

Title: Wednesday, January 24, 2007 Legislative Offices Committee

Date: 07/01/24

Time: 9:02 am

[Mr. Strang in the chair]

The Deputy Chair: Good morning, everybody. We'll get started with the meeting. I'll call it to order now. Just to preface what we're here for today, as members we're understandably concerned with the short notice of this meeting, especially considering how short the meeting itself will be. That said, I think the committee should where possible be prepared to deal with issues, requests from various offices that are operational in nature outside of what is considered our usual meeting schedule. This issue today is a straightforward one, but it does require a decision from this committee.

I've noted on the record that Richard Magnus, Jack Flaherty, and Len Mitzel are joining us today via telephone conference, and they will be able to actively participate in the discussion. We heard them through the speaker consoles in front of us here today, and in turn we'll hear what is spoken through the consoles, so please speak into the microphones when addressing your comments, questions through the chair. Note that the consoles are being operated by our *Hansard* staff, so members should hit – I just like to get Karen all excited here – not hit the button on the consoles.

I would ask that we go around the table now and have everyone introduce themselves for the record, and we'll start with Laurie.

[The following committee members introduced themselves: Ms Blakeman, Mr. Flaherty, Mr. Mitzel, Mr. Magnus, Dr. Pannu, Mr. Rodney, and Mr. Strang]

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

[The following staff of the Ombudsman's office introduced herself: Ms Wilkin]

The Deputy Chair: Thank you. At this time you have the agenda before you. Can I have somebody approve the agenda as presented?

Mr. Flaherty: So moved.

The Deputy Chair: Thanks, Jack.

Okay. We'll move to our first item, the request from the office of the Ombudsman.

First of all, I guess I better call for the question. Everybody in favour of the agenda?

Hon. Members: Agreed.

The Deputy Chair: Thank you.

Okay. We'll go to Request from the Office of the Ombudsman: delegation of authority. Members have copies of the letter from the Ombudsman as well as excerpts from the Ombudsman Act requesting the delegation of power by the Ombudsman. I understand that our committee clerk researched committee records back to the early '80s and that the office of the Ombudsman conducted a search of the records as well but were unable to find any historical data. In the absence of existing approvals the committee should consider the request of the new Ombudsman to delegate his power to his staff in the office.

I would at this time like to welcome Georgeann Wilkin, the Deputy Ombudsman, from the Edmonton office to present her request for the record. Go ahead, Madame.

Ms Wilkin: As you're aware, you've got a letter here from Gord Button, the Ombudsman, dated January 19 requesting that you delegate authority to him to delegate his authority under section 27(1) to the investigative staff so that we may conduct investigations. It is something we always assumed was in place. We never should make assumptions; we know that. We look at that when we do investigations of other departments, to make sure that they have the proper delegated authority, but we never looked in the mirror to be certain that we had it. We assumed that when the Ombudsman was appointed, he had the authority, but clearly the legislation does not say that. So we're requesting that you delegate this authority to him under 27(1) to delegate the authority to us to conduct his investigations.

The Deputy Chair: Okay. Thank you, Madame.

Does any of the committee have any questions for Ms Wilkin? At this time kindly identify yourself for our people that are on the conference call, and we'll go with Laurie first.

Ms Blakeman: Thank you. I understand that you have in fact been operating as though you have the permission in place and have just recently discovered that you didn't. So since 1980 you have been delegating the responsibility?

Ms Wilkin: Absolutely. With every Ombudsman the delegation has gone to the investigative staff as they've been hired or retained with a new Ombudsman.

Ms Blakeman: My second question, then, is: what process were you following that had you discover that, in fact, you didn't have this? Were you doing a review of your legislative requirements, or how did you discover it?

Ms Wilkin: I'm sorry. I don't know how it was discovered. I was away on holidays when it was discovered. I've just come back, and unfortunately the Ombudsman is out of town this morning. I believe it was a routine request about: what kind of delegation of authority do you have? Then when he went to look to show, we couldn't find anything.

Ms Blakeman: All right. Thank you.

The Deputy Chair: Okay.

At this time we'll go with Mr. Rodney.

Mr. Rodney: Thank you, Chair. Would I be correct in presuming that your office has known for some time about this backlog? Is it fair to say that you've been trying to deal with this for some time?

Ms Wilkin: Yes.

Mr. Rodney: I know it came up at the last meeting. Now, the discovery that the legislation wasn't in place has happened since our last meeting. Is that also correct?

Ms Wilkin: Yes, that's correct.

Mr. Rodney: And that's why we needed this meeting.

Ms Wilkin: That's right.

Mr. Rodney: Of course, we want to put our meetings together when we can.

Ms Wilkin: We appreciate the promptness with which this was done, but we can't ask Gord to start going out and doing investigations now that we're aware.

Mr. Rodney: No, of course not. And I can't speak on behalf of the committee, but I appreciate that you're here. I would hope that when we deal with direct matters in the future, the person running the department may be able to be there, even on the phone. That's not any kind of slight. I'm just suggesting for next time that we do that because I know it puts you in a bit of an awkward spot.

I guess my question, my only question really, is: can you tell me what other jurisdictions do? Are you saying that every jurisdiction in Canada other than ours already has this legislation in place?

Ms Wilkin: I have no idea whether they have a comparable clause in their legislation. I think we may have operated wrongly on an assumption that by the appointment of the Ombudsman he had authority to delegate authority, but when we look at the legislation, section 27(1) shows us that the committee must give him that authority to delegate that power. He's always done it. I have my own delegation of authority document in my files, as does every other staff member, but it turns out he never had the authority to give it to us.

9:10

Mr. Rodney: So, Chair, is there anyone here or on the phone that may be able to answer the question: is this consistent with the other provinces or the country in terms of legislation?

The Deputy Chair: Well, Mrs. Sawchuk maybe knows.

Mrs. Sawchuk: Mr. Chairman, that is not something that we would have researched in a case like this. We'd go with the statute that's in place. I did actually do the research, going back in the records. I think the last minute book that I went through was probably 1978, so we did go back that far flipping through and trying to find something. There are numerous instances where the committee has recommended that an Acting Ombudsman be appointed but not instances like this, where we've approved the delegation of authority by the Ombudsman.

Mr. Rodney: Very good. Thank you, Chair.

Ms Wilkin: Can I just respond further to your question? We do look at other legislation, however, within the province to determine, when we are investigating a decision made, how that delegation of authority has occurred in that particular ministry, so this is consistent with other ministries within Alberta. That I know.

The Deputy Chair: Okay. Thank you.

Any questions from our telephone people? Seeing none, I'll go to Raj.

Dr. Pannu: Thank you, Mr. Chairman. Two questions. This whole matter before us piques my curiosity. Have there been any amendments to this piece of legislation since it was put in place?

Ms Wilkin: We've got the amendments that set up the patient concerns resolution authority for the Ombudsman, the regional health authorities. There has been no amendment to this particular section.

Dr. Pannu: All right. Okay. So this was part of the original piece of legislation?

Ms Wilkin: I believe so.

Dr. Pannu: All right. The second question, again, has not much to do with the substance of the request, but can we specify a date when the absence of this power to delegate was noted or discovered or found out?

Ms Wilkin: I believe it would have been early January. Is that right, Karen?

Mrs. Sawchuk: Actually, Mr. Chair, in that respect it was just shortly after the budget meetings in December when the request was made for us to research our records in the committees branch of the Legislative Assembly Office because nothing had been found in the office of the Ombudsman. So they did make that request to us, and you know we pulled out all the old binders. The *Hansard* records online only go back to, I think, '90 or 1991, so we were looking at manual searches of a lot of years. That's when it all originally started.

Now, you know, we wanted to be sure that there wasn't something in place because the statute goes on to say that it carries forward with the next Ombudsman, but we could not find any evidence of an earlier approval at all. So between that and the Christmas break and the actual searching last week it was agreed that a written request should come in if this is what they wanted to proceed with.

Dr. Pannu: The last meeting of the committee was on the 15th, was it?

Mrs. Sawchuk: December 13, I believe.

Dr. Pannu: So it's after the 13th but before we broke for Christmas.

Mrs. Sawchuk: Right.

Mr. Magnus: You guys are going to have to speak up for us deaf old people.

Dr. Pannu: Sorry about that, Richard.

The Deputy Chair: Okay. Any other questions for the Deputy Ombudsman? Seeing none, could I then have a motion to move forward?

Ms Blakeman: Yes. I'm prepared to move that the Standing Committee on Legislative Offices approve in accordance with section 27(1) of the Ombudsman Act the delegation by the Ombudsman of his powers under the act, except this power of delegation and the power to make any report under the act, to any person holding any office under the Ombudsman.

The Deputy Chair: Have we got any questions on that? Okay. At this time I'll call for all those in favour. Maybe state your name so that everybody knows.

Ms Blakeman: Agreed.

Mr. Rodney: Agreed.

Dr. Pannu: Agreed.

The Deputy Chair: Okay. For the phone?

Mr. Flaherty: Agreed.

The Deputy Chair: Richard, are you awake?

Mr. Magnus: Agreed.

The Deputy Chair: Okay.

Mr. Mitzel: Agreed.

The Deputy Chair: Okay. Thank you, everybody. Now I'd ask if there are any other items for discussion today.

Dr. Pannu: Mr. Chairman, I have one question about the delegation that, in fact, has occurred over the years. What's the status of that? How do we ratify it at this point? There is a question of the acts of delegation on the part of the Ombudsman, either this one or one prior to his coming in. Decisions were made on the assumption that the Ombudsman had been given by this committee power to delegate. Now that assumption has proved to be untrue. Therefore, the decisions made by the Ombudsman to delegate need to be somehow ratified.

Ms Blakeman: Good point. The obvious move to take, although I think an unwise one, would be to just automatically ratify every decision that's been made since 1980, which I'm not prepared to do just in case there were some that, looking back, the Ombudsman regretted or would have preferred not to have done. So I think perhaps the wisest course for the committee would be to ask for a review by the staff of the Ombudsman's office of those delegations to ensure that if we ratify those decisions that have been made, we are doing ones that everybody is happy about and that were in good order.

Dr. Pannu: And to add, if I may, that this committee is within its rights to in fact ratify, you know, the way we think we might be able to do, that this is within our powers to do it.

The Deputy Chair: So in other words, what I hear people saying here – and I don't know if any of the other ones on the phone want to put their thoughts forward. What I would suggest and what I think Dr. Pannu is saying is that they want the Ombudsman to come back with the ones that he's ratified so that this committee can review them and sanction them so that they can move forward from today on with the delegated authority, to bring them back so that the committee can review them.

Ms Blakeman: I don't know that I feel the need to review all the decisions of the Ombudsman, but it is an opportunity for that office to make recommendations to us that they believe the following ones should be ratified. I am more comfortable with that sequence, but I also agree that we need to have our well-researched committee clerk look into our powers to be able to in fact ratify what's gone before.

Mrs. Sawchuk: Mr. Chairman, I was just wondering. The one issue that kind of stands out, at least in my mind, is that it allows the delegation of power excepting that delegation, the ability to delegate and the ability to report. So ultimately all the actions that would have been taken by staff under a delegation of authority, whether it was put in place rightly or wrongly, would still have required the Ombudsman who may have been in office at that time to ultimately issue the final report, would it not? I mean, I can always check also

with Senior Parliamentary Counsel in that respect, but I think that that might be the saving grace here.

It is two separate issues. The committee wants to know how long this has gone on for and, you know, the types of decisions that may have been dealt with. But, like I say, the second issue then is: is there even really a need to revisit those earlier delegations? The reporting itself would have had to occur by the Ombudsman. Does that make sense?

Ms Blakeman: Well, I think there's a legal argument there, and obviously the staff from the Ombudsman office, I'm sure, will weigh in on this, but we could end up with someone coming forward saying: "I was dealt with by so-and-so under delegated authority, and I challenge that because they, in fact, did not have the authority. They had not received the delegation of it, and I challenge their finding." Boy, how many cases do you guys deal with a year? Do we really want a couple of hundred of those ones landing on our plates? Then, again, I don't want it to give a blanket ratification to everything that has gone on.

The Deputy Chair: Prior, no.

Mr. Rodney: I certainly appreciate that we have at least two competing issues here, one being transparency and the other one expediency. We know that part of the reason we're doing this here today is that the Ombudsman's office is overloaded. We don't want to give them extra, huge jobs that take them away from the jobs that they're there to do. That being said, it does need to be addressed for reasons outlined by hon. Blakeman and others.

9:20

I guess I have a question of the chair. Perhaps he can answer it and perhaps not. It may sound unrelated, but it is related. Do you know when our next meeting will be called?

The Deputy Chair: No. It'll be at the call of the chair.

Mr. Rodney: Okay. What I guess I'd suggest, then, is that we have one fairly soon after our legislative session starts, and in the meantime I wonder if it may be appropriate for Karen to consult with Parliamentary Counsel, find out what is appropriate in terms of content and format for a report, whether it's verbal or written down. I guess what I'm saying, Mr. Chair, is that perhaps we could table this until the next meeting, at which point we could have Karen Sawchuk report back as to what the recommendation is in terms of how to report this so that it is both transparent and expedient.

The Deputy Chair: Any other discussion?

Ms Blakeman: I think I'd rather see action move forward. I'm a little worried about timing here and leaving ourselves open to potential problems, so I would tend to say that if we're going to give direction from the committee to the clerk, it be a two-part direction. One is to check with Parliamentary Counsel to see exactly what is the status of the delegations that were made by the ombudsmen when they did not have the appropriate delegation from this committee. Two, if the delegations were not in order, then I would ask that the office be notified and commence an investigation of the delegations that did happen. It's a twoparter. If the clerk comes back and says, "No, Parliamentary Counsel says that everything that's been done is fine; we agreed to the reports when they were tabled in the Assembly, so all the bases are covered," fine. That's the end of it. But I don't think there's any rush to do this from the staff. I don't think we need to reconvene in two weeks, for example,

knowing that they are working on a fairly onerous backlog of cases, but I think we do need to address it.

The Deputy Chair: Okay.
Dr. Pannu.

Dr. Pannu: Thanks, Mr. Chairman. Yes, I think one is the issue of retroactivity, whether we can make decisions that are retroactively effective, and the second is a formal request on the part of the Ombudsman for us, in fact, to take action that will have a retroactive effect. I think a formal request should come forth. But I agree that it's not a matter of urgency; it's a matter of setting things right, you know, so that we as a committee feel that we have taken action that's appropriate and that's due.

The Deputy Chair: Okay.
Any questions or comments from the people on the phone?

Mr. Flaherty: Well, I was just going to ask: do we need a motion to direct people to do that, or do we just take these comments that were just made?

The Deputy Chair: Yeah, Jack. I was going to get Laurie to make a motion . . .

Mr. Flaherty: I would appreciate that.

The Deputy Chair: . . . and have Dr. Pannu make the second part.

Ms Blakeman: Fine. I would move that
the committee direct the committee clerk to consult with Senior Parliamentary Counsel on the appropriateness or legality of the delegations that the various ombudsmen have made since 1980 and the committee's ability to retroactively approve those.

The Deputy Chair: Okay. Any questions on that? I'll call for the question, and we'll start with Laurie.

Ms Blakeman: Agreed.

Mr. Rodney: Agreed.

Dr. Pannu: Agreed.

The Deputy Chair: Okay. On the phone?

Mr. Flaherty: Agreed.

Mr. Mitzel: Agreed.

Mr. Magnus: Agreed.

The Deputy Chair: Okay.
Then, Dr. Pannu, if you want to do the second part, please.

Dr. Pannu: Yes, Mr. Chairman. I move that the Ombudsman make a formal request to this committee to retroactively approve the decisions with respect to delegation of powers that might have been made in the past while this authority was not formally granted to the Ombudsman to so do by this committee.

The Deputy Chair: Okay.

Mr. Rodney: Can we have questions?

The Deputy Chair: Okay. Go ahead.

Mr. Rodney: I'm thinking that with the previous motion we kind of need to hear from that first. I don't know if I'm comfortable agreeing to all of the retroactivity until we've heard from Senior Parliamentary Counsel and the Ombudsman.

The Deputy Chair: Well, basically what Laurie is really asking for is to go back and do the research and then present the research. In the meantime all we're looking at with Dr. Pannu's motion is to go back to clear up anything that has been done just in the short time frame that we're working on now.

Mr. Rodney: Oh, okay. So which time frame are we talking about? From just the last month or so? I think we just need to be clear what we're approving because if we're approving everything that the Ombudsman has done in the past in terms of . . .

Mr. Flaherty: Since 1980, wouldn't it be?

Mr. Rodney: Yeah. So I guess I'm here to say that I'm not comfortable approving all of the retroactivity until we have heard from Senior Parliamentary Counsel.

Mr. Magnus: Mr. Chairman, I'm kind of with Dave on this. I want to know what we've got before we approve it.

Ms Blakeman: It's A then B.

The Deputy Chair: Now, that's what we're looking at. With Laurie's motion we're looking to bring the evidence here, and then with Dr. Pannu's one the committee is going to review it with the information that Mrs. Sawchuk is getting from Parliamentary Counsel. So it's parts A and B.

Ms Blakeman: Well, sort of. We're checking the legality of what's happened, and if Parliamentary Counsel tells us that everything that's happened is okay for whatever reason, then there's no need for any additional action to be taken and Dr. Pannu's motion would not come into play. If Parliamentary Counsel tells us, "Yes, indeed, there are . . ." – and I don't know – "a hundred delegations that happened over the 25 years that need to be ratified," then we would ask the office to proceed as per Dr. Pannu's motion.

Mrs. Sawchuk: Mr. Chairman, I guess that the motion made by Ms Blakeman is very clear. It's very specific. Unfortunately, with the second motion there are too many variables there. What are we acting on? Usually, you know, with a motion it's an action item. It's almost like it's something that's going to be in abeyance because you'd have to present all the different scenarios: this motion will apply only if you discover this, this, or this. But if we don't even know what it is we're really after or what we're going to get from Parliamentary Counsel, it's premature.

Dr. Pannu: I thought it's a fairly simple matter, that if ratification is indeed necessary and the committee has the power to do so, then we need a formal request from the Ombudsman's office for us, in fact, to ratify the decisions already made for which he did not have the authority given by this committee.

Mr. Rodney: Chair, could Dr. Pannu read his motion one more time so that everyone is completely clear on what is in it?

Dr. Pannu: I'll try to reiterate it. I don't have it in writing. Moved that

the Ombudsman be asked to bring forward to this committee a motion for ratification of the decisions made during the time that the Ombudsman did not have the formal powers delegated to him to delegate powers that he has done in the course of his duties in the past, provided that ratification is considered necessary.

That's all.

Mr. Rodney: Oh, okay. By Senior Parliamentary Counsel: is that what you mean at the very end of that statement?

Dr. Pannu: Well, yeah. That's the mechanics of it, you know, who is the right person to give the advice. That will be Parliamentary Counsel.

9:30

The Deputy Chair: So basically what we're asking with Laurie's motion and Dr. Pannu's motion is that it's two parts, but we may not need the second part if we get ratified on the first part. So we're just making sure we've got our bases covered. So is everybody in agreement with that? Okay. This time I'll go with Laurie again.

Ms Blakeman: Agreed.

Mr. Rodney: Chair, I'd say that I'd be happy to agree with this. I'd kind of like to see the A part before the B part, but if it's the will of the group, I'm happy to go along with it.

Dr. Pannu: Yes. I agree with the motion.

The Deputy Chair: For the phone delegates?

Mr. Flaherty: Agreed.

Mr. Mitzel: Yeah, I agree. Just for clarification, I'd like to understand whether there in fact was anything done by the Ombudsman that he did not have the authority for. In other words, he always had the authority for approvals, so the issue is whether he had made any decisions based on the delegations that he made over the years, right?

The Deputy Chair: Yeah, that's right. Maybe I'll let Ms Wilkin answer that.

Ms Wilkin: I certainly can confirm what Karen had told you, that the Ombudsman makes all decisions on all investigations and

alternate complaint resolutions. No decisions are ever made by the Ombudsman office staff. However, I guess that where the whole question comes in is he's making that decision based on evidence gathered by someone who may not have had the delegated authority.

Mr. Mitzel: Yes, that's clear. That's exactly what I was trying to say.

The Deputy Chair: So, Richard, are you in favour?

Mr. Magnus: Well, I still have the same problem I had a moment ago, you know, where we're asking the lawyers questions to get some clarification here to find out how far we have to go back. This could be a whole mess here. I'm quite willing to wait for a lawyer to come forward and then react to that, but to give this a blanket approval at this point, I'd have to say no.

The Deputy Chair: Okay.

Len, are you okay on yours?

Mr. Mitzel: Yes.

The Deputy Chair: Okay. I agree on that.

You want yours registered, then, Richard?

Mr. Magnus: Yeah. As I say, it's kind of like: why are we going to the lawyer if we already know the answer? You know, I'm not going there. I want the lawyer's advice, and then I'll make a decision. Obviously I'm going to lose here, though.

The Deputy Chair: You've done that before, so that's okay.

Mr. Magnus: Many times.

The Deputy Chair: Okay. Thanks, everybody. I appreciate you all making it today so that we could get this done so we could move forward.

At this time we'll say that the next meeting will be at the call of the chair. I'd like to call for adjournment.

Mr. Magnus: I'll move it, Ivan.

The Deputy Chair: Thanks, Richard. Okay. Thanks, everybody. Have a good day today. Thank you very much.

[The committee adjourned at 9:34 a.m.]

