

# Ontario Appeals Court backs provincial government against Toronto Council

By Roger Jordan  
21 September 2018

Ontario's Court of Appeals has green-lighted Progressive Conservative Premier Doug Ford's plan to slash Toronto City Council by almost half just weeks before the October 22 municipal election.

In a highly political decision, the Appeals Court stayed—that is set aside pending the outcome of an appeal—last week's ruling that Ford's plan was unconstitutional, thereby obviating the need for his government to invoke the Canadian constitution's antidemocratic "notwithstanding clause" to force it through.

On September 10, Ontario Superior Court Justice Edward Belobaba found the Conservatives' Better Local Government Act (Bill 5) violated the constitution's Charter of Rights and Freedoms, specifically Toronto voters and candidates' right to free of expression, by slashing the number of councilors from 47 to 25 and redrawing ward boundaries in the midst of an election campaign.

Ford reacted aggressively to Belobaba's decision. Within hours, he announced that his government would use the controversial and seldom used "notwithstanding clause" to annul the court ruling striking down Bill 5. Moreover, he vowed that he will make use of the "notwithstanding clause" whenever needed to enforce the "people's will," i.e., his government's class-war agenda.

Adopted as part of the 1982 reform of Canada's constitution, the "notwithstanding clause" empowers a federal or provincial government to pass legislation that violates the rights "guaranteed" under the constitution's Charter of Rights and Freedoms. Hitherto, only the Quebec and Saskatchewan governments have ever invoked it.

The three Appeal Court judges went out of their way in Wednesday's unanimous ruling to discredit Justice Belobaba's ruling, calling it "dubious" and saying he likely "erred in law." Virtually prejudging the appeal that Attorney General Caroline Mulroney has launched of Justice Belobaba's ruling against Bill 5, the Appeal Court judges wrote, "We have concluded that there is a strong likelihood ... that the Attorney General's appeal to this court will succeed."

In their ruling, the judges said they had taken "note" of the government lawyer's pledge that if the stay was granted it would not proceed with Bill 31, the legislation invoking the

"notwithstanding clause." However, the judges insisted this played "no part in (their) decision."

What is indisputable is that the Appeal Court judges were keenly aware of the controversy unleashed by Ford's breaking of the political taboo on deploying the "notwithstanding clause."

Among the public it was widely recognized to be an authoritarian measure; one moreover, entirely in keeping with the Conservative's drive to further enrich the few at the expense of the many. Meanwhile, within the ruling class, there were fears that a clash between the government of the country's most populous province and the judiciary would weaken the ruling elite and its state under conditions of growing social discontent and class struggle.

Wednesday's ruling was carefully crafted to diffuse the political crisis, underscoring the judiciary's role as an implacable and highly conscious defender of the capitalist order. That it did so by handing Ford a victory, while keeping his "powder dry"—allowing him to brandish the "notwithstanding clause" to threaten opponents, without actually invoking it—is a further sign of the rightward lurch of the ruling elite as a whole.

## The growing ruling class constituency for authoritarian measures

Polls indicated that Ford's intention to run roughshod over Charter rights was highly unpopular.

However, the right-wing populist premier found substantial support for his plan to invoke the "notwithstanding clause" among a ruling elite that is increasingly frustrated by the popular opposition to its push for the dismantling and privatizing of public services, further tax cuts for big business, and rearmament and greater Canadian involvement in the US wars and strategic offensives aimed at asserting North American global hegemony.

Christy Clark, the former Liberal Premier of British Columbia, declared Ford's invocation of the "notwithstanding clause" "a good thing for Canada, because we are in a moment where Canadians are looking around and saying, 'Hey, Why can't anything get done?' Well, Premier Ford has shown there is a way ... to get things done in spectacular fashion."

Neoconservative commentator and one-time media mogul Conrad Black labeled Ford's resort to the notwithstanding clause "the best thing that has occurred in Canadian politics since the defeat of the Parti Quebecois in the provincial election in Quebec four years ago." Black went on to make clear that he viewed the Toronto City Council issue to be little of importance. But, he argued, the taboo on the use of the "notwithstanding clause" needed to be broken so it could be used to suppress public sector strikes and "militant natives."

Saskatchewan's current and former rightwing premiers, respectively Scott Moe and Brad Wall, also applauded Ford's plan to annul the adverse court ruling. Federal Conservative Party leader Andrew Scheer was somewhat more circumspect, merely noting that Ford was exercising rights accorded his government under the constitution.

The enthusiasm for Ford's actions expresses the growing support within Canada's ruling elite for authoritarian measures. Under conditions of a rapidly accelerating global capitalist crisis, expressed above all in the advanced breakdown of the postwar economic and geopolitical order and the eruption of trade war, ever-wider sections of the ruling class favor abrogating core democratic rights in order to pursue their interests more forcefully on the global stage and at home.

In the three months since coming to office, the Ford government has dramatically intensified the assault on the working class. This has included slashing welfare benefits, imposing a public-sector hiring freeze, laying the groundwork for billions in social spending cuts, and outlawing a strike by York University teaching assistants. Ford has also launched a xenophobic campaign aimed at scapegoating refugees for the appalling social conditions in Ontario brought about by the decades of austerity implemented by all three major capitalist parties; and cultivated the support of the police with new "law and order" measures and by reducing civilian "oversight."

For its part, the Trudeau Liberal government, behind a posture of concern about rising "social inequality," has followed on from the Harper Conservative government, slashing health care spending, increasing military spending by 70 percent by 2026, and maintaining, with only a few cosmetic changes, the sweeping new powers awarded Canada's security-intelligence apparatus under Bill C-51 in 2015.

The trade union bureaucracy and their pseudo-left allies are working to politically disarm the working class in the face of this ever-widening assault on its social and democratic rights. Summing up the perspective of the union bureaucracy, which has connived with governments and corporate bosses over the past three decades to slash wages, attack workplace benefits, and smother strikes, Ontario Public Service Employees Union President Warren "Smokey" Thomas recently hectoring his members for pressing the union to organize protests and strike against the Ford government. He claimed it was still unclear what the Conservatives intend to do, then boasted that the unions are in talks with Ford and his ministers.

Deeply hostile to the emergence of a mass movement of the working class and speaking on behalf of a privileged section of the middle class, the pseudo-left works to keep workers tied to the pro-capitalist unions and bourgeois political parties. In connection with Ford's latest actions, this perspective was articulated most crudely by Leo Panitch, the principal theoretician of the Socialist Project, in an article for the *Toronto Star*. The fact that Panitch, a self-declared "Marxist," chose to publish his comment in the *Star* is itself significant, given that this newspaper is the principal voice of the liberal Toronto establishment and the staunchest supporter of the Trudeau government.

Titled "Authoritarian Fordism in Ontario Trumps the Far Right Elsewhere," Panitch's article makes no mention of Ford's attack on the working class. Nor does it warn that by moving to invoke the notwithstanding clause to push through his reform of Toronto City Council, Ford was laying the ground for suppressing a working-class challenge to his government. Rather it celebrates the supposedly "remarkably broad-based" opposition to Ford, encompassing "activist groups, as well as the powers-that-be so deeply entrenched they don't need to be very visibly active," including "other levels of government."

A second Socialist Project article is even more explicit in calling for joint action to defend "democracy" with the pro-war, pro-austerity Liberals.

Long the Canadian ruling elite's preferred party of government Canada, the Liberals under Trudeau are simultaneously seeking to expand Canada's alliance with a Trump-led US, while covertly cheering on the campaign being spearheaded by the US military-intelligence apparatus to drive him from office through a "palace coup" so as to ensure there is no let-up in the US offensive against Russia.

The reality is, the antidemocratic and authoritarian turn to the right is rooted in the crisis of capitalism and involves the entire ruling elite. It can be opposed only by the working class, mobilized as an independent political force, in conscious and irreconcilable struggle against big business and all those who seek to tie it to alliances with the "progressive" wing of the bourgeoisie in the name of fighting for "democracy."

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