



# Gettingit Richt BY BILL STEWART

The fairness and legality of union activity in politics needs to be challenged. *Open Mind* reports.

he rules of political engagement dramatically changed recently for Canada's construction industry. Rather than spend money on issue-specific advertising or to support "union-friendly" candidates, union coalitions are spending millions in mandatory union dues on attack ad campaigns against political parties or leaders they consider "unfriendly."

In 2003, five construction unions joined the Canadian Auto Workers and two provincial teachers' unions to form the Working Families coalition. Led by the head of the Provincial Buildings Trades and Construction Council of Ontario, Working Families ran a \$5-million, negative attack ad campaign against the incum-

bent Progressive Conservative government during the 2003 Ontario provincial election. Not a single advertisement mentioned labour relations or dealt directly with collective bargaining issues. Nor did the ads identify the sponsoring unions.

This campaign helped bring down the Conservatives. In turn, the new Liberal government responded by implementing the union leaders' agenda. This included creating the \$25-million Skills Training Infrastructure Program to support craft union training centres. Funding came at the expense of public community college programs guaranteeing universally accessible trades training.

Controversial amendments to the Labour Relations Act were also brought in.

The right of employees to have a secret ballot vote on construction industry unionization elections was revoked. Ontario's Labour Relations Board was also given the power to order

a company unionized when it felt employers had disrupted a union-organizing campaign – regardless of what the democratic wishes of employees might ultimately be.

Seeking similar results, the Alberta Building Trades Council helped organize and finance the Albertans for Change (AFC) coalition

Change (AFC) coalition in 2007. As their counterparts in Ontario had done, AFC spokespersons denied that their campaign was partisan. The negative and personal tone of their advertising, however, underscored that their goal was to unseat the ruling Progressive Conservative government in the 2008 Alberta provincial election.

Despite spending more than \$2 million on the campaign – more than the opposition parties spent on advertising during the election – the AFC initiative failed. Indeed, some analysts believe that the AFC campaign was so badly received that it had the opposite intended effect of motivating voters to support the incumbent government.

Two similar sets of circumstances and strategies; yet, two diametrically different results. The similarities in style and tone nonetheless indicate that Canadian poliguarantee that unions would receive dues to finance their operations, regardless of whether an employee was a union member.

This formula assumed that all employees, regardless of their union membership status or political persuasion, benefited from having a union negotiate and administer collective bargaining agreements on their behalf. Designed to prevent "freeriding," the compulsory dues check-off mechanism ensured all bargaining unit employees paid the same for these services. Unfortunately, when Rand Formula principles were incorporated into provincial labour laws, few boundaries beyond internal union self-regulation were set out for how these dues were spent. This provided union leaders with vast resources to pursue

political agendas.

In 1960, a political alliance was formalized through the merging of the Co-operative Commonwealth Federation and the recently established Canadian Labour Congress in the form of the New

Democratic Party. Whenever NDP governments held power, labour laws and government public works spending policies were changed to support craft union labour supply monopolies.

Saskatchewan, British Columbia and Manitoba – provinces intermittently governed by NDP administrations at various times over the past 40 years – brought in "union preference policies." While these took various forms, the goal was to direct publicly funded or Crown Corporation-controlled construction projects to unionized contractors – regardless of whether open shop contractors were providing competitive wage, benefit, retirement and training plans and more cost-effective

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tics is headed in the same direction as the U.S., where third-party Political Action Committees play major roles. Unless Canada's archaic and paternalistic rules respecting mandatory union dues are changed, vast financial resources will continue to fall under the control of union leaders who are not subject to the same degree of regulatory oversight that exists elsewhere.

## **Changing Times**

The current framework for the collection of union dues goes back to a 1946 landmark arbitration decision by Justice Ivan Rand. In what is known as the Rand Formula, he determined that the best way to settle a 100-day long strike at Ford of Canada was to



After returning to power in 1991, B.C.'s NDP government brought in "super-minimum" wage and benefit rate regulations for publicly funded construction projects. These regulated wage rates were set comparatively close to building trade unions' collective agreement rates. The price tag was estimated to have cost B.C. taxpayers an extra \$100 million annually.

Saskatchewan's NDP also returned to power in 1991. Shortly thereafter, it enacted legislation banning independent construction unions such as the Christian Labour Association of Canada from representing construction industry employees.

Building trade union-inspired legislation seeking to retroactively unionize companies back to 1983, and without a vote from current employees, also remains before the courts.

The rationale behind these measures is quite simple. More work for unionized contractors translates into more work for unionized workers. In turn, this generates more dues revenues to the union local and more political power for union leaders. And it seems the extent to which union leaders use these dues for political purposes knows few limits. This was borne out in a 1991 landmark Supreme Court of Canada decision.

Merv Lavigne was a teacher in Ontario's college system. The Rand formula required him to pay union dues to the Ontario Public Service Employees Union. Over time, OPSEU made several contributions to which he objected and he argued that because portions of his union dues were used to finance political causes, he was

being forced to conform to the underlying ideology behind them. This, he argued, violated his rights under Canada's Charter of Rights and Freedoms.

In a complex split decision, the Supreme Court ruled against Lavigne. While three justices believed his Charter rights were violated, they ultimately agreed with the majority of the other justices that these violations were justifiable.

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Ten years later, however, in the case of R. v. Advance Cutting and Coring, Canada's Supreme Court ruled for the first time that, except in Quebec's construction industry, where it is illegal to work on an open shop basis, "freedom of association" also includes being free from government-compelled association. A narrow majority of the court ruled that Quebec's requirements were a reasonable and necessary response to the corruption and violence that had run rampant in the industry during the '70s. However, a strong minority held that, unlike Lavigne, who was not forced to take out a union membership, Quebec's mandatory union membership requirement meant that all individuals were forced to

share similar values with all other union members.
The minority opinion in this case is of interest beyond
Quebec's boundaries because most construction unions and many other settings operate on a "closed shop" basis where union membership is a mandatory condition of employment.

## **Hidden Politics**

A Nanos Research comprehensive poll for the *National Post/Global National* on workplace issues, released in August 2008, found that only 16 per cent of working Canadians felt union dues

should be used to make political contributions to political parties. And only 17 per cent of respondents felt union dues should be spent on partisan political advertising campaigns. The strong opposition to spending dues for campaigns stands in stark contrast to the recent trend of union coalitions spending millions of dollars in union dues on political attack advertisements.

British Columbia has a long-held political tradition of two party politics. During the 2005 election, four B.C. unions spent almost \$3 million in support of the provincial NDP and launched a series of ads attacking the incumbent government. In November 2008, two union members were granted "standing" in a British

Columbia Supreme Court case launched by unions to challenge a new B.C. law that restricts third party spending during election campaigns. According to one of the litigants, an integrated support teacher and member of B.C.'s teacher union, the motivation for their legal action is to "limit how much of our union dues can be spent on political causes." The other litigant stated that union members "didn't realize how much of their money was going to support political campaigns." There seems little doubt that union leaders are poised to spend millions on political activism during B.C.'s May 2009 provincial election if B.C.'s Supreme Court rules in their favour.

for their workplace. Unionized employees in the 47-nation Council of Europe, including countries with socialist traditions such as Sweden and Denmark, have a choice regarding union membership. As of 2007, and a landmark European Court of Human Rights ruling, it's also illegal for unions to use unionized non-members' dues for political activities.

Would Canadian legislators and jurists be prepared to go as far as the European Courts or some U.S. states? The Nanos Research survey indicated that most Canadian workers are opposed to mandatory union membership. Most respondents believe it would be fairer to pay lower dues

June 2008. Key provisions in the amendments deal with the use of union-related dues or assessments for the purpose of subsidizing a unionized worker's labour costs on construction projects. This arrangement may be the first of its kind in Canada, stipulating that individual employees must voluntarily agree to it and authorize it in writing as a dues deduction.

While it may be arguable that at one time unions were justified in spending dues for political campaigns, the magnitude of recent union-financed political advertising campaigns is reaching epic proportions. This constitutes a major shift in the character of Canadian elections. At

> one time, different political parties and candidates debating amongst themselves characterized elections. Various media were used to have their messages delivered directly to the electorate.

Is it appropriate for third parties to spend

more on advertising than the political parties themselves in the hopes of swaying the electorate? Is it fair that the millions union coalitions are spending on these campaigns are being paid for by working Canadians who oppose their dues being spent for these purposes? Moreover, is it fair that regardless of whether they agree with the political views being expressed by union leaders, Canada's archaic and paternalistic labour laws dictate that Canadian workers must yield their political voices to union leaders?

The current Canadian regime is contrary to the democratic principles our country was founded on and the foundation on which workplace democracy should be based. Q

## **Global Perspective**

Canadian labour laws are among the most archaic in the industrialized world in terms of dealing with union dues being used for political purposes. While other coun-

tries reformed their laws, Canada's laws stand out in terms of forcing people to join unions and then forcing members and non-members to pay union dues that may be used for political purposes.

Given how divisive this issue is, perhaps it is time for Canadian legislators to find a compromise solution. Such a compromise should balance the rights of employees who freely choose to be union members and to allow union leaders to speak on their behalf during political campaigns with the rights of those who take exception to the political views voiced by union leaders.

Some U.S. states permit total voluntary unionism, whereby employees are completely free to join or not join and pay dues to a union that may have bargaining rights

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> to cover the costs of collective bargaining and agreement administration but not be forced to pay for union activities relating to non-collective bargaining activities such as supporting or opposing political parties and social causes.

In 1988, the U.S. Supreme Court ruled that unions may use dues for political purposes but that non-members would not be required to support these activities. Consequently, formulas are used to allow non-members to opt out of contributing to non-collective bargaining activities but pay a "fair share" of costs associated with core workplace-related union activities.

A somewhat related precedent for this type of voluntary arrangement was recently brought to Alberta's labour legislation in



# R. v. Advance Cutting & Coring Ltd.

The reasons of McLachlin C.J. and Major, Bastarache and Binnie JJ. were delivered by 1 BASTARACHE J.

The importance was discussed by La Forest J. in Lavigne, where he prescribed a broad and liberal interpretation of s. 2(d) in light of other Charter values. He stated, at pp. 318-20: Forced association will stifle the individual's potential for self-fulfillment and realization as surely as voluntary association will develop it. Moreover, society cannot expect meaningful contribution from groups or organizations that are not truly representative of their memberships' convictions and free choice. Instead, it can expect that such groups and organizations will, overall, have a negative effect on the development of the larger community. . . .

As I have said, ideological conformity is engaged in particular because the members of the associations necessarily participate in and indirectly support a system of forced association and state control over work opportunity. This is a situation whereby the democratic rights of workers are taken away. Being forced to accept and participate in a system that severely limits the democratic principle in the area of labour relations is a form of coercion that cannot be segregated totally from ideological conformity. If Parliament provided that a person must belong to a specific political party to work in the public service of Canada, the situation would be analogous. Some would argue that one does not have to believe, simply that one has to belong; as stated at para. 16, I believe there would still be clear ideological conformity.

Read the whole case:
R. v. Advance Cutting & Coring Ltd.
http://csc.lexum.umontreal.ca/en/2001/2001scc70/
2001scc70.html