

Citations: Banks, Kevin, “Must Canada Change Its Labour and Employment Laws to Compete with the United States?” (2013) 38 Queen’s LJ 419

Abstract: Globalization has created new and increasingly complex market pressures that governments must cope with. In the United States, there is evidence that states compete with each other in a “race to the bottom”, weakening labour and employment regulation in order to attract industrial development. Given that Canada is more exposed to US competition than ever, the author considers whether such pressures will require Canadian jurisdictions to do the same in order to remain competitive. The theory underpinning the race to the bottom suggests that only in select circumstances is it advantageous to pursue regulatory convergence, since countries with strong labour and employment protections tend to have other national advantages that offset the higher costs associated with those protections.

A series of studies have examined the relationship between protections offered by labour and employment laws with trade and investment success, but the results have not been uniform. Building on those studies, the author develops a theory of that relationship which he assesses against economic analyses that try to measure the effects of those relationships globally. Analyzing Canada-US competitive dynamics through this theoretical framework, he concludes that Canada’s stronger labour and employment law protections are not likely to diminish its economic success. Deepening economic integration between Canada and the US drives regulatory competition in labour and employment law only if they are a predominant factor in competition between the two jurisdictions. Where that is not the case, competition in labour and employment laws is more likely to be the product of anxious political discourse.

The author considers the total proportion of the cost of Canadian goods and services exports that can be attributed to labour and employment laws and the extent to which Canadian producers can exploit competitive advantages not available in the US. He argues that Canadian workplace laws are not likely to affect competitiveness with the US because the direct cost implications of those laws are small both in relation to total production costs in traded industries and to other competitive advantages. Nor is there evidence that labour and employment laws are holding back Canadian productivity growth. He concludes that Canada need not adjust its workplace laws to compete with the US and that Canadian policy makers have room to establish laws that meet workers’ needs without downgrading its labour and employment law protections.