

DFAIT: CBS vs. LES

Overview

By John Kruithof

The Department of Foreign Affairs and International Trade (DFAIT) can justifiably pride itself on carrying out foreign policies reflecting the mood of Canadian people. Because it has no record of having compromised public perception of what ought to be done, DFAIT may consider itself above reproach. In one aspect that may be true, but in another DFAIT is highly suspect. That aspect is the employment policy DFAIT practices at Canadian missions abroad.

When one thinks of Canada's Foreign Service, the role of diplomats comes immediately to mind. Less well known, if at all, is the complex array of human resources supporting those diplomats. It is DFAIT's administrative management policy of this lesser known resource that raises the question of whether the Department is in tune with Canadian thinking. My contention is that it is not.

Staff at Canadian missions is composed of two main elements: Canada-based staff (CBS) and locally-engaged staff (LES). There may be a sprinkling of contracted out employment, at a level not yet registering on the scale. Canada-based staff, as the term implies, covers full-time Departmental employees with Canadian citizenship, hired in Canada, who then rotate, on a career basis, between Ottawa headquarters and missions abroad. Locally-engaged staff (LES), mostly nationals of the country where the mission is located, is recruited by Canadian embassies on the authority of headquarters. The LES positions are fixed to that mission: non-rotational.

Prior to the 1990s, DFAIT was quite specific in what it was looking for in LES: unique linguistic, cultural and local talent not available, or not readily available, from Canada. By choice, in staffing its missions, DFAIT accorded Canadians (CBS) priority, with unique requirements met by LES. That time period marks DFAIT at its best: highly motivated, proud, Canadians serving their country abroad, ably assisted by LES proudly employing their unique talents.

From the 1990s and onwards, this successful marriage of CBS and LES was marred by the introduction of a mercenary element: money. No longer were the unique talents of LES the main requisite for being employed by DFAIT, but whether it was cheaper. DFAIT, a Canadian employer, began ditching Canadian jobs in order to avail itself to cheaper, foreign labour. Positions for which qualified Canadian were available were made LES. DFAIT turned a deaf ear to appeals that Canadians be employed instead. A once-proud Canadian institution turned multi-national. No wonder DFAIT lost its allure.

This paper is prepared mainly for those familiar with Foreign Service rotational life. During the timeframe of this report, the Department's name changed a few times. Its present form is used throughout.

DFAIT – CBS vs. LES

By John Kruithof

1993 Department of Foreign Affairs and International Trade mission statement:

*** OUR MISSION ***

TO PORTRAY, PROMOTE AND DEFEND THE INTERESTS OF CANADA
AND THE COMMON VALUES OF CANADIANS IN THE WORLD
TO BRING AWARENESS AND UNDERSTANDING OF THE WORLD TO CANADIANS
TO SERVE CANADIANS AT HOME AND ABROAD

Nowadays (2009), many travelers complain that Canada's Foreign Service is not serving Canadians very well. This should come as no surprise to those who have worked, or are working, in the Department. When Canadians call on embassies and consulates for assistance, quite often the sparse Canadian representation there can not respond in timely fashion. The solution is to have a stronger contingent of Canada-based staff (CBS) posted to missions abroad.

At its missions overseas, the Department of Foreign Affairs and International Trade (DFAIT) relies too heavily on non-Canadian locally-engaged staff (LES), who through no fault of their own often have insufficient knowledge of Canada, not having lived here to experience the uniquely Canadian values that shape our culture. Achieving the right balance of CBS and LES employees is an ongoing concern at DFAIT.

During my 35-year career with DFAIT, I involved myself, to the extent possible, defining problems and suggesting solutions. In the case of CBS vs. LES, things started earnestly in 1992, during my posting to Washington. At the time, I was also Alternate Vice-President, Outside Canada, National Component, Public Service Alliance of Canada (PSAC).

PSAC Local Z-0252 represented CBS at the Washington embassy. On November 24, 1992, I drew up this paper for presentation at the Local meeting scheduled for the next day:

Washington, D.C.
November 24, 1992

LOCALLY-ENGAGED STAFF (LES) POSITIONS

TALKING POINTS FOR NOVEMBER 25TH MEETING OF LOCAL Z-0252:

External Affairs is aggressively reducing the number of Canada-based support staff positions at its missions abroad. It does this by:

- a) implementing technological change;
- b) hiring locally engaged staff (LES); and
- c) contracting out remaining support services.

PSAC members are upset about this. They question External's employment policy. Is it moral? Is it legal? Why is the Department deliberately depriving qualified Canadians of employment opportunities?

Is it moral for a government department to hire foreign workers just because they are cheaper? External Affairs is prohibited by immigration laws from bringing in foreign workers to Ottawa to replace Canadians capable of doing the required work there. Shouldn't the same restriction apply to Canadian "territories" abroad, i.e. its diplomatic missions?

The PSAC must promote an employment policy visibly more pro-Canadian than External's effort.

Local members are urged to consider the threat to their employment overseas and effectively make their concerns known.

The meeting took place; my 'Note to File' reads:

Washington, D.C.,
27-Nov-1992 Fri 10:46

CONVERSION OF CANADA-BASED STAFF (CBS) POSITIONS ABROAD

At the 25th November meeting of Local Z-0252, I raised the question of disappearing Canada-based Staff (CBS) positions abroad. Before introducing my prepared talking points (dated November 24), members voiced their view on what was happening. Officers themselves were now performing tasks formerly done by support staff, i.e. preparing documents, photocopying, faxing, mailing, etc. It was recommended that support staff (secretaries) more readily volunteer their involvement in these areas. The observation was made that some secretaries were only too happy not to be bothered by officers requesting support. That prompted the question of why officers were not requesting support in the first place. Two facts were discussed: officers seemed to feel that if they did not do the job themselves it wouldn't get done to their satisfaction, and that during their initial training as FSIDs, officers were not made aware of the support resources potentially available to them.

The challenge, therefore, is on how to re-establish productive support positions and allowing officers to devote more attention to their primary tasks. It is not too far-fetched to solicit support from officers who dislike performing administrative chores.

I then distributed copies of my talking points. The practical steps just discussed would come to naught with Headquarters hell-bent on eliminating support positions abroad. The ability of External Affairs to create locally-engaged staff (LES) positions, filled by non-Canadians, should be challenged.

Discussions made clear that spousal employment, sensitive as it is, must be viewed separately from local employment.

Time did not allow me to expand on stress experienced at missions. For example, External Affairs has indicated it will staff an anticipated half dozen SIGNET LAN manager positions at the embassy in Washington with LES. This results in increased numbers of American residents being employed at the expense of qualified Canadians. Similar moves are planned for most missions.

Actions described above would not be allowed in Canada. Immigration laws protect us. Canadian missions should be equally protected. Replacement of Canada-based staff at Canadian diplomatic missions with locally-engaged foreign nationals adversely affects employment opportunities for Canadians at home and abroad. It's in Canada's interest to correct the matter, and maintain the Canadian cultural characteristics of its missions.

The reference above to spousal employment and the need to view it separately from local, (non-Canadian) employment was my doing. During my time in Ottawa (1984-1992), I had become thoroughly familiar with the efforts of the Foreign Service Community Association (FSCA) advocating spousal employment, a concept I unequivocally supported. The differentiation between spousal (mostly Canadian) employment in some LES positions and of non-Canadians in others is demonstrated at various times in subsequent correspondence.

Spousal employment is a complex issue. It was meant to address the growing necessity of two-income families when only one partner was actually an employee of the Department. Living abroad did not alleviate the need. Spousal employment took the form of creating LES positions which might otherwise have gone CBS, or formerly CBS positions re-designated as LES. The upside was that a limited number of spouses of CBS found ways of being employed that might otherwise be impossible. The downside was that indeterminate (permanent) DFAIT employees at HQs saw their posting opportunities dwindle as CBS positions disappeared. When wearing my union hat, I had to tread carefully in dealing with rotational, dues-paying, union members (colleagues) who were against the Departmental LES policy in total.

By August, 1993 I had become President of Local Z-0252. The Local drew up this position paper on the CBS vs. LES issue:

LOCAL Z-0252 POSITION PAPER
ON
FOREIGN AFFAIRS EMPLOYMENT POLICY

Members of Local Z-0252 protest the policy Canada's Department of Foreign Affairs and International Trade (DFAIT) is pursuing in staffing its missions abroad. DFAIT's employment of foreign national locally-engaged staff (LES) in support staff positions reduces employment opportunities abroad for qualified Canadians. We question the legality of this discriminatory practice. A public debate on DFAIT's employment policy may compel it to a more acceptable approach in coping with departmental restructuring.

For example, DFAIT's world-wide communication system, Secure Integrated Global NETwork (SIGNET), calls for a considerable number of System Administrators (SA). The stated intention of DFAIT is to have as few Canadians as possible employed in these positions. They are favouring non-nationals instead. In the department's "Information Technology Strategic Plan 1991-1996", it is clearly stated: "The high cost of maintaining staff abroad narrows the normal cost differential between officers and support staff and

creates a strong incentive...for the transfer of functions to locally engaged employees wherever possible". We question DFAIT's methodology in calculating costs of maintaining lower paid Canada-based support staff overseas vis-à-vis high-profile officer positions and the degree to which money would be saved by going the LES route. Is a minimal impact on bottom-line figures more important than keeping Canadians employed?

The legality of DFAIT's employment policy must be questioned. In Canada, the introduction of foreign labour to the job market is controlled by immigration laws. If Canadian missions abroad are extensions of Canadian territory, Canada-based staff expects Canadian laws and customs to apply there. It is quite a psychological burden to see the effects of DFAIT's "Canadians are too expensive to maintain, let's hire local instead" policy. This from an employer whose mission statement reads "Our mission...to portray, promote and defend the interest of Canada and the common values of Canadians in the world, to bring awareness and understanding of the world to Canadians, to serve Canadians at home and abroad".

DFAIT's administrative measures in support of the strategic plan of cutting down the number of Canadians abroad are having a severe impact on the morale of those still at missions. Technological modernization is accompanied with bureaucratic insensitivity. In effect, DFAIT managers are saying: "we are going to replace support staff Canadians with machines, and hire non-Canadians to operate those machines". By implementing this policy, dozens of Canadian positions have been prematurely cut from establishments. Hundreds more are in jeopardy.

The department's employment policy conducted in the SIGNET SA area is carried out in the secretarial and clerical fields as well. It is a policy of systematically replacing Canada-based support staff (CBS) with locally-engaged staff (LES) at Canadian missions abroad.

We are convinced this managerial attitude is improper, immoral and possibly illegal. It simply is not the correct way of going about departmental restructuring. The progression of DFAIT's employment policy will change the character of Canadian missions abroad. Is DFAIT so keen on assembling submissive locally-engaged staffs that it has forgotten the potential of host countries exerting pressure on their nationals employed within our missions? Bureaucrats are jeopardizing the continued viability of our missions by cutting in the wrong areas. In contrast to DFAIT's threat to Canadian jobs overseas, American law-makers are reversing State Department policies that discriminated against American citizens seeking employment at U.S.A. missions.

We believe Canadians inside, and outside, the Department of Foreign Affairs and International Trade hold strong views of what our missions abroad ought to represent and what kind of institution Canadians wish to retain for the long haul. An open debate is warranted on whether this national resource is being properly managed.

What the Departmental strategic plan mentioned above shows is that the insensitivity many managers (officers) had for lower paid support staff was still around in the early 1990's, some years after it was supposed to have been remedied by the according of diplomatic status to all ranks. Officers abroad are essential, support staff abroad expendable. Old habits die hard. In fairness, there was a minority within the Department who for a variety of reasons shared our opposition to cutting CBS positions.

After the position paper had been drawn up, circulating it became a priority. My approach to the Ottawa Citizen did not pan out. Columnist Frank Howard faxed this message:

I have received your documents, but I have not done anything on them yet – except to read them. This is a particularly busy time for me, but I hope to be in touch with you early next week.

A more encouraging letter arrived from the National Component at PSAC HQs:

With reference to your Position Paper, during our first meeting with the Department, the estimated number of SA positions was approximately 43, which was a drop from the original estimate of 66. The drop was due, in part because of the intention to use LES rather than CBS.

At our second meeting, the number had risen again, this time to 63. Apparently certain people were in the firing line as a result of negative publicity. Anything that helps keep the number of SAs at the sixties mark must be beneficial. So we perceive your Position Paper to be timely.

DFAIT, in an all missions telegram dated 28Sep93, announced i.a. that:

During the next twelve months, against a background of ongoing technological change and the need for further streamlining, Personnel Branch will examine the way it discharges its mandate. To accomplish this, I have asked Michael Conway, as ADA, to advise Branch Senior Management on questions of reorganization. Any suggestions you may have would be welcome, either directly to me or to Michael.

As President, Local Z-0252, I sent this letter to Michael Conway:

External's telegram ACB0166 September 28, 1993 invited input of suggestions relating to departmental streamlining during a period of technological change.

Attached is this Local's position paper on problems associated with staffing Canadian diplomatic missions. While critical of recent departmental practices, it recommends an eminently achievable objective: "put Canadian interests first".

I hope that during your endeavours outlined in the referenced telegram you will have the opportunity of addressing the concerns expressed in the position paper.

On October 27, 1993, I wrote my MP, John Manley:

With the advent of a new government, I hope more attention will be devoted towards having External Affairs and International Trade Canada (EAITC) adopt employment policies consistent with Canadian sensitivities and priorities.

During the last few years EAITC assigned an inordinate amount of work to foreign locally-engaged staff (LES). This resulted in reduced employment opportunities for qualified Canadians at Canadian missions abroad.

Attached is this Local's position paper on EAITC's policy. Also attached is a copy of my letter to EAITC requesting it to address concerns of many Canada-based staff (CBS) colleagues.

I hope you share the view that EAITC is an institution deserving Canada's best efforts. Is it possible for you to include in the government's agenda a review of EAITC's employment policy? A start would be to have EAITC justify each and every LES position.

Then on December 13th, to the President of the Public Service Commission:

Please find attached this Local's self-explanatory position paper critical of the Department of Foreign Affairs and International Trade (DFAIT) employment policy.

We have communicated our concerns to the headquarters of the National Component of the Public Service Alliance of Canada (PSAC), to the Director of Personnel Policy and Planning Secretariat of DFAIT, and to my Member of Parliament, John Manley.

For a definitive response on whether our situation can be addressed, we are placing the matter in your hands.

For one reason or other, it was only after I had sent that letter that the substantive reply from DFAIT, dated November 15, came to hand. Because of its comprehensive nature, I am reproducing it in full.

External Affairs and International Trade Canada

OTTAWA, Ontario
K1A 0G2

November 15, 1993

Mr. John Kruithof
President, Local Z-0252
Canadian Embassy
Washington D.C.
2001-2111

Dear Mr. Kruithof,

Thank you for your letter of October 6, 1993 attaching comments from your union local regarding employment policies of the department.

As you will be aware from contents of the department's telegram ACB0166 of September 28, human resources policies are affected by many forces, some beyond the control of departmental management. In general, two strong forces have led to our current situation vis-à-vis communications. First, technological improvements both at the desk level (personal computers) and globally (SIGNET and MITNET) has seen an increase in productivity accompanied by a decline in the need for human resources. These hardware and software improvements have resulted too in reshaping (and in some cases, elimination) of traditional job packages e.g. CMs, SCYs and CRs, and the creation of entirely new jobs, e.g., System Administrators. The net result has been a decline in the number of officer and support positions required to deliver our programs and services. Indeed, much of the cost of implementing the new systems has been generated from an anticipated reduction in personnel costs. This sort of thing, of course, is not unique to our department. It is occurring in the private sector as well – and to a much greater degree than in government.

The other great force influencing our personnel policies is the fiscal environment in which we find ourselves. Reduced budgets leave us with limited options: reduce staff, reduce or eliminate programs, reduce operational costs, or some combination of these. The Canadian taxpayer wants value for money, elimination of waste and duplication and a smaller public service. Departmental management has been wrestling with these requirements for some time. The downsizing which occurred earlier this year was directly attributable to the need to reduce departmental expenditures by \$31 million. These were imposed on us by the December, 1992 budget. We did not have the luxury of choosing not to comply. Unfortunately, to realize savings of this magnitude meant that we had to reduce our staff. You may recall that at the end of the day, we cut 82 Canada-based positions and 390 local staff.

Since our first post opened many years ago, Departmental management has always had to make choices on the best mix of LES to CBS in our missions abroad. Clearly there has always been a need for locally-engaged staff. Linguistic, cultural and local environment differences demand the knowledge and skills that host-country nationals bring to their work. But beyond that, costs again play a central role. It is the duty of management to deliver its mandate at the most economical cost while taking due account of security and other constraints. In the particular case of Systems Administrators, if we could afford it, we would prefer to deploy Canada-based SAs wherever required for the reasons so well articulated in your letter. Our budget will not allow us that luxury. More often than not it is less expensive to hire LES. While you point out certain weaknesses in relying on LES, it is a risk that management must take in implementing SIGNET. Where it can be shown it is less expensive to deploy a Canadian, of course that will be our preference.

As will be evident from the above discussion, management's decisions are driven by many forces, not least by serious budget constraints. The department's budget base is shrinking and this has and will continue to have important personnel implications. It will also have program and operational implications. Management's job is to make choices as to the most effective allocation of its limited resources – human and financial. The department does so, we believe, with an eye to balance and sensitivity to the needs of the department, its employees and its client, the Canadian public. That some employees will suffer is, regrettably, inevitable. We are fully aware of the impact on morale that restructuring is having on our employees. You can assure your members, however, that the department is committed to minimizing the impact on employees and where cutbacks are necessary that we will continue to be as generous as possible in applying workforce adjustment provisions.

(sgd) Denny Stimpson
Director
Rotational Administrative Personnel
Division

The letter perfectly describes the CBS vs. LES dilemma prevailing in 1993, how DFAIT continues to operate to this day, 2009, and will continue to operate in the future. I should have thrown my hands into the air in 1993 and admit defeat. But my Dutch upbringing made me too stubborn to see the light, so I soldiered on.

In a letter dated January 18, 1994, the President of the Public Service Commission of Canada stated:

We have looked at the documentation submitted with your letter and we note that the concerns you raised regarding the hiring in missions of locally-engaged staff in lieu of Canada-based support staff is a human resources management and work organization

matter for which the Public Service Commission has no jurisdiction. Therefore, we suggest you deal directly with the Department of Foreign Affairs and International Trade and with the Treasury Board Secretariat which, as the employer, is responsible for the Locally-Engaged Staff terms and conditions and for the establishment of parameters regarding the identification of such positions abroad.

Having already dealt with DFAIT, I took to writing the Treasury Board Secretariat:

This Local questions the validity of the Department of Foreign Affairs and International Trade (DFAIT) employment policy. At its missions abroad, DFAIT is creating/maintaining too many Locally-Engaged Staff (LES) positions, at the expense of employment opportunities for Canada-Based Staff (CBS). We are herewith requesting your investigating DFAIT employment practices to ascertain whether parameters pertaining to the establishment/conversion of LES positions are being adhered to. If DFAIT is in compliance, do the parameters themselves accurately reflect current Canadian sensitivities? If DFAIT is not, who will impose compliance?

We now request a Treasury Board Secretariat ruling on DFAIT's policy. Your response will be appreciated.

Naively, I took at face value a CP Wire report dated January 20, 1994 which read:

The Government will opt for jobs in any choice between reducing the deficit and putting Canada's unemployed back to work, Jean Chretien suggested Wednesday. "We will not throw people out of work simply to be able to say that the deficit has come down" he said in his first formal Commons speech as Prime Minister. "We believe that the government should be lean, but not mean".

If the issue of CBS vs. LES can be politicized, I'm game. On February 7, 1994 I wrote our Canadian Ambassador in Washington, Raymond Chrétien:

Local Z-0252 contends the Department of Foreign Affairs and International Trade (DFAIT) is pursuing employment policies detrimental to long-term Canadian interests. At Canadian missions abroad, including Washington, locally-engaged staff (LES) is being hired at the expense of employment opportunities for Canada-based staff (CBS). This practice must be re-examined in the light of presently existing Canadian priorities.

The concerns of this Local are outlined in a position paper ('A'), and communicated to DFAIT ('B'). DFAIT's response ('C') was forwarded to the Treasury Board Secretariat ('D') for an opinion. Issue 4 of PANORAMA ('E') illustrates the LES/CBS ratio of SIGNET trainees.

DFAIT stated its budget does not allow it the "luxury" of deploying Canada-based System Administrators (SAs) where LES are less expensive. Our position paper challenges DFAIT methodology of costing. It is our view that DFAIT's preoccupation with money is contradictory to the Prime Minister's statement in the House that "We will not throw people out of work simply to be able to say that the deficit has come down".

Your effort in reconciling these conflicting directions will be most appreciated.

Since no response was requested, none was received. Also at this time my posting to Washington came to an abrupt end to allow me to start SIGNET System Administrator (SA) training in Ottawa slated for September. I was experiencing what I had been

fighting for. Training lasted for months, and it was arduous. In addition to acquiring the skills necessary for staying employed with DFAIT, it resulted in my eventual posting to Hong Kong 1996-1999, during which I experienced the handing over of the former British Colony back to China.

The last letter I received as President of Local Z-0252 in Washington was from the Treasury Board of Canada Secretariat.

This is further to your letter dated January 27, 1994, concerning the Employment Policy of the Department of Foreign Affairs and International Trade (DFAIT), as it relates to the hiring of Locally Engaged Staff (LES) and Canada Based Staff (CBS).

I should mention at the outset that the authority to establish LES and CBS positions rests with Departmental management. I understand from Departmental sources that the overseeing authority in this area is the Departmental Program Management Board who, as part of their mandate, carefully consider the operational and budgetary requirements of the service as part of their deliberations.

When the need for a position has been established, the duties are evaluated by Departmental management in accordance with prescribed classification standards. In the case of LES, the classification authority is contained in the Locally Engaged Staffs' Terms and Conditions Regulations.

To my knowledge, there is no quota on the number of LES or CBS positions at a post, nor am I aware that one is being contemplated.

By mid-May 1994 I was back in Ottawa. Consequently, I was no longer President of Local Z-0252. I continued to carry on union activities in the capacity of Alternate Vice-President Outside Canada, National Component, PSAC.

On June 15, 1994 I wrote the Minister, Human Resources Development Canada:

Canada's Department of Foreign Affairs and International Trade (DFAIT) is pursuing an employment policy of deliberately denying qualified Canadians from opportunities of serving at Canadian diplomatic missions abroad. It does so on the grounds of not being able to afford the luxury of employing Canadians when it is less expensive to hire foreigners to do the job.

Is DFAIT exempt from having to conduct its activities in accordance with established limitations on Canadian enterprises for the use of foreign labour?

Your department's stand on this issue is of intense interest to Canada-based personnel around the world. May I have an early indication that you are addressing the problem?

The response came in a letter dated July 4, 1994:

On behalf of the Honourable Lloyd Axworthy, Minister of Human Resources Development, I wish to acknowledge receipt of your correspondence.

As the subject of your representation falls within the jurisdiction of the Honourable André Ouellet, Minister of Foreign Affairs, your correspondence has been forwarded to that office for necessary action.

The precise timing and circumstances of my approaching the Minister of DFAIT had been taken away from me. No longer could I dangle that sword over the heads of senior Departmental managers. In a letter July 7th to the DFAIT Assistant Deputy Minister I had some explaining to do.

From the attachments you will note that correspondence on the subject was forwarded by Human Resources Development Canada to the office of Minister Ouellet.

Some months ago I made a commitment to Mr. Hugh L. Stephens, Secretary to Program Management Branch (MCBA), of informing you of my eventual approach to the Minister. The forwarding of the material at this time to the office of the Minister was another department's doing.

Notwithstanding the unexpectedness of potentially involving the Minister, sooner or later the conduct of the Department of Foreign Affairs and International Trade in staffing its missions abroad will be exposed. Since DFAIT engineered a bad policy, surely there is authority within the Department for reversing it. Is this being considered?

Confirmation of your having received this letter will be appreciated, as well as any points you wish to make on the substantive issue of employment policy.

On July 15th, I entered this 'Note to File':

During coffee break, David Smith (APV) mentioned that my letter of July 7th to ADM/ACB had surfaced in APV for comments. We decided on an immediate off-the-record informal meeting to discuss the issue. Neither of us had a clear mandate for discussing substantive positions.

We went over the circumstances leading up to my letter to ACB.

As to what advice APV could offer ACB, some scenarios were:

- a) to reaffirm Departmental position outlined in Stimpson letter November 15, 1993;
- b) to revisit direction of employment policy.

To exercise option a) was simple: just bulldoze on.

Option b) could be pursued by:

- obtain binding legal opinions on Departmental policy;
- assessing downsides of LES domination at missions;
- realistic costing of CBS/LES options;
- once costing accurately done, approach political masters for resources to maintain Canadian content (per Stephens' verbal suggestion March 16th).

From Smith's comments I concluded the Department unlikely to reverse its course. In fact further cutbacks in SIGNET were being contemplated in response to financial constraints.

Smith indicated he would approach the Department's legal division to obtain a ruling on the legalities involved.

I reiterated my complete opposition to Departmental policy. My next steps were to approach the minister's office of Citizenship and Immigration, get a lawyer working on it (labour or private), exert political pressure where possible and have the Department's conduct publicly aired.

Am starting my two-week holiday July 18th. On my return August 2nd, Smith will be on holiday. Battle lines are drawn.

During my 'two-week holiday', I actually prepared for, and attended, the triennial National Component convention in Vancouver. With support from colleagues, I was elected National Director, Countries Outside Canada, Public Service Alliance of Canada, narrowly beating out incumbent David Delaney. This new position leapfrogged me out of the National Component to a seat at the inner councils at the highest level of the PSAC.

In this capacity, I approached the Minister of Citizenship and Immigration.

The purpose of this letter is to request Citizenship and Immigration to investigate the employment policy and practices of the Department of Foreign Affairs and International Trade (DFAIT) and to render a decision on the legality of the latter's conduct in this area.

DFAIT has implemented a policy of assigning Canadians to its overseas missions only where it can be shown it is less expensive than employing host-country nationals. The policy is clearly detailed in DFAIT's letter dated November 15, 1993 (attached).

Employees of DFAIT, at home and abroad, see themselves denied the protection of existing immigration constraints on the hiring of foreign labour by Canadian entities. Their concern is contained in the Public Service Alliance of Canada (PSAC) Local Z-0252 position paper (attached).

It is important for Citizenship and Immigration to ensure all Canadians are equally protected by the law of the land governing access to jobs. Your findings, therefore, will be of intense interest to Canada-based personnel around the world.

Please inform me of progress in the matter and if I can be of further assistance.

The same day, I forwarded a copy of the letter to the Executive Vice-President of the PSAC with these comments:

What I would like to see is to have this issue run past the legal resources available to the PSAC. If you are in agreement, can you arrange it?

There are at least two aspects to this case: the legal and the political. My experience with DFAIT suggests the need for legal clout to make them backtrack. Whatever the legal findings, the political fallout of the government, as an employer, selling out its employees to foreigners must not be made to sit well with ministers. I set the political theme tentatively in motion with my letter to Ambassador Chrétien dated February 7th.

Lawyers reviewing this case must be well versed in the legal status of our missions abroad, the application of Canadian law to these missions, and what avenues are available to redress the situation. For example, invoking the Canadian Charter of Rights and Freedoms sections 15.(1) and 6.(2)(b) should not be dismissed out of hand.

Looking forward to your views, and action.

I also provided a short overview of my assessment of how the Department was practicing discrimination and infringing on employees' rights.

Q. How is the Department's employment policy discriminatory?

A. It draws distinctions between officer and support staff. As stated in its own publication 'Information Technology Strategic Plan 1991-1996', because of the eroding cost differential between maintaining officer and support staff positions abroad, there is a strong incentive for the transfer of functions to locally engaged employees wherever possible. Any policy designed to perpetuate the largest possible discrepancy between officer and support staff levels disadvantages support staff. Departmental managers are deliberately pursuing such discriminatory practices, using budgetary restraints as an excuse.

Q. How does the Canadian Charter of Rights and Freedoms apply?

A. Under Mobility Rights provisions of the Charter, (6.(2)(b)), every citizen of Canada has the right to pursue the gaining of a livelihood in any province. Canadian missions abroad are extensions of Canadian territory. Administrative support employees are being denied by Departmental management from pursuing a livelihood in certain geographic areas. This is a limitation inconsistent with mobility provisions of the Charter.

Section 15.(1) of the Charter holds that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination. Departmental employees see themselves denied the protection of standards applying to Canadian entities relative to the hiring of foreign nationals. At its missions abroad, DFAIT hires host-country nationals because it deems Canadians too expensive. The Department should not be allowed to pursue this option, because qualified Canadians are available for positions at Canadian diplomatic missions abroad.

Q. What can the Public Service Alliance of Canada do about it?

A. Commit funds to the establishment of a legal taskforce investigating DFAIT policies and practices with a view towards having the Department conform to Canadian laws, customs, provisions, etc...

Not being a lawyer, the concept was crudely presented. A smart lawyer was needed. Whenever I think of a lawyer astute enough to grasp the significance of the Canadian Constitution, particularly when it pertains to the Canadian Charter of Rights and Freedoms, I think of Lawrence Greenspon. So I turned to him.

It has been some time, six years to be exact, since the satisfactory outcome of the tussle with the Department regarding privileges and immunities for administrative and technical staff abroad. This time employees of the Department are facing an even larger issue, that of employment itself.

In its wisdom, the Department has decided on an employment policy of assigning Canadians to its missions overseas only where it can be shown it is less expensive to do so than employ host-country nationals. The policy is clearly detailed in their letter of November 15, 1993.

Not surprisingly, the present Canadian workforce deployed abroad has a problem with that concept. It sees itself as having to compete with foreign workers without the

protection it would be granted in Canada by existing immigration limitations on hiring foreign labour. That concern, and others, is expressed in Local Z-0252's position paper on the issue.

I am, of course, engaged directly with the Department in trying to correct the situation. It would benefit me, however, having a legal opinion on the options available. Is it possible our getting together to discuss what, and how, things can be done?

Within a couple of days, I informed the PSAC executive:

I received a voicemail from Mr. Greenspon's secretary that he was agreeable to receiving documentation on retainer.

I telephoned her to say I was very encouraged that Mr. Greenspon was prepared to get involved, that I would have to co-ordinate legal activities with the PSAC executive, and that I would get back to her as soon as possible.

I am firmly convinced this development confirms the practicality of launching a legal challenge to DFAIT's conduct. I am also convinced legal action must be taken soon to be effective.

I further informed the PSAC:

I am fervently hoping the right lawyer with the requisite talent is chosen to represent us. Because of his performance on our behalf when I was President of Local 70371, I consider Lawrence Greenspon to have the desired qualities.

On August 15, 1994, Gordon S. Smith assumed the responsibilities of Deputy Minister. Two days later, I sent him a letter.

Your message USS0086 August 15, 1994 invited employees to send a short note of ideas they have. I have done so through SIGNET but couldn't resist following it up by this more traditional means. The text of the note is attached.

MESSAGE FOR THE DEPUTY MINISTER

DFAIT has at hand the ingredients for both excellence and self-destruction. You willingly accepted a high position from which to influence the direction of the Department. On the premise that excellence demands passionate pursuit, I seriously question the contribution managers are making to the cause. They are frivolously discarding Canadian content in DFAIT's workforce and substituting it with anything less expensive. I am specifically referring to the practice of eliminating Canada-based positions at missions abroad and replacing them with jobs for host-country nationals. As an employee, and Canadian, I am offended by that practice. As a union representative I am working towards having that policy reversed. I am firmly convinced, based on 30 years of experience in the Department, that Canadian interests are best represented abroad by Canadians themselves at all levels for which they are qualified. To do otherwise courts disaster. Your handling of this particular issue will in great part determine how you will eventually feel about your stewardship of the position of Deputy Minister.

A week later, I entered this 'Note to File':

Something strange happened today. I was at the cashier of DFAIT's cafeteria, standing across from John McCann, Chief of Staff Relations. He asked me how things were going. Inside I felt terrible, having reached the end of the road as far as doing anything novel was concerned in trying to have the Department address the problem of staffing missions abroad. Outwardly, I smiled, said things were looking up. McCann then volunteered: "I am going to write you a long, legal letter soon, and to all the top people. Congratulations". Nothing else was said between us, both going our separate ways.

To this day, I wonder what that was all about.

On August 24th, I received this short note:

On behalf of the Honourable Sergio Marchi, Minister of Citizenship and Immigration, I wish to acknowledge receipt of your correspondence. (Aug. 9)

Please be assured that this matter will be given proper consideration.

Meanwhile, another 'Note to File':

Lawrence Greenspon's office telephoned for an update.

I replied that lawyers retained by PSAC were looking into the matter, and was awaiting their findings. Should we request Mr. Greenspon to become involved, it would be after the vetting of the issue by others. She requested a time frame. I suggested a week to ten days might see something develop. She will keep the case in the rack.

Anyone reading my account this far can rightly conclude I was merely spinning wheels at this point. Of all sources, it was the PSAC that devastatingly removed any chance of traction whatsoever. It wasn't until September 21, 1994 that PSAC HQs released findings of their legal representative that had been gathering dust for a month. The name of the originating counsel was purposely withheld.

The findings themselves are dated August 19, 1994. Please keep in mind it was entirely a PSAC HQ/counsel arrangement. I had had no contact with PSAC counsel. In the interest of how one lawyer might look at things differently from another, here is the entire text of PSAC counsel.

Re: Employment Policy: Department of Foreign Affairs & International Trade

Thank you for your letters of August 12, 1994 and August 16, 1994. We have reviewed the accompanying material and have examined the issue raised and are now in a position to provide you with our views.

We begin by acknowledging the importance of this issue to the Alliance, National Component and those interested in sharing the maintenance of staffing levels in posts outside Canada. In our view, however, while aspects of the newly instituted employment policy may well be questionable from several perspectives including the issue of cost benefit, we have serious doubts that there is a legal basis for attack here having regard for the relevant provisions of the *Charter* and the jurisprudence of the Supreme Court of Canada interpreting these provisions.

With respect to the *Charter* protections in the area of mobility rights, it is our view that the mobility rights established by subsection 6(2) of the *Charter* are not engaged in these particular circumstances. In particular, subsection 6(2) is primarily designed to prohibit the establishment of barriers between provinces which rely upon explicit preferences for persons within a province. Subsection 6(2)(b) would, therefore, guarantee a citizen or permanent resident the right to work in any province, subject to subsection 6(3). Subsection 6(3) is not applicable to the present circumstances.

As the restrictions imposed by the Department's Employment Policy do not relate to inter-provincial movement, and, indeed, do not apply in any province of Canada, it is our view that section 6 is not applicable in these circumstances. Moreover, as section 6 does not guarantee a right to work to Canadians, but is primarily concerned with the mobility of Canadians, it cannot be used to prevent the Department from hiring locally engaged staff instead of Canadian based staff.

With respect to the quality protections enshrined in section 15 of the *Charter*, you are aware that we have had several opportunities to consider the reach of this provision in other contexts. Without reviewing, in any detail, earlier expressions of opinion on this *Charter* right, we can confirm that since the Judgment of the Supreme Court of Canada in the Andrews case, the law has been clear that in order to engage section 15, the applicants must establish that, by the nature of their inherent personal characteristics, they belong to a group which can be said to constitute a discreet and insular minority, i.e., a group which can point to historical discrimination and disadvantage.

In the present context, it is difficult to characterize what precise "group" would be identified as the group whose discrimination can be said to be equivalent to one of the expressly identified bases of discrimination in section 15. It seems to us to be a non-starter to suggest that Canadians at large have suffered *Charter*-defined discrimination in comparison to locally engaged staff.

In summary, it is our view that there are several impediments to successful *Charter* litigation attacking the employment policy of the Department of Foreign Affairs and International Trade. In these circumstances, we have difficulty recommending the commencement of legal proceedings. We are assuming that there are no provisions of any existing collective agreement which are violated by this policy and that there is no evidence that application of the policy results in direct or indirect discrimination upon a prohibited ground as specified in the *Canadian Human Right Act*.

Please advise in the event that you have further information or facts which might be pertinent to this issue or if you have any questions regarding the foregoing. We shall keep our file for a period of time pending further instructions from you.

When it rains, it pours. Soon thereafter I received this letter from DFAIT:

Thank you for your letter of July 7, 1994. In reviewing previous correspondence, I reaffirm our position on staffing practices as communicated in our response of November 15, 1993. Your concern for your fellow employees is commendable. I regret that ongoing budget constraints do not provide for greater flexibility in the application of our current policies. Your views are appreciated and we will certainly take them into consideration in our endeavours to look after our rotational administrative and technical support staff.

We are pleased to advise you that recent initiatives have enable us to provide a number of options for those most directly affected by the introduction of SIGNET and there is every

indication that the impact for a number of employees will be reduced significantly.
Thank you for expressing your concerns.

By now I had seen the light. But just in case I hadn't, the Honourable Sergio Marchi, Minister of Citizenship and Immigration provided some more illumination.

Thank you for your letter of August 9, 1994, concerning the employment policy of the Department of Foreign Affairs and International Trade (DFAIT). I apologize for the delay in writing.

I understand the concern of your membership over the elimination of Canada based positions at Canadian missions.

There are provisions in immigration legislation for Canadian employers in Canada to show that there are no qualified permanent residents or citizens of Canada available, before they recruit offshore to fill employment vacancies in Canada. This, however applies only in the case of persons wishing to enter Canada either as immigrants or temporary workers.

Employment policy and practices for personnel at missions are not specifically covered under the Immigration Act or Regulations. In the absence of a clearly articulated legal requirement to extend the protection of Canadian immigration law to our missions abroad, DFAIT's practice of altering the mix of locally staffed and Canada based positions to suit operational requirements is not, in my view, inconsistent with Canadian immigration legislation.

I hope this information will be of assistance. Thank you again for taking the time to write.

Undeterred, I carried on. All the cards were stacked against me. Only one hope remained. Retain Lawrence Greenspon. In my dealings with him some years ago, covering much the same complexities facing me now, I had come to admire his vision of what the Canadian Charter of Rights and Freedoms was capable of; certainly different from the defeatist attitude of PSAC counsel.

I wrote Daryl T. Bean, National President of the PSAC:

PSAC members represented by the Countries Outside Canada region are facing a unique problem. Their employer, the Department of Foreign Affairs and International Trade (DFAIT) is pursuing an employment policy of systematically removing Canadian support staff from its missions abroad and replacing it with foreign labour. This is not simply a case of jobs traditionally held by unionized Canadians being contracted out to other Canadians, as would be the case in Canada, but to foreigners with no allegiance to Canada. If DFAIT continues this trend, the day will come when Ottawa will not be able to communicate with its representatives abroad without the whole world knowing about it.

While DFAIT's management is willing to take that risk because of claimed budgetary savings, I see the Department as pursuing an employment policy at its missions abroad incompatible with its obligations as a Canadian employer. My understanding is that employers in Canada must satisfy certain requirements before engaging foreign labour. By virtue of its operations being worldwide, DFAIT is conveniently circumventing those requirements.

That places our members in a unique situation. Our workplace in Canada would, to a degree, be a protected environment. That protection is denied us at our own missions overseas. The legal implication of that inconsistency must be clarified. What is our recourse for reversing Departmental practices?

According to legal counsel supplied by the PSAC, Canadian law and constitution do not apply in this case. With due respect, I request authorization for obtaining a second opinion.

Within my allocated budget this year there remains a surplus. For me to effectively represent our members, it needs to be made crystal clear what legal avenues are available to address our situation. I request your recognizing the importance the issue has for our members and to authorize the following.

Mr. Lawrence Greenspon, a lawyer who gave us sterling assistance while I was President of Local 70371, has indicated his readiness to receiving documentation related to DFAIT's employment practices and to offer his findings. A retainer needs to accompany the material I already collected. Again, based on previous experience, I expect Mr. Greenspon's input to be valuable.

In view of the reliance the labour movement places on resolving conflicts through invoking constitutional protection, your authorizing my request will correspond to the aspiration of our members.

I am looking forward to a prompt response.

A prompt response I got:

This will acknowledge and respond to your letter of November 14, 1994 concerning "Employment Policy: Department of Foreign Affairs and International Trade".

I am aware of who provided you with the previous information, however, I am also aware that we have had considerable experience with similar situations in the past. Via this letter, I will request... to review your comments and provide us with an explanation.

While Lawrence Greenspon may well have given you "sterling assistance" in the past on other matters, the responsibility for this matter is that of the Alliance Centre. Therefore, you are not authorized to seek his opinion. While there is definitely funds within your allocated budget, it cannot be used for you to obtain a legal opinion.

That was the final nail in the coffin. Within a year, after successfully completing job retraining in DFAIT, my employment position shifted to one represented by the Professional Institute of the Public Service of Canada (PIPSC), necessitating my resigning as PSAC National Director. I never took up union activities again. My subsequent three-year posting to Hong Kong was an exhilarating experience. In early 2000, having done my bit for Y2K, I retired.

My absolute best wishes go out to all, CBS and LES alike.

That's more than I can say for the Department.

February 2009