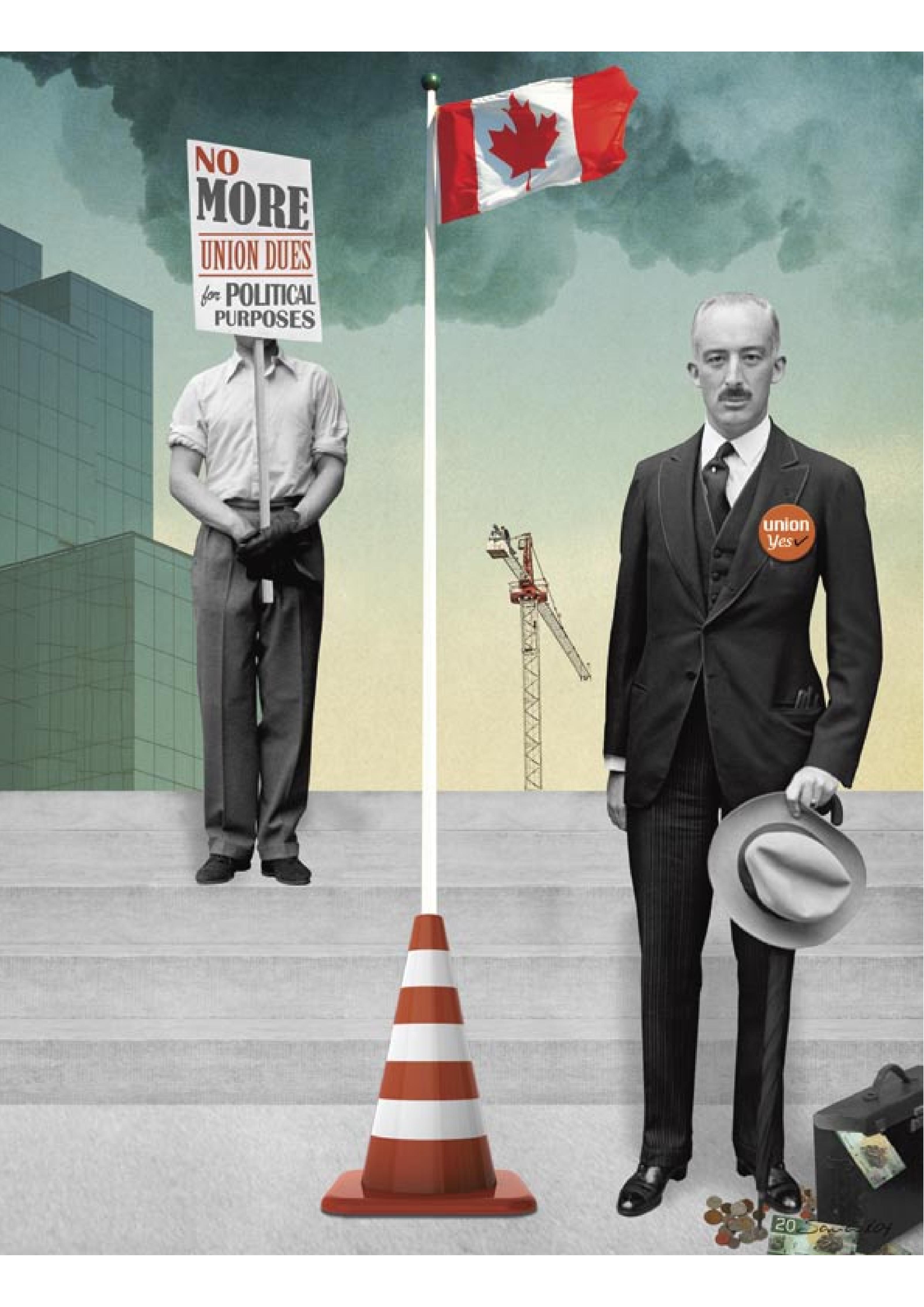
NO
MORE
UNION DUES
for POLITICAL
PURPOSES
union
Yes

Rectifying an Imbalance

It is time to free workers from being compelled to financially support the political ambitions of union leaders

BY BILL STEWART

On October 6, 2011, Ontarians will head to the polls to elect a new provincial government. The run up to election day may not be shaped by policy debates between politicians vying for election. Rather, the tone may be set by third-party advertisers.

As early as November 2010, the Provincial Building and Construction Trades Council of Ontario had "decided to start priming its pumps to support the Working Families Coalition (WFC) in order to combat Ontario's 'Regressive Conservatives'." The millions of dollars the coalition will pour into attack ads will come at the expense of workers in unionized settings who are required to pay dues to unions in order to keep their jobs. It's time that Canadian legislators changed this.

While unions have long been politically active, a major change in approach came during the Ontario provincial election in 2003 when 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 used compulsory dues to finance a costly U.S.-style political attack ad campaigns – without the same kinds of check and balance rules that exist in the United States.

ILLUSTRATION BY: SONIA ROY

The $5 million, negative attack ad campaign that was run in 2003 helped bring down the ruling Conservative government. Ontario's construction industry paid heavily. Early in their new mandate, the Liberal government removed the right of construction industry employees to a secret ballot vote in unionization elections. All other industry sectors retained secret ballot voting.

A similar $5 million amount was reportedly spent to help the Liberals gain re-election in 2007. And for the 2011 election, one Ontario MPP has speculated that WFC could spend in excess of $10 million.

Elsewhere, in 2007, affiliates of the Alberta Building Trades Council helped organize, and were the major financiers behind the Albertans for Change coalition. Emulating the campaigns in Ontario, the coalition spent more than $2 million on advertising which slammed Premier Stelmach and his Progressive Conservative government 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.

The enormity of these campaigns and the influence they have on the election process has prompted considerable discussion in legal, political and journalistic circles, think-tank research institutes and various advocacy organizations.

Nation-wide surveys conducted by Nanos Research in 2003 and 2008 found that over three-quarters of unionized workers opposed having their union dues go to fund political parties, political advocacy or attack style advertising. A similar number of Canadians felt the same way. A majority of respondents also liked the idea that unionized workers should be able to pay lower dues to cover the costs of collective bargaining but not be forced to pay additional dues for political related activities.

The Ontario division of the Canadian Federation of Independent Business (CFIB) released the results of a survey it had conducted in 2009 that found that 84 per cent of small business owners agreed that non-union employees in a unionized workplace should have the right to opt-out of paying dues. According to the CFIB, "these views are consistent with the views of most Canadians who favour an employee choice approach to union dues and suggest that it's time to consider reforms to laws that govern labour relations in Canada."

In 2010, the Ottawa-based Canadian Centre for Policy Studies issued a blue paper titled "Balancing Workers' Rights and Union Privileges in a Mandatory Dues Environment." After noting that, "Canada is the only country in the world where a majority of workers at a particular place of employment are able to compel the remaining minority to pay, against their will, full dues to a union to which they may not belong" the authors concluded that "Trade unions enjoy extraordinary powers as a result of this mandatory relationship including the power in practice to tax those who do not wish to be members. Modernizing legislation in order to protect workers from potential abuse at the hands of their unions from these powers is both sensible and long overdue."

The current union dues collection framework dates back to a 1946 arbitration decision by Justice Ivan Rand. In what is known as the "Rand formula," he ruled that the best way to settle a long strike at Ford of Canada was to have employees pay union dues, regardless of whether they were union members or not. This was predicated on the assumption that all employees, regardless of their union membership status, 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.

Ultimately, the federal and six provincial governments incorporated these principles into their labour laws. Unfortunately, they set few boundaries beyond internal union self-regulation as to how the dues should be spent. This provides Canadian union leaders with vast resources to pursue political agendas.

Concern over this was taken to the Supreme Court of Canada in 1991. Merv Lavigne was an Ontario college teacher who complained that his union dues were directed to campaigns and organizations he disagreed

with. Lavigne argued that 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. The Supreme Court narrowly ruled against him.

Union leaders have long since argued that this decision is the final word on the issue. For instance, during Alberta's 2008 election, the Merit Contractors Association and the National Citizens Coalition joined together to publicly challenge organized labour's use of compulsory union dues to finance pre-election attack ads. Alberta Federation of Labour President Gil McGowan responded by saying the critical organizations were, "simply trying to put a coat of fresh paint on old, tired argument." and noted that in reaching the decision it did in Lavigne, the Supreme Court of Canada "ruled that unions have a democratic right to use their members' dues for political purposes."

However, Canada's political, legal and economic landscape has dramatically changed since Lavigne's 1985 court challenge. Moreover, the assertion that the Supreme Court's decision gives unions unfettered authority to spend dues on activities unrelated to collective bargaining and that federal and provincial governments are precluded from rebalancing individual rights against the political goals of union leaders is simplistic.

Indeed, key principles contained in strongly worded dissenting opinions in Lavigne were critical to the landmark R. v. Advance Cutting and Coring case in 2001. In this case, the Supreme Court ruled that "freedom of association" also included, within limits, being free from compelled association. Later decisions have also determined that governments are not constitutionally bound to provide unions with the most favourable mechanism to collect and use dues as set out in the Rand Formula.

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.

This could be challenged in a case currently making its way through Alberta's courts. For 30 years, Old Dutch Foods negotiated numerous collective agreements that included an open shop arrangement, allowing employees to choose whether they would join 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 Old Dutch was bargaining in bad faith. Moreover, the ruling declared that Alberta's labour code was unconstitutional because it did not "mandate a minimum union security provision" (i.e. a Rand Formula) to help finance the union.

A group of 21 employees that have never been union members or been required to pay union dues is in the process of appealing the decision. It's disturbing that these employees have had to incur the trouble and expense of taking legal action when all of the other industrialized countries that Canada competes with globally have labour relations regimes that democratize the collection of union dues and the distribution of monies for political purposes.

"CANADA IS THE ONLY COUNTRY IN THE WORLD WHERE A MAJORITY OF WORKERS AT A PARTICULAR PLACE OF EMPLOYMENT ARE ABLE TO COMPEL THE REMAINING MINORITY TO PAY, AGAINST THEIR WILL, FULL DUES TO A UNION TO WHICH THEY MAY NOT BELONG."

Unionized employees in the 47-nation Council of Europe have a choice regarding union membership. Following a 2007 landmark Court of Human Rights ruling, it is now illegal for European unions to use unionized non-members' dues for political activities.

In the USA, unions may use dues for political purposes but non-members are not compelled to support these activities. Various formulas exist across many states that 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.

The principle is simple. Union members that want their union to engage in political activities are free to make their contribution. Those employees who do not wish to do so can opt out. There is no reason that similar structures could not be established in Canada.

While it may be argued 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. 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 political ambitions of labour leaders. ◘