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**Canadian Labour Law and
Industrial Relations:
Back to the Future?**

An Interview with Harry Arthurs

Interviewed by Mary Lou Coates

IRC Press

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PRESS**

Queen's University

Canadian Labour Law and Industrial Relations: Back to the Future?

An Interview with Harry Arthurs

What in your opinion are the most important forces shaping employment relations in Canada?

I see the forces as largely extrinsic to the field of industrial relations and labour law. I call them collectively 'the new economy.' By that I mean globalization and changes in the organization of work because of technological change, especially in terms of information technology. In addition, there are changes in the environment of employment relations caused by shifts in political ideology, the retreat of the state from various forms of intervention in the marketplace. This retreat ranges from the downgrading of the unemployment insurance scheme to the effects of changes in the public health system on people's sense of security. These things are not, strictly speaking, to do with employment relations but they have created a climate that is more powerful than anything within any given bargaining relationship.

What impact has this had on Canada's legislative and public policy framework?

In a sense, the legislative or public policy framework is increasingly irrelevant because of globalization. The policy can remain unchanged, the legislation unaltered, and yet the dynamic of the labour market and the behaviours of the actors in the labour market can change quite dramatically. Transnational companies, more and more, are centralizing power and authority at their head offices, with the result that the role of subsidiaries is shrinking. For example, many Canadian companies, like Ford Canada and GM, were publicly held Canadian companies in which the largest single shareholder was a multinational. Those companies are being reincarnated as private companies. They are ditching their Canadian shareholders and becoming wholly owned subsidiaries of the multinational. They either no longer have Canadian boards of directors, or the directors no longer have any significant role in plotting strategy in the company. Frequently, senior executives have diminished autonomy in fields ranging from finance to marketing to employment relations. Sometimes these subsidiaries are simply folded back into the parent company. The net result of all this is that the autonomy of the Canadian business community is considerably diminished. The survivors tend to be smaller Canadian-based companies which, if they are successful, are then absorbed into the multinationals. There are a few sectors, like the banks, however, where public policy has indeed preserved Canadian companies.

Let me try to explain these developments in an industrial relations sense. A lawyer is sitting in his office in Toronto and gets a phone call, not from Hamilton or Brockville or some other Canadian Centre where the IR people used to be but from Arkansas or Arizona or somewhere in the States, saying 'we've got an organizing campaign in our plant in Hamilton, please go out and break their kneecaps.' And the Canadian lawyer says, 'I'm sorry, that's not the law here and that's not the way we do things here.' 'Thank you so much; we'll get ourselves another lawyer!' How long does it take the lawyer to learn that instead of reasonable compliance with Canadian legislation, litigate every point? Instead

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of working through the legislative framework, learn how to bypass the legislative framework so you produce the results the client wants. Why does the client want them? Because the client comes from a different IR culture. For example, the American and the Canadian IR cultures have gone in somewhat opposite directions. We no longer have the mediating influence on our IR culture that comes from Canadian managers who read *The Globe and Mail*, who sit on a United Appeal committee with the head of their local trades council or union, whose children were born under Canadian medicare or go to Canadian schools, and so on. The subtle influence of these social forces, on both Canadian and foreign-born executives who at one time worked in Canada with a degree of autonomy and independent decision-making power, are dispelled and dissipated in this new environment. The consequence is that the labour relations legislation can be totally unamended and yet attitudinal changes, structural changes, behavioural changes can profoundly affect the way in which industrial relations plays itself out.

Overwhelming or swamping any role that labour law would have?

Exactly.

With business needing results yesterday is there time to educate the American counterpart as to what Canadian IR culture is?

They're not interested. This is eight or ten percent of their North American market—a tiny fraction of their global market. Why should they take the trouble? Even in areas like marketing, which you would expect to be quite culturally bound, more and more is coming into Canada directly from the US, and not through Canadian advertising agencies, not through Canadian television stations, but directly by satellite or cable to Canadian consumers.

What you have is a concentration of power and authority, and therefore, of norms and attitudes and styles of management, with less and less opportunity for distinctive Canadian industrial relations traditions to manifest themselves. This is not necessarily true in all countries. We are particularly susceptible because of our linguistic affinity, our geographic proximity, and the high degree of foreign ownership in our economy. And, there isn't a strong culture to offset that influence. I'm not arguing about cutting ties with the US or NAFTA (which, by the way, has very little to do with us except in the general sense of legitimating the concept). But, if we are talking about the forces that play on our legislative or public policy framework, this shift in the concentration of authority is a really powerful force and its ramifications are quite terrifying. For example, corporations tend to give at home in charitable terms. If they have no home, there is no give. As a result, funding for the Arts, for universities, and so on is just not there. For these companies, to the extent that they no longer see themselves as primarily Canadian companies but as one district within a North American or global corporation, what incentive is there to play significant roles in public policy debates? They don't care what the law is. They can simply avoid it if they wish or threaten to leave if they have to. All in all, I think our capacity to shape our public policy framework is considerably diminished.

What role is Canadian public policy playing in employment relations? Is it playing any kind of specific role right now?

Well, it is and it isn't. Take Bill 40 as a good example. The people who brought in Bill 40 and enacted it were, no doubt, sincere when they claimed that this would have really important consequences for the fate of Canadian workers in the new globalized economy. They were sincere but, in my opinion, not very well informed. The fact is that what has been undermining union power has been technological change and globalization. Bill 40 was not going to reverse that. It couldn't. Similarly, the Tories were, no doubt, sincere when they repealed Bill 40. But did they really believe that the repeal of Bill 40 would make a difference to the presence of capital investment in Ontario? Did they really imagine that the repeal would significantly expand the scope of the attractions offered by Ontario to foreign investors? It was a symbolic issue, an emotive issue. In practical terms, it is very difficult to believe that the actual conduct of employee relations altered one iota as a result of the important labour law and public policy debate on Bill 40. I think we had better expand our comprehension of what other forces are moving industrial relations and where we look for evidence of what's shaping it. I don't think it's labour law.

The fact is that what has been undermining union power has been technological change and globalization.

How stable is the current employment relations system? Are we going to see more of this swinging back and forth, not necessarily just in Ontario but across the country?

I think so. It was the NDP initially that opted for a relatively radical departure in the law, with no particular consequences. In a sense that approach invites reprisal and reprisal invites counter measures the next time the pendulum swings. So, I don't think it is very helpful to dissipate all this energy and goodwill on symbolic fights and distract ourselves from the really difficult structural questions that must be addressed, and addressed with all relevant stakeholders engaged in the discussion.

Are there changes in labour law or public policy initiatives that would help in any way deal with the impact of this new economy? Are we going to see any major restructuring of labour law?

Yes, we may well see the restructuring of labour law. One of the big problems, however, is that there is no capacity for serious dialogue among the stakeholders. You build dialogue, not with legislation, but by creating a framework for people to talk to each other. The more Canadian corporations are disempowered, the less likelihood there is of creating such a framework. For example, there is the absence of strong, centralized employer federations, which is natural enough in a country where so much employment depends on foreign-based multinationals that are repatriating their head offices. But, the more this goes on, the less likelihood we have of creating a solid, reasonable, well-informed management voice on the one side. On the other side, the increasing marginalization of the labour movement is bound to lead to a degree of radicalization and 'radicalization' does not describe people who are prepared to enter into dialogue. It describes people who are, understandably, very defensive, very aggressive, and not people who are looking to a future which is very different from the one we live in now. They are people who are trying to defend with their last breath everything that they have earned over the last 40 or 50 or 60 years. They are not imagining how we might reconstitute our economy. The best way forward, through consensus, is a way that doesn't seem to be available to us.

Was there an opportunity for dialogue in the past?

Yes, I think there might have been. Whether it would have survived globalization, who knows, quite possibly not. But, I would have said in the 1960s and into the 1970s, there was that possibility. There was a good deal of interest, for example, in Sweden. Every Royal Commission or government study on what to do about industrial relations policy almost automatically sent somebody to Sweden. The core of the Swedish system was what we call tripartism, or what people call corporatism. There is the somewhat different German system which was obviously very successful in building a sound economy with a sound social safety net. These drew on traditions of social solidarity, of having social partners—big employer federations, big union federations—who would talk to each other and to government. We don't have any of those things, but there was certainly an interest in them for a period of 10 or 15 years.

What impact has the Charter of Rights and Freedoms had on employment relations?

Juridically, none. Any attempts to use the Charter to enlarge the area of labour rights have failed. Attempts to constrain labour, such as the political dues case, also failed. I do argue that the Charter is part of a larger movement towards juridification of society, generally, and in labour relations specifically, which has a number of unfortunate effects. It has the effect, first of all, of getting people to focus on the outcome of litigation instead of using political and social action to achieve their objective. Litigation cannot deliver to them what they hope it will deliver. It can't fundamentally alter social forces and economic forces. It hasn't altered them in the US. It can't alter them here. There is a false set of preoccupations with all of this. It skews the strategies and alters the leadership of the labour movement to the extent that lawyers take a more central role in devising these strategies and on the management side as well. It creates or reinforces views of formal adjudication as being important, as opposed to the informal, mediative traditions which are so important in labour relations.

Interestingly, I think it destabilizes the categories and vocabulary of labour relations. For example, the word 'workers' doesn't appear anywhere in the Charter. To be a worker vindicating your rights under the Charter means that you have to detach yourself from your worker identity and attach yourself to your identity as a woman, as an aboriginal or as an individual. But to be a member of a worker collective gives you no particular status under the Charter. So, there is psychic pressure on people to adopt other identifications and to detach themselves from the strategy that unions have pursued for 200 years, which says that workers have collective interests and have to vindicate those interests by acting collectively. Now, if you're acting collectively it has to be in one of the Charter categories; workers' collective ambitions have no resonance under the Charter of Rights.

Do you see any changes in the future in terms of the Charter's impact?

There is a lot of American social science research that suggests that the great American civil rights revolution in the US Supreme Court never happened, that *Brown v. The Board of Education* [347 US 483 (1954)] did not produce the desegregation of American schools. Today, 40 years later, more black children are in segregated schools than were in 1954. After *Roe v. Wade* [410 US 113 (1973)], abortions went down and not up. There are a lot of other studies to indicate that social, cultural, economic, political resistance to the *Bill of Rights* litigation and to pronouncements of the US Supreme Court has shown the quite

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limited power of law to affect social transformation. Although they are far from definitive, I do believe those studies and I think that the history of the Charter, if I can write it into the future, will be one of disappointed expectations, not just on the part of the labour movement but on the part of all the other people who hoped for good things from it.

Have there been any rulings by the courts, labour boards, arbitrators that you would consider landmark decisions or particular turning points in recent years?

There have been many rulings which are legally interesting, but in the big scheme of things I would have to say no. I don't think that the courts, boards, or arbitrators are driving industrial relations. I think they are putting band-aids on it, which seldom stick, and life flows on around them.

What are the chances of seeing a new era in labour-management relations? You've talked about the difficulty in getting dialogue started. Do you see a transformation taking place?

I do, but only in the long term. The most optimistic scenario in my opinion is the following. Ultimately, it is not in the interests of the most powerful corporations in the world to be living in a context of instability. It's not in their interest to be living in the unregulated global marketplace where 28 year-olds in Singapore can destroy banks and cause thousands of investors to lose their money or a crook in Tokyo speculating in copper futures can destroy the values in the Tokyo stock exchange. So, regulation ultimately will assert its charms, as it did in the 1930s in America. For example, the Securities and Exchange Commission, for all the rhetoric, was quite well supported by American capitalism because it was understood that an unregulated securities market is in nobody's interest. I think ultimately the same thing will happen in the labour market. Research is currently being done on the impact global corporations have on their own immediate environment. For example, if New York ceases to function because of the decay of its infrastructure or social unrest and racial disharmony prevents people from living within easy access of their jobs, that is extraordinarily inconvenient from the point of view of global corporations that have their head offices on Wall Street. If there is serious worker unrest, that too is going to be very inconvenient. I can imagine at some point that powerful American global multinationals will have to make their peace with workers. We see small signs of it already. For example, companies that are having their goods produced in totally unacceptable social conditions by child labour, exploited women, convicts in the case of China, and so on, are going to have problems selling in their most valuable markets, in the sophisticated countries of North America and western Europe. The ability through modern electronic technology to get the word out about how Reebok, for instance, is having its shoes made gives the labour movement and social movements a weapon they didn't have before. They haven't learned how to use that weapon very effectively and there isn't yet a set of ground rules on how to use the weapon as a counterpart for strikes or picketing. But, I can certainly see the beginnings of that happening. It will take a long time and it will be messy.

On the one side, then, it's in the interest of corporations to have a degree of stability, predictability, and decency back in the world in which they live and prosper. On the other side, workers and other social movements are finding new techniques for organizing and for vindicating their interests. Sooner or later we are going to have a global Wagner Act, as it were. We may not replicate all of the machinery but we will have a framework for relationships.

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Would that be the starting point for getting some kind of consensus between the labour movement and employers?

Certainly in the case of Canada. As long as the consensus is defined by national boundaries we're in trouble because so much of our economy is driven by external forces and owned by people abroad. We need something transnational.

Turning to collective bargaining, how successful has it been in adjusting and adapting to the new economy? Are there limits on the traditional collective bargaining system?

Collective bargaining in a sense has worked just as it is supposed to work, because it is ultimately a power relationship. Power has shifted away from unions because of technological change and globalization and they are losing more fights. In that sense, collective bargaining has functioned as one would have anticipated. It doesn't make life very nice for people who are desperately afraid of losing their jobs, who have been suffering with reverses in real income for the last 15 years, and whose children have no prospects of employment. Collective bargaining hasn't provided the answers to these problems, uppermost in the minds of most working people.

Would you say that both sides have been constrained by this? Do employers have the flexibility that they need from the collective bargaining system? Are workers and the labour movement able to have their needs addressed?

I think employers have slowly been gaining the flexibility they feel they need through outsourcing, concession bargaining, and all kinds of devices. They've been gaining the flexibility. There's been no obvious quid pro quo that unions can say they have won for their members.

Are there other mechanisms that would work better? We are hearing a lot about works councils and other arrangements, new forms of joint governance. Are there other mechanisms that can deal more effectively with today's environment?

Any of the mechanisms you mentioned can be very useful. The problem is who has the incentive to engage in that kind of responsible behaviour? Who has the incentive to create what in Europe they call the social market, which involves works councils or worker directors or centralized negotiations involving both the government and the principal social partners? Who has the incentive in our environment to become involved with those sorts of things. The answer is nobody, certainly not the employees without whose participation the whole thing fails.

Is more government regulation of the employment relationship an answer in today's environment? Today many employers bristle that they're not able to compete because of too much government regulation?

That's nonsense. North American employers are subject to lower levels of regulation by far than employers in most European countries, subject to lower levels of taxation by far than

Who has the incentive in our environment to create a Social market.

anywhere else in the industrialized world. So, you ask yourself how come the European economies have managed reasonably well to be productive and to be profitable and yet to bring in various forms of protection for their workers? While the answer lies partly in political traditions, there are other reasons. For example, there are big differences in patterns of investment between North America and Europe. In North America or the UK, the banks tend to finance industries by means of debt rather than equity and that puts the banks at arm's length from the people they are financing and they tend to be, understandably, as creditors quite demanding. European banks tend to take an equity position within the companies that they finance, and consequently it is in their interest to take a long-term view of profitability not simply a 'when are you going to pay back our loan' view. These approaches are very deeply embedded in the economic structures of different countries and regions, and make it very difficult to import European solutions to North America. To come back to your question, it is absurd to say that we cannot compete in a regulated environment. What it does mean is that we can't achieve profit levels within our operating time frame and accept the burdens of regulation. So, a choice is made and that choice is not regulation.

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There's been some experimentation recently with alternative approaches in collective bargaining, mutual gains bargaining, interest-based bargaining. How successful or enduring do you think these new approaches will be? Are they experiments?

Yes, they are experiments and I am sure that in some situations they're valuable. But again, I have to ask what incentive is there to 'get to yes'? The incentive in some cases is to get the dispute over with, even if it means paying a reasonable price to do that and buying into a long-term collective agreement to ensure stability. But, if you are powerful and if you don't want long-term agreements because you want flexibility and if you are not prepared to pay the reasonable price because you don't have to pay a reasonable price, how much interest is there in these imaginative experiments in bargaining? Yes, at given moments, given companies will have an interest in these approaches, and I think they are valuable. But I don't think that the accumulation of a series of experiments produces an overall IR system with the same characteristics as those individual experiments.

How important is it to move towards more constructive or more cooperative employment relations?

As I said earlier, in the long term, it's very, very important. I think it will just take a while before the people who presently have an upper hand come to understand that it's in their interest to move in that direction. When that time comes, these experiments in new approaches will begin to have salience. There will be lessons learned that we can then put to work. There has to be a will to have them work, however, before we can assess their contribution.

Do employers have a leading role in that as well as the labour movement?

I think the labour movement can be somewhat excused for its intransigence because its back is against the wall. Whether holding out a more reasonably attractive set of options to them might persuade them to let their guard down is the big question.

Do employers have to be the catalyst?

I think employers are the key.

Are there any other changes that would help move that process along. How do we get from here to there or is it going to take some huge crisis?

I don't know whether a 'huge' crisis would move the process along or whether slowly grinding away at the problems will ultimately get the message to the people that count. I think that's the way it will work. Crises can have all kinds of unexpected consequences: a crisis may make us all realize that we are in the same boat and have to help each other or it could simply exacerbate tensions and lead to greater debilitating conflicts.

Can public policy do anything? Some say that labour law reinforces the separation of the roles of management and labour. Can public policy play a facilitative role?

I think there is something of a dialectic that goes on here. A public policy debate does play some role in shaping the attitudes of the parties. At the same time, the parties' attitudes inform the public policy debate. Academics and others who are devising experiments in bargaining, participation, etc., offer solutions. Everybody contributes. But the one thing we have learned is that we cannot make things happen by simply changing the law or declaring the policy. There has to be buy-in. That's the key—how to get people to buy in.

Do you think collective interests will help that more than an individual-based approach?

Yes, but we're very much in an individualistic age at the moment. That's one of the problems with the system. Employers are responding, not to their fellow members of the employer community, but to global headquarters. Workers are now more and more individualistic and see themselves less and less as having ties back to the worker collective. I think we're in an age of exaggerated individualism. That individualism taken too far can be harmful. And so the pendulum swings. It will swing back, but not, I believe, through crisis but through lessons learned, through gradually accumulated experience, and, ultimately, through the knowledge that there's a better way to do things.

Have you seen major changes in the use or the role of mediation and arbitration in resolving disputes? Have they been effective? Do you see a move towards greater use of alternative dispute resolution processes?

There has been a great deal of experimentation in alternative dispute resolution (ADR) in and out of the labour field, and yes, I think it has been for the good. It has helped to some extent in preventing the system from totally bogging down. But, the system is bogging down and however much we divert disputes out of traditional arbitration models into these more facilitative mediative models, somehow the space left by diversion always gets filled once again. For example, now we have arbitrators with the power to apply the *Human Rights Code* and the Charter. Suddenly, arbitration cases themselves are becoming

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longer and more technical. We thought that diversion into ADR would free up the adversary process. But something has flowed in to fill the space. So, again, it's a very complicated, and frankly not very optimistic, scenario that I see ahead. I think we've learned lots of good things from these experiments, and by looking at the whole process. But arbitration is not looking better today than it did 20 years ago; quite the contrary. It's slower, more costly, less efficacious than it was 20 years ago.

When the Canada-US Free Trade Agreement and NAFTA were introduced there were concerns that increased global integration would lead to greater pressures for harmonization of labour relations. There was a fear that there would be an erosion of labour standards and weaker labour laws etc. Has there been evidence of this? Is there still a potential for this to happen?

NAFTA had very little direct impact on labour law. As you know, the side agreement bound each of the countries to observe only its own laws. In the case of Canada, the provinces were to accede individually to NAFTA, which took several years. So, in fact, operationally and juridically, neither NAFTA nor the side agreement have yet had a direct effect on labour relations. They haven't altered the legal regime. But as I tried to say earlier, the whole process of regional economic integration, of which NAFTA is only a part, is proceeding apace. Canadian companies are being integrated into a North American economic space dominated by their parent companies. Tax policies, various kinds of subsidies which affect the productivity of Canadian workers, are under attack. I am absolutely certain that medicare, which was supposed to be sacrosanct, will sooner or later come under attack, not because NAFTA unwinds medicare, it clearly doesn't, but because we have become so totally dependent on North American free trade as a country, as a trading country. If someone says medicare allows Canadian automobile manufacturers to manufacture at three dollars less than their American counterparts because the state picks up the cost of health care, this will be considered an illicit subsidy to the Canadian plants. It causes jobs to be lost from the American plants to the Canadian plants because there's a subsidy coming from the Canadian government. So, someone may say, 'let's get out of public health care' because otherwise we will lose our privileged position in North American free trade. It's not NAFTA, per se, that causes this; it's the structure of the economy, the patterns of our trade, and, as we discussed earlier, the influence of American political culture. The attitudinal shifts in Canada are really quite considerable.

What are some of the attitudinal shifts?

There is the sense that we're over taxed and over regulated, for example. This is very definitely an American phenomenon. The state's retreat from the marketplace, the state's retreat from the social welfare system is heavily influenced by both political and intellectual rhetoric coming out of the US. Because we are so close and all of this is so easily and rapidly accessible to us, we find Canadian politics being reshaped in the image of American politics. It is so interesting to see how quickly the discourse on reengineering government, which originated in the US, is popping up in Canadian learned journals. Some of the most influential material being written in Canada now is reacting to or derived from American scholarly literature. The answer is that there are definite influences coming across the border, which have resulted in attitudinal shifts.

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The whole series of privatizations and deregulations, which shift the role of the states are diminishing the need for lawyers in many ways.

Do you see any moves to greater harmonization of labour laws across Canada itself?

No, I think things are rather moving in the opposite direction.

Turning more to the legal profession, what changes do you see happening or what changes are needed in Canada's law schools if they are going to prepare students adequately for entry into the legal profession.

In the last 15 or 20 years law schools have been going through something of an intellectual revolution, a quite different understanding of what law is and what it does in society. This is now beginning to influence what is taught, but it isn't yet influencing what is learned. The reason is that the professional ethos of the law school is very powerful. Students come here expecting to be prepared for careers. Their information about what those careers consist of, what skills are required, what knowledge is required, what kind of life will be led in the law, is very, very sketchy. The knowledge they do have is derived from two sources, either from lawyers who are presently in practice, or from popular culture. In many ways, people who are presently in the game have a very constrained understanding of their own roles; they may be able to give you an accurate account of what they do day-by-day but they can't compare it to anything. So, the students have a very conservative view of what it is that will advance their own interests, a very uninformed view of the world they are going into. Law schools are, therefore, at a critical juncture where the lessons being learned by the academics are not yet being effectively transmitted to new generations of students who are still influenced by their vision of what it means to be a lawyer. There is a real tension here and it will continue.

At the same time, the roles of the legal profession are shifting quite dramatically and for the worse. The consequences of globalization for the Canadian legal profession are quite horrendous. For example, the same companies that are consolidating their operations at head office are no longer going to raise capital on Bay Street. They are now raising it on Wall Street or in global markets, which means that Canadian law firms suddenly no longer have clients. With respect to deregulation, Canadian lawyers, especially those in prestigious firms, spend a lot of their time resisting government regulation. If government ceases to regulate or regulates less, they have less work to do. In the taxation area, as taxation levels diminish, which they are, the corporate drive for tax avoidance diminishes. The whole series of privatizations and deregulations, which shift the role of the state, are diminishing the need for lawyers in many ways. Labour law is a particular example. Whether the law stays the same or changes, the pressure is somewhat off companies because of the shift in power, and therefore, lawyers who have made their living acting for companies are going to notice the decline in the demand for their services.

One might say that there is also a whole realm of private relations outside the ambit of state law where lawyers could be useful. It's true in principle but so much of that market is global and is dominated primarily by American and a few British and continental law firms. They are there because they followed their corporate clients. We have no multinationals, or very few, operating in the global market, and therefore, Canadian law firms have no 'coattails' to travel on. As a result, Canadian law firms can't replace the lost domestic market by taking a significant position in the global market. Then there is the whole area of services for ordinary clients. There seems to be a model emerging, again in the US, where high-tech firms deliver standardized legal services to poorer and middle class

clients. There are three such firms now in the US and each of them handles 300,000 files a year. They have offices in shopping malls and on street-corners with banks of computers and trained secretaries and paralegals and one or two very poorly paid lawyers to 'legitimize' the whole operation. A client comes in to get a divorce or to incorporate a small business or to fight a zoning bylaw and, essentially, someone enters the information into a computer and your divorce papers come out or your house deal comes out. Because they are into mass production with minimally qualified personnel, these firms can deliver these services at a price that no solo practitioner can hope to compete with. That's the bottom end of the profession.

That is the new economy at work, then, with technology at the one end and globalization and deregulation at the other end. These things are about to make it extraordinarily difficult for Canadian lawyers. So, what can we do for the poor students now going through our law schools? We can get them to crank down their expectations, broaden their horizons, become more adaptable—all of the things people going into any other career must do today.

Are different skills needed today compared to the past?

There used to be an enormous premium placed on the ability to analyze cases in appellate court. If you could chop a case up into little pieces and derive from it a rule which enabled you then to go out and argue another case, you would have learned, as we used to say, to 'think like a lawyer.' All this litigation has become impossibly expensive and mediation has become the way in which so many disputes in many areas of law are now resolved. Mediative skill, an absolutely different kind of skill, is now required; social problem-solving, as opposed to 'logic-chopping,' has become very important. While that is just one small example, it is one of the growth areas for lawyers. Another skill that has become very important is being able to work effectively as a member of a multidisciplinary team. The big six accounting firms now have internal law firms with from 500 to 1,500 lawyers. The attraction of these big six is that they can offer engineers, and lawyers, and accountants and whoever else is needed to solve the problem. That means you can't be on your high horse about 'law trumps all.' You must understand the contribution of law—it is a contribution but a limited contribution. There is the need to listen carefully to other people and to learn from other people and to engage with other people. I think that is a big change.

Looking to the future, can you summarize what you see as the most important challenges in labour law and industrial relations?

I would say it is, in some ways, 'back to the future.' We have to relearn lessons we began to learn in the 1930s and have gradually forgotten over time—that unregulated conflict ultimately serves no one's interests. This doesn't mean that there's only one way to regulate conflict and only one level at which things can be stabilized. It means that, in the broad sense, we must invent new structures and new processes to deal with all forms of social and economic conflict, structures and processes that will enable us to improve the environment our aggressive and reckless behaviour has created.

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