

Sharp lurch of official Canadian politics to the right expressed in increasing use of anti-democratic “notwithstanding clause”

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The Bloc Québécois (BQ) took advantage of a recent “opposition day” in the federal parliament to table a motion calling on the House of Commons to “remind the [Justin Trudeau-led Liberal] government that it is up to Quebec and the provinces to decide on the use of the notwithstanding clause.”

The notwithstanding clause is a provision of Canada’s constitution that allows the federal and provincial parliaments to pass laws that violate rights purportedly guaranteed in the constitution’s *Charter of Rights and Freedoms*—including freedom of religion, expression or association—and prevents them from being overturned by the courts.

This provision is deeply reactionary. It is contrary to international law, which has provided for the supremacy of fundamental rights since the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations in 1948 in response to the abominable crimes of the Nazi regime. While the UDHR states the need for all countries to respect inalienable fundamental rights, the Canadian constitution “guarantees” rights and freedoms that governments can “derogate from” unilaterally with a simple parliamentary majority.

The notwithstanding clause in the Canadian Charter is notoriously unique in the world. It has been repeatedly cited by the far-right Israeli government as a model for imposing a key element of its attack on the Supreme Court that will allow the Knesset to overturn court decisions with the support of a simple majority of MPs. This is what Israeli Prime Minister Benjamin Netanyahu trumpets as the “Canadian solution.”

The anti-democratic nature of the notwithstanding clause is also apparent from its recent invocations by Quebec and Ontario’s hard-right provincial governments and growing calls for its use by right-wing federalist and pro-Quebec independence politicians.

Reactionary forces aligned with the federal Conservative Party have long urged that the “taboo” surrounding the use of the notwithstanding clause be broken. Echoing the arguments put forward by the Republicans in the United States in their crusade to overturn abortion rights, most regulations of big business and other basic democratic rights, they argue that

routine use of the notwithstanding clause is necessary to counter an “activist” Supreme Court that is “rewriting the law.”

In 2000, Alberta’s Conservative Premier Ralph Klein used the notwithstanding clause in a law banning same-sex marriages in the province (although the courts struck down this law on the basis that marriage issues are a federal responsibility and the notwithstanding clause cannot override the constitutional division of powers between the federal and provincial governments).

Last November, Ontario’s Progressive Conservative Premier Doug Ford used the notwithstanding clause to protect legislation criminalizing an impending strike by education support staff workers from legal challenge. Ford had threatened to invoke it twice before and did so once.

During last year’s federal Conservative Party leadership race, its winner, Pierre Poilievre, promised to use the notwithstanding clause to overturn a Supreme Court ruling that struck down a 2010 law passed by Stephen Harper’s Conservative government that ordered anyone found guilty of a crime of a sexual nature be automatically and permanently entered in Canada’s registry of sex offenders.

Another promise made by Poilievre was to use the notwithstanding clause to reinstate a Harper law that effectively abolished the possibility of parole after 25 years of imprisonment for certain people guilty of multiple murders. This proposal was endorsed by other candidates, including his more “moderate” rival, former Quebec Premier Jean Charest.

The notwithstanding clause is also regularly invoked by the right wing in Quebec. Since its election in 2018, the province’s Coalition Avenir Québec (CAQ) government, led by multi-millionaire former CEO François Legault, has used the notwithstanding clause to exempt its discriminatory laws on “secularism” (Bill 21) and the expansion of the Charter of the French Language (Bill 96) from court challenge.

To disguise the anti-democratic nature of its actions, the CAQ, supported by other nationalist forces such as the BQ, has launched a campaign to normalize the use of the notwithstanding clause. While it was used very rarely prior to Bill 21, the Quebec nationalists now promote it as a way to

defend the “collective rights” of the Quebec “nation” against the supposed tyranny of minorities and the federal government.

This is a fraudulent pretext that completely ignores the true scope of the Canadian Charter. A law passed by a parliament can already infringe upon the rights enshrined in the Charter “within reasonable limits prescribed by law in a free and democratic society” under Section 1 of the Charter. A law aimed at defending legitimate collective interests can, for example, legally impinge on the “rights” of big business and the rich, by placing limits on for-profit health care or providing for a progressive tax system, in which the wealthy, at least in theory, have higher tax rates than ordinary workers.

In contrast, Bills 21 and 96 seek to divide the working class along ethnic and linguistic lines and make Quebec’s immigrant and Anglophone communities the scapegoats for the disastrous social conditions that are, in fact, the result of the ruling class’ austerity policies. The discriminatory impact of these bills is their very essence, and cannot be legally justified, hence the use of the notwithstanding clause under the fraudulent pretext of defending Quebec.

In addition to continuing its relentless defense of the CAQ’s chauvinist policies, the BQ sought through its February 9 parliamentary motion to attack and politically corner Prime Minister Justin Trudeau, whom they view as their premier federalist opponent. In January, the latter had tentatively raised the idea of asking Canada’s Supreme Court to rule if provinces can invoke the notwithstanding clause in a pre-emptive manner, shielding it from court challenge before a court has ruled that the law violates Charter-protected rights.

The Liberal Party and the social democratic New Democratic Party (NDP) voted against the BQ motion, ensuring its defeat by 172 votes to 142. During the debate, Liberal and NDP MPs postured as defenders of Canadians’ democratic rights and denounced Ford’s use of the notwithstanding clause to trample on worker rights.

The BQ, which with the support of the union bureaucracy at times cynically poses as pro-worker, refused to criticize Ford’s strikebreaking. Amid a public outcry and a growing movement for an Ontario-wide general strike last November, the BQ declared that it was “indifferent” to Ford’s violation of workers’ rights to strike and collectively negotiate the terms of their employment. For the BQ, as it proudly proclaimed, the priority was to uphold provinces’ prerogative to use the notwithstanding clause to enact anti-democratic legislation.

The Liberal-NDP vote against the BQ motion is entirely hypocritical and reveals no principled commitment to fundamental rights. While denouncing the Quebec government’s anti-democratic actions, the federal Liberal government acted in a similar fashion when it invoked emergency powers in February 2022 to dismantle the far-right “Freedom” Convoy that was menacingly threatening downtown Ottawa—and, as the *World Socialist Web Site* has explained, secretly reinterpreted the *Emergencies Act* to do so.

The use of these draconian powers for the first time in Canadian history is a warning to workers that the Trudeau government will not hesitate to adopt authoritarian methods to suppress growing working class opposition to austerity, war and social inequality.

Liberal criticism of Ford’s use of the notwithstanding clause against the Ontario education support workers is equally hypocritical. The Trudeau government itself has passed legislation to criminalize strikes, including at the Port of Montreal in April 2021. The reason it did not use the notwithstanding clause is that it could count on its allies in the union bureaucracy to force workers to comply with its back-to-work legislation.

The NDP supported the Liberal government when it invoked the *Emergencies Act*. Through its many votes of confidence in parliament, the NDP has enabled Trudeau, in a minority government since 2019, to retain power even as the Liberals have massively increased military spending and given Canada a major role in the US-NATO-instigated war against Russia over Ukraine. In 2021, while the Trudeau government was openly preparing to criminalize the Port of Montreal strike, the NDP provided it with the necessary votes to pass the federal budget, allowing the Liberals to stay in power and suppress the dock workers’ struggle.

The only party in the House of Commons that voted with the BQ in favour of its notwithstanding-clause motion was the Conservatives. Like the Republicans in the US and the British Conservatives, this traditional right-wing party is morphing into a fascistic movement. The Conservatives and other sections of the Canadian ruling class sought to exploit the far-right “Freedom” Convoy to demand the repeal of all anti-COVID measures and to destabilize, if not overthrow, the Trudeau government.

Regardless of their tactical differences over the use of the notwithstanding clause, all sections of the Canadian ruling class—Quebec sovereignists as well as federalists—defend this anti-democratic provision as they increasingly resort to authoritarian methods to suppress growing working class resistance.

This is part of a universal turn by capitalist ruling elites around the world toward police state forms of rule and the promotion of violent far-right forces. This is evidenced by Trump’s January 6, 2021 coup attempt which climaxed with the assault on the US Capitol and the January 8, 2023 attack on Brazilian government buildings by followers of the fascist ex-President Jair Bolsonaro.



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