

The Changing Work Place Review

Sept 2015

A discussion paper submitted by

APCC (Association of Professional Computer Consultants)

Introduction

The Ministry of Labour recently conducted an outreach to the staffing sector under the leadership of.

- C. Michale Mitchel and
- The Honourable John C. Murray

The APCC – Association of Professional Computer Consultants – Canada represents more than 8,000 Knowledge Workers within the Canadian Economy, with the majority being located in Ontario. While the opportunity for a formal submission is not possible due to oversight on our part, it is hoped that there might be merit in the introduction of our Association and the provision of background information on the Knowledge Workers who make up our membership and the critical role that Knowledge Workers fulfill within Canada's economy.

In doing so, our goal is to:

1. Provide comment on the changing work place as it unfolds in the 21st century
2. Introduce two groups which have been termed “ Knowledge Workers” and “Service Providers”, even though both groups provide their services on a contract basis and
3. Provide insights as to possible motivations for clients and individuals alike to enter into contract relationships.

Your consideration of this submission is appreciated.

About the APCC (Association of Professional Computer Consultants)

The APCC (www.apconline.com) is an association of individuals commonly characterized as being Knowledge Workers, who provide their services under contract to clients across Canada, the majority of which are clients based in Ontario. Our membership is in excess of 8,000 individuals.

Members provide their services through the following structures:

- Corporations (where they own the a majority of shares),
- Sole Proprietorships (individuals operating as a registered business), and
- Partnerships and
- Temporary Employees.

Member income is on average is in excess of \$100,000 per annum. As such our members are in an entirely different strata from temporary employees who might otherwise be termed by the media as being engaged in “precarious employment”.

The APCC has two lines of benefits for its membership:

- **Professional Guidance** The APCC posts timely and appropriate information on government policies, legislation and initiatives at all levels. A core objective is the education of members as to best practices for the operation and management of their businesses so that they are 100% compliant with all government, employment and tax obligations.

- **Provide Benefit Programs** designed for self employed individuals such as contractors, example programs include:
 - IPP Pension Plans
 - Self funded Health Care Programs such as those offered through Benecaid
 - Errors and Omissions, insurance programs
 - CGL Insurance Programs
 - Automotive Insurance Programs.

Knowledge Workers

Peter Drucker has been described as "the founder of modern management". He was also a leader in the development of management education. He invented the concept known as "management by objectives".

He was also the first one to coin the term "Knowledge Worker" in his book *The Landmark of Tomorrow* (1959). In doing so he predicted that labourers would rely more on their brains than their hands and that the Knowledge Worker would become the main cog in a network of information-based industries, such as Information Technology. He argues that knowledge has become the central, key resource that knows no geography. He described a Knowledge Worker as one who works primarily with information.

In his book, Drucker broadly segmented the work force into Knowledge Workers and Service Providers. In doing so he went back in time and referenced the concept of the Master Servant relationship which is commonly referenced in Common Law which has been with us through the centuries:

- Royalty / Peasant
- Industrialist / Plant Worker
- Boss / Employee

He noted that in each relationship the individual at the lower level was commonly struggling to get out of grinding poverty.

In early centuries they did so by going into business of some form. As education became available to a few and then the masses, people used education to escape their grinding poverty. In the age of industrialization workers formed unions. Now in the 21st century, specialization in technology is providing the path to independence with Drucker pointing out that people are becoming loyal to their technology as opposed to the corporation that engages their services.

As we progress into the 21st century Drucker's predictions regarding loyalty are being validated as labour engagement of Knowledge Workers continues its transition from one of full time employment to one of engagement under contract. To an increasing extent reputable organizations are making predictions of increasing percentages of Knowledge Workers being engaged under contract as opposed to as Full Time Employees.

Of additional significance is the ratio between Knowledge Workers and Service Provider jobs that is suggested to exist. Steve Jobs addressed this point when he was criticized for manufacturing Apple's IPOD in China. He responded by noting that all the research was done in the US by a team of more than 100,000 Knowledge Workers and for each Knowledge Worker's job, 5 Service Jobs were created. In other words his development effort created 500,000 Service Worker jobs. By comparison the suggested ratio of Service Provider jobs to jobs in the manufacturing sector is 1.2 to 1.

Knowledge Workers Motivations to work under Contract

It is suggested that a number of guiding principles apply to the engagement of Knowledge Workers under contract:

1. **Security** – Knowledge Workers engaged under contract enjoy greater security than Knowledge Workers engaged a Full Time Employees. There is a saying within the contract industry that your security is what you have in your head (i.e. knowledge and experience) and what you have in your bank account (a nest egg of cash). Knowledge Workers who work on contract are better positioned to have both.
2. **Specialization** - Technology is changing at an ever increasing rate of change. Client applications and the technology used to build them are increasingly found to be outdated in a surprisingly short period of time. Consequently for Knowledge Workers there is a strong argument that in order to remain current with your chosen technology, you must continually move from client project to client project . Contracting provides the optimum vehicle for such movement.
3. **Price** – We live in a global market with services being available through low cost global service providers. If contractors are not readily available for a contract in the local market, clients will have little choice other than to take their work off shore, denying the experience to Canadian Knowledge Workers and their taxable income to Canada's economy.
4. **Client corporation business goals:** Client needs are typically finite and subject to financial scrutiny. In brief, clients are looking for the right person, with the right skills, for the right duration, at the right price. The engagement of Knowledge Worker is the perfect solution.

In a **contract engagement**, when that a Knowledge Worker offers his/her skills on the open market they commonly find themselves working on projects where the technology is on the leading edge. They move from project to project commonly improving their skills. With each new assignment they gain experience which may well be valued by a future client. They learn the state of the art features and functionality in their chosen area of specialization. The result is increased security and value.

By comparison in **conventional employment**, where a Knowledge Worker is the employee of the corporation, the presumption is that the Knowledge Worker has some degree of security. This is a myth carried over from the 20th century. The Knowledge Worker's security is clearly tied to the corporation. However when (if) that corporation disappears, as the result of a merger, an acquisition, or possibly a cost reduction initiative, that security is lost. If their prior employer had them working on legacy technology, they could well find themselves in the job market competing at a disadvantage to Knowledge Workers with current skills as a result of their contract assignments.

In summary contractors are attracted to contractor employment by:

1. The premium paid for their services under contract at income levels at 40% to 50% above what they would receive as an employee or more
2. Control over that how that excess income, received today as opposed to sometime in the future can be applied.
3. Control over where they work (physical location, type of work, suitability to their career path)
4. Control over what the work on
5. The ability to realize the benefits of being s small business, shelter and defer income tax
6. Independence, entrepreneurship and the ability to grow their own company
7. Security through Knowledge and cash

Client Motivations to engage labour under Contract

Corporations of all sizes find themselves competing in a global economy as barriers of physical separation by geography are minimized through technology.

Within those corporations there is an ever present demand for the specialized services provided by Knowledge Workers across a range of disciplines.

The cost of the services required by the corporation is a fundamental consideration within the profit motive which itself is fundamental to

The level of education, experience and productivity of off shore resources continues to improve at impressive rates.

Within this context of change and competition, it is suggested that client corporations want

1. The right person;
2. doing the right job;
3. for the right duration; and
4. at the right price.

While Canadian corporations are attracted by the low hourly rates of off shore resources the basic precepts, listed above continue to apply to some extent. Additional motivations which may apply include:

5. Verbal communication skills
6. Face to face communication
7. Cultural fit
8. Local availability and
9. Productivity.

As market demand for Knowledge Workers increases:

- the capability and saleability of our existing work force of Knowledge Workers, combined with
- the ability of our educational system to produce knowledge workers and
- our government's willingness to embrace Knowledge Workers from off shore as new Canadians and
- the extent to which our tax system recognized and accommodates workers in the 21st century economy

will all become factors in determining the direction of Canadian business to remain on shore or to go off-shore.

Contract Labour within the Canadian Economy

Contract labour plays a significant role within the Canadian economy in general and Ontario's economy in particular:

1. Enables the market to optimize the allocation of scarce resources to client requirements.
2. Is supportive of an entrepreneurial spirit which is vital to the growth and prosperity of Canada's economy.
3. Makes available to clients a cost saving strategy which is an alternate to sending jobs off shore
4. Provides companies a low risk strategy for the employment of individuals under contract in advance of the more costly offer of full time employment. This approach is termed try before you buy and commonly applies to:
 - a. New graduates
 - b. Experienced foreign Knowledge Workers workers who are new to Canada's job market.
 - i. **Note**
 1. That the federal government foreign worker program appears to have the impact of actually discouraging corporations from employing foreign workers despite their qualifications.
 2. Quebec is the only province known to have an outreach program which incents Quebec based corporations to participate in a Provincial programs to recruit foreign worker and bring them to Quebec.
5. Allows Knowledge Workers to pursue innovative and entrepreneurial opportunities which capitalize upon their knowledge and experience
6. Provides a downsizing strategy to clients to capitalize upon replacement of retiring individuals with contract labour in advance of the down-sizing so that when the downsizing occurs no employee is negatively impacted and the contract is simply terminated according to the contract's terms.
7. Provides a cost effective alternative to going off shore for Knowledge Worker expertise, which retains the costs of services within Canada's economy
8. Funds paid to Knowledge Workers employees in Canada are taxed in Canada and flow through the Canadian economy
9. Knowledge Workers engaged under contract commonly charge clients a premium of 40% or more above what a client would pay a Knowledge worker engaged on a full time employee basis. This results in increased Tax Revenue for the government:
 - a. An employee's compensation package reflects benefits which will be paid out in future years.
 - b. Conversely Knowledge Workers engaged on contract earn a premium to the rate paid top employees and all funds, including the premium are paid out in the current tax year
 - c. Basic math suggests that a tax rate applied against a larger income numbers results in more taxes for the government at all levels
 - d. GST / HST are additional taxes remitted by contractors but not by employees.

Industry Concerns

A market currently exists and enables the effective and efficient engagement of Knowledge Workers under contract to the benefit of Canadian corporations and the Canadian economy. However there are a number of concerns:

1. Protect workers at the lower wage rates

Under Common Law, one has to determine if a worker is in :

- A contract of services relationship
OR
- A contract for service relationship

In order to define the employer's responsibilities as to CPP / EI and Tax.

A prime purpose of EI is to provide income continuity for employees. However where a matter is in dispute the employee does not receive the benefit of the program until the dispute is resolved.

Where there is a dispute as to the employee's rights and the employer's obligations the decisions can take an unreasonably long period of time, sometimes up to a year or more. In such instances, workers lack the knowledge, expertise and resources to dispute an employer's decision not to treat them as being insurable and pensionable. Concern over termination or withdrawal of a job offer is an added concern. Likewise workers at lower pay rates lack the luxury of time to pursue the matter through the various levels of appeals and into the courts. The adage that justice delayed is justice denied is applicable.

It is suggested that there needs to be a hard rule which is not subject to interpretation or avoidance. More specifically it is suggested that where a worker is engaged at a rate equal to 2 times the minimum wage that the worker and is deemed to be both insurable and pensionable, with whom-ever is paying the worker having the responsibilities of the employer, including other employer responsibilities such as Vacation Pay, Holiday Pay along with the withholding of taxes.

2. Common Law

Employment in the 21st century is moving away from a number of traditional structures.

There are a number of issues such as the concept of:

- The master /i servant relationship or
- An independent / dependant contractor relationship.

which require discussion and investigation.

3. Absence of any formal ongoing industry / government dialogue

- a. There is a large and growing need for an ongoing dialogue between industry representatives and the Provincial government

- b. Core topics would be taxation and employment standards.

4. Knowledge Workers

The current population of Knowledge Workers is finite. Strategies and programs designed to attract Knowledge Workers to Ontario as well as to create Knowledge Workers within Ontario need to be considered and advanced.

In the absence of such programs, clients may find themselves forced to expand their already sizeable commitment to off shore resources in order to satisfy their corporation's needs. In doing so they will deny Ontario tax revenues and also deny Ontario's youth job opportunities.

5. Government Resistance.

In January 2013, the Federal Government introduced legislation which targeted corporations which were determined to be Personal Services Businesses (PSB's). Their motivation for doing so was a perceived tax inequality benefiting individuals who provided services through their own corporation as opposed to people who were employees and subject to income tax act. The rationale presented at that time compared income tax rates to small business tax rates. This simplified comparison was flawed in that it ignored the reality that dividend tax rates were additional and would be applied to any funds taken out of the corporation. The government's attempted suppression needs to be reconsidered

Comment

Knowledge Workers provide a vital role within Canada's economy for the optimization of scarce resources in support of economic growth and prosperity. Knowledge Workers are fast emerging as Canada's Natural Renewable Resource.

- Canada is recognized as desirable place to emigrate to
- shortages of knowledge worker in the US is resulting in US organizations establishing development presences in Canada
- there could be literally an unlimited number of Knowledge Workers who would come to Canada if Canada's foreign Worker laws were less punitive to foreign workers and Canadian corporations alike.
- such workers could reasonably be engaged by Canadian corporations under strategies which could reward companies that took the risk of engaging foreign workers and also provide employment guarantees to mitigate unemployment risk to the government.

Governments at all levels need to recognize the changing work place that exists in the 21st century and explore strategies to capitalize upon the changes with a view to enhancing the opportunities available through labour engagement on a contract basis while introducing safe guards which protect the vulnerable in the work place. Dialogue with industry is fundamental to any such understanding.

Workers at lower salary levels need the protection of hard rules which stipulate the obligations of the employer as it relates to Canada's social programs (CPP and EI) as well as ESA legislation.