A BRIEF OUTLINE OF SUPREME COURT OF CANADA PRECEDENT CONCERNING FORCED UNION MEMBERSHIP AND USE OF UNION DUES

1991 *- Lavigne v. Ontario Public Service Employees Union*
     [1991] 2 S.C.R. 211

The Court appeared to read a right of non-association into the *Charter's* Section 2 d) Freedom of Association provision, but with four separate opinions the scope of this new right was not clear. The Court also found that the Rand Formula of dues interferes with the freedom from compelled association. However, the majority ruled that such interference was justified under section 1 of the *Charter*. The majority decision also held that the use of the union dues did not constitute forced expression, and so there was no violation of the freedom of expression, even if dues were used for "non-collective bargaining purposes", including political purposes.

The result in unionized workplaces is that compulsory union dues for all unionized employees whether or not they are actual members of the union continues. Membership for Lavigne was voluntary based on a Rand Formula agency shop clause.

2001 *- Regina v. Advance Cutting and Coring Ltd.*
     [2001] 3 S.C.R. 209; [2001] S.C.J. No. 68; 2001 SCC 70; File No.: 26664.

The Court clearly read a right of non-association into the *Charter's* Section 2 d) Freedom of Association provision. It found that the effect of Quebec legislation compelling membership in one of five unions a violation of this freedom from association <u>but</u> then allowed closed shops under Section 1 of the *Charter* due to the history of union violence and vandalism in the Quebec construction sector.

2007 *- Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia,*
     2007 SCC 27

The Court reversed 20 years of rulings. It read into the Section 2 d) Freedom of Association provision a limited *Charter* right to collective bargaining, in the public sector. Relied on international instruments Canada had signed. Parliament's to decide how to implement, courts to use as interpretation guides.