Court strikes down 2017 Quebec law criminalizing strike by 175,000 construction workers–but rejects any compensatory measures

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The Quebec Superior Court issued a ruling last month on the Construction Union Alliance's (CSA) challenge of a May 2017 "emergency" law, adopted by Quebec's then Liberal government, that illegalized a province-wide strike by 175,000 workers.

In his December 6 decision, which came more than five years after the state attack on the strike, Justice Frédéric Pérodeau acknowledged that the back-to-work law had violated the Canadian Charter of Rights and Freedoms by "completely prohibiting the legal right of workers to strike."

But Justice Pérodeau then stripped his own ruling of any practical significance. He rejected each and every one of the remedies sought by the CSA, a coalition of the province's five building trades' union federations: FTQ-Construction, the Provincial Council, the Quebec Construction Union, CSD-Construction and CSN-Construction.

The judge refused to order the Quebec government to pay compensatory, let alone punitive, damages for trampling on workers' supposedly constitutionally protected basic rights. The CSA was seeking approximately $25 million in damages and changes to the laws that governing collective bargaining in Quebec's construction industry. However, Judge Pérodeau refused to order the government to take any remedial action on the grounds that it had not acted in "bad faith" or abused its powers.

Justice Pérodeau thus rejected the unions' plea for him to partially invalidate sections of the construction industry labour relations law, R-20, and order the government to amend it to include a prohibition on contractors hiring scabs to break a legal building workers' strike. The CSA argued that employers' ability to deploy strike-breakers undermines workers' right to strike. But the judge, siding with the government and management, found that the lack of such a ban does not constitute "a substantial interference with the right to strike." As per his ruling, formal legal recognition of workers' right to strike is sufficient for R-20 to be in compliance with Charter, even if in practice employers can undermine and seek to break strikes by deploying scabs under the protection of the police, courts and entire state apparatus.

The CSA also sought to strike down a section of R-20 that prohibits collective agreements from having retroactive effect. This provision, unique to the construction industry, ensures that collective agreements and any wage and benefit increases they contain only take effect on the date they are signed. In other economic sectors, collective agreements are generally retroactive to the date the previous contract ended.

After recognizing that the issue of retroactive wages and benefits is of "definite importance" to workers who are "financially affected" by delays in signing new collective agreements, Justice Pérodeau refused to strike down this section of the act. He justified his blatant defence of a powerful employer weapon for bullying workers into reducing their wage demands so as to arrive at a quick settlement, with the claim that this doesn't constitute a "substantial obstacle to collective bargaining."

In sum, the Quebec Superior Court decision gives the greenlight to governments to use the repressive apparatus of the state to attack workers' rights and enforce the dictates of big business. It is one of a series of decisions that expose the true role of the judiciary. Far from standing above class conflict as a neutral arbiter, it is an integral part of the capitalist state and acts as a highly conscious defender of the ruling class.

In 1987, five years after the Charter of Rights and Freedoms had been included in Canada's constitution, the Supreme Court of Canada ruled that the democratic rights it guaranteed did not include workers' rights to collectively struggle and negotiate their terms of employment. The Court declared that the Charter's guarantee of freedom of association "does not include any guarantee of the rights to bargain collectively and to strike." In justifying its ruling, it dismissed these rights as only recently recognized—an implicit admission that the Canadian ruling class had long fought, and employed much violence in resisting, workers' efforts to form trade unions.

With its 1987 ruling, Canada's highest court gave governments a free hand to pass a battery of anti-worker laws criminalizing strikes, imposing concession-filled contracts, stripping workers of any legal right to carry out job action by declaring them "essential employees," and otherwise curtailing worker rights.

This was at a time when the militant strike struggles of the 1960s and 1970s were still fresh in the collective memory of the working

class, and workers were still involved in bitter struggles under the leadership of the trade unions, although the latter were already moving sharply to the right.

In 2007, the Supreme Court reversed its original decision and ruled that the Charter's constitutionally protected right of association did include the right of workers to form a union to negotiate their terms of employment. This change came after decades during which the class struggle had been suppressed, as graphically demonstrated by the decline in the number of strikes, due both to repressive anti-worker laws and the reactionary role of the unions, which had integrated themselves ever more fully with corporate management and the state.

In 2015, the Supreme Court went further and in 5-2 decision found that right to strike is an "indispensable component" of collective bargaining and therefore must be included among the rights recognized as protected by the Charter.

This new ruling was in no way intended to encourage worker resistance to the ever widening and intensifying big business assault on workers' wages and rights. Rather, it was aimed at upholding the popular legitimacy of the collective bargaining system that serves to handcuff and divide workers and to strengthen the ability of the union bureaucracy to sabotage workers' struggles—in particular by promoting the illusion that workers can rely on the courts to defend their democratic rights.

The unions have long been complicit in the policing of antistrike laws, with their maneuvers following by now a well-grooved pattern. For as long as possible, the union bureaucrats remain silent about the threat of government intervention. Then when workers begin to assert their interests and launch or press job action, they invoke the government's imposition of an antistrike law or the imminent threat of such legislation to sabotage the struggle, claiming that workers have no choice but to return to work or accept sellout contracts. They wrap these despicable capitulations in promises to challenge the law in court and to "punish" the ruling party in the next election.

The major trade unions in Ontario have recently provided a textbox example of this. In late November they celebrated a court ruling that found the hard-right Doug Ford-led provincial government's Bill 124 to be unconstitutional because it violates workers' collective bargaining rights. Introduced in 2019, Bill 124 imposed a three-year 1 percent annual pay cap on over 1 million public sector workers. With powerful momentum building for a political struggle and general strike against Ford's draconian bill in 2019, the unions sabotaged the movement, agreed to contracts with the 1 percent pay cap, and vowed to challenge the law in the courts. Three years on, workers have been left to struggle under massive real-terms pay cuts as inflation runs rampant. As with the Quebec court ruling, the decision striking down Bill 124 has no practical significance, since the Ford government has appealed it.

Workers' right to strike has been under systematic attack for decades. The union-backed Trudeau government has illegalized strikes by Canada Post and Port of Montreal workers and repeatedly used the threat of back-to-work legislation to prevail on their union bureaucrat allies to accept concessionary contracts or binding arbitration.

Quebec construction workers are among the many sections of workers whose basic rights have been trampled on time and again. The "negotiations" that preceded the 2017 bargaining round also concluded with an emergency back-to-work law, with the Parti Québécois government of the day robbing workers of their right to strike.

During the 2017 negotiations, the CSA said nothing about the threat of government intervention until Liberal Premier Philippe Couillard himself raised the issue on May 12. As the law was being adopted, union bureaucrats voiced concern that "very angry" workers would take matters into their own hands. To ensure this didn't happen, the unions immediately ordered their members back to work, while promising to challenge the law in court.

Once the threat of a mass mobilization of workers against the employers and government was removed, the unions negotiated concession contracts in three of the four sectors of Quebec's construction industry (residential, roads and civil engineering). The contract for the approximately 100,000 workers in the institutional, commercial and industrial sector was ultimately determined, as stipulated in the antistrike law, through a pro-employer arbitration process. The fact that these contracts—both those "negotiated" by the unions after workers were stripped of their legal right to strike and the one dictated by arbitrator—were full of concessions was demonstrated by the swelling anger among workers when they were up for renegotiation in the spring of 2021.

After the right-wing Coalition Avenir Québec government brandished the threat of an antistrike law, invoking the COVID-19 pandemic as the reason why it could not tolerate any "disruption" of the construction industry, the unions quickly caved in and pressed workers to accept sellout agreements. Their role in policing anti-labor laws had been blatantly exposed only a few years earlier by their treacherous response to the 2018 wildcat strike by crane operators.

Workers must learn from the December 6 ruling: the pro-capitalist unions and bourgeois courts are not their allies in fighting the capitalist governments, but accomplices in suppressing the class struggle and criminalizing strikes.

The only way for workers to oppose these reactionary laws is to mobilize as an independent political force. A crucial step in this direction is to organize rank-and-file committees, independent of and hostile to the corporatist union apparatus. Only such militant organizations will be able to respond to antistrike laws, not in the courts or by appealing to big business politicians, but on the only terrain favorable to workers, that is, through the mobilization of its industrial and political power in class struggle.