

How a Parliamentary Legislative Employment Framework Can Contribute to Effective and Efficient Human Resources Management

The object of this brief presentation is to share my point of view on the above statement. I will do that by referring to my managerial experience in the Parliament of Canada and to the Canadian parliamentary employment environment, so well summarized by Mark Audcent earlier today.

What tells us a legislative framework influences effective and efficient staff performance ?

Does the Canadian employment framework, or any other system, governing the overall management of staff in a parliamentary administration help in making the workforce of the Administration or the Secretariat effective and efficient? To answer the question satisfactorily we have to first establish some criteria or reference points that constitute our measuring stick or are indicative of a well performing staff.

In today's management, the traditional model of the boss ordering and the employees doing is long extinguished. You may, quite validly, opt to use a complex Human Resources Management (HRM) model to analyze workforce effectiveness but in reality there are two inescapable, obvious sources to having a strongly performing work force. Firstly, *management* that is able to demonstrate qualities such as leadership, a true understanding of the organization's strategic mission, competence, flexibility and

innovation /creativity. Secondly, the other half of the equation, the larger *staff* itself or employees who participate positively to the results of an organization: they are characterized by know-how, motivation, a sense of belonging, commitment and productivity.

It is on the basis of this general and admittedly oversimplified score card that I would like to share with you my thoughts viewed, not from an academic paradigm, but rather from my on-the-ground years in Canada's parliamentary bureaucracy where I had senior-level responsibilities ranging from, among others, restaurants and cafeterias, information technology, parliamentary publications and human resources.

You should know immediately that I do not have a yes or no answer to the title question (...one does not spend all this time with politicians without at least learning how to reply without really answering!). Indeed, my answer to the title question is two-fold:

- 1) I do not know to what degree a legal employment framework contributes but I am just as certain that it does in an appreciable way
- 2) 2) I do not believe there is a direct cause effect between our Canadian Parliamentary Employment and Staff Relations Act (PESRA) nor any other legislation of the type we are discussing here today and effective and efficient people management

I only hope those two 'answers' will be clearer at the end of these 20 minutes. My focus is narrow and predominantly uses the PESRA, Part I, as the reference point.

What does our Parliamentary Employment and Staff Relations Act cover ?

Under Part I, of the Act, employee organizations may seek to become certified bargaining agents. This confers on them the exclusive right to negotiate on behalf of employees in a specified unit. The Public Service Staff Relations Board (PSSRB) is responsible for overseeing the proper functioning of collective bargaining. In that role, it certifies bargaining agents, it issues orders in respect of unfair labour practice prohibitions, such as interfering in the formation of an employee organization or preventing an employee from exercising his or her rights under the Act.

The Board is also responsible for such matters as the determination of managerial exclusions (i.e. persons who may not be members of a bargaining unit) and it can adjudicate different types of grievances, namely relating to disciplinary action resulting in discharge, suspension or financial penalty; application or interpretation of an arbitral award or a collective agreement; termination of employment; demotion; a staffing competition and the classification of an employee's position.

Notwithstanding the near total dominance of the staff relations component, the PESRA has many features that merit closer examination relating to our discussion. So let us look more closely at this Canadian law to see if it has anything to do with the characteristics of an effective and efficient workplace.

Who is management ? Who is staff ?

The first series of articles, predictably, give a number of technical definitions (“bargaining unit”; “collective agreement”; “adjudicator”; “persons employed in a managerial or confidential capacity”) to ensure uniformity of interpretation and eliminate as well as possible any misunderstandings in applying the PESRA. For our purposes, the definition of ‘employee’ explicitly excludes managers and other workers employed in a confidential capacity where a collective agreement is involved. There is here on the part of the legislator the clear recognition of the management role as distinct and separate. The meaning of “persons employed in a managerial ...capacity” is described at length and covers all the possibilities (e.g.-a person representing the employer in the grievance process, having “executive responsibilities and duties”, reporting to the offices of the Speaker or the Clerk). Here then is a positive element that opens the door to developing an effective Parliamentary Administration in that it underlines how managers have a different role. Managers cannot organize as a union since their job is to direct the activities of the institution.

Similarly, in a further article, PESRA excludes all political staff and employees of an individual Member or Senator. Staff performing politically biased work is not considered employees of Parliament. Again, this is a plus; it eliminates the blurred lines which might otherwise be drawn and almost ensures the creation and development (or in the Canadian context, the continuation) of a non partisan Secretariat whose employees’ accountability is to the institution and not to political leanings or interests. I should mention that the Canadian House of Commons recognizes and supports the partisan

role of Members with a lot of common sense and at a distance by providing financial support to official political parties proportionate to their number of seats, mostly for the hiring of party researchers.

Conversely, the act also defines “employer”. The Parliament of Canada comprises three different employers who are specifically and respectively the Senate (Committee on Internal Economy, Budgets and Administration), the House of Commons (Board of Internal Economy) and the Library of Parliament (Librarian). As an employee of the Senate you have neither status with the Library, nor with the House of Commons. On the one hand, this will suit the senior managers and management of each institution who enjoy total independence from the sister institutions and allows for the development of policies and rules not dependent on the other entities that aggregately make up Parliament. The practical advantages from the single perspective of each individual organization stretches beyond policies and rules and opens the doors to a number of institution-specific initiatives such as the Career Management Structure for procedural experts which may be similar but were designed to correspond specifically to the requirements of either House.

In terms of staff management, this can be seen as quite advantageous because each institution may concentrate solely on its own needs. In a situation where there were real, integrated common services this could not work as presently established and would require some accommodation in our context. For example, the Senate and the House have separate Security and Building Maintenance directorates. If they were brought together as common

services, special provisions would have to be developed since there is no single, overall employer currently recognized.

Another important element in this law is that although managers are not considered employees under most of its provisions, managers as individuals are indeed considered employees when it comes to grievances or the dispute resolution process. In other words, a manager has every right to submit a grievance and to be represented as an individual in this process. The Director of Publications could complain about the classification level of his position or the refusal of a vacation request just as a unionized employee can do.

What is it that management can do ?

The references just made to definitions and other aspects of the PESRA give you a good appreciation, I believe, of the management cadre responsible for directing the operations and services of the Secretariats and the Library of Parliament. Circumscribing who acts and speaks for the employer as well as specifying who is responsible and accountable in the employer's name is a fundamental requirement for things to get done according to the employer's intentions also known as the right to manage.

Section 5 of the Act entitled *Rights* goes much further than identifying who is to be considered in the management group. It confers to the employer, in one short and unequivocal sentence, what I would term the quasi-unlimited latitude to put in place the organizational structure that it desires in each parliamentary institution. It simply states that "*Nothing in this Part shall be*

construed to affect the right or authority of an employer to determine the organization of the employer and to assign duties and classify positions of employment”. It is difficult to imagine a stronger affirmation that management has the unilateral right to organize the operating units in the manner that it wants. The mandates of directorates, the hierarchical relationships and how they are to function are not a negotiable issue. Management has a free hand in this area. In addition and just as significantly, as you have no doubt noted, the employer decides which tasks an employee has to perform and how the series of tasks and duties assigned to that individual will be classified.

Much of what I have just enumerated and described in the last few minutes basically indicates “who is boss” and how much the boss has to say in running the organization. Do not forget this applies independently and respectively to the Senate, the House and the Library. How a management team that holds all the advantages chooses to use that authority is another matter. What stands out in the situation just summarized is the idea that, in the end, the employer has the final say in shaping the foundation and main pillars of its organizational structure.

When measured against the general characteristics of the good manager in my opening remarks (they could apply to a management cadre or team), this legislation serves management quite generously. Managers know where they belong in the organization and where their loyalties lie. These features of our Legal Framework are positive contributors to establishing an organization intent on obtaining results and providing quality services in a timely manner, imperatives in a well functioning parliamentary environment. Why? Because

it is clear where the decision lies. It provides all the conditions for designing processes, taking the lead, introducing innovative approaches and modifying established or unsatisfactory practices.

A prime example, is the way in which at the Canadian House of Commons the field of technology is one where management has been able to keep pace, maybe even lead, not just by adopting new technologies and making them available to Members and Senators but by restructuring the way they were organized, by re-valuing their relative importance in the global organization, i.e. from a modest technical services unit to a large Directorate where technologies converge and complement each other. Management had “room to move”, took advantage of it and re-engineered the directorate for the purpose of better performance. They succeeded.

One thought that occurs to me which I alluded to earlier is that technically each of the three Canadian Parliamentary administrations could organize in such a way that the differences in organizational structure and the systems of job classification reach a point where little commonality could be found. To my mind, that is but a remote “on paper” possibility since there are inherent pressures from many sources in the immediate environment of our Legislature to prevent that from happening.

And where do employees stand ?

A productive organization that reaches its objectives and satisfies those that it serves even with superior managers can only exist in our imagination. Anyone who has held a post of authority recognizes the precious, if not

indispensable, assistance that key employees give us, and without whom our own work would undoubtedly be of much lesser quality. Such individuals generally respond as they do because they are committed to the job, motivated, respected and valued in the workplace.

Exceptionally, an individual may be an excellent worker due to circumstances that exert some form of pressure for her or him to perform, for example need for money, fear of losing the job. On the whole, I think you will agree that good performance cannot be ordered or used in modern management. In the same manner, no law can have the effect of contributing to the performance of staff unless it plays a part in motivating them or in helping genuinely translate how they are valued.

If I were in the shoes of a Canadian parliamentary employee, my conclusion as to the effectiveness of the legal framework would be mixed. Adopting an Act that gives employees the right to be represented is a positive sign that staff deserves to have their rights and interests protected and, even more so, promoted. Unionization did not come easily to the workers of Parliament in Canada. Opposition from elected Members themselves in many cases was quite firm. The PESRA bill was seen as infringing on the privileges of parliamentarians. It remains that the Parliamentary Employment and Staff Relations Act we are now talking about solidly entrenches in legislation employee rights relating to terms and conditions as well as to redress. Most of them who are able to, indeed, belong to a union. Through their union and the collective bargaining process they have a voice that is equal to that of management albeit in the narrower area of negotiable issues included in the applicable collective agreements.

I am rather convinced that employees after 15 years do not have the same perspective. And, to be fair, even before unionization working conditions in the Parliament of Canada were rather good; older employees would say better in many respects. How equitably the former and unevenly documented terms and conditions were applied before Parliament passed the PESRA is another question for another day. Let's say that the arbitrary nature of applying terms and conditions was markedly reduced with the active presence of union representatives and the need for managers to justify their people management decisions under much brighter lighting.

My personal experience of the introduction and early years of collective agreements in Parliament is that the management of human resources was measurably improved, if only for the fact that there were detailed, public contracts relating to terms and conditions of employment that had to be respected as well as elaborate mechanisms to ensure their proper application. In parallel, the development of more detailed and complete human resources policies outside the collective agreements were realized. If not the sole source of more open and relevant human resources policies, the birth of the PESRA at least played an inspirational role...and continues to do so.

Why is there an omnipresent third party tribunal ?

If you were to be insane only long enough to have the inexplicable urge to read the Parliamentary Employment and Staff Relations Act of Canada, you would be struck by how much of it is dominated by the duties, powers and authority of the Public Service Staff Relations Board (PSSRB) of the

federal Public Service. All those many provisions are inevitable in establishing the rules of the game for a collective bargaining process. What is more surprising is that in drafting legislation governing staff relations inside the precincts of the Parliament of Canada with one major objective being to distance this employment milieu from the “regular” Public Service, the PSSRB whose prime mandate has nothing to do with Parliament has significant powers.

Under the Act the PSSRB gets involved in adjudicating appointment grievances or complaints which is left to other bodies for the Public Service of Canada. Despite the potential encroachment on ‘parliamentary privilege’, from a management angle it makes eminence sense to me that a professional, fully operational, and highly qualified tribunal be charged with the additional responsibility for staff relations in Parliament given the total of approximately 2500 staff comparable to a small Canadian government ministry. More importantly this tribunal is neutral and is seen to be neutral. Both management in the three parliamentary administrations and the four unions have been angered and satisfied by different decisions, a solid indication that it is likely doing a commendable job. This is an unmistakable signal that employees are to be treated fairly in situations where staff relations disputes, after having exhausted other avenues, are sent on to an independent third party for examination and resolution after the parties concerned have exhausted other avenues in trying to settle their differences.

Are collective bargaining rights a positive factor in staff performance ?

In developing such a complete infrastructure to establish the right for employees to organize and form bargaining units to negotiate terms and conditions of work, the PESRA not only foresees a process to settle differences but the opportunity to present demands to the employer that must be negotiated. Hence, in entering contract talks the unions can put forward proposals that represent the common concerns and priorities of a specific group. Collective agreement negotiations invariably concentrate on remuneration aspects of the work contract but, through the 15 years of bargaining, employees have made real gains in terms and conditions.

Now, I may interpret collective bargaining as a positive element to building an effective workforce but here once again and despite major progress in using interest-based or less confrontational approaches, the fact is the bargaining process still is essentially adversarial. So, I am not sure unionized staff see it as giving them a strong enough voice in how they should be treated by the employer. Their firm perception is probably that the right to collective bargaining, not easily gained in the Canadian Parliament, is now a minimum..

Significantly, the Act also prohibits unionized employees from withdrawing their services; employees do not have the right to strike. If negotiations fail, an adjudicator will be appointed and can impose a settlement. This denial of what most union people consider their ultimate tool is a dark cloud on the staff relations horizon, especially since counterparts in the Public Service do have that right. In my opinion, denying parliamentary employees the right to

strike is very difficult to defend in principle and in practice. It could legally be accommodated (e.g. by an essential services clause) but this may be a mute point since Governments in Canada have not hesitated to order striking employees back to work as soon as the movement becomes overly disruptive to the general public. I am not sure, in today's climate of cynicism towards politicians, that the Canadian public feels the House of Commons and the Senate cannot be closed down on account of a work stoppage. In reality, they could function without unionized employees for a substantial period of time.

Does the PESRA contribute to better staff management ?

My premise in trying to analyse whether a Legal Parliamentary Employment Framework is or can be a factor in developing an effective and efficient human resources cadre by using the Canadian Parliamentary Employment and Staff Relations Act was that such legislation needed to speak to those qualities of a good manager and a good employee.

The Parliamentary Employment and Staff Relations Act does influence proper human resources management because it creates conditions that give managers the authority and the latitude to direct staff. The Act is helpful to managers in that it does not codify a set of detailed constraints and obligations that become a series of obstacles to be overcome before getting on with the job. It says managers have the right to manage in those important areas of organizational structure, job descriptions and classification.

The importance of treating employees fairly and allowing them the right to be represented and negotiate terms and conditions of employment is, in the end, a statement that they count and merit due consideration despite all the caveats one could add to that statement. It certainly puts managers on notice that in dealing with staff they must respect a formal contract and be accountable for their actions. In a less than direct manner, it says employees have a voice and must be valued in a tangible way.

Hence, the Act maps out broad and real management perimeters while at the same time it firmly anchors how, in the domain of staff relations, the employees can, on the one hand, have input into their working conditions and, on the other, obtain a fair and balanced hearing when presenting a grievance which extends to the crucial area of the selection and appointment system. In fact, employees can grieve just about any issue.

It should be noted that any benefit obtained through collective bargaining is extended to all unionized staff since the Senate and the House of Commons of Canada have an official policy to that effect. This is not a negligible effect of the collective bargaining process.

So, on a number of fronts, the PESRA sets the stage for a balanced workplace but, by definition, it is narrow in scope since it deals only with staff relations. From the other side, it clarifies numerous management / employee issues but it is clearly not an employment act. The French version of the title, which holds equal and official status in Canada, does not even translate the word “employment”.

What's missing ?

A legislative employment framework governing human resources management in a Legislature or anywhere for that matter should have loftier goals, demonstrate a much wider vision and express values and principles characterizing the institution of Parliament: what it means to work for the legislative branch of a nation. An objective the Canadian law does not attain. The PESRA was conceived, and drafted with little imagination and without meaningful consultations.

You have by now realized that nowhere in the PESRA do you find the stated principles of merit, non-partisanship, equity and fairness. Nor will you find them in other statutory instruments relating to our Parliament. If I were in any way involved in developing the conceptual framework for a parliamentary employment act from concept to legal text, my recommendation would be to take a serious (you might say idealistic) and strategic view of the desired legislation, in order that such a framework avoid the single mind-set of staff relations and that it not limit itself to a legalistic aggregate of prescriptive measures as some parliamentary employers may be tempted to do.

Of course, merit, fairness and equity appear in our personnel policy manuals and are, by a form of osmosis, mostly an expected and logical result of the proximity and shadow of the larger Public Service in Canada. It is my belief that much as you expect values and principles to be at the heart of a Human Resources Development Strategic Plan, they should appear as the cornerstone of any act that purports to govern employment in a legislature.

This could take the form of a preamble or expression of purpose reflecting values and principles of people management with those of the parliamentary institution. Such an employment law is meant to guide policy development and implementation to ensure they indeed remain aligned to the fundamental beliefs of Parliament.

The majority of us here are probably biased towards the need to have a separate legal employment framework for workers of a Legislature. I would tend to agree but would caution that in developing a distinct framework to “separate” a Legislature from the wider Public Service of the Executive Branch, the accent be more on complementarities than on differences, specifically for reasons of efficiency and effectiveness. In Canada, this approach is widely used and oh! so very useful to Parliament. In fact, in many instances it provides the opportunity to opt out of Public Service plans and directions. Effectiveness is served by allowing for parliamentary-specific approaches to staff management and efficiency is made all the easier by accessing Public Service resources, programs and employee benefits. To illustrate this the House of Commons, Senate and Library of Parliament employees participate in the Public Service Pension Plan, Health Plans and Life Insurance plans; they can arrange for the use of facilities and expertise found in such organizations as the Public Service Commission’s Management Assessment Centre.

However, employees of either group are considered outside candidates for staffing purposes. An employee of the Library of Parliament does not have open or equal access to government jobs for which she/he might qualify...and vice-versa. In developing an employment framework,

consideration should be given to facilitating the exchange of Parliamentary and Public Service staff to the mutual benefit of the legislative institutions and the Public service. Currently in Canada, these are only possible on an ‘ad hoc’ agreement basis.

What lessons have I learned ?

Let me summarize my conclusion on the links between effective and efficient human resources management and the employment framework based on my Canadian experience and the specific observations I have just shared with you:

A statutory employment framework is not a day to day concern of managers nor staff. Collective agreements, policies and regulations are much closer to the operational activity of both managers and employees.

An employment law, parliamentary or otherwise, provides the stage, the parameters and perimeters to manage efficiently and effectively as well as to value employees. In general, the PESRA does that peripherally and partly only, yet very strongly in terms of staff relations

I would suggest that a well thought-out framework should be all-encompassing and state up front broad and real values and principles inherent to the Legislative branch of governance and conducive to guiding people management therein. This commits the organization to the outlined criteria and communicates the essence of what it means to work in Parliament for employees. In effect, a vision of the organization as it relates

to managing people. It should reflect rights, responsibilities and flexibility instead of rigidity to get on with what counts. Today's rapidly changing and technologically-driven employment environment ironically requires the stability and solidity of a fundamental principles and values system expressed in a legal employment framework

A legislative employment framework should strive to determine obligations and delineate roles and accountabilities at a high level. Specific policies and programs that align with the framework can then be developed and implemented to balance in more detail the roles and interests of managers and employees respectively as they normally do in most of our parliamentary administrations now. This is the heart of managing for results and managing in full respect of the human resource, the employee.

That is why efficient and effective people management can and does occur without a legal or formal framework. The framework, however, leaves it much less to chance or circumstances and constitutes a very deliberate and transparent commitment to the essential values that are meant to mould the way managers and staff should behave, interact and performs.. It sends the signal. It sets the tone. It is a commitment not a guaranty.

Even the imperfect framework and results of the Canadian parliamentary staff relations law is witness to the positive influence of a legal employment framework on the performance of the total workforce, managers and employees.

I am deeply convinced that my conclusions surprise no one in this room, given the extent of the participants' cumulative experience and knowledge in reflecting and acting on how to maximize the use of our organizations' human resources. I can only hope that our Canadian experience and my perspective on it will have brought an effective and efficient contribution to our dialogue.

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