

Explaining Canada's High Unionization Rates

by Jason Clemens, Niels Veldhuis, and Amela Karabegović

Main Findings

- Canada's unionization rate (31.8%) remains more than twice that of the United States (13.8%). Similar patterns hold when employment is broken down between the private and public sectors.
- There are a number of reasons for Canada's comparatively high unionization rates that have gone relatively ignored, including labour relations laws and the relative size of our public sector.
- The manner in which unions are approved (or certified) as the collective agent for workers has an impact on their success. Requiring secret ballot votes reduces unionization success rates and certification attempts. Five Canadian provinces (SK, MB, QC, NB, and PEI) allow unions to be certified automatically without a secret ballot vote. The remaining jurisdictions all require secret ballot votes to authorize a union certification.
- The average unionization rate for the five provinces with automatic certification (34.7%) is above that of the provinces that require mandatory voting (30.5%). This is 13.8 percent or 4.2 percentage points higher than the average unionization rate for provinces that require certification votes.
- The United States prohibits mandatory union membership clauses as a condition of employment in collective bargaining agreements. On the other hand, no Canadian jurisdiction prohibits such clauses. Such provisions were determined to influence unionization rates.
- All Canadian jurisdictions permit, in one way or another, mandatory dues payment as a condition of employment. Twenty-two US states, the so-called "right-to-work" states, have prohibited mandatory dues payment clauses as a condition of employment. The remaining 28 states allow partial mandatory dues payment, which means that workers may pay only for representation-related union activities.
- The right-to-work states maintain much lower average rates of unionization (8.2%), than other US states (16.2%) and the Canadian total (31.8%).
- Canada's public sector represents 18.0 percent of total employment versus only 14.3 percent in the United States. The difference provides another explanation as to why Canada's unionization rate is high compared to the US. Canada's public sector unionization rate in 2004 of 75.5% was nearly double that of the United States (40.7%).



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Acknowledgements

The authors would like to thank Nadeem Esmail, Mark Mullins, Keith Godin, John Mortimer, and an anonymous reviewer for their comments and suggestions. Any remaining errors or oversights are the sole responsibility of the authors.

Introduction

This *Fraser Alert* explores the reasons for the significant divergence in Canada’s unionization rate with that in the United States.¹ Many Canadians support the notion that Canada’s relatively high unionization rate is a result of democratic choice by workers who prefer unionization and therefore are more inclined to become unionized through a democratic process. This Alert will show that a number of important alternative explanations for Canada’s higher unionization rates also exist, yet are largely ignored.

Unionization Rates

The following section summarizes current unionization rates (total and by sector) in Canada and the United States at both the national and sub-national (province and state) levels.

Total unionization rates

Canada’s unionization rate is noticeably higher than that in the United States. In 2004, the total rate of unionization in Canada was 31.8 percent, significantly higher than the United States’ 13.8 percent (table 1).²

Table 1: Canada-US Unionization Rates (2004)

| | Canada | United States |
|-----------------------|--------|---------------|
| Total | 31.8% | 13.8% |
| Private Sector – Only | 19.0% | 8.6% |
| Public Sector – Only | 75.5% | 40.7% |

Sources: Statistics Canada (2004). Unionstats.com; calculations by the authors.

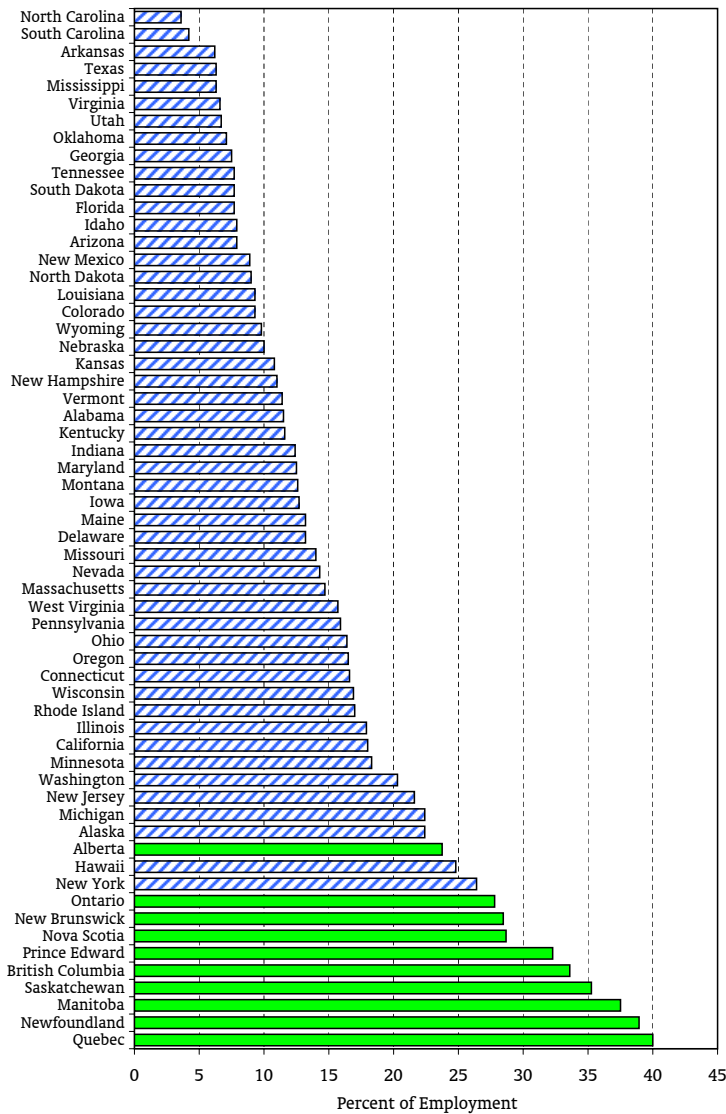
Variations among the provinces and states are even starker (figure 1). North Carolina maintains the lowest unionization rate of either country at 3.6 percent. Alberta has the lowest unionization rate in Canada at 23.7 percent, which ranks it 49 out of 60 jurisdictions (10 provinces and 50 states). Quebec’s unionization rate is the highest of any province or state at 40.0 percent.

Similar patterns hold when employment is broken down between the private and public sectors. In 2004, Canada’s unionization rate in the private sector stood at 19.0 percent versus the United States’ 8.6 percent. Canada also maintains a much higher rate of unionization in the public sector: 75.5 percent in 2004 compared with the United States’ rate of 40.7 percent.

Explaining Differences in Unionization Rates

Many political and union leaders as well as academics have argued that Canada’s current unionization rates are a response to a democratic demand by Canadian workers for greater collective representation. That is, Canadian workers demand more collective (i.e., union) representation. However, independent research and empirical analysis show that other important factors help explain Canada’s high unionization rates. Specifically, academic research discussed below concludes that the legal rules or legislation governing unionization (labour relations laws) significantly affects unionization rates. In addition, Canada’s relatively large public sector, with its higher unionization rates, also explain Canada’s relatively high rate of unionization.

Figure 1: Total Unionization Rate as a Percent of Employment (2004)



Source: See table 1.

Labour Legislation: A Key Explanation for Unionization Rate Differences

There is an emerging consensus that one of the key explanations for the marked divergence in Canada-US unionization rates is the labour laws in each country. Specifically, differences in the laws governing how unions are certified as the collective representative of workers as well as union security

clauses (e.g., union membership and dues payment requirements) are increasingly being accepted as explanations for the diverging unionization rates.³

Certification rules

Certification rules⁴ relate to the process through which unions become the bargaining agent for workers of an organization or a bargaining unit.⁵ For a union to submit an application for certification to a Labour Relations

Board, they must have written support from a prescribed percentage of workers. Once a union has achieved the required level of support, the Labour Relations Board will either conduct a secret ballot vote or, in some jurisdictions, automatically certify a union (often called card checks). Research indicates that requiring mandatory votes to approve a union as the representative of workers reduces unionization success rates, compared to the process wherein unions can be automatically certified through card checks (i.e., without a vote).⁶

Professor Chris Riddell (2001, 2004) explored how unionization rates are influenced by differences in the certification process and, in particular, automatic certification versus mandatory voting. Riddell (2004) specifically investigated the experience of British Columbia between 1978 and 1998. This is an interesting period since mandatory voting was introduced in 1984 and then eliminated in 1993.⁷ It provides an opportunity to link results with the specific manner in which workers certify a union. Riddell (2004) found that unionization success rates fell by 19 percent after mandatory voting was introduced, and then increased by nearly the same amount when it was eliminated.⁸ In addition, Riddell argues that differences in certification processes are directly linked to the divergence in unionization rates between Canada and the United States (2001, 2004).

Similarly, Professor Sara Slinn of Queen's University investigated the effect of Ontario's change from a card-check system to mandatory voting in 1995. She concluded that the "introduction of mandatory votes had a highly significant

negative effect on the probability of certification” (2004, p. 259).

Studies on the certification process by Susan Johnson of Wilfred Laurier University buttress these findings, particularly the importance of the certification process in determining unionization rates.⁹ Johnson (2004) concluded that 17 to 24 percent¹⁰ of the difference in unionization rates between Canada and the United States could be explained by the widespread use of mandatory votes in the United States, compared to the less widespread use of such votes in Canada.¹¹

A previous study by Johnson (2002) using 19 years of data covering 9 Canadian provinces concluded that mandatory vote policies reduced certification success rates by 9 percentage points. Johnson specifically noted that, “the results also suggest that differences in recognition procedures between the USA and Canada may provide a potential explanation for why Canada’s unionization rate is higher than that of the USA.” (p. 358).

Riddell’s, Slinn’s, and Johnson’s findings are important for understanding differences in unionization rates between Canada and the United States since there are five jurisdictions that allow automatic certification, and all five are Canadian provinces (Saskatchewan, Manitoba, Quebec, New Brunswick, and Prince Edward Island) (Karabegović *et al.*, 2004). The remaining five provinces and all 50 US states require a secret ballot vote to approve the certification of a union as the collective agent for workers, which the three researchers independently argue leads to both lower certification attempts and unionization success rates.

Unionization rates in Canada support these conclusions. The average unionization rate in 2004 for the five Canadian provinces that still permit automatic certification was 34.7 percent. This is 13.8 percent or 4.2 percentage points higher than the average unionization rate for provinces that require certification votes (30.5 percent). Clearly, the method of certification is a key contributor to differences in unionization rates between Canada and the United States.

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Union security rules

Union security relates to whether or not certain provisions regarding union membership and dues payment can be included in a collective agreement, specifically, whether or not workers in a unionized firm can be required to join a union (become a member) and/or remit dues to the union as a condition of employment.

Union membership

Intuitively, allowing mandatory union membership as a condition of employment should result in higher rates of unionization. It is telling, therefore, that no Canadian province prohibits mandatory union membership to be included in collective bargaining agreements as a condition of employment. Alternatively, federal legislation in the United States expressly prohibits allowing mandatory union membership in collective

agreements as a condition of employment.

Given that in 2004 Canada’s total unionization rate was 31.8 percent compared to 13.8 percent in the United States, the fact that Canada does not prohibit mandatory union membership in collective agreements while the US does, is an explanation for the differing rates of unionization.

Mandatory dues

A study by Taras and Ponak (2001) focused specifically on “agency shops,” where all employees in a bargaining unit, regardless of whether or not they are members of the union, are required to pay union dues. The effect of this is more indirect than is mandatory membership. By permitting mandatory dues payment as a condition of employment regardless of union membership, unions are assured of secure resources with which they can undertake advocacy, expansion, and development activities.

A landmark Canadian Supreme Court decision, referred to as the Rand Formula after Justice Ivan Rand, resulted in the imposition of mandatory dues payment by Canadian workers as a condition of employment, regardless of union membership status.¹² The Rand Formula was an historic decision because it decoupled union dues payments from union membership.

In the United States, 28 states permit partial dues payment by workers in a collective bargaining unit regardless of union membership status. Workers in these states are permitted to opt out of dues payments that are not directly linked to representation-related activities.¹³

The remaining 22 states have expanded upon US federal law to outlaw agency shops or mandatory dues payment as a condition of employment. The specific legislation is normally referred to as Right-to-Work¹⁴ (RTW), which prohibits collective agreements from including mandatory union dues as a condition of employment.

Taras and Ponak (2001) concluded that the differences in union security provisions between the two countries explain at least a portion of the differences in unionization rates. They specifically stated that:

the financial security provided by the agency shop laws enhanced servicing and organizing activities, leading to higher union membership, which in turn generated more financial resources. In the US, in contrast, the weakening of financial security engendered by RTW laws reduced servicing and organizing resources, leading to loss of membership and further financial erosion. (548).

William Moore's important 1998 study, which reviewed the research to date on Right-to-Work (RTW) legislation, supports Taras and Ponak's findings. Moore concluded that RTW laws reduce unionization rates. Specifically, he found that

union membership was lowered by 5 to 8 percent in states with RTW rules and that union organizing efforts and successes in certification elections were significantly reduced in those states.

As predicted by Taras and Ponak (2001) and Moore (1998), the type of union security legislation in place has significant ramifications on unionization rates. Table 2 highlights the unionization rates across these three categories of union security provisions.

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sector in the same year.

Not only are there differences between Canada and the United States, but there differences within the United States between RTW states and non-RTW states. States with RTW laws maintain average unionization rates of 8.2 percent, half that of states without such laws (16.1%). Clearly, union security laws (specifically provisions

dealing with mandatory union membership and dues payment as a condition of employment within collective agreements) are critical in determining unionization rates and are a key explanation for the diverging unionization rates between Canada and the United States.

Size of the Public Sector: Another Explanation

A second important explanation for Canada's higher unionization rate is Canada's comparatively larger public sector. In 2004, for instance, public sector employment in Canada represented 18.0 percent of total employment, whereas in the United States it was 14.3 percent, a difference of 25.9 percent. As has been discussed, the public sectors in both countries have a higher unionization rate than does the private sector. For instance, the unionization rate in Canada's private sector was 19.0 percent in 2004, compared with a 75.5 percent unionization rate in the public sector in the same year. Thus, the differing sizes of the public sector in the two countries provide a strong explanation for the differing unionization rates.

An analysis of sub-national jurisdictions provides further evidence of the relationship between the size of the public sector and unionization rates. Figure 2 presents the correlation between unionization rates and the size of the public sectors in Canadian provinces and US states. The trend line suggests a strong positive correlation, indicating that the larger the public sector, the higher the unionization rate.

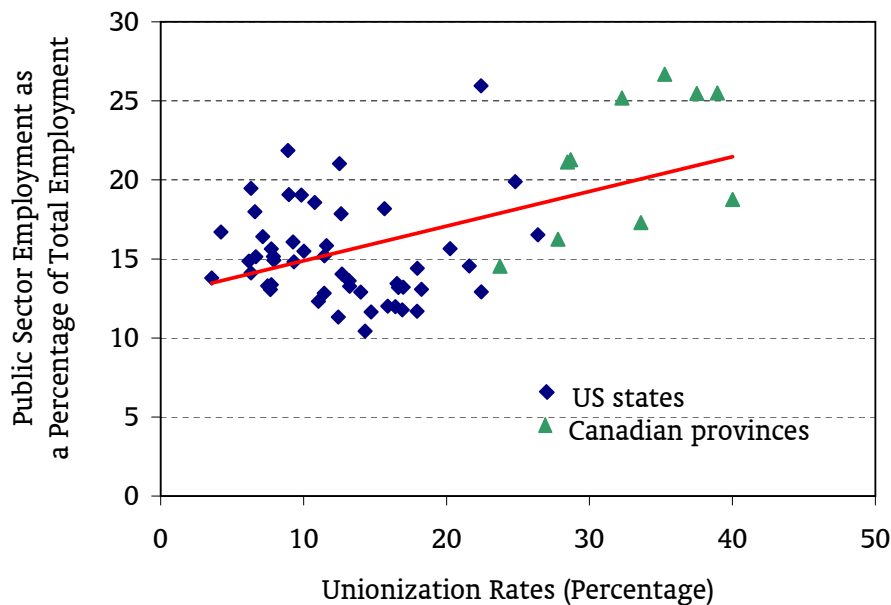
Table 2: Unionization Rates (2004) by Type of Union Security

| | Canada | US | |
|---------------------------|--------|---------|------|
| | | Non-RTW | RTW |
| Total Union Rate | 31.8 | 16.1 | 8.2 |
| Private Sector Union Rate | 19.0 | 9.9 | 5.0 |
| Public Sector Union Rate | 75.5 | 47.7 | 23.4 |

Sources: Statistics Canada (2004). Unionstats.com; calculations by the authors.

Note: Canadian numbers are weighted averages whereas the US figures are simple averages.

Figure 2: Correlation between Unionization Rates and Public Sector Employment (2004)



Sources: Statistics Canada, *Labour Force Historical Review 2004* (CD-ROM); Statistics Canada, *Financial Management System 2005*; Statistics Canada, *Provincial Economic Accounts*; Unionstats.com dataset (available at www.unionstats.com/); US Department of Labor, Bureau of Labor Statistics (available at www.bls.gov/lau/); calculations by the authors.

Note: Unionization rates are calculated as a percentage of total employment defined as public and private employment, not including self-employment. Public sector employment is calculated as a percentage of total employment defined as public and private employment, including self-employment. Public sector employment does not include military personnel.

Conclusion

Empirical evidence shows that legal institutions (laws and regulations) matter in determining unionization rates. The presence of certification without a vote, union security provisions that favour

unions (either through mandatory membership or dues payments), and a comparatively large public sector are key explanations for why Canada's unionization rate is markedly higher than that in the United States.

Notes

- 1 Most Canadians do not realize that unionization rates in Canada and the US were essentially the same until the mid-1960s. In 1966, both countries maintained unionization rates of roughly 30 percent. However, unionization patterns and trends diverged markedly after this period (Taras and Ponak, 2001).
- 2 Unionization figures include both workers who are members of a union and non-members covered by a union contract.
- 3 It is important to recognize that in Canada, labour relations laws, which govern the relationship between unions and employers as well as the process through which unions attain and lose the right to collectively represent workers, are largely an area of provincial responsibility. In the United States, however, the same laws for the private sector are under the domain of the federal government. US states may clarify and extend federal laws, but are precluded from contradicting them. See Karabegović *et al.* (2004) for further details.
- 4 The discussion of certification rules refers to private sector labour legislation only.
- 5 Alternatively, *decertification* refers to the process through which unions lose their ability to collectively represent workers.
- 6 It is important to note that it is highly likely that decertification rules also play a role in explaining Canada's higher unionization rates. Canadian provinces apply asymmetric rules to certification and decertification, with a net result that it is materially easier to certify a union than it is to decertify one (see Karabegović *et al.*, 2004, for more information). Another related issue, which is beginning to gain ground, is the length of time allotted between the initiation of a certification election and the actual election. For further information please see Thomason (1994).
- 7 British Columbia reintroduced mandatory secret ballot voting in 2001.
- 8 Interestingly, Riddell's previous study (2001), which used 1984-1993 data for British Columbia, similarly concluded that unionization success rates fell by 20 percent and the number of certification attempts fell by over 50 percent when mandatory voting was implemented.
- 9 Note that Johnson (2004) uses a theoretical model to determine the effects of mandatory voting on unionization rates.
- 10 The equivalent of 3 to 5 percentage points in total unionization rates (Johnson, 2004, p. 361).
- 11 Her analysis further indicated that the movement away from automatic certification over time towards mandatory voting in Canada has reduced the union density gap by 1 percentage point.

- 12 For further information on the Rand Formula, please see Rand (1958).
- 13 The Supreme Court of Canada in the landmark case of *Mervyn Lavigne* rejected the principle of partial dues payment and specifically reviewed the US law, which established the principal whereby workers could refuse to pay the non-representation-related portion of their dues. The Court provided three justifications for its decision: (1) it believed the partial dues payment would increase litigation and court intervention into determining what are and are not collective representation activities; (2) instituting a partial dues policy would weaken union power; and (3) the Court recognized that union political and social activism, which it acknowledged was well beyond the scope of representation activities, generated benefits for its members broadly. For further information please see Taras and Ponak (2001) or Lynk (2000). Alternatively, in *Communications Workers v. Beck*, 487 U.S. 735 (1988), the United States Supreme Court ruled that objecting non-union members cannot be required to pay full union dues. The most that non-union members can be required to pay is an agency fee that equals their share of what the union can prove is its costs of collective bargaining, contract administration, and grievance adjustment with their common employer.
- 14 In Canada, these laws are often called “worker choice” laws.

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