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/vote for union president or other office
To participate in ratification/strike votes
To be disciplined/fined (can union collect?)
To lose “Membership”
To lose your job for loss of “Membership” (some provinces have some protections)
Most allow loss of job for loss of “Membership” for non-payment of dues
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
**TERM NOLGY DIFFERENCES**

"unionized" & "closed shop"

**Sweden/ "Europe"**

- Term not really used

- If it was: unionized = actual members of the union - *only*

- Not unionized = non-members & those not covered by a CA at all

**Canada/ US**

- Both members & non-members covered by a collective agreement

- How Canadian labour experts define "closed shop" may NOT be the same as the European Court of Human Rights
**Advance Cutting & Coring (2001):** Clearly read right of non-association into Charter, said Quebec forced membership a violation but allowed under Sec. 1 of Charter 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.
Overview European political and Court system

Summarize European history of:

• End of closed shop – forced membership

NOTE: Definition of closed shop in Canada & Europe not necessarily the same

• End of non-member dues for politics & other non-bargaining purposes

Compare to Canadian situation & Supreme Court cases
## Sweden, EU & Canada Stats

<table>
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<tr>
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<th>Sweden</th>
<th>EU</th>
<th>Canada</th>
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<tbody>
<tr>
<td><strong>GDP:</strong></td>
<td>$290 billion*</td>
<td>$13.08 trillion*</td>
<td>$1.181 trillion*</td>
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<tr>
<td><strong>Per Cap:</strong></td>
<td>$32,200*</td>
<td>$29,900*</td>
<td>$35,600*</td>
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<tr>
<td><strong>Pop:</strong></td>
<td>9,031,088**</td>
<td>490,426,060**</td>
<td>33,390,141**</td>
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<tr>
<td><strong>COE Pop:</strong></td>
<td>none</td>
<td>806,595,500**</td>
<td>11</td>
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<td><strong>Provs:</strong></td>
<td>none</td>
<td>n/a</td>
<td>11</td>
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<tr>
<td><strong>Founded:</strong></td>
<td>June 6, 1523</td>
<td>1992+ (Treaty of Maastricht)</td>
<td>1 July 1, 1867</td>
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<td></td>
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<td>2 December 2, 1981</td>
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<td>3 April 17, 1982</td>
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**CIA World Factbook Data**

* 2006 and $US
** 2007
+ EU roots go back to 1951

1 – British North America Act
2 – Repatriation of Canadian Constitution
3 – Canadian Charter of Rights and Freedoms
BANNED - COUNCIL OF EUROPE
(47 member countries)

Closed shops:  
Post-entry (working & clause comes in)
  • Young, James and Webster (1981)
Pre-entry (member before or must join to work)
  • Sørensen & Rasmussen v. Denmark (2006)

Union dues from non-members:
For political purposes & other non-bargaining purposes
  • Evaldsson and Others v. Sweden (2007)
"UNIONIZATION" (2005)

Canada

32% - Total
19% - Private sector
71% - Public sector

Sweden

“80%”

Swedes join unions!

Other Countries

90-100% - Austria & Belgium
78% - Denmark
67% - Germany
36% - UK

US - 8% Private - 40% Public Sector
9.6% - France but 90% of workforce impacted by collective bargaining – but not members of unions

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

Sweden

Blue collar unions lost 97,000 & white collar 40,000

Members under age 25:

• 1994: 77%
• 2007: 52%

Decreasing due to government measures re cost of being a union members and end of forced membership

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

Workers under 30:

• Since 1995 a 40% drop from 471,000 to 284,000

UK

From 13 million in 1979 to just over 6 million today. Forced membership ended starting in 1981
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><strong>COUNCIL OF EUROPE (COE)</strong></th>
<th><strong>EUROPEAN UNION (EU)</strong></th>
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<tbody>
<tr>
<td>Founded ’49 - wake of WWII</td>
<td>Founded ’51 - wake of WWII</td>
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<tr>
<td>22 member countries, today 47</td>
<td>6 member countries, today 27</td>
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<tr>
<td>Principal focus: Human and social rights</td>
<td>Principal focus: trans-border economic activities</td>
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<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>
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<td>• Social Committee</td>
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- [European Union](https://www.europa.eu) - European integration and collaborative efforts among European countries.
- [Council of Europe](https://www.coe.int) - Promotes human rights, democracy, and the rule of law across Europe.

### KEY POINTS
- **European Convention on Human Rights (1950)**
- **European Court of Human Rights**
- **European Social Charter**
- **Social Committee**
- **European Court of Justice**
EUROPEAN COURT OF HUMAN RIGHTS & THE CONVENTION

THE COURT

- Individual & inter-state complaints (collapsing under its success)
- Declaratory judgments, awarding damages & costs
- May order general measures that change national law

THE CONVENTION

- Human Rights
  - Rights of association, conscience, opinion (Art. 11, 9, 10)
  - Right of possession or property rights (Art. 1 of Protocol No. 1)

Labour law a sensitive social area left for member countries to decide
- at least 47 labour codes for 47 countries
SOCIAL CHARTER & SOCIAL COMMITTEE

SOCIAL CHARTER

Social and human rights – including:

Express right to organize unions -
Art. 5

Social Committee has decided Social Charter Art. 5 also includes right to not associate

SOCIAL COMMITTEE

Rule on collective complaints from NGO’s & organizations – actio popularis

NOT a venue for “victims”

Bi-annual reporting

Committee of Ministers adopts resolutions “recommending” measures to achieve compliance
Legislation changed to allow post-entry 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 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 as factors: conscience and opinion (Art. 9 and 10)
.SIGURJÖNSSON 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 - no jurisdiction to rule on the issue of expulsion, but could rule on the compulsion to join

- Court found Art. 11 violation since applicant faced the dilemma of joining organization or no work. Also noted right of conscience and opinion (Art. 9 and 10) as factor
SWEDISH LABOUR LAW

Master agreements

Substitute agreements

Closed shops in some master agreements until 1992-1993 and in many substitute agreements

No domestic statute protecting freedom from forced association

No restrictions on using dues of non-members for political purposes & non-bargaining unit purposes
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
SWEDISH GOVERNMENT REACTION

• Closed shop issue should be solved through “dialogue”
• 2003: Minister of Industry invited parties for talks – he is “satisfied by the progress”
• 2004: Minister invited again, employer organization refused to attend – further talks “useless”, want legislation
• May 30, 2005: Problems solved when Sweden reported that all “15,000” closed shop clauses are gone
The issue of monitoring fees, also questioned by the employers, is, after the decision of the Committee of Ministers, is a non-issue.

Although *Evaldsson* case on dues pending before the European Court of Human Rights.
**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, next question: interference justified?
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 . . . 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
EVALDSSON JUDGMENT

Court found violation based on right of possession - (property rights)

Court declined to rule on freedoms: from forced association, conscience & opinion

Court found entitlement to verification that fees or dues collected by union corresponded to union’s costs of representation:

"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) was enough to find violation

Transparent accounting to non-members required if dues imposed on non-members

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

*Evaldsson & Sørensen* together render union dues imposed on non-members for non-bargaining purposes illegal under *European Convention on Human Rights*
UN Declaration of Human Rights not yet a Canadian reality. “No one may be compelled to belong to an association”

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 – what will they do with these?

“Special circumstances” in Advance justify forced membership; likely not available to justify provincial laws allowing or requiring “closed shops” or forced membership/conditional employment

Canadian “Rand Formula”: union dues for political & non-bargaining purposes imposed on non-members would be struck down in Europe as “disproportionate”
Application of closed shop agreement to conscientious objector

77 Where (a) a collective agreement . . . provides for membership in a union as a condition of employment or continued employment or provides for preference of employment to a member of a union; and

(b) an employee satisfies the board that

(i) the employee is a member of a religious group which has as one of its articles of faith the belief that members of the group are precluded from being members of, and financially supporting, any union or professional association, and

(ii) the employee has a personal belief in those articles of faith; the board may, on application of the employee, by order exempt the employee from complying with that provision of the collective agreement and in that case the employer may employ or continue to employ or grant preference in employment to, that employee without being in breach of the collective agreement.
Compulsory check-off 76(1)
Every collective agreement entered into, revised or renewed, between a union and an employer shall contain a provision requiring the employer

(a) to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular membership dues payable by a member of the union, except that where the employee is not a member of the union the amount deducted shall not include any portion of such dues that is payable in respect of pension, superannuation, sickness, insurance or other benefits that are available only to persons who are or have been members of the union or in respect of special assessments payable by members of the union;
Article 4 - Union Security and Dues Check-Off

4:06 All new employees shall, as a condition of employment, become and remain members in good standing in the Union as of the date of hire.
MB EXAMPLE SECURITY CLAUSE

Dr. Gendreau Personal Care Home Inc. and The Manitoba Government and General Employees’ Union (Health Care Support Services)

All new employees shall, as a condition of employment, become and remain members in good standing in the Union as of the date of hire. The above provision shall not apply to employees who have taken the vow of poverty.
Every union, . . .

19 (b) who requires an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the union as a condition of acquiring or retaining membership in the union . . commits an unfair labour practice.

But this is illegal in Council of Europe (Sørensen)