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Forced labour

Canada flouts the UN Declaration on Human Rights and its own Charter in compelling workers to belong to unions

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As signatories to the United Nations 1948 Universal Declaration on Human Rights, both Canada and Europe committed themselves to promote and achieve its rights and freedoms.

Yet, 60 years later, there's a stark difference in the response 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 joining a union or being fired.

CREDIT: Stuart Davis, Vancouver Sun Files

BCGEU activists, their union supported by all members' dues, stage a political protest in Burnaby in 2002.

In contrast, unionized employees in the 47-nation Council of Europe have a choice regarding union membership; 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 and other purposes unrelated to collective bargaining.

Change was neither rapid nor easy. In Sweden, forced membership in collective agreements were finally banned in 2005 -- a 17-year struggle. In 2007, Sweden was in violation of human rights based on the mere suspicion a union might be using unionized non-members' dues for political activities. Denmark's government held out until a landmark 2006 judgment against its forced membership system.

Changes occurred over 26 years, as brave, principled unionized employees stood up to unions and governments that refused to ensure their rights. 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.

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 you support judge-made law or not, the result reflects the long-standing responsibility of signatory countries to uphold the UN-declared right.

But, 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 have lost their membership have in fact 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 nation's highest court (and guardian of the rule of law) essentially chose to limit the right of its citizens to not associate instead of striking down the law. This would have sent a message that the top court expected Canada's criminal code to be upheld, that union violence be effectively prosecuted rather than essentially rewarded. In the absence of such facts, it is doubtful any such statute or collective agreement with any government across Canada would be upheld if challenged.

In British Columbia, numerous collective agreements require unionized employees to become and remain members in good standing of a union as a "condition of employment." Unionized private sector, municipal and B.C. government employees are bound by these union demands agreed to by their employers.

In May, Premier Gordon Campbell said his government's job is "to make sure that workers have an opportunity to make choices." The facts are that B.C.'s labour code allows collective agreements that violate the Charter. The provincial government requires its employees to join one union as a condition of employment -- the BCGEU. The B.C. Labour Code allows such clauses in collective agreements. Both are Charter violations.

Unionized Canadians cannot yet rely on the courts to fully protect their rights let alone count on unions to stop violating their Charter rights. It is incumbent upon politicians and employers to take action through legislation and at the bargaining table. Legislative reform will likely be stymied as long as unionized employees are compelled to fund Canada's left-of-centre parties that thwart union reform to appease union leaders and keep donations flowing.

This was evident in Europe; labour reform was slowest when union-funded parties were in power and they used that power to defeat legislative reforms that limited union power.

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 is time for Canada to acknowledge and support these critical rights as well as ensuring free employee choice regarding union membership.

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