



Executive Summary:

The Government of Canada has been very clear about its intent to pass legislation that would remove a federally regulated, private or public sector employee's statutory right to a secret ballot vote on whether or not they will be unionized.

Instead, the proposed legislation would enable unions to automatically unionize a workplace if a union files signed cards that it says were signed by more than 50% of employees in a workplace.

Conversely, Manitoba's new government has promised the opposite; to reintroduce a mandatory secret ballot vote so that workers can decide privately (the vote is administered by neutral government officials). Currently, if a union in Manitoba presents cards signed by 65% of employees it claims are supportive of a union, a union is automatically certified.

A secret ballot ensures a worker can make a clear decision privately, without fear of intimidation. Those reasons are also why a secret ballot is used during general elections. Conversely, the card sign-up method means workers must share their opinions with outside or inside union organizers; perhaps facing intimidation during the process.

The Manning Centre obtained labour board data for the period 2009-2015 from five provinces (BC, AB, MB, NL, NB). An analysis of the impact a secret ballot vote has on support for a union was undertaken. Specifically, we looked at data from applications that involved two steps.

Data from the first step showed the percentage of employees in a workplace that the union claims signed cards in favour of unionizing. In most Canadian jurisdictions, unions need a minimum of 40% or more of such cards signed in order to trigger a union certification vote. The second piece of data represents the percentage of employees



at the same workplace who later voted in favour of joining the union.

After analyzing data from 1,057 union certification votes, we observed that it's quite common for "support" for joining a union to drop off once a secret ballot vote is held:

- We discovered there were at least 81 cases whereby the percentage of employees who signed cards, allegedly in favour of joining a union, dropped by 15 percentage points or more once those employees had an opportunity to decide through a secret ballot vote (administered by neutral, government officials).
- Overall, there were at least 160 cases where support dropped by 5 percentage points or more once a secret ballot vote was held.
- There were cases in each province where support dropped by 40 percentage points or more once employees could vote in private, through a secret ballot vote. In one case, in Alberta, support for joining a union dropped by 100 percentage points.
- It's quite likely that numerous groups of employees have been unionized in Canada without having a true backing from a majority of workers.

- As we only had access to partial data from three provinces, the number of instances whereby support for unionization dropped significantly is likely underreported.

In a majority of cases the percentage of employees supporting a union increased from the time cards were signed until the certification vote was held. This suggests a secret ballot vote would support those who feel intimidated to sign certification cards, but at the same time, such a process would not negatively impact those who wish to vote in favour of a union.

In conclusion, the Government of Canada should reconsider legislation to remove the secret ballot vote for workers covered under federal labour legislation. Further, the Province of Manitoba should be encouraged to bring back the secret ballot.

Background:

In Canada, unionization of a workplace can generally be done through one of two means:

1. A union presents cards signed by employees (that it claims support joining the union) to the labour board and a secret ballot vote is then held. For example, in B.C., if 45% of employees in a workplace sign cards allegedly in favour of establishing a union, a certification vote is subsequently held among employees that would be included in the proposed union. Neutral government officials administer the vote. *(Note: the threshold for forcing a vote differs by province.)*
2. A union presents cards signed by employees (that it claims support joining the union) to force automatic certification of a union. For example, in Manitoba, if 40% of employees (or more) sign union cards at a workplace, a union certification vote is subsequently held. However, if 65% (or more) of employees sign a card allegedly in favour of establishing a union, a union is automatically certified for the workplace. *(Note: most jurisdictions do not have this option, a worker is always guaranteed the right to a secret ballot vote.)*

The following table provides information on the union certification process in Canada:

Table 1: Union Certification Process at a Glance

Jurisdiction	Secret Ballot Vote Triggered	Automatic Certification (No Vote)
Federal	40% or more	-
British Columbia	45% or more	-
Alberta	40% or more	-
Saskatchewan	45% or more	-
Manitoba	40% or more	65%
Ontario	40% or more	-
Quebec	35%-50%	50% + 1
Prince Edward Island	-	50% + 1
New Brunswick	40% or more	60% + 1 (Automatic) 50-60% (Board may certify without a vote)
Newfoundland	Over 50%	-
Nova Scotia	40% or more	-

Source: [LabourWatch](#)

Note: Some jurisdictions have different labour rules for those working in the construction industry

Currently, the House of Commons is debating *Bill C-4: An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act*. If passed, the legislation would change the process for unionizing a workplace. Currently, once a union presents cards signed by 40% of employees and suggests they would like to join the union, a secret ballot vote is then held to let workers decide. Should Bill C-4 pass, a secret ballot vote would give way to automatic unionization if a union presents cards signed by more than 50% of employees. Further, while the government intends to ease the process for certifying a union, it is not easing the process for decertification.

Conversely, in Manitoba, the Progressive Conservative Party of Manitoba [promised](#) during the 2016 election:

“Guarantee the right to a secret ballot vote in workplaces, to foster a more open labour environment.”

The two governments are obviously heading in different directions; each reversing decisions by their predecessors.

In January 2016, the Manning Centre filed Freedom of Information requests with multiple provincial labour boards (and the Government of Canada) to look into the percentage of employees who sign union cards allegedly in favour of joining a union, as well as the percentage of employees (at the same workplace) who eventually voted to approve/reject a union.

Data was obtained from the governments of British Columbia, Alberta, Manitoba, New Brunswick and Newfoundland and Labrador for union certification votes held from January 2009 – December 2015.

Some other jurisdictions have yet to respond or were not able to provide data electronically or in printed form (the Government of Canada did not respond, the Saskatchewan government does not keep the records and the Ontario government does not publish all the data online).

Summary of Findings:

We analyzed data from 1,057 union certification votes, spanning seven years and five provinces. The following are the highlights for each province:

British Columbia: British Columbia labour laws require a union to file signed cards for at least 45% of employees in a proposed bargaining to trigger a secret ballot vote administered by neutral government officials.

While it was cost prohibitive to obtain the percentage of employees who signed union cards for each labour board application, it was possible to obtain the percentages of employees who voted in favour of union certification for the years 2009-2015.

During that period, the data shows there were at least 34 instances where the percentage of employees who voted in favour of a union dropped by at least 15 percentage points (from the threshold of 45% of cards required to obtain a secret ballot vote).

During the 2009-2015 period, there were four instances where a union filed cards for at least 45% of employees (again, the exact percentages aren't available due to cost considerations), yet, when it came time to vote in favour of joining a union, 0% actually supported unionization.



Table 2: BC: Significant Drops in Union Support (2009-2015)

Vote Date	% Signed Cards*	% Voted for Unionization (Secret Ballot)
February, 2010	45% (or more)	0.00%
May, 2010	45% (or more)	0.00%
September, 2012	45% (or more)	0.00%
September, 2013	45% (or more)	0.00%
August, 2010	45% (or more)	5.26%
January, 2009	45% (or more)	6.45%
October, 2014	45% (or more)	6.90%
February, 2015	45% (or more)	7.14%
August, 2012	45% (or more)	8.33%
November, 2015	45% (or more)	10.00%

* Percentage of employees who signed cards in favour of certification is not available. However, rules require at least 45% to force a vote.

Alberta: In order to force a vote to establish a union in a workplace, Alberta labour laws require a union to either file a petition showing at least 40% of employees want to be members of the union or file membership information demonstrating that at least 40% of the workplace’s employees are members of the union.

Data from the Alberta Labour Relations Board shows there were at least 31 cases between 2009-2015 whereby the percentage of employees

claimed to be in support of joining a union dropped 15 percentage points once a secret ballot certification vote was held. (Administered by neutral government officials.)

During the same period there were four instances where unions suggested in their applications that 50% of employees or more were either members, or had signed a petition, yet, once the vote was held, not a single member supported joining the union.

Table 3: AB: Significant Drops in Union Support (2009-2015)

Vote Date	% Signed Cards	% Voted for Unionization (Secret Ballot)	% Drop
2013	100.0%	0.0%	-100.0%
2015	100.0%	25.0%	-75.0%
2015	100.0%	25.0%	-75.0%
2015	70.0%	10.0%	-60.0%
2015	52.6%	0.0%	-52.6%
2012	50.0%	0.0%	-50.0%
2015	50.0%	0.0%	-50.0%
2012	71.4%	26.7%	-44.7%
2012	57.1%	14.3%	-42.8%
2013	40.0%	6.0%	-34.0%



Newfoundland and Labrador: In 2014, Newfoundland and Labrador [amended its labour legislation](#) to move away from automatic union certification once a union presented signed cards by 65% of employees. Instead, a secret ballot vote is now held after 40% of employees (or more) sign cards.

From the beginning of 2009 to the end of 2015, there were 38 certification votes. The percentage of employees allegedly in favour of a union dropped by 15% or more in ten cases.

One case worth highlighting occurred in 2012, when provincial laws saw automatic unionization of a workplace once 65% of employees signed cards. The case in question saw a union come just shy of the 65% threshold, it presented signed cards from 64.4% of employees. However, once the workers voted privately through a secret ballot, only 17.1% of employees actually voted in favour of joining the union. Had the union gathered just a couple more signed cards, a union would have been certified; despite a lack of true support.

Table 4: NL: Significant Drops in Union Support (2009-2015)

Date Application Received	% Signed Cards	% Voted for Unionization (Secret Ballot)	% Drop
2014	91.7%	33.3%	-58.4%
2013	85.7%	33.3%	-52.4%
2012	64.4%	17.1%	-47.3%
2012	87.5%	50.0%	-37.5%
2013	68.6%	33.3%	-35.3%
2015	60.0%	31.7%	-28.3%
2012	64.3%	37.5%	-26.8%
2012	63.6%	37.3%	-26.3%
2012	88.0%	65.2%	-22.8%
2014	78.4%	55.6%	-22.8%

Manitoba: In Manitoba, union certification votes are triggered when a union presents cards signed by 40% of employees and claims they are in favour of joining a union. However, if 65% of employees sign cards, certification is automatic.

While the Manitoba government does not track the percentage of employees who sign cards, data was available for the outcomes of certification votes.

From 2009-2015 there were at least seven instances whereby the percentage of employees who signed cards dropped by 5% or more once a certification vote was held. This included two instances where no workers voted in favour of joining a union.



Manitoba Legislature



Table 5: MB: Significant Drops in Union Support (2009-2015)

Date Application Received	% Signed Cards*	% Voted for Unionization (Secret Ballot)
2013	40% (or more)	0.0%
2009	40% (or more)	0.0%
2013	40% (or more)	25.3%
2011	40% (or more)	25.3%
2010	40% (or more)	28.6%
2009	40% (or more)	29.7%
2013	40% (or more)	35.0%

* Percentage of employees who signed cards is not available. The figure would be between 40-64.9%.

New Brunswick: According to New Brunswick labour legislation, once a union presents cards signed by 40% of employees, and suggests they are in favour of joining a union, a vote is held.

If between 50-60% of employees sign cards, the government has the discretion to approve automatic certification of a union. Once 60% of employees sign cards, certification is automatic.

New Brunswick's government considers the percentage of employees who sign cards in a

certification process confidential. Thus, it's difficult to examine cases where "support" for joining the union dropped.

However, using the minimum threshold of 40% of employees to sign cards to force a secret ballot vote, there were several cases where the percentage of employees who voted to join the union was well below the 40% threshold. In one case, not a single employee voted in favour of joining the union.

Table 6: NB: Significant Drops in Union Support (2009-2015)

Date Application Received	% Signed Cards*	% Voted for Unionization (Secret Ballot)
2011	40% (or more)	34.4%
2011	40% (or more)	23.1%
2012	40% (or more)	18.2%
2011	40% (or more)	33.3%
2012	40% (or more)	25.0%
2012	40% (or more)	0.0%
2012	40% (or more)	36.8%

* Percentage of employees who signed cards is not available. However, New Brunswick labour legislation requires at least 40% of employees to sign cards to trigger a certification vote. Upwards of 60% of employees could have signed cards as certification becomes automatic once more than 60% of employees sign cards.

Why the Drop in “Support?”

What could explain all the aforementioned examples of “support” for joining a union dropping once employees were given an opportunity to express their views through a secret ballot vote?

The reason seems to be obvious – anonymity. People feel more comfortable expressing their true views when they know they can do so without reprisal or intimidation. General elections use a secret ballot for this very reason – to ensure voters have privacy, to prevent corruption, vote buying and other problems. It’s also why unions use the secret ballot method to select their own presidents and senior officials.

To understand how the union certification process can be intimidating for workers, and lead to signatures being collected from people who aren’t truly supportive of joining a union, consider this letter to the editor in the [April 18, 2016](#) edition of the Winnipeg Free Press: ²

“...late one night, two very large union organizers visited my home and tried to get me to sign a union card. They indicated that all my fellow co-workers had signed and so should I. This was quite intimidating.

A secret ballot would take this intimidation out of the equation.”

*- Dave Deighton,
Winnipeg*

This tactic – union organizers showing up at a worker’s home to seek a card signature – is even acknowledged by unions as common practice. In *Organizing and Union Renewal: What Determines Union Organizing Tactics?*, Jonathan Eaton notes survey data from union organizers in British Columbia and Ontario. In the two provinces, union organizers indicated “make house calls to workers homes” is the second and fifth most commonly used organizing technique respectively (out of 19 possible choices.) ³

That’s not to say every visit will be seen as intimidating, but it’s easy to see how people like Dave Deighton could find large union organizers showing up at their home unsettling. It’s also

why we’ve described cards signed in support for joining a union as “alleged” throughout this policy brief. Clearly, a signed card does not always mean employees are truly in favour of joining a union.

Finally, it should be noted that even Canada’s union movement has conceded that “tricks” may be played during union certification drives. One of Canada’s largest unions, the Labourers’ International Union of North America (LIUNA), posted the following note of caution to its members on its website:

“Q: What should I do if I am asked by a rival union to sign a membership card?”

A: Don’t sign anything! You do not have to sign anything. Don’t be tricked into signing something “to get more information” or fall for “a card needs to be signed for Local 183”. We don’t need you to sign anything. It’s just a sneaky way to get a member to sign a card for another union.” ⁴

Conclusion:

The data clearly shows that, when given an opportunity to vote privately, workers are often not as supportive of joining a union as the card check system suggests. A signed card should not be mistaken for true vote in favour of joining a union. To determine if employees truly want to union, a secret ballot vote should be held as it protects employees from fear or intimidation.

The numerous instances of large drops in alleged support for joining a union (once employees have an opportunity to vote privately) suggests it’s quite likely that several unions in Canada have been automatically certified without the true support of a majority of employees. A secret ballot vote could correct this problem.

The Government of Canada would be wise to reconsider legislation to remove the secret ballot vote for workers covered under federal labour legislation. Further, the Province of Manitoba should be encouraged to continue with plans to reintroduce the secret ballot prior to union certification.



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Prior to joining the Manning Centre, Colin served as Prairie Director for the Canadian Taxpayers Federation from 2008 to 2015. While working for the CTF, his advocacy efforts led to public policy reform at the municipal, provincial and federal levels, including the federal government's *First Nations Financial Transparency Act*.

Colin's work has been published in newspapers across Canada, most notably by the National Post, Sun newspapers nation-wide, the Calgary Herald, Winnipeg Free Press, Regina Leader Post and Saskatoon Star Phoenix.

He has policy experience from inside government, having previously served as a policy advisor to a former Ontario minister of finance, a research assistant in the Manitoba government and as a project director for a commission focused on finding efficiencies at the City of Winnipeg.

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