in real estate.

MR. ENGEL: — Is that federal or provincial?

MR. MEIKLEJOHN: — Well, it's basically federal legislation, because in Canada there are really two pieces of legislation that are used by either insurance funds, or by pension funds, or most types of investment funds, and one of them is the British and Canadian insurance Act, which is a federal statute, and the other is the pension standards Act of Canada, which is also of course a federal statute, and which the provinces for the most part have incorporated into their legislation and regulations.

It's also the legislation which is most used by the legal profession in providing opinions, and it's basically standard legislation. Everybody thinks they understand it. There's been enough precedence that can be used, and so on. And that's basically the legislation that we have been using.

Pension funds from years ago, I think, have had problems dealing with real estate. They wanted to be more involved in real estate and mortgages, and with the difficulty of the provisions, they came up with the pension fund realty concept.

I guess we assume that the people who regulate pension funds and insurance companies and so on, that this form of investment was acceptable to them. As far as we know, it has never been challenged, and it has been used and is a precedent in Canada for the last 10 years. It simplifies life for a pension fund in organizing to get involved and manage real estate. And for that reason, that's the direction we chose to go in getting into real-estate investments, both in pension fund realty and in setting up SaskPen.

I think the Provincial Auditor is making a point here. And you know, I don't disagree that he's making a valid point here, that if the legislation is not appropriate in all circumstances, why not change the legislation. Well, I don't disagree with that. I wish I could change the legislation tomorrow, but I can't change it. At the same time, I can use what I know is being used in Canada, and which we think is prudent, and which hasn't been challenged, as far as we know.

I can hope that maybe as a result of this recent working paper by the federal government, that there will be some changes in investment provisions in standard legislation, meaning the British and Canadian insurance Act and the pensions standards Act, and I think there probably will be. And I think if that comes to pass — and I think we will be advocating it as a matter of fact — if that comes to pass, I think certainly, I think the Provincial Auditor will have an easier time dealing with this and certainly we will, because I can assure you, it's very technical.

And we've spent more time on this, I can tell you, than on anything I've ever been involved in in 20 years in the business, and given the amount that we invest in it which, relatively speaking, is very small. You know, we're talking about 2.7 million out of 2 billion, and we've spent more time working on this, you know . . . At the same time, we still believe that the pension funds, if it's not too complicated and we have to be sure that we're getting good returns as well, we think it's a legitimate investment for pension funds and other funds. But I can assure you, it's far more complicated than buying a share or buying a bond.

MR. ENGEL: — The question I suppose I want to ask Mr. Lutz is: the terms of reference or the umbrella that Crown corporation works under, SaskPen, is the legislation encompassing enough for that, or is there some legislation that you'd recommend provincially we could have changed to, to give them a sufficient umbrella to operate under?

MR. LUTZ: — Mr. Chairman, Mr. Engel, as Mr. Meiklejohn has said, this was a very difficult subject with which to deal. Nowhere in my discourse have I suggested that this is not a good deal, or that this is a bad deal, or that it's a bad investment. I don't believe I was qualified to make that judgement.

My position was, as long as the relevant legislation permits you to invest in developed properties, and by implication, I guess, prohibit you from investing in undeveloped properties, if the legislation precisely says, thou shalt have a three-year track record of earnings before you invest therein, and if the legislation says, there shouldn't be any other liens, mortgages against the property — I think that is precise. Now if in fact we find the pension funds are being invested where these restrictions are being either bypassed or ignored, as the case may be, then I think we will always object.

Now this morning we heard that some of these properties have not been developed yet in approximately two years, so I think that criterion applies. Similarly, while I believe Mr. Meiklejohn is right, this thing has never been challenged — whether it's federal or provincial — I think, and I submit that this presently is a challenge. We have just challenged it, and how this turns out . . . Well, I would like to see the legislation changed if they're going to get into this kind of stuff, change the legislation, and permit this type of investment of pension funds.

MR. ENGEL: — But the problem is . . . The question I'm trying to ask, and the basic underlying question was in my laymen's language, and you'll have to forgive me for not being schooled in handling numbers and using the right terminology. But the legislation that governs his investments, Mr. Meiklejohn argues, are federal Acts. Is there a Saskatchewan provision that we could change, or is there some authority (and this is what I was asking): is there some authority we could give by amending The Crown Corporations Act or the specific Act that governs SaskPen?

MR. CHAIRMAN: — Could I . . .

MR. ENGEL: — No, but I want to ask Mr. Lutz. I want to ask you a question and I'll ask you a question, Mr. Chairman. I'd like to address this question . . .

MR. CHAIRMAN: — It's not a Crown corporation — just to clear that up.

MR. ENGEL: — Agency, okay. I'm sorry.

MR. LUTZ: — It is a Crown agency, certainly, but not a Crown corporation as we look on Sask Power, Sask Tel.

MR. ENGEL: — Right. Okay. Now this Crown agency, as governing legislation, is that the area that you feel should be changed, or is it actually in the finance Act itself? Which piece of legislation are you talking about that could be covered off that we could cover this one off as far as Saskatchewan is concerned. If it's a federal Act there's not much we can do. Then we'd have to mend our ways if we're breaking a federal law. But if it's a Saskatchewan Act that you feel could change, is it in the Act that governs agencies, or is it a specific Act that deals with this Crown agency? That's my question.

MR. LUTZ: — Mr. Chairman, Mr. Engel, I would like at this time to introduce to you Mr. G. J. K. Neill, who is solicitor to the Provincial Auditor. And I am going to ask Mr. Neill to deal with this law stuff. I usually try to avoid it if I can.

MR. NEILL: — I think the simple answer to your question is that the province has adopted certain federal Acts in its enabling legislation. But the determination of what kind of investment could be made is a matter of provincial responsibility. But they've done that by adopting some federal legislation. So it's open to the provincial legislature to amend their Act independent of

any amendments that may be made to the federal Act. They choose to adopt the federal . . .

MR. ENGEL: — Can you cite a specific Act? Is it the Act that relates specifically to Crown agencies, or is it an Act that the Department of Finance operates under? Can somebody help me?

MR. NEILL: — The Pension Benefits Act is the primary Act. And there's also investment powers contained in The Department of Finance Act itself. Both those Acts contain powers with respect to pension, investment of pension funds. And The Pension Benefits Act, both of them refer to regulations under . . . well, to the Canadian and British Insurance Companies Act, which is a federal statute, and to the regulations under the federal pension . . . What's the Act called? Do you remember?

A MEMBER: — Pension Standards Act?

MR. NEILL: — Yes, the Pension Standards Act, which is also a federal Act.

MR. GLAUSER: — Now just to ask one question here that's pertinent to this whole line here and that is: there are mortgages on these properties, is that correct?

MR. MEIKLEJOHN: — On the SaskPen?

MR. GLAUSER: — Yes.

MR. MEIKLEJOHN: — Some of them.

MR. GLAUSER: — Is there any direct liability to the funds as a result of those mortgages?

MR. MEIKLEJOHN: — No, we do not believe so.

MR. GLAUSER: — Because that is an important element in the line of questioning that . . .

MR. ENGEL: — This is where I appreciate your back-up, Mr. Auditor. The 20 per cent share that the Crown agency has, are you saying that they are not liable for 20 per cent of the responsibility should one of those developments go into receivership — that we wouldn't be liable for 20 per cent of the costs involved? Because it's been known that companies and buildings and people that occupy buildings can go into receivership. There's a possibility to have a liability there.

MR. MEIKLEJOHN: — The amount of our 20 per cent investment is always at risk. There's no question about that.

MR. GLAUSER: — No matter where you put it.

MR. MEIKLEJOHN: — But there's no recourse to the funds themselves. SaskPen is the legal entity. But I'm not sure that I understand completely the question.

MR. ENGEL: — Well I suppose to bring it in perspective, the 20 per cent share that SaskPen, that agency, had in the developments of these five major projects, that total block would be about how many dollars? Did you say 3 billion? What number did you quote earlier when you said the 2.7 million is a small fraction of SaskPen's total involvement?

MR. MEIKLEJOHN: — No, no, no, no. SaskPen — all I was trying to indicate there that we have 2.7 million at this particular time, or at the time this was being reviewed. We had 2.7 million of Saskatchewan pension funds invested in SaskPen out of 2 billion of superannuation funds. We don't have 2 billion invested in SaskPen. We have 2.7 million invested in SaskPen.

MR. ENGEL: — What's the bottom line? SaskPen as an entity . . .

MR. MEIKLEJOHN: — SaskPen can only be liable, or can only lose \$2.7 million, nothing more.

MR. ENGEL: — That's all it's worth?

MR. MEIKLEJOHN: — At that point in time. It may be worth more now. But at that point in time it was only 2.7 million.

MR. ENGEL: — So if we're into these developments at 20 per cent, the total development thing, 2.7 million is 20 per cent of that development project?

MR. MEIKLEJOHN: — Yes, at that point. Yes, I guess so.

MR. ENGEL: — Oh, I see. I thought that there were other — that SaskPen as an agency had other funds or other sources.

MR. MEIKLEJOHN: — Oh no, no, no. No, this is a very specific vehicle — investment vehicle for that particular project, and nothing else. And it was put together for that particular project — that particular investment.

MR. ENGEL: — But when I look at Saskatchewan Teachers' Superannuation Commission's report . . . Schedule of investments acquired, year end June 30, 1983, page 27, for example. Are you part of this list?

MR. MEIKLEJOHN: — At that point in time probably not, but we certainly would be now.

MR. ENGEL: — But starting on page 28, the province of Saskatchewan, there's a whole list of those. Are those the ones you picked up? Is there a grouping of these?

MR. MEIKLEJOHN: — What will appear in that list . . . I haven't seen that report, but I assume that that's a schedule of investments for the defined benefit plan. What will appear in there will be the amount of the equity that the teachers' superannuation holds in SaskPen, which is probably \$1,000. In addition to that it will also have several different debentures. We call them A, B, C, D and E, I think, at this point in time. There's five different debentures or bonds, participating bonds. Those will be listed, and the amount that's invested in each of those bonds will be listed in there as well.

MR. ENGEL: — I see.

MR. MEIKLEJOHN: — So that is the security that will show in the schedule of securities in each of the funds.

MR. ENGEL: — So when next year's report is printed, it'll actually list SaskPen as a Crown agency.

MR. MEIKLEJOHN: — Yes. It will say how much equity it's got in SaskPen, and it will say what participating bonds it holds of SaskPen. Yes.

MR. ENGEL: — Because there's a province of Saskatchewan December issue and par value is 2.7 million. It's likely something like that that you've picked up that . . . Is that just a coincidence?

MR. MEIKLEJOHN: — It's just a coincidence because they don't have 2.7 million of it at that point in time. I'm not sure what their share was at that point in time.

MR. ENGEL: — Oh, I see what you're saying . . . Because the total's only 2.7.

MR. MEIKLEJOHN: — The total's only 2.7, and there's seven funds involved.

MR. ENGEL: — So we're dealing with an item that is a small amount of even the teachers' superannuation fund.

MR. MEIKLEJOHN: — The teachers' is over 300 million?

MR. ENGEL: — Yes, I think so.

MR. MEIKLEJOHN: — There's no total here.

MR. CHAIRMAN: — Mr. Engel, if I may one more time . . . Mr. Meiklejohn, just to make sure, what you're saying to Mr. Engel is that SaskPen is a company that has \$2.7 million at the time, put in by six shareholder companies, plus an additional company which has money in, who is not a shareholder. That has nothing to do with all the rest of the investments of the Government of Saskatchewan, either through Sask teachers' or through any other way which they buy bonds or debentures or so forth — totally two separate identities.

If you have any other questions? Mr. Weiman has been waiting to get in.

MR. ENGEL: — Just to finish this point off, or just further on this issue, I think the auditor makes a fairly strong case in the final paragraph. Now I understand that you said there are trustees that govern the operation of this Crown agency, SaskPen. He submits that the trustees may be liable for any loss that occurs as a result of the investment on behalf of the beneficiaries here. Do you understand that?

MR. MEIKLEJOHN: — We are perfectly aware, Mr. Engel, of the responsibilities of the trustees, and have been for many years. You know, there's nothing new. They've always had a responsibility, and a legal responsibility. Every superannuation fund in Saskatchewan has a responsibility, and I think the trustees are well aware of their responsibilities.

MR. ENGEL: — Well, I've been involved as a trustee on various organizations and boards, and so on, in my life, but it's quite different sitting on a board as a trustee and making an investment that, according to the auditor, that isn't according to the governing legislation. And should any one of these developments of these five operations that you have listed here earlier — either the old Bank of Montreal building, or Victoria West building, or old Royal Bank, or whichever one — should there be a failure there, that you personally, as trustees, could be liable to the beneficiaries, is the way I read that.

Now if you acted in good faith and within the scope or the umbrella of some legislation, you have responsibility there. But it's quite different than being personally liable for investments. And I was wondering just what recommendations we, as a Public Accounts Committee, can make here to give you . . . I'm not arguing that it's not a good idea.

The questions I was going to ask, as far as the investment of superannuation of the teachers . . . (inaudible) . . . that somebody else, the Department of Finance, makes these investments. I was wondering: why should there be investments in Bank of America, for example? Now my mother-in-law banks there, but why should we be giving money to the Bank of America to reinvest when there's such urgency for development here in Saskatchewan.

And I'd like to see a role where you could maybe use all \$300 million in this kind of an agency that would be used to back good projects in Saskatchewan. Don't get me wrong. But what I'm saying is, I hate to see legislation that is so restrictive that if you believe the same as I do and, in spite of the legislation, make these kind of investments, even if it is only \$2.7 million, people like yourself shouldn't have to be personally obligated it that should fail. And I think we have a specific role here as members of this committee to see that that is changed.

MR. GLAUSER: — Well, Mr. Engel, that situation is no different than what their exposure was over the past eight years. That exposure has been there forever, as long as these investments have been going on. Whether it's the Bank of America, whatever, that exposure has been there. They're still responsible for . . . I'm sure I'm correct on this, Mr. Meiklejohn.

MR. MEIKLEJOHN: — Well I think the Provincial Auditor's legal counsel has pointed out that if the investments do not meet legal tests and . . . that the trustees may be liable. I guess our understanding is from our legal counsel that it does meet legal tests. But I — you know, this responsibility exists. It exists at all times. The trustees are in charge of the superannuation funds, and if they breach their fiduciary trust, they can be held responsible. I think every legal counsel will say that, and in whatever investment is made. You know, I don't know that I can elaborate on that.

MR. ENGEL: — My personal concern is with item (a). If either Mr. Neill or Mr. Lutz or somebody would give me some idea that we could consider and flag to make a recommendation from this committee saying that this is how we should change the Act that governs the agency, or this is how we should change the Act that governs The Pension Benefits Act, or whichever piece of legislation; but I think we should be specific here and say that here's the governing legislation that we're operating under. This is how you see it . . . and if he sees it otherwise, then I wish somebody could help me out on this one because . . . (inaudible interjection) . . . I think it is, Mr. Glauser.

MR. LUTZ: — Mr. Chairman, Mr. Engel, I think my solicitor would perhaps like to comment on what you have just said. If you'll indulge us, I'll let Gordon Neill speak to this one.

MR. NEILL: — The last paragraph on item (2) on page 11 in the report is intended to state that if there has been a breach of trust — technical though it may be, and without any bad intent on the part of those who made it — if there has been a technical breach of trust, because the legislation does not permit this kind of investment, then, as Mr. Meiklejohn has already said, the trustees become personally liable, as distinct from if they make an investment which is permitted by law within the terms of their trust, and it goes sour, the fund suffers, as distinct from the trustee. Because the trustee has done nothing wrong; he has done what he was allowed to do.

So the question then becomes . . . Since concerns have been expressed by the auditor as to whether this particular investment falls within the enabling legislation — and remember, of course, we're not in the — the auditor, it's not a matter of in a court of law — the auditor has a duty to the legislature to draw to its attention anything which maybe create a problem. So he's drawing this to the attention of the legislature and suggesting that this problem can be taken care of if the legislature, as a matter of policy, decides that they want to make this kind of investment. Then appropriate amendments to the enabling legislation could be made to make it perfectly clear that they can make this kind of investment.

So the answer to your question is: yes, that that can be done. That is exactly what the auditor is recommending.

MR. CHAIRMAN: — Just one clarification again: are you recommending the Legislative Assembly, or are you recommending treasury board, or what are you saying to us?

MR. NEILL: — In my view it would require an amendment to the Act — the relevant Act.

MR. CHAIRMAN: — Would you know what relevant Act?

MR. NEILL: — Well The Pension Benefits Act, and possibly The Department of Finance Act. Now I haven't drafted any proposed changes, but it can be done.

MR. ENGEL: — I suppose I'd just suggest, Mr. Chairman, that we flag this issue as something that

the committee can discuss with some input, either from both the Department of Finance and the auditor's staff, that we then come back to this. I don't think it's the role of this committee to draft the amendments or be specific on it. But I think we should be reporting and recording or flagging that we're going to record in our report that some changes should be made here, because I feel that that's the way to go with pension funds. I feel strongly about this, that those moneys, rather than be used around the world for blue chip investments, that we'd use them here in Saskatchewan and create our own blue chips.

Consequently, if we haven't got legislation to do that, I'd like to see this flagged that we look at recommending to the legislature to amend either one or both Acts, whichever one will cover it . . . (inaudible) . . .

MR. LUTZ: — Mr. Chairman, and Mr. Engel, this item as it sits is not much different than many other items I've reported where something occurred contrary to legislation. Now in the past I have not proposed legislation or said, hey, change this Act, change that Act, change that section. I don't believe that's my function.

I'm sure if Mr. Meiklejohn wants legislation changed, he knows exactly what Acts he would want changed. I'm sure if the executive government wants Acts changed, they will certainly know which ones. I don't want you to suggest that I should be proposing legislative changes.

MR. ENGEL: — No, no, I . . .

MR. LUTZ: — I thought that was what you were doing.

MR. ENGEL: — I hope I didn't say that.

MR. LUTZ: — Well anyway, I'm telling you that I won't be.

MR. CHAIRMAN: — We're going to move to the next person who's been waiting, and then we can come back to you again if you'd like additional because I think you finished your line.

MR. WEIMAN: — I'll tell you, quite frankly, I thought I had this clear in my mind, but now I'm really confused so I'm going to have to ask some questions for clarification.

It almost seems to me like we're talking about the young lady who was going to have a baby without benefit of marriage. In either case they're both legal to have that baby except in one instance we don't deem it proper, you know.

A MEMBER: — It's worse than that.

MR. WEIMAN: — Well this is what's confusing me, but I would like some points of clarification on this.

First of all, as I understand it, whether it's the teachers' superannuation plan or municipal employees' superannuation fund or etc., etc., . . . that SaskPen is a very small item of their portfolios in so far as investments — very small. You're saying 2.7 million, and that's taking in all seven. So it's a very small portfolio.

And as I understand it from the auditor's report, he is concerned that the legality isn't there for any of those funds separately to invest in real estate properties, etc. Separately as their own identity, they can't do that. Is that . . . So far, is that correct?

MR. MEIKLEJOHN: — Would you just say that again, please, Mr. Weiman.

MR. WEIMAN: — Well either of the seven funds, there is not legislation in place for them to go

out and invest directly in properties, real estate, etc. as it stands now.

MR. MEIKLEJOHN: — Well except through the basket clause of the legislation which . . .

MR. WEIMAN: — Could you explain the basket clause very briefly please.

MR. MEIKLEJOHN: — Well the basket clause authorizes . . . The basket clause of the pension benefit regulations and of the British and Canadian insurance Acts authorizes funds to invest up to 7 per cent of their assets in anything — in anything. There's no qualitative or tests required, and there's just a quantitative restriction on the amount, or the percentage of the assets, that can be invested in any type of investment.

MR. WEIMAN: — Have any of these funds through SaskPen exceeded 7 per cent?

MR. MEIKLEJOHN: — No, I don't think so at this point. I don't have the figures here, but I don't think so at this point.

MR. WEIMAN: — So had there not been a SaskPen, there was nothing preventing the seven funds from investing through the provision of the basket clause in any of these arrangements?

MR. CHAIRMAN: — Stop, Mr. Weiman, for a minute. I read between the lines, and I will ask the lawyer with the comptroller's office to come because you've asked a legal question. We have only one lawyer here, if that's agreeable.

MR. LUTZ: — Comptroller?

MR. CHAIRMAN: — I'm sorry. From the Provincial Auditor's department.

MR. NEILL: — Mr. Baldwin is also a lawyer.

MR. CHAIRMAN: — Oh, sorry.

MR. NEILL: — But in any event, this report refers to the legislation that was in place at the time this investment was made. The legislation that was in place has been amended already to a certain extent. It still . . . I have not specifically directed my mind to whether or not the basket clause would permit this investment because that, for the purposes of the questions I was asked, was a hypothetical one.

I still would suggest, however, that the legislation in the whole area could be much more clearly and specifically defined to enable both the trustees, and the others administering the funds, and the provincial auditor, incidentally, to know whether an investment was permitted or not.

It's a very complex piece of legislation. It draws into the authorizing powers several different Acts. And some of the provisions of these Acts are conflicting. And you find yourself having great difficulty as a lawyer in reading it.

MR. WEIMAN: — Well then, I will stop there.

MR. NEILL: — So to answer your question, it's not as simple as you might think.

MR. WEIMAN: — Well okay. Well then, we'll go off of that train of thought because this whole concept, as you're saying, of whether it was correct or not to invest through the basket clause is open to interpretation from both sides. So we'll just leave that one alone.

MR. NEILL: — That's right.

MR. WEIMAN: — Okay, so we'll go back to my original question. Individually as funds, there's no legislation to allow each fund individually to invest in properties. Is that correct?

MR. MEIKLEJOHN: — Well there is, but it has to meet certain tests.

MR. WEIMAN: — Are we going to go back on this circle again, the certain tests regarding the basket clause?

MR. MEIKLEJOHN: — No, no, no. Certain . . .

MR. WEIMAN: — But there is.

MR. MEIKLEJOHN: — Yes, mmmm.

MR. WEIMAN: — There is legislation in place governing the activities of Crown corporations and Crown agencies?

MR. MEIKLEJOHN: — I beg your pardon?

MR. WEIMAN: — There is legislation in place governing the activities of Crown corporations and Crown agencies to allow them to get into this type of activity?

MR. MEIKLEJOHN: — I think there is. You can probably find, in certain Crown corporation Acts, provisions that would allow it, yes. Not . . .

MR. WEIMAN: — Is there anything incorrect or illegal for any funds grouping together under such an arrangement as SaskPen?

MR. MEIKLEJOHN: — I don't think so.

MR. NEILL: — That was one of my principal concerns, is that . . .

MR. WEIMAN: — I think we all are in agreement that there's no legislation there right now for the individual fund. I'm just trying to find out whether there is any incorrectness involved with seven pensions getting together to form another association that would allow them under present legislation — whether they call themselves a Crown agency or Crown corporation — which would allow them under present legislation to do that exact thing.

And from what I've been hearing this morning, there's nothing incorrect in that activity. Albeit, you know, they came through a back door, it seems that some people are saying, because they didn't go the front route of waiting for the legislation to be in place.

MR. NEILL: — At the time this investment was made, the pension funds could not invest in the common shares of SaskPen Properties Limited. Now that was perceived as a nominal investment of \$1,000 by six of the funds. And accordingly, it was considered by some not to be significant. In my view that is not the case because the investment in the common shares was tied in with the investment in the bonds. So in my view the whole thing was one investment. An investment in the shares and the bonds was a total investment in the two.

The argument has been made that one of the seven funds chose not to invest in the shares and still invested in the bonds. That's so, but they would not, in my view, have done that if the company had not been controlled by the other six funds. So I view their investment in the same light as I do the others, and the legislation in place at the time the investment was made did not permit the investment in this kind of common share. And that's that simple.

Now nowhere have I seen a legal opinion, either from the firm that was being consulted by the

pension funds, nor by any other firm across Canada, that has said, with respect to these investments, that the investment in shares was permitted.

MR. CHAIRMAN: — Do you have a comment at that end of the table?

MR. MEIKLEJOHN: — I don't have any comment, Mr. Chairman. I would have to bring my lawyer in to have any kind of a comment.

MR. CHAIRMAN: — I have a feeling we're getting into a legality . . . and I think that maybe . . . and I don't think we have the expertise in this committee from the membership — I'm not talking about the support staff. And we may have the right to ask for a legal opinion from a third party, as this committee sometimes is empowered. Am I correct or incorrect, Mr. Clerk?

MR. JAMES: — Oh yes.

MR. CHAIRMAN: — And I am wondering if that is one method. Or maybe something that was said by the lawyer for the auditor — that they didn't have authority at the time — seems to indicate maybe something has changed. And maybe, if it is proper to tell us what has changed, maybe the problem has partially been, or totally cured, so we maybe should save some of our energy. Could you answer one of those?

MR. NEILL: — Well I think I've tried to answer that already in this respect: that I have other concerns with respect to this kind of investment and whether or not it is permitted under the existing legislation, which I haven't even touched upon yet. And I found it unnecessary in expressing the opinions that I've already expressed to go into those in any great detail.

But when you get done, and for the purposes of your committee — if I may be so bold to suggest this — is that, irrespective of the legalities of the situation, it is patently obvious to anybody looking at this legislation that it is complex, difficult to interpret, and may, in the future, cause all sorts of problems. And it is a matter that I would suggest, with greatest respect, that the legislature should direct its mind to making clear what kind of authority they intend to give the trustees to invest pension funds, even in a more general way than dealing just particularly with this problem. This is but a symptom of a very complex . . .

MR. CHAIRMAN: — I think you just hit the key word: we have a symptom here of a complex problem.

MR. NEILL: — That's right.

MR. CHAIRMAN: — I am not sure if we should spend the rest of the day on the complexity or try to find if we have a problem and figure out how the cure should be done.

MR. ENGEL: — This is why I suggested earlier, Mr. Chairman, that we flag this section and admit as a committee that either your suggestion that we bring in a third party to review it, or go around the horn on it and just make a general comment in our report to the legislation, saying that this presents a problem. Here is a conflict between the investment and what the legislative authority is in place. And maybe we've covered it off for this year with that kind of recommendation. But I think that would save some time because we have these expert people here, and there's quite a bit more areas that I'd like touch on other than just SaskPen.

MR. CHAIRMAN: — Just hold it. Mr. Weiman has the floor for questioning, but I was just to trying see, as from the chairman's role, that if we were in a jam here, that maybe there should be, sort of, say, a stop on this particular small point which is the legislation point, and ask for an outside opinion. Or if you wish to say, maybe the department is doing something and they wish to tell us what they've done, maybe to start to cure the situation. I don't know what the answer is. Now Mr. Glauser has done more research than any one of us I believe here, and I would allow

him to speak on this point even though he was not next in order.

MR. GLAUSER: — Yes. I think that we might be putting the cart before the horse here in so far as to what the feds will come down with. And I think that we are going at something that perhaps we're too soon. And I think that we should perhaps leave this item until such time as we see what the federal government does, and then make our moves in accordance with that, afterwards.

MR. ENGEL: — Have you some inside information on that that you're making that statement, Mr. Glauser?

MR. CHAIRMAN: — If I may interrupt. Are you suggesting that four pillars announcement made by that federal minister? Is that what you're talking about?

MR. GLAUSER: — It goes further than the four pillars. It's a whole new look at the way insurance companies and . . .

A MEMBER: — Pension funds and trust funds.

MR. GLAUSER: — It doesn't just relate to the pension funds, does it?

MR. CHAIRMAN: — Mr. Glauser, you're referring to Barbara McDougall's announcement?

MR. GLAUSER: — Yes, that is correct. And I feel that that's going to come very quickly.

MR. CHAIRMAN: — Yes, she did say this month.

MR. ENGEL: — Could we ask for a comment from our comptroller. Have you looked at this? I didn't know whether you're trying to hide from this issue, or whether you had a real pertinent comment you want to make.

MR. KRAUS: — No. This issue is actually somewhat outside — well, almost completely outside of our jurisdiction. I think we rely extensively on finance and people that invest the moneys to determine whether or not the investments are with authority or not.

MR. CHAIRMAN: — I will go back to Mr. Weiman.

MR. WEIMAN: — I think I understand fully Mr. Meiklejohn's comments that it is a vehicle to invest. I think we understand that. And I don't think it's a conflict. I've heard this term raised around there's a conflict. I think basically it's a difficulty with concerns of opinion or interpretation of what was legal or not legal. In fact, none here have mentioned or indicated that it was legal or illegal. It's a matter of interpretation.

I've heard different discourses now on the basket clause, or different discourses on what are the provisions for Crown corporations to be able to go into an activity like this, or Crown agencies to go into an agency like this, or whether — what provisions any fund has to set up a Crown agency. So I think it's a matter of interpretation.

I tend to agree with . . . Mr. Glauser said one of two things: determining, finding out what the final determination is of the federal government; or some type of (I suspect this has been going on for a few years) dialogue between the two groups involved, the department and the auditor to come to a final determination of what this interpretation is.

Because quite frankly, you know, one says, yes, there is provision with the basket clause; and another says, no, I'm sorry that's a fine line, and it really isn't. And I don't think we're going to come to any resolve.

MR. MEIKLEJOHN: — I should clarify something, Mr. Chairman. We're not talking specifically about the basket clause here about whether it would have been legal or is legal had we done it under the basket clause. I don't want to leave that impression with the committee. We did it a different way. We did not use a basket clause.

MR. WEIMAN: — Well, I guess what I'm saying, Mr. Meiklejohn, is if we come to a resolve on what that basket clause really can or cannot do, and should it come out (this is hypothetical) that the interpretation of the department and the auditor is the same in so far as yes, a basket clause can do this type of thing, it would seem to me that SaskPen is synonymous with a basket clause. And if that's the case then it would resolve the whole thing.

MR. CHAIRMAN: — Mr. lawyer Weiman, I thank you for your dissertation. Mr. Glauser, you're next.

MR. GLAUSER: — I have no further comment on this because I feel that we're jumping the gun a little bit here and that we should wait and see what comes down from the federal level.

MR. CHAIRMAN: — On that case I have a couple of questions. They are not on SaskPen, but they are on the other pension plans which you administrate for the government. I believe you administrate quite a few other pensions or do the investing for other pensions either through SaskPen or through another client. That's not important at this issue.

Could you indicate to me and this committee the financial position of your pension plans you're responsible for? And I would suggest I'm not looking for the dollars and cents. I'm more concerned if they are in funds and therefore the matching has been contributing for the pension, or if they are unfunded pensions. Take the MLA pension for a fact, the old one. I believe it basically has no funds, and it has to come out of the treasury, other than what we put in each year and they pay that out, and the remaining comes through. Can you indicate which funds you, as a board, have to handle as a department?

MR. MEIKLEJOHN: — Mr. Chairman, I think I should clarify for the committee just what the Department of Finance, and in particular the investment of financial services, role is or function is with regard to pension funds. We, of course, do not administer pension funds. We do not have any role in determining contributions or benefits or how they're funded particularly. We have a role that's limited to an investment management service, and we provide this service to each of the boards who, in fact, do administer the funds.

I'm not necessarily familiar with the financial position — that is to say whether they're unfunded or funded or . . . At this point in time, you know, I have a little bit of background on some of them, where they stand, but I'm not an expert, nor do we have any particular responsibility in that area.

MR. CHAIRMAN: — I understand what you're saying. We had chose to ask your department that question. Now maybe it's a question that should be to your deputy minister rather than to your group of people here today. What we are thinking — rather than calling in each group that has a pension — is we had hoped that the Department of Finance could answer who has them and if they're soluble or if they have a debt to equity sort of situation or unfunded liability, I guess, is a better word.

If you are suggesting to us that you don't have that knowledge with you today, I accept that. And where I'd accept just a letter from each of the funds you invest for, if you would notify them to just give us a letter to the Clerk saying — if it's agreeable to the committee — saying what their financial position is, rather than having to call them.

MR. KRAUS: — Mr. Katzman, to some extent I don't know that it would be necessarily the most

current actuarial evaluation, but to the end of March 31, 1984 any of the pension funds that have an unfunded liability are identified in notes to the financial statements, the Consolidated Fund financial statement. So if you were to look on page A-36 of volume 1, you would find that there are four particular plans that are identified as having a non-funded liability. And it tells you when the actuarial report was performed and at what date the liability was determined.

MR. CHAIRMAN: — Did you say 36 or . . .

MR. KRAUS: — A-36 in volume 1.

MR. CHAIRMAN: — You're saying half-way down that listing group — reported unfunded liabilities?

MR. KRAUS: — Yes. The old . . . the first one is the old government superannuation plan. They obviously had had an actuarial report that was completed in March '84, but the liability was determined to '83, and at that time the unfunded liability was 992 million. And you can see some have no reported unfunded liability, but there are four in total that do.

It mentions the three teachers' superannuation funds that you're interested in.

MR. CHAIRMAN: — And then I would assume, Mr. Kraus, what you are informing me that . . . Let's take the transportation one at the bottom: "No study has been made at this date." That means there's never been an actuary study on that one?

MR. KRAUS: — It appears that, yes, that's what that would mean in the case of the TB League and the SPC, yes.

MR. CHAIRMAN: — And on the teachers' superannuation allowance fund — permanent based on contributions to fund, which means that we should never see an unfunded liability.

MR. KRAUS: — Hopefully not. Correct.

MR. CHAIRMAN: — This does not reflect the Crowns, am I correct, though? This will not reflect Crowns?

MR. KRAUS: — No, it will not.

MR. CHAIRMAN: — And they have their own pension funds. And, Mr. Meiklejohn, do you invest those funds, all except for one, or do you invest any of them?

MR. MEIKLEJOHN: — We invest them all, I think.

MR. CHAIRMAN: — Well, the only place, Mr. Meiklejohn, I believe I can get a complete report would be from you people, on all the plans. I'm not sure of the proper method to ask for, and we have part of it here, as I say. It's up to the committee's wishes. It's my wish, but if the committee wishes to suggest not, I will accept that. Or if the committee wishes to have it for information, I accept it. It could save a lot of discussion time, that's all.

MR. KRAUS: — I believe there are annual reports for each of those pension funds from the Crowns, and I believe the committee could probably get that information by asking for it from the Crown Management Board. They probably would be able to provide you with reports on each of them.

MR. LUTZ: — Mr. Chairman, at one time those things were tabled in the House. I don't know if they are yet or not, but certainly they're available at each Crown, if they have a superannuation plan.

MR. KRAUS: — I believe they are, Mr. Lutz, tabled in the House, and I'm not so sure that they haven't been put together in a booklet so that four or five of them come together in a little booklet.

MR. CHAIRMAN: — Some are, some aren't. They used to be, that's correct. I think they changed about 1980, a little different. They put them in their annual reports, and it was a little harder to pull. Fine. I'll get them, my own sources. I accept that. Or I'll have the Clerk drop a line or something like that.

MR. CHAIRMAN: — Okay. Any other questions of the Department of Finance? If not, we have two things to deal with as a group later.

MR. ENGEL: — I'd like to ask about the second . . . I thought that's the role of this committee to discuss . . . the auditor's suggestion in there is that he's bringing to our attention. But section (b), page 11, starts by saying that: "The Minister of Finance has the authority to hold in trust the assets of the Saskatchewan Transportation Company employee superannuation fund, subject to investment guide-lines. And he reports that the "investment of pension trust funds in real estate represents an investment made for which there was no authority."

Do you argue the same arguments as we had with SaskPen on these, or is there a different situation that involves the superannuation fund for Saskatchewan Transportation Company?

MR. MEIKLEJOHN: — Yes, I think it's an entirely different case, Mr. Engel.

MR. ENGEL: — Could you explain? Could you explain about how much money we're talking about in this case here, the Saskatchewan Transportation Company superannuation fund?

MR. MEIKLEJOHN: — For Sask Transportation, we think it's . . . about 241,000 for Sask Transportation in this particular project.

MR. ENGEL: — There's 241,000 that was invested in real estate?

MR. MEIKLEJOHN: — Yes, in this particular project. It's called Victoria Industrial Place in Regina, the particular investment or real estate project.

MR. ENGEL: — Is that a part of this . . . that's not Victoria West Building?

MR. MEIKLEJOHN: — No, no.

MR. ENGEL: — That's not part of that same concern?

MR. MEIKLEJOHN: — No, it has nothing to do with it.

MR. ENGEL: — But this is a down-town redevelopment project?

MR. MEIKLEJOHN: — It's not down town; it's out in the north — Ross Industrial Park.

MR. ENGEL: — Oh, I see.

MR. MEIKLEJOHN: — It's a separate project out in Ross Industrial Park.

MR. ENGEL: — Are the Department of Finance shareholders in a development project there, or under what terms were you investing in that? Can you explain some of the terms of the investment there?

MR. MEIKLEJOHN: — It's a completed building. We purchased this real estate project. It's an operating project. And in total, we own 50 per cent of the project. That is to say the transportation employees' superannuation fund and the public employees' superannuation fund together own 50 per cent of the project and the other 50 per cent is owned by Winfield Development.

MR. ENGEL: — Is this building leased to Winfield, or who's using the building?

MR. MEIKLEJOHN: — Multi-tenant, a multi-tenant. It's a little complex with a number of different . . .

MR. ENGEL: — Shopping-mall type operation, or . . .

MR. MEIKLEJOHN: — Well, it's more in the wholesale. It's not a retail . . . I don't think there's any retail in it. Is there? It's sort of an industrial warehouse, and so on, a complex.

MR. ENGEL: — What's the total amount the Saskatchewan Transportation Company has in it? Did you make this investment as part that qualifies under less than 7 per cent of the total investment of Saskatchewan . . . (inaudible) . . . superannuation, or under what terms of reference were you using to make that type of an investment?

MR. MEIKLEJOHN: — Well, I think specifically in this case the investment itself qualifies under the direct provisions of the legislation. That is to say, it meets the qualitative tests — that is, three years' operating profit and so on — that we talked about earlier. It meets the direct real estate investment provisions of the particular legislation or regulations.

MR. ENGEL: — Could I ask Mr. Lutz that same question, as to if they feel that it met the requirements of the legislation? Why do you feel it didn't? Can we have those arguments?

A MEMBER: — Mr. Neill will answer that question, Mr. Engel.

MR. NEILL: — The legislation that sets up this particular fund does not include any borrowing powers. The fund cannot borrow money. It can invest the money that it collects from the employees and from the other contributors to the fund.

What happened here was that they bought an interest in this property and assumed a mortgage liability, just as if you had bought your house and you have a mortgage on it, you owe the mortgage company the amount secured by the mortgage. That has the effect, in my view, of taking into the fund borrowed moneys, increasing the fund by the extent of the debt to the mortgage company.

The particular legislation that sets this up, as it's set out in the auditor's report, the section as set out there, says that the fund consists of funds that come from three different sources. It doesn't allow the borrowing of money. So we now have a fund increased by the amount of the mortgage, which is really the investment.

Do you follow me?

MR. ENGEL: — Well I suppose the question I have is: what did you consider the value of the building? It's more than a half a million dollars, I presume.

MR. NEILL: — I have no . . . I'm not . . . Mr. Lutz might have some view on that.

MR. LUTZ: — Mr. Chairman, that wasn't the point of the comment. We have no idea what the value of the building was. We merely make the point that you can't borrow money in that fund. That was the only thing we were doing here. I have no idea what that building would be worth.

MR. ENGEL: — If the building would have been worth \$482,000, this would have been a legal investment. It would have been within the framework of the legislation.

MR. LUTZ: — No, that's not the issue, Mr. Engel. The point was that, by doing this transaction, they borrowed money when they acquired a piece of a mortgage.

MR. ENGEL: — Well but the point I was making, if they have 50 per cent share in a building and the amount they invested would have paid for the building, you're saying that they then would have been legal. You know, by adding their 241,000 they have in it and their 50 per cent share, if the building would have been worth 482,000, that is a point, because then they wouldn't have borrowed money.

I can't see why you're arguing with me. I think Mr. Neill agrees with me, do you?

MR. NEILL: — The point is exactly that, that the existing legislation does not contemplate the fund borrowing money. And in my view, they borrowed money in this instance, and as a result, they have done something which they were not permitted to do.

The investment is not in the equity in the building. The investment, including the borrowed moneys that they assumed liability for, is all part of the one investment. So they've acquired funds by borrowing to increase the — to make their holding 50 per cent subject to a mortgage.

MR. ENGEL: — Do you know what the building is worth?

MR. MEIKLEJOHN: — We don't have the precise figures here. But the total value of the property of that time, that is to say, the equity and the mortgage outstanding and so on — a computed cost — is somewhere between 3 and \$4 million.

MR. ENGEL: — And we got 50 per cent of that for \$241,000?

MR. MEIKLEJOHN: — No. There's two funds involved. The transportation employees put in 241,000, and the public employees put in 562,000.

MR. KRAUS: — Part of the question here, Mr. Chairman, and Mr. Engel, is whether or not these funds can actually borrow money or should they be simply restricted to investments? Well the point is, of course, they can only be restricted to investments in real estate. But there was an intermediary here, a limited company formed. And the funds did not directly invest or acquire the asset and the liability. This real estate was purchased by means of a company, a limited company that was formed separately.

So in the opinion of the lawyers who have looked at this particular transaction from the Department of Finance's perspective is that the funds in fact do not have any liability. They're not responsible for the liability. I mean, there's a difference in legal opinions here, is what it amounts to.

As far as the funds are concerned, they have put so much money up into a limited company and that's the extent of the risk. Of course, if the whole venture goes down then you lose whatever your investment is. But you're not . . . This is the legal opinion that these funds are not responsible for any additional liabilities that may result if this real estate venture goes down.

So the two pension plans involved are simply accounting for this as an investment. They're not treating it as an asset and a liability, as is being suggested it should be.

MR. CHAIRMAN: — If I read you correctly, what you are saying to us now is what you believe was the opinion of the lawyers of Finance. And what you also said to us is if the thing went sick,

the only thing you can lose was the investment. You're not responsible for something else.

MR. KRAUS: — In the same way as if you'd invested in the stock-market or in bonds, and when they go down, that's what you lose.

MR. CHAIRMAN: — And because it's limited, they're protected.

MR. KRAUS: — That's the legal opinion that we're using, yes.

MR. CHAIRMAN: — I think before we go in circles and circles, I'll . . . Mr. Glauser next. But after that I would suggest maybe the committee should make some kind of decision. What do we want to do? Do we want to flag? What do we want to do here?

MR. ENGEL: — Well, Mr. Chairman, I was in the middle of a line of questioning. I think it's very rude that you interrupted and that you don't let me finish at least this one line. If you think you know where I'm going, that's fine. You can read my mind. But I feel I should have a right to ask these questions.

MR. CHAIRMAN: — Mr. Engel, I'm not preventing you from answering, but I do . . .

MR. ENGEL: — You interrupted me, Mr. Chairman. And I'd like to know, was that a point of order? Or on what basis . . . where I continue.

MR. CHAIRMAN: — Mr. Engel, just before you and I decide to have a dispute here, I would suggest to you that we have all acknowledged Mr. Glauser has some expertise here earlier today. He, I think, wanted in with a point of clarification, and that was why I was going to recognize him, then go back to you.

MR. GLAUSER: — It has to do with the indirect liability, and that was a question that I asked very early on, if whether there was any direct liability for the mortgage. And I think that Mr. Meiklejohn answered that question, and that's what is causing me some confusion now with this separate thing that we're going into because I thought we got that answer when I originally asked that question.

MR. MEIKLEJOHN: — Well, according to our legal counsel, the fund, meaning the Saskatchewan Transportation Company employees superannuation fund has not assumed the mortgage, and there would not be any recourse to the fund if the real estate project went down, and that the vehicle that has been used as an intermediary in this transaction has insulated the fund from this problem.

I think that was the opinion we received. That's the way the project was constructed in terms of the investment. We always had the option to pay off the mortgage. That was always an option. I'm sure the two companies who hold the mortgage would have been perfectly happy to have us pay off the mortgage because they were 10 per cent mortgages. But we didn't because we felt that we could make . . . have a higher rate of return by retaining the mortgages and, at the same time, protect the funds as well. And that's the way we did it.

MR. ENGEL: — What is the name of this limited company that . . .

MR. KRAUS: — It is a numbered company. I mean, the number is called 563361 Saskatchewan Ltd.

MR. ENGEL: — I thought I saw that number in here . . . 56 32 . . .

MR. KRAUS: — 33, is the number I've got anyway. 33 61.

MR. ENGEL: — And shareholders of that company are these two . . .

MR. KRAUS: — These two pension plans.

MR. ENGEL: — Are these two pension plans. It's a limited company that is . . . Somebody's shaking his head here.

MR. MEIKLEJOHN: — Mr. Chairman, I would like Dan Baldwin just to explain the structure involved in this particular company, and the way it is organized, and what kind of a company it is.

MR. BALDWIN: — The corporation that we're speaking about in this case, it was formed under The Business Corporations Act. The sole shareholder is a member of the law firm, MacPherson Leslie & Tyerman. The corporation is in essence just a shell, and acts as a bare trustee for the holding of the investment on behalf of the pension funds.

The corporation appears on title as the owner, and the corporation also has entered into all of the joint venture agreements on behalf of the beneficiaries of the trust.

MR. ENGEL: — MacPherson Leslie & Tyerman just act as agents on a percentage basis for handling that investment?

MR. BALDWIN: — No. MacPherson Leslie gets no specific fees for acting as the shareholder of this company. They were of course paid by the pension funds for forming the corporation in the normal course that legal matters are conducted. But they receive no ongoing fees on any percentage basis. They bill us just for time put in.

MR. ENGEL: — Nor are they responsible for any losses that that company may incur?

MR. BALDWIN: — No. Shareholders generally aren't responsible for the losses of corporations unless there are guarantees or other legal obligations formed.

MR. ENGEL: — Okay. And basically, from my information then, the 241,000 by the Saskatchewan Transportation Company employee superannuation fund was invested, the moneys were invested into this company . . .

MR. BALDWIN: — They were given to the company to be invested in this project. The company gave back the pension fund a declaration of trust saying that they held a certain percentage of the real estate in trust for the transportation superannuation fund.

MR. ENGEL: — What would have been your experience in an investment like this? What rate of return would that have yielded? You say that the mortgage is bringing in 10 per cent. It's a 10 per cent mortgage, but the rental rates, this vehicle is full? This building is full — fully occupied?

MR. MEIKLEJOHN: — Yes. At this point, and at the point we bought this, when we were doing the evaluation of the project, and of course the lessees existed at that point in time, our rate of return on our investment would be 17 per cent with the mortgages in place. If we had removed the mortgages, paid off the mortgages, our rate of return would have been 14 per cent.

So the differential there was 3 or so per cent as a result of leaving the mortgages in place. And that's the way we computed it at that point in time.

MR. ENGEL: — I suppose a final question I would ask Mr. Neill is that: with the explanation as such, do you still feel that the legislation covering investments, the responsibility that even if this numbered company has the mortgage, that you still feel that . . . Has this sufficiently ducked that rule that they can't hold a mortgage?

MR. NEILL: — In my view a trustee, as Mr. Baldwin said, the numbered company is a bare trustee for, in this case, the Minister of Finance who in turn is trustee for the funds. And the Minister of Finance cannot delegate to an agent or trustee powers to borrow money that he, himself, does not have by the legislation. Otherwise it would make nonsense of the legislation.

So that's my view. And I think, therefore, if the minister of trustee has purported to direct the numbered company, who is his bare trustee, to assume a mortgage which he, himself, could not assume, then he has exceeded his powers.

MR. ENGEL: — I think we should flag this to discuss later. I don't think we can resolve that.

MR. CHAIRMAN: — Do we have any other issues on the pension field, which is what we called Mr. Meiklejohn here today . . .

MR. ENGEL: — Not as far as that book is concerned.

MR. CHAIRMAN: — . . . before I go anywhere else. None? Mr. Glauser, do you have something else you wish?

MR. GLAUSER: — I'm not too sure that . . . I think that what we will do is, after the officials have left, we can resolve what we want to accomplish as far as flagging or anything else. We don't usually do that when the officials are here anyway. So we'll deal with that . . .

MR. CHAIRMAN: — Mr. Meiklejohn, I believe you're excused with your officials. Thank you kindly, and thank you for your answers.

Okay. Mr. Clerk, who will we call next week?

MR. JAMES: — On Wednesday it will be the pork producers, Prairie Agricultural Machinery Institute, and the sheep and wool people. Thursday will be the Department of Finance — if they can make it — forest products, and Department of Highways.

MR. ENGEL: — But I think we should have forest products at the top of the list, so we're sure to do them.

MR. JAMES: — Sure. And we don't have lead questioners, with the exception of forest products, which would be Mr. Muller. So do we want to decide who's going to be talking on . . .

MR. CHAIRMAN: — We can do that unofficially if we'd like. It doesn't have to be on tape . . .

MR. ENGEL: — It would be nice to have them on the tape so we'd know . . .

MR. CHAIRMAN: — Okay. Pork producers, I'm prepared to, if nobody else wants it, or Allen, you may — your choice.

MR. ENGEL: — Agricultural ones I wouldn't mind leading on.

MR. CHAIRMAN: — Okay, you want to do the Prairie Machinery, and the pork one you'd like to lead on?

MR. ENGEL: — Okay.

MR. CHAIRMAN: — Okay. Sheep and wool?

MR. ENGEL: — Go ahead. I've only one sheep-herder in my whole constituency.

MR. CHAIRMAN: — Forest products is Mr. Muller; Highways should not be me because I am in that department. Anybody?

MR. ENGEL: — You'd know more about it than most of us.

MR. CHAIRMAN: — It's an inventory control problem, I believe.

A MEMBER: — I'll take that.

MR. CHAIRMAN: — Okay. And we will see who will . . . I guess everybody wants in on Finance. We are covered; we are adjourned. Thank you, gentlemen.

The committee adjourned at 11:00 a.m.