



ILLUSTRATION BY KEVIN GHIGLIONE

More Than Their Due

BY BILL STEWART

An antiquated Canadian system allows union leaders to spend dues to support partisan causes, even when members don't agree with the politics

If asked, most Canadians would likely say that Canada's unionization rules are more benign and neutral compared to European countries, with longer histories of democratic socialist governments. However, the sad reality is that Canada is an isolated island in the industrialized world when it comes to the archaic and antiquated rules by which Canadian workers are forced to pay union dues.



At the same time, there are virtually no restrictions on how Canadian union leaders use these dues, particularly for political purposes. Consequently, Canadian unions receive more than their due in terms of the funds they collect from employees. Broad sweeping reforms are needed to democratize how these funds are spent.

Canada's trade union movement has historically aligned itself with left-wing political parties such as the Cooperative Commonwealth Federation (CCF) and its successor, the New Democratic Party (NDP). However, Canadian affiliates of U.S.-based unions recently starting using compulsory dues to finance costly U.S.-style political attack campaigns – without the same kinds of check and balance rules that exist in the United States.

During the Ontario provincial election in 2003, five construction union affiliates of the Building and Construction Trades Council of Ontario joined three other unions to form the Working Families Coalition. This group ran a \$5-million negative attack advertising campaign that helped bring down the ruling Progressive Conservative government in 2003. Shortly thereafter, construction industry employees lost their right to a secret ballot in unionization elections.

In 2007, affiliates of the Alberta Building Trades Council helped organize, and were the major source of funds for, the Albertans for Change coalition.

The coalition spent more than \$2 million on ostensibly “non-partisan” advertising, slamming the premier and the Progressive Conservative government just before, and during, the 2008 Alberta provincial election. This was more than the three opposition parties spent on advertising, and even included spots that ran during the Super Bowl.

How We Got Here

The current union dues collection framework dates back to a 1946 arbitration decision by Justice Ivan Rand. In what is

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known as the “Rand formula,” he ruled that the best way to settle a long strike was to have employees pay union dues, regardless of whether they were union members or not.

This compromise 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 “free-riders,” from receiving the benefits of collective bargaining without having to pay anything, a compulsory dues check-off mechanism ensured all bargaining unit employees paid the same for these services.

Many provincial governments incorporated these principles into their labour laws through what are termed “union security provisions.” Unfortunately, in so doing, they set few boundaries beyond internal union self-regulation as to how dues were spent. This provides Canadian union leaders with vast resources to pursue political agendas, regardless of member views.

Concern over this was brought to the Supreme Court of Canada in 1991. Merv Lavigne was a teacher in Ontario's college system whose union dues were directed to campaigns and organizations he disagreed with. Donations were made to disarmament campaigns and campaigns that opposed municipal funding to build Toronto's SkyDome stadium, to

provide strike support for the National Union of Mineworkers in the United Kingdom and to a health-care workers' union in Nicaragua. Donations were also made to the NDP. He argued this violated his “freedom of association” rights under Canada's Charter of Rights and Freedoms because he was being forced to conform to the underlying ideology behind the causes he was ultimately contributing to.

Even though the Supreme Court narrowly ruled against Lavigne, key principles contained in strongly worded dissenting opinions were critical to the landmark *R. v. Advance Cutting and Coring* case in 2001. In this case, the Supreme Court ruled for the first time that “freedom of



association” also includes, within limits, being free from compelled association.

The court narrowly upheld the Quebec government’s mandatory unionization rules because they were part of an overall scheme put in place to deal with the corruption and destructive union violence that ran rampant across the construction industry during the ’70s.

Notwithstanding this, a number of justices took the position that Quebec’s mandatory union membership requirement meant that all individuals were forced to share similar values with all other union members. This is an important consideration because many workplaces outside Quebec’s construction industry operate as closed shops where union membership is a mandatory employment condition.

The Road Forward

Current Canadian labour laws are among the most archaic in the industrialized world. While other countries are reforming their legislation and rules, Canadian laws and jurisprudence stand out in terms of how they force members and non-members to pay union dues that are often used for political purposes. Consider how the Alberta Labour Relations Board (ALRB) dealt with the following issue in a November 2009 decision.

Over many years, a unionized employer had negotiated numerous collective agreements that included an open shop arrangement, allowing employees to elect whether they would join and pay

dues to the union. Employees choosing not to join the union were not required to pay dues.

While this type of arrangement is unusual in Canadian unionized settings, Alberta’s Labour Code allows union security clauses to be settled at the bargaining table. When the employer refused to agree to include a requirement for all employees to pay dues, the ALRB ruled that the employer was bargaining in bad faith and that Alberta’s labour code was unconstitutional because it did not “mandate a minimum union security provision” to

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help finance the union.

Given biased and expansive interpretations such as this, the time is ripe for elected legislators to bring Canadian labour laws in line with the rest of the industrialized world and establish a framework that respects the democratic rights of individual working people, as opposed to the institutional interests of labour leaders.

Research surveys indicate that Canadians clearly support reforming how dues are collected and used by unions. A Nanos Research poll for the *National Post* and *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. Similarly, only 17 per cent of respondents felt union dues should be spent on partisan political advertising campaigns.

Only two provincial governments have ever attempted to set boundaries around how unions use dues. In 1961, the British Columbia government amended its labour relations legislation to prohibit trade unions from “contributing to or expending on behalf of any candidate for political office, any moneys deducted from an employee’s wages or paid as a condition of membership in the trade union.”

In 1996, Manitoba enacted legislation further requiring unions to “consult each employee who is in a bargaining unit about whether they wish[ed] their union dues to be used for political purposes.” The legislation further allowed employees objecting to such uses to have an equivalent amount redirected to a charity of their choice. These provisions were later repealed.

Other industrialized countries that Canada competes with globally have put in place formal mechanisms to democratize the collection of dues and the distribution of monies for political purposes. Since 1992, unions in the United Kingdom have been required to pass a “political resolution” that must be periodically voted on to establish a segregated “political fund” for which union members may voluntarily contribute to. Unionized employees in the 47-nation Council of Europe, have a choice regarding union membership.



And, following a 2007 landmark European Court of Human Rights ruling, it is now illegal for unions to use unionized non-members' dues for political activities.

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. Since then, a variety of rules and formulas have been developed 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.

In the U.S., Washington State, Michigan, Ohio, Wyoming and Utah have all adopted paycheque protection provisions within election financing legislation that prohibit unions from using dues for political purposes without specific authorization in writing from employees. As such, unions are subjected to the same rigorous accounting, reporting, filing, compliance and enforcement measures that all other organizations making political contributions are subjected to.

Approaches along these lines would likely find wide acceptance in Canada. A 2008 Nanos Research survey found that most Canadian workers opposed mandatory union membership. Most respondents also felt that it would be fairer to

pay lower dues 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. The challenge, therefore, is to create a transparent and accountable structure that equally balances the rights of employees who support their union being politically active, and want to contribute to furthering its political objectives, with the rights of employees who believe that any monies they are legally required to pay to a union should be limited strictly to negotiating and administering collective agreements.

To create this balance, Canadian unions should be expressly prohibited from spending dues that are legislatively mandated for purposes beyond what is needed to maintain a collective bargaining relationship with the employer. Funds collected for these purposes should be accounted for separately and segregated from monies that may be collected and used for other purposes.

The rights of unions and union members to voluntarily engage in political activism or support political causes and parties should also be expressly dealt with. Most jurisdictions address this by requiring separate political action accounts from which all voluntary dona-

tions and expenditures are accounted for, reported on and then audited. There is no reason that similar structures could not be established in Canada.

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. Is it appropriate for unions to spend more on advertising than the political parties themselves during an election campaign? Is it fair that the millions they spend to support political campaigns and left wing social causes are being financed by working Canadians who are required by law to pay dues? Moreover, Canada should re-examine a system where, regardless of whether union members agree with the political views being expressed, Canada's archaic and paternalistic labour laws dictate that Canadian workers must yield their political voices to union leaders who claim to speak on their behalf. ◻



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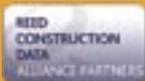

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