

The Prospect of Social Partnership in Canada in the 21st Century

Prepared by
Timothy J. Christian, Q.C.

For the International Symposium
on the Prospect of Social Partnership in the 21st Century
National Chengchi University, Taipei, Taiwan
September 26-27, 2006

Conveners:

Center for Labor law and Social Law, College of Law, National Chengchi
University

Institute for Labour Research, National Chengchi University

Taiwan ILO & Employers Foundation

Introduction:

The concept of "social partnership" is distinctly European and has never very accurately described the relationship between the state, labour unions and employers in Canada. In a model of social partnership the social partners: labour unions, employers

associations and governments, work together to ensure a positive outcome for the citizens. This model presupposes a high rate of unionization, direct political involvement by trade unions, joint management of the economy by unions, employers groups and governments, and a high-level of social welfare support for citizens.

The organization of Austrian labour, both in its centralization and high-density, has been given a predominant position in explaining the successful management of Austria's economy. Labour's integration into consensual decision-making, under the watchful eye of the government, along with the similarly well organized professions and farmers, usually called the social partnership, leads to a no-surprise, relatively predictable, dependable system in which all major economic interests achieve their primary goals by mutually sacrificing secondary goals.^[1]

The idea of social partnership originated in the European models of industrial relations and is now adopted across the European Union. An example of a functioning "social partnership" may be found in the Republic of Ireland where the term "social partnership" is used to describe tripartite, triennial national wage

^[1] [Harald Von Riekhoff, and Hanspeter Neuhold, eds., Unequal Partners: A Comparative Analysis of Relations between Austria and the Federal Republic of Germany and between Canada and the United States \(Boulder, CO: Westview Press, 1993\) 55](#)

agreements. These "pay pacts" are voluntary agreements between the government, the main employer groups and the Irish Congress of trade unions. The most recent corporatist agreement, which operates for three years, sets centralized, national wage increases, and provides for policy agreements over welfare, education, health and employment issues.¹

In recent years doubts have been expressed about the future of the concept of social partnership. In their work, Renegotiating the

Welfare State: Flexible Adjustment through Corporatist

Concertation, Vaan Warden and Lehmbbruch observe:

Since the late 1970s considerable changes have affected the economic, political and social conditions of social partnership action. Growing uncertainties related to an ever-greater intertwined world economy, the end of high growth rates, increased unemployment and the erosion of homogeneous interests have given new fuel to the question as to the decline of corporatism for some time now. Most recently, external incisive changes in social partnership are being underscored along with watchwords such as neoliberalism and globalization. Together with internal undermining tendencies of the system such as a new coalition government without social democrats, a calling into question the existence of chambers and the declining degree of the organization of labour unions, the question arises as to what survival potential and what future social partnership will have.

Forecasts as to the future potentials of social partnership have become relatively pessimistic, lately. Many sociologists, political scientists and economists, though for different reasons, all predict its decline. Crepaz (1995), for example, used the metaphor of the 'end of a dinosaur' in order to express the inability of social partnership to meet the sociological needs of post-modern time. According to his view the dinosaur called social partnership will die out because young people want a transparent system of decision making, a democratic way of making these decisions and equal and fair access possibilities for men and women, to give some examples. No more closed-door compromises by some old boys sitting around a green table, no more paternalistic decisions over people's heads would, indeed, mean, the end of social partnership, because non-transparency is one of its main characteristics and an important pillar for it to function. ^[2]

Whatever the future of social partnership in Europe, it is clear that the classic notion does not fit very well in North America, and particularly in Canada. In this paper I shall examine several reasons why social partnership has not been achieved in Canada. This will involve a consideration of the Canadian concept of "social contract", rates of unionization and challenges faced by the union movement, the degree to which organized labour

^[2] [Frans Van Waarden, and Gerhard Lehbruch, eds., Renegotiating the Welfare State: Flexible Adjustment through Corporatist Concertation \(New York: Routledge, 2003\) 97.](#)

participates in parliamentary politics, and features of the Canadian economy which make social partnership, in the European sense, a difficult goal to achieve.

The Canadian Social Contract:

In 2002 the Canadian Policy Research Network undertook a national conversation about the fundamental qualities of Canadian life by giving a representative sample of Canadians an opportunity to engage in a dialog about the kind of Canada citizens want. The study was conducted by a prominent Canadian economist, Judith Maxwell, and the resulting report, "Citizens Dialogue on Canada's Future: a 21st Century Social Contract " provides an interesting measure of Canadian opinion on important elements of the social contract. Maxwell saw the two main outcomes as a reframing of the unwritten social contract and a restatement of core Canadian values.

Two key points emerged from the study which bear on the themes

canvassed in this paper.

1. Markets are no longer seen as separate from and even opposed to civil society--an assumption that helped create the welfare state. Instead, to a surprising degree, markets are now seen as an integral part of a working society, serving public as well as private interests, with market values being integrated into Canadian's notions of civil society and social equity in a unique and compelling way. At the same time citizens are pragmatic about the limitations of both markets and governments.
2. Citizens see themselves as more active participants in government. They have moved toward greater self-reliance and beyond deference to demanding a voice. Hidden beneath the thin crust of cynicism lies a keen desire for more active citizen involvement in public affairs. Citizens insist on greater accountability on the part of governments, business and other institutions and are willing to assume greater responsibility and accountability themselves. They want to see more responsive governments that foster ongoing dialogue with and between citizens.^[3]

The opinions and values expressed by the participants in the study clearly indicate that Canadians are not looking for a traditional social partnership model to resolve the challenges of the 21st century. The acceptance of the legitimacy of the market as a

^[3] Maxwell et al, "Citizens Dialogue on Canada's Future: a 21st Century Social Contract" Canadian Policy Research Networks, 2003

device serving both public and private interests is a move beyond the class-based ideology which is the foundation of the social welfare state.

Citizens do not see trade unions as essential vehicles for their political expression. Instead there is a general cynicism about all institutions and a demand for greater accountability.

The participants also gave voice to a new view about social welfare:

Citizens articulated a vision of a "working society" where everyone who can work gets a chance to earn a living wage. They believe that social programs should be better designed to help Canadians participate fully in work, community and family. Programs should give people a "hand up not a hand out", reduce dependency and overcome barriers to participation in work in community life. This means that education training must be more affordable and accessible--not only for reasons of social mobility but also because that is the way to ensure a strong economy.^[4]

While public opinion surveys do not necessarily express sociological truth, this particular study does provide support for the

^[4] Ibid, p.vii

idea that Canadians attitudes toward the social contract have undergone a fundamental change over the last 40 years. The current thinking, as reflected in the study, shows that Canadians are further removed from the European notion of social partnership and social welfare.

The Density of Union Membership:

The most recent survey of union membership conducted by Human Resources and Social Development Canada indicates that the unionization rate (union membership as a percentage of nonagricultural paid employment) was 30.7% as of January 1, 2005. In the United States the Bureau of Labour Statistics reports that in 2005, 12.5% of wage and salary workers were union members, a number unchanged from 2004. In both countries the rate of unionization of public sector employees was higher than the private sector. In 2005 the unionization rate for government workers was 36.5% in the United States and 70% in Canada.

While union density rates are generally higher in the European Union countries, the scientific director of the Amsterdam Institute for Advanced Labour Studies, Jelle Visser, observed in a recent analysis of "adjusted" union membership data in 24 countries that:

... union density rates in 2002 or 2003 are lower than in 1970 in all but four small European economies (Finland, Sweden, Denmark, and Belgium). These four happen to be the only ones in which unions are involved in the administration and execution of unemployment insurance. Also, each decade became progressively worse from the perspective of union organizing (except in Spain where the unions, after a difficult start after the fall of the Franco dictatorship, managed to acquire organizing rights and succeeded to build a reasonably loyal membership base among permanent workers in large firms). Thus, even in countries in which unions made strong membership gains in the 1990s as was the case in Ireland or the Netherlands, the rapid employment growth caused the union share in wage and salary employment to fall. Elsewhere in Europe--for example, in Germany, France, or Austria--union density fell in spite of the extremely slow employment growth.^[5]

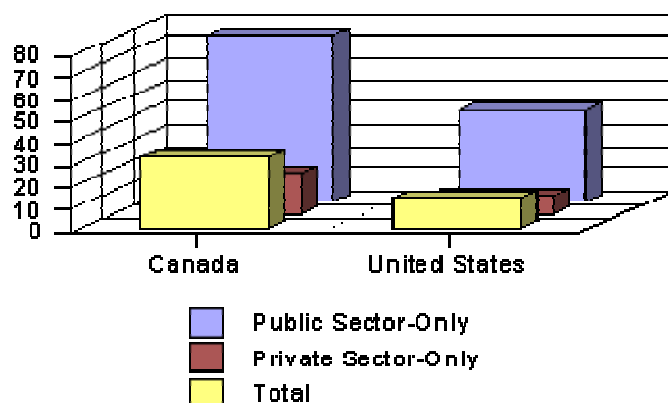
^[5] Visser, Jelle, Monthly Labour Review, January, 2006. Visser concluded that:

... it can be argued that sharper international competition ("globalization"), the rise of service employment, slower growth--or even decline of government employment ("privatization"), much higher (long-term) unemployment rates (especially in Europe), the increased use of flexible employment contracts, also lower inflation rates and the control of inflation by means of tighter monetary policies--have limited union power and union recruitment. However, these influences are mediated by labour market institutions, legal rules and politics. Most cross-national comparative and longitudinal studies on the subject find that such institutional factors as union-administered unemployment funds, the accepted presence of unions in the

In Canada, recent commentators have focused on the difference in the union density rate between Canada and the United States. The following table demonstrates the significant difference in both the public and private sector and in the overall density.

Several factors have been identified to account for the differential density. The first point is that the Canadian public sector is larger (18 % of total employment in Canada compared with 14.3% in United States). However, even within the public sector, the Canadian unionization rate is nearly double that of United States.

Canada-US Unionization



workplace, coordinated nationwide bargaining, and consultation correlate positively with union density--because it provides direct incentives for membership, underpins the "social custom" of membership in the workplace, and lowers employer opposition.

Rose and Chaison argue that there was "in the 1960s and 1970s, an explosion in public-sector unionism in both countries following the passage of enabling collective-bargaining legislation."^[6]

Three further factors help to explain the difference in union density between the United States and Canada. These include: differences in the legal environment; the performance in collective-bargaining; the affiliation between organized labour and social democratic parliamentary parties.

The Legal Environment:

Three elements in the Canadian legal environment provide Canadian unions with a competitive advantage over their American counterparts. These include the recognition process, the

^[6] Rose, Joseph B., Chaison, Gary N., "Unionism in Canada and the United States the 21st Century: the Prospects for Revival," *Industrial Relations*, Volume 56, Winter, 2001. The authors go on to note that: But now the prospects of an organizing Revolution appear remote because of the absence of economic upheaval (e.g., a depression, declining confidence in market-based economies, and/or a resurgence of the welfare state) and the slim chances of major legislation favoring union organizing.

lawfulness of mandatory union membership as a condition of employment, and the mandatory payment of union dues as a condition of employment.

The recognition process: in order to obtain exclusive bargaining authority to represent the employees in a bargaining unit, trade unions bring an application to be certified as the proper bargaining agent. Once a certificate issues the trade union has exclusive authority to engage in collective bargaining on behalf of the employees in the bargaining unit. As the following table demonstrates, there are several variations in the approach taken in the various provinces of Canada and in the United States. Union membership is not required in two of the Canadian provinces or at the state level in the United States.

The first step in the certification process is for the union to present evidence of employee support for the union applicant. The degree of support which must be shown varies from a low of 25% in the case of Saskatchewan to 50% plus one in Prince Edward

Island. After evidence of support has been presented, a Labour Relations Board rules whether there is sufficient support to allow a certificate to issue. Five Canadian provinces require that a secret ballot be conducted before a certificate can issue. Five other provinces have no such requirement and, indeed, in three provinces there is a provision for automatic certification where the evidence of union support is 50% plus one of the employees in the appropriate bargaining unit.^[7]

Table 1: Certification Information in Canada & the United States, 2005*

	Is union membership required for Application?	Threshold required for application	Is vote by secret ballot required for Certification?	Threshold required for certification vote	Threshold for automatic certification*""
BC	Yes	45%	Yes	50% + 1	n/a
AB	No	40%	Yes	50% + 1	n/a
SK	No	25%	No	50% + 1	50% + 1
MB	Yes	40%	No	50% + 1	65%
ON	Yes	40%	Yes	50% + 1	n/a
QC	Yes	35%	No	50% + 1	50% + 1
NB	Yes	40%	No	50% + 1	60%
NS	Yes	40%	Yes	50% + 1	n/a
PEI	Yes	50% + 1	No	50% + 1	50% + 1
NF	Yes	40%	Yes	50% + 1	n/a
Federal	Yes	35%	No	50% + 1	50% + 1
All US	No	30%	Yes	50% + 1	n/a

States

Notes

^[7] Quebec has the most densely unionized economy in North America, with 40% of its workers belonging to a union. (That compares with about 25% in Ontario and Alberta, and less than 15% in most U.S. states.) In large part, this is because Quebec law forces unionization on workers: To work in construction, for instance, one must belong to one of five officially sanctioned unions.

The threshold for automatic certification is the threshold required to certify a union without a representation vote
Source: *Clemens et al. 2006*
[10]

Research has shown that differences in the certification process influence unionization rates.

Riddell (2004) investigated British Columbia's experience between 1984 and 1998. This is an interesting period since mandatory secret ballot voting was introduced in 1984 and then eliminated in 1993. It provides an opportunity to link results with a specific manner in which workers certify a union. Riddell (2004) found that unionization success rates fell by 19 percentage points after mandatory voting was introduced, and then increased by nearly the same amount when it was eliminated.

Professor Sara Slinn, also of Queen's University, investigated the effect of Ontario's change from a card-check system (a type of automatic certification) to mandatory secret ballot voting in 1995 and came to similar conclusions as Riddell. She found that the "introduction of mandatory votes had a highly significant negative effect on the probability of certification" by unions.^[8]

In contrast, as Rose and Chaison have observed:

The American system of labour board certification of unions relies on elections among workers and typically results in protracted campaigns in which employers use union-avoidance tactics ranging from procedural delays to

^[10] Clemens, Velhuis, Palacios, "Buzz Hargrove's Democracy and Automatic Certification", Fraser Forum, July/August 2006

^[8] Clemens, Velhuis, Palacios, "Buzz Hargrove's Democracy and Automatic Certification", Fraser Forum, July/August 2006 at p.29.

discrimination against union supporters.^[9]

Mandatory Union Membership as a Condition of

Employment: once a Canadian union gains exclusive bargaining authority through the certification process it is able to enter into a collective agreement which may contain as one of its terms a provision requiring that employees be members of the union as a condition of their continued employment. There are different types of union security clauses found in collective agreements in Canada and labour legislation expressly permits mandatory union membership. For example, s.29 of the Alberta Labour Relations Code 1988 cL-1.2 s27 provides:

29(1) Subject to subsection (2), nothing in this Act prevents a trade union from continuing an existing collective agreement or entering into a new collective agreement with an employer or employers' organization whereby all the employees or any unit of employees of the employer or of one or more employers represented by the employers' organization are required to be members of a trade union.

(2) If the Board is satisfied that an employee because of the employee's religious conviction or religious belief

(a) objects to joining a trade union, or

^[9] Op.cit. at para. 6.

(b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type referred to in subsection (1) do not apply to the employee and that the employee is not required to join the trade union, to be or to continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, if amounts equal to any initiation fees, dues or other assessments are paid by the employee to, or are remitted by the employer to, a charitable organization agreed on by the employee and the trade union.

This provision ensures that trade unions can include in collective agreements, a requirement that employees be members of the trade union as a condition of employment. The Labour Relations Board is empowered to exempt an employee who objects to joining a trade union or paying dues on the basis of religious conviction or religious belief. The situation in Alberta and other provinces is to be contrasted with the prevailing regime in the United States following passage of the Taft-Hartley Act which is described by the Executive Director of the Harvard Trade Union Program as follows:

The major legislated roll back, however, came with the passage of the Taft-Hartley Act of 1947. ... The Act ... abolished the "closed shop," a form of union security and maintenance that unions may negotiate with employers to require union membership as a condition of employment in that shop. And Taft-Hartley provided the legal basis for states to adopt their own more restrictive labour legislation – the

so-called right-to-work laws, which outlaw most forms of union security, even those voluntarily agreed to by labour and management. By prohibiting union security provisions of the kind taken for granted in most other industrialized nations, unions in "right-to-work" states are forced to constantly deal with the problem of "free riders." Unions in these states are required by law to represent and collectively bargain for non-union workers in union worksites, but these workers need not join the union, pay union dues, or contribute to servicing costs for the benefits they receive from the unions. By promoting freeloading and banning union security, right-to-work laws construct a serious barrier to union organizing and survival. Twenty-one states, mostly in the South, have adopted right-to-work laws. Designed to placate business demands to restrain "big labour" in the post-World War II era of labour militancy, Taft-Hartley effectively reversed many of the rights labour had won with the passage of the Wagner Act.^[11]

The Mandatory Payment of Union Dues as a Condition of

Employment: in the above citation, Professor Bernard refers to the problem of the free rider in the United States. This is not a problem for trade unions in Canada since the innovative decision of Justice Ivan C Rand of the Supreme Court of Canada. In 1946 Justice Rand was appointed as an arbitrator to resolve a 99-day strike by 10,000 Ford workers in Windsor, Ontario. In late 1945 the workers struck for a "union shop" (which would have required all

^[11] Bernard, Elaine, 'The Divergent Paths Of Organized Labour In The United States And Canada', <http://www.law.harvard.edu/programs/lwp/eb/canusa.pdf>

workers to join the union) and an automatic “check-off” (which would have required the employer to deduct union dues from pay-cheques and remit them to the union, thereby relieving the union of the task of collecting dues from each member). The strike involved mass picketing, and led to solidarity strikes by some 8500 workers at 30 other establishments. There was a concern the strike would spread further and the government persuaded the parties to accept the intervention of Mr. Justice Rand.

Rand ruled that while the workers did not have to join the union, they had to pay an amount equivalent to dues to the union since they all benefited from the collective bargaining conducted by the union. Justice Rand also granted an automatic check-off provision.

The "Rand formula" as it has come to be known is now protected by legislation and operates in many workplaces. Table 1 describes the provisions requiring automatic dues deduction in the various jurisdictions.

The union security provisions permitted by labour legislation in Canada give unions several advantages in increasing membership. First, unions are able to include provisions in collective agreements requiring membership as a condition of employment. In such closed or union shop settings, the union effectively controls the labour supply and all who wish to work must first become union members. Second, the operation of the Rand formula and automatic dues deduction provide unions with a certain and predictable income which enables them to hire staff who, in addition to providing services for the existing membership, are able to participate in organizing drives to expand union membership.

Union security provisions have been targeted by critics who argue that the level of union density in Canada is higher than it ought to be, and that legislation should be amended to reduce union density to the levels found in the United States.^[12] On the other hand,

^[12] Masse, Martin, Quebec Must Loosen The Unions' Grip, *Les Quebecois Libre*, Montreal, September 15, 2004 / No 146; Clemens, Velhuis, Palacios, "Buzz Hargrove's Democracy and Automatic Certification", *Fraser Forum*, July/August 2006

critics from the left have argued that the problem with union security provisions is that they make unions bureaucratic and overly dependent upon the automatic collection of dues. One commentator has written:

Why, then, does the labour officialdom sing such praises to it? For one thing, it guarantees the steady flow of union dues. More fundamentally, it's one of the foundations of stable union institutions. The Rand Formula gives the blessing of the state to "responsible" unions – unions that negotiate pay and benefits, help to minimize strikes and direct action on the job, and endorse capitalism.

...

For full-time officials (and those who aspire to become full-timers), acceptance by the state and employers is vital. It allows them to go about their business with a minimum of trouble. For the officialdom, the stability and legitimacy of union institutions are much more important than the power of unions as organizations of workers' solidarity and struggle.^[13]

Performance in Collective-Bargaining:

Rose and Chaison have expressed the opinion that the higher rate of unionization in Canada has allowed Canadian unions to perform

^[13] Lamb, Sebastian, "The Rand Formula: Heart and soul of the labour movement?", *New Socialist Magazine*, Issue 57, July to August 2006 .

more effectively and thereby make themselves even more attractive to potential members.

... higher unionization has also enabled Canadian unions to outperform their American counterparts in collective bargaining, particularly during the turbulent 1980s. Concession bargaining was far more prevalent in the United States where union membership losses and aggressive employer bargaining strategies put unions on the defensive. The inability of American unions to repel employer demands for concessions and secure collective bargaining gains did little to increase the attractiveness of unionism among nonunion workers.^[14]

Participation in the Political Process:

The formal participation of organized labour in party politics has been a hallmark of Canadian political life for many years. Trade unions have traditionally supported the New Democratic Party and have provided significant funding. The Executive Director of the Harvard Trade Union Project has commented upon the significance of union participation in politics:

If there is one overriding conclusion to be drawn from the Canadian experience, it is the importance of labour political action -- and, in particular, the need to break with parties dominated by business interests and construct a new politics based on the needs and aspirations of working people.

^[14] Rose, Joseph B., Chaison, Gary N., "Unionism in Canada and the United States the 21st Century: the Prospects for Revival," *Industrial Relations*, Volume 56, Winter, 2001

Unions can only break their social isolation by getting political and joining in coalitions with other progressive social movements for change.^[15]

Rose and Chaison have observed:

...the affiliation between organized labour and the social democratic party, the New Democratic Party (NDP), has enhanced the political influence of Canadian unions (Rose and Chaison 1996). The institutionalization of the NDP within a highly federalized parliamentary system has resulted in the liberalization of collective bargaining laws (Bruce 1989). In contrast, union-political party linkages in the United States are less formal and unions have not been able to persuade Congress to reform the national collective bargaining law.^[16]

The link between electoral politics and the quality of labour legislation is clearly recognized by the union leadership. Buzz Hargrove, the National President of the National Automobile, Aerospace, Transportation and General Workers Union of Canada put the position clearly in a recent speech.

It is no coincidence that when Mike Harris was elected in Ontario, the very first piece of legislation he brought in was an omnibus bill aimed at disempowering the labour movement,

^[15] Bernard, Elaine, 'THE DIVERGENT PATHS OF ORGANIZED LABOUR IN THE UNITED STATES AND CANADA',
<http://www.law.harvard.edu/programs/lwp/eb/canusa.pdf>

^[16] Rose, Joseph B., Chaison, Gary N., "Unionism in Canada and the United States the 21st Century: the Prospects for Revival," *Industrial Relations*, Volume 56, Winter, 2001

cancelling the anti-scab law, eliminating card-based certification procedures, and facilitating decertification efforts. Those initiatives continue to work their painful magic on Ontario's labour market even today, more than a decade later.^[17]

It is no doubt true that the active participation by the union movement in the affairs of the New Democratic Party has provided an important platform from which to advocate for progressive labour legislation and social welfare reform. One of the ironies, however, is that Canadian workers have not voted for the NDP in sufficient numbers to ensure the election of the party at the national level. The NDP has formed the government from time to time in several of the provinces and some progressive labour legislation is directly attributable to the fact that the NDP agenda has been influenced by the trade union movement.

In 2004 a significant change was made to election financing laws in Canada. These new rules limit the amount an individual may

^[17] Hargrove, Buzz, *The State of the Union Movement in Canada: The Challenges We Face and the Innovations We Must Undertake*, 2006, Industrial Relations Centre, Queen's University Kingston, Ontario, Canada p.5.

contribute to a party and its candidates to \$5,000 in a calendar year. Corporations and trade unions are capped at \$1000 per year. In speaking in favour of the changes, Prime Minister Chretien said there was:

...a perception that corporate and union contributions buy influence.... I firmly believe that the elimination of contributions to political parties by business and trade unions will greatly improve the political culture in Canada.^[18]

In 2003 the New Democratic Party received \$5.1 million from trade unions. This represented just over half of the contributions received by the NDP that year.^[19] The new law will significantly reduce the funds available to the NDP.

In the last federal election in Canada an important disagreement arose when the president of one of the largest private-sector unions, Buzz Hargrove, decided that he would support the Liberal party rather than the New Democratic Party. Hargrove

^[18] CBC News Online, June 5, 2006

^[19] "Registered parties fiscal period returns..." Ottawa : Chief Electoral Officer of Canada, 1977 -

rationalized his decision as follows:

If we simply go to our members today and tell them, as we did for decades, “We recommend the NDP, and if they get elected, everything will be OK,” they will laugh at us. In the first place, we have learned the hard way that electing the NDP does not solve all our problems. We need an active, demanding and independent labour movement to push the envelope and hold government accountable, whatever party is in power. There is nothing that can replace a strong and independent labour movement. Governments come and go. The labour movement, as long as it does its work, will continue for many years to come.

Second, our members are far more sophisticated and independent-minded in their politics today. They do not want to be told how to vote. It is now essential that unions begin to rebuild an independent political capacity. We can no longer have our political hopes and dreams symbolized in the fortunes of one political party. This is not to say that we do not take stands on political issues, including taking sides during elections. Anyone who read a newspaper at any time during the last federal election knows full well that we did not sit on the sidelines. But it does mean that our interventions must become more strategic, more deliberate and above all, more independent. In the CAW, our innovations in this area have involved replacing our former NDP-affiliated political education committees with non-partisan political action committees. We call them the Union in Politics Committees (UPCs), to reflect the twin truths that the union must be present in the political arena, but as the union, not as a party.^[20]

^[20] Hargrove, Buzz, *The State of the Union Movement in Canada: The Challenges We Face and the Innovations We Must Undertake*, 2006, Industrial Relations Centre, Queen’s University Kingston, Ontario, Canada p.21.

Hargrove's decision was extremely controversial but frankly recognized the fact a vote for the NDP made more likely a Conservative Party victory. No doubt Hargrove's strategy significantly weakened the NDP and strengthened the Liberals. However, notwithstanding this break with tradition, the Conservative Party succeeded in forming a minority government.

In the next federal election, expected within the next year, it will be very interesting to see how the NDP manages. Faced with the twin challenges of significant reductions in funding from trade unions (as a result of the election law amendments) and the strategic voting advocated by important leaders such as Buzz Hargrove, the NDP could be in significant trouble.

Features of the Canadian Economy Which Militant Against Social Partnership:

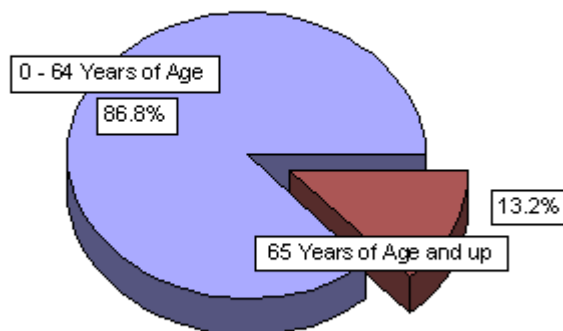
Canada's leading national newspaper, the *Globe and Mail* recently ran a week long series on the greatest problem facing the Canadian economy in the coming decades--a looming labour shortage resulting from a falling birthrate and the retirement of the

baby boomers.

The likely progress of a national labour shortage can be seen in the experiences of Alberta and British Columbia. A booming resource sector runs short of certain types of skilled workers. Those sectors begin to raise wages to draw in workers from other sectors. The wider economy is engulfed by those sectors unable to compete on wages—generally, hospitality and retail businesses which find themselves chronically short of workers.^[21]

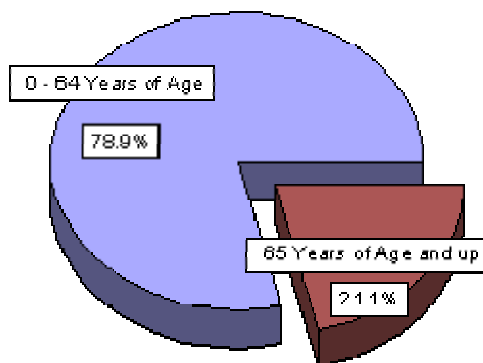
The proportion of Canadians over the age of 65 will double in the next two decades.

Age Distribution in Canada in 2006

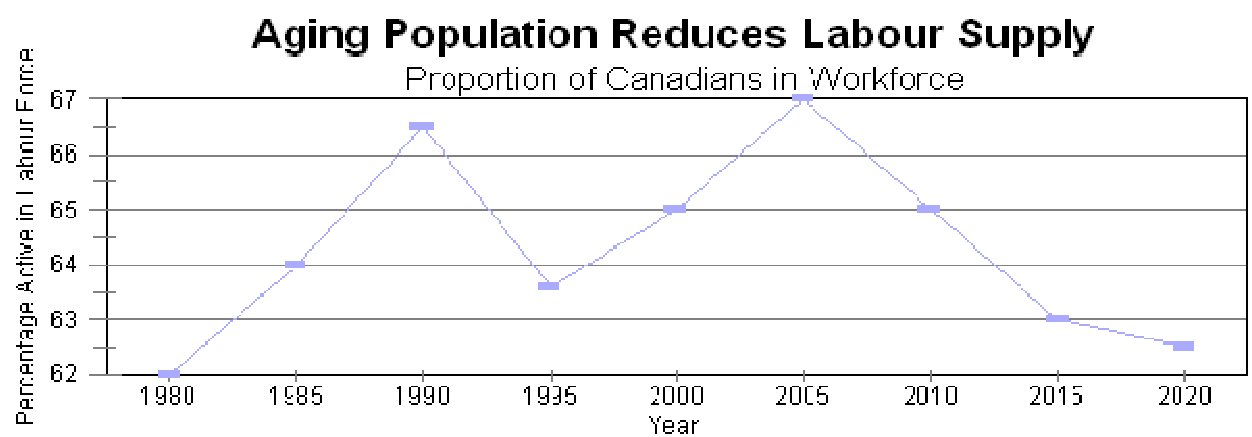


^[21] Ibid

Age Distribution in Canada in 2026



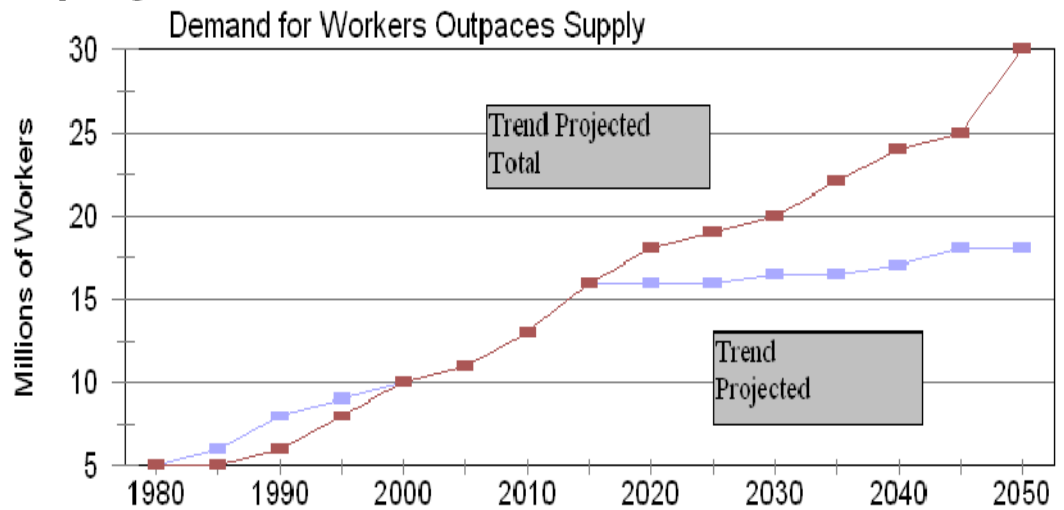
The proportion of Canadians active in the workforce will decline steeply.



The growth in the demand for workers will begin to outpace supply

beginning in 2016.

Employment and Labour Force



The shortage of labour is most marked in the over heated economies of Alberta and British Columbia. There is a competition among Canada's regions for workers. Eastern workers are gradually moving west for the jobs offered in the increasingly important oil industry.²

Even though eastern workers are moving west, and the movement

² As Forbes Magazine has noted (Canada To Compete In Oil Market [Oxford Analytica](#), 02.17.05, 6:00 AM ET), increased international oil prices, combined with advances in extractive technologies, now make it economically viable to accelerate removal of the oil. The Alberta Energy and Utilities Board estimates that some 1.6 trillion barrels of crude oil lie in the tar sands. Of this, approximately 11% (some 175 billion barrels) are recoverable under current high oil prices. These reserves were officially recognised in 2003, dramatically raising Canada's proven reserves from approximately 5 billion to some 180 billion barrels (positioning it second only to Saudi Arabia at 265 billion barrels).

is fast by historic standards, the transition will not satisfy the demand. As the Globe and Mail reported:

By any measure, Alberta's growth and wealth in recent years are staggering, especially when compared with the rest of the country. The province's surplus hit a record \$10-billion in 2005-06 (the original projection was \$1.5-billion). For the 2006-07 year, Alberta announced record program spending of \$28-billion and another big unbudgeted surplus of \$4.1-billion, which is the highest initial projection in the province's history.

This summer, the Conference Board of Canada predicted that Alberta will lead the nation's growth this year, expanding by 6.6 per cent, compared with a national growth rate of 3.1 per cent.

Driven by commodity prices, especially oil, which the board expects will hover above \$65 (U.S.) a barrel for the next five years, it says Alberta's boom is not a "temporary phenomenon" but a "permanent structural change in the economy."³

³ Globe and Mail, August 23, 2006. According to the Conference Board, Alberta's per capita income for 2007 is expected to reach \$44,788, compared with the national average forecast at \$34,757.

During the first quarter of this year, Alberta's population climbed by 0.78 of a percentage point, or three times the national average of 0.24 per cent. About 25,900 people were added to the tally, including a net gain of 15,600 who moved from other provinces. Both increases set record highs for the first three months of the year.

More than 3.3 million people now live in Alberta, making it the fourth-largest province in the country by population.

But the massive population boom hasn't been enough to feed the economy's need for workers. The province recently released a 10-year work-force strategy that found that Alberta will need 86,000 workers in everything from trades to health care, professionals, and the retail and service sectors.

If nothing changes, the board worried earlier this year, by 2025 Alberta will face a

Alberta's tremendous development has been made possible by the rising price of oil which has made viable the economic development of the Alberta oil sands.⁴

shortfall of 332,000 workers. Already, the provincial economy is adjusting to avoid that kind of gap. But the casualties connected to it are mounting.

These days across the province, businesses are closing early, or shutting down altogether because they cannot find staff. There are delays in building new homes, roads and schools due to the labour shortage. And even if workers are found, the cost of materials and labour has skyrocketed.

⁴ Until recently Alberta's bitumen deposits were known as tar sands but are now called oil sands. Oil sands are deposits of bitumen; viscous oil that must be rigorously treated in order to convert it into an upgraded crude oil before it can be used in refineries to produce gasoline and other fuels. Bitumen is about 10-12 % of the actual oil sands found in Alberta. The remaining 80-85 % is mineral matter, including clay and sands, and around 4-6% water. While conventional crude oil is either pumped from the ground or flows naturally, oil sands must be mined or recovered in situ (meaning in place). Oil sands recovery processes include extraction and separation systems to remove the bitumen from the sand and water. Oil sands currently represent 40% of Alberta's total oil production and about one-third of all the oil produced by Canada. By 2005, oil sands production is expected to represent 50% of Canada's total crude oil output and 10% of North American production. Although tar sands occur in more than 70 countries, the two largest are Canada and Venezuela, with the bulk being found in four different regions of Alberta, Canada: areas of Athabasca, Wabasha, Cold Lake and Peace River. The sum of these covers an area of nearly 77,000 km². In fact, the reserve that is deemed to be technologically retrievable today is estimated at 280-300Gb (billion barrels). This is larger than the Saudi Arabia oil reserves, which are estimated at 240Gb. The total reserves for Alberta, including oil not recoverable using current technology, are estimated at 1,700- 2,500Gb.

Companies operating in Alberta's oil sands have had no choice but to build accommodation, with all the comforts of home, to keep and attract workers. Shell Canada Ltd., for example, has asked ATCO Structures Inc. to build housing for nearly 2,500 workers at its Athabasca oil-sands project, which includes a gymnasium, track, lounge, lecture theatre and covered elevated walkways to protect workers from the cold. The self-sufficiency expands beyond housing to keep the economy chugging along. Canadian Natural Resources Ltd., for example, is bringing in foreign workers, opening a training centre to apprentice trades such as welding and building a landing strip to handle Boeing 737 jets to bring in workers from elsewhere in the country.

The prospect of a secure source of supply of vital oil, now feasible to produce given higher world prices, has created an overheated economy in the West. Vital public infrastructure such as schools, transportation systems, and health delivery services are strained by the rapidly growing population. Housing prices are rising rapidly(40% last year in the city of Calgary).

Employers are desperate to find reliable employees and the demand has driven up wages and benefits. It was recently reported that the wages of sheet metal workers increased by 21% over one year. Employers like McDonald's offer scholarships to entice part-time workers. Non union employers pay rates

equivalent to union jobs-- and advertise the fact that employees will not have to pay union dues.

In this booming environment trade unions are struggling to adapt. The Chemical, Energy and Paperworkers Union, for example, has implemented a new strategy for construction organizing. The Union aims to represent all trades people working on job sites, a dramatic departure from the tradition in which each trade has been represented by a different union. One of the rationales for the approach is to offer cost savings to construction employers while maintaining and improving the wages, benefits and working conditions of trades' people. Organizing is to be strategically targeted at mega-projects.

Conclusion:

The concept of social partnership may belong to an earlier era.

Even in Europe where the concept was developed it is being challenged by the forces of globalization which have resulted in downsizing and contracting out in the creation of a part-time worker class. The concept never captured the essence of the industrial relations system in North America where the market has been given freer rein.

In this paper I attempted to identify the key features of social partnership and assess the degree to which these features are present in Canada. In summary, my conclusion is that the notion of social partnership is inadequate to capture the essence of the Canadian experience going forward into the 21st century.

The Canadian notion of what should be contained in a social contract openly recognizes and appreciates the functioning of a free market system. There is an absence of a fear of a class system which is one of the driving forces of the notion of social partnership. The acceptance of the legitimacy of the market as a device serving both public and private interests moves beyond the

class-based ideology which is the foundation of the social welfare state. Related to this understanding is the fact that citizens do not see trade unions as essential vehicles for their political expression. Rather, there is a general cynicism about all public institutions, including trade unions.

One of the important measures of social partnership is the density of trade union membership. As my paper demonstrates, there is a significant difference in the density rates between Canada and the United States. The differences can be explained primarily by the fact that the Canadian legal environment is more hospitable to trade unions. This very important legislated bias in favor of trade unions is under sustained attack in Canada. The premise of the industrial relations model, that strong trade unions are desirable to effectively represent employees, is not a comfortable assumption shared by all. Increasingly, right-wing commentators are attacking the basic assumptions upon which the Labour Relations system is founded. While Canadian union density rates continue to be higher than those the United States there are many in Canada who

believe that the American, rather than European model should be emulated. Given the increasing integration of the two economies under the North American Free Trade Agreement, it is likely that Canadian Labour law will come to more closely resemble that which exists in the United States. This reality does not bode well for the notion of social partnership.

Another key element of social partnership is the involvement of trade unions in the political life of a nation. As my paper shows, recent changes in election financing laws will significantly reduce the influence of organized labour on the New Democratic Party and will make it significantly more difficult for that party to raise funds to compete effectively for political office. Furthermore, the idea that unions should engage in strategic voting rather than blindly supporting a particular party, may have profound consequences for the NDP. Blunt speaking union leaders such as Buzz Hargrove, have said what many people have thought for years. With the political realignment of the right side of the political spectrum in Canada (the coming together of the Conservative Party and the

Reform Party) there will be pressure to unite the left (the new Democratic Party and the Liberal Party). The idea of strategic voting to resist the united right will be critical in coming years. This may well reduce the political influence of organized labour.

Finally, the Canadian economy is undergoing fundamental changes which do not conduce to the idea of social partnership. The fact the population is aging and that there is a looming manpower shortage will likely result in increased immigration. Newcomers to Canada will not necessarily be the strongest advocates of social partnership. Further, the change in the political and financial center of the country toward the West will affect the social consensus. The scale of the energy development is so vast that trade unions are showing themselves prepared to make significant compromises to ensure that they will not be priced out of the market. There is serious competition from the non union sector and existing trade unions are making important changes in traditional methods (for example, reducing the significance of trades distinctions) in order to maintain a share of the labour

market.

For all of these reasons, it is difficult to be optimistic about the concept of social partnership in Canada the 21st century.

二十一世紀加拿大社會夥伴關係的前景

Timothy J. Christian, Q.C.

劉梅君 譯

For the International Symposium
on the Prospect of Social Partnership in the 21st Century
National Chengchi University, Taipei, Taiwan
September 26-27, 2006

Conveners:

Center for Labor law and Social Law, College of Law, National Chengchi University

Study Program of Labour and Social Policy; National Chengchi University

Institute for Labour Research, National Chengchi University
Taiwan ILO & Employers Foundation

前言

「社會夥伴」的概念源自歐洲，在加拿大這個概念未曾清楚正確地描繪勞資政三者的關係。根據社會夥伴的模式，勞資政三方共同努力為該社會的公民達成正面積極的結果。在該模式裡，應有不低的工會組織率、工會直接政治參與、勞資政三方共同經營管理經濟、同時應有高水準的社會福利保障。

歐洲勞資關係模式下的社會夥伴概念目前已廣為歐盟國家所採用。愛爾蘭即為社會夥伴關係模式的一顯著例子，愛爾蘭「社會夥伴」的概念，具體呈現在勞資政三方，每三年一次的全國工資協議上。最近一次的三方協議內容包含了全國工資的調升，同時也就福利、健康及僱用等事項提供政策協定。⁵

近年來，「社會夥伴」概念的未來發展，引發些許疑慮，如 Vaan Warden 及 Lehbruch 出版的書：「社會福利國家的再協商：組合主義合作下的彈性調整」(Renegotiating Welfare State: Flexible Adjustment through Corporatist Concertation)，當中指出：

其中觀察 1970 年代末，大環境的變化已相當程度影響了社會夥伴之行動所依據的經濟、政治及社會條件。日益錯綜複雜的世界經濟底下，不確定性愈來愈大、高成長率的歲月已一去不返、失業率節節高升、勞資間利益共識基礎日漸受到侵蝕，這些變化導致組合主義模式備受挑戰。近來，伴隨著新自由主義及全球化風潮，社會夥伴面臨的是外在大環境的遽變。同時內在系統也起了變化，缺少了社會民主元素的新聯合政府、對國會的質疑、工會組織率的下降等，均不得不令人懷疑社會夥伴究竟是否還有明天。不少對此不甚樂觀的預言，舉例而言，

⁵ [Harald Von Riekhoff, and Hanspeter Neuhold, eds., Unequal Partners: A Comparative Analysis of Relations between Austria and the Federal Republic of Germany and between Canada and the United States \(Boulder, CO: Westview Press, 1993\) 55.](#)

Crepaz(1995) 就用了「恐龍的滅亡」(end of a dinosaur) 來形容社會夥伴無法滿足後現代社會的需求，他的觀察是，年輕一代希望的是一個透明公開的決策系統，民主的決策方式，以及對兩性而言平等公平的機會。然而老一輩的密室協商及家父長式的決策方式，正好是社會夥伴的主要內涵，因此這表示社會夥伴的概念與實務，與前述趨勢相抵觸。⁶

無論歐洲的社會夥伴未來如何，在北美，特別是加拿大，社會夥伴很顯然並不適用。本文我將回顧何以社會夥伴無法在加拿大被廣為接受的理由。以下我將從加拿大的「社會契約」概念、工會組織率及工會的挑戰、工會參與政治的程度、及加拿大的經濟發展特徵等，五方面來說明，何以社會夥伴這個目標無法落實於加拿大。

加拿大的社會契約

2002 年加拿大政策研究網，在知名經濟學者 Judith Maxwell 的帶領下，執行了一項具有代表性樣本的調查，想了解加拿大公民希望的基本生活素質，這項調查後來寫成以下的結案報告：「加拿大未來的公民對話：21 世紀的社會契約」，當中點出了加拿大公民對攸關社會契約的重要元素的意見。結論提出以下兩項重點，這兩項重點標示出一個尚未形諸文字，但卻能彰顯出加拿大核心價值的社會契約。

其一、市場不能再被視為獨立的，而且是市民社會的對立面。相反地，市場現在被視為是社會的核心部份，提供兼具公共與私人利益的功能，市場價值以一種獨特且具說服力的方式，被整合入加拿大市民社會及社會公平的概念中。同時

⁶ Frans Van Waarden, and Gerhard Lehbruch, eds., *Renegotiating the Welfare State: Flexible Adjustment through Corporatist Concertation* (New York: Routledge, 2003) 97.

加拿大公民已務實地看待市場與政府的限制。

其二、加拿大公民認為他們更積極的參與政府。他們更強調自立且要求自己的聲音被聽到。其中，隱隱地感覺出加拿大公民渴望能積極參與公共事務。他們也堅持政府、企業及其他機構要展現出更大的責信(accountability)，他們希望見到的是一個能回應民眾的政府，以利公民彼此間的持續對話。⁷

這次調查所透露的想法與價值，很清楚地表明加拿大人要的不是一個傳統的社會夥伴模式來解決 21 世紀的挑戰，而是能超越過去奠基於階級意識形態的社會福利國家模式，同時接受市場作為提供公共及私人利益之機制的正當性。現在加拿大民眾不再認為工會是其政治發聲的主要工具，這個社會對所有的機構普遍存在不信任，因而對機構課以更大的責任。

這次受訪民眾對社會福利也有新的看法：

他們希望所有能工作的民眾都有機會得到一份生活工資，社會方案需要更好的規劃，以協助民眾完全參與工作、社區及家庭。這些方案能發揮拉民眾一把，而非只伸出手(hand up not a hand out)的作用，降低民眾的依賴，克服社會參與的障礙。這表示教育及訓練必須更讓民眾負擔得起，且易於取得，這麼做不僅有助於社會流動，也是確保經濟發展的必要之途。⁸

固然民意調查未必能反映社會真實，但這份調查的確支持了以下的看法，那就是加拿大人民對社會契約的態度在過去 40 年已經有了根本性的改變。反映在這份調查中的當前想法是，加拿大已日漸遠離歐洲的社會夥伴及社會福利概念。

⁷ Maxwell et al, "Citizens Dialogue on Canada's Future: a 21st Century Social Contract" Canadian Policy Research Networks, 2003.

⁸ Ibid, p.vii

工會組織率

最進「加拿大人力資源及社會發展」(Human Resources and Social Development Canada)這個機構對工會會員的調查顯示，工會會員組織率(工會會員佔非農業受雇的比例)在 2005 年 1 月 1 日的比例是 30.7%，美國同期是 12.5%。這兩個國家的公部門員工組織率都高過民間部門的組織率。以 2005 年為例，加拿大公部門組織率高達 70%，美國為 36.5%。

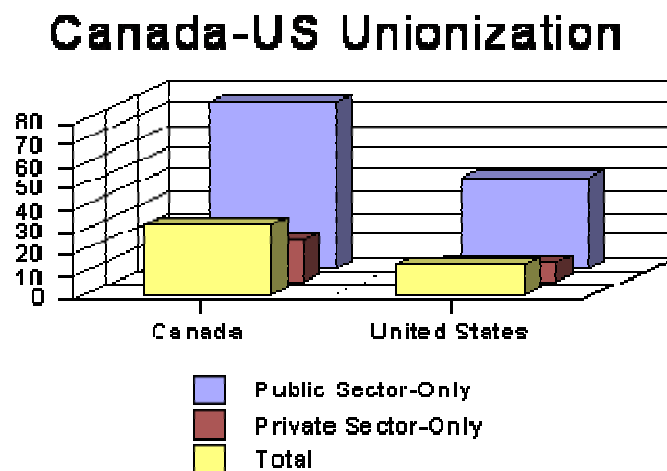
歐盟國家的工會組織率通常較高，阿姆斯特丹高等勞動研究中心 (Amsterdam Institute for Advanced Labor Studies)的主管 Jelle Visser 最近對一項針對 24 國工會組織率的分析報告指出：

工會組織率在 2002 及 2003 年都低於 1970 年，只有四國例外，分別是芬蘭、瑞典、丹麥及比利時，而這四國也恰好是工會參與失業保險的管理與執行。同時，從工會組織的觀點來看，這些年來工會組織情況日漸惡化(西班牙例外)。即使在九 0 年代，工會頗有新獲的愛爾蘭或荷蘭，快速的就業成長，仍使得工會在薪資工人的比例持續下降；在其他僱用成長非常緩慢的歐洲國家，如德國、法國、奧地利等，工會組織率也依然下降。⁹

在加拿大，近來有評論家注意到美加兩國工會組織率的差異，下圖清楚呈現

⁹ Visser, Jelle, *Monthly Labour Review*, January, 2006. Visser 的結論指出，「... 國際競爭日益激烈(全球化現象)，服務部門僱用提高，經濟成長緩慢，甚至政府僱用下滑(民營化使然)，失業率更高(且期間更長，特別是在歐洲)，採用彈性用雇契約的比例提高，同時較低的通貨膨脹率及藉由貨幣緊縮政策來進行通貨膨脹的管控等作為，均對工會實力及工會招募新會員造成不利的影響。當然前述的影響還會受到勞動力市場制度、法令規章及政治的左右。許多跨國長期性的比較研究指出，一些制度性因素，如工會管理失業基金、工會在職場的正當性被接受、全國性的集體協商等，都跟工會組織率高低有正向關係，因為前述制度性因素為會員提供了直接的誘因，也支持職場會員的「社會規範」，同時降低雇主的抵制。

出兩國工會組織率在公部門及私部門的顯著差異。對於這個現象，研究者提出若干解釋，第一種解釋是加拿大的公部門比美國大(加拿大為 18%，美國為 14%)，但即使如此，加拿大公部門的工會組織率幾乎是美國的兩倍。Rose 及 Chaison (2001)的說法是，「1960 及 1970 年代公部門組織率的暴漲是得力於通過有利的集體協商立法」。¹⁰



其次，是法律環境不同。加拿大工會有略勝於美國工會的優勢，那就是強制入會及強制收會費是雇用的前提條件，以及「認可程序」(recognition process)。所謂「認可程序」是指工會為了取得與資方協商的唯一代表權，工會要先取得作為適當談判主體的承認，一旦工會取得了承認，才有資格代表工人進行集體協商。此種「認證」的方式，美國和加拿大在做法上各有差異，例如工會會員身份在加拿大的兩各省及美國有些州，就非必要條件。具體差異，請見表一。

法律環境

¹⁰ Rose, Joseph B., Chaison, Gary N., "Unionism in Canada and the United States the 21st Century: the Prospects for Revival," *Industrial Relations*, Volume 56, Winter, 2001. 這兩位作者接著指出「目前工會進行會員組織這項重大使命的前景不甚樂觀，因為見不到經濟復甦的跡象(如不景氣、對市場經濟信心的滑落，及福利國的再度抬頭)、以及有利工會組織的主要立/修法機會不大。

工會取得談判權的「認可」程序，首先是工會要提出員工支持工會此舉的證明；一般而言，工會獲得的支持度，從 25%(Saskatchewan 的案子)到 50%+1(Prince Edward Island 的案子)都有。之後，勞動關係委員會即要裁定工會提出的支持證明是否能被接受，加拿大有五個省要求是以秘密投票來決定，另外五個省則無此規定，還有三個省的規定是只要工會取得了超過 50%的支持度，該工會即當然取得代表協商權(簡稱自動認可)。¹¹

研究也發現，各省不同「認可」的規定程序會影響該地的工會組織率。Riddell (2004)的研究指出，在 1984 到 1998 年期間，加拿大卑詩省的狀況是，1984 年卑詩省通過秘密投票的規定，但於 1993 年廢止，主要原因是，強迫投票的規定通過實施後，工會組織率驟降 19%，待該規定廢止後，工會組織率又提升到幾乎是原來的水準。另外 Sara Slinn 研究安大略省的情況後表示，該省原先是採自動認可的方式，但 1995 年改為秘密投票，結果工會組織率大幅滑落。¹²

Table 1: Certification Information in Canada & the United States, 2005*

	Is union membership required for Application?	Threshold required for application	Is vote by secret ballot required for Certification?	Threshold required for certification vote	Threshold for automatic certification*""
BC	Yes	45%	Yes	50% + 1	n/a
AB	No	40%	Yes	50% + 1	n/a
SK	No	25%	No	50% + 1	50% + 1
MB	Yes	40%	No	50% + 1	65%
ON	Yes	40%	Yes	50% + 1	n/a
QC	Yes	35%	No	50% + 1	50% + 1
NB	Yes	40%	No	50% + 1	60%
NS	Yes	40%	Yes	50% + 1	n/a
PEI	Yes	50% + 1	No	50% + 1	50% + 1
NF	Yes	40%	Yes	50% + 1	n/a

¹¹ 魁北克省的私部門工會組織率是北美最高，40%的勞工加入工會（安大略省及亞伯他省才 25%，至於美國大多數的州才 15%不到）。主要原因是魁北克省的法律強迫工人加入工會。舉例而言，要在營造業工作，勞工必須先加入五個官方許可的工會之一。

¹² Clemens, Velhuis, Palacios, "Buzz Hargrove's Democracy and Automatic Certification", Fraser Forum, July/August 2006 at p.29.

Federal	Yes	35%	No	50% + 1	50% + 1
All US States	No	30%	Yes	50% + 1	n/a

Notes

The threshold for automatic certification is the threshold required to certify a union without a representation vote.

Source: Godin *et al.*, 2006.¹³

至於美國的情況如何？Rose 及 Chaison 指出，美國體系也是依賴工人的選舉，但通常結果是雇主會以程序拖延，甚至以歧視工會支持者的方式來阻礙。¹⁴

強制入會作為僱用前題

一旦工會取得了唯一協商權，即可與資方進行集體協商，訂定集體協約，在協約中可以規定強制入會條款，作為員工繼續雇用的條件。加拿大的集體協約中，這類的工會安全條款有許多種，勞動法規也明白地允許強制入會的規定。舉例而言，亞伯他省 1988 年勞資關係法規定，取得協商代表權的工會可以延續既存的集體協定，或另和資方團體簽訂新的協定，要求所有的員工必須加入工會。但若某些員工因為宗教信仰或信念的理由，可以拒絕入會，同時也就無須繳交會費。另外，該省勞動關係委員會同意，只要員工跟工會取得共識，同意員工捐給特定慈善機構的金額相當於會費，則該員工可以不受協約當中強制入會條款的拘束。

換言之，該省的規範是確保工會有權利在團體協約中放入強制入會條款，但勞動關係委員會另有權限豁免有特殊宗教信仰者排除適用。相較之下，美國的情況有很大的不同。Taft-Hartley Act 通過後，美國的情況，誠如哈佛工會計畫

¹³ Clemens, Velhuis, Palacios, "Buzz Hargrove's Democracy and Automatic Certification", Fraser Forum, July/August 2006

¹⁴ Op.cit. at para. 6.

(Harvard Trade Union Program)執行主任所言：

美國主要立法潰敗來自於 1947 年 Taft-Hartley Act 的通過，該法廢止了「工會壟斷場廠」（或謂「封閉式工廠」，closed shop）的規定，這使得工會無法要求雇主將工會會員身分作為雇用的條件。該法進一步提供各州制定更限縮的勞動立法的法源依據，亦即所謂的「工作權法」（right-to-work laws），後者對工會安全造成相當大的破壞。在大多數已開發國家視為當然的工會安全條款被禁止後，在這些實施工作權法的各州，工會被迫經常面臨「搭便車」的問題，因為在這些州，工會不僅代表工會會員，也要代表非工會會員與雇主集體協商，即使後者根本未盡繳費與其他會員義務，但享有會員同樣的保障與福利。這使得工會在組織上與生存上面臨極大的困境。美國有 21 州，主要在南方，均通過實施工作權法。原本意在節制二次世界大戰後「大工會」戰鬥力的 Taft-Hartley Act，的確很有效地逆轉了更早之前 Wagner Act 對勞方權益的保障。¹⁵

強制繳會費作為雇用條件

在前述引文中，Bernard 教授指出了美國「搭便車」的問題。這個問題不存在於加拿大，因為 1946 年時，加拿大最高法院法官 Ivan Rand 曾經做了一項頗具創意的裁定，當年他被指定做為發生於安大略省 Windsor 這個地方的福特汽車公司一萬名員工長達 99 天罷工的爭議仲裁員，福特員工要求要有「工會場廠」（union shop，亦即所有的員工均需加入工會）及「自動扣繳會費」（雇主協助工會自員工薪資中扣繳工會會費）。那次罷工也引發 30 家位於其他地方之福特公司約 8500 名員工的響應。政府擔心罷工會進一步漫延，因此勸導雙方接受最高法院法官 Rand 的仲裁。

¹⁵ Bernard, Elaine, 'The Divergent Paths Of Organized Labour In The United States And Canada', <http://www.law.harvard.edu/programs/lwp/eb/canusa.pdf>

Rand 在該案提出的仲裁建議是，員工不必強制加入工會，但須繳納會費，因為所有員工會因工會的努力而獲益，換言之，該次罷工原先的兩項訴求，「自動扣繳會費」這一項在仲裁中被接受了。這項成果現在被稱為「蘭德規定」(Rand formula)，受到法律支持，並在許多職場實際發生作用。表一呈現的是各地實施狀況。

加拿大勞動法令所允許的工會安全條款，提供了工會組織上的有利條件。首先，工會可以在團體協約中規定加入工會做為雇用的前提條件。無論是「工會壟斷場廠」或是「工會場廠」，工會均有效地控制勞動力的供給，任何想要工作的人必須先加入工會才行。¹⁶其次，「蘭德規定」提供了工會一份確定可預期的收入，以便能有專職工會幹部，不僅提供會員服務，也能從事組織任務以壯大工會規模。

也有人對工會安全條款有意見，這些批評者認為加拿大的工會組織率已超過它應該有的程度了，因此建議修法來降低組織率¹²。不過也有來自左翼的批評者指出，工會安全條款的問題出在，它使得工會變得官僚化，且過度依賴自動扣繳會費的機制。例如一位評論者曾表示：

為何工會領導人是如此讚美這個體制？很簡單，因為它確保會費收入。更根本的是，它是工會組織的根基之一。「蘭德規定」提供了國家對「負責任」工會的祝福—工會負責薪資福利的協商、協助減少罷工的發生、指導員工職務的執行、及擁抱資本主義。…對全職工會領導人而言，國家及雇主的接受是非常關鍵，唯有如此他們才能較不受干擾的執行工會任務，對他們而言，工會這個組織的穩定與正當性的關注，遠比對工人團結組織及鬥爭等工會實力的問題，還來得重

¹⁶ Masse, Martin, Quebec Must Loosen The Unions' Grip, Les Quebecois Libre, Montreal, September 15, 2004 / No 146; Clemens, Velhuis, Palacios, "Buzz Hargrove's Democracy and Automatic Certification", Fraser Forum, July/August 2006

視。¹⁷

團體協商的成就

Rose 及 Chaison 也曾表示，加拿大這麼高的工會組織率，使得工會能較有效的運作，從而對潛在會員具有吸引力。他們指出：

較高的工會組織率讓加拿大工會有能力在團體協商上，表現得比美國的工會好，特別是在譎多變的八〇年代。「讓步協商」(concession bargaining)盛行的美國，工會會員不斷流失，雇主攻擊性的協商策略，讓工會淪於守勢位置。美國工會無能拒絕雇主對於協商讓步的要求，並守住團體協商的談判成果，以至於在非會員工人群眾中缺乏吸引力。¹⁸

政治過程的參與

工會在政黨政治中的正式參與，向來是加拿大政治生活很重要的標誌。工會一向是支持新民主黨(New Democratic Party)，同時也提供該黨財務支援。前面提到哈佛工會計畫執行主任對加拿大工會參與政治的重要性，也做過如下的評論：

若加拿大經驗有什麼結論可取的話，大概是工會的政治行動，特別是工會需要與那些被經濟利益掌控的政黨保持距離，並根據勞動大眾的需要與願望建構出一個新的政治。工會只能藉由參與政治並與其它進步的社會運動團體攜手合作，才能打破其社會孤立的局面。¹⁹

¹⁷ Lamb, Sebastian, "The Rand Formula: Heart and soul of the labour movement?", *New Socialist Magazine*, Issue 57, July to August 2006.

¹⁸ Rose, Joseph B., Chaison, Gary N., "Unionism in Canada and the United States the 21st Century: the Prospects for Revival," *Industrial Relations*, Volume 56, Winter, 2001

¹⁹ Bernard, Elaine, "THE DIVERGENT PATHS OF ORGANIZED LABOUR

Rose 及 Chaison 對此的觀察是：

工會與社會民主政黨、新民主黨的聯手合作，有助提高加拿大工會的政治影響力。(Rose & Chaison, 1996)。在高度聯邦議會體制下，新民主黨的機構化卻導致集體協商法的退步(Bruce, 1989)。相反的，美國的工會與政黨間的聯結，就比較不這麼正式，工會也比較沒辦法遊說國會去改革團體協商法。²⁰

工會領袖很清楚地看到政治與勞動立法品質間的關聯。舉例而言，加拿大全國汽車、航空、運輸及一般產業工人工會主席 Buzz Hargrove 在最近一次的演講中很清楚的表達了這個立場，他認為安大略省的 Mike Harris 十多年前當選後所推動的第一項立法就是瓦解工會運動，這對安大略省的勞動力市場的影響至今仍深遠。

毫無疑問，工會積極參與新民主黨事務的確提供了一個很重要的平台，有利於倡導進步的勞動立法及社會福利改革。然而諷刺的是，加拿大勞工在投票箱前卻沒投給新民主黨足夠的票數，以確保該黨在全國層級的選舉中獲勝。新民主黨常常在數個省裡組政府，推出一些進步性的勞動立法，主要是因為工會運動對新民主黨的議題設定發揮了影響力。²¹

2004 年加拿大修訂了選舉獻金的法律，新規定限制個人一年內對政黨其候選人的捐款金額上限為 5000 美元。至於企業及工會的額度最高為 1000 美元。當

IN THE UNITED STATES AND CANADA',
<http://www.law.harvard.edu/programs/lwp/eb/canusa.pdf>

²⁰ Rose, Joseph B., Chaison, Gary N., "Unionism in Canada and the United States the 21st Century: the Prospects for Revival," *Industrial Relations*, Volume 56, Winter, 2001

²¹ Hargrove, Buzz, *The State of the Union Movement in Canada: The Challenges We Face and the Innovations We Must Undertake*, 2006, Industrial Relations Centre, Queen's University Kingston, Ontario, Canada p.5.

時支持該改革的財政部長表示：

…一般人觀念是認為企業及工會以捐款來換取影響力…我堅信廢除了企業及工會對政黨的捐贈規定後，加拿大的政治文化將會大幅改善。²²

2003 年新民主黨從工會處獲得 510 萬美元的捐款，該金額是當年度新民主黨所得到的總捐款金額的過半數以上。因此新修訂的法律很顯然會減少新民主黨所能獲得的捐款金額。²³

最近一次聯邦政府的選舉，出現了嚴重的意見紛歧，因為前述提到加拿大最大的私部門工會之一的工會主席，Buzz Hargrove 決定不支持新民主黨，轉而想支持自由黨，他對自己這項決定所提出的理由是：

今天我們若去跟會員說，正如多年來我們一直都是這樣子做，「我推薦新民主黨，若他們當選了，一切就會沒問題」，他們將會嘲笑我們。首先，根據經驗我們已經學到教訓，那就是新民主黨當選並不能解決所有我們的問題。無論是哪個政黨執政，我們需要的是一個積極、敢要求且獨立的工運來推動法案，並要政府負起責任來。沒有任何一個東西可以取代一個強而有力且獨立的工運。政府來來去去，只要工運還有功能，工運會一直堅持下去。

其次，我們的會員在政治上比以往更成熟且具有獨立的意志，他們不要他人來告訴他該如何投票。因此工會迫切需要開始重建一個獨立自主的政治能力。我們不能再將我們的政治希望及夢想寄託於某個政黨的運氣上。這麼說不表示我們在政治議題上不站立場，包括選舉時選邊站。在最近一次的聯邦政府選舉上，任

²² CBC News Online, June 5, 2006

²³ “Registered parties fiscal period returns...” Ottawa : Chief Electoral Officer of Canada, 1977

何人若有看報紙，就會很清楚知道我們沒有站在邊線上。這也表示我們一旦要介入，就必須要更有策略、更審慎，最重要的是更獨立。在 CAW 這件事情上，我們的創新作法是我們以非黨派的政治行動委員會來取代先前新民主黨有聯屬關係的政治教育委員會。我們稱之為「政治委員會中的工會」(Union in Politics Committees, 簡稱 UPCs)，以此來彰顯兩項事實：第一，工會在政治場域絕不能缺席；第二，工會不是政黨，工會需要扮演好工會角色與任務。²⁴

Hargrove 的決定引發極大的爭議，但很清楚的認知到一個事實，那就是投票給新民主黨只會讓保守黨勝選的機會增加。毫無疑問，他的策略很顯然會弱化了新民主黨，強壯了自由黨。不過，即使和傳統劃清界線，保守黨仍贏得了組少數政府的權力。

預計未來一年內，下一次聯邦選舉中，值得我們觀察的是新民主黨如何面臨考驗，一來從工會處能獲得的財務挹注大幅減少，二來重要工會領袖倡議的策略性投票主張，都讓新民主黨如臨大敵。

不利於社會夥伴關係的經濟環境

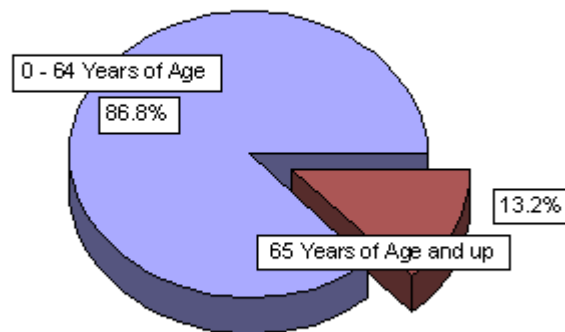
加拿大主要的全國性大報，全球郵報(Globe and Mail)最近刊出一系列專文，分析加拿大未來面臨的最大問題—生育率下滑引發的勞動力短缺的隱憂，以及戰後嬰兒潮的退休。

全國勞動力短缺已見之於亞伯他省及卑詩省。有些部門短缺的是某些技術性勞工，因此開始提高工資以吸引其他部門的勞工。沒有工資競爭力的部門，與其

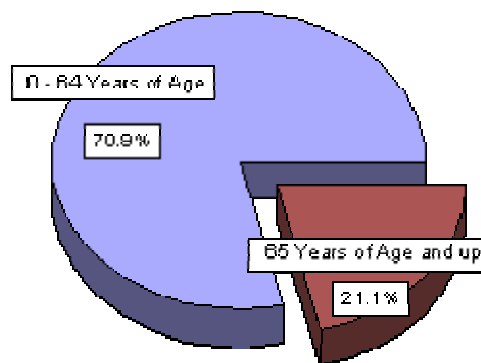
²⁴ Hargrove, Buzz, *The State of the Union Movement in Canada: The Challenges We Face and the Innovations We Must Undertake*, 2006, Industrial Relations Centre, Queen's University Kingston, Ontario, Canada p.21.

它有競爭力的部門出現愈來愈大的鴻溝，一般而言，餐飲旅館及零售業經常性的面臨人力短缺的問題。加拿大在未來 20 年 65 歲以上的人口將增加一倍。²⁵

Age Distribution in Canada in 2006

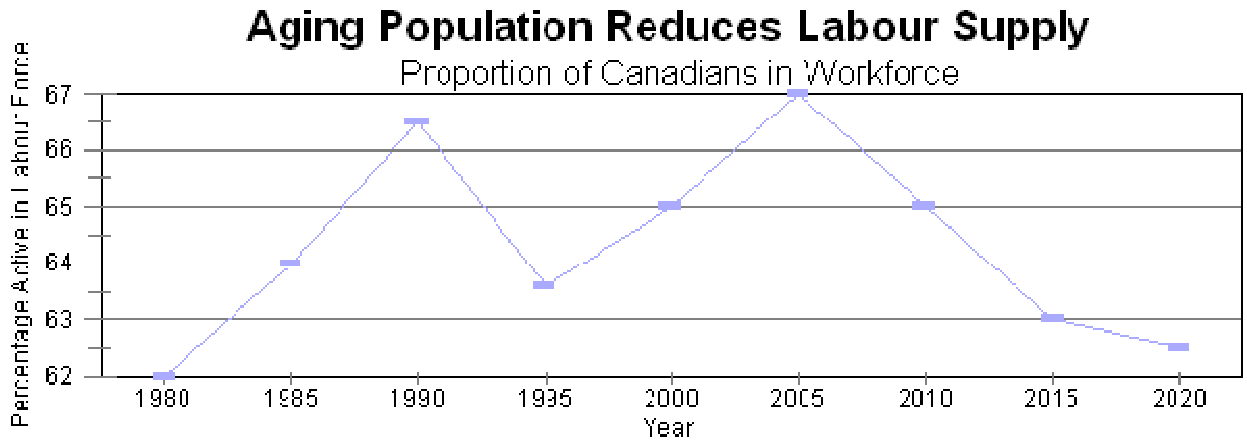


Age Distribution in Canada in 2026



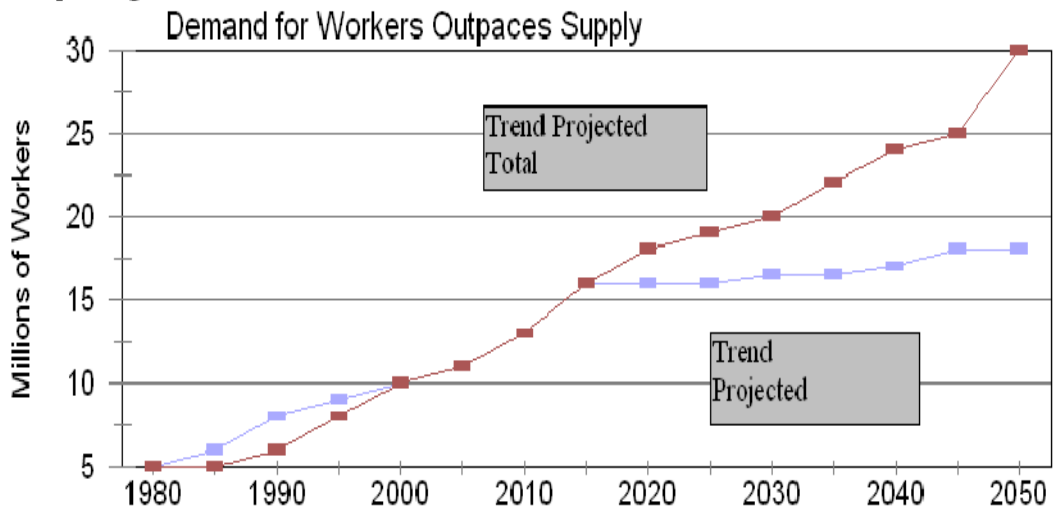
加拿大勞動人口的比例將大幅下滑。

²⁵ Ibid



勞動需求的成長，將於 2016 年開始超過勞動力的供給。

Employment and Labour Force



如前如指出，在亞伯他省及卑詩省這類經濟過熱的地區，勞力短缺的情形很顯著。因此加拿大境內的不同地區，存在勞動力市場的競爭。居住東岸的勞工逐漸往西部移動，特別是日漸重要的石油產業。²⁶

²⁶ 如美國 Forbes 雜誌刊載的一文指出 (該文標題：**Canada To Compete In Oil Market**

Oxford Analytica, 02.17.05, 6:00 AM ET), 國際原油價格的提高，再加上採煉技術的進步，使

即使東岸人口往西部移，且遷移的速度也超過歷史性標準，但仍不能滿足市場所需。全球郵報曾有如下分析：

無論用任何標準來看，亞伯他省近年來的成長與財富都是令人驚羨的，特別是跟其他地區相對照時。該省的盈餘在 2005-2006 年高達 100 億美元。也因此，亞伯他省宣佈一項 2006-2007 的支用計畫，金額高達 280 億美元，以及另一個高達 4.1 億美元非預算的營收，這均是該省有史以來最高的初期計畫。

今年夏天加拿大會議委員會(Conference Board of Canada)預測，亞伯他省今年的成長率將是加拿大第一，增加了 6.6%，全球的成長率只有 3.3%。該委員會表示亞伯他省的繁榮不是一個「短期現象」，而是「經濟上永久的結構變化」。

27

亞伯他省的快速發展，是靠著日漸上漲的原油價格，也是這個寶貴的石油資源讓亞伯他省的石油沙地上能有盎然繁榮的經濟。²⁸

得原油的挖掘成本下降且速度加快。亞伯他省的能源及電力委員會預估當地原油蘊藏量約在 1.6 兆桶。

²⁷ 全球郵報在 2006 年 8 月 23 號的一篇報導指出，「根據會議委員會消息，亞伯他省 2007 年的每人國民所得將達 44,788 美元，加拿大預測的全國平均值才 34,757 美元。今年的第一季，亞伯他省的人口成長了 0.78%，是三倍於全國的數值 0.24%。大約 25,900 人新加入亞伯他省，其中從其他省遷移來淨移入人口 15,600 人。這兩項數值是今年前三個月的歷史新高。目前居住在亞伯他省的人口超過 330 萬人，就人口數而言，是全國第四大省。即使如此，亞伯他省的人口仍不敷經濟生產所需。因此該省最近公佈了一項為期 10 年的勞動力策略方案，該方案表示該省需要 86000 勞工，以因應所有行業之需。

若情況沒改變，該委員會今年稍早擔心的是，亞伯他省到 2025 年時，會短少 332,000 名勞工。因此該省已開始調整來避免勞力短缺的發生。

該省這些日子來，企業都提早打烊，甚至因為找不到員工來關閉。新建房屋、道路及學校，也因勞力短缺而被迫延期。即便能找到工人，原物料及工資成本也一路狂飆。

²⁸ 加拿大的石油是一種焦油礦沙，需要經過採掘及分離系統來處理。2005 年焦油礦沙的生產預計會達到加拿大原油總產量的 50%，這數量是北美石油產量的 10%。全球有此焦油礦的國家有 70 個以上，加拿大及委內瑞拉是最大的兩國。技術可以採掘到的蘊藏量約有 2800 億桶到 3000 億桶，比沙烏地阿拉伯的 2400 億桶還多。亞伯他省的石油總蘊藏量，包括以現在技術尚未能採掘的估計有 1700-2500 億桶。

在亞伯他省的石油公司毫無選擇，都需要建房屋，提供舒適的居家條件，來吸引勞工。以 shell Canada Ltd 為例，該石油公司請 ATCO 營造公司為大約 2500 名員工建造住屋，其中包括了健身房、跑道、休憩大廳、演講劇院聽、加蓋的空中走廊以避寒。另一家公司，Canada Natural Resource Ltd. 也正引進外勞，開設了訓練中心來訓練諸如鎔焊的技術，建造了可供波音 737 起降的跑道，以便載運外地來的勞工。

豐沛的石油造就了西部的過熱經濟，因此隨著人口快速成長而來的是學校、交通運輸系統及醫療服務等必要的公共建設就顯得捉襟見肘。這些地區的房價因此大漲，如卡加利市(Calgary)去年就漲了 40%。

勞動力市場求過於供，以至於工資及福利節節上昇，最近的消息是金屬板工人的工資在過去一年就漲了 21%，麥當勞也提供獎學金來吸引兼職工作人員。沒有工會的雇主，給付工人的工資率，也幾乎和有工會保護之職場的工資率相當，另外，無工會職場在招募新員工時，還特別表示，無須繳交會費，以吸引求職者。

在這種經濟環境下，工會得去調整因應。舉例而言，加拿大的「化學、能源及造紙工會」提出一個新的組織策略，其目的在組織所有現場工作的技術勞工，這跟以往傳統上一個行業有一個代表性工會的慣例，有很大的差異。這麼做的道理在於，此舉可以幫營造業雇主省去成本，同時又可維持並提升技術勞工的工資、福利及勞動條件。這項組織工作策略性鎖定的對象是大型工程計畫。

結論

社會夥伴的概念或許是屬於上一個世紀。即使發軔於歐洲的這個概念，如今

也面臨全球化的考驗，如企業裁員瘦身、外包等作，均衝擊到勞資間的社會夥伴關係。在市場力較不受節制的北美地區，這個概念從來就沒有捕捉到勞資關係的精髓。

本文試圖指出社會夥伴的主要特徵，評估這些特徵是否存在於加拿大及其程度。總之，結論是社會夥伴概念不足以掌握正邁向 21 世紀的加拿大勞資關係經驗的精髓。

加拿大社會契約的概念公開地認可，且重視自由市場體制的功能。加拿大缺乏對階級社會的恐懼，而這正是驅使社會夥伴關係出現的原動力。這個社會接受市場作為滿足公私部門利益的工具性手段的正當性，這種想法越過了社會福利國家以階級主導的意識形態。同時加拿大公民也不認為工會是其表達政治意見的關鍵手段，相反的，這個社會對所有的公共機構(包括工會)存在著普遍地不信任。

社會夥伴關係的一個很重要的特徵是工會的組織率，如同這篇論文指出，美加兩國的工會組織率有很大的差異，差別在加拿大的法律體系對工會比較友善，但這樣的情況正被侵蝕中。過去認為強大的工會是有效能代表員工福祉的這種勞資關係模式的前提，並不為所有工人認同。右翼評論家對前項勞資關係所立基的前提，提出愈來愈多的質疑。加拿大工會組織率持續美國高的當下，許多加拿大人卻認為加拿大應該仿效的不是歐洲模式，而是美國模式。在北美自由貿易協定下兩國經濟日漸整合的情況下，加拿大的勞動法令很可能會愈來愈像美國，這對社會夥伴關係當然不是好兆頭。

另一個社會夥伴的重要元素是，工會參與政治事務。如同本文指出，選舉獻金法的近來修訂，會顯著的降低工會對新民主黨的影響力，同時該黨也因為在募款上困難度更高而無法有效的競逐政治位置。另外，工會應策略性投票，而非盲

目的支持特定政黨的想法，對新民主黨的影響實不可小歛。坦率直言的工會領袖如 Buzz Hargrove 說出了許多人心中的想法。在政治光譜右邊的政黨開始重新結盟(保守黨及改革黨)的關頭，勢必對左翼政黨的合作結盟(新民主黨及自由黨)形成壓力。未來日子裡，策略性投票來抵制右翼政黨的合作結盟將變得非常關鍵。但這將降低工會的政治影響力。

最後，加拿大的經濟正變面臨根本性的變遷，而這樣的變遷並不有利於社會夥伴的概念。人口的老化及勞動力短缺的事實，很可能會導致移民的增加。新移民未必會是社會夥伴模式的最堅強的倡議者。再者，加拿大的政治及經濟中心日漸往西部轉移，也會對社會共識造成影響。目前加拿大能源工業發展的規模是如此巨大，工會正展現有能力作出相當的妥協，以確保自己不被拋出市場之外。既有工會遭遇非工會部門極大的競爭，因此被迫對傳統方式做出重要的變革(例如淡化存在於職業間差異的重要性)，以維持在勞動力市場上的地位。

正是前述這些因素，加拿大 21 世紀的社會夥伴關係很難讓人能有樂觀的期待。