

Ontario invokes anti-democratic “notwithstanding clause” to override court ruling

Roger Jordan**12 September 2018**

Ontario Premier Doug Ford announced Monday that he will use the “notwithstanding clause” to override a court ruling that his government’s hurriedly-enacted Better Local Government Act (Bill 5) violates rights “guaranteed” under the Canadian constitution’s Charter of Rights and Freedoms.

Ford’s actions—including a vow he will not shy away from abrogating democratic rights in the future to push through his reactionary big business agenda—represent a further step toward authoritarian forms of rule, and must serve as a warning to the working class.

By invoking the almost never used and highly controversial “notwithstanding clause” (Section 33 of the Charter of Rights and Freedoms), Ford and his newly-elected Progressive Conservative government are demonstrating that they will answer any challenge to what Ford calls his “mandate” to govern with repression.

Ford’s announcement that he was calling the legislature into session today to enact the “notwithstanding clause” came in response to an Ontario Superior Court ruling earlier Monday. Ruling on a challenge to the constitutionality of the Better Local Government Act brought by Toronto’s municipal government, Justice Edward Belobaba found that the Ontario government’s decision to slash the Toronto City Council from 47 to 25 elected members in the midst of an election campaign violated both voters and candidates’ Charter guarantee of “freedom of expression.” He ordered that the municipal elections, scheduled for October 22, proceed as planned when the campaign officially began earlier this summer, with 47 constituencies rather than 25.

Ford responded swiftly. Rather than focusing on a court appeal, he announced that his government will become only the third ever Canadian jurisdiction to make use of the anti-democratic “notwithstanding clause.” Introduced along with the Charter, in 1982, Section 33 permits the federal, provincial and territorial governments to set aside, i.e. violate, the rights and freedoms guaranteed in the Charter. The federal government has never invoked it.

Quebec—whose political elite, both pro-independence and federalist, refused to support the 1982 repatriation and reform of the constitution—has invoked it more than a dozen times, including in limiting minority-language rights; Saskatchewan twice.

Everything suggests that far from being reluctant to break with precedent, Ford seized on Justice Belobaba’s ruling to break the political taboo on using the “notwithstanding clause.”

At Monday’s press conference the premier acted in a manner reminiscent of US President Donald Trump, casting himself as the voice of the people and sole legitimate constitutional authority against an unelected and unaccountable judiciary. “I was elected. The judge was appointed. He was appointed by one person,” declared Ford. He went on to warn that his government will use “every tool at our disposal” to implement its agenda. “I also want to make it clear,” said Ford, “that we are prepared to use Section 33 again in the future. We’re taking a stand.”

Ford’s class war agenda is inseparable from his government’s attack on democratic rights. Neither can be successfully opposed by the working class by appealing to, or aligning with, any section of the bourgeois establishment and their institutions, be they the courts, the Liberal and NDP opposition parties, or the pro-capitalist trade unions.

The courts have upheld numerous anti-strike laws in recent decades, while giving their stamp of approval to a vast expansion of state powers of surveillance and the curtailing of democratic rights in the name of the “war on terror.”

As for the NDP and Liberal representatives at Toronto City Hall and the Ontario Legislature, they have helped implement devastating public spending cuts, while rewarding big business and the rich with handouts and tax cuts.

Ford’s readiness to violate constitutional rights to overcome opposition within the bourgeoisie underscores that he leads a hard-right government that is viciously hostile to

the working class. If Ford is willing to go to such lengths in dealing with a judicial ruling and opposition to his plans to reorganize Toronto City Council from municipal politicians, including those aligned with his own Progressive Conservative Party, it is not hard to imagine how he will respond when confronted with mass working-class opposition.

In the less than three months since Ford took office, his Progressive Conservatives have adopted a flurry of right-wing measures, including cuts to welfare, a provincial hiring freeze, the appointment of a commission charged with laying the groundwork for billions in spending cuts, and legislation outlawing a strike by graduate teaching and research assistants at York University.

At the same time his government has sought to cultivate an ultra-right constituency, by pandering to the police and seeking to scapegoat refugees for the social crisis produced by decades of social-housing and other cuts by all three major parties.

Ford knows full well that he has no mandate for this deeply unpopular agenda and is therefore mobilizing all the tools of state power at his disposal to put down an emerging working-class movement. His declaration that he is ready to resort to the “notwithstanding clause” in the future is aimed precisely at such an eventuality. By invoking Section 33, the government can legally suspend fundamental rights, criminalizing protests and strikes. Significantly, one of the few occasions on which the “notwithstanding clause” was previously invoked was in 1986, when the Saskatchewan government invoked it to prevent a court challenge by provincial government workers to strikebreaking legislation.

Far from being the result of Ford’s personal proclivities, as is largely being claimed in the bourgeois press, the Ontario premier’s embrace of anti-democratic methods of rule is part of an international process rooted in the deepening global capitalist crisis. From the Trump administration in the US to Emmanuel Macron’s government, which has “normalized” emergency provisions in France, and the German government’s embrace of the anti-immigrant chauvinism of the Alternative for Germany, ruling elites the world over are dispensing with traditional bourgeois-democratic norms to enforce the interests of the corporate elite and super-rich in the face of mounting working-class opposition.

Canada is by no means apart from this process. In addition to Ford’s election victory in June, a significant shift to the right in Quebec politics is imminent with the right-wing populist CAQ leading in polls ahead of the October 1 provincial election. And the federal Liberal government, which last year announced a 70 percent increase in defence spending by 2026, is now promising big business that its fall

fiscal update will be devoted to boosting “corporate competitiveness.”

The ruling elite’s shift to the right is bound up with the deepening crisis confronting Canadian imperialism, which has been expressed most sharply in recent months in the bitter differences over trade that have erupted between Ottawa and Washington, Canada’s closest military-strategic partner for over three-quarters of a century. The Trudeau government responded to Trump’s imposition of import tariffs on Canadian steel and aluminum by adopting \$16 billion in retaliatory tariffs—tariffs which were endorsed by Ford and all of Canada’s parliamentary parties.

It was Ford who made clear that, notwithstanding the bogus propaganda about Canadians uniting in opposition to Trump, the rise of trade war and economic protectionism will be bound up with a vast expansion of the assault on the working class. Ford stated in June, “Make no mistake about it, we’re going to go after them full tilt—on reducing our taxes, making ourselves more competitive. ... We will go down to the street at the border and put up that big sign I’ve been talking about and tell our neighbour, ‘Ontario is open for business.’”

To carry out the wholesale deregulation, corporate tax cuts, and evisceration of what remains of public services that Ford is talking about, the ruling elite requires strong, authoritarian state structures to suppress popular opposition. Ford’s invocation of the “notwithstanding clause” to allow his government to press ahead with the restructuring of Toronto’s municipal government, together with his declaration that his government will use “every tool” to enforce its agenda, must therefore be understood as a warning of the dictatorial methods the ruling elite will resort to in the class battles immediately ahead.



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