

STANDING COMMITTEE ON PUBLIC ACCOUNTS
May 30, 1985

Clerk's Report on Year Under Review

MR. CHAIRMAN: — Initially, I will read into the record. I gather you've all received copies. I'll read into the record a report from the committee clerk on the terms of reference defining the year under review:

At its meeting of May 29th, 1985, the Standing Committee on Public Accounts instructed the committee clerk to report on the committee's terms of reference regarding the period during which questions can be asked of a witness.

Members are aware that the government's fiscal and reporting year is from April 1st through March 31st of the following year. Some Crown agencies have chosen, for reasons presumably expedient to the nature of their business, as fiscal and reporting year, one that coincides exactly with the calendar year, January 1st through December 31st.

The established practice of this committee is to discuss issues raised in the Provincial Auditor's report that has been referred to them by the legislature. This instruction permits the committee to question the respective Crown agency regarding the Provincial Auditor's concerns.

If the issue has not been raised by the Provincial Auditor, then the following guide-lines should be adhered to. The period under review' is the reporting period mentioned by the Provincial Auditor in his letter of transmittal. Where a Crown agency's fiscal and/or reporting year begins, continues, or terminates during the one for which the Provincial Auditor is reporting, then the questions should be allowed of the witnesses for the period to April 1st of the auditor's reporting year. If the question involves an issue which is commenced later than that outlined above, then the committee should instruct the witness that discretion may be used on their behalf in answering the question.

MR. KATZMAN: — I want to challenge that. Either I don't understand it, or I think the clerk has made an error. What does he mean by the April 1?

MR. JAMES: — The April 1 through March 31st is the fiscal year; and if it coincides with the year that the Provincial Auditor has scrutinized, then in his document, in the Provincial Auditor's report to the Legislative Assembly, that document has been referred to this committee for study, and anything in his document is able to be looked at by the committee.

MR. KATZMAN: — Let us use STC for a prime example. The document tabled to STC which he looked at was the '82-83 document that he reported on, even though their year was October 31st or something like that. So that is then . . . What we review under that year is November 1, 1982, till October 30th, 1983. Correct?

MR. JAMES: — If those are the parameters that are in his report.

MR. KATZMAN: — So the April 1 means not exactly what it says here. I'm looking for clarification of that April 1. I think if we both just agreed, then there's no problem.

MR. CHAIRMAN: — All right. If there's no problem, there's no problem. I'm not going to go around trying to find one.

MR. KATZMAN: — I think we both agreed that in STC it's the '82-83 report.

MR. CHAIRMAN: — But you can also continue up to . . .

MR. KATZMAN: — No. You can only go to the October 31st, 1983, because that's the document that the auditor looked at. He didn't look at from November 1 till March 31st of '83-84.

MR. CHAIRMAN: — Perhaps the clerk should respond. I interpreted your memo to mean . . . What's the date of the STC report, just to use the exact example? What was it?

MR. BENSON: — October 31st.

MR. CHAIRMAN: — Okay, October 31st.

MR. KATZMAN: — Just let me clarify. Which auditor's report — you examined which one, please?

MR. WENDEL: — '82-83.

MR. KATZMAN: — '82-83 report.

MR. LUTZ: — STC fiscal year, ending October 31, 1983.

A MEMBER: — Thank you.

MR. LUTZ: — . . . which falls in the March '84 government fiscal year?

MR. CHAIRMAN: — Right on. The one examined by the Provincial Auditor was '82-83 ending in October 31, '83. That, then, is the subject of legitimate review, but the memo says that in addition to that activities up to — unless I'm misinterpreting this memo — activities up to April 1, 1984 are also legitimate subject of inquiry.

MR. KATZMAN: — No, that's where the Clerk and I are in disagreement if that's what he's saying.

MR. CHAIRMAN: — Is that what you're saying?

MR. JAMES: — That's what I'm saying, yes.

MR. KATZMAN: — I would challenge that ruling, Mr. Chair. I have no other choice but . . . It's a new precedent . . .

MR. JAMES: — Well it should be not considered a ruling by the Clerk. The Chairman is the one who delivers the rulings.

MR. CHAIRMAN: — I recognize I'm putting you in a bad position.

MR. JAMES: — The Clerk merely offers an opinion.

MR. CHAIRMAN: — I recognize I'm putting you in a bad position here.

MR. KATZMAN: — I think that when he says April 1, he means there's all different kinds of dates, and that's why he has to refer to April 1.

MR. CHAIRMAN: — That is not what he means.

MR. MEAGHER: — May I pose a question with respect to this? We're dealing with two periods, reporting periods, from a Crown agency such as this one. Are both of them able to be examined by this committee if they commence or end in the year, the fiscal year, under review. Are both

years of the Crown subject to examination?

MR. CHAIRMAN: — My position yesterday was — and confirmed by this — was that the normal circumstances you deal with the year under review which is in this case the April 1 to March 31, 1984 . . .

MR. KATZMAN: — '83-84.

MR. CHAIRMAN: — No, '84 in this case. In this case they have an odd fiscal year. It ends on October 31. So of course the year that he was auditing — the Provincial Auditor was auditing — was November 1, 1982 to October 31, 1983. That is the subject of a legitimate inquiry, but members also may inquire about other matters falling within that fiscal year of the government which is April 1, 1983 to March 31, 1984.

MR. KATZMAN: — I challenge that ruling, and I would ask the Speaker of the House to rule.

MR. CHAIRMAN: — Okay, fine. You need a seconder or anything for that, or a motion?

MR. JAMES: — You need a motion . . . (inaudible) . . .

MR. KATZMAN: — You can write it. You can't read my hen scratch anyway.

MR. CHAIRMAN: — We'd better get this down in Hansard correctly then so it . . .

MR. KATZMAN: — I will try to place it for you, Ned. The comment is that I believe that under the year under review the only document that this committee has total right to review is the document reviewed by the Provincial Auditor, and things that will be in the next year's report of the Provincial Auditor are reviewed the next year.

MR. JAMES: — If I might interject, the committee does have the opportunity to examine years prior to and years following the year under review, as I mentioned, at the discretion of the witness.

MR. KATZMAN: — That's correct. I don't argue the witness part. That's acceptable. My point is you have now set a . . . I'm scared of this precedent that says that I can now examine STC from November 1 till March 31st even though I have no annual report or anything properly before me. Now this year we just happen to have it because it's been filed.

MR. CHAIRMAN: — Well we should have them. In . . .

MR. KATZMAN: — No, some years we haven't had them, Ned.

MR. CHAIRMAN: — Well in that case I don't know how we would go about . . . without the annual report I don't know how we'd go about examining them.

In any event to get the bear out of the buckwheat — because we do have someone out there waiting that we're paying good money for — I rule that where the committee has before it a Crown corporation whose fiscal year ends on other than March 31st, the committee members may inquire of the witness matters arising out of the Provincial Auditor's report; also may inquire into other matters arising during that year, during the fiscal year of the Crown corporation which was inquired into by the Provincial Auditor but which issues may not have actually been specifically mentioned in the Provincial Auditor's report; and thirdly, may inquire into other matters on other issues which may arise before March 31st of the fiscal year of the government, which is under review with respect to line departments.

I'm just trying to frame it in a fashion in which the Speaker can deal with it.

MR. KATZMAN: — I challenge that ruling.

MR. CHAIRMAN: — Your challenge has been noted.

MR. KATZMAN: — I suggest to you, Mr. Chairman, for the benefit of the Speaker, who's not here, so he has the verbatim, that using a corporation with a date of October 31st as the final date of their report, then the only thing this committee has the total right to review is the dates of the annual report that was reviewed by the Provincial Auditor. Example: if it ends on December 31st, he can't go past that date; if it ends October 31st, he can't go past that date; and the following year, when he does it, we then do that one.

There is a general courtesy rule that the witness, if he so wishes, can go further. But I would say that is the witness's choice and the committee's non-prerogative to demand. And that is why I'm being very sticky when I suggest we have the right and he must answer to the date. After that is a voluntary, and he does not have to.

And that's why I challenge, because you indicate by your comments you believe he must answer, and that's where we disagree.

MR. CHAIRMAN: — Objection noted. You signed them, you've prepared, but you've got to write it out, I'm sorry, Ralph.

MR. KATZMAN: — Nobody'll read them. Ask the Speaker for a review of the verbatim.

MR. CHAIRMAN: — I think it needs a motion. I'm told that we need a motion.

MR. KATZMAN: — What should the motion say — that Mr. Speaker review the verbatim and give us a ruling?

MR. JAMES: — We can either do it . . .

A MEMBER: — Well, just do it right here in committee.

MR. KATZMAN: — Well, we can't . . . We can vote on it.

MR. CHAIRMAN: — But we're supposed to put these motions in writing for the benefit of posterity, for the benefit of our grandchildren who will be anxiously inquiring into our activities, Paul.

MR. KATZMAN: — Well just a minute. Hold it; hold it just a minute. If we do it . . . You know, Paul's right. If I challenge the ruling, we can vote right here and decide it. That's correct.

MR. MEAGHER: — If we overrule in a massive majority, we'll trample over the chairman.

MR. CHAIRMAN: — Okay. But that, I guess, is correct, is it?

MR. JAMES: — That's correct.

MR. CHAIRMAN: — Well I'm still going to make you write the darned thing out.

MR. KATZMAN: — No, don't have to. The challenge was . . . (inaudible interjection) . . . It's not required.

MR. CHAIRMAN: — You at least have to make a motion, though, challenging the chair.

MR. MEAGHER: — You can do that in the verbatim, too.

MR. KATZMAN: — Just do it verbatim; that's all that's ever done in the House.

MR. MEAGHER: — Okay. I'm resident . . .

MR. CHAIRMAN: — Resident expert.

MR. MEAGHER: — Resident parliamentary . . .

MR. CHAIRMAN: — Paul Beauchesne.

MR. KATZMAN: — I challenge the chair's ruling. That's all you need.

MR. CHAIRMAN: — Do you want to do this in the report, or do you want to go back . . .

MR. KATZMAN: — Well I thought maybe, you know, if we sent it back to the Clerk it might be, you know . . . and the Speaker ruled in the House, it would be easier.

MR. CHAIRMAN: — I think that would be the appropriate thing to do.

MR. KATZMAN: — Well I'm prepared to challenge it here and work under the old rules as we have, and if the Speaker wants to come in with a new ruling, fair game. But I'm prepared to challenge you here and vote on it now. I'm totally flexible.

MR. CHAIRMAN: — That would not be an unreasonable compromise, actually. A challenge is obviously, I assume, going to be successful. I don't know that, and perhaps we should find that out. We'll work under the rules as you see them, if indeed the government caucus is of one mind about this, but refer it to the Speaker for a definitive ruling.

MR. KATZMAN: — Mr. Shillington, in seven years in the committee, it's the first time it's ever been suggested that you can go past the annual report without agreement of theirs, and that's what I'm concerned with.

MR. CHAIRMAN: — Well, okay. You are challenging then?

MR. KATZMAN: — Oh, definitely.

MR. CHAIRMAN: — Is the decision sustained?

MR. KATZMAN: — Are you going to ask those in favour of your decision?

MR. CHAIRMAN: — Yes, those in favour of the decision? Those opposed? You're going to live to regret this, I tell you guys.

Okay. I then am going to make a motion that:

the matter be referred to the Speaker for a definitive ruling.

I don't need a seconder for it. We've discussed it.

A MEMBER: — Do you need a seconder?

MR. CHAIRMAN: — No, I do not need a seconder, no. All in favour of the motion? Okay. Opposed to it? All right. I guess we will then, whatever the appropriate mechanism is . . .

MR. KATZMAN: — Mr. Clerk, would you instruct the *Hansard* typist to as quickly as possible get that portion of the verbatim typed and over to Mr. Speaker today?

MR. JAMES: — You want something done this afternoon on that?

MR. KATZMAN: — It could actually get done this morning and over to him for a ruling today. Or he may want to chat with the chairman or myself.

MR. CHAIRMAN: — It doesn't matter. I think we're going to finish with this particular item anyway. I don't think it matters much, actually.

MR. KATZMAN: — We may have to bring it up in the House today, Ned, at 2:30.

MR. CHAIRMAN: — I'm not going to be in the House today. That's going to be one of the problems. That's why I wasn't in any hurry. I have to go to Saskatoon . . . (inaudible interjection) . . . intimidating the Chair. I very nearly resigned, I'll tell you that, on a matter of principle.

A MEMBER: — That's why I was glad Kim walked in, so if we had to do without you we'd still have a quorum.

MR. CHAIRMAN: — If you gentlemen need to sit, if it's more convenient to sit at a table so you can spread a file or something in front of you, the official from the Provincial Auditor can move up and one person could sit around here if that's more convenient for you three. I don't know whether that's a convenient spot for you there or not.

MR. LUTZ: — I don't think we have that much paper.

MR. CHAIRMAN: — It's not that necessary. Okay.

MR. LUTZ: — Mr. Chairman, that gentleman is not one of my officials.

MR. CHAIRMAN: — No, I don't think I said . . .

MR. LUTZ: — Yes. You said an official of the Provincial Auditor.

MR. CHAIRMAN: — Oh, I meant Finance. I can see why you would disown and want to disassociate yourself. I can understand the sentiment.

Thank you for coming back, Mr. Sentes. Since this is a new cast, perhaps you can introduce your officials.

MR. SENTES: — Okay. On the far right is Gerry Karst. He's the manager of transportation. Beside me is Darrell Lowry, the vice-president of operations; Peter Whitmore from Whitmore and Company; Ken Skilnick from Whitmore and Company, our legal counsel; and John Lyzaniwski, the manager of accounting.

Just maybe to stress one thing. As I said yesterday, none of us were involved at the time, so we're all going somewhat on speculation.

MR. CHAIRMAN: — Okay. Perhaps then you could describe for us . . . You, Mr. Sentes, were here yesterday and heard the nature of the questions. Perhaps you could describe for us what happened with the detail we questioned of you yesterday.

MR. SENTES: — Okay. I guess the first request was to bring back legal history, and that has been done. Graf Zarzeczny were our lawyers up until approximately 1982, at which time we used a number of legal firms. One was Jim Young; one was Leslie, Marlin; one was MacPherson Leslie &

Tyerman. And I'm not sure . . . What was the date . . . And roughly in October of '82 Lane & Whitmore became our legal counsel on a per file basis.

MR. CHAIRMAN: — Were they involved with respect to this file in October of '82?

MR. SENTES: — Not until things went astray. They were not consulted until February, 1983.

MR. CHAIRMAN: — Once the door was open and the horse was out, they were then brought in, I gather.

MR. SENTES: — Well we were . . . Before that we were relying very heavily on a consulting engineer who was administering his own contract. That was a Reid Crowther contract. If anyone should know the contract, it should be a Reid Crowther engineer who is administering the company contract.

MR. CHAIRMAN: — I have not personally ever been involved in a construction project of this size, I must candidly admit. It would have been my assumption, however . . . My assumption would have been in a sense the same as Mr. Young's yesterday: that is, that when the engineer sends you a certificate, he is saying that the building is properly built. The nuts and bolts are all properly tightened. It's strong enough, etc., etc. It is built according to the design, and the design is adequate. But I wouldn't have thought, having given it more thought than I had yesterday, I wouldn't have thought that the engineer would be responsible for ensuring that there were no mechanics' liens arising. Perhaps I'm wrong about that; I don't know.

MR. SENTES: — I think I'll let Mr. Lowry answer that.

MR. LOWRY: — Yes. I'm a professional engineer, and I was in the consulting business myself all my career virtually, and that type of process that they've just indicated is normal process for consulting engineers. They do process all payments. They administer the terms of a contract because — and in this case — the contract is a tailor-made contract with their general conditions, etc. They are the most familiar with the contract. They certainly don't advise on legal matters. However, that payment was in accordance with their prescribed procedure, and so on, of that contract.

MR. CHAIRMAN: — Did you have a written contract with Reid Crowthers?

MR. LOWRY: — Well, I assume STC did. But the contract between Tyndall and STC was a Reid Crowther document, their format totally, their wording, prepared by their lawyers, etc. And that's a common procedure for all consulting engineering firms in the practice.

MR. CHAIRMAN: — Did you have a written contract with Reid Crowther, though? They were providing services to you . . .

MR. LOWRY: — I would imagine we did — certainly prescribed fees, and so on, payable to Reid Crowther. They were virtually a project manager for STC.

MR. CHAIRMAN: — And did the contract specify the duties of Reid Crowther?

MR. LOWRY: — Well, yes, yes. I would say they normally do because it does prescribe they process payment certificates, etc., that type of thing.

MR. CHAIRMAN: — And just one further question then: did the contract specify that they would provide these services with respect to checking to see whether or not there were mechanics' liens?

MR. LOWRY: — With respect to — I'm sorry?

MR. CHAIRMAN: — Did the contract specify that they would provide, either implicitly or explicitly, that Reid Crowther would provide these services with respect to checking to see whether or not there were mechanics' liens outstanding before payments were made?

MR. LOWRY: — I don't think we have a copy of this contract here. I'm not sure that . . .

MR. KATZMAN: — You said project engineers?

MR. CHAIRMAN: — The solicitor's looking at something. We'll just let . . .

MR. KATZMAN: — Did you say they were the project engineers?

MR. LOWRY: — Virtually project manager. They managed the whole project for STC. All STC virtually did was when, I guess you'd say, the documentation came in with Reid Crowther's recommendation, funds were released, totally based on their say-so.

Yes, we have a copy of the contract here. One of the statements says: "guidance to the contractor and interpretation of the contract documents, examination of progress claims for the purpose of approving progress payment." I would say that one sentence does clarify they processed the payments. All we do is issue the cheque, virtually.

MR. CHAIRMAN: — That sentence is hardly definitive. But you're telling me that with a project of this size it is a custom in the engineering industry that an engineer will provide services with respect to checking to see whether or not there are mechanics' liens. That is a custom in the industry, is it?

MR. LOWRY: — Yes, it is. Yes, it is.

I would say only large corporations that do a lot of construction themselves, are involved in it daily on a regular basis, only then would it differ.

Consulting engineers provide that service for virtually every small town in Saskatchewan, every small business that builds anything, and they, the small firms, small towns, etc., and a firm in STC's position that is not involved in construction on a normal basis, has to rely on the consultant to provide that expertise. That's a standard — absolute standard.

MR. YOUNG: — The practice differs considerably in Saskatoon. I practised law for seven years there, and the firm I was with, we did that sort of stuff — that sort of decision-making — on things as large as major hotels and as small as three-storey walk-up apartments, and yet you're saying here that in this city, at least, the consulting engineer pushes the button when the funds are to be released.

Fair enough, but I was just surprised . . .

MR. LOWRY: — That 's a normal standard.

MR. MEAGHER: — Where was this construction project? Where was this built?

A MEMBER: — In Saskatoon.

MR. MEAGHER: — Saskatoon. When did it commence? When did the building . . . (inaudible) . . .

MR. SENTES: — Late 1980s.

A MEMBER: — 1970s you mean.

MR. SENTES: — No, 1980s.

MR. MULLER: — Late 1980. We're not into the '80s yet.

MR. SENTES: — In the year of 1980.

MR. MEAGHER: — Do you have this information? Did the consulting engineer firm that you referred to retain legal counsel?

MR. LOWRY: — They have their own company lawyer, yes.

MR. MEAGHER: — Do you have a copy of the certificate that was submitted to you by the engineer authorizing payment?

MR. SENTES: — Of the 209,000? Yes.

MR. LOWRY: — The date of the contract, by the way, was dated the 25th of November, 1980. That's when they were retained.

MR. CHAIRMAN: — Either table it or read it in its entirety. I don't know how long it is. It would be better to table it, actually.

MR. SENTES: — It's not very long. I can probably table it. We may have a couple copies of it.

MR. CHAIRMAN: — They make copies next door, actually, I'm told. Perhaps you'd better do that since it's a key document.

MR. SENTES: — Yes, and this is our one and only . . .

MR. YOUNG: — I'm amazed at this stuff. You're in a court case now, suing Reid Crowther.

MR. CHAIRMAN: — I take it these are not original documents that you have, then?

A MEMBER: — No.

MR. LOWRY: — If I could have . . . That big book right there is the contract documents for the contract, and the actual agreement itself actually has Reid Crowther and Partners written right on the bottom page of every page that's compiled by them. It's not a standard construction document that's used commonly by everybody. Let's say it is their document. They're the most proficient at recommending payments, stages, etc.

MR. CHAIRMAN: — Let me ask some questions, and you may want your solicitor to respond to this. You may want Mr. Whitmore to respond to this.

A couple questions, first of all. Two preliminary questions. There was a performance bond. Who held the bond? Who was the bonding company?

MR. SENTES: — Canadian Surety Co.

MR. CHAIRMAN: — Okay. Are there any terms in the bond which are relevant to this problem?

MR. SKILNICK: — You're referring specifically to the \$209,000 payment. I guess that's what you're getting at. I think there's a general term of the bond is that the owner has to abide by the relevant laws and by the contract.

MR. CHAIRMAN: — But nothing which is strictly relevant to when and how progress payments are to be made — nothing which deals with that explicitly? Or you may want to check your documents; I don't know.

MR. SKILNICK: — I'm pretty sure that's not the case. It's a short . . . The bond is a short document, page, page-and-a-half document.

MR. MEAGHER: — Mr. Chairman, a bonding contract provides that the bonding company is not obligated to step in and finish a project if moneys that should have been retained . . .

MR. CHAIRMAN: — Had been improperly advanced.

MR. MEAGHER: — . . . had been improperly advanced.

MR. LOWRY: — The bonding company is entitled to the full contract value amount before they'll take over and complete the projects, so that's sort of the gist of why the final payment had to be made to them. They would not take it over. That facility would just be sitting virtually until the full value was paid out.

In other words, if there was million dollars still not paid, you'd have to pay that. Then the bonding company would take over, and they must complete the project if it cost them \$5 million. That's the guarantee, I guess you could say, under the bond process.

MR. CHAIRMAN: — So I gather that's the common term of performance bond is it, Mr. Whitmore?

MR. WHITMORE: — That's right, and to a lesser degree that's exactly what happened in this case.

MR. CHAIRMAN: — Okay, we've got the document here which I gathered Mr. Sentes is going to table — has tabled. Perhaps you might just give it to Mr. Clerk. I'll let Mr. Young look at this because he's more familiar with these matters than I am.

MR. KATZMAN: — While Kim's reading that, could I ask a question of the . . .

MR. CHAIRMAN: — Yes, please do.

MR. KATZMAN: — Just to clarify something. You were called in on this on February 18?

MR. WHITMORE: — I think it was several days earlier than that, Mr. Katzman, but it was approximately that time.

MR. KATZMAN: — You were brought in as consultant, file by file, on October '82?

MR. WHITMORE: — October, November of '82 — that's right. We were advised that we would be doing certain legal work for STC, as would certain other firms in Saskatchewan.

MR. KATZMAN: — Okay. The thing I just wanted confirmed here is that yesterday they referred to two names of your company. Could you explain that one?

MR. WHITMORE: — Oh, Lane & Whitmore is the same firm as Whitmore & Company. It's a sole proprietorship; it's owned solely by myself. Mr. Skilnick is an associate. I have three other associates. We changed office locations within the last several months, and at that time changed the name of the firm to Whitmore & Company. But Lane & Whitmore was, from April of '82 onwards, solely my practice of law.

MR. KATZMAN: — Thank you.

MR. YOUNG: — Mr. Whitmore, it was you, then, who commenced the legal proceedings on behalf of STC against these other folks.

MR. WHITMORE: — That's correct.

MR. CHAIRMAN: — It would seem to me to be . . . My father used to say that if our foresight was as good as our hindsight, we'd all be better off by a damn sight. And it's always true that events are obvious afterwards.

It appears obvious at this point in time to me, being very much a layman in the area — as I say. I've never been professionally involved in a construction contract — that there's some confusion as to what the precise role of an engineer is. I don't regard the statement here as being definitive; nor do I regard the sentence in that contract as being definitive.

It seems apparent that you should have had legal advice earlier and that you should have had your solicitor — Mr. Whitmore, whoever it was — look at the contract with Tyndall — perhaps Mr. Zarzeczny; look at the contract with Reid Crowther as well as the contract with the contractor, which in this case was Tyndall Development. It seems to me both should have been reviewed, and your solicitor, in the tiresome way that they do, might have asked questions about what that meant.

There seems to be some confusion as to what the role of the engineer was. I assume he's not admitting that he was supposed to check this and didn't. I assume that's being . . . (inaudible) . . .

MR. WHITMORE: — I think that matter can quite fairly be said to be before the courts, Mr. Chairman.

MR. CHAIRMAN: — So these things are always cheaper to solve in advance, quite obviously.

MR. YOUNG: — I take it that it's a matter of public record. It's at the court-house. But I take it that his statement to the defence is to the effect that it was not for him to authorize payment.

MR. WHITMORE: — That's correct, that it's negligence on behalf of the STC. I must say that when we were first approached on this one, when my firm was first approached on this after the payment had been made, it was a representative of Reid Crowther that came in, as well as representatives from STC; that Reid Crowther, in our opinion, were working as project managers for STC, not just as consulting engineers. They were putting the package together and putting the building up for STC. And they came in, said, there looks like there might be a problem here; we've made this payment.

MR. YOUNG: — The deviance would be, the letter reads that payments should be forwarded directly to the contractor. In fact, what we heard yesterday was it was forwarded through this agent at the bank.

MR. WHITMORE: — That is correct. That's correct, at the request, as I understand it, as I recall it, at the request of the contractor.

MR. YOUNG: — It's no substantial difference? The same person?

MR. WHITMORE: — No, and STC went so far as to inquire of the bank the position, financial position and stability of the contractor. And you may notice that the bank is a party to that legal action.

MR. CHAIRMAN: — I was going to ask you that. They are, are they?

MR. MEAGHER: — Just by way of a comment. It seems incomprehensible to me that a contract this size being executed by a client and a consultant firm, all of them would be acting without the advice of counsel who could obviously immediately advise them that the 37-day waiting period is really a requirement. I mean it's done on much smaller contracts.

MR. WHITMORE: — Absolutely.

MR. MEAGHER: — If no one had the services of counsel at that time, then it seems just about incomprehensible to me.

MR. SENTES: — Once again, none of us were involved, but we have to assume that Reid Crowther would have certainly brought in their counsel when they checked the liens or the stat decs (statutory declarations) and things like that. You know, we're only speculating.

MR. YOUNG: — . . . (inaudible) . . . the land titles office?

MR. MEAGHER: — Who would their counsel have been, would you know that?

MR. SENTES: — I wouldn't know.

MR. WHITMORE: — As far as I'm aware, they did not have legal representation until the action was commenced.

MR. KATZMAN: — I would assume that there was legal representation by STC and by the contractor on the original signing of the original documents for the contract. From then on there might not have been involvement of lawyers until it became a problem.

MR. LOWRY: — That is the standard and this may be also, but normally there's hundreds and hundreds of contracts administered every day. But lawyers are not consulted for every progress claim.

Normally, when a progress claim is made and a statutory lien period runs down, somebody makes a search of the land titles to find out whether there are any liens. That's the only legal sort of process that's normally involved in a progress payment procedure. But you may, on a large project, make hundreds (and I'm using the term correctly) hundreds of payments. You do not consult a lawyer on every one of them.

MR. MEAGHER: — Oh, I know that, because most contractors and most consultants know that the 37-day period is in place and they don't need a legal opinion. But if you were prepared to sit down and authorize and write a letter authorizing payment direct to the contractor, you either don't know it or should get some legal advice, because they're inconsistent.

MR. LOWRY: — Well there were no liens in place when this payment was made. There was nothing . . .

MR. MEAGHER: — Oh, but the 37-day period hadn't run down either — hadn't even commenced.

MR. SENTES: — \$3.8 million.

MR. LOWRY: — The 37-day period sort of does not kick in on this one because it wasn't a final payment.

MR. CHAIRMAN: — I'm surprised to hear . . . What's the total cost of this building?

MR. SENTES: — \$3.8 million.

MR. CHAIRMAN: — I'm really surprised to hear that someone who has no familiarity with construction would build a \$3.8 million building without getting legal advice on the niceties of contract law and the relationship with contractors. I'm surprised . . . It seems apparent (and I'm going to recognize the Provincial Auditor here in a moment), it seems apparent to me that the engineer felt he had no responsibility to check the mechanics' liens.

Some member of the committee just brought to my attention the last sentence of a letter, "We trust you are in agreement with the above." It seems apparent that you people thought the engineer was doing it, and it also seems apparent to me that you ought to have had that defined, and that's one of the things a solicitor would have done for you.

MR. MEAGHER: — As well, Mr. Chairman, I'd like to clarify a point. You made the suggestion that this is not a final payment, so that the 37-day period isn't applicable to this advance. But the letter suggests that it is part of the hold-back reduction. The hold-back is what I'm referring to. The hold-back . . .

MR. LOWRY: — It's a reduction. It's not a final payment.

MR. MEAGHER: — No, but it is a part of the moneys that are obligated to be held back until the final payment, so it's part of the final payment.

MR. CHAIRMAN: — I'm going to recognize the Provincial Auditor.

MR. LUTZ: — Mr. Chairman, I believe my solicitor, Mr. Neill, would like to make a brief comment here if he could, please.

MR. NEILL: — Well I think there are two sections of The Mechanics' Lien Act that shouldn't be lost sight of in this inquiry, and the first one is section 20(1), which provides:

Where a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made and the statutory period has elapsed after a certificate issued by that architect, engineer or other person to the effect that the subcontract has been completed to his satisfaction has been given to the person primarily liable upon that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced by twenty per cent or fifteen per cent, as the case may be, of the subcontract price or, if there is no specific subcontract price, by twenty per cent or fifteen per cent, as the case may be, of the actual value of the work done, services rendered and materials furnished under that subcontract; but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act.

Now if I might summarize that.

MR. CHAIRMAN: — I'm not sure if any member of the committee quite follows that.

MR. NEILL: — All right. What this section says, as I understand it, is that where you have an engineer — in this case an engineer — supervising the contract, he can notify the owner that a subcontractor or more than one subcontractor has completed, to the satisfaction of the engineer, the subcontract, whereupon the amount of the hold-back which is required to be made under the Act can be reduced by paying out that part of the hold-back which is applicable to that subcontract.

MR. YOUNG: — After the 37 days.

MR. NEILL: — After. Thirty-seven days after he has received notice of satisfaction that the work

has been satisfactorily performed. Now looking at this notice here, if this is the first notice that the owner got from Reid Crowther and Partners with respect to the completion of the work by subcontractors, this notice doesn't say anywhere that the subcontract has been satisfactorily performed. And accordingly I don't think this is even notice which would make an advance under 21 applicable. Okay.

Now the other section of the Act that I think is a matter that you may consider worthy of some further inquiry, and that is section 62(1), which deals with liens in respect of public works. And the procedure there is not the same as works where the owner is not the Crown. And the STC, for the purposes of this Act, is the Crown.

And section 62(1) provides, if I can summarize it, that there is no lien against land. There is only a lien against the hold-back. Accordingly, in this case, in my view, the records of the land titles office are irrelevant to whether or not this advance was made.

I understand — I don't know — but I understand that yesterday it was established that no notice of lien was received by STC. And if that is correct, I don't know why they felt obliged then to make the second payment to the bonding company.

MR. CHAIRMAN: — Except that I'm not sure that the statutory period had even commenced.

MR. YOUNG: — But the bonding company, excuse me, would say as follows: our opinion is otherwise; we're doing nothing; you sue us; it'll be three years, and you'll never get a bus depot in Saskatoon. So they literally would be in a blackmail situation. Otherwise you'd have to sue the bonding company, and meanwhile who builds the bus depot?

MR. NEILL: — The bonding company, though, is only required — only has the right to get what moneys that had not been properly advanced. And if the first payment was properly advanced without any notice of lien, they couldn't demand that . . . (inaudible) . . . So, I mean, just because somebody's holding a gun to your head does not excuse making an unwarranted payment.

MR. KATZMAN: — It sure does if it's my head and his gun.

MR. YOUNG: — Well I'm just assuming that's the position the bonding company would take. You know, we differ; you can rot and sue us and, you know, this sort of thing.

MR. CHAIRMAN: — May I ask you a question, Mr. Neill? What would be the appropriate assumption if you got this letter? Would you then ask the contractor to take some further steps, or what steps should have ensued from this letter?

MR. NEILL: — Well in my experience, I don't know . . . Mr. Lowry says that this company was the project manager. But where the owner is making the actual payments, I don't think that the owner can excuse themselves from the responsibilities under The Mechanics' Lien Act by simply saying, well, somebody told me to do the wrong thing.

But even if that is the case, this notice, in my view, is not a notice that meets the requirements of section 20(1). And accordingly . . . But if it was, if it did meet the requirements of 20(1), then they would have still have to retain the payment for 37 days after receipt of it, if this was the first notice.

MR. KATZMAN: — Mr. Chairman, I have a problem before we go any further. We have a court case, and I'm afraid the last speaker's statement should be struck, if feasible, because it could end up in the court case. And I really don't think we want to add extra fire to the flame. I know the stuff can be used there.

MR. CHAIRMAN: — It's nothing but his opinion. Nothing that Mr. Neill renders as an opinion

here is evidence before a court.

MR. KATZMAN: — Okay.

MR. LOWRY: — We are getting into some of the details, most certainly, of the court case. But to clarify one point — at this point in time the owner had occupied some of the buildings under construction. Some of it was in use in November, as I understand, '82. Some of the work was actually said to be completed, which justified some reduction of hold-back in this particular project. So some of the mechanics' lien, I guess, periods could have commenced on subcontractors at that point in time, which, taking it into January, February, had your mechanics' lien periods already covered. So there were parts of the work that were occupied and being used by the owner at that time.

MR. SENTES: — It's important to note that it was a reduction of hold-back.

MR. CHAIRMAN: — I'm not sure what we're accomplishing here except I'm thoroughly convinced that when someone is building a \$3.8 million building and is not intimately familiar with the details of the construction industry, they ought to have legal advice from the beginning and could retain it all the way through.

MR. YOUNG: — Who was the minister at that time, Ned; you'd remember. Who was running that thing?

MR. CHAIRMAN: — STC in 1983?

MR. YOUNG: — No, when this all happened . . . can't remember.

A MEMBER: — It was Don Cody.

A MEMBER: — Neon-jacketed Cody.

MR. CHAIRMAN: — He didn't need headlights on his car.

At any rate, unless members have other questions of STC's activities other than this little effort . . .

MR. KATZMAN: — Thank you kindly for bringing the additional staff today to get us all, I think, understanding, at least, what the problems were.

MR. CHAIRMAN: — Thank you for coming and answering our questions, and we will be reporting on this, I assume, and you will no doubt see some mention of this in our report.

Agriculture, gentlemen. I'm sorry, Mr. Katzman stepped out for a moment. All right, we can do it after Agriculture.

Public Hearing: Department of Agriculture (continued)

MR. CHAIRMAN: — Okay. Yesterday, at 11 o'clock, we were reviewing the details of the comments by the Provincial Auditor on the Department of Agriculture. You had provided us with a list of people who had obtained the benefit, I suppose, the other creditors, the unsecured creditors. I am not sure . . . I am perpetually embarrassed by my inability to remember names. I'm sorry, a representative from the comptroller's office. I'm sorry. Mr. Benson. I'm sorry. As I say, I'm perpetually embarrassed by it.

What is the appropriate procedure, Mr. Benson, when a department wishes to make this sort of a step? They don't go to treasury board, I gather, and say: listen, we want to forego our position as secured creditor; that will involve an expenditure of \$216,000; may we have approval for that? I

guess they don't do that. Or are they supposed to? Or what is your view of . . .

MR. BENSON: — Our position, Mr. Chairman, is that there's no requirement for the organization in this kind of a situation to take the decision before treasury board at this time. I think what would be required is eventually they will have to go before the Board of Revenue Commissioners to ask for a complete write-off of the account. And at that time the commissioners are able to make recommendations, or take whatever action they see fit in the process of writing off that account.

MR. CHAIRMAN: — That strikes me as being a little late. The door is open, the horse is out of the barn, and indeed the horse is probably gone to the glue factory by then, in the sense that a year later surely is too late to decide then you want to be a secured creditor. The liquidator will have taken action on the strength of the position as communicated to them by the department. It seems to me that permission should be got in advance of the commitment.

MR. BENSON: — Well, the position being taken right now, Mr. Chairman, is that departments, by virtue of their Act, have authority to undertake a number of different commitments that don't require treasury board approval at the time those undertakings are made. So it's a question of what the parliamentary rules are.

MR. CHAIRMAN: — You see, it strikes me that had they gone to treasury board and said, we want to spend \$216,000 in this way, I do not think it's a foregone conclusion they would have got it. I think the Minister of Finance might want to ask some questions about this expenditure of \$216,000.

It's the same issue as . . . It's somewhat similar to requests that governments often get, to provide interest-free loans. The public often think that there's really no cost. Of course, there's an enormous cost in interest-free loans. The same is true of this.

I'm, at the moment, not quarrelling with the Department of Agriculture so much as what I perceive is a lack of treasury board regulations which have been in existence for decades. There's nothing . . . (inaudible) . . . laying at the door of this government. It just seems to me that this is \$216,000 of taxpayers' money which was foregone. It was done without permission of central authorities, and had they gone to treasury board, I do not think it's a foregone conclusion you would have got permission to spend \$216,000 on a group of farmers in an area. I'm wanting long, long treasury board regulations, I guess.

MR. BENSON: — Well I believe the department had cabinet approval for what they have done.

MR. CHAIRMAN: — I thought that the cabinet approval came a year later or something.

MR. BENSON: — No, I'm sorry, Mr. Chairman, that cabinet approval was April 24th of '84.

MR. CHAIRMAN: — Oh, was it? I thought the OC was done a year later; I thought that's what I had heard you say yesterday.

MR. BENSON: — No, I'm sorry if I've mislead you.

MR. CHAIRMAN: — That legitimizes it then. That's different. I'm operating under misapprehension.

MR. KATZMAN: — Now hold it. No, no, no, no, no. I think we got some dates crossed here again. I've got to argue with my own officials; that's terrible. When was the approval?

MR. DREW: — I believe it was April of '84, Mr. Chairman.

MR. KATZMAN: — If it is, then you're in trouble.

MR. CHAIRMAN: — If it is, then you're in trouble, yes.

MR. KATZMAN: — Because you did it prior to March 31st of '84.

MR. BENSON: — I don't believe there was an OC, in this particular case, evidencing the cabinet decision.

MR. KATZMAN: — That's what I thought.

MR. BENSON: — There was no warrant . . .

MR. KATZMAN: — . . . (inaudible) . . . to me, Ned.

MR. CHAIRMAN: — What I'm back to my original . . .

MR. KATZMAN: — Can I pick it up for a second? I think I can help out the situation.

MR. CHAIRMAN: — Okay.

MR. KATZMAN: — This was named the year before, the 600-and-some thousand dollar advance that was given that shouldn't have been given to buy product. Now the product disappeared, basically, for lack of a better way of putting it. Sufficient product disappeared. The government had a choice: shut the place down, take its money as first creditor, and the farmer has got nothing; or the government had a choice of saying, look, we'll go second creditor; let the farmers have a little bit of theirs, then we will take. That's what they chose.

They may have, the same as big Mac did wrong too when he gave the 600,000 without proper cabinet permission and all the rest of it, they may have not got the sequence in order because of timing. I give you that. I would suggest that may have happened. But other than that, the intent, by what I heard him say, they discussed it and had agreed to go with it but didn't have all the orders in place prior to the year under review, prior to the thing happening. But it had been discussed at the proper levels, if I understood yesterday's comments.

Would that be correct, Mr. Auditor? You're nailing them because there was no date or minute or so forth, to do what they did.

MR. LUTZ: — Mr. Katzman, we're reporting the fact that the administration failed to collect a certain amount of dollars which was rightfully accruing to the administration.

MR. KATZMAN: — Correct. And what they chose as a cabinet is to waive it. Fair game. That's their choice. You've done your job. They did their decision in cabinet. We say you should have made the cabinet order before you moved away from the money; you should have had the order, the order OC. That's the mistake that was made . . . (inaudible) . . . The OC might have been in process but didn't get processed in time before the end of the year.

When was the money paid out? That may answer the question.

MR. BENSON: — There was no payment of money. The money was paid out in 1981, and it was simply the government elected not to recover all of it.

MR. CHAIRMAN: — The Provincial Auditor has a comment.

MR. WENDEL: — If I could, Mr. Chairman. A number of years ago the Department of Agriculture had made a loan to a company in Outlook. I believe it was about \$600,000, or \$650,000. And at

that time we had reported them for making a loan without authority. And over the last couple of years we've also reported this matter in that there's been an allowance required because of the lack of . . . or a reduction of what was estimated to be collectible on this.

Now this report is saying, further report, that we could have collected more money had we — or the province, if you would — maintained their position as a preferred creditor. Okay? Now cabinet chose not to retain that position, and the result was, revenue not collected.

Now there are a number of ways that that could have been done by cabinet. However, there was nothing formal. They could have gone to the Board of Revenue Commissioners and did that, which they did subsequently, I understand. Have they not gone to the Board of Revenue Commissioners to authorize that write-off?

A MEMBER: — Yes, they have.

MR. WENDEL: — I believe they have. However, that was not done at the time, or else they could have, if they wanted to give the farmers some money, they could have got a budgetary appropriation for it and paid transfer funds, and retained their position as a preferred creditor. There were a number of options. Whatever the reason, that was what they did.

MR. CHAIRMAN: — Any one of those options, so mentioned, would at least have provided something in the nature of prior approval. It strikes me here that . . .

MR. WENDEL: — If I could, Mr. Chairman, I believe there was prior approval by cabinet. What we're saying is you have to document that. That's our view. A cabinet document is really nothing for authority. It may be that they can do anything they want, but they still have to put a piece of paper in place.

MR. KATZMAN: — They had the proper authority. They didn't have things signed in place before they did it.

MR. BENSON: — I think the point of issue here, too, is that there was no requirement for them to have an order in council doing that. But I don't disagree with the points that are being made by the Provincial Auditor that a grant could have been requested and made, or that there is nothing illegal in terms of the actions taken by the department, in our view.

And what we wouldn't want to establish is a practice of going to the Board of Revenue Commissioners on an interim basis. The practice is to go when the final write-off is requested. And that's the control established by the legislature at the current time.

MR. CHAIRMAN: — But that wasn't done in this case?

MR. BENSON: — Well, they have gone. Once the final amount determined to be written off was determined, they went before the Board of Revenue Commissioners and got approval for the write-off, and there was full disclosure, I would expect, of what's transpired.

MR. CHAIRMAN: — And the Board of Revenue Commissioners was in a position to say, no, I'm sorry; we don't want to write this off.

MR. KATZMAN: — No. I suppose they could have, yes.

MR. CHAIRMAN: — Strikes me they're not in a practical position to do it after the . . . They're not quarrelling with the department. They're not in a practical position to do it after the . . . When did they go to the Board of Revenue Commissioners?

MR. BENSON: — Well, the practice . . . (inaudible) . . . people in '85 can determine.

MR. CHAIRMAN: — Well it strikes me that that's something of a formality.

MR. BENSON: — Well if I might say, Mr. Chairman, that is the practice with respect to all uncollectable debts, that departments are expected to do whatever procedures is expected of them and go before the commissioners when they're having a final write-off.

MR. CHAIRMAN: — Except that, Mr. Benson, this was a collectable debt, highly collectable They just chose, for perhaps good reasons. I'm not quarrelling at this point to have the decision; they chose not to do it. This was a collectable debt. They chose not to do it. By April of '85 surely they were committed to that position that they weren't going to collect it, publicly as well as otherwise. That strikes me as a little late to go ask permission, in April of '85, in practical purposes.

MR. KATZMAN: — Mr. Chairman, may I suggest that there is an agreement here, that what happened and, as the auditor notes, is correct and move on to the next topic. And when I suggest that, may I also suggest: does anybody have an idea how long these people will be here?

MR. CHAIRMAN: — We've called SGI.

MR. KATZMAN: — You've already called them? Good enough.

MR. CHAIRMAN: — With respect to the second item mentioned in the Provincial Auditor's report, do I take it from yesterday's discussion that there is now some form of verification being done? Could you outline for my benefit in simple terms what changes there has been in the procedure?

MR. DREW: — Mr. Chairman, two things are happening. One is that there is an audit of existing clients on a random sample basis to determine whether or not there was any misuse of the eligibility criteria by the lenders.

MR. CHAIRMAN: — If I may interrupt, Mr. Drew, what percentage are sample?

MR. DREW: — I believe it's 100 out of some 5,000. And further to that, now, when the applications come in, they are randomly audited on a pre-audit basis before the decision is made as to whether or not they're eligible.

MR. CHAIRMAN: — What error rate have you found?

MR. DREW: — I am not aware, Mr. Chairman, of any errors at the moment, although we haven't reviewed very many of the random sample. It's about half the information is available, I understand.

MR. CHAIRMAN: — Would you undertake to review that and report to the committee?

MR. DREW: — I surely would.

MR. CHAIRMAN: — Both the number and the percentage, just so we have a handle on how academic or how serious the problem is.

MR. DREW: — We hope to have that completed by the end of June. When would you like us to report?

MR. CHAIRMAN: — As soon as you can. Our final report isn't normally handed in till fall.

MR. KATZMAN: — Send it to the . . . When you have it ready, send it to the Clerk — 15 copies?

MR. CHAIRMAN: — 20 copies.

MR. KATZMAN: — Twenty copies to the Clerk, and then he will pass it to the members of the committee.

MR. MULLER: — Any of these applicants that apply for the interest write-down have applied to a lender. The lender lends them the money, and the application then comes to the government for an interest write-down. Those appraisals are all done by professional appraisers. So the land values that the lender holds have full appraisals on them, and it's fairly easy to check a balance sheet to see what the borrower's net worth is. So I can't see how there'd be a large amount of people getting money that they shouldn't be getting because it's got a lot of checks and balances in it prior to it ever coming to the Department of Agriculture.

MR. DREW: — That's true, Mr. Chairman. I think the biggest check and balance in that program is the fact that the lender determines the eligibility. And he says, you're eligible; you're going to get a rebate down to 8 per cent. And if, in fact, the guy is determined to be not eligible, the lender will look awfully embarrassed in the borrower's eye. In fact I think the lenders are very careful to make sure they don't tell someone he's eligible if there's any chance that he isn't. And in fact some of them they send in ahead of time, just to verify.

MR. MULLER: — Just to have another comment on this, the people that go to Farm Credit Corporation as such, they list all their assets and all their liabilities. And the loan is granted on that basis of what their net worth is. So it's a very tight-run ship.

MR. CHAIRMAN: — All of the applications are reviewed by someone in advance of the commitment being made to rebate the interest?

MR. DREW: — Yes. We get an application from the lender, Mr. Chairman, and determine that the rebate will be made. But the lenders will by that time have already told the guy, look, you're eligible; you could get a write-down to 8 per cent. And so they would be very careful not to tell that to someone that they weren't sure would get approval.

MR. CHAIRMAN: — What the member from Shellbrook is saying is that the banks would have . . .

MR. MULLER: — The banks or Farm Credit Corporation, whoever is the actual lender, has gone through that balance sheet or the financial situation of the person that's planning, knows what his net worth is, and the land that is being purchased is appraised by a professional appraiser. And also the land that he's using as collateral if he has other land.

MR. CHAIRMAN: — Do they take collateral security as well — machinery and cattle and soon? Just land is the only security under this program?

MR. DREW: — No. You see, we don't make the loans, Mr. Chairman, so we don't have any security requirements or restrictions.

MR. CHAIRMAN: — But would the bank be loaning this on the security of machinery and cattle and hogs and stock as well, or just land?

MR. DREW: — Well the loan, Mr. Chairman, has to be for the purchase of land. What the security is is up to the lender.

MR. MULLER: — But they also take a list of all the assets of the borrower to show his financial position.

MR. CHAIRMAN: — And I guess I'd better ask, since I don't know and Mr. Muller probably does, what are the eligibility requirements, in 50 words or less? What are the eligibility requirements?

MR. DREW: — Simply, Mr. Chairman, a net worth of less than \$300,000 and the amount of rebate feathers between a net worth of 200,000 and 300,000. So a net worth of less than 300,000 to get any rebate; a net worth of less than 200,000 to get full rebate. A maximum loan of up to \$350,000; off-farm income of a family of less than 45,000; and a resident of Saskatchewan. That's basically it.

MR. CHAIRMAN: — In that case I dissent from the view expressed — if that's what we're talking about — I dissent from the view expressed by the member from Shellbrook-Torch River. A bank manager or whoever has no interest in assuring himself that there are not assets which are not recorded . . . (inaudible) . . . Well, why? I don't understand it. But I don't understand why he would care . . . (inaudible) . . .

MR. KATZMAN: — Mr. Chairman, may I suggest to you that you take some time, then, if you're so interested, and take a look at the form that is signed at the bank and so forth? And you will just see there's also declarations and so forth.

MR. MULLER: — I think I should have some chance to, seeing since it was directed to me. If a bank manager or Farm Credit Corporation looks at someone's application and sees that he hasn't got the equipment to handle that extra land, and hasn't got the wherewithal to purchase that equipment, he's certainly not going to give him the money.

A MEMBER: — Because he gets stuck with the land in the end.

MR. MULLER: — Because the lender is the one that has to repossess.

MR. CHAIRMAN: — Let me ask a question, then. It should be asked of the witnesses, but I'll ask it of you since this is a discussion.

Farmer A comes into the royal American bank, okay? And he wants a loan . . . (inaudible interjection) . . . I'm using a hypothetical bank. He wants to make a loan. He knows the requirements, gets his land appraised. Land's worth a quarter million bucks — no, that's too high — say \$200,000. Lists a few hogs, machinery, gets up over 300,000 bucks. So he strikes from the list a \$50,000 tractor, brings himself underneath. How on earth would the bank manager ever know he'd done that?

MR. MULLER: — Okay. He files three years of income tax returns. All his machinery is listed on the back of the income tax return.

MR. CHAIRMAN: — And all that material goes to you people, does it?

MR. MULLER: — It goes to the local bank or Farm Credit Corporation. That machinery is all listed so he gets his tax credits on that. He's not going to leave a tractor off of there, or anything else, because it's depreciated. All that information is there. Also, the banker will ask him if he has any other outstanding loans with Massey-Ferguson, International, Case or whoever else, and those are all checked by the lender, by the person that's lending the money. There's no way that you can get away with not declaring equipment.

MR. CHAIRMAN: — Okay — without the bank manager knowing that.

MR. MULLER: — And most of the equipment is borrowed . . . The money's borrowed through the bank to buy it in the first place.

MR. CHAIRMAN: — All these people get is the . . . Well, no, for these purposes, you people just get the application form.

MR. DREW: — That's right.

MR. MULLER: — With the net worth on it. With the declarations.

MR. CHAIRMAN: — We are presupposing a very high degree of public morality.

MR. MULLER: — Well, farmers are very moral people, but . . .

MR. CHAIRMAN: — I recognize that, yes.

MR. MULLER: — No, the checks and balances are all in place.

MR. CHAIRMAN: — A great number of people who would never think of chiselling with each other aren't above shaving a corner when it comes to dealing with the government, in the sense that . . . There's a surprising number of people who think the public pockets are bottomless, and it really doesn't matter if you're not completely honest. As I say, I think you presuppose an extremely high degree of integrity when dealing with the government on the part of farmers.

MR. MULLER: — The checks and balances are all in place because the banks can check with different machine companies and everything, how much you owe on specific machinery, and I would say this much: that most of the machinery that's out on the farms today has some kind of a loan against it, whether it be through the bank, or farm machinery dealership, or machinery company, or with their own credit corporation.

MR. CHAIRMAN: — What you're saying is . . .

MR. MULLER: . . . and this is where the bank or Farm Credit Corporation finally gets the net worth of the farmer.

MR. CHAIRMAN: — What you're saying, Mr. Muller, is that there is no way a farmer can fool the bank manager, because he's got too much documentation there, and probably knows the farmer's operation anyway, if it's a small-town bank.

MR. MULLER: — The banker probably knows the farmer's operation better than the farmer.

MR. CHAIRMAN: — Than the farmer does, right. Okay. So you're saying there's no way the farmer can fool the banker. But then you go on and say, secondly, there's no way the banker would consider being less than candid with the government. I'm not sure that's universally true.

MR. YOUNG: — Well it's just STC that they're less than candid with.

MR. CHAIRMAN: — Yes. I'm not sure that's universally true. I unload on that second proposition.

MR. KATZMAN: — I suggest, Mr. Chairman, that reading what you're saying, if somebody wanted to be a blank they could possibly get away with it . . .

MR. CHAIRMAN: — Beat the government, they could do it, yes.

MR. KATZMAN: — But remember, the person that gets beat is not the government. It ends up being the bank itself who is going to end up with repossessing that land or something, if there isn't sufficient now. If you don't show assets, that is a different issue.

But remember he's signing a document of an affidavit that everything is true and sworn. The only thing you can do is ignore some assets. That's the only thing you could do.

MR. CHAIRMAN: — But the point of doing that here is that the bank's client gets the benefit of an interest rebate which he's not entitled to because he's got too much assets. The loan may be perfectly . . . From the banker's point of view, the loan may be perfectly in order, perfectly secure, but he's got a farmer with \$400,000 who wants the money, and, as I say. I'm not with you on that second proposition that there's no banker in the province who would stoop to chiselling on the government.

MR. KATZMAN: — Same as no politicians would do that either, Ned.

MR. CHAIRMAN: — No politicians would do it either.

Anyway, you don't verify them in advance now.

MR. DREW: — We will, Mr. Chairman. We will be random sampling verifying on a pre-audit basis.

MR. CHAIRMAN: — Okay, on a pre-audit basis. Okay. That may be of some assistance. If in 100 or so that you pre-audit you find no examples of any irregularity, it may be some proof that your system is adequate. Well you're going to share that with us in any event.

MR. DREW: — Surely will.

MR. YOUNG: — My concerns are, and I have seen it happen with land bank land and all sorts of stuff in years gone by, is the kid with the rich father and he gets land bank land — good example in my area where I grew up — gets land bank land, and the old man then pulls the lever once he's got it and drops more net worth on him then he could choke with, you know. And away he goes, and it drives other people in the community absolutely crazy because they knew it was coming. Everybody knew it was coming except the land bank commission, so to speak. And it's in the cards if he's an only son or two sons and . . .

MR. KATZMAN: — It's legal.

MR. YOUNG: — Pardon?

MR. KATZMAN: — It's legal.

MR. YOUNG: — It's legal?

MR. KATZMAN: — It's not improper.

MR. YOUNG: — It's not improper, but it just bothers the other people.

MR. KATZMAN: — That's correct. It's not improper, by all the rules, if the father says a year after the son got some lease land, I've got a break, he says, I'm cutting back, he can have it all.

MR. YOUNG: — I don't know how you . . . I'm not suggesting that I have any answers, but it just drives them guys nuts back there.

MR. CHAIRMAN: — I agree with what Mr. Young says: it creates a very bad impression of the expenditure of public funds. I think it's also contrary to the spirit of the program. The program was not designed to help, and I know Allen was talking hypothetically yesterday, but it was never designed to help Rick Engel get started.

MR. KATZMAN: — Rick Engel is the lawyer, so he can't be a farmer.

MR. CHAIRMAN: — I don't know who he was talking about. He may have another son.

MR. WEIMAN: — Things will be different after the second coming, Ned.

MR. CHAIRMAN: — After the revolution. Come the revolution, Duane, things will be different.

MR. MULLER: — There's no government program that has ever been put into effect that's perfect, but I'll say that the Farm Purchase Program is working very well in my area, and there's some young fellows who are farming one, two, or three quarters and just doing a terrific job on it. And I'm glad to see it in place, and I hope it carries on into the future, and it should have been there in the past.

MR. CHAIRMAN: — Any questions on the third item raised by the Provincial Auditor? Was that examined yesterday, that grant?

MR. KATZMAN: — Yes, yes. We're all satisfied on that one.

MR. YOUNG: — I had one thing that's not in the Provincial Auditor's report, and it's with respect to people who have leases on land bank land. How long can you be in arrears before you guys get nasty with the land bank tenant? And I'm talking about paying your land bank less than fair market value, in most cases, rent.

MR. DREW: — Are you asking the current situation, Mr. Chairman?

MR. YOUNG: — Yes. What happens? How bad can I be dragging on my payments to the government on my land bank land before you guys start to get legal with me and kicking me off, or whatever you do?

MR. DREW: — Well at the present time, Mr. Chairman, we're being very lenient. We always were lenient, but we're being more than ordinarily lenient due to present economic conditions.

MR. YOUNG: — What are we talking in years, then, Mr. Drew? I mean, how many years can I be behind before you guys start coming down on me?

MR. DREW: — Well, I'm not sure, Mr. Chairman, what "coming down on" someone means. Before we would . . .

MR. YOUNG: — I mean throwing me off and giving it to somebody who'd pay the rent, you know.

MR. DREW: — We have not put anyone off the land that is within three years of being current at the moment.

MR. CHAIRMAN: — Given a dose of that good old Tory prosperity we're experiencing right now, you've got to go awful easy.

MR. KATZMAN: — Let's thank the . . . (inaudible) . . . and we'll thank the gentlemen and have a coffee break.

MR. CHAIRMAN: — I have no questions to ask. My constituents have no particular quarrels with the Department of Agriculture, I want to say. Their window gardens are coming along fine without your assistance. Although I may say Stan Sheard is all . . . (inaudible) . . . about the Department of Agriculture.

Public Hearing: Saskatchewan Government Insurance

MR. KATZMAN: — Do you want to introduce them and read them their rights?

MR. CHAIRMAN: — It is my duty to read you your rights before . . . No. I want to welcome Mr. Black to the public accounts committee.

Mr. Black, before making any further comments, I'll ask you to introduce those who are with you.

MR. BLACK: — Thank you, Mr. Chairman. On my immediate right, Bill Heidt, vice-president of finance of the corporation; my immediate left, Larry Fogg, vice-president of the Saskatchewan Auto Fund; and on my far left, Dan Kuss, legal legislative advisor.

MR. CHAIRMAN: — I've two comments to make, one of which is normally made, and the other one . . . One is that what is said before the committee is privileged in the sense that it can't be used outside the committee in any libel or slander action, or in any criminal action in the unlikely event that such a thing would ensue. It is taken down verbatim and is regularly available for use elsewhere.

I might say, as well, that it is not the intention, I think, of the public accounts committee to usurp the function of the Crown corporations committee. It is not our intention to travel the length and breadth of the operations of SGI. That is properly the function of the Crown corporations committee.

There was an item raised by the Provincial Auditor which we felt really did come squarely within our jurisdiction. We want to deal with that. I just say for the record that a failure to ask you about all other issues is not any sign of approval or disapproval of them, but just that we are restricting our work to what is properly ours.

MR. KATZMAN: — You want to answer on SaskPen? I'll do it, Ned. I got it.

SaskPen is the whole argument on 2.20, page 29. Would you like to reply on it?

MR. BLACK: — Mr. Chairman, I'll ask Mr. Heidt to start our reply.

MR. HEIDT: — Well, Mr. Chairman, I believe Mr. Lutz is making a comment there regarding the legal permission of that investment.

Now at the time that SGI joined SaskPen in 1983, we were of the opinion that the investment vehicle that was being formed, SaskPen, was an appropriate body in which to allow the Saskatchewan Government Insurance superannuation plan to invest in some, we believed, very appropriate real estate investments in Regina.

There is precedent for this nature of investment in prior years, and has been used Canada wide by, I believe it's Pension Fund Realty. I think the Department of Finance officials, while not here, would . . . One of the reasons for forming SaskPen was that it would be cheaper without their administration costs for the pension plans to participate in real estate projects in Saskatchewan.

The governing legislation, in our opinion, is confusing, and there are a number of moves right now afoot to clarify and to allow investments of this nature. And I think there is even some conflicts in the legislation as it exists now. But it was our opinion at the time that that was an investment that was appropriate for the superannuation plan. It allowed a vehicle for us to participate in real estate projects in Regina — I believe it's five of them. And there was a precedent for these nature of investments by pension funds through Pension Fund Realty. And of course Mr. Lutz takes some exception to our opinion at the time.

MR. CHAIRMAN: — I gather, Mr. Heidt, that this was your advice from the Department of

Finance, that it was obtained within your purview. Is that right? You were relying on the advice of Finance, were you?

MR. HEIDT: — I think we were relying on the advice of Finance, but also not abdicating our responsibility as administrators of the fund.

MR. CHAIRMAN: — Is it fair to say that these investments were more speculative than would have been allowed under the legislation as it is interpreted by the Provincial Auditor?

MR. HEIDT: — As it's interpreted by the Provincial Auditor, I think that's possibly so, Mr. Chairman. But from our point of view, they were not speculative investments whatsoever, or we would not have invested in them.

MR. CHAIRMAN: — I still remember the words of Rod Sykes and I remember Ross Sneath's words about Pioneer Trust, talking about Rod Sykes. Ross Sneath said, he was against everything. And then he stopped for a minute and he says, it turned out he was right. But he said Rod Sykes was negative on everything. And after a moment's hesitation he said, and I guess he was right.

What is risky and speculative is always apparent afterwards and never before.

MR. BLACK: — Mr. Chairman, perhaps we could put this in context.

MR. CHAIRMAN: — This was not moose pasture in Denver. I know that.

MR. BLACK: — Clearly it was not moose pasture in Denver. It is first-class real estate in down-town Regina, basically. We can see it very clearly from our building. The fact is that the wording in the auditor's report says that the investment "may not be permitted by the regulations." It does not say, is not permitted by the regulations.

And certainly it was our view at the time and clearly Finance's view at the time, that the structure of SaskPen was legal for the superannuation fund to invest in. And to this point in time, we do not have an opinion to the contrary, other than the words of the Provincial Auditor suggesting that it may not be permitted. And we still feel that the structure as put forward by Finance was "legal" at that point in time.

MR. CHAIRMAN: — It is my understanding, and I guess I'm looking at the Provincial Auditor here, or his staff, that it was their view that in order to invest in real estate you had to come within a different section, and that you could only invest in it if it was built, if the structure was there and had been producing a profit for three years.

And perhaps I should ask this question of the Provincial Auditor: what is your view as to what's appropriate? What's now legal?

MR. LUTZ: — Mr. Chairman, certain relevant sections of legislation is still in place, and to refer to them briefly, they are suggesting, or they do state, that you may invest in real estate if, one, the

. . . real estate or leasehold has produced in each of the three (immediately) preceding years . . . net revenue in an amount that, if continued in future years, would be sufficient (a) to yield a reasonable interest return on the amount invested in the real estate or leasehold; and (b) to repay at least 85% (of that amount etc., etc., etc.)

The point that we have made in our entire discourse is not that it is a good or a bad investment. Our entire point, I think, was summed up on page 11 of my report, when I said: since this investment has been made in shares and bonds of a company whose only assets are the same properties which would not be permitted as a direct purchase by the pension funds, I

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

MR. CHAIRMAN: — If I may just make a comment, and then I would ask the officials to comment. I for my part . . . Let me ask a question of you first. I gather that this was property which was being developed. This was not an existing structure; this was something being built.

MR. HEIDT: — Mr. Chairman, our investment is actually in SaskPen.

MR. CHAIRMAN: — Okay. What was SaskPen doing then?

MR. HEIDT: — Pardon me?

MR. CHAIRMAN: — What was SaskPen investing in then?

MR. HEIDT: — SaskPen, as a limited company, was in fact investing in the real estate projects.

MR. CHAIRMAN: — Which was real estate projects to be developed.

MR. HEIDT: — Some of them were, and some of them are . . . One of them is the Cornwall parkade, which is an operating entity for a few years. But the big projects in that group were development properties.

MR. CHAIRMAN: — If I may just make a comment before I recognize the member from Rosthern. I for my part would cast my vote in the legislature against permitting pension funds to be invested in real estate projects.

MR. BLACK: — Mr. Chairman, could I just make a point? The investment is not in the real estate itself. The investment is in the shares of SaskPen, which in our view are legal investments. What SaskPen invests in is of no concern to us. It's no different than SGI's superannuation fund buying shares of the Canadian Imperial Bank of Commerce or the Royal Bank of Canada. I'm sure the Royal Bank of Canada has investments in real estate, which in themselves would not be legal investments if directly invested in by the superannuation fund. But the shares of the bank are a legal investment for the superannuation fund. And it is our view that the shares of SaskPen are a legal investment, and that's . . .

MR. CHAIRMAN: — All right. Let me respond to that by saying, first of all, your example is a bad one. A bank cannot invest directly in real estate.

MR. YOUNG: — The Bank Act says they can't own real estate.

MR. CHAIRMAN: — But your actual example was a bad one.

MR. BLACK: — Well I'm sorry. Then I'll use Imperial Oil. But the analogy is an accurate one.

MR. CHAIRMAN: — The analogy is inaccurate, in my view. No, I want to finish, and then I'll recognize the member from Rosthern. The analogy is not a good one, in my view. Investing in the shares of a bank is a relatively blue-chip investment. They have a long track record of success. SaskPen, as I gathered, had no assets of substance but these real estate developments. If these real estate developments go under, the pension fund loses investment. All they wind up with is some worthless shares in SaskPen. I gather that the company has no other investments of substance besides these real estate developments.

What in fact, in my view, SaskPen was doing, either advertently or inadvertently, probably inadvertently, was enabling investments in speculative real estate developments which could not have been made directly. In essence, what could be done indirectly . . . What could not be

directly was being done indirectly. And that is my quarrel with SaskPen, is you couldn't have invested directly in it. SaskPen had no assets but these real estate developments. Therefore you are putting at risk the pension funds by investing in them indirectly.

MR. HEIDT: — Mr. Chairman, can I just put it in context a bit?

The real motivation for SaskPen, because I attended one of the founding meetings of it, was that all the pension funds wanted to be able to invest in Saskatchewan, to sink some more of their money in Saskatchewan — larger participation. Our portfolio has been dwindling in Saskatchewan participation in the last three years. Our corporation portfolio has done the same. The Saskatchewan government superannuation plan's investment in SaskPen is \$360,000, on about a \$30 million investment portfolio — a relatively minor amount to enable us to invest in Saskatchewan in what we believe to be viable projects.

MR. CHAIRMAN: — I'm going to make one more comment and then I'm going to let someone else in, because I gather there are some other comments. We should really deal with this in the Department of Finance, not here, since that's the larger issue. I assumed the issue was exactly the same.

A MEMBER: — It is. Mr. Chairman . . .

MR. CHAIRMAN: — Okay. Then let me make a comment, and then I'm going to . . . The first obligation of a pension fund is not to invest in Saskatchewan; the first obligation of a pension fund is to the employees whose money that is. If you lose the money, it isn't your money that's lost. It's not the taxpayers' money that's lost. It is the employees' money that's lost. The first obligation . . . Well I don't think the government coughs up any losses. The first obligation of a pension fund is to . . . (inaudible interjection) . . . Let me finish first.

MR. BLACK: — Mr. Chairman, I beg to differ a little there because this is a formula pension plan that we're talking about, and the corporation would have been still responsible for providing the pensions to the employees. The benefits to the employees are guaranteed by the formula that's struck in the plan. Whether the investments succeed or lose simply results in a deficiency in the plan which has to be funded by the corporation.

MR. CHAIRMAN: — Okay. Then that is different. The obligation is not of SGI, and it is not like . . .

MR. YOUNG: — It's not an annuity.

MR. CHAIRMAN: — Well it's not a separate . . . You're saying that whatever is in the fund, SGI is responsible for paying a pension that is a set amount.

MR. BLACK: — Clearly, Mr. Chairman, that doesn't let the trustees of the superannuation fund off the hook. Clearly you have to exercise your responsibilities judiciously, and there are legislative requirements that have to be met.

What we're debating here, I believe, is the appropriateness of a particular investment vis-a-vis those legislative requirements. And it is our view, and I think we could support that with the opinion of rather eminent legal counsel, that, in fact, the investment was legal. We, however, have the opinion of the Provincial Auditor that it may not be legal, and it's a technicality, I believe.

We talked about my analogy not being appropriate. I'd suggest that your pointing out that banks are traditionally very solid, safe investments — perhaps the shareholders of the Canadian Commercial Bank would be interested in that comment, and what we have done, indirectly, something that we could not do directly — in fact, there's all kinds of situations that exist daily where investments can be made on just that basis. And one example is something called a

mortgage investment corporation which gives pension funds the ability to lever their investment in investment in mortgages, something that they cannot do directly, but can indeed do indirectly. And it is legally sanctioned by the federal government.

I mean that is done every day, and sure, this is something that we have done indirectly that we could not do directly. Nobody's debating that point, that . . . we stipulate that. The fact is that, in our view and the view of Finance and all the legal consulting work that was done prior to, and I submit that we could get even now, says that the shares of SaskPen were a legal investment for the pension fund at that point in time.

MR. CHAIRMAN: — I'm just going to ask you one small question which is not intended to be . . . is it intended . . . is it the policy of the corporation that the pension funds shall be fully funded or not? Ultimately, are the employees responsible for . . .

MR. BLACK: — The policy of our particular corporation is, and in fact we have a significant actuarial surplus in the pension fund, and it is our intention to manage it in such a way that there is. That, we feel, is a responsibility that exists for the trustees and the corporation to manage it in such a way as to do that.

MR. CHAIRMAN: — In essence — and I'm going to make this comment, and then I'm going to recognize the member from Rosthern. He's been very patient, as is always his nature.

In essence you are investing the money of the employees, not the money of SGI in essence, since they provide it, and they have to keep this fund solid.

MR. BLACK: — Exactly. It's the employees' money, and it is the corporation's money in terms of what is contributed to match the employee contributions. But yes, in our view it's the employees' money, and there's a responsibility there to protect it.

MR. CHAIRMAN: — Is it a separate fund . . . kept separate from the others?

MR. BLACK: — It's kept separate, yes.

MR. CHAIRMAN: — I maintain the view, then, it is not appropriate to be speculating with trust funds. I'll recognize the member from Rosthern.

MR. KATZMAN: — Mr. Chairman, I both apologize for you, and suggest that you weren't here for the whole debate on this section when Finance was here.

The word "pension realty," I believe, is the company.

MR. HEIDT: — That's right. Pension Fund Realty.

MR. KATZMAN: — Pension Fund Realty. If we invest with them because they have three years ability in doing it — and they would have been the investor here — through them rather than SaskPen, this would have been legal because . . .

MR. HEIDT: — That opens up a question, though, because they have never been challenged, Pension Fund Realty. But they are basically the same type of vehicle as SaskPen.

A MEMBER: — That's correct.

MR. KATZMAN: — The second part of my comment is because Saskatchewan Crown corporation chose to do it directly and . . . Now in 1986 or '87 — and I'll throw a date out, you know, '87 for sure — after SaskPen has gone three years, the investments will be legal if they show the profits, and so forth, by the requirements of the Act that the auditor has nailed them

on. I'm getting a shake of the head. The auditor wants to answer that one.

If it meets the requirements of the '85 and the . . . (inaudible) . . . and all the rest of that, as was indicated earlier, and has a profit for three years . . . Maybe they won't have it by '87 because the buildings won't be all let. But when they hit that point, then it's illegal. Either that or Pension Realty has always been illegal. Now we have to make that decision. Is there any comment from the auditor on that?

MR. LUTZ: — Mr. Chairman, Mr. Katzman, as Mr. Heidt just pointed out, the question of legality of Pension Fund Realty has never been challenged. Perhaps, when it is, we may find that there is a different result. I'm not prepared to debate it; I just point that out to you.

MR. KATZMAN: — I think, Mr. Chairman — and I was going to suggest we wrap up SGI on this point, in fact — the point is: is or isn't, it will have to be decided by somebody other than this committee. We will . . . (inaudible interjection) . . .

Okay, and that point we would say here that we have concerns. We will mark it in our report that all the investment in SaskPen had left us some question mark if or if they were not proper. And we should be telling SGI here today that we have some concern because of the auditor's comments. We don't know who's exactly 100 per cent right. Finance understands that too. I understand everybody is looking at things, trying to make it more proper.

And I think on that note we can almost say, thank you, gentlemen, and start with the next corporation.

MR. LUTZ: — Mr. Chairman, I would like to maybe just respond briefly to Mr. Black's comments.

I believe he referred to the term "technicality" when he talked about my reference to prohibitions in an Act. And he also referred to "imminent legal advice," which I think, in general, I've referred to a basket clause which wasn't even in place when these investments took place.

I think we have a basic difference of opinion. I am going to stand on my opinion that you can't invest in shares in a company whose only assets represent things you couldn't invest in in the first place.

MR. CHAIRMAN: — I am also of the view this is no technicality; this is serious issue of policy here, which I agree with . . . (inaudible interjection) . . . I agree.

MR. KATZMAN: — We should highlight it at the House and let the House do something about it.

MR. CHAIRMAN: — Mr. Benson, you had a comment.

MR. BENSON: — It's probably irrelevant at this point. There's no sense in it.

MR. CHAIRMAN: — God bless the man who knows when his comments are relevant. It saves the committee time. I want to thank you gentlemen for coming and assisting us with our work. Call Sask Power.

Public Hearing: Saskatchewan Power Corporation

MR. CHAIRMAN: — Sit in a manner which is convenient to yourselves. There is no assigned seating here.

I want to welcome, to the committee, witnesses from the Saskatchewan Power Corporation. I don't have my usual sheet in front of me, but I know Mr. Campbell, and I'd ask, Mr. Campbell, that you introduce the officials who are present with you.

MR. CAMPBELL: — To my right is Mr. Harvey Jim, vice-president of finance in Saskatchewan Power. On my left, Mr. Lindsay Neilson who is corporate comptroller on the electric side of our business. Further to the left is Mrs. Katherine Wellman, our general counsel.

I should say, perhaps, that Mr. Neilson also happens to be chairman of the power corporation's superannuation board, and Mrs. Wellman is a member of that board.

MR. CHAIRMAN: — Let me make two comments, one with respect to the nature of our proceedings. What is said before the committee is privileged in the sense that the nothing you say can be used in a libel or slander action or a criminal action outside the committee. On the other hand, everything is taken down verbatim and is regularly available and is used by others elsewhere.

Secondly, it is not, I think, the intention of the committee (although we have the right) it is not the intention of the committee to usurp the function of the Crown Corporations Committee. While I suppose we might travel the length and breadth of the company's activities and their policy, that is not our intention. There are some items which this committee, because we deal with officials rather than the minister, are easier for us to deal with. And I think, specifically, the two which I want to deal with are in the Provincial Auditor's report. The fact that we don't deal with any other portions of your activities indicates neither approval nor dissent to that. We just view that as something the Crown corporations, at this point in time, can deal with as well as we can.

Who was the lead critic here?

A MEMBER — . . . was; now I am.

MR. CHAIRMAN: — All right. Mr. Katzman then is prepared to deal with the two items.

MR. KATZMAN: — Okay, on page 33 of the Provincial Auditor's report there's two comments made: one is re the pension plan, and I may get in trouble with this suggestion, but I would suggest when you get the verbatim from today, read the corporation that was here before you, and you will know all our concerns on SaskPen. It's the same thing for everybody, and there's no sense dragging the same carcass over the wall again.

The other one is Many Islands Pipelines which is a subsidiary of yours serving power in the North, which you bought and have not sort of put into the main company yet; or have you finally put it into the main company?

MR. CAMPBELL: — No. The Many Islands Pipelines are a subsidiary that deals with gas production and transmission primarily in Alberta.

MR. KATZMAN: — There is a concern here about the security of funds, as you have read. How do you answer that concern?

MR. CAMPBELL: — I would like to have Mr. Jim respond to that question if I may.

MR. JIM: — I'd like to first of all say that the Many Islands Pipeline, Canada Ltd., it's a wholly owned subsidiary of SPC. And its records were not . . .

MR. CHAIRMAN: — Can I interrupt you, Mr. Jim?

MR. JIM: — Yes.

MR. CHAIRMAN: — What does it do? Is it a pipeline company which brings natural gas?

MR. JIM: — It's a pipeline company that produces gas in Alberta.

MR. CHAIRMAN: — So it's both a producer and a pipeline company, is it?

MRS. WELLMAN: — That's correct.

MR. JIM: — Much of our gas that we sell in Saskatchewan is derived from Many Islands.

MR. CHAIRMAN: — From their wells that they own?

MR. JIM: — Yes.

MR. CHAIRMAN: — Okay.

MR. JIM: — As I was saying, this is a wholly owned subsidiary of SPC, and as such the systems that are in place at the time are not in the mainstream of the controls that we have in effect for Saskatchewan Power. So consequently we've been manually signing cheques.

I might add, though, that in the Provincial Auditor's review, in our subsequent reviews, we found no evidence of any defalcation or misappropriation of the funds.

We've since taken the necessary action to strengthen the internal controls through changing our procedures and systems, as well as reorganizing the accounting function in such a way that we're now reviewing all the cheques to ensure that they're properly supported and verified and approved.

MR. KATZMAN: — Mr. Comptroller, do you agree? Oh, you don't see that.

MR. BENSON: — They're not responsible to us.

MR. KATZMAN: — Mr. Auditor, are you aware of the correction?

MR. LUTZ: — Mr. Chairman, I would like Mr. Erickson to respond, if you would so indulge us.

MR. ERICKSON: — During the 1984 audit our review indicated that the problem had been corrected, and the item won't be reported again this year for Many Islands.

MR. KATZMAN: — I'm done, Mr. Chairman.

MR. CHAIRMAN: — With respect to . . . Just for the record, with respect to the pension fund problem, I gather you people had actually delegated your responsibilities in this area to the Department of Finance. And you therefore are to be faulted, at best, for being passive observers in a system which has come under criticism, but you weren't directly involved in it. Is that correct, Mr. Campbell . . . or Mr. Neilson?

MR. CAMPBELL: — Yes, I believe that is correct. I should correct one point, though. It was the power corporation superannuation board that had the investment authority that was assigned to the Department of Finance, not the corporation itself.

MR. CHAIRMAN: — Then that is a separate board from your normal management structure?

MR. CAMPBELL: — Yes, it is.

MR. CHAIRMAN: — All right. Who sits on the board?

MR. CAMPBELL: — The board has a total of five people, two of whom are nominated by our two trade unions, and two of whom are representatives of management and of the corporation, and one is a management employee that is really there to look after the interests of the management employees that are members of the plan.

MR. CHAIRMAN: — Okay. Is the corporation . . . Let's deal with a wholly hypothetical situation okay. There's some very bad investments are made, of huge investments, cost the fund a lot of money. Who's responsible for making up the fund? Do the employees continue to get their pension from SPC regardless of what happens to the fund? Do the employees have to make up . . . Do the contributions have to make up any deficiencies in the fund? Who is responsible for making up deficiencies in the fund?

MR. CAMPBELL: — Under the Act, the corporation is responsible for making up any deficiencies in the fund.

MR. CHAIRMAN: — Okay. Is it in the intention of the corporation that it shall be a fully funded plan, or not?

MR. CAMPBELL: — Mr. Jim, would you . . .

MR. JIM: — We had an actuarial report done in 1983 which indicated a \$40 million unfunded liability. And it's since been approved by the board to fund that at the rate of 4 million a year for 15 years.

MR. CHAIRMAN: — The corporation is anteing up the . . .

MR. JIM: — We are anteing up, although I understand under the Act that we're not required to fund it. We're required to pay the pension liabilities when they occur, but we're not required under the Act to fund the liability in advance of the actual pension payment.

MR. KATZMAN: — There is a quasi-argument, I believe, in the industry that indicates governments do not have to — cities, towns, villages and so forth. And there's a quasi-argument that says Crown corporations should be bringing the fund up. The quasi-argument says, no, they're governments; they don't have to be. So it's an argument that I've heard in the industry.

But I don't think by law, Ned, that they have to. But like the city of Regina, if they were short, they'd have to, by law.

MR. CHAIRMAN: — Okay. Those are the only two issues we're going to raise. As I say, we don't intend to travel the length and breadth of your operations. That's the proper functions of Crown corporations.

I want to thank you gentlemen for coming. My apologies for that remark — thank the ladies and gentlemen for coming. No undertakings, that's fine. You're finished. Thank you very much.

MR. CAMPBELL: — Thank you very much, Mr. Chairman.

MR. CHAIRMAN: — It is my suggestion to the committee that Wednesday morning next we knock off Finance, tie the ribbons and bows on this thing, on this issue which we'll just simply report to the House, I agree, ask the Clerk at that point in time . . . Well perhaps they won't be reported to the House. We'll have to decide that.

MR. KATZMAN: — I suggest that we should have an interim report because I think we flagged a few things that we can knock off now.

MR. LUTZ: — Just before we adjourn, Mr. Chairman, Mr. Wendel would like to point out a

couple of anomalies here relative to pension plans.

MR. WENDEL: — Just one more point on this SaskPen thing, if we could. The questioning and the answers seem to be that these are benefit-based plans so the employees would not suffer. Now there are some in here that are annuity plans, just so you're aware of it.

MR. LUTZ: — Some of them . . . the superannuate is maybe going to pay the bill some day if something goes a little far.

MR. CHAIRMAN: — In any event, I dissent from the proposition, expressed by Mr. Black, that it is appropriate to be . . . Whatever he says, these are speculative investments. Anyway, that's not at an issue. If the employees don't have to, then the policy holders do. Someone's got to ante up the costs. But I recognize that is a policy area.

My suggestion is Wednesday next we deal with Finance, knock that off, have a look at the draft report. And we never did finalize the location of the '86, if I recall correctly, and we'll do that next Wednesday. The '86 convention, the '86 meeting. We never did finalize that.

MR. KATZMAN: — We're stuck.

MR. CHAIRMAN: — Yes, I think we are. I'm quite sure we are.

A MEMBER: — What time next week, Mr. Chairman?

MR. CHAIRMAN: — 8:45.

A MEMBER: — 8:45, okay.

The committee adjourned at 11:00 a.m.