

Bora Laskin Award Ceremony
November 24, 2022
Toronto, O.N.

[Christopher Albertyn, Arbitrator](#)

Jeffrey Sack has been involved in many important labour law developments. He has also played a leading role in advancing the cohesion, collegiality, and education of the labour law community. In this tribute, I will touch briefly on a few areas of such impact in the array of Jeffrey's enduring contributions.

Charter rights and values in the workplace

Jeffrey has argued many cases advancing the rights of workers and unions, and tried to achieve the full recognition of workers' rights in the workplace as Charter rights. I will mention two.

Jeffrey led the legal team in the *Lavigne v OPSEU*¹ case before the Supreme Court of Canada in 1991, representing the CLC and the OFL, in the important decision which established that union dues could be used, in part, for political objectives, and not just for purposes directly related to collective bargaining. Doing that does not violate a contributing employee's Charter rights to freedom of association and freedom of expression.

The Court's decision upheld the Rand Formula, allowing the continued contribution of union dues by non-members covered by collective agreements, including for the union's political purposes. One of Jeffrey's contributions to the argument was referenced by the Court. He pointed out the many dangers of following the American approach, which allowed court review of the extent to which union funds were expended on legitimate collective bargaining activities. The Court relied on Jeffrey's contribution, among other submissions, to affirm that once a union is certified it may exercise some authority over the members, including, through democratic decision-making, how union funds are expended.

Perhaps more importantly, Jeffrey made a significant early contribution to the recognition of the right to strike as a constitutional right, as part of freedom of association.

¹ 1991 CanLII 68 (SCC).

One year after the promulgation of the Charter, in 1983, Jeffrey, representing the SEIU², argued in the *Broadview Manor* case³ that the *Inflation Restraint Act, 1982* violated the fundamental freedom of association guaranteed by the Charter by removing the right to bargain and to strike. As a result, the Act was declared void, to the extent of such infringement.

The following comment by Judge Galligan is notable:

However, as Mr. Sack put it, fortunately often enough to finally get through to me, freedom of association contains a sanction that can convince an employer to recognize the workers' representatives and bargain effectively with them. That sanction is the freedom to strike. By the exercise of that freedom the workers, through their union, have the power to convince an employer to recognize the union and to bargain with it.

In the absence of a statute like the *Labour Relations Act* which regulates the collective bargaining process the freedom of association includes within it the sanction that makes it a worthwhile freedom. If that sanction is removed the freedom is valueless because there is no effective means to force an employer to recognize the workers' representatives and bargain with them. When that happens the *raison d'etre* for workers to organize themselves into a union is gone. Thus I think that the removal of the freedom to strike renders the freedom to organize a hollow thing.

This approach was not followed in the Supreme Court of Canada's trilogy of decisions in 1987. But in 2015 – 32 years after Jeffrey's successful argument in the *Broadview Manor* case – these same two paragraphs were quoted with approval by the Supreme Court in *Saskatchewan Federation of Labour v. Saskatchewan*⁴, – albeit without the reference to Jeffrey's perseverance – and the right to strike was recognized as an inseparable part of the right to bargain collectively, itself an essential part of freedom of association in a liberal democratic society. This recognition, creating a level playing field between employers and unions, conforms with Canada's treaty obligations, including ILO Convention No. 87. To quote an article by Jeffrey in the *International Labor Rights Case Law*⁵, the recognition of the right to strike reflected and reinforced an emerging global consensus on the fundamental nature of this right.

² In *Re Service Employees' International Union, Local 204 and Broadway Manor Nursing Home et al.*, (1983) 44 O.R. (2d) 392, 4 D.L.R. (4th) 231.

³ *Service Employees' International Union, Local 204 and Broadway Manor Nursing Home* (1983), 1983 CanLII 1928 (ON SC).

⁴ 2015 SCC 4 (CanLII).

⁵ 1 (2015) 177-189

Through Jeffrey's efforts and those of others, the core democratic right of collective bargaining and the right to strike now form part of the fabric of our society.

The founding of CALL

Jeffrey has always been committed to building collegiality across the labour law profession. As part of this commitment, he played a seminal role in the founding of CALL, the Canadian Association of Labour Lawyers, the association of union-side lawyers in Canada. Although CALL had its inaugural meeting in 1992, its origin goes back further.

There were informal meetings of labour advocates in the 1950s, which included David Lewis, Pierre Elliot Trudeau, Andrew Brewin, and Maurice Wright. Following the passage of the *Charter of Rights* in 1982, at Jeffrey's request the President of the CLC, Dennis McDermott, called a meeting of the known union lawyers across the country in April 1983, in Montebello, Quebec. It was estimated that as many as 25 union-side lawyers might respond, but in fact 65 lawyers attended. The CLC gave initial support for such meetings thereafter but, by 1988, it was clear that, if such gatherings were to continue, the union-side lawyers would have to do it on their own.

Ron Pink wrote to a small group of union-side lawyers, including Jeffrey, and suggested the establishment of a Canadian conference of union-side lawyers. Then a small group – Mel Myers, Gaston Nadeau, Louise Otis, Brian Shell, Catherine St. Germain, and Jeffrey – met and agreed upon the objectives, membership, organizational structure, and plans for a founding meeting. That founding meeting was by teleconference on May 1, 1989, when a constitution was adopted, officers were elected, and a campaign was initiated to solicit members across the country. The first general membership meeting and conference took place in Vancouver in June 1992 with 127 lawyers present. The constitution was adopted with amendments, and the officers were formally elected. Jeffrey became the founding President, for the first four years. CALL has grown significantly over the years, and currently boasts a membership across Canada of more than 500 union-side labour lawyers. It meets regularly, each year, in a different province.

As Jeffrey and Gaston Nadeau say, in a piece written in 2017: "At this [1992] meeting the character of CALL was firmly established. It was to be a voluntary association, run on a shoestring, with its mission being to advocate the cause of labour, assist each other in our efforts, and reach out internationally to aid labour lawyers who were persecuted for representing workers and trade union leaders."

Lancaster House

The establishment of Lancaster House by Jeffrey has become a very important resource for our labour law community. It has created a venue for every part of our community to meet together: activists, unions and management, counsel for employers and unions, arbitrators, mediators, and adjudicators. It has created a forum within which to share our ideas and to learn from each other. Lancaster House keeps us abreast of developments in labour law through its information bulletins, its conferences, and its publications. It is an important contributor to the collegiality and mutual respect and regard we have for each other as labour lawyers. I'm told that Bora Laskin believed very much in bringing unions and management together in dialogue to reconcile their differences and seek an accommodation of their respective interests. Lancaster House operates within that tradition.

The International Association of Labour Law Journals (IALLJ)

Lancaster House describes Jeffrey's contribution to labour law scholarship and collegiality within Canada. He has also exercised a formidable impact internationally.

Jeffrey has written a number of books and articles on labour law. He also teaches an annual course on international labour law at the University of Toronto's Centre for Industrial Relations and Human Resources. As part of his interest in labour law scholarship, he established the Canadian Labour and Employment Journal, published by Lancaster House, the only peer-reviewed labour law journal in Canada.

The late Marco Biagi was a jurist, law professor in Bologna, and celebrated comparative labour lawyer. He was assassinated in 2002 by the Red Brigade in Italy. Prior thereto, he had informally convened a gathering of the editors of some key labour law journals in different countries to discuss the themes and focus of their publications. The gathering was more of a club than an association. With the creation of the Canadian Labour and Employment Journal Jeffrey became part of the club. After Marco Biagi's death, Jeffrey was elected as the President of the IALLJ. He urged and established a wider, more inclusive approach than had prevailed. Now there are over 30 labour law journals from around the world that are recognized and included within the IALLJ. The Association meets once a year to review important issues in labour relations and labour law, to the benefit of labour law journals across the world.

Also, pursuing his interest in international workplace labour law, Jeffrey has urged the revival of the Canadian Labour Law Association, the Canadian affiliate of the International Society for Labour Law and Social Security (ISLLSS), as a forum for Canadian labour lawyers, academics and adjudicators to engage with their international colleagues.

To conclude, Jeffrey has made a sustained, and most valuable, contribution to our law, to our labour law institutions, and to the general collegiality of our profession, both nationally and internationally. He richly deserves this award.

Professor Jack Granatstein

I have known Jeffrey for more than 50 years. I was co-Chair of the Stop Spadina Save Our City Coordinating Committee while Jeffrey was representing the anti-Spadina Confederation of Resident and Ratepayer Associations before Toronto City Council. It was Jeffrey who found the way to get the Ontario Municipal Board to review its earlier decision in favour of the expressway, and I watched him as he worked with J.J. Robinette in front of the crucial OMB hearings in December 1970 and January 1971. Robinette was a superb litigator, but when in February the OMB released a split decision (2-1) upholding the construction of the expressway, Jeffrey was despondent until he realized that this split decision offered the possibility of an appeal to the provincial government. This turned out to be the route to success.

Happily, Bill Davis had just become Premier, and Davis decided that the way to put a new face on a long-lived Tory government was to Stop Spadina. In June, Davis told the Legislature that “if we are building a transportation system to serve the automobile, the Spadina Expressway would be a good place to start. But if we are building a transportation system to serve people, the Spadina Expressway is a good place to stop.”

It would be overstating matters to say that by discovering the opportunity to review the OMB’s initial decision and then to appeal the 1971 split verdict that Jeffrey Sack saved Toronto, but a reform-minded City Council soon was elected that ensured that no more expressways would be built, and that residential housing could be preserved in the downtown and midtown neighbourhoods. Jeffrey was certainly present at the creation.

He also saved my street. While the Spadina Expressway fight was underway, Marathon Realty, owned by the CPR, proposed a large development at Yonge just south of Summerhill. The plan was that traffic from the development would exit onto Marlborough Avenue where I lived. That traffic would have killed the street, so we hired Jeffrey, who spent the next year fighting a huge developer, City Council, planners, traffic experts, and much of the media. He even managed to get the street rezoned to provide more protection against unchecked development. The Globe and Mail later noted that the key to Marlborough’s ultimate survival was that we had hired “a pay me later people’s scrapper like Jeffrey Sack.” I wish we had paid him—my memory is that he received perhaps \$300 for his year’s work. I have, however, bought him innumerable lunches over the subsequent half century.

None of my story so far has had much to do with labour law. But in the early 1970s the York University Faculty Association was creating a union, and we secured Jeffrey as our lawyer. This time he was paid. The highlight of a very long process was Jeffrey fending off a court challenge by anti-union faculty represented by John Sopinka, a top Canadian litigator and subsequently a judge on the Supreme Court of Canada. For someone just over 30, for one who was still relatively new to the law, this was an undoubted triumph. That alone should have earned him the Bora Laskin Award.

His career, as you all know better than I, continued with victory after victory. Underneath it all, Jeffrey remained a “people’s scrapper.” Perhaps he is less of a “pay me later” lawyer now, but his values and drive continue to flourish, and I congratulate him on this award which he richly deserves.

Jeffrey Sack, K.C.

For those who are curious, I intend to say a few words about my background and how I came to be a labour lawyer but I must begin by saying that no one believes me when I tell them that I was born and grew up in Ireland – in Belfast, Northern Ireland, to be precise – and it reminds me that when I told one of my clients – Tony O’Neill of the then Irish-led Labourers’ union – that I was Irish, he said to me: “Well, if you’re Irish, I’m Jewish!”

My family was in fact Jewish, and part of a small but thriving Jewish community in Belfast. There was no anti-Semitism – the Catholics and the Protestants were so consumed with each other, I doubt they even knew what the term meant. Indeed, every Jewish family had the same story to tell – from which I assume the story is apocryphal – namely that the father of the family was stopped on the street by a terrorist and asked: “what religion are ya?” To which the father responded: “I’m Jewish.” And was met with the follow-up question from the terrorist: “A Catholic Jew or a Protestant Jew?”

One of my earliest memories was of dancing in the streets. It was Victory Day, the end of the Second World War, and my father, who had spent six years in the British Army, was returning home. But for my immediate family it meant coming to Canada. His business had been bombed and he wanted to make a fresh start. Lucky me because no sooner had we left than the so-called Troubles, born of religious strife, began in earnest - you will have seen them portrayed in the current movie “Belfast” – but emigration to Canada meant that I would not join my uncle’s law practice – he was President of the Law Society of Northern Ireland – and I was free to choose my own career path.

A second thing you won't believe. Because my mother was Irish and my father was English and we had lived in both countries, I had an accent that was neither one nor the other; it was what they then called a BBC accent, and as a result I was recruited as a child actor by the BBC and spent four years in that vocation while attending public school.

This of course became my goal – to become an actor – but when I got to high school, my plans changed. It dawned on me that, as an actor, I would have to repeat the same lines, again and again with each successive performance and this I knew I could not bear to do. And so, by the time I was 15, I had decided to become a labour lawyer. Why labour law? First, I could write my own lines. And secondly, I could pursue my personal sympathies. These, I am told, were predictable from the time I was 8 years old when I refused a cash prize offered by the teacher – in UK currency, 3 pennies or a “thrupenny bit” – and when questioned by my mother explained that I did not want to take the money because teachers were very poorly paid. Labour law was plainly in the cards.

Knowing that I intended to go to law school, I thought I should try to learn as much as I could about other subjects that interested me, and so I studied modern history and modern languages at the University of Toronto, spent a year in Germany at the University of Berlin and ended up at Columbia University in New York pursuing a graduate degree in medieval European literature. That's when I woke up one day and came to terms with the fact that I really wanted to be a labour lawyer. I promptly entered Dalhousie Law School and in second year transferred to U of T Law School.

I moved from Dalhousie to Toronto because I knew that at that time Bora Laskin taught labour law at U of T. One cannot overstate the influence that Laskin had on my generation of law students. I was fortunate to be in the last class he taught on labour law before becoming a judge, a pioneering course in which he charted the epochal shift from the law of master and servant - as employment law was known, and still is - to collective bargaining law, which assumes a workplace based on a level playing field, where employees participate in determining the conditions under which they work and have a voice in setting workplace rules that are fair and balanced.

At the same time, Laskin was engaged in turning his vision into a legacy. Acting as a labour arbitrator in over 100 union-management disputes, he laid down the principles that as an academic he had espoused. Two decisions especially stick in my mind. In one he stated: “The change from individual to collective bargaining is a change in kind and not

merely a difference in degree. The introduction of a collective bargaining regime involves the acceptance by the parties of assumptions which are entirely alien to an era of individual bargaining. Hence any attempt to measure rights and duties in employer-employee relations by reference to pre-collective bargaining standards is an attempt to re-enter a world which has ceased to exist.” (*Peterboro Lock*, 1953). And in the famous *Polymer* case (1959), Laskin held that labour arbitrators were not limited to granting mere declarations but could award monetary damages as an effective remedy for breaches of the collective agreement.

In 1965, Laskin was appointed to the bench and in 1970 to the Supreme Court of Canada by Pierre Trudeau. From 1973 to 1984 he served as Chief Justice of Canada. I argued cases before him but one encounter, which occurred during his tenure as a law professor, stands out. In the 1930s, although he graduated in law from U of T and Harvard, Laskin could not, because of anti-Semitism, get a job as a law teacher, and to make a living he had to take on freelance work writing basic case summaries for a commercial law publication, the *Canadian Abridgment*. Years later, while in law practice, I found myself in the same small group of guests as Laskin at a cocktail reception at Osgoode Hall and, commenting somewhat sharply on a project in which a particular academic was involved, I said: “God, that sounds boring – just about as boring as writing the digest on sewers and easements for the *Canadian Abridgment*!” At which point, Laskin chimed in: “I wrote that!” In fact, it wasn’t until the 1970s that laws were enacted in Ontario to effectively prohibit discrimination.

On my graduation from U of T law school in 1965 Laskin said to me: “Jeffrey, labour law is important but don’t limit yourself. Do other things as well.” I took that advice to heart and very soon found myself engaged in legal battles to save residential housing from blockbusting developers, to protect tenants from eviction in South of St Jamestown, and to stop the Spadina Expressway. In those days, the 1970s, politicians in Toronto viewed our unique natural ravine system as divinely ordained to facilitate the movement of automobiles without having to pay the cost of expropriating private property. The Spadina Expressway had been partially constructed, and was poised to plough through the Cedarvale ravine, and then downtown Toronto, before hooking up with a series of other ravine-invasive expressways required to absorb the flow of traffic. It all came to a stop when a whistleblower revealed a secret report that the City had commissioned and then buried which disclosed that, if all the planned expressways were built, traffic would flow more slowly than was currently the case. It was that revelation that enabled then Premier

Bill Davis to stop the project, following a hearing at the OMB in which Jane Jacobs, the famed authority on urban planning, was our star witness.

To me that is the great virtue of lawyering. While you might be bound by solicitor-client confidentiality, you get to peer through a window into the deepest recesses of society – to learn, as I have, from the inside about transportation planning, about the medical profession and the health care system, about the role of academic freedom at the university level, and a dozen other diverse aspects of society. Another virtue of lawyering has been the opportunity to continually learn new things by listening to others. I learned about practicing law from two great lawyers, John Robinette and John Sopinka. I learned about labour relations from outstanding arbitrators – Ken Swan, Kevin Burkett, Martin Teplitsky, John Stout and Jim Hayes – and I learned from reading the books and articles of world-class labour law scholars, and in particular Harry Arthurs and Paul Weiler, both previous recipients of the Bora Laskin award. I also learned from listening to my own clients, many of whom became friends, who explained to me how the real world worked. Over the years my long association with the firefighters has taught me the importance of their work, and of the values of caring and camaraderie that they demonstrate on a daily basis.

I will trespass on your patience, as I approach the end of these remarks, to speak about a cause in which I have been passionately engaged throughout my career – the right of workers to collectively bargain and strike. It took our Supreme Court 28 years, from 1987 to 2015, to extend the protection of the Charter of Rights, and its guarantee of freedom of association, to the right to strike – as the Court itself acknowledged, a fundamental element of a liberal democratic society. It seems to me that what has taken place in Ontario in the past month has an importance that is not fully appreciated. The retreat of the Ford government from use of the “notwithstanding” clause to nullify the Charter rights of education workers, in the face of a threatened province-wide general strike and overwhelming public disapproval, serves to buttress the decisions of the Supreme Court protecting the right of workers to collectively bargain and strike – so much so that governments across Canada will henceforth have to think long and hard before moving to eviscerate them through resort to the “notwithstanding” clause. Over the years I have sparred with our leading labour scholar, Harry Arthurs, about the readiness of the courts to protect labour rights, but I think we can both agree that there must be a public mindset that deters governments from abuse of the “notwithstanding” clause. This mindset, it seems to me, has now crystallized as a result of the recent events in Ontario.

At the same time, I want to stress the necessity of bringing together both sides of the labour relations community. In this regard, it is imperative that business and labour work together to reconcile their differences and that we do much more than we have done to replenish the pool of impartial mediators and arbitrators needed for this task. To meet this need, which all of us in the labour relations community recognize has the highest priority, we should call upon centres of industrial relations, such as those at the University of Toronto and Toronto Metropolitan University, for assistance.

Lastly, on a personal note, the Supreme Court case that I most hated losing was about mandatory retirement. I have been opposed to mandatory retirement - for occupations that are not physically demanding. However, the Supreme Court ruled that this is a decision for legislatures to make, not the courts. By now, most legislatures across Canada have, with limited exceptions, abolished mandatory retirement. Speaking for myself, I have loved the practice of labour law from the outset of my career, and I intend to continue practicing it, teaching it, and writing about it as long as I am able to do so.

Thank you.