

**STANDING UP TO THE NOTWITHSTANDING CLAUSE:  
THE STORY OF CUPE EDUCATION WORKERS' DAY OF ACTION**

SEE VIDEO AT: <https://youtu.be/bYih1nhVIE>

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**Key Event Timeline - 2022**

<b>Summer-Fall</b>	<p>Old Collective Agreement expires in summer 2022.</p> <p>CUPE and School Boards commence collective bargaining to renew the Collective Agreement. Government <b>conciliator</b> meets with the parties but is unable to help them reach a deal.</p>
<b>September 23- October 3</b>	<p>CUPE takes a strike vote, which is required to conduct a legal strike in Ontario. Workers vote 96.5% in favor of a strike if necessary.</p>
<b>October 30</b>	<p>CUPE gives a 5-day notice of the beginning of a lawful strike. This notice is required by a law (<b>statute</b>) called the <i>School Boards Collective Bargaining Act</i>. This notice indicates that CUPE workers will begin a strike on Friday, November 4.</p>
<b>October 31</b>	<p>Ontario government introduces <i>Bill 28, Keeping Students in School Act</i>. This law bans the right to strike for CUPE education workers, imposes a new collective agreement on the workers that they did not agree to, AND uses the '<b>notwithstanding clause</b>' in the Charter to block CUPE from arguing in court that Bill 28 violates the workers' Charter protected 'freedom of association'. Bill 28 also includes very large fines against workers and CUPE if they engage in a '<b>strike</b>' in violation of Bill 28.</p>
<b>October 31 - November 3</b>	<p>CUPE announces that workers will not report to work on Friday, November 4 and will instead engage in a protest against Bill 28. School Boards announce that schools will be closed to students for as long as CUPE workers are not at work.</p> <p>Bill 28 comes into force on Thursday, November 3.</p>
<b>November 4</b>	<p>CUPE workers do not report to work. Many of them engage in picketing and protesting across the province. School is cancelled.</p>
<b>November 4-6</b>	<p>Ontario government files a complaint with Ontario Labour Relations Board (OLRB) arguing that CUPE workers are engaged in an 'unlawful strike'. CUPE argues (1) that they are not engaged in a 'strike', they are engaged in a political protest, and (2) that if this is a 'strike' then the definition of 'strike' violates CUPE workers' freedom of association and freedom of expression as protected by the Charter. The OLRB holds an emergency hearing over the weekend to decide this complaint.</p>

<b>November 7</b>	Premier Ford announces that the government will repeal Bill 28 entirely if CUPE workers agree to return to work. CUPE announces that it will return to work given the government's promise to repeal Bill 28.
<b>November 8</b>	CUPE workers return to work, schools re-open. Government and CUPE return to collective bargaining with the help of a <b>mediator</b> .
<b>November 14</b>	Ontario government officially repeals Bill 28.
<b>November 16</b>	CUPE gives a new 5-day notice of strike, setting Monday, November 21 as the date of a new strike.
<b>November 20</b>	CUPE and the Government announce that they have reached a "tentative" collective agreement. CUPE members must now vote whether to accept or reject the collective agreement. Results to be released in early December.
<b>Early December</b>	CUPE will announce if a majority of its members "ratified" (voted in favour of accepting) the proposed collective agreement. If a majority of members reject the proposed collective agreement, then the collective bargaining process resumes.

#### GLOSSARY - KEY TERMS

**Charter of Rights and Freedoms:** Part of the Canadian Constitution since 1982, it protects a list of fundamental rights and freedoms of Canadians from interference by governments, including 'freedom of association' and 'freedom of expression'.

**Collective Bargaining:** Process of negotiations between a union representing employees and an employer to reach agreement on a new collective agreement.

**Conciliator/mediator:** A person who is not on the side of either the employer or the union (they are a 'neutral') who meets with the parties to try and help them reach a settlement/agreement.

**Inflation:** Increases in the prices of items we regularly buy such as food, housing, clothing, gas.

**Interest arbitrator:** A person who hears arguments from a union and an employer and then decides the final terms of a collective agreement.

**Invoke:** When a government uses the notwithstanding clause, we say they are "invoking" the clause, which means to cite or rely upon it.

**Labour Law:** An area of law that encompasses legal rules relating to unionization, collective bargaining between unions and employers, strikes and lockouts, and collective agreements.

**Notwithstanding clause:** Section 33 of the Canadian Charter of Rights and Freedoms, which permits a government to give itself the authority to violate the Charter of Rights and Freedoms.

- Statute:** Legislation passed by a government, such as the *Labour Relations Act*, *Employment Standards Act*, and *Human Rights Code*.
- Strike:** Occurs when workers together (“in combination”) refuse to come to work or agree to work slowly to harm the employer (known as “work to rule”).

### Questions for Discussion

1. What does the “duty to bargain in good faith” require of the parties engaged in collective bargaining?
2. What conditions did CUPE need to satisfy to be in a position to engage in a lawful strike? What can happen to workers who engage in an unlawful strike?
3. What are two ways that governments in Canada commonly resolve collective bargaining impasses (when the parties are unable to reach agreement on the terms of a new collective agreement)?
4. What did Bill 28, the *Keeping Students in School Act*, do?
5. Why was Bill 28 unusual in terms of how Canadian governments usually deal with collective bargaining impasses?
6. Who (or what) does the Charter of Rights and Freedoms apply to? In other words, who or what does it regulate?
7. What does ‘freedom of association’ mean? What sorts of rights does it protect?
8. What was the effect of the Ontario government ‘invoking’ the notwithstanding clause in Bill 28?
9. Why did the Ontario government file an “unlawful strike” application against CUPE and its members before the Ontario Labour Relations Board? What did the government argument? What did CUPE argue in response?
10. Why do you think that Canadian unions react so strongly against the Ontario government’s use of the ‘notwithstanding clause’ in Bill 28?