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## **Marcel Boyer**

Vice president and chief economist of the Montreal Economic Institute  
Emeritus professor of economics at the University of Montreal  
Fellow at the CIRANO, CIREQ and C.D. Howe Institute

# **Union certification: Developing a level playing field for labour relations in Quebec**

**September 2009**





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## Executive Summary

In votes of various types, such as elections and referendums, the secret ballot is seen as a way of guaranteeing that voters are protected from pressure or intimidation and of ensuring that the vote represents their true opinion. However, this is not the approach used in labour relations in Quebec and elsewhere: the outcome of a union certification or a strike vote may be determined by a less rigorous process that involves canvassing workers to get signatures or a show of hands in favour of a strike. This procedure may alter workers' true will and favour labour relations disputes, putting economic growth and investment at risk.

The objective of this research paper is to examine reform options for the union certification process in Quebec. To this end, we begin by presenting an overview of the state of unionization in Canadian provinces and in other developed countries. We then compare the different union certification systems in North America and the arguments for and against each of these systems, focussing especially on the advantages and disadvantages for interested parties. We also analyse non-union forms of employee representation as an alternative to unionism. Finally, we present a portrait of the relative economic performance of Quebec compared to the rest of Canada and to the United States, which is obviously influenced by the particular position of Quebec with regard to labour relations. We conclude that it is crucial that our businesses can compete on a level playing field with the businesses of our main trade partners, making a reform of our labour relations legal framework necessary.



The scope of Quebec's economic lag can be shown concretely as follows: (i) in the 1981-2007 period, only 16.9% of Canada's new full-time jobs were created in Quebec; (ii) if, during the 1981-2007 period, Quebec had created jobs at the same pace as the rest of Canada and the United States, it would have created 224,190 jobs more than the 1,062,000 jobs actually created; (iii) for Quebec's employment rate (59.7% for 2000-2007) to reach that in the rest of Canada and the United States (63.0%), 219,745 more jobs would be needed in 2007, or 5.7% more than the 3,852,000 jobs available; (iv) the shortfall in private investment in Quebec came to \$7.7 billion in 2007 on investments of \$48.1 billion (in 2002 dollars) and to \$73.2 billion for the last 10 years on investments of \$387.6 billion (in 2002 dollars). Chronic deficits in private investment are both witness and precursor to steady degradation in capacity for production and innovation and thus in Quebec's competitive position, a situation all the more worrying in that the Quebec economy is very open to the outside: three jobs out of five depend on foreign markets.

This disappointing economic performance can mainly be explained by the institutional constraints that we choose and impose on ourselves, reducing the profitability of investments as well as the incentives and flexibility that can lead citizens and businesses alike to adapt to changes in our socio-economic environment.

Foremost among these institutional constraints should be mentioned the relative pro-union bias in certification and in voting procedures on strikes and employers' offers. In

this regard, it is imperative to establish secret-ballot voting by all members of a bargaining unit in certification procedures and to recognize voting rights for all members covered by a collective agreement in balloting for strikes or employers' offers. In a similar vein, our laws and regulations should recognize fully the various non-union forms of employee representation in a company or certification unit.

People in the labour movement are obviously aware of the changes in the socio-economic environment of individuals and companies. They are seeking a new path and new means both to survive and to pursue their main stated goal, namely the defence of justice and the dignity of labour. Thus, they have to deal with some serious challenges, in particular those of aligning demands for solidarity and democracy internally, meeting growing demands for flexibility in the workplace, recognizing the greater mobility of capital, and adjusting to the increased challenges to former government monopolies.

Although people in the labour movement may tend to see a worldwide plot orchestrated by governments and employers' groups behind these challenges, the fact remains that greater

competitive pressures resulting from globalization of markets, new technologies (in information, communications and production) and the internationalization of cultures have been a major source of effectiveness, efficiency, gains in well-being and declines in poverty in every country and region that has adhered to these developments by favouring a better balance between flexibility, adaptation and security, accountability, and good governance in private and public institutions.

This will have to be the same for Quebec if it truly wishes to reverse its current trend toward marginalization. A first step would include overhauling its legal framework in labour relations, first by establishing mandatory voting by secret ballot, open to all members of the unit concerned, for union certification and votes on strikes or employers' offers, followed by the establishment of greater "worker democracy" through recognition of other forms of representation. Such an overhaul is likely to enable Quebec companies to compete on a level playing field with firms in competing jurisdictions in attracting investment and favouring job creation.

## Introduction

In votes of various types, such as elections and referendums, the secret ballot is seen as a way of guaranteeing that voters are protected from pressure or intimidation and of ensuring that the vote represents their true opinion. However, this is not the approach used in labour relations in Quebec and elsewhere: the outcome of a union certification or a strike vote may be determined by a less rigorous process that involves canvassing workers to get signatures or a show of hands in favour of a strike. This procedure may alter workers' true will and encourage labour relations disputes, putting economic growth and investment at risk.

The British government attacked this problem successfully in the 1980s by pushing through several laws that included measures to implement secret votes for union certifications and strikes and to have ballots sent in the mail.

In Quebec and across Canada, employers and employees face various challenges regarding labour relations and its related laws. The main topics of discussion in recent years have involved anti-scab legislation, the Rand formula, union certification rules, and new forms of labour representation.

The anti-scab law was introduced as an amendment to Quebec's *Labour Code* in 1977. In 1993, the province of British Columbia adopted a similar law. Anti-scab rules prevent establishments from replacing striking or locked-out workers.<sup>1</sup> The arguments in favour of such legislation are that it would decrease violence and shorten

conflicts between employers and employees. However, studies could not prove these positive effects. Rather, the economic effects of anti-scab laws were found in some studies to involve reductions in employment and investment.

In Canada, legislation allows the Rand formula to apply to a collective agreement, which makes it compulsory for employees to pay trade union dues even if some employees do not want to be part of the union. "In contrast, U.S. federal legislation states that nobody can be forced to join a union. Moreover, in U.S. states with "right to work" laws, nobody is automatically required to pay union dues. These states give workers the more democratic choice of whether or not to support a union."<sup>2</sup>

However, debate on reform of federal labour relations law continues in the United States, especially with regard to union certification. Union-friendly bills (the *Employee Free Choice Act* and the *Re-Empowerment of Skilled and Professional Employees and Construction Trade-workers Act*) have received the support of the new president.

Discussion on union certification, the main subject of this research paper, focuses on finding the best procedure for obtaining certification. According to an opinion poll commissioned by the Conseil du patronat du Québec in October 2006, 79% of Quebecers think the government should change the law and require the secret ballot as a way of getting union certification.<sup>3</sup> Support for this change is even stronger among unionized workers, at 83%.

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1. Guy Lemay and Norma Kozhaya, *The perverse effects of anti-scab measures*, Economic Note, Montreal Economic Institute, January 2005, p. 1.

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2. Norma Kozhaya, *The consequences of a strong union presence in Quebec*, Economic Note, Montreal Economic Institute, September 2005, p. 2.

3. Pascale Gauthier, *Les grands dossiers en relations de travail*, Conseil du patronat du Québec, November 2007, p. 1.

The goal of this research paper is to examine reform options for the union certification process in Quebec. To this end, we will begin by presenting an overview of the state of unionization in Canadian provinces and in other developed countries (Section 1). We will then compare the various union certification systems in North America (Section 2) and the arguments for and against each of these systems (Section 3), focusing especially on the advantages and disadvantages for interested parties. We will also analyze non-union forms of employee representation as an alternative to unionism (Section 4). Finally, we will present a portrait of the relative economic performance of Quebec (economic growth, job creation and private investment) compared to the rest of Canada and to the United States (Section 5), which is obviously influenced by Quebec's particular position with regard to labour relations.



# 1. Unionization in Canada and other developed countries

The density of trade union membership has been declining in most member countries of the Organisation for Economic Co-operation and Development (OECD) since 1980.<sup>1</sup> In the United States, 22.3% of employees were trade union members in 1980, compared to 11.6% in 2007 (ranging from 3.9% in North Carolina to 26.3% in New York State). A similar trend occurred in the United Kingdom, where trade union membership reached 50.7% of employees in 1980 and declined to 28% in 2007. Besides these countries, significant reductions in trade union density also occurred elsewhere, notably in Australia, Austria, France, Germany, Ireland, Italy, Japan, Korea, the Netherlands, New Zealand, Portugal, and Switzerland. Trade union density remained about the same in Belgium, Finland, Norway, and Sweden. In Canada, trade union density reached 34.0% in 1980, but declined to 29.4% in 2007. Hence, as compared to the U.S., the U.K. and many other OECD countries, trade union membership in Canada declined but remained relatively steady throughout the period.

1. OECD, *Trade union density in OECD countries (1960-2007)*, <http://www.oecd.org/dataoecd/25/42/39891561.xls>.

## The situation in Canada<sup>2</sup>

According to Statistics Canada,<sup>3</sup> unions had 4.23 million members on average in the first six months of 2008. Meanwhile, 4.54 million employees on average were covered by collective agreements during the same period. This difference, as illustrated by the distinction between *union membership* and *union coverage*, can be explained by the fact that some employees who are not union members are covered nonetheless by collective agreements. On an annual basis, 31.5% of Canadian employees were covered by collective agreements in 2007, down from 33.7 % in 1997.

Union coverage rates are higher in the public sector—particularly in educational services, utilities, public administration, and health care and social assistance—as well as in full-time jobs and among employees in larger workplaces. According to Statistics Canada,<sup>4</sup> union membership and coverage rates were respectively 71.0% and 74.5% in the public sector and 16.3% and 17.9% in the private sector. These rates were respectively 52.0% and 54.8% in workplaces with more than 500 employees and 12.6% and 14.2% in those with less than 20 employees. These job, worker and workplace characteristics are associated with higher earnings, which may explain in part the higher pay reported by unionized employees. Collective bargaining on behalf of unionized employees may also partly explain their higher pay.

2. This section is based, sometimes verbatim, on data from Human Resources and Social Development Canada, *Union membership in Canada—2008*, [http://www.hrsdc.gc.ca/eng/labour/labour\\_relations/info\\_analysis/union\\_membership/index.shtml](http://www.hrsdc.gc.ca/eng/labour/labour_relations/info_analysis/union_membership/index.shtml) and on Statistics Canada, *Union coverage rates*, <http://www.statcan.gc.ca/pub/71-222-x/2008001/sectionk/k-rates-taux-eng.htm>.

3. Statistics Canada, “Unionization,” *Perspectives on Labour and Income*, Vol. 9, No. 8 (August 2008), Catalogue No. 75-001-X.

4. *Id.*

In 2008, union coverage rates were above average in Quebec, Newfoundland-and-Labrador, Saskatchewan and Manitoba, and lowest in Alberta.<sup>5</sup> Membership and coverage rates were respectively 35.5% and 39.2% in Quebec, 29.7% and 31.1% in the Atlantic Provinces, 26.7% and 28.2% in Ontario, 26.9% and 28.8% in the Prairies and 29.8% and 31.4% in British Columbia. Hence, Quebec is by far the most heavily unionized region in Canada whether measured by membership rates or by coverage rates.

The results of a survey by Human Resources and Skills Development Canada (HRSDC) show that national unions represent 67.1% of membership; whereas international unions (those headquartered outside Canada) represent 27.7%. Independent local organizations and directly chartered unions represent respectively 3.8% and 1.5% of total union membership.

Most unions are affiliated to a labour federation, which offers certain benefits in terms of financial assistance, professional staff, negotiating power and political representation, but there are also disadvantages such as cost

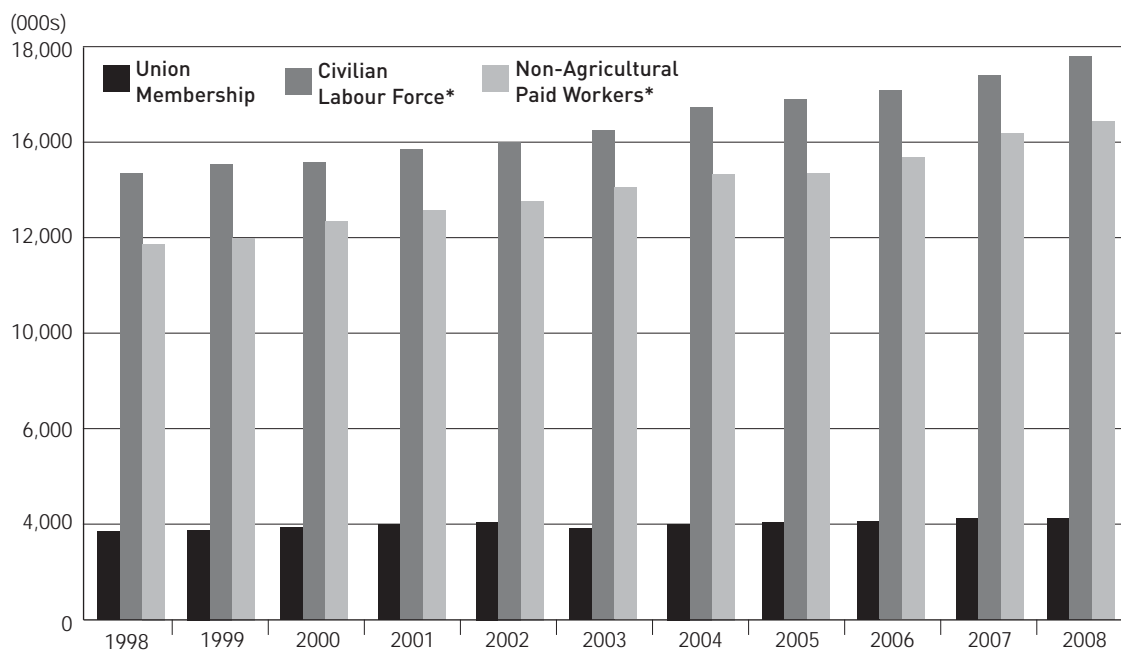
(dues must be shared), loss of local autonomy and greater distrust between employer and union. The Canadian Labour Congress (CLC) has the largest membership affiliation at 70.7%. Meanwhile, the Confédération des syndicats nationaux (CSN) accounts for 6.6% of total membership affiliation, the Centrale des syndicats du Québec (CSQ) 2.3%, the Centrale des syndicats démocratiques (CSD) 1.5%, and the Confederation of Canadian Unions 0.2%.

Ten unions, representing 4.7% of the overall number of national and international unions, have memberships over 100,000, and account for 51.4% of union membership. On the other hand, 153 unions, representing 71.8% of national and international unions, have fewer than 10,000 members and account for 8.1% of union membership.

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5. *Id.*

**Figure 1.1**  
**Union Membership, Non-Agricultural Paid Workers,**  
**and Civilian Labour Force (1998-2008)**



\* Statistics Canada, *The Labour Force Survey*.

Civilian labour force and non-agricultural paid employment data shown for each year are annual averages of the preceding year; data shown for union membership are as of January of the years shown and as reported by labour organizations.

Source: Human Resources and Skills Development Canada – Strategic Policy, Analysis, and Workplace Information Directorate.

**Table 1.1**  
**Union Membership in Canada (1998-2008)**

| Year | Union Membership | Civilian Labour Force* | Non-Agricultural Paid Workers* | Union Membership as a Percentage of Civilian Labour Force | Union Membership as a Percentage of Non-Agricultural Paid Workers |
|------|------------------|------------------------|--------------------------------|---|---|
|      | (000s)           | (000s)                 | (000s)                         | %   | %   |
| 1998 | 3,938            | 15,079                 | 11,964                         | 26.1  | 32.9  |
| 1999 | 4,010            | 15,316                 | 12,212                         | 26.2  | 32.8  |
| 2000 | 4,058            | 15,588                 | 12,603                         | 26.0  | 32.2  |
| 2001 | 4,111            | 15,847                 | 13,027                         | 25.9  | 31.6  |
| 2002 | 4,174            | 16,110                 | 13,304                         | 25.9  | 31.4  |
| 2003 | 4,178            | 16,579                 | 13,650                         | 25.2  | 30.6  |
| 2004 | 4,261            | 16,959                 | 13,965                         | 25.1  | 30.5  |
| 2005 | 4,381            | 17,182                 | 14,265                         | 25.5  | 30.7  |
| 2006 | 4,441            | 17,343                 | 14,464                         | 25.6  | 30.7  |
| 2007 | 4,480            | 17,593                 | 14,782                         | 25.5  | 30.3  |
| 2008 | 4,592            | 17,945                 | 15,111                         | 25.6  | 30.4  |

\* Statistics Canada, *The Labour Force Survey*.

Note: Civilian labour force and non-agricultural paid employment data shown for each year are annual averages of the preceding year; data shown for union membership are as of January of the years shown and as reported by labour organizations.

Source: Human Resources and Skills Development Canada – Strategic Policy, Analysis, and Workplace Information Directorate.

**Table 1.2**  
**Unions with Largest Membership**

| Name and Affiliation  | Members |
|---|---------|
| Canadian Union of Public Employees (CLC)  | 570,000 |
| National Union of Public and General Employees (CLC)  | 340,000 |
| United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,<br>Allied Industrial and Service Workers International Union (AFL-CIO / CLC) | 280,000 |
| National Automobile, Aerospace, Transportation and<br>General Workers Union of Canada (CAW Canada) (CLC)                                      | 255,000 |
| United Food and Commercial Workers Canada (CtW / CLC)   | 245,327 |
| Public Service Alliance Canada (CLC)  | 173,686 |
| Communications, Energy and Paperworkers Union of Canada (CLC)   | 142,592 |
| Fédération de la santé et des services sociaux (CSN)  | 122,193 |
| Teamsters Canada (CtW / CLC)  | 108,516 |
| Service Employees International Union (CtW / CLC)   | 92,781  |
| Elementary Teachers' Federation of Ontario (CLC)  | 73,296  |
| FTQ Construction (CLC)  | 69,914  |
| Alberta Union of Provincial Employees (Ind.)  | 69,000  |
| Laborers' International Union of North America (CtW)  | 68,650  |
| Centrale des syndicats démocratiques (Syndicats à charte directe) (CSD)   | 61,742  |
| Fédération des syndicats de l'enseignement (CSQ)  | 60,000  |
| Fédération interprofessionnelle de la santé du Québec (Ind.)  | 57,191  |
| International Brotherhood of Electrical Workers (AFL-CIO / CLC)   | 57,130  |
| Canadian Union of Postal Workers (CLC)  | 56,456  |
| Ontario Secondary School Teachers' Federation (CLC)   | 55,260  |
| Ontario Nurses' Association (CLC)   | 54,000  |
| Professional Institute of the Public Service of Canada (Ind.)   | 53,122  |
| United Brotherhood of Carpenters and Joiners of America (CtW / CLC)   | 50,000  |
| United Association of Journeymen and Apprentices of the Plumbing and<br>Pipe Fitting Industry of the United States and Canada (AFL-CIO/ CLC)  | 48,325  |
| Fédération des employés de services publics inc. (CSN)  | 48,000  |
| UNITE HERE Canada (CtW / CLC)   | 46,000  |
| British Columbia Teachers' Federation (CLC)   | 44,748  |
| Christian Labour Association Canada (Ind.)  | 43,239  |
| Syndicat de la fonction publique du Québec (Ind.)   | 42,500  |
| International Union of Operating Engineers (AFL-CIO/ CLC)   | 41,993  |
| International Association of Machinists and Aerospace Workers (AFL-CIO/ CLC)  | 40,567  |
| Alberta Teachers' Association (Ind.)  | 37,031  |
| Fédération du commerce inc. (CSN)   | 36,274  |
| Ontario English Catholic Teachers' Association (CLC)  | 36,000  |
| Canadian Office and Professional Employees Union (CLC)  | 34,000  |

**Affiliations Legend:**

AFL-CIO: American Federation of Labor -  
Congress of Industrial Organizations  
CCU: Confederation of Canadian Unions  
CLC: Canadian Labour Congress  
CSD: Centrale des syndicats démocratiques

CSN: Confédération des syndicats nationaux  
CSQ: Centrale des syndicats du Québec  
CtW: Change to Win  
Ind.: Independent Local Organization  
NUPGE: National Union of Public and General Employees

Source: Human Resources and Skills Development Canada – Strategic Policy, Analysis, and Workplace Information Directorate.

**Table 1.3**  
**Union Membership by Congress Affiliation (2008)**

| Congress Affiliation                               | Membership       | %            |
|--|------------------|--------------|
| <b>Canadian Labour Congress (CLC)</b>              | <b>3,248,490</b> | <b>70.7</b>  |
| CLC only   | 2,083,012        | 45.4         |
| AFL-CIO/CLC  | 622,794          | 13.6         |
| CtW / CLC  | 542,624          | 11.8         |
| Directly Chartered Unions                          | 60               | 0.0          |
| <b>Confédération des syndicats nationaux (CSN)</b> | <b>303,271</b>   | <b>6.6</b>   |
| CSN only   | 297,390          | 6.5          |
| Directly Chartered Unions                          | 5,881            | 0.1          |
| <b>Centrale des syndicats du Québec (CSQ)</b>      | <b>107,084</b>   | <b>2.3</b>   |
| <b>Centrale des syndicats démocratiques (CSD)</b>  | <b>67,500</b>    | <b>1.5</b>   |
| CSD only   | 5,758            | 0.1          |
| Directly Chartered Unions                          | 61,742           | 1.3          |
| <b>Confederation of Canadian Unions (CCU)</b>      | <b>7,439</b>     | <b>0.2</b>   |
| AFL-CIO only                                       | 36,040           | 0.8          |
| Change to Win (CtW) only                           | 68,650           | 1.5          |
| <b>Unaffiliated National Unions</b>                | <b>579,240</b>   | <b>12.6</b>  |
| <b>Unaffiliated International Unions</b>           | <b>1,930</b>     | <b>0.0</b>   |
| <b>Independent Local Organizations</b>             | <b>172,603</b>   | <b>3.8</b>   |
| <b>TOTAL</b>                                       | <b>4,592,247</b> | <b>100.0</b> |

Source: Human Resources and Skills Development Canada – Strategic Policy, Analysis, and Workplace Information Directorate.

**Table 1.4**  
**Union Membership by Type of Union and Affiliation (2008)**

| Type of Union and Affiliation  | Unions     | Locals        | Membership       |              |
|--|------------|---------------|------------------|--------------|
|  |            |               | Number           | %            |
| <b>National Unions</b>   | <b>174</b> | <b>10,795</b> | <b>3,079,923</b> | <b>67.1</b>  |
| Canadian Labour Congress (CLC)   | 42         | 7,151         | 2,083,012        | 45.4         |
| Confédération des syndicats nationaux (CSN)  | 10         | 1,831         | 297,390          | 6.5          |
| Centrale des syndicats du Québec (CSQ)   | 13         | 311           | 107,084          | 2.3          |
| Confederation of Canadian Unions (CCU)   | 6          | 27            | 7,439            | 0.2          |
| Centrale des syndicats démocratiques (CSD)   | 1          | 63            | 5,758            | 0.1          |
| Unaffiliated Unions  | 102        | 1,412         | 579,240          | 12.6         |
| <b>International Unions</b>  | <b>39</b>  | <b>3,896</b>  | <b>1,272,038</b> | <b>27.7</b>  |
| American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) / Canadian Labour Congress (CLC) | 27         | 3,434         | 622,794          | 13.6         |
| American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) only                             | 4          | 72            | 36,040           | 0.8          |
| Change to Win (CtW) / Canadian Labour Congress (CLC)   | 5          | 354           | 542,624          | 11.8         |
| Change to Win (CtW) only   | 1          | 29            | 68,650           | 1.5          |
| Unaffiliated Unions  | 2          | 7             | 1,930            | 0.0          |
| <b>Independent Local Organizations</b>   | <b>257</b> | <b>2</b>      | <b>172,603</b>   | <b>3.8</b>   |
| <b>Directly Chartered Unions</b>   | <b>4</b>   | <b>287</b>    | <b>67,683</b>    | <b>1.5</b>   |
| Canadian Labour Congress (CLC)   | 2          | 0             | 60               | 0.0          |
| Centrale des syndicats démocratiques (CSD)   | 1          | 287           | 61,742           | 1.3          |
| Confédération des syndicats nationaux (CSN)  | 1          | 0             | 5,881            | 0.1          |
| <b>TOTAL</b>   | <b>474</b> | <b>14,978</b> | <b>4,592,247</b> | <b>100.0</b> |

Note: Due to rounding, total percentage does not equal 100%.

Source: Human Resources and Skills Development Canada – Strategic Policy, Analysis, and Workplace Information Directorate.

## 2. Comparison of current union certification systems

In Canada, each of the ten provinces has different rules regarding union certification, which means that labour relations laws are highly decentralized (more than in the United States). However, some workers are employed in federally regulated industries with distinct rules that are the same regardless of the province in which the business operates. Two systems exist in Canada for obtaining union certification: the Card Majority Certification Regime (CMCR) and the Mandatory Secret Ballot Vote Certification Regime (MSBVCR). Under both systems, the first

stage in applying for union certification is proof of support for the trade union in a bargaining unit.

Under the Card Majority Certification Regime, adopted by four of the ten provinces (Quebec, New Brunswick, Manitoba and Prince Edward Island) and applying also under Canadian federal jurisdiction, union certification will succeed if a majority of employees represented by the bargaining unit are signed up. This majority varies among the different jurisdictions: New Brunswick and Manitoba require a super majority of signed cards (60%+1 and 65% respectively), while a simple majority (50%+1) is sufficient for automatic certification in Quebec and Prince Edward Island. Even under this system, should a group not obtain automatic certification, labour law allows a vote when another threshold of signed cards (obviously lower than for automatic certification) is met.

**Table 2.1**  
**Trade Union Application for Certification in Canada**

|                           | Characteristics                   |
|---------------------------|-----------------------------------|
| Federal jurisdiction      | - CMCR (50% +1), VT 35%           |
| British Columbia          | - MSBVCR, VT 45%                  |
| Alberta                   | - MSBVCR, VT 40%                  |
| Saskatchewan*             | - MSBVCR, VT 45%                  |
| Manitoba                  | - CMCR (65%), VT 40%              |
| Ontario                   | - MSBVCR, VT 40%                  |
| Quebec                    | - CMCR (50% +1), VT 35%           |
| New Brunswick             | - CMCR (60% +1), VT 40%           |
| Nova Scotia               | - MSBVCR, VT 40%                  |
| Prince Edward Island      | - CMCR (50% +1), VT not specified |
| Newfoundland-and-Labrador | - MSBVCR, VT 40%                  |

\* In May 2008, Saskatchewan made several changes to its labour relations laws. It introduced secret ballot voting for certification elections, and the thresholds is now 45%.

Sources: Human Resources and Skills Development Canada, *Trade Union Application for Certification*, [http://www.hrsdc.gc.ca/eng/lp/spila/elli/irlc/07trade\\_union\\_application\\_for\\_certification.shtml](http://www.hrsdc.gc.ca/eng/lp/spila/elli/irlc/07trade_union_application_for_certification.shtml); Roy Heenan, *Card Majority Certification*, presentation before The National Finance Industry Employment Law Committee (Philadelphia), June 2007.

The six other provinces (British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, and Newfoundland-and-Labrador) use the Mandatory Secret Ballot Vote Certification Regime. Under this system, employees supporting union representation will sign membership cards. If the number of employees is sufficient (each province sets its own minimum percentage), a secret ballot vote is conducted to determine if the union is to be certified. Table 2.1 summarizes the characteristics of the process for obtaining union certification in each of the ten provinces.

## Rules applicable in the United States

In the United States, labour relations are more centralized, with labour relations laws enforced by the National Labour Relations Board.<sup>1</sup> “However, federal laws allow individual states to clarify, expand upon, or introduce new laws in addition to, but not contravening, federal law. Like Canadian provinces, U.S. states have the sole authority to regulate labour relations in the public sector.”<sup>2</sup> Also, in the United States, right-to-work laws, in force in 22 states, permit workers to choose whether or not to join a union and support it financially.<sup>3</sup> In Canada, as we mentioned earlier, no legislation prevents the adoption of an obligation for workers to pay union dues, even if they do not necessarily support the union representing them (Rand formula).

As in Canada, unions in the United States wishing to obtain certification have to demonstrate that a majority of workers in a

bargaining unit want to be represented by a union. Also, the bargaining unit should be an appropriate one, meaning that there are some criteria that determine the appropriateness of a bargaining unit such as its history, the parties’ wishes, and similarities in skills, interests, duties and working conditions among employees.<sup>4</sup>

In the U.S., the *National Labour Relations Act* provides the basic legal framework for labour relations in the private sector.<sup>5</sup> To run a secret ballot election, a petition must be filed and conducted by the National Labour Relations Board. At least 30% of employees must sign the petition or authorization cards for a petition to be attended. In states without right-to-work laws, employers may agree to voluntary recognition of a union through a card check arrangement. Employers can also consent to a neutrality agreement under which they agree to remain neutral during a union organizing campaign.<sup>6</sup> Provincial preponderance in labour legislation and the fact that some Canadian provinces currently favour card majority certification regimes partly explains Canada’s higher unionization rate compared to the U.S.

## The unusual situation of Quebec

Quebec is at odds with the other large Canadian provinces, namely Ontario, British Columbia and Alberta, regarding certification and decertification provisions as well as statutory provisions regarding strikes, ratifications and final offer votes.<sup>7</sup>

1. Keith Godin, Milagros Palacios, Jason Clemens, Niels Veldhuis and Amela Karabegovic, *An Empirical Comparison of Labour Relations Laws in Canada and the United States*, Fraser Institute, May 2006, p. 9.  
 2. *Id.*  
 3. *Id.*, p. 17. These states are: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

4. Terry Thomason and Silvana Pozzebon, “Managerial Opposition to Union Certification in Quebec and Ontario,” *Relations industrielles / Industrial Relations*, Vol. 53, No. 4 (Fall 1998), pp. 750-771, on page 751.  
 5. Roy Heenan, *Card Majority Certification*, presentation before The National Finance Industry Employment Law Committee (Philadelphia), June 2007, p. 4.  
 6. Gerald Mayer, *Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks*, Congressional Research Service, April 2007, p. 12.  
 7. See: Canadian LabourWatch Association, <http://www.labourwatch.com>.

Quebec is alone among the four big provinces in not requiring a secret ballot for certification. Moreover, the card membership evidence threshold required for certification through a secret ballot is lower in Quebec, at 35%, compared to 40% in Ontario and Alberta and 45% in British Columbia. Finally, the duration for which a union card is valid for a union certification drive is longer in Quebec (12 months, compared to 6 months in Ontario and 90 days in B.C.; in Alberta, signatures for a certification petition are valid for 90 days, while proof of current union membership in good standing applies indefinitely).

As regards strike votes and final offer votes in the private sector, Quebec is the only one of the four big provinces where only current union members are eligible to vote. In the other big provinces, all members of a bargaining unit are eligible to vote.

These two characteristics of the certification and voting statutes and regulations, namely the certification regime and the eligibility to vote in strike and final offer proceedings, are symptomatic of Quebec's favourable bias toward unionization. In the next section, we will review the main arguments that support or oppose this favourable bias as formulated by various labour relations analysts, focusing on the certification system issue.



### 3. Arguments for and against union certification through secret ballots or card checks

As mentioned above, four provinces in Canada use the card majority certification regime: Quebec, Manitoba, New Brunswick and Prince Edward Island. The federal jurisdiction also uses the card majority certification regime. The rules for automatic certification vary among these jurisdictions, though. The other provinces use the mandatory secret ballot vote certification regime when a union reaches a minimum threshold of signed cards, which is generally lower than the percentage required for automatic certification.

Proponents of both systems use similar language to support their positions.<sup>1</sup> Unions support the idea that card certification is necessary to “avoid the campaign-style elections prevalent in the United States and the influence that the employer is perceived to have over its employees during such campaigns.”<sup>2</sup> They fear that, under the mandatory secret ballot vote certification regime, employers can pressure or coerce workers during the election campaign to vote against the union since they have privileged access to workers.

On the other hand, as pointed out by Roy Heenan, a well-known authority in labour law, card majority certification, which is said to avoid

employer intimidation, “often ignores the very real existence of either peer intimidation or substantial peer pressure.” Furthermore, under card check recognition, workers are exposed only to the union’s point of view.<sup>3</sup> This could lead to employees being misled and pressured into signing authorization cards without having access to all relevant information. Also, it is important to note that there is no limit to the pressure that union organizers can exert on their colleagues, in contrast to employers. Indeed, legal rules against “unfair labour practices” protect employees from employers’ abuse. But there are no measures to limit the persistence of union organizers. “There is neither any restriction as to the number of times that the union may visit nor as to what can be told to the employee.”<sup>4</sup>

Another point of discord between the proponents of each system is whether a signed card is sufficient proof of an employee’s desire to join a union. Given empirical evidence that employees often join rival unions, or join unions twice, it may be that their choice does not necessarily reflect their support for a union but more their fears of being harassed or intimidated by union organizers. In such cases, the uncertainty of employee support for a union undermines the union’s capacity to negotiate with the employer since its credibility is not proven: “to expect negotiations in good faith with the employer to get under way, it is necessary that the employer be persuaded that the trade union does indeed represent and enjoy the support of a majority of its employees.”<sup>5</sup>

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1. As mentioned in Gerald Mayer, *Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks*, Congressional Research Service, April 2007, p. 18.  
2. Roy Heenan, *Card Majority Certification*, presentation before The National Finance Industry Employment Law Committee (Philadelphia), June 2007, pp. 1-2.

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3. Gerald Mayer, *op. cit.*, footnote 1, p. 18.  
4. Danny Kaufer and Michael Grodinsky, *The Employee Free Choice Act (EFCA): Lessons to Be Learned from the Canadian Experience*, presentation before the American Employment Law Council, October 2008, p. 19.  
5. Roy Heenan, *op. cit.*, footnote 2, p. 6.

One of the proposed solutions is the pre-hearing vote,<sup>6</sup> which consists of calling an immediate vote within five days of an application for certification being filed and before the hearing on the application. In this way, the union may choose when the application is filed, at a time it feels it has the most support. This leaves too little time for any elaborate campaign by an employer, but it does provide for a vote as an appropriate test of employees' wishes. If unfair labour practices occur despite the short period, the results of the vote can be discarded and the decision on certification will be based on other

factors, including cards signed. This would allow for more privacy and confidentiality than card majority certification does while increasing the union's credibility when negotiating with the employer.

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6. *Id.*, pp. 7-8. The pre-hearing vote was suggested by Innis Christie, professor of labour law and at the time Chairman of the Nova Scotia Labour Relations Board. The measure was introduced on an experimental basis in Nova Scotia and later included as a mandatory feature.

**Table 3.1**  
**Main arguments for each union certification regime**

| Card Check Recognition   | Mandatory Secret Ballot Elections   |
|--|---|
| Card check recognition requires signatures from more than 50% of bargaining unit employees.  | Casting a secret ballot is private and confidential. A secret ballot election is conducted by the labour relations board. Under card check recognition, authorization cards are controlled by the union.              |
| During a secret ballot campaign, the employer has greater access to employees.   | Under card check recognition, employees may only hear the union's point of view.  |
| Because of the potential employer pressure or intimidation during a secret ballot election, some workers feel coerced into voting against a union.   | Because of potential union pressure or intimidation, some workers may feel coerced into signing authorization cards.  |
| Employer objections can delay a secret ballot election.  | Most secret ballot elections are held soon after a petition is filed.   |
| Allegations against a union for unfair labour practices can be addressed under existing law. Existing remedies do not deter employer violations of unfair labour practices.                              | Allegations against an employer for unfair labour practices can be addressed under existing law. Existing remedies do not deter union violations of unfair labour practices.  |
| Card check recognition is less costly for both the union and employer. If secret ballot elections were required, the labour relations board would have to devote more resources to conducting elections. | Union members must pay union dues. Unionization may result in fewer union jobs.   |
| Card check and neutrality agreements may lead to more cooperative labour-management relations.   | An employer may be pressured by a corporate campaign into accepting a card check or neutrality agreement. If an employer accepts a neutrality agreement, employees who do not want a union may hesitate to speak out. |

Source: Gerald Mayer, *Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks*, Congressional Research Service, April 2007, p. 17.

As regards the cost of the two regimes, unions argue that card majority certification costs less than secret ballot certification, while employers argue that unionization is more costly for workers since, once a union is certified, workers will have to pay union dues. Employers also claim that, once a union is certified, higher wages, which is usually a goal of unionization, may end up reducing the number of jobs. A report for the U.S. Congress<sup>7</sup> summarizes the common arguments (see Table 3.1).

## Impact of certification regime on unionization rates

Although little research has been realized so far in associating different regimes of union certification with the rate of union certification success, the evidence suggests that the card majority certification regime may increase the level of union certification success while the mandatory secret ballot vote certification regime may decrease it. Moreover, the report to the U.S. Congress argues that: “To the extent that mandatory secret ballot election or mandatory card check recognition would affect the level of unionization, the economic effects may depend on how well labour markets fit the model of perfect competition. Mandatory card check recognition may improve worker benefits and reduce earnings inequality — if more workers are unionized. Mandatory secret ballot elections may increase inequality in compensation — if fewer workers are unionized.” All the results and statements by various authors are conditional in nature, in the sense that they depend on the particular data used and the particular period considered.

Another study<sup>8</sup> evaluates the impact of various tactics used by Quebec and Ontario managers during union organizing drives. Its hypothesis is that employers’ actions (requiring employees to attend anti-union speeches by the employer, meeting between supervisors and small groups of bargaining unit employees, the distribution of anti-union literature, threats against union supporters, and promises of higher wage or benefits) reduce support for the union and the probability of certification. The results show that managerial opposition tactics during certification campaigns are substantially lower in Quebec and Ontario than in the United States. The practices used by Canadian employers are effective, however, in reducing the number of employees supporting the union.

Professor Riddell’s research,<sup>9</sup> using data from British Columbia, shows that rates of certification success in the private sector were lower in mandatory secret ballot years when compared to card majority years. Moreover, his results show that certification attempts also decreased during mandatory secret ballot years when compared to card majority years, as mandatory secret ballots complicate the process of obtaining certification. Thus, Riddell argues that the following are the two main reasons for the decline in unionization:

- Mandatory voting is believed to lengthen certification procedures;
- Mandatory voting possibly increases the incidence of management opposition, therefore leading to more unionization failures.

7. Gerald Mayer, *op. cit.*, footnote 1.

8. Terry Thomason and Silvana Pozzebbon, “Managerial Opposition to Union Certification in Quebec and Ontario,” *Relations industrielles / Industrial Relations*, Vol. 53, No. 4 (Fall 1998), pp. 750-771.

9. Chris Riddell, “Union Suppression and Certification Success,” *Canadian Journal of Economics*, Vol. 34, No. 2 (May 2001), pp. 396-410.

To analyze and test the impact of management opposition in the success of certification, Riddell used multiple regression analysis and data comprising 422 certification applications in British Columbia. He investigated the impact of union suppression within a mandatory voting system and the interaction between processing time and employer behaviour. Results show that, during the sample years of mandatory voting in B.C., employers were successful in deterring success of organizing drives. The success rate of unionization fell by 20% during the mandatory voting years in B.C., while the number of certification attempts decreased by over 50%. The impacts are similar to those found in the U.S. literature and much higher than those in the limited Canadian literature.<sup>10</sup>

For Riddell, it is clear that, if a government wants to reduce unionization, it may do so by establishing mandatory voting requirements. However, recent trends are toward compulsory secret ballot voting requirements. The study suggests that, if a government seeks a more neutral policy toward unionization, stricter employer penalties for improper intimidation should be considered. The author also thinks that strict time limits could form a useful policy tool to enforce neutrality in the organizing process, but mentions that further investigation into the relationship between representation voting and management opposition is required to make any final conclusion.

In a second study,<sup>11</sup> Riddell estimates the impact of mandatory vote laws on certification success using data on over 6,500 private sector certifications from British Columbia over the years 1978–1998. A unique quasi-experimental design is used, exploiting two changes in the

union recognition law: first, in 1984, the introduction of mandatory elections; and second, in 1993, the repeal of elections and their replacement by the original card check procedure. The author also estimates the effectiveness of management opposition tactics across union recognition regimes. Success rates declined by an average of 19 percentage points during the voting regime, and then increased by about the same amount when card checks were re-instituted. The results indicate that the mandatory election law can account for virtually the entire decline. In addition, the findings suggest that management opposition was twice as effective under elections as under card checks.

Using cross-section time-series analysis of nine Canadian jurisdictions over 19 years, Johnson aimed to identify the effect of mandatory votes and card check on certification success.<sup>12</sup> Her results, which are significant at above the 99% confidence level, indicate that mandatory votes reduce certification success rates by approximately nine percentage points below what they would have been under card check.<sup>13</sup>

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10. Terry Thomason, "The effect of accelerated certification procedures on certification success in Ontario," *Industrial and Labor Relations Review*, Vol. 47, No. 2 (January 1994), pp. 207-226; Terry Thomason and Silvana Pozzebon, *op. cit.*, footnote 8.

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11. Chris Riddell, "Union Certification Success Under Voting Versus Card-Check Procedures: Evidence From British Columbia, 1978–1998," *Industrial & Labor Relations Review*, Vol. 57, No. 4 (July 2004), pp. 493-517.  
 12. Susan Johnson, "Card Check or Mandatory Representation Vote? How the Type of Union Recognition Procedure Affects Union Certification Success," *Economic Journal*, Vol. 112 (April 2002), pp. 344-361.  
 13. Since the average success rate in the sample is 69%, this represents a 13% drop in the certification success rate when the mandatory secret ballot vote is in effect.

## Impact of the certification system on a firm's value

As we have seen above, the type of certification regime greatly influences the level of certification attempts and successes. But the question remains as to whether the increase or decrease of union density directly affects economic growth or even firm performance. It is undeniable that employers are generally opposed to unions on the grounds that they would affect a firm's profitability. But the magnitude of the effect of unions on company performance is still unclear.

There are a very limited number of studies that have tried to tackle this specific question. Three reasons seem to explain this: "First, large scale establishment or firm-level micro-data containing the relevant information on the extent of unionization are not readily available. Second, even when such data are available, omitted variables and the endogeneity of unionization at the firm level makes it difficult to separate causal effects from other unobserved confounding factors. Third, it is difficult to find data that can also be plausibly representative of the population of unionized companies in the United States."<sup>14</sup>

Nonetheless, the study conducted by Lee and Mas indicates that there is a clear relation between unionization and reduction in a firm's equity value. To ensure a large sample size and therefore robust results, the authors focused on publicly traded firms for which stock market information and other performance measures were readily available. Their results suggest that, after a union election victory, a typical firm's market value is decreased by 10%, which represents a decline of US\$40,500 (in 1998 dollars) per unionized worker.

The authors obtained these results by assessing the impact of union elections on the stock market value of firms. They used the event-study method to compare "the firm's stock returns to the returns the firm would have experienced in the absence of a union organizing event."<sup>15</sup> They then plotted the "average cumulative return of union victory firms against the average cumulative return of the size-matched reference portfolios over the same time period. The figure reveals that both union victory firms and the corresponding reference portfolios have almost identical trends in returns prior to the union victory. However, near the time of the election there is a pronounced downward break in the returns of union victory firms relative to the benchmark, persisting for approximately a year and a half. The average cumulative abnormal return implied by this divergence is approximately -10 percent."<sup>16</sup>

They argue that this total loss in market value is attributed to a combination of transfers to workers as well as lost profit due to the inefficiencies caused by unionization.

Another way to consider the impact of union certification and union density on the overall performance of the economy would be to study the question of flexibility. According to a Fraser Institute report: "The key to a high-performing, efficient labour market characterized by strong job creation, low unemployment, short durations of unemployment, and a highly productive workforce is flexibility. Labour market flexibility refers to the ease with which workers and employers alike are able to adjust their efforts given changes in the marketplace. For employees, flexibility allows them to supply their labour as they wish and shift their efforts to endeavours that provide the greatest return or benefit. Similarly, flexibility allows employers to adjust

14. David Lee and Alexandre Mas, *Long-run impacts of unions on firms: New evidence from financial markets, 1961-1999*, National Bureau of Economic Research, Working Paper No. 14709, February 2009, p. 1.

15. *Id.*, p. 11.

16. *Id.*, p. 16.

the mix of labour and capital to respond to market changes.”<sup>17</sup> The authors believe that, by adopting labour laws that favour either workers or employers, flexibility will be eroded, harming economic performance. They therefore support the idea that labour laws should create an environment that is free for both employers and employees. This, of course, supports the idea that unionization should not be encouraged and that card certification regimes should be avoided.

The reduction of a firm’s value, whether due to a transfer to unionized workers or to inefficiencies caused by unionization, as well as the decrease in flexibility likely to result from a union certification regime biased in favour of unions or of employers, can only have negative consequences on job creation and private investment, and thus on productivity gains.

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17. Niels Veldhuis, Milagros Palacios and Keith Godin, *Measuring Labour Markets in Canada and the United States: 2008 Report*, Fraser Institute, August 2008, p. 11.

## 4. Analytical Review of Labour Representation: Union versus Non-union Alternatives

Unionization is not the only model that allows workers to be represented in the context of labour relations. According to Harcourt and Lam,<sup>1</sup> union certification serves only a small portion of workers. By dividing employees into seven theoretical groups, the authors show that only two of these seven groups have their interests served by certification. Even for workers who could be potentially served by union certification, the rigid system of certification will not easily let them change their representative, for example. In their view: “Certification is akin to a political election in which the electorate is permitted to vote only once, as if people’s preferences are forever set in stone. [...] Certification makes unionism a take-it-or-leave-it-choice for the entire bargaining unit, with little regard for the increasingly diverse workforce, their divergent interests, and their diverse preferences for different kinds of representation.”<sup>2</sup> The authors therefore believe that certification systems have fundamental flaws; they not only neglect individual and minority rights in favour of collective rights, they also rarely fulfil the needs of the majority.

In their paper, the authors propose a non-union form of representation that actually emphasizes employee representation rather than just unionism. Under *compulsory proportional representation*, workers would have the freedom to vote for any representative, and this would not be restricted to unions (in other words, it would include non-union representation). Proportional representation bases the share or proportion of representatives on the percentage of voter support. This approach would allow for minority voter representation and reduce free riding.

Non-union employee representation (NER) can be defined as “one or more employees who act in an agency function for other employees in dealings with management over issues of mutual concern, including the terms and conditions under which people work. Selected workers’ representatives meet with managers, usually in committee-type structures in which communication and exchange of thoughts is fostered. Representatives usually are internal to the company and serve leadership roles for limited terms.”<sup>3</sup>

Kaufman and Taras note that, even though unions have been on the decline in the North American private sector, this has not necessarily lead to a “representation gap”: alternative forms of employee representation are on the rise in corporate environments. Indeed, they believe that non-union forms of employee representation have recently emerged as a contentious issue in both academic and policy-making circles. They have identified four trends that seem to explain this phenomenon.

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1. Mark Harcourt and Helen Lam, “Union certification: A critical analysis and proposed alternative,” *WorkingUSA: The Journal of Labor and Society*, Vol. 10, No. 3 (August 2007), pp. 327-345.  
2. *Id.*, p. 329.

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3. Daphne Taras and Bruce Kaufman, “Nonunion Employee Representation in North America: Diversity, Controversy and Uncertain Future,” *Industrial Relations Journal*, Vol. 37, No. 5 (August 2006), pp. 513-542, on page 515.

“The first is the marked long-term decline in the organized labor movement in the U.S. and, to a lesser degree, Canada and most other industrialized nations.”<sup>4</sup> By the late 1990s, policy-makers were concerned about the widening gap between the portion of employees who wished to be represented in their workplace and those who already were. To confront this situation, two options were available to them: make union representation more accessible or encourage alternative non-union forms of representation.

“A second trend [...] is the popularization of new forms of management and work organization, variously referred to as participative management, employee involvement, and ‘high-performance’ workplace.”<sup>5</sup> Because of heightened competition, skill-intensive production systems and greater employee expectations of involvement, the traditional “command-and-control” system has given way to more decentralized decision-making schemes and enhanced employee participation. By creating channels through which employees can have their voices heard, employers are able to insure productivity and employee satisfaction in the workplace while decreasing the incentives to unionization.

“A third, and uniquely American, development [...] is the ongoing political debate over reform of the NLRA” adopted in 1935.<sup>6</sup> Also known as the *Wagner Act*, this piece of legislation imposed a ban on most forms of non-union employee representation. Even though Canadian labour legislation resembles the U.S. NLRA, the question of non-union representation is treated differently in the two countries. In Canada, non-union employee representation is legal as long as it is not used to handicap or limit union organizing. The major difference between the two bodies of legislation is that Canada has adopted a

different definition of the concept of labour organisation. “To avoid banning non-union forms, Canadian lawmakers concentrated on creating narrow and structural definitions of labour organizations.” The result of this difference has led to a greater number of non-union employee representation schemes in Canada.

“Finally, a fourth trend that has worked to visibly raise interest in NER is the important role that such representation plays in the industrial relations systems of other major industrial countries outside of North America.”<sup>7</sup> Indeed, there are many European countries that have adopted legislature strongly encouraging non-union employee representation. For example, work councils are very popular in Europe. Japanese companies have also innovated in this sector by adopting several different forms of non-union employee representation. More recently, Central and Eastern European countries that have recently adopted market economies have also brought additional diversity into industrial relations systems.

Non-union employee representation is a far more diverse and complex institution than the stereotypical “company union.”<sup>8</sup> The diversity of non-union forms of employee representation can be partly explained by the fact that non-union forms of employee representation have no complex body of statutory rules, agency regulations or procedures for court rulings, in contrast to unions.

To map out the diversity of non-union employee representation and understand it better, Taras and Kaufman start by arguing that NER varies along six distinct dimensions: form, function, topics, representational modes, extent of power and degree of permanence. Secondly, they emphasize the fact that individual opinions

4. Daphne Taras and Bruce Kaufman, “Nonunion Employee Representation: Introduction,” *Journal of Labor Research*, Vol. 20, No. 1 (Winter 1999), pp. 1-8, on page 1.

5. *Id.*, p. 2.

6. *Id.*

7. *Id.*, p. 5.

8. Daphne Taras et Bruce Kaufman, *op. cit.*, note 3, p. 514.



on non-union employee representation depend on the perspective or the “frame of reference” that is used to evaluate them. The authors identify four different perspectives that represent the different dimensions or realities of non-union employee representation.

The first perspective is an evolutionary one, in which non-union employee representation schemes are considered as a mere step in the evolution of employee-employer relations. This implies that non-union employee representation is considered as “an unstable form of voice” that will be supplanted by genuine industrial democracy.

The second and more positive perspective is to consider non-union forms of employee representation as means to unify the interests of both employees and employers. Proponents of this method of regarding non-union employee representation believe that, in contrast to unions that generally foster a confrontational relationship between management and employees, non-union employee representation encourages cooperation and the pursuit of common interests. Non-union employee representation offers a venue for promoting employee involvement and empowerment while providing a forum to build outcomes providing mutual gain.

The third perspective is to consider non-union employee representation as a way to hinder and limit union introduction in the work place. Proponents of unions consider non-union employee representation as a way for employers to succeed in blocking certification attempts. Indeed, many cases were identified where employers suggested non-union employee representation in reaction to union drives. Of course, union avoidance is an important criterion when management considers adopting a non-union form of employee representation in their organization, but empirical evidence seems to suggest that it is not the only reason, since non-union employee representation has been imple-

mented in organizations where the threat of union certification was low.

The fourth way of considering non-union employee representation is to view it as a complement to trade unionism and not a substitute. This idea of complementarity has been observed in Europe, where work councils handle plant-level issues while trade unions tackle industry-wide matters.

This last perspective can help us understand why non-union employee representation covers only a small percentage of workers in Canada and the U.S. Indeed, for non-union forms of employee representation and unions both to flourish, it is necessary for policy-makers to adopt a legislative framework that “promotes the optimal mix of the two forms of voice”.<sup>9</sup> And since this type of legislation is unlikely to be adopted in either country in the short or even medium term, the future of non-union employee representation in North America remains uncertain.

Also, even though non-union employee representation would avoid some of the flaws of unions, they are not perfect. Here are some of the main problems: “Most forms of non-union representation are ‘management dominated’. [...] NER generally lack independence from management and real-decision making power: they consult rather than bargain.”<sup>10</sup> Also, such programs are often “merely management’s attempt to gain knowledge possessed by workers in order to increase productivity, reduce work rules, and in general, gain concessions from unions without sharing decision making.”<sup>11</sup> Furthermore, in a study regarding systems of collective employee representation in non-union firms in the U.K., the author states that, in many

9. *Id.*, p. 533.

10. Mark Harcourt and Helen Lam, *op. cit.*, note 1, p. 336.

11. *Id.*

cases, “non-union representatives are less able, trained, expert, or more nervous than their union counterparts (and hence less likely to press management) and/or that management take less seriously representatives who lack the potential sanctions of trade unions.”<sup>12</sup>

Therefore, non-union employee representation can become an efficient way of creating dialogue between employees and employers. However, certain conditions need to be in place; for instance, management must be supportive and genuine in its desire to include and consider workers’ needs and complaints. Also, these groups must be backed up by a clear and institutionalized set of sanctions enforceable through industrial tribunals. Finally, new legislation must be adopted to create a legal framework to support non-union employee representation.

Even though there are limits to the immediate large-scale implementation of such non-union employee representation schemes, they should remain a very important area of research in both academic and policy-making circles. Some studies are showing that non-union representation is a positive way of ensuring that employees have the freedom to choose whatever form of representation they desire in order to achieve a greater voice in the workplace.

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12. Michael Terry, “Systems of collective employee representation in non-union firms in the UK,” *Industrial Relations Journal*, Vol. 30, No. 1 (June 2003), pp. 16-30, on page 25.

## 5. The relative economic performance of Quebec, the rest of Canada and the United States: growth, job creation and private investment

Quebec's distinct position with regard to labour relations legislation makes it useful to compare the province's economic performance with that of its direct North American competitors over the last 26 years.<sup>1</sup> Although this exercise cannot establish a direct causality, given the many factors involved, it does help us picture the ground Quebec could gain by adopting more flexible labour laws that would favour stronger job creation and increased productivity in particular.

### GDP growth rate

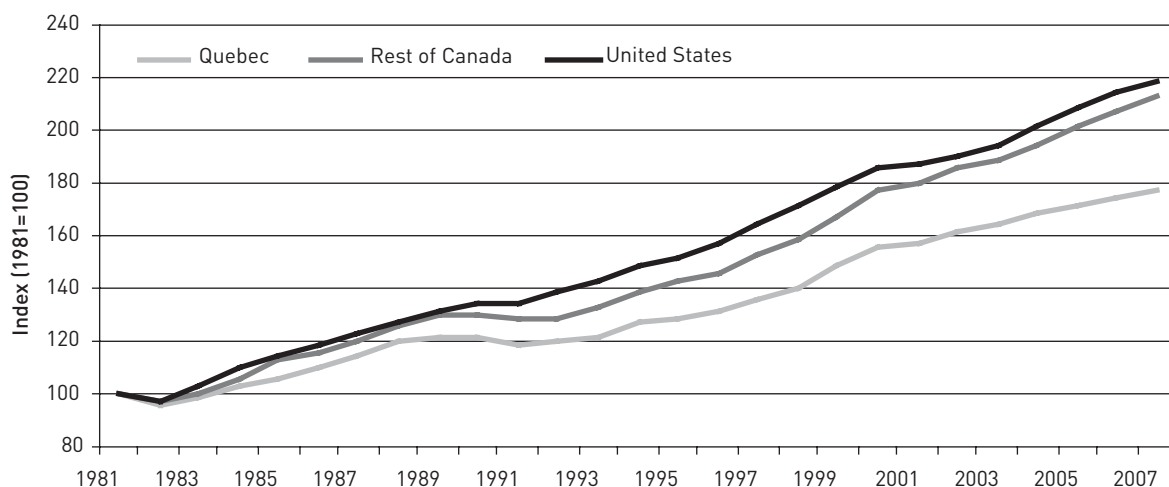
From 1981 to 2007, the average annual growth rate of Quebec's gross domestic product (GDP)<sup>2</sup> was 2.2%, compared to 2.9% in the rest of Canada. This amounts to a 77.0% overall increase in Quebec's real GDP and a 112.4% increase in the rest of Canada. Quebec's real GDP represented 23.2% of Canada's GDP in the early 1980s but only 20.2% in 2007.

More recently, from 2002 to 2007, the average annual variation in real GDP was 1.8% in Quebec, compared to 2.8% in the rest of Canada. Quebec's real GDP thus rose by 9.4% over this period, whereas real GDP in the rest of Canada went up by 14.8%. At this pace, Quebec's GDP would climb 56.6% in the 25 years from 2007 to 2032, while the GDP rise in the rest of Canada would be 99.3%. Quebec's economic weight would then account for only 16.6% of the Canadian total.

1. This section draws upon Marcel Boyer, "La performance économique du Québec: constats et défis (IV)", CIRANO, November 2008, <http://www.cirano.qc.ca/pdf/publication/2008s-29.pdf>.

2. GDP is a commonly accepted aggregate measure of a country's or a region's economic activity. It measures the value of all goods and services produced.

**Figure 5.1**  
**Comparison of GDP growth:**  
**Quebec, rest of Canada, United States (1981-2007)**



Sources: Statistics Canada, CANSIM Table 384-0002 (expenditure-based GDP); Bureau of Economic Analysis, May 2007.

### Per capita GDP growth

Per capita GDP growth has been following a very different trend. While real GDP has been growing more slowly in Quebec than in the rest of Canada, the same is true of population. This means that real per capita GDP in Quebec has been following almost the same trend as in the rest of Canada: an increase of 50.5% in Quebec compared to 53.5% in the rest of Canada from 1981 to 2007. Since 2000, real per capita GDP has gone up by 8.8% in Quebec and 10.9% in the rest of Canada.

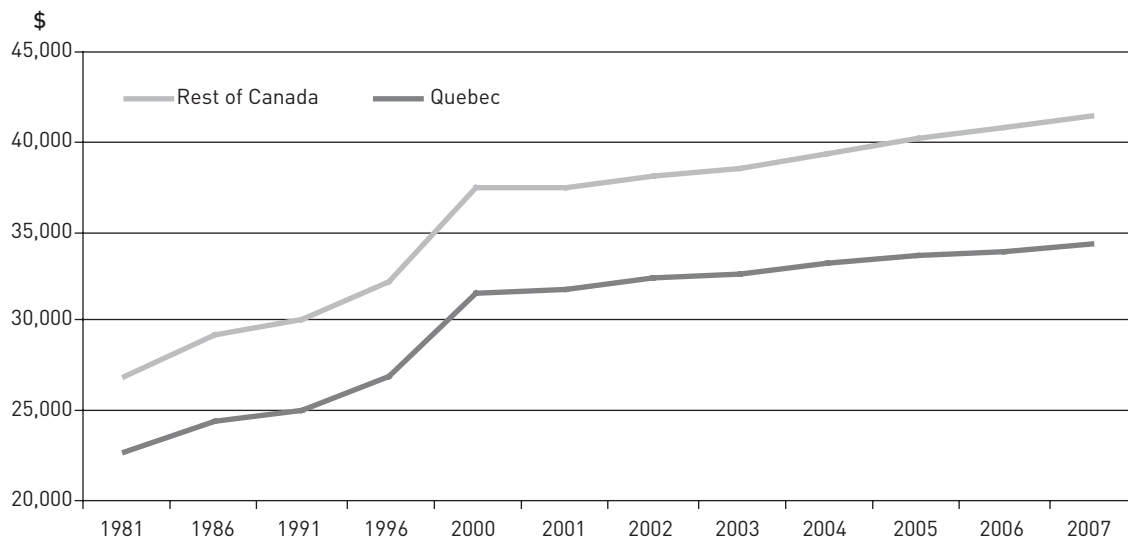
Quebec's real per capita GDP was \$22,786 in 1981 (in constant 2002 dollars), or 84.5% that in the rest of Canada. This percentage fell slightly to 82.9% in 2007. The fact that Quebec has not managed to get its real per capita GDP to converge toward that in the rest of Canada suggests that the gap in real terms is growing. Thus, the difference between real per capita GDP in Quebec and that in the rest of Canada went up, in constant 2002 dollars, from \$4,178 in 1981 to \$5,802 in 2000 and \$7,092 in 2007, a 69.8% increase in the 1981-2007 period as a whole.

### Population growth

The size of the Quebec population aged 15 and under has been falling for many years, going from 1.41 million in 1981 (21.5% of total population) to 1.23 million in 2007 (16.0% of total population), a 12.6% decline. Data for the rest of Canada show an increase of 6.3% in this category.

Quebec's working-age population, 15 to 64 years old, grew by 17.5% from 1981 to 2007, compared to 42.4% in the rest of Canada. Within this age group, Quebec saw a 5.0% decline in the number of 15- to 44-year-olds and a 76.9% rise in 45- to 64-year-olds from 1981 to 2007. The corresponding figures for the rest of Canada were rises in both categories, 21.6% and 96.2% respectively. GDP data thus hide a complex and troubling reality: in relative terms, Quebec is losing population. If this trend were to continue, it would have serious negative consequences for Quebec's relative economic growth.

**Figure 5.2**  
**Growth in GDP per capita:**  
**Quebec, rest of Canada (1981-2007)**



Sources: Statistics Canada, CANSIM Table 384-0002 (expenditure-based GDP); CANSIM Table 051-0001.

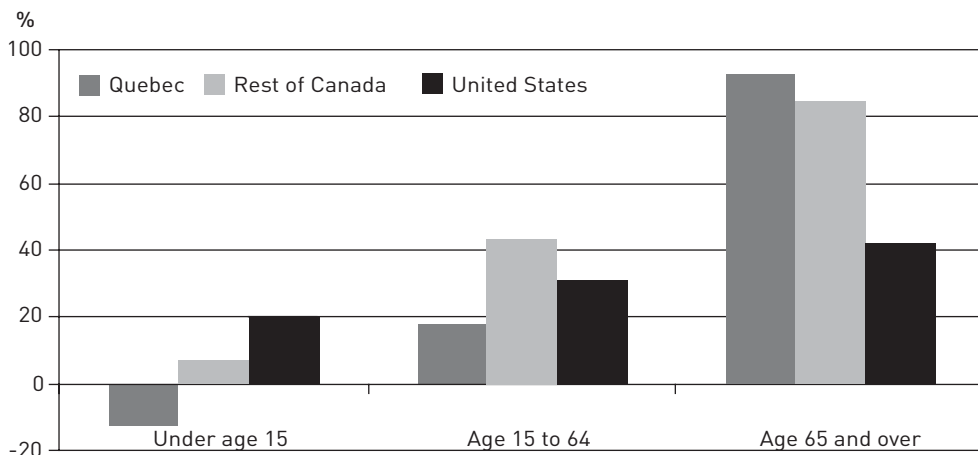
Ideally, we would want to compare growth in GDP and in GDP per capita in a way that takes cost of living changes into account. This comparison can be made only for certain base years for which adequate, reliable data are at hand. These data include calculations of GDP per capita, expressed in purchasing power parity (PPP), conducted by the OECD<sup>3</sup> for various large cities around the world. We can see that GDP per capita, expressed in U.S. dollars, was \$29,100 in Montreal in 2004 compared to \$34,900 in Toronto (+20%), \$32,000 in Vancouver (+10%), \$45,600 in Chicago (+57%), \$52,800 in New York (+81%), and \$58,000 in Boston (+99%). Thus, although Montreal has a lower cost of living, the difference in the real value of goods and services production (adjusted for cost of living) between Montreal and competing cities is considerable.

### Job creation

In terms of job creation, it can be observed that the total number of jobs rose in Quebec by 1.1 million from 1981 to 2007, up by 38.1%. Again, this increase may appear favourable; however, in the course of this same period, 4.5 million jobs were created in the rest of Canada, a rise of 53.0%, while the United States created 45.6 million jobs, a 45.5% increase. In other words, the Quebec economy has systematically been creating fewer jobs than the rest of Canada for at least 25 years, despite an improvement since 1999.

3. OECD, *OECD Territorial Reviews: Competitive Cities in the Global Economy*, 2006.

**Figure 5.3**  
**Population growth:**  
**Quebec, rest of Canada, United States (1981-2007)**



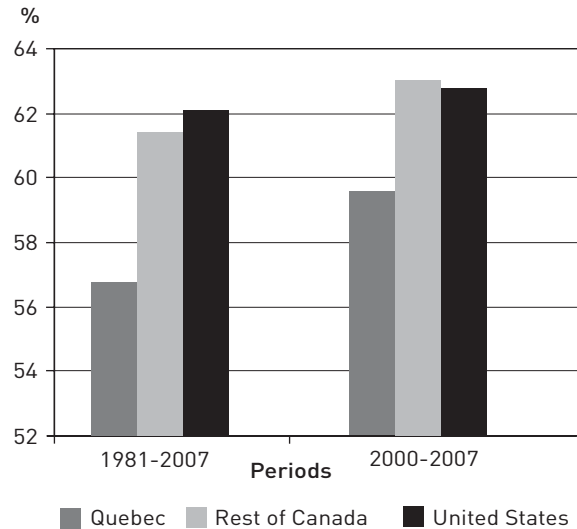
Source: Statistics Canada, CANSIM Table 051-0001; United Nations Population Division, <http://esa.un.org/unpp>.  
 Note: For the United States, the period is from 1980 to 2005.

Quebec's disappointing job creation performance is not unrelated to its low demographic growth. Again, job creation and economic growth are interdependent. Lower job growth implies lower population growth to the extent that people are sufficiently mobile to react quickly to differences in the availability and quality of jobs offered elsewhere.

*Employment and unemployment rates*

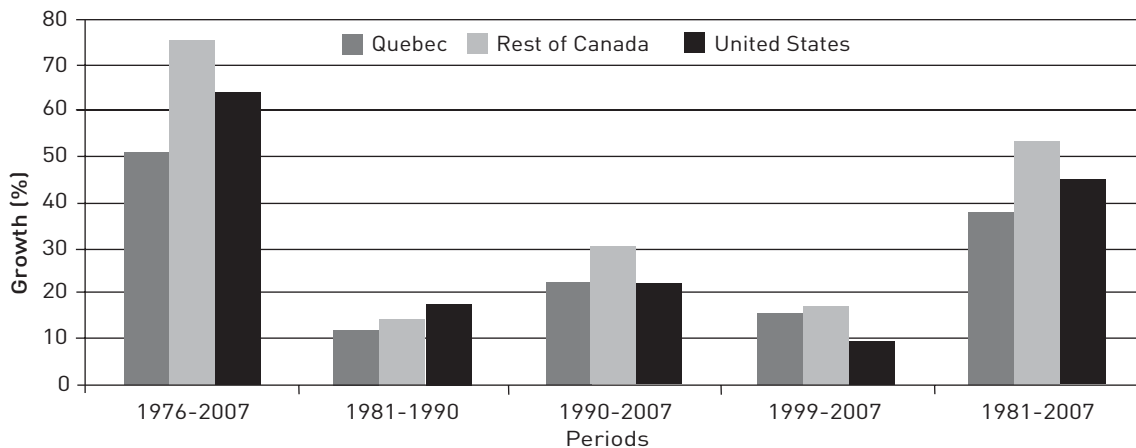
Employment rates, as measured by the percentage of the population aged 15 and over and holding a job, is a credible and revealing indicator of a society's economic health. During the period from 1981 to 2006, this employment rate averaged 56.7% in Quebec, 61.4% in the rest of Canada and 62.0% in the United States.

**Figure 5.4**  
Average employment rate:  
Quebec, rest of Canada,  
United States (1981-2007)



Source: Statistics Canada, CANSIM Table 282-0055; U.S. Department of Labor, Census Bureau.

**Figure 5.5**  
Job creation: Quebec, rest of Canada,  
United States (1976-2007)



Source: Statistics Canada, CANSIM Table 282-0004; U.S. Department of Labor, Census Bureau.

These results suggest that Quebec's unemployment rate (7.2% in 2007) compares unfavourably with the rates in the rest of Canada (6.0%) and the United States (4.6%): the "real" disparities between unemployment rates (or, more precisely, non-employment rates) are actually greater. Weak job creation can lead some individuals to stop looking for work, to go into retirement or simply to leave the workforce, in which case they are no longer unemployed even though they are not working. This phenomenon results in Quebec's true unemployment rate in 2007 compared to the rest of Canada probably being closer to 11% than to the official rate of 7.2%.

#### *Employment insurance recipient rate*

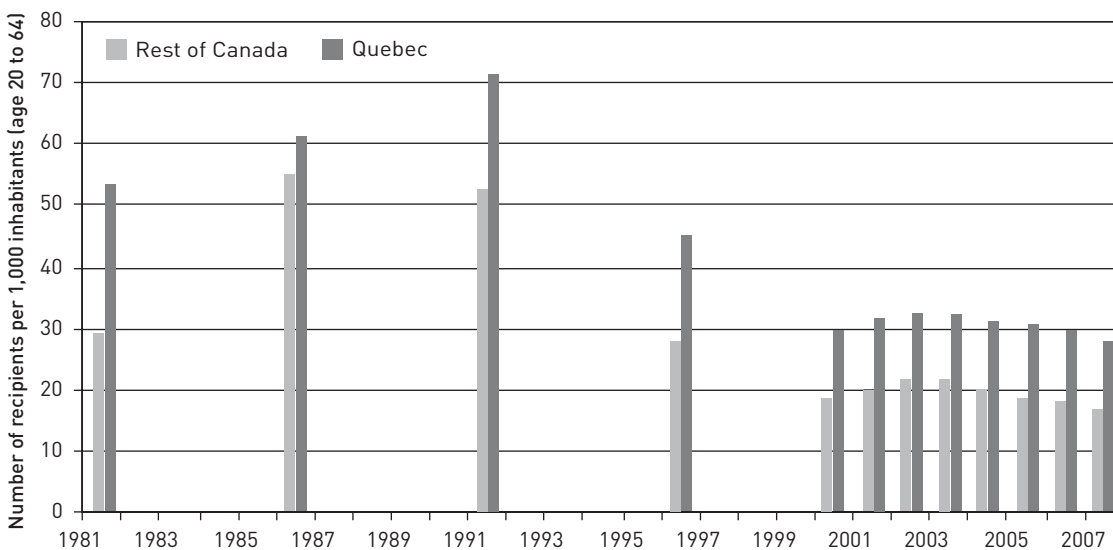
As regards the number of employment insurance recipients, Quebec's less than enviable situation within Canada has not changed for the better in the last quarter-century. Year in and year

out, about one-third of Canada's employment insurance recipients come from Quebec, resulting in a substantially higher rate of recipients than in the rest of Canada: 28.5 recipients per 1,000 inhabitants (age 20 to 64) in Quebec and 17.0 in the rest of Canada in 2007.

#### *Private investment spending*

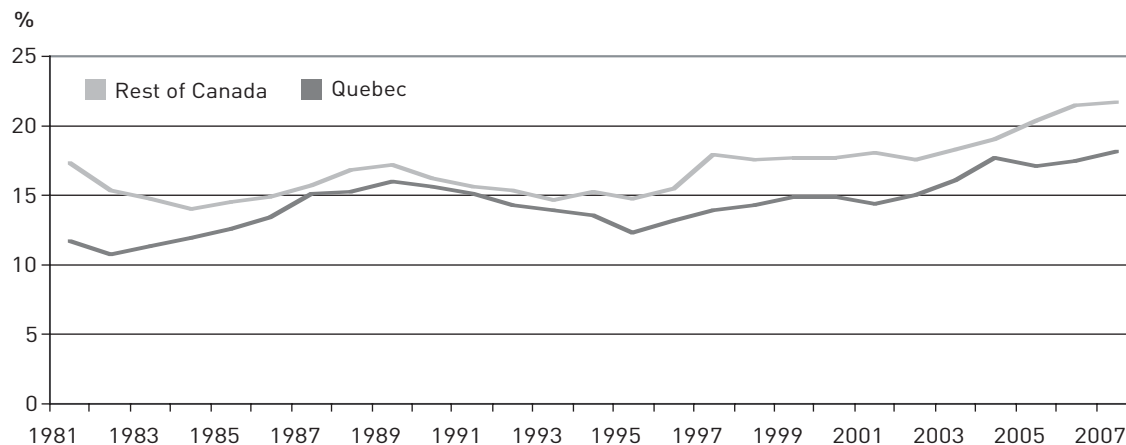
Data on private investment spending enable us to observe various significant elements in Quebec's relative economic performance compared to the rest of Canada. The share of private investment spending in real GDP was lower in Quebec than in the rest of Canada for the entire 1981-2007 period. Although public investment as a percentage of GDP has been higher in Quebec than in the rest of Canada since 1992, total investment spending in real GDP remained lower in Quebec for the entire 1981-2007 period.

**Figure 5.6**  
**Employment insurance recipient rate:**  
**Quebec, rest of Canada (1981-2007)**



Source: Statistics Canada, CANSIM Table 276-0002.

**Figure 5.7**  
**Private investment as a percentage of real GDP:**  
**Quebec, rest of Canada (1981-2007)**



Source: Statistics Canada, CANSIM Table 384-0002.

## Conclusions on Quebec's economic performance

The indicators outlined above are the main markers of a society's economic health. They show that, in relations to its main partners, Quebec has been losing ground continuously.

This situation is not improving. On the contrary, it tends to deteriorate, as shown by factors such as the creation of full-time jobs, which has been relatively anemic over the last 25 years and more so since the early 1990s, as well as by the employment rate, which is relatively low, and by the unemployment rate, which is not only relatively high but also underestimated.

The scope of Quebec's economic lag can be shown concretely as follows: (i) in the 1981-2007 period, only 16.9% of Canada's new full-time jobs were created in Quebec; (ii) if, during the 1981-2007 period, Quebec had created jobs at the same pace as the rest of Canada and the United States, it would have created 224,190 jobs more than the 1,062,000 jobs actually created; (iii) for

Quebec's employment rate (59.7% for 2000-2007) to reach that in the rest of Canada and the United States (63.0%), 219,745 more jobs would be needed in 2007, or 5.7% more than the 3,852,000 jobs available; (iv) the shortfall in private investment in Quebec came to \$7.7 billion in 2007 on investments of \$48.1 billion (in 2002 dollars) and to \$73.2 billion for the last 10 years on investments of \$387.6 billion (in 2002 dollars).

Why does this situation exist, and how can it be remedied? How can the current trend be reversed? How can these gaps be filled, pushing Quebec from the rear of the pack toward, and into, the front of the pack of North American regional economies?

First and foremost, it must be reaffirmed that there is no reason to believe people in Quebec are different from other Canadians or from Americans in their desire to enhance their living standards and those of their children, and nor do they differ in their ability to achieve this. It is high time to reverse Quebec's tendency toward marginalization. To have any hope of filling the



gap in economic efficiency afflicting Quebec and to do so in the next 25 years, there will be a need for imagination, insight and courage to bring about the required changes in economic environment and policies. We are in a certain way condemned to be more efficient and more innovative than our main competitors.

Quebec's economic difficulties appear to result essentially from four main causes: a general lack of incentives for adaptation, productivity and innovation; the growing ineffectiveness of public mechanisms for coordination and allocation of resources; opaque and pernicious manipulation of prices, too often viewed as a favoured support mechanism for organized interest groups; and the absence of a balance, comparable to that found among our main economic competitors, in labour relations between unions and employers, not only in the public sector but also in the private sector, as we have seen above.

This last factor is probably what best explains Quebec's difficulties in terms of private investment and job creation, especially in terms of full-time jobs.

It is quite apparent that our private and public Quebec companies will not manage to create jobs here at the necessary pace because they do not find it profitable to do so. Among the factors explaining this state of affairs, it is important not to underestimate the obstacles to technological and organizational innovation and flexibility too often created, first, by the presence of too high a level of unionization compared to our main competitors, and also by the difficulty in challenging established supplier networks for goods and services, especially in the public sector.<sup>4</sup>

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4. On this subject, see Marcel Boyer, *Manifesto for a Competitive Social Democracy*, 2009, [www.cirano.qc.ca/~boyerm/20090414\\_MBOYER\\_Manifesto\\_en.pdf](http://www.cirano.qc.ca/~boyerm/20090414_MBOYER_Manifesto_en.pdf).

## Conclusion

There is no reason to believe that people in Quebec are any different from people elsewhere in their ability or willingness to create wealth. The reasons for our disappointing economic performance thus have to be sought elsewhere, starting with the institutional constraints that we choose and impose on ourselves, reducing the profitability of investments as well as the incentives and flexibility that can lead citizens and businesses alike to adapt to changes in our socio-economic environment. These investments favour productivity gains and the creation of quality jobs. Foremost among these institutional constraints should be mentioned the *relative* pro-union bias in certification and in voting procedures on strikes and employers' offers.

In this regard, it is important to enable our companies to compete on a level playing field with our main commercial competitors by improving our legal framework in labour relations. It is imperative to establish secret-ballot voting by all members of a bargaining unit in certification procedures and to recognize voting rights for all members covered by a collective agreement in balloting for strikes or employers' offers. In a similar vein, our laws and regulations should recognize fully the various non-union forms of employee representation in a company or certification unit.

The stakes are significant. Chronic deficits in private investment are both witness and precursor to steady degradation in capacity for production and innovation and thus in Quebec's competitive position. Investing in Quebec looks less profitable in relative terms, and this relatively low level affects the Quebec economy's future productivity. The situation is all the more worrying in that the Quebec economy is very

open to the outside: exports account on average for nearly 60% of its production, with one-third of this going to the rest of Canada and two-thirds to international markets. Three employees out of five thus rely directly or indirectly on our competitiveness compared to the rest of the country and to our international partners and, accordingly, in our ability to raise productivity, which itself depends heavily on the scope of private investment.

We are talking here about relative and not absolute degradation: Quebec's compound economic growth of nearly 2.2% a year on average since the early 1980s has enabled the province to achieve appreciable gains in living standards. But competition from regional societies (cities, provinces and U.S. states) that generate private and collective wealth more effectively will gradually lead to the *relative* degradation of Quebec's services and institutions.

People in the labour movement are obviously aware of these changes in the socio-economic environment of individuals and companies. They are seeking a new path and new means both to survive and to pursue their main stated goal, namely the defence of justice and the dignity of labour.<sup>1</sup> By the admission of their own analysts, unionists have to deal with some serious challenges, in particular those of aligning demands for solidarity and democracy internally, confronting erosion in the representative capacity of union organizations and doubts raised in this regard, meeting growing demands for flexibility in the workplace, and recognizing that the reconfiguration of production systems worldwide, with establishment of new logistics and market liberalization, has led to greater capital mobility.<sup>2</sup> Other challenges include acknowledging the growing permeability of public-

1. See Larry Haiven, Stéphane Le Queux, Christian Lévesque and Gregor Murray, "Union Renewal Amid The Global Restructuring Of Work Relationships", *Just Labour*, Vol. 6 & 7 (Fall 2005), pp. 23-36.

2. *Id.*, p. 38.

private boundaries and the increased challenges to former government monopolies due both to new technologies, that weaken or destroy the very bases of these monopolies, and to their partial or total privatization.

Although people in the labour movement may tend to see a worldwide plot behind these challenges orchestrated by governments and employers' groups, the fact remains that greater competitive pressures resulting from globalization of markets, new technologies (in information, communications and production) and the internationalization of cultures have been a major source of effectiveness, efficiency, gains in well-being and declines in poverty in every country and region that has adhered to these developments by favouring a better balance between flexibility, adaptation and security, accountability, and good governance in private and public institutions.

This will have to be the same for Quebec if it truly wishes to reverse its current trend toward marginalization. A first step would include overhauling its legal framework in labour relations, first by establishing mandatory voting by secret ballot, open to all members of the unit concerned, for union certification and votes on strikes or employers' offers, followed by the establishment of greater worker democracy through recognition of other forms of representation.

Such an overhaul is likely to enable Quebec companies to compete on a level playing field with firms in competing jurisdictions in attracting investment and favouring job creation.

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