

Ontario's use of the notwithstanding clause for strike-busting is bad business across the board

DAVID MOSCROP- SPECIAL TO THE GLOBE AND MAIL

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The right to join a union, engage in collective bargaining and to strike are essential labour rights in Canada. Indeed, the Supreme Court of Canada [affirmed](#) the right to strike in a 2015 decision that had been a long time coming. Now, the Doug Ford government in Ontario is attempting to undermine labour rights by forcing Canadian Union of Public Employees (CUPE) education workers to accept a terrible deal and prohibiting them from striking.

Education Minister Stephen Lecce has introduced the “Keeping Students in Class Act,” at Queen’s Park in Toronto. The legislation is backed by Section 33 of the Charter of Rights and Freedoms – known as the “notwithstanding clause” – to override worker rights guaranteed by the Constitution. [The](#) Ontario Federation of Labour is [calling the move](#) a “full frontal attack on basic labour freedoms” and Prime Minister Justin Trudeau – who [legislated Canada Post workers back to work in 2018](#) – is [calling it](#) “wrong.”

What ought we to expect from this move? More of the same in the future and an increasingly chilly environment for labour. This assault on labour rights will undermine collective bargaining across the country and have grave implications for workers.

The right to strike is essential leverage in labour negotiations. Without it, workers have limited recourse to bring the employer to the table, let alone to get a fair bargain from the state in the case of public unions. The government’s offer to CUPE’s 55,000 education workers is an utter joke. Mr. Ford and Mr. Lecce are offering – which is to say threatening to impose – a pay increase of 2.5 per cent yearly for workers earning less than \$43,000. For those making more than that, their increase would be 1.5 per cent a year.

In September, the [Consumer Price Index](#) sat at 6.9 per cent year-over-year with an [annual average basis](#) of 3.4 per cent for 2021. The Bank of Canada’s [inflation target](#) is 2 per cent. All of that is to say that even if inflation is short-lived, and there’s no guarantee it will be, the Ford government is locking tens of thousands of education workers into legislated pay cuts for four years while abrogating their right to collectively bargain.

Charles Smith, president of the Canadian Association for Work and Labour Studies and associate professor of political science at St. Thomas More College, University of Saskatchewan, calls the bill “[draconian](#).” He notes that it limits “the ability of the labour board or arbitrators to weigh in” on the matter vis-a-vis the Constitution or the province’s Human Rights Code. “In other words, it dismantles the entire administrative structure of labour relations to solve a political problem,” he writes. On top of that, the bill threatens striking workers with fines of \$4,000 and up to \$500,000 for unions each day.

The political problem here is that Mr. Ford’s government doesn’t want to burn its political capital by having kids home from school, but nor does it wish to spend the money to give workers reasonable salary increases so they can feed themselves and their families.

If public workers can expect the government to legislate them back to work whenever they wish, and to override constitutional rights to do so, then those workers have effectively lost their right to collective bargaining and to strike. It's a catastrophe, the effects of which will spill out into the broader labour market. Indeed, because the rights of workers anywhere are bound up with the rights of workers everywhere, balancing worker rights further in favour of the employer will harm labour across the country, including non-unionized folks.

Crushing public-sector labour rights for CUPE's 55,000 workers will embolden other provincial governments and the federal government to bully their own workers. Private-sector unions will also feel the pinch as governments depress the labour market and further normalize anti-union thuggery. Furthermore, the precedent will serve as an anti-union talking point for those who wish to see workers suffer. "See, what does a union do for you? They can't even keep salaries up during an affordability crisis." It's bad business across the board.

Ontario's education workers have said they [intend to walk off the job on Friday anyway](#), as they rightfully should.