

Labour Law Leads the Way

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Labour relations has always played a leadership role in Canada. Businesses and unions represent vital interests in our communities.

Their interactions have set many of the important ground rules by which we live. This is because work and work opportunities are central to us all. It is upon businesses or jobs that we build our lives. The content of labour law is therefore very telling about a society and its direction.

I thought it might be therapeutic, if not instructive, to reflect on this leadership role.

Economic and Social Justice

Collective bargaining has always represented a contest between economic and social forces. Today, however, it is more like the search for a cure to a destructive virus. The old equilibrium between these forces has been entirely disrupted. Global trade and capital markets, aided by new technology and free trade agreements, have literally created 'a new economy' which we do not yet fully comprehend. Indeed, the changes are only beginning to be understood and most of us are very frightened and confused. Our understanding, however, is not aided by the rhetoric and other ideological exhortations of either the right or the left. Fortunately, practitioners in the field of labour relations cannot afford to be side-tracked by such bluster. On your day to day efforts depend the survival and growth of businesses and jobs.

Trade unions, as we all know, are here to test economic forces and shield their members and others from the most harmful consequences. If we did not have them, we would invent them. Employers, on the other hand, must react to economic forces in order to survive and thrive. Their perspective is essentially competitive and employers create jobs. We need our businesses to grow and we want the presence of new business. The existence and interaction of trade unions and employers are fundamental to liberal democratic society. These parties produce economic growth and social standards that are the most reliable guides to our society's success and its true direction.

This does not mean that social and economic policy must always follow collective bargaining. It simply means collective bargaining produces tested results. We know employees want such initiatives because they were prepared either to strike or to forego some other benefit. Similarly, we know employers can afford the initiatives and that they can be practically implemented. This laboratory is vital to the well-being of this country.

When change comes, as it has, collective bargaining becomes charged with finding a new equilibrium. When discovered, it will be a practical compromise between what employees want and need and what employers think is appropriate in light of what they see ahead and can afford. Aspects of this compromise will also be

Labour Law and IR

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- The increased political interest in labour law reform simply bears testimony to the revolutionary nature of the forces now faced by labour, management and the public.
- Liberal democratic society has always been interested in maximizing equality between citizens.
- Labour relations has been consistently innovative in conflict resolution.
- The courts are not immune from the forces of change and are aware of the current turbulence in labour law policy.

helpful in charting a more general course for labour relations policy. Today, more than ever, collective bargaining remains on the cutting edge of economic and social policy formation.

Unfortunately, however, a new equilibrium has not yet been discovered and there are many who claim no new status quo will be found. For them, the future spells of constant change and they fear collective bargaining cannot adapt. Global competition, evidenced by the North American Free Trade Agreement, and technological change, exemplified by the computer, have had an immense impact on Canadian workplaces. Adjustment strategies, it is argued, must be tailored to particular circumstances, not to a trade-union-driven artificial industry standard.

We know, however, that too often corporate goals look more like the management theme of the month. Centralization, then decentralization. What about regionalism or zero based budgeting or possibly worker empowerment? There is now much talk of contingent workers although not many want to be one.

Having to dialogue about major workplace changes with an independent trade union is not a bad thing. Sometimes management finds it difficult to obtain independent advice. Whether appreciated or not, corporate Canada benefits by having to deal with the trade union viewpoint. And so do ordinary Canadians.

Canadian trade unions too, like their corporate counterparts, are undergoing profound change. I'm not referring to just the mergers. Unions are becoming much more knowledgeable in the industries they are active in. Collective bargaining is being tailored to individual work places. Unions are increasingly interested in the issues of training, product quality and product development. Workplace survival is very much on their agenda because management has put it there and union professional retainers reflect a growing financial sophistication. But trade unions will continue to resist changes harmful to their members. They will continue to search for a new equilibrium along with management. Management will continue to innovate and fix on cost containment. Labour relations will therefore continue to play its leadership role.

Political Policy Making

The heightened economic forces facing workplaces, coupled with an increasingly sensitive concern for social justice, has placed labour and employment law in the political arena in a manner not previously experienced since collective bargaining's advent. The last two general elections have seen labour law policy as a major political issue. This reflects the current lack of stability in our industrial relations system and related public insecurity. The intensification of cross-border interactions has eroded the capacity of any one nation state to control all the problems it now confronts. There is much anxiety. We are in need of a new consensus on what kind of workplace regulation is desirable and necessary to improve our standard of living in this new context.

Collective bargaining produces tested results. When change comes collective bargaining becomes charged with finding a new equilibrium, a practical compromise between what employees want and need and what employers think is appropriate and can afford.

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Unfortunately, the interest of the political process in labour law reform brings with it yet another disruption for the parties. Indeed, labour and management have been distracted by the political process for some years now. But it's hard to be too critical.

The increased political interest in labour law reform simply bears testimony to the revolutionary nature of the forces now faced by labour, management and the public. Politicians are unable to stand aside in the face of crippling deficits and unemployment, competition for economic activity between political jurisdictions within and without Canada's borders, a declining provincial industrial base and widespread social problems. Labour law is therefore on the political cutting edge and it will stay there until the economic and social partners in our country establish a new relationship.

Equality

Liberal democratic society has always been interested in maximizing equality between citizens. Labour relations has played a leadership role in pursuing this interest. Early on, the emphasis was on providing greater equality of opportunity. But consistently unequal outcomes for members of various groups in Canadian society such as women and the passage of *The Canadian Charter of Rights and Freedoms* caused us to reflect on equality issues in more fundamental ways. This reflection produced new policy concepts such as systemic discrimination, affirmative action, and pay and employment equity. The workplace has been the focus of these new policies because of the centrality of work to the realization of one's potential and to one's sense of self-worth.

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Some issues of equality, however, have been as difficult to resolve as they have been important. The mandatory retirement and compulsory union check off cases explored the subtle underlying economic and social implications of equality claims. There is also the concern of avoiding discrimination in the name of equality and our need to reconcile rigorous equality regulation with our interest in job growth. But whatever the policy decisions by government today, our workplaces and our communities will never be the same. A new awareness has been achieved in the field of equality. While the forum for achieving equality may change to a tribunal or courtroom, labour law will continue to lead the way in this important area.

Conflict Resolution

Here labour relations has been consistently innovative. Exiting the conventional court system in the 1940s was labour law's first important initiative together with the development of the administrative tribunal, grievance arbitration and the conciliation process. In the '70s and '80s, sophisticated mediation programs were developed under the banners of preventive mediation, relationship by objectives, and grievance mediation.

Alternatives

- Grievance arbitration
- Conciliation
- Preventative mediation
- Relations by objectives
- Grievance mediation

Judicial Review

For years, labour law has provided the cases and the sophisticated advocacy to inform the law of judicial review. Cases such as *Met Life* ([1970] S.C.R. 425), *Port Arthur Shipbuilding* ([1969] S.C.R. 85) and *New Brunswick Liquor* ([1979] 2 S.C.R. 227) created an entirely new appreciation of the appropriate judicial approach. More recently, however, this approach has changed and some might argue the pre-New *Brunswick*

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Liquor uncertainties criticized by De Smith (114-15) are reappearing. If this is so, I think this too reflects the lack of stability in our industrial relations system over the last decade and the failure of tribunal decisions to reflect a new consensus. The courts are not immune from the forces of change and are aware of the current turbulence in labour law policy.

The Future

Our courts are beginning to transform themselves along the lines forged by labour law long ago. Over time, I suspect they will come to look more familiar to practitioners of labour relations. But our tribunals also need to change. For example, because the process problems and challenges of our many tribunals are so similar and money is in short supply, it is possible to foresee a merger of most tribunals under a common administrative body of one kind or another. The resulting institutional structure might also be more user-friendly and cost effective. The consolidation of dispute resolution structures might even come to embrace a more deformed judiciary. This is the case in several advanced European countries, e.g. Germany (*Code of Civil Procedure*, art. 279(1)) and France (*Nouveau Code*, art. 21, 127-28).

The robust involvement of labour and management in a more comprehensive dispute resolution framework would help dedicate all state-provided dispute resolution services to greater speed, economy and informality.

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