

[Chairman: Dr. Carter]

[4:06 p.m.]

MR. CHAIRMAN: Okay. Here we are, gathered once again. The agenda item for this afternoon is the matter of dealing with contracts of constituency office staff. The Chair looks forward to an interesting discussion.

The hon. members for Edmonton-Strathcona, Edmonton-Highlands, Rocky Mountain House, Westlock-Sturgeon -- oh, yes Westlock-Sturgeon. Okay. Westlock-Sturgeon.

MR. TAYLOR: Me first? Okay. These are just points for you. I don't believe any of the drafts take recognition of the part-time employee, the one that may be there for half a day, a day, or a week. Also, there are two types of part-time employees: one that's unemployed anywhere else, and those that are employed somewhere else; in other words, it's a part-time job in addition to their main job where they may already be getting CPP and all the other deductions. I don't think that's kept track of. This again, I'm speaking on the first agreement -- whatever you call it -- constituency office staff contract, the decision items.

Secondly, the other area that is not covered is if the contractor is a company. That's as far as that.

Now I have other points to make on appendix A and appendix B if you want to have them all down at once, Mr. Chairman, or what would you care to . . .

MR. CHAIRMAN: For those of us who come from southern Alberta where we're oftentimes short of feed in the wintertime, we might as well have the whole haystack at once.

MR. TAYLOR: All you're going to get is a bale this time on it, I think. In appendix A then . . .

MR. CHAIRMAN: I look forward to you bailing me out. That would be unique.

MR. TAYLOR: Okay. Gee, I think I should have closed that door when I came in there.

But, Mr. Chairman, draft A is fine in my interpretation, except for one thing. The whereas they use in draft B, which is a contract of personal employment, could well be moved and done for the same too to the front of appendix A. It's just a thought. Because the whereas set up what this is all about, and it's thought to be important enough to put in B, but it's left out of A. These are all minor drafting points, because I think in general the job is well . . .

Appendix B. You should prorate both sick leave, which is 5(a), and annual vacation, 5(b), either into so many hours per day of work. In other words, a part-time worker or somebody that may have worked only 10 or 15 or 40 days for you in a year will qualify for a different type of vacation leave and sick leave as the other.

Also -- this is the very last, Mr. Chairman -- on appendix B, section 5(f). I think it's wise, out of abundance of caution, to refer to clause 3, where you indeed do have another type of pension being allowed for. It could be misleading to mention that there are no pensions when in fact you do have . . . These are mostly just drafting things. They're not in any way, shape, or form to change the philosophy, I don't think.

MR. CHAIRMAN: Cypress-Redcliff followed by Edmonton-Strathcona.

MR. HYLAND: Thank you, Mr. Chairman. I guess my problem is in reading this over and reading the sheets in front down to D, Alternatives & Implications. I still wonder -- if what we think operates in a constituency office and what the Clerk and his staff have put this together -- if we're still on the same wavelength, because when you look at the first one, under (1)(a), it refers to the "contractor is not part of the organization structure." Well, if our contractors in our constituency offices weren't part of the organizational structures, probably some of us wouldn't be here now. I mean, it's all part of the team. No matter which party, it's part of the team to serve your constituents. So you have to be part of the organizational structure.

"Contractor works with considerable freedom and has latitude concerning the time put into the work." While it may be true they have considerable freedom, the amount of time is set because of your office hours. Normally they're published, either in a paper or sent out to your constituents, so people know when to phone or when they can get hold of you or your constituency office help.

This goes on. I guess in the last one: "contractor is his/her own master and uses his/her discretion in things not specified." I have the feeling that we just don't seem to be going at the same end in that it's often more than an employer/employee relationship. As I said, it's a team effort, such as other people involved, and I wouldn't want to lose that implication of the team effort in what we do. Just the outlines and implications concern me that that may be happening in either contract, in either A or B, or however we've got it.

MR. CHAIRMAN: Okay. Edmonton-Strathcona.

MR. WRIGHT: Yes. Well, that's an important point, Mr. Chairman. But that's exactly why those words are in here. Because it seems to me that what you were arguing for there was an arrangement basically the same as we have at present. The whole object of this exercise is to point out that the arrangement we have at present is in most cases unlawful, in all probability, in that it is not a true independent contractor arrangement. It is a contract of employment, and so we run a great risk if we do not switch over to B for the sorts of people that we do employ on the sorts of terms and conditions we do impose for our constituency employees if we stay on the existing arrangement, which is basically appendix A, but on conditions which are applicable really to the appendix B-type contract.

So I think those words are very advisedly in here. In other words, if you are trying to put a fee-for-service arrangement onto employees who in fact do not answer to most of those tests -- i.e., is someone who is part of the organization structure and is under your supervision and control and on tasks that are in your discretion -- then they are probably true employees and not independent contractors, and therefore appendix A is inappropriate.

As to Mr. Taylor's point about half-time employees, it does speak in appendix B of full-time employees, which does contemplate there being part-time employees. Perhaps Parliamentary Counsel can correct me if I am wrong, but I do believe the purpose of these forms is to give us the two sorts of contracts. They're not to be rigidly adhered to word by word, because it may be inappropriate for the particular arrangement, but the types of contracts are represented here, and there can be some alterations to meet individual cases. But so long as they comply with the type, that's all that's necessary. These have to be run past Parliamentary Counsel anyway when they're entered

into so that any illegitimate discrepancies will be picked up at that point.

In general, we agree with what's been laid out in the two types, Mr. Chairman.

MR. CHAIRMAN: Parliamentary Counsel, any comment on that?

MR. RITTER: Well, I was just about to agree with Mr. Wright on that. Certainly there are certain peculiar circumstances under which certain members will hire employees or even those who are a contractor. I think the thing is to remember that nothing is carved in stone, and we can always accommodate any peculiar circumstances, but we would like to see anybody who is likely to be considered by the authorities as an employee classed as an employee and put on an employer/employee-type relationship.

MS BARRETT: Most of what I was going to say has been said, except for the pointing out of the notion that what we are doing with the fee-for-service contract is cleaning up what has hitherto been the contract between the constituency office and the persons working in those offices. I think there is sufficient latitude between the two types of contracts to allow for members who have, for instance, several part-time workers or several different constituency offices, to allow them to engage in the fee-for-service contract, which is the more legal form of what we have right now, while giving the opportunity to enter into more conventional employee/employer relations for members so choosing. And I think that's been the point of the exercise to date.

MR. CHAIRMAN: Thank you.

DR. ELLIOTT: Mr. Chairman, some of us have in our constituencies arrangements with the person who supplies the space for our office. With that space comes a receptionist, answering service, and so on. This wouldn't spill over into that employee; that employee belongs to the person from whom we're renting the space?

MR. RITTER: The employment contract in certain cases like that would be governed by the person supplying that individual. It wouldn't even fall within the members' consideration as to whether that person was a contractor or an employee. It's much like a Kelly Girl or any other employment agency person.

MR. CHAIRMAN: Is there a motion that someone would like to put before the House? Another question? Cypress-Redcliff, Edmonton-Highlands, Edmonton-Strathcona.

MR. WRIGHT: No, I was moving.

MR. CHAIRMAN: Oh. Thank you.

MR. HYLAND: Reading through this -- and then when the Member for Edmonton-Strathcona spoke and said we're probably unlawful or it's probably not lawful what we're doing with the contracts. I can remember a couple of years ago we were told we were probably unlawful in the income tax arrangements. When we asked for written confirmation, all of a sudden it was okay; it was okay for somebody to make a comment in the department about being unlawful but when they were asked to put it in writing, they wouldn't put anything in writing. And we keep on hearing that. But what can we say? What have we got

to prove that it is unlawful?

MR. RITTER: Trust me. I would hate to have it proved by a possible conviction in the future, but if you want something on record I think I would certainly be willing to say that I feel that the present arrangement that we have now is very risky, and I would certainly not want to put it to the test.

MR. CHAIRMAN: Well, the Chair bows to the wisdom of the lawyers around here. Are we engaging in a topic of conversation that should be part of an in camera discussion, or are we . . . Everything is copacetic. All righty.

MS BARRETT: Mr. Chairman, I move that we adopt appendix A and appendix B as the options for the basis upon which we hire constituency staff from January 1, 1988, until further revised.

MR. CHAIRMAN: Thank you. It's been moved. Now there's a motion on the floor to adopt. Further discussion?

MR. KOWALSKI: Mr. Chairman, I think I've served on the Members' Services Committee since 1982, and that doesn't mean anything other than the fact that this matter was raised before. I apologize; I think it was two meetings ago that this matter was raised. In looking at the sheets of paper provided today, a number of thoughts have gone through my mind.

In the previous Members' Services Committee -- and I recognize it has no bearing in terms of what decisions are being made by this Members' Services Committee -- when the decision was made after 1979 to in fact move to constituency offices and have constituency staff, the matter was raised and discussed in terms of definition and parameters and the like. I recall very vividly a previous chairman of this committee and previous Parliamentary Counsel advising the committee in terms of definition. Now, I also recognize that in the legal profession there tend to be varying views with respect to a similar matter. Just a few days ago I sat in this House and listened for two hours about certain definitions about a particular person. I subsequently found that all those definitions being forwarded to that particular person were all wrong. Nevertheless, if one would have accepted them that day one would have felt that he in fact was worthy of the attacks. But that's not the point either.

The point of all of this is that an arrangement has been set up since 1980 where a Member of the Legislative Assembly, he or she, has basically said that they wanted to contract with an individual to provide a certain type of service in their constituency office. Now, there is in appendix B, I think, a general definition that basically carries out and covers most of the items. It may very well be that since 1986 there have been new kinds of services provided that I'm unaware of, and I would certainly ask my colleagues to attempt to help me better understand this. But essentially where you have in appendix B the "Position," it is generally my understanding that the person who would be functioning in a constituency office would carry out secretarial duties or business duties, and I presume that word "business" really refers to secretarial or reception and other office services and other types of duties "as may from time to time be prescribed by the Member." But essentially all of them deal with meeting with the public for the most part, undertaking duties on behalf of the member. The person that I have in my constituency office, who has been there since 1980, essentially functions as a secretary, constituency assistant and meets with people on a day-to-day

basis in dealing with all kinds of concerns that individuals have.

I'm wondering if all of a sudden we've now arrived at another kind of person that is different from that, and that is why we now have these appendices A and B to cover certain situations. Never until the last couple of meetings, as I can understand, was this matter raised to members of the Members' Services as perhaps being a situation that could be considered by the courts to cause some problems. Now, first of all, why would a court deal with this? -- which is a striking question for me to ask. Secondly, what is so different today from a year or two years ago with respect to the type of person who basically works in a constituency office?

My colleague from Cypress-Redcliff asked some questions with respect to item (D) on the decision item and basically said, "Well, what do these words mean: the 'contractor is not part of the organization structure' for seven years?" The contractor, secretary, the person who's paid by contract, "is not part of the organization structure." Heck, everything we've done in the past, basically getting equipment and contacts with the Legislative Assembly -- we've even had people go out from the Legislative Assembly Office to look at constituency offices to see, to find out exactly what these people were doing. Now, we're getting another kind of definition. Again, I've got question mark after question mark because I don't understand what it means or why we have this.

The statement that a "contractor is to produce a given result and is not under the employer's supervision or control over execution of tasks" -- in my years in government in a variety of different positions, including that of a deputy minister, I've never had that kind of a definition ever provided to me. And there were literally dozens of people under contracts in that administrative office. Certainly as a minister of the Crown I have people under contract, and if they're not under somebody's employer supervision -- that's a type of contract definition I've never heard of before. And a "contractor is his/her own master and uses his/her own discretion in things not specified." Again there's a clarification here that I would simply like to know of, because I'm not sure if appendix A and appendix B are necessary documents and we really amplify, clarify, or improve anything.

I'm on the motion, but I don't know if I'm speaking for or against it. I'd like some further clarification as to why we're into this. There's the necessary question that one surely can ask in a democracy: why are we doing this? If it ain't broken, why fix it, I guess is the colloquial expression. If there's any evidence that can be submitted -- no disrespect to the academic qualification and the outstanding professionalism of the Parliamentary Counsel. This is not what I'm questioning, his ability or anything else. But do we have any evidence from anybody that says we must do this, because surely there comes a point in time when you ask yourself: why you are doing something that's not necessary, if it isn't necessary?

MS BARRETT: Mr. Chairman, this is partially to answer the queries just raised by the Member for Barrhead. In the first place the reason that this has been under discussion for what I suspect must be close to a year now is because there is consideration for an alternative type of employment to be made available, the more conventional type; that is, the conditions set out under appendix B. Now, the reason that we determined to look at the fee-for-service contract as opposed to the current contract we have with the constituency office employees is because the current contract assumes that those employees --

which, by the way, they technically are not -- are self-employed.

[Mr. Bogle in the Chair]

Now, that concept comes with a number of notions, including that that person, the self-employed person, brings with her or him her own tools or his own tools and in fact often provides space for her work or his work himself.

There are a whole number of things which in fact are not really true in the current arrangement. That is why we have been pursuing a document which would more legally and technically reflect the type of relationship we have with those people we have currently on a self-employed contract. In other words, the most readily interchangeable format would be that described in appendix A, which is called fee for service. You'll see that there is a fair amount of latitude, given that this is accompanied by what is called schedule A, shown on page 6 of the document called appendix A, and it says, "Description of services and/or product(s) rendered." Now, there is an incredible amount of latitude for the member of the Assembly to describe whether or not it's an end service or an ongoing service that the contractor wishes to have performed for the member. That seems to me to provide more than enough latitude to accommodate virtually every type of constituency office that we might have anywhere in Alberta. The alternative, appendix B, would be certainly more appropriate for those of us who wish to have our constituency office employee on a regular employer/employee contract such that they are specified to be part of the organization; that is, integral to and working regular hours.

Presumably, appendix B would not be used in many instances in terms of part-time employment but would be used more commonly in terms of the full-time employment that we may wish to engage in. It seems to me that the latitude offered in appendix A is certainly enough to accommodate any member's individual needs and that appendix B is identical or very nearly identical to the conventional employment contract used by virtually all employers in the province. I don't see what the problem is at all.

MR. DEPUTY CHAIRMAN: The Chair believes that it would be appropriate if the committee heard from legal counsel. The Chair also believes that because of the sensitivity of the subject matter, this committee should be in camera for that portion of the discussion; in other words, give the legal counsel an opportunity to respond to some very direct questions put to the committee by several members, give an opportunity for further clarification by any other members, and then, if it is the wish of the committee, we would come back out of camera and go into our normal business. So the Chair would entertain a motion to go in camera.

MS BARRETT: I so move.

MR. DEPUTY CHAIRMAN: Edmonton-Highlands. All in favour? Any opposed? Could I have that vote again, please? I want to make sure. All in favour? Five. Opposed? Two. Do you wish your votes recorded?

SOME HON. MEMBERS: No.

MR. DEPUTY CHAIRMAN: Thank you.

[The committee met in camera from 4:31 p.m. to 5:05 p.m.]

[Dr. Carter in the Chair]

MR. CHAIRMAN: Okay. The committee is back in. The Chair looks forward with great fascination to a motion.

MS BARRETT: A motion was on the floor, Mr. Chairman. My motion was on the floor.

MR. CHAIRMAN: A motion is on the floor to accept both A and B. Okay. A motion is on the floor, A and B. Any other motion?

MS BARRETT: Question.

AN HON. MEMBER: Behind you, Mr. Chairman.

MR. CHAIRMAN: Surely you jest. You think that I would ever miss for one moment my part-time MLA for Cypress-Redcliff? Cypress-Redcliff.

AN HON. MEMBER: What do you mean part-time? You work harder than most.

MR. HYLAND: That's right. It just means he's there part of

the time.

Mr. Chairman, I must say after hearing the advice that we just heard, I am now really confused. If the advice we heard was right, there are major budget implications in the discussion we have, and I would like to move that we table this so we can at least think about it and maybe get some more information before we vote on the motion.

MR. CHAIRMAN: There's a motion to table. All those in favour of a motion to table? Seven. Opposed? One. One abstention. Thank you. The motion to table carries.

Thank you, ladies and gentlemen. The Chair assumes that this will come back at our next regular meeting, which is January 18 at 1 o'clock in the afternoon, same place.

Motion to adjourn? Moved by the Member for Innisfail. All those in favour, please signify. Opposed? Carried. Safe, happy holiday.

AN HON. MEMBER: The same to you.

MR. CHAIRMAN: Thank you all very much.

[The committee adjourned at 5:07 p.m.]