

The Sefton Lecture 1991: Laurel Sefton MacDowell

It is difficult to believe that this is the tenth year of the Larry Sefton lecture. It was a great honour for my family when Woodsworth College approached us about setting up the lecture series. It is an honour for me tonight to have been invited to deliver this year's talk following so many prominent trade unionists like Lynn Williams and Bob White, leading labour lawyers and scholars like Jeffrey Sack, John Murray and Paul Weiler and distinguished historians like Melvyn Dubovsky and Seymour Martin Lipset who have all stood here in previous years.

If I may be permitted to begin on a personal note, I would like to affirm that it was a wonderful experience to have Larry Sefton as my father. Since his death in 1973, I have been pleased and touched by how many people from all walks of life have remembered him. I think it is because he made a lasting impression on people. He was singular in his quiet strength and character (to use an old-fashioned word) and in his own way he was a great teacher. Many people noticed the world was a little different without him and he has been missed. I have come to realize that for me personally, he was an important influence in my formative years -- he was a positive role model within our family.

As the Director of the largest geographical district of the Steelworkers union, he was away a great deal travelling. But what I remember about him in my childhood were his homecomings -- the jokes at meals, the stories of his travels or of his negotiations with Stelco or Inco at Toronto hotels, his discussion of politics within the union and in Canada and indeed the world. I also remember his affection and his delight at seeing us. We were important to him. He was a man of great energy and vitality and he was larger than life to live with in

the sense that when he came home he brought the world and all of its ideas with him. At the same time he was not authoritarian but respectful and a democrat in his dealings with all people beginning with his family. He was an intuitive man --- way ahead of his time and indeed prophetic in many ways.

As a young man in his twenties, he responded to John L. Lewis' call to "organize the unorganized". As he matured, his role in the labour movement and in the country grew. His vision of the country was compatible with changes taking place today. A proud Canadian of many generations, nevertheless he was comfortable with our evolving multicultural society. As a democratic socialist, he was not always comfortable with the politics of his American and indeed some Canadian colleagues in the union, but he was a consistent upholder of international unions with strong and autonomous Canadian regions. As a Vice President of the Canadian Labour Congress, he chaired a CLC constitutional committee to incorporate such standards for Congress affiliates. The basis of this belief in international unionism was a pragmatic appreciation of the strength of American corporations in Canada, a political commitment to strong unions within a democratic society and a belief that for workers there was strength in unity, solidarity and in working class cooperation both in North America and globally. In 1971, he initiated what became the first World Nickel Conference in Geneva. He was ahead of his time in that he recognized that white collar workers must be organized -- both in the public and private sectors and he spearheaded a campaign to accomplish this task as Chair of the White Collar Organizing Committee within the Canadian Labour Congress.

He had a clear vision of where we would be in the year 2000 technologically and ecologically. Were he here today, no doubt he would have developed some common sense strategies to address problems associated with the computer

revolution, a global economy in the process of restructuring and our polluted environment.

For me as a little girl he became a model -- being out in the world seemed to be where the action was. My father was not an interventionist parent and certainly not a disciplinarian -- he hated bullying and did not approve of corporal punishment of children. But he was a parent who taught my brother Michael and I about high standards, self-discipline, Christian socialist ethics, positive attitudes, about persistence and courage not by lectures but by his example as a person. We tried to behave well, not because we were afraid of him, but because we loved and respected him, and we did not want to let him down. And the reward was companionship when he was home (fixing things or working in the garden) and unswerving emotional support at all times. He gave me personally a sense of confidence and support, the feeling that he would be behind me; he helped me set high educational goals. He helped me get my first job and he provided guidance about the future. In retrospect, for a little girl growing up in the 1950's, he was a fortunate male parent to have. He never discriminated against me because I was a girl. A traditionalist in some ways in that he liked polite, "feminine" women, he also admired strong, spunky, intelligent women like his own mother, my mother's mother and my own mother. Of course there were disadvantages in having such a fair parent. Until I was twenty-one, I thought the world was like my family and did not experience any discrimination until I hit the labour market -- it was quite a shock! It never occurred to me that anyone would be judged on anything but their abilities or that people would not as a matter of justice be paid equally for the same job. I had never met men who if they did not emotionally grasp the idea of equality for women at least intellectually believed in it as a matter of fairness. So having a father who

was exceptional -- who was a humanist and a democrat, and who would have approved of the advances made by women -- this advantage was not always good preparation for the real world. By the time I was in the real world, with all of its challenges -- he was gone -- but his influence has persisted in my life through my memories of him and I have tried to emulate his style of parenting with my own children.

It is unusual for a university to have an established lectureship for a trade unionist, if only because the life of a scholar isolated in a carrel somewhere in a large library is in many ways the opposite of the life of an organizer travelling all over, working with many people. But as I reflected on Larry Sefton's life, which included occasional lectures to university classes, when I was preparing this talk, Woodsworth College's lectureship seemed an appropriate honour for him for above all else he was an educator and he worked at it constantly just as university people do in a somewhat different way.

Now to this evening's business! What does Larry Sefton have to do with J.L. Cohen? It was my father who initially encouraged me to study and write working class history. As I began my research and writing about the 1941 Kirkland Lake gold miners' strike in particular, and the emergence of the modern industrial relations system in Canada in general, I became increasingly interested in Jacob Lawrence Cohen -- the first active labour lawyer on the union side in Canada. This evening I want to discuss briefly certain aspects of his career.

I

"He championed all the wrong people in all the right things"¹

Jacob Lawrence Cohen, or "Jake" as he was known to his family and "J.L." to union men², was born in 1898, the son of a hatter in Manchester, England.

He was to become an influential practitioner of labour law at the height of his career in the 1930's and 1940's, but he had a difficult youth.

In 1905 the Cohen family moved to Canada. In 1911 at the age of 13 after his father's death by drowning, Jake Cohen left school to become the breadwinner of his family, which included his mother and five younger children. In 1914, after attending high school classes at night, he passed his matriculation exams. He worked as a clerk in a Toronto law office, enrolled at Osgoode Hall Law School and stood first in his class³. In 1918 when he was 21 years old he was called to the Bar.

J.L. Cohen opened an office on Bay Street in Toronto from which he began to conduct his practice. From the beginning it involved labour and civil rights cases brought to him by his radical friends. His physical appearance has been described as that of "a small dapper man with a swift tongue, a large ego and a harsh unattractive personality"⁴. His self-assured, self-important manner was reflected in his surroundings. He worked in a large space, with his desk at one end of the room raised on a dais so that he towered over anyone seated in the client's chair⁵. J.B. Salsberg Communist Party of Canada (CPC) organizer and NPP in the 1940's commented about Cohen that he was both brilliant and disliked. He was cocksure but very clever.

Despite his arrogance he wrote masterful law briefs and quickly gained a reputation for sympathizing with the underdog. He had a certain personal strength and integrity, and perhaps because the law had been the vehicle for improving his personal situation, he had great faith in the legal system. As William Kaplan has written, "If there was a wrong, Cohen believed, then the law was there to make it right. And where there was no law, Cohen made new law".⁶

Between 1927 and 1931 Cohen became counsel to the Communist Party of Canada (CPC) and its offshoot the Canadian Labour Defence League (CLDL). In this capacity, in a series of civil liberties cases, he defended party members who were the object of police harassment. Through this association, he became experienced and well-known, infamous to some and he made contacts. He met union organizers and activists. His law practice broadened out and increasingly involved him more in labour law.⁷

II

Labour Lawyer

By the late 1920's and early 1930's, Cohen's practice of labour law involved him with workers in the clothing industry--firstly, in the more organized needle trades sector and later in the 1930's with the unorganized textile workers. This association allowed him to influence policy on minimum standards. His role was to encourage these workers to organize and to assist them to pressure the province of Ontario to expand such existing legislation.

In 1927, the International Ladies' Garment Workers Union (ILGWU) wrote to the Minimum Wage Board of Ontario to oppose its proposed changes in minimum wage regulations which would abolish any standards during the first three month probationary period of an employee's service. Cohen was hired by the union, attended an international union board meeting to be briefed and then he drafted a memo to deal with the issue. At a conference of Cohen, ILG people and government representatives, the question was debated and the government board agreed to withdraw the proposed changes.⁸

Cohen then proposed that the wage board investigate the wages and hours or labour in the entire clothing industry.⁹ It agreed and Cohen was asked to prepare a list of 20 sample factories in the ladies garment industry for the

board to investigate which he did. He discussed with board officials the methods they might use to obtain data from these employers. Cohen wrote to the client union's headquarters in New York City "I want to be close/yv in touch with the investigation so I can influence their methods and avoid an unsatisfactory conclusion."¹⁰ To further the broad provincial investigation Cohen sought information from the Ontario Railway and other Minimum Wage Boards about any regulations which they had issued which might be useful. At the same time, he urged James Watt of the Toronto Labour Council to contact the minimum wage board and to begin to deal broadly with the issue of standards.¹⁰ As a result, the council held a conference on minimum wage legislation (which Cohen attended) and on the proposed changes in the needle trades.¹¹ It was the beginning of work on an issue which would engage Cohen for more than ten years. In dealing with it, he became an expert on minimum standards legislation, and he influenced policy in that area.

At that time, Cohen sought some guidance from the international union as "I seem to be in the position of having started something here which should be followed up and yet with the departure of Mr. Polakoff [a union staff person] I will have practically no status." His position would not be formalized for 3 years.

To increase the strength and the political clout of the needle trades workers, they had to become more organized. In October 1929, Cohen wrote to International Union President David Dubinsky. He told him that the local market in Toronto was almost completely unorganized with a membership of 300 out of a potential membership of 2000. The "conditions of the trade are deplorable...and a very definite sense of resentment prevails."¹² Because the workforce was overwhelmingly Jewish, he believed this homogeneity would facilitate

organization. "I am making these statements not merely as an advocate of the point of view which the joint board desires presented...but I am summing up my personal observations in the matter and I feel that it would be more than in the interests of the International if the situation were considered..." The reorganization of the New York district had raised expectations amongst *Toronto* workers of what was feasible. The international agreed to announce an organizing campaign in Toronto and call a strike. Cohen of course did not singlehandedly effect this union decision, but besides being legal counsel he acted as a policy advisor and much of his advice was accepted.

In 1930, he was retained by the ILGWU as its solicitor in the strike and negotiations in Toronto. In that capacity he drafted by-laws, attended meetings and did considerable work before he received any retainer or his appointment was ratified formally by the international union (as he had requested). Cohen always liked to have some formal status and like all lawyers he appreciated being paid. He appealed directly to Dubinsky who confirmed the arrangements, paid him \$100 and explained his delayed response as the result of his preoccupation with the strikes in New York and Cleveland.¹³

Once hired, Cohen set to work handling cases arising from the strike. There had been a reasonably encouraging response to the union's strike call. Cohen prepared a memo sent to the federal and Ontario departments of labour and to the city's mayor with a view to "paving the road to mediation" after the strike call. He told Dubinsky that he had to write an informal memorandum as "there is so little experience in official circles here with that sort of procedure that too formal a document would have the effect of putting them on guard."¹⁴ Throughout his career Cohen would educate workers on how to do union business, the public about workers' concerns and government officials about

professional procedures in the conduct of labour relations. In this instance, he enclosed a draft agreement to L.M. Singer K.C. The counsel for the employers with a memo on the more important of the union's demands.¹⁵ Singer responded with a counter draft agreement which was signed apparently within a week. Cohen was pleased with the outcome and hoped the new contract would make for future constructive relations in the industry. He wrote to Dubinsky to advise him of the "comparatively complete success of the outcome of the strike."¹⁶ He was very generous in his praise of organizer Bernard Shane of the Toronto Cloakmakers' Union and very modest about his own role. Of Shane, he wrote "His energy and hopefulness never lagged for one moment and I attribute the result in a very emphatic measure to his own persistence in following up every clue or possibility regardless of its apparent immediate returns."¹⁷ This praise was typical of Cohen. He genuinely admired trade unionists he worked with and just as they deferred to him on legal and many other matters about which he was knowledgeable, he always respected their area of competence and never interfered unless asked for advice.

Cohen also had kind words for Louis Fine whom he thought played a suitable role once negotiations were underway. "His adroit manner captured them [the parties] completely. Once the psychological contact was made, the rest was a matter of manoeuvring and bargaining."¹⁸ Fine would have a distinguished career as a mediator and conciliator in labour relations and in this early period was honing his skills. Cohen advised Dubinsky shrewdly, that if the union conducted itself responsibly and with an eye to the possibilities of further organizing which the new arrangements afforded "your success in Toronto is accomplished for some considerable time to come." Cohen then described without comment his own role. His services were broad and went beyond the role of legal adviser. He was

given much responsibility and as usual even by the standards of that time in the practise of law, his charges were minimal. He wrote, "During the last week of the strike particularly, my time was ~~so~~ completely absorbed that I was not able to be at my office for any more time than it required to draft the constant series of memoranda and agreements required during the negotiations." ¹⁸ The conferences regularly lasted into the early hours of the morning. The hectic pace was a constant factor in his career as a labour lawyer. For all of this work in this early ILO dispute, he charged a total of \$437 and was paid less.¹⁹

The resulting agreement of 8 February, 1930 established on the employers side the 68 member Amalgamated Garment Manufacturers' Council. Its appointees and union representatives were selected for the Joint Conference Board established to administer the agreements. Thus out of this dispute the mechanisms and procedures for the conduct of labour relations in the Toronto ladies garment industry were established, but there was a testing period.

In 1931 and 1933 the Cloakmakers' Union of the ILGWU called "general" stoppages amongst the Toronto shops; these work stoppages were conducted out of frustration and relative weakness. Finally in January 1935, a collective agreement was concluded between four ILGWU locals and 58 manufacturers, members of the Toronto Manufacturers' Association.²⁰ The master agreement introduced a 44 hour work week, a minimum wage and increased wages. It established procedures which would allow the cloakmaking industry to regulate itself; it thereby reduced cutthroat competition among businesses and the accompanying sweatshop conditions. The relationships and structures also furnished a basis for administering minimum standards legislation in the needle trades in Ontario in the 1930's. In 1936 the Ontario government passed the Industrial Standards Act as a successor to the minimum wage legislation, which was broader in its

application. As a first decision, it legalized the minimum hours and wages agreed upon within the Toronto needle trades industry. The existence of this legislation and the experience of the needle trades became a model for less organized industries like textiles.

Interestingly, Cohen's association with the needle trades led him to practise briefly "employment law" in the modern sense on both sides of the table. This phase did not last long, and he retreated from company boards.¹¹ Whether or not his career influenced younger lawyers at the time, the practise of labour law as it has developed in this country has been divided between labour lawyers working on the union side and labour lawyers working on the management side. Unlike other sections of legal practice, there is little crossover, and judging from Cohen's career it has been that way from the beginning.

Cohen's experience with the needle trades unions was useful in his dealings with textile workers. In 1936, textile workers in Cornwall struck Courtauld's (Canada) Ltd. and Canadian Cottons in 1937. After the 1936 strike an agreement was negotiated and signed which contained wage increases, a grievance procedure, a seniority system and lower production quotas in certain departments. As with many contracts at this time the union was not recognized officially. The Courtaulds strike was significant because it was the first victory of an AFL/ILC union in an unorganized industry in Canada. It was a vindication of the principles of industrial unionism associated with the CIO movement of which the union, the United Textile Workers of America (UTWA) was a part.¹²

After this strike, the textile workers in Cornwall decided to leave the UTWA and form the Cornwall Textile Workers Union (perhaps to avoid anti-CIO sentiment in the province). This group and others in Peterborough and Toronto

joined a new co-ordinating body--the National Textile Council--and affiliated directly to the TLC.

The outcome of the 1937 strike against Canadian Cottons was mixed. ¹¹ The union did not gain recognition but did win a grievance procedure, a fairer distribution of piecework and a minimum work day of four hours but wages and overtime issues were to be decided by the Ontario Labour and Industry Board (OILB), in what would become a long drawn out process.

In these disputes, the Toronto Needle Trades Council paid the legal fees of those arrested and the Toronto Trades and Labour Council hired J.L. Cohen to act as a "legal adviser" in the situation. Following the strikes in Cornwall, the Ontario Industry and Labour Board conducted a province-wide investigation of the textile industry. Cohen as legal counsel for the National Textile Council, represented the workers' interests at the hearings. At one such hearing, Cohen observed, "It appears that the \$15 wage for a fifty-four hour week predominates in the Cornwall Mills of Canadian Cottons. Workers should not be expected to maintain themselves on such wages."²³

By this time, Cohen had had experience working with the organized needle trades, urging them to organize more effectively and through their unions had worked a great deal with government officials in formulating and establishing administrative procedures for the enforcement of minimum wage legislation. When the scope of standards legislation was broadened by the 1936 legislation, he used it to pressure for higher standards. When the OILB was delegated by the parties in the Cornwall textile disputes to determine wages not only in those plants but throughout the textile industry, Cohen used the hearings to try to upgrade those standards and as a vehicle to encourage textile workers to become more unionized.

In November 1937, he sat with the Industry and Labour Board in connection with an inquiry into the textile inquiry. In January, 1938 he spoke to the semi-annual conference of his client, the National Textile Council. Much of the conference's time was taken up with discussion of a minimum wage order for the industry announced several days previously by the OILB. Cohen gave the conference some background on the OILB. It had started its investigation of the textile industry with the idea that all forms of work could be classified and minimum wage rates set for each job. In its public sessions it cross-questioned employers and workers on the nature of different jobs and the labour processes. It concluded that it had embarked on an impossible task "because of the host of classifications and the varying interpretations placed upon what seemed to be the same class of work in different mills."²⁴ The second policy, Cohen related was to establish minimum rates for each town or city. This did not work out "because of the constant pressure of employers in other places where wages were even lower." In his view it was a "myth" that workers in smaller places could live more cheaply than those in large cities and consequently did not require the same rate of pay. "It doesn't cost less for the worker to live in a small centre. He just lives cheaper. He is forced down to a lower standard of living."²⁵

One of the best features of the board's order was that it had eliminated zoning in women's minimum wage laws. Under the new order the basic minimum for adult women was \$12.50 per week throughout the entire province. No government could go the whole way in regulating hours and wages and so the OILB had established minimum rates. But Cohen commented, "I have often felt that the minimum wage-earner is the unorganized wage-earner. It is now apparent that the workers must find their own solution to their own problem out of their own efforts."²⁶ Cohen analysed the board and its evolving policies and he advised

the trade unionists. In his view, the minimum standards legislation provided a floor. Workers had to unionize and try to negotiate improved job classifications, wage schedules and working conditions directly with employers. Cohen urged employees to be vigilant and ensure that all got the new minimum rates but he urged them further "to carry on and advance the organization work in Cornwall and out of Cornwall and to take action where it is necessary and proper, to obtain what the employers will not give."¹⁷ As always his audience of workers listened to Cohen as they would to a leader of their own with respect and attentiveness. The conference passed a resolution of appreciation for his work as their attorney during the OILB's investigation of the textile industry in Ontario. In 1937, Cohen became involved in a similar inquiry following strikes in the rubber industry. In November 1937, a six week strike against Kaufman Rubber in Kitchener ended as the result of Provincial government intervention.

Cohen presented the Ministry's proposal for settlement to the workers. The proposals called for a return to work at the old wage scale pending an investigation of the issues in the dispute by the Ontario Industry and Labour Board. It was not a victory but as in the textile disputes the board was to investigate the wage structure, classify jobs, fix minimum rates, examine hours of work overtime rates and in general apply consistent standards to the industry.¹⁸ It was a defeat for the union insofar as it failed to gain any wage increase and hence Kaufman employees were paid below the standard of three other rubber companies in Kitchener. Also while Kaufman promised reluctantly not to discriminate against workers for union activity before or during the strike, he refused to meet union representatives. He had met the local union committee, J.L. Cohen and an official of the Department of Labour, but he refused to talk

to Mr. Eagle the United Rubber Workers of America (URWA) international representative.²⁹ Kaufman granted recognition of the local union only. He did not sign an agreement. Because the union representatives were excluded from the negotiating process at this stage, as in the Oshawa auto strike, Cohen became the representative of the workers' interests and the intermediary between the union and the government mediators. Cohen believed optimistically that despite Kaufman's anti-American rhetoric, "it should be possible for Mr. Eagle to establish contact with him when next in Canada."³⁰

The Industrial Standards Act in Ontario had been passed in the previous session of the legislature in 1936 and empowered the Ontario Industry and Labour Board (OILB) to inquire into this strike and generally into the rubber footwear industry in Ontario. Such an investigation could result in implementing orders which as a result of classifying various operations in the industry could fix a minimum wage for each job, hours of labour, over-time rates and achieve other changes.³¹ J.L. Cohen believed that should this public enquiry take place "such a proceeding would be to effect an increase in the wages of the employees of this particular firm, and generally to stabilize the industrial situation."³² He was sympathetic to such a procedure and advised the international union that if properly handled, it might also give the union a point of entry into one or two other plants, such as the Northern Rubber Company at Guelph where the union had made little progress.³³ Cohen's view was important, not only because he was involved in the negotiations in this dispute and in frequent consultations with the Minister of Labour, but also as the lawyer to both established and new unions, he had developed a strategy to use the province's newly established Industry and Labour Board to raise standards in industries where there were few and weak unions (as in textiles) or fairly well established unions (as in the

Needle trades). He also sought through publicity of the hearings and informal contact between management and trade unionists involved in the proceedings to pressure employers to recognize and deal with unions in industries where they were in the process of becoming organized. Kitchener's rubber industry was one such instance.

In this dispute, the Minister of Labour thanked Cohen for his assistance in effecting a settlement and for "his reasonable attitude".³⁴ There were about 80 police charges of obstruction and assault against the strikers arising out of their resistance to moving material out of the factory and picket line activity during the strike. Through adjournments and negotiations with the Attorney-General, Cohen was able to get the cases withdrawn after the settlement was reached.

In the aftermath of the dispute, the OILB did meet but was disinclined to deal with the wage question at that time. Cohen believed that there might be some possibility of gaining an understanding on the question of overtime (the company had previously stated that it would pay overtime after 57 hours of work) and a more workable arrangement on the question of determining piece rates.³⁵ Eagle agreed that it was inadvisable to press for better wages but believed that the board, backed by the Department of Labour should definitely deal with the other matters as "there is no excuse for such a confused state of affairs with respect to the basis upon which payments are made,"³⁶ and overtime pay was prescribed by statute and should be enforced in a community the size of Kitchener.

Cohen's emergence as the leading labour lawyer on the union side paralleled the growth of industrial unions in Canada. He first entered the national spotlight when he figured actively in the 1937 Oshawa strike of General

Motors employees. In that strike, he was retained as union counsel by UAW organizer Hugh Thompson³⁷ and immediately went to work organizing negotiations. As local union president Charlie Millard wrote to UAW president Homer Martin on 12 May, 1937, "matters in Oshawa have considerably improved over the past week, due I feel in large part to the timely arrival and careful attention of Bro. J. L. Cohen. Bro. Cohen has very skilfully planned negotiations here in Oshawa to the point where I will be able, from now on to represent the negotiating committee and on behalf of the union be able to consult more freely with the management."³⁸ From then on, Cohen was "damned often as the CIO mouthpiece."³⁹

The Oshawa strike became famous not only as the first large dispute involving a CIO union in Canada, but also because Premier Mitchell Hepburn intervened actively and was very hostile to the CIO. With Hepburn, Cohen worked out a formula for settlement of the celebrated strike. The settlement, at the Premier's insistence recognized the local union but not in name, so that while the company knew its employees belonged to the UAW, it persisted in ignoring the connection. Until the outbreak of the Second World War, the Oshawa settlement was a model which many other corporations in other industries would follow.

Between 1937 and 1939 Cohen worked actively with many unions as they struggled for existence. His assistance was invaluable, his knowledge of the law and his mediating abilities were essential, as he made union policy, developed administrative procedures and as he worked on many levels with trade unionists and union members, politicians and civil servants, and lawyers and judges.

In these years the UAW, for example, was emerging as a force in several working class communities but was only informally recognized by employers. As the union trained shop stewards, elected negotiating committees and handled grievances, Cohen played a vitally important role in the formative years of that

union. He literally rode the rails between Oshawa, Windsor, and St. Catharines to offer assistance. In a letter of 5 May, 1938 to C.H. Millard, who was at that time in Detroit (headquarters of the international union), he wrote "I will be in Detroit on Friday morning and it should be possible for us to deal with the Windsor situation on Friday night, St. Catharines on Saturday and finish up with Oshawa on Sunday." ⁴⁰ As he provided advice, he wrote copious letters to Homer Martin the international union president, Charles Millard, the Canadian UAW Director, the OCL leaders and others. Often, when the union leaders were elsewhere, he performed more than the task of union counsel and proposed to local union committees, strategies for dealing with management. He also suggested policy priorities to trade unionists and counselled caution to frustrated and sometimes hot-headed rank-and-filers. He could do so as the men trusted his judgment.

In performing such functions, he was careful not to interfere unless he was asked for advice. He never promised the membership anything unless directed to do so by the proper union authority. He thus consistently respected the democratic internal procedures and the elected leadership of the trade unions. ⁴¹

He became embroiled in issues relating to the interpretation of UAW contracts and in that process worked directly with rank-and-file grievance committees where he played an educational role. After the Oshawa strike Cohen reviewed 26 individual complaints by workers at General Motors and concluded they were not legitimate grievances. He wrote to Millard, "Although I have asked the management for a report upon each case...I explained to the committee at the same time privately, that they must be careful about dealing with such matters." In April, 1937, Cohen reported to Homer Martin how much educational work there would have to be "with a group of men as yet untrained in the trade union approach."

He found the union committee "unprepared even for the mechanics involved in handling grievances. There had been no attempt...to examine any questions prior to the sessions [with management] or to sift out undesirable cases." Cohen explained their functions to the committee and suggested "that they fix regular hours during the week for meetings of the committee at union headquarters, when grievances can be presented and discussed and the policy determined."⁴² It was a beginning.

War Years

In the war years, Cohen reached the peak of his influence on the growing labour movement and on governments which consulted him about labour policy. In the energy which he expended and in the advice and legal services which he provided to unions in numerous organizing and strike situations, he demonstrated a consistent and selfless dedication to working people. At the same time, when he provided policy makers with his legal expertise, he sometimes expressed less attractive qualities and abilities. He could be both pompous and manipulative. Nevertheless the range of his activities in these productive years was impressive.

In 1940 he acted for the Canadian Seamen's union in its strike on the Great Lakes in which 300 ships were tied up and 500 men were idle. In that same year the ACCL merged with the Canadian CIO Committee whose member unions had been expelled in 1939 from the TLC. Cohen was hired to draft the constitution and by-laws of the new Congress, the Canadian Congress of Labour (CCL). For his work, Secretary Treasurer Norman Dowd asked him to reduce his account for services as the new congress had many expenses. Such requests had been received from clients in the past and would come up in the future and Cohen usually agreed to some

lowering of fees for his useful and essential services. Dowd astutely and accurately commented at the time, "Apparently, you are going to have to do quite a lot of work for Congress unions in the near future and I need no add that, in our opinion, no one can do it more competently."⁴³

As the federal government sought to delay the introduction of collective bargaining policy, it made extensive use of conciliation boards to try to resolve the growing number of serious disputes. As Cohen was counsel to many of the emerging industrial unions, he invariably became the union nominee on many such boards. Because of his thorough knowledge of the law and his clients' needs, he had great influence on other members of the boards and on their reports. One of the most important conciliation boards he sat on was immediately prior to the Kirkland Lake strike of gold miners in 1941-1942. Cohen performed many roles in that historic battle for union recognition.

Since 1936, Mine Mill (IUMMSW) had been mounting a campaign to organize the mining industry of northern Ontario. In 1939 it had enough members to attempt to gain union recognition and a contract in a single mine--the Teck-Hughes mine in Kirkland Lake. When the owners refused to acknowledge the union, Cohen advised it to apply for a conciliation board and told them how to do it. The board would highlight the issues in the dispute, give the union some *de facto* status, and put pressure on the company. The board was established and Cohen was appointed as the employees' representative.

The Teck-Hughes dispute was lost but from the experience, the union developed a new strategy. It was not enough to put pressure on one company, or to have separate agreements. The union decided to organize all of the mines in Kirkland Lake and to seek recognition and a master agreement. This decision would result in the dramatic Kirkland Lake gold miners' strike of 1941-42.⁴⁴

Before the miners could commence a legal strike, the government insisted on sending in the Industrial Disputes Inquiry Commission (IDIC) which from the union's perspective meant further delay. On 6 June 1941, P.C. 4020 which set up the IDIC was proclaimed. The Commission's major function was to investigate disputes prior to conciliation. It thereby introduced another step in the process of resolving industrial conflicts. The government believed that the Commission might improve communication between the parties and expedite settlements. Cohen argued that this result was possible theoretically but believed that IDIC could both delay and deny conciliation and was therefore unlikely to expedite the already overburdened conciliation process. He went further. In the Kirkland Lake dispute, the union saw the intervention of the IDIC as a device to impose a government--sanctioned company union. Cohen saw the IDIC's intervention in the Kirkland Lake dispute and its report as a complete renunciation of any claim to trade union recognition and representation.⁴⁵ He dubbed its proposed solution in this highly polarized dispute where the issue of union recognition overshadowed all else as "the Kirkland Lake Formula"--a proposal which would be recommended in other disputes by the government agency. He condemned the recommendation of this formula in the miners' dispute as political expediency and as a non-solution. The proposed adoption of a discredited one-plant committee plan violated and undermined collective bargaining, and the spirit of wartime proclamation P.C. 2685⁴⁶. The ideas of employees committees, in place of unions had been put forward by some businessmen and some government officials for years. To a public uninformed about labour relations, the labour movement's insistence during the war on union recognition and their adamant rejection of employees' committees which some employers were willing to concede, was possibly confusing. In an incisive and all-encompassing

definition which distinguished between the two vehicles of employee representation, Cohen crisply clarified the issue and labour's objection to "company unionism." He wrote in a monograph called Collective Bargaining in Canada which was published in 1941 by the Steelworkers' Organizing Committee (SWOC), "The essential feature without which it cannot be said that collective bargaining exists, is the independence of the bargaining medium operating on behalf of the workers so that it meets on equal terms with the employers. Anything which destroys that independence violates the first essential of collective bargaining. Any form of employee recognition which destroys the independence of the bargaining medium, and which is acquiesced in by the workers, not on their own volition, but only because of the influence or control or dictate of the employer, is a collective bargaining form which emanates from the company and not from the workers. That form of arrangement, whatever the variation is therefore a form of company unionism."⁴⁷ In defining the issue, Cohen as counsel articulated the democratic basis of the CIO industrial union movement which had grown up and he firmly opposed the old paternalistic approach of Mackenzie King and the Department of Labour of which the IDIC and its "formula" were representative. He spoke for wartime production workers who joined the labour movement in droves, who sought an independent vehicle of their own to express their wage demands, their grievances, their right to dignity and security and their desire for equality or at least equal opportunities in post-war Canadian society.

Cohen commented in his monograph on the other function of the IDIC which was to deal with individual cases of discrimination for union activity. The provision in his view, provided 'illusory protection' at best as "no forum is designated, no administrative process is provided, much less is any penalty

provided.⁴⁸ Any action whatsoever under war order P.C.4020 was at the discretion of the Minister. Cohen may well have been a bit pessimistic. The provision was an advance on the 1939 amendment to the Criminal Code and it set a precedent for the future. In later collective bargaining legislation discrimination and discharge for union activity became "an unfair labour practice" capable of remedial action by labour relation boards.

Cohen's analysis of the ILO was part of an overall critique of labour policy in wartime Canada. His book was intended to publicize the inadequacy of the government's labour policy and assist the labour movement in pressuring the government to change that policy by introducing collective bargaining legislation. It received widespread publicity and was read, even by the Prime Minister. It was an indication that Cohen at this time, was regarded as the leading labour lawyer representing unions.

The Kirkland Lake dispute afforded Cohen another opportunity to criticize the inadequacy of the government's labour policy in the absence of collective bargaining legislation. On 22 August, 1941 a conciliation board was finally appointed with Cohen sitting as the representative of the gold miners. The union brief to the board was 87 pages long, well drafted and researched and was written with Cohen's assistance. Its presentation by the union impressed the conciliation board. The companies presented less ambitious briefs and flouted the status of the conciliation process and the board's authority by dramatically withdrawing from the proceedings. Such behaviour had never occurred before. It did not help their case in that the report which resulted was unanimous, and supported by the employer nominee. It did point up the inadequacy of a conciliation board procedure to settle a dispute whose central issue was the right to collective bargaining, and the recognition of a union of the workers'

choice. It was not an issue which could be resolved by compromise. The conciliation report received widespread publicity in the press. Mine Hill President Reid Robinson wrote to Cohen that he could see his hand in the report⁴⁹ and there is no question he greatly influenced his colleagues on the board. The board accepted Cohen's argument that the IDI Act was an inappropriate mechanism to resolve collective bargaining disputes. It issued a clear challenge to the government in that it repudiated the work of the IDI and questioned the efficacy of the government's existing labour policy.

Following the release of the conciliation board report, Cohen (as counsel to Mine Hill) continued to perform other functions pertaining to the situation. On 21 October 1941 Cohen accompanied Tom McGuire, an international representative for Mine-Hill on the scene in Kirkland Lake to a CCL Executive meeting. The situation in the north was heating up and the two men were present to report to the Congress on the extent of organization there and to lobby the Congress for its support. Cohen informed them of the mine operators' over-confident approach to the conciliation board and how it had backfired. The essential issue in the dispute was management opposition to dealing with Local 240. Cohen believed that this issue was of national importance and he urged the CCL to provide the financial support which the union sought.⁵⁰

Cohen's commitment to a union for the northern Ontario gold miners and to the principle of a collective bargaining basis for a restructured modernized industrial relations system went beyond his official role of union counsel. It was a political commitment which he pursued with great energy. One week after the strike began, Cohen travelled to Kirkland Lake and from there he wrote to Mine Hill President, Reid Robinson, "It appeared to me that no concrete steps had been taken to gear into the whole issue the support of the labour movement

generally and particularly the Congress of Labour membership in Canada, to say nothing of the sister locals and affiliated unions in the United States.⁵¹ He believed it was necessary to act along these lines if the strike were to be won. It was Cohen who not only urged the union to organize activities along these lines, but told them how to do it and acted as a catalyst to assist them in getting underway. The result was a decision to hold a national conference in Kirkland Lake to involve Congress affiliates and to focus public attention on the issue of collective bargaining at the centre of the dispute. It was Cohen who foresaw the role of local Kirkland Lake committees which were established all across the country to organize mass support for the strike and to educate workers and the public on the issue of union recognition. As an individual, he was more engaged emotionally and intellectually by this dispute than in previous cases. Before they were set up, Cohen wrote "these committees (the Kirkland Lake committees) will constitute the nucleus of a national apparatus which, both from the standpoint of money and securing organizational support, will enable complete co-ordination of activity."⁵² The organizational efforts succeeded in bringing the strike to national attention, in raising funds, in involving and educating workers about the issue in the dispute. In the end it was not enough and the strike was lost, and Cohen's role was to try to ensure that the companies would not blacklist people by seeking government involvement. He was unsuccessful. Among the trade unionists not rehired was Larry Sefton who moved to Toronto to find work.

In addition to assisting the union and the CCL in promoting support for the Kirkland Lake miners across the country, Cohen had plenty of action to deal with on the ground. Some of the mining companies tried to continue operations during the strike. They tried to frustrate picketing and undermine the union's

legitimacy with false allegations of union-instigated violence. They were successful in getting support from the provincial government of Milton McCoun, which sent in a large force of OPP one week after the strike began. The presence of the police in an already polarized and tense situation made matters worse. Cohen believed that the police were making it difficult for the union men to lay charges while they actively encouraged strike-breakers to complain.⁵³ There were court cases most of which Cohen handled. Mine mill organizer Bob Larin remembered, "we got an awful lot of them off because we had the best attorney in the country--J.L. Cohen"⁵⁴ He acted as defense counsel for union members charged with criminal offenses. Most of the cases were dismissed or the defendants received small fines. A few were convicted and served 30 to 90 days in jail.⁵⁵ None of the cases were serious, (although tempers on both sides were inflamed) or bore any resemblance to the extreme fantasies of Globe and mail reporters writing front page stories of the strike.

Briefly Cohen also handled a libel suit in connection with the strike. Reid Robinson was vilified in the press to such an extent that he decided to sue. Cohen believed he had a case which might succeed. Nevertheless in April 1942 against Cohen's advice he dropped the suit. Cohen had feared there would be bad publicity if the case were dropped which might hurt the union. It was still organizing in the north.⁵⁶ Robinson had also been harassed by immigration authorities and this preoccupied Cohen for a short time.⁵⁷

There was briefly one point when the possibility of a settlement by arbitration seemed real. Teck township council suggested arbitration of the dispute. Cohen appeared before it to confirm that the union would abide by the decision of an arbitration board. A.R. Mosher (CCL President) consulted the local union on behalf of the newly appointed Minister of Labour, Humphrey

Mitchell, who had gotten involved. The local did nothing until it consulted Cohen. Cohen agreed that it should respond positively. The minister then held a meeting with the mine operators, after which he changed the proposal (as a result of their pressure) and then denied doing so. Mosher felt he had been used and placed in a compromising situation with a member union. Cohen was outraged by the Minister's duplicitous behaviour, and was at his arrogant best at expressing his scorn of Mitchell. In doing so, he reflected his labour clients attitude to the minister.⁵⁸

With the loss of the Kirkland Lake strike, the labour movement was deeply concerned about the future. In its frustration with both levels of government in Canada it turned to the U.S. and sought joint AFL and CIO assistance in trying to work out some viable legislative program for Canada. As the AFL and CIO were separate and competitive organizations and American, the idea was a pipedream which reflected the lack of political clout and the frustration of the Canadian labour movement at this time. Cohen's role was simply to caution the CCL (whose politics he understood) to approach the American congresses warily and carefully so as not to jeopardize the independence of the CCL. The initiative came to nothing.⁵⁹

From the Oshawa strike of 1937 until the passage of P.C. 1003 in 1944, J.L. Cohen was involved in virtually every major industrial dispute of the CCL unions. By the time of the Kirkland Lake strike in 1941-42, he was the foremost labour lawyer on the union side in Canada. In that dispute perhaps more than any others, his strengths were evident. He had great rapport with leading trade unionists. He often praised organizers. He genuinely admired trade unionists he worked with and just as they deferred to him on legal and many other matters, he always respected their area of competence. He understood the aspirations of

the 'new unionism', its members and its leaders. For this reason his clients trusted him and there was mutual respect. The trade unionists treated him as a legal expert upon whom they could depend for good advice. From time to time they also turned to him as one of their own. He was invited to participate in both organizational and political decisions made by union leaders.

III

Conen and Labour Policy

J.L. Conen became an outspoken critic of the federal government's labour policy during the war. In particular he opposed the use of the compulsory conciliation process to delay the resolution of strikes--an increasing number of which involved union recognition⁶⁰ and he deplored the refusal of King's government to enact collective bargaining legislation. He would be placed in a position to influence the direction of policy in the area of labour relations.

After the loss of the Kirkland Lake strike, both labour congresses (the TUC and the CCL) actively supported the introduction of collective bargaining legislation. Their political pressure, their close cooperation with the CCF and the CCF's championing of workers' rights during the war were factors which led to growing public support for labour's demands, major electoral gains in support for the CCF⁶¹ and pressured the two major parties to accommodate labour's needs. These pressures resulted in watershed labour legislation in Ontario and at the federal level and they shaped the emergence of a modern industrial relations system and the development of labour law.

In an effort to recapture the support of workers and unions, Premier Mitchell Hepburn took an initiative in Ontario. In 1937 in Oshawa and in 1941 in Kirkland Lake, he had used police against strikers in an attempt to drive "the CIO" out of the province on the grounds that it was communist dominated. But,

In May 1942, he spoke out in favour of a collective bargaining act for Ontario.⁶² In August, Ontario Labour Minister, Peter Heenan promised a new labour code at the CIO convention. Shortly thereafter, Heenan retired abruptly and his successor, former Attorney-General Robert Corbett secretly hired J. J. Cohen to draft new collective bargaining legislation for the province. He was given independence. In a signed agreement of 19 November, 1942 with Heenan, the government "gave him the right to completely recompose draft bills if they did not meet his approval, and to cease work and collect his fees if he felt the government's purposes and his own had become incompatible."⁶³ By the same token, the government was not obligated to use his drafts. He apparently tried to produce a bill which was acceptable to the government. When he faced impediments, he became frustrated and on 30 January, 1943 he quit.

We know from his book Collective Bargaining in Canada and from his papers that Cohen favoured compulsory collective bargaining legislation similar to the American Wagner Act, the strong enforcement of labour law, and a labour board as preferable to either ministerial discretion or a court. If there were no board, he preferred a court to ministerial discretion even though he knew that court procedures were slow, too formal to deal adequately with labour relations questions and were not popular with the labour movement.⁶⁴

In his legislative drafts for the Ontario government, Peter Bruce contends that Cohen was "considerably more bound by the precedents of collective bargaining laws in other provinces and by limits on reform [which] Canadian major parties were willing to accept than by adherence to a model of the Wagner Act."⁶⁵ There are several versions of the evolution of the Ontario Collective Bargaining Act⁶⁶ and of Cohen's role at this time. Cohen apparently presented various drafts to the Ontario government but none of them called for a labour

board. Instead the minister was given discretion to define bargaining units and make certification decisions. Such decisions were exempt from the review of the courts as there was a privative clause included. Cohen had suggested a board but Heenan wanted to exercise discretion.⁶⁷ Unfair labour practice cases were to be heard in magistrates' courts under the procedures of the Summary Convictions Act. Unions were required to seek "consent to prosecute" from the minister. One draft laid out a procedure whereby the judges of the Supreme Court of Ontario might act as a labour "court" in certification cases.⁶⁸

Cohen experienced increasing frustration as he prepared legislative drafts which he saw as a minimum out which the government believed went too far.⁶⁹ He made a last effort on 27 January, 1943 and then he resigned. On 5 February, 1943 the Globe and Mail broke the story that Cohen "known as the CCL's best lawyer" as it reported, had been hired by Heenan to draft Ontario's collective bargaining legislation. Once his involvement became known, it de-legitimized his work.⁷⁰ Business was outraged and objected to the drafting process and labour criticized the secrecy of the process.

Under pressure, the Liberals established a legislative committee to conduct public hearings. The Ontario Conservatives previously had endorsed new collective bargaining legislation. They protested the Liberals' secret dealings and refused to sit on the committee. Their absence and the committee proceedings provided a public platform for the virtually identical reforms suggested by the trade unions and the CCF.⁷¹ Heenan presented proposals close to those drafted by Cohen at the beginning of the committee's hearings, but to no avail.

In the meantime, in December, 1942, Andrew Brewin had drafted for the CCF a "Trade Union" bill, which in January, 1943 was published in the CCL publication Canadian Unionist.⁷² In contrast to Cohen's drafts, it was based on a critical

analysis of the Wagner Act and its administration by the National Labor Relations Board (NLRB). The bill included the major provisions of the Wagner Act - an independent administrative tribunal, a ban on company unions, compulsory collective bargaining, certification and unfair labour practice procedures. In addition, Brewin added a strong privative clause to prevent court interference with all board decisions because such interference in the United States had delayed the work of the NLRB.

The hearings of Ontario's legislative committee took place in a changing political situation which made what was politically possible closer to what labour wanted. The Ontario Collective Bargaining Act which passed in April, 1943 was the result and it was similar to the Wagner Act except that instead of a board, it provided for a labour court. The legislation was supported by the CCF and the labour movement. Once it was passed, both interests pressured for improvements and argued that the court was too slow and too formal. In the brief period in which Ontario's labour court operated, J.L. Cohen presented 30 cases before it and won them all.¹³

In February, 1943 Cohen accepted an appointment Prime Minister Mackenzie King offered him to sit on the newly reconstituted National War Labour Board (NWLB). The NWLB was to conduct an inquiry into the causes of labour unrest and to make recommendations for new federal labour legislation. Cohen accepted the appointment because he saw it as an opportunity to effect new labour policy - the centrepiece of which would be collective bargaining legislation.¹⁴

Cohen had observed the fluid political situation and realized that the combined CCF and CCL pressure had resulted in the features of the Ontario Collective Bargaining Act.¹⁵ The act was an advance over his legislative drafts as it included an administrative enforcement mechanism (the labour court) which

had been missing in earlier provincial legislation,¹⁶ and a strong privative clause. The court idea had been introduced in one of Cohen's drafts in a limited way, which is probably where the idea came from. Henceforth on the NWLB, Cohen put forward his views as outlined in his 1941 book. He championed the Wagner Act principles at the national level as his minority report, which came out of the NWLB enquiry indicated, including a labour board, knowing that the CCF and the labour movement had injected such concepts into the public debate and were continuing their pressure along such lines.

Cohen became more focused on labour policy at this time for two reasons, other than that he sat on the NWLB. As the internal conflicts in the labour movement between the Communist and non-Communist trade unionists increased, Cohen lost clients. He remained legal counsel to the UAW and the UEW which had significant CPC influence amongst the leadership or secondary leadership of these two unions. He did work for the CCL but so did Andrew Brewin. But, C.H. Hillard, the head of the steelworkers' union in Canada became fed-up with Cohen because he thought his association with the Communists was too close.¹⁷ Cohen was never a member of the CPC but his professional and personal contacts with the Communist Party continued. Coinciding with his labour practice, Cohen took civil liberties cases. There was ample opportunity to do so for in the war years, as certain groups were interned or declared illegal. His major clients were the Jehovah's Witnesses and the Communists. This continued service to the Communists (both in labour and internment situations) adversely affected his labour practice. As the major industrial unions and the CCL became more pro-CCF¹⁸ and the CCF's popularity rose dramatically in the polls around 1943, labour men of influence turned to other lawyers to handle their unions' cases. For the first time Cohen face serious competition in the area of labour law. The USWA used Ted

Jolliffe until he became Ontario leader of the CCF and leader of the Official Opposition. Cohen was furious at Millard for using Jolliffe in the steel strike but by late 1942, the USWA was Jolliffe's big client.⁷⁹ The USWA also got political and legal counsel from David Lewis, the National Secretary of the CCF. John Oster was part of this new labour law firm. Andrew Brewin, a CCFer, lawyer and author of the CCF draft bill for collective bargaining legislation in Ontario as well as many articles in Canadian Forum, was becoming not only an outspoken critic of the abuse of civil liberties in Canada but another critic of the government's labour policy and an expert on policy alternatives in that area. He also drafted Saskatchewan's Trade Union Act 1944 when the CCF took office in that province.⁸⁰

As a result of these pressures, Cohen focused his energies on the NWLB job. On the personal level, he began to go into decline. One can only speculate about the reasons for his crisis. He had had a harsh childhood, and led a hectic pressured life. Ted Jolliffe remembered that he acted rather peculiarly at times and some people thought he was on drugs.⁸¹ Later his behaviour would get him into serious trouble and would contribute to ill health. He was personally vulnerable and professionally insecure as he manoeuvred in a pragmatic fashion to achieve the public policy on labour relations which both he and the labour movement were demanding.

On 1 September, 1943, Cohen addressed the TLC convention in Quebec City and went public on a matter which had been percolating for some weeks. The speech cost him his appointment on the NWLB. The NWLB's enquiry had been completed and Mr. Justice C.P. McTague's majority and Cohen's Minority reports had been submitted to the government. Nothing happened. The government gave no

indication of what it planned to do with the reports and gave every indication that it might delay acting on them.

Cohen was not a man to waste his time and he was arrogant enough to think that no one else, even the Prime Minister, should expect him to. Also he was deeply committed to the changes put forward in his report. From mid-August he began to apply pressure on the government. On 18 August he wrote to McIague that he would not take an active part in controversial cases before the board until the government made some decisions about the reports. He informed the press of his intentions⁸², and alluded to the contents of the report. McIague sent Cohen a frosty reply saying that he did not want to be included in Cohen's protest, that he objected to Cohen's statements to the press before the reports were public and offered to accept any resignation that Cohen might care to submit. But he also got to the crux of the matter. McIague wrote, "It has seemed quite clear to me from the time we both became members of the National War Labour Board that our job was to administer Government policy as to wages and cost of living bonus in a fair manner under the law. We were also empowered to conduct an inquiry into the general problems of labour relations and made what recommendations we saw fit. I have never felt that there was any guarantee on the Government's part that it was bound to accept any recommendations which we might make...I can have no political interest on account of my position. Naturally I assumed when you became a member of a Government Board that as long as you remained in the position any political interest on your part would cease as well."⁸³

Cohen had no intention of playing the role of a "neutral" administrator. As a labour appointee, he represented the interests of working people as a sympathetic partisan. His participation in the enquiry was to further the

adoption of legislative goals which he had been advocating for years and which had been adopted in the United States in 1935. While McTague feigned surprise at Cohen's position which was politically inconvenient, it is likely that the only thing that surprised him was the extent of Cohen's dogged determination to embarrass the government enough that it would act.

Cohen responded the next day to McTague without offering his resignation. He stated that if the government had not as yet received the reports, the fault and responsibility was entirely McTague's as they could have had them weeks before. He suggested that McTague approached the question of the functions of the NWLE in a manner "entirely different to that which was represented to the public and certainly to me, when the reconstitution of the Board was first announced".⁸⁴ According to Cohen when McTague had invited Cohen to serve and he had agreed, McTague's view was that the board members were neither pro-government nor anti-government but that they could serve the government, the war effort and the public interest effectively only if they made clear the deficiencies in law and administrative policy as they related either to labour relations or wage conditions. To Cohen the appointment was clearly an opportunity to change the system; it challenged his abilities and he accepted on that basis. He reminded McTague that: "You and I were both agreed before I stepped on the Board that the government labour policy was bad, whether reflected in existing legislation, lack of legislation or in administrative policy. We both agreed that it would be our job as a Board to change this, so far as possible, firstly by interpreting the laws themselves in a temperate manner, and secondly by recommending changes or additions to legislation which would conform to our concept. You were most emphatic in your expressed viewpoint that such recommendations would be accepted and I entered into this responsibility upon

that basis. I have not deviated from that viewpoint." The issue to Cohen was that the public was waiting for publication of the report. He wanted it implemented because only with a proper industrial policy "could Canada be effective "at this crucial hour of the war" and in the post-war era as well. "To delay that Report is to delay action at the most vulnerable point at this moment of the national interest." The submission of the Report was a job which the country wanted them to do. He took the political stance that he would consult public and labour opinion as to what course he should take if there were no action.

The day before Cohen's speech to the ILC convention, on 31 August, 1943, Prime Minister Mackenzie King made a surprise visit. At that time he privately assured ILC President Bengough that the government would study the reports but not make them public until after the CCL convention. In that way, neither Congress would be placed at a disadvantage.

Following Cohen's speech to the ILC convention, McTague saw King and told him that "he [McTague] could no longer sit with Cohen that he was a political intriguer, had changed his attitude on the night of the Ontario election. When he saw how the CCF was turning out, mentioned his different moves as to announcing his decision. Spoke of his treachery of going to Quebec and making the address he did, etc."ⁱⁱ McTague agreed to continue with another colleague. The situation was discussed in Cabinet. King saw a delegation of labour leaders-Mosher, Bengough and Ward of the railway unions-who told King that they had urged Cohen to go back and sit on the board and hear a few cases. They also complained about the delay in the release of the reports. King told Mosher of his assurance to Bengough that the reports would not be released until after the CCL convention but assured them that the reports would be considered as soon as

possible. King said he would not interfere as he viewed the Board as a court.³⁶ But he had told Labour Minister Mitchell before the meeting that he "would not be a party to reinstatement of Cohen." On 8 September King reported his meeting with the trade unionists to the Cabinet. When Isley complained that the government was losing honour by not dismissing Cohen, King replied that he could not proceed on the basis of newspaper reports alone but he wanted a formal letter of complaint from McTague. When McTague saw King, he had received a letter from Cohen which said he was going to sit on the board because the labour men asked him to do so. McTague reiterated that he would not sit with Cohen as he viewed him as an intriguer working against the national interest who was out to destroy the government politically. McTague agreed to write a formal letter requesting the government to dismiss Cohen. On 9 September Cohen was fired. The next day King noted in his diary that Cohen was "trying to create prejudice against myself personally for his dismissal, putting it on my anti-labour attitude. This is all part of the political game of the CCF. They have not dared to attack me personally while seeking to have Cohen create prejudice"³⁷

Cohen increased his pressure on McTague and the government a week later when on 15 September, 1943 in a partisan, political speech he addressed the CCL convention in Montreal. By this time he was well known to them all after years of work as a labour lawyer and famous as the union board member of the NWLB national enquiry. As he clearly stated to the enthusiastic delegates he viewed his speech as an opportunity to report to the delegates and the nation on "the discharge of the functions and responsibilities" of the NWLB enquiry.³⁸ He commenced by saying that he regretted that the reports had not as yet been made public as there was no sound reason for the secrecy. For the record, he stated

that, "I, for one declare myself clearly and unequivocally for immediate publication and for frank and free public discussion and criticism."⁸⁹

The Prime Minister, he noted, had stated that the reports were important, would be given detailed consideration by the government and as a result there would be delay in their publication. Cohen stated that delay was not in the public interest. He went on to correct impressions left by some newspaper editorialists that the function of the NWLB was solely to interpret and administer existing laws. He reminded the convention that the NWLB as reconstituted in February 1943 came into being mainly to ascertain what labour laws and what labour policy should exist. "It was upon that basis that I was invited to become a member of the Board. It was upon that basis that I agreed to accept, and did accept the appointment."⁹⁰

The Order in Council which appointed the Board gave it power, which the former board did not possess, to conduct an enquiry on its own initiative and to make a Report on matters relating to wage conditions and labour relations in Canada. It was hoped the board would correct the existing policy which Cohen told his audience was basically unsound and injurious to the war effort and the interests of the nation. Hence the announcement of the enquiry had been greeted positively by the press and the public.

Clearly Cohen saw his role as a policy maker. The government had of course appointed the board to respond to growing demands for a change in labour policy demands which were lending support to the CCF - but also to delay immediate legislative changes. The board had received many representations from labour, employers and the public. The reports were filed, but were delayed until after Parliament adjourned in July so that they were not public in time to be considered by the conventions of the two labour congresses.

Cohen was frustrated as he said "We were appointed, we assumed office, we discharged our responsibilities...to devise and recommend correct labour policy and to devise satisfactory legislation." He had a voluble constituency which supported his role in the enquiry and he was using it to apply pressure on the government. Everyone up to the Prime Minister respected him for his ability but the man was self-propelled; he had his own agenda which meant ultimately he was not controllable. He would work within the system (as he had in Ontario drafting legislation for the Ontario Court) if that served the purpose of achieving a national labour code. But he was equally capable of publicly embarrassing the government if that tactic would help to achieve the desired legislative goal. Always Cohen respected the law, had the ability to achieve much by using the law and was often an architect at making new law. The law had been his own vehicle for emerging from a youth in poverty to become a leading barrister and it could be the source of justice for others. This report would not be ignored or undermined by the government as the Marsh report had been if he could do anything about it. Hence he went public. Just as a crisis had sparked the initiation of the new board and its enquiry, he deliberately provoked another "crisis" to get out the report. "How regrettable that crises are needed in order to bring about effective government or management action on matters of essential public interest,"⁹¹ he said. To Cohen, it was obvious that it was just as necessary to equip the nation with a workable labour policy so that the industrial front could function effectively (with fewer strikes) as it was to equip fighting forces with materials and strategies for fighting the war. And in his mind the government could be criticized for waiting until strife and turmoil and strikes created a crisis before dealing adequately and justly with the problems of the industrial home front.

As a spokesman for labour, he said, "I am sure that I speak for the whole family of organized labour when I say that we will not be diverted from the basic issues, whatever the provocation."⁹² He argued that organized labour had given unqualified support to the war effort - and the government's administration of it - freely. Working people had contributed greatly to both the military and war production efforts, and this had been acknowledged verbally by the Prime Minister and others. Cohen told the convention that it was time for public measures which would acknowledge labour's contribution. Such measures were a "proper labour policy" which would contribute to and be an integral part of a more effective war policy. Such a policy was necessary, for in the post-war period Canada would emerge with a transformed industrial economy as a result of the war and labour would have a larger role to play than in the past. The economic needs of Canada could not be achieved alone by business.

In his view, it was the time for Canada to establish policies and administrative machinery which would allow Canada to play an effective role both in the war and in peace time. The labour policy which Cohen advocated was contained in this independent report filed with the NWLB enquiry. He told the convention "I deplore that hush-hush policy which has so far concealed these documents from public scrutiny and I have already stated that they could have been made available much earlier. Whatever may be said on that score, the Reports are at last filed. They are public documents. They should now be public property."⁹³ It is clear that Cohen feared that his work might result in evasion by the government. The enquiry, Cohen pointed out had involved the public extensively in its deliberations and the public consequently was entitled to the board's conclusions.

He called for the introduction of collective bargaining legislation and a policy to facilitate trade union activity. He favoured the proper treatment of labour by a fair wage policy, equal pay for equal work for women employees and the representation of labour on all policy-making and administrative government agencies. He wanted action not lip-service and he concluded, "We must have an efficient, a modern, a workable industrial policy, co-ordinated with the needs of the war, with our transformed industrial economy and with our post-war prospects."⁹⁴ In his emotional speech, he cried "Delay is the mother of mischief. Delay can destroy confidence. Delay demoralizes." As he had done so many times before, he called on labour to unite, close its ranks and determine to secure action for itself and the benefit of the entire nation. It was a remarkable unprecedented performance by a union counsel. It indicated the extent to which Cohen had become a nationally known figure and a policy maker. His understanding of the legal economic system during the war was practical and profound and his sense of urgency about developing a new labour policy reflected not just his political goals but also his concern about the country's future.

meanwhile King was engaged in a complicated strategy to undercut the growing popularity of the CCF by moving the Liberal Party left while at the same time placating conservative business interests and Cabinet Ministers who had co-ordinated major aspects of the military and war production efforts. The political compromise which emerged was to look to reconstruction and the introduction of some aspect of social welfare legislation, to concede to labour on the collective bargaining issue but not on wage controls. Accordingly, on 28 January, 1944 the reports were made public. In February, P.C. 1003 which inaugurated collective bargaining legislation in this country was proclaimed. The labour movement was delighted but it sought improvements. The CCL

established a committee to recommend amendments to both P.C. 1003 and wage order P.C.9384. Cohen worked with the committee in the preparation of its report of 22 March, 1945. It was sent to the Department of Labour and all Congress Unions.⁹⁵

There after Cohen continued his labour practice, but the most influential and public part of his career was over.

IV

Conclusion

Let me draw two conclusions, the first about J.L. Cohen as a labour lawyer. He was a brilliant man, never simply a "hired gun"! He was knowledgeable of the law and had respect for it as a vehicle of reform. He was a ~~in~~rewd policy advisor to his union clients. He was a professional who gave advice but he understood and respected the individuals he dealt with and the democratic procedures of the labour movement and never tried to dominate its elected officials. He acted as an educator at the level of local unions teaching workers how to administer their collective agreements, and how to develop demands in preparation for negotiations with management. He educated government officials like those administering minimum standards legislation and occasionally even a few judges who knew less law than Cohen.⁹⁶

Cohen was "political" and was perceived as a "radical" lawyer because he sought legislative reforms throughout his career and used the law creatively as a tool to change social policy and make jurisprudence. He had faith in independent boards and even courts and was wary of procedures which gave too much political discretion to status quo governments which invariably used it to delay

or retard change. As a labour lawyer, Conen had significant impact on many people and on policy.

Secondly, let me compare J.L. Conen - the subject of this paper - and Larry Sefton - the person in whose memory this lecture has been delivered.

J.L. Conen and Larry Sefton met, of course, and knew each other. Conen had been counsel to Mine Hill during the 1941-42 Kirkland Lake gold miners' strike in which my father--then a young man of 24 years--began his career in the labour movement. As a result of this experience Sefton came to admire and respect Conen for his role in that strike.

They were different ages, of different backgrounds and practised different politics. They were different in appearance and size. They had markedly different public images and personalities; they were poles apart in the way they conducted their personal lives and presented themselves to the world. People saw Conen as intelligent, capable, not very likeable, extremely arrogant and they were wary of him. People saw Sefton as attractive and even charismatic, confident but unassuming and formidable. Both men evoked admiration, some jealousy and even a little fear. Occasionally, both men were isolated because of their obvious talents and abilities. In terms of their roles in the labour movement and their dedication and services to working people, perhaps their similarities are more important. Both men were forceful because they had an inner strength, and people sensed this about them. They were private persons but led active public lives. Both men had a deep commitment, almost to the point of stubbornness, to strong democratic trade unions, to reform, to helping people help themselves and to a more egalitarian society. One man used his organizational abilities and leadership qualities at the head of a union to play out his role in life, and the other used his analytical skills and legal training

to do the same. They both worked too hard and died too young, in the month of May--but each accomplished a great deal.

There was a dark side to Cohen and near the end of this career, when he got into deep trouble with the law, his wife called on Sefton for help. She asked him to go north and see if he could uncover any information which would assist Cohen's case. Sefton agreed to go but was unable to find further evidence which would be of use. Cohen was convicted of assault and sent to Quebec reformatory for 6 months. As a result of his conviction, he was disbarred for three years from 1947 to 1950. He suffered personal humiliation and professionally for a man who was proud of being a lawyer, it was a tragedy. He was reinstated in 1950 but too late. His life and health began to decline and he died in May 1950. I like to think, and this speculation is in the realm of the historical imagination that this brief incident when the lives of these two people touched again at a crucial time for Cohen, indicated a mutual understanding between them. When it came to assisting working people, they were cut of the same cloth. They were staunch defenders of disadvantaged people, of the working class and their trade union organizations. I need hardly add that both individuals have influenced my own life. One I knew and loved in life, and the other I have come to know through his papers. Both men have taught me a great deal.

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April, 1992.

ENDNOTES

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6. William Kaplan, Loc. cit., p. 79.
7. Lida-Rose Betcherman, Loc. cit..
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9. J.L. Cohen to Julius Hochman, 28 December, 1927, Ibid.
10. J.L. Cohen to James Watt, n.d., Ibid.
11. J.L. Cohen to J.W. Macmillan, 16 February, 1928, Ibid.
12. J.L. Cohen to David Dubinsky, 25 October, 1929, File 24, Vol. I, J.L. Cohen Papers, NAC.
13. J.L. Cohen to David Dubinsky, 27 January, 1930, Ibid.
14. Ibid.
15. J.L. Cohen to L.M. Singer K.C., 3 February, 1930, Ibid.
16. J.L. Cohen to David Dubinsky, 11 February, 1930, Ibid.
17. Ibid.
18. Ibid.
19. J.L. Cohen to Bernard Shane, 11 February, 1930, File 24, Vol. I, J.L. Cohen Papers, NAC.

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26. Ibid.
27. Ibid.
28. Kitchener Daily Record, 3 November, 1937.
29. J.L. Cohen to S.H. Dalrymple, 6 November, 1937, File 2667, Vol. 11, J.L. Cohen Papers, NAC.
30. Ibid.
31. Arbitration Board Report, Kitchener Rubber Industry, Part II, p.2, File 2731-8, Vol. 13; J.L. Cohen Papers, NAC,
32. Minutes, Arbitration Board meeting, 4 May, 1939, p.7, Ibid.
33. Ibid., p. 14.
34. Kitchener Daily Record, 3 November, 1937.
35. N.H. Eagle to J.L. Cohen, 5 May, 1938, File 2667, Vol. 11, J.L. Cohen Papers, NAC.
36. Ibid.
37. J.L. Cohen to M.T. Montgomery, 13 April, 1937, File 2602, Vol. 7, J.L. Cohen Papers, NAC.
38. C.H. Millard to Homer Martin, 12 May, 1937, File 2615, Vol. 8, J.L. Cohen Papers, NAC.

39. Globe and Mail, 25 May, 1950.
40. J.L. Cohen to C.H. Millard, 3 May, 1938, File 2611, Vol. 8, J.L. Cohen Papers, NAC.
41. J.L. Cohen to Homer Martin, 24 May , 1937, File 2614, Vol. 8, J.L. Cohen Papers, NAC.
42. J.L. Cohen to Homer Martin, 29 April, 1937, File 2609, Vol. 7, J.L. Cohen Papers, NAC.
43. File: J.L. Cohen K.C. 1928-43, Vol. 181, J.L. Cohen Papers, NAC.
44. For detailed study of the Teck-Hughes dispute see L.S. MacDowell, 'Remember Kirkland Lake: The Gold Miners' Strike 1941-42, (Toronto 1983), Chapter 3.
45. J.L. Cohen, Collective Bargaining in Canada , (Toronto 1941), p. 54.
46. P.C. 2685 was a war order which outlined principles which the government hoped companies and workers would follow voluntarily to facilitate the peaceful settlement of labour disputes in the war crisis.
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51. Ibid, p. 173.
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56. Ibid, p. 154.

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69. Ibid, p. 20.
70. Ibid, p. 54.
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72. Ibid, p. 32.
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78. Gerald Caplan, The Dilemma of Canadian Socialism, Loc. cit., Chapter 7.
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81. Author's telephone conversation with E.B. Jolliffe, 26 May, 1981.
82. C.P. McTague to J.L. Cohen, 19 August, 1943, File 14, Vol. 210, CLC Papers, NAC.

83. Ibid.
84. J.L. Cohen to C.P. McTague, 19 August, 1943, File 17, Vol. 210, CLC Papers, NAC.
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87. Ibid, p. 574.
88. Address, J.L. Cohen to TLC Convention, 1 September, 1943, p. 1, File 14, Vol. 210, CLC Papers, NAC.
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92. Address, J.L. COhen to CCL Convention, 15 September, 1943, p.1, File 14, Vol. 210, CLC Papers, NAC .
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94. Ibid, p.13.
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96. L. Betcherman, The Little Band, p. 47.