CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T

NO: 500-05-065031-013

KEITH OWEN HENDERSON

PETITIONER

v.

ATTORNEY GENERAL OF QUEBEC

RESPONDENT

&

ATTORNEY GENERAL OF CANADA

MIS-EN-CAUSE

et als

RE-AMENDED MOTION FOR A DECLARATORY JUDGMENT
ARTICLE 453 C.C.P.
RE-AMENDED APPLICATION FOR DECLARATORY RELIEF
SECTIONS 24(1) & 52, CONSTITUTION ACT, 1982

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN THE DISTRICT OF MONTREAL, PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

Object of these proceedings

1. It is the object of these proceedings to establish that certain provisions of the *Act respecting the exercise of the fundamental rights and prerogatives of the Quebec People and the Quebec State* or *la Loi sur l'exercice des droits fondamentaux et des prérogatives du peuple québécois et de l'État du Québec* (the *"Act")* are invalid, inoperative and of no force or effect, in that they purport to confer on the political institutions of Quebec,. including the Legislature of Quebec, acting alone, the authority to alter the political regime and legal status of Quebec without following the amending formula set out in Part V of the *Constitution Act, 1982,* entitled "Procedure for Amending Constitution of Canada" and to obtain declaratory relief appropriate in the circumstances;

Legislative context of the *Act*

2. On December 7, 2000, during the First Session of the Thirty-sixth Legislature, the Legislature of Quebec adopted *Bill 99* entitled *An Act respecting the exercise of the fundamental rights and prerogatives of the Quebec People and the Quebec State or la Loi sur 1'exercice des droits fondamentaux et des prérogatives du peuple québécois et de l'État du Québec;*

3. *Bill 99* received royal assent on December 13, 2000, and became chapter 46 of the Statutes of Quebec for the year 2000;

4. The English version of the *Act* was published in the *Gazette officielle du Québec*, Part 2, Laws and Regulations, January 17, 2001, Volume 133, No. 3, pp. 323-328, as appears from the extracts filed as Exhibit R-1;

5. The French version of the *Act* was published in the *Gazette officielle du Québec*, Partie 2, Lois et règlements, 17 janvier 2001, 133° année, N° 3, pp. 411-416, as appears from the extracts filed as Exhibit R-2;

6. Section 14 of the *Act* provides for a coming into force on the dates to be fixed by the Government;

7. The *Act* came into force on February 28, 2001, pursuant to Décret 148-200.1, published in the *Gazette officielle* du *Québec*, Paine 2, Lois et règlements, 14 mars 2001, 133' année, N° 11, p. 1609, as appears from the extracts filed as Exhibit R-3;

8. In the preamble of the *Act,* reference is made to the judgment of the Supreme Court of Canada rendered on August 20, 1998 in *Reference Re Secession of Quebec* [1998] 2 S.C.R. 217;

9. In the preamble, reference is also made to the adoption by the Parliament of Canada of the *Act to give effect to the requirements of clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference* (Statutes of Canada, 2000, chapter 26, assented to June 29, 2000), "the *Clarity Act",* a copy of which is filed as Exhibit R-4;

10. It is evident from the preamble of the *Act* that it was the intention of the Legislature of Quebec to respond to the federal *Clarity Act,* and in the words of the last paragraph "to reaffirm the collective attainments of the Quebec people, the responsibilities of the Quebec State and the rights and prerogatives of the National Assembly with respect to all matters affecting the future of the Quebec people;"

11. This intention was reflected in the debates surrounding the adoption of *Bill* 99, as appears from the following extracts of the *Journal des débats* of the First Session of the Thirty-sixth Legislature annexed hereto:

1) Wednesday, May 3, 2000 —N°102, pp. 5712-5713, as Exhibit R-5;

2) Thursday, May 25, 2000 —N° 112, pp. 6167-6195, as Exhibit R-6;

3) Tuesday, May 30, 2000 — N° 114, pp. 6317-6318, as Exhibit R-7;

4) Thursday, December, 7, 2000 — N°149, pp. 8575-8583, as Exhibit R-8;

12. As appears from these extracts, members of the Parti Quebecois and the sole member of the Action Démocratique du Québec voted in favour of the passage in principle of *Bill* 99 on May 30, 2000 and its adoption on December 7, 2000; on both dates, members of the Quebec Liberal Party voted against its passage, taking the position that the affirmations made in the *Act* were better made in the form of a "Déclaration solonnelle sur le droit des Québécois de décider de leur avenir" rather than a statute due to the possibility of judicial review;

Petitioner and his interest

13. Petitioner Keith Owen Henderson lectures in English literature at Vanier College in Montreal; he is a Canadian citizen by birth;

14. The Equality Party was a registered political party pursuant to the *Election Act;* the Party was first registered on April 17, 1989 and was deregistered in April 2012; It fielded candidates in four (4) provincial elections, in 1989, 1994, 1998 and 2003;

15. The Equality Party was a member organization of the Special Committee for Canadian Unity, a civil association pursuant to Art. 2267 C.C.Q.; the Special Committee was formed in December 1994 and it was the only group to be recognized as an affiliated group to the NO Committee during the October 1995 referendum campaign;

16. Petitioner Henderson was the leader of the Equality Party from 1993 to April 2012 and has been a member of the Management Board of the Special Committee since 1996;

17. Petitioner Henderson has been active in the defence of the rule of law and the supremacy of the Constitution for many years;

18. Petitioner Henderson has participated in the following proceedings, either personally and/or in his capacity as a representative of the Equality Party and/or the Special Committee:

1) A challenge dated October 23, 1995 before the Superior Court of the District of Montreal to the constitutionality of Bill 1 of the First Session of the Thirty-fifth Legislature, entitled *An Act respecting the future of Quebec* or *Loi sur l'avenir du Québec* in S.C.M. #500-05-011275-953, as appears from a copy of said proceeding filed as Exhibit R-9;

2) A challenge before the Referendum Council to the refusal by the NO Committee to accept the Special Committee as an affiliated group during the October 1995 referendum campaign in C.Q.M. #500-02-020747-957; by decision dated October 19, 1995 (written reasons dated October 31, 1995), the Referendum Council overturned said refusal and ordered the affiliation of the Special Committee, as appears from a copy of said written reasons filed as Exhibit R-10;

3) An Intervention before the Supreme Court of Canada in *Reference re Secession of Quebec*, as appears from a copy of the Interveners' factum filed as Exhibit R-11;

4) The hearings on *Bill 99* before the Commission permanente des institutions on March 29, 2000, as appears from copies of the brief of the Equality Party and the Special Committee annexed hereto as Exhibit R-12 and the transcript of the hearing, Journal des debats de la Commission permanente des institutions, Wednesday, March 29, 2000 — N° 57, pp. 11-18, filed as Exhibit R-13;

19. Petitioner Henderson appears in these proceedings to assert, to preserve, and to protect rights that would be abrogated by the unlawful amendment to the Constitution of Canada contemplated by the *Act*, that is to say, the following rights:

(1) his continued enjoyment of all the rights and privileges attached to Canadian citizenship by the Constitution and the laws of Canada; including *inter alia:*

(i) the right to vote for members of the House of Commons of Canada elected in, and sitting from, Quebec;

(ii) the right to vote for members of the Legislature of Quebec;

(iii) eligibility to hold, enjoy, and exercise, federal public office and federal public employment in, and from, Quebec

(iv) eligibility to hold, enjoy, and exercise, provincial public office and provincial public employment in Quebec;

(2) his continuing to reside in Quebec as a Canadian citizen living within Canada, so enjoying the full protection of the Canadian state and law, and in particular the guarantees of the *Canadian Charter of Rights and Freedoms*,

(3) his being governed only by the Constitution of Canada itself and by laws validly made or continued under that Constitution, until such time as that Constitution, and those laws, are altered by lawful means; in sum, his right to the full protection of the rule of law;

(4) his not being deprived, or threatened with being deprived, of any of the foregoing unless by lawful authority,

20. In addition, Petitioner Henderson appears in these proceedings as a representative or nominal or "public interest" party, to vindicate the foregoing rights and interests belonging to those members of the public who, though they desire the maintenance of constitutional legality, are, on account of their number, and for many other reasons, in no position to participate, individually, as parties to legal proceedings of this nature;

Nature and effect of the *Act*

21. The essential nature, purpose, and purported effect of the impugned provisions of the *Act*, sections 1, 2, 3, 4, 5 and 13, are fully apparent from their face:

The English version

"CHAPTER I

THE QUEBEC PEOPLE

1. The right of the Quebec people to self-determination is founded in fact and in law. The Quebec people is the holder of rights that are universally recognized under the principle of equal rights and self-determination of peoples.

2. The Quebec people has the inalienable right to freely decide the political regime and legal status of Quebec.

3. 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.

No condition or mode of exercise of that right, in particular the consultation of the Quebec people by way of a referendum, shall have effect unless determined in accordance with the first paragraph.

4. When the Quebec people is consulted by way of a referendum under the Referendum Act, the winning option is the option that obtains a majority of the valid votes cast, namely fifty percent of the valid votes cast plus one.

CHAPTER II

THE QUEBEC NATIONAL STATE

5. The Quebec State derives its legitimacy from the will of the people inhabiting its territory.

The will of the people is expressed through the election of Members of the National Assembly by universal suffrage, by secret ballot under the one person, one vote system pursuant to the Election Act, and through referendums held pursuant to the Referendum Act.

Qualification as an elector is governed by the provisions of the Election Act.

CHAPTER V

FINAL PROVISIONS

13. No other parliament or government may reduce the powers, authority, sovereignty or legitimacy of the National Assembly, or impose constraints on the democratic will of the Quebec people to determine its own future."

The French version

"CHAPITRE I

DU PEUPLE QUÉBÉCOIS

1. Le peuple québécois peut, en fait et en droit, disposer de lui-même. Il est titulaire des droits universellement reconnus en vertu du principe de 1'égalité de droits des peuples et de leur droit a disposer d'eux-mêmes.

2. Le peuple québécois a le droit inaliénable de choisir librement le régime politique et le statut juridique du Québec.

3. Le peuple québécois détermine seul, par l'entremise des institutions politiques qui lui appartiennent en propre, les modalités de 1'exercice de son droit de choisir le régime politique et le statut juridique du Québec.

Toute condition ou modalité d'exercice de ce droit, notamment la consultation du peuple québécois par un referendum, n'a d'effet que si elle est déterminée suivant le premier alinéa.

4. Lorsque le peuple québécois est consulté par un referendum tenu en vertu de la Loi sur la consultation populaire, l'option gagnante est celle qui obtient la majorité des votes déclarés valides, soit cinquante pour cent de ces votes plus un vote.

CHAPITRE II

DE L'ÉTAT NATIONAL DU QUEBEC

5. L'État du Québec tient sa légitimité de la volonté du peuple qui habite son territoire.

Cette volonte s'exprime par l'élection au suffrage universel de députés a l'Assemblée nationale, a vote égal et au scrutin secret en vertu de la Loi électorale ou lors de referendums tenus en vertu de la Loi sur la consultation populaire.

La qualité d'électeur est établie selon les dispositions de la loi électorale.

CHAPITRE V

DISPOSITIONS FINALES

13. Aucun autre parlement ou gouvernement ne peut réduire les pouvoirs, l'autorité, la souveraineté et la légitimité de l'Assemblée nationale ni contraindre la volonte démocratique du peuple québécois à disposer lui-même de son avenir."

Scope of authority conferred by the *Act*

22. The impugned provisions of the *Act* purport, — by their own immediate, direct, and unilateral authority, — to confer on the political institutions of Quebec, including the Legislature of Quebec, acting alone, the authority to alter the political regime and legal status of Quebec without following the amending formula set out in Part V of the *Constitution Act, 1982;* By necessary implication, such authority includes, at the very least, the authority to amend or modify constraints imposed on Quebec by the Constitution of Canada, while remaining part of Canada, and at the limit, the authority to repeal, or abrogate, the entire Constitution of Canada, insofar as that Constitution applies in and to Quebec and to establish Quebec as a sovereign state independent of Canada;

Unilateral declaration of independence

23. By purporting to confer the ultimate authority to establish Quebec as a sovereign state independent of Canada, the impugned provisions of the *Act* are themselves tantamount to a unilateral declaration of independence;

The *Act* is a measure of the existing Quebec Legislature

24. On its face, the *Act* is expressed to be a legislative measure of the existing Legislature of Quebec, established under the Constitution of Canada:

(1) in that it describes itself as a Bill of the First Session of the Thirty-sixth Legislature and after its adoption as chapter 46 of the Statutes of Quebec for the year 2000; and

(2) its enacting clause being (in English) **"THE PARLIAMENT OF QUEBEC ENACTS AS FOLLOWS**" or (in French) **"LE PARLEMENT DU QUEBEC DECRETE CE QUI SUIT";**

The *Act* claims and asserts absolute constituent power on behalf of existing Quebec Legislature

25. Passage of the *Act* by, and in the name of, the "National Assembly of Quebec", and assent to the Act, especially with the aforesaid enacting clause, necessarily amounts to a claim and assertion, on behalf of the now-existing Legislature of Quebec (established under the Constitution of Canada), of a total, absolute, and unfettered power of constitutional change;

Invalidity of the impugned provisions of the *Act*

26. The central issue in these proceedings is whether the Legislature of Quebec had the authority to enact the impugned provisions of the *Act;* in order to decide this question the Court need not:

(1) catalogue every instance or particular in which the impugned provisions of the *Act* infringes the Constitution of Canada; nor

(2) decide which one or more constitutionally-prescribed methods could be employed to enact their terms, or their substance, lawfully and validly;

Relevant powers of constitutional amendment

27. The following propositions govern the determination of the substantial issues in this motion:

(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with it is of no force or effect *(Constitution Act, 1982,* s. 52(1)); this was equally true before April 17th, 1982: the *Colonial Laws Validity Act, 1865,* s. 2 and the *Statute of Westminster, 1931,* s. 7;

(2) The political regime and legal status of Quebec are exhaustively determined by the Constitution of Canada as further set out herein;

(3) It lies within the power, not of "the Quebec people," acting alone, but of the people of Canada, acting through the various governments duly elected and recognized under the Constitution, to effect whatever constitutional arrangements are desired within Canadian territory;

(4) Amendments to the Constitution of Canada may be made only in accordance with the authority contained in the Constitution of Canada *(Constitution Act, 1982, s*. 52(2) and s. 52(3));

(5) The *Canada Act 1982* (being Chapter 11 of the Statutes of the United Kingdom for 1982), including the *Constitution Act, 1982* (Schedule B to the *Canada Act 1982),* has been law within and throughout Canada since April 17, 1982, save for those of its provisions delayed in their operation by the terms of the legislation itself;

(6) Part V of the *Constitution Act, 1982,* entitled "Procedure for Amending Constitution of Canada", sets forth a comprehensive series of provisions for amending the Constitution of Canada in the broadest sense of that term, including a provision for amending the constitutions of the provinces;

(7) It is possible, by lawful means under Part V, to accomplish any conceivable constitutional change which might be decided on by the country (including the independence of Quebec); thus the "general" procedure under section 38 is always available save where another procedure is exclusively prescribed; and the amending procedures are themselves amendable under section 41(e) (the "unanimous consent" procedure); so that any conceivable constitutional amendment, or series of amendments, could (if properly framed) be accomplished by use of section 41;

(8) Although, on occasion, almost any power conferred on the Legislatures of the provinces can be the basis of a provincial legislative enactment having some constitutional significance, the provincial power of constitutional amendment as such is exhaustively set forth in section 45 of the *Constitution Act, 1982,* replacing, with effect from April 17, 1982, the power formerly set out in section 92.1 of the *Constitution Act, 1867* (as it is now entitled); the present power is limited (just as the former power was limited) to amending the "constitution of the province";

(9) Under the former section 92.1 of the Act of 1867, the Legislature of Quebec had no wider powers of constitutional change than it now has under the *Constitution Act, 1982;*

(10) It is obvious from the face of the constitutional provisions themselves, and is conclusively settled by the courts, that the provincial power of amending the "constitution of the province" is concerned with, and only with, the law relating to the governmental institutions of the province itself; and, even then, the power is subject to various further express, and implied, restrictions; in sum, the Constitution attributes to the electorate and the institutions of a province no right or power save to govern its territory within the Constitution and as a Canadian province;

(11) In particular:

(i) a provincial legislature acting alone cannot interfere with the offices (which, so far as is here relevant, include the powers) of the Queen, of the Governor-General, or of the Lieutenant-Governor of province itself; these being expressly excluded from provincial legislative authority by the terms of section 45, read with section 41; on the contrary, section 41(a) requires, for such an amendment, action by the Governor-General, the Houses of the federal Parliament, and the legislative assemblies of all the provinces;

(ii) a provincial legislature acting alone cannot interfere with the general constitution of Canada, which itself is the subject of the amending procedures set out in sections 38 to 44, inclusive, of the *Constitution Act, 1982;* these provisions all require at least action by the Sovereign or the Governor-General, and one or both Houses of the federal Parliament;

(iii) a provincial legislature acting alone cannot interfere with a constitutional rule essential to the federal principle, or one which is a fundamental term or condition of the Canadian Union;

Particulars of *ultra vires* operation

28. By their own unilateral fiat, sections 1, 2, 3, 4, 5 and 13 of the *Act* purport to confer on the political institutions of Quebec, including the Legislature of Quebec, the authority at the limit:

(1) to abolish, as regards Quebec, the executive institutions and powers of the Canadian federation, including the office and powers of the Queen and of the Governor-General, set forth notably in Part El, "Executive Power", of the *Constitution Act, 1867,* sections 9 to 16; but this abolition cannot lawfully be accomplished save through the amending powers established by sections 41(a) and 44 of the *Constitution Act, 1982;*

(2) to abolish, as regards Quebec,

(i) the powers of the Governor-General, and also

(ii) the status and the powers of the Lieutenant-Governor as representing the Queen,

in each instance, in respect both of:

(a) the executive institutions of Quebec, and also of

(b) the Legislature, or Parliament, of Quebec

which vice-regal powers of the Governor-General and Lieutenant-Governor are set forth *inter alia* in sections 58, 71, 85, and 90 of the *Constitution Act, 1867;* but such an abolition cannot lawfully be accomplished save through recourse to section 41(a) of the *Constitution Act, 1982;*

(3) to abolish, as regards Quebec, the legislative institutions of the Canadian federation, set forth notably in Part IV, “Legislative Power”, of the *Constitution Act, 1867;* but such an abolition cannot be accomplished save through the amending powers established by sections 38, 39, and 42 and 44 of the *Constitution Act, 1982;*

(4) to abolish, as regards Quebec, the powers of the Parliament of Canada, the authority of its laws, and the limitations now subsisting on the legislative powers of the Legislature of Quebec; which powers and limitations are set forth principally in Part VI, “Distribution of Legislative Powers”, sections 91 to 95 inclusive of the *Constitution Act, 1867,* as amended; but such an abolition cannot lawfully be accomplished unless through recourse to the amending powers established by sections 38 and 39, or in exceptional instances, section 43 of the *Constitution Act, 1982;*

(5) to abolish, as regards Quebec, various constitutional limitations on the powers of its Legislature, and of its executive Government, and notably the guarantees of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982,* and the provisions of sections 121 and 133 of the *Constitution Act, 1867;* these however being lawfully alterable only through recourse to the amending procedures established under sections 38, 41, and 43 of the *Constitution Act, 1982,* as the particular case requires;

(6) to abolish, as regards Quebec, the authority of the Supreme Court of Canada, and the powers of the Governor-General and of the Parliament of Canada with respect to that Court; such constitutional amendments being however constitutionally possible only through recourse to sections 41(d) and 42(1)(d) of the *Constitution Act, 1982;*

(7) to abolish the powers of the Governor-General and of the Parliament of Canada in relation to the courts contemplated by section 96 of the *Constitution Act, 1867;* and to make those courts subject to the unfettered power either of the National Assembly itself or of new legislative institutions established under its authority; this however being constitutionally possible only through section 38 or section 41 of the *Constitution Act, 1982;*

(8) to transform the boundaries of Quebec as a political subdivision of Canada, fixed and defined under sections 3, 5 and 6 of the *Constitution Act, 1867* as amended, into the boundaries of a sovereign state, but this is constitutionally possible only under sections 43, 38 or 41 of the *Constitution Act, 1982,* depending on the circumstances;

(9) to amend the process of constitutional amendment itself; this however being exclusively reserved to the process established by section 41(e) of the *Constitution Act, 1982;*

The Court and the Constitution

29. This Court, like all other Quebec courts, sits under the Constitution of Canada and by its authority; accordingly, the Court can accept no justification which may be offered for any exercise (or attempted exercise) of public authority, save only such as is legitimate under that Constitution; the Constitution of Canada neither authorizes nor acquiesces in its own overthrow under any circumstances whatsoever; in sum, the Court, even in the very face of revolutionary acts, cannot entertain any attempt by any litigant to justify revolution against Canada, even revolution undertaken under pretext of international law;

The justiciability of the issue

30. Petitioner submits that the constitutional validity of a statute enacted by a provincial legislature having regard to the Constitution of Canada is always a justiciable issue;

Repeated and interminable cycles of constitutional crisis

31. Without prompt and firm judicial intervention, it is to be expected as a matter of probability or, at least, serious risk, even if the referendum vote contemplated in ss. 3, 4 and 5 of the *Act* is never held, that:

(1) the claim will persist, within and outside the Government represented by Respondent, that the electors or institutions of Quebec are lawfully entitled, at any future time and by their unilateral act, to abrogate or repeal the Constitution of Canada, or otherwise alter the political regime and legal status of Quebec without following the amending formula set out in Part V of the *Constitution Act, 1982*, and at the limit, to dissolve the Canadian state at will and establish Quebec as an independent sovereign state; hence also to define the terms of independence as they please; and

(2) this threat will, in the normal course of events, form the basis of future constitutional demands, and probably also of an indefinite series of further referendums, or of demands for (or threats of) referendums, based on an alleged continuing right to declare independence unilaterally; and

(3) all of this must cause, for the indefinite future, ineradicable underlying social and economic instability in Quebec and, in lesser measure, elsewhere in Canada, varying in severity according to time and circumstances but never removed;

Petitioner's reasonable basis for belief

32. Petitioner believes, and respectfully submits to the Court:

(1) that the contested provisions of the Act are intended to mean, and must be interpreted to mean and judged for constitutional purposes as meaning, what they provide on their face, and without any dilution; and that this is so especially in the light of the constitutional history of the last several decades, in which an alleged right or power on the part of the institutions or population of Quebec to alter unilaterally and at will the constitutional position of Quebec has been repeatedly asserted in party programmes, legislative measures, referendum proposals, ministerial statements, legislative speeches, and other public statements by political leaders;

(2) that the contested provisions must be regarded as a direct and immediate confrontation with the Constitution all the more because they purport to have and to have had immediate effect from the date on which the Act was brought into force, and this regardless whether or not any referendum vote contemplated in ss. 3, 4, and 5 of the *Act* is ever held.

The *Act* as an instrument of intimidation and deception

33. By its very nature, the *Act* is, — and Petitioner believes, on reasonable grounds, that it must also be intended as, — a means of deception and intimidation, in that (explicitly and implicitly) the *Act* conveys to the general public, throughout Canada and particularly within Quebec, the unmistakable message:

(1) that Quebec's population and institutions have both

(a) the right in law to secede unilaterally; and, in any event, also

(b) the irresistible power, in fact, to secede unilaterally; and

(2) that Quebec's population and institutions therefore can, in the last resort, dictate, at their own will, the essential conditions of Quebec's independence, as to boundaries (section 9), public debt and assets, or otherwise, whether or not these matters formally become the subject of negotiation;

by these means:

(1) reassuring the population of Quebec as to the attractiveness of independence, whilst

(2) intimidating the public of the rest of Canada into submission to demands made on Quebec's behalf;

Superior Court judgment of September 8. 1995

34. On September 8, 1995, this Court, *coram* the Honourable Robert Lesage, J.S.C., rendered judgment in interlocutory proceedings against Respondent Attorney General of Quebec, and others, in the matter of Guy *Bertrand v. Begin et als, S.C.Q.* #200-95-002117-955, said judgment, with the reasons therefor, being of record in this Court;

35. In the course of his reasons for judgment in the aforesaid matter, the Hon. Mr. Justice Lesage found in fact that then Premier, Jacques Parizeau and other ministers in the Government of Quebec, had embarked on a course of proceeding to a unilateral declaration of independence to establish Quebec as a separate state, without regard to the processes of amendment established by the Constitution of Canada, and in "repudiation" of that Constitution;

Supreme Court judgment in *Reference Re Secession of Quebec*

36. On August 20, 1998, the Supreme Court of Canada rendered a unanimous judgment on the following three (3) reference questions:

In English:

(1) Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?

(2) Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

(3) In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

In French:

(1) L'Assemblée nationale, la législature, ou le gouvernement du Québec peut-il, en vertu de la Constitution du Canada, procéder unilatéralement à la sécession du Québec du Canada?

(2) L'Assemblée nationale, la législature, ou le gouvernement du Québec possède-t-il, en vertu du droit international, le droit de procéder unilateralement à la sécession du Québec du Canada? A cet égard, en vertu du droit international, existe-t-il un droit à l'autodétermination qui procurerait à l'Assemblée nationale, la législature, ou le gouvernement du Québec le droit de procéder unilatéralement à la sécession du Québec du Canada?

(3) Lequel du droit interne ou du droit international aurait préséance au Canada dans l'éventualité d'un conflit entre eux quant au droit de l'Assemblée nationale, de la législature ou du gouvernement du Québec de procéder unilatéralement à la sécession du Québec du Canada?

37. The Supreme Court answered questions 1) and 2) in the negative and declined to answer question 3) on the grounds that there was no conflict between domestic and international law to be addressed in the context of the *Reference;*

38. In *Reference re Secession of Quebec,* the Supreme Court made specific reference to the absolute imperative of legitimate constitutional amendment to effect changes to the political regime and legal status of Quebec, including at the limit, the establishment of Quebec as a sovereign state, independent of Canada:

> "84 The secession of a province from Canada must be considered in legal terms, to require an amendment to the Constitution, which perforce requires negotiation. The amendments necessary to achieve secession could be radical and extensive. . . It is of course true that the Constitution is silent as to the ability of a province to secede from Confederation but, although the Constitution neither expressly authorizes nor prohibits secession, an act of secession would purport to alter the governance of Canadian territory in a manner which undoubtedly is inconsistent with our current constitutional arrangements. The fact that those changes would be profound, or that they would purport to have a significance with respect to international law, does not negate their nature as amendments to the Constitution of Canada.
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> 85 The Constitution is the expression of the sovereignty of the people of Canada. It lies within the power of the people of Canada, acting through their various governments duly elected and recognized under the Constitution, to effect whatever constitutional arrangements are desired within Canadian territory, including should it be so desired, the secession of Quebec from Canada. . . "
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> "84 La sécession d'une province du Canada doit être considérée, en termes juridiques, comme requérant une modification de la Constitution, qui exige forcement une négociation. Les modifications requises pour parvenir à une sécession pourraient être vastes et radicales. . . Il est vrai que la Constitution est muette quant à la faculté d'une province de faire sécession de la Confédération, mais bien que la Constitution n'autorise pas ni n'interdise expressément la sécession, un acte de sécession aurait pour but de transformer le mode de gouvernement du territoire canadien d'une façon qui est sans aucun doute incompatible avec nos arrangements constitutionnels actuels. Le fait que ces changements seraient profonds, ou qu'ils prétendraient avoir une incidence en droit international, ne leur retire pas leur caractère de modifications de la Constitution du Canada.
>
> 85 La Constitution est 1'expression de la souveraineté de la population du Canada. La population du Canada, agissant par 1'intermédiaire des divers gouvernements dument élus et reconnus en vertu de la Constitution, détient le pouvoir de mettre en {oe}uvre tous les arrangements constitutionnels souhaites dans les limites du territoire canadien, y compris, si elle était souhaitée, la sécession du Québec du Canada. . . "

Issues of international law

39. While it is unnecessary to address issues related to international law for this Court to grant the relief requested herein, Petitioner does so only to respond to the references in s. 1 of the *Act* to "self-determination" and the references in the preamble and ss. 1, 2, 3, 4, 5, 6, 10 and 13 to "the Quebec people";

40. Petitioner relies on the answer of the Supreme Court to the second question in the *Reference* case and in particular, the findings that 1) the right to self-determination is not equivalent to a right of secession except in colonial situations and in situations involving gross violations of human rights and 2) neither exception applies to Quebec in Canada;

41. Petitioner acknowledges that individuals may choose to assume multiple identities, based on such considerations as citizenship, residence, or belonging to a particular ethnic or linguistic group;

42. In the context of self-determination and secession, Petitioner makes the following assertions:

(1) He is Canadian;

(2) The population of Quebec does not constitute a single people; rather it is composed of many peoples;

(3) Canadians of all ethnic and linguistic backgrounds fully exercise their right to self-determination in Canada as a whole;

(4) Canada has an absolute right to assure that Canadians' right to self-determination is exercised in ways that are consistent with the rule of law and with the Constitution of Canada;

(5) Canada has an absolute right to its territorial integrity;

(6) The only way to respect the right of self-determination of all of the peoples inhabiting the territory of Quebec in the event of secession is to redraw the current boundaries of the province;

Other provisions of the *Act*

43. Under Chapter II entitled "The Quebec National State," ss. 6, 7 and 8 of the *Act* purport to further elucidate the prerogatives of the Quebec State in several areas;

44. As regards s. 6, it merely restates that principle that provinces are sovereign in the areas of provincial jurisdiction under the *Constitution Act, 1867;*

45. As regards s. 7, it is not amongst the provisions whose validity is contested in these proceedings. Given the context it seeks to establish for the contested provisions, Petitioner Henderson states his position with respect to its accuracy as a statement of the law, as follows:

> (1) Quebec, whether through its executive government or otherwise, has no status or power to engage in or enter into international relations, nor to conclude any treaty or agreement in any capacity implying sovereign capacity in international law. However Quebec may, within the limits imposed by the Constitution and any appropriate and relevant federal legislation, make agreements and arrangements with foreign governmental and non-governmental entities just as other individual and corporate persons may do, whether or not they have a governmental character;
>
> (2) The Government of Canada, that is to say Her Majesty in right of Canada, has entire and exclusive power to engage in international relations in respect of Canada, including any or its political subdivisions. The extent of the power of the Parliament of Canada to implement the treaty obligations or other obligations of Canada has not yet been completely defined, but difficulties in this regard are avoided by the prevailing practice of the Government of Canada, which is to seek the concurrence of the Provinces before undertaking obligations which might require legislative implementation in subjects of provincial jurisdiction.

46. As regards s. 8, the affirmation that the French language is the official language of Quebec is already stated in s. 1 of the *Charter of the French Language;*

47. Under Chapter III entitled "The Territory of Quebec", ss. 9 and 10 of the *Act* address the issue of boundaries;

48. Section 43 of the *Constitution Act, 1982*, provides that the boundaries of Quebec cannot be changed without its consent;

49. The transformation of the boundaries of Quebec as a political subdivision of Canada, fixed and defined under sections 3, 5 and 6 of the *Constitution Act, 1867* as amended, into the boundaries of a sovereign state, is constitutionally possible only under sections 43, 38 or 41 of the *Constitution Act, 1982,* depending on the circumstances;

50. In *Reference re Secession of Quebec,* the Supreme Court specifically referred to the issue of boundaries in the context of negotiations on a constitutional amendment relating to the secession of a province:

"96 No one can predict the course that such negotiations might take. The possibility that they might not lead to an agreement amongst the parties must be recognized. Negotiations following a referendum vote in favour of seeking secession would inevitably address a wide range of issues, many of great import. After 131 years of Confederation, there exists, inevitably, a high level of integration in economic, political and social institutions across Canada. The vision of those who brought about Confederation was to create a unified country, not a loose alliance of autonomous provinces. Accordingly, while there are regional economic interests, which sometimes coincide with provincial boundaries, there are also national interests and enterprises (both public and private) that would face potential dismemberment. There is a national economy and a national debt. Arguments were raised before us regarding boundary issues. There are linguistic and cultural minorities, including aboriginal peoples. unevenly distributed across the country who look to the Constitution of Canada for the protection of their rights. Of course, secession would give rise to many issues of great complexity and difficulty. These would have to be resolved within the overall framework of the rule of law, thereby assuring Canadians resident in Quebec and elsewhere a measure of stability in what would likely be a period of considerable upheaval and uncertainty. Nobody seriously suggests that our national existence, seamless in so many aspects, could be effortlessly separated along what are now the provincial boundaries of Quebec." . . (under-lining added)

"96 Personne ne peut prédire le cours que pourraient prendre de telles négociations. Il faut reconnaitre la possibilité qu'elles n'aboutissent pas à un accord entre les parties. Des négociations engagées à la suite d'un vote référendaire en faveur d'un projet de sécession toucheraient inévitablement des questions très diverses et souvent d'une grande portée. Il existe inévitablement, âpres 131 ans de Confédération, un haut niveau d'intégration des institutions économiques, politiques et sociales au Canada. La vision des fondateurs de la Confédération était de créer un pays unifié et non pas une vague alliance de provinces autonomes. Par conséquent, s'il existe des intérêts économiques régionaux qui coïncident parfois avec les frontières provinciales, il existe également des entreprises et intérêts (publics et privés) nationaux qui seraient exposés au démantèlement. Il v a une économie nationale et une dette nationale. La question des frontières territoriales a été invoquée devant nous. Des minorités linguistiques et culturelles, dont les peuples autochtones, réparties de façon inégale dans l'ensemble du pays, comptent sur la Constitution du Canada pour protéger leurs droits. Bien sûr, la sécession donnerait naissance a une multitude de questions très difficiles et très complexes, qu'il faudrait résoudre dans le cadre général de la primauté du droit de façon a assurer aux Canadiens résidant au Québec et ailleurs une certain stabilité pendant ce qui serait probablement une période d'incertitude et de bouleversement profonds. Nul ne peut sérieusement soutenir que notre existence nationale, si étroitement tissée sous tant d'aspects, pourrait être déchirée sans efforts selon les frontières provinciales actuelles du Québec." . . (under-lining added)

51. Under Chapter IV entitled "The Aboriginal Nations of Quebec", ss. 11 and 12 of the *Act* address aboriginal issues;

52. Petitioner Henderson does not in these proceedings seek any relief in respect of ss. 6 to 12 of the *Act*, and for the purposes of these proceedings neither admits nor denies their validity. Nevertheless, since ss. 6 and 10 appear to apply generally to the *Act*, including the contested provisions, Petitioner states his position on the following particulars:

(1) The second paragraph of s. 6 is innocuous if and insofar as it merely states a ***political principle*** and insofar as it means by "the Quebec people" the entire population on a fully equal basis for all citizens. That paragraph is however inconsistent with the principles and rules of the Constitution if by "the Quebec people" is meant a single ethno-linguistic people, or the aggregate population defined as part of, or assimilated to, the ethno-linguistic majority. But if that paragraph seeks to establish a ***legal rule***, it is incapable through its vagueness and otherwise of having meaningful legal consequences, especially as regards conventions, which themselves are not legal rules and so cannot be the object of a legal duty of accountability;

(2) Similar considerations apply to the first paragraph of s. 10 as regards the interpretation to be given to the phrase "the Quebec people";

Petitioner's request for a reference to Court of Appeal

53. In their brief to the Commission permanente des institutions filed as Exhibit R-12, the Equality Party and the Special Committee requested that the Government of Quebec refer the issue of the constitutionality of *Bill 99* to the Court of Appeal of Quebec;

54. The same request was repeated verbally during the hearing before the Commission on March 29, 2000, as appears from the transcript filed as Exhibit R-13;

55. Notwithstanding such requests, no such reference was made;

Inclusion of Attorney's General of Canada and each of the provinces as Mises-en-Cause

56. The Attorneys General of Canada and each of the provinces are included as Mises-en-Cause in these proceedings because they are interested parties under the amending formula set out in Part V of the *Constitution Act, 1982,* and have an interest arising from their office in the maintenance of constitutional legality;

57. For these reasons, Petitioner is entitled to the relief requested in the conclusions of the present Re-Amended Motion;

58. The present Re-Amended Motion is well-founded in fact and in law.

FOR THESE REASONS, PETITIONER RESPECTFULLY REQUESTS THAT THIS HONOURABLE COURT:

1) **DECLARE** that sections 1, 2, 3, 4, 5 and 13 of the *Act respecting the exercise of the fundamental rights of the Québec people and the Québec State* and la *Loi sur l'exercice des prérogatives du peuple québécois et de l'État du Québec*, being Bill 99 of the First Session of the Thirty-sixth Legislature of Quebec, adopted on December 7, 2000 and being chapter 46 of the Statutes of Quebec for 2000, are *ultra vires*, absolutely null and void, and of no force or effect;

2) **DECLARE** that sections 1, 2, 3 4, 5 and 13 of the said Act purporting to confer the authority to establish Quebec as a sovereign state, or otherwise to alter the political regime or legal status of Quebec as a province of Canada, constitutes an infringement and denial of Petitioner's rights under the Canadian Charter of Rights and Freedoms, and is accordingly unlawful, invalid, and of no force or effect;

3) **THE WHOLE** with costs.

MONTREAL, December 3, 2012

BRENT D. TYLER
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