

Opinion: Why I'm appealing court ruling on Quebec's Bill 99

Keith Henderson says he finds neither comfort nor clarity in the recent judgment on his court challenge.

KEITH HENDERSON, SPECIAL TO MONTREAL GAZETTE Updated: June 13, 2018



Keith Henderson speaks about why he feels decision on Bill 99 must be heard by the Supreme Court of Canada at a press conference on Parliament Hill in Ottawa on May 15, 2018. PATRICK DOYLE / THE CANADIAN PRESS

Eighteen years ago, the separatist government of my native province legislated on my rights as a Quebecer. The law was called, "An Act respecting the exercise of the fundamental rights and prerogatives of the Quebec people and the Quebec State." The short name is Bill 99, one of whose provisions declares, "The Quebec people has the inalienable right to freely decide the political regime and legal status of Quebec. The Quebec people, acting through its own political institutions, shall determine alone the mode of exercise of its right to choose the political regime and legal status of Quebec."

But I knew that the Supreme Court of Canada had already adjudicated which people would decide "the political regime and legal status of Quebec." The justices had written, "It lies within the power of the people of Canada ... to effect whatever constitutional arrangements are desired within Canadian territory, including, should it be so desired, the secession of Quebec. ... The secession of a province from Canada must be considered, in legal terms, to require an amendment to the Constitution."

So, 18 years ago, I was left with a question for the courts. What exactly were my rights? Were they those of my residency in Quebec under Bill 99 or those of my citizenship in Canada under the Constitution? Who could decide the future of my country, the people of Quebec or the people of Canada?

A few weeks ago, Justice Claude D'Alaire of the Quebec Superior Court handed down her decision, one a Montreal Gazette editorial [welcomed as a victory for everyone](http://montrealgazette.com/opinion/editorials/editorial) (<http://montrealgazette.com/opinion/editorials/editorial>), myself included. Justice D'Alaire herself invited me to take comfort from her findings. But like the proverbial skunk at the garden party, I don't. Here's why.

In one breath Justice D'Alaire writes that Bill 99 cannot be used by separatists as a springboard to unilateral secession. But in the next, she quotes a 2006 Quebec Court of Appeal judgment that seems to suggest a breakdown of negotiations could pave the way to a unilateral declaration of independence (UDI) that would have constitutional validity and be binding on other provinces.

In fact, however, in its 1998 opinion, the Supreme Court of Canada declined to speculate about what would transpire if negotiations on secession were to reach an impasse, but noted, "Under the Constitution, secession requires that an amendment be negotiated."

Thus, I find neither comfort nor clarity in Justice Dallaire's ruling.

Imagine the situation of 1995 reversed. The "Yes" side wins by a whisker. The government of Quebec demands that negotiations on secession commence. Basing itself on the Clarity Act, Ottawa refuses. Quebec declares the federal government's refusal to negotiate in good faith means the negotiations have proven unfruitful. Quebec, citing Bill 99 and this judgment, then declares it considers itself free to issue a constitutionally valid UDI.

However, there cannot be two standards of rights and prerogatives in Canada, one requiring adherence to the Constitution's amending formula, the other evading it. Plainly stated by the Supreme Court, it is for the people of Canada, through the amending formula, to decide whether or not the secession of a province occurs. The Dallaire decision must be challenged, exactly what my colleagues in the Special Committee for Canadian Unity and I have done. (<http://montrealgazette.com/news/local-news/quebec-sovereignty-ex-equality-party-leader-appeals-bill-99-ruling>), in launching an appeal.

As a citizen of Canada, resident in Quebec, I have the right to demand of my governments a secure, peaceful future for myself and my family. That is not a demand for today or tomorrow. It is a demand for succeeding generations. As a citizen of Canada, resident in Quebec, I have the right from my courts to clarity. The fastest way to secure those rights is for Prime Minister Justin Trudeau to refer the confusions sown directly to the Supreme Court, for where confusion reigns, injustice quickly follows.

Keith Henderson is a former leader of the Equality Party.

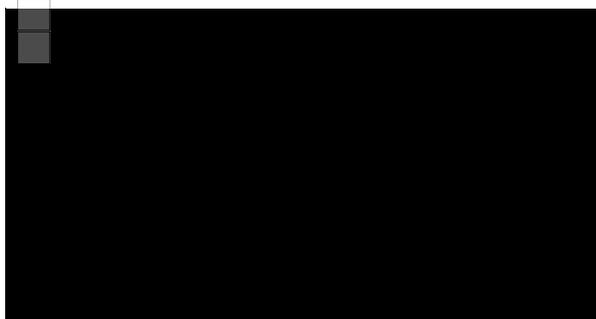
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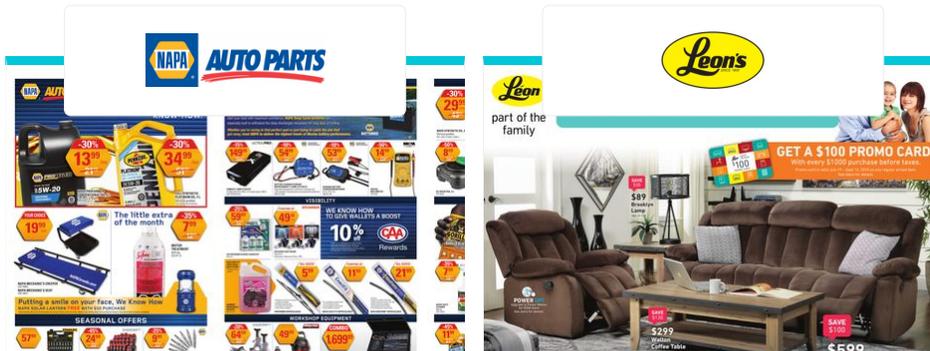
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