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Quebec MNAs' oath refusal poses legal quandary

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Staff

The elected members of Quebec's two sovereigntist political parties have refused to pledge allegiance to the King, likely preventing them from sitting in the National Assembly when it reconvenes in November without a change to the law.

The province's impasse around how to accommodate the 14 holdouts without violating the Canadian Constitution makes it the latest jurisdiction to reconsider its relationship with the monarchy since the accession of Charles III.

Deputies from Québec solidaire and the Parti Québécois swore oaths to the "people of Quebec" this week during the official swearing-in ceremony in the assembly's red chamber. The leaders of both parties had promised since the Oct. 3 election to withhold their allegiance from the King and asked the government of Premier François Legault to pass a motion allowing them to sit as deputies anyway.

The Constitution Act of 1867 requires every member of a provincial legislative assembly to swear that they "will be faithful and bear true Allegiance" to the

monarch of the United Kingdom before taking their seat.

Quebec Justice Minister Simon Jolin-Barrette said this week that a simple motion in the National Assembly would not be enough to override that constitutional provision, but that the government is open to passing a law abolishing the oath in Quebec.

Legal experts say any such law would require modifying the Constitution.

Quebec has long had an uneasy relationship with the monarchy. Royal visits have occasionally prompted riots, including Quebec City's notorious Samedi de la matraque, or Truncheon Saturday, in 1964. Some sovereigntists continue to view the Crown as a symbol of foreign domination dating to the British conquest in 1760.

The issue of the oath has come up before in Quebec politics. After the previous election in 2018, Québec solidaire deputies sought to avoid pledging allegiance before finally doing so in private as a protest against an "archaic ritual." QS deputy Sol Zanetti said he felt "soiled" by the experience.

The death of Queen Elizabeth in September brought the monarchy back into the spotlight, as it has elsewhere in the Commonwealth. Parti Québécois Leader Paul St-Pierre Plamondon criticized the Premier for flying the Quebec flag at half-mast on government buildings, writing on Twitter that Mr. Legault should not "give credibility to a colonial regime that's illegitimate in Quebec." (Soon after, Mr. St-Pierre Plamondon said he reacted too quickly and chose the wrong moment to launch his criticism, saying he didn't mean to offend anyone.)

A Leger online poll shortly after Charles became King found that 66 per cent of Quebecers want to get rid of the monarchy.

Another recent web survey by the same firm found that threequarters of Quebecers think deputies should only have to pledge allegiance to the people of Quebec.

Currently, there is no way for deputies to sit without taking the oath, said Philippe Lagassé, associate professor of international affairs at Carleton University and an expert on the Crown and Parliament.

"I think legally the assembly and the government are in a bind. I don't think there's a good way around the oath until such a time as they try to remove it," he said.

The most direct way for the government to remove the oath would be a unilateral amendment to the Canadian Constitution exempting Quebec from Section 128 of the Constitution Act, Prof. Lagassé said. The province did something similar with its recent language law, Bill 96, which inserts clauses into the Canadian Constitution asserting that Quebec is a nation whose common and official language is French.

The courts have yet to weigh in on that aspect of Bill 96, however, and a law abolishing the pledge of allegiance in Quebec would likely face legal challenges. Quebec likely could not amend Section 128 unilaterally because it affects the other provinces and the federal government, said Pierre Thibault, assistant dean of the civil law section of the University of Ottawa's faculty of law.

"I think there are difficulties with a simple law because the article touches all the provinces," he said. "We're in a dilemma."

For Sergio Marchi, the former federal minister of immigration, the debate brings a certain amount of déjà vu. As he described in a recent essay for Policy Options magazine, he attempted to remove the Crown from the citizenship oath in the mid-1990s so that new Canadians would simply be pledging allegiance to Canada.

At the last minute, then-prime minister Jean Chrétien cooled on the reform, explaining that he did not want to fight "separatists and monarchists" at the

same time. But with transition on the throne, Mr. Marchi said he believes Quebec is on the vanguard of a conversation Canada should be having.

"This may be a way of bringing it out of the shadows, starting a discourse, an intelligent one, about what the monarchy means in 2022."