Chapter 1

PRESIDENTIAL ADDRESS: YESTERDAY, TODAY, AND TOMORROW IN ARBITRATION

I. Blessed Are the Peacemakers

Joel Cutcher-Gershenfeld, Neil Gershenfeld, and Alan Gershenfeld

"Blessed are the peacemakers." That is what they said when Walter Gershenfeld completed his term as President of the Faculty Senate at Temple University—honoring the many long-standing disputes that he helped to resolve in that role. "We are blessed as a field." And "blessed" is exactly how the three of us in the audience felt during the vice-presidental (emerita) introduction and presidential address to the National Academy of Arbitrators. We are blessed with Gladys and Walter as our mom and dad.

What is it like to grow up in a household with two arbitrators as parents? Well, as one might imagine, with three growing boys there were many opportunities for conflict resolution. Whether opting for mediation, collective bargaining, or binding arbitration—our parents were always fair, balanced, and thoughtful. Whether determining if Neil had just cause in tying Alan to a tree or resolving a particularly thorny arbitration case, our parents' passion and joy for the practicing of their craft was infectious—a quality of all three of us have carried into our professional personal lives. We learned from them that there were no limits to what we could accomplish in our lives, as well as the responsibility to live our lives in ways that would help make a difference in the world.

Now, as parents ourselves, we are each discovering how hard it is to do what our parents did so gracefully. Moreover, as scholars and leaders, we are also discovering what powerful role models we have had and still have. All three of us were deeply touched to see our parents in their roles as scholars and leaders at the most recent NAA meeting. The exuberance of that moment is now a cherished memory, happily recalled as we write these introductory remarks.

II. INTRODUCTION: WALTER GERSHENFELD

GLADYS GERSHENFELD*

Introducing the President of the Academy raises a special question for me. After close to 50 years of marriage and 30 years of our both being in arbitration, how can I present just a capsule picture of Walt?

If you have read his biographical material, you would already know that Walter worked for a union, then he worked in management, and he was a long-term professor at Temple University. He also served as President of the Industrial Relations Research Association. Walter is proud of the fact that only three people have been President of both the IRRA and the NAA. The others are Benjamin Aaron and Charles Killingsworth. But I'm not going to talk more about Walter's biography. I'm sure you want a more personal view.

I will characterize Walt as a "STEP AHEAD" person. By that I mean a person who learns about something new, something unusual, something important, and steps right in to get involved. Let me give you a couple of illustrations.

At one time Walt was a visiting professor in Jamaica, at the University of the West Indies. Soon after we arrived, he learned that there were unique features in the arbitration of essential industries there. So he stepped ahead. He started to do research, he conducted interviews, he read cases, and he wrote a book on the subject.

Ethics have always been a matter of concern for the Academy, and not long ago at every meeting or training program the focus was on an ethics session. In 1990, Walt, stepping ahead, initiated a film dramatizing ethical problems faced by arbitrators. The video was shown at meetings and training programs all over the country. As far as I know, it could still be in use somewhere.

Currently, with the increasing use of employment arbitration, a matter of concern for arbitrators is the demand for disclosure of prior relationships. In 1991, Walt presented a paper at the Academy on disclosure. It was printed in the Proceedings, and people still call with a particular situation and ask, "Should I or shouldn't I?"

---

*Vice-President, 1997–1999, National Academy of Arbitrators, Philadelphia, Pennsylvania.

One aspect of a "STEP AHEAD" person is a sense of timing. I believe that Walt's friends in the audience would agree that he has a keen sense of timing—especially when it comes to making a play on words or a pun.

Walter's career has provided a great deal of satisfaction. I would say that he has only one regret. On that subject, I came upon an interesting thought recently: "Comedy is like an ear for music. You have to be born with it." Walt was born with one and not the other. Walt grew up in South Philadelphia, the home of Marian Anderson and Mario Lanza. Walt's regret is that he can't sing.

But he has no regret over three individuals you see in front of us—our three sons, Joel, Neil, and Alan. I present to you their father, my husband, and the President of the Academy, Walter Gershenfeld.

III. ADDRESS

WALTER J. GERSHENFELD*

When I planned this talk, I received two clearly identifiable streams of advice, other than don't talk too long. The first stressed that the address constituted a bully pulpit, providing me with the opportunity to emphasize those matters that I considered important for the future of the NAA and arbitration. The second was that I had had and would have opportunities to present my thoughts, and the more suitable approach was to emphasize my personal experiences in becoming and serving as an arbitrator. An excellent example of this latter genre is Dick Mittenthal's presidential address.[1] Not surprisingly, some of both approaches will follow, and I note that personal responses to arbitration sometimes serve as a segue to policy positions. I will cover some personal observations on arbitration, current trends and their possible impact on arbitration and Academy membership, new approaches to Academy activity, and unfair dismissal legislation. I begin with some of my reactions to the way arbitration worked a few years ago.

---

*President, 2003, National Academy of Arbitrators, Philadelphia, Pennsylvania.

[1]Mittenthal, *The Presidential Address: Joys of Being an Arbitrator,* in Arbitration of Subcontracting and Wage Incentive Disputes, Proceedings of the 32nd Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1980), at 1.

Early Memories of the Field

My early memories include the pleasant way that the American Arbitration Association (AAA), in Philadelphia under Art Mehr, assisted new arbitrators. We were helped by having a case manager take us to the hearing if it was away from the office, manage the documents, swear in witnesses, and generally facilitate the hearing. One substantial fringe benefit was that the AAA staff became sufficiently knowledgeable about arbitration to avoid some of the problems that occur when the staff person has less knowledge of arbitration.

It is my understanding that some AAA offices offer this type of exposure, but it is limited because of case-load pressures. It is an activity worth continuing, even with occasional attendance of tribunal managers. To the extent feasible, the same holds true for most state and local appointing agencies. I recognize that the Federal Mediation and Conciliation Service (FMCS) and some state agencies have a more limited involvement in case processing than AAA, but my sense is that case-attendance exposure could be useful for FMCS and other agencies.

A second early and continuing observation involves the special words and terms used to identify work activities in a particular organization or industry. The first arbitration I attended occurred when I worked for the shipbuilders' union. At the arbitration, the union official's opening statement began with "The snapper put shenangos on the boottop, and we want relief." When the arbitrator asked for clarification, the case was clear. The "snapper," a bargaining-unit member who was a working leader, had placed "shenangos," or new recruits with low seniority, on the "boottop," the water line, which was premium-pay work usually reserved for high-seniority employees.

Next, I worked for a company that had occasion to lay off employees. The word used to describe these individuals was "overages." I thought this term provided a good picture of the image the unnecessary worker has to the organization until I became aware of the British approach. They describe employees to be laid off as "redundant" employees. I note that the term has been culturally absorbed and is frequently used on this side of the ocean.

I'm not going to go into additional examples, but there are many such terms. Some of the words or terms have been fashioned by the people involved as suitable descriptions of activities in a company, industry, or organization. My speculation is that these terms may

sometimes be created by insiders to make it difficult for outsiders to gain access to a field unless they know the code words.

It was more common years ago to invite the arbitrator to visit the plant to get an idea of the grievance setting. This was sometimes useful in making a decision, sometimes not, but it always gave you an interesting insight into differences in work environments. I note that arbitrators and parties are less likely to ask you to visit a work setting these days. The reason may be a composite of the belief that most arbitrators are familiar with what they might see and the increasing pressure to bring the hearing to a close so that steps to the next case can begin. In any event, plant visits almost always provided some type of useful learning experience.

Advocates as Arbitrators

Another early memory illustrates the bridge between practice and ethical concerns. When World War II ended, President Truman appointed George Taylor to chair a national labor-management conference in 1946. Following the positive World War II experience with dispute resolution, one of the few agreed-upon subjects was the desirability of grievance arbitration. The stage was set for the growth of grievance arbitration, and the arbitrators were the individuals who had settled disputes during World War II.

Some of these individuals moved seamlessly into neutraldom. Others became active as advocates, either as officials in an organization or as members of a law firm, who worked primarily for either management or labor. Virtually without exception, these individuals were respected for both their knowledge of the IR field and their ethical standards. To a neophyte arbitrator, it was nevertheless puzzling to see people deal interchangeably with each other as advocate and neutral. Their friendships often extended well into their social lives. No matter how honorable these individuals were—and there was every reason to believe that they called them as they saw them when they were in an arbitral phase—the image for arbitration left me uncomfortable.

I was not alone. The Academy and the principal national appointing agencies, the AAA and the FMCS, created a Code of Ethics in 1964. The NAA was the sponsoring author of the Code, and the appointing agencies were signatories. One important emphasis of the Code was that arbitrators had to be neutral to be on an arbitration panel, and the advocate arbitrators were asked to decide if they wished to be arbitrators or advocates.

Advocates as Arbitrators: Employment Arbitration

We're dealing with almost the same situation when it comes to employment arbitration. In its 1991 *Gilmer v. Interstate Lane* decision,[2] the U.S. Supreme Court opened the door for the growth of employment arbitration. The early approach to identifying employment arbitrators taken by appointing agencies works from the assumption that the advocates in the growing employment arbitration profession are the only groups with the numbers and the legal skills presumably needed to hear these cases. There are two rebuttable presumptions here, namely that the cases all involved legalities, and employment advocates were the only ones with the legal background and skills appropriate to hear these cases. I am not going to address the pros and cons of these presumptions; rather, I wish to concentrate on the fact that neutrals, skilled in employment matters, are available and are not being utilized to hear employment cases. I hear regularly from these individuals: Their backgrounds are often fully appropriate for them to serve as employment arbitrators in my judgment, and there is no room for them on employment panels dominated by advocates.

As with the labor arbitrators after WWII, I have no reason to doubt that these advocate arbitrators are doing an excellent job when they serve in a neutral capacity. Colleagues have suggested to me that I leave well enough alone. However, no matter how much the attorney representing a discharged individual has assured the complainant that the selected arbitrator, who is normally paid for service on the other side, will provide a fair arbitration hearing, a decision for the employer creates a problem for arbitration. After the hearing, I expect that a discharged individual, who has lost in arbitration before a management official, will have something to say about the level of fairness in arbitration. I note that it took us 17 years to step away from advocates as arbitrators in labor cases. We are now 13 years and counting from the more widespread use of employment arbitration. It would seem that the time has come for movement toward the use of neutrals in employment cases. Newer arbitrators are having more than the usual difficulty in getting started. Opening of employment panels would be an important step in the development of new arbitrators.

---

[2] *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 55 FEP Cases 1116 (1991).

In sum, there are both ethical reasons and practical arguments for the building up of a cadre of neutrals as employment arbitrators.

Academy Membership and Industrial Relations Trends

In the beginning, the NAA membership standard was that the candidate should be a neutral and have at least 50 cases over the recent five-year period, show diversity, and, hopefully, reflect increasing acceptability. During the so-called "Golden Years" (largely portions of all of the Fifties, Sixties, and Seventies), there was an informal increase in the number of cases required for membership. I believe it's fair to say that we are back to the original standard.

Among the reasons for the change are the fall off in agency-administered case loads and the increase in the number of "wannabe" arbitrators. Nels Nelson and I documented the former factor in a recent study that found that national, state, and local appointing agencies had experienced approximately a 25 percent decline in cases they administered between 1980 and the early 2000s.[3] Although there are no reliable data available regarding the reasons for the increase in the number of new arbitrators, one informal observation is that people are living longer and a greater number of retirees from the industrial relations field are seeking to re-enter as arbitrators. Also, individuals working for government or in academia may be serving as arbitrators on a more widespread basis than was true in the past. These observations are admittedly subjective, but what is not subjective is that it is increasingly difficult to obtain a place on appointing-agency panels.

Now, how are emerging trends in labor relations likely to affect the use of arbitration and related tools and the Academy? The areas I will touch on are outsourcing, health care costs, unit recognition by card counting, and first agreements.

Outsourcing

Outsourcing, known as subcontracting or contracting out in earlier years, has long been an area of professional interest and

[3]Gershenfeld & Nelson, The Appointment of Grievance Arbitrators by State and Local Agencies (Labor-Management Relations Centers, Cleveland State University, 2001).

case load for Academy members. Previous papers by Donald Crawford[4] and Tony Sinicropi[5] provided us with substantial insights into what was going on. Today, the operative term is "outsourcing," which probably better reflects the global nature of some of the activity.

In the private sector, the parties routinely bargained on subcontracting, and the outcomes ranged from widespread freedom to engage in the activity, to bans of some type, and a range of other solutions. Grievance arbitration frequently addressed the role of the recognition clause and subcontracting. Determinations often depended on the specific facts involved in the subcontracting history of the parties. It seems likely that outsourcing will replicate the past to some degree as the parties bargain on the subject.

The public sector, however, reasonably can be expected to see more new employer initiatives to permit greater degrees of subcontracting as public employers suffer more and more from budgetary problems. The dispute-resolution activity will emphasize contract bargaining and include fact-finding and interest arbitration.

One possible outcome from both private- and public-sector bargaining is a clause that provides the bargaining unit with an opportunity to compete with outside bidders. Such activity is already present in the federal sector. Outsourcing grievances involving make/buy situations will probably be more common in the future.

Health Care Costs

The overwhelming rise in health care costs have made this subject a prime topic in bargaining in both the private and public sectors. There probably will be little involvement for dispute resolvers in connection with private-sector interest bargaining, but the necessity to address the subject will be routine in public-sector fact-finding and interest arbitration. The key subjects to be covered will probably be co-pays, cost sharing, and retiree coverage. Unions can be expected to seek joint cost-reduction efforts as a means to avoid additional payments by bargaining-unit members.

---

[4]Crawford, *The Arbitration of Disputes Over Subcontracting*, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), at 51.

[5]Sinicropi, *Revisiting an Old Battleground: The Subcontracting Dispute*, Proceedings of the 32nd Annual Meeting, National Academy of Arbitrators, eds. Stern and Dennis (BNA Books 1980), at 125.

On the grievance side, one possible outcome from bargaining is that the employer will have an opportunity to change insurance carriers, provided that the new coverage is "substantially" the same as the previous coverage. The term "substantially" sets the stage for arbitration cases to define its use in specific situations. For example, similar benefits in two plans may be administered differently.

Card Counts for Recognition Purposes

This is a growing practice. Unions are seeking legislative support for the activity, and some employers, although a minority, have agreed to accept the outcome of a card count in recognition drives.

Card counts for recognition purposes will provide some dispute-resolution activity for a relatively small number of arbitrators who become specialists in that area. Little or no grievance arbitration is expected to be involved.

Recognition Drives and First Contacts

There have been calls for legislation to speed up the recognition process when employer opposition to recognition is present. Currently, such legislation does not appear likely to be successful and would not affect private dispute resolvers. There is also interest in ending the stalemate that frequently occurs in the negotiation of first contracts. Dispute resolvers could have a role to play here.

Some Pennsylvania experience may be relevant. In the Eighties and Nineties, Pennsylvania experienced a growing number of teacher strikes. Act 88 of 1992 was passed that provided, *inter alia*, for the use of advisory arbitration as the final step in a complex dispute-resolution process that included fact-finding and permitted strikes for a limited period of time. Advisory arbitration following fact-finding would appear to be duplicative, but the experience is that it routinely became the basis for settlements. Whatever the reasons are, it works. It is not likely that Congress will permit mandatory arbitration of new contract disputes, but the Pennsylvania experience with advisory arbitration might be worth considering in the future. In any event, this area does not imply any growth in grievance arbitration.

Overall, industrial relations trends suggest that there might be an increase in interest-bargaining roles for dispute resolvers. However, although there will be some growth in interesting outsourcing or health care cases, the numerical impact will be small. The bread

and butter of grievance arbitration will continue to be discipline and wages, hours, and working conditions, but at a lower level than in the past.

Limited Case Load and Academy Membership

I've had occasion to talk with new arbitrators who are interested in joining the Academy. Some of them indicate that they handle between 5 and 10 labor cases per year, and they regret that they do not quality for Academy membership. Permit me, although it is *ad hominem*, to share a recent, related experience. I conducted an arbitrator training session that had 25 attendees. With one exception (an Academy member), participants heard between 5 and 10 labor cases per year. Some had been doing so for more than 10 years. They were generally employed full time, and they felt that they were not likely to see an expansion in their case load that would permit them to consider full-time arbitration activity.

The question case loads raise in my mind is, are there circumstances under which we should consider these individuals for Academy membership? My early reaction is that there is probably some number beyond 50 cases that when achieved over a longer period than five years, warrants consideration of an applicant for Academy membership. Herbert Marx, outgoing chair of our Membership Committee, and Susan Brown, incoming chair, are well aware of the situation and I hope it will be a topic for discussion by the Membership Committee.

There is another group of newer arbitrators who deserve some analytical thought. These are the individuals who handle a workload of workplace arbitration cases that include combinations of labor, employment, unit determination, fair share, and other types of workplace issues. Dealing with these arbitrators raises the additional question of whether or not the Academy should consider a change in its mission. These topics are considered in the next section of this paper.

Academy Membership and Mission

Questions about the Academy's mission, principally in the light of the growth in employment arbitration, have arisen regularly since the *Gilmer* decision. The "if any" commission, chaired by Michael Beck, did not recommend a change in the Academy's mission. The more recent Commission on the Future of the

Academy, chaired by George Fleischli, held hearings and invited comments on the topic. They also did not recommend a change in the Academy's mission, but they suggested that employment cases could be given weight in judging a candidate's application.

Reexamining the Questions

It is time once again to re-examine the questions involved: It would seem in order, as a first course of business, to discover what is going on in workplace arbitration outside of traditional labor-management grievance and interest activity. Unfortunately, we have little reliable data. Hoyt Wheeler, Chair of the Research Committee, has suggested that the Research and Education Foundation submit a Request for Proposals to the profession to obtain up-to-date detailed baseline data on employment arbitration. The excellent Cornell survey of Academy arbitrators warrants updating.[6] The task will be a difficult one as a good part of the work occurs by direct appointments from the attorneys involved in the cases. We do know, from a recent report by AAA, that AAA received from 2,500 requests for employment panels in a 15-month period in 2002–2003.[7]

Does this mean that we are not in a position to discuss who we are or who we might want to be before more background data are obtained? I believe, regardless of your initial reaction to organizational change, there are some basics on which we can agree, and this will facilitate what we eventually decide to do.

To illustrate, we are a labor-management dispute-resolution organization composed of neutrals who have a centrality in grievance and interest arbitration. We are likely to continue in that direction. When the role of employment arbitration in our future was first raised, a proper immediate question was the impact on the work of labor unions. Both management and labor were and are the foundations of our profession, and the provision of arbitration services was and is a major activity offered by unions to prospective members.

---

[6]Picher, Seeber & Lipsky, *The Arbiration Profession in Transition*, in Arbitration 2000: Workplace Justice and Efficiency in the Twenty-First Century, Proceedings of the 53rd Annual Meeting, National Academy of Arbitrators, eds. Briggs & Grenig (BNA Books, 2001), at 267.

[7]Letter from Robert Meade, Vice-President, American Arbitration Association to Walter Gershenfeld, Sept. 16, 2003.

However, a growing number of unions elect to represent individuals in employment cases as an organizational tool. I am aware of such activity among locals of the American Federation of State, County and Municipal Employees; the Service Employees International Union; and the International Brotherhood of Teamsters. Probably a majority of unions have not become so involved, but I believe it is likely that the number will grow as unions perceive the possibility of such representation offering organizing assistance. Continuing antipathy by unions to employment arbitration is no longer a given.

Membership Considerations

Should our membership include individuals who do employment cases and other nontraditional forms of workplace arbitration? Recognizing such activity would give us a stronger voice in all aspects of workplace arbitration discussions. However, given our background and nature, I suggest that careful constraints must be in place. These include the fact that a candidate for membership must always be a neutral, have a core of traditional labor-management cases, and show diversity and growth in the workload. My observation is that we are entering an era where newer arbitrators may have a labor-management core (approximately 50 cases) and a substantial number of other workplace cases. In the past, admission of these individuals might have been marginal. My hope is that it will become more routine. In that regard, I note that in a 1994 presentation I made at the Academy Annual Meeting, I predicted that in 2004, an otherwise qualified individual with 45 labor cases and 45 employment cases will be admitted to Academy membership.[8] As Yogi Berra said, "You could look it up." I believe some of the admissions this year are not too far from that standard.

Impact on NAA's Mission

If we give increasing recognition to other forms of workplace arbitration, is it necessary to modify our mission statement? That is a question for tomorrow, but I believe it would be in order to survey our membership on that subject after we have collected and evaluated additional data on employment arbitration.

---

[8]Gershenfeld, *Will Arbitrator's Work Really Be Different*, in Arbitration 1994: Controversy and Continuity, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books, 1994), at 285.

Although I support change toward greater involvement of the Academy in workplace arbitration, I note the feelings of some members who believe we should stick to our labor-management past. This represents an honorable position, but I believe one that is less than viable. Events in employment arbitration carry over to labor-management arbitration. For example, disclosure in labor-management has grown, requests for discovery are increasingly on the table, and it has been suggested that we consider advocate arbitrators in labor cases. Our ability to reply effectively is certainly enhanced if we are perceived as spokespersons for the broad field of workplace arbitration.

New Academy Activity

Two new Academy initiatives are interest or study groups and sister organizations. Don McPherson has been coordinating the interest-group effort. Following the lead of the Industrial Relations Research Association (now the Labor and Employment Relations Association) (IRRA/LERA) and its international analogue, we are planning to set aside time before national meetings for groups, called sections by IRRA, with common interests to meet. The IRRA sections have grown to the point where some of them have a regular place on their national programs. Recently, a foundation grant to IRRA will create industry councils to work on issues, problems, and opportunities in their industry, including labor-management cooperation.

The sister-organization effort got off the ground at our Fall meeting in Boulder. Dan Nielsen, Academy member and former president of the Association of Labor Relations Agencies, chaired a meeting with 10 organizations present. These organizations have members active in arbitration and often have a close relationship or interest in studying aspects of workplace arbitration. In the past, we have worked with AAA, IRRA, the American Bar Association, FMCS, and the Society of Professionals in Dispute Resolution (SPIDR; now the Association for Conflict Resolution). In fact, we are participating in their annual meeting this fall in Sacramento. Their Workplace Section, with more than 1,000 members under then-chair Richard Fincher, has been very helpful in promoting this meeting. The number of other organizations with some common interests keeps growing, and we are at 12 and counting.

It turns out that we are a natural as the coordinating organization. All of the organizations involved have Academy members

among them. Frequently, an Academy member has been president or played a significant role in the so-called sister organization.

Our initial efforts are to share information about each other's meetings, and, informally, to explore opportunities to work with each other in future programs. The groups involved are moving carefully so as not to compromise in any way the fundamental role of each of the organizations involved. Nevertheless, the possibilities of healthy future growth are exciting.

I wish to point out that the name of the committee involved is: Professional Organizations' Liaison Committee. Whether or not you consider the name felicitous is up to you. Their work certainly is.

Unfair Dismissal

The idea of legislation protecting employees from arbitrary dismissal has frequently attracted the interest of Academy members. Individuals who have worked on the subject include Arvid Anderson, Clyde Summers, Jack Stieber, George Nicolau, Tim Heinsz, and Ted St. Antoine. However, it was difficult to make headway in attracting interest from the parties because they had historic reasons for not desiring such legislation.

As noted earlier, unions offer their services in representing employees in grievance arbitration as an important reason for employees to consider union representation. However, employees continue to be difficult to organize, and access to employees in a job-saving effort has potential organizing returns for unions. Many American unions are aware that British unions frequently represent unorganized employees in their industrial courts and have a reputation for doing an excellent job. This supportive publicity can reasonably be perceived as a reason why British unions support continuation of unfair-dismissal legislation. American unions may be willing to take another look at such legislation.

Management has long been enamored of the employment-at-will doctrine. The problem for management is that civil rights and other court decisions have eroded the employment-at-will standard. Management has been faced with successful six- and seven-figure courtroom awards against their organizations. Given that the recovery standards in unfair-dismissal legislation are usually limited, management may be willing to reconsider the idea of unfair-dismissal legislation.

Politicians have seen little reason to become supporters of unfair-dismissal legislation. Now that some portions of both labor and management have found reason to consider such legislation, I believe we will see political activity in connection with unfair-dismissal legislation.

Where do we fit in? We are the only major industrial society without such legislation. Typically, it takes the form of an industrial court in other societies. We have an informal system that works well. It may involve government agencies, but they generally provide private arbitrators. Some agencies do offer their staff to hear cases, but, basically, ours is a desirable private system. It would seem appropriate to support an analog of that system if unfair-dismissal legislation receives serious consideration.

Such legislation could provide for the parties to select their arbitrator. Failing that, they could be directed to an appropriate government agency as a backup to provide panels of arbitrators. Also, many industrial courts are limited to providing financial remedies. We would likely wish to consider reinstatement as a possible outcome here.

A Final Word

Earlier, I mentioned a 1994 prediction. My 2004 prediction is that by 2014 we will have some form of national legislation dealing with claims of unfair dismissal.

I note that the golden age of arbitration may be over, but a silver age may be quite acceptable.

It has been a pleasure sharing reminiscences and thoughts about the future with you. Thank you for your concern and interest.