"Bora Laskin: Identity and Professionalism"

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For delivery at the Chief Justice of Ontario's Advisory Committee on Professionalism Thirteenth Colloquium on the Legal Profession "Lawyers, Legends, Legacies and Lessons from Ontario Legal History" 1-2 November 2010

There are many aspects of Bora Laskin's life that I could talk about under the general theme of this colloquium, but I decided to talk about identity and professionalism. The question I want to address is whether Bora Laskin was a Jewish lawyer (and I use that term to embrace both his academic and judicial careers as well), or a lawyer who happened to be Jewish. In other words where did Laskin's faith and ethno-cultural background fit within his professional identity? By the phrase Jewish lawyer I mean an identity where Judaism is a prominent and public part of the individual's persona, both in the person's own mind and in the perception of that individual by the public. By the phrase "lawyer who happened to be Jewish" I mean, by contrast, an individual who prefers to keep his or her religious adherence private and lives in a society where that is permitted. This theme is, I think, relevant to any lawyer who comes from outside the mainstream, but particularly to women, visible minorities, First Nations, gay and lesbian lawyers and lawyers with disabilities in today's Ontario.

I have been thinking about this question ever since getting some feedback on the Laskin biography by a contemporary of Laskin, a now elderly Jewish man whom I interviewed for the book. He was very positive about my treatment of Laskin but he had one critique: he said he thought I had overplayed the Jewish theme. I was a bit surprised by the comment but thought about it for a long time. I think what this person meant was that in his view, Laskin was someone who would have preferred to be a lawyer who happened to be Jewish, while the message of my book was, in a sense, that for most of his life, and especially during his early years in the profession, Laskin was not allowed to be simply a lawyer who happened to be Jewish. No women or members of minorities were. Their gender or race or religion or ethnicity was assumed by others, no matter what their personal feelings, to define them as lawyers, and along with that definition went a clear set of permitted and non-permitted behaviours. In the 1930s, you could not be a lawyer who happened to be Jewish, you had to be a Jewish lawyer. That was pretty much the only identity on offer.

The amazing thing about Bora Laskin is that he did not accept that situation as a fait accompli, perhaps because he was used to a more integrated and accepting background in Thunder Bay, where he was raised. In fact, in Thunder Bay he had been lionized for his sporting and academic successes in high school, from which he graduated as valedictorian. He went about his professional life even in his early days as much as possible as if his religion was simply another interesting feature about him, along with being from Thunder Bay, being interested in labour law, wanting to teach,

etc. That was a very bold and unusual position to take at the time, and it put him in difficult straits at times. Even more difficult, though, was that Laskin wanted in a sense to be able to switch back and forth: there were times when he wanted to be a Jewish lawyer, to make common cause with other Jewish lawyers or the Jewish community in pursuing particular goals. I suggest that those times were relatively infrequent, although they were important in and of themselves. Most of the time, Laskin wanted to be thought of as simply a lawyer or a judge who happened to be Jewish, and to be judged on purely professional terms. So my critic and I were, in a sense, both right. My critic only knew Laskin at the height of his success in the 1960s, when he could pretty much decide which aspect of his identity he wanted to stress, and he chose to keep his Jewish identity more in the background. My work had exposed me to the more vulnerable Laskin of the 1930s and 40s, when widespread anti-semitism sometimes left him no choice but to fall back on Jewish networks or organizations.

I want to look at three incidents—three vignettes if you will—when Laskin's religion and his professionalism intersected, in order to elaborate on this distinction between being identified as a Jewish lawyer and one who happened to be Jewish. The first occurred when he was seeking an articling position in 1933, the second when he was active in the early human rights movement through the Canadian Jewish Congress, and the third when he was acting as governor general in 1974.

It was well known in the 1920s and 30s that Jews could only article with other Jewish lawyers or firms because the vast majority of non-Jewish lawyers would not

accept them as articling students. Laskin did not accept this, not because he deprecated what other Jewish lawyers were doing, but partly because he sought out wider horizons and partly because he did not see why it should make any difference to his principal what his religion was. But he simply could not find any non-Jewish lawyer to take him on at the beginning, and no student was allowed to enroll at Osgoode Hall until he or she had a principal. In other words, the professional world of the time defined Laskin as a Jewish lawyer when he wanted to be thought of as a lawyer who happened to be Jewish. So Laskin did what many of his Jewish classmates did: he resorted to his network of fraternity acquaintances (and fraternities in those days were organized along religious lines) to find a principal, and he found Sam Gotfrid willing to sign the papers and get him on the books as an articling student with the Law Society. Now Sam himself had just been called to the bar, had virtually no practice, and could not offer Laskin anything in the way of experience or money. So while Laskin was grateful that Sam helped him get on the books of the Society, he continued to want a "real" articling position with, preferably, a non-Jewish lawyer. And he actually found one a year later, W.C. Davidson, who had a small firm in the same building where Sam Gotfrid had his office, and that is where he served out the rest of his articles.

It is interesting that when Laskin became famous later in life he never referred publicly to Sam's role in helping him get started as a lawyer. When questioned about his articling period he referred only to his time with Davidson. To be honest, I think a bit

less of Laskin for that but I think I understand why he pulled a veil over that period in his life.

He would never acknowledge the anti-Semitism he encountered in the 1930s and 40s because it would have contradicted the identity he wanted to stress later in life, that he was a lawyer who happened to be Jewish, that being Jewish did not matter all that much in his professional life in either a negative or a positive sense. When Ian Kyer showed him in the 1980s the famous letter from Caesar Wright acknowledging that Laskin had to deal with anti-Semitic prejudice, Laskin wanted the letter destroyed; that is how strongly he felt about this disjunction between the identity he wanted to project and his actual experience.

The second episode is Laskin's involvement with the Canadian Jewish Congress when it was trying to get the first anti-discrimination laws passed in the 1940s and 50s. Laskin chaired the law and legal research committee of the Joint Public Relations Committee established by the Canadian Jewish Congress. Here, one might say, is Laskin acting as a Jewish lawyer, giving substantial amounts of time to a cause which would benefit his co-religionists and other minorities as well. That is true, but the interesting point here is that Laskin's work was not well known outside the Jewish community and he never made a point of publicizing it. So here, he is dancing on the edge of being a Jewish lawyer but still preserving in the wider world the identity of a lawyer who happens to be Jewish. Laskin never wrote in mainstream legal publications about discrimination or anti-Semitism, with the exception of an early case comment on

the *Christie v York* case in 1940 in the Canadian Bar Review, and he never spoke out publicly about it with one interesting exception. In 1960 he attended the Second Commonwealth and Empire Law Conference in Ottawa, and at it he delivered some very interesting remarks about discrimination in the legal profession. There were, he said, "verified cases of discrimination on the ground of religion and colour in the refusal of some firms to accept students for service under articles." Such behaviour, he said, should be treated as "conduct unbecoming a barrister and solicitor and deserving of discipline by the controlling organization, and the equivalent of contempt of court." This was a quite radical approach in 1960, indeed it would be considered quite radical today, and it certainly threw down the gauntlet to professional organizations about their duty to punish discriminatory practices among their members. But where did Laskin deliver these radical remarks? Not at a Canadian Bar Association meeting or other mainstream venue, where Canadian lawyers might actually have heard him, but at an obscure conference of largely international jurists that was not covered by the newspapers. In fact until I discovered these remarks in the published report of the conference proceedings forty years later, I don't think any Canadian lawyer had ever run across them.

This incident poses an interesting contrast to Laskin's willingness to publicize his role on the board of the Canadian Civil Liberties Association. The CCLA grew out of an earlier entity called the Association for Civil Liberties, which was really a one-man show run by a lawyer named Irving Himel, and it dealt almost exclusively with anti—

Semitism and not with civil liberties in the wider sense. In the early 1960s, when many of the legal battles against anti-Semitism had been won, people like Bora Laskin, Harry Arthurs, June Callwood and others thought it was time to move on to broader issues and persuaded Irving essentially to get out of the way and let this larger organization take over. The CCLA was founded in 1964 had a diverse board of directors including men and women and Protestants, Catholics and Jews, and identified itself with broad issues of freedom of speech, assembly, and the like. In this mixed context Laskin had no concerns about publicizing his role. He could present himself as a lawyer who happened to be Jewish rather than a Jewish lawyer, in the same way that other board members happened to be Protestants, Catholics, and the like.

Now the last incident that I want to discuss happened when Laskin was serving as governor general in 1974. Soon after being sworn in as governor general, Jules Leger had a serious stroke and was unable to carry out his duties. Laskin was appointed administrator of Canada as the Chief Justice is the go-to guy when that happens, and he had to serve in this role for six months starting in June of 1974. Now the date for the opening of Parliament in September had been set for some time, but it turned out that it fell on Yom Kippur. Laskin would have to read the speech from the throne and he protested that he would not do so on the most sacred day in the Jewish calendar, when work is strictly prohibited. So the opening was delayed by four days to accommodate him. Now this was very interesting to me, as it involved a very public profession by Laskin of his faith, something he had generally avoided during his life, and it involved

a request for religious accommodation which suggested that his Judaism represented something essential about him. Here he was saying that his religious identity trumped his professional identity, rather than the other way round, and in a sense he was making common cause with Jews throughout Canada who might find themselves in a similar dilemma of being asked to work on their religion's most solemn feast day. One could interpret this incident in various ways I suppose, but one way of looking at it is to say that it was only when Laskin had the security of being chief justice and governor general of Canada that he felt emboldened to affirm a religious identity that he had tried to keep largely separate from his professional life for over forty years. But from another perspective, maybe Laskin (who was an avid baseball fan) was just following the example of the well-known baseball player Sandy Coufax, who nine years earlier (6 October 1965, to be precise) had refused to pitch for his team, the Los Angeles Dodgers, at the first game of the World Series because it fell on Yom Kippur.

Bora Laskin died 26 years ago but I suggest to you that the challenges he faced in reconciling a minority identity with membership in the legal profession are still with us, and perhaps in some ways have intensified. I wonder about young Muslim lawyers, for example, and the kinds of challenges they face in entering the legal profession. There is no single right way to negotiate those challenges, and as we have seen Laskin himself changed tactics over the course of his life, sometimes downplaying his Jewish identity and other times embracing it. I hope that these remarks about Canada's first chief

justice to come from outside the traditional English and French constituencies will be of some interest to lawyers in Ontario's increasingly diverse legal profession.

[Biographical information about Bora Laskin is drawn from the author's book, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press for the Osgoode Society 2005). The incident involving Sandy Coufax is a matter of public record.]