

## **J.L. Cohen and Professionalism**

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Thank you for the invitation to talk about J.L. Cohen. He was the lawyer for the Mine Mill union during the Kirkland Lake gold miners' strike in 1941-42, which was the subject of my doctoral thesis. I became interested in him through his papers in the National Archives and a few years later went back to them to write his biography.<sup>1</sup>

It is perhaps ironical to discuss a lawyer and professionalism when dealing with the career and life of a man who was disbarred, fought hard for reinstatement, won it, then could not restart his career, and died prematurely.

Yet J.L. Cohen was very professional. He rose to the top of his chosen field – the new area of labour law, his cases being the subject of the first courses in labour law in Ontario. In his practice, he performed his work with a high level of intelligence (judging by his writing), expertise and innovation (making new law as he practiced). His legal briefs were analytical, clear, and masterful, which was apparent when I dipped into the papers of other lawyers working at that time. Cohen in 1943 also served as a member of the National War Labour Board. It became a model for future labour boards in that it was tripartite and wrestled with issues of independence from government authorities and from business and labour. It conducted a public inquiry into the causes of labour unrest during the war, and produced two reports (one was Cohen's Minority Report) that recommended collective bargaining legislation. In that board position and in his report, Cohen saw himself as a policy maker, which he clearly was, and also as a representative of the labour constituency. Though the two NWLB reports were a blueprint for the 1944 war order (PC1003) and future labour legislation, after their release, Cohen was fired

from the NWLB as he did not get on with either C.P. McTague, the NWLB chairman or Prime Minister Mackenzie King. So this combination of useful intelligent work but a prickly difficult personality emerged throughout his career.<sup>2</sup>

Cohen revered the law and had great respect for the trappings of the profession, for his colleagues, and for the courts. He came to these views – perhaps because the law was the vehicle he used to escape poverty and at the same time fulfill his arduous role as the main breadwinner in his family after his father died.<sup>3</sup> To accomplish this task, he worked unceasingly – as a clerk in a law office, in a combined work-study program to gain his law degree, taking classes, researching cases in a law office, in 1918 passing his law exams (with distinction) and eventually representing clients and presenting cases as a young lawyer. As a Jew he had to deal with anti-Semitism in the profession, which made getting work articling, in firms and eventually setting up his own practice difficult. His preferred defence mechanism was to ignore it as much as possible. All of these early experiences turned him into a life-long workaholic, who did best practicing on his own. Indeed he remained a loner, not frequenting social clubs or networking with peers in the Law Society, or doing community work for Jewish organizations. In some sense his entire professional life was about working in communities, but as a lawyer, as a professional.<sup>4</sup>

The nature of Cohen's practice, defending and protecting disadvantaged, sometimes marginal people including unemployed workers in the 1930s, Communist union and political activists, workers trying to form unions in the 1940s, different categories of people interned during the war, including Communists, trade unionists, the Jehovah's Witnesses, and some banned organizations such as the Ukrainian Labour

Farmer Temple Association.<sup>5</sup> His clients and their cases shaped his ideas about the law and contributed to his interest in public policy. Cohen saw the law as an instrument that he could use to secure rights for people to protect them or get them out of scrapes. Sometimes, if the law was insufficient to achieve these ends, he then used it as an instrument to create change, both in briefs to governments and publicly, by demonstrating its weaknesses or inadequacies from his perspective. So for example during the war in his cases for internees, he became frustrated by their lack of rights and by the lack of information to enable him to defend his clients professionally. Increasingly both within the legal system and outside it as a member on the board of the Civil Liberties Association of Toronto, he critiqued the Defence of Canada Regulations, the procedures of the advisory committees, and eventually he influenced some changes in those regulations. Similarly in his trade union cases, as he defended striking workers he focused on a gap in Canadian public policy at that time – the lack of collective bargaining legislation. Informed by his knowledge of British and American law, he wrote a small book called *Collective Bargaining in Canada* (1941) and clearly articulated the need for new labour law in Canada as he helped unions to formulate their policy needs effectively.

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In the course of his career, Cohen worked almost exclusively with groups of men in a pre-feminist world where the genders were segregated. The lawyers, most of his clients, the labour leaders and local union committees were virtually all men. Women outside of his family whom he met while doing his work sometimes were plant workers but mostly were secretaries in his and other offices. While Cohen married an educated, professional woman (a social worker), and though he supported equal pay for equal work

for women and mothers' allowances, he accepted the gendered status quo in the legal profession and in Canadian society and worked comfortably within the male culture of the day. In that sense, he was part of the mainstream and as a lawyer he shared the prevailing notions of what it meant to be a professional. Within the legal profession, he himself was very much in a minority, as a Jew, as a radical, and as a lawyer representing the new emerging unions that corporations opposed vigorously. In this position, he could not afford to make a mistake.

Partly because he had a prickly personality many perceived as arrogant, partly because of his immigrant status and his radical politics, but also because of his great ability he provoked envy in some. Senator David Croll commented, 'nothing like him has appeared on the scene for a long time. There hasn't been anybody as brilliant in labour law.'<sup>7</sup> For all of these reasons, J.L. Cohen made enemies. Thus when he made a mistake, the structure, culture, and biases of many in the legal profession prevented his peers from being sympathetic towards him, and the nature of his mistake also evoked paternalistic concerns about his mistreatment of a 'young' woman.

Had Cohen been a conventional, easier personality, he would have remained an outsider, but would have continued to practice law at a high level, influence lawmakers with his expertise, his innovative ideas, and his brilliant briefs. But Cohen had issues he kept well hidden, which made him a fascinating person to study, but caused him to project a cocky, arrogant not particularly likeable personality. We now know from his testimony at his disbarment hearing that he was a neurotic who suffered from fear of airplanes, heights, crossing bridges (his father drowned), some claustrophobia, and a fear of being alone.<sup>8</sup> To ease these inner tensions and perform at a high level professionally

every day, he resorted to barbiturates and became habituated to them. He also drank but was not an alcoholic. As his marriage became strained, he actively took up with other women, including women working for clients and in his own office. The growing tension between running a hectic career with many demands on his time and energy, and coping with his private addictions and obsessions resulted in a crisis.

After a long day of meetings in November 1945 he went back to his hotel in Kirkland Lake where his secretary/travelling companion was waiting. After drinking and popping pills, he got into an argument with her and hit her. She screamed, the police arrived and eventually he was driven back to Toronto. But the incident sparked action against him. It is unclear by whom, as evidence in the Ontario Archives was destroyed.<sup>9</sup> But shortly before this incident, Cohen publicly criticized the Attorney General, Leslie Blackwell before the LeBel Inquiry into government spying on the CCF and labour movement. Blackwell eventually personally decided Cohen's case would be prosecuted.<sup>10</sup> In addition, the mine owners disliked Cohen for his leadership role with the unions during the war, including in the Kirkland Lake gold miners' strike in 1941-42. Also Cohen was a small 'c' Communist at a time when that party was unpopular for its ideas, its support of the totalitarian government in the Soviet Union and for its shifting positions before the Soviet Union became an ally of Canada in the war. In 1945 rumblings that led to the Cold War already were coming to the surface.

After a conviction for assault (despite being represented by J.J. Robinette), Cohen went to jail and the Law Society began to investigate grounds for his disbarment. Ultimately despite many positive representations and expert legal advice at the

disbarment hearing, Cohen was disbarred and humiliated publicly. His case was a personal tragedy.

When I researched the disbarment case I came across language used and rituals and behaviour I could not totally fathom. I knew I was missing something. I turned to theories of masculinity to explain what I was encountering. Such ideas allowed me to illuminate Cohen's personality and behaviour, his relations with the Law Society and its rituals so that I could better clarify Cohen's position in the disbarment process. Clearly in the 1940s, professionalism in law was about men. In the 1930s and 1940s society expected men to fulfill the role of the 'good provider.' Men supported their families, were protective and paternal towards women and carried enormous public and private responsibilities, in exchange for which they had power and preference in the labour force, in their professions and in their families. Cohen reflected the notions of manliness current at the time. He worked very hard, made a good living, and supported his extended family from an early age. As a lawyer, he was the epitome of the educated, rational, male professional who gained a position from which he derived status, respect and income. It was a position he worked hard to attain and enjoyed.

At the same time, there were hierarchies within the male professional culture of the day. Cohen's status as a Jewish immigrant made him a minority within the legal profession. In the disbarment hearing he was not only embarrassed about his own behaviour but he was judged by peers who were all white Christian conservative males and much more powerful lawyers than he would ever be by virtue of their schooling, class backgrounds and leadership positions in the Canadian legal profession. Thus they totally had the upper hand not just because they had power to decide Cohen's future

membership in the profession but also because they were the dominant majority and he was from a distinct minority (as a Jew, immigrant, Communist, labourite). Cohen was not just nervous because his stupid mistake had put him in this excruciating and humiliating position; he was uncharacteristically obsequious and deferential, because he was vulnerable. He was prostrate before them, confiding his personal and medical problems in a plea for his professional/ personal life. He lost and was disbarred for conduct 'unbecoming' a lawyer, which was a tragedy for a man so respectful of the law and the law profession.<sup>11</sup>

Barred from practising law, he did arbitrations to make a living. His disbarment was unusual. Between 1945 and 1965, 93 lawyers were disbarred, most for misappropriation of clients' funds or related business activities. Only six sought reinstatement, as most were somewhat 'marginal' lawyers, who had been poor students. Cohen was an exceptional law student, at the top of his field, and the only labour lawyer disbarred.<sup>12</sup>

A few years later his lawyers agreed enough time had passed for him to apply for reinstatement. Again they collected letters attesting to his gifts as a lawyer, presented proof that he had followed the Law Society's rules while disbarred, medical testimony that he was well and would not offend again, and comments from lawyers who felt he had paid the price for his bad behaviour, had rehabilitated himself and should be allowed to reestablish himself in the profession. After his reinstatement and four years of fighting a case that had destroyed his health, strained his family relations, and ruined his professional life, a much-chastened Cohen sought to return to practising law.<sup>13</sup>

Cohen gained reinstatement but he had to start all over again. He found that old clients would not use him in cases. His case was an embarrassment, about which his associates in the labour movement remained embarrassed to talk about even years later, as I did my research. He was a proven adulterer and his former clients who respected his talents were very critical of his assault of ‘a young woman.’ It brought out their sense of chivalry and they saw his behaviour as very unprofessional. His other difficulty was that the labour field had developed quickly so other younger talented men were competing for work in the area, (people like Ted Jolliffe, David Lewis, Andrew Brewin, Charles Dubin) and they got the work. By then, Cohen had changed and lacked his old stamina, energy and confidence.<sup>14</sup>

Cohen’s identity as a lawyer was total. His long-suffering wife remained loyal to him. His daughter Phyllis Clarke adored him and later was responsible for having his papers put in the National Archives. But none of this was enough. When he could not resume his career, he resumed his addiction to barbiturates and in a fit of depression chose not to continue living.<sup>15</sup>

Cohen was a victim of his work habits, of his own personality but also of a profession that chose to punish him for his mistake. Colleagues recognized his great talent but many detested his arrogance, which was particularly offensive to them because of whom he was and who he represented. So when given the opportunity to ‘cut him down to size’ his peers were ready to do that. Despite his successful efforts to rehabilitate himself between his disbarment and the reinstatement hearings, he could not re-establish his career after his readmission to the Bar. The case has great pathos, because Cohen was not simply a victim, although he was stripped of his professional credentials by a panel of

Christian, prosperous, successful men. He did not see himself as a victim as he shared the prevailing notions of what it was to be a gentleman and a lawyer, and he had no one to blame but himself. He had violated a cultural code of manhood that some of his peers and clients found scandalous even years later, as well as the professional code of conduct in his profession. Thus even after reinstatement, he could not begin again and could not conceive of a future without his work. Perhaps the lesson we can learn from Cohen's lifestyle was that work-life balance was not part of his life and its absence was lethal. Four months after his reinstatement in 1950, he died at age 53.<sup>16</sup>

An imperfect individual, but neither a hero nor a villain, Cohen nevertheless helped many people. His legacy is his formidable contribution to the development of labour law and the industrial relations system, to the emergence and administration of industrial standards legislation, and in furthering the protection of civil liberties. Cohen was among a small minority of 'radical lawyers' who represent the less powerful and seek to use the law to reform society and to protect civil liberties.<sup>17</sup> Though a brilliant lawyer, his profession ostracized him after the assault case. His personal flaws, developed partly from harsh experiences early in life, his heavy financial responsibilities, and obsessive work habits undermined his great talents, as did a legal culture of the day that expected all men to perform many duties both work-related and personal with honesty and professionalism, as it was then defined. Thus his legacy, which was very real, did not turn into a legend. People even years later valued his work and understood his formidable legal contributions but they did not celebrate the man himself.

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<sup>1</sup> Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen*, Osgoode Society for Canadian Legal History and University of Toronto Press, 2001. (hereafter referred to as Cohen)

<sup>2</sup> On the NWLB Inquiry, Cohen, 132-138; on Cohen's firing, 138-144.

<sup>3</sup> Cohen, 18-22.

<sup>4</sup> On his legal training, Cohen 19-20; on anti- Semitism in the legal profession and his lack of networking, Cohen 20-24.

<sup>5</sup> On the internment cases that Cohen handled, Cohen, 153-192.

<sup>6</sup> On his work experience with unions in the 1940s and his authorship of *Collective Bargaining in Canada*, see Cohen 83-108.

<sup>7</sup> Cohen, 223.

<sup>8</sup> Cohen, 239-243.

<sup>9</sup> On the destroyed file in the Ontario Archives, see Cohen, chapter 9, endnote 37, 346.

<sup>10</sup> On the LeBel Inquiry, see Cohen, 206-211.

<sup>11</sup> For events leading to the disbarment hearings and the hearings themselves, see Cohen, 223-250 and 251-276.

<sup>12</sup> For data on disbarments, see Cohen, 273-275.

<sup>13</sup> For details about the struggle for reinstatement, see Cohen, 277-288.

<sup>14</sup> On the changing labour law field, see Cohen, 289.

<sup>15</sup> On his tragic end, see Cohen, 290.

<sup>16</sup> This analysis is in Cohen, 8.

<sup>17</sup> On his legacy, see Cohen, 3.