

**"MANAGING
STAFF"**

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PARLIAMENTARY GOVERNMENT

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IN THIS ISSUE...

In the space of just one generation the resources available to MPs to carry out their responsibilities have changed dramatically. Until 1970 most private Members shared an office with a colleague. The two had the help of a single secretary, equipped with a manual typewriter and carbon paper to respond to letters arriving by mail. For oral communication they shared a rotary dial telephone.

The resources now available to MPs are substantial: budgets sufficient to hire staffs of four to six persons, state of the art technology, larger accommodation and highly qualified institutional support. In the process, MPs have become managers of staff in two or more locales, in Ottawa and in their constituencies. While these resources have greatly increased a Member's reach, they have also added to the range of responsibilities and challenges of the job.

This issue of *Occasional Papers on Parliamentary Government* examines the range of challenges and pitfalls in managing personal staff in the special environment of an MP's office. Problems can range from inefficiency and low performance to the extreme of legal challenges based on breaches of fair employment practices.

Through the use of case reports drawn (without attribution) from actual experience, this issue of *Occasional Papers* reviews people management techniques that have proven successful for Members in an article by Jacques Sabourin. It presents as well the more common problems that MPs have faced in managing their offices and a series of practical tips which address the various situations you are likely to encounter.

The issue concludes with a complementary article by Diane Davidson, which provides an overview of certain legal considerations to assist Members in the performance of their duties as employers. Her advice is particularly relevant to termination of employment matters.

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TABLE OF CONTENTS

Managing Staff for Better Results and Fewer Headaches.....	3
Employment Law Issues Affecting the Member of the House of Commons as Employer	14

Cartoon by Anthony Jenkins



MANAGING STAFF FOR BETTER RESULTS AND FEWER HEADACHES

Yet Another Dimension of a Member of Parliament's Job

by Jacques Sabourin

Well into her second term an MP who prided herself on giving immediate and serious attention to requests for help or information from constituents became aware that negative comments relating to the level of service provided by her office had increased: complaints about weekend functions, e-mails asking why questions posed three or four weeks previously had not been answered, immigration inquiries referred to government officials with little or no office involvement, and unhelpful replies to inquiries that provided only bureaucratic and routine advice. The situation surprised the Member since during her first term, the Ottawa and riding offices had received favourable notice that had enhanced the Member's reputation with constituents as well as with her party. During her first term, she had occasionally been asked by staff to personally intervene in more complex or sensitive situations, but normally cases were dealt with quickly and competently by her staff. On looking into this disturbing situation, the member quickly discovered where the problem lay.

Following the second election, the experienced office manager in Ottawa had retired for personal reasons. Having just successfully emerged from a hotly contested race, the Member turned to Richard who had managed a very effective electoral campaign for her. Impressed by Richard's performance in managing the campaign, the Member did not hesitate to offer him the vacant position of office manager in Ottawa. On assuming office, Richard recommended that an administrative assistant in the constituency be replaced, advice that the MP accepted without question.

The source of the poor office performance became apparent to the Member when she took the time to verify how the case work was being handled and examined more closely how Richard worked. While he was competent in marketing and generating new ideas, she perceived that he lacked the administrative experience needed in an MP's office. Management of on-going operations and disciplined follow up, crucial in giving constituents quality service, did not interest him. In addition, the assistant he had recommended for the riding office was much less able than her predecessor.

SO, WHO'S THE BOSS?

Managing a small, highly challenged staff is now an inescapable part of the job of an MP. People management is an area where practices and approaches have undergone major shifts. "Boss" does not have quite the same ring it used to have. The employee-employer relationship is no longer characterized by the familiar top-down culture of not so long ago

The lines differentiating supervisor and employee are much less clear than they once were. More cooperative modes are now the norm, which means teamwork, participation, consultation, and consideration for the individual employee. The effect? Managing people is more complicated or, at a minimum, radically different.

WHAT WENT WRONG?

The immediate conclusion to the scenario on the preceding page would be to say "the Member misjudged Richard's ability and made a bad choice". This is undeniable, but replacing Richard was really only part of the solution. The Member had been fortunate during her first term in finding a skilled office manager who needed no supervision. She had not learned the importance of monitoring the standard of service provided by doing regular follow up, maintaining communication with riding staff and using other management tools to detect and address problems.

The multitude of demands on MPs call for making maximum and efficient use of all resources at their disposal. Experienced MP's readily acknowledge that on a day-to-day basis, their personnel is central to their doing good work. Yet, many newly elected MPs have not in their previous work acquired the human

resources management skills required for the new job. After an election the whirlwind of political and parliamentary activities quickly takes over their lives, making it hard to find the time to hire competent and congenial staff to establish a smooth-running and constituent-friendly office operation.

The object of solid staff management is to establish, maintain, and improve the delivery of service to constituents and to support the performance of the MP in all facets of the job. This brief overview in *Occasional Papers* of practical and proven present-day ideas and practices drawn from life could help newly elected MPs to set up and maintain effective office support, as well as help serving Members to evaluate their performance as people managers.

MPs have an exceptional advantage in recruiting staff for their offices and in building the support and service team that suits them. In today's work world it is a rare manager who can pick her or his staff, even when they only number five or six. Hiring individuals is your very best chance to put the imprint you want on the way the office will operate, on which services will have priority and the results you want. That alone should be argument enough for Members to give time, effort and care to building the team that satisfies their own criteria. Managers rarely regret having invested effort and attention to bring the right people on board. The opposite is not true.

You will normally be offered advice by your Party secretariat, colleagues, personal acquaintances and others on specific candidates. But never forget that the final decision to offer someone a job on your personal staff is yours and that the choice will affect your performance on the new job. ■

HERE'S WHAT THIS JOB'S ABOUT: DO YOU UNDERSTAND?

Finding competent and productive employees is a challenge for all managers. What is special in the case of MPs is the inherently personal relationship between employee and boss. In the public service or in private enterprises employees report to a boss or supervisor who is in fact also an employee in the vast majority of

instances. In a Member's environment there is no such distinction. Employer and "boss" are synonymous. In addition an MP's staff does not reflect on a department, company or product, but on the very person of the parliamentarian. In our opening scenario, Richard's mediocre performance impacted directly on the MP and seriously jeopardized her reputation, influence and, potentially, even votes in the next election.

A well-intentioned staffer, seeking to accelerate the response to information requests or casework from government departments would regularly punctuate his request for help with departmental officials by alleging that his first-term MP was irritated at the slowness of the response. He would assert that his MP was quite "upset at the lack of cooperation shown" by the government contacts,

and would "personally bring this lack of co-operation to the attention of the Minister". This approach did not fit the Member's style and was not in fact directed by him. Rather than impressing departmental workers, the impact of the tactic was to generate increasing irritation that weakened the Member's ability to help constituents cut through red tape. As a consequence, case-work suffered and the MP developed a reputation for being ineffective in helping constituents. The staffer's high-handed and ill-advised approach negatively influenced the departmental response to all requests emanating from the office of this Member.

When first organizing their offices, Members will receive the publication *Organizing Your Ottawa and Constituency Offices* focussing on the administrative considerations of setting up those offices. This article focusses not on those aspects but, more importantly, on the individuals who will actually deliver the goods.

To do that Members of Parliament will want to find employees who understand and have the capacity to represent a parliamentarian's views and priorities convincingly. Professional or job specific competence is but a part of the skills-set needed to be effective and productive in working for an MP. Bear in mind that the

selection process, from establishing the positions required, identifying good potential candidates through the selection of staff has a direct and major impact on how well you will do your job or even be seen to be doing it. The process demands a lot of a newly elected Member's time and concentration. Making the time available is equally crucial when filling a vacant post, because of the effect a new team member can have on an established work team. Even when an excellent employee leaves, in spite of the extra work and the added administrative burden, filling a vacant position always presents an ideal opportunity to re-evaluate how the office team is performing.

An MP was discouraged at losing an extremely capable office manager. To fill the vacancy he pressed his legislative assistant, who very competently handled research and advisory tasks as well as working on computer problems, to accept the position of office manager. The legislative assistant resisted the pressure and insisted on doing a detailed review of office operations. The result was the hiring of a new manager who was both computer-knowledgeable and a first-class administrator. As a result, the legislative assistant had more time to do in depth projects for the Member and the overall performance of the office even improved.

The recruitment stage usually has a dominant effect on the ultimate performance of a Member's personal support team. The importance of doing it right cannot be over emphasised. Recruitment efforts should go beyond just finding a competent person to accomplish a series of tasks, but should also involve consideration of how the candidate will help to create a coherent unit working collectively to promote the Member's goals. BOX A summarizes important elements to keep in mind when looking for staff.

Members have a number of options in the types of employment they can offer their personal staff. They can, for example, choose to offer full-time and long

term employment, casual work or short term contracts. Thinking through the type of employment is crucial because of possible implications. Some Members have been known to resort to a "probationary arrangement" as a sort of test period on the assumption that the Member is free to end the employee's contract for any reason during the probation period. This approach and others of a similar ilk may be tempting but they can be hazardous if the employee is not treated fairly and given sufficient opportunity to improve. Before adopting such an approach, Members should not hesitate to consult Legal Counsel to obtain a clear understanding of the implications?

BOX A: When Looking for New Staff...

- Consider important recommendations and references, but make the choice yours. Ensure that the candidate satisfies your requirements, not anyone else's.
- Take the time to determine both the qualifications and the qualities of the individual you wish to hire. The two cannot be separated in a Member's office environment.
- Decide whether you are seeking political affiliation or competence.

- If a position is vacant, ask your staff what type of individual and skills *they* consider are needed.
- Do some comparison shopping no matter how strongly a candidate is recommended.
- Check references and consult former employers rigorously.
- Resumés give you the information the candidate wants to profile. Take the necessary measures to gather the information *you* want.
- Do serious selection interviews that deal with job related matters, not peripheral ones.
- Invite a second person experienced in staffing and the work of an MP's office to conduct the interview with you.
- At the interview, commit to nothing that is not essential. Give yourself time and flexibility to reflect and adjust.
- When having any doubt whatsoever about a candidate, do not hire.
- Before deciding on the full-time, casual, short-term or other option, make sure you understand exactly the obligations related to the considered option.

WHERE DO I START?

Assuming that the employee group on staff has been carefully selected and has the combination of talent, know-how and drive to go a good job, the challenge is to maintain their interest or, better still, to improve their skills and increase their productivity. What factors influence an employee's ability and willingness to perform well? It can vary widely from the physical surroundings, the availability of adequate office material and technical equipment, the human or social atmosphere of the work place, the reputation and image of the "boss" — Member. Beyond all factors to be taken into account, an MP's most reliable tool

for obtaining strong employee performance is the capacity to motivate. A motivated individual will often surprise with unexpected superior results, as ambitious and energetic Members' employees have shown on many occasions.

Managers generally recognize the importance of motivation for employees, but taking concrete steps to motivate personnel requires time and effort. In the dynamic environment of the political and parliamentary world in which MPs work, the potential to stimulate employees is enhanced if they encourage employees and show genuine interest in how the office team or individuals accomplish their tasks and make tangible contributions.

An MP of long-standing recalls a case that should have been handled quite differently. A junior staff person enjoyed looking after the Member's schedule, but this responsibility was jealously guarded by the more senior administrative staffer who believed it conferred a certain status on him. As it turned out, the many detailed steps involved in organizing a Member's activities actually frustrated the senior staffer and interfered with other responsibilities more important to the MP. As a result, project work was not up to expectations, while the scheduling side suffered from too little attention to detail. In this case, the junior staffer was never asked to look after the travel, meeting and appointment arrangements. The Member accepted the status quo, which was a lesser quality of assistance. A great opportunity was lost to benefit from an employee's special skills and the employee remained frustrated at not being able to use a proven skill. Result: a lose – lose situation.

WHAT IS IT EXACTLY WE AGREED TO?

It is to the advantage of both an MP and his/her staff that duties be well explained and understood. A written job description is the basic tool for this purpose. The aim is not to list exhaustively every aspect of the work required, but rather to circumscribe the main, non-negotiable elements of what has to be done by the incumbent, while leaving

room for complementary duties or different methods of work. Of course, responsibilities specifically attached to a designated position cannot be optional. For example, office correspondence, whether by e-mail or paper, must be tracked and rigorously followed up. Yet, no matter how constraining a job where repetitive or routine tasks dominate, there are creative ways to make it more interesting, e.g. by allowing for different work methods. The challenge in

considering ways to enrich a position is to respect the boundaries of the main tasks and the spirit of the position description. In some unfortunate instances, MPs—as other managers—have been known to

stretch the assigned duties more than marginally and beyond a reasonable interpretation of "related" tasks or responsibilities, only to land themselves into proverbial hot waters.

An MP, not satisfied with how case work was being tracked in the Ottawa office, began to add further duties to a constituency office employee tasked primarily with responsibility for general reception and information at a very modest salary. Incrementally, over a fairly lengthy period of time, the Member asked the riding employee to do more: would she "mind following up on immigration cases?" and next time could she "help those constituents with income tax problems?", and then on to handling passport requests and doing budget reports for the riding office. The employee did not object to doing these tasks per se; they added to the interest of her job and she found it satisfying. However, rather predictably, at the end of an especially busy and taxing week, the constituency employee took a hard look, not just at the heavier workload, but at how the kind of work assigned to her had evolved. Even though she was gaining precious experience and enjoying the work, she was in fact carrying out substantially more important tasks that had less and less to do with the original job description, by now 14-months old. Her question to the Member was straightforward. "Is this situation really fair, and does it still correspond to our initial agreement?"

The difference between related duties not spelled out in the job description but nevertheless bearing a relation to the responsibilities assigned to an employee and substantial changes in the assigned responsibilities can be border-line in some cases. The objective is to have a fair, mutually understood agreement. A job description should be a comfortable jacket, not a straight-jacket, reasonably fitting the functions and the individual. This is a situation where a Member should not hesitate to consult colleagues or human resources experts.

Most often, the common test of reasonableness for a given set of duties is the salary paid to do them.

When the question of motivation is addressed, the first item of discussion to come up is likely to be one of remuneration. In this regard, MPs have considerable latitude in setting the salaries of individual employees. The limits are essentially the position guidelines outlined in the *Manual of Allowances and Services* and the maximum salary allowed for each of those categories. The MP has far more latitude than do managers in the public or private sectors. On the latter case, a panoply of administrative rules or collective agreement clauses leave the manager limited room to manoeuvre. ■

IS THERE MORE TO IT THAN THE MONEY?

The consensus of human resources experts in both business and the public service is that, once the salary rate and benefits are established at a level considered fair, money is far from constituting the top motivator for employees. The mistake, however, is to take this conclusion to the other extreme. Let's face it: words of congratulations, expressions of confidence and thanks count, but pay increases reinforce these gestures and

present a tangible demonstration of appreciation for an employee's efforts and performance. Employees want to feel they are satisfactorily paid. Dissatisfaction with the pay cheque most often stems from a real or perceived absence of relativity. Feelings of the type—"I am working way longer hours than Mary and my work is more important than hers. Why am I paid almost the same salary as she is?"—are regularly at the root of staff discontent.

An MP who was particularly satisfied with the quality of work and the efficiency of an hourly-paid part-time constituency worker, decided to give her a substantial increase. The Member ignored that he had given overall staff responsibility to a senior employee in the Hill office and directly instructed the pay office to process the increase. Other than the communication faux pas in not at least informing or explaining to the office manager why he wanted to grant this rather exceptional pay

raise, the Member did not consider the effect on the remainder of the staff. The raise was not overly generous in dollar terms and, for that reason, remained well within the financial envelope of the Member's Office Budget, but the percentage increase to the part-timer's pay rate happened to be twice the increase allowed full-time staff who were putting in extra hours most of the time without remuneration. Although individual pay levels are technically confidential, the intensity of communication and exchange of formal and informal information in a small, closely integrated office make confidentiality difficult. The regular staff was understandably upset by this situation, and the MP then felt pressured to adjust their pay scales. The salary budget flexibility planned by the office manager disappeared. More seriously, rightly or wrongly, full-time staff did not forget the way the Member acted in the circumstances, with the predictable dampening effect on personnel morale. The Member ultimately recognized the hard lesson learned in this case. The flexibility accorded him regarding pay levels was double-edged and needed to be deftly managed.

Some Members choose not to give individual salary adjustments and incentives and prefer to simply give everyone on staff a similar percentage raise across the board. From a good people management viewpoint, this represents a refusal to reward individual performance and to assume managerial responsibility. Especially to be resisted is rolling back pay levels because the Member's Office Budget is running short. In the first instance, the action confirms that the Member is not willing or able to judge employees' contributions. In the second instance, the MP is making staff pay for budgetary mismanagement that is not their fault.

A good mutual understanding of the job, fair application of working conditions and attention to pay levels are all basic, essential ingredients for creating a positive and productive atmosphere for staff. Important as they are, they will generally not suffice to maintain or stimulate energy and enthusiasm of employees. They need to be strengthened and complemented continuously. When was the last time you took deliberate action to motivate your team members? Do the quick mirror-check in BOX B.

BOX B: WHAT MAKES A GOOD MOTIVATOR? IN THE LAST YEAR HOW OFTEN HAVE YOU...

- Challenged an employee with an important and more complex task?
- Praised your team or an individual employee in a special way?
- Promoted an employee for special or exceptional performance and shared that employee's profile beyond the office?
- Helped your staff to complete a task by working with them or assisting an individual by giving attentive direction to him or her when engaged in a special assignment?
- Delegated real decision power to your staff?
- Consulted the team on organizational issues and created the opportunity for staff in Ottawa and the constituency to review and evaluate how the office is operating?
- Written a congratulatory letter to one of your team members?
- Requested their views and recommendations on issues that concern you?
- Provided a substantial training opportunity?
- Taken the time to get to know a staffer better?

WHAT DO YOU MEAN: YOU WERE NOT AWARE?

Motivating staff and trying as much as possible to treat employees equitably will go a long long way in leading staff to put out personal effort and improve the performance of the team as a whole. The next

major requirement in a well-run MP's office is establishing good communication. The sharing of relevant information is frequently assumed to happen naturally. Given the small numbers of personnel, the technological tools available (e-mail, fax, phones,

frequent contact with the boss) how can there be communication problems? Yet, staff have many times indicated that the pace of day-to-day activities, the respective and separate areas of responsibility of each employee, the demanding schedule of the MP and the different concerns of the constituency and Ottawa offices taken together stand in the way of good communication. The communication function is the platform for building a team approach and reinforcing the support provided to the MP. For organizational effectiveness communication requires conscious effort and consistency. Staff reading this article can probably cite case after case of 'I-was-not-aware-but-should-have-been' situations.

Consultants in personnel management can always count on too little information sharing or the need to improve communication as a standard recommendation when examining staff issues in big or small organizations. It is not different in MPs offices.

Why? It seems that never enough relevant communication takes place even in so-called well-managed shops. Building a dedicated and productive team is not possible without solid intra-office communication. Some communication improvement tips for MP's offices appear in BOX C.

BOX C: Communicate a lot, then... communicate some more!

An MP's level of communication with staff is a sign of trust. Do you trust your staff? To prove it...

- Listen. Listen a lot. It is probably the best form of communication.
- Let staff know what is important to you in the short and long terms. Staff can then align with your direction and with your priorities.
- Information is power. Empower your staff.
- Give all the information you can...and then some. Staff are astute at selecting what counts.
- Encourage (insist even!) employees to share information and ideas. This reinforces the message that each staff member is a key contributor to the effectiveness of the office.
- Practice communicating on an on-going basis. Intermittent communications are a sign of crisis or uneven management. Practice will improve the quality of communication.
- Back up verbal communication with written texts on more significant issues. It underscores the importance and the crucial points of the message.
- If communication with staff really is important, show it. As much as possible, do it yourself rather than through an intermediary. The most convincing form of communication is example.

Do I DESERVE ALL THIS?

Despite their best efforts and extensive experience, there is one law parliamentarians can expect not to amend substantially: the law of averages. Somewhere and at some time a Member will encounter problems of some kind with an employee, notwithstanding the lessons learned, the thoroughness of the work contract and excellent personnel management skills.

For this reason the best way to address people problems is prevention and preparedness: learning and developing defensive human resources managing skills. Compared to solving problems, avoiding problems is much underrated.

In hindsight, the Member involved in the situation that follows might have acted differently.

On meeting a candidate to offer him an administrative position in the constituency office, a Member cautiously proposes a reasonable starting salary. However, he adds that "this is just a starting salary" and that "it is for a steady job". He continues that there is "plenty of flexibility" and he would be surprised if "within a short while" the new employee does not qualify "for a better pay rate and even a promotion" based on the quality of his work. In the course of the employee's first three months this message is reiterated occasionally.

By acting in this manner the Member is to all intents and purposes making a formal commitment conditional on the performance of the employee. It would be quite understandable if the employee interpreted these remarks as firm engagements to increase her pay level or give him a promotion down the road. Members must be prudent not to make such offers unless they are very certain they can and are prepared to deliver. In this case, if the employee can demonstrate that his performance has not been criticized or if he has been told that the quality of his

work is good, the remarks cited, although verbal only, could become a factor in a contract dispute.

In somewhat similar situations, MPs have been known to make promises to potential candidates relating to employment security in an effort to attract individuals who already hold secure employment. If an employee hired in such circumstances is terminated before the stated end date of a contract, the severance amounts could be significantly increased because of this type of commitment. ■

IS "BECAUSE I SAY SO" NOT GOOD ENOUGH?

The large degree of discretion enjoyed by MPs in managing the operation of their offices gives them the opportunity to influence and shape how effective and helpful their

staff can be. This management flexibility can, however, also represent an occupational hazard if discretionary and arbitrary latitude are confused. Indiscriminate use of managerial discretion can make you vulnerable.

The tracking and allocation of annual leave and overtime is a sensitive issue as one Member learned when a staffer, who did not request any compensatory time off despite working many 10 hour days, discovered that a colleague was routinely being compensated with time off for extra hours worked. When this practice was questioned the explanation given related to the colleague's years of experience, personal commitments and previous campaign work — all subjective reasons that had no reasonable link to fair compensation for extra work. The reasons given did not pass the test of equitable treatment.

The practice amounted to a form of favouritism that may have been involuntary or attributable to a lack of attention as to how terms and conditions were applied in the office. Such incidents spur discontent that go beyond the case in question and inevitably undermine staff morale.

much less likely to encounter staff management difficulties if the main elements of fair employment arrangements, obligations and rights on both the employer's and employee's parts are clearly understood and written down and lived by.

In the majority of situations, personnel management problems can be avoided. However, establishing a solid administrative and contractual platform does involve time, effort and paper or bureaucratic processes. And it is not an unconditional guarantee against people problems. However, good administrative housework does minimize the risk of costly misunderstandings or complications. MPs are

Diane Davidson's excellent article in this issue is a 'must reading' guide to establishing a solid basis for good employment relationships, to minimizing the negative consequences of occasional staff relations problems, as well as to protecting the interests of Members. Cases reported in the media have shown all too clearly that personnel problems not correctly or professionally managed can cause an MP serious personal embarrassment. ■

YOU THINK WE HAVE A PROBLEM?

Experience indicates that the more damaging staff relations problems that arise between MPs and their staff usually stem from the interpretation and application of legal or administrative rules set out in the employment framework applying to Members' staff: clauses of a contract are not clear or too limiting; basic employee rights are not

respected; the employee is not meeting expectations; an employee believes terms and conditions are not applied properly; workload and responsibilities are unfairly distributed or remunerated. Similar problems can be encountered when employees misunderstand or misinterpret clauses in a contract or their obligations as set out in the job description.

An energetic administrative assistant in a Member's office understood that his work schedule had been fixed so that he could start early and leave work earlier in order to pick up his son at school. Unexpectedly the party assigned the Member to a special task force, in effect upsetting the Member's own office hours. As a consequence, he required the assistant to stay later to review correspondence in the late afternoon. The employee protested that he had accepted the job strictly on condition that the original work schedule was observed. The Member quickly responded it was an MP's prerogative to set hours of work, despite the short notice and his previous assurance to the contrary at the staffing interview. What had been heretofore a productive relationship began to escalate into a serious confrontation to neither party's advantage. Since the employee's contract made no mention of working hours, the Member insisted that the employee change his work schedule. Fortunately a close fellow MP, on hearing of the problem, suggested that his friend reconsider. An understanding satisfactory to both parties was eventually reached through further intervention by the Member's colleague and the positive working relationship was eventually restored. Had the fellow Member's intervention not occurred, both the employee and the Member would have lost out.

This difficult situation could have been entirely avoided or, at least, addressed differently had the terms and conditions of employment been set out in clear, unequivocal language. This experience strongly underscores, however, the advantage of leaving room for reasonable adjustments. Inserting a clause in the employment contract allowing for re-negotiation or adjustment of conditions of work (such as the work schedule or specific tasks) is a simple approach, which leaves you some options as well as clearly informing the employee of these possibilities and your right to proceed with such modifications.

It will seldom, if ever, be a good idea to unilaterally impose changes or exercise your employer rights without consulting the person affected. Setting out the parameters should difficulties surface will be to your advantage and the employee cannot claim to be surprised. In the event your decision risks inconveniencing or displeasing an employee, anything you can do to attenuate the regrettable impact, such as providing advance notice,

explaining the rationale of your decision, or letting the employee propose a mutually satisfactory solution, may lessen the problem or even lead to suitable arrangements. Unilateral changes imposed by an MP or a representative are impractical and harmful from the perspective of the effective operation of the office as a whole and the Member's interests in particular.

In a word, people problems can be largely pre-empted by doing a manager's basic homework when it comes to staff management. It must be understood that people problems are common in an MP's office where stress, level and scope of activity, personal commitment and responsive service are the order of the day.

Without pressing the panic button when a people problem does appear or is suspected, the fail-safe advice is: "do not be dismissive". These types of difficulties seldom solve themselves, but prompt attention will stop them from being exacerbated. The predictable outcome of avoidance or delay is that the problem is compounded and becomes even messier. ■

A Member feels an employee in his riding office is performing substantially under expectations and decides the employee "has to go". The Member wants to avoid firing the middle-aged employee without cause, but has poor notes relating to the employee's deficiencies in the work. Other than passing a rare comment on the need to verify outgoing correspondence more attentively or that filing does not seem up to date, no serious discussion has occurred relating to the employee's performance. The Member wants to bring the employee to leave voluntarily. In an effort to achieve this goal, he assigns duties the employee does not like, makes more and more unfavourable remarks on her work and telephone manners in front of other staff or visitors, adding comments like "I am thinking about putting a younger, more energetic face in the constituency office".

WELL I DID SOMETHING ABOUT IT, DIDN'T I?

Addressing a people problem unprofessionally is begging for trouble.

The real life scenario above encapsulates an approach frequently taken to deal with staff whose conduct or quality of work does not meet the MP's standards. Sometimes the cause may just be a plain conflict of personality. Rather than dealing with the problem

itself, a roundabout way is sought to make the problem go away. What are the odds of a satisfactory denouement in this case? From a legal aspect, such tactics can amount to constructive dismissal, a form of harassment or discrimination. They certainly are not fair employment practices and, if termination eventually enters the picture, monetary costs would be increased significantly as compensation for what the employee was made to experience. ■

A Member decides "this is too much" after experiencing major embarrassment due to mistakes made in the organization of a meeting with an important advocacy group from his riding (incomplete list of participants, inaccurate titles, confusion as to time and an inadequately prepared meeting room). The employee, who is clearly responsible, is known to be defensive about his work, as well as impatient and easily angered when the quality of his work is questioned. On returning to his office, the Member insists that two security guards whom he meets in the hallway, accompany him to serve "as witnesses". He calls in the employee concerned into his office, along with the two guards, whom he instructs "to just sit down and listen". On the assumption the employee is entirely at fault, he then loudly describes what he terms "the total mess", sarcastically thanks the staffer "for the great help", and asks him to gather all his personal effects and leave for good accompanied by the security staff.

COULD I HAVE A WORD WITH YOU?

Meetings with individual employees on a matter relating to performance or behaviour will often determine whether a situation can be corrected or solved. Such meetings demand all the skill and concentration the manager can muster. They are

equally difficult for the employee who usually realises that things are not right. Consider the tips in BOX D to make "one on ones" as productive and helpful as possible for both the Member and the individual employee. Based on those tips, how do you rate the Member's actions in the situation just described?

BOX D: A checklist for your 'one-on-one' meeting...

- Prepare what you want to say to the employee ahead of time.
- If you are angry, better to wait for your cool to return.
- Insist on the problem, not the person.
- Remember you may have it wrong.
- Keep your perspective. How serious is the problem?
- Avoid pettiness or vengeful measures. Take the high road.
- Ask the employee how she or he would solve the problem.
- Respect the individual at all times.
- Do not revert to direct or indirect threats.
- Document your interventions and meetings with the employee, especially the employee's commitment to "change".

HOW DO I DEAL WITH ALL THIS?

In spite of significant differences in each and every case, there are general rules or proven approaches for managing people problems. Key steps in handling sub-

standard performance or unacceptable behaviour are suggested in BOX E (next page). However, the most important lesson learned from experience is that a Member has to acknowledge the problem and act on

it. Do not be dismissive. Ask for help, or at the very least, for advice from a Human Resources' staff relations officer or, the House of Commons Legal Counsel, especially when you sense or wish to gage potential legal implications.

Small or major differences with employees have the potential of undermining a Member's success in building a solid team and in motivating employees to peak performance. Common sense dictates that the efforts made in maintaining positive staff relations and in preventing, lessening or solving problems pay a high return.

BOX E: Oh Oh! What do I do now?

When faced with a people problem, use the following questions as a quick checklist to help you move towards a solution...

- What is potentially the best way to approach the problem?
- Do I have the full picture? What is the best way to get it?
- Who could help me through this?...A Human Resources' staff relations officer or Legal Counsel?
- How can I or someone else help the employee?
- What exactly is the problem? — Discipline, behaviour, performance, illness?
- Has the employee had a chance to explain her or his point of view or difficulty?
- Does the employee understand my point of view, expectations, conditions and consequences relating to the situation?
- Is the employee willing to contribute to a solution?
- Will the measures I am considering lead to a solution?

SO WHAT'S REALLY IN IT FOR ME?

Would any MP doubt that there is a marked positive correlation between the quality of staff work and his or her ability to deliver the goods as a representative, a parliamentarian and a party member? Likely not. Conversely, the quality and productivity of an MP's team depends on how seriously he or she invests in managing personal staff. People management in any employment environment today is a formidable challenge by any measure and no article can aspire to cover adequately the essential principles and practices of effective people management.

These few lines are meant to focus on key points and lessons learned drawn from actual experience that might be helpful to Members when first setting up their offices or wishing to re-evaluate, re-adjust or improve personal staff management. Whether Members agree, totally, partly, or not at all with the suggested approaches is secondary. The objective is to encourage you to think about how best to handle your staff so they can support you in the effective discharge of your duties as a parliamentarian and constituency representative...and probably in lowering your level of stress. ■

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EMPLOYMENT LAW ISSUES AFFECTING THE MEMBER OF THE HOUSE OF COMMONS AS EMPLOYER

by Diane Davidson

Individual Members are the employers of their staff in their Ottawa and constituency offices. This is consistent with the legal independence each Member possesses in the conduct of his or her parliamentary functions without interference or obstruction of any kind. As a separate employer¹, each Member has the authority to recruit, determine the duties to be performed by staff, their hours of work and, within the basic terms and conditions of employment established by the Board of Internal Economy of the House of Commons, to set salaries and job classification. This general introduction to the topic of employment law in a parliamentary context will focus on often-ignored, but important legal responsibilities of Members as employers for which they could be held personally liable.

What then is the legal framework, which governs the relationship of Members of the House of Commons with their personal staff?

There exists no federal statute² or other special legislative regime governing the employment relationship between a Member and his or her staff. However, the absence of such a federal statutory framework does not necessarily preclude the application of the common law rules respecting master and servant and contracts of employment. The Canadian constitutional law regime provides that the province in which the primary duties are performed by staff Members establishes such principles of employment law.

Even though it may be said that generally the law of employment is similar across the country this brief analysis will focus on the law of Ontario which governs staff working for Members on Parliament Hill.

THE EMPLOYMENT CONTRACT

Employment is a contract. At its simplest, a person agrees to provide services to an employer in return for compensation. However, what that compensation is, how the contract can be terminated and the consequences of the termination are often unclear, and if left unclarified, can result in costly and protracted litigation.

Having a **written contract** is the best way to protect an employer. It defines the employment relationship by establishing a clear framework outlining the obligations and responsibilities of each party. In the absence of a written contract the Courts would reasonably imply terms that could often exceed statutory minimums, particularly in the area of termination benefits.

¹ The degree of control exercised by Members over the hiring and the conditions of employment of staff would support the legal determination that the Member is the employer of his or her staff. The criteria for the legal determination of an employment relationship were established by the Law Lords of the Privy Council in the leading case in this area of the law: *Montreal v. Montreal Locomotive Works Limited et. al* (1947) 1 D.L.R. 161, at 169.

² The Parliamentary Employment and Staff Relations Act which grants collective bargaining rights to Hill employees expressly excludes from its application the staff of the Members of the House of Commons

In preparing employment contracts, there are **minimum standards** established by the various provincial jurisdictions. Contracts of employment must meet or exceed these minimum standards. Where a contract provides for less than the standards, courts may find that the entire contract is void and imply reasonable terms, which may far exceed the minimum. They will not just raise the provisions of the contract to the minimum standard.

It is important to make sure that the contract is **signed prior to the employee beginning to perform his or her duties**. When an employee begins to work with the expectation that he or she will be paid there is a contract. Presenting them with a document after that time is considered to be a different contract legally requiring the employee to make a different commitment (continued employment is not enough). This failure to give consideration for the new contract can result in a new contract being considered void.

Since Members will want to rely on the written contract, and the terms and conditions of employment contained in the written agreement, care must be taken to make **no commitments beyond those contained in the written contract and the prescribed general terms established by the Board of Internal Economy of the House of Commons**. If there are any commitments made which fall outside of the written agreement, Members should write them in. If, after the person is hired, commitments are made, Members should put them in writing and have the employee sign that they have received and agree to the contract. Much litigation has taken place over what was purportedly promised but was not included in the written documents.

Contracts of employment should set out:

Type of Position

The contract should make reference to the position for which the employee is being hired, and some of the key duties, which define the position. This can be accomplished by attaching a definition, or job description to the contract. While the job description should be clear enough to identify the position and some of its key attributes, the description should not be too precise, or exhaustive. There should be some indication in the description that the person will be

required to perform such other and related duties as may be assigned from time to time.

There are decisions of the courts, which have found that if the duties performed are different from those outlined in the contract the contract no longer applies. This should be remembered when an employee is appointed to a new position. New positions require new, or amended, employment contracts.

Term of the Agreement

The period of the agreement is an important part in an employment contract. The termination of regular employees as opposed to term employees imposes different remedies at termination.

Since you are elected for a certain period of time you should arrange your employment contracts accordingly so as to not exceed your term in office. Avoid making promises of indefinite employment because any verbal representations you might make may be binding during the employment relationship. Such commitments would be inconsistent with a Member's tenure of office, which has unique consequences for employees. It is recommended that the contract of employment draw the employee's attention to the provisions, which relate to the termination of employment at the termination of the Member's term.

Many employees are hired only for particular terms or projects. If this is the case, the term should be incorporated into an employment contract. It should be made clear that employment will then terminate at the end of the term, or such earlier time on short notice. Failure to insert such a clause could expose you to liability for the entire period remaining in the Agreement.

Terms and Conditions of Employment

The Board of Internal Economy sets certain general terms and conditions of employment which applies to all employees working for Members. These conditions generally meet the minimum standards for employment in the various provinces. It would be prudent if the contract made specific reference to these terms and conditions and incorporated them into the contract by reference. Members are also cautioned to apply the terms contained in the *Members' Manual of Allowances and Services (MAS)* in

accordance with the minimum employment standards in the jurisdiction in which the work is to be performed. For example, when granting time off in lieu of overtime, in some jurisdictions the time off must equal one and one-half the overtime worked. If Members have any doubts they should be raised with House of Commons Legal Services.

Changes to Circumstances

The contract should allow for certain amendments to take place, without the entire contract becoming void. Since fundamental changes to the terms and conditions of employment could necessitate a new contract, or justify a claim for constructive dismissal, provision for amendment to the contract should be provided for:

A clause could be inserted which indicates that the attached terms and conditions of employment established by the Board of Internal Economy (the chapter of the *MAS*) shall apply as amended from time to time.

Where Members introduce changes which are quite significant, such as a lower salary, fundamental changes to the duties to be performed, or appointment to a different position by way of promotion, these changes should be agreed to by the employee. The changes should be put in writing and signed by both the Member and the employee.

OBLIGATIONS IN THE COURSE OF EMPLOYMENT

Throughout the employment relationship, Members are responsible for performing their obligations as employer set out in employment contracts, and in the applicable employment law.

It is a Member's responsibility to ensure that actions taken do not directly or indirectly violate the provisions of human rights law. For instance failure to be aware of or to take action against office employees who discriminate against other staff members can result in the Member being held liable for the actions of such employees.

Where there are perceived deficiencies or concerns during the course of employment, steps should be taken to deal with such situations. If the circumstances are possibly related to a human rights issue or absenteeism, attempts to resolve the

concerns, or accommodate the circumstances of the employee are important.

Corrective Measures

During the course of employment, Members may need to consider situations, which will require that they deal with unacceptable actions of employees, or circumstances, which appear to be impeding work. Different circumstances allow for different options. Willful conduct allows for different consequences than does innocent conduct. Before deciding what response is warranted, it is important to fully understand the situation by gathering information, and by offering employees the opportunity to give their version of events or explanations. For greater assurance the Member may also wish to seek advice.

Disciplinary Situations

Discipline, up to and including termination, must be based on actions or circumstances, which are within the control of the employee.

Where certain behaviour or circumstances warrant some form of punishment, and either the grounds for just cause for termination would not be met or termination of employment is not being contemplated, Members may discipline employees by suspending them from work without pay. If such action is taken you should carefully document the circumstances and provide the employee with notice in writing of the reasons for your actions.

If lesser forms of discipline do not correct the behaviour in question, employees should be warned that a more serious penalty could be imposed for future misconduct. Progressive discipline in such circumstances would allow for the termination of employment for incidents which in and of themselves would not constitute a basis for just cause but, taken in the context of patterns of behaviour and progressive discipline would constitute cause.

Non-Disciplinary Situations versus Disciplinary Situations

There are certain situations, which require special attention and may require seeking advice before you make any decisions.

The most common areas of difficulty arise in cases of absenteeism, drug or alcohol dependency, and illness or injury. In all areas there is a risk that actions taken

to terminate employment based on such circumstances violate the employee's human rights.

While numerous absences for numerous reasons, such as sleeping in may provide a basis for termination for employment based on unreliability, where an employee is absent because of an ongoing or chronic condition, such as heart disease, cancer, depression, HIV, etc. which results in periodic absences, termination of employment could be seen as a form of discrimination. Similarly, where the absences result either directly or indirectly from alcohol or drug dependency, a human rights complaint could follow termination.

Where an employee is injured and absent from work termination could also violate human rights protections. If an injured employee or an employee with a medical condition desires to return to work, the employer must take the steps necessary to reasonably accommodate the worker. An employer is not entitled to know the precise illness suffered by an employee, or their precise medical condition. Such requests of employees or their doctors would constitute a violation of human rights. An employer is, however, entitled to know whether an employee is capable of performing the duties and functions of their position. Therefore, an employer may provide a medical practitioner with a job description and ask the doctor whether the employee is capable of performing the duties; if not, which duties cannot be met, and whether steps can be taken to accommodate limitations. And, if the employee is being treated, when the employee would be able to return to work to perform all or some (modified) duties.

Where absences are frequent, or prolonged, termination may be warranted if the illness or injury can not be accommodated, and the employee is no longer capable of performing the essential duties of his or her position. However, caution is advised.

Terminating the employment of an employee for being pregnant or requesting maternity leave is a form of discrimination. As well, action taken in response to medical conditions related to pregnancy, such as more frequent absences, lateness or requests for modified duties, will constitute discrimination. In addition to human rights violations, most provinces and federal employment standards legislation guarantee a person on maternity leave the right to

return to her previous position, or a comparable position, following maternity leave.

Besides human rights concerns, you should be cautious in terminating the employment of employees who have been injured at work and may have applied for workers compensation. In such circumstances employers may not dismiss an employee on workers compensation and may have a duty to reinstate the employee in some form of modified work. Again, this would be a situation where legal advice should be sought.

TERMINATION

The bulk of legal involvement in the employment relationship normally occurs on termination of employment. Much of the confrontation is over two issues: whether there was just cause for terminating the employment relationship; and, where there is no just cause for termination, the amount of compensation to which the employee is entitled.

When an employer terminates the employment of an employee the employer is deciding to end the contract. The question is whether there is just cause for terminating the contract or whether the employer must pay the employee termination pay, or wrongful dismissal damages, for prematurely ending the contract.

Just Cause

Where an employer has just cause for terminating the employment of an employee the employee is not entitled to any compensation. While there is no closed list of what constitutes just cause, there are few general considerations. Since the employment relationship is fundamentally one of trust, the major question is whether the employee has done something to breach trust e.g. theft, breach of confidential information, acting in a manner inconsistent with the parliamentary interests of the employer, insubordination, willful disruption of the work place, or engaging in improper conduct such as harassment of fellow employees. A second possible basis for a just cause termination, is the failure to perform a fundamental condition of the employment contract. Finally, where the employee has been warned about particular behaviour, such as lateness, poor performance, or absenteeism, has been given a reasonable opportunity to correct their behaviour, and has failed to correct the problem, there could be just cause to terminate employment.

Determining that a degree of incompatibility exists does not amount to just cause for termination, unless there are specific actions of the employee which would meet the test of just cause.

Off duty conduct or conduct away from the workplace which does not impair the employee's ability to perform his or her duties, or which is not related to the job, does not constitute just cause. Possible embarrassment of the employer is not enough to establish just cause.

Just cause is often difficult to establish and failure to establish just cause at a trial could result in increased wrongful dismissal damages and court costs.

Termination Without Cause

An employer may terminate employment at any time by paying termination pay in accordance with the employment contract.

Where there is no contract the employer will have to provide reasonable notice of termination or pay wrongful dismissal damages in lieu of notice.

Employers do not have to give reasons for the termination of employment. Of course, where no reason is given, the employer has accepted that there is no just cause for the termination, with the consequence that termination pay will have to be paid.

Since the employment relationship is contractual in nature, the parties are free to include contractual provisions that deal with termination of employment. As long as the provisions meet or exceed the minimum required by employment standards laws the provisions will set out the employer's obligations. Where there are no contractual provisions that set out the employer's obligations on termination the courts will imply a term in the contract which requires the employer to provide reasonable notice of the termination of employment or pay damages in lieu of notice, often referred to as damages for wrongful dismissal. The amount of notice normally exceeds the

statutory minimum. While each case is based on its own facts and factors, the courts usually base their decisions on such things as the age of the employee, the length of service, the availability of similar employment and the manner of termination.

Constructive Dismissal

Employment is a contract for the performance of particular work with particular terms and conditions of employment. Where there are fundamental changes in the work relationship such as the nature of the work to be performed, the reporting relationships, salary, hours of work and responsibility level, the employee may feel that the original contract has been breached by the employer and consider that she or he has been dismissed from the job. If the courts agree that there has been such a fundamental change the employer will be liable for the same level of damages as if she or he had terminated the employment without just cause.

In order to avoid such consequences, as much notice as possible should be given to employees prior to any changes, or where notice is not possible, obtain the employee's consent. Attempts should be made to enter into a new contract for any new position. To deal with the possible termination pay issues, a bridging provision which would have the employee receive their former salary for a period equal to the termination period, before being reduced to the new salary (assuming the new circumstances pay less) could resolve a number of issues.

CONCLUSION

This has been an overview of certain legal considerations to assist Members in the performance of their responsibilities as employers of their staff. It is not intended as a substitute for seeking professional advice in a particular case either from Human Resources specialists or from Legal Counsel, especially in termination of employment situations or in others with potential legal implications. ■

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