

The Up and Down of Lawyering in the '90s; Our Traditional Profession in the Postmodern World

Keynote Presentation by Tom Carter

I know that it isn't easy to be a lawyer in the 90's. So many things that we thought we could count on seem to be out of control.

When we started law school most of us assumed that we were embarking on a path that would lead to financial security, prestige and a useful life of solving important problems for important people, our clients. To the extent we thought about it, we assumed that those clients, like the cod of the Grand Banks or the salmon of British Columbia, would be there in abundance forever. Articling positions too were there for the asking and a good job at a good firm or a lifetime in government service would inevitably follow.

The hard part was getting through Law School; endless hours of reading and reconciling irreconcilable cases, exam questions that made War and Peace or Ulysses look like light reading for the cottage. But we knew we could do it, and the Holy Grail was waiting, just a short walk across the stage of Convocation Hall and the LLB was ours.

For some the dream came true, but for many others, it did not. The world changed and many of us discovered that we couldn't count on those things anymore. To make it worse, the change wasn't gradual, smooth or predictable; suddenly it seemed that everything was up and down. I have often felt that I was hurtling through space on the Mindbender roller coaster at West Edmonton Mall and it was threatening to careen out of control, again.

I would like to explore those ups and downs with you. I will start by looking at the social context; I wonder if there is anything in Canadian society that accounts for this. I will then focus on the ups and downs of my own experience and how my partners and I have dealt with them. Finally I will take a tentative look into our future. Along the way I will delve into two

topics that are dear to me; listening to voices and bifocals.

The Social Context

In an intriguing new book called Sex in the Snow; Canadian Social Values at the End of the Millenium Michael Adams, co-founder of Environics Research Group Ltd. and a pollster for over twenty five years, explores the changes in Canadian attitudes over his career. He has found that despite significant differences between generations, the sexes and the founding language groups, there are a few key values that belong to all Canadians regardless of age, province or cultural heritage. They are:

- the quest for personal autonomy
- the quest for pleasure
- the quest for spiritual fulfillment.

Adams says this represents Canada's entry into the postmodern world. I think he is right. And I believe that if we understand the changes that have been happening to us as a society, we will better understand the changes that are happening to us as a profession.

First, what is this "postmodern world"? What does it look like and why does it matter to us? Here is a list of a number of differences that scholars identify as dividing the Modern Age that began with the Enlightenment from the Postmodern Age that we now live in. (This is taken from the book The Practice of Preaching by Paul Scott Wilson, a Professor of Homiletics at Emmanuel College, University of Toronto. It is interesting to see that another traditional institution, the Church, is painfully aware of, and struggling to cope with the same pressures we face.)

Modern Age	Postmodern Age
centered	decentered
theistic	polytheistic
vertical authority	horizontal authority
separate disciplines	interdisciplinary
information	communication
single meaning	multiple meanings
objective/subjective	relative

authority of fact

authority of interpretation

A quick look at these, and a quick thought about the distinctions gives us a sense of the world view that is implicit in our evolving postmodern world. This sets the stage for Adams.

Adams' message is simple. He says that the Canadian personality has changed. We used to be shy and deferential, now we are autonomous and "ironically individualistic". We used to defer to the authority of our established systems, now we want to make our own decisions. We are still looking for spiritual meaning, but not within the existing religious structures. And, we want to have fun now, not later.

This is quite a change. Our national motto for the nineties might well be the title of a charming Sesame Street book that I used to read to my children, "I Can Do It Myself!".

If our social values are reflected in the institutions that support and serve us, then, Adams says, a value shift from deferential to independent will have a revolutionary effect on our social structures. And Adams' polling, not to mention the daily papers, confirms a "crisis of declining confidence" in Canada's social systems. While this crisis is happening worldwide, Adams says that in Canada it is so dramatic that you can almost taste it.

He cites the drop in public confidence in our political institutions. We Canadians used to assume that government was on our side. It would be there and it would look after us no matter what. Well, says Adams, look again. We are living through the dismantling of much of our government structures at all levels. If the Canadian Dream was built on "Peace, Order and Good Government", Good Government is not just a moving target, it's shrinking fast. Peace? Our famed international peacekeepers are currently in disgrace. Order? At least the Mounties are still popular enough to land a marketing contract with the nice folks from Disney.

This combination of a shift in the Canadian personality and a loss of confidence in Canada's traditional institutions is a volatile and threatening mix for any profession. All the more so for a profession like law that claims a monopoly on service and girds itself with its own history, customs, language, codes and mystique. These factors set the stage for a look at the ups and downs of lawyering, at least as I have experienced them.

The Ups And Downs of My Experience

I graduated at the end of “the Great Alberta Boom” of the 70’s, and started practice just in time for “the Great Alberta Recession” of the early 80’s (Does anyone in this town remember the National Energy Policy?). That, to put it mildly, was quite a ride. There was another recession in the late 80’s and then a third in the mid 1990’s, which we are only now pulling out of. Aside from the economy, what are some other ups and downs that I have experienced?

- overhead... mostly up
- new technology... definitely up
- cost of that technology... up, and always higher than first thought
- productivity gains from that technology... down, always less than expected
- legal work... down
- supply of lawyers... always up
- debate about the supply of lawyers... forever and ever up
- fee sensitivity... up
- fees... down
- speed... up, (thanks to technology: fax, e-mail, on-line services)
- “standard of care” for lawyers... always up
- professional and personal satisfaction... down

Here are some that may be more familiar to you:

- government downsizing...up
- government employees...down
- demand on the courts...up
- money for courts...down, at least stagnant
- demands for innovation in the courts...up
- money/time/will for innovation...?

I’m not just on a roller coaster, but my head is swinging wildly up and down as I go! I get dizzy just thinking about it.

My partners and I had a very creative strategy for managing our ups and downs; we adopted the “turtle approach”. We hunkered down and waited them out. You can imagine the results. By the summer of ‘94, in the depths of the third recession of our careers, we reached our all time low. We went to lunch to discuss the disappointing results and, for the first time, found ourselves blaming each other and trying to justify why each of us was

entitled to a higher draw than the other. It was a very disturbing performance. It sounded a lot like what you might overhear if you visited the local school playground at recess.

It seemed as if I had spent my entire legal career, almost twenty years of my life, racing along the track, looking up and down, yet I hadn't really "seen" anything. All I had was a very sore neck.

And then, in October 1994, I heard a voice. It was the voice of Paul McLaughlin, the Practice Management Advisor of the Law Society of Alberta. He told us that his job was to provide help to members who were struggling with the ups and downs of running a law practice. I suggested that we call him in and my partners agreed. We knew that computers were his forte and we thought that if we could upgrade our technology we could get more work out of our existing staff and make more money.

McLaughlin surprised us. He gently told us that our problem was not getting work out, it was getting work in. He offered a four stage process; a complete review of all aspects of our operation.

We had four meetings spread out over several months. Paul insisted that we start by looking at our personal and professional values; we spent an entire evening exploring the question "Why did we become lawyers in the first place?". In the second meeting we looked at the kind of work we wanted; we sketched out a rudimentary business plan. In the third meeting we talked about ways of getting that work in; we developed a marketing plan. Only in the fourth meeting did we talk about technology, because as McLaughlin said, "Until we knew what the job really was we couldn't choose the right tools for it."

From Paul, I learned that there were other voices worth listening to. To the amusement of my wife and kids I became a middle aged self-improver. I began listening to motivational tapes in the car. I listened to people like:

- Stephen Covey: author of The Seven Habits of Highly Effective People. He believes that all human behaviour is founded on a set of simple, universal principles that he calls "natural laws". These principles include responsibility, integrity and purpose. He says that effective management does not mean applying technique, rules or strategies. Instead, good management, whether of the self, a business, a professional practice or an organization starts from within. He calls this "the inside out approach", or "the character

focus". He says these things in a voice that is quiet, calm, kindly yet very firm.

- Tom Peters: co-author of In Search of Excellence. In his recent book, The Tom Peters Seminar: Crazy Times Call For Crazy Organizations, he calls for a kind of perpetual institutional revolution. He talks about moving beyond current management theories, flattening the organizational flow charts, turning every employee into an independent business person and re-inventing your organization as often as market forces, or just your personal whims, demand. He believes that if we embrace change we unleash creativity which is deliberately stifled in most of our existing organizations. His voice, naturally, is full of energy and passion.

- Warren Bennis: author of On Becoming A Leader. In this brilliant and moving book, Bennis shares the insights he gained from two decades of study of top corporate, government and academic leaders. He says that leaders are made, not born and we all have the capacity for leadership. Leadership of a family, a community group, a department, a firm or a profession starts with leadership of the self and you can't lead yourself if you can't express yourself. His voice, like the voices of his leaders, is a voice of full, free self-expression.

As I listened to these voices I realized why McLaughlin's intervention worked so well. Like Covey, he took us back to the beginning. He asked us to recall why we chose to become lawyers in the first place. Then he started us on the process of re-creating that vision for the future. Like Peters, he showed us that vision unleashes passion which gives us energy and creativity. Those are the fuels that allow us to make a renewed vision a reality. Like Bennis, he showed us that once the vision and the passion are unleashed they need guidance and direction. The whole process hinges on effective personal and professional leadership.

And, as I listened to these voices, I was gradually able to hear another voice. It is the most important voice. It is the voice that doesn't talk about the bottom line or the monthly numbers. It is the voice that says "yes" with excitement and commitment. It is the inner voice that says, "You can make a difference."

The result was that my partners and I agreed to let each other focus on the areas of law we liked and we gave each other permission to let go of the areas that were draining our energy and resources. I chose to focus on my growing Elderlaw practice, to help bring mediation into that area and to

devote more time to writing and speaking.

But as I listened more carefully to my inner voice I was mystified. It was telling me to get a special pair of bifocals, one lens for distance, the other for close up, and to take another look up and down. Getting the bifocals was easy, I'm 46 and it was time. But the other part was a complete mystery. Look up and down? "Been there, done that". What was I supposed to see?

Being a resolute and resourceful lawyer, I decided to do the lawyerly thing and look back into the past for my answer; I decided to look for a precedent. Unfortunately, I couldn't find any reported cases on looking up and down but then I remembered a story about someone who really experienced the ups and downs, someone who went from the highest of ups to the lowest of downs. As a precedent it was ancient, and it is a story that is very appropriate for this audience because it is the story of a trial. It's the story of Job.

You must remember Job, the Biblical character who, for no reason that he could discern, found himself stripped of his wealth, his health and his family, and was left asking "Why me?" as he sat in the dust scraping his boils with a potshard.

Job is down so far that he is totally, fundamentally confused. He is so confused that he doesn't even know what his situation is. Job thinks he is on trial, complete with judge, prosecutor and defense counsel. Quite reasonably, all he wants to know is the case against him; he wants to know the charge. And even though he has utmost confidence in his case, he is very nervous about having to act as his own defence counsel. (With Satan on for the prosecution, who wouldn't be nervous?)

The confusion is due to the fact that neither Job nor his friends realize that there are two kinds of trial; one focuses on the past, on what one did or didn't do, the other focuses on the future, or on what one can still become. The problem is that Job and his friends think that Job is involved in the first kind of trial, the trial of guilt or innocence, when in fact he is involved in the second, the trial of becoming.

Imagine Job's astonishment when a whirlwind appears before him and the judge himself comes down from the bench. What does the judge do? As only judges can, he ignores all of Job's questions. But unlike most judges, he doesn't talk about guilt or innocence.

Instead, the judge presents Job with a remarkable vision. Job is shown all of creation, from the perfect harmony of the morning stars to Leviathan, prince of all the children of pride. It's as if the judge reached down out of that whirlwind and placed a special pair of bifocals on Job's face, bifocals that brought all that up and down chaos into sharp, clear focus. Where can you and I find a pair of bifocals like that?

A Look Into the Future

I think we find those bifocals by listening to voices, simply because if we want to see better, we have to listen better. Which voices must we listen to?

- to the voices of those who can teach us about personal and professional leadership (voices like Covey, Peters, Bennis et al)

- to the voices of those who have to live with us as we drag ourselves home after another day of the ups and downs

- to the voices of the historical leaders of our profession who remind us of the fundamental principles and values that have been the cornerstones of the legal profession for centuries: honesty, integrity, courage and trust

- to the voices of our clients who are, after all, the reason we exist, and who are only asking for helpful service, at reasonable cost, in language they can understand

- to the inner voice that reminds us of why we wanted to become lawyers in the first place

I believe that if we listen to those voices we will pick a very special pair of bifocals that will bring the dizzying ups and downs of the present into focus, and allow us to look ahead to see our way into the future.

If we do that, what will we see? For one thing we will see where to put the bottom line. Warren Bennis believes that that America is obsessed with the bottom line and that his country is strangling on the lack of vision that that implies. He says it is time to realize that there is no bottom line any more; there aren't any lines, except for the line we call the horizon. When asked what priority she puts on the bottom line Anita Roddick, founder of the Body Shop chain, says, "I put it at the bottom, where it belongs!"

Ironically, we will also see, that in spite of the ups and downs that have been grinding us, the world already looks to the legal profession as leaders in this confusing, postmodern world. Tom Peters says “The professional service firm is the best model for tomorrow in any industry”.

This is staggering news. I run a professional service firm, and for most of my career I haven’t felt like much of a model for anything. But on reflection, and in spite of all our ups and downs, I think I see what he means. He means that:

- we already work on multiple, market focused projects simultaneously (we call them “files”)
- we are already part of numerous, flexible, over-lapping teams focused on meeting client needs (my teams are made up of partners, staff, runners, court clerks, social workers, psychologists, mediators, even judges!...yours might include assistant deputy ministers, members of parliament, crown attorneys, public focus groups, an Inuit leader, a tax policy specialist, an economist, a professor of law or linguistics, and even a chief legislative counsel or two!).
- many of our firms have no hierarchy to flatten (we don’t live by the organizational flow chart)
- many of us are actively working to develop effective personal and professional leadership skills precisely in response to those nasty ups and downs

Of course, lawyers still have a lot to learn. I think that:

- we have to develop more collaborative ways of problem solving.
- we must redesign our compensation systems to break down the unhealthy culture of competition within our firms.
- we may have a moral duty to design profitable ways to re-enter marketplaces that we have recently abandoned (the ones where so-called “para-legals” are causing so much grief).
- we definitely have to improve our “people skills”

But, even though we didn’t know it, it is important to keep in mind

that when we look to the future, we see that in a significant sense lawyers have been there for a long time.

How will we know when we have discovered the new things that will work for us in the future? Tom Peters offers a simple suggestion; he calls it “a new, one-dimensional measure of excellence.” He says that the best way to test the health of an organization is to ask yourself the question, “Would you want your son or daughter to work there?” What would such a place be like? He speculates:

“Ethical? Profitable? Growing? Yes. Yes. Yes. Also, if you ask me, spirited, spunky. And curious. And a place where they are routinely told, ‘Do something great!’”

What a marvelous vision! That kind of firm would certainly be good enough for my kids.

Since I was invited to speak at this conference my firm has undergone an unexpected change. One partner decided that he could no longer ride the roller coaster with us and he chose to get off. This came as a complete shock. It almost brought me to a halt. You could say it really brought me down. However, after a brief period of despair, my other partner and I put on our bifocals and took another look up and down.

We decided to stay together and to stay the course. We realized that we had come a long way since October 1994 and it would be foolish to turn back. We also realized that when we started this ride, we couldn’t possibly have foreseen all the ups and downs that lay in store for us. But we knew that if making a difference means riding the roller coaster, then ups and downs are inevitable.

So, like all Canadians, it seems to me that we lawyers have three quests in this exciting postmodern world:

- our quest for spiritual fulfillment: How can we encourage each and every member of the legal profession, individually and collectively, to take a good hard look at the spiritual roots of lawyering in order to prepare for the challenges of the next millenium?

- our quest for autonomy: How can we maintain and re-vitalize our proud tradition of independent service to the people of Canada, in the face of all of the changes and ups and downs we have looked at?

- our quest for pleasure: I'm with Tom Peters on this one. How can we build firms, departments and systems that allow us to have fun as we go? (If that sounds too farfetched there's always sex in the snow.)

Gandhi said, "We must be the change that we wish to see in the world." That means that we have a lot of work to do, but I am very hopeful, and I think it is going to be a wonderful ride. It's just a matter of listening to voices and getting the right bifocals.