

May 2006: Labour Rights are Human Rights

Most Canadians being denied collective bargaining rights

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In the ideal political economy promoted by the UN's International Labour Organization, the conditions of work of nearly all working people are negotiated by independent representatives of their own choosing. The situation in Canada falls well short of that ideal. A significant majority of Canadian workers are unorganized and thus have no effective influence over conditions under which they work—conditions critical to their well-being.



The basic argument of my new CCPA book, *Labour Left Out*, is that the main reason for that state of affairs is the failure of Canadian governments to deliver on their ethical and legal obligation to protect and promote collective bargaining as a human right.

Respect for human rights is an essential element of democratic society. It is a prime duty of all democratic governments to ensure that everyone may exercise their human rights as freely as they exercise their right to breathe and sleep. In 1998, the ILO reaffirmed solemnly, and with Canada's strong support, that a set of core labour rights are human rights. Among them are freedom from child labour, discrimination and forced labour, freedom of association, and "effective recognition of the right to organize and bargain collectively."

International human rights norms insist that each of these rights must be accorded the same respect and be treated the same. As stated in the 1993 Declaration of Vienna: "All human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

With respect to some human rights, we have made considerable progress in recent years. A few generations ago, women had no right to vote and few legal rights. They were treated in law as appendages of their male spouses. Not long ago, Japanese-Canadian citizens were rounded up and put into compounds—not because they committed any crime, but simply because of their ethnicity. Even more recently, our Aboriginal peoples were basically treated as wards of the state with rights and freedoms much inferior to those of fully-fledged Canadian citizens. Until even more recently, if you were disabled, you were shunted aside and prevented from participating fully in Canadian life.

For these human rights, we have experienced a revolution in Canada. In every province and territory, there are now Human Rights Commissions mandated and equipped to protect and promote the rights of these groups.

But labour has been left out of the human rights revolution. Instead of being effectively protected and promoted, the rights of labour have been going in reverse.

In Canada, the right to organize and bargain collectively exists in theory for most employees, but it is a right whose exercise is hobbled by obstacles and dangers. In the public sector, when employees attempt to negotiate decisions critical to their welfare, their governments frequently pass ad hoc legislation imposing working conditions upon them. That action offends both the letter and spirit of international human rights law—law that Canada has promised to abide by. Most public sector strikes that are characterized by the press as "illegal" are instead the result of action contrary to statutes that should never have been passed in the first place—statutes that blatantly offend international law. For their illegal behaviour, both federal and provincial governments have been repeatedly condemned by the ILO, the UN agency charged with overseeing the implementation of global labour standards.

Such behaviour not only strikes at the heart of the human rights of Canadians, but also jeopardizes the welfare of workers around the globe who depend upon the international convention that all human rights are sacred and must be treated equally. If Canada, a self-acclaimed champion of human rights, may deliberately and with calculated intent offend one human right, then why should governments elsewhere refrain from discriminating against ethnic minorities, or against women? When we consciously offend human rights at home, how can we credibly condemn child exploitation and forced sex-trade trafficking elsewhere?

In Canada, our neglect of the human right to organize and bargain collectively is even more evident in the private sector. Wal-Mart, for example, has put massive resources into preventing employees from having any collective say over their conditions of work; into maintaining complete, unfettered control over labour management and labour costs. When Wal-Mart hears of any attempt by employees to associate with a view towards negotiating their conditions, the company's executives typically send in a team of labour-busting experts to pressure them to decide against that course of action.

With the principle in mind that all human rights must be treated the same, imagine that you are a woman who has decided to apply for a job at a company known to have a predominantly male work force. Now imagine that the company sends a team around to your house to persuade you to withdraw your application. Rightly, you would be outraged. Most likely the incident would precipitate demonstrations and condemnatory editorials in the local press. But, although Wal-Mart's procedure with respect to union organizing is the precise human rights equivalent, its behaviour is legal (although sometimes its agents go too far and offend the law), and unremakable. Rarely do you see editorials condemning Wal-Mart's publicly stated policy of dissuading their employees from exercising their human right to organize. Even more rarely does one find examples of politicians talking out against the union-avoidance philosophy embraced by the great majority of non-union employers. We have allowed conventions to set in that accept such behaviour as normal.

In the private sector, many of the unorganized are the working poor, immigrants, and farm-workers, whose pay and conditions are inadequate to allow them to participate fully in Canadian society. They need effective representation to help them improve their material conditions. Others, like those at high-tech firms like IBM, have pay and benefits that are quite adequate or even cushy. But, whether well compensated or not, the conditions of unorganized workers depend on the whim of their boss. Any day in the week, the boss may tap them on the shoulder and say, for any reason or no reason: "We've decided to change the conditions on which you have come to expect and rely upon." Recently, the pensions of IBM workers in the U.S. were changed radically, for the worse as far as most employees were concerned, but without their advice or consent.

To impose conditions upon anyone without their advice and consent is to treat them as less than human--to strip them of their dignity as human beings, whatever their level of material welfare.

Although collective representation is a human-rights imperative, the practice of collective bargaining in the private sector in Canada is declining, and has been for some time. It peaked several years ago at about 30% of the labour force, but is now down to under 18%. And it is falling even in those jurisdictions, like Quebec, considered to have the best labour legislation.

Why is that? The great lie underpinning our current conventions is that employees, in growing numbers, prefer not to exercise their right to negotiate their conditions. They prefer their employers to make critical decisions for them without their advice and consent. Imagine an employer saying: "Would you folks like to choose a representative to sit down with us in order to work out a mutually acceptable wage and benefit system?" And the employees responding "Nah, you do it for us. Whatever you decide is fine with us. Cut our wages, do away with our benefits, increase or reduce our hours, lay us off, treat us mean and cruel, treat us like fools, why would we want to have anything to say about that?"

One survey, discussed in *Labour Left Out*, found that nearly everyone wanted to have a say through a collective representative about their conditions of work. About 40% of the currently unorganized want to be represented by a traditional union acting as a state-certified bargaining agent. If they were to get what

they want, traditional union density would double. The remainder don't want exclusion as Canadian policy nonsensically assumes; they don't want to be at the mercy of their employer's whim. Instead, they want less formal, non-statutory arrangements.

An example of what such an arrangement might look like is the McMaster University Faculty Association, of which I am a member. Although our association is not certified, like certified unions we negotiate wages with final offer selection to settle impasses. We also have a well-functioning grievance procedure and even have a check-off arrangement. Indeed, some of the arrangements the association has been able to negotiate are better than those found in typical collective agreements. For example, we have representation on nearly all university committees that have any impact on faculty interests. The McMaster Model, as it is fondly known, works fine because in the specific circumstances our employer has accepted the association as an integral part of enterprise governance. Were similar arrangements pro-actively promoted and backed by governments and accepted by employers, they would very likely flower across the economy. But, as things now stand, they are almost unknown as a representational option.

So, if essentially everyone wants representation of some sort, why are the large majority of employees without it? Most employers don't go as far as Wal-Mart in opposing the exercise of freedom of association, but nearly all unorganized employers make it known to their employees that they do not want them to exercise their collective rights. They make it known that employees who do so are "traitors" against corporate culture. Imagine an employer calling an employee into his/her office and saying: "I'm a Tory (or Liberal, or whatever) and would like you to vote for my party," or even worse, "I would prefer it if you did not vote at all, and, since I know the people working at your poll, I'll know it if you do." Or perhaps, "Don't vote socialist because if you do we may have to shut down and you'll lose your job." Whether that sort of thing is legal or not, there are norms in place that ensure it doesn't happen. But we benignly accept behavior that is the human rights equivalent when it comes to union organizing.

According to international standards that Canada has promised to respect and promote, governments have a responsibility to ensure that workers are aware of their labour rights. They should be trying to expand the practice of collective bargaining. That is one of the ILO's explicit goals, and, as a member of the ILO, Canada has endorsed that goal. But, as the responses to my inquiry to all of Canada's labour ministers make clear, that's not happening. Our governments are complacent about the decline of collective bargaining. Their policy is to remain "neutral." Indeed, government neutrality with respect to the right to organize is strongly embedded in Canadian labour relations culture. In remaining neutral, governments behave much differently than they do with respect to other human rights and, in doing so, deny the human rights character of the right to collective representation.

Our Human Rights Commissions in every jurisdiction have the mandate to pro-actively promote respect for human rights and acceptance of them and their implications by employers and landlords. For example, the Ontario Human Rights Commission has a mandate "to develop and conduct programs of public information and education and undertake, direct, and encourage research designed to eliminate discriminatory practices that infringe rights under this Act."

There is no such agency charged with eliminating practices that have the effect of denying workers their right to organize and bargain collectively.

Why are labour rights treated so differently from other human rights? Why do governments stand by idly as corporations actively work to dissuade employees from exercising a human right? Why are we all so tolerant of norms that permit the treatment of workers as commodities rather than as dignified human beings?

Once a set of conventions gains a hold on society, it is difficult to displace them. But it can be done. There is no better example than what has been achieved in establishing the rights of visible minorities, women, people with disabilities, and our Aboriginal peoples.

Recently, four major Canadian unions--the National Union of Public and General Employees, the United Food and Commercial Workers, the Canadian Professional Police Association, and the Canadian Teachers' Federation--formed a coalition to promote compliance with the international consensus behind the notion of labour rights as human rights. I hope that this coalition will become the cutting edge of a mass movement that will establish a set of institutions that comply fully with international norms and ensure the dignity of all.

But I am also a realist. Most Canadians have been conditioned to accept our current conditions as tolerable. The idea that the right to organize and bargain collectively should be treated the same as the rights of visible minorities and women has not yet penetrated Canada's collective consciousness. Most of the facts reported in *Labour Left Out* are known to governments, but the political forces that might cause them to do something positive about them have not yet jelled.

Several government respondents to my inquiry reported that, as far as they were concerned, the system was working just fine. There is no evident upswell of discontent; no significant demand for fundamental change.

It was much the same in Britain in the 18th century when the anti-slavery movement got off the ground. And it took 50 years for that movement to get people aroused enough to insist that slavery be outlawed. I hope that it doesn't take that long to get collective bargaining established in Canada as a human right deserving respect and treatment equal to that accorded other human rights.

However long it takes, my faith is strong that it can be done. As Margaret Mead once said: "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has."

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