

EVIDENCE**Whitehorse, Yukon****Tuesday, February 8, 2005 — 10:00 a.m.**

Mr. Hardy: I will now call to order this hearing of the Standing Committee on Public Accounts of the Yukon Legislative Assembly.

Today, the Committee will investigate the Auditor General of Canada's report on the Energy Solutions Centre.

I would like to thank the following witnesses for appearing: Mr. Willard Phelps, Chair of the Board of Directors of the Yukon Development Corporation; Mr. David Morrison, President and Chief Executive Officer of the Yukon Development Corporation; and Eric Hoenisch, Chief Financial Officer of the Yukon Development Corporation.

Also appearing as witnesses are officials from the office of the Auditor General of Canada. They are Ronald Thompson, Assistant Auditor General responsible for Territorial Governments; Eric Hellsten, Principal in the Vancouver office, and Monica Reda, Audit Project Leader from the Vancouver office.

I will now introduce the members of the Committee and its advisors.

The Committee members are me, Todd Hardy, the Chair of the Committee; Patrick Rouble, who is the Vice-Chair; Brad Cathers; and Steve Cardiff will be joining us shortly. He had other business to take care of.

Advising the Committee today is Roger Simpson, who is a principal in the Edmonton office of the Auditor General of Canada and Gerry Chu, a director from the Vancouver office.

The Clerk to the Public Accounts Committee is Floyd McCormick.

The Public Accounts Committee is established by order of the Legislative Assembly.

We are a non-partisan committee with a mandate to ensure economy, efficiency and effectiveness in public spending — in other words, accountability for the use of public funds.

Our task is not to challenge government policy but to examine its implementation. The results of our deliberations will be reported back to the Legislative Assembly.

To begin the proceedings, Mr. Thompson will give an opening statement summarizing the findings in the Auditor General's report. I believe Mr. Morrison will then give a brief statement before the Committee. Members will then ask questions.

As in our past practice, we devise the questions, we compile all the questions, and then we divide them up among the members, and it is not done in any particular order other than to try to ensure that the questions we ask are done in a consistent manner.

Our plan is to conduct this hearing from 10:00 a.m. until noon, and then we will reconvene again from 1:30 until 3:30 this afternoon.

Nonetheless, I ask that questions and answers be kept brief and to the point so that we may deal with as many issues as possible in the time allotted for this hearing. At the end of the hearing, the Committee will prepare a report of its proceedings and any recommendations that it makes.

This report will be tabled in the Legislative Assembly along with a verbatim text of the hearings.

We will now proceed with Mr. Thompson's opening statement.

Mr. Thompson: Mr. Chair, thank you for this opportunity to discuss our report on Energy Solutions Centre Inc., a subsidiary of the Yukon Development Corporation.

Last year, we completed an audit of the 2003 financial statements of the Energy Solutions Centre Inc. During the audit, we became aware of serious deficiencies in the overall management and control of the operations of the company. As a result, we expanded our audit to look at issues relating to corporate governance, oversight and control in the company and its parent, the Yukon Development Corporation.

Overall, the corporate governance and oversight of the company failed, in our view. Management did not operate in the full interest of the company, nor did the board of directors exercise sufficient oversight and control to protect the public interest. Mr. Chair, I would like to go over some of the key findings in our report at this point.

We found that managers' decisions showed a disregard for good management principles and practices. Management did not inform the company's board of directors of many of its significant actions. Problems continued because the board did not challenge management action.

It was not clear why the company was established and why it was involved in certain projects. We also identified overlapping roles and responsibilities and unclear accountability among the company, its parent, its board members and its president.

Our audit found serious problems in the overall management of the company. We found that the company's president entered into large contracts with two senior managers that were, in our opinion, inappropriate under the circumstances and not approved or provided to the board of directors.

We identified significant weaknesses in the company's internal and financial controls, including a lack of segregation of duties. For example, contracts were negotiated, issued, signed and paid by the same person. We qualified our auditor's report on the company's 2003 financial statements because certain payments were made by the company without proper supporting documents.

We identified deficiencies in the company's contracting practices as well. The company awarded only a few contracts on a competitive basis. We observed that one contractor had significant business dealings with the company through a number of sole-source contracts.

As well, we observed shortcomings in funding and operating agreements. There was also a lack of board approval of major projects.

The company's costs are higher than necessary because of these deficiencies.

Mr. Chair, in conclusion, I hope that our findings and recommendations contained in this audit report will help the government to consider changes that may be necessary to avoid similar problems in the future and, beyond that, to strengthen

the governance and oversight of government-owned corporations.

Mr. Chair, that concludes my opening statement, and we'd be very pleased to answer questions the Committee may have.

Mr. Morrison: For the record, I'd just like to point out a few things, in terms of the introductions. Eric Hoenisch, on my right, is the Chief Financial Officer of the Energy Solutions Centre, not Yukon Development Corporation. So, he's here in that role today.

And in addition to Mr. Phelps' duties as Chair of Yukon Development Corporation, he is also Chair of the Energy Solutions Centre. That's for the record.

We are very pleased to be here today to answer your questions. The audits, as they have been conducted, and we know that today we are just covering the Energy Solutions Centre — the board of the centre did request the Auditor General's Office to come in and do the audit. We were concerned, and had a number of concerns very early on, about some of the issues that Mr. Thompson has outlined for you today.

Since the audits have been underway, we have been working very hard with the auditors and our own internal staff to correct a number of these deficiencies. We're very happy to talk about what we have done. We're very pleased to try to give the Committee today the opportunity to try to determine how some of these things happened, and we'll do the best we can to do that.

Having said that, in all instances, a number of these problems happened before any of us were in the positions we're in now. So we'll try to do our very best that way.

I would request today, Mr. Chair — both Mr. Phelps and Mr. Hoenisch are quite new to their positions. If it would be helpful for the Committee, if they address questions to us, we will do our best among us to answer those questions as quickly and as efficiently as we can.

It may be that one or other of us will answer the questions, just depending on who has the information.

Mr. Hardy: We do have a fair number of questions to ask and we have identified the people to whom we wish to ask the questions. We are also very aware of the fact that the two other people with you have come after many of these problems existed, including yourself. However, we would like as best as possible if the person to whom the questions are addressed can answer them. If not, of course, we are willing to hear responses from other people.

Saying that, I will start the questioning. Mr. Rouble will be the opening questioner.

Mr. Rouble: Good morning, gentlemen. Thank you for participating in our hearing today. I would also like to voice a vote of thanks to the Auditor General who prepared the audits that we are reviewing.

I think I speak on behalf of, well, all Yukoners and ratepayers when I say that I am personally disturbed and am very concerned about the findings in this report. It has tarnished the reputation of an organization that has done some very valuable work and encouraged some very important initiatives in the Yukon. Our task here today is to ask some questions to find out

how this could come about, how it happened and, most importantly, how we can prevent it from happening in the future.

To start off with, I would ask Mr. Phelps if you could provide the Committee with an overview of the operations of the Yukon Development Corporation, the Yukon Energy Corporation and the Energy Solutions Centre. In doing so, we would like you to explain why each entity was created, how they have evolved to their present state, what relationship they have to each other, and what the reporting relationship is with the minister responsible for the Yukon Development Corporation.

Mr. Phelps: I'll try to be brief. That's a question that could take a considerable period of time to answer.

I'll start by giving a brief history of Yukon Development Corporation, why and when it was established. Back in 1985, I was then in the position of being the government leader, and we commenced negotiations with the federal government for the transfer of the assets of NCPC to the Yukon government. I was out of the picture fairly quickly because of an election, but the new government carried on with those negotiations and with the consultants that we had engaged. The Yukon Development Corporation was initially formed and its subsidiary, YEC, under the *Business Corporations Act* of the day, was formed.

The concept at that time was that YEC would be responsible for the running of the utility, and the parent corporation, Yukon Development Corporation, was, as I understand it, in place partly because there was a concern that YEC was going to generate a considerable amount of money. There was concern that if the excess profits were to be divided to the government, into general revenue, this could have an adverse impact on their financing arrangements with Ottawa.

YDC originally was set up, as well, to do a fairly broad range of development-related work and, right from the outset, it started spending some of the profits generated by YEC on such things as the now rather infamous Watson Lake sawmill and other things, many of which proved to be rather unsound investments.

Initially, YEC was managed for the most part through a contract with the other private utility company in the Yukon, the Yukon Electrical Company Limited, which, for all intents and purposes, ran the utility business with oversight from a very small, skeletal crew in YDC and YEC.

In 1991, I was briefly the minister responsible for YEC. At that time, we passed the northern council, which restricted the spending of YEC to energy-related projects. That order-in-council, of course, is still in force and effect. My personal view, then and now, is that I'd much rather see excess funds or profits or money not needed for the financing of the utility company to be paid into the general revenues of the government so that when they're spent, they would be spent in a transparent way and the government would be accountable for how those monies were spent. I feel that the budgetary system of the government provides good accountability and transparency for money spent by government and that the idea of bypassing the budgetary process is less than satisfactory.

In 1991, we couldn't really recommend or put into effect a system whereby profits made by YDC that weren't necessary

for the financing of YEC could be divided to the government and go into general revenues. The reason for that was because of the perversity factor in the formula financing arrangements with the federal government, whereby with every dollar that was made or paid to the Yukon government, the Yukon government would be penalized 60 cents for every dollar in that money they received from Ottawa.

So we did the next best thing at the time, which was to simply restrict the activities of Yukon Development Corporation.

Some time after that — about two or three years after that — the management contract between Yukon Energy Corporation and Yukon Development Corporation and the Yukon Electrical Company was terminated and Yukon Energy Corporation took on the responsibility for running the utility and all that entails.

The Energy Solutions Centre was incorporated more recently. I believe it was incorporated in the year 2000. Of course, that was done in a way that was rather surprising. It's rather surprising when one reads the report of the Auditor General, because it was apparently done without the knowledge of the government then sitting — the minister or Cabinet. The reasons for incorporating that company are unclear.

I think the comment can be made that by incorporating the company, the management was placed in a position where they weren't under the same kinds of restrictions, policies and controls that Yukon Development Corporation or a government department is. Whether that was the reason for doing this, I can't say, but it's certainly one that jumps out at you when you look at it.

The Energy Solutions Centre in effect took on responsibility for looking at energy-related policies and, in effect, through its actions, developed energy policy in a de facto way. By doing certain things and performing certain tasks, they actually had the impact of creating, in a de facto way, policy of the government in the energy field. My view is that that's really not desirable, either.

Those policies should be established by government and through the appropriate branch, AM&R. With regard to the reporting relationship, that's set out quite clearly in the report of the Auditor General. The board of directors of ESC is really a subset of the board of directors of YDC. There are certainly problems with regard to the oversight and how the directors performed their duties. We recognize that; we really can't disagree with the comments of the Auditor General in that regard. We've taken steps to correct those deficiencies but, unfortunately, we have to agree with the comments and observations of the Auditor General.

Mr. Hardy: Excuse me for a second. I'd just like to get clarification. Mr. Phelps, you mentioned 1991 as a date a couple of times in your comments. I believe you were elected in 1992. Yes.

Mr. Phelps: Yes, that's correct. 1991 or 1992.

Mr. Rouble: Thank you. The Auditor General's report was very critical regarding governance and oversight, to the extent that the exact quote is, "The company's governance and oversight process failed. The management did not operate in

the full and complete interests of the company and the board of directors did not exercise sufficient oversight and control to protect the public interest."

By way of background, Mr. Morrison, could you please differentiate between the role of the board and that of the management of the company, and specifically highlight the differences between the roles and responsibilities of the chair of the board and of the chief executive officer?

Mr. Morrison: I would be happy to do that. In terms of a summary of how I might approach this, the responsibilities of the board are numerous, but in terms of trying to be succinct, I would say that there are three primary roles. One is to provide oversight — and that sounds like either a broad or a narrow word, depending on how you characterize it. But that to me is the primary role of the board, and that takes into consideration their roles for accountability and financial oversight and reporting on that in an open manner.

The second major role is to hire a president or chief executive officer and, in many cases, a senior management team — so in other words, to make sure that the corporation that they are charged with the oversight of has a senior management team and therefore a staff complement that is required to properly operate the corporation.

The third primary role of the board is to ensure that the activities of the board, both on a business planning and an annual reporting basis as well as in between, are reported or communicated in a clear and transparent manner. Those points would be a summary of what I would see as the principal roles.

Management's primary role is to do exactly what the word "manage" connotes, and that is to operate the company on a daily basis and to be accountable to the board for its actions. So the board, in return, is accountable to the Cabinet and the minister or the Legislature, if we're talking about how reporting relationships flow out. But management's duty is to employ the resources of the corporation in the best interests of the corporation.

Always act with the interest of the corporation in mind — the best interest of the corporation. It's a fairly well accepted set of terminologies. You act in the interest of the corporation.

I would say, Mr. Rouble, that you employ the resources in an economic and efficient manner, that you use proper and accepted accounting and reporting principles, you do things in a transparent manner. You make sure that you follow the requirements of the directors or, in this case, being a public corporation, any policy directives or priorities provided by the shareholder, the government. Those are the best interests of the corporation. You have to protect the assets, and you have to employ those assets in an economic and efficient manner.

Mr. Rouble: Could you be more specific about the differences and responsibilities between the chair of the board and the chief executive officer?

Mr. Morrison: The chair — I think it's obvious to say — is the senior officer of the board and is responsible for the board's business, for making sure that management is providing the information, the management information reports — the information the board needs in order to do its business. The

chair of the board sets the board agendas and manages the committee process.

The senior operating officer, the CEO of the corporation, is responsible on a day-in-and-day-out basis for the actual operations of the various departments in the corporation and how they conduct their business. The reporting relationship is one where the CEO reports to the board, and usually through the office of the chair.

The chair's job is to ensure — and the board's job then — the accountability that is required in order to ensure the corporation is being properly managed. It is provided by management.

Mr. Rouble: Thank you. Mr. Morrison, when you were appointed the chair of the Yukon Development Corporation Board, would you please explain what your mandate was?

Mr. Morrison: Yes. My mandate, at the time I was appointed chair of the Development Corporation Board, was to resolve the issues surrounding the Mayo-Dawson line project, and at that time the project was stalled. It was well overdue and there was a perception out there that it was overbudget. That perception turned out to be true, as we know.

I was also asked to ensure that the financial management of the three corporations — the Development Corporation, the Yukon Energy Corporation and the Energy Solutions Centre Inc. — were reviewed and, where necessary, any improvements and/or resolution of any issues that was required took place.

Mr. Rouble: And where did this mandate come from?

Mr. Morrison: From the minister.

Mr. Rouble: When you did become aware of the problems discussed in the Auditor General's Report on the Energy Solutions Centre, and can you give us a brief synopsis of the actions that you took when you found out?

Mr. Morrison: I assumed my duties as chair of YDC and the Yukon Energy Corporation right at the very end of May in 2003. I concentrated during that very first period on the Mayo-Dawson line. The contractor was off the job; there were very serious issues: subcontractors hadn't been paid. I was trying to figure out what the issues were and spent a fair bit of time doing that and working with the board to help them understand what those issues were, as well.

In August of 2003, I was appointed the chair of the Energy Solutions Centre Board. Just prior to being appointed chair and subsequent to being appointed the chair of that board, I was attempting to get information to help me understand some questions I had regarding financial statements and financial issues. It was apparent very early on that I wasn't going to get this information — simple things that I think we've since instituted.

But there was no contractor report, so there was no way to see what contracts were out there, what the value of those contracts were, who those contractors were or what work they were doing. There was no reporting of that on a regular basis, and I couldn't get a report. I finally quit asking, because things just culminated to a point where the issues were so many and so serious in my mind that I took the issue to the board and, in

November of 2003, we took away the signing authority for all management at the corporation.

I can say to you that, within two days of having signing authority control, within a few days of that and asking some of my staff to provide a contract report, we had a contract report, which we use today. The board gets it on a quarterly basis when the board meets, but it's a monthly report that management reviews. The board gets the monthly reports but they get them every three months prior to board meetings, and they're reviewed by the board.

There has been a whole series of things like that where we've instituted and fixed the problem where people are approving and signing their own invoices, initiating contracts and then signing the invoices. I approve for payment of all the invoices, but somebody other than me recommends them for payment. I review them all against the contract to make sure the actual dollars are there, that we're not overspending. If we have to extend contracts, we use change orders — there's a system for doing it. There are approvals for doing these things.

We have made, I think, very significant steps forward in terms of the financial management and the operational management of the corporation since that time. But it took several months in late 2003 to get a handle on all of these issues.

Mr. Rouble: These activities — you talked about changing policies. Is that the extent of the activities?

Mr. Morrison: Changing policies and practices. Management reports — and they may not seem like they are great, significant papers in many cases, but a contract report brings a certain amount of discipline in that you are showing to management and preparing for management an outline of your activities and how they're being conducted. If the contract is trending off budget, well, you'll see it in the contract report because you'll see how much the original price was and how much you spent to date and therefore how much you have left, and you can ask the question: how much work is left to do? Is there enough money here? So those are the disciplines and the reporting system that have to be in place. Having someone at my level sign invoices as a final arbiter of whether the invoice is really being paid means that those recommending the invoice have to do their scrutiny, have to look at whether or not the dollars are available, and that is why financial control systems are in place, as I'm sure our auditors would agree, as would any accounting professional.

Those are the controls that are there now. We still have a ways to go. We, given the governance announcement, would be instituting new contracting guidelines and signing authorities, but we will see how those things go. But on an operational basis, there are a great number of financial controls in place today — far more than there were.

Mr. Rouble: The people that made the decisions that the Auditor General is very critical of — are those people still in place?

Mr. Morrison: No, they are not. I think you've seen in the report that two of the senior managers — who were there on contract — it became evident to me very early on that these contracts existed. When I looked at them, I had grave concerns about them. I showed them to the board, who didn't know they

existed. They instructed me to initiate the termination clauses. I did that. Those individuals are gone. Their contracts were completed.

The president at the time, who is a Yukon Development Corporation employee, and therefore a government employee — my understanding is that he is retired.

Mr. Rouble: Government-owned corporations generally receive their mandate through legislation, by which they are created. The Energy Solutions Centre was not created by way of legislation. Given that, what is the source of the Energy Solutions Centre mandate, and what is its mandate?

Mr. Morrison: The source of the Energy Solutions Centre mandate, as I can go back and look and see now — at least in my view of the world — has been the Yukon Development Corporation. Basically, I would say to you, in simple terms, that the Energy Solutions Centre mandate is to implement the programs that are associated with the green power, energy efficiency and demand side management aspects of the Yukon Development Corporation's mandate.

I would offer to you that for 2005, we have taken huge steps forward. We took some steps in 2004, but not quite as far as we should have gone. But for the 2005 business plan, it's very clear what the centre's mandate is. It's very clear in the business plan what the Energy Solutions Centre is going to do.

The murkiness of the past, and particularly back in 2003 and earlier, was that it seemed — to me, at least — that the Energy Solutions Centre mandate and the Yukon Development Corporation's mandate were one and the same, and you weren't sure which was carrying it out.

That's a very difficult process. We've taken a significant amount of time in the past year to look at what the mandate was. I think, if you will recall back in the first Public Accounts Committee hearing and your subsequent report from that, we discussed this issue of mandate creep. We discussed it when I was here and you discussed it in your report. It seemed that both the Development Corporation and the Energy Solutions Centre had experienced a great deal of mandate creep. The word "energy" was being translated very literally and, wherever possible, if it was even close to energy — and everything is pretty close to energy, if you want to define it that broadly — the Energy Solutions Centre and Yukon Development Corporation were taking up those activities.

Mr. Rouble: It was also mentioned earlier that the Energy Solutions Centre was created as a separate entity. Can you tell the difference between operating as a Crown corporation and how this other separate entity would operate?

Mr. Morrison: If, instead of creating the Energy Solutions Centre, we had undertaken all the activities that were undertaken at the Energy Solutions Centre within the Yukon Development Corporation, just in aid of trying to explain this — the Development Corporation is subject to, by its legislation, the restraints or conditions of the *Financial Administration Act*, the *Public Service Act*, and government contracting guidelines. I'll go back to the example I used earlier of this contracting report.

As a government agency, Yukon Development Corporation is required to submit a contracting report to the govern-

ment's monthly contract registry. The government has one, and Yukon Development Corporation should have — and I'm not saying they were doing it, but they should have been submitting a monthly contracting report.

Energy Solutions Centre, as a private corporation, had no requirement to follow any of these guidelines.

Now, that in itself can be quite disturbing, so you say, well, what is it that's governing the Energy Solutions Centre? How should it have been reporting? I think you have to understand that with a business corporation there are requirements, and they may not be the *Financial Administration Act*, but there are good governance requirements of a business, and particularly in reporting to its board of directors and making sure the board understands the business of the corporation. Then the board can be accountable to the shareholders.

I'm trying to distinguish here, Mr. Chair, that there would be differences between YDC being a Crown corporation — or ESC being a Crown corporation — rather than being a corporation under the *Business Corporations Act*, but I want to be clear that, even so, the Energy Solutions Centre did not always follow, just in good business practices, either.

Mr. Rouble: There are some very disturbing comments coming out from the report and from your statements.

Mr. Morrison, during your appearance before this Committee, in February 2004, you said that you believed the Energy Solutions Centre was created to, and I quote: "to avoid having to operate as a government department." You also said that you didn't think the Energy Solutions Centre was necessarily created for the right reasons.

Do you believe that the Energy Solutions Centre mandate could have been achieved without creating a separate corporate entity?

Mr. Morrison: I believe that all the work that was done by Energy Solutions Centre could have been carried out within either the Development Corporation or the Energy Corporation.

Mr. Rouble: Can you think of any reasons, any benefits for creating the Energy Solutions Centre as a corporate entity rather than just operating under YDC? Is there any benefit to it?

Mr. Morrison: Well, no. I feel quite strongly about this. There was no need to do that. You had a corporate entity that existed. It was a government Crown. It had a subsidiary. If it wasn't policy related — so, to give you an example, the secondary sales program that the Energy Solutions Centre engaged itself into is quite rightly a Yukon Energy program, and we have moved it back there. So that kind of a program always could have been done in the Energy Corporation and the rest of the programs could have been operated under the Development Corporation.

Are there advantages to doing it by setting up another corporation? I think there were perceived advantages, and that was that we perhaps didn't have to follow government guidelines. But what I'm trying to get to here is that I wouldn't do those things in a corporation, whether those government guidelines were there or not. So I'm a little betwixt and between on the answer, and I understand I'm probably not being as clear as

you would like me to be, but I think that's the difficulty. There was no real benefit in my mind to having a separate corporation.

Mr. Rouble: Thank you.

Mr. Hardy: Thank you, Mr. Rouble. We will now have Mr. Cathers ask some questions.

Mr. Cathers: Thank you to you gentlemen for appearing before us today, and thank you to the Auditor General's staff as well for their assistance on this.

Like my colleague Mr. Rouble, I am certainly very troubled about the problems and the mismanagement that are in the Auditor General's report and the fact that they were allowed to occur in the first place. I have appreciated hearing the answers that you have given today in your testimony and, along with the report, I have found them to be somewhat disturbing in looking back at what occurred over past years.

I'd like to preface my questions to you by recognizing that the problems that we're discussing today predate you and that Mr. Phelps and Mr. Morrison, in particular, were appointed by the current government to clean up the mess that we're looking at here today.

That being said, I'd like to begin by asking you some questions regarding governance principles and accountability mechanisms, so we can hopefully learn from this and go forward to prevent such things from occurring in the future.

Mr. Morrison, since being hired to chair the Yukon Development Corporation Board of Directors, you have been doing work regarding changes to the governance system of that corporation and its subsidiaries. On November 19, 2004, you told this Committee that you forwarded certain information to the minister responsible for the corporation and anticipated that this governance work would be completed soon. What can you tell us here in the Committee about the status of this governance project?

Mr. Morrison: For want of sounding like a broken record, I think I would say very similar things, with the exception that the Premier did announce yesterday that there will be a move made with the Energy Solutions Centre and it will be transferred to the Department of Energy, Mines and Resources, and that's a step in the governance process.

I have to say again to you that the work we're doing on governance is with the minister and with Cabinet, and we're still working through some of the issues. I'm hoping we'll have something soon, but I don't have a date for you.

Mr. Cathers: That also leads somewhat into my next question regarding what timelines are applicable to the project and whether you have the resources of staff to meet that. I'm understanding that's somewhat affected now by Cabinet timelines and am certainly aware that the calling-in of the Auditor General and the subsequent report have been factors you've had to deal with in your work there.

Mr. Morrison: That's correct, and since the new chair, we have had a fair bit on our plate over the last little while. I'm hoping we can get the work done. We are also in a Yukon Utilities Board process at the moment, and that's taking up time and energy. I'm afraid I just can't give you a timeline today, as much as I'd like to.

Mr. Cathers: Thank you, that's appreciated. Given the review that you've done of governance and other matters at the corporation, can you comment on what characteristics you believe are necessary to be an effective member of the boards of these corporations?

Mr. Morrison: I am certainly happy to tell you in general what my thoughts are on that. I think I've said to the Committee before that I've spent a fair bit of time looking at these issues, and I've looked at how things work in other jurisdictions, both in the corporate and public enterprise worlds. I think everybody is quite aware these days — you know, corporate boards and their actions are in the press fairly regularly. We all know that the big issue — maybe I shouldn't say that we all know, but if you're paying attention to these things, you'll certainly see that the big issue is that the directors appointed to boards must be appointed on an experience basis, or a qualification basis. I think I've talked to the Committee about this in the past.

In terms of corporate governance, it's no longer the old boys club; it's whether or not you have the credentials to sit on the board, that you're prepared to do the work, that you have the time to do the preparation for board meetings, that you understand the issues behind the corporation. And those you can learn. You don't have to be a utility expert to sit on a utility board, or a liquor expert to sit on a liquor corporation board or the Workers' Compensation Health and Safety Board. You can learn the specific corporate issues, but you have to understand the fiduciary responsibilities. You have to have some experience in business management or corporate management and financial statements.

I can only refer you to both the work that the Treasury Board and the federal Auditor General's Office are doing in terms of federal corporate appointments — the move there has been to ensure that directors are actually qualified to sit on these boards — to the work that British Columbia has done that has made great strides in that area, and to the recommendations to the Conference Board of Canada and the Institute of Corporate Directors. All would say the same thing: you can have the best system in the world, but if you don't have qualified individuals to operate it, it's not going to operate very well.

I think, to me, that would be the biggest recommendation I could make, in terms of boards of directors.

When we're talking about the kinds of dollars that we have here, we must have people who are qualified.

I just want to add one thing. In the corporate world, the audit committee is a significant part of the board. It does a great deal of work on behalf of the board. To chair an audit committee in corporate Canada or corporate United States — I can't remember the terminology, and perhaps we can find the exact terminology, or perhaps maybe one of the auditors might help me here — but it's that the chair of the audit committee must have a substantive amount of financial experience. There is a word that they use. I would suggest to you that if I looked at it, I may not qualify to be the chair of an audit committee.

I don't mean that in a derogatory term about anybody who is doing those kinds of things on our behalf, but I mean it in the sense that they take it that seriously, that they're saying just

having financial experience or a certain degree of financial understanding isn't good enough. You virtually almost have to have an accounting degree to chair an audit committee. And we just don't impose those rigorous standards. We're a small jurisdiction, and I understand that, but we have to find a balance there.

Mr. Cathers: Thank you for that answer. With regard to that comment, that is something that I think probably all of us are well aware of — is the fact that in a small jurisdiction we do have a very limited pool of people. You can have the best structure, the best corporate modelling that you may wish to set up anywhere in the world, but we are dealing with a very limited pool of people and with limited qualifications to draw from here in the Yukon. So the other aspect, of course, of potentially dealing with that, if you can't find somebody with the qualifications, obviously, being that you can provide training. Can you provide comment on whether there is an interpretation or a specific policy within the corporation right now or to how you interpret the responsibility for training board members and what steps are being taken to ensure that the current board of directors has the necessary skills and training to avoid problems like we are discussing today?

Mr. Morrison: I have two comments in that regard. I cannot underscore enough how important ongoing — not just training, but ongoing — annual training of directors is. At the level of any of the senior corporations in the territory, it's an absolute must. It has to happen.

Have we done as much as we could have over the last year and a half? Probably not, but what we have done is this: it's an effort we make on an annual basis to ensure that the board is getting training. What I've been doing the past year is spending a fair bit of time with the board on doing some internal work through board meetings. We've spent a great deal of time looking at publications and we've provided the board with materials to help them get themselves up to speed as to what's going on in terms of the corporate world.

We're a little later than we had planned but, by next month, we're bringing an individual up from the Conference Board to spend a day with the board to talk about the roles and responsibilities of boards in general. I will offer to you that we're doing this in conjunction with the Housing Corporation board so, together, we're bringing this individual up. He's going to spend a day with us. We've looked at the seminar outline. This individual also runs the directors college for the Conference Board — I can't remember what university: McMaster or Hamilton, or something like that. He's a very well-qualified individual.

We're going to start with that and, in an annual basis — Mr. Phelps and I have spent some time talking about this — we're going to find an opportunity to enhance that training. It has to happen. It's a big part of what's needed, not just here but everywhere. It would really help our directors understand what their duties and responsibilities are.

Mr. Cathers: Moving on to another issue, I would like to talk about the staffing within a company such as the Energy Solutions Centre. There is a fair bit of mention in the report about staffing and, in particular, contract workers who are ref-

erenced at very high rates, as noted in the report. Can you shed a little light on what kind of permanent employees you feel a company such as the Energy Solutions Centre should have, and also what level of remuneration might be appropriate for positions such as the two discussed in the report?

Mr. Morrison: Certainly. As I have mentioned earlier, we have taken a great deal of time this year and we have really looked at the operation of the Energy Solutions Centre and the projects that it is involved in and the projects it is going to be involved in and the mandate. Once we got all that work done, we were able then to sit down and work through a budget process, a business planning process. Out of that, we have determined that we need a staffing level of about 4.5 permanent employees to operate the centre. That at the moment we have. We don't have 4.5; we have four. Two of those positions are seconded from the Yukon government, and we have an individual filling the role of executive director and we have an administrative position.

What we did in terms of remuneration — and I don't have the numbers with me and we can certainly provide some information to the Committee. But we did what we should do in every case, and what we do in every case at Yukon Energy and what we should have done previously is that we wrote job descriptions, classified the positions, and in this case we classified the positions against YTG norms. So we used the YTG classification system and came up with a salary. I can tell you that those salaries are, in my mind, very appropriate. They are substantially less than what individuals were being paid on contract to do, and they fit within the staff and wage guidelines that either the government would employ or Yukon Energy Corporation would employ.

Mr. Cathers: Can you tell us, regarding that, what level these positions are classified at? Now, I note that in the report, section 32, specifically section 32 through to section 34 — sorry — refers to the wages paid to the managing director and the treasurer. I can't help but note that the amount is, in the case of the managing director, more than the remuneration for a deputy minister's pay scale.

What current classification level are these positions at, or is that something you can't answer?

Mr. Morrison: I can get you the level of classification. I just don't have it in front of me, but I can assure you that they're well, well under these, that they are appropriate. We looked at the YTG levels and for a manager with that responsibility load and that workload, that's where it fits. It's well under ADM or DM levels — please believe me. I'm happy to get the information for the Committee, I just don't have it in front of me right now. I am sure it'll pass the scrutiny of the auditors.

Mr. Cathers: Thank you for that answer.

Do you see a need for an entity such as the Energy Solutions Centre to have both a president and a general manager?

Mr. Morrison: It's a difficult question because one of the issues — let me back up for a minute. If you don't mind, I'd like to go back to my answer to the previous question for a minute. We see that as the full-time staff of the operation — the four, four-and-a-half people — as to what I said. At the moment, Mr. Hoenisch and I are providing president and CFO

services to the corporation, on a very part-time basis. The workload at the corporation is such that you need an admin/accounting type individual, but you don't need both, so you get the accounting or the invoice paying, the accounts payable level things done, but we need financial statements prepared, and most of that work can be done, again, at the admin level, but somebody needs to be able to, at a senior level, look at them and sign off on them. So we're providing that on a very part-time basis.

Where the difficulty is — do I think the corporation needs a full-time president and a full-time executive director? No. But when you come to issues like segregating duties, signing off invoicing and things like that, even in a small organization that becomes a problem when you don't have that ability to say right at the moment that the executive director would recommend an invoice for payment. It will come over to me and I'll sign it.

If there is no president, there is no segregation of duties at that level. Now you're going to have to sign it one level down, and it becomes — it's not that it can't be done, but it becomes more difficult. So, I think within this organization we have a more appropriate scale of appointment, in terms of president or chief executive officer.

I know I'm kind of giving you both sides of the answer here, but I see a little bit of a problem so I'm trying to be careful.

Mr. Cathers: So, if I understand correctly, in some cases there may not be a need for full-time people filling those positions, but it's probably still appropriate to have that separation of duties in some way.

Mr. Morrison: That's right.

Mr. Cathers: Thank you for that.

Moving on to another area, corporations are often set up for the reason of providing some distance between themselves and departmental policy-making, but they are still subject to government policy. I'd like to reference section 18 of the report, which notes that: "Government corporations function at a distance from traditional government operations under a distinct accountability framework. Despite those differences, government corporations are still a part of the government program family and are subject to fundamental principles of accountability that apply to government departments."

My question with regard to this is: how independent do you think a government-owned corporation should be from government?

Mr. Morrison: Well, I think that depends on what the corporation is doing and what government policy is and what the government's system of controls and governance for Crown corporations is. And, please, I'm not trying to not answer your question, but I don't think there is a panacea answer.

Let me refer you to the federal system, which I think is very clear in terms of the answer to your question. The federal system, part 10 of the *Financial Administration Act*, governs primarily the operation of Crowns and really addresses the issue that you speak of. But what it does is it classifies Crowns into categories. Depending on the category, the Crown will have either a very close and tight level of accountability and

close working relationship with government and the department; or if it is a very commercial corporation, it has a less stringent set of rules under which it can live by in terms of reporting direct to departments and to ministers.

But in every case there is a very clear understanding of what the requirements are for those corporations, whether they submit business plans or do not submit plans, whether they submit business plans for approval or they just submit them for distribution — it's a very clearly laid out system.

We don't have that here. We don't have a system that works to clearly outline what the various categories of Crowns are. If you're talking about the Energy Solutions Centre, as I was just saying earlier, as a business corporation it was not a commercial operation. So I would have seen something like the Energy Solutions Centre being more tied to government than farther away in terms of its ability to operate independently, if we talk about the scale that the auditors have outlined in section 18. I think, if you think about the Energy Corporation, and I understand we have some issues around the Mayo-Dawson line, but if you think about the day-to-day operations of the Energy Corporation, it operates as a commercial business. When operating properly as that, it is governed in many of its financial dealings by the Yukon Utilities Board.

So, does it need to be tied as closely to government because it has another set of accountabilities? There are degrees, and you have to look at corporations on an individual basis and you have to look at the system within which they operate. I think that would be a worthwhile thing for us to do.

Mr. Cathers: My understanding is then that it's not a simple answer that can be applied to every corporation. If I understand correctly what you're saying, as a jurisdiction we should be looking at a clear categorization of what responsibilities and relationships are for a Crown corporation, whether they're established as a made-in-Yukon framework or borrowed from the federal government or another jurisdiction — that we should be taking that step.

Mr. Morrison: I agree, and I think there are a number of examples out there, I think even to the extent of whether Crown corporations should be able to create subsidiaries or not.

Mr. Cathers: Speaking of the Energy Solutions Centre in particular regarding the relationship with government, would you say the Energy Solutions Centre had too much discretion and was too distant from a government relationship?

Mr. Morrison: The short answer would be yes.

Mr. Cathers: That answer is fine.

An issue related to this is there was some mention of, earlier in your responses to Mr. Rouble, or I believe Mr. Phelps was responding — I would be interested in hearing both of you comment on this — the distance and separation of the Energy Solutions Centre from government and how it was set up. It is a very interesting relationship. I'm not asking you to ascribe any motive to those who were setting this up, but can you conceive of any benefit to setting up that distant relationship that allowed so little government oversight and control?

Mr. Phelps: I can't.

Mr. Morrison: And I can't in this case either. I could conceive of that argument if it were a very commercial corpo-

ration; in other words, if it were buying and selling, out there in the marketplace. Maybe it's not a good example, but Canada Post, where they're conducting business; maybe a better example is Via, selling rail tickets. They're operating in a market. I could see that, but the big issue here, you have to remember, is this corporation was funded by its parent and by government money.

The more you're funded, the closer you have to be. I guess maybe that's a bit of a rule of thumb to use. It's like a department. Departments are directly funded by government; they're very accountable. Maybe that's what I was searching for before. The less money you need from government, maybe you can be a little further away but, in this case, it was clearly getting all its money from government. Yukon Development Corporation is a government corporation.

Mr. Cathers: That's an excellent analogy. Thank you, Mr. Morrison, for your answers. I'll ask a question that I think is more in Mr. Phelps' area, to give you a bit of a break here.

If a corporation is created to be somewhat independent of government, what compensating controls are available to the minister responsible for the corporation to make sure the corporation functions in accordance with the wishes of Cabinet?

Mr. Phelps: Well, to answer that question, first of all it's important that we all understand that the bottom line is that the minister and Cabinet carry the can for these corporations. They have the power to revoke appointments to the board; they have quite wide powers, if they choose to exercise them.

I think that some of the more important and interesting controls they have available — and which we're working on with government — are the protocols, which I think should be signed every year; the letter of expectations, which I believe the chair has a great deal of responsibility for negotiating — I guess would be the word — with the minister and the government.

I think it's important that there be a clear understanding as to the priorities of government for that corporation at the outset. I think that transparency and accountability should be set up using those mechanisms primarily at the outset. Basically, those are the most important tools that we have available in our situation.

Mr. Cathers: Thank you for that answer. Can you provide a little more light — speculation is the wrong word, but a little bit of opinion on what compensating controls you feel are appropriate or what steps should be taken either specific to the Energy Solutions Centre or to Yukon Development Corporation or in general, whichever you feel comfortable with? And just to give a little bit more of a line of what I'm referring to, I believe that some of the federal corporations are looking at not just a financial audit but have done also periodic value-for-money audits to look at matters of economy, efficiency, effectiveness, environmental impact. I think they're looking at other areas. Is this something that the Yukon should be considering taking further steps on and putting in review mechanisms such as this, or perhaps some alternate review mechanism? What are your thoughts on that, please?

Mr. Morrison: I would just like to jump in a minute, Mr. Cathers. All of those are great suggestions. I'm a bit of a

fan, I think, of a lot of the aspects of the federal system. I think what we were talking about is that there is a requirement every five years to do a special examination or a review of the corporation, and I think that's a great suggestion. As a practice at the Energy Corporation, we have implemented a few years ago some of these attributes. We do each year at the board — and we provide some budget dollars, and the board makes a decision regarding what the auditors call a value-for-money audit and I am calling an operational audit. They are different but fairly close.

Last year, for instance, we spent some money and had a contractor — we tendered it — come in and look at our purchasing, inventory management and procurement department. It was a very thorough review. We provided it to the auditors when it was available. Then the board was able to see. This is an operational audit, so it's not a financial audit, because our auditors do a very good job of that.

So, what it did was look at the structure of the department, how we buy inventory, what processes are in place, what controls are in place, whether or not these are effective, and whether or not we're getting value for our money.

I can tell you that they were pretty critical of the operation. The board — and Mr. Phelps can certainly add to this — endorsed the report with a great deal of enthusiasm and required management to implement the recommendations. I can tell you that in the last four or five months we have implemented most of the recommendations of that report and are reporting back to the board on our progress.

We have revamped the department, we have new contracts in place, and new contracting authorities and contracting systems.

Those are the kinds of things we need to do on a regular basis. This year, we're going to propose to the board — and the board can decide otherwise — that we do project management. I think we mentioned that in our response for yesterday.

Those are the kinds of things that boards should be doing as part of their oversight: taking a specific part of the operation on an annual basis and having a very thorough look at it. That complements the work of the auditors, and we're all there trying to make sure that we improve the operation of the corporation.

We don't look to audits to be critical of what we do. We look to them to make sure that we're doing the right things, and where we aren't, that we point those out and institute measures to correct them. So, I'm a fan of all of those things. I think they're all worthwhile.

Mr. Phelps: If I may, I thought your question was more directed at, should there be another process in addition to what you, as the Public Accounts Committee, do on a fairly regular basis. In a smaller jurisdiction like this, I think from your end, from the government end, the Public Accounts Committee is in the position to provide the kinds of services needed, in addition to the kinds of things the board is doing with management and the Auditor General.

Mr. Cathers: Thank you for that response. I think we all have the goal here of seeing better methods of keeping control of these things in the future. I'm glad to hear you have

taken steps to keep better control internally on this, so we will hopefully not have a situation down the road where the government is, yet again, forced to call in the Auditor General to look into perceived problems and the mess that's there.

Will any of the changes you've made in the internal review, with regard to operation, result at this point in changes to the annual report, showing more benchmarks for the public of how you're meeting targets, or is that premature to speculate on at this point in time?

Mr. Morrison: I'm not going to tell you you're going to see great revelations in terms of changes in the annual reports and whether or not we're meeting performance targets, because I don't want to mislead you there at all, but I will say to you that, in all three corporations, the budgetary and business-planning process has really taken some very positive strides forward in that regard in the last couple of years. I still don't think we're there yet, but we're getting close.

Right now, if you look at the business plans — and you will see that reflected in the annual report — there are priorities, there are targets, there are performance levels, to a certain extent, and there are deadlines with responsibilities assigned to them. All of that will be reflected in the annual report. Is it as good a system yet as it should be? No, but we're getting there and we certainly take both the auditor's comments and our own board's comments in that regard, who are trying to push us toward this process very seriously. It has to come. It's just an evolving process, at least in my mind, and we're getting better at it.

I think this year the financial plans are the best we've ever had. They're clear, you can understand where the dollars come from, so I'm very pleased with that. We're still looking at performance indicators and still trying to refine how we look at that part of the business plan.

So yes, you'll see some improvements. Is it all there yet? No, but we're very actively working on it.

Mr. Cathers: Thank you for that.

A series of recommendations were made in the first report of the Public Accounts Committee, and these are referred to in paragraph 22 of the Auditor General's report that is before us. Some of these recommendations relate to control and to some of the governance issues raised in the Auditor General's report. Can you please update the committee on what you plan to do in regard to these recommendations and, if you are able, to give us a timeline of when that plan will be completed?

Mr. Phelps: Well, many of these, of course, are issues that the government will have to respond to. We have talked a bit about the training of the directors. Certainly, we take that very seriously. I think the issue of leadership from the chair to the directors is important. I think when Mr. Morrison took over as chair, he started the process of ensuring that the directors fully understood their responsibilities, et cetera. The criteria for appointment to boards of directors, insofar as we make any recommendations to the government — we have discussed that at some length already in an earlier response from Mr. Morrison.

I think that we really have to look at a system that takes the politics out of appointments to boards, and so I am somewhat

sympathetic with some of the recommendations here. I think no longer can we look at a situation where when governments change, boards necessarily change. It has unfortunately happened in the past. I don't think any one government can claim to be any better than another in that regard, but that just doesn't work. I think we should be looking at putting a lot of resources into the quality of the directors of the few Crown corporations that we have.

I think that the longer some of these people are in those positions, the better. The training and experience is something that is of value to the people of the Yukon — the ratepayers and the government.

With regard to accountability to the Members of the Legislative Assembly, we've taken some steps, even as recently as since I've become the chair. We now intend to have the protocols signed on an annual basis. My understanding is that these will be tabled in the House. The letter of expectation signed by the minister is something we hope to have by the end of March each year and tabled in the House in that spring session.

As I've said, I really do feel that one of the main areas for improving accountability and transparency is to try to ensure that most of the monies that are spent by a corporation or a department — corporations such as the Energy Solutions Centre or Yukon Development Corporation — are monies that come from general revenues.

So, I'm certainly a proponent of seeing excess profits paid into general revenues by way of dividends. And then if that money is to be spent on energy-related programs, such as rate stabilization or the kinds of things that the Energy Solutions Centre is doing, the budget is debated in the normal process in the Legislature before the money is spent and allocated.

Mr. Morrison: I think, as we've said earlier, these are issues that we've made comment on in past meetings and are fairly supportive of.

Mr. Cathers: My next question may actually be for Mr. Hoenisch, from a financial perspective, or perhaps one of you gentlemen, Mr. Phelps or Mr. Morrison, may also wish to comment on this. It's from the perspective of financial control.

In your experience, is it normal or acceptable for persons on a contract to have signing authority over the budget of the entity they're on contract to?

Mr. Hoenisch: I can't speak for government entities, because I don't have any experience with government. Certainly in private companies there are contract CFOs, contract accounting people who do have signing authority, but it's usually the owner of a company who would oversee what that contract person is signing for. But in a government entity or an entity that's owned by the public, I can't speak to that.

Mr. Morrison: Let me add something, and thanks, Eric, for the help there. I think what's extraordinary in the case we have in front of us — the Energy Solutions Centre — is that the senior management of the corporation, the direct day-to-day managers of the corporation, were contractors, and that is not normal. It just isn't normal. Whether or not one of those individuals may or may not have signing authority is not the norm. I'm sure there are instances we can point to where these things exist, but it's not the norm and, in my mind, it's not the proper

way to operate a subsidiary of a government-owned corporation. It's not a good management practice.

Mr. Cathers: Thank you, particularly with regard to that. If I'm correct in understanding, the contract employees were actually then not only tendering the contract but approving them and signing off on them without any oversight from any other representative or official of the government corporation.

Mr. Morrison: That certainly is evident in the report from the auditors that these things were happening. I think the president had a role. If we look at the auditor's report, it always didn't initiate his own role there, which would have been the separation of responsibilities that we have talked about and the auditor talked about. But you can't have an organization that is spending these kinds of dollars — and public dollars — where you don't have those segregations of duties, and you can't have the same person initiating a contract, approving all the invoices and doing these things. It's just not proper financial controls.

Mr. Cathers: Now, for members of the public who are listening, they may not be aware that the board of Yukon Energy Corporation and Yukon Development Corporation are comprised of the same individuals and that the board of the Energy Solutions Centre is comprised of a subset of those same individuals. I'm not sure which of you may wish to answer this question, but in your experience, is this a normal situation, and to what extent do you think that this situation may have contributed to the problems described in this report?

Mr. Phelps: I think, first of all, there is no general rule. You have to really look at the corporation and its subsidiary and see what their goals and objectives really are, their purpose. If you look at the private sector, you often have companies that form subsidiaries for the purpose of running an operation such as a mining operation in a particular jurisdiction. You often see Canadian companies with a wholly owned subsidiary in Mexico or the States — they're set up for tax purposes and so on.

It makes perfect sense to me that the board — much the same, because these corporations are set up solely because of tax reasons. There's no kind of potential conflict between the parent and the subsidiary. To the extent that you have a corporation with a subsidiary that might have some conflict with regard to their goals or their reporting functions, then it becomes more and more important that you do have a different board of directors for the subsidiary.

In a situation — if you take the example of Yukon Development Corporation and Yukon Energy Corporation, I think you can see a conflict arising whereby Yukon Development Corporation right now operates in a manner where it is the main financier for Yukon Energy Corporation. At the same time, Yukon Development Corporation has been spending some of the profit money on energy-related programs through Energy Solutions Centre most recently. You could see there could be a conflict between the board of Yukon Energy Corporation and the board of Yukon Development Corporation as to how much money should be saved and used for the purpose of financing Yukon Energy Corporation and how much should be

either divided to government or spent on other programming.

Again, with regard to Energy Solutions Centre and Yukon Development Corporation, I think an argument could be made for some different directors, but in this situation, given that it was such a small company, I don't think that's really a primary reason for things going awry as they have.

Mr. Cathers: Just a follow-up question to that. I'm aware of the corporate practices of often having sub-corporations with the same directors, but are you aware of that being practised by other governments within Canada?

Mr. Morrison: That's a good question. I just don't have the background knowledge to answer it. I'd just be guessing, and I shouldn't guess.

Mr. Cathers: Thank you, gentlemen.

Mr. Hardy: We've covered a fair amount already, and I think some follow-up questions are building up. I'm trying to make a decision about whether we'll allow these questions to be brought back toward the end of this session. If you guys are comfortable with that, I'd probably recommend that we do that. We'll just continue with our line of questioning and then come back to some stuff.

I have a few questions I'd like to ask. Mr. Morrison, you had made a comment in a previous hearing, and it's already been mentioned again in this one. The comment, of course, was "to avoid having to operate as a government department" — that was around the Energy Solutions Centre. It's an interesting comment.

What it seems to indicate is a desire to avoid being accountable in some ways. I'm not putting words in your mouth, Mr. Morrison. I'm not saying that's what you were indicating. But we've already talked about the comment in a mandate angle. My interest is: who would have made that decision, and what process was followed to come to the decision to set it up in that manner?

Mr. Morrison: I will do my best. I'm afraid some of the answers I can't give you. What I'm suggesting is that I couldn't — and I recall from previously being here, and I'm certainly happy to agree with you that I did say that. I'm trying to think of what reason you would have for setting up the Energy Solutions Centre, and I can't think of any other reason, as I've said earlier, because you could have done all the work under the Development Corporation. There is nothing in the legislation or the regulations that would prevent you from doing the kinds of things that were conducted in the Energy Solutions Centre. You could do them in Yukon Development Corporation. So I was trying to think of the reason for why you would set this company up.

You may not want to operate under the strict rules of the *Financial Administration Act* or the *Public Service Act* or government contracting guidelines. There may be a business reason to do that. I can't think of any reason in this case for doing it other than wanting to institute this business model and for what purposes I don't know. I can't suggest to you that people — I think there is certainly an opportunity here where people might have said, "Well, you know, it gives us more freedom to

operate.” But what the reasons were — I don’t know. I can’t speculate on that.

What I can tell you in terms of the establishment of the corporation was that there was information taken to the board in, I believe, either late November, early December in the year 2000, and the board then approved the establishment of the corporation. I can’t tell you what was explained to the board. The minutes don’t reflect any kind of detail. They reflect there was a presentation and that the board approved the establishment of the corporation. So it’s difficult for me to speculate on what people’s reasons were and why the board of Yukon Development Corporation was convinced that it should allow the corporation to be set up, but it concerns me a great deal that the business model that came into play was one where, even though there were rules in place, they weren’t followed. That’s a bigger concern to me even than establishing the corporation and whatever the motives were that people had for setting it up.

Mr. Hardy: Ultimately, the chair should have taken this meeting and discussed it with the minister. Would you agree with that?

Mr. Morrison: I would go a step further. Let me use an example that we have in front of us. As chair of Yukon Energy Corporation’s board, we got into the muddle of the Mayo-Dawson line. At a board meeting, we sat and discussed how we were going to objectively figure out what’s going on with this project, because it was very complicated and very messy. So we agreed at the board and we passed a resolution to ask the Auditor General to come and do a special examination audit.

We made that decision — that’s how we think we should go forward. As chair of the board it’s my responsibility, and I exercised that responsibility. I called the minister and asked for a meeting, came over and said that the board of directors feels it’s a necessity we get an objective viewpoint, and we are recommending and would like to go ahead with a letter to the Auditor General and ask her to undertake this work; and do you have any issues, Mr. Minister? Is there some input the government would like to give us?

There’s a duty to inform. The chair’s duty is to inform the shareholder. That’s the communication duty I talked about earlier when Mr. Rouble asked me about the differences and what are the primary roles of the chair, the board and the CEO.

I would never have created a government corporation without asking the government if they had any objections, if there was a process. I just don’t understand why people would do that, but they did it, and they thought they had the ability to do it. There’s nothing in law that prevented them from doing it, so there’s a gap in the system, as well.

But you are responsible, as the chair, and experience tells you what you need to talk to the minister about and what you need to deal with your shareholder on.

Mr. Phelps: Even going one step further, under the current regime, I would want to see that type of direction contained in a letter of expectation from the minister, as chair, as one of the priorities of the minister with regard to the yearly priority letter.

Mr. Hardy: Listening to the responses so far today — I’m reading between the lines, but there seems to be, from my

perspective and what I’m hearing and could be quite easily said, a fair degree of accountability and responsibility in where we’re at lying with the board of directors. When you say here that this was brought before the board, and then the board approved it, I think back to a comment that Mr. Phelps has made, where he indicated that, from what he could understand, the minister and government weren’t even aware of this being done. This indicates a failure of duty and responsibility at the board level, possibly at the government level, at the ministerial level, and also at the management level for operating in this manner.

Who would have made this presentation?

Mr. Morrison: Management.

Mr. Hardy: Management made the presentation to the board of directors. The board of directors approved this, and nowhere was it ever passed on to the minister, and the minister has never been briefed on that.

Mr. Morrison: I’m just going to avoid using the word “never” because — not that I can see. There is no evidence I’ve seen that the minister was asked, “Is this all right? Do you have any difficulty with us doing this?” I would guess that after the fact, at some point, the minister was told. But I don’t know what the sequence of events was, and I have no information that tells me that the minister was told.

Mr. Hardy: Okay, this leads to — it’s a great deal of difficulty trying to track how this accountability — what roles people were playing, where the accountability is in this, and where the checks and balances are. We’ve already talked about that a fair amount.

Who is responsible for briefing the minister? Just to get clarification, I’m hearing two things. I’m hearing that the chair actually didn’t have a responsibility to report this to the minister.

Mr. Morrison: No. If you got that out of my comments, I’m sorry, Mr. Chair. The chair’s responsibility is to report to the minister and to make sure that the minister, as the representative of the shareholder, is clear about what significant actions the corporation is involved in — all significant actions.

Mr. Hardy: You misunderstand me. What I meant was that the board does have the authority to set up something such as this without getting the approval of the minister — because that’s what happened, wouldn’t you say?

Mr. Morrison: I think, in the report — and I’m not going to make reference to a section because I can’t remember it — but my recollection is that the auditors have said to us in their report that at the time that happened, there was nothing in law that prevented the corporation from doing it, but there is now. I think that’s correct.

Mr. Phelps: That’s right. That comes from the report. That’s right.

Mr. Hardy: Okay, that’s what I’m trying to get clear about. Now, Mr. Phelps, you’ve already indicated that you feel that there should be that connection — a reporting back to the minister, and the minister should be part of that kind of decision-making.

Mr. Phelps: Well, sure, and I would want the minister to be directing that we do it, either through the letter of expectation, or the protocol, or by OIC.

Mr. Hardy: Okay, who was and is accountable for the activities and results of the Energy Solutions Centre in your view? I'll direct this to you, Mr. Phelps, and anyone else can jump in, of course.

Mr. Phelps: Was?

Mr. Hardy: In your view, who was and is accountable for the activities and results of the Energy Solutions Centre? Specifically, what role does the minister responsible for the Yukon Development Corporation play in directing Energy Solutions Centre policy, or do they play any role whatsoever?

Mr. Morrison: If you don't mind, Mr. Chair, I'll answer. The board is directly accountable, as I said in the beginning in response to a question from Mr. Rouble, I think. In my mind and my experience, the direct accountability rests with the board for the day-to-day ongoing operations of the corporation. The board, through the office of the chair, has the responsibility to ensure that significant actions, significant occurrences and general overview of the corporation are provided to the minister on a regular basis. So he gets a general overview on a regular basis; certainly the legislation requires that annual reports are tabled with the minister by a certain date for Yukon Development Corporation and Yukon Energy Corporation and, on a regular basis, he should also get an update on significant actions of the corporation, but the minister shouldn't be directing the day-to-day operations of the corporation.

This is where we get into these clear lines about who's responsible at what level. The key here is that the board, through the chair's office, is this middle piece between the minister, the Cabinet and the Legislature — if you take that as a group — and the management of the corporation, and it's key that both the wishes and directions of the owners are transmitted to the corporation through the office of the chair, and the actions of the corporation and its accountability are provided up to the minister and Cabinet through the office of the chair.

Mr. Phelps: But ultimately, it's the minister and Cabinet of the day, of course.

Mr. Hardy: You said that. You said they carry the can, and you're right. In the public eye, and also the way our political structure is set up, you are ultimately responsible. That would indicate to me that there would have to be a fairly good relationship and communication link between the minister — and of course, the minister and Cabinet — with the chair of the Yukon Development Corporation, and following down through there. That would have to be on an ongoing basis.

Do you know if there were regular meetings during that period? If you don't know that, what do you have in place today? You've already indicated there have been some changes made in this regard.

Mr. Phelps: I take it as one of my most important roles to be in communication with the minister and members of Cabinet, if necessary, on the important issues of the day for the corporations. So that is extremely important, in my view, and in working with them on the annual protocol and the letter of expectations I see as equally important.

Mr. Hardy: Mr. Phelps, what would you be comfortable with, from your past experiences as a minister in this area, as a government leader and now as a chair here. What would you consider as — how do I put this — the communications between the chair and the minister — how often would be appropriate to ensure that all parties are on the same page and working together?

Mr. Phelps: I try to be in communication with the minister at least on a monthly basis and sometimes more often. Certainly, when we're looking at, again, developing a protocol annually and letter of expectation — as that nears, it's more often. But it's very important to keep the minister informed.

Mr. Hardy: Just to connect a little bit more, I just want to ask one more little question. How often does the board meet?

Mr. Phelps: The board has been meeting four or five times a year. We are looking at actually increasing the numbers of meetings. We're looking at some of the subcommittees of the board meeting on a regular basis, as well.

Mr. Hardy: I'm changing direction a little bit. Yesterday the Yukon government announced that responsibility for the Energy Solutions Centre will be transferred from the Yukon Development Corporation to the Department of Energy, Mines and Resources. Specifically, how will this transfer help solve the problems identified in the Auditor General's audit report, and following that question, what changes will this entail at the Yukon Development Corporation?

Mr. Phelps: In broad brush strokes, I think the announcement from the Premier in regard to that issue would seem to show that there's broad agreement with the Auditor General that there was no need to create this company. I would see the company being wound up and the programs and assets, as it were, transferred to the Department of Energy, Mines and Resources.

With respect to Yukon Development Corporation, we'll have to work and see what else is transferred over, particularly looking at such things as the green fund, and so on.

I would really see the Yukon Development Corporation having, as its primary function, financing and ensuring it has the money to finance the activities of Yukon Energy Corporation, as it has in the past. Otherwise I would see surplus money — or profit, as it might be called — divided to the government.

Mr. Hardy: Just a tiny follow-up on that. You have indicated that the work that has been done by the Energy Solutions Centre could quite easily have been done under the Yukon Development Corporation or Yukon Energy Corporation. Are there any concerns on your part that you wouldn't just roll that in there and continue with the work, or is this a better fit?

Mr. Phelps: I think it's better to transfer these responsibilities over to Energy, Mines and Resources, and one of the reasons is that Energy, Mines and Resources should be the body that creates policy for government in energy. The Yukon Development Corporation and Yukon Energy Corporation should be running the utility business. I think that one of the unfortunate aspects, as I've said already, of Energy Solutions Centre is that we had a de facto policy occurring, a policy

stimulated from the actions of Energy Solutions Centre rather than from government through policy development by Energy, Mines and Resources up to Cabinet.

Mr. Hardy: I'm going to switch up a little bit. We only have a few more minutes before we'll have our break, and I would like to thank you for your responses and for coming well prepared. We all appreciate it on this side, even though we do have another two hours after this. So we still have a fair number of questions left.

This is a question I would like to direct to Mr. Hoenisch, if he can answer it. If not, or you feel somebody else should answer it, that's fine.

In your view, is it legal for the large management contracts mentioned in paragraph 32 and 33 of the Auditor General's report to be granted without being sanctioned by the corporation's board of directors? If it is legal, do you believe it is appropriate?

Mr. Hoenisch: I'll have to pass that one. I don't have any legal experience.

Mr. Morrison: If I may, Mr. Chair, if you don't mind, there are two things: the contracts were legally entered into — let me put it to you that way — but specifically in the one case, my interpretation of the contract, and I believe the auditors have agreed in their report, was that they were beyond the signing authority of the individual. So did they breach internal controls and internal policies? Yes, they did. I want to be clear about this definition of "legal". Were they appropriate? No. They were far beyond and they were far in excess of anything that ever would have been paid had these positions been properly classified and had proper job descriptions been written. The work of the Energy Solutions Centre and the number of things that go on in an organization and the value of those things help determine how you generate salaries to a certain extent. On a salary basis, there is no good reason in my mind for paying an individual more than a deputy minister to run an organization of that size. So, yes, they were legally entered into. Were they appropriate? Not in the least.

Mr. Hardy: Okay, following that, Mr. Morrison, you can answer this, if you wish. There was a decision to contract for the positions of managing director and treasurer of the Energy Solutions Centre. Were these decisions made in consultation with, or with the approval of, the Public Service Commission? Are you aware of that?

Mr. Morrison: No, they weren't, and nor is there a requirement for them to do that.

Mr. Hardy: Do you think that the Public Service Commission should have been used?

Mr. Morrison: I believe that in the case of the Energy Solutions Centre it should have been far more closely tied to government than what it was. As I said earlier, this little measurement I might use is: how much money are you getting from government, and how much money are you generating on your own?

I think a classification system should have been used and the Public Service Commission's system would have been a good one. It's fair. The Yukon Energy Corporation has its own. It's pretty close to the Public Service Commission's, but some

kind of proper classification system should have been used, and the Public Service Commission's would have been a good one.

Mr. Hardy: Actually, just going back to a question asked earlier, and with respect to this one as well, is that you said you use the YTG classification now for the — have there been new hires?

Mr. Morrison: There are people in both of those positions I described earlier, and the seconded individuals are there as well. So, the four positions I talked about earlier are staffed, and they are classified on the YTG system.

Mr. Hardy: What policy did you use for that?

Mr. Morrison: Well, hiring policy is that we advertised for the administrative assistant. We prepared a job description, and we received approval for the positions from the board. So, we went through the proper process.

Mr. Hardy: Did you utilize the Public Service Commission?

Mr. Morrison: We have our own human resource department at Yukon Energy Corporation and we used the services of that department and the HR professionals to do the recruitment.

Mr. Hardy: In your view, given the size and complexity of the Energy Solutions Centre — I think you've already answered this. A lot of our questions are following certain lines. We have already talked about the remuneration of the people.

You've been very clear about feeling it's inappropriate, that the amounts were in excess of what the positions demanded. I've a question I'll take from that, following that again. These contracts also had a long dismissal life, a one-year payout, and six months. Has that been done?

Mr. Morrison: Yes.

Mr. Hardy: It's my understanding you've terminated these two positions.

Mr. Morrison: I went to the board in late 2003 and asked the board to give me authority to terminate the contracts, which they did. Both contracts had termination clauses. I triggered those clauses. I gave the individuals letters, triggering the contracts. Not only were the termination clauses long — unduly long, in my mind — but they were termination clauses where it didn't matter why they were being terminated. So even if they were terminated for cause, they still had to be paid.

I'm sure there are people who are saying, why didn't I just not do that? In fact, I operate ethically and honestly and, if I have a contract, and that's what I'm required to do, I do it.

We know they were by — both the individuals worked right until the end of their termination. So we paid them — we terminated the contracts, they worked every day until the contracts were expired.

Mr. Hardy: And what were the grounds for terminating them, from your perspective?

Mr. Morrison: We had no ability with those — (a) the dollar value was excessive. We had no ability to do anything in terms of reorganization or creating efficiencies within the corporation while these contracts existed, and they were lengthy. We had years yet to run on these contracts. We weren't satis-

fied that we were getting value for our money, and on the board's part we needed to take some action.

Mr. Hardy: I'll ask Mr. Hoenisch, if you feel that you can answer this one: are you concerned about the possible implications to Energy Solutions Centre of the apparent failure of the corporation to deduct and remit tax in respect of the two management contracts, and what actions have you taken to minimize any corporate exposure? As the Auditor General's report indicates, the tax office could be coming, knocking on your door.

Mr. Hoenisch: Again, I'm certainly concerned about all risks to ESC. I guess we have to wait for the knock on that one, if there is to be one.

But in terms of action, you know, to ensure that this situation doesn't occur in the future, in our business plan for 2005 there are still contractors, but we have ensured that the budgets for those contractors are small enough that they cannot be seen to be employees. As well, we are basically insisting that our contractors don't work in the office. If they only come in when they absolutely have to, they should be working from home. They should be doing the projects and not using Energy Solutions Centre facilities. Revenue Canada has a number of tests where they determine if it's a contractor or an employee, and we want to certainly stay on the right side of that test.

Mr. Morrison: If I could also add, Mr. Chair, that we did a couple of things. First of all, we moved to a staffing model, so we're hired staff. We all need to understand — and again, I think the auditor pointed this out — that normally you bring in a contractor when you need a specific professional or technical service that you don't have in-house, and that's the basis on which contract dollars are available these days. If we were doing a project and we needed economic or engineering advice and we don't have it, those individuals would be properly contracted for and they would do a specific task and the contract will have a beginning and an end, and they wouldn't be operating out of our office.

In addition to that, we did get a legal opinion and we did look at the board level of this exposure issue. The big question on our side of it is that we don't know if individuals paid their taxes or not. That's not an ability we have to determine. We can't get that information.

Yes, there may be some exposure on the Energy Solutions Centre but, as Mr. Hoenisch said, we'll have to wait and see whether it comes forward. We will have to pay the penalties and the employer's share of those taxes if the Canada Revenue Agency decides we're in breach, but we'll never know that until someone comes and does an audit and figures out if the individuals who were collecting these contract dollars paid the taxes they should have paid.

Mr. Phelps: Just to add to that, it's important to know that we're following the legal advice to the letter.

Mr. Hardy: It is now 12:00 and I'd like to thank you for your presentation so far, and I look forward to the questions and answers that we will be receiving at 1:30. Thanks, everybody, for the first session and I'll see you at 1:30.

Recess