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Who is the lawyer of tomorrow? What was the big takeaway from the Canadian Armed Forces review? What can railroads teach us about international law? We sat down with former Supreme Court justice, internationally renowned defender of human rights and BLG senior counsel, the Hon. Louise Arbour, for a candid conversation on her hopes for the future of law in Canada and around the world.

BLG: What are some of the most pressing issues facing law today?

Mme. Arbour: In the Canadian context, the most pressing issues are access to justice and affordability. For most people, the costs are astronomical. And the issues with timeliness are severe.

BLG: In 2018, former Chief Justice Beverley McLachlin said the principles and institutions underpinning the rule of law were under increasing attack, even in Western democracies. Is her statement still true in 2023?

Mme. Arbour: If anything, it's gotten worse. I see two big issues. Both are more U.S.-based, but anything that happens in the U.S. tends to affect — or infect — Canada to some degree. The first one is the politicization of the judiciary. In the U.S. you cannot refer to any public official, including judges, without the tag Democrat or Republican. In Canada it's creeping in. Sometimes newspapers will refer to a Supreme Court judge as "a Harper appointee" or "a Trudeau appointee." This is irresponsible and misleading. It causes public distrust because it suggests that judges come with the baggage of partisanship or political ideologies. The second issue is the personal attacks on judges that some politicians in the U.S. are fond of — calling a judge deranged or corrupt. I find it disappointing that the bar associations are not rising to denounce that. The judiciary works on credibility and trust. If we let that get eroded, it will be very hard to gain back.

BLG: What do you predict for the future of law?

Mme. Arbour: It's very difficult to talk about law in the future without talking about artificial intelligence, which presents both amazing opportunities as well as cause for concern, particularly in litigation where much of what we do is the reconstruction of past events. With new technology comes the capacity to fabricate or distort images, text and voice recordings. The tools are now so sophisticated that they can pervert the process. Another issue — when you think of jury trials, for instance — is that, for many people, what they believe is more important than what they know. And what they believe is often based solely on who they like.

BLG: How about the role of the law in Canada specifically?

Mme. Arbour: It's a challenge for the law to strike the proper balance when it comes to evolving social norms. It can't get ahead of itself, but it shouldn't lag too far behind, either. We did quite well in Canada when it came to medical assistance in dying. It was a social debate that could have gone stale or turned very angry. The contribution of the courts made it a sober and respectful discussion, grounded in fact, science and principles. I believe the law can contribute to resolving divisive social issues in a way that is progressive and acceptable. But for this to happen, it's important to preserve the integrity and confidence in the judiciary. Public political debate is often hijacked by those who have a megaphone and not much to say. This paralyzes the lawmaking process. In contrast, when the issues come to the courts, the debate is evidence-based, the tone is more respectful of contrary views and progress is made incrementally. In my view it's a mistake to shut out the courts, in particular through the use of the notwithstanding clause of the constitution.

BLG: How has your recent work with the review of the Canadian Armed Forces and Department of National Defense influenced your views on the role of law and lawyers to shape a better future?

Mme. Arbour: It reinforced my general sense that the law must be applied universally. There is a special regime for the armed forces called martial law. Martial law is fine if it stays within the realm of military discipline, the preservation of hierarchy and obedience, like being AWOL, which is conduct specific to the military. But I don't think there should be a separate regime for criminal offenses, particularly sexual offences, because the process inevitably gets tainted by the culture. It's the same for prisons. In fact, somebody once said prisons are an environment where rules are omnipresent, but the rule of law is notoriously absent.

BLG: Let's talk technology and the law. Friend or foe?

Mme. Arbour: It's neither. Or it's both. Often at the same time. It's a miracle that we can video call like this, but it becomes an immense irritant the minute there's a glitch. Technology has facilitated the work of lawyers. But at the same time, we're expected to be much more self-sufficient because of these tools and they add so many irritants while we're trying to intellectually handle the substance of our work. Lawyers in private practice are prisoners to the immediacy that technology imposes on our time. Women in the profession were the first to speak up about the need to balance personal life and work life, and just as we were starting to make a bit of progress, technology took over. So, I think it's both friend and foe. But at the end of the day, it's what it is. It's everywhere. Like air.

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BLG: How would you describe the lawyer of tomorrow?

Mme. Arbour: I started my career teaching law, so I had a much better sense of that then. I just hope the lawyers of tomorrow aren't simply technocrats of the law — smart people who know the law inside and out but don't care that much about how it connects to the big social issues of our time. The law historically was always taught as one of the liberal arts, a discipline grounded in philosophy, literature, economics. I worry that we may turn our back on some of that generalist understanding in favour of increased agility as technical experts. An example would be tax. It's a very intricate body of law that is underpinned by huge issues of social justice and equality and wealth distribution.

BLG: What happens if tomorrow's lawyers aren't trained and willing to tackle the big social issues?

Mme. Arbour: I think we become more and more disconnected from the society in which we live and miss an opportunity to use our sophisticated tools to make a contribution. Making a living and making a contribution should go hand in hand. We may lose a lot of public trust. And exacerbate the perception of the practice of law as something that serves only those who can afford it, leading to further disconnection and more inequality. This is morally problematic. It's also dangerous for a society to become increasingly fragmented and confrontational.

BLG: I won't ask you to pretend you have a crystal ball, but what are your hopes for the future of law?

Mme. Arbour: I hope that legally trained people will be at the forefront of the kinds of societal changes that need to be made if we want a better world. As lawyers we have capabilities that allow us to address the more systemic issues that result in planetary and humanitarian crises. I hope we use our visionary skills, not simply our technical skills, to make a difference. It's one thing to maximize small opportunities within the system. It's another thing to take a step back and look at the entire structure and contribute to addressing the whole problem, whatever it may be. We shouldn't be overly comforted by the good deeds we do that are simply band-aids on a broken system that needs our contribution on a much more fundamental basis.

BLG: What insight has your UN work given you regarding the future?

Mme. Arbour: If we were to try to construct the United Nations today, I don't think it would be possible. Some pessimists suggest that we're coming to the end of a genuine multilateral system, and we'll see more and more regional or other types of alliances like the G7, the G20, the BRICS. I'm not so pessimistic. The big issues of our time are truly universal. They cannot be resolved by smaller alliances alone.

BLG: What role does international law play in our collective future?

Mme. Arbour: I was once told that the beginning of modern international legal cooperation was railroads. If trains were to travel between countries, the rails had to be the same on both sides of the border. I think that's a very good example of what international law is all about. To make the planet work, we need all — or at least most — of the players at the table. And they must agree. It's messy, but the rails must match. Otherwise, everybody loses. International law is a glue that holds us together. It's what we need to resolve the big issues of the future, like climate change, human mobility, technology and the commercialization of space.

BLG's Future of Law series captures the perspectives of industry leaders on the biggest issues facing law and business over the next decade and beyond with the goal of starting conversations and supporting action in organizations across Canada. The year-long series was created in honour of BLG's 200th anniversary in 2023-2024.