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Quebec independence back in spotlight as challenge of 17-year-old secession law goes to trial

By Graeme Hamilton

Lucien Bouchard's PQ government passed Bill 99, which asserts Quebec's right to unilaterally secede, after the federal Clarity Act set ground...

MONTREAL – On the streets and around dining room tables, talk of Quebec independence has faded. A Léger Marketing poll published Saturday put support for sovereignty at just 36%, and the opposition Parti Québécois has ruled out another referendum if it wins the next election.

But in Montreal Monday, debate over separation was back in the spotlight as a challenge of a law asserting Quebec's right to unilaterally secede finally came to trial in a courtroom that had the feel of a time machine.

Lawyers representing the various parties have added grey hairs, and as one of them quipped, a few pounds since proceedings in the case began in 2001.

But for plaintiff Keith Henderson, the former leader of the defunct anglophone-rights Equality Party, the issue to be decided is as vital now as it was in 2000 when the PQ government of Lucien Bouchard passed Bill 99.

The law was a response to the Supreme Court of Canada's 1998 ruling on secession and the subsequent federal Clarity Act, which following 1995's close call set ground rules for any future referendums and negotiations on secession.

Bill 99 denounced the Clarity Act as a federal assault on "the legitimacy, integrity and efficient operation of (Quebec's) democratic institutions." It declared that the Quebec people alone could determine the political regime and legal status of the province. A majority of 50 per cent plus one is enough for victory in a referendum, the Quebec law said, and no other government can "impose constraint on the democratic will of the Quebec people to determine its own future."

Pleading on Henderson's behalf Monday, constitutional scholar Stephen Scott said Bill 99 amounts to a repudiation of the Canadian Constitution and renders Charter rights conditional to the will of Quebec legislators and voters in a referendum.

Even though a Liberal government is in power, the Quebec Attorney General continues to defend the PQ law, and on Monday it introduced a last-minute motion to have the court dismiss the heart of Henderson's case.



Jogn Mahoney/Postmedia/File Former Equality Party leader Keith Henderson in 2005.

Jean-Yves Bernard, pleading for Quebec, said that when the Court of Appeal narrowed the scope of the case in a 2007 decision, it rendered many of Henderson's allegations and evidence superfluous. Superior Court Justice Claude Dallaire dismissed the motion, saying Quebec should not have waited until the first day of trial to make the argument.

In an interview, Henderson said he does not understand why the Liberals of Philippe Couillard remain so dogged in their defence of Bill 99.

"The law is a separatist law done by a separatist government. The Liberal opposition at the time voted against the law, warning the Parti Québécois that it could be taken to the courts, that it was potentially unconstitutional," he said.

"Supposedly Couillard praises himself on being a good Canadian. For heaven's sake, why is he defending a separatist law?"

Henderson said the current calm on the constitutional front should not lull people into thinking Bill 99 is irrelevant.

"We don't know if the Parti Québécois is going to get re-elected," he said. "Nothing is certain. You have to have the rules of the game absolutely crystal clear for the future. That's what this is about."

For a long time Henderson was fighting alone, supported by the Special Committee for Canadian Unity. But in 2013 the federal Attorney General decided to intervene in his support. In its arguments, the federal Attorney General says Bill 99 "does not and can never provide the legal basis for a unilateral declaration of independence" by Quebec.

The Quebec government maintains that talk of Bill 99 leading to a unilateral declaration of independence is purely hypothetical. "It is not based on any empirical demonstration and in reality is only imputing motives," the Quebec Attorney General says in its written arguments.

The case has dragged on so long because it went to the Court of Appeal three times on preliminary matters. Last year, the nationalist Société Saint-Jean-Baptiste was granted the right to intervene as a friend of the court. Maxime Laporte, president of the Société, promised Monday to take the trial even further back in time, saying he plans to invoke the Magna Carta of 1215, the Patriotes rebellion of 1837 and the subsequent Durham report to buttress his defence of the Quebec people's right to self-determination. The trial is expected to last a week.

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References

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