

STANDING COMMITTEE ON PUBLIC ACCOUNTS
May 29, 1985

Public Hearing: Department of Rural Development

MR. CHAIRMAN: — I will welcome the officials from the department of rural affairs — Rural Development, I'm sorry. I have to candidly admit, I don't know which one of you is the deputy, but I'm going to assume the gentleman in the centre is. I guessed wrong?

MR. CHAYKOWSKI: — Our deputy, Mr. Dan Gilewich, has a commitment this morning. We're expecting he may join us in a few minutes. So we've got his name tag here.

MR. CHAIRMAN: — I see. Well, perhaps . . . I can't read your name either.

MR. CHAYKOWSKI: — It's Chaykowski, Larry Chaykowski.

MR. CHAIRMAN: — Chaykowski. Perhaps, Mr. Chaykowski, you can introduce the other officials.

MR. CHAYKOWSKI: — On my far right here is Mr. Roy Parkinson. He's the chairman of the Municipal Employees' Superannuation Commission. And on my immediate right is Mr. Larry Aebig. He's the executive secretary, also, of the Municipal Employees' Superannuation Commission. And I'm Larry Chaykowski, director of administration for the Department of Rural Development.

MR. CHAIRMAN: — I want to, in addition to welcoming you here and thanking you for coming, make a statement that is made to all the witnesses who come, and that is that what is said before the committee is privileged in the sense that nothing you say can be used in a libel or slander or criminal action, in the unlikely result that might ensue out of this. On the other hand, it is taken down verbatim and is readily available for use elsewhere.

With that, I'll open the discussion for questions by any members.

MR. KATZMAN: — Gentlemen, there's only one question that we asked you to come here for, really, and that is the pension issue and what the position of the pensions you look after is — unfunded, surplus. What's the position of them?

MR. AEBIG: — Well, there is no unfunded liability at the present time. We had an actuarial evaluation done on the plan as of December 31st, 1983, and it was found that the surplus was 9.3 million on a conservative basis. The previous study, which was conducted three years earlier, December of 1980, showed a surplus of 5.5 million. So the surplus did go up by approximately \$4 million over the three-year period.

MR. KATZMAN: — Has there been adjustment, benefits or anything, since in that period?

MR. AEBIG: — Yes. There is an adjustment in September of 1984.

MR. KATZMAN: — And what does the actuary or the negotiated suggestion mean that will cost in the balance in the account over the next years, as may be indicated?

MR. AEBIG: — Well, the last increase that was granted to the pensioners, it was deemed to have an actuarial cost of about \$1.4 million.

MR. KATZMAN: — Mr. Chairman, that's it.

MR. CHAIRMAN: — I had some questions. In the material which I had got — I'm not sure how it wound up in front of me — I have two sets of financial statements, both labelled "draft copy for discussion purposes only." Where did these come from? They don't appear to be finalized, final

copies.

MR. AEBIG: — Well there are still some discussions going on with respect to which statements we should be using — whether we should be using the original statements in the format in which they are; or whether we should go with the revised statements; or go to a third set of statements, because neither one of the first two is totally acceptable to the auditor.

MR. CHAIRMAN: — Well let me ask you how that situation arises.

MR. AEBIG: — The original set of statements was prepared in the same manner as we always have done. Our annuity underwriting activity and our new plan formula pension have been in operation side by side since 1973. And since that's still the case today, we didn't see any need in changing the statements.

But the auditor's position apparently is that we should be spreading out the annuity underwriting and the new plan pension benefits from other activities of the fund, the reason for that being that we could more appropriately show the pension or the financial position of each activity at the end of each fiscal year.

MR. KATZMAN: — That's the proper way to do it.

MR. AEBIG: — Well as far as the commission is concerned and the way the Act is written, any one particular activity need not necessarily be solvent at all times, provided the fund as a whole is always solvent.

MR. KATZMAN: — You cannot bleed from the fund that is the formula fund to the cash purchase fund by the normal rules of the system; and therefore if you want a motion from this committee, we'll tell you that the auditor is correct and do it his way.

MR. CHAIRMAN: — You're likely to get to that, I think, in any event. Perhaps the Provincial Auditor may have some comments on this matter.

MR. LUTZ: — Mr. Chairman, I think Mr. Atkinson would be the best person to comment on this subject.

MR. ATKINSON: — I'm not certain what comments you'd like from us. What we've written in the annual report is the fact that we're uncertain as to what financial statements they'd like us to audit at this present time.

MR. KATZMAN: — Let's put it this way. The way I've seen all the other statements of all the other pension plans from all the other government agencies and so forth, so on, they are split.

The old formula is based on one and shows its accrued interest, or its position, and the cash purchase — or the '78, I guess, or whatever time that came in — has another financial sheet. And they show separately. That seems to be what the auditor's report is asking for, which is proper.

MR. ATKINSON: — I think to perhaps clarify this matter is that I'll mention that there was a change in the Act, 22(2), I believe, in the year 1983. That change in the Act was our opinion that it took this plan from being one plan, because the restrictions that were contained in that section 22(2) in fact made the plan that was there one plan because there was one restriction. We reported in our annual report that payments were being made from the plan not in accordance with section 22(2).

The Act was subsequently changed and that change precipitated the change in reporting requirements, where they would show the money purchase plans separately from the defined benefit plan separately from the annuity underwriting operation that could have been performed by any insurance company.

MR. KRAUS: — If I could make some comment. I think I'd like to have the plan administrators speak to this. But I do want to raise, perhaps before they do, that the difficulty with the accounting has been that, I suppose, number one, what has been said to this point is probably something that we instinctively would agree with as accountants, and so on, and it sounds logical.

On the other hand, apparently the people that put the Act together and also legal counsel to this plan are saying, well no, that's not really true; it was intended that it be all one plan. And that has caused some difficulty. And I suppose what we'd really like to clarify is just exactly how should this plan be administered. We've obviously got two camps, and I think the first position is the one that would sound the most logical, but the people that put it together and some of the legal support say no.

MR. KATZMAN: — Mr. Kraus, the point is though, all things aside, there is no legitimate and honest method to show that you lump them together, because the growth in the cash plan is going to continue and the growth in the formula plan is going to dwindle over the next 30 years.

MR. BENSON: — Mr. Katzman, this is perhaps a little bit different plan than in other cases in that it's the same individuals who move from one plan to the other. So at any one time you have people who are in both plans. In teachers and in the government plan, you're in one or the other. And there's reason for keeping the segregation.

MR. CHAIRMAN: — Isn't Mr. Katzman right, that you cannot take money from one plan and put it in the other? You can't shuttle money out of one?

MR. BENSON: — There doesn't appear to be any legal restriction in the Act, of doing that.

MR. CHAIRMAN: — That strikes me as being an unmanageable mess. You got two plans working out of one fund.

MR. KATZMAN: — No, because what he said is, and if I read him now, what he's saying is that the point of the new plan everybody was automatically clipped. In the old plan, you have your benefits prior to such and such a year, and that's it. And from 1979 or '80 . . .

A MEMBER: — '73.

MR. KATZMAN: — '73? From 1973 forward you were on the cash plan and you were forming a group there. It is not a legitimate way by common sense to do it, but it is probably legal under the system that you have because everybody is flipped. But if you are going to make an actuary just look at it to say, the benefits paid prior to '73 and the cash liquidity to pay then, versus the benefits paid from '73 on, should be based on the funds placed in those two years.

You probably are short cash prior to '73 under unfunded liability. But it picked up cash on your cash purchase plan since '73.

MR. BENSON: — It's the other way around, Mr. Katzman. It was cash plan, it was money purchase, and then it changed to the . . . (inaudible) . . .

MR. PARKINSON: — We faced the opposite way. We went from a money purchase to a formula plan.

MR. KATZMAN: — Then I definitely want to see them split because the formula plan will get you in trouble in due course. It cannot do anything but. It's got everybody in trouble. If inflation stays down you're not in trouble, but if inflation ever goes whoosh, you're in trouble right now. If you get a four-year or five-year inflation cycle, you got trouble.

MR. CHAIRMAN: — The basic purpose of preparing financial statements is to get you information upon which you can plan ahead and administer a plan. If you've got them mixed up, the information is much less useful to you than if you have two separate statements.

To that extent it seems to me that the Provincial Auditor is right. Perhaps I'm wrong, and if I am, say so.

MR. AEBIG: — Well I would have thought this would have been gone over very carefully when the new plan came into effect in 1973, to see whether or not it was proper to draft the Act the way that it was drafted. But since it reads the way it does, we feel that we should prepare the statements accordingly.

MR. KATZMAN: — Mr. Chairman, I'm prepared to move a recommendation to the House that they split them. I think that's the only logical way. Even though they may have the authority, I think that . . . (inaudible) . . . I very strongly believe that they should be shown separately, so people who are not experts within the group yourself, they'll be like everybody else's plans, visible the two sides, even though the money receivers are the same.

It's the oddball in the picture and it's, you know, it doesn't . . . They should be all comparable. If it's going to give you any trouble, speak up now, because otherwise . . .

MR. AEBIG: — Well it would take quite a number of amendments to the Act. There's no question about that. There's one section in the Act that stipulates that interest can only be credited to members' accounts until retirement. If one were going to amend the statements as suggested, to keep track of the remaining funds in a money purchase plan, we would have to continue crediting interest, which the Act doesn't allow for.

MR. KRAUS: — If I could, I'd like just to make this comment, that perhaps the people would — the officials — would like to consider some type of study or the committee may want to consider that, and not from an accounting perspective, but we've been wrestling with this in our own minds trying to determine, you know, what comes first, accounting or the principles of putting a plan together — how should plans be structured.

I've wondered whether they should not have someone come in and assist them to review and establish what is proper. What the committee is recommending, I guess, it sounds very logical. I'm just wondering whether, in fact, though, there is the possibility that what they are doing is still possible or correct.

MR. CHAIRMAN: — Well, Mr. Kraus, who would you suggest ought to come in and help them? Are you suggesting Mr. William Mercer or someone?

MR. KRAUS: — Well, no, not an actuary, but rather somebody who may be considered to be a pension policy expert.

MR. CHAIRMAN: — Wes Robbins?

MR. KATZMAN: — I don't recall Robbins in that technician business.

MR. CHAIRMAN: — We clearly cannot continue with this situation. It is, to put it mildly, a little unusual to be getting draft copies of your financial statements. That's not what the committee usually works from.

It is intolerable to continue this situation. In some manner, it has to be resolved.

MR. KATZMAN: — Mr. Chairman, I am prepared to take the bull by the horns and say, you do it

this way, and that's it. And now you get the mechanics worked out, the same as we do anybody else, because I do not think one should be totally different than everything else within the government.

MR. CHAIRMAN: — There's one small difference here. I gather, unlike the provincial government employees' plan, in this case people didn't have the option of staying in one or the other. Everybody got something in the nature of a cash . . . And they keep that, I guess. And then you began to pick a formula plan. To that extent, it's different. Mr. Atkinson?

MR. ATKINSON: — Mr. Kraus has indicated that we have talked to our legal counsel concerning these financial statements and the opinion that we rendered on the first set of financial statements, the original copy that you have there was cleared . . .

MR. CHAIRMAN: — Well did you start with an original version?

MR. ATKINSON: — The original version was cleared with our legal counsel and he felt that the Act was quite clear in what it had defined to be shown and what should be accounted for.

If the intention of the commission is to have one formula-base plan for all people who are currently employees, municipal employees, then it would take a redrafting of that Act, I suggest.

MR. KATZMAN: — What did the original show, two separate plans?

MR. ATKINSON: — The original financial statement was as they were prior to the amendment of section 22(2), and if those financial statements were, in fact, going to be tabled, it would be our opinion that they do not present fairly.

MR. PARKINSON: — What would happen if we again amended section 22 and just said the allowance has resulted from the calculation in subsection (1), "purchased on behalf of a retiring member shall not exceed the lesser of?"

MR. ATKINSON: — If you're asking me for a legal opinion, I'm sorry I can't give you one.

MR. KATZMAN: — What are you suggesting it will do? You're making a suggestion.

MR. PARKINSON: — The reason we got into this problem was the amendment that we put through to section 22(2). If we had not amended it, I don't . . . I think I'm aware that we wouldn't have had a problem then, because in section 22, we do mention annuities and we took that word out.

MR. ATKINSON: — Excuse me. Are you saying if you went back to the way that section 22(2) was worded prior to the amendment?

MR. PARKINSON: — Yes.

MR. ATKINSON: — I think we indicated in 1981 that at that time that if you changed that section, you would have to change how you accounted for the operations of the plan. Now the thing that precipitated that change, I believe, was because we reported that you were making payments that were not in accordance with your Act at that time. And I think our suggestion at that time was that it was very simple to amend the Act if that's what you wanted to do by changing the word . . . What was it for? "Service." There was one definition, "contributed service," I believe.

MR. CHAIRMAN: — Well I will accept the motion from the member from Rosthern.

MR. KATZMAN: — Now I don't care what they got to do within their own system, but they

better know they're going to have to do it. And what we're going to say is we want one on the formula and one on the cash and that's the way you're going to have to report it.

MR. BENSON: — Are you talking about two separate funds now — segregation of the assets?

MR. KATZMAN: — The only way everybody else has reported it.

MR. PARKINSON: — How do we separate them at this date? Do we . . .

MR. ATKINSON: — Mr. Katzman, I believe that they could have one fund if you . . . It's always been our contention that the Act does say that you shall have one fund, but we would like . . . I think what we were saying is the activities of the plan should be shown and that there's, as we see them right at the present time with the present Act, is you have the former plan — you have a money purchase plan. You have a fiduciary relationship with those people. That's shown. You have a formula-base plan, and we say that you should show the operations of that plan.

You also do something that an insurance company does and you underwrite annuities, and you should also show the results of underwriting those annuities. That can all be done from one fund.

A MEMBER: — That's what I moved.

MR. CHAIRMAN: — All right. State it as a formal motion, so that it is on the . . .

A MEMBER: — I move as is indicated in the Provincial Auditor — that description.

MR. CHAIRMAN: — All right. Have you got that written out, Mr. Clerk?

MR. KRAUS: — I don't want to complicate this, but well . . .

MR. CHAIRMAN: — It would be virtually impossible to do, I think.

MR. KRAUS: — We feel that if you are going to account for the annuity fund separately to determine whether or not it is making money or losing money, that you, in fact, probably would have to cut some of the assets out of the pool and attribute them to the annuity. Otherwise, you wouldn't know whether the assets that are supporting the annuities are making enough money to pay for the annuities. You might be losing 1 or 2 per cent a year.

So I suspect that that may be the proper way to go. If you're going to split it out, you may have to attribute — if you want to use that term — to some of the assets from the major pool to this annuity activity.

MR. BENSON: — I think the related point to that is that people in the industry, if they are being gauged about making money in terms of the annuity, would invest in perhaps different assets than you would if you're looking after a money purchase plan or, indeed, a formula plan. And so to use some arbitrary interest rate for comparison, to us just doesn't make any sense.

MR. ATKINSON: — It's my opinion that you could have a pool of assets from which the earnings of any one segment of this operation can be derived. I don't believe that accountants couldn't work this out. I believe that you don't have to take each asset and put it in a sock and bury it in the backyard, so to speak, to know what is yours. You can simply have a pool of assets with earnings derived therefrom split in different ways.

MR. CHAIRMAN: — So what if a member gets this written out?

MR. AEBIG: — Mr. Chairman, could I make one point here? It's quite important. At the present time you are probably aware that there's a combined investment fund being put together here,

where all the various pension plans will pool their assets into one consolidated fund. And they'll all be invested from that fund, and each plan will simply own units.

In our case, both our new plan assets and former plan investments are all combined into one pool. And we have asked that they all be included — because they can't be separated really, anyway — that they all be included. So actually all of the investments, whether it would be from new plan contributions or former plan contributions, will all yield the same.

MR. KATZMAN: — This is a little bit more open but it allows you guys now to negotiate the situation: that the plan be reported so that it shows the position of all assets and liabilities — the plans, I should say. That will give you the time to negotiate how you want to show them, either way, between everybody involved, and yet . . .

MR. ATKINSON: — Show the assets of the fund.

MR. KATZMAN: — Yes, fine. Funds. There's two funds.

MR. ATKINSON: — There's one fund. There is only one fund. I think everybody's agreed with that part.

MR. KATZMAN: — Okay. The assets . . . show the position . . . the plan, okay. The plan be reported so that it shows the position of all assets and liabilities independently. That's what you're concerned about.

MR. PARKINSON: — What you're wanting is a financial, or a statement on the operation of people on annuities, of people on allowances.

MR. KATZMAN: — That's right. That will work.

MR. PARKINSON: — But we still only have one fund. But how much money do we pay out each year to those who are on annuities and how much money are we paying out to those on allowances or pensions, whatever you want to call them?

MR. ATKINSON: — I believe the annuity operation . . .

A MEMBER: — That'll work.

MR. PARKINSON: — The annuity operation is a former plan.

MR. ATKINSON: — No. It's just an operation.

MR. PARKINSON: — Except under the former plan, we define that they're getting an annuity.

MR. ATKINSON: — They could purchase the annuity from anyone.

MR. PARKINSON: — From an insurance company, if they wish.

MR. ATKINSON: — That's right. Well I believe that you've locked them in, have you not?

MR. KATZMAN: — I think my motion does allow them some manipulation room between departments. Gerry, does that work? Just hang on. I'm just checking with the comptroller to see if he has any problem with that style that allows the two sides to get down and solve the problem.

MR. CHAIRMAN: — While they're fine tuning their thinking on that, I wonder: do we want to make a recommendation to the Municipal Employees' Superannuation Commission and ask

them to report back in the fall? Is that what you're suggesting?

MR. KATZMAN: — Yes. We can add it in our report.

MR. CHAIRMAN: — Add it on our report and ask them to report back in the fall.

MR. KATZMAN: — Will that do what you need, Gerry? Give you manipulation room for both of you — that says, hey guys, straighten it out one way or the other; get it done.

MR. KRAUS: — I think as long as you added something along your last comments there, about straighten it out, Mr. Katzman, would help. Because again, I don't want to get into the specifics, but there will be some difficulties in accounting for some of these activities individually. And if we're going to meet your requirements, or the plan is going to meet your recommendations, rather, then you really want to make sure that the recommendation says, straighten things out in such a fashion that it's accounting for these activities individually.

MR. KATZMAN: — That's what's intended.

MR. KRAUS: — And I believe that's what the auditor wants to see as well.

MR. KATZMAN: — Yes. That's what's intended.

MR. ATKINSON: — Right. I think that's been the contention since day one, is that the prior financial statements did show the operations of the former plan. What we have asked, that they show the operations of the new plan, and show the operations of the annuity underwriting activity — three distinct areas of operation.

MR. CHAIRMAN: — The motion — before I accept it, I want to be sure that there aren't a whole lot more problems with it. The motion as suggested states: the plan be reported so that it shows the position . . . Sorry, Ralph. You should have tried the English language.

MR. KATZMAN: — It shows the position of the assets and liabilities.

MR. LUTZ: — Mr. Chairman, you mentioned earlier that there are two sets of financial statements in that folder. I would not like the committee to think that we sort of casually toss financial statements around, because they're marked "draft", it doesn't matter.

The first set of financial statements we got from the commission had a letter attached which said, these are our finals. We promptly rendered an adverse opinion on those for these numerous reasons. And when they went back to, I think, treasury board or wherever, for approval, they began to bounce around. We then got another set of financial statements which was called "final," and we audited those, to which we attached a non-opinion — we denied — and then that has bounced around. I frankly was quite surprised to see these two things in the back of their annual report. I don't understand why they would be there. I would hope they haven't been tabled.

But we will, any time, accept from one of our auditees a set of financial statements which he says are theirs and final; and we will audit them, and we will render an opinion on them.

MR. CHAIRMAN: — To put it mildly, gentlemen, it's not satisfactory to be dealing with \$100 million and to present the public accounts committee with three such financial statements. To put it mildly, that is no way to run a railway. I am not being critical . . . Well, I guess I am being critical. This is just an unmanageable mess.

MR. YOUNG: — I'm not on the motion — after the motion. Are we talking about a motion now?

MR. CHAIRMAN: — No, we're not, actually. I've not accepted the motion. They're still drafting it. Go ahead with your comments, whatever they are.

MR. YOUNG: — My concerns are with respect to the annuities in general. I don't know who I'm addressing — who's ever responsible, pipe up and answer me.

But when a person goes along and he gets to retirement age, there's \$300,000, shall we say, earmarked for this fellow. That's his retirement. And as I understand it, somebody in the government, or someone in the pension department, phones up a specific life insurance company and says, we've got \$300,000 here; what's that worth per month? And the guy says, oh, that's worth \$558 a month. He phones the guy back and says: your pension is da dada dada. As I understand it, there's no tendering of that earmarked money to the various life insurance companies, and there's no ability for the retiring person to get his figure, his \$500,000, and then go shopping throughout the many institutions for an annuity that would pay him the best.

I think that's unfair to the retiring person and unfair to the insurance industry who should get a chance to take a poke at it and see what they can do with that pool of money.

MR. AEBIG: — You're incorrect there, sir. We fund our own annuities from the plan, or the annuitant has the option of going to the private company, getting as many quotes from as many companies under as various different plans as he would like, and he can make his choice. And in cases where he selects an annuity from a private company, we simply transfer his money out.

MR. YOUNG: — Oh, you're clean then. Somebody's not doing it that way. Maybe it's the line departments, or somebody.

MR. AEBIG: — Well, we've always done that. The only reason a lot of the private companies are not getting the bids is because we provide higher benefits per dollar.

MR. YOUNG: — Well, that's fair enough. There's somebody not doing this. Maybe it's the Crown corporations; maybe it's the line departments. There's somebody not doing it. I don't know who it is. Do you know, Gerry, who it is?

MR. KRAUS: — Well, if I'm not mistaken, what the municipal employees' superannuation plan is doing is very similar to what they do in the Public Employees Benefit Agency. I'm positive that government employees from departments are allowed to go and obtain quotes from various . . .

MR. YOUNG: — Do you happen to know about Crown corporations?

MR. KRAUS: — No, I don't.

MR. YOUNG: — Well, maybe they're the people. I have this in my head. I've heard this on a number of occasions, and I can't recall who the guilty party was. It may be this Crown corporation then, Gerry. Obviously it's not departments and it's not municipal people. So, false alarm, as far as you guys are concerned.

MR. PARKINSON: — While they're drafting this motion, there's one other problem from the auditor's report, who says that The Pension Benefits Act has no application to our plan, and we wonder why they would say that.

MR. CHAIRMAN: — Just hang on a moment, Mr. Parkinson. I'll be with you in a moment. I'm sorry. Go ahead. I'm sorry, Mr. Parkinson. Continue.

MR. PARKINSON: — Well one of the reports from the auditor says:

My legal counsel has advised me that The Pension Benefits Act has no application to the pension allowances which should be paid to retiring members of the municipal employees' superannuation fund.

We wondered why they would say that. We're not a government plan.

MR. CHAIRMAN: — Why would you say that?

MR. PARKINSON: — According to the superintendent of pensions, we come under The Pension Benefits Act.

MR. ATKINSON: — It's my understanding from our legal counsel, that the benefits that you were calculating — the benefits that you were calculating under your Act — that you were using section 16(1) of The Pension Benefits Act to determine. Our legal counsel says that the only place that The Pension Benefits Act has any application to your Act is the requirement to determine solvency.

MR. PARKINSON: — Why would they say that 16(1) does not come into effect in this plan?

MR. ATKINSON: — Because it's not under your Act. Do you want me to read the legal opinion, too?

MR. PARKINSON: — If you would, please.

MR. ATKINSON: — Okay.

MR. CHAIRMAN: — How long is it?

MR. ATKINSON: — I can read the . . . It says here:

The only sections in The Municipal Employees' Superannuation Act which make reference to The Pension Benefits Act are sections 54 and 55, which read as follows:

The commission shall file this plan for registration under the Income Tax Act (Canada) and The Pension Benefits Act. The plan authorized by this Act shall be funded in accordance with a test for solvency prescribed by The Pension Benefits Act.

Mr. Neill then poses the question:

What then is the effect of these sections? Clearly, section 55 makes application to the plan authorized by The Municipal Employees' Superannuation Act. The tests for solvency prescribed in the regulations under The Pension Benefits Act passed pursuant to section 22(d) of the latter Act, which reads as follows:

Section 22. For the purpose of carrying out the provisions of this Act, according to their intent, and of supplying any deficiency therein, the Lieutenant Governor in Council may make regulations not inconsistent with the spirit of this Act, which shall have the same force and effect as if enacted herein. And without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations (and it says under part (d)) prescribing tests and standards for solvency of pension plans.

And section 6(1) provides:

The superintendent shall (under part (c)) administer and enforce this Act and cancel pension plan certificates of registration issued in respect of pension plans that:

(1) fail to meet the test for solvency prescribed by the regulations.

Mr. Neill then goes on to say:

So by providing in section 54, The Municipal Employees' Superannuation Act, that the plan is to be registered under The Pension Benefits Act, it is clear that the legislature intended that the superintendent of pensions would have a supervisory mandate over the plan established by the Act to ensure that it met the tests for solvency prescribed by the regulations.

In my opinion, The Municipal Employees' Superannuation Act is not registered, or indeed registerable as a pension plan pursuant to section 14 of The Pension Benefits Act, but it is registered under The Pension Benefits Act pursuant to section 54 of its own Act. That being the case, it is clear that section 16(1) has no application to it since it only applies to a pension plan filed for registration in accordance with section 14.

MR. CHAIRMAN: — There's your answer.

MR. PARKINSON: — The Pension Benefits Act applies to all pension plans within the province except government plans. Is that correct? But we're not a government plan. Why doesn't it apply to us?

MR. CHAIRMAN: — This is an inappropriate forum in which to resolve that legal problem. I'm fine-tuning, if I can take that liberty. The recommendation which I would suggest . . . and I'll read this before it's moved. The committee cannot order; it can only recommend.

Public Accounts Committee recommend to the Municipal Employees' Superannuation Commission that the funds shall report its activities to show the financial position and results of its annuity underwriting activity and the financial position and results of operations under the new plan, including a comparison of the new plan assets to obligations to pay allowances to new plan members; and that the commission report back to the committee as soon as possible on its success or failure — success or otherwise, in implementing this recommendation.

Okay. So moved then, by the member from Rosthern. Any discussion on the motion?

MR. AEBIG: — I would like to just point out one thing as well, that if our financial statements have to be revised, then perhaps the Act would have to be changed as well, so that each activity has to be self-sustaining. It would mean that in the future, very likely our annuitants would no longer receive annual supplements to make up for the erosion of the cost of living due to inflation. That could have some political implications, I suppose, and probably we would be taken to task, too, for it.

MR. KATZMAN: — I disagree with that opinion. If they are telling me what to do here as far as reported here, then when the legislation can be written you can cover those situations that you're talking about. It just means careful draftsmanship of the legislation reflecting that concern.

MR. AEBIG: — Then we would have to use surpluses derived from new plan operations to supplement former plan pensions. And we'd be back where we started from right now.

MR. KATZMAN: — A position must show them independently so we know where they are. What you have now is you can vary them in such a way that it's conducive to what you're doing. It's not totally illegal, I suppose, because the people are getting the benefits. But the problem is, for the reporting side of it it's nothing but headaches.

We are saying that we can write the legislation to cover it and make sure you don't take away that inflation benefit. But you can . . . this report will show one side, and when you write legislation, you can cover those concerns. I'm certain Mr. Nestor Gilewich, you know, knows the processes to make sure you get yourself covered for those issues. And that's strictly in the legislative review committee, when you make your point very strong, why and why, and because of negotiations. And it will be protected.

But you have two sets of rules to follow: the accounting rule and the agreement that you have with your people who get benefits, and both must be respected.

MR. AEBIG: — I'm just thinking of the actual cash that would be required to make these supplements to the annuitants. And if it has to come out of the former plan accounts, there would be no money there, which would mean that they wouldn't get a supplement.

MR. KATZMAN: — I think you're talking . . . You're mixing apples and oranges.

MR. ATKINSON: — Mr. Chairman, although I'm not a lawyer, it's my opinion that the motion could be complied with by the commission as the Act is presently drafted. And I believe that the revised financial statements that they have included with the information they have tabled before the committee in fact portrays that.

MR. CHAIRMAN: — They're getting, apparently — in fairness to the witnesses — they're getting different opinions from their lawyers. Come the revolution, we're going to solve this problem with lawyers who give contrary advice. But until the revolution, Paul, we're going to have to live with the world as it is.

MR. KATZMAN: — There'll be no more lawyers. That's the only solution.

MR. CHAIRMAN: — You know what we do with lawyers, come the revolution. That's the one part of the revolution that Lloyd agrees with.

MR. KATZMAN: — A former member of this House once used to say, more than two lawyers in the Legislative Assembly was a guaranteed way to waste time and the government's money and the opposition's money. Have you guys decided who you want to get rid of?

MR. CHAIRMAN: — While the Clerk is struggling to write this down, let me say that I recall a day when an opposition party, which is not now represented in the House, used to have two lawyers in it, and they used to argue among themselves: Stu Cameron and Tony Merchant.

MR. KATZMAN: — There was one before that, too. In '71-75 they did the same.

MR. MEAGHER: — You're making a strong case for the restoration of capital punishment today.

MR. KATZMAN: — What a long bow. Question on the motion, Mr. Chairman.

MR. CHAIRMAN: — I guess the Clerk can write it out later. No more discussion? All those in favour of the motion? Opposed, if any?

AGREED

Realistically, gentlemen, we have not made a practice of meeting in the summer. We've never

actually pulled it off. We did one the first year, but we've not done it since. So barring that, you're not likely to have to report back to us until fall. But when the House resumes in November, if it does according to our standard practice, you can expect to be called back in November. So you've got the summer to fine-tune this thing.

And of course, it goes without saying that the Public Accounts Committee is not a legislative body; it only makes recommendations which, if ignored, I suppose we would then report to the House. But I suppose the report is concurred in. Yes, I suppose that's true. The report is concurred in in the House. And to the extent that the report is accepted in the House, I guess it is binding on you. Perhaps that's true, so I shouldn't underrate our . . .

A MEMBER: — Minimize the clout.

MR. CHAIRMAN: — Minimize the clout. No, we have not had to hang anyone by the thumbnails, but one never knows.

MR. KATZMAN: — Working on getting the chairman that way.

MR. CHAIRMAN: — Working on the chairman. Okay, any further questions of Rural Development, gentlemen?

MR. KATZMAN: — Thank you gentlemen. Bring in the next line change.

MR. CHAIRMAN: — Order. It makes it difficult for Helen if we have more than a dozen conversations going at the same time.

A MEMBER: — It wouldn't be so bad if it was intelligent conversation.

MR. CHAIRMAN: — And it wouldn't be bad if they were intelligible and intelligent and in English, but as it is, it is challenging.

Public Hearing: Saskatchewan Transportation Company

MR. CHAIRMAN: — I want to welcome Mr. Dave Sentes who is vice-president of finance and administration of the Saskatchewan Transportation Company. Welcome, Mr. Sentes.

In addition to thanking you for coming to the committee I want to make a comment that is made to all witnesses, and that is that what is said before the committee is privileged in the sense that it can't be used outside the committee for libel, slander, or any criminal action. On the other hand, everything is taken down verbatim and is readily available for use elsewhere.

Now with that, I will open the floor for questions by the members of the committee.

MR. WEIMAN: — In that the auditor's report is concerned with the observation that necessary procedures to establish and ensure that final construction hold-back payments which were to be withheld for the statutory period under The Mechanics' Lien Act, for the benefit of myself and the benefit of the committee, could you please indicate to me what the appropriate procedures regarding hold-back payments are?

MR. SENTES: — Well generally, from each progress payment as the construction progresses, there is a provision to hold back a certain percentage of that payment. When substantial completion of the contract is certified by the consulting engineer — I think there's a 37-day waiting period — at which time the hold-backs become payable under the contract.

MR. WEIMAN: — If that's the case, then could you please explain to me very simply what happened here regarding the \$209,000 that was paid twice? What happened here, if you had

that safeguard built in?

MR. SENTES: — Okay. What happened here basically was: I guess the project was somewhat, near the end, fraught with some deficiencies. There had been some problems with the general contractor in falsifying some declarations, some statutory declarations. But as things progressed, all payments to the contractor were frozen due to the deficiencies and the knowledge that he had falsified some statutory declarations for the subtrades.

The consulting engineer then satisfied himself that the appropriate statutory declarations had been signed a second time. He indicated that payment was in order and in fact recommended payment. Based on his advice, the payment or the funds were released. Oh, and also prior to that, a credit check of the developer was initiated by STC because its financial status was somewhat shaky.

So when all that information was in, the bank indicated that they were still supporting them. The consulting engineer had given his approval or recommended payment. And based on that, STC made the payment.

The next day the bank pulled the plug on the developer, called in all his loans, and at that point STC turned to the bonding company to complete construction. The bonding company then said, pay us out the balance of the contract; and, by the way, that \$209,000 that you paid, shouldn't have been paid; we want it. And it had to be turned over to the bonding company.

Legal action has been initiated against both the consulting engineers, Reid Crowther, and the Royal Bank of Canada, to recover the \$209,000 overpayment or duplicate payment, or whatever.

MR. WEIMAN: — Okay. Let's go back a couple of steps. I've been trying to get this in sequence. First of all you say the contractor . . . The reason it was frozen was you were convinced that he was falsifying his declarations.

MR. SENTES: — At that point I am not certain that there was a knowledge or whether that knowledge came later. It's a little . . .

MR. WEIMAN: — Okay. It's not quite in that sequence of events then, or . . .

MR. SENTES: — For certain there were deficiencies in the contract. You know, the work wasn't being done in accordance to, I guess, our satisfaction, and there was knowledge that the contractor was in financial difficulty. There was no question about that. Now I wasn't present at that time, so the events are somewhat unclear. I don't know whether the company had knowledge of the falsified documents at that time.

See, he had falsified the stat decs, or had the subcontractors sign stat decs saying they had been paid, and had promised them that was the only way they could get their money.

MR. WEIMAN: — Something doesn't ring right with me. You've stated that at one point in the sequence — we're not sure what that sequence is, whether the falsifying the declarations may have been noticed after the fact or before the fact — but you did say in that sequence that there was a time when everything was frozen.

MR. SENTES: — Yes.

MR. WEIMAN: — So obviously something precipitated that decision to freeze it. Now it seems to me that whatever action precipitated that, had to have happened before that, and you must have had knowledge of it before that.

MR. KATZMAN: — I have a supplementary to your question; it may help. You just said that

before he gets a payment, the subcontractor has to sign.

MR. SENTES: — A stat dec, yes.

MR. KATZMAN: — Would you explain that one so it follows what Mr. Weiman's problem is, because I think that's where the confusion is.

MR. SENTES: — Well prior to the . . .

MR. WEIMAN: — Something prompted you to put it on hold.

MR. SENTES: — Okay. That was the contract deficiencies. Those were in existence for certain. The management was not satisfied with the way construction was progressing. Certain things were not being done, they felt, according to specification. Plus, they had heard that Tyndall was experiencing financial difficulties. As a minimum, for those reasons, the payments were frozen.

MR. WEIMAN: — Which brings me to another point. Okay, if they assumed or suspected that there were financial difficulties there, outside of the contractual part that wasn't kept totally up to snuff — but if they presume that there was financial difficulties there, and as you stated further down in the sequence, the bank obviously felt the same way and called in the loan, didn't that sort of set off a little warning bell?

MR. SENTES: — Well prior to the bank calling the loan in, STC initiated a credit check with the developer's banker and he indicated he was continuing support of that company.

MR. WEIMAN: — Okay. So some of the stuff happens after the fact?

MR. SENTES: — Oh, yes, definitely. The cheque was wired to the bank and the next day they called in the loans. It might be a little suspicious.

MR. WEIMAN: — Now you've indicated the efforts to date — no, you haven't yet. You've indicated the efforts to date in recovering the \$209,000. Now that's to do with the court action.

MR. SENTES: — Yes.

MR. WEIMAN: — Okay. So I won't comment further on that. However, what efforts to date have you taken to ensure against future problems like this? Because this is, I suspect, what has concerned the auditor to start with, that this type of thing doesn't happen again in the future where there's two payments going out. What types of efforts have you taken to date to ensure that that type of thing will not happen in the future?

MR. SENTES: — Well, two payments didn't go out through a weakness — and I suppose it's certainly an arguable matter. But it wasn't so much a weakness of internal control. The funds had been set aside. The management had acted prudently in the sense of retaining an expert, being a consulting engineer, and had made payment based on his comment, or his recommendation. The process, the internal controls concerning the process, the payment process, were in place. The hold-backs were made from the progress payments. It is just, I guess, acting on the advice, and maybe the negligent advice of the expert consulting engineer.

MR. CHAIRMAN: — It sounds like it was . . . (inaudible) . . . negligent.

MR. WEIMAN: — It doesn't sound that way to me. If I may offer an opinion, what it sounds to me from the sequence that you just told me, there were problems in the contractual part of it. That was cleared up. The mechanic's lien after, you said, the 30-day period?

MR. SENTES: — 37, I think.

MR. WEIMAN: — 37-day period. Okay. You checked with the banks. You're telling me the banks said, yes, we still have confidence in this gentleman, etc., etc. Okay. So it's fair pool to release this money. It sounds to me as if the banks were just waiting for the 37 days to go by, and of course . . . and say, yes, we still have confidence in them, because as soon as that 37 days go by and that money is sent to them — boom, the banks pull the plug to get their money back.

MR. YOUNG: — The banks have nothing to do with . . . (inaudible) . . .

MR. SENTES: — Not with the hold-back period, they don't. It is suspicious certainly in my mind, that they would indicate support.

MR. WEIMAN: — That's what I'm getting at, you know, I mean . . .

MR. CHAIRMAN: — Sorry. Go ahead, Mr. Sentes. I'm going to recognize Mr. Atkinson. He's trying to get in here.

MR. SENTES: — That's not — I mean, it may be suspicious but that may be not be their intentions. I mean, obviously that's one of the reasons we have brought the suit against them, that we feel . . .

MR. CHAIRMAN: — You clearly got some negligent advice from the experts that you had and that's patently obvious.

MR. WEIMAN: — Is it permissible to ask who the law firm was that you retained regarding this advice?

MR. SENTES: — The law firm was not brought in until things had gone awry. The consulting engineer was Reid Crowther. They are who the negligent advice, in our opinion, came from.

A MEMBER: — Reid who?

MR. SENTES: — Reid Crowther.

A MEMBER: — From?

MR. SENTES: — From Regina. They have a Regina office.

MR. WEIMAN: — Well, I just have one question and we'll close it down, for myself.

MR. CHAIRMAN: — Okay.

MR. WEIMAN: — May I please know the name of the company involved?

MR. SENTES: — The law firm?

MR. WEIMAN: — Not the law firm. The company involved, the contractors.

MR. SENTES: — Oh, Tyndall Development.

MR. WEIMAN: — Tyndall Development from?

MR. SENTES: — I'm not certain if they were from Saskatoon. I think they were from Saskatoon, but I'm not certain.

MR. WEIMAN: — Okay.

MR. ATKINSON: — Mr. Chairman, I just think, Mr. Sentes, that in fact it is our opinion that STC did not have sufficient procedures in place to ensure that the final construction hold-back payments were held for the statutory period under The Mechanics' Lien Act. Maybe to throw some light on this, it's my understanding that The Mechanics' Lien Act is that for a public work, which this is, the hold-back does not, or the lien if you want to say under the Mechanics' Lien Act, does not attach itself to the land. It attaches itself only to the hold-back. The lien, if you were a subcontractor and you had a lien to register here, you would register it with STC by letter.

MR. YOUNG: — You can't lien the Queen.

MR. ATKINSON: — You can if you follow these procedures. You can lien the hold-back.

MR. CHAIRMAN: — This is under the public . . .

MR. YOUNG: — Oh, it's not under The Mechanics' Lien Act?

MR. CHAIRMAN: — No. It's not under The Mechanics' Lien Act.

MR. ATKINSON: — It's under The Mechanics' Lien Act.

MR. CHAIRMAN: — Oh, they don't use the public one.

A MEMBER: — Section 62.

MR. ATKINSON: — Section 62 under The Mechanics' Lien Act is liens with respect to public works.

MR. CHAIRMAN: — Yes, okay.

MR. YOUNG: — Oh, okay. It's public works . . . (inaudible) . . .

MR. CHAIRMAN: — Yes. It's a different . . .

MR. ATKINSON: — As I understand, the notice that the project was substantially complete was given to STC on January 11th.

MR. SENTES: — No. The notice that . . .

MR. KATZMAN: — January of what year?

MR. ATKINSON: — Of 1983.

MR. KATZMAN: — Okay.

MR. ATKINSON: — The cheque was drawn by STC on January the 14th of 1983, and released on January 27th of 1983.

MR. SENTES: — Substantial completion was not . . . A certificate of substantial completion was not issued by Reid Crowther until February 18th. So in essence they had recommended release of the hold-back prior to issuing the statement of substantial completion. The hold-back period does not commence until the statement of substantial completion is issued. Therefore, STC acted on expert advice. And in our opinion we received negligent expert advice. We are not experts in the construction contract administration. We had hired an expert. We relied on negligent advice.

MR. YOUNG: — His expertise is in the area of stresses and beams and things like that.

MR. SENTES: — No. Reid Crowther acts as a general consulting engineer.

MR. CHAIRMAN: — In the committee I don't want to malign someone who isn't here, but a consulting engineer who is advising a company on a project this size, good Lord, ought to know the provisions of the Act. Mind you, if I may say so, so should the officials. So should whoever's handling it from STC.

I've got a bit of a speakers' list.

MR. LUTZ: — Thank you, Mr. Chairman. Did I understand you to say that you received your certificate of completion in February? Is this what you told me just now?

MR. SENTES: — Yes, February 18th.

MR. LUTZ: — And you made the final payment on the hold-backs when?

MR. SENTES: — Well not a final payment. We paid a portion of the hold-backs on January 27th.

MR. LUTZ: — This 209,000?

MR. SENTES: — Yes. There was more hold-back payable at that time, but that was all that was on the project progress certificate.

MR. LUTZ: — So whatever was left there between January something and February something, you didn't pay that, then?

MR. SENTES: — No.

MR. LUTZ: — I see.

MR. SENTES: — That was turned over to the bonding company.

MR. LUTZ: — Yes. Okay. The bonding company. Why would you pay that hold-back at all until you had your certificate of completion?

MR. SENTES: — I suppose I can only speculate, but I assume that very heavy reliance was placed on the consulting engineer's advice to pay.

MR. LUTZ: — But are the rules not fairly plain in the construction industry? You get your piece of paper saying it is finished, and then you give the guy his hold-backs.

MR. SENTES: — Well they are certainly probably well-known in the construction industry, and management was not an expert in the construction industry, and therefore retained the services of an expert, and relied on his advice.

MR. CHAIRMAN: — I've got a bit of a speakers' list here. We've got some former contractors, of which Paul has the floor first.

MR. MEAGHER: — Just one question. It follows up with the auditor's comments there. Did you receive the advice from the consultant in writing to pay out the portion of the hold-back?

MR. SENTES: — There is a certificate or recommendation for payment on the progress certificate that is signed by a Reid Crowther representative, I believe.

MR. KATZMAN: — Which statement . . . (inaudible) . . .

MR. SENTES: — I believe.

MR. MEAGHER: — But you're not certain of that. What I'm getting at is: how did you receive the recommendation from the consultant to pay out a portion of the hold-back, prior to your receiving the completion certificate?

MR. SENTES: — There is generally a recommendation for payment on the progress certificate, and there was obviously — and once again, based on my review of some of the documents; part of it is speculation on my part; I wasn't there — but there were a substantial number of discussions with the consulting engineers. Obviously some of the advice would have been verbal, but the signature is generally on the progress certificate, recommending payment.

MR. MEAGHER: — Just one more brief question. So in effect, you're suggesting that you relied heavily on the advice of the consultant engineer so far as it relates to the process here.

MR. SENTES: — Yes.

MR. MEAGHER: — What ordinarily would be your legal advice, that payment should not be made. So are you suggesting that you did not retain the services of a legal counsel during this period?

MR. SENTES: — Legal counsel was retained. At what point, the records are not clear. There are legal letters with dates, but there were telephone discussions. Unfortunately, a lot of that has blurred with time. There are very few people left who were involved with that process.

MR. MEAGHER: — Who would be your legal advice at that time?

MR. SENTES: — The legal firm, I think, that was retained for this particular situation — now when they were brought in, I'm not sure.

MR. MEAGHER: — I'm referring to the period under discussion right now: February . . .

MR. SENTES: — Well I'm not certain of that. Lane and Whitmore was brought in on this particular issue, but at what point, I don't know.

MR. MEAGHER: — So what you're saying to the committee is that there's a possibility you had no legal advice at all during the pay-out period that we're discussing, this time that the money was being . . .

MR. SENTES: — I suppose that's a possibility. I think that it is unlikely.

MR. KATZMAN: — When you say on the 11th of June or the 18th of February, what was he talking about?

A MEMBER: — That's January.

MR. KATZMAN: — January 11th or February the 18th, which date were you talking about to Paul? I didn't understand that.

MR. MEAGHER: — Well we're referring to both dates. Both of them are prior to the issuance of the certificate anyway, so it's academic. It shouldn't have been paid out in either case.

MR. CHAIRMAN: — It shouldn't have been paid out in either case. I was going to recognize the member from Assiniboia-Gravelbourg, please, next.

MR. ENGEL: — Just a couple of questions . . . My memory has to be stretched a little bit or way back, but on most contracts of that magnitude . . . What is the total contract?

MR. SENTES: — Approximately 3.7 million, 3.8 million.

MR. ENGEL: — There's a two-stage hold-back. There's a hold-back of a flat 10 per cent until the building is substantially completed. On a substantial, you know, that means that the biggest part of the construction is done. Like, in sewer and water, when the pipes are in the ground and the manholes are made, you consider the sewer system substantially complete. They take and give you half the hold-back. Then you get your engineers to make their final inspection, make sure that all the manhole lids are on the right grid and so on. Then you have a 30-day waiting period after that, and then you get your final 5 per cent.

I was wondering if there was a two-stage hold-back because, if the engineer recommends that the structure is substantially built — the roof's on; the walls are up; the doors are on; it's substantially done; but you know there's a lot of corners that aren't finished up. Like in a building it can take quite a list of stuff, so I was wondering if there's a two-stage hold-back there. Can we see a copy of that contract, or have the auditors looked at the contract itself? Have you looked at the contract to see if it was, if the hold-back, in fact, was a two-stage one?

MR. ATKINSON: — I'm not certain that that's really that relevant here.

MR. ENGEL: — Well I think it is, because if the contractor went belly up, I don't see that you are in the wrong. I believe you're going through the right process by checking and seeing if the pressure from the banks was fraudulent or not — if they knew that . . .

MR. SENTES: — Well I'm not suggesting they were fraudulent.

MR. ENGEL: — Well you don't sue somebody unless he's done something wrong. Fraudulence may be too strong a word, but if the bank knows that I, as a contractor, am in pretty rough shape, and they think, well he's got a hold-back coming, and somebody phones and says, how's this particular company doing, that the bank will say, oh, great, they're still operating. They're not going to release any information saying, hey, you get that cheque in here by Monday morning or you're in trouble. So the contractor comes along with his \$209,000 cheque, and he still hasn't got enough to make ends meet.

But as far as the owner is concerned, if the engineer recommends that this much of the job is done, and you release that percentage of the hold-back, I can't see that we'd have to fault . . . I can't see any problem.

MR. SENTES: — There was still a substantial amount of hold-back payable; \$418,000 was turned over to the bonding company after that.

A MEMBER: — 418?

MR. SENTES: — Yes. So there was . . .

MR. ENGEL: — And this one's 209?

MR. SENTES: — Yes.

MR. ENGEL: — That's still not 10 per cent.

MR. MEAGHER: — Well, yes, but the 209 is part of the 418 again — another 209. That 209 is reproduced in the 418.

MR. SENTES: — In the 418, yes. Yes, there was . . . I don't know what percentage that would be; I suppose 5 per cent.

MR. ENGEL: — Yes, so you're down to the 5. That points up my argument, because you've already made that substantial hold-back. You know, you're down to the 5 per cent, so the guy got his construction money.

MR. YOUNG: — I have a real fundamental problem with some of the things you've been saying today, because you are, in everything you've said so far, suggesting that it's up to the consulting engineer to interpret the whens and hows and how much of The Mechanics' Lien Act, and the hold-back periods and so on. And it's always been my understanding that that is not his area of expertise, and that you're going to be hard pressed to hang liability on him for negligence in that field.

I would ask you again, Dave: at the time that the 209 was disbursed to the Tyndalls', to the contractor's bank, who then on your construction file was the legal counsel? Who was your lawyers at that time?

MR. SENTES: — I would have to look that up. I don't know. I was not present at the time. I don't know who the corporate lawyer was at that time. As I said, I know Lane and Whitmore was brought in. I don't know at what point, and I don't know whether they were the corporation's regular counsel. I could get that for you.

MR. CHAIRMAN: — Well I suppose it might have been somebody in the Department of Justice. Oh not. You had outside counsel during this time, did you?

MR. YOUNG: — Who then is your lawyer who signed your statement of claim in your action against Tyndall and the Royal Bank? Who's that lawyer?

MR. SENTES: — Whitmore and Company is currently acting on this case.

MR. YOUNG: — Are you saying there's some chance that it's the same lawyer who commenced the proceedings against the various defendants who is also your lawyer at the time that the disbursement of the 209 was made to the Tyndalls' bank?

MR. SENTES: — No, it's not the same lawyer.

MR. YOUNG: — Same firm?

MR. SENTES: — I don't know whether Lane and Whitmore has been reorganized or whatever, but that's basically your decision whether it's the same company. I don't know. I don't know whether it's the same company. I would get that information.

MR. YOUNG: — I would think that that's quite important in a situation such as this, and I'm surprised that you don't know who the lawyers were throughout this thing. It's basically one of the only items in public accounts that is up in the auditor's report to be discussed today. Have you read the file prior to coming here today?

MR. SENTES: — Oh yes.

MR. YOUNG: — But you can't recall who the lawyers were.

MR. SENTES: — The lawyers at the process — and I do not know when they were appointed — was Lane and Whitmore.

MR. CHAIRMAN: — Are you satisfied, if I might interrupt, that you had lawyers during the

month of January in '83?

MR. SENTES: — I am not satisfied by written correspondence that there was a lawyer, but I understand there were verbal discussions with a lawyer concerning the contract deficiencies.

MR. CHAIRMAN: — See, Mr. Meagher's argument and to some extent Mr. Engel's argument is that, when the engineer sends you his progress certificate, he is saying, the work has been satisfactorily completed to the point that I certify; other things being satisfied, you may disburse the funds. But so what happened then, once you got that progress certificate? What happened physically? Tell me where everything went.

A MEMBER: — Contract got . . . (inaudible) . . .

MR. CHAIRMAN: — No, I know that. But what happened to the money? Where did the money go? Did it go to a law firm?

MR. SENTES: — Oh, no. The money was wired directly to the Royal Bank of Canada in Saskatoon.

MR. CHAIRMAN: — Oh, well, there's your problem. I'll cease and desist. I'm out of order here. The member from Rosthern is next on the list.

MR. KATZMAN: — If I, and I'm going with some knowledge here . . . The building to date isn't even still completed totally.

MR. SENTES: — What's that?

MR. KATZMAN: — The building is still not totally satisfactory.

MR. SENTES: — Well there's things that we certainly feel are deficient. And there's still some work left to be done by the bonding company, I think \$60,000 worth.

MR. KATZMAN: — So you still have \$60,000 hold-back or whatever?

MR. SENTES: — Yes, there's definitely . . . Yes, there's some work left to do.

MR. KATZMAN: — Second of all, is it possible the engineer was also sort of what you would call project management, like he was in charge of the projects, confirming the documents sent in by the contractor that this work was done or wasn't done?

MR. SENTES: — Yes, there's no question about that.

MR. KATZMAN: — Mr. Young, did you hear that reply?

MR. YOUNG: — No, I didn't.

MR. KATZMAN: — The question was, is it possible the engineering firm co-signed sort of like a document saying the contractor had finished work or didn't, and then that was the automatic release of the payment? His indication is that's correct.

MR. SENTES: — It's correct that he was acting in a project manager capacity.

MR. KATZMAN: — Which means that his advice says that the work is done or isn't done. And it's under his authority they release money. The real question is: on January the 11th, how did he tell you that the work was completed? And on February the 18th you got the documents signed that work was completed to both points. And was it normal practice to the construction to get a

verbal or whatever on January 11th and then the document follows?

MR. SENTES: — I wouldn't say it's normal practice.

MR. KATZMAN: — It's improper practice, but I was wondering if that's the practice that developed through this whole project.

MR. SENTES: — The proper procedure on the consulting engineer's part, we feel, was not followed. That is the very, I guess, essence of the reason we are suing him for negligence.

MR. CHAIRMAN: — There is a legal suit against the consulting engineer?

MR. SENTES: — Yes.

MR. KATZMAN: — The contract was put out what year — 1981 or '2?

MR. SENTES: — It would have been out in 1981 or possibly even prior. Once again, the contract is in our lawyer's hands right now, and I haven't seen it for quite . . .

MR. KATZMAN: — The contract was prior to '82. Let's put it that way.

MR. SENTES: — Oh, yes.

MR. KATZMAN: — And the engineering firm, consultant, whatever it was, were in place and so was the contractor in place, and it just continued to completion supposedly in February of '83 when all this broke loose?

MR. SENTES: — Yes.

MR. KATZMAN: — I think, Mr. Chairman, basically that the legal question is part of what we've got to be careful how we go near it, because as precedent in the House we don't really deal with court cases themselves, and we're touching on the edge of it once or twice here. But for the document of 209, we've got the information. I don't know if we can do much else until the court decision comes down, or whatever they do because it's in court.

MR. ATKINSON: — Well, Mr. Sentes, perhaps just to clarify this for myself, was the \$209,000 paid out before the statutory period had elapsed, or after?

MR. SENTES: — It was paid out before the statutory period had begun.

MR. ATKINSON: — Okay. Were there any liens registered with STC under The Mechanics' Lien Act?

MR. SENTES: — Not to my knowledge, there were no liens registered.

MR. ATKINSON: — Thank you.

MR. ENGEL: — A supplementary to that. When the request for payment was made to you as to the owner, the documentation that came along with that request — was that supplemented by signed affidavits that the subcontractors had been paid, or whatever term you use? That mightn't be the right word.

MR. SENTES: — I'm not certain that they were accompanied by them or not.

MR. ENGEL: — There was an indication that they were paid?

MR. SENTES: — There was an indication that they were paid by . . . On January 19th there is evidence in the file that Herman Rattai, president of Tyndall, swore his new statutory declarations, declaring all subtrades, suppliers, and statutory creditors had been paid in full. So there were appropriate, and I guess new stat decs signed.

MR. ENGEL: — And after that point, how much did it cost, over and above the total contract price, to complete the job? How much more money did STC have to dig up to bring somebody in, or did the bonding company complete it within the original contract?

MR. SENTES: — Yes, there's still a few minor items outstanding, but the overpayment as such is the 209,000, because the balance of the contract payable was turned over to the surety company. And they in essence said, we want . . . The remainder or balance of the contract was paid over to the surety company to complete construction, which is normally sufficient, but they wanted the additional 209 also.

MR. ENGEL: — The bonding company did?

MR. SENTES: — Yes, before they would commence on finishing the project. So in essence, the 209,000 . . .

MR. ENGEL: — Who is your bonding company, if I may ask?

MR. SENTES: — Canada Surety Company.

MR. ENGEL: — And the Canada Surety Company would not recognize the \$209,000 payment . . .

MR. SENTES: — . . . as being paid to the contractor, and reaching the subtrades. It never reached the subtrades. It was seized at the Royal Bank to cover Tyndall's loans.

MR. CHAIRMAN: — I'd better recognize . . . The next is Mr. Weiman.

MR. WEIMAN: — I'll defer to Mr. Meagher.

MR. MEAGHER: — I just want to jump in for one brief question, if I might, in his place.

MR. CHAIRMAN: — All right. I don't know the legality of that, but I'll allow it anyway.

MR. MEAGHER: — I would like you to bring back to this committee . . . I'd like, Mr. Chairman, for you to request, or for the committee to request if we need a motion or something, two things: whether or not Saskatchewan Transportation Company had the services of legal counsel during the course of construction, and at the date of the pay-out of these funds. If so, who was the counsel, legal counsel?

A MEMBER: — And when did they hire the counsel they had there? I think we'd like a breakdown of the dates of . . .

MR. MEAGHER: — Does that require a motion — the request for information?

MR. CHAIRMAN: — Okay, when you're coming back — and we'll probably have you back next week — would you be prepared to describe, be fully familiar with your file?

MR. KATZMAN: — He'll be back tomorrow; never mind next week.

MR. CHAIRMAN: — All right, well tomorrow.

A MEMBER: — Tomorrow, that's handy for you?

MR. SENTES: — Oh certainly, yes.

MR. CHAIRMAN: — And also what I'd like to know tomorrow is what your procedure now is. I for one want to be assured that you're doing things differently than you were then, because you're clearly handling hundreds of thousands of dollars in an improper fashion here.

MR. ENGEL: — Have you got another construction in process right now?

MR. SENTES: — No.

MR. CHAIRMAN: — Why don't we just adjourn this and come back tomorrow?

MR. MEAGHER: — I just want to make certain he understands my two questions. Now do you understand the two requests I'm putting forward?

MR. SENTES: — Whether we had counsel at the beginning of this process and who they were, and when they were retained. Are those the two questions?

MR. MEAGHER: — Yes.

MR. KATZMAN: — But you could have three counsellors involved here. You said you had Lane and Whitmore — you had Whitmore — and you might have had somebody else prior to that.

MR. LUTZ: — Mr. Chairman, I'm having a little trouble with the function of the bonding company in this process. I presume you pay to the bonding company a fee which in essence is sort of a guarantee that if the contractor does fail somebody will come in to finish this job. Is this correct?

MR. SENTES: — The contractor pays the performance bond, or posts the performance bond with the bonding company.

MR. LUTZ: — Then why did you deem it necessary to pay the bonding company the 209,000 which you had already paid prior to the statutory time limit when, if you had waited, you wouldn't have had a problem? Why did you pay that 209,000 to the bonding company? What was that rationale?

MR. SENTES: — It was . . . And once again, it's based on my review of the file. It was based on very heavy reliance on the consulting engineer's advice that everything was in order and to pay.

MR. LUTZ: — To the bonding company? You paid to the contractor, or his banker.

MR. SENTES: — You mean why did we pay the second 209?

MR. LUTZ: — Yes, that one.

MR. SENTES: — That was . . . By that time legal advice had been retained. The bonding company would not step in and complete the construction of the contract. So our only recourse, or our only method, was to pay the bonding company and take action against the negligent party.

MR. KATZMAN: — The problem could have been that the affidavit signed by the subtrades, that was paid to the contractor, had not been paid to the subtrades. Therefore it had to be repaid. That's the hang-up you get into.

MR. LUTZ: — So the bonding company took the 209,000 and paid the subcontractors who had

been left out in the cold. Is that right?

MR. SENTES: — Yes, yes. And then completed the remainder of the construction.

MR. LUTZ: — But if you had waited until 37 days had expired there was no obligation to do that at all.

MR. SENTES: — If we had waited for the 37 days to expire, there would be no obligation to pay the original 209?

MR. LUTZ: — No, the last 209.

MR. SENTES: — The last 209. Yes, that would have been true. In that case, we wouldn't have ever paid any one of the 209's.

MR. WENDEL: — On the second \$209,000 payment to the bonding company, had those subcontractors registered a lien with Saskatchewan Transportation Company, as required by The Mechanics' Lien Act.

MR. SENTES: — They had not registered one against STC, to my knowledge.

MR. WENDEL: — Right. So were you still under a legal obligation to pay the second, even though they hadn't followed the appropriate lien procedure?

MR. SENTES: — Well, that was outlined as the appropriate course of action, was to complete the construction, get the thing done, rather than let it sit in an uncomplete stage and have the funds tied up, you know, \$3.6 million tied up in a useless facility — to pay it out, get the contract done, and I guess take our legal action against the consulting engineer.

MR. ENGEL: — I think that's a point I want to make. You decided as a transportation company that it's worth 200,000 bucks to get this building opened up and going, because if the contractor had a bonding company . . . You gave me the name, and I'm sorry, I didn't it write it down.

MR. SENTES: — Canada Surety Company.

MR. ENGEL: — Okay. Now if the bonding company had . . . If the contractor had Canada Surety Company sign up and say that they're going to provide a performance and a material payments bond, that that bond is in place, when the contractor defaulted, you should have been able to go that company regardless of who the money went to at that point, because you had an agreement that for three point whatever million dollars that contract was, you were going to get a building. And they had a guarantee that they were going to do it.

Now somewhere along the line, somebody decided that there was going to be a lot of red tape here, and it's worth 200,000 bucks to get this building going. And it seems to me that they made a company decision to spend 200,000 bucks extra.

MR. SENTES: — I'm not certain that's true.

MR. ENGEL: — There's no other argument why they would pay the 200,000 bucks twice.

MR. SENTES: — The 209 had never reached the subcontractors, and in essence, they had, in some cases, falsified their statutory declarations. We have since . . . (inaudible interjection) . . . Well, we have since learned that, I guess, a statutory declaration is not worth the paper it's written on.

MR. LUTZ: — Which is why they put those terms in The Mechanics' Lien Act and give you 37

days to sweep everything clean so that you don't have to make a second payment.

MR. CHAIRMAN: — May I suggest, gentlemen — and we're going to ask these people to come back tomorrow morning — may I suggest we move to agriculture? We may knock them off before 11, and then we could come back and finish this up tomorrow when this gentleman's had a chance to review his file.

MR. SENTES: — Will you want reference to the contract? Shall I get the contract from the lawyer, also?

MR. ENGEL: — Can he bring a lawyer, with his contract along, so we know what the contract actually said as to how much the hold-back was supposed to be and so on?

MR. SENTES: — I expect, unless he's tied up in court or something, I can get him to come along.

MR. ENGEL: — Or one of his staff.

MR. SENTES: — Sure.

MR. KATZMAN: — Right sharp at 8:45.

MR. SENTES: — Okay.

MR. CHAIRMAN: — Yes, 8:45 sharp. If we have anything like a quorum.

MR. YOUNG: — In the year under review, I want to know from you how many complaints you received about the horrid condition of the Regina Bus Depot, particularly the wash-rooms. And I'm wondering if, under the year in review, if there was any consideration by STC to bulldoze that bus depot. I'd like to know from you the answer to those two questions.

MR. SENTES: — I was not present in the year under review. I don't know what the discussions are, at that time.

MR. KATZMAN: — Mr. Chairman, point of order.

MR. CHAIRMAN: — What's your point of order?

MR. KATZMAN: — My point of order is that that's a policy decision and not an accounting decision and therefore should be asked in Crown corporations.

MR. CHAIRMAN: — The work of this committee goes beyond mere accounting. Members can ask about the economy, effectiveness, or efficiency with which these operations are conducted. I think it's in order.

MR. SENTES: — I can say that the washrooms have been repaired. The main lobby of the depot has been somewhat renovated and cleaned up in the last several months. I don't know whether that . . .

MR. CHAIRMAN: — The fact remains it's still a squalid dump.

MR. ENGEL: — Supplementary to that. Is there any discussion yet to move to a multimodal station in the city? In the year under review, or even to date, are you considering moving over to a . . .

MR. SENTES: — My impression is the year under review is '82-83.

MR. CHAIRMAN: — No, you're wrong about that.

MR. SENTES: — The year under review is '83-84?

MR. CHAIRMAN: — 1983-84, yes.

MR. SENTES: — Okay. In '83-84 there was no doubt discussion about moving.

MR. KATZMAN: — Whoa, whoa. What's the date of '83-84? What's the year-end date?

MR. CHAIRMAN: — December 31, 1984.

MR. KATZMAN: — So it can't be '84. You've got to be doing '83.

MR. SENTES: — I assume that the contract payment was made in '82-83.

MR. ENGEL: — That's a different story then.

MR. SENTES: — I think we're talking about '82-83 fiscal year. At that time I do not know whether there were any discussions concerning multimodal. We have an October year-end.

A MEMBER: — What year are we reviewing here? '83-84.

MR. SENTES: — Our fiscal year falls into . . . our '82-83 fiscal year falls into your '83-84 fiscal year.

A MEMBER: — When is this annual report dated?

MR. CHAIRMAN: — December 31, 1984.

MR. SENTES: — That is not the annual report under which the contract payment occurred. This is the one. There's . . . I'm not sure where those reports came from.

MR. CHAIRMAN: — I can tell you where it came from. It's tabled in the House.

MR. SENTES: — Okay, but that is the '83-84.

MR. ENGEL: — Yes, we can discuss those here too, though, because they've been tabled.

MR. CHAIRMAN: — Just a . . . Whoa. I want to clarify something here, and I want the Clerk to answer it, and not everybody at once. What year is . . . Would you tell me what the year under review is?

MR. MEAGHER: — What period.

MR. CHAIRMAN: — What period is this gentlemen obliged to answer questions for us?

MR. JAMES: — For the fiscal year of 1983-84.

MR. CHAIRMAN: — All right.

MR. MEAGHER: — Fiscal year, okay. What period is that? Describe it exactly.

MR. JAMES: — That's April 1, 1983 to March 31, 1984.

MR. KATZMAN: — So you're saying that the report ends in October of 1983, so it's his '82-83 report that he's answering here today.

A MEMBER: — And the annual report for . . .

MR. ENGEL: — I think he's stuck with answering both . . . (inaudible) . . .

A MEMBER: — There's two annual reports. That's right.

A MEMBER: — Two annual reports that he's hooked on.

MR. KATZMAN: — Well, just hang on. I'm confused as heck.

MR. JAMES: — Mr. Katzman was . . . (inaudible) . . . because we couldn't deal with anything after April 1, 1984 because it wouldn't be handled in the Provincial Auditor's report.

MR. KATZMAN: — Mr. Katzman is correct, that it is the '82-83. That's right. The '83-84 comes in now because of the . . . his year-end is different. His year-end is October 31st. That's what's giving you your problem, Mr. Chairman. It's '82-83 we're doing.

MR. CHAIRMAN: — No, no. The year for which you are — the period of time for which you're obliged to answer questions is April 1, 1983 to March 31, 1984.

MR. SENTES: — Then the \$209,000 payments — none of that occurred during that time period — none of this occurred. It occurred February 18, 1983.

MR. KRAUS: — To give you an example, Mr. Chairman, I'm not sure that it will deal with other matters, but the committee, at least from our perspective when we're dealing with financial affairs, we'll deal with the province's year-end or year, which is all of an April 1 to a March 31. But any other entities we say, well, when did their year-end occur? And let's say with the teachers' superannuation, it occurs on June 30th. And in this year that we're looking at, the year-end then would have been June 30, 1983, so you would have looked at material from 1982 to June 30, 1983, at least as far as the financial stuff goes.

MR. KATZMAN: — That's correct. And this year we're looking under '82-83 because of October date . . .

MR. CHAIRMAN: — By virtue of the authority and high prestige incumbent in this office, I'm going to adjourn these. One of the things I want to ask for — we're going to pick it up tomorrow — one of the things I want to ask for is a review by the Clerk on exactly what the year-end is, because I don't think we know, and we're wasting time arguing about it . . . (inaudible interjection) . . . Well, it was not my understanding.

Anyway, why don't we get a written report? We'll get onto agriculture and knock them off. We're running close to the . . .

MR. KATZMAN: — Can I ask a question of the auditor, please?

Mr. Auditor, in your report, which annual report do you refer to, please?

MR. LUTZ: — Mr. Chairman, Mr. Katzman, we will report to the legislature with the legislature's fiscal year ending '84, March, but in that report we will also deal with Crowns, agencies, boards, whatever, whose year-ends fall within that same period. In the case of STC, their year-end was October 31, 1983, which falls within my '84 fiscal year government.

MR. KATZMAN: — Thank you.

MR. CHAIRMAN: — You're welcome. I'm still going to ask the Clerk for the opinion because I

do not believe the question as to what financial period you're reviewing is the same question as the question: for what period do they have to answer questions? I think it's different.

MR. KATZMAN: — It has to be the same, or you've changed all the rules of this whole committee, every year I've sat on it, whenever you bring a Crown in. The Crown's years, we accept them as their financial year — in this case is October.

The auditor just said he went to the October date of '83, and that's as far as we can go. Next year we do the '83-84.

MR. CHAIRMAN: — Well since this gentleman's coming back, why don't we get all of this clarified, and we'll pick it up again tomorrow?

MR. MEAGHER: — Can I ask one brief question to bring some more information?

MR. CHAIRMAN: — All right.

MR. MEAGHER: — I would like as well for you to bring to the committee information relating to the bus facility in Prince Albert. I want to know if any invitations have been extended for proposals to build any new facilities on a lease-back basis to the private sector in Prince Albert?

MR. SENTES: — I can answer that right now. I don't know if it's in the year under review.

MR. MEAGHER: — Well, it's for the year under review, yes.

MR. SENTES: — In this year '82-83 there was no offers tendered out to build the Prince Albert facility.

MR. KATZMAN: — . . . got the right to. If you wish to offer what's happening now, but that's not under the year under review.

MR. CHAIRMAN: — I'm going to adjourn this and start on Agriculture.

MR. ENGEL: — Before you adjourn this, I think we should clarify what the role of this committee is: do we want to use the rules as far as year ends, and so on, or do we want to get to the bottom of our problem? And I think the committee should decide that. If we want to play games and use year ends and stuff so that part of it occurred in one year end and the solution is in another one, which is still in the dates that we're dealing with, if we're not going to have any flexibility here we might as well adjourn the committee for a couple years until after the next election because we're not going to accomplish anything.

MR. CHAIRMAN: — I'm going to ask the Clerk for a ruling on that as well. It was always my understanding that if you got involved in an issue within the year under review, you could follow that through to its conclusion even though it didn't conclude in the year, but you can't start on an issue which didn't start in the year.

MR. KATZMAN: — With permission of the people, if they're willing to give you the information.

MR. CHAIRMAN: — That wasn't my understanding. My understanding was that if you were dealing with an issue which began in the year under review, you could follow that through to a conclusion even if it wasn't concluded in the year.

Our ever-ready Clerk is going to prepare a written report on all these, and numerous other issues as well, for tomorrow.

MR. KATZMAN: — Mr. Chairman, if I may, just to come back at Mr. Engel's comments, we

normally do the year under review and wide ranging within it. We will follow some through and into the new year if it is agreeable to those, and if they have the information present with them. I'm assuming the gentleman here today, by the looks of the amount of documentation, doesn't have all that thing with him.

MR. CHAIRMAN: — It also may be more complex than we had imagined.

MR. KATZMAN: — Right. And if he comes back tomorrow with his legal people and his contracts and so forth, then you have more of an option to go further.

MR. ENGEL: — This is why I wanted to clarify that for the member for Rosthern's edification that he's bringing some information back. We have two year ends before us. The next year-end report has already been tabled. And to facilitate the work of this committee, let's not play games. Bring your stuff along . . . If you're going to bother bringing in a legal counsel and making that kind of expenditure, if you're going to bring a legal counsel and the copies of the contract along, let's make sure we have some ground rules in place so that we can follow it through and not start using games and saying, well that's not in the '82-83 year, that's '83-84. If we're going to do that, then don't bother coming back because let's follow the thing through or don't do it, one or the other.

MR. KATZMAN: — Mr. Engel, I have used that less, probably one hundredth of what Mr. Randy Nelson used it when you guys were government. I know you say to heck with it. It's all in the rules because you're in opposition. The fact is, if the department is willing to give us more information, fair game.

MR. CHAIRMAN: — Order.

MR. KATZMAN: — . . . If the department is not willing, then we follow the rules, and it's up to the department . . .

MR. ENGEL: — I don't want to listen to him. I want to listen to the chairman's ruling.

MR. CHAIRMAN: — The Clerk is going to bring back a ruling on this.

MR. KATZMAN: — The people that are here know the rules so they know if they have to answer or not. And that's all I do. They have the right to answer or not. And that's all I keep . . .

MR. CHAIRMAN: — Order, order, order, order, order! The Clerk is going to define the rules for us — at least he's going to give us a report that we can consider — defining the rules.

MR. WEIMAN: — I disagree, first of all, with the member from Assiniboia. There's a very good reason why you follow just the year under review. In fact, it's opposite to his argument.

The reason you follow it . . . (inaudible interjection) . . . the reason being that you could play games the other way, because you could go over a whole decade if you wanted to, and say, well, there's a tie-in there, and there's a tie-in there, and back and back and back. The whole objective of keeping it under the year under the review is so that you don't go wandering all over the place.

MR. CHAIRMAN: — I'm not going to recognize any more speakers . . .

MR. WEIMAN: — I do have my question that I was granted about a half-hour ago before the order all went to hell here.

MR. CHAIRMAN: — The unparliamentary language aside, I'll recognize the member from Saskatoon Fairview.

MR. WEIMAN: — Well, actually "hell" is not unparliamentary because it's actually ecclesiastical. There's heaven and hell.

MR. CHAIRMAN: — It's a religious comment.

MR. WEIMAN: — That's right. This is to the year under review and the topic of concern. The topic of concern is irregularities, and that is using a mild term in what we've heard all this morning regarding the contract, how it was handled, legal counsel, the whole bit.

Now coming back to this point of irregularities. I take it, when contracts are given out, not only are they tendered, but it's also based on track record, you know. Is this a viable company — work that's been done, etc., etc., etc. Is that true?

MR. SENTES: — I assume so. That's generally the practice, yes.

MR. WEIMAN: — Well, I'm sure that that all comes into play. You do not . . . Is this a unique, singular incident, with STC and buildings that they've put up, this one particular incident that we're discussing today? Is that a very unique, singular incident? It's never happened before?

MR. SENTES: — Not to my knowledge. We're not in the construction business.

MR. WEIMAN: — No, I know. You're not in the construction business, but you are in the business of putting these . . .

MR. SENTES: — It has never happened to my knowledge before.

MR. WEIMAN: — It's never happened before?

MR. SENTES: — Not to my knowledge.

MR. WEIMAN: — I suspect you do not have to answer this question, so I'm going to preface it ahead of time with that warning.

Has this particular company been involved with any other projects by STC?

MR. SENTES: — Has Tyndall Development?

MR. WEIMAN: — Yes.

MR. SENTES: — Once again, not to my knowledge.

MR. WEIMAN: — Could you please check for me whether they were involved in any other construction projects?

MR. SENTES: — Sure.

MR. WEIMAN: — As well, I would like to know whether the engineering consultant —because there seems to be a lot of argument on whether he gave you good or correct advice — whether the engineering consultant was involved in any other projects vis-a-vis STC. Those are my only two questions.

MR. CHAIRMAN: — Okay. We're going to adjourn this. Mr. Sentes, one of the things you may want to do at the earliest opportunity is to get a copy of the transcript. It should be ready by what time today?

MR. SENTES: — Tomorrow morning.

MR. CHAIRMAN: — It won't be ready till tomorrow morning?

MR. SENTES: — No. It's printed overnight.

MR. CHAIRMAN: — It's not much good to you then. You can get a typed copy, can't you?

MR. SENTES: — I can try. There's other committees going on . . . (inaudible) . . .

MR. CHAIRMAN: — If we can get you a typed copy of this, it might be useful, and Mr. Whitmore, whoever it is, may want to review it before tomorrow.

At that point, I think I'm going to adjourn this. Thank you for coming, and I look forward to picking this up tomorrow.

MR. SENTES: — At 8:45?

MR. CHAIRMAN: — 8:45, yes.

Public Hearing: Department of Agriculture

MR. CHAIRMAN: — I want to welcome to the public accounts committee various public servants from the Department of Agriculture. I want to introduce Mr. Jack Drew; and, Mr. Drew, ask you to introduce those who are with you.

MR. DREW: — Thank you, Mr. Chairman. My assistant deputy, Henry Zilm, to my right; to my left, Wes Mazer, director of administration; Ken Petruic, the accountant with the department.

MR. CHAIRMAN: — Thank you very much. Gentlemen, in addition to thanking you for coming to the committee, I want to just express a word of explanation about our proceedings here. What goes on before the proceedings is privileged in the sense that it can't be used outside for libel and slander action, or in the unlikely event that criminal proceedings ensue out of this. It is, however, taken down verbatim and is readily available for use elsewhere and, indeed, reporters indeed are present at the moment, and are present throughout, so what you say may be used outside the committee.

With that, I will open the committee to questions from the floor. Mr. Engel is our lead critic on this one.

MR. ENGEL: — Thank you. There's a number of issues — three, in fact — that have been raised. You received the auditor's report, Jack? Do you want to give us your analysis of this and what changes you've made, if any, regarding these three? We'll start with that, eh? Get the auditor's report out of the way.

MR. DREW: — Okay, Mr. Chairman. The three issues, I believe, that are referred to are the beef stabilization plan, the Farm Purchase Program audit, and the Outlook alfalfa dehy plant problems.

With regard to beef stabilization, we have a recommendation before treasury board — I'm not exactly sure what the state of the position is — for them to see if they wouldn't discontinue charging interest on some nearly \$15 million in that fund that was associated with the 50-steer purchase program that was initiated in early '82 and lasted for some four or five months. So that issue will be addressed.

With regard to the alfalfa dehy plant, the government chose to take a non-preferred position in the receivership and trusteeship of that account. I think it was probably an easy way to assist

some of the producers that had in fact delivered to the plant and hadn't been fully paid.

With regard to the Farm Purchase Program, there is an audit in place at the moment. I believe it should be about half completed as of today, to audit the eligibility of people that received rebates under the Farm Purchase Program.

MR. ENGEL: — I suppose, Mr. Chairman, if I may, to back up, on the first one, with Outlook's alfalfa dehyd plant, about how many farmers were involved that had delivered alfalfa and hadn't been paid off? Do you have that number with you? In this committee either one can answer, or if you want to have others get involved, it doesn't really matter.

MR. DREW: — About 50 farmers, Mr. Chairman.

MR. ENGEL: — About 50 farmers. And by making this decision, the additional 109,000 went to the farmers. How much would they have lost, had you not made this decision to be a non-preferred creditor?

MR. DREW: — They received about 33 cents on the dollar. They wouldn't have received anything had we maintained our preferred position.

MR. ENGEL: — Is that right? The department didn't have a guarantee of any kind in place, or something, that . . . What are the regulations? Is it the same as a company going into a business that deals directly with farmers? We had Pro-Star Mills involved. Is this a similar situation? Were they in default, or was their licence in good standing?

MR. DREW: — There's no such thing as a licence involved, Mr. Chairman. This plant was established and had to go on — or got into financial difficulty some time before — and the government of the day chose to assist them by buying the inventory and they hadn't been able to see fit to pay back that inventory advance. That's why the plant, in fact, owed the government money.

MR. ENGEL: — I see. So this was an inventory. I was wondering what amounts of money were involved there. How much of an advance was made there? Do you know, generally?

MR. DREW: — I think it was in the neighbourhood of 650,000.

MR. KATZMAN: — 650 . . .

MR. DREW: — 650,000, I believe.

MR. ENGEL: — And of that, about half of it was paid back?

MR. DREW: — No.

MR. ENGEL: — Because the auditor suggests here that there was about 325,000 that you would have had recall on.

MR. DREW: — That, Mr. Chairman, was the net value, or the value of the estate when it was settled by the receiver. It didn't come near to covering even our advance.

MR. ENGEL: — I see.

MR. KATZMAN: — Mr. Chairman, a supplementary. The \$650,000 paid out was, I believe, in last year's auditor's report as unapproved and improperly done. In this year's report, he reports that you could have collected 325 but you chose not to. You've got 216 which was — you fell into the other category, allowing the farmers' first shot at money. Is that correct?

MR. DREW: — The latter statement is correct, Mr. Chairman. I'm not sure about the initial statement with regard to whether the advance was — what was your comment? — not legal.

MR. KATZMAN: — There's something improper about the 600-and-some thousand dollar advance, if I'm . . . Mr. Auditor, did you not nail that the year before?

MR. LUTZ: — Mr. Chairman, I don't have the numbers in front of me, but I believe it was in that range last year. I anticipate that when this thing finally finalizes, we will likely review the bidding over the entire span of time so that we have the numbers when it's finalized.

MR. KATZMAN: — My question, Mr. Chairman . . . Basically, it looks like that this is a carry-through from the year before auditor's report into this year, and probably into next year, till it all clears itself through the system, the way I read it. So the 650 comes to 325; the department takes 216; the farmers take 109; and what the deputy minister has said is: we have deferred to the farmers and let them claim something, otherwise they would have got nothing. Am I correct in that, sir?

MR. DREW: — That's correct, Mr. Chairman.

MR. LUTZ: — I think the issue in this one is the fact that the government gave up its preferred creditor status. While this has been an ongoing problem, the additional action during this year was: the government gave up its preferred creditor status. They could have recovered more.

MR. KATZMAN: — I think that's what my comment was, Mr. Chairman. The government chose to allow the farmers to have the funds rather than have nothing, because they had that choice.

MR. ENGEL: — Was that done by order in council or did you have authority to give that up?

MR. DREW: — Cabinet approval, Mr. Chairman, on April 25.

MR. ENGEL: — You had approval on April 25 by Lieutenant Governor. Was that an order in council approval to make it legal or did they do this without authority? Is the question I'm asking the auditors, I suppose.

MR. WENDEL: — If I could, Mr. Chairman, we believe that there was no authority for that. That's correct.

MR. DREW: — 1984, April 25, 1984 — cabinet decision.

MR. KATZMAN: — The order didn't come till the following year. That could be the problem.

MR. CHAIRMAN: — Was there no . . . There was no order in council?

MR. DREW: — A cabinet decision is my information.

MR. KRAUS: — We understand that the cabinet decided to change their creditor status in April of 1984. I guess the question that the auditor would be raising: do they have that authority? Our position on that is that decisions are made from time to time on issues that may result in moneys not being collected. Ultimately though, it has to go before the Board of Revenue Commissioners who approve the write-off or raise questions, whatever the case may be. In this case, they approved the write-off.

MR. ENGEL: — Was that after the fact, then?

MR. KRAUS: — Yes, after the fact.

MR. KATZMAN: — In the next year under review, too, so it wasn't even under the year under review they approved it. That's why they got their hand slapped.

MR. ENGEL: — Well, I gather that. I'm just wondering if decisions like that are made. I don't argue that the government should have taken the loss instead of the farmer. I believe that our argument with Pro-Star Mills was the same thing then. You know, should the individual that supplied the grain and when that particular company was in default even as far as their licence was concerned . . . But here was a situation that a pay-out was made and then information goes to the cabinet and you get an order in council. So I'm not sure if we're going to clean this up or we have to make a recommendation to satisfy the auditor that it was done, I think . . .

MR. KATZMAN: — It was cleaned up in the next year.

MR. ENGEL: — It gets covered off. The second one that bothers me a little bit and maybe even more so, because you're subject to criticism; you're subject to criticism on issues that are made if on the Farm Purchase Plan. If the process . . .

Why don't you take us through the steps that determine if my son's going to get a loan or not? Like, when you decide on the criteria on the Farm Purchase Plan, if this farmer's net worth isn't over \$200,000, this proposed farmer, and he wants to get a \$125,000 loan (I think that's the numbers you gave us — the average loan's about \$125,000).

Now, when he's applying for making that loan, what kind of a form do you use or what kind of mechanism is in place that the people paying out the interest difference are giving him that money to make that difference in interest? What kind of mechanism is in place to determine who should get the loan or not? Maybe you could . . .

MR. DREW: — Mr. Chairman, I guess my comment would be that first of all we don't make a loan, we make a rebate. The eligibility is determined by the lending institution. The eligibility criteria are basically a net worth of less than \$300,000. It's a sliding scale between 200 and 300,000 as to how much rebate he's eligible for. We don't determine whether he gets the loan or not. We just determine whether he's eligible for a rebate of interest.

MR. ENGEL: — Now when you decide that farmer A is going to get a rebate on his interest rate — you know he qualified — and as far as your records are concerned, do you sign a five-year agreement with him that over this five-year period he's going to get that interest rebate? Or does . . . Because year one, you know, in '83 when he made the loan . . . You were in operation already then, eh? In '83 when he made the loan his net worth was \$200,000. He gets a full 5 per cent rebate down to 8 per cent. He gets the full rebate on his loan. If by year '85 he's sold his wheat and he's made some money custom combining, or whatever he did, and he now is worth \$300,000, is he still going to get that loan for that period of that five-year contract, or do you decide that, okay buddy, you're now not in this category any more where you're still that net worth? Do you take the category when he's going in, or is your audit looking for to see if that expands? That's one of the problems I had when the loan was first . . . the program was first introduced.

MR. DREW: — No, Mr. Chairman, the rules are eligibility is determined at the time of application. He is sent a letter saying his rebate will be such and such each year for five years, and so much for the next five years.

MR. ENGEL: — So regardless of what happens, that program is going to work for five years or the 10-year life of the loan.

MR. DREW: — Subject to maintaining, if you like, bona fide farmer status.

MR. YOUNG: — You've got to give your kid the land after he's approved though, not before.

MR. ENGEL: Well this is the point I'm making. This is the point I'm making. How do you know if a person is giving you the whole picture? This young fellow is coming back. He was working in the mines. He was making some money. He's coming back to farm. Do I set him up to the right size that he qualifies under \$200,000 net worth?

Once he gets his agreement signed, he gets his loan in, then, like Mr. Young suggests, he gets the rest of his land and gets his economical unit. And even if he's worth more, the day that the loan was signed he was only worth 200,000. He gets his interest rebate even if he's worth two and a half million bucks.

MR. DREW: — That's correct, Mr. Chairman. The eligibility is at the time of application.

MR. ENGEL: — So the problem I have with the auditor, where if . . . And you suggested that you're doing an audit, and you're about half-way through these. Are you suggesting that you made loans and accepted them without having fully audited to determine if their eligibility criteria was correct? . . . (inaudible interjection) . . . No, no. I mean makes the agreement to subsidize the loan.

MR. DREW: — Yes, Mr. Chairman, we agree to rebate interest rate on the basis of the application at the time it's made, and the lending institution that makes the loan has to take a statement from the guy and determine his net worth and eligibility criteria.

MR. YOUNG: — Is the net worth of the applicant's father considered in any way? The father owns 40 quarter-sections, shall we say, and a Cadillac car. Is that considered at all?

MR. DREW: — No, it is not, Mr. Chairman.

MR. YOUNG: — It is not considered.

MR. ENGEL: — Now my question would then go back to the auditors. What is the problem that you see here as far as . . . You're saying that: "This situation results because there is no verification by officials of the department of the information provided by the applicant."

MR. LUTZ: — Mr. Chairman, Mr. Engel, that is the problem. In our view, the persons who are running this program, who are advancing this support money, should have some say in the eligibility standing of the recipients thereof.

Now I think, if it's good enough for medicare, it is not that exceptional to expect the same of agriculture. Medicare is quite free with verifying that doctors have, in fact, provided you with a medical service or myself with a medical service. I see nothing wrong with this, except that I wouldn't trust it all to third parties. I would want to have a hand in the verification process myself if I'm going to spend taxpayers' money.

Now just further to that, Mr. Chairman, I think I can say I'm very pleased that the Minister of Agriculture reacted to my comment. He is presently in the process of doing his own post-audit on a random sample basis. And he has advised me that in future, he proposes a random sampling pre-audit of applications and applicants, just to make sure that the criteria which have been put in place are adhered to.

Do I answer your question, Mr. Engel?

MR. ENGEL: — Yes.

MR. LUTZ: — Okay.

MR. KATZMAN: — Supplementary, Mr. Chairman, on this issue. I think the auditor just spelled it out. When the plan came into effect, they didn't do a check before they got the first cheque. Now they have gone back and are redoing them on a selection of some sort. And now what they're saying is, before they pay them out they're going to do a random selection to make sure it's the same again.

MR. ENGEL: — Well Jack — Mr. Drew, I should say; I'm getting too informal here — but the deputy minister, when he commented on it, suggested that they're just about through the audit. So it's more than a random audit, but I think you're auditing all the accounts.

MR. DREW: — No, it's a random audit.

MR. ENGEL: — It is a random audit.

MR. CHAIRMAN: — Okay, I'm going to interrupt you, Allen, just for a moment. We've got a couple supplementaries. Then I think the clock is going to run us out here.

MR. WEIMAN: — Well my supplementary is that, in that we are trying to keep ourself to a schedule, and if there's a possibility of finishing it off this morning, I would like to freeze the clock. I'd like to freeze the clock half an hour.

MR. ENGEL: — No, I'd rather not.

MR. CHAIRMAN: — It's a big department.

MR. KATZMAN: — If we go into other issues, then we may not finish in another half an hour.

MR. ENGEL: — No, I don't think we can do it.

MR. CHAIRMAN: — The member from Saskatoon Eastview has another supplementary.

MR. YOUNG: — Did you have the occasion to contact the Attorney General's department in any way as a result of any fraudulent representations vis-a-vis the qualifications? Have you found any applicant who was falsifying his net worth, shall we say, in any of the Farm Purchase Program?

MR. DREW: — No, we've not, Mr. Chairman.

MR. YOUNG: — You haven't found anybody that's been less than straight with you on the numbers?

MR. DREW: — No, we haven't.

MR. CHAIRMAN: — Unless there's something that is closely related, we'll thank you gentlemen for coming and apologize for not having got it done, but these things take a life of their own.

MR. ENGEL: — Now if you're doing STC first, because they're bringing in other staff, you should have set a time when these guys are going to come. I'm sure STC's going to take more than an hour.

MR. CHAIRMAN: — No, I was thinking of quarter after 9 for STC. We'd be done by quarter after 9.

MR. KATZMAN: — If he clarifies some answers from this morning, we won't need more than half an hour.

MR. CHAIRMAN: — All right. Can I assume the following agenda for tomorrow? 8:45 . . . Try and be cognizant of the fact we've got somebody sitting here we're paying 150 bucks an hour, so . . . I don't know what the fee would be but it's going to be substantial. So try to get here . . . (inaudible interjection) . . . No. The Clerk says it's not him that's getting paid that.

Try and be here on time. Ask the Department of Agriculture officials to be here at 9:15 and . . . (inaudible interjection) . . . No. SCI was mine, and Power was mine. And given the lateness of the hour . . .

A MEMBER: — SGI walked away.

MR. CHAIRMAN: — Yes, we did. We sent them away.

A MEMBER: — A real waste.

MR. WEIMAN: — SCI was Myles Morin, as it says in the agenda, and Sask Power was Kim Young.

MR. CHAIRMAN: — Okay. Clean them off, and then I guess probably maybe deal with Finance the Wednesday next. We've still got Finance hanging fire.

MR. KATZMAN: — Mr. Chairman, just let's . . . for tomorrow we have STC, Agriculture at 9:15, SCI, Sask Power here, ready to go.

MR. YOUNG: — I don't think we should have Sask Power here. We're never ever going to get through Agriculture and SGI.

MR. KATZMAN: — Well, that's the question I was about to ask you.

MR. YOUNG: — If we do, we'll adjourn early.

MR. KATZMAN: — How long are we going to be with Ag? What's the thought? In fact we can turn the clock . . . We can adjourn and do this after, discuss it, you know.

MR. CHAIRMAN: — We should adjourn the meeting.

The committee adjourned at 11:05 a.m.