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Sound the Trumpets! Quebec is Shouting, “Victory!” Despite the Canadian Supreme Court’s Denial of Unilateral Secession

I. Introduction

What was it that tugged tourists away from their adventures and to the steps of the High Court of Canada?¹ It was a recent Canadian Supreme Court decision. As the Peace Tower chimed “O Canada,” the Court released its opinion holding that Quebec cannot secede unilaterally from Canada.² After decades of attempted secession, Quebec presented it to the Supreme Court. One might expect that the Quebecois³ would be hanging their heads after being denied again. This time, Quebec’s hunt for independence was rejected by the Supreme Court. Surprisingly, however, the citizens of Quebec claimed victory.⁴ The unfavorable decision only fueled the fire for independence.

Quebec’s excitement relies on a portion of the Court’s decision, which held that Quebec cannot secede unilaterally, or without the rest of Canada’s consent, but it may do so if it fulfills two requirements. Quebec must first obtain a clear majority vote from its citizens demanding secession. Second, it must participate in a detailed negotiation process with Canada.⁵ The jubilation shared by Quebecois regarding this decision, however, has left many of the majority English-speaking Canadians puzzled and even angry.⁶

1. Allan Thompson, *High Court Latest Tourist Attraction*, TORONTO STAR, Aug. 21, 1998.

2. *Id.* at 1.

3. The natives of Quebec are known as the “Quebecois.”

4. Rick Gibbons, *Seizing Victory from the Jaws of Defeat*, OTTAWA SUN, Aug. 25, 1998, at 13.

5. Reference re Secession of Quebec, No. 25506, 1998 Can. LEXIS 39, at 1. The Supreme Court of Canada numbered the paragraphs. Thus, the page numbers in this article refer to paragraphs.

6. Gibbons, *supra* note 4, at 13.

After years of fighting for independence, Quebecois and non-Quebecois are frustrated and tired.⁷ Nevertheless, despite numerous rejections it appears the Quebecois will continue to fight.⁸ The first part of this comment examines Quebec's prior attempts to maintain its identity, beginning as early as 1867. The second part studies the reasoning behind the recent Canadian Supreme Court's rejection of Quebec's unilateral session. The third part discusses Canada's reaction to this decision and whether Quebec will persevere. Finally, the fourth part will analyze whether Quebec should pursue secession or merely maintain the threat.

II. Evolution of Quebec's Fight to Secede

A. *Early History of Canada and the Constitutional Fight*

1. *The Constitutional Act of 1867.*—Quebec's concern for its distinct culture and independence began with the creation of the Constitutional Act of 1867 ("the Act").⁹ The Constitutional Act of 1867 developed the first quasi-independent dominion within the British Empire.¹⁰ The Act divided powers between the central government and various provinces, including Quebec.¹¹ Despite the Act's guarantees to help preserve Quebec's language, religion, and culture, the French-speaking Quebecois were troubled.¹² The year 1960 brought changes.¹³ Quebec became restless after the Quebec Liberal Party gained power demanding changes in favor of their independence.¹⁴ The desire for special status separating Quebec from other provinces and creating a dual nation became apparent in the early days of the Liberal Party.¹⁵ Their first victory came in 1969 when Canada officially became bilingual with the Official Languages Act.¹⁶ Their next achievement did not arrive for more than a decade.

7. *Opinions from Across Canada*, TORONTO STAR, Aug. 22, 1998.

8. Gibbons, *supra* note 4, at 13.

9. Susan Lavergne, *The Future of Canadian Federalism*, 23 GA. J. INT'L & COMP. L. 63 (1993), at 68.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Lavergne, *supra* note 9, at 69.

15. *Id.*

16. *Id.*

2. *The Constitutional Act of 1982*.—In the 1960s and 1970s, constitutional negotiations occasionally took place, but ultimately died because of the parties' "conflicting interests and agendas."¹⁷ A change took place in the early 1980s when newly elected Prime Minister Pierre Trudeau made constitutional concerns number one on his list of concerns.¹⁸ Trudeau's desire to reform the Constitution was so resolute that he was willing to proceed without provincial consensus.¹⁹

With Ottawa's support, Trudeau made adoption of a reformed Constitution and a Charter of Rights the centerpieces of his proposal.²⁰ Although this appeared to have broad popular support, Quebec was outraged.²¹ Quebec began the fight against what it believed to be a unilateral reform, even though Trudeau's actions were constitutional.²² In response to its concerns, Quebec developed alternative proposals.²³

Trudeau did not pay attention to these proposals and set off with his package to London.²⁴ Backed by the fury and desire for independence, Quebec released one of its proposals, and along with several other provinces sought the Supreme Court's opinion. Accordingly, the Supreme Court held that "substantial" provincial consent was required to make constitutional amendments, which Trudeau lacked.²⁵

Finally, on the night of November 24, 1981, the federal government and nine predominantly English-speaking provinces agreed on the Constitutional Act of 1982.²⁶ The act strengthened individual and minority rights and federal courts, and added amending formulas that would appeal to all Canadians.²⁷

17. R. KENT WEAVER, *THE COLLAPSE OF CANADA* 57 (1982).

18. *Id.*

19. *Id.*

20. *Id.* at 58. The proposal also eliminated the British Parliament's role in the amendment process. *Id.*

21. WEAVER, *supra* note 17, at 58.

22. *Id.* at 59. Quebec considered the constitutionality of unilateral actions as early as the 1980s.

23. *Id.*

24. *Id.* Trudeau was missing the agreement of eight provinces when he went to London. *Id.*

25. WEAVER, *supra* note 17, at 58. The Court noted that conventionally speaking its decision was not legally binding. *Id.* at 59. The Supreme Court later required a substantial consensus for unilateral secession.

26. *Id.*

27. *Id.* The "provincial qualities" were set forth in order to gain substantial provincial assent. *Id.*

Although the Constitutional Act of 1982 emphasized individual rights, Quebec was displeased that it had not been given any special rights.²⁸ Hence, Quebec challenged the constitutionality of the act but lost.²⁹ Hope arose, however, in 1985 when a new government came into power and promised to address Quebec's aspirations.³⁰

B. Quebec's Modern Attempts at Secession

1. *The Meech Lake Accord.*—Quebec's desires were addressed at the Meech Lake Accord ("the Accord") in April, 1987.³¹ The Meech Lake Accord mandated that Canada recognize five Quebecian claims of right.³² The first was "a constitutional recognition of Quebec's status as a 'distinct society'."³³ The second was "the constitutionalism of Quebec's preeminence in controlling immigration to the province."³⁴ The third addressed "restrictions on federal spending in areas of provincial jurisdiction."³⁵ The fourth mandated was "a Quebec veto over constitutional amendments involving changes to federal institutions, and an extension of Quebec's right to opt out with compensation from amendments transferring jurisdiction from the provinces to Ottawa."³⁶ The final claim sought "participation in naming some Supreme Court of Canada judges."³⁷ English-speaking Canada hoped that this accord would squelch Quebec's desire to secede.³⁸ The measures set forth in the Meech Lake Accord also responded to the grievances of other provinces.³⁹ Thus, Quebec's "province-specific demands" were generalized to all provinces.⁴⁰

28. WEAVER, *supra* note 17, at 59. Quebec did not receive its desired veto over most constitutional amendments. *Id.*

29. *Id.* at 60. Quebec argued that its approval was required on the basis of its status as the principal home of one of Canada's two linguistic groups. *Id.*

30. Lavergne, *supra* note 9, at 72.

31. *Id.* at 63.

32. WEAVER, *supra* note 17, at 60.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 61.

37. WEAVER, *supra* note 17, at 61.

38. Lavergne, *supra* note 9, at 65.

39. WEAVER, *supra* note 17, at 61. For example, the provision giving other provinces the authority to nominate people to try new Senate vacancies until comprehensive Senate reform could be initiated. *Id.*

40. *Id.*

The Accord had two notable features.⁴¹ First, it used many methods to guarantee freedoms, contrary to the single overall theme used in the 1982 Constitutional Act.⁴² Second, it utilized the new ratification method of the 1982 Constitutional Act, whereas the negotiation system remained the same.⁴³ This was the first test of the new ratification formula.⁴⁴ It required provincial unanimity in some areas, approval by provincial legislatures as well as premiers in other areas, and a three-year time limit for ratification.⁴⁵

Most Quebecers were confident that the Accord would be ratified.⁴⁶ The Prime Minister, all provincial premiers, and the leaders of the federal opposition parties approved it.⁴⁷ But criticism sprung from Pierre Trudeau, who believed that the Accord would lead to Canada's loss of control over the provinces and was a repeat of "preferential treatment" for Quebec.⁴⁸ English-speaking Canadians, as well as some aboriginal leaders, joined Trudeau in expressing their fear that their language rights would face further erosion.⁴⁹

As the three-year ratification period continued, opposition to the Meech Lake Accord grew steadily.⁵⁰ In the end, the provinces of Manitoba, New Brunswick, and Newfoundland had deep reservations about the Accord.⁵¹ Consequently, as the spring 1990 deadline approached, things looked dismal for Quebec and the Accord.⁵² Finally, after a final full week of negotiations in early June, the Meech Lake Accord expired.⁵³ Quebec felt that the entire country was attacking it. Therefore, Quebec's demands began to escalate well beyond the Meech Lake Accord's negotiations.⁵⁴

41. *Id.*

42. *Id.* A variety of mechanisms were used here. Additional power was delegated to provinces in controlling immigration and limited-government guarantees were strengthened by increasing hurdles to constitutional amendments and use of federal spending powers. WEAVER, *supra* note 17, at 61.

43. *Id.* at 62. It was to be ratified using executive federalism. *Id.*

44. *Id.*

45. *Id.*

46. WEAVER, *supra* note 17, at 62.

47. *Id.*

48. *Id.*

49. *Id.* at 63.

50. *Id.*

51. WEAVER, *supra* note 17, at 63.

52. *Id.*

53. *Id.*

54. *Id.*

2. *The Charlottetown Accord of 1992.*—For many English-speaking Canadians, the secessionist nightmare was over. Nevertheless, in 1992 Quebec managed to push its way into another accord, this time at Charlottetown.⁵⁵ Quebec not only wanted special recognition from the other provinces, but it also wanted to promote its own social and cultural development.⁵⁶ In July of 1992, a revised “distinct society” provision was set forth and negotiations began shortly thereafter.⁵⁷

Negotiations produced the Charlottetown Accord. It recognized Quebec as a society with its own distinct French character, gave Quebec more provincial membership in the Senate than other provinces, and recognized Quebec’s right to self-government.⁵⁸ This was only the third time since the formation of Canada in 1867 that a national referendum had been held, and it marked the first time that support for Canada as a whole was submitted to a nationwide electoral test.⁵⁹ On October 26, 1992, Canadian citizens made their way to the polls to determine Canada’s future, as Quebecers stood by in anticipation.⁶⁰

Many Canadians were relieved when the answer came; it was a resounding “No.”⁶¹ Six provinces, including Quebec, rejected the Accord.⁶² Quebec rejected the reforms by a margin of 55% to 42%.⁶³ English-speaking Canadians believed that too much was being surrendered to Quebec, while a large minority of Quebecers believed that they were not being given enough.⁶⁴ After two years of debate, the Quebec separatists were back to the drawing board.⁶⁵

55. *Id.* at 64.

56. WEAVER, *supra* note 17, at 64.

57. Lavergne, *supra* note 9, at 64.

58. *Id.* at 65.

59. *Canadian Voters Reject Reforms; Constitutional Plan’s Fall a Blow to Efforts to Preserve Unity*, STAR TRIBUNE, Oct. 27, 1992, at A1.

60. Lavergne, *supra* note 9, at 65.

61. *Id.*

62. Martin W.G. King, *Canada’s Prime Minister Faces Crisis after Referendum*, S.F. CHRON., Nov. 5, 1992, at A29.

63. *Canadian Voters Reject Reforms*, *supra* note 59, at A1.

64. Lavergne, *supra* note 9, at 65.

65. *Canadian Voters Reject Reforms*, *supra* note 59, at A1.

III. Reference re Secession of Quebec: The Supreme Court Says No

Since Quebec did not receive the Canadian government's support for secession, it sought the Supreme Court's permission to secede unilaterally.⁶⁶ This effort, however, proved futile. On August 21, 1998, the Supreme Court denied Quebec's right to secede both domestically and internationally.⁶⁷ The holding set forth several reasons for denial and it provided a guideline to follow for future secessionist efforts.⁶⁸

A. *Issue 1 Before the Supreme Court: Can Quebec Secede Unilaterally from Canada?*

The Canadian Supreme Court was presented with several questions concerning Quebec's secession.⁶⁹ The first issue was whether Quebec's government could effect secession from Canada unilaterally.⁷⁰ The Court held that Quebec needed a clear majority vote for secession within its boundaries and a negotiation process between two legitimate majorities - Quebec and the citizens of Canada.⁷¹

The Court defined "secession" as "the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, with a view to achieving statehood for a new territorial unit on the international plane."⁷² Although it has proven to be difficult, the Court held that secession requires a radical and extensive amendment to the Constitution.⁷³ The holding was based on the fact that the Canadian Constitution does not expressly authorize or prohibit a province's secession from

66. Reference re Secession of Quebec, 1998 Can. LEXIS 29, at 2.

67. *Id.*

68. *Id.*

69. *Id.* at 2.

70. *Id.* The Court adopted a domestic perspective to decide this issue. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 81.

71. *Id.* at 91.

72. *Id.* at 81. The Court noted that secession is typically "a territorial unit seeking to withdraw from the federation" in a federal state like Canada. *Id.*

73. *Id.* at 82. The Court was not persuaded by the argument that secession required more than an amendment because it would have a significant impact on Canada. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 82. Secession would alter the governance of Canadian territory in a way that would be inconsistent with Canada's current constitution. *Id.* Therefore, whether the changes would be drastic was irrelevant. *Id.*

Canada.⁷⁴ The Court held that if the Constitution is the expression of the sovereignty of the people of Canada, then it is within their power to change it.⁷⁵

The Court was asked only whether Quebec could secede unilaterally.⁷⁶ Therefore, the Court based its decision on the legality of the final act of unilateral secession.⁷⁷ “Unilaterally” was defined by the Court as “the right to effectuate secession without prior negotiations with the other provinces and the federal government.”⁷⁸ Quebecers felt that presenting the issue of unilateral secession to the Supreme Court was, perhaps, the only option they had left.

1. *First, A Referendum in Quebec Is Required.*—The Supreme Court rejected the notion of unilateral secession, but instructed Quebec on other methods of secession.⁷⁹ First, the Supreme Court declared that Quebec needed a referendum, because a clear expression of the people is needed on an issue of this magnitude.⁸⁰ A referendum provides a democratic method of obtaining the voters’ views on a political issue.⁸¹ Next, the Court stated that the referendum must be free of ambiguity in the question presented and the terms of its support.⁸² Then a clear majority must approve the referendum.⁸³ As defined by the Court, a “clear majority” is “a qualitative evaluation.”⁸⁴ According to the Court, if Quebec could clearly repudiate the existing Constitution, then it would confer legitimacy on its demands for secession.⁸⁵ Furthermore, it would place an obligation on the other provinces and the federal government to acknowledge and respect Quebec’s decision.⁸⁶

74. *Id.*

75. *Id.* at 83. The Court could not adopt a political position and answer the issue presented, but noted that the ultimate decision was that of the people. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 82.

76. *Id.* at 84.

77. *Id.*

78. *Id.* The Court decided that “unilateral” did not mean “a constitutional amendment initiated by a single actor” in the present case. *Id.* at 84.

79. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 2.

80. *Id.* at 85.

81. *Id.*

82. *Id.*

83. *Id.* at 85.

84. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 85.

85. *Id.* at 86.

86. *Id.* A clear expression that Quebec wants to pursue secession gives rise to a reciprocal obligation on the rest of Canada to negotiate constitutional changes. *Id.* at 86.

2. *Second, the Nation Must Negotiate.*—Canada's new obligation to acknowledge Quebec's desire to pursue secession requires the entire country to sit at the negotiating table and create some constitutional changes.⁸⁷ According to the Court, Quebec alone cannot invoke a right of self-determination and dictate the terms of a proposed secession to the other parties.⁸⁸ Negotiation is a necessity. If Quebec clearly expresses its desire to leave Canada, then the rest of Canada cannot ignore it.⁸⁹ The Court held that the other provinces in Canada cannot exercise their rights in such a way as to deny absolutely Quebec's rights, as long as Quebec exercises its rights while respecting them.⁹⁰ Only then may Quebec propose secession.⁹¹

Once the proposition is made, negotiations must begin.⁹² The Court warned the negotiators to keep an eye on the country's constitutional principles and to keep its citizens informed of all the actions taking place.⁹³ It added that negotiations may not lead to an agreement among the parties.⁹⁴ Based on past referendums, the Court noted that negotiations will be difficult.⁹⁵

Who is finally going to decide if Quebec will secede? Quebec was hoping that the Supreme Court would, but the Court disappointed Quebec. The Court declined to assume any role other than to simply identify the relevant aspects of the Constitution in the broadest sense possible.⁹⁶ They left the rest up to the politicians.⁹⁷ Only they have access to all of the relevant information

87. *Id.* at 89. A constitutional amendment is initiated by elected representatives of Canada. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 86. The corollary to this is the obligation to negotiate. *Id.*

88. *Id.*

89. *Id.* at 90.

90. *Id.* at 91. The Court told the parties that if Quebec can secede, then so can the other provinces. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 91.

91. *Id.* at 91.

92. *Id.* at 92.

93. *Id.*

94. *Id.* at 94.

95. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 95. The Court noted that a referendum inevitably would address a wide range of issues, including the question of the economic, political, and social integration across Canada. *Id.* at 94.

96. *Id.* at 98. The problems presented by a referendum would be resolved within the rule of law. *Id.*

97. *Id.* at 99. The Court maintained its constitutional obligation to restrain from a political position. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 96.

needed for the citizens to make the final decision.⁹⁸ The Court only required a negotiation.⁹⁹

The Court gave the Canadian government a little incentive to continuing seeking independence. It held that if the government fails to undertake negotiations and pursue them according to constitutional principles, the government's legitimacy may be undermined.¹⁰⁰ Canada's legitimacy is, after all, a precondition for acceptance in the international community.¹⁰¹

In sum, Quebec cannot secede from Canada unilaterally. It could only secede after obtaining a clear majority vote in Quebec and after participating in a negotiation process with the hostile provinces in Canada.¹⁰² Thus, the fight is not over. In fact, it may only be getting underway. If Quebec follows the constitutional guidelines given by the Canadian Supreme Court, Quebec's chances of being recognized by the international community are greater.

B. Second Issue Before the Supreme Court: Will International Law Give Quebec the Right to Secede?

In the event that the first question was denied, Quebec posed a second question to the Canadian Supreme Court.¹⁰³ The next issue was whether international law would give a right to self-determination that would give Quebec the right to secede.¹⁰⁴ Again, the Court's answer was no.¹⁰⁵ It may be presumptuous for Quebec to believe that the international community would accept it after the secession effort has been denied by Canada, which has long been its global friend.

98. *Id.* at 96.

99. *Id.* at 95.

100. *Id.* at 101.

101. *Id.* If Quebec follows constitutional principles while seceding, then it is more likely to be recognized by the international community. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 101.

102. *Id.*

103. *Id.* A third question was also posed to the Court as to whether domestic or international law would prevail in the event of a conflict. *Id.* The Court did not believe it necessary to answer this question because, based on its answers to the first two issues, it saw no conflict. *Id.* at 101.

104. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 2. The Court adopted international law as the relevant standard to decide the second issue. *Id.* at 81.

105. *Id.* The Court's denial of the right to secede under international law applies to all provinces in Canada. *Id.* at 107.

The Court held that international law does grant self-determination to "peoples," or a group seeking self-determination.¹⁰⁶ In 1995, the UN General Assembly declared that people would be given the right to self-determination and secession if they meet one of three conditions.¹⁰⁷ First, a colonial empire must govern them.¹⁰⁸ Second, the people must have been subjected to alien subjugation, domination, or exploitation.¹⁰⁹ Third, they will be given the right to secede only if they have been denied in any meaningful exercise of the right to self-determination.¹¹⁰

The Court was quick to hold that the first condition was irrelevant.¹¹¹ Quebec was not governed by a colonial empire.¹¹² The second was equally inapplicable because Quebecers have not been the victims of attacks on Quebec's physical presence or its integrity, or subjected to alien domination.¹¹³ In fact, for the last fifty years, the Canadian Prime Minister has come from Quebec.¹¹⁴ In addition, Quebecers have had the opportunity to hold all the most important positions in the federal Cabinet, and from 1988 until 1996 the Prime Minister and Leader of the Official Opposition in the House of Commons were both from Quebec.¹¹⁵ At the present time, the Prime Minister of Canada, the Right Honorable Chief Justice and two other members of the Court, and the Deputy Secretary-General of the UN are natives of Que-

106. *Id.* at 120. The right of self-determination takes into account the particular situation of the people seeking recognition. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 120. The right does not encourage any action that would dismember a government that represents the whole people belonging to it. *Id.* at 120.

107. *Id.* The UN General Assembly adopted this rule regarding the right of self-determination in its Declaration on the Occasion of the Fifteenth Anniversary of the United Nations, GA Res. 50/6, 9 November 1995. *Id.* at 117. The Court described two types of self-determination, recognized by the international community. *Id.* The first was internal self-determination, "a people's pursuit of its political, economic, social and cultural development within the framework of an existing state." Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 117. The second type was external self-determination, "the establishment of a sovereign and independent state, the free association or integration with an independent state or emergence into any other political status freely determined by a people." *Id.* Only when the former is denied, will the latter be accepted. *Id.*

108. *Id.*

109. *Id.*

110. Reference re Secession of Quebec, 1998 Can. LEXIS 39, 117.

111. *Id.* at 124.

112. *Id.*

113. *Id.* at 132.

114. *Id.*

115. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 132.

bec.¹¹⁶ These lofty achievements of Quebecers prove that they have been successful in gaining control throughout Canada.¹¹⁷

Furthermore, according to the UN's Final Act of the Conference on Security and Co-operation in Europe, a state may maintain its territorial power if that state represents its entire people equally, and respects the principles of self-determination.¹¹⁸ Thus, Quebec did not meet the second condition for international community recognition.

Similarly, the Supreme Court easily dispatched the third condition. The citizens of Quebec can freely make political choices and pursue their own self-development within the borders of Quebec, Canada, and the rest of the world.¹¹⁹ Thus, Quebec could not receive the right to self-determination and secession because it could not meet any of the three conditions.¹²⁰ According to the Court, the foregoing demonstrates that Quebec does not have an international right to secede.¹²¹

In conclusion, the Canadian Supreme Court held that Canadian law does not permit Quebec's unilateral secession. And international law does not give Quebec the right to self-determination, which would give it the right to secede.¹²² The question that remains, however, is whether or not Quebec will continue to pursue secession. While some English-Canadians would like to waive good-bye to Quebec, others may not be so willing.

IV. Quebec's Reaction Following the Supreme Court Decision

A. *Quebec's Victory Cry*

One headline read, "The Supreme Court Decision Seemed Simple Enough: Quebec Does Not Have the Right to Declare Unilateral Independence."¹²³ Some said that it was the Supreme Court's toughest test ever because politicians asked it to rule on the

116. *Id.*

117. *Id.*

118. *Id.* at 118.

119. *Id.* at 133.

120. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 120.

121. *Id.*

122. *Id.* at 152.

123. *Quebec Can't Go It Alone . . . But on a Clear Referendum Question, With a Clear "Yes" Majority, the Rest of Canada Must Negotiate Terms of a Split*, THE OTTAWA SUN, Aug. 21, 1998.

future of Canada.¹²⁴ One author believed the Court passed with flying colors.¹²⁵ The majority of the country, however, is not as certain. After studying the reactions of Canadian citizens, the Supreme Court's decision does not seem to be clear in its rejection of Quebec's secession.

The decision could have been a humbling, perhaps even irreversible, setback for Quebecois separatists.¹²⁶ The result, however, was quite to the contrary. Quebec Premier Lucien Bouchard quickly spun it into a triumph for Quebec, asserting that Canada is now obligated to negotiate Quebec's secession in good faith.¹²⁷

One journalist believed that those in support of Quebec's separation from Canada did a brilliant job with the Supreme Court's decision.¹²⁸ Perhaps this was made easier by the court's rambling on about what constitutes a majority and its description of Canada's obligation to negotiate if a "Yes vote" occurs.¹²⁹ The Court may have done nothing more than ensure more litigation.¹³⁰

The separatists claim that the Canadian government shot itself in the foot by going to the Supreme Court with the question of secession.¹³¹ Some refer to it as "l'arroseur arrose," referring to someone who uses a hose to try to spray water on someone else but ends of spraying it on himself.¹³² The separatists' excitement arises out of the notion that one of the biggest obstacles in persuading hesitant nationalists to follow them has been removed.¹³³

Some Quebecers, however, harbored certain fears concerning sovereignty.¹³⁴ They thought that the rest of Canada would not negotiate with them.¹³⁵ Now that Canada cannot attempt to scare

124. Ray Martin, *Supreme Wisdom in Decision*, EDMONTON SUN, Aug. 26, 1998, at 11.

125. *Id.*

126. Gibbons, *supra* note 4, at 13.

127. *Id.*

128. Rafe Mair, *PQ and BQ Turn Attention to the Entrails, Not the Chicken: Chretien and Dion Rise to the Bait*, FIN. POST, Sept. 4, 1998, at 13.

129. *Id.*

130. *Id.*

131. Robert McKenzie, *PQ Leaders Cheer Death of Federal Hard Line*, TORONTO STAR, Aug. 21, 1998.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

Quebecers by saying that they will refuse to deal with them, what will these apprehensive Quebecers do? Will they join the fight for independence or will they remain hidden behind their fears?

Some Canadians believe that Quebecers may now feel safer to vote because a "Yes" vote could result in a better deal for them and not necessarily independence.¹³⁶ Is that what Quebec really wants? Do they simply want a better deal or are they looking for more? Even Prime Minister Jean Chretien acknowledged that Canada will not hold Quebec against its clearly expressed will.¹³⁷ The Court has told them that if the country breaks up, it must be handled democratically and peacefully.¹³⁸

Chief Justice Antonio Lamer expressed his frustration upon hearing Quebec's reaction to the opinion.¹³⁹ He feels that his words have been misinterpreted, but he questions whether he should correct the country's interpretation of his opinion.¹⁴⁰ The justices of the Canadian Supreme Court have traditionally refused to comment on their decisions, but there have been times when they wanted to correct the country's interpretation of them.¹⁴¹ He kept his comments general when he explained, "Quebec cannot legally secede without some sort of consent from the rest of the country."¹⁴² Conversely, the people adverse to Quebec's secession have adopted an interpretation of the Court's opinion similar to that of Chief Justice Lamer's.

Prime Minister Chretien urged Bouchard to read the whole opinion and not just the parts he likes.¹⁴³ Immediately following the decision, Justice Minister Ann McLellan and Stephane Dion were dispatched to the media where they asked Bouchard to promise never to attempt a unilateral secession.¹⁴⁴ Perhaps Chretien's actions were a bit harsh, but they expressed the general consensus of secessionist critics.

It appears that the majority of Canada was aghast at Quebec's jubilation over the Court's opinion. And many Canadians have

136. Rosemary Speirs, *Plan B Backfires and Moves Talks about the Constitution Off Chretien's Back Burner*, TORONTO STAR, Aug. 22, 1998, at B1.

137. *Id.*

138. *Id.*

139. Edison Stewart, *Judge Wonders How to Right Twisted Rulings. Should He Speak Out When Wrong Interpretations Are Made?*, TORONTO STAR, Aug. 24, 1998, at A1.

140. *Id.*

141. *Id.*

142. *Id.*

143. Speirs, *supra* note 136, at B1.

144. *Id.*

attacked Bouchard and his ideas. Specifically, one journalist criticized Bouchard for not distinguishing between a simple majority and the "clear majority," which the Supreme Court set as a minimum benchmark.¹⁴⁵ The same journalist accused Bouchard of believing that any majority is a clear majority.¹⁴⁶ The message is clear. The Supreme Court has muddied the waters just enough for Bouchard to establish his own interpretation.¹⁴⁷

Several opinions from across Canada demonstrate Canadians' contrasting views on the decision.¹⁴⁸ On one hand, the Halifax Chronicle-Herald stated that neither side can claim a victory because the decision merely provided the nation with guidance.¹⁴⁹ On the other hand, the Calgary Herald believed said that the Court treated the sincere political convictions of Quebec separatists with respect, without compromising the equally legitimate stance of the federal government in any way.¹⁵⁰

Other Canadians, however, are angry over Quebec's desire to secede. The Moncton Times and Transcript said that, "Quebec can't just walk away from the rest of us," at least not without a series of intense, far-ranging negotiations.¹⁵¹ They recognized that Canada can still say "No" to secession, but it must negotiate first.¹⁵²

Aside from those Canadians who believe that the Court's decision was unclear, others think that it provided useful guidelines.¹⁵³ The Windsor Star noted that the judgment gave Ottawa a blueprint to begin preparing for the next referendum.¹⁵⁴ One citizen claimed that the Supreme Court wrote Bouchard's "clear question" for him: "Do you give the government a mandate to negotiate Quebec sovereignty?"¹⁵⁵ Perhaps this will be the next referendum question.

The Vancouver Sun made a surprising interpretation of the Court's opinion.¹⁵⁶ The Sun believed that the decision provided clarity by applying common sense and lessons of Canadian history

145. Gibbons, *supra* note 4, at 13.

146. *Id.*

147. *Id.*

148. *Opinions from Across Canada, supra* note 7.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Opinions from Across Canada, supra* note 7.

154. *Id.*

155. Speirs, *supra* note 136.

156. *Opinions from Across Canada, supra* note 7.

to the questions.¹⁵⁷ It took comfort in the degree of difficulty laid out by the court in determining the steps for secession.¹⁵⁸

The Nanaimo Daily News recognized that there remains nothing the rest of Canada could do to keep Quebec in the Confederation.¹⁵⁹ The Nanaimo Daily News is not ready to back down yet. "To keep Canada together from sea to sea, we are going to need real legal, economic, political, and military clout."¹⁶⁰ Will English-speaking Canada, indeed, resort to violence resulting in a Canadian civil war? It will be interesting to see what happens as Quebec tries yet again for independence. What will Canada do in the meantime?

Some fear that Quebec will continue to determine the content of the next referendum and the result will be disastrous.¹⁶¹ Therefore, some anti-secessionist Liberals feel they must take action. First, Quebec must gain two-thirds of Quebecers' support to offer the question of secession to the rest of Canada.¹⁶² Second, the secession question must make it clear that Quebecers have to choose between Canada and an independent Quebec, in order to have a fair referendum question.¹⁶³ Finally, it must be made evident that the federalists will not recognize the results of, or participate in, any referendum that fails to meet these terms.¹⁶⁴ If these conditions are not met, uproar could occur throughout Canada.¹⁶⁵ Canada will not give up without a fight.¹⁶⁶

In November, 1997, a poll was taken concerning whether Quebec would attempt secession after the results of the Supreme Court were published.¹⁶⁷ More than two-thirds of Canadians outside Quebec believed that the court case, and related hard-line efforts, made it more likely that Canada would remain united.¹⁶⁸ The government was aiming for two things.¹⁶⁹ First, Prime Minister Chretien wanted to eliminate any confusion over what

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. Gibbons, *supra* note 4, at 13.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. Gibbons, *supra* note 4, at 13.

167. Bruce Wallace and Mary Janigan, *Moment of Decision*, MACLEAN'S, Aug. 24, 1998, at 12.

168. *Id.*

169. *Id.*

constituted a mandate to leave the federation.¹⁷⁰ Second, Chretien wanted to show that Canadian and international laws applied to secession, in order to let those Quebecers wary of secession know that separation would not be painless.¹⁷¹

As a result of the recent Supreme Court decision, the country has been left more confused as to whether Quebec may secede from Canada. The unconstitutionality of unilateral secession is the only certainty now.¹⁷² And this has not quelled Quebec's secessionist desires. Now Quebec believes that it has the Court's permission to secede by simply negotiating.¹⁷³ The negotiations, however, may prove to far from.

Chretien noted that any negotiations would be complex for a number of reasons.¹⁷⁴ First, the personal rights of minorities, aboriginals, and Canadians outside Quebec must be taken into account.¹⁷⁵ Second, the issue of whether Quebec's existing boundaries would remain intact exists.¹⁷⁶ One thing for Quebec to keep in mind throughout the negotiation process is that "Canada is not just ten provinces, it's one country."¹⁷⁷

As one author inquired, "Will [Quebec] draw back from the dangers in [its] strategy of clarifying the rules of breakup now that the Supreme Court's ruling turned out to be a double-edged sword?"¹⁷⁸

As one Canadian said, "It's sad that it had to go to court, that we're even discussing the fact that [Quebec] want[s] to leave our country."¹⁷⁹ Although other Canadians may share his sentiment, Quebec can continue to fight. Bouchard is calling the decision a "tremendous boost to separation because Quebecers know that if they vote 'Yes,' the rest of the country must negotiate."¹⁸⁰ Now that separatist Lucien Bouchard has been re-elected as Quebec's leader, will Quebec pursue secession or simply threaten it?

170. *Id.*

171. *Id.*

172. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 126.

173. Stewart, *supra* note 139, at A1.

174. *Id.*

175. *Id.*

176. *Id.*

177. Thompson, *supra* note 1.

178. Speirs, *supra* note 142, at B1.

179. Thompson, *supra* note 1.

180. Stewart, *supra* note 145, at A1.

B. Quebec's Future in the Hands of Separatist Lucien Bouchard

On November 30, 1998, separatist Lucien Bouchard once again won the seat as Quebec's premier.¹⁸¹ Liberal leader Charest and Canadian Prime Minister Chretien both thought that their best chance of stopping Bouchard and avoiding the creation of a third referendum was a Liberal victory in Quebec's provincial election.¹⁸² Not only did they lose the election, but they also may be forced to wait in anticipation of another referendum.

Prior to the election, in the hope of stopping Bouchard, Charest and Chretien adopted a plan of silence.¹⁸³ Everyone was trying to keep silent about the Supreme Court ruling with the approaching election, with the expectation that Bouchard would forget about it.¹⁸⁴ However, that approach did not work. Less than one month before the election, Bouchard reminded Canada that independence would be the best solution for Quebec.¹⁸⁵

The rest of Canada, which is commonly referred to as Ottawa, also had plans to keep Quebec from leaving Canada.¹⁸⁶ Ottawa considered following up the Supreme Court ruling with a political strategy that would define a fair referendum question and what kind of a majority was needed to force negotiations.¹⁸⁷ It abandoned this idea fearing that it would hurt Charest's chance to oust Bouchard from office.¹⁸⁸

Some Canadians feel that Ottawa may try to prevent Canada's approval of secession by setting out some guidelines.¹⁸⁹ Those guidelines could include the share of the national debt Quebec would assume, the requirements for Canadian citizenship, and the

181. Douglas Fisher, *A Little Room to Breathe, Lucien Bouchard's Failure to Secure a Decisive Victory May Put Confederation Out of Danger for Now, But It Will Not Stop the Separatists' Campaign to Unravel Federalism One Stitch at a Time*, OTTAWA SUN, Dec. 2, 1998, at 14.

182. Speirs, *supra* note 142, at B1.

183. Janice Tibbets, *Court Ruling on Quebec Now Too Hot to Handle*, LONDON FREE PRESS, Oct. 19, 1998, at A6.

184. *Id.*

185. Nelson Wyatt, *Charest Mocks Bouchard on Social Union*, THE LONDON FREE PRESS, Nov. 6, 1998, at A7.

186. Tibbets, *supra* note 183, at A6. A poll conducted September 17 through 24, 1998, showed that the Supreme Court decision would make it harder for Quebec to become independent. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

rights of aboriginal people.¹⁹⁰ Another possibility is a federal referendum.¹⁹¹

If these plans fail to stop Bouchard from attempting secession, then Canada needs to discuss its next plan of attack.¹⁹² The first discussion needs to concern the form of a fair referendum question for secession.¹⁹³ Then Canada must discuss the amount of post-secession sharing of the same monetary unit and the same citizenship or joint-citizenship.¹⁹⁴ Quebec's land mass and the cost of resettling the rest of Canada must also be discussed.¹⁹⁵ Now that Bouchard has won Quebec's election, these issues may become very important. Prior to the election, Canadians were unsure how Bouchard would proceed.

One pre-election bet was that if Bouchard was re-elected by forty-eight percent or higher, it was likely that a referendum on secession would be held within eighteen months and Chretien would be pressured to step aside as Prime Minister.¹⁹⁶ Another bet made by the federal government's unity minister was that a referendum would come within months of the election.¹⁹⁷ Only Bouchard knows when the next referendum will come because he has the authority to hold a referendum at any time.¹⁹⁸

Bouchard has said, however, that he will wait for a "winning condition" before calling for another referendum.¹⁹⁹ Although Bouchard never exactly defined a winning condition, he did say that if Quebec's economy were stronger, Quebec would have more confidence to become a sovereign country.²⁰⁰ A stronger economy would include a continued drop in unemployment, more young people finding work, and the demolition of Quebec's spending

190. Edison Stewart, *To Forecast the Future, Check the Numbers*, TORONTO STAR, Nov. 28, 1998.

191. *Id.*

192. Fisher, *supra* note 181.

193. *Id.*

194. *Id.*

195. *Id.*

196. Stewart, *supra* note 190.

197. Edison Stewart, *PQ Could Act Soon After Vote - Dion*, TORONTO STAR, Nov. 19, 1998.

198. *Id.*

199. Stewart, *supra* note 197. Some fear that Bouchard will propose a two-step referendum process by first getting a mandate to negotiate secession, but promise nothing would happen until voters approved in a second referendum. *Id.* The idea of a first referendum is seen as a means of strengthening Quebec's bargaining position. *Id.*

200. Sandro Contenta, *Bouchard Praises PM's 'Combative' Capacities*, TORONTO STAR, Nov. 24, 1998.

deficit by spring.²⁰¹ Bouchard believes that when this occurs, Quebec will have the confidence to secede.²⁰²

Some predicted that the day after the election a debate would begin over what exactly constitutes a clear question, a clear majority, and Quebec's borders.²⁰³ Bouchard claims that his sole interest is to fight for the rights of Quebec, whether it takes secession or not.²⁰⁴ But he has not chosen to discuss the particulars of secession since the election.²⁰⁵ Perhaps it is because Bouchard only carried forty-three percent of the seats in Quebec.²⁰⁶ Or maybe Bouchard has not begun creating a referendum because a poll taken at the election showed that seventy-five percent of Quebecers did not want another referendum.²⁰⁷ Others believe that the threat of a Quebecois separation has ended for the foreseeable future.²⁰⁸

Some Canadians believe that the threat of secession has finally been revealed for what it truly is – “pure politics.”²⁰⁹ One Canadian journalist stated that the threat was real in the early 1970s, but now it is simply a bargaining tool.²¹⁰ In order for the tool to be useful, however, the rest of Canada has to think that the threat is real.²¹¹ But does the threat hold any legitimacy today?

Quebec would like to severely restrict the large province's power to create a new health care system and establish other social programs or change existing ones without Quebec's consent.²¹² Quebec also wants the right to withdraw from any new or modified Canadian social programs.²¹³ And it wants to receive full federal compensation in order to create its own program.²¹⁴ Independent

201. *Id.*

202. *Id.*

203. Stewart, *supra* note 197.

204. *Quebecers Vote to Play With Fire*, LONDON FREE PRESS, Dec. 1, 1998, at A10.

205. Hartley Stewart, *Bargaining Tool No Longer Useful; Separatist Threat Exposed for What It Really Is*, CALGARY SUN, Dec. 7, 1998, at 15.

206. Fisher, *supra* note 181.

207. *Id.*

208. Stewart, *supra* note 205.

209. *Id.*

210. *Id.*

211. *Id.*

212. Stewart, *supra* note 190.

213. *Id.*

214. *Id.* In addition to using funds to create its own program, Quebec would like to spend the money in the same priority area. *Id.*

advisory panels to help settle disputes regarding social programs are also an item on Quebec's wishlist.²¹⁵

Despite the polls, Quebecers gave Bouchard a strong mandate to separate by re-electing him.²¹⁶ But they are gambling by hoping that Bouchard will not take the secession route.²¹⁷ Moreover, Quebec also gave Bouchard the authority to wield the threat of secession whenever talks with the federal government get too tough.²¹⁸ By getting elected, he obtained the power to create the winning conditions.²¹⁹

In further support of Bouchard's desire to use secession as a threat, he said that Quebec would accept a constitutional amendment giving provinces the right to opt out of social programs with full compensation.²²⁰ If a referendum is held, Bouchard declared that it would only be held on secession.²²¹ It will not be on a specific constitutional amendment.²²² Bouchard is looking for fifty-one percent to win the referendum, although he claimed that he would like to have more.²²³

Although some English-speaking Quebecers cry out against secession efforts,²²⁴ Bouchard continues to fight for Quebec's independence. English-speaking Quebecers have tried to dissuade the rest of Quebec from pursuing secession with their ballots, checkbooks, and voices, but they are losing steam.²²⁵ It appears that they are giving up because they are being ignored by French-speaking Quebecers and thrown out of Quebec's mainstream.²²⁶

Justice Minister Stephane Dion agrees with those English-speaking Quebecers against secession.²²⁷ In a letter to Bouchard dated April 9, 1999, Dion gave Bouchard two suggestions concerning his secession efforts.²²⁸ The first and preferred suggestion was that Bouchard forget his plans for another referendum, which

215. *Id.*

216. *Quebecers Vote to Play With Fire*, *supra* note 204.

217. *Id.*

218. *Id.*

219. *Quebec's Three Emerging Solitudes*, TORONTO STAR, Dec. 3, 1998.

220. Wyatt, *supra* note 185.

221. Contenta, *supra* note 200.

222. *Id.*

223. *Id.*

224. Chantal Hebert, *Tide Turns against Hard-line Anglos*, TORONTO STAR, May 14, 1999.

225. *Id.*

226. *Id.*

227. *Minister Dion Responds to Mr. Lucien Bouchard's Comments Concerning the Majority Required for Secession*, CAN. NEWS WIRE LTD., Apr. 9, 1999.

228. *Id.*

would divide and weaken Quebec.²²⁹ Instead, Dion told Bouchard to focus on working together with the other provinces to ensure prosperity and social progress for Canada.²³⁰ The second suggestion was to respect the Supreme Court decision and its requirements for clarity regarding a majority.²³¹

Bouchard, however, has yet to waiver under the pressure to abandon secession efforts. On June 7, 1999, Bouchard announced his impatience to hold another referendum on Quebec sovereignty.²³² The launching pad for the referendum is set for May, 2000, at the next full-scale Parti Quebecois convention.²³³ Bouchard declared that the referendum is a question of identity.²³⁴ Quebec began securing its own identity by managing with its own money for the first time in 40 years.²³⁵ In addition to being able to support itself, Quebec would save the \$30 billion a year that it sends to Ottawa.²³⁶

Quebec already is preparing for the next Quebecois convention.²³⁷ In February, 1999, groups began seeking advice on a range of secession issues such as Quebec's international role, a partnership between a sovereign Quebec and Canada, citizenship and democracy, and defending Quebec's interests in the House of Commons.²³⁸ The groups' findings will be the focus of discussions at the 2000 convention.²³⁹

As seen throughout this discussion, the reactions to the Canadian Supreme Court decision have been mixed. At the outset, both sides were claiming victory, although most were puzzled by Quebec's jubilation. Now will Quebec pursue secession or simply threaten it?

V. Analysis

Now that secession is possible by meeting the two conditions described by the Supreme Court, will Quebec try to secede from

229. *Id.*

230. *Id.*

231. *Id.*

232. Robert McKenzie, *PQ 'Impatient' for Referendum on Sovereignty for Quebec*, TORONTO STAR, June 7, 1999.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. Jennifer Ditchburn, CP, *Bloc Going Back to Roots for Renewal*, LONDON FREE PRESS, Feb. 11, 1999, at E10.

238. *Id.*

239. *Id.*

the rest of Canada? Why should Quebec go to the trouble of presenting the Court with the secession issue if it simply can use secession as a threat to seek leverage? The most prudent plan for Quebec is to continue threatening secession until the threat is seen as just that. Then when the economy is strong enough and Quebecers see that they are not getting the special privileges they have been seeking for over two hundred years, they should secede.

Quebec has wanted its own unique provincial recognition since the Constitutional Act of 1867.²⁴⁰ Canada has rejected Quebec's desire for special recognition for the last century. This time, the Supreme Court told Quebec that it could not secede unilaterally. Although separatists claimed victory after this decision, maybe they are getting tired of getting rejected. It may be in Canada's best interest to take Quebec's threats seriously, because Quebec may be close to its breaking point.

Quebec cannot be blamed for wanting to celebrate its own culture without Canada controlling its every move. Since Canada was formed, Quebec has sought independence, but has not been strong enough to attempt it. If ever a good time existed or independence, it may be now because separatist leader Bouchard will make every effort to build Quebec's strength for secession. Therefore, Quebec should take advantage of this position and attempt secession.

According to the polls, the majority of Quebecers do not want to take this chance.²⁴¹ Nevertheless, they re-elected Bouchard knowing his strong stance on secession. Perhaps they would like their independence, but fear what might happen if they fail.

Bouchard may be correct. Perhaps once the economy becomes stronger, Quebecers will be ready to admit they want to secede.²⁴² It may come sooner than later with Bouchard in office pushing for it. Until Quebecers are prepared to draw up another referendum, however, Bouchard should not hesitate to use secession as leverage to opt out of the programs that Quebec does not like.

Bouchard said that Quebec would accept a constitutional amendment that would allow it to opt out of social programs and receive full compensation.²⁴³ Of course, Quebec would like to have this opportunity, but will Canada give Quebec the chance? Quebec's only hope is that Canada will fear its secession and bend

240. Lavergne, *supra* note 8, at 68.

241. Fisher, *supra* note 181.

242. Contenta, *supra* note 200.

243. Wyatt, *supra* note 185.

to Quebec's demands. At this point, secession may only be a threat, but Canada cannot be sure when it will become serious. Several journalists feel that it may not be a joke. Canada may want to think twice before denying Quebec the right to opt out of some programs. If Canada does not, it may lose Quebec and its economic support.

Quebec would not have gone to the trouble of presenting the issue of unilateral secession to the Supreme Court if it was not serious. It would have been a considerable waste of resources if Quebec were not interested in the outcome. If the Supreme Court had held that Quebec could, in fact, unilaterally secede, Quebec would probably have left Canada already. Now Quebec has some obstacles to overcome if it wants to secede.

First, Quebec must obtain a clear majority vote within Quebec to secede.²⁴⁴ Bouchard believes that fifty-one percent will be sufficient, but he does not have that support yet.²⁴⁵ The support may come in just a matter of months. If Quebec is unhappy and is strong enough to survive on its own, obtaining a clear majority will be easy. The second step may be more difficult.

The second obstacle is negotiating with Canada.²⁴⁶ It will be challenging getting the rest of Canada to let Quebec go. On the other hand, Canada may be too tired and frustrated to intercede. With the majority of Quebec desiring independence, it may be hard for Canada to say "No." It depends on how Canada is feeling at the time of negotiations. Quebec is a large part of their country, but surely Canada would be able to survive without it.

Canada is concerned that its access to the U.S. market and the economic advantages that comes with it will be threatened if Quebec secedes.²⁴⁷ The U.S. is Canada's biggest trading partner and last year they traded \$564 billion in goods and services.²⁴⁸ Without a united Canada, Minister Dion's fear is that it will lose its bargaining clout internationally.²⁴⁹ In an attempt to frighten Quebec, Dion points out that Quebec would not automatically have access to NATO.²⁵⁰ While this may be Canada's concern, a Canada minus Quebec would surely have more power in the

244. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 85.

245. Contenta, *supra* note 200.

246. Reference re Secession of Quebec, 1998 Can. LEXIS 39, at 86.

247. *The Honourable Stephane Dion States that Market Globalization Is Another Argument in Favour of a United Canada*, CAN. NEWS WIRE LTD., Mar. 30, 1999.

248. *Id.*

249. *Id.*

250. *Id.*

international trading arena than an independent Quebec. Canada may lose the \$30 billion a year that it receives from Quebec, but it would not have the disadvantage Quebec has by entering the international world on its own. Quebec, however, is in the position to be selfish because it can support itself economically. If Quebec is going to go beyond threatening secession, now is the time to do it. It is Quebec's choice to venture out into the international world.

When it comes time for Quebec to draw up a referendum, what will it include? Whatever it includes, Quebec should take care to present a clear issue of secession so as not to confuse Canada. It will be interesting to see how Quebec decides to word it.

Bouchard may simply be using the threat of secession to opt out of programs he does not want Quebec to participate in, or he may be serious about tearing free from Canada. Either way, Bouchard and Quebec should be claiming victory because the Canadian Supreme Court set forth steps that could lead to Quebec's independence. Now is Quebec's opportunity to attempt secession and freedom.

VI. Conclusion

A recent Supreme Court decision tugged tourists away from their adventures on August 21, 1998. The Court held that Quebec could not secede unilaterally from Canada. Despite the Court's denial, Quebec was shouting, "Victory!" Quebec may not be permitted to secede unilaterally, but it may attempt secession after fulfilling two requirements. First, Quebec must obtain a clear majority vote from its citizens demanding secession. Second, Quebec must participate in a detailed negotiation process with Canada. After decades of fighting for independence, Quebec finally has some hope.

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