



**Legislative Assembly of Saskatchewan**

**BOARD OF INTERNAL ECONOMY**

**MINUTES AND VERBATIM REPORT**

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No. 1 — Tuesday, April 8, 1997

## **BOARD OF INTERNAL ECONOMY**

Hon. Glenn Hagel, Chair  
Moose Jaw North

Bill Boyd  
Kindersley

Hon. Joanne Crofford  
Regina Centre

Myron Kowalsky  
Prince Albert Carlton

Hon. Eldon Lautermilch  
Prince Albert Northcote

Harvey McLane  
Arm River

Grant Whitmore  
Saskatoon Northwest

## BOARD OF INTERNAL ECONOMY

Room 10 Legislative Building  
8:05 a.m. Tuesday, April 8, 1997

**Present: Members of the Board of Internal Economy**

Hon. Glenn Hagel, Chair  
Mr. Bill Boyd  
Hon. Joanne Crofford  
Mr. Myron Kowalsky  
Hon. Eldon Lautermilch  
Mr. Harvey McLane  
Mr. Grant Whitmore

**Staff to the Board**

Robert Cosman, Legislative Counsel and Law Clerk  
Gwenn Ronyk, Clerk  
Deborah Saum, Secretary

**AGENDA** Moved by Mr. Kowalsky, seconded by Ms. Crofford, that the proposed agenda be adopted. Agreed.

**MINUTES** Moved by Mr. Lautermilch, seconded by Mr. Whitmore, ordered, that the Minutes of Meeting #4/96 be adopted. Agreed.

**ITEM 1** **Table Item - The Chair Tabled Documentation of Approval by Members of the Board for Increases to the 1997-98 Estimates for Transmittal to the Minister of Finance, January, 1997**

Minute #1414

**ITEM 2** **Decision Item - Review of the Independent Legal Opinion of D.E. Gauley, Q.C., as directed by the Board of Internal Economy on December 16<sup>th</sup>, Mtg. #4/96**

**Statement by Chair**

On December 16, 1997, the Board of Internal Economy instructed the Chair to retain legal counsel to seek recovery, through civil action, of funds misappropriated from the Legislative Assembly by former Members of the Legislative Assembly and others, where:

- (a) Those persons have been convicted of misappropriating funds;
- (b) full restitution has not been ordered by the court; and
- (c) legal counsel indicates to the Chair that there is a strong likelihood of success in civil action to recover public funds; and that the cost of conducting a civil action to recover these public funds is reasonable relative to the likelihood of recovery.

In fulfillment of that direction, D.E. Gauley of Gauley & Co., Saskatoon, was retained. Following his consideration of the matter, he submitted his opinion which has been forwarded to Members of the Board.

It is Counsel's conclusion that it is not advisable to proceed with civil suits against those convicted of misappropriating Legislative Assembly funds. Given the restitution ordered by the court and given the financial status of those in question, it is Counsel's view that no action against any of the individuals is warranted because he cannot say, in any realistic fashion that "the cost of conducting a civil action to recover these public funds is reasonable relative to the likelihood of recovery".

Counsel also notes that the limitation period for proceedings of civil action appears to expire in June or July of 1997, by virtue of *The Limitation of Actions Act*.

As I previously stated at the December 16, 1996 meeting, I, as the Chair of the Board of Internal Economy have carried out your order, but as Speaker, it would be improper for me to act in any way that would jeopardize the confidence of the Members of the Legislative Assembly and of the public. Consequently, I said that I would not be providing a recommendation related to the legal opinion. It is an important principle

of the Speaker's requirement for neutrality that the Speaker neither act against the interest of Members or the House, and also attempt to avoid a perception of action against Members or the House.

Finally, it is my duty to inform the Board of Internal Economy that if this opinion is made public, Client-Solicitor privilege will be waived.

That concludes my report.

Moved by Mr. Lautermilch, seconded by Mr. Whitmore:

That the Board of Internal Economy accept the recommendations in the Gauley Report and that the Board, therefore, not pursue civil action.

Moved by Mr. McLane:

That the current motion before the Board be tabled.

No seconder was obtained, therefore, the motion was lost.

A debate arising on the first motion, and the question being put, it was agreed to.

Minute #1415

### ITEM 3

#### **Revision of Directive #21, Annual Indemnity and Allowances, and the Declaration of Attendance Form**

Moved by Mr. Kowalsky, seconded by Ms. Crofford:

That Directive #21 respecting Annual Indemnity and Allowances be amended:

- (a) by deleting all the words of subsection (4) following the words "no deduction shall be made pursuant to clause (3)(a)" where they occur therein;
- (b) by adding immediately after subsection (4) the following new subsections:

"(4.1) Every Member of the Legislative Assembly shall make a declaration with respect to his or her attendance for the previous month in a form approved by the Board of Internal Economy, signed by that Member and filed with the Speaker on or before the 10<sup>th</sup> day of each month, and thereafter the Speaker shall make the declaration available for examination by the public during normal business hours at the Clerk's office.

(4.2) Where a Member has been absent for a reason other than those enumerated in subsection (4), the Speaker shall consult with the Member's Party Whip or, in the case of an independent Member, with that Member, to ensure, to the Speaker's satisfaction, that the deduction prescribed by clause (3)(a) is justified, and thereupon both the Speaker and the Whip (except in the case of an independent Member) shall authorize the deduction from the annual indemnity of the Member pursuant to clause (3)(a)."

- (c) by deleting the column entitled "Percentage Relationship" where it appears in subsection (6) thereof.

A debate arising and the question being put, it was agreed to.

Minute #1416

Moved by Mr. Whitmore, seconded by Ms. Crofford:

That the form entitled "Member's Declaration of Attendance Pursuant to Directive #21", be approved, reflecting the amendment to Directive #21 made this day.

A debate arising and the question being put, it was agreed to.

Minute #1417

The meeting adjourned at 8:35 A.M.

**The Chair:** — We've reached the call to order time here, I know some have 8:30 commitments. So shall we begin? Are we ready to begin?

Okay. Ladies and gentlemen of the board, you have before you the agenda. And first of all can I ask for a motion to adopt the agenda? Kowalsky and Crofford. Discussion? In favour? Opposed? And that's carried.

You have before you the minutes of the meeting of no. 496 which I believe was December 16. It's quite lengthy and dealt with . . . our main focus was the budgetary considerations. I've been through and reviewed it, and attempted to check it for accuracy as a secretary. Is there a motion to adopt the minutes of meeting no. 496? Lautermilch and Whitmore. Discussion? In favour? Opposed? And that's carried.

Brings us to item no. 1 which is a table item which was included in your package for the meeting. And as you know there was information that came to light regarding the requests from the Office of the Ombudsman, and Children's Advocate following the meeting of December 16. And included here, tabled for your information then, is the documentation of the approval by members of the board for the increases to the 1997-98 estimates for transmittal to the Minister of Finance in January of '97. And I table that for your information.

Item no. 2 is a decision item related to the legal opinion which flows out of the motion passed and on the . . . sorry, at the December 16 meeting, and in that regard the Chair has a statement that I would like to make to the board.

On December 16, 1996, the Board of Internal Economy instructed the Chair to retain legal counsel to seek recovery through civil action of funds misappropriated from the Legislative Assembly by former members of the Legislative Assembly and others where:

- (a) those persons have been convicted of misappropriating funds;
- (b) full restitution has not been ordered by the court; and
- (c) legal counsel indicates to the Chair that there is a strong likelihood of success in civil action to recover public funds and that the cost of conducting a civil action to recover these public funds is reasonable relative to the likelihood of recovering.

Now in fulfilment of that direction, D.E. Gauley of Gauley & Company, Saskatoon was retained. Following his consideration of the matter, he submitted his opinion which has been forwarded to members of the board. It is counsel's conclusion that it is not advisable to proceed with civil suits against those convicted of misappropriating Legislative Assembly funds.

Given the restitution ordered by the court and given the financial status of those in question, it is counsel's view that no action against any of the individuals is warranted because he cannot say, in any realistic fashion, that the cost of conducting a

civil action to recover these public funds is reasonable relative to the likelihood of recovery.

Counsel also notes that the limitation period for proceedings of civil action appears to expire in June or July of 1997 by virtue of The Limitation of Actions Act.

Now as I previously stated at the December 16, 1996, meeting, I as the Chair of the Board of Internal Economy, have carried out your order. But as Speaker, it would be improper for me to act in any way that would jeopardize the confidence of the members of the Legislative Assembly and of the public.

Consequently I said that I would not be providing a recommendation related to the legal opinion. It is an important principle of the Speaker's requirement for neutrality that the Speaker neither act against the interest of members or the House, and also attempt to avoid a perception of action against members or the House.

Finally it is my duty to inform the Board of Internal Economy that counsel has advised that if this opinion is made public, then client-solicitor privilege will be waived.

Ladies and gentlemen of the board, that concludes my report.

**Hon. Mr. Lautermilch:** — Mr. Speaker, we've all had an opportunity to look at Mr. Gauley's report as per your request of him and the board's motion. And it would appear to me that in any of these instances that Mr. Gauley has outlined, if we were to pursue civil action, the likelihood of success with respect to recovery of public funds would be limited, a strong likelihood that we'd recover nothing and end up with legal costs. And I don't think it's the intention of this board to throw good money after bad, frankly. And looking at his recommendation and based on his judgement, I would think it would not be prudent for this board to proceed on any of these particular items that I can identify here.

So given that, and I think in an attempt to be prudent with taxpayers' dollars, that we may want to put this matter to rest.

With respect to the initiatives that he had reviewed here, the court proceedings that he had reviewed, I think most of his information came from public . . . well not public documents but documents that were made public through the court cases and those are all included in here. So I don't know, I think it would appear to me that it's pretty, pretty much straightforward, that being, civil action wouldn't be a prudent way to approach recovery of funds.

And it would appear that what hasn't been recovered — as a result of judgements in the courts — could, in all likelihood, just cost us money to pursue with little chance for recovery. So I'm going to move, and I haven't got a written motion, Mr. Speaker, but I'm going to move that we accept Mr. Gauley's recommendation in his report — or recommendations in his report — and that this board not pursue civil action in the circumstances outlined in his report to the board.

And I don't know who's going to write that motion.

**The Chair:** — Perhaps can I get you to say that again and I'll ask the secretary to . . . Or has somebody got a copy of the form?

**Hon. Mr. Lautermilch:** — I've got copies here.

**The Chair:** — If I can ask you to say that again and I'll ask the secretary to write it and then . . .

**Hon. Mr. Lautermilch:** — Okay, I'm going to try and do this as concisely as I can.

**The Chair:** — Okay, okay.

**Hon. Mr. Lautermilch:** — Just based on the report tabled at the December 6 . . . no at the April . . . day, what? 5, 6 . . . April 8 Board of Internal Economy meeting by legal counsel with respect to pursual of civil action of the cases outlined in the Gauley report — you're going to have to clean up the wording of this, I just want to get the intent on the record — that the board not pursue civil action in the circumstances.

**The Chair:** — Can I run this wording by you?

**Hon. Mr. Lautermilch:** — Okay, Mr. Speaker, then let me put this in a formal motion.

**The Chair:** — Okay.

**Hon. Mr. Lautermilch:** — And I move:

That the Board of Internal Economy accept the recommendations in the Gauley report tabled today, and that the board therefore not pursue civil action.

**Mr. Kowalsky:** — I just want to ask whether this has actually been tabled formally. I'm not sure, is the report . . .

**Hon. Mr. Lautermilch:** — Well it's part of your information.

**Mr. Kowalsky:** — As long as it's not misunderstood that this is not a publicly tabled document.

**The Chair:** — Tabled documents are not public documents. That's consistent with the counsel advice.

**Mr. Kowalsky:** — Okay, that's the clarification I wanted, Mr. Speaker.

**Hon. Mr. Lautermilch:** — Okay . . . (inaudible) . . . I can live with that.

**The Chair:** — Okay. There is a motion — we'll get the form filled out for signature — that the board accept the . . . (inaudible) . . . by Mr. Lautermilch, that the board accept the recommendations in the Gauley report tabled today, and that the board therefore not pursue civil actions. Is there a seconder to that motion? Mr. Whitmore. Discussion?

Mr. McLane? Or first of all, Mr. Lautermilch, is there any more you'd want to say as mover?

**Hon. Mr. Lautermilch:** — No, I'll speak to it later if I . . .

**The Chair:** — Okay.

**Mr. McLane:** — Thank you, Mr. Chairman. Certainly I concur with Mr. Lautermilch that we certainly don't want to be frivolous with taxpayers' money, and given the recommendation of the law firm of Gauley and Gauley that the chances of recovering any of the monies is highly unlikely . . . However I'm not sure that the perception of the general public is that. They would like to see some efforts made in that regard.

I would have a question maybe to you, Mr. Chair: did the legal firm of Gauley and Gauley look at the possibility of recovering some of those funds by way of the Conservative Party, given the fact that there are considerable amount of monies in trust funds that were uncovered last year?

Is that part of this report? I didn't understand it as I read it, that that option had been looked at. And would that be a possibility?

**The Chair:** — I think the review . . . your members' review of Mr. Gauley's report would indicate that that was not a question that he . . . it was not a question that he answered. It wasn't in the terms of reference, and therefore makes no comment on that subject in his report.

**Mr. McLane:** — Would it be appropriate to have this item tabled and ask the law firm that question?

**Mr. Kowalsky:** — Mr. Chairman, I believe that that question would prejudice the position of the Chair if you were asked to answer it.

**The Chair:** — Yes. I believe, Mr. McLane, it would be improper for the Chair to answer that question.

**Mr. McLane:** — Would it be appropriate then . . . Mr. Lautermilch has made a motion. I'm not sure how we can amend that motion to reflect that wish.

**Mr. Kowalsky:** — Mr. Chairman.

**The Chair:** — On a point of order?

**Mr. Kowalsky:** — No.

**The Chair:** — Or on a point of debate?

**Mr. Kowalsky:** — No, just on a point of debate.

**The Chair:** — Yes, I've got you on the list.

**Mr. Kowalsky:** — Thank you.

**The Chair:** — To answer your procedural question, Mr. McLane, it's the view of the Chair that that would not be in order as an amendment. It would require a motion to table the

motion that's before the committee right now and then, if successful, then the moving of a separate motion.

**Mr. McLane:** — Then it would be appropriate that I would move then that we table the motion by Mr. Lautermilch?

**The Chair:** — That can be done.

**Mr. McLane:** — I would make that motion.

**The Chair:** — The question before the . . . there is a motion before us then to table the motion moved by Mr. Lautermilch. Mr. McLane has moved that that motion be tabled.

Is there a seconder for the motion to table? In the absence of a seconder, then the motion to table would be lost.

Debate will continue on the motion before us. Any further debate, Mr. McLane?

**Mr. McLane:** — No.

**Mr. Kowalsky:** — Just speaking to the issue raised by Mr. McLane, I think if we look back at our original mandate and what we had suggested was to . . . that the Speaker be advised to get the opinion regarding people who have been charged and convicted.

**The Chair:** — If I could just interrupt for a moment, if you don't mind, to differentiate between the Speaker and the Chair, because it is a very sensitive point from the point of view of the Chair, and it was the Chair that was directed.

**Mr. Kowalsky:** — I stand corrected, and I thank you very much, Mr. Chair, for that.

And so I think what is not clear to me is why a member of the committee would raise an issue where we would be attempting to recover money from a body that was neither charged nor convicted.

**Hon. Ms. Crofford:** — Mr. Chair, I'll just support Mr. Kowalsky's view on that because the party does not sign or authorize any of our payments, and it would be in my view highly inappropriate to involve them in something which had they no role in to begin with. So I just leave that comment like that.

**The Chair:** — Is there any further debate on the question before the committee?

The question before the committee then is the motion moved by Mr. Lautermilch, seconded by Mr. Whitmore:

That the Board of Internal Economy accept the recommendations in the Gauley report tabled today and that the board therefore not pursue civil action.

Those in favour please indicate. Opposed? Then the motion is carried.

That brings us to item no. 3, the revision of directive no. 21, and the declaration of attendance form.

If I can just . . . I bring to the members of the board, a recommendation which you will find in your item no. 3, if I may. And the recommendation that I make to you is listed there.

If I can just give you some background information to it; this relates to the attendance form. And members will be aware that with the McDowell report a number of recommendations have been approved and implemented. And when we met in December the board advised the Chair at that time that you would like to have, at some point in 1997, for the Chair to make recommendations for amendments to those directives based on the experience that members have had with them, and I will intend to do that. However just because of timeliness, one of the items about which members just had no opinion at that point in time because there was no experience, was the precise attendance form that was previously approved by the board.

I advised members of the board that as the House is returned now, and members have looked very closely at the attendance form and its exact layout and its implications, that I've had some concerns raised with me. It appeared to many, and I share the conclusion, that the form as it was previously approved by this board implied extremely onerous verification responsibilities on the whips of each caucus. And that the . . . I think the implications would involve a great deal of onerous verification — I don't think there's any other term for it — that would require a great deal of time on the part of the whips, without in any way adding to the accountability of the form.

And it is my view that it must ultimately, always be the members' full accountability for accuracy of the attendance report that must be paramount in the form. And quite frankly the form that you previously adopted didn't make that as clear as I think it should ought to be.

It also would be, in my judgement, appropriate to restore the original recommendation in the McDowell report that members declare their attendance to the Speaker, and also that the traditional role of the whips of the caucuses be sustained. And what I'm recommending to you is a revision to the form which would require the authorization of the whip, which would first of all make it crystal clear that the accountability for accuracy of the attendance report lies with the member. And the authorization for the deductions for \$200 a day for absence without approved reason, that that authorization would rest with the . . . for that item, would rest with the whip of the caucus and the Speaker.

I also want to recommend two housekeeping amendments to you. One is to clarify the procedure regarding an independent member — our directive doesn't contemplate an independent member as is currently written — and also to remove the percentage relationship from the column of the list for additional duties, allowances in the directive, as it's unnecessary in the directive. As that suggested, it's the dollar figure that is relevant once the percentage is established and this simply makes it clearer.

So with that in mind, I recommend to you the form that you have in your package, which includes all of the entire list — absolutely zero change to the criteria for acceptable absence but in my view makes a stronger statement on the form about the member's accountability for its accuracy and in my view then provides for the traditional relationship of the whip with the member and also then adds that the attendance report is submitted to the Speaker.

That's a fairly lengthy explanation for a recommendation but that perhaps gives you some background as to why I recommend this to you. It's obviously timely because these will be due just in a matter of a very small number of days and that we're meeting this day makes it possible for the board to consider altering the form and putting it into practice immediately beginning today. So I leave that recommendation to you.

**Mr. Kowalsky:** — Thank you, Mr. Chairman. I have had an opportunity to review the recommendation that you have made here. And I think it is quite consistent with, certainly what I think would be a practical way to implement McDowell, and I certainly believe it is consistent with the McDowell recommendation on page 12 of the original report, March '95.

I think this method is also consistent with the way the civil service makes their declarations, people in the provincial civil service make their declarations for attendance with respect to work.

That's just one question. I would just like a little clarification on the percentage relationship. It's a little detail that I'm just not familiar enough and I would like another explanation.

**The Chair:** — Yes, the percentage relationships are written . . . are listed now. And because of indexing and rounding — rounding doesn't always leave you with purely right to the point, percentage relationship as established. And once the amount has been established, that's the figure from which we always work. This would mean that the percentage applications of adjustments annually to extra duties would be dealt with in exactly the same way as they are for caucuses and members and allowances for other matters.

And so just in the interest of pure accuracy, because sometimes rounding doesn't get you to 60.0 per cent. And there's no need for it now that it's been established. It's a housekeeping matter.

**Mr. Kowalsky:** — Okay.

Therefore I would move that we accept your recommendation.

**The Chair:** — Okay. There's two motions that I recommend to you. I think you've been provided copies of my recommended motions — one which deals with amendment to the directive and one which deals with the adoption of this form that I proposed to you.

Do you want to move the one that deals with the amendment to the directive?

**Mr. Kowalsky:** — I will so do.

**The Chair:** — Okay. And for the record, I would ask that you would read that into the record, Mr. Kowalsky.

**Mr. Kowalsky:** — I move:

That directive 21 respecting annual indemnity and allowances be amended:

(a) by deleting all the words of subsection 4 following the words "no deduction shall be made pursuant to clause 3(a)" where they occur therein;

(b) by adding immediately after subsection 4 the following new subsections:

"4.1 Every member of the Legislative Assembly shall make a declaration with respect to his or her attendance for the previous month in a form approved by the Board of Internal Economy, signed by that member and filed with the Speaker on or before the 10th day of each month, and thereafter the Speaker shall make the declaration available for examination by the public during normal business hours at the Clerk's office.

4.2 Where a member has been absent for a reason other than those enumerated in subsection 4, the Speaker shall consult with the parties . . . with the member's party whip or, in the case of an independent member, with that member, to ensure to the Speaker's satisfaction that the deduction prescribed by clause 3(a) is justified, and thereupon both the Speaker and the whip, except in the case of an independent member, shall authorize the deduction from the annual indemnity of the member pursuant to clause 3(a)."

(c) by deleting the column entitled "percentage relationship" where it appears in subsection 6 thereof.

**The Chair:** — Moved by Kowalsky. Is there a seconder? Crofford. Discussion? In favour? Opposed? And that's carried.

And then I also recommend . . . We need a motion because the previous form was adopted. We need a new motion if you want to go with this form.

**Mr. Whitmore:** — On your recommendation, Mr. Chair, I would like to move the motion that we change the form, and I would like to read it into the record:

The form entitled, "Members Declaration of Attendance Pursuant to Directive No. 21," attached, be approved, reflecting the amendment to the directive no. 21 made.

**The Chair:** — Moved by Whitmore. Is there a seconder? Ms. Crofford. Discussion? In favour? Opposed? And that's carried.

Before we adjourn, can I ask your advice, because we do have



two of the whips here actually with us right at this moment. Because this requires filing by the 10th and today is the 8th, we want to get these to the members today.

We've got forms here. Is it most expeditious to hand them to you right now or to distribute them on the desks in the House or . . . (inaudible interjection) . . . Or maybe both?

**Mr. Kowalsky:** — In the House, I think, would be quite advisable. And there may be a few that aren't, so perhaps if we had a few forms . . .

**The Chair:** — So why don't we put them in the House. For the members who are here today, they'll get them. And if I can give them to the whips, and we'll get them down to your whip, Bill.

**Mr. Boyd:** — Just leave them on my desk.

**The Chair:** — Just on your desk is fine? Okay.

**Mr. Boyd:** — Yes.

**Mr. McLane:** — Is there any leeway on the 10th for this particular one?

**The Chair:** — I think we'll have to on this one because the original one said 15th. Now this changes to the 10th because it introduces an extra step which is through the Speaker's office. And to get to Finance in time to make the adjustment, it needs to be through by the 15th.

So I'm willing to accept some leeway on this because we're changing the date without notice to members. So we'll give those copies to the whips; ask you to distribute them to members and for them to file them by the 10th. We'll exercise a little bit of leeway to the 15th today.

Anything else? Then the meeting stands adjourned.

The meeting adjourned at 8:35 a.m.



