

The Crime of Working in Quebec

The air is cooling. And, as the light of day yields to the earth's curvature, the descending darkness begins to envelop the capital city of Ottawa. A few short hours ago, the streets were teeming with bustling traffic, busy public servants, business people and children eagerly touring Canada's greatest symbol of democracy - the Parliament Buildings.

Gazing across the Ottawa River to Hull, Quebec past a stand of sturdy maple trees resplendent in their blanket of multi-coloured fall foliage, one sees the MacDonald-Cartier Bridge. Named after both an English and a French speaking statesman; the bridge symbolizes the forging of two great democratic cultures in the formation of a unified and independent Canada.

As evening emerges from the dusk, this idyllic setting is disturbed by a piercing light beginning to glow more menacingly -its objective to light the area of an inspection booth on the Hull side of the bridge. Inside, inspectors don their day-glow fluorescent jackets to ensure they will be visible to oncoming traffic and ready themselves for the tasks to come. Yes, another evening is about to begin at Checkpoint Charlemagne.

Wait a minute! What is all this? A "Big Brother" type scene from some avant-garde film being shot to debut at a Montreal film festival? Perhaps a low budget movie whose producers couldn't afford to go to Berlin, Germany to shoot a cold war movie scene at the real Checkpoint Charlie? But, wasn't the Berlin wall torn down about ten years ago?

While this depiction is fictional, it does serve to illustrate the wall of sorts that exists around Quebec when it comes to working in that province's construction industry. While all provinces have trade certification rules, Quebec's rules are unique in Canada. These rules not only limit the natural flow of construction workers from other provinces coming into Quebec. They also prevent qualified construction workers within Quebec from plying their trade.

Problems with Canada's Social and Economic Union

Though Quebecers are generally free to work in other parts of the country untold numbers of Canadians, particularly Ontarians, New Brunswickers and Newfoundlanders are barred from working in Quebec's construction industry through a series of severely restrictive laws and regulations. The existence of these rules and regulations is indeed curious for Stephen Harper, former Reform Party MP and President of the 40,000 member National Citizens Coalition (NCC) whose motto is "more freedom through less government". Given language differences, which serve as a "natural barrier" to the in-flow of construction workers, Mr. Harper suggests the regulations are symptomatic of "problems with Canada's social and economic union".

These problems, are evident in the imbalance of 6,000 Quebec construction workers moving freely on a daily basis into Ontario compared to the estimated 1,000 Ontarians working in Quebec. This recently caused Ontario's government to implement retaliatory laws and regulations targeted against Quebec-based construction companies and workers. Along with protectionist counter measures, Ontario launched an unprecedented "Fairness is a Two Way Street" publicity campaign. While western Canadians may recall heated exchanges between

Alberta Premier Ralph Klein and BC Premier Mike Harcourt in the mid '90s over inter-provincial competition for construction contracts, that dialogue came nowhere close to Ontario's campaign which included posters and a complaint hot line for aggrieved Ontarians to call.

Canadian Heroes

Though the issue of inter-provincial mobility of construction workers has festered between Quebec and its neighbouring provinces for over 30 years, this is only half the story. Much of the more recent publicity has focussed on the plight of thousands of Quebecois construction workers who are disenfranchised as a result of that province's regulatory regime. Led by President Jocelyn Dumais, a Gatineau contractor, under the banner of the Association pour le Droit Au Travail (ADAT), this group has organized and engaged in both legal and civil disobedience campaigns. Their public protest, and what they will argue before the Supreme Court of Canada on March, 20, 2000, is about Quebec's construction employment laws forcing compulsory unionization on workers.

At the height of their protest in April 1999, some of these disenfranchised workers, whom noted National Post writer Diane Francis referred to as "Canadian Heroes", blockaded the Quebec Government's Casino in Hull for 48 hours. To bring further pressure to bear and greater national attention to their plight, they then blocked the MacDonald-Cartier Bridge between Ottawa and Hull and four other access points to/from Hull delaying an estimated 100,000 vehicles from making their way between the two provinces.

These actions helped prompt the Quebec and Ontario governments to reach a limited compromise. Amidst great fanfare, the two governments announced the temporary relaxation of rules so that Ontario contractors and their employees could work in the Hull region - in particular, on the \$200 million Hull Casino project. For its part, Ontario agreed to suspend its retaliatory measures and allow Quebecers to continue to move freely into the province to work.

This settling of political dust, however, came as cold comfort to ADAT members and adherents. To work in Quebec, native Quebecers were still required to obtain a "Certificat de Compétence" (CDC). And, to obtain that CDC, Quebec workers were still required to join a union. So at the end of the day, the Ontario-Quebec accord meant little to those refusing to join a union for they **WERE STILL BARRED FROM LEGALLY WORKING IN QUEBEC'S CONSTRUCTION INDUSTRY!**

How is it that such a "soviet" style regime of registration and enforced unionization could exist in Canada? Did our nation not send its sons and daughters off to foreign shores in two World Wars and the Korean conflict to defend freedom and democracy? Did Canada not play a key role in developing the Universal Declaration of Human Rights which codified generally accepted inalienable rights and civil liberties?

Universal Declaration of Human Rights

Article: 20.1 Everyone has the right to freedom of peaceful assembly and association

Article: 20.2 No one may be compelled to belong to an association

Did Canadian's not stand resolutely with NATO allies to deter aggressive threats to democracy when the Berlin Wall stood as the epitome of oppression?

An Unholy Alliance

The 1950's and 60's was a time of tremendous economic expansion in Quebec and throughout North America. As economies expanded, so did the fortunes and strength of organized labour. In Canada, the gain in strength was due, in part, to a landmark 1946 Supreme Court decision written by Mr. Justice Ivan Rand. Known as the Rand Formula, the compromise, which ended a bitter strike at Ford of Canada, permitted employees to opt out of union membership as long as dues continued to be paid to the representative union.

During this period, contractors came to increasingly rely on construction unions and their hiring halls to fill manpower requirements. By 1961, this service became so entrenched that a Royal Commission on Labour Management Relations in the Construction Industry concluded that building trade unions had become, "contractors for the supply of labour in the construction industry". The economic power these unions brought to labour markets, coupled with compulsory and tax-free revenues, ultimately translated into enormous political influence and power.

Canada's constitution vests provinces with rights to legislate and regulate the licensing and employment of construction workers. While each jurisdiction has its own regime, the peculiarities of Quebec's system stem from what Diane Francis refers to as an "unholy alliance" between the Quebec government and that province's construction unions.

According to Mr. Dumais the "unholy alliance" that Ms. Francis refers to, began following the "war" that raged between U.S. - based international building trade unions and Quebec - based unions during the 1964-67 period. With the "Quiet Revolution" in Quebec becoming increasingly noisier, a new economic and political order involving "big" business, "big" organized labour and "big" government emerged. As was in vogue elsewhere in varying degrees, this approach was based on the notion that if a consensus could be reached among these three pillars, society and the economy could be "engineered" to respond in appropriate ways. Accordingly, to deal with the labour unrest, Quebec's last Union Nationale government passed Bill 290, the Construction Industrial Relations Act on December 16, 1968. On that day, the cosy relationship between the Quebec government and the unions was consummated when the new law made union membership mandatory and effectively turned the Province's construction industry into a closed shop.

The expected industrial peace and stability all but evaporated while the enormous James Bay hydroelectric mega-project was being built in the early 70's. After millions of dollars in damage was done through vandalism and rampant violence, the government formed the Cliché Commission coincidentally bringing two relatively young experts in industrial relations law to the public spotlight, future Prime Minister Brian Mulroney and future Quebec Premier, Lucien Bouchard. The Commission recommended strengthening the new regime by giving the provincial government more control over the supply and dispatch of construction workers to construction employers.

The 1976 amendments to the law effectively took direct negotiating of collective agreements out of the hands of construction employers and building trade unions and placed it under the control of the Provincial Government - a Government beholden to organized labour and predisposed to be sympathetic to the views of union leaders. Reflecting Quebec's unique "nationalist" approach to dealing with problems, the legislation was heavily based on government controls through Ministerial "orders" or "Decrees". The Act also established the Commission de la Construction du Quebec (CCQ) to implement and enforce regulations governing construction industry employment. The result is a complex series of rules and regulations under the current Labour Relations, Vocational Training and Manpower Management in the Construction Industry Act.

As Jennifer Wunsch noted in a survey report on national labour relations laws published by the Mississauga, Ontario - based Work Research Foundation in 1998, "Sorting through the Act to determine who can work where and when and under what circumstances is no simple task. Where most provinces encompass their regulations regarding union membership and rules governing how that relates to construction work in a few clauses, Quebec legislation offers many paragraphs of disparate rules." The Construction Decree, particularly Section 7, however, seems quite clear when it comes to unionization. That the intent is to make union membership compulsory is evident in the marginal notation to Sub-Section 7.01. Translated into English this notation reads, "Compulsory membership in a representative association". The text for the subsection stipulates that, "Every employee must...choose one of the representative associations and for this purpose he must obtain from the Commission, and the latter must issue him, a card....and the name of the representative association he has chosen." The subsection goes on to note, "If the employee is recognised in a specialty under the Regulation respecting the vocational training, this specialty is indicated on the card." Sub-Section 7.02 states further, "Every employee must join a union or syndicate affiliated to the representative association he has chosen. Any syndicate or union that an employee has joined must issue him a membership card proving that he belongs to the syndicate or union."

But, the simple fact is that the cards are difficult to come by and rigidly controlled by the CCQ. In a province of over seven million people, only approximately 98,000 cards are issued. When Quebec's population is compared to the almost three million people in Alberta, where upwards of 130,000 people work in construction, it seems readily apparent that the purpose is to limit the supply of construction workers to protect inordinately high rates of pay established by the Construction Decree. According to Mr. Harper, this is clearly an example of the Quebec government's political collusion with construction unions and an indication why Quebec is one of the highest cost provinces to do business in. Moreover, it is, in Mr. Harper's view, a major contributing factor to the "depressed state of construction in Quebec." That these high costs

dampen construction levels is evident from a statement made by Mr. Dumais, "I mean who in ile de la Madeline can afford to pay \$40 per hour to have their house built?"

It is thus easily understood why those unable to obtain cards might attempt to work without them and why contractors, hard pressed to find employees, would risk hiring them. Consequently, an underground "black market" economy has emerged, which Laval lawyer and labour relations expert, Roger Bedard estimated in 1997 constituted upwards of 80% of the residential construction sector. Similarly high levels are also apparent in certain commercial and institutional construction settings. According to Jocelyn Dumais, "If you had 150 workers on any construction site in Quebec, I'd estimate that half of them would be "illegals or working without a permit."

That there are incentives to flirt with the rules is readily apparent. With hourly rates ranging from \$32.35 for labourers to \$39.41 for electricians, is it any wonder why there is resistance to the rules and high non-compliance levels?

Your Money or Your Microwave!

Any employee caught working without a card is subject to fines and penalties. Employing a worker without a card is also an offence.

These rules are administered through the Commission de la Construction du Quebec (CCQ) which has an annual budget of \$36 million and 450 staff. The CCQ employs 150 inspectors who check compliance and enforce the rules with a zealous vigour comparable to the provinces language law rules. As Mr. Dumais, said to Diane Francis, "We run like crazy when the Boubo Macout [inspectors] arrive. I have hidden in a dumpster for two hours to avoid being caught."

While no offenders have been spirited away in the dark of night to languish in some Russian-style "Gulag" in Arctic Quebec, dozens of workers have, in fact, spent time in jail for the "crime" of working in Quebec's construction industry. Almost \$25 million in fines and penalties were issued between 1978 and 1996. According to one 1997 report in the Ottawa Citizen, thirty four thousand construction permit infractions were registered in 1994, and 6,155 non-permit workers were ordered to appear in court.

Though his company had paid \$43,000 in fines and penalties between 1989 and 1993, perhaps the last straw came for Mr. Dumais in 1992 when he himself was fined \$159 after an inspector found him helping one of his employees shovel concrete, "I didn't figure I needed it [a card] because I owned the company. I realized then, there was something wrong with the system." That something was indeed wrong was made abundantly clear when a government official showed up at his home one day and threatened to seize his television and microwave oven unless he paid the \$300 fine arising from the incident. He paid.

Shortly thereafter, Mr. Dumais and a group of similar-minded contractors and employees formed ADAT in the hopes of changing Quebec's draconian regime. Whether they are successful hinges greatly on the outcome of the Advance Cutting and Coring Ltd. Et. Al. v. Her Majesty the Queen and the Procureur Général Du Quebec scheduled to be heard by the Supreme Court of Canada on March 20, 2000.

The Canadian Charter of Rights and Freedoms Appeal to The Supreme Court

It is submitted that no one can force an individual to be a member of a union against his will or his conscience.

Advance Cutting and Coring et. al. Motion for Leave to Appeal March 11, 1998

The Advance Cutting and Coring Ltd. Et. Al. case was formally initiated in 1993 and brings together thirteen individuals and four companies appealing 1998 decisions of the Quebec Superior Court and the Quebec Court of Appeal.

The essence of the appeal is that the Quebec Government's registration and licensing scheme under the *carté de la compétence* system constitutes a compulsory obligation to join a construction union. The appellants are contending that this, along with the penal enforcement of these laws and regulations violates rights guaranteed under both the Canadian and Quebec Charters of Rights and Freedoms.

Section 2 d) of the Charter guarantees "freedom of association" for Canadians. This is generally accepted to mean the freedom to join together to form a union for the purposes of bargaining collectively on wage and working condition issues. To succeed in their challenge, the appellants must convince a majority of Supreme Court Justices that the card and registration system constitutes a legal compulsion to join a union. They then need to convince the High Court that this same Section 2 d) provision of the Charter also provides the corollary freedom against being legally compelled into joining a union - what is sometimes referred to as the "freedom of disassociation". In affirming this right, the court would then have to find that the card system and the penalties and fines derived therefrom, violate guaranteed Charter rights. Should the appellants be successful in convincing the High Court to make this determination, the majority of Justices would also then have to agree that this violation is an unreasonable limit on what can be "demonstrably justified in a free and democratic Society" as set out in Section 1 of the Charter.

Too Much Salad Dressing!

It is natural for people to react negatively to being forced to join or financially support an organization with objectives or activities to which they disagree. Subject to any contractual obligations or penalties which may have been voluntarily entered into, when a member disagrees with the direction the club is headed, he or she can always quit.

Broadening the scope of examination further, however, reveals that the right to join and not to join is not always a straight forward proposition. For example, all Canadian residents by virtue of their citizenship status are members of the same "club" called Canada. While we might disagree with a government policy, law, or a particular tax we cannot simply renounce our

membership or obligation to pay the tax or fine for which we are found legally guilty . To do so would lead to social chaos. Thus, there are situations where we are compelled to associate with others. But, why, as Stephen Harper asks, is the full coercive power of the state brought to bear in protecting and supporting unions that are, after all, private institutions? While Mr. Harper notes that “the case can be made in favour of government supporting and regulating legitimate professional or occupational standards”, Quebec’s regulatory regime is “clearly intended to be an extension of forced unionism.”

There are certainly instances where society as a whole benefits from professional standards and regulation. The licensing of surgeons is a case in point. And, while some might argue that some self-regulating professional bodies serve to control the supply of services to maintain high fees, given the complexities of the profession, few would argue against there being a high level of regulation in the medical profession.

A level of regulation is also justified when it comes to certifying the competence of certain construction trades. However, as George Hill, former President and Chief Executive Officer of Saskatchewan Power once noted, “Government regulation is something like ordering salad dressing in a restaurant. You either get too much or too little.”

As implicit in Mr. Hill’s comment, achieving the necessary balance is extremely difficult. And, it is with a view to achieving a more balanced approach to Quebec’s compulsory union membership requirement that prompts Mr. Harper and Julius Grey, the Montreal lawyer, who will argue the Advance Cutting and Coring case before the Supreme Court, to conclude that the regime goes “too far”.

What if the government was to legislate that a citizen had to be a member of a specific church or religious institution and make a weekly offering? When it comes to laws regarding union membership in Canada, this analogy is not that far off reality.

But, I Don’t Want to Join a Union

The essence of the Rand decision in 1946 was that if employees benefit from the collective bargaining results, they should financially contribute to the administration of that collective bargaining regime regardless of whether they are union members. But, should this same rule apply when unions engage in activities outside collective bargaining? This was, in fact, an issue the Supreme Court addressed in the landmark Lavigne v. Ontario Public Service Employees Union (OPSEU) case in 1991.

Merv Lavigne was a teacher at an Ontario college. He was not an OPSEU member. However, under the collective agreement between Ontario’s Council of Regents for the college system and OPSEU, Mr. Lavigne was required to pay union dues. A portion of the dues collected eventually made their way to the New Democratic Party and a variety of groups and causes such as one supporting disarmament; another protesting the use of municipal funds to build Toronto’s Skydome Stadium; a health care workers union in Nicaragua and aid for striking miners in England. Mr. Lavigne’s case argued that the enforced association established by the Rand Formula, compelled him to contribute to these groups and causes. He did not agree with their objectives and felt that being forced to pay dues violated his freedom to disassociate with them.

The majority of Justices disagreed, principally because Mr. Lavigne was not, in fact, compelled to join OPSEU. A minority of the Justices, however, did agree that his case had merit especially as it related to an implicit right to a freedom of disassociation. Writing in the minority, Mr. Justice LaForest noted, “The Rand formula violates S.2 (d) of the Charter because it interferes with the freedom from compelled association. The essence of the S. 2(d) guarantee is protection of the individual’s interest. The protection of this and the community interest in sustaining democracy requires that that freedom from compelled association be recognised under S.2 (d). **Forced association will stifle the individuals potential for self-fulfilment and realization as surely as voluntary association will develop it, and society cannot expect meaningful contribution from groups and or organizations that are not truly representative of their memberships’ convictions and free choice. Recognition of the freedom of the individual to refrain from association is a necessary counterpart to meaningful association in keeping with democratic ideals.**”

Having laid this foundation, Mr. Justice LaForest, however, went on to say: “The Rand formula would in any event meet the requirements of S. 1 of the Charter. The objective of the impugned legislation, which is to promote industrial peace through the encouragement of free collective bargaining is **sufficiently pressing to and substantial to warrant overriding a constitutional right.**” **...The impingement on appellant’s charter rights was thus not out of proportion to the legislature’s objective in promoting collective bargaining.** “

As is fundamental to any debate on laws and public policy, there is always a question of balancing individual rights against collective rights. Are employees necessarily better off having their individual rights impinged? Further, at what point do the costs in terms of lost individual rights or the collateral fallout from “industrial action” become too high?

Are Employees Better Off?

As industrial history records, working conditions could be pretty appalling without the advances promoted by labour unions. The coming together of individuals to collectively achieve a common end - in the case of unions, improved economic and working conditions through collective bargaining, is viewed as being in the public interest. A good deal of public policy is developed to support these goals and is a primary reason why government policies tend to be supportive of unions.

It is clear, however, that sometimes the rules are biased such as those that exist in Quebec, or the interpretation of these rules is not always balanced. Consider, for example, the rationale found in an Alberta Labour Relations Board decision dealing with the possible merging together of two equally-sized employment operations - one non-union and one union. The decision states, “If one or the other of these contractual regimes must yield, however, we think that the policy of promoting industrial stability and minimising employee unrest favours continuation of the collective bargaining regime and the incorporation of the non-union employees into that regime. We say this because the ensemble of employee rights achieved under a collective bargaining regime is almost invariably superior to those enjoyed under an individual contract of employment.” This is an arguable assertion for at least two reasons.

First, in the construction industry, organizations such as the Merit Contractors Association have sprung up throughout the country with the expressed purpose of making competitive wages and comprehensive benefit and training programs available on an industry-wide basis to contractors and employees operating in open shop environments. The incredible growth in voluntary memberships these organizations have experienced attests to the validity of open shop environments in a balanced industrialized economy and democracy.

Second, membership in a construction union can result in individuals being forced by virtue of their membership to perform actions against their free will or be subject to disciplinary sanction. For example, in the 1990's many Canadian Building Trades Unions adapted the COMET (Construction Organising Membership Education Training) program from their U.S. counterparts. Upon completion, members were expected to become actively involved in organizing non-union companies. Under the protection of unfair labour practice laws, which prohibit discriminatory action against union supporters, part of this program involves actively seeking work with a non-union contractor and then potentially causing him economic harm. For example, the International Brotherhood of Electrical Workers (IBEW) "Salting Clearance Agreement" binds individual members to "promptly and diligently carry out the organising assignments and leave the employer or job immediately upon notification of the Business Manager or its Agents". A by-law for an Alberta carpenters union local also states, "Members working on non-union job sites must inform the union where and who the member is working for and must be available to assist in any organising effort undertaken by the local." Some individuals find these activities distasteful and freely choose not to participate in them or be subjected to disciplinary measures.

Numerous individuals have also been fined by their unions for working for a non-union contractor or a contractor not affiliated with a U.S.- based international building trade craft union. According to one report in 1995, a local of the International Union of Operating Engineers fined 50 members up to \$4,000 each for working with a contractor not affiliated to the local building trades council. Given these examples, is it so obvious that, "the ensemble of employee rights ...is almost invariably superior to those enjoyed under an individual contract of employment" as the Labour Relations Board stated in its decision?

Union Violence

A second rationale for governments tending to treat unions deferentially is the need to preserve peace and minimise violence. Our nation's labour history is sadly speckled with outbursts and examples of violence. The Winnipeg General Strike of 1919 and the strikes at mines in Thetford Lake, Quebec and Estevan, Saskatchewan in the 30's and 40's are but a few examples.

Perhaps viewed in the context of the times, these can be considered historically justified as part of organized labour's bitter and difficult struggle for recognition and existence. To be sure, organized labour fought hard to have freedom of association rights guaranteed in order to collectively bargain improved wages and working conditions with employers. But is the violence as justifiable today as it once may have been?

Why does it seem that normal standards of conduct and respect for the private property of others have less meaning when dealing with unions and striking workers? Though labelled "scabs" can

the cold-blooded murder of replacement workers in the dark and quiet tunnels of the Giant Yellowknife mine in 1992 be rationalized? Similarly, was the 1994 storming of the Nova Scotia Legislature by unionized construction workers because of proposed legislation to overturn the court decision prohibiting unionized general contractors from subcontracting to non-unionized subtrades, a legitimate exercise of free speech?

In 1994, most people watched in horror as violence openly erupted at the Macmillan Bloedel paper mill in Port Alberni, BC. In what was termed “one of the most bitter labour disputes in BC history”, internationally affiliated building trade union members took action against the pulp paper and wood products giant. Why? Because it awarded a construction project to a firm that was affiliated with the independent Canadian Industrial Iron and Steel Workers Union. While there were numerous court cases including a reported \$1.5 million settlement in 1997 between the building trade unions and TNL Construction, a case involving two company superintendents and the BC and Yukon Territory Building and Construction Trades Council was only resolved in October, 1999. In awarding \$170,000 damages, including \$100,000 in punitive damages against the unions, Mr. Justice Cohen noted, “the plaintiffs were threatened, intimidated and constantly harassed by the BTU’s members while these representatives who clearly had knowledge of their members’ activities took no active steps to stop their members’ conduct.”

Perhaps the most bizarre incident occurred at Sydney, Nova Scotia on Cape Breton Island. In 1997, an estimated 1,000 unionized construction workers descended on a building under construction to protest that a minor part of the project was being done by a non-union contractor. Where was the RCMP and its pepper spray as the angry mob burned the virtually completed building to the ground and held both police and fire-fighters at bay?

Is not a “culture of intimidation” evident on most picket lines? A friendly athletic event was not the first thing to come to mind when television reporters recorded a striking member of the Public Service Alliance of Canada taking up her position on a picket line wearing a protective football helmet.

In contrast, consider how the police deal with unruly mobs when they congregate after a major sporting event such as a victory in a Stanley or Grey Cup contest? Does the potential threat that some participants will get out of control prevent police action or cause legislators to prohibit the holding of these events?

We’re In!

On December 3, 1999 an important telefax was received at the Edmonton office of the Merit Contractors Association. The fax, itself was a copy of a signed order from a Justice of the Supreme Court of Canada which read in part, “the motion for leave to intervene of the applicant Canadian Coalition of Open Shop Contractors Associations [COSCA] is granted. The applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 15 minutes.” At the top of the fax, simply inscribed in thick felt pen, were two words: “We’re In!”

Realizing the importance the Advance Cutting and Coring case has on Canadian employment law in general and the construction industry specifically, seven open shop based construction

organizations across the country formed a coalition in 1999 to “intervene” in the case. The decision approving COSCA’s intervenor application was granted over the formal legal objections of the Quebec government. The 15 minutes of oral arguments will be presented by Peter Gall of the Vancouver office of the Heenan-Blaikie law firm whose masthead includes the names of former Prime Minister Pierre Trudeau and the current Secretary-General of the renowned Organisation for Economic Co-Operation and Development (OECD), Donald Johnston.

Given the unique peculiarities of Quebec’s system, there is no way of predetermining how the judges will respond to the case or COSCA’s intervenor arguments. However, it is clear that the Courts ruling could have broad implications for the construction industry across the country. As Mr. Gall noted, “This case will set the guidelines for freedom to (or not to) associate within the construction industry for years to come.” Consequently, all levels of government in Canada will have to be mindful of the decision in setting policies including those relating to the expenditure of public monies.

What is COSCA Saying?

COSCA is submitting that the “open shop” construction industry encompasses employers, employees and unions which have a legitimate right to operate outside the traditional building trades craft union “closed shop” system of construction. This means that employees should not be required to join a particular union in order to be employed. Moreover, participation on a construction project should not be limited to contractors who have collective bargaining relationships with particular unions but rather open to all contractors qualified to do the work.

These organizations will submit that freedom of association not only includes being free to work with a union other than one affiliated with a U.S. - based international craft union, it includes the right not to be forced into association. In fact, COSCA will argue that any system of mandatory union membership imposed by governments as a condition of employment or continued employment infringes on freedom of disassociation rights implicit in the Charter. Perhaps most poignant will be the argument that a mandatory choice among five unions (as exists in Quebec) or any number of unions does not amount to actual choice as required by the Charter. The argument being that in order for freedom of association to be fully realised, there must be the freedom to choose no union representation implicit or otherwise.

If the Supreme Court accepts these arguments, the impact could be felt in a number of areas including:

1. Restrictive Tendering Practices and Non-Affiliation Clauses

Both publicly and privately funded purchasers of construction have been known to enter into agreements which stipulate that all contractors must either be affiliated or adhere to collective bargaining provisions set out by U.S. - based international building trade craft unions. This serves to eliminate contractors and employees who have no affiliation with the building trades unions from participating on the project even though public monies may be involved.

2. Project Agreements

Projects such as the Bi-Provincial Upgrader at Lloydminster, Saskatchewan which was \$260 million over budget, the Vancouver Island Highway in BC and the Crown Construction Tendering Agreement in Saskatchewan include strict union hiring provisions which give building trade unions preference over non-unionized or alternative labour unions.

For example, in 1994 the BC government established a shell corporation called Highway Constructors Limited which entered into a project agreement with the Building Trades Unions to build a highway that spanned the island. This model followed previous models used by BC Hydro to build dams and followed for the Sky Train expansion project in Vancouver.

It is conceivable that a favourable Supreme Court decision could place limits on these types of arrangements.

Conclusion

The situation in Quebec was perhaps best summed up by electrical contractor and former head of the Ottawa-Carleton Home Builders Association Robert Sanscartier. In a 1997 Ottawa Citizen article Mr. Sanscartier says, "They're throwing people in jail because they want to feed their families. It's ludicrous." The fact that this is happening in Canada leads one to question whether the historical rationale for granting special protections to construction unions should supersede the rights of individuals and the security of their property. Are such infringements necessary and justified in a free and democratic society? Is not the most democratic employment structure one in which employees are free to choose whether they wish to be affiliated with a union? As we embark on a new millennium, the Supreme Court of Canada's decision on the Advance Cutting and Coring case will go a long way to answering these questions.