

**No Forced Union Membership
or Dues for Politics:**

It's a Human Right

The European Experience

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MEMBER OF WHAT?

Unionized workplace – collective agreement

Employees are “members” of a bargaining unit

BUT, are they also “Members” of the union?

If yes, are they voluntary or forced members by law or collective agreement?

HAS ITS PRIVILEGES!

To run/vote for union president or other office

To participate in ratification/strike votes

To be disciplined/fined (can union collect?)

To lose "Membership"

To lose your job for loss of "Membership"
(some provinces have some protections)

Most allow loss of job for loss of "Membership"
for non-payment of dues

UNION DUES

NOT the same issue as membership

Almost all unionized Canadians pay full dues

Why?

Dues "check-off" in labour codes and collective agreements

Dues of non-members of union can be used for political & other non-bargaining unit purposes

TERMINOLOGY DIFFERENCES

"unionized" & "closed shop"

Sweden/"Europe"

Term not really used

If it was: unionized = actual members of the union - only

Not unionized = non-members & those not covered by a CA at all

Canada/US

Both members & non-members covered by a collective agreement

How Canadian labour experts define "closed shop" may NOT be the same as the European Court of Human Rights

SUPREME COURT OF CANADA

2 KEY CASES

Advance Cutting & Coring (2001): Clearly read right of non-association into *Charter*, said Quebec forced membership a violation but allowed under Sec. 1 of *Charter* due to history of union violence and vandalism in the Quebec construction sector.

Lavigne (1991): Effectively upheld compulsory dues, used for "non-collective bargaining purposes", including for political purposes as reasonable limits under Section 1 of *Charter*. Membership for Lavigne was voluntary based on a Rand Formula agency shop clause. Existence and scope of freedom to not associate very uncertain.

AGENDA/OBJECTIVES

Overview European political and Court system

Summarize European history of:

- End of closed shop – forced membership

NOTE: Definition of closed shop in Canada & Europe not necessarily the same

- End of non-member dues for politics & other non-bargaining purposes

Compare to Canadian situation & Supreme Court cases

SWEDEN, EU & CANADA STATS

SWEDEN

EU

CANADA

GDP: \$290 billion*

\$13.08 trillion*

\$1.181 trillion*

Per Cap: \$32,200*

\$29,900*

\$35,600*

Pop: 9,031,088**

490,426,060**

33,390,141**

COE Pop:

806,595,500**

Provs: none

n/a

11

Founded: June 6, 1523

1992+
(Treaty of Maastricht)

1 July 1, 1867
2 December 2, 1981
3 April 17, 1982

CIA World Factbook Data

* 2006 and \$US

** 2007

+ EU roots go back to 1951

1 – British North America Act

2 – Repatriation of Canadian Constitution

3 - Canadian Charter of Rights and Freedoms

BANNED – COUNCIL OF EUROPE (47 member countries)

Closed shops:

Post-entry (working & clause comes in)

- *Young, James and Webster* (1981)

Pre-entry (member before or must join to work)

- *Sørensen & Rasmussen v. Denmark* (2006)

Union dues from non-members:

For political purposes & other non-bargaining purposes

- *Evaldsson and Others v. Sweden* (2007)

"UNIONIZATION" (2005)

Canada

32% - Total

19% - Private sector

71% - Public sector

Sweden

"80%"

Swedes join unions!

Other Countries

90-100% - Austria & Belgium

78% - Denmark

67% - Germany

36% - UK

US – 8% Private – 40% Public Sector

9.6% - France but 90% of workforce impacted by collective bargaining – but not members of unions

LOSING MEMBERS

Sweden

Blue collar unions lost 97,000 & white collar 40,000

Members under age 25:

- 1994: 77 %
- 2007: 52 %

Decreasing due to government measures re cost of being a union members and end of forced membership

Denmark

Blue collar unions lost 140,000 in last 10 years:

- Membership from 84.6% in 1994 to 81.7% in 2001 to 78.5% in 2005

Workers under 30:

- Since 1995 a 40% drop from 471,000 to 284,000

UK

From 13 million in 1979 to just over 6 million today. Forced membership ended starting in 1981

REFORM IN EUROPE

Mostly not the result of political will – but in spite of

Litigation by employees 1976 – 2007, two venues:

- European Court of Human Rights
- European Social Committee

Role in European judgments of Art. 20 (2) of UN Declaration of Human Rights:

“No one may be compelled to belong to an association”

EUROPEAN BODIES



COUNCIL OF EUROPE (COE)

Founded '49 - wake of WWII

22 member countries, today 47

Principal focus: Human and social rights

European Convention on Human Rights (1950)

- European Court of Human Rights

European Social Charter

- Social Committee

EUROPEAN UNION (EU)

Founded '51 - wake of WWII

6 member countries, today 27

Principal focus: trans-border economic activities

Legislative powers

- European Court of Justice

EUROPEAN COURT OF HUMAN RIGHTS & THE CONVENTION

THE COURT

Individual & inter-state complaints
(collapsing under its success)

Declaratory judgments, awarding
damages & costs

May order general measures that
change national law

Labour law a sensitive social area left for member countries to decide
– at least 47 labour codes for 47 countries

THE CONVENTION

Human Rights

- Rights of association, conscience, opinion (Art. 11, 9, 10)
- Right of possession or property rights (Art. 1 of Protocol No. 1)

SOCIAL CHARTER & SOCIAL COMMITTEE

SOCIAL CHARTER

Social and human rights – including:

Express right to organize unions -
Art. 5

Social Committee has decided Social
Charter Art. 5 also includes right to
not associate

SOCIAL COMMITTEE

Rule on collective complaints
from NGO's & organizations –
actio popularis

NOT a venue for "victims"

Bi-annual reporting

Committee of Ministers adopts
resolutions "recommending"
measures to achieve compliance

YOUNG, JAMES & WEBSTER v. UK (1981)



Legislation changed to allow post-entry closed shop collective agreements. Employer signs one on a renewal. Some employees opposed to union political agenda. Applicants refused to join; employer fired per union

- Judgment's effect: right of non-association even though it had been specifically considered and left out of Convention.
- Did not rule on all forms of closed shops, just post-entry
- Loss of livelihood struck at the very substance of freedom of association
- Other rights noted as factors: conscience and opinion (Art. 9 and 10)

SIGURJONSSON v. ICELAND (1993)

Taxi driver compelled member of professional organization. Applicant stopped paying membership fees, he did not share view on limiting competition. Expelled and lost license.



- Repetition of *Young* ruling re post-entry, but not a union and not clear cut post-entry; might be pre- entry case
- After adoption of legislation confirming compulsion he rejoined "Frami"
- ECHR - no jurisdiction to rule on the issue of expulsion, but could rule on the compulsion to join
- Court found Art. 11 violation since applicant faced the dilemma of joining organization or no work. Also noted right of conscience and opinion (Art. 9 and 10) as factor

SWEDISH LABOUR LAW

Master agreements

Substitute agreements

Closed shops in some master agreements until 1992-1993 and in many substitute agreements

No domestic statute protecting freedom from forced association

No restrictions on using dues of non-members for political purposes & non-bargaining unit purposes



COUNCIL OF EUROPE SOCIAL COMMITTEE ACTIONS

- Played a key role in the ending of 10,000 to 15,000 Swedish closed shops (in substitute agreements)
- 4 reports of violations in 14 years 1988-2002
- Some closed shops eliminated
- 2002: Collective complaint by the confederation of Swedish Enterprises (employers)
- 2003: Social Committee demands full resolution by next Report in 2005

SWEDISH GOVERNMENT REACTION

- Closed shop issue should be solved through "dialogue"
- **2003:** Minister of Industry invited parties for talks – he is "satisfied by the progress"
- **2004:** Minister invited again, employer organization refused to attend – further talks "useless", want legislation
- **May 30, 2005:** Problems solved when Sweden reported that all "15,000" closed shop clauses are gone

... på arbetsmarknaden och på...
...liga resultat varit för stort, vilket
... företagsledarna att manipule-
... rättsföres.

... belöningar och vad vi faktiskt
... ästa mmer".
Richard Normann bör sedan

... betsmarknaden.
PIA GRIPPE
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Ingen lagstiftning mot Byggnads organisationskra

Arbetslivsministern nöjd med successiv avveckling.

Byggnads har två år på sig att
... helt monstra ut de så kallade
... organisationsklausurerna ur
... sina avtal. Arbetslivsminister
... Hans Karlsson vill på inga villkor
... lagstifta mot facket utan före-
... drar diskreta påtryckningar.

Arbetsgivarna hatar dem, rege-
... ringen vill inte heller ha dem och
... facket har insett att det inte håller
... längre med organisationsklausu-
... ler i avtalen.

Arbetslivsminister Hans Karl-
... sson är nöjd med att Byggnads har
... lovat att monstra ut de kontrover-
... siella klausurerna, som innebär att
... inga organiserade arbetare kan
... anställas.

Hän vill inte lagstifta för att i
... stället bli kvitt problemen – det gör
... inte en socialdemokratisk minister
... som dessutom har ett förflutet i
... facket.

– Jag har hellre en dialog med
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KÄRTEN FRÅN Europarådets sociala
... kommitté har Hans Karlsson lärt på:
... Att arbetsgivarna i Svensk Närings-
... livs och Sveriges Byggnadsfir-
... mer ser det som en seger, som DN be-

... rättade i onsdags-
... tidsning, för-
... står han inte alls.
Europarådets
... ministerkomit-
... té, som är den
... slutliga instans-
... en, ville i sitt ut-
... talande från den
... 24 september inte
... fälla Sverige för
... kränkning av de
... mänskliga rättig-
... heterna eftersom
... arbetet med att
... rensa ut organisationsklausurerna
... redan har påbörjats.

Hans Karlsson har haft möten
... med Byggnads, som gör bedöm-
... ningen att de 4 400 hängvald det

... handlar om kan bytas ut på
... Han anser att facket hade
... skäl för att en gång i tiden ingå
... organisationsklausurerna. De vi-
... riga för att värna om medlem-
... nas jobb och motverka löne-
... ring. Men han säger att "norm-
... en annan nu" och han har också
... spektr för arbetsgivarnas håll-
... att klausurerna bör försvinna.
– De har också sina legitima
... tressen, jag kan inte fördoma
... Granskningsrövodena, som
... betagivarna också ifrågasatte
... genom beskedet från Europar-
... rådet närmast en icke-fråga, anser
... arbetslivsministern.

CECILIA JACOBSSON
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... på arbetsmarknaden och på...
...liga resultat varit för stort, vilket
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Svenskt Näringsliv tackar nej till nya samtal med Hans Karlsson

Svenskt Näringslivs vice vd, Jan-Peter Düker, anser dock att samtal inte fungerar längre.

– Vi har träffat regeringen vid flera tillfällen och tror om detta. När nu Europarådet varit tydligt har vi väntat att regeringen ska agera. Men ingenting händer och samtal löser definitivt inte frågan, säger han.

Om Svenskt Näringsliv deltar i ytterligare samtal, legitimeras dessutom samfällighetslösen och det vill inte de privata arbetsgivarna medverka till, konstaterar han.

– Vi vill inte att regeringen återkommer till Europarådet och hänvisar till samtal med oss. Det räcker inte den här gången, säger han.

Enligt näringsdepartementet finns det cirka 4 000 hängvald med så kallade organisationsklausuler, antalet minskar hela tiden.

Lagstiftning kan vara ett, sätt att ta bort organisationsklausurerna, enligt Jan-Peter Düker. Arbetslivsminister Hans Karlsson anser att Svenskt Näringslivs agerande följer ett mönster.

– Svenskt Näringsliv marginalliserar sig själv. Jag tycker att organisationslösen, som är en av de viktigaste på arbetsmarknaden, alla för många gånger hoppar av eller säger nej. Men det är deras beslut och jag kommer inte sluta bjuda in dem för det.

ANNA DANIELSSON
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SWEDISH GOVERNMENT REACTION

WAGE MONITORING FEES

Minister Karlsson (2003):

The issue of monitoring fees, also questioned by the employers, is, after the decision of the Committee of Ministers, is a non-issue

Although *Evaldsson* case on dues pending before the European Court of Human Rights

ans Karlsgnads har kontroversinnehåller att detare kan

för att i ett i - det gör sk minister förflutet i

ialog med Karlsson.

lets sociala ison lätt på. venskt Näggindustri-som DN be

rättade i onsdagens tidning, förstår han inte alls.

Europarådets ministerkommitté, som är den slutliga instansen, ville i sitt uttalande från den 24 september inte fälla Sverige för kränkning av de mänskliga rättigheterna eftersom arbetet med att rensa ut organisationsklausulerna redan har påbörjats.

Hans Karlsson har haft möten med Byggnads, som gör bedöm-



Hans Karlsson

handlar om kan bytas ut på två år.

Han anser att facket hade goda skäl för att en gång i tiden införa organisationsklausulerna. De var viktiga för att värna om medlemmarnas jobb och motverka lönedumping. Men han säger att "normen är en annan nu" och han har också respekt för arbetsgivarnas hållning att klausulerna bör försvinna.

- De har också sina legitima intressen, jag kan inte fördöma det.

Granskningsarvodena, som arbetsgivarna också ifrågasätter, är genom beskedet från Europarådet närmast en icke-fråga, anser arbetslivsministern.

CECILIA JACOBSSON

SØRENSEN & RASMUSSEN v. DENMARK (2006)



Sørensen

- University student applied for job, to last 10 weeks
- Job application required union membership
- Sørensen opposed union's political agenda
- Refused to pay membership fees, lost membership; fired
- Danish Supreme Court had banned post-entry, but not pre-entry
- Sørensen aware of requirement before employment, Danish Court ruled in favour of union pre-entry okay

Rasmussen

- Confederation union member but did not support political affiliations
- Resigned & joined a Christian union
- After period of unemployment offered job conditional on joining Confederation union
- He took the job, rejoined but still did not support its' political affiliations
- Applies to European Court of Human Rights claiming violation

EUROPEAN COURT OF HUMAN RIGHTS

Sørensen Grand Chamber Judgment

- Did not address equality of negative & positive freedom of association; but did not exclude possibility they are equal
- Found no reason to distinguish between post & pre-entry
- Recognised personal autonomy as a principle of Convention's guarantees
- Danish Government argued applicants merely subscribing to a "non-political membership". Court responded:

"...it is to be observed that such "non-political membership" does not entail any reduction in the payment of the membership fee to the specific trade union. In any event, there is no guarantee that "non-political membership" will not give rise to some form of indirect support for the political parties to which the specific trade union contributes financially."

Art. 11 applicable, next question: interference justified?

EUROPEAN COURT OF HUMAN RIGHTS

Sørensen Grand Chamber Judgment

Danish Government had a hard time justifying system

Court found little need for closed shops in modern society since trade unions have grown to be strong organizations

"...there is little support . . . for the maintenance of closed shop agreements...and that their use in the labour market is not an indispensable tool for the effective enjoyment of trade-union freedoms."

Conclusion – The end of closed shops in 47 COE countries

EVALDSSON v. SWEDEN (2007)

- Master Agreement, construction sector, union monitored member & non-member wages for fee of 1.5 %
- Monitored piece-work & time-salary; latter easier - less expensive
- 5 unorganized employees (non-members) of 8 total directed employer to stop deductions. Employer complied
- Union claimed violation of Master Agreement
- Employer organization applied to the Swedish Labour Court claiming violation of the right not to associate - Art. 11
- Labour Court cited *Young*, found no compulsion as non-members did not become members merely by paying the monitoring fees
- Labour Court avoided issue of whether the system generated a surplus for the union

EVALDSSON

JUDGMENT

Court found violation based on right of possession – (property rights)

Court declined to rule on freedoms: from forced association, conscience & opinion

Court found entitlement to verification that fees or dues collected by union corresponded to union's costs of representation:

" This was even more important as they had to pay the fees against their will to an organization with a political agenda which they did not support. "



CONCLUSIONS *EVALDSSON*

Mere suspicion "dues" used for non-bargaining purposes (political, social, etc) was enough to find violation

Transparent accounting to non-members required if dues imposed on non-members

Lack of information violated human right to Peaceful Enjoyment of Possessions (property rights)

Evaldsson & Sørensen together render union dues imposed on non-members for non-bargaining purposes illegal under *European Convention on Human Rights*

FINAL REMARKS

UN Declaration of Human Rights not yet a Canadian reality.
"No one may be compelled to belong to an association"

Used by SCC & ECHR to read in freedom from forced association

Supreme Court of Canada taking note of European developments prior to *Sørensen* and *Evaldsson* – what will they do with these?

"Special circumstances" in *Advance* justify forced membership; likely not available to justify provincial laws allowing or requiring "closed shops" or forced membership/conditional employment

Canadian "Rand Formula": union dues for political & non-bargaining purposes imposed on non-members would be struck down in Europe as "disproportionate"

NOVA SCOTIA LABOUR CODE

UNION SECURITY - Provisions in collective agreement

- 59 (1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring, as a condition of employment, membership in a specified trade union or granting a preference of employment to members in a specified trade union

ANOTHER NOVA SCOTIA EXAMPLE

Highway Workers Collective Bargaining Act:

43 (1) The Union or a person acting on behalf of a Union shall not

(b) use coercion or intimidation of any kind with respect to any employee with a view to encouraging or discouraging membership or activity in the Union

(2) For greater certainty, clause 43(1)(b) does not prohibit the Employer and the Union from inserting in a collective agreement a provision requiring, as a condition of employment, membership in the Union

EXAMPLE SECURITY CLAUSE

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE of NOVA SCOTIA represented by the MINISTER OF JUSTICE and the NOVA SCOTIA GOVERNMENT & GENERAL EMPLOYEES UNION

ARTICLE 14 - UNION SECURITY (1) It shall be a condition of employment with the Employer that all employees shall be and remain members in good standing of the Union upon commencing employment

EXAMPLE SECURITY CLAUSE

Nova Scotia Government & General Employees Union
and Annapolis Valley District Health Authority (DHA
#3) Office & Clerical Bargaining Unit

3.02 Mandatory Membership – New Employees

All bargaining unit employees of the Employer hired subsequent to the date of signing of this Agreement shall, as a condition of employment, become and remain members of the Union. All bargaining unit employees who are members of the Union on the date of signing of this Agreement shall be required to maintain membership

SOME EMPLOYEE PROTECTION

54. No trade union and no person acting on behalf of a trade union shall

e) require an employer to terminate the employment of an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;

f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to any person by applying to him in a discriminatory manner the membership rules of the trade union;

This is illegal in Council of Europe (*Sørensen*)