



The Notwithstanding Clause

WE SECOND

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Council for
independence of the path.

Full title of
Council...

GREETING:

FACTION

Attorney General of Canada

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...and with the consent of Canada...
...made as an independent state that
...Canada in all respects...
...resolutions of Canada for the recogni-
...to make other amendments to the...

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...Trust, Soil of Canada...
...Council for Canada, do by
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Presented map which are hereby

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...ofland...
...Name of the Sovereign day of
...of our Lord Our...
...and Eighty-two and in the Thirty
...of King...

By Her Majesty's Command.

Registrar General of Canada

the Minister of Canada



Elizabeth II
Queen of Canada

ELIZABETH

PAR LA GRACE DE
CANADA, et de son
chef de communi-

À TOUS CEUX QUE
MARIAGE CONVO-

SALUT!

PROCL

Le gouverneur général du Canada

PROCLAMATION
C'est à la demande et avec le con-
sentement de nos députés à plusieurs
...en vertu de leur appartenance à un
...leur pouvoir de modifier leur Constitution
...qu'il est indispensable d'inscrire dans la
...certains principes de liberté et de justice
...que le Parlement du Royaume-Uni, à l'
...adopté en conséquence la Loi sur le
...canadienne et sa modification...
...que l'article 94, figurant à l'annexe
...de l'article 94, la Loi constitutionnelle
...proclamation avec le grand sceau du
...MONTREAL le 28 Mars de la
...constitutionnelle de 1982 ont été
...par du mois d'avril en l'an de grâce mil
...MILLE DEUX CENT VINGT ET HUIT
...ACTE DE SA PRESENTE PROCLAMATION...
PROCLAMATION Nous avons voulu les
...grand sceau du Canada...
...fait en Notre ville d'Ottawa, ce dix-neuf
...neuf cent quatre-vingt-deux, le dix

Par ordre de Sa Majesté

Andriehelit

Le gouverneur général du Canada

Le premier ministre du Canada

CHU PASTOR



Signing the Constitution Act

Back in 1982, the signing of the Constitution Act and the Charter of Rights and Freedoms came after years of negotiations and discussions between the Federal Government and the Provinces.

Not all the provinces were excited about some of the new powers the Federal government, led by Pierre Trudeau would enjoy.



Signing the Constitution Act

There were several Premiers who did not care for the idea that provincial laws could be **struck down by the judiciary** for violating the new Charter of human rights and freedoms being proposed.

Including the Clause was a **compromise** that ensured the Provinces would agree to the terms of the Constitution Act.

What is the clause?

Section 33 of the Canadian Charter of Rights and Freedoms allows governments (both provincial and federal) the power to **override** the Charter by declaring that its laws don't need to adhere to the Charter.

Generally, this is for a finite period of time (generally 5 years) and the government must declare which **fundamental freedoms** are suspended.



What does this clause do?

Sometimes laws passed by a government are challenged in court as being unconstitutional.

The Notwithstanding Clause allows a Federal or Provincial/Territorial government to declare that one of its laws can temporarily override the protections of the Charter of Rights.

The Rights being overridden **must** be a “**Fundamental Right**” for the Clause to applied.

The clause will only apply for a **maximum of five years** but can be **extended any number of times**.

Based on our Election system, why do you think that limit is five years?



How has it been used?

Prior to 2020, Only two provinces have used the Clause.

Saskatchewan used it in 1986 to **force striking provincial employees** back to work, restricting their **Freedom of Association** rights.

Quebec used it twice. Firstly, enacting its **strict language laws in terms of signage** and then again to **prevent public employees from wearing religious symbols**. This restricted citizens **Freedom of Expression** and **Equality Rights**.



Ontario



Ford Government's Planned to Utilize the Clause

The Ontario Government, led by **Doug Ford** and the **Progressive Conservative Party** planned to use the Clause in 2018 to push through its electoral system legislation (Better Local Government Act) that was being fought in the courts.

In the end, the courts ruled in their favour and they didn't need to use it.

Ontario



Ford Government Utilizes Clause for first time in Ontario's history

In 2021, the Judiciary declared that the government's changes to the Finances Act were **unconstitutional**, and infringed on the rights of Canadians' Freedom of Expression.

In June, 2021 the Ontario Government invoked the Not Withstanding Clause, nullifying the Court's ruling.



Ontario Election Finances Act

The Act declared that **3rd party** spending on advertisements would be severely limited.

Groups such as the **Canadian Civil Liberties Association (CCLA)** and **unions** challenged the Government's legislation and brought the issue to the Courts.

This would stop groups from making large donations to political parties and from advertising during elections.



Groups that were affected include **UNIFOR, Education Unions, Ontario Proud** the **Ontario Medical Association** and the **Ontario Real Estate Association**.

Many accused the Government of trying to silence voices that would be critical of **the Progressive Conservatives**, accusing them of using the “nuclear option” and ignoring judicial findings.

The government says this is to restrict foreign and “special interest” influence from interfering in Ontario’s Elections and point to interference in other places.

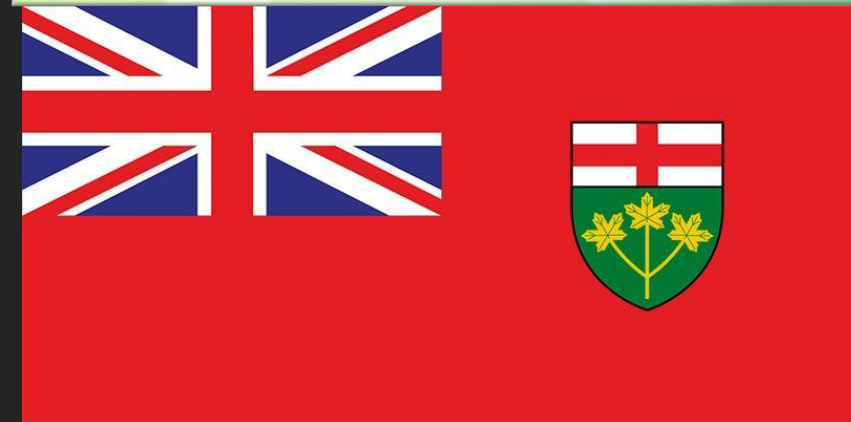
Ontario Election Finances Act

The Keeping Students in Class Act: CUPE and the Ontario Government

In 2022, the government of Ontario passed a bill (Bill 28: Keeping Students in Class Act, 2022) that imposed a contract on Ontario education workers who were part of the Canadian Union of Public Employees (CUPE).

The Bill prevented CUPE from striking and used the Notwithstanding Clause to prohibit the union from a constitutional challenge regarding the freedom to associate.

While the government said this is necessary to avoid school disruption, civil liberties groups and the Prime Minister himself have spoken out against the Provincial decision.

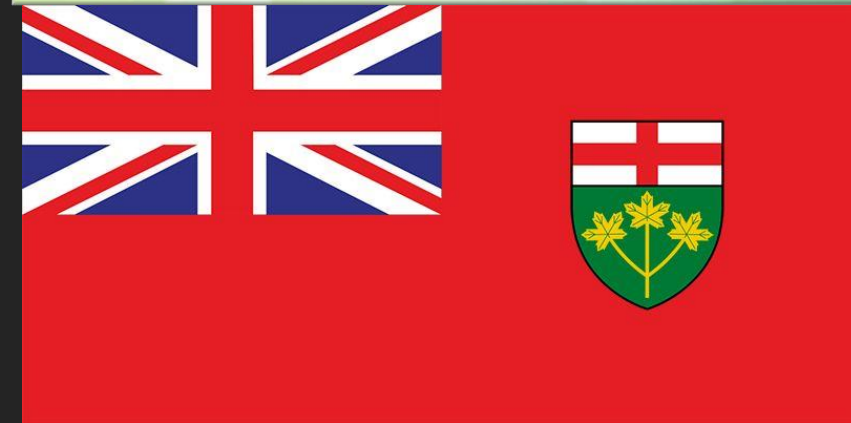


The Keeping Students in Class Act: CUPE and the Ontario Government

Bill 28 basically prevents anyone from taking the Provincial Government to court regarding this legislation.

While the legislation imposed the contract, CUPE still worked to go on strike on Friday, November 4th in a “Political Protest”.

Labour Relations experts, constitutional advocates, unions and governments of all levels are watching this situation develop as it will have long-standing impacts in Canada.



Concerns About the Use: Nuclear Option

People were upset because using the Clause means that a Government **can ignore** the findings of the Judicial Branch.

The question boils down to whether a **Government should be able to enact any legislation it feels serves its purposes** or if the **Courts' authority over the Constitutionality of law takes priority**.



Concerns About the Use

Question to Consider:

Do you think that the Government should be able to ignore the power of Provincial Courts and the rights set out in the Charter to pass their legislation?

