

Spare workers forced union membership

By JAN SÖDERGREN and JOHN MORTIMER

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As signatories to the UN's 1948 Universal Declaration on Human Rights, both Canada and Europe are committed to promote and achieve its rights and freedoms. Yet 60 years later, there's a stark difference in their responses to Article 20 (2) of the declaration. It states, "No one may be compelled to belong to an association;" and that includes the right to freely choose or reject union membership.

Despite this being a universally-declared right and a growing worldwide trend to ensure union membership is freely chosen, Canada still allows forced union membership and the use of union dues for political purposes. Many unionized employees still face the archaic choice of join a union – or be fired.

In contrast, unionized employees in the 47-nation Council of Europe have a choice regarding union membership; and most who reject membership pay no dues at all. As of 2007, it's also illegal for unions to use unionized non-members' dues for political activities.

Change was neither rapid nor easy. In Sweden, forced membership in collective agreements was banned in 2005, after a 17-year struggle. Denmark's government held out until a landmark 2006 judgment against forced membership. Changes occurred over 26 years, as brave, principled unionized employees stood up to unions. They fought their way to the highest court to gain the right to not associate and to not have their dues used to fund political activities. The European Court of Human Rights has now fully dismantled these aspects of union power over employees. In 2007, Sweden was found in violation of human rights based on the mere suspicion that a union might be using non-members' dues for political activities.

Like the 1950 European Convention on Human Rights, Canada's 1982 Charter of Rights did not expressly enshrine the right to not associate. Yet, through judicial activism, both the European Court of Human Rights and Supreme Court of Canada read that right into their respective freedom of association provisions; based, in part, on the abundantly clear UN Declaration. Whether or not you support judge-made law, the result reflects the long-standing responsibility of signatory countries to uphold the UN-declared right.

While European legislators and unions backed up court decisions with new legislation and policies, Canada's courts, labour boards, unions and legislators have done little to guarantee the right to not associate. Canadians who've lost their membership have been fired.

The 2001 Advance Cutting and Coring case is particularly troubling in this regard. Canada's Supreme Court confirmed the freedom to not associate, but still upheld forced union membership for Quebec construction workers, claiming the province's legislation was a justifiable way of limiting union violence. In doing so, the guardian of Canada's laws essentially chose to limit the right of its citizens to not associate instead of striking down forced union membership and sending the message that union violence is to be prosecuted, not rewarded. In the absence of such a ruling, it's doubtful any such statute or collective agreement with any government across Canada would be upheld if challenged.

In Nova Scotia, numerous collective agreements require unionized Nova Scotians from all sectors of the economy to become and remain members in good standing of a union as a "condition of employment." In fact, Justice Minister Murray Scott, on behalf of the government is the employer party to such a collective agreement. That is, the minister responsible for Nova Scotia's legal affairs is party to a collective agreement that almost certainly violates the Charter rights of provincial employees.

The only jurisdiction that appears to have achieved some progress is Canada's federal civil service, where a tenuous legislative scheme's results are no collective agreements with forced membership for unionized employees as a condition of employment.

Unionized Canadians cannot yet rely on the courts to fully protect their Charter rights; and they certainly can't count on unions to stop violating those rights. It is therefore incumbent upon politicians and employers to take action through legislation and at the bargaining table.

Today, Europe's unions remain important participants in society, but they are focused on satisfying their members' workplace wishes rather than various political agendas. It's time for Canada to acknowledge and support these critical rights, as well as to ensure free employee choice in union membership.

Swedish human rights lawyer Jan Södergren represented employees in one of Europe's landmark wins for unionized employees in 2007. He is on a cross-Canada speaking tour including a stop in Halifax on Oct. 1; details at www.labourwatch.com. John Mortimer is president of the Canadian LabourWatch Association.

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