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## **Ontario Government Uses Notwithstanding Clause to Pass Pre-Emptive Back-to-Work Legislation Against Education Workers Join Province-Wide Political Protests**



Education workers rally in support of their just demands outside PC annual convention in Etobicoke, October 22, 2022.

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## **Ontario Government Uses Notwithstanding Clause to Pass Pre-Emptive Back-to-Work Legislation Against Education Workers**

### **Join Province-Wide Political Protests**

The Ontario Federation of Labour has called an emergency rally in Toronto for Tuesday, November 1 at 5:00 pm at the Ministry of Labour (400 University Ave.) to protest the Ford government's pre-emptive tabling of back-to-work legislation against the teachers and education workers while mediation was still set to take place. Fifty-five thousand education workers organized into the Ontario School Boards Council of Unions are set to withdraw their labour on Friday November 4 in what has now become a province-wide political protest in response to a law which invokes the use of police powers to impose wages and working conditions in the education sector.

In a Facebook post the union stated: "We will not allow our rights to be legislated away. They may have a majority in the legislature. We have a majority across the province. We will take a stand and do everything we can to defend workers' rights and to defend public education."



Everyone is encouraged to join the protests and lend a hand in this important battle. Follow the union's website ([osbcu.ca](http://osbcu.ca)) to keep informed and their social media accounts to stay up to date as things unfold and express your support.



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## Government Goes Outside the Bounds of a Democratic Society

– Enver Villamizar –



Education workers protest outside Windsor-Tecumseh MPP's office, October 21, 2022.

On October 31 the Ontario government introduced legislation, cynically titled the *Keeping Students in Class Act*, which if passed would impose a four-year collective agreement on 55,000 education workers of the Canadian Union of Public Employees' Ontario School Boards Council of Unions (CUPE-OSBCU) without their agreement. In addition, the government has declared that if passed the legislation will operate "notwithstanding sections 2, 7 and 15 of the *Canadian Charter of Rights and Freedoms* and despite the *Human Rights Code*." It claims this is being done to "protect against legal challenges, which may create destabilizing uncertainty for students and families."

Section 2 of the *Charter of Rights and Freedoms* is freedom of conscience and religion, freedom of expression, freedom of peaceful assembly, freedom of association. Section 7 outlines that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."



According to the federal Ministry of Justice's website "the guarantees under section 7 typically arise in connection with the administration of justice, which has in turn been defined as 'the state's conduct in the course of enforcing and securing compliance with the law.'" Section 15 of the *Charter* concerns equality rights and that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

The legislation also limits the jurisdiction of the Ontario Labour Relations Board, arbitrators and other tribunals to make rulings, inquiries or decisions and attempts to block any legal action against the Crown. It contains two parts: the first spells out provisions, powers and penalties invoked to end a strike planned for Friday November 4 by education workers and the second is the new contract to be imposed. The penalties for defying the legislation start at \$4,000 per day for an individual and up to \$500,000 per day in any other case.

For the government to say it is using the notwithstanding clause to ensure stability for students and families is to say it can do whatever it wants and is not accountable. Stability is precisely what will not come from such a move as it is recognizing and upholding the rights which belong to people by right which provides stability and predictability, not governments of police powers which rule by decree.

To shield its law from the *Charter of Rights and Freedoms* and the *Ontario Human Rights Code* reveals that it is intentionally using its power to go outside the bounds of a democratic society. Once laws are passed to enforce a government of police powers, it shows that what is called the constitutional order no longer exists. The use of its majority in the legislature to attempt to crush 55,000 education workers who refuse to accept dictate and demand negotiations which address the wages and working conditions they require to perform their duties shows it cannot rule with the consent of the governed. The education system cannot function on this basis and nor can any sector of the economy or domain of public life. The government obtained its majority of seats with the votes of only 18 per cent of the electorate in the June election. The government, its Ministers and all members of the legislature who go along with this are a shameful lot. Any of them with any sense of dignity should resign and not be a party to such anti-democratic behaviour which sets a new low.



Something is seriously wrong with a government that does not respect teachers and education workers who are one of society's best assets. Any society which does not respect its teachers and education workers who give so much of themselves to educate the younger generation is in deep trouble. To portray them as unreasonable and troublemakers is to put them into a category which deserves to be punished. It is to justify their criminalization. The imposition of onerous penalties for defying

the unjust law is to force them to accept wages and working conditions which are unreasonable. It is also to humiliate them if they have to choose between standing up for what is right and the loss of their livelihoods and professions. It shows the entire society must take up the fight because this attack is aimed at all workers from all sectors of the economy, not just education workers.

By setting this precedent, the government is creating a situation which will not go well for

it. To believe it can simply rule by decree and declare it has a mandate from the people to implement an ever more brutal anti-social offensive and that the people will agree with governments of police powers is not rational. It will face the condemnation of the working people. It may think the experience of the working people of Ontario in fighting for their rights will suddenly evaporate but this will not happen.

By dispensing with the *Charter of Rights and Freedoms* and *Human Rights Code*, the government is showing everyone clearly that in Canada rights are not worthy of the name. They are given and taken away with the stroke of a pen. By invoking the notwithstanding clause the Ford government thinks it can eliminate the block to governments getting away with the ongoing mistreatment of teachers and education workers for the past 10 years, leaving contract disputes and imposed contracts to be settled in the courts. This was the case with the infamous Bill 115 imposed by the Liberals in 2012 and then Bill 124 imposed by the Conservatives in 2019. This use of the courts has served those in power to violate the right of workers to speak and organize by having the fight take place within the confines of the courts and the power that the Crown wields to set the agenda and who can and cannot speak and how. But even with such power used against the teachers, education workers and their unions, the tribunals of different kinds have several times found in favour of the unions. That cannot be tolerated by a government hell-bent on imposing wages and working conditions beneath what the teachers and education workers and the system of education require. The Ford government is now setting the stage for an open political fight with the working people.

The working people of Ontario will devise the ways and means to hold the government to account. The pandemic has revealed the essential role of working people who provide vital public services like education and health care. Governments that think they can treat them with such disdain must be put in their place.

The situation calls on everyone to join this fight. Stand as one in defence of the rights of all! Condemn the Ford government's anti-democratic, anti-social legislation!



# On the Significance of Ford Government's Use of Notwithstanding Clause

– Pauline Easton –

The Ford government is using the notwithstanding clause contained in the 1982 Constitution to violate the rights of Ontario workers and prevent any court challenges to its back-to-work legislation against education workers. What this means is that far from the law being found unconstitutional if it were challenged in court, the very inclusion of the notwithstanding clause in the Constitution shows that the attacks on the rights of the education workers would be found constitutional by the courts. What this means is that the constitutional arrangements are not what most Canadians consider to be of a democracy but, on the contrary, they are precisely there to protect governments of police powers.

Far from the democratic arrangements and institutions keeping police powers in check, the *Charter of Rights and Freedoms* contains the conception of "reasonable limits" so that governments can do what the Ford government is now doing: declaring the claims of teachers and education workers unreasonable because they allegedly violate students' rights. According to the Ford government, the notwithstanding clause is necessary to "protect against legal challenges, which may create destabilizing uncertainty for students and families."

The government has resorted to using police powers against the teachers and education workers based on the underlying supposition that their claims are unreasonable. It will not discuss. It does not take into account what the teachers and education workers and their unions say and relegates them to a category of self-serving individuals who harm society's interests, and it is therefore alright to penalize and punish them. It is doing and will do the same thing against all members of society in order to impose its anti-worker, anti-national and anti-people agenda as well as to legalize the theft of Indigenous resources and violate their territories and hereditary rights.



This means that addressing the situation is not a matter of applying labour law to resolve a specific dispute. It is a political matter which concerns the polity itself and it is up to the people themselves to settle the matter by taking their own decision as to whose demands are reasonable. Teachers and education workers' working conditions are students' learning conditions and families can only achieve peace of mind for their children's health and safety if they support the just claims of the teachers and education workers for the wages and working conditions they say they require.

The post-pandemic conditions must be set by the workers of Ontario, not the rich and governments in their service. Do not permit the Ford government to cross this line! Uphold the just claims of teachers and education workers for the wages and working conditions they are fighting for. All out to uphold the rights of all!

