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Challenge of Quebec secession law makes it before the courts after 16-year wait

The provincial law, known as Bill 99, was adopted in 2000 by the Parti Québécois government of the day and was meant to counter the Clarity Act.



Yes supporters cheer during a speech by Bloc Québécois Leader Lucien Bouchard at a junior college in Montreal in this file photo from October 1995. A challenge to Quebec's law on secession is finally set to be heard in court. (RYAN REMIORZ / THE CANADIAN PRESS)

By **PIERRE SAINT-ARNAUD** The Canadian Press
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MONTREAL—The long-awaited constitutional challenge of Quebec’s secession law finally found its way before a judge on Monday, nearly 16 years after it was launched.

The provincial law, known as Bill 99, was adopted in 2000 by the Parti Québécois government of the day as a direct response to the federal Clarity Act.

Drafted by the Lucien Bouchard-led PQ, it affirms the legal existence of the Quebec people and its right to self-determination.

The law was meant to counter the Clarity Act, which states a “clear majority” vote on a clear question on secession would be required before any negotiations are held.

Keith Henderson, an English professor and former leader of the now-defunct Equality party, launched the constitutional challenge in 2001.

In 2013, Stephen Harper’s Conservative government chimed in with federal lawyers seeking to have Bill 99 declared invalid, much to the chagrin of provincial politicians who unanimously denounced the move.

Henderson said Monday his belief is the law is unconstitutional because it gives Quebec the right to unilaterally declare independence, doing an end run around the Constitution in the process.

Monday was spent debating whether the court would accept certain documents.

Henderson said he hopes the judge hearing the case will deal with the core issue of where the source of power lies — a popular referendum or the Constitution of the country.

“The law that has passed makes no reference to the Constitution whatsoever,” Henderson said. “It bases the source of power on a referendum, one by 50 per cent plus one.

“It gives the government of Quebec the authority to determine its legal and political status inside the country.”

The Supreme Court of Canada has ruled that a constitutional amendment is required for a province to change its status.

“What that means is Quebec doesn’t decide all by itself, alone,” Henderson said. “It means that Canadians have a right to weigh in and have their word on the future of their own country, which I regard as perfectly normal.”

There are other questions — whether groups such as aboriginal communities or areas of the province that are largely English-speaking could secede from Quebec.

“Once you open Pandora’s box this way, a lot of strange things emerge,” Henderson said. “That’s something else the Quebec government didn’t consider.”

Henderson said he doesn’t know why Quebec Premier Philippe Couillard, a staunch federalist, is defending the law.

When the law passed in 2000, the Liberals voted against it because they thought it was unconstitutional, he noted.

The Quebec government fought for nearly seven years against Henderson's right to have standing in the case. That, and health issues among participants on both sides, caused delays.

"What can I say, the wheels of justice grind very slow," Henderson said.

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