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IN LABOUR ISSUES

# Unions Boost Democracy and Prosperity for All

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Canadian Centre for Policy Alternatives – Manitoba office

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## Acknowledgements

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# Introduction

On any given day across Canada, thousands of unionized workers are engaged in making their workplaces, communities and country better. They may be learning how to combat sexism, racism, and other forms of discrimination. They may be taking classes on how to avoid workplace injury or having proposed legislative changes explained to them. Federal scientists may be negotiating to have revenue from their inventions used to advance scientific research. Committees of workers will be participating in charitable campaigns to help the disadvantaged, or organizing a rally in support of Idle No More, or launching a public campaign to improve the Canada Pension Plan so all workers can retire with dignity.

Somewhere in Canada, every day, a union representative is helping a worker who has been treated unfairly, and somewhere else a team of union negotiators is bargaining with an employer with the aim of improving or preserving workers' wages, benefits, and working conditions.

Unions play a vital role in democratizing labour-management relations, and in gaining economic security for working people. Despite the ongoing 30-year assault on unions and their constitutional rights, they continue to strive for

and achieve a good standard of living for millions of Canadian families. But all of their beneficial contributions to our society are being jeopardized and could be lost if the current assault on organized labour is not soon stopped.

Unions have been the subject of a massive propaganda campaign to demonize them: to smear them as obsolete, counterproductive, out of touch with Canadians, and more of an economic burden than a boon. Workers are being told they no longer need unions to represent them. They are assured that, with governments lowering their taxes, and business offering lower prices, they can prosper more as free and independent individuals than collectively as union members. (And they can save on union dues, too)

This full-blown corporate/political campaign designed to belittle and undermine the labour movement has already weakened workers' basic rights and impaired their union-won pay and benefits. And it's an onslaught that continues to be intensified. To confront and throw it back means challenging all the powerful forces behind it – not just big corporations and political parties, but much of the commercial media and even some big polling firms, too.

# Value of Unions: Industrial Democracy

For a purportedly democratic country such as Canada, it is strange that so many of us seem to accept, unquestioningly, the absolute right of the employer to arbitrarily dictate the terms and conditions of our workplaces. This is just one example of what Ralph Nader is talking about when he says that, “When all is said and done, democracy is widely liked and widely unpractised.” The quality of our lives and health of our families depends on the wages and benefits we receive in return for the up-to-90,000 hours we spend, on average, working during our lifetimes. But most workers have to leave any thought of democracy at the workplace door.

Employers wield immense power over the amount and hours of pay; over access to benefits; over health and safety on the job; and whether workers can participate fully and freely in designing the workplace and its procedures. Minimum employment standards apply to all workers, but the balance of power is always with the employer. Government-set standards are applied sparingly, often only on a voluntary basis. Options for discontented non-union workers are few: they can quit and look for another job, try to start their own companies, or contract out their services. The most effective option, of course, is to organize or join a union to represent their interests.

As of 2013, more than 4,700,000 Canadians were unionized – a considerable number, but still less than one-third of all workers in the country.

Through our constitutionally protected freedom of association, workers have the right to form a union and gain more say in shaping their workplaces. Unions cannot level the industrial playing field completely, because they are subject to legal restrictions varying across jurisdictions. But they do contribute significantly to some measure of industrial democracy, which, along with political democracy, constitute the two pillars of a truly democratic society.

The democratizing effects of unions are indisputable. Unions give workers a collective voice that rings much louder and clearer than would one worker’s voice. This influence is best exemplified by collective bargaining, which puts some limits on employers’ otherwise absolute power over the workplace. Collective bargaining is integral to industrial democracy, itself a correlate of political democracy.

Former U.S. Supreme Court Justice Louis Brandeis once notably declared:

Collective bargaining is today the means of establishing industrial democracy – the means

of providing for workers in industry the sense of work, of freedom, and of participation that democratic government promises them as citizens.

Industrial and political democracy are closely related. When union density is high, other democratizing influences such as progressive taxation and better income security programs such as unemployment insurance are also more prevalent. Workers who participate in democratic processes at work are more likely to vote in political elections, and be more informed about

issues affecting society at large. And when the labour movement as a whole gets behind an issue, it has the power to change society. Whether it be through our public health care system or the Canada Pension Plan, or almost any other major social program, the labour movement has helped shape Canadian institutions and values. To attack and weaken unions is to subvert the institutions Canadians most value, and to challenge democracy itself. It is also to attack workers' financial security and, in the process, the country's economic health.

# Value of Unions: Economic Stability

For a people so enamoured of democracy, Canadians are very passive about working in undemocratic workplaces. In a recent report examining unions and wages, economist Jordan Brennan discusses another odd development: that unions' enemies will not connect the dots between unions, wages, and the economic health of a country.

This "oversight" serves the corporate sector well. The less discussion there is about the value of unions, the fewer Canadians will consider joining unions to improve their working and living conditions. But non-unionized Canadians jeopardize their security by not giving unions some careful thought. If they did the math, as many have, they'd soon perceive the many benefits that union membership provides working people.

A comparison of U.S. and Canadian work-related data gives everyone a good opportunity to analyze the important role unions play in workers' economic security. Research in the early 1990s found that the difference in union density between Canada and the United States accounted for 40% of the wage differential between the two nations. It showed that Canada's higher rates of unionization was a key factor in explaining why Canadian wages were higher.

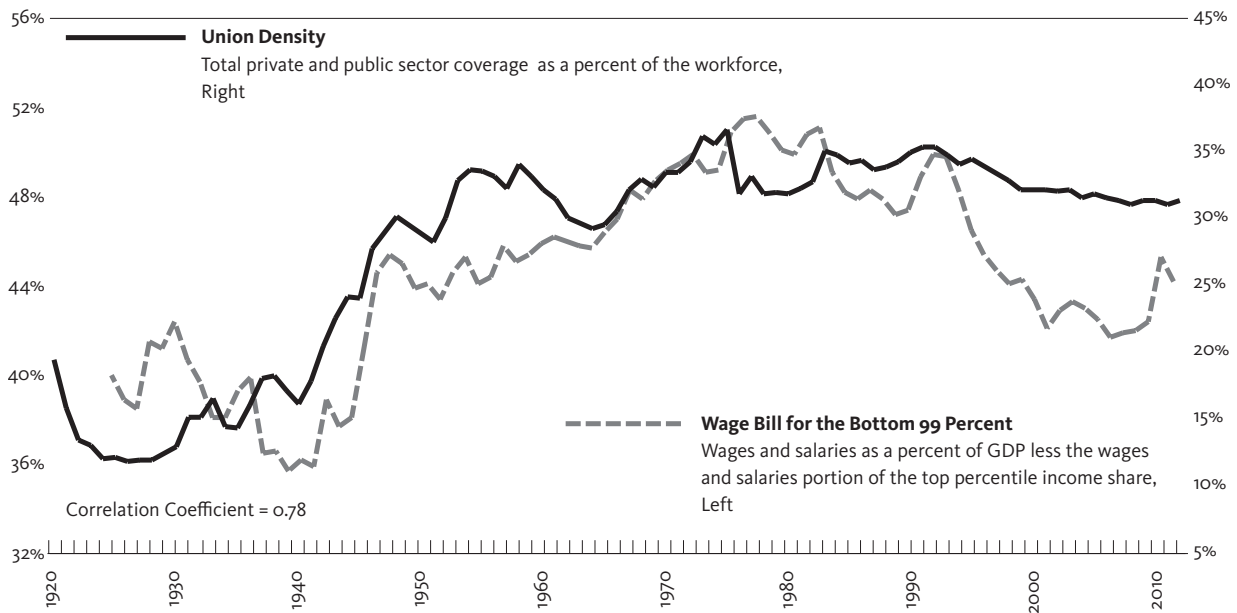
More recent research by labour economist Jim Stanford confirms the role Canada's higher union density (31% in Canada; 12% in the U.S.) plays in maintaining a higher standard of living here. The extent to which unions affect our living standards becomes clear when we compare historical data for the national wage bill and union density in both countries.

## Shared Prosperity

The following two graphs from Brennan's study tell an important story about unions and wages in Canada and the U.S. Figure 1 displays the historical data from Canada.

The left axis measures the percentage of the country's wage bill (total amount of wages paid/year to the bottom 99% per cent of all workers, unionized or not) as a percentage of gross domestic product (GDP). The right axis measures union density (the percentage of the workforce that is unionized). The decades are represented at the bottom, starting from 1920 and ending at 2010. The black graph line represents union density as it rises and falls over the decades, and the lighter graph line represents the national wage bill as a percentage of GDP, and also as it moves through time.

**FIGURE 1 Organized Canadian Labour Strength and the National Wage Bill**



**SOURCE:** Historical Statistics of Canada, Series F1 and F13 and E176; Cansim Tables 380-0016, 279-0026 and 282-0078. The top percentile income share is from: Saez, Emmanuel and Veall, Michael, retrieved from The World Top Incomes Database. Reproduced with permission of author.

The first thing that jumps out is how similar the trajectories of the two lines are. The correlation coefficient is 0.78, which means that we can be confident the two issues are related. But does one cause the other?

Brennan explains why we can be confident that the national wage bill does indeed follow union density. The fact that we see the same relationship over almost a century speaks to the strong likelihood of causation. As Brennan states, “It isn’t an historical accident that average hourly compensation stagnated and the national wage bill declined from the mid-1970s onward. The main driver of shared prosperity for all workers – unionization – declined after 1975.”

Also important to note is that the data used to construct the national wage bill did not include Canada’s highest income earners, who tend not to be union members. And the relationship becomes even stronger when we look at the graph for the United States.

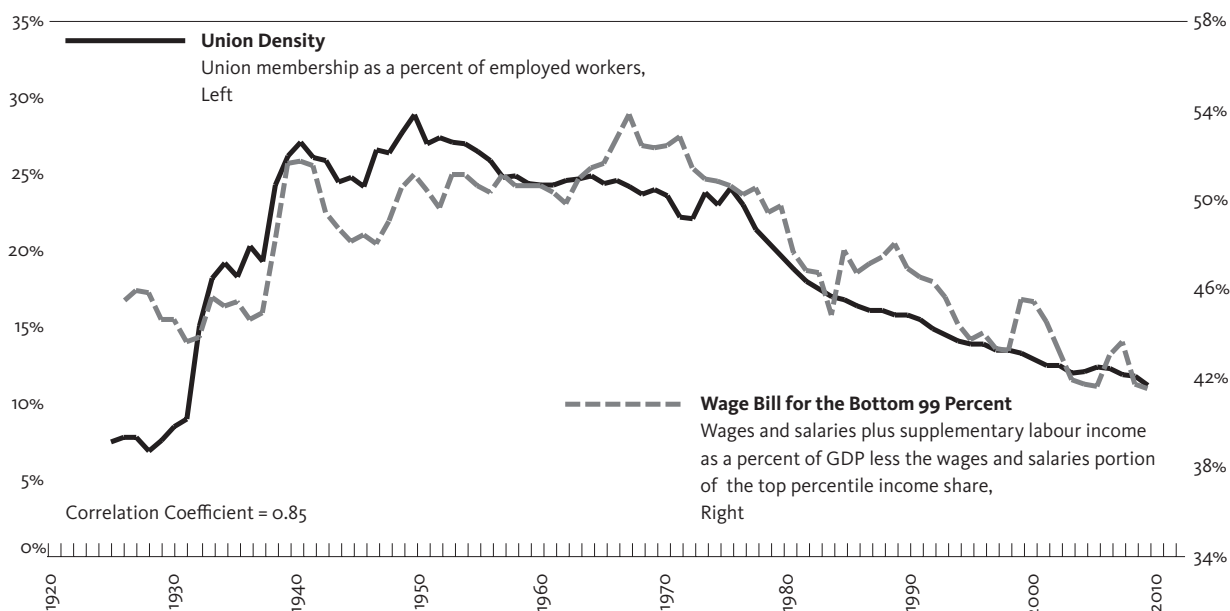
The U.S. graph – Figure 2 – tells the same story (*note: the left and right axes are reversed*

*on this graph*). In fact, the degree to which the two variables are correlated is even higher than in the Canadian example, at 0.85. The trend in Britain is similar.

The lightly shaded lines on these graphs confirm that the middle class is struggling in both countries. Whether it be the growing income gap, the growing wealth gap exposed by economist Thomas Piketty, or the worrisome post-recession job quality indicators starting to emerge – these graphs reflect what many Canadian workers are feeling: that, since the 1970s, they have been receiving less and less of what they produce as a society. At the time of writing, American workers were receiving the lowest portion of GDP since these records have been kept. The black lines tell us why this phenomenon is occurring: the weaker the labour movement, the smaller the portion of GDP workers can claim.

These two graphs dramatically show what we have lost financially and socially, and stand to lose should unions continue be weakened, and what we stand to gain if we revitalize them. When

**FIGURE 2 Organized American Labour Strength and the National Wage Bill**



**SOURCE:** Gerald Mayer (2004), union Membership Trends in the United States, Table A1, pp. 22-23 and Union Stat (<http://www.unionstats.com>); Bureau of Economic Analysis, Tables 1.1.5 and 2.1; top percentile income share data from research conducted by Thomas Piketty and Emmanuel Saez, retrieved from The World Top Incomes Database. Reproduced with permission of author.

the two lines in the graphs spike upwards, so do the lives and prospects of Canadians, whether it be through increased economic security, greater participation in industrial and political democracy, or access to cherished public programs. Conversely, when the lines descend, incomes stagnate, poverty rises, and an entire way of life starts to slip away.

The strong upward trend between the 1940s and 1980s represents the Post-War Accord, or what some refer to as the Great Convergence: the time when workers received a fair and larger portion of GDP, allowing the middle class to emerge and grow in Canada and the U.S. The greater strength of unions during this period

enabled them to push governments into implementing or improving major social programs such as the Canada Pension Plan and unemployment insurance, and to pass more progressive legislation. Labour was even sometimes given a voice in the formulation of economic policies, even if that voice was seldom heeded.

How, then, do we explain the downward trend of the black line in the previous graphs showing the decline of union density? If unions were playing such a positive role in society, why didn't the line keep trending upwards, with more and more workers joining unions? And why did union density decline so much more in the U.S. than in Canada?



## Right to Work for Less

Appeals to democracy, freedom of association, and economic security benefit workers, but not so much – at least in the short run – employers who tend to look only at their immediate position in a fiercely competitive economy. The need to compete effectively impels companies to look for ways to gain and keep as much of the national economic pie as possible. At the same time, workers want their fair share of the fruits of production and, when they receive it, their purchasing power boosts economic activity. But the imperative to compete induces many employers to ignore the many long-term advantages of fair wages and benefits. Business leaders know that keeping unemployment up to what they consider an optimal level – euphemistically referred to as the “natural” rate of unemployment – does much more than keep inflation down. It conveniently helps them discipline workers and keep wages and unionization rates down.

The “problem” perceived with a lower jobless rate is that workers will have more power when they have more choice about where to sell their skills. Groups of them may even claim some control over their wages and working conditions by joining a union. Looking at the above graphs,

we can see that unionization rates peaked in the years when unemployment was low and the economy was growing – the post-war period. When this period ended, workers in general and unions in particular came under attack. Punishingly steep interest rates, ostensibly intended to curb inflation, also conveniently kept unemployment high and sapped unions’ ability to organize more workers. But, as the graphs demonstrate, American employers have been much more effective than those in Canada in their efforts to debilitate unions.

As Ralph Nader notes, corporations in the U.S. have gained considerably more influence over governments and their policies there than have business leaders in Canada – so far. This emergence of an American economy so dominated by and dedicated to corporate interests provides the two main conditions for the diverging rates of unionization between the two countries. Firstly, there are distinctive inter-country differences in laws pertaining to unions and collective bargaining, and secondly, there is a much more blatant and active management opposition to unions in the U.S. — an opposition most starkly exemplified by the misnamed “right to work” movement.

## “Right to Work”

The very term “right to work” (RTW) displays the business class’s penchant for deceptive language. Who would disagree with the notion that everyone has the right to work? The implication is that unions prevent people from working, which is doublespeak at its most devious. It should be rephrased as “the right to work for less” because, wherever it is in effect, wage rates tend to fall.

Starting in the late 1940s in the southern U.S., several states enacted laws that dismantled union security – the obligation that all workers who are members of a union must pay dues to support the union’s operation. Labour laws normally require a union to represent and service all workers in a bargaining unit, whether they voted for the union or not, but RTW removes their obligation to pay union dues for the benefits the union negotiates for them. In this way, “right to work” laws promote freeloading by workers and erode a union’s financial stability – causing a drop in revenue that can – and often does – weaken a union to the point of collapse.

In 1955, the National Right to Work Committee was established in Virginia with the aim of having RTW laws adopted in every state. This grand scheme fell short, but nearly a dozen states – mostly in the American south – did enact and enforce “right to work” laws over the next few decades. This provides an interesting contrast between the RTW and non-RTW states. In the states where RTW has been adopted, union density – the number of unionized workers – is more than HALF the rate in the rest of the country. Many of the RTW states have median incomes that are well below the U.S. national average.

RTW states also employ a complementary strategy designed to weaken unionization by other political means. Labour relations laws and policies are amended to make union organizing and certification more difficult and to discourage workers from joining or remaining in a union. These tactics and their effect of draining unions’ dues revenue drive down union density (as

shown in the black line in the foregoing graphs). As union density declines, so do workers’ wages.

For decades, RTW was contained mostly within the boundaries of the agrarian, former slave-holding states, but, emboldened by decades of decline in the U.S. manufacturing sector and an economy weakened by the Great Recession, politicians in other states have also been able to implement RTW legislation. In 2012, Indiana was the first state in the industrial Midwest to do so, but, remarkably, even Michigan, formerly a bastion of unionized auto workers, has also fallen to RTW. The concentrated effort of American business firms to eviscerate the nation’s labour laws has since led to the adoption of RTW legislation in 24 states. This more widespread anti-unionism continues in the U.S. despite evidence that it lowers wages and thus consumer spending, and fails in its promise to entice more companies and investment to a more “business-friendly” environment.

It was this “beggar-thy-neighbour” race to the bottom that Canadian Justice Ivan Rand sought to avert in Canada when he issued his precedent-setting ruling on union dues, since known as the Rand formula.

## Union Security in Canada

The differences between labour legislation in the U.S. and Canada is best demonstrated by comparing RTW in the U.S. with the Rand Formula in Canada. RTW in the U.S. removes union security; the Rand Formula protects union security.

In 1946, Justice Ivan Rand delivered his famous arbitration decision that ended a strike at Windsor’s Ford Motor Company. Workers were striking to protest the employer’s refusal to implement a union security process. Rand understood the need for unions:

Labour unions should become strong in order to carry on the functions for which they are intended... [they are meant] to secure industrial civilization within a framework of a labour-

employer constitutional law on a rational economic and social doctrine.

Rand clearly believed that the state had an obligation to ensure social stability by regulating the forces of inequality and social marginalization that inevitably arise in an advanced industrial economy. In his own words:

In industry, capital must in the long run be looked upon as occupying a dominant position... Certainly the predominance of capital against individual labour is unquestionable.

Rand acknowledged that workers need a mechanism by which they can level the playing field. Unions are that mechanism, and the Rand formula is part of the legal framework that allows unions to exist.

The Rand formula, or dues check-off, forms the foundation of union security in Canada. The check-off process compels the employer to deduct union fees from employees' pay and pass them on to the union. All members in the bargaining unit – whether they voted in favour of joining the union or not – must pay dues to defray the union's operating costs. This requirement is based in the simple concept that "everybody benefits, everybody pays." To abandon this principle would be to deprive unions of the resources they need to negotiate for and preserve the contractual benefits they win.

The Rand formula guarantees union security federally and in some provinces (Manitoba, Ontario, Quebec, and Newfoundland/Labrador). Although the other provinces have not formally

adopted the dues check-off, none has (yet) prohibited it, as 24 U.S. states have done. This is undoubtedly a key factor in the divergence of union density rates between the two countries, and explains why some of labour's enemies in Canada keep trying to have the Rand formula scrapped.

The formula has so far survived all legal challenges. In the 1991 *Lavigne vs. Ontario Public Service Employees Union*, the Supreme Court of Canada ruled that the Rand Formula did not encroach on individual freedoms guaranteed by the Charter of Rights and Freedoms:

The state objectives in compelling the payment of union dues which can be used to assist causes unrelated to collective bargaining are to enable unions to participate in the broader political, economic and social debates in society, and to contribute to democracy in the workplace. These objectives are rationally connected to the means chosen to advance them; that is the requirement that all members of a unionized workplace contribute to union coffers without any guarantee as to how their contributions will be used.

The Supreme Court also affirmed that union representation "*carries the hallmark of democracy.*"

The strong support given the Rand formula by our Supreme Court is reassuring, but does not imply that union security is guaranteed. There is still a powerful and determined undercurrent of anti-union activism constantly seeking new ways to advance RTW-type legislation in Canada, and to undermine workers' freedom to join unions and engage in collective bargaining.

# Collective Bargaining and the Right to Strike

The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work.

— *The Supreme Court of Canada, June 2007.*

Whether it be negotiating a first contract or renewing an existing agreement, the process of collective bargaining is one of the few times workers can exercise any control over their workplace. The degree to which they manage to gain control will depend on a variety of circumstances, including the ability of their negotiating team, the financial situation of the employer, public support, existing labour legislation, and prevailing economic conditions. Issues covered in collective bargaining are not just about wages and benefits, but also cover such non-monetary issues as on-the-job health and safety, a grievance procedure, and the right to participate in workplace design and shift scheduling.

Unions have the right to bargain terms and conditions that affect all the workers in a par-

ticular workplace or bargaining unit. A negotiating team chosen by the workers meets with the employer to propose improvements in pay, benefits, and other working conditions. Employers reluctant to make concessions invariably push back, and if their intransigence persists despite mediation efforts, the union is left with only one last-ditch alternative: its right to strike.

Given the hardship workers endure when they lose their wage income, strikes are never undertaken lightly. But without their ability to withhold their labour as a last resort, their constitutional rights to freedom of association and collective bargaining would exist in name only. Why else would employers make any improvements to pay or working conditions if they had a powerless and virtually captive work force? Often it is only the threat of a strike that induces employers to bargain in good faith – a fact supported by the statistical record that over 90% of the disputes in which workers have voted to go on strike wind up being settled without a work stoppage.

The effectiveness of the right to strike (even if only the threat to exercise it) is reflected in the strenuous efforts by many employers and governments in Canada to fetter this basic union

freedom – and the worrisome extent to which some, including the current federal government, have succeeded in doing so. The combined cor-

porate/political onslaught on organized labour in Canada, though still less extreme than it is in the U.S., is of great concern.

# The Nature of the Attack

Ralph Nader warns of the pressure Canada is under to integrate more closely with the American model of a corporate-run society. We see how successful U.S. corporatism has been in enfeebling unions and suctioning income from workers to swell corporate profits. Unions, long considered a countervailing force against such inequity, are also the natural adversaries of large Canadian employers and their political allies, who are now striving to replicate the successful American war on unions in this country.

Their anti-union crusade is evident on a broad scale. Whether it be the recently defeated federal Harper government, provincial Conservative or Liberal governments; powerful right-wing lobby groups like the Canadian Conference of Chief Executives, the Chambers of Commerce, the National Citizens' Coalition, and the Canadian Taxpayers' Federation; the Fraser Institute and other business-funded think-tanks; fiercely anti-union corporations such as WalMart and Merit Canada; anti-union commercial newspapers, TV, and other media outlets; or even some conservative polling agencies — the labour movement certainly faces a host of prestigious and financially armed enemies.

## Political opposition

Both of the mainline federal political parties have colluded with the big corporations to expand the political power of Canadian CEOs, bankers, and big investors. Canada's political system runs the risk of turning into a corporate autocracy such as the one now found in the US. In the 1980s and early '90s, the Conservatives under Brian Mulroney signed international trade deals mainly designed to expand corporate power to global heights, and in the later 1990s the Liberals under Jean Chretien and Paul Martin gutted the Unemployment Insurance program, slashed social spending, and gifted the corporations with lavish tax cuts.

This political enhancement of corporate wealth and influence was enthusiastically continued and even intensified under the Conservative government of Stephen Harper, which added unions to its growing list of public enemies. Curtailing unionized workers' rights and freedoms is a central ploy in the grand scheme to weaken unions and further empower their employers — who happened to include the Harper government itself. On a broader scale, it also helps accelerate deeper integration with the U.S. by harmonizing Canada's labour practices with those across the border.

Nowhere is that imperative more clearly evident than in the drastic policy changes the Harper government made, or tried to make, when in power. They aggressively blocked or terminated the right to strike by several federal public sector unions, even vowing in advance to do so should such a union even consider taking strike action. They also used the spurious “need” to reduce their budget deficit (mainly the result of huge business tax cuts) to cut 37,000 federal public sector jobs, in the process substantially reducing the number of unionized workers in the public sector.

Back-to-work legislation of this kind, arbitrarily rescinding the unions’ constitutional rights, has been occurring more frequently, even though the number of work stoppages without such government intervention has been declining steadily over the past 35 years. Professor Ian Lee, with the Sprott School of Business at Carleton University, declared that the Harper government introduced a “new norm in labour relations” when it legislated striking employees of both Canada Post Corporation and Air Canada back to work in 2011. Although Parliament has passed such strike-ending legislation many times in the past, never before had it come so quickly – and not only to terminate a union’s bargaining rights, but also to dictate the terms of an eventual settlement or put strict limits on what an arbitrator could award the union.

Private member bills filed in the House of Commons by two Conservative back-bench MPs also drew much attention. Normally, such bills are put at the bottom of the government’s priority list and die without being processed. But these two were given a quick passage through the complicated and usually prolonged parliamentary process, leading to speculation that they had actually originated in the Prime Minister’s office. Both bills affect unions adversely, and will significantly impair their organizing and operating capacities.

## Bill C-525

On December 16, 2014, just before the Canadian Senate broke for the holidays, Senators voted 45 to 21 to give final approval to Bill C-525, even though the legislation contains several egregious errors. If it were to become law, federal-sector employees will find it much harder to join and certify a union, and their employers much easier to have the union decertified and ousted.

Currently, the federal and some provincial labour laws provide for automatic certification, or “card check.” If federal-sector workers want to unionize, they can do so by showing the federal Industrial Relations Board that it has the support of the majority of workers involved. The board can accept signed union membership cards as evidence of this support, and then certify the union without holding a vote. Bill C-525 eliminates the granting of certification on the basis of majority support proof alone, and requires that members vote in every case.

Not only does such a vote become mandatory under the bill, but a majority of all the workers in the bargaining unit must vote in favour of unionization. In other words, a failure to vote is counted as a no-vote. As for decertifying a union, a similar process is followed, but the ante is upped for those workers who want the union to remain certified. With non-votes again counted as no-votes, they will have to win by an unjustified 55% to preserve their union and the benefits it provides them.

Eliminating automatic certification on the basis of proven support by most workers will make it harder for workers to unionize and easier for employers to intimidate workers before and during the vote. According to Senator Joan Fraser:

It’s helpful to look at the record in jurisdictions that already have this mandatory secret ballot system. That includes several Canadian provinces, as well as various jurisdictions in the United States. Study after study shows two effects. One is that there are fewer applications



for certification; another is that the success rate of those applications that are made diminishes.

Bill C-525, if implemented, could result in Canada's public-sector unionization rate of around 70% being dragged down closer to the U.S. public sector unionized rate of 35% – which may well be the bill's real intention.

#### Bill C-377

Another backbench MP's bill that seemed to have better-than-average survival prospects, Bill C-377 made it to the Senate only to be soundly defeated. But the Bill was brought back for second reading and finally passed into law in June, 2015. This bill requires every labour organization, whether it be a national union, a union local, a federation of labour or a labour council, to file detailed annual reports with the Canada Revenue Agency. The reports have to disclose detailed financial information on all aspects of union activities.

The requirements are so onerous and time-consuming that the average union local will have to devote hundreds of hours every year to meet them. This bill not only greatly increases unions' operating costs, but also detracts from the important bargaining and other services they provide their members. For the anti-unionists who support the bill, on the other hand, it gives them additional fodder for denouncing the unions.

Bill C-377 passed despite being voted against by Senators of all political stripes. Pundits and analysts doubt the bill will survive federal and provincial legal challenges, given that, in former Conservative Senator Hugh Segal's words, it is "flawed, unconstitutional, and technically incompetent." Leading up to the October federal election, now Prime Minister Justin Trudeau promised to repeal the law if the Liberals won a majority. Unions will be watching closely to see if this promise is kept.

#### Provincial Attacks

The National Union of Public and General Employees (NUPGE) has documented the long list of government violations of Canadian unions' legal and constitutional rights that have occurred over the past three decades. Between 1982 and 2013, no fewer than 204 such regressive laws have been enacted in Canada, most of them by provincial governments. The following examples barely scratch the surface of a deep and worrisome record of legislative attacks on unions and their members.

- Alberta has the most restrictive public-sector labour laws in Canada, prohibiting all public workers from striking. In 2013, Bill 45, the *Public Sector Services Continuation Act*, was introduced, putting further restrictions on Alberta's unionized workers. The bill expands the definition of a strike to cover any sort of "slowdown" or activity that delays or disrupts services. More remarkably, it actually forbids workers from even *talking* about going on strike, and in a further assault on freedom of expression, even prohibits analysts or experts who are not part of the union from suggesting that workers need to go on strike to gain the contract improvements they seek. Both the United Nurses of Alberta and the Alberta Union of Public Employees (AUPE) have filed court challenges to this bill.
- Just in case Alberta's workers didn't get the message, the province also introduced Bill 46, the *Public Service Salary Restraint Act*. The purpose of this bill was to remove AUPE's right to apply for arbitration while it was in negotiations with the government. The bill arbitrarily imposed a non-negotiated settlement on the workers. A Court of Queen's Bench judge issued an injunction against Bill 46 in 2014, stating



that it had the potential of causing long-term damage to Alberta labour relations.

In 2007, Saskatchewan's Bill 5, An Act respecting Essential Public Services, defined such services so broadly that almost any public-sector worker could be considered essential by the government and thus banned from taking part in a strike. This legislation was the inspiration for the federal Conservative's own sweeping labour law changes buried in Bill C-4, passed in 2013. Later, Saskatchewan's Bill 6, An Act to amend the Trade Union Act, drastically curtailed workers' ability to unionize and engage in collective bargaining. In 2010, the International Labour Organization, a United Nations agency, stated that Bills 5 and 6 violated the commitments Canada had made to abide by international labour standards. A provincial court judge also found both bills to be unconstitutional, but the provincial government appealed to the Supreme Court. On January 30, 2015, in an historic ruling, the Supreme Court stated that:

The right to strike is not merely derivative of collective bargaining; it is an indispensable component of that right. It seems to me be the time to give this conclusion constitutional benediction.

Now that the right to strike has been enshrined as a constitutional right, we can expect federal unions to launch their own challenge to the federal restrictions brought in under Bill C-4.

### **Unions for a new world**

Reading about the decline of unionization in North America perpetrated by anti-union employers and governments, as described above, might be considered grounds for pessimism by the supporters of organized labour. But there are also encouraging signs that the battle to save unions from their corporate and political foes is far from lost. This is especially true in Canada, where acceptance of basic labour rights and values remains unshaken and most people

want those rights and freedoms preserved. The January 2015 Supreme Court decision making the right to strike part of our constitution reaffirms this country's commitment to upholding the rights of workers.

We should also consider the defeat of the Ontario's Conservative party in that province's last election. Running openly on a promise to bring Right to Work laws to Ontario, Tim Hudak's party was handily trounced by a somewhat labour-friendlier Liberal party led by Kathleen Wynne. And the denunciations of federal Bill C-377 by conservatives such as former Senator Hugh Segal showed they still respect the legitimacy of unions in Canada and their right to be treated fairly by law-makers.

The attacks on unions will continue, of course, as will the pressure to "harmonize" our labour laws and standards with their weaker counterparts in the United States. Canada's unions will need to muster their strongest, effectively strategic resources to prevail against such powerful adversaries. Recommended ways of revitalizing the labour movement to meet this challenge have come in volumes from labour relations specialists and sympathizers, and this essay does not pretend to offer anything new.

But there are a few tactical options that bear consideration. We have argued, for example, that one of the main reasons for the decline of union density is the passage of so many laws that erode unions' ability to organize and maintain their membership. Another handicap has come from economic "globalization," whose structural changes have gutted our manufacturing sector and led to mass layoffs of Canada's well-paid unionized industrial workers. The subsequent enforced shift of employment to the low-paid service sector, whose workers are very difficult to organize, has become a deterrent to union growth. Many sympathetic observers of the labour movement, however, still believe that unions could break down these organizing barriers if they developed more innovative methods.

Since a larger number of women than men are now unionized, it makes sense for unions to focus their organizing efforts on the sectors where women tend to work. Contrary to traditional assumptions that women are less likely than men to want to join a union, recent research finds that they are now the most fertile source of union growth and renewal. Charlotte Yates, professor at the School of Labour Studies at McMaster University in Hamilton, emphasizes the need for gender-organizing strategies to address the needs of female workers, often different than those of men. Women tend to work for smaller companies with lower profit margins and in the non-profit sector, so new thinking is also needed about how best to provide bargaining benefits and other improvements in these workplaces.

The makeup of Canada's workforce has changed dramatically over the past 50 years, so unions need to develop a new gender-sensitive culture that accommodates the way women interact with their managers and colleagues at work while balancing a disproportionate amount of unpaid family work at home. Much progress has been made in the public sector, where most unionized women work, but private-sector unions also need to make headway in this area so they can better deliver what female workers need.

The literature on union renewal also talks about the importance of community unionism and its potential for organizing the precariously employed who are difficult to reach through traditional organizing campaigns. Community unionism offers a different organizing approach, especially for female and immigrant workers who tend to gravitate to smaller, non-industrial workplaces. Unions are urged to work with community groups that advocate for such precariously employed or unemployed workers. Successful examples of community unionism are found around the world, including in Canada, and could be greatly bolstered by adopting a system of employee relations recommended by the International Labour Organization (ILO).

In Canada, Professor Roy Adams, a labour relations specialist and human rights activist, has been a strong proponent of recognizing the right of all workers to bargain collectively, whether they are represented by a certified union or not. His arguments are based on the conventions and jurisprudence of the ILO, which are much more attuned to the needs of all workers than is the labour legislation found across Canada. That said, Adams does not call for the replacement of labour legislation, which does provide workers with important safeguards, especially when dealing with employers refusing to recognize their rights. But the very rigidity of this legislation that protects workers can also forestall the challenging task of organizing the many thousands of Canada's private-sector employees who remain outside the protection certified unions can offer. What is required, Adams argues, is a wider variety of ways in which workers can engage in collective bargaining.

If the ILO model were adopted, far more Canadian workers would be enabled to participate in collective bargaining. The ILO recognizes "social partnership," which includes employee representation, as a crucial component of any democracy. Adams, among others, argues that employment relations should be aligned with international human right norms (as per NUPGE's "Union Rights are Human Rights" campaign). Under a human rights model, all groups of workers in Canada could bargain collectively with their employers and would also have the legal right to strike. The notion that, without a certified bargaining agent, they should have no collective rights would be invalidated. As explained by Adams:

In fact, in addition to the human rights standards that Canada has promised to promote and abide by, the Canadian Supreme Court has declared that all Canadian workers, whether represented by a certified agent or not, have the right to organize, to choose their own leader, to formulate their own program, and to make representation to their employers.

Canadian society and global economic forces have been transformed since unions first gained recognition and the right to organize workers and represent them in dealing with their employers, and many supporters of unions are waiting in anticipation for them to adapt to these changes. But renewal and revitalization of the labour movement will not be easy. Unions have even been unable to re-educate and politicize most of their own members, let alone precarious workers outside the movement who are bearing the brunt of the Great Recession and government austerity measures.

In its current besieged and weakened state, the labour movement is struggling to mount an effective response to the new normal: stagnant wages, insecure employment, massive cuts in public services and jobs, and alarming levels of household debt. Reaching out to unorganized

and precariously employed workers through community unionism and taking leadership on issues of social importance would not only boost membership but also strengthen labour's voice on the national scene.

Nowhere is this voice needed more than in the monumental challenge of dealing with climate change. Civil society and environmental activists and NGOs striving for climate justice are trying to strengthen their campaign for an urgently needed transition to a green economy. Their collective voice, however, will not be raised sufficiently without the organizing expertise and broad institutional framework that unions provide. The politicization of rank-and-file members and support of community activism will be key components in bringing the potential influence of labour to the task of transitioning to a green economy.

## Conclusion

Imagine a map of Canada, and place points of light across the country: hundreds of points of light, each one representing unionized workers in action. Lights would glow from coast to coast, from a demonstration demanding improvements to the Canada Pension Plan, to a classroom where workers are learning how to handle dangerous chemicals, to a grievance hearing where a union rep is advocating for an injured worker. Many of the lights would stand for union halls where members are debating resolutions on political issues, learning about the detrimental effects of free trade agreements, or examining the many institutional changes required for transition to a green economy.

Other lights would represent public forums where union leaders join with other members of civil society to discuss cuts to Canada's public health care system, or the damaging effects of privatizing our public services. With so much activity, the map is bathed in light and Canada as a whole shines more brightly than does the United States.

But what would our country look like from space in this scenario if all the federal and provincial anti-union legislation now on the books or being planned actually become law? If federal Bill C-565 and Alberta's Bills 45 and 46 were implemented? If Bill C-377 is not repealed? If the pro-

ponents of "right-to-work" laws actually had them adopted in any Canadian jurisdiction? Imagine nearly all these lights of hope and renewal being extinguished, one by one. And, as our hypothetical map of Canada grows dimmer, it gradually blends with the American map, until you can no longer distinguish one country from the other.

At the light fades, the lines in our two graphs also drop lower until the Canadian graph becomes a duplicate of the U.S graph. As Jordan Brennan points out, for every percentage point the union density line goes down, the average income of Canadian workers falls by \$500 a year. If union density in Canada were to drop to the U.S. level, the bottom 99% of workers would suffer a 16% fall in average income.

The Great Convergence – the attainment of a level of income equality that allowed our middle class to emerge – has given way to the Great Divergence – the transfer of wealth, income, and power from the many to the few. That we are now experiencing this Great Divergence is undeniable. Equally clear is the need to reinstate workers' rights in their workplace and throughout the political sphere.

Only then will Canada shine brightly and become the truly great country it could be.

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