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COMMENTARY/COMMENTAIRE

Secession and the Virtues of Clarity

By The Honourable Stéphane Dion, P.C., M.P.

Stéphane Dion (PC) is the Member of Parliament for the riding of Saint-Laurent-Cartierville in Montreal. He was first elected in 1996 and served as the Minister of Intergovernmental Affairs in the Christian government. He later served as leader of the Liberal Party of Canada and the Leader of Her Majesty's Loyal Opposition in the Canadian House of Commons from 2006 to 2008. Prior to entering politics, Mr. Dion was a professor at the Université de Montréal. This Commentary is based on Mr. Dion's presentation, entitled Secession and the Virtues of Clarity, which was delivered at the 8th Annual Michel Bastarache Conference at the Rideau Club on February 11, 2011.

Stéphane Dion (CP) est député fédéral pour la circonscription de Saint-Laurent-Cartierville à Montréal. Il a été élu pour la première fois en 1996 et a servi en tant que ministre des Affaires intergouvernementales dans le gouvernement Chrétien. Il est par la suite devenu chef du Parti libéral du Canada et chef de l'Opposition à la Chambre des communes de 2006 à 2008. Avant de faire de la politique, M. Dion était professeur à l'Université de Montréal. Ce Commentaire reprend les principaux éléments de l'allocation de M. Dion intitulée « La sécession et les vertus de la clarté », prononcée lors de la 8e Conférence annuelle Michel Bastarache au Rideau Club le 11 février 2011.

It is an honour and a pleasure for me to have been invited to the Michel Bastarache Commission... excuse me, Conference.

When they invited me, Dean Bruce Feldthusen and Vice-Dean François Larocque suggested the theme of "clarity in the event of secession". And indeed, I believe this is a theme that needs to be addressed, because the phenomenon of secession poses a major challenge for a good many countries and for the international community. One question to which we need the answer is this: under what circumstances, and by what means, could the delineation of new international borders between populations be a just and applicable solution?

I will argue that one document which will greatly assist the international community in answering that question is the opinion rendered by the Supreme Court of Canada on August 20, 1998 concerning the Reference on the secession of Quebec. This opinion, a turning point in Canadian history, could have a positive impact at the international level. It partakes of the great tradition of our country's contribution to peace and

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harmony in the world, from the drafting of the UN Universal Declaration of Human Rights to the Convention on the Prohibition of Anti-Personnel Mines. That is my conviction, and I could not hope for a better forum in which to express it, since one of the justices who rendered that unanimous opinion on August 20, 1998 was in fact the Honourable Michel Bastarache.

After describing how the international community views the phenomenon of secession and identifying the principles in play, I will argue that the opinion of our Supreme Court does indeed have universal scope and significance, and then close by bringing the discussion back home, that is, to the current situation of Canadian unity and the Quebec separatist movement.

1. The aversion of States and the international community to secession

Secession is the act of separating from a State to form a new one or to join another one. Let us note first of all that, all around the world, secession is not something that is encouraged outside of the colonial setting. On the contrary, secession is considered with definite mistrust – even real aversion when it is effected unilaterally, that is, without an agreement negotiated with the predecessor State. This mistrust of secession can be verified at three levels: those of domestic State law, international law, and internal State practice.

1.1 Domestic law

In terms of domestic law, numerous States affirm their indivisibility in their constitution or their jurisprudence. Many democratic States, for example France, the United States, Italy, Spain, Australia, Finland, Norway and Sweden, consider themselves to be inseparable entities.

1.2 International law

In international law, any attempt at unilateral secession, that is, secession with no agreement negotiated with the existing State, is without legal foundation. International law does not prohibit unilateral secessions. It simply does not authorize them. There are no regulations in this respect, except in cases where there is a right to secession, namely in the case of colonies, subjugation or foreign occupation.

On July 22, 2010, the International Court of Justice declared in an advisory opinion that the unilateral declaration of independence of Kosovo did not violate international law. The Court noted that there is no applicable rule in international law under which such declarations can be disallowed.

The Court did not say that Kosovo had a right to secede from Serbia. In fact, the Court did not rule on the legal consequences of this unilateral declaration of independence. It explicitly refused to say whether or not Kosovo has the status of a State, and did not tell States whether they should recognize Kosovo as a State.

Aside from cases of colonies or subjugation, international law has no rule for the pro-

hibition of unilateral secessions, and conversely, no rule to allow a secessionist government to impose secession legally on those who do not want it. The absence of an international rule prohibiting secession does not create a positive right to secession which would oblige citizens or States to recognize it or conform to it.

Yet that is exactly what a secessionist government would need if it wanted to proceed unilaterally: a legal means of forcing everyone to accept a change of countries, including those who do not want to. International law does not provide for unilateral secession, nor does it contain any peremptory norms that would make it possible to ignore the domestic laws of the State from which the secessionist government is trying to separate.

1.3 State practice

State practice is extremely reluctant to recognize unilateral secession outside the colonial setting. In fact, no State created by unilateral secession has been admitted to the United Nations against the declared will of the government of the predecessor State.

Let us return to the recent case of Kosovo, as it illustrates this reluctance to recognize unilateral secessions. The States that recognized Kosovo against the wishes of Serbia, notably the United States, European Union countries and Canada, took endless precautions. They insist that Kosovo is a particular case which, in their opinion, does not create a precedent. They refer to a combination of four factors.

- First, the people of Kosovo were victims of serious abuse, particularly during the bloody attempt at ethnic cleansing at the hands of the Milosevic regime, at the end of the 1990s.
- Second, no one doubts that nearly all of the people of Albanian descent in Kosovo want their independence.
- Third, the separation of Kosovo from Serbia is already an established fact in the territory itself. In the spring of 1999, NATO drove the Serbian forces out of Kosovo to put an end to a humanitarian disaster. Kosovo was placed under UN authority for nearly ten years.
- Fourth, forcing the people of Kosovo to return under Serbian authority would inevitably cause instability in an already fragile region. We cannot go back in time.

Despite these four solid arguments for the recognition of Kosovo, a majority of States continue to support Serbia's point of view; this includes China and Russia which both have veto power on the UN Security Council. This leaves Kosovo, 20 years after its first unilateral declaration of independence, with partial, restricted recognition throughout the world, a situation that would be unacceptable to a population like ours, which is used to having its citizenship, passport and government routinely recognized all over the world.

1.4 The case of southern Sudan

In another recent case, that of the South Sudan, there were solid reasons for resorting to secession as a means of pacifying a conflict between warring populations. However the international community was reluctant to go down that road, and insisted that the secession not be unilateral but negotiated by both sides.

There has been an almost uninterrupted succession of civil wars since the Sudan became independent in 1956, claiming millions of deaths, injuries and refugees. Southern Sudan in particular has been the victim of serious abuses, including the imposition of traditional law (Shari'ah) upon a non-Muslim population.

After the last civil war led to a weakening of the northern authorities' control over the south, a peace agreement was concluded in 2005, under the sponsorship of the United States and the United Nations, between the Sudanese government and the rebels of southern Sudan's People's Liberation Army/Movement. That agreement provided for a referendum in 2011, which was to confirm the massive support of the South Sudanese for an independence which was already in part a de facto reality.

From 1995 to 2011, the UN and the African Union attempted to get the two sides to negotiate a compromise which would have avoided the break-up of the Sudan, but in vain. In light of that fact, the international community set to work with all of the Sudanese authorities on preparing the referendum, so that it might be held under the best possible conditions, to limit the risks of violence.

Care was taken to ensure that the question clearly posed the choice between Sudanese unity and secession, with no ambiguity. To limit the number of malcontents, plans were made to permit at least one region to hold its own referendum to choose between northern and southern Sudan. The simple majority chosen as the line of victory was purely rhetorical, since no one doubted that there was a consensus for independence among the population of southern Sudan. Such a referendum was not conceivable if the secession project had divided the South Sudanese population into two more or less equal factions.

In other words, the focus was on legality, clarity and negotiation.

1.5 The reasons for this aversion to secession

Let us now examine why domestic State law, international law and State practice have such reservations towards unilateral secession.

The first reason, of course, is that the States are concerned that their own territorial integrity not be challenged. The golden rule of "do unto others as you would have others do unto you" has a powerful dissuasive effect. It is difficult for a State to demand that its own unity be respected if it does not respect that of others. It will be more difficult for it to prevent separatist movements at home if it encourages them in other States.

The second reason is the constant concern for international stability. Separatist movements are potential factors of disorder. If the international community is so clearly opposed to recognizing unilateral secession as an automatic right outside of the co-

lonial context, it is no doubt because it would be very difficult to determine to whom that right should be granted, because such an automatic right to secession would have dramatic consequences on the international community -- with some 3,000 human groups each claiming a collective identity for itself in the world -- and because the creation of each new State would risk mobilizing, within that same State, minorities which would in turn stake their own claim for their own independence.

Let us simply take the case of Africa. Nigeria has 250 local languages. Côte d'Ivoire is made up of 60 ethnic groups, the Democratic Republic of Congo 105, Cameroon 200, and so forth. Understandably, the break-up of the Sudan is being contemplated with a great deal of precaution. Southern Sudan itself is a fragmented region inhabited by some 60 different groups.

As former United Nations Secretary General Boutros Boutros-Ghali has stated: *"Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve"* (An Agenda for Peace, 1992, p. 17).

But in addition to these considerations of State and international stability, another factor argues against recognizing an automatic right to secession. This is a factor fundamental to democracies.

The democratic ideal encourages all the citizens of a country to be loyal to each other, regardless of language, race, religion or regional considerations. Secession asks the opposite of citizens, asking them to break the solidarity that unites them, and to do so, almost always, based on considerations related to specific affiliations, such as language or ethnic origin. Secession is that rare and unusual exercise in democracy whereby a choice is made as to those of one's fellow citizens one wants to keep and those one wants to transform into foreigners.

A philosophy of democracy based on the logic of secession would be unworkable. It would incite groups to separate from one another rather than trying to unite or reach agreement. Automatic secession would prevent democracy from absorbing the tensions inherent in differences. Recognition of the right to secession on demand would invite separation as soon as difficulties were experienced along fault lines which are very likely to develop around collective attributes such as religion, language or ethnicity.

We are surely touching here on the fundamental reason why international law and State practice alike recognize a right to secession only in situations of colonization or flagrant human rights violations. In extreme circumstances where a State refuses to treat a group of citizens as citizens, where it rides roughshod over their right to citizenship, those citizens in turn have the right to consider it no longer to be their State. They have that right not by virtue of distinctive traits pertaining to race, language or religion, but because, like other human beings, they have a universal right to citizenship.

It does not mean that a democratic State must reject any and all secessionist demands. The State may conclude that in light of a clear desire for secession, allowing the secession is the lesser of two evils. But a democratic government has the obligation to en-

sure that this desire for secession is truly clear and unambiguous, and that it will not be carried out unilaterally, but within the framework of legality and justice for all.

And this brings us to the Supreme Court of Canada's opinion on secession of August 20, 1998.

2. Universal scope and significance of the Supreme Court of Canada's opinion on secession

The Supreme Court of Canada's opinion on secession is a legal document which has been quoted, studied and considered in light of situations as diverse as the relationship between Taiwan and China and the relationship between Montenegro and Serbia. Professor Zoran Oklopčić of Carleton University has highlighted the extent to which this opinion has come in for consideration all over the world (text in preparation which has been provided to me by the author).

The International Court of Justice opinion on Kosovo, and the briefs submitted by many countries on that occasion, refer to the opinion of our Supreme Court. A delegation of parliamentarians from northern and southern Sudan has come to Canada to study our experience and the state of our law.

Before recalling the content of this opinion, let us recall the reasons why the Government of Canada, under the leadership of Prime Minister Jean Chrétien, applied to the Supreme Court after the 1995 referendum in Quebec. There were basically two of them. The first was that the separatist government of Quebec claimed it had a right to secede unilaterally. The second was that in both the 1980 and the 1995 referendums, the government of Quebec had asked a confusing question, designed to artificially swell support for the Yes vote.

The Government of Canada felt that it had a moral obligation to refuse to consent to the loss of Canada for Quebecers unless they clearly supported secession and unless secession was duly negotiated within the constitutional framework, in a manner respectful of everyone's rights. The government of Quebec claimed that international law would prevail over Canadian law in the event of a unilateral proclamation of independence. In the terms used by the Attorney General of Quebec, Mr. Paul Bégin, before the Superior Court of Quebec on April 12, 1996: "[TRANSLATION] ... *sovereignty is essentially to be decided through a fundamental democratic process which finds its sanction in international public law, and the Superior Court has no jurisdiction in that regard*".

In other words, the Government of Canada argued that Canada was divisible, but not just anyhow: only in legality and clarity. In the words of the Attorney General of Canada of the time, the Honourable Allan Rock – whom I believe you know... – : "*The leading political figures of all our provinces and the Canadian public have long agreed that the country will not be held together against the clear will of Quebecers.*" Similarly, on December 8, 1997, Prime Minister Jean Chrétien said that [TRANSLATION] "*in such a situation, there will undoubtedly be negotiations with the federal government.*" (*Le Soleil*, 08-12-97).

This is what the federal government argued before the Supreme Court of Canada. For example, the written response of the Attorney General of Canada to the questions asked on February 19, 1998 by the Supreme Court of Canada mentions that the Government of Canada has stated on many occasions that “*Quebeckers would not be held in this country against their will should they clearly express an unambiguous desire to leave Canada*” (para. 33). I myself have stressed this principle many times in my speeches and public letters, starting with my first statement as a minister, in which I indicated that “[TRANSLATION] *in the unfortunate eventuality that a firm majority in Quebec were to vote on a clear question in favour of secession, I believe that the rest of Canada would have a moral obligation to negotiate the division of the territory*” (Le Soleil, 27-01-1996).

The Court’s opinion of August 20, 1998 confirmed that this obligation to negotiate can be precipitated only by “*a decision of a clear majority of the population of Quebec on a clear question to pursue secession*” (para. 93). It does not exist if the expression of the democratic will is “*itself fraught with ambiguities. Only the political actors*”, says the Court, “*would have the information and expertise to make the appropriate judgment as to the point at which, and the circumstances in which, those ambiguities are resolved one way or another*” (para. 100).

The Court does not encourage us to try setting the threshold of this clear majority in advance: “*it will be for the political actors to determine what constitutes ‘a clear majority on a clear question’ in the circumstances under which a future referendum vote may be taken*” (p. 5). In other words, examination of the clarity of a majority has a qualitative dimension which requires a political evaluation in full knowledge of the concrete circumstances.

The Court confirms that “*the secession of a province from Canada must be considered, in legal terms, to require an amendment to the Constitution, which perforce requires negotiation*” (para. 84) “*within the existing constitutional framework*” (para. 149). All of the participants would be required to negotiate secession in conformity with four constitutional principles identified by the Court: “*federalism, democracy, constitutionalism and the rule of law, and the protection of minorities*” (para. 90). The government of Quebec could not determine on its own what would and would not be negotiable. It “*could not purport to invoke a right of self-determination such as to dictate the terms of a proposed secession to the other parties*” (para. 91). It would have “*the right ... to pursue secession*” (para. 92) via these negotiations founded on the above-mentioned principles.

Such negotiations would inevitably touch upon “*many issues of great complexity and difficulty*” (para. 96). In particular, the Court mentions economic issues, debt, minority rights, Aboriginal peoples and territorial boundaries: “*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*” (para. 96).

“*In the circumstances,*” says the Court, “*negotiations following such a referendum would undoubtedly be difficult. While the negotiators would have to contemplate the possibility of secession, there would be no absolute legal entitlement to it and no assumption that an agreement reconciling all relevant rights and obligations would actually be reached.*”

It is foreseeable that even negotiations carried out in conformity with the underlying constitutional principles could reach an impasse. We need not speculate here as to what would then transpire. Under the Constitution, secession requires that an amendment be negotiated” (para. 97).

The Court does not dismiss the possibility that the government of Quebec might make an attempt at unilateral secession. But the scenario it describes has little in common with the one contemplated by the Parizeau government in 1995. Such an attempt would have no “*colour of a legal right*” (para. 144), and would take place in a context where Quebec’s governing institutions “*do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally*” (para. 154).

Thus no rule of law would be available to this government that would permit it to impose unilateral secession on persons who did not want it.

Could the Government of Quebec then try to obtain international recognition? The Court weighed the probabilities in that respect very prudently and realistically. “*A Quebec that had negotiated in conformity with constitutional principles and values in the face of unreasonable intransigence on the part of other participants at the federal or provincial level would be more likely to be recognized than a Quebec which did not itself act according to constitutional principles in the negotiation process*” (para. 103).

This prudence of the Court is understandable in light of the topic that I addressed earlier: the international community’s extreme reluctance to recognize unilateral secession. There are, unfortunately, many populations in the world who desire their independence to an almost unanimous degree, that are victims of unimaginable exactions by the States to which they belong, and yet do not succeed in obtaining international recognition as independent States.

And so we Quebeckers should not opt for secession by counting on international support exercised against the will of the Canadian State. Instead, we should count on the honesty of other Canadians. We should rely on the values of tolerance that we all share in Canada, and which would be essential to the conduct of those painful and difficult negotiations. And therein lies a contradiction of the secessionist project: since other Canadians are good and reasonable people, why should we want to separate from them?

In summary, secession is a perilous and difficult enterprise that ushers in “*a period of considerable upheaval and uncertainty*” (para. 96). There is every interest in resolving this matter within the general framework of the rule of law, conducting negotiations based on the principles that define a country, which in our case are: federalism, democracy, constitutionalism and the rule of law, and the protection of minorities. The trigger for such negotiations would be an expression of clear support for secession.

These are the simple principles set forth by our Supreme Court. Thanks to its 1998 opinion, these principles are being increasingly discussed, and sometimes even taken into account, by other countries and by the international community.

The Court's opinion is part and parcel of what can be called the Canadian approach. That approach consists of focusing, first of all, on the need to continuously improve a country of which all citizens can be proud, a democratic and prosperous country whose highly diversified populations develop and flourish with their own cultures and their own institutions, while working together toward common objectives.

If, in spite of this type of understanding that a federation such as Canada affords, a population should clearly express its desire to separate, then a negotiation on secession should be undertaken within the legal framework and with a concern for justice for all, no matter how numerous the difficulties inherent in such a negotiation.

This approach appears daring and liberal in the face of the internationally abhorred phenomenon of secession. It rejects the use of force, of any form of violence. It emphasizes clarity, legality, negotiation and justice for all. While it may appear idealistic to many nations, this is precisely because it seeks to address in an ideal manner situations of break-up which are always complex and delicate. I am convinced that it is going to contribute to peace and to enlightened State practice.

3. Scope and significance of the Supreme Court of Canada's opinion on secession in Canada today

But what about here at home? Given that Quebec's separatist leaders reject the opinion of the Supreme Court, and even more so the Clarity Act which gives it effect, are we to conclude that we are little further ahead than in 1995? That is the opinion of observers such as University of Ottawa professor Michael Behiels (*Ottawa Citizen*, September 3, 2010) and journalist William Johnson (*Globe and Mail*, October 30, 2010).

On the contrary, I believe that in Quebec and across Canada, we have taken giant steps toward a better understanding of the irresponsible and unrealistic character of an attempt at unilateral secession. However we must guard against any complacency and continue the debate.

I believe there is a growing realization in Quebec that an attempt at secession made without clear support and without the safeguard of a legal right would divide the Quebec population in a dangerous and unacceptable fashion. It has become clearer that a secessionist government acting outside the law would have no way to compel obedience and would confront the entire society with dangers that are unacceptable in a democracy. An attempt at the unilateral secession of Quebec from Canada would be an irresponsible act and would be perceived as such by the international community.

I believe there is a growing realization in Quebec, including in the sovereigntist movement, that the Parliament and Government of Canada could not, outside the law and without the clear support of Quebecers for secession, proceed with the break-up of Canada and put an end to their constitutional obligations toward almost a quarter of the country's population. In fact, such a break-up would require not only the consent but also the active involvement of the Government of Canada, if only for practical reasons.

Ways would have to be found to transfer tens of thousands of public servants from federal departments and Crown corporations to the Quebec public service, millions of tax returns, tons of laws and regulations... The break-up of a modern State like Canada could turn into an administrative nightmare. Obviously, such a huge operation could not happen without the assent and active participation of the Government of Canada.

But this level of participation by the Government of Canada would not be secured through a unilateral declaration of independence. On the contrary: not only would unilateral secession be without legal foundation, it would also be a practical impossibility.

Of course, the separatist leaders are not admitting that their belief in the legality of unilateral secession was wrong, that the questions asked in 1980 and 1995 were confusing, and that it would be irresponsible and unrealistic to attempt to secede without the support of a clear majority. But it was precisely because Mr. Bouchard's government engaged in a selective reading of the Supreme Court opinion, and did not consider itself bound by it, that Mr. Chrétien's government had the *Clarity Act* passed, obliging the Government of Canada to give effect to the Supreme Court's opinion. That Act requires the Government of Canada to negotiate secession only when there is clear support for secession. Negotiate if it is clear, and do not negotiate if it is not clear. No negotiation, no secession.

I am convinced that this clarification initiative has changed the separatist leaders' outlook on another referendum should the Parti Québécois return to power, even if they will not admit it.

For example, you will surely have noticed that no one is now talking about linking a question on secession with a possible political and economic association or partnership with Canada. That is a huge gain from the standpoint of clarity. Remember that in 1995 one elector in two, according to surveys, mistakenly believed that the conclusion of a partnership was a prerequisite for sovereignty.

Of course, the leaders of the Bloc and the Parti Québécois maintain that 50 percent plus one of votes cast in a referendum would be a clear majority, sufficient to give effect to secession. But it is doubtful whether they believe this themselves. As evidence, consider their internal debate on the appropriate time to hold a referendum. More and more of their voices can be heard defending the only responsible point of view: hold another referendum only when they have a reasonable assurance of clear victory.

Note that from a strictly partisan point of view, it would be preferable, for those of us who are Liberals, for the Parti Québécois to announce that a referendum would inevitably and immediately follow its election to government. That way, the Liberal Party of Quebec would have better chances of winning upcoming elections and continuing to form the government. But it is in the interest of Quebec society and of all Canadians that the voices of responsibility should carry the day, and that there be general agreement that a future referendum should be held only upon the assurance that a clear majority of Quebecers are in favour of secession.

It is encouraging, for example, that a noted separatist, Mr. Joseph Facal, has recently written that, for sovereignty to be possible, it would be necessary to have “[TRANSLATION] *a clear, stable and solid majority ... which will not vary quantitatively from week to week, as the mood dictates*”. “*The decision of whether to leave Canada is a solemn and serious decision*”, he goes on; “*we cannot take advantage of an inflamed climate to hold a rush referendum*”. What is more, “*the referendum timetable paralyzes the machinery of government on virtually all other issues. You cannot really govern and prepare a referendum at the same time. Anyone who has tried it will tell you so*” (“Le respect du peuple”, September 27, 2010, and: “Discours à l’Action Nationale,” October 29, 2010). One would hope for the same candour from Mr. Duceppe and Ms. Marois.

Similarly, the immense difficulties that the recognition of unilateral secession would cause are much better understood in Quebec today than they were in 1995. Naturally, the separatist leaders will not acknowledge that it would be totally unrealistic and contrary to State practice for such recognition to be obtained against the will of the Government of Canada. But even Mr. Jacques Parizeau has agreed that recognition would be far from guaranteed (*La Presse*, November 24, 2009). What a change from the assurance displayed in 1995!

In fact, the best way to measure the progress of the debate is to compare the Parizeau bill of 1995 (the Act *respecting the future of Québec* tabled by the government of Quebec in the National Assembly prior to the 1995 referendum) with the Facal bill of 2000 (the Act *respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State* which the government of Quebec passed in 2000 in response to the federal *Clarity Act*).

The Parizeau bill of 1995 clearly announced a unilateral secession. Its Clause 2 stated that the declaration of sovereignty contained in the Preamble would take effect and that Quebec would become independent on a date determined by National Assembly proclamation.

In comparison, the Bill of 2000 lists a series of principles which does not include external self-determination or the right to secede, according to what the sponsoring Minister of the Bill declared in the National Assembly: “[TRANSLATION] *there is no question of Clause 1 conferring a right to secession upon the Quebec people*” (statement by Minister Joseph Facal, May 30, 2000). Counsel for the Attorney General of Quebec repeated the same argument in order to convince the Quebec Superior Court of the constitutionality of this Bill: “[TRANSLATION] *There is nothing there either that would allow one to claim that this Bill takes on any semblance of an unilateral declaration of sovereignty*” (Henderson vs. Quebec, defendant’s oral plea, March 13, 2002, p. 63). They prudently argued that the motion was based on a factual vacuum, and for that reason did not require substantive examination¹. Such prudence contrasts with the above-cited pontifications by the Attorney General of Quebec before the Superior Court in April 1996, to the effect that Canadian law has no jurisdiction in matters of secession!

¹ The Court of Appeal rendered a ruling on August 30, 2007 declaring receivable the most important part of the motion for a declaratory judgment by appellant Keith Henderson.

Conclusion

Quebec's sovereignist movement has given itself a huge task: to convince us Quebeckers to make Quebec an independent country, and in order to do that, give up Canada, the country we have built with other Canadians and which is the envy of the world. Far from making secession less onerous, attempting to achieve this objective unilaterally would put it out of reach.

Whether one is for or against Quebec's secession, one has to admit that unilateral secession would be doomed to fail. It would be bad for everyone concerned. It would not lead to independence and it would be very disruptive for all.

And the reason is simple: a unilateral secession would have no legal foundation. It would contravene Canadian law and would have no legal standing in international law. In clarifying this point of law, the Supreme Court has done to everyone a great service.

It has also done us service by confirming that secession is possible within the legal framework. A separation agreement would have to be duly negotiated within the Canadian constitutional context, and on the basis of a clear expression of the will of Quebeckers to leave Canada in order to make Quebec an independent State.

The difficulties that the separatist leaders are having in convincing Quebeckers to clearly give up on Canada do not authorize them to resort to confusion to achieve that end. Clarity has virtues for everybody.

The break-up of a modern state such as Canada would be a very difficult goal to attain – and an unreachable one if pursued without clarity and outside the rule of law. This is a lesson of value for Canada, and certainly not for Canada only. It highlights the universal scope and significance of the opinion of the Supreme Court of Canada.



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