

*The Societal Importance of Unions: A Legal Perspective*

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Unions are directly to thank for many of the rights and benefits enjoyed by all Canadians today, unionized or not. The work of unions gave Canadians the right to safety at work, parental benefits, and minimum wage, just to name a few.<sup>1</sup> Unions continue to make significant contributions to many facets of society including, but not limited to, the movement towards substantive equality in the workplace, stimulation of the economy, and the overall improvement of health and safety of workers.<sup>2</sup> There are a wide variety of ways unions improve today's society, however, I have chosen to focus this essay on the social importance of unions from a legal perspective, particularly surrounding their effect on the realization of employee rights in the workplace, and access to justice. Employees are legally entitled to certain rights in the workplace, but without knowledge and understanding of these rights, or access to the means and methods necessary to enforce them, these legal rights can ring hollow.

Labour and employment laws can be extremely complex, and expecting the average employee to have a comprehensive understanding of which Acts, Regulations, case law, and contractual provisions apply to their employment relationship – let alone how to interpret these documents – is completely unrealistic.<sup>3</sup> Many non-union positions do not have employment contracts at all, or have contracts which are limited in scope or ambiguous in language. For these reasons, it may be difficult for non-unionized employees to be fully aware of their rights. In contrast, in a unionized workplace a collective agreement will clearly set out terms and conditions of employment.<sup>4</sup> Additionally, unions provide support and education to employees to ensure they understand their entitlements.

While legal rights exist for all Canadian workers, these rights are often overlooked by employers either through ignorance, or in extreme circumstances, a malicious disregard for the law. As we know, the mere existence of a law is not enough to ensure compliance; if it were, there would be no need for police to enforce criminal law. Similarly, even with an employment contract and statutory protections, some employers will not fulfill their obligations to employees. Without a union's oversight and ability to

take steps to enforce rights, employees are particularly vulnerable to being taken advantage of by their employers.

Even if all employees are completely aware of their legal rights, significant barriers still remain in enforcing these rights without unions. There is an inherent inequality of bargaining power between individual employees and employers. This power imbalance can leave non-union employees reluctant to bring their concerns forward for fear of retribution. Bringing forward an issue directly to an employer may not be a safe option for a vulnerable non-union employee who relies on their wages to survive. In contrast, an employee in a unionized workplace can bring an issue to their union representative. A union representative can take the issue forward on their behalf, and offer the protection of third-party oversight and the provisions of the collective agreement.

Even in cases of the most serious breaches of workplace rights, it may not be a realistic option for a non-union employee to take legal action against their employer. For an individual to bring a claim against an employer there are substantial legal costs, time, and effort involved. For the average employee, it may not be possible to devote time away from their work, and their families to pursue a legal action. Additionally, as an unfortunate reality of the modern justice system many employees will be unable to afford to retain legal counsel. Regardless of income level, Legal Aid in the Northwest Territories does not provide legal representation for Employment Law matters.<sup>5</sup> This leaves many employees in the situation where they are unable to pursue legal action, or must attempt to represent themselves. Individuals are also less likely to pursue novel claims, due to the high risk of an expensive legal action with no return. Over time this can limit the progress and development of employee rights.

Comparatively, taking legal action in a unionized workplace is much more feasible. If an employee's grievance rises to the stage of legal action, it will take place in the form of arbitration between the union and the employer. The individual employee does not shoulder the legal burden. The union fights on

their behalf, and will hire a lawyer at their own expense if necessary.<sup>6</sup> Additionally, unions have the capacity to grieve issues in which the legal costs may outweigh the benefits on an individual scale, but which affect many union members (similar in concept to a class action lawsuit). Unions can also afford to advance novel claims for worker rights. These types of cases can have significant positive effects on the entire union membership, and can advance rights for all of society by setting legal precedents.

New technological innovations are continuous, and society is rapidly changing both locally and globally. With these societal changes come changes to the way we do our work, changes to where work is done, and even changes to the very nature of employment relationships. The resources and negotiating power of unions are critical to ensuring that the rights of workers progress in tandem with these developments. For example, in a recent legal development a union successfully argued that an employer's official social media page constituted part of the workplace, and therefore the employer was responsible to protect their employees from online harassment on said page.<sup>7</sup> Due to the barriers discussed earlier, it is extremely unlikely the success of a novel claim such as this could have been possible without union involvement.

This is just one small example illustrating the continued need for unions leading the way to protect workers now and into the future. There are significant and pressing labour issues imminently facing the Canadian workforce today. Job security in an increasingly globalized and technologized society, employee rights to privacy, and an aging workforce are only a few of the issues which must be addressed. In the face of a rapidly changing society the role of unions to push for the development and improvement of workplace rights, and to protectors and enforce existing rights remains as indispensable as ever before.

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