



No. 2

November 8, 2022

Workers Force Ford Government to Rescind Bill 28

• Rejection of Ford's Conception of Agreements Without Consent

– Enver Villamizar –

• What the Unions Said at November 7 Press Conference

Letters to the Editor

**• To Negotiate Wages and Working Conditions Is a Right,
Not a Privilege**

**• When a Collective Agreement Is Neither Collective
Nor an Agreement**

Proposals to Fight Police Powers with More Police Powers

**• "Power of Disallowance" the Latest Diversion to Detract from
Need to Replace the Constitutional Order**

– Pauline Easton –

For Your Information

• Previous Use of the Notwithstanding Clause in Ontario

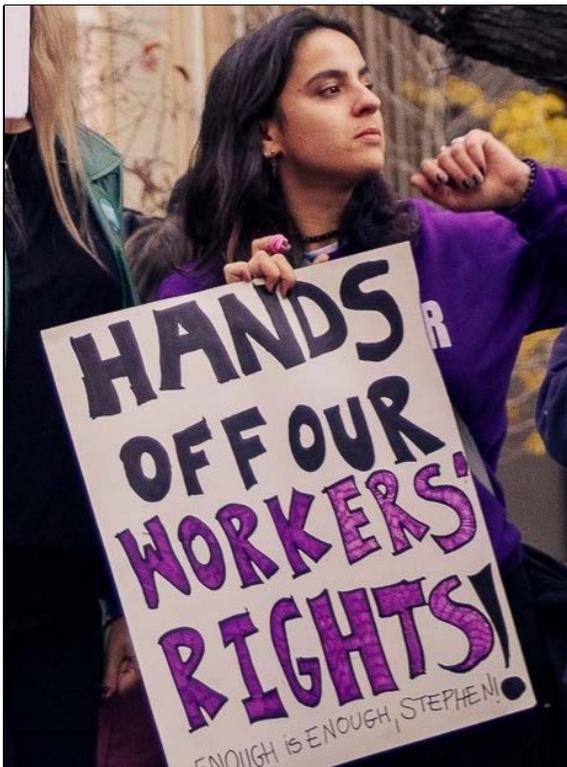
– Anna Di Carlo –

Workers Force Ford Government to Rescind Bill 28

**Rejection of Ford's Conception of Agreements
Without Consent**

– Enver Villamizar –

Ontario Premier Doug Ford held a press conference on Monday, November 7 at which he said he would rescind the *Keeping Students in Class Act, 2022* that his government passed just four days prior if the Canadian Union of Public Employees (CUPE), representing 55,000 education workers, gives up its right to strike.



In essence this is in fact the same demand Education Minister Lecce made when he tabled the anti-worker legislation imposing a contract on education workers which includes the notwithstanding clause to make all opposition to the law illegal. The adoption of the anti-worker legislation, misnamed *Keeping Students in Class Act, 2022* was the declaration that the government would no longer bargain wages and working conditions with the union. Prior to its adoption, the threat of passing such legislation was accompanied by the threat to impose draconian penalties if CUPE did not agree to give up its right to negotiate a collective agreement and its right to strike.

Ford's announcement came in response to plans by Ontario unions to hold province-wide protests and other actions in support of the education workers' fight against the legislation. CUPE held its own press conference a couple of hours later with leaders of numerous other public and private sector unions also in attendance. There,

Laura Walton, president of CUPE's Ontario School Board Council of Unions (OSBCU) said the union agreed to call off its political protest in response to a commitment from the premier, which they got him to put in writing, to repeal the legislation and resume bargaining with the union for a new collective agreement. The government's tune has not changed however, and in its response CUPE made it clear that the government must now deliver and that the union is not giving up the right to strike.

Walton told the press conference she hopes the union's gesture of "good faith" in ending its walkout is met with similar good faith by the government at the bargaining table. She said CUPE education workers will be back on the job Tuesday, though it is up to individual school boards to decide when schools closed because of the protest action will reopen. She added that CUPE continues to be in a legal strike position and is willing to strike if renewed negotiations fall apart.

A statement from Minister of Education Stephen Lecce confirmed that the government will repeal Bill 28 "in its entirety." As if CUPE were to blame for not being at the bargaining table, the arrogant minister said:

"CUPE has agreed to withdraw their strike action and come back to the negotiating table. In return, at the earliest opportunity, we will revoke Bill 28 in its entirety and be at the table so that kids can return to the classroom after two difficult years," Lecce said.

The legislature is not currently sitting, so MPPs would need to be called back early for the law to be repealed this week.

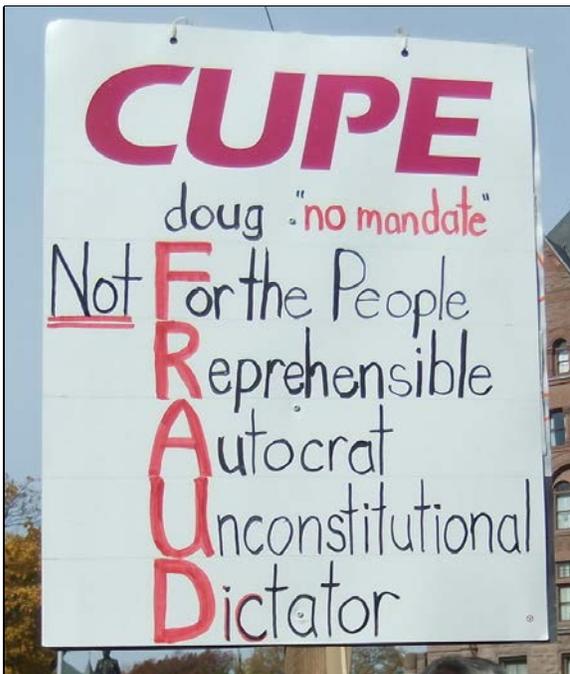
The mass actions of the education workers in Ontario supported by working people from all walks of life have clearly chastened Doug Ford and his arrogant government. Congratulations!



The working people won another battle and this is hugely significant because it shows that our future lies in defending the rights of all. The situation also reveals that this is but one clash of what will likely be more to come.

Ford seems to think that by decree he can overturn the right of workers to withdraw their labour power which is the power they hold to ensure negotiations can take place in good faith. His offer to rescind the legislation in return for an end to the strike shows that he thinks rights are privileges which can be granted for good behaviour. But rights belong to the holder by virtue of their being. They do not fall into the category of privileges which can be given and taken away, denied and negated and then returned depending on how it serves narrow private interests and how the winds are blowing.

Collective agreements cannot be imposed by fiat when there is no agreement or consent. It is to make a mockery of the fact that rights belong to the holder by right. Furthermore, if a person's *No!* has no power, then their *Yes!* is meaningless.



Even as he has to crawl away with his tail between his legs, Ford hopes that his disinformation blaming the unions and education workers for not negotiating and for everything that is wrong in Ontario will disorganize the ranks of the workers, cause confusion and get them to submit to his dictate.

The workers and their unions, however, know they have the right to participate in negotiations without the use of force or the threat of the use of force. Unless their *No!* means something, where is the agreement? What is the agreement? It is a farce, not worthy of the name.

The objective conditions are demanding more funding for education -- more teachers, more education workers, more staff. Teachers and education workers' working conditions are the students' learning conditions. The conditions in

the schools -- the stress, the lack of care for students in need, the lack of sanitary conditions because the custodial staff cannot maintain standards no matter how much individuals forced to fend for themselves try to uphold standards on their own, are not the figment of the imagination of the workers or their unions.

Education workers and, in fact, the working people throughout the province, are saying *No!* to what the Ford government is doing. A workforce which cannot legally say *No!*, and enforce it, is enslaved. The Ontario working class will not agree to this. Ford and his retinues and mouthpieces in the media and the narrow private interests he serves should get that into their heads.

***Negotiations Yes! Dictate No!
No Means No!***

(Photos: TML, CUPE ON, OFL)



What the Unions Said at November 7 Press Conference



On November 7 representatives of many Ontario and national unions held a press conference to announce an escalation of the opposition to the *Keeping Students in Class Act, 2022*. However, the government earlier in the day committed, in writing, that it would repeal the legislation in its entirety and, in fact, it would be deemed to have never been enacted and made law. This commitment to repeal the legislation was addressed by the speakers.

Mark Hancock, National President of the Canadian Union of Public Employees (CUPE) opened the press conference indicating that he was joined by CUPE leaders from across the country including the Presidents of CUPE Ontario and the Ontario School Boards Council of Unions (OSBCU).



Mark Hancock, National President of CUPE opens press conference, November 7, 2022

Also joining were leaders from the Canadian Labour Congress (CLC), the Ontario Federation of Labour, Amalgamated Transit Union (ATU), Elementary Teachers' Federation of Ontario (ETFO), Ontario English Catholic Teachers' Association, Ontario Secondary School Teachers' Federation, International Alliance of Theatrical Stage Employees, Association des enseignantes et des enseignants franco-ontariens, United Steelworkers, United Food and Commercial Workers Union, Unifor, Ontario Building Trades, International Brotherhood of Electrical Workers, United Association of Plumbers and Pipefitters, Sheet Metal Workers, National Union of Public and General Employees, UNITE HERE!, Public Service Alliance of Canada, Canadian Union of Postal Workers, Ontario Public Service Employees Union (OPSEU), Ontario Nurses Association, Service Employees International Union Healthcare, Canadian Office and Professional Employees Union, Society of United Professionals and Toronto and York Region Labour Council.

It was a mighty force representing millions of private and public sector workers across the country and Ford had clearly received the message that the unions would not back down.

Hancock said it was an unprecedented gathering because of the attack on rights of the workers. Bill 28 was a direct threat to workers across the country and to the *Charter* rights of all Canadians, which, he said, united the labour movement like never before. Ford's decision to rescind the legislation demonstrated the power of private and public sector union solidarity. "When our rights come under attack we will stand up for each other," he said.

OSBCU president Laura Walton then thanked the education workers currently on the protest lines. She reiterated that her union had never left the bargaining table, something the government has repeatedly misled the public about. She then formally announced that Ford had been forced to put in writing a commitment that his government would repeal the legislation in a manner that ensures that it will be deemed to have never been a law in Ontario in the first place.

This was met with resounding applause. As a gesture of good faith, she said, the union will be collapsing the protest sites starting Tuesday and are ready to negotiate right away with the government. She made it clear that the union was not giving up their right to strike in the future if the government does not negotiate in a serious manner which addresses the workers' needs.



When asked when the government will repeal the legislation, a CUPE representative indicated that no date had been set but that Ford had spoken with the NDP to get agreement to recall the legislature.

Walton said the protests started because the Ford government didn't want to pay the lowest paid workers a living wage, because "we know the reality in our schools. They're anything but normal and stable due to constant underfunding, and lack of investment in the direct services students need to be safe and successful." Education workers have been legislated into poverty and used their power to fight back, she said. It was the actions of the workers that forced the government to back down. With this fight, she said, people are recognizing that they have a voice and they don't have to accept being silenced.

CLC President Bea Bruske said Ford made a dangerous decision with Bill 28 and that under no circumstances will workers allow any premier to take away workers' rights. She said that Ford did it knowing how bad the economy is and that parents and students would be in a tough spot.

She highlighted the fact that the response from the Ontario workers was matched by workers across the country saying *Hell No!* Canada's unions are ready to come back and rally once again and do what it takes to get this done, she said.

ETFO President Karen Brown said, "Let there be no doubt, we will not stand by and watch this government strip away our constitutionally protected rights because they want to avoid the inconvenience of negotiations." The law was an unprecedented attack, she said, adding that "our members and people of Ontario will hold Ford to his word to rescind Bill 28."

Unifor President Lana Payne congratulated the education workers for their heart and courage and resolve and thanked Laura Walton for her fierce and relentless leadership. "The bargaining table is the only place where this will be settled," she said. "Bill 28 represents an outrageous and unprecedented attack on workers' rights and trade union freedoms and as a labour movement we were prepared to respond with an unprecedented response, because if fundamental rights can be taken away from public sector workers without recourse, no one's rights are safe." She pointed out that this could be used again in Ontario and in other provinces where other conservative premiers were watching closely and concluded that "workers made it clear they will not tolerate the weaponizing of the notwithstanding clause to strip away our *Charter* rights. Not today, not tomorrow, not ever." She also informed that the previous day, Unifor's national executive board decided to take whatever action was needed to defeat Bill 28. Now Unifor will be with the education workers every step, she said.

OPSEU President JP Hornick said the repeal of the Bill was good, but that 180,000 OPSEU members are not standing down; they are standing by. "We will make sure that that promise is made to stick. OPSEU/SEFPO members are in this fight with the CUPE education workers, with all workers, until a fair deal is reached for CUPE education workers, for our own education workers, for teachers and for workers across this province, including our comrades in ATU." She was referring to GO Transit workers who started a strike in Toronto the same day.

The significance of the private and public sector unions standing together is that Bill 28 is an attack on workers and democracy and all Ontarians should be joining labour to hold the Ford government accountable, she said. She said that the government



will continue to try and divide and conquer workers, as in Ford's press conference that morning in which the government blamed the union for its own failure to bargain by suggesting it was the union which walked out of negotiations. "But we are the majority. We are where the power resides in the province. When you come for one of us, you come for all of us. Workers, united will shut this province down whenever we need to," she said.



During the question period some members of the media attempted to impose divisions by asking that those unions which had supported Ford during the provincial election address this now. Neither Hancock nor Walton permitted that discussion to take place saying that during elections people do things, but what is important is that when CUPE needed them, they came. This set a unifying tone for the battles which lie ahead.

(Photos: TML, CUPE National, OPSEU)

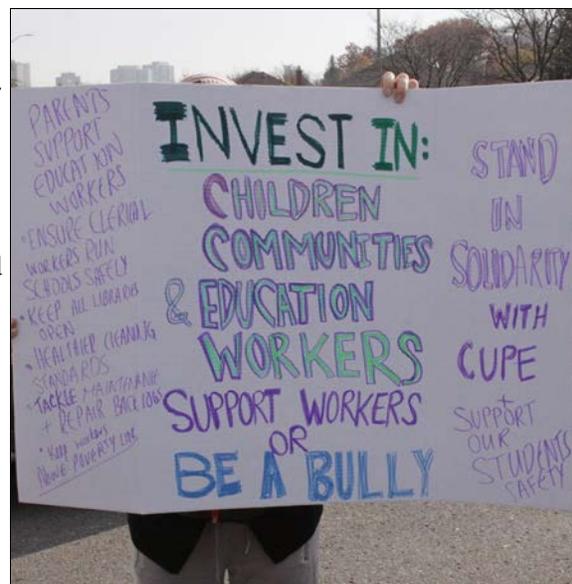


Letters to the Editor

To Negotiate Wages and Working Conditions Is a Right, Not a Privilege

The working people of Ontario are in no mood to accept the truly medieval notion that at they must first submit to the arbitrary rule of a Crown power above them and only then will they be accorded privileges which can be given and taken away at the whim of that Crown power above them. This is what Ford is demanding -- submit to the power of the Crown to violate your right to negotiate and strike which are the essence of collective bargaining enshrined in labour law, and then you can have the privilege of negotiating, with no way to say no.

It is a set-up which seeks to divert from the fact that the working people of Ontario and across Canada are demanding that the economy must serve the people, not the rich and that social



programs require more investments to provide for the people.

The claims of the people on society are to what belongs to them by right, as members of society. Their demands to stop paying the rich by privatizing all public services and programs, and to increase investments in social programs, is the demand to set a direction for the economy which favours the interests of the people in first place. Demanding that governments invest in social programs rather than pay-the-rich schemes by using public funds to privatize services, and rule as governments of police powers over the people, is for purposes of humanizing the social and natural environment without which progress is impossible. The status quo is untenable.

This is made clear as CUPE education workers point out that the government has a surplus and refuses to invest in the social programs which require urgent attention. CUPE education workers are also parents who are waging this fight, and giving up their wages to protest for themselves, their families, the students and future generations. On this they are clear. This is what the Ford government hopes to crush with his good cop routine and to send a message to all working people that they best not join in this fight. It is an act of desperation.

A teacher in London



When a Collective Agreement Is Neither Collective Nor an Agreement

The Ford government is demanding that the Ontario Labour Relations Board (OLRB) must criminalize the workers' political protest and force them back to work because the *Keeping Students in Class Act* says so, irrespective of the right of workers to bargain their wages and working conditions.

The government lawyer had nothing to offer the hearing of the OLRB except silly talk. Ferina Murji said strikes are prohibited in the midst of any contract, not just one that was ratified by union membership.

"A collective agreement is a collective agreement is a collective agreement," she said.

It begged the very essence of the matter the hearing was dealing with: What is to be done when the alleged collective agreement is neither collective nor an agreement? Silly talk is silly talk and brings neither the government lawyer nor the government she was representing any honour.

A reader in Etobicoke



Proposals to Fight Police Powers with More Police Powers "Power of Disallowance" the Latest Diversion to Detract from Need to Replace the Constitutional Order

– Pauline Easton –

While the people of Ontario, joined by workers from across the country, took to the streets to denounce the *Keeping Students in Class Act, 2022* passed by the Ford government, which invokes

the notwithstanding clause, some well-known commentators and high-ranking people evoked the powers of the Crown, saying they could be used to overturn the law.

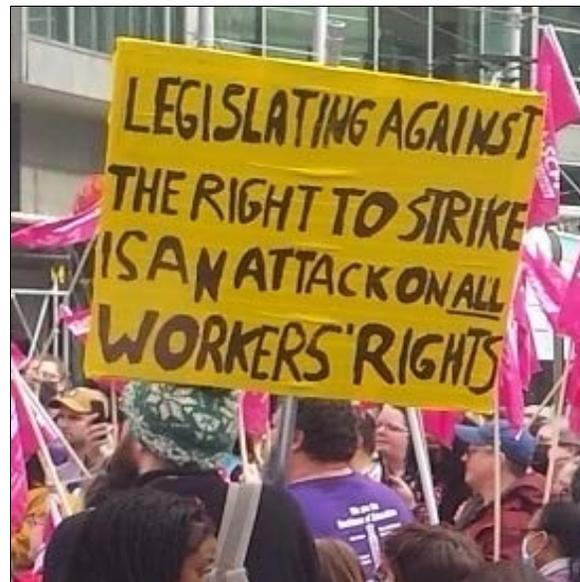


Talk about federal intervention began with Minister of Justice Lametti telling reporters on November 2 that the notwithstanding clause "was meant to be a last word for a legislature to exercise parliamentary sovereignty. If it's used at the beginning, it guts Canadian democracy, it means the *Charter* doesn't exist."

In other words, the notwithstanding clause should only be used by a legislature to negate rights the *Charter* purports to enshrine once the courts have declared the impugned law violates the Charter. This is what the Ford Government did when the Ontario Court struck down its "third-party" spending regulations as a violation of the right to freedom of speech.

When asked what the Liberals might do, Lametti said, "There are a number of different things ... but I'm not going to discuss my options."

Justin Trudeau then told reporters on November 4 that his government is one that "stands up for people's rights and freedoms and we are absolutely looking at all different options." As he spoke he condescendingly ignored the fact that thousands upon thousands of education workers and their supporters were assembled on the streets of Ontario to defy the Ford government's anti-social, anti-worker law. Trudeau said: "It would be much better if instead of the federal government having to weigh in and say, 'You really shouldn't do this, provincial governments,' it should be Canadians saying, 'Hold on a minute. You're suspending my right to collective bargaining? You're suspending fundamental rights and freedoms that are afforded to us in the *Charter*?'"



This from a federal power all too happy to pass anti-worker legislation when it so decides. But what is significant is the police power both Lametti and Trudeau are evoking: the power of the Crown called "disallowance." Disallowance is the decision by a representative of the Crown to veto an enactment of a parliament or a provincial legislature, and the enactment ceases to operate as law.

NDP Leader Jagmeet Singh has called on the Liberals to use the power of disallowance, while also calling for a Supreme Court "reference case" on the validity of Ford's use of the notwithstanding clause.

Political analyst and commentator Andrew Coyne wrote in the *National Post* on November 2 about the increasing use of the notwithstanding clause by provincial governments outside of what he says was its intention:

"If the 1982 bargain is now off -- if we are back to the days before the *Charter* -- if minority and individual rights are once again at the mercy of provincial governments, then it falls to the federal government to resume its former role as their guarantor, at least until the notwithstanding tiger can be returned to its cage.

"That the disallowance power has not been used in some time does not mean, as some allege, that it has become void. For such a convention to exist the federal government itself would have had to formally renounce it. No federal government has done that.

"No doubt its revival would cause a flap, and certainly it should be considered a last resort. But the alternative is simply to stand by while the *Charter* dissolves in front of our eyes. Surely the Prime Minister, of all people, will not wish to preside over the dismantling of his father's proudest legacy.

"The nuclear option? The notwithstanding clause was supposed to be the nuclear option. Only the bombs are going off with such regularity now we barely notice them. It's time for a little constitutional deterrence."

"Disallowance"

The fundamental issue before us is whether we as Canadians and Quebeckers, Indigenous peoples, Métis and Inuit, are going to base ourselves on the fight of the people of this country for the affirmation of the rights of all and a regime and institutions which put that at the centre of our concerns, or we are going to rely on anachronistic colonial institutions, set in place to uphold the colonial power and regime whose main goal is to keep the people subjugated to a sovereign whose decision-making power is not in our hands.

A review of the "power of disallowance" actually makes the case for the need to convoke a constituent assembly and draft a modern constitution. Such a constitution, written by the people themselves, will have as its first act to vest sovereignty in the people, not a fictitious person of state with police powers to declare what the people need and do not need and decide things behind the backs of everyone, sometimes even those in the inner circles of power.

The Centre for Constitutional Studies explains:

"'Reservation' and 'Disallowance' are often confused, since both derive from the practices of the British colonial empire, but they are actually distinct terms. Historically, 'reservation' was the practice whereby a colonial governor, rather than giving or refusing assent to a bill, could refer it to the imperial government for the final decision. 'Disallowance,' on the other hand, was the practice whereby a colonial bill could still be declared null and void by the imperial government, even though the colonial governor had given royal assent.

"Sections 55, 56 and 57 of the *Constitution Act, 1867* provided that acts of the Parliament of Canada were subject to these instruments of imperial control. A few such acts were reserved or disallowed in the first few decades after Confederation, but the powers passed into disuse as Canada evolved towards independence, even though they were never formally eliminated.

"Section 90 of the *Constitution Act, 1867*, which adapted the same practices to the purpose of maintaining federal control over the provinces, proved to be of much greater significance. Early

Lieutenant-Governors frequently reserved bills for a final decision by the federal government. Although the practice was controversial, and soon became unnecessary as communications improved between Ottawa and the provincial capitals, a Saskatchewan bill was unexpectedly reserved as late as 1961.

"Disallowance, from the federal viewpoint, was a much more reliable instrument of control over the provinces. It was used extensively by the Macdonald, Mackenzie and Laurier governments, particularly against Manitoba and British Columbia, and thus became a source of western discontent with the federal system. After 1911 its use was rare, but the election of the Social Credit government in Alberta in 1935 led to a brief revival. The last Act ever disallowed was a 1943 Alberta statute which prohibited the sale of land to 'enemy aliens' or Hutterites.

"The Victoria Charter of 1971 would have eliminated 'reservation and disallowance' from Canada's Constitution, but the extensive changes made to the Constitution in 1982 left both powers intact. Either might still be used to prevent the illegal or unilateral secession of a province, but otherwise their future use is extremely unlikely."

The Heart of the Matter

What lies at the heart of the matter of the appeal of some for the Crown to use the power of "disallowance" to overturn the *Keeping Students in Class Act, 2022* is the need to fight for the claims everyone is entitled to make on society within the context of fighting for a society that affirms the rights of all. Essentially what is unfolding before our eyes is a fight within the ruling class to control what has escaped their control because of unfolding events. The arrangements perfected over the years in the form of liberal democratic institutions have been destroyed because of the drive of the global neo-liberal economic order and striving for hegemony on the part of the big powers with the U.S. emerging as the so-called indispensable nation. All of that has not sorted out the contradictions between the narrow private interests which have formed oligopolies and international cartels and coalitions to seize the state powers of countries which they control.

To now call on the federal executive power to trump an executive power at the provincial level is the formula for a civil war within the ranks of the rulers. We see precisely this taking place in the United States where the federal power and the states' powers are clashing on every matter facing the polity while they both vie to control the federal executive power.

The power of disallowance essentially uses a superior power of the Crown to nullify another power of the Crown. It is the blatant expression of an overruler. It will not be well received by the peoples of Canada, Quebec or by the provinces, let alone the Indigenous peoples, Métis and Inuit.



Will such powers now overrule hereditary rights when it suits the narrow private interests and the holders of federal office, as is the case with the use of the notwithstanding clause when it suits the holders of office in Ontario and Quebec? This is already taking place with the federal and provincial governments making deals with band councils under their control or private Indigenous corporations for consent to steal resources on Indigenous territories. Deals are being imposed on those who have never ceded title to their lands. The use of the powers of the Crown will increasingly be used to supercede treaty rights. Will the powers of the Crown now also be used to force the Inuit to accept turning their homeland over to NATO?

The peoples of Canada and Quebec, the Indigenous peoples, Métis and Inuit are under tremendous

pressure to be what is called pragmatic as if this is a virtue. To be pragmatic is made synonymous with being practical, realistic, a problem-solver when, in fact, it is to be opportunistic and self-serving in the name of high ideals. All of it is used to disinform the struggle for what belongs to the peoples and workers by right. The people can only be united behind a cause if it is just and accords with their conditions and if they can provide rational, persuasive arguments which help them to fine tune their forward march and to open a path which will guarantee their well-being.

The idea for the federal government to use the "power of disallowance" serves to get the people to rely on the very state which is waging the anti-social offensive and attacking them to save them. The fight against the Ontario *Keeping Students in Class Act, 2022* is a political fight against an act of the Legislature which has taken negotiations for wages and working conditions outside the bounds of labour law. It is up to the working people themselves to unite in action and force the government to recognize their right to speak, organize and negotiate their wages and working conditions.

It is also obvious that floating the idea of convoking the "power of disallowance" is to maintain the existing constitutional arrangements which are in fact the problem. Those arrangements can no longer keep the people subjugated to a power which exists above them and deprives them of the ability to exercise everything that belongs to them by right. The power-sharing arrangements contained in Canada's Constitutions of 1867 and 1982 can also no longer sort out the fights between federal and provincial powers and the peoples of Canada, Quebec, the Indigenous peoples, Métis and Inuit, or the factional fighting within the ruling class which has seized the state powers at the federal and provincial levels.



The arrangements whereby governments at the federal and provincial levels can violate rights in a constitutionally guaranteed manner were never acceptable to the people, who have always fought to have the limitations on their rights removed.

Today, under the pretext of upholding national security and the national interest against enemies as described by the ruling circles and their media, governments of police powers are taking over and deliberations on matters pertaining to war and peace are forbidden. These arrangements are the "constitutional order" called "the King's democracy" to which elected and appointed officials swear oaths of allegiance to uphold and defend.



For Your Information
Previous Use of the Notwithstanding
Clause in Ontario

– Anna Di Carlo –

It is of note that this is the second time the Ford provincial government has invoked the notwithstanding clause contained in the *Constitution Act 1982*. The first time was when it

overturned a court ruling which found that changes to the electoral law in Ontario brought in by the previous Liberal government violated the right to freedom of speech and expression -- fundamental freedoms outlined in the *Charter of Rights and Freedoms*.

The law was dealing with what it called Third Parties' participation in elections. These measures sought to regulate the conduct of the citizenry in elections. By declaring them "Third Parties," limits were established which severely regulated the ability of the people to speak and participate in elections, while at the same time strengthening the role of the cartel parties already in power.

At that time the federal government made no issue of the possible use of disallowance because the use of police powers to control the participation of electors in the election and strengthen the role of the cartel parties is something the cartel parties in power have also been putting in place at the federal level. The use of the notwithstanding clause at that time was essentially given a pass because it favoured the cartel parties to keep themselves in power.

The changes brought in by the Liberals in Ontario were in response to the participation of the workers in a by-election which denied the Liberals a majority and the PCs any chance at a majority. The Liberals at the time cited the Kitchener-Waterloo by-election as the reason they needed to regulate what they called Third Parties, a euphemism for a campaign spearheaded by fighting industrial and public sector unions, especially steelworkers and teachers and education workers, to block a Liberal majority and their imposition of back-to-work legislation in the form of Bill 115, the *Putting Students First Act* which harmed not only teachers and education workers but all public sector workers. In other words, the Liberals were setting out to prevent the labour movement from being able to assert its power in elections.

When Ford overturned the court ruling, essentially bringing back the legislation with even more anti-worker regulations included, he said it was to address foreign influence in elections. Now we have Ford invoking the notwithstanding clause to violate workers' rights again and the Trudeau government and various appeasers and lovers of the anachronistic liberal democratic institutions are calling on the federal police powers to use all the colonial powers of subjugation to defend the democracy which serves them.

It is a lost cause. It has nothing to do with defending democracy. Self-serving stands are taken pragmatically by various cartels as they fight over power and control. The champions of disallowance as a method of serving their episodic self-serving aims would do well to recall that a sow's ear cannot be turned into a silk purse. They should keep that in mind.

Website: www.cpcml.ca Email: editor@cpcml.ca