

# STATEMENT DISCOURS

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EXTÉRIEURES.



86/38

Notes for an Opening  
Statement to the Standing  
Committee on External Affairs  
and International Trade by  
the Right Honourable  
Joe Clark, Secretary of  
State for External Affairs  
on June 17

OTTAWA

June 23, 1986.

Mr. Chairman and Members of the Committee,

I have come here today at your request to follow-up my earlier testimony concerning the contract between Michael Deaver and Associates and the Canadian Embassy. You know from my letter to Mr. Winegard of May 21 that I have some serious concerns about the appropriateness of this Committee dealing with Mr. Deaver's activities as a consultant for Canada and other countries and companies, since that is currently being investigated by an independent counsel, Mr. Whitney Seymour, in the United States. I hope that there will be no attempts to turn this Committee into an arm of that United States process.

I also recognize that our contract with Michael Deaver has generated a tremendous amount of press coverage in Canada and the United States. Some of that coverage is factual, some of it is not. I hope to clarify as much of this misinformation as possible, by providing you with a brief explanation of why this Government has carried on the practice, adopted by the Trudeau Government in the early 1980's, of hiring consultants in Washington to help our Embassy provide the best promotion and protection for Canadian interests.

The question of the appropriateness of hiring consultants of course is not new. It has been raised from time to time. It is important to remember that our Embassy in Washington has to deal with a situation which is quite different than the parliamentary process with which we are so familiar here. Because of the separation of the legislative and executive branches of the U.S. Government, our Embassy has no alternative but to take our case to Congress as well as to the Administration.

In attempting to defend Canadian interests at stake in Congressional deliberations, we need to observe the requirements of U.S. law and, at the same time, to avail ourselves of the means to defend our interests which that law envisages. In particular, we need to engage professional help. Specialist law firms with their extensive knowledge of U.S. law, their knowledge of particular economic and social sectors, their knowledge of Washington officials and of the Congress, can be invaluable in providing intelligence on a given issue and in developing strategies to influence the U.S. legislative process.

An early case was the promotion and the defence of the Telidon System where the previous Government, working with a law firm headed by a former chairman of the U.S. Federal Communications Commission, the Canadian industry and the Embassy jointly succeeded in gaining the support of the U.S. industry and subsequently the FCC itself for videotext technological standards based on Canadian Telidon standards.

Engaging specialized firms is also cost effective. While such firms services do not come cheaply, they do not give rise to the transportation, housing, education, secretarial, and other support costs of Canada-based officers. Nor do they require time to develop the requisite depth of expertise in a particular field.

In 1983, responding to the growing protectionist and other threats Canada faced in the United States, the then Government set up the Fund for the Management of Canada-USA Relations from vote 1 of my Department's estimates. Originally set at \$550,000 for FY 83/84, the fund now has \$715,000 for the current fiscal year.

The United States Justice Department maintains records of all American consultants engaged for foreign countries or industries in accordance with the provisions of the Foreign Agents Registration Act. The most recent report covering the 1984 calendar year, indicates that such services were employed by the Governments, state corporations or private sector entities of 154 countries. The Justice Department estimates that some 800 firms or individuals are registered with them as so-called foreign agents.

According to the Justice Department, total Canadian Government expenditures on such services in 1984 amounted to approximately U.S. \$600,000. In the same period, 7 Canadian provincial Governments expended over U.S. \$380,000, (not including their operating costs which they are required to register under the act), while Canadian private business and industry spent more than U.S. \$4 million (excluding in some instances the costs of legal representation in American courts and quasi-judicial regulatory processes).

Total Canadian public and private sector expenditures were dwarfed, however, by those of other countries such as Japan, for example, which spent more than four times as much as Canada, according to Justice Department records. Other sources, such as the New York Times, have estimated that real total expenditures in support of Japanese interests may be closer to U.S. \$50 million if account is taken of the lobbying efforts of American importers of Japanese products.

The retention or use of expert representation, counsel or consultants in Washington is by no means solely a phenomenon restricted to foreign interests. It is, in fact, as the Committee would know, a longstanding tradition in the United

States for domestic American interests to rely on such services. The representation of domestic U.S. interests before Congress, the administration or various regulatory bodies is one of Washington's biggest industries. This fact is recognized by the House of Commons Committee investigating the role of lobbyists in this country, which recently visited Washington and also California.

Congressional authorities recently announced that expenditures on representation before members of Congress alone approached \$50 million in 1985, an increase of 16 percent from the previous year. American supporters of restrictive textile import quotas spent nearly \$3 million lobbying members of Congress in 1985.

The rationale for the Canadian Government to engage such services is really quite simple. There is no other country in the world in which Canadian interests are so directly and massively engaged. The economic dimension is self evident. Last year 78% of our exports went to the United States representing almost 25% of our GDP. Actions taken by the Administration, Congress, regulatory bodies, or state Governments can have an immediate and adverse impact of our economic well being, as has been so vividly demonstrated.

Other key areas where U.S. domestic law has a direct impact on Canada are major environmental issues (acid rain, toxic wastes in the Niagara Penninsula, the Garrison Diversion in North Dakota, the siting of a nuclear waste repository near the Canadian border), regulatory changes in areas such as communications, energy, transportation, financial services, etc.

In fact, there is little that transpires in the United States in innumerable domestic policy areas which does not have potential ramifications for Canada.

Successive Canadian Governments, through our Embassy, have used consultants for years on environmental questions, which derive from U.S. policy thrusts. The Canadian effort to promote an enhanced acid rain control program is one which is focussed necessarily on changes in a piece of U.S. domestic legislation - the Clean Air Act. The Garrison Diversion, a major threat to Canadian interests in Manitoba for years, was a domestic project driven by strong Congressional pressures. Manitoba, on several occasions, has itself sent lobbying delegations to Washington and elsewhere, aided by our

Embassy and Consulates General. Indeed, Manitoba and Ontario both hired the same consultant as the Embassy to provide advice on Garrison and toxic waste respectively.

The possible choice of a U.S. nuclear waste repository near the Canadian border stirred anxieties in the Eastern Townships of Québec and then in New Brunswick and Manitoba. In all these cases we have found it essential for some years to become involved in these domestic decision making processes.

Another dimension of Canada-USA relations warrants attention in this regard: that Canada and Canadian interests remain abysmally unknown in the U.S. Over 60% of Americans still believe that Japan is their largest and most important trading partner. Only 16% of Americans identify Canada as America's number one trading partner. Striving for greater recognition of Canada in the U.S. is a necessary precondition in attempting to define more clearly our interests and our importance to U.S. interests in the eyes of American opinion leaders and decision-makers at every level. It is only on the basis of more informed American decision makers that we can avoid being side-swiped by American actions often directed at other targets.

The complexity of American decision-making processes, the significance of our interests at stake, and our general lack of visibility in the USA all help to explain in large part why the previous Government decided on the need for engaging the services of expert American consultants. Such expertise or services are not engaged to duplicate the activities of our Embassy or Consulates. The intent is to rely on such services to complement or bolster the efforts of our own official representatives, or to carry out tasks which are beyond their capacities.

It has not been the Government's practice to hire American consultants - or lobbyists, if you will - to make representations on Canada's behalf with the Congress or the Administration. On the contrary, it has been found that this type of activity is more appropriately and more effectively done by the Embassy or other representatives - whether officials or in many cases Members of Parliament - of the Government. Access to American decision makers has not been a problem for Canada.

The main purposes consultants serve are to provide analyses of regulations; information about domestic developments and the positions of special interest groups where appropriate; advice on getting our message across and many other such ends.

The majority of the contractual arrangements have been made with Washington law firms. But the dividing line between lawyers and other types of consultants and lobbyists is often pretty hard to see and sometimes invisible. The leading Washington law firms such as Arnold and Porter, who represent the Canadian softwood lumber industry, (and who, incidentally, were present in Vancouver last week at the meeting I chaired with the provinces and industry to work out a united front on our lumber strategy), also help to provide public relations services to the industry and do liaison with U.S. domestic interests.

In general, the activities undertaken by such firms on Canada's behalf have been:

1) the provision of ongoing advice on legislative, legal or regulatory or other policy developments in areas of particular concern to Canada, such as the environment, acid rain, toxic or nuclear waste, or on a range of trade and economic issues of concern to us. Such arrangements cover not only expert analyses on these matters, but, as well, guidance on appropriate strategies and tactics to pursue on these issues. They have also helped from time to time with early warning of U.S. industry initiations inimical to Canadian interests;

2) the provision of advice on legal or regulatory processes, as well as strategic and tactical advice, involving Canadian interests such as countervailing duty or anti-dumping actions on Canadian exports to the U.S., or in U.S. court proceedings involving Canadian business or industry subjected to, for example, the extra-territorial application of U.S. law. Recent examples have been advice given to counter U.S. actions against East Coast groundfish, B.C. raspberries, pork and hogs from most parts of Canada;

3) direct representation of Canada's position before U.S. courts or regulatory agencies through, for example, the preparation and presentation of an amicus curiae brief to the U.S. Supreme Court on the unitary tax issue;

The other major category of expenditure in the Embassy's contractual arrangements has been in the area of public affairs. Services have varied from advice on the handling of specific issues, such as the seal hunt or acid rain,

to the production of radio, television and print materials for dissemination in the U.S. In early 1984, for example, production and distribution in the U.S. of television coverage of the Canada-European Ministerial Conference on Acid Rain was facilitated through such a contract. Several of the Embassy's public affairs contracts have been arranged for the provision of advice and expertise on our overall public affairs strategy in the United States in support of developing a higher profile for Canada.

While most of the consultants have been asked to deal with specific issues, there have been three hired on a general retainer basis: the firm of Akin, Gump, Strauss, Hauer and Feld and Interface International, by the previous Government and the firm of Michael K. Deaver and Associates by the present Government. The first two firms provided useful information and advice with respect to key issues such as steel import quotas legislation, American steel industry trade law actions, natural resources subsidy legislation, "Buy America" restrictions on cement and mass transit equipment, the sale of light armoured vehicles and others.

The terms of reference of Mr. Deaver's contract are contained in the contract which I tabled at my last appearance here. I have provided supplementary information about the Deaver Contract in my letter to Mr. Winegard of May 21. I should make clear that we never asked Deaver to lobby on our behalf. The contacts he listed with the U.S. Justice Department between his firm (he did not undertake them personally) and the office of the United States Trade Representative were not undertaken at our request. The Ambassador has relied on Mr. Deaver to provide advice about the presentational aspects of many issues. He advised on a process to seek bids for a major public relations contract for the Embassy, he provided advice on the public relations aspects of the trade initiative and protectionist pressures. He was not our man to lobby on acid rain.

It is true that Mr. Deaver did participate in an October 25, 1985 meeting between the two Special Envoys and Ambassador Gottlieb and Dr. Doucet in New York. That meeting was related mainly to the timing of the Envoys submission and the public relations aspects if the report was issued prematurely. Mr. Lewis was intending on taking up a new appointment and was anxious to finish his work as Special Envoy. Messrs. Lewis and Davis had many other meetings where Mr. Deaver was not present. Mr. Deaver reported his presence at the October 25 meeting to the Department of Justice, since neither he nor our officials believed there was anything improper with his presence. I

recognize that Mr. Deaver's presence at the October 25 meeting has led to allegations that it was a possible violation of U.S. law. That is currently the subject of an investigation by independent counsel Seymour.

Mr. Chairman, to help members get a more precise picture of the nature of our contracts with U.S. consultants, I have had prepared a table outlining the contracts by fiscal year since 1983, which I am making available to the Committee at this time.



## CONSULTANTS ENGAGED BY CANADIAN EMBASSY SINCE 1983

Firms or individuals engaged in the last three fiscal years to provide advice or guidance on trade and economic related issues were:

### FISCAL YEAR 1983/1984

1. Akin, Gump, Strauss, Hauer and Feld: monthly retainer of US \$10,000 for the period Decembr 1983 to March 1984.
2. Interface International Inc.: monthly retainer of US \$12,000 for the period December 1983 to March 1984.
3. Myer Rashish Associates: US \$20,000 for a study on possible ways for Canada to insulate its trade interests from adverse American action.
4. Pettit and Martin: US \$4,900 for production of a guide for Canadian exporters on new U.S. Government procurement regulations.
5. Mayer, Platt and Brown: US \$3,800 for a study on the possible impact on Canada of natural gas deregulation in the USA.
6. Sutherland, Asbill and Brennan: US \$20,500 for expert legal advice on the extraterritorial application of U.S. law and anti-trust issues.
7. O'Melveny, Myers: US \$16,500 for legal advice on the potential vulnerability of the Canadian East Coast fishery to an American trade law action.

### FISCAL YEAR 1984/1985

1. Akin, Gump, Strauss, Hauer and Feld: a contract for a maximum expenditure of US \$100,000, based on a schedule of hourly rates for general advice on trade and economic issues. Actual expenditures were approximately US \$50,000.
2. TKC International Inc.: under two separate contracts, based on hourly fee schedules, the firm provided advice on trade and economic issues. Actual expenditures were under US \$40,000.
3. Sutherland, Asbill and Brennan: the firm was hired for Cdn. \$185,000 to provide legal advice on U.S. export control law, anti-trust and extraterritoriality.

FISCAL YEAR 1985/1986

1. O'Melveny, Myers: a contract for Cdn \$139,000 was signed by the Justice Department for this law firm to advise the Government on the countervail duty case brought against Canadian exports of certain species of Canadian groundfish into the United States.
2. Sutherland, Asbill and Brennan: a contract for the period September 11, 1985 to May 31, 1986 was entered into with this law firm to have it provide legal advice on aspects of the extraterritorial application of U.S. law (US \$25,000).
3. Sutherland, Asbill and Brennan: the firm was engaged for a fee of up to US \$4,200 to provide legal advice on the issue of compulsory pilotage on the Great Lakes.
4. Cameron, Horbostel and Buttermann: this Washington law firm was hired to provide legal advice, under two separate contracts, on:
  - (a) the banning of some U.S. states of imports of Canadian hogs and pork products which had been treated with the chemical chloremphenicol (US \$6,000 maximum fee); and
  - (b) the trade law action mounted against imports of Canadian raspberries (Canadian \$9,500 maximum fee).
5. Professor Andreas Lowenfeld: a contract providing for a total payment of up to US \$3,500 was entered into for the provision of legal advice on certain aspects of the negotiation of a new bilateral air agreement with the United States.
6. Arnold and Porter: this large Washington law firm was engaged to provide legal advice, under separate contracts, on:
  - (a) the banning by certain states of imports of Canadian hogs and pork products treated with the chemical chloremphenicol (for up to US \$7,500); and
  - (b) the potential susceptibility of the Canadian aircraft industry to the filing of a countervailing duty case in the USA.
7. Wald, Harkrader and Ross: the Washington law firm was engaged for US \$7,800 to do work on the amicus curiae brief to the Supreme Court on the Matsushita vs Zenith case.

8. Bishop, Lieberman, Cook, Purrell and Reynolds: this Washington law firm was hired to do further work on the amicus curiae brief to the Supreme Court on the Alcan Aluminum unitary tax case. The firm's principals include both Democrats and Republicans.

The other major category of expenditure in the Embassy's contractual arrangements has been in the area of public affairs. Again, such contracts have varied in nature. Some have been for the provision of expert advice on the handling of specific issues such as, for example, the Canadian fur seal hunt. Others have been concluded for the production of radio, television or print materials for dissemination in the United States. In early 1984, for example, production and distribution in the USA of television coverage of the Canada-European Ministerial Conference in Ottawa was facilitated through such a contract. Other technical services in this area arranged through contracts have provided for the production and analysis of specific more general public opinion polls in the USA. Finally, several of the Embassy public affairs contracts have been arranged for the provision of advice and expertise on our overall public affairs strategy in the United States in support of developing a higher profile for Canada in that country.

In fiscal year 1983/1984, Gray and Company, one of Washington's largest public relations firms, was engaged on a monthly retainer of US \$10,500 for the last four months of the fiscal year to provide general public relations advice. In the same fiscal year, the firm produced and had broadcast in the USA television coverage on the Canada-European Ministerial Conference on Acid Rain.

That same fiscal year the polling firm, Market Opinion Research, was hired for \$25,000 to produce and analyse a poll on U.S. business leader attitudes towards Canada. As well, the firm of Matt Reese Associates was engaged for US \$41,000 to undertake a complete survey and analysis of all existing polling data in the USA regarding Canadian and American attitudes towards Canada.

In the next fiscal year (1984/1985) all three firms were again engaged. Matt Reese Associates, under separate contracts, carried out a comprehensive evaluation of Canadian Government public affairs program delivery in the USA (US \$85,000), prepared an American opinion leaders mailing list (US \$8,500), and handled the public distribution of material

highlighting the results of the 1985 Québec City Summit. Market Opinion Research, again under separate contracts, did a further analysis of the American business leaders poll (US \$10,000) and undertook a national opinion poll and analysis on American attitudes towards Canada (for US \$45,000). Gray and Company, under separate contracts, produced and disseminated four radio commentaries in the USA on Canada-U.S. issues (at US \$1,000 each); produced and distributed television coverage in the USA of the Prime Minister's visit (for US \$6,850); and provided public relations advice on the issue of the fur seal hunt in Canada (for US \$1,100).

In the last fiscal year, 1985/1986, the firm of Michael K. Deaver and Associates was retained for US \$100,000 (plus up to US \$5,000) for a period of one year to provide public affairs advice. More specifically, his firm was engaged to provide guidance on the way in which existing Canadian public affairs activities were carried out in the United States, how these might be improved upon, and how we could best handle specific issues in the USA from a public relations point of view.

A key part of his work was to provide advice on the development of a long term and comprehensive public affairs campaign in the United States which, over the course of some years, would heighten American knowledge about Canada and Canadian interests in the United States. His work in this regard related not only to the design of such an effort but as well to the themes and issues to be incorporated in such a campaign. In addition, he provided advice and guidance on individual American firms in this field which would be best suited to the implementation and development of specific aspects of such a campaign.

The consultants engaged by the Embassy on the acid rain issue were: Wellford, Wegman, Krulwich and Hoff, which had a contract for U.S. \$80,000 in FY 83/84, U.S. \$90,000 in FY 84/85 and U.S. \$100,000 in FY 85/86. The firm also provided advice on hydroelectricity.