

HOW JUSTICE RAND DEvised HIS FAMOUS FORMULA
AND FOREVER CHANGED THE LANDSCAPE OF
CANADIAN LABOUR LAW*

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INTRODUCTION

It is a great pleasure to be back at the Faculty of Law of the University of New Brunswick. I spent part of my first sabbatical as a law professor here – the fall of 1992. I had an office in the law library and had an excellent time working at the provincial archives, getting to know some of the truly wonderful faculty members at this great law school and exploring New Brunswick. When former Dean La Forest invited me to be this year's Rand lecturer, I could not have been more pleased. This lecture is dedicated to a giant of a man, a great Canadian and New Brunswicker, and Ivan Rand's chief aide when he was settling the Ford Dispute: Horace Pettigrove.

Ivan Rand was my hero in law school. As a puisne judge of the Supreme Court of Canada (1943-1959) he expanded federal authority, strengthening the centre and preserving the union. But it was his great civil liberties judgments that really attracted my attention: the Japanese deportation case, *Boucher, Saumur*, and, of course, that truly great contribution to the common law, *Roncarelli v Duplessis*.¹ Together, with at least two generations of law students, I sat in the law library and read in awe as Rand acknowledged the legitimate rights of Japanese Canadians, brutalized and robbed by their government during the Second World War and threatened, at war's end, with

* This was delivered at the 2010 Rand Lecture. It is derived from chapter five of *Canadian Maverick: The Life and Times of Ivan C. Rand* published in 2009 by The Osgoode Society and the University of Toronto Press.

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¹ *Roncarelli v Duplessis*, [1959] SCR 121, 16 DLR (2d) 689.

removal to a country most of them did not even know. It was Rand who stood up for the Jehovah's Witnesses during the dark days of Maurice Duplessis's authoritarian rule in Quebec in the 1940s and 1950s when witnesses were beaten and imprisoned by Quebec authorities acting with the blessings of the Roman Catholic hierarchy for the crime of going door to door and peacefully spreading their version of the word of God. It was Rand who upheld the rule of law by calling Premier Duplessis to account for his gross abuse of power. And it was Rand, at the height of the Red Scare, who defended communists and their right to free speech. "Who is this guy?" I used to ask myself, and I resolved to find out.

He was born on 27 April 1884 in Moncton, with a caul. For hundreds of years, the birth of a veiled child – his head covered by a thin membrane, was believed to be an omen. "This boy," the attending physician prophesied, "will have a great and worthwhile life." From very modest beginnings, Ivan Cleveland Rand would build a remarkable career of professional accomplishment and success. He was valedictorian at Mount Allison. He studied law at Harvard. He participated in the opening of the Canadian west before returning to his Moncton home where he served as a reformist Attorney-General. He was Regional Counsel of Canadian National Railways before getting the top legal job, Commission Counsel, in what was, in its day, one of the most important companies in Canada. In 1943, when the Maritime seat on the Supreme Court became vacant, Rand was *the* choice even though it was not New Brunswick's turn.

Rand had a great and worthwhile life. At the Supreme Court of Canada, Rand, improbably perhaps, became Canada's greatest civil libertarian judge. Where other judges saw a division of powers, and then went about mechanistically attempting to define and compartmentalize it, Rand saw something special in our Constitution. Some freedoms, he wrote, are fundamental to society and are beyond the scope of legislative power. While a judge of the Supreme Court of Canada, Rand took time away from his judicial duties to serve as Canada's representative on the United Nations Special Committee on Palestine and was one of the key drafters of the majority report that led directly to the creation of the state of Israel. When he retired from the Court at age 75 in 1959, he became founding Dean of the University of Western Ontario law school, but also took time off from that assignment to study the Cape Breton coal problem. The fate of the entire population of the island, it seemed, was at stake as the coal-mining industry, propped up for years by government subventions, was in decline, if not already dead. Rand was asked to find a solution to this long-simmering social, political and economic catastrophe, just as he would later be called upon to make recommendations to deal with the fate of an errant judge named Leo Landreville and labour disputes in Ontario. There was a Rand mystique. He was the guy who got things done right.

Rand's Formula is a case in point. This story starts with the 1945 Ford Strike.

THE FORD STRIKE

At ten in the morning on 12 September 1945, the 10,000 workers at the Ford plant in Windsor, Ontario walked out, bringing the assembly line to a halt. The timing, just weeks after Japan's surrender, was not unexpected. During World War II, organized labour had won the right to collective bargaining, and union membership had soared. In the giant automobile plants and the smaller feeder factories, employees knew that there would be a period of adjustment, a slowdown as the industry retooled to meet the demands of a peacetime market. They also expected, with war's end, that the federal government would vacate the labour relations field, leaving the regulation of most industrial activity to the provinces.

Since November 1941, the workers at Ford, Windsor's largest employer, had been represented by a big and powerful trade union, the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America (the UAW). Earlier that year, the UAW had taken on the world's biggest automobile plant — Ford's Rouge Plant in Dearborn, Michigan — and won two key demands: the union shop (everyone had to join the union as a condition of employment) and the union check-off (management deducted union dues from the wages of every employee and forwarded them to the union).² This was exactly what the UAW had been trying to achieve at the Ford plant in Windsor.

Tensions simmered on the assembly line, as negotiations began early in 1945 for a new collective agreement geared to peacetime. "We will take action," promised Roy England, the president of Local 200 at Ford Canada.³

Ford of Canada was not alone in facing labour unrest. In the United States, Ford had laid off more than 50,000 employees, and the number was growing because of disputes at automotive parts suppliers. Henry Ford II knew who to blame: Communists, he claimed, were deliberately impeding the progress of reconversion. Communists were a convenient target, and indeed, in the 1940s, domestic Communists were a force to be reckoned with. Many Communists were extremely active in the labour movement, especially in the leadership of the Windsor UAW and its Ford local.⁴ Canadian UAW

² There are a number of different types of union security provisions. The closed shop requires all employees to be union members as a condition of employment. The union shop requires all employees to join the union as a condition of becoming and remaining employed. The Agency shop allows employees to join a union or not, but requires all employees to pay union dues unless granted an exemption, for example, because of a religious objection.

³ *Windsor Star* (4 September 1945).

⁴ "Subversive Activity in UAW, Canada," Ottawa, National Archives of Canada (RCMP Security Service files, NA, RG 146).

director George Burt was “soft” on party members. He claimed that “[m]ost people didn’t know communism from rheumatism,” but Burt knew the difference.⁵

While Burt was sympathetic to communist goals, the executive of Local 200 was under Communist control, and Roy England was a secret party member.⁶ These connections greatly muddled the waters, and it was often unclear whose interests Communist union members put first — those of organized labour or of Moscow. On the one hand, what better way to renew the class struggle than to take 10,000 men and women out on strike and precipitate a crisis in capitalism? On the other, the UAW and its members were well within their rights to withdraw their labour from Ford in pursuit of legitimate collective bargaining demands. Most UAW members were not Communists. They did, however, want to preserve wartime gains. And, after many months of unsuccessful negotiations and a democratic election, the union and its members decided to pull the plug. When the whistle blew to signal the mid-morning break on 12 September, they walked out.

Most of the action and excitement was at the enormous Ford plant, located on the banks of the Detroit River. Pickets were established at all sixteen gates — 1,000 men assigned to duty at all times. After about a month of getting nowhere, the union made its next move. Ford generated its own electricity, but the more than 100 union men who maintained the power plant walked out. The lights went dark, the heat was turned off, and the water stopped running. In previous strikes, a skeleton powerhouse crew had been kept in place. Now, once the strike was settled, it would take weeks to fully restore services, extending the time spent without work — and wages. In the meantime, there was a real risk of the hundreds of miles of water pipes freezing in the event of a cold snap. Untended machinery would seize and rust, and might eventually need to be junked. The source of everyone’s livelihood was at risk.

For the strikers, it was terrific fun, and morale was high. The carnival atmosphere got even better with the arrival of a brass band and groups of young women to join in the street dancing.

All this activity played right into Ford’s hands. With the agreement of Ontario Premier George Drew and acting Prime Minister J.L. Ilesley, hundreds of OPP and RCMP officers began arriving in town. An army unit in nearby Chatham was placed

⁵ Gloria Montero, *We Stood Together* (Toronto: James Lorimer, 1979) at 103–4.

⁶ Stephen Charles Cako, *Labour’s Struggle for Union Security: The Ford of Canada Strike, Windsor, 1945*, (MA Thesis, University of Guelph, 1971) at 18 and 110 [unpublished]. This thesis was extremely valuable in reconstructing the background to the dispute and in the preparation of this narrative. On the Communist issue, Cako states that the UAW was “a union whose principal officials were Communists or men influenced by Communist political policies,” Cako at 105. See Montero, *ibid*, and James S. Napier, *Memories of Building the UAW* (Toronto: Canadian Party of Labour, 1976) at 56–64.

on standby.⁷ Attorney-General Leslie Blackwell declared that the people of Windsor were at risk in this “state of emergency.”⁸

The arrival of massive police reinforcements should have been sobering, but the union decided instead to provoke a major confrontation. On 5 November, UAW members, along with some of their friends (various thugs widely believed to have been imported from Detroit especially for this purpose), stole approximately 1,000 cars and buses from the streets of Windsor, beating uncooperative drivers with lengths of rubber hose. They then abandoned the vehicles around the perimeter of the Ford plant, completely blocking all sidewalks and streets. It was a defensive action, some unionists claimed, in anticipation of a police attack. The union was demanding its rights, but what about the rights of others? Union president England expressed regret that private vehicles were caught up in the melee. He was, he added, “extremely sorry.”⁹

Clearly, the parties were at an impasse, so the Labour Minister, Humphrey Mitchell, who had been attempting to broker a deal since the beginning, decided to take another crack at breaking the log-jam. From his suite at the Prince Edward Hotel, he called Henry Ford II across the river and invited him over for a chat. Ford arrived that night and explained to the minister that he had no control over Ford of Canada. He also told Mitchell that nothing would change until the blockade was removed, the union allowed the powerhouse to be reopened and the non-striking office employees allowed to return to work. It was a matter of “safety and sanity.”

Ford’s claim that the Canadian branch plant was run independently was nonsense. The company bore considerable responsibility for the dispute. Its delay tactics were notorious, and refusing to yield in Canada on a matter already settled in the United States was bad business and bad labour relations. Still, coming to Windsor had been a sage move for the experienced Mitchell. As he told reporters, “I never give up in labour disputes.”¹⁰ Within days, he persuaded the union leaders to dismantle the barricade in return for an understanding that the government would encourage Ford to resume negotiations and, should the negotiations fail, to proceed to arbitration on any outstanding issues.¹¹ Mitchell’s quiet diplomacy provided the parties with an opening, allowing them to step back and avert a major showdown. As Burt now belatedly realized, if the union did not return the cars to their owners, the troops would be called

⁷ RCMP Access to Information Act Request (19 September 1990). Research materials deposited at University of Western Ontario Archives.

⁸ *Windsor Star* (3 November 1945).

⁹ *Windsor Star* (6 November 1945).

¹⁰ Herb Colling, *Ninety-Nine Days: The Ford Strike in Windsor, 1945* (Toronto: NC Press, 1995) at 96 and 122.

¹¹ Cabinet Conclusions (14 November 1945), Toronto, National Archives (NA, RG 2, A-5-a, Vol. 2637, Reel T-2364).

in and the future existence of the union threatened.¹² The need for a settlement was urgent.

However, instead of taking advantage of the momentum toward settlement, UAW president England sent telegrams to unions across the country, asking them to join in a one-day “solidarity strike.” England was quickly disappointed as no support for his plan materialized.¹³

Disgusted, Mitchell packed his bags and left for Ottawa, telling reporters he had “no plans for returning to Windsor.”¹⁴ He had put the power of his position on the line, interceded directly with Henry Ford II, and succeeded in obtaining a commitment from management for the arbitration of the key outstanding issues. Obviously, union members needed more time on the picket line. An accordionist was brought in to entertain the strikers, but the numbers of picketers, on what was now a sixty-day strike, began to noticeably thin.

Behind the scenes, Mitchell continued to work hard at resolving the dispute. In mid-November, the parties met for the second time since the strike began. As the strike entered its eleventh week, Mitchell observed: “I would like to think that the company and the union are about to shake hands, but they have not reached out yet.”¹⁵ Finally, after more shuttle diplomacy, the outlines of a deal were reached. Mitchell had figured out an exit strategy: the outstanding issues in dispute would proceed to supervised negotiations, and absent agreement, arbitration. After ninety-nine days, the strike was over.

SETTLING CONTROVERSIES

Speculation quickly began to focus on who would be appointed to arbitrate the outstanding issues in dispute, and finally, the job went to Ivan C. Rand. Paul Martin, a Windsor MP and recently-appointed Secretary of State, lobbied behind the scenes to get Rand assigned to the file. Hard working, ambitious, and well educated, the left-leaning Martin always had his eye on the bandwagon, and considering all the elections in his future, that meant retaining UAW support. As he observed in his memoirs, “it was fairly obvious that the executives of the car plants could influence only a tiny number of voters.”¹⁶ Rand, Martin later recalled, “was a man who knew the evolution

¹² *Windsor Star* (7 November 1945); supra note 7 at 85.

¹³ Doris Jantzi, “Ford Strike in Windsor, 1945” in Paul Craven & Gary Teeple, eds., *Union Organization and Strikes* (Toronto: OISE, 1978) at 54.

¹⁴ *Windsor Star* (10 November 1945).

¹⁵ *House of Commons Debates* (16 November 1945) at 2182.

¹⁶ Paul Martin, *A Very Public Life*, (Ottawa: Deneau, 1983) vol. 1 at 214.

that was taking place in social thinking... and it just happened that I was in a position to help bring about his appointment.”¹⁷ Martin never understated his contribution to events, but his opinion about how to handle a legal and political problem in his own backyard was not taken lightly in Ottawa.

The supervised negotiations lasted until 8 January 1946, and a number of outstanding issues were resolved through mediation. No one had ever believed, however, that there was any realistic prospect of reaching a complete settlement through negotiation alone. Some cases must be heard, and this was one of them. The hearing began at two in the afternoon on 9 January, with John B. Aylesworth, K.C., one of the best corporate lawyers in the province and a future judge of the Court of Appeal, representing Ford. George Burt, the director of the Canadian branch of the UAW, and Pat Conroy, the Secretary Treasurer of the Canadian Congress of Labour, were there on behalf of the union, together with a committee that included local president Roy England.

Attention quickly focused on *the* main issue in dispute: union security. There was no ambiguity about what the union sought — a classic union shop. Everyone presently working at Ford who was not a union member had to become one, and anyone hired to work at Ford had to join the union. Continued membership was to be a condition of employment. The employer would also institute a check-off — deducting union dues from everyone’s pay and remitting these funds to the union. Union security provisions — and the more comprehensive the better — are important to unions for many obvious reasons. They provide the union with membership support and financial stability, leaving it free to focus its efforts on collective bargaining and the representation of employees, not on collecting dues. Moreover, the argument goes, it is equitable to require everyone, union member and non-member alike to pay dues, because everyone benefits from the activities of the union.

For its part, management naturally reacted negatively to any restrictions on its rights, especially to it exercising discretion in the running of the enterprise. The existence of a union and a collective agreement are two of the main fetters on management’s right to operate its business. In addition, there are principled reasons for opposing the union shop: no one, the argument goes, should be forced to join a union, or any other organization, in order to remain employed. Even more important, there are practical and self-interested reasons for employers to be against the union shop and check-off: stronger unions are better able to achieve gains for their members, some of which might be in the short-term interests of employees but, over the long term, may be contrary to the best interests of the business and its shareholders.

¹⁷ David Moulton, “Ford Windsor 1945” in Irving Abella, ed, *On Strike: Six Key Labour Struggles in Canada, 1919–1949* (Toronto: James Lewis & Samuel, 1974) 129 at 147. See Martin, *ibid*, at 395.

Rand had no difficulty understanding what the union was after. It was obvious why the UAW wanted a union shop and check-off, but did that mean it should have either? The pros and cons of providing the union with a compulsory security provision dominated the discussions as the hearing continued from one day to the next.

The employer did not have any current objection to the union, although Aylesworth candidly admitted that, in the beginning, management went out of its way to frustrate collective bargaining. Nor was Ford at all interested in assisting a rival trade union. Ford was satisfied that UAW Local 200 represented a majority of its employees. These matters were established, and a union security provision was not necessary. The company was completely opposed to union security. Obviously, the union did not require it to bargain — or bargain well — on behalf of the Ford employees. If the union had the power to deprive men and women of their jobs in a union or closed shop, it would, Ford warned, do so.

Other problems were forecast as well. If the union had enhanced security, one could expect that next time around, the damage to plant and equipment would be greater; that more men and women not involved in the labour dispute would be prevented from attending their work; and that episodes like the near revolt on 5 November would start earlier, last longer, and cause greater destruction. All of these events, Aylesworth told Rand, could be predicted with near certainty unless there was an adequate system of checks and balances; unless there was no union shop; unless there were real, substantial, and judicially enforceable fetters on the union's exercise of power, including the right to sue and be sued for damages for breach of its contractual obligations; and unless individuals had access to an impartial tribunal should they come into conflict with their union. Aylesworth did not believe that these safeguards needed to be cast in concrete: "If it were demonstrated that the counter checks were too extensive or not extensive enough... well and good; those are matters of progress and are matters that are not necessarily static but which can be changed as progress demands it."¹⁸ The union agreed, in part — everyone should be liable for breach of contract including the employer. We, too, the union suggested, need a legal mechanism to enforce our rights.

After almost six full days of evidence, the hearing came to an end and it was up to Rand to write the award.

The "Rand Formula" was announced on 29 January 1946, at Toronto's Royal York Hotel. As he handed out his 6,000 word "report," Rand said that he hoped "this may prove to be the beginning of cooperation... that will be to the benefit of the entire industry." The negotiations, he added, had been "on a most pleasant plane, there were

¹⁸ *Ibid* at 194.

good tempers, good manners and a good spirit.”¹⁹ Balancing the respective interests of the parties was Rand’s objective: “I do not want anybody here to look upon anything as a victory. We are trying to arrive at a rationalization of arrangements that are essential to the industry... We are just settling controversies and that is all there is to it.”

THE RAND FORMULA

“Union security,” Rand wrote, “is simply security in the maintenance of the strength and integrity of the union.” The UAW wanted a union shop with a union check-off. This union, however, did not need it: “The negotiating union is unchallenged in the organization of workers of automobile and affiliated industries.” Moreover, awarding a union shop was inconsistent with “the principles which I think the large majority of Canadians accept... and it would deny the individual Canadian the right to seek work and to work independently of personal associations with any organized group.” It was not the Canadian way. “On the other hand,” Rand declared, “the employees as a whole become the beneficiaries of union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work and courage by the non-member.” Ford was on record, admitting that “substantial benefits for the employees have been obtained by the union, some in negotiation and some over the opposition of the Company. It would not then as a general proposition be inequitable,” he continued, “to require of all employees a contribution towards the expense of maintaining the administration of employee interests, of administering the law of their employment.” And there it was — the Rand Formula. No one would be forced to join the union, but everybody would be equally required to help support it financially. This was his singular, inventive, and creative solution to the dispute and the first part of the equation.

All employees, Rand continued, should share in the financial cost: “[T]hey must take the burden along with the benefit.” Moreover, in his view, making the check-off mandatory would induce membership and encourage union democracy. “It may be argued that it is unjust to compel non-members of a union to contribute to funds over the expenditure of which they have no direct voice,” he conceded; and it might even be said “that it is dangerous to place such money power in the control of an unregulated union.” But, he continued, “the dues are only those which members are satisfied to pay for substantially the same benefits, and, as any employee can join the union and still retain his independence in employment, I see no serious objection in this circumstance... Much more important to the employee will be the right which is being secured to him in the conditions to be attached to the check off, to have a voice in that of which he is now a victim, the decision to strike.” That was the second important part of the equation.

¹⁹ *Windsor Star* (29 January 1946).

There had been an existing trend in various conciliation board reports recommending settlements to various industrial disputes that had, in the years before the Ford strike, generally recommended some form of union security.²⁰ Yet Rand went one step further in satisfying both union and employer concerns with his particular “formula,” and he did so by imposing important concessions on the union in return for union and financial security. The union was now required to conduct a secret ballot before calling a strike, just as it was obliged to repudiate any wildcat strike that arose during the term of the collective agreement. The secret ballot of all the employees within a unit, whether union member or not, would guarantee union democracy and act as an inducement to employee involvement in internal union affairs. Implicit in all of this was Rand’s understanding that strong unions were necessary to act as a bulwark against communist influence in the workplace. The Communist Party was no longer illegal as it had been during much of World War II. As a judge, Rand would stand up for communist free speech. He also would not disentitle someone from union office simply for having a Communist Party membership. However, he intuitively understood, as did organized labour in time, that communists and communism represented a real threat to democracy and free trade unions. The counterweight to communist influence was the rule of law, reflected in a collective agreement negotiated in a legal framework imposing contractual obligations on employers, unions, and employees. Since “the union was granted security in order to better exercise its function — the peaceful administration of the collective agreement — it was responsible for taking steps to ensure that its function was not hampered.”²¹

It was all part of a piece, one set into motion several years earlier in PC 1003 and the regulatory prohibition of industrial action during the life of a collective agreement. Illegal work stoppages would still be a matter for the courts and the labour board, but there was now a new power to hit the unions where it hurt — in the pocketbook. If the union failed to respect the contract, it, along with the membership, would be punished. In addition to bargaining for employees, unions would also exercise control over those employees within a contractual context. And, as a number of post-war arbitration and judicial decisions soon established, unions *would* be held responsible for illegal work stoppages during the term of a collective agreement. The Rand Formula can and should be seen as part of the federal government’s post-war settlement, an important part of which was institutionalized collective bargaining, statutory recognition, and financial security for unions in exchange for organized labour’s continued commitment to free enterprise and, to a considerable extent, commitment to the Liberal Party.²²

²⁰ Canadian Congress of Labour, *The Case for Union Security and the Check-off* (Ottawa: 1951) at 41.

²¹ Judy Fudge, *Voluntarism and Compulsion: The Canadian Federal Government’s Intervention in Collective Bargaining from 1900 to 1946* (Ph D Thesis, University of Oxford, 1988) at 338-39 [unpublished].

²² *Ibid* at 344.

The beauty of the formula was its simplicity. It avoided the union shop but provided the union with real financial security. At \$1 per employee per month, the union would have, assuming current employment levels, \$120,000 a year to administer and enforce the collective agreement as soon as it reached its pre-strike strength. There was also a lot in the award for the employer. The workers at this plant had a history of wildcat strikes, and Rand's award made it clear that the union was required to repudiate any illegal strike, declare any picket line unlawful, and make sure its members reported to work. Anyone participating in an illegal strike would be subject to fines of \$3 a day and the loss of one year's seniority for every week on strike. Non-compliance meant suspension of the check-off. Moreover, Rand introduced a provision allowing employees to vote in favour of a new union — and it is interesting that he did not provide for the option of no union representation at all. Every employee was entitled to join the union by paying the entrance fee.

Of all the checks and balances, the loss of seniority, the third important part of the equation, was particularly significant. More than 5,000 Ford employees had enlisted in the Canadian forces and had continued to accrue Ford seniority while in uniform. Ford had treated these men well — most of them received allowances and other contributions from the company while they served, and more than \$1 million had been paid out in all. On their return, many of them had displacement rights over newer hires with less seniority. Any truncation of seniority would have had a direct impact on job security, as more men came back to work and also during the layoffs that would accompany reconversion. If the economy tanked, seniority would be even more important. Moreover, buried deep in the award were other provisions that cemented the union's position in the workplace. Plant "committee men and negotiating committee men," notwithstanding their seniority status, were in the case of layoff, to be kept at work as long as there was work in their classification. Fifty years from the date of Rand's award, many unions remain unsuccessful in negotiating "super seniority" for stewards and other local officials.

For the parties, the Rand Formula signaled the end of one era, characterized by confrontation, and the start of another, marked by negotiation. Both parties, it seemed, needed the strike: the union to obtain the security measures it required to represent its members; and the employer to accept that unions were here to stay and that the UAW was the legitimate representative of its industrial workers. In the aftermath of the strike, grievances — often a useful barometer about the state of the world — declined. Rand was privately pleased in the honeymoon period following the release of his award to be told by both labour and management that relations between the two sides were in a "heavenly harmony."²³ Peace prevailed until 1954, when the union again went on strike — in another bitterly fought but ultimately successful battle for company-paid health and welfare benefits.

²³ Rand to Pettigrove (13 March 1946), Pettigrove Papers.

The 1945 Ford strike never seriously threatened the social order. Unlike the situation in 1919, when state action successfully crushed labour unrest during the Winnipeg General Strike, the landscape had profoundly changed — as England and Parent realized when their calls for a general sympathy strike fell on deaf ears. Disputes were now about wages and working conditions, and they were largely confined to single industries, preceded by lengthy negotiations under a legal umbrella, and monitored and mediated by expert government officials. Industrial conflict would be carefully managed.

The Rand Formula soon became the default provision of Canadian labour law, although it would take time for Parliament and the provincial legislatures to catch up. But by the early 1980s, legislation was in place in just about every jurisdiction in Canada requiring an employer, on receipt of a request from its union, to deduct union dues for all employees and remit them to the union.

AFTERMATH

The formula easily survived the enactment of the *Bill of Rights*. The advent of the *Charter of Rights and Freedoms*, however, was a different matter. Did freedom of association, one of the *Charter* guarantees, also include freedom from association? Under the Rand Formula, no one was forced to join a union, but everyone, with some limited statutory exceptions for persons asserting a religious objection to unions, was required to pay a share of its support. What was really at issue, of course, was how the money was being spent. The test case was framed somewhat differently: were mandatory union dues inconsistent with the *Charter*?

At first, a judge said yes, buying the argument of community college teacher Francis Edmund Mervyn Lavigne who, with the backing of the National Citizens' Coalition, challenged the constitutionality of the Rand Formula. Lavigne was required by the Rand Formula to pay union dues to the Ontario Public Service Employees Union (OPSEU). Under the OPSEU constitution, monies collected could be used towards the advancement of the members' "common interests, economic, social and political." Lavigne was not a union member and he objected, among other things, to the union directing a fraction — \$2 of his \$338 annual payment — to causes with which he disagreed, most particularly abortion rights, a union of health care workers in Nicaragua, disarmament campaigns such as Operation Dismantle, and the New Democratic Party. Simply put, Lavigne claimed that he had a right not to be forced into association with "socialists" and "fellow trave[l]lers." He argued that the money should be exclusively spent for collective bargaining. He claimed that his *Charter* right to associate also gave him the right not to associate, and that compulsory union dues interfered with his rights.

When the case finally got to the Supreme Court of Canada, the Rand Formula was upheld in a 1991 decision.²⁴ While two of the judges concluded that Lavigne's *Charter* freedom of association rights had been infringed, they also found that that the violation was justified under section 1 of the *Charter*. That meant that the infringement was a reasonable limit, prescribed by law and demonstrably justified in a free and democratic society. The rest of the Court, for different reasons, concluded that there was no violation at all. Decades after the Ford strike had been settled by Rand's Formula, that compromise and settlement was confirmed by the Supreme Court as one of the defining features of Canadian labour law.

²⁴ *Lavigne v Ontario Public Service Employees Union*, [1991] 2 SCR 211, 81 DLR (4th) 545.