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Collective change

Europeans have the right not to join a union. Why not us?

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Article 20 (2) of the UN's 1948 Universal Declaration of Human Rights states, "No one may be compelled to belong to an association." In other words, it's a basic human right for individuals to make a free choice about joining -- or rejecting -- membership in a particular group, such as a union.

To this day, many unionized Canadian workers are required to join the union that represents them or risk losing their jobs. In the midst of a worldwide trend to ensure union membership is a free choice, Canada remains one of the last Western countries to allow forced union membership and the use of union dues for political purposes.

Unionized employees in the 27 nations of the European Union and the 47 nations of the larger Council of Europe now have the right to make a free choice regarding union membership. In fact, those who don't join the union often do not pay any union dues at all. As of 2007, it is illegal for unions to use the dues of unionized nonmembers for political activities.

These changes weren't accomplished rapidly or easily. In Sweden, forced membership in collective agreements was only banned in 2005 -- after a 17-year struggle. Denmark held out until a landmark judgment against its government in 2006. In contrast, Britain began a series of legislative changes in the 1980s.

In 2007, Sweden was found in violation of human rights based on the mere suspicion that a union might be using the dues of unionized employees, who had not also become union members, for political activities.

Changes in Europe occurred over a period of 26 years as brave, principled unionized employees stood up to the unions that used their dues for political purposes and forced employers to fire unionized workers who chose not to become or remain union members. They fought their way to the highest court to gain the right to not associate and to not hand over dues for political activities. The European Court of Human Rights responded by dismantling these aspects of union power over unionized employees.

Like the 1950 European Convention on Human Rights, the right to not associate was not expressly written into the 1982 Canadian Charter of Rights and Freedoms. As a result of judicial activism, both the European Court of Human Rights and the Supreme Court of Canada read the right to not associate into their respective

freedom of association provisions. Both courts relied on the crystal-clear UN declaration as part of their rationale. Whether or not you support judge-made law, the result has been a positive change that reflects the long-standing responsibility of European countries to uphold the UN-declared human right to not associate.

But in 2007, the similarities end. While European legislators and unions have backed up court decisions with appropriate legislation and policies, there is little tangible evidence of Canada's courts, labour boards, unions or legislators ensuring the freedom of non-association.

Only Canada's federal civil servants appear to benefit from a tenuous legislative scheme that has led to an absence of collective agreements requiring membership as a condition of employment. This is the only Canadian jurisdiction that appears to be achieving some of the human rights protections enjoyed by unionized Europeans.

But this is the exception, not the rule. Canadian unions can and still do request collective agreements that demand membership as a condition of employment. Unions still discipline workers who never voluntarily agreed to the rules under which they are disciplined. They still force employers to fire such workers whose discipline is loss of membership.

Reform was slowest in Europe when union-funded governments were in power and able to defeat legislative reform. Significant union funding of, and support for, Canada's left-of-centre parties (the NDP and Liberals) underscores the need to protect unionized employees from being compelled to fund the political parties that appease union leaders who steer funding their way.

For observers of international law, it is difficult to understand Canada's Supreme Court ruling in Advance Cutting and Coring. While this decision confirmed the freedom to not associate in Canada, the court still upheld forced union membership in the Quebec construction industry. Remarkably, the court held that the province's legislation was a justifiable way of addressing the union violence that has been historically evident in Quebec's construction sector.

In doing so, it appears the nation's highest court (and guardian of the rule of law) decided to limit the rights of its citizens rather than ensure that Canada's Criminal Code is enforced. In June of this year, Canada's Supreme Court's further increased union power, particularly in the public sector, by creating a right to collective bargaining.

It's clear that unionized Canadians cannot rely on the courts or on their own union leaders to protect their human rights. It now becomes incumbent on Canada's politicians and employers to take legislative and bargaining-table action to do so.

Europe's unions remain important participants in society, but they are increasingly focused on serving the true wishes of the employees they represent. Why? Because Europe's union leaders rely only on dues from voluntary members. That's good for unions, good for unionized employees and good for Europe. As for Canada, it is the 21st century -- the time has come to achieve these critical employee human rights.

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