No Forced Union Membership or Dues for Politics:
It’s a Human Right
The European Experience

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MEMBER OF WHAT?

Unionized workplace – collective agreement

Employees are “members” of a bargaining unit

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

If yes, are they voluntary or forced members by law or collective agreement?
HAS ITS PRIVILEGES!

To run for union president or other office
To vote on internal union affairs
To participate in ratification votes
To participate in strike votes
To be disciplined
To lose your membership
To be lose your job for loss of membership!
UNION DUES

NOT the same issue as membership

Almost all unionized Canadians pay full dues

Why?

Dues “check-off” in labour codes and collective agreements

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

**"unionized" - (apples and pears)**

<table>
<thead>
<tr>
<th>Canada/ US</th>
<th>Sweden/ &quot;Europe&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both members and non-members covered by a specific collective agreement</td>
<td>Term not really used</td>
</tr>
<tr>
<td></td>
<td>If it was: unionized = actual members of the union - <strong>only</strong></td>
</tr>
<tr>
<td></td>
<td>Not unionized = non-members and those not covered by a CA at all</td>
</tr>
</tbody>
</table>
AGENDA/ OBJECTIVES

Overview European political and Court system

Summarize European history of:

- End of closed shop – forced membership
- End of non-member dues for politics & other non-bargaining purposes

Compare to Canadian situation and Supreme Court cases
# SWEDEN, EU & CANADA STATS

<table>
<thead>
<tr>
<th></th>
<th><strong>SWEDEN</strong></th>
<th><strong>EU</strong></th>
<th><strong>CANADA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GDP:</strong></td>
<td>$290 billion*</td>
<td>$13.08 trillion*</td>
<td>$1.181 trillion*</td>
</tr>
<tr>
<td><strong>Per Cap:</strong></td>
<td>$32,200*</td>
<td>$29,900*</td>
<td>$35,600*</td>
</tr>
<tr>
<td><strong>Pop:</strong></td>
<td>9,031,088**</td>
<td>490,426,060**</td>
<td>33,390,141**</td>
</tr>
<tr>
<td><strong>COE Pop:</strong></td>
<td>none</td>
<td>n/a</td>
<td>11</td>
</tr>
<tr>
<td><strong>Provs:</strong></td>
<td>none</td>
<td>n/a</td>
<td>11</td>
</tr>
<tr>
<td><strong>Founded:</strong></td>
<td>June 6, 1523</td>
<td>1992+ (Treaty of Maastricht)</td>
<td>1 July 1, 1867</td>
</tr>
<tr>
<td><strong>1</strong></td>
<td>1 - British North America Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>2 - Repatriation of Canadian Constitution</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>3 - Canadian Charter of Rights and Freedoms</td>
<td></td>
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</tbody>
</table>

CIA World Factbook Data

* 2006 and $US

** 2007

+ EU roots go back to 1951
BANNED - COUNCIL OF EUROPE (47 member countries)

Closed shops:

Pre-entry

Post-entry
- *Young, James and Webster* (1981)

Union dues from non-members:

For political purposes

Non-bargaining purposes
- *Young, James and Webster* (1981)
### "UNIONIZATION" (2005)

<table>
<thead>
<tr>
<th>Country</th>
<th>Total</th>
<th>Private sector</th>
<th>Public sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>32%</td>
<td>19%</td>
<td>75%</td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td>&quot;80%&quot;</td>
</tr>
<tr>
<td>Other Countries</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria &amp; Belgium</td>
<td>90-100%</td>
<td>78%</td>
<td>67%</td>
</tr>
<tr>
<td>Denmark</td>
<td>78%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>67%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>36%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US</td>
<td>8%</td>
<td>40%</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>9.6%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Swedes join unions!

Fraser Institute for Canadian and US data
Eurofound for European Data
## LOSING MEMBERS

<table>
<thead>
<tr>
<th>Country</th>
<th>Blue collar unions lost</th>
<th>White collar unions lost</th>
<th>Members under age 25:</th>
</tr>
</thead>
</table>
| **Sweden** | Blue collar unions lost 97,000 & white collar 40,000 | | 1994: 77%  
 2007: 52% |
| **Denmark** | Blue collar unions lost 140,000 in last 10 years: | | Membership from 84.6% in 1994 to 81.7% in 2001 to 78.5% in 2005 |
| **UK** | From 13 million in 1979 to just over 6 million today. Forced membership ended starting in 1981 | | Since 1995 a 40% drop from 471,000 to 284,000 |
REFORM IN EUROPE

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

Litigation by employees 1976 – 2007, two venues:

- European Court of Human Rights
- European Social Committee

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

“No one may be compelled to belong to an association”
## EUROPEAN BODIES

<table>
<thead>
<tr>
<th>COUNCIL OF EUROPE (COE)</th>
<th>EUROPEAN UNION (EU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founded ’49 - wake of WWII</td>
<td>Founded ’51 - wake of WWII</td>
</tr>
<tr>
<td>22 member states, today 47</td>
<td>6 member states, today 27</td>
</tr>
<tr>
<td>Principal focus: Human and social rights</td>
<td>Principal focus: trans-border economic activities</td>
</tr>
<tr>
<td>European Convention on Human Rights (1950)</td>
<td>Legislative powers</td>
</tr>
<tr>
<td>• European Court of Human Rights</td>
<td>• European Court of Justice</td>
</tr>
<tr>
<td>European Social Charter</td>
<td></td>
</tr>
<tr>
<td>• Social Committee</td>
<td></td>
</tr>
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</table>
YOUNG, JAMES & WEBSTER v. UK (1981)

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

- Judgment’s effect: right of non-association even though it had been specifically considered and left out of Convention.
- Did not address whether or not the freedom of non-association equal to the right of association.
- Did not rule on all forms of closed shops, just post-entry
- Loss of livelihood struck at the very substance of freedom of association
- Other rights noted: conscience and opinion (Art. 9 and 10)
SIGURJONSSON v. ICELAND (1993)

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

- Repetition of Young ruling re post-entry, but not a union and not clear cut post-entry; might be pre-entry case
- After adoption of legislation confirming compulsion he rejoined “Frami”
- ECHR did not have jurisdiction to rule on the issue of expelling, but merely on the compulsion to join

Court still found Art. 11 violation since applicant faced the dilemma of joining organization or loss of livelihood. Court did not find it necessary to rule if negative aspect on the same footing as the positive. Also noted right of conscience and opinion (Art. 9 and 10)
COUNCIL OF EUROPE
SOCIAL COMMITTEE ACTIONS

• Played a key role in the ending of 10,000 to 15,000 Swedish closed shops (in substitute agreements)
• 4 reports of violations in 14 years 1988-2002
• Some closed shops eliminated
• 2002: Collective complaint by the confederation of Swedish Enterprises (employers)
• 2003: Social Committee demands full resolution by next Report in 2005
• 2005: 10,000 - 15,000 closed shops gone
SØRENSEN & RASMUSSEN v. DENMARK (2006)

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

Rasmussen
- Confederation union member but did not support political affiliations
- Resigned & joined a Christian union
- After period of unemployment offered job conditional on joining Confederation union
- He took the job, rejoined but still did not support its’ political affiliations
- Applies to European Court of Human Rights claiming violation
Did not address equality of negative & positive freedom of association; but did not exclude possibility they are equal
• Found no reason to distinguish between post & pre-entry
• Recognised personal autonomy as a principle of Convention’s guarantees
• Danish Government argued applicants merely subscribing to a “non-political membership”. Court responded:

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

Art. 11 applicable, to be decided if the interference could be justified
**EUROPEAN COURT OF HUMAN RIGHTS**

Sørensen Grand Chamber Judgment

- Danish Government had a hard time justifying system
- Court found little need for closed shops in modern society since trade unions have grown to be strong organizations

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

Conclusion – The end of closed shops in 47 COE countries
EVALDSSON v. SWEDEN (2007)

- Master Agreement, construction sector, union monitored member & non-member wages for fee of 1.5%
- Monitored piece-work & time-salary; latter easier - less expensive
- 5 unorganized employees (non-members) of 8 total directed employer to stop deductions. Employer complied
- Union claimed violation of Master Agreement
- Employer organization applied to the Swedish Labour Court claiming violation of the right not to associate - Art. 11
- Labour Court cited Young, found no compulsion as non-members did not become members merely by paying the monitoring fees
- Labour Court avoided issue of whether the system generated a surplus for the union
Court ruled on right of possession
(Art. 1 of Protocol No. 1)

Court declined to rule on freedoms: from forced association, conscience and opinion (Art. 11, 9) (Art. 10).

Court found entitlement to verification that fees corresponded to costs:

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

Mere suspicion "dues" used for non-bargaining purposes (political, social, etc).

Transparent accounting to non-members required

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

*Evaldsson & Sørensen* together render union dues for non-bargaining purposes illegal under *Convention*
FINAL REMARKS

Underlying international legislation common to Canada & Europe

UN Declaration of Human Rights – explicit right to not associate

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

Supreme Court of Canada taking note of European developments prior to Sørensen and Evaldsson

Special circumstances in Advance justifying closed shop likely not available to justify provincial laws allowing or requiring ”closed shops”

Union dues for political purposes & other purposes imposed on non-members more difficult to challenge it appears
UNION SECURITY - Provisions in collective agreement

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

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

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

(2) For greater certainty, clause 43(1)(b) does not prohibit the Employer and the Union from inserting in a collective agreement a provision requiring, as a condition of employment, membership in the Union
ARTICLE 14 - UNION SECURITY (1) It shall be a condition of employment with the Employer that all employees shall be and remain members in good standing of the Union upon commencing employment.
Advance Cutting & Coring (2001): Clearly read right of non-association into Charter, said Quebec closed shops a violation but allowed closed shops under Sec. 1 due to history of union violence and vandalism in the Quebec construction sector.

Lavigne (1991): Effectively upheld compulsory dues, used for “non-collective bargaining purposes”, including for political purposes as reasonable limits under Section 1 of Charter. Membership for Lavigne was voluntary based on a Rand Formula agency shop clause. Existence and scope of freedom to not associate very uncertain.
Nova Scotia Government & General Employees Union and Annapolis Valley District Health Authority (DHA #3) Office & Clerical Bargaining Unit

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