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## No Success in Secession: 135 Years Ago the United States of America Experienced Civil War, Now Canada Grapples With the Possible Secession of Quebec

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## NO SUCCESS IN SECESSION: 135 YEARS AGO THE UNITED STATES OF AMERICA EXPERIENCED CIVIL WAR, NOW CANADA GRAPPLES WITH THE POSSIBLE SECESSION OF QUEBEC

### I. INTRODUCTION

From 1861 through 1865, the northern and southern states of the newly formed United States were engaged in a Civil War.<sup>1</sup> The victory of the northern states denied the Southern Confederacy the opportunity to secede from the Union. The American Civil War was a victory for the supremacy of the Constitution and nationalism.<sup>2</sup> The next 135 years witnessed the United States defining its place as the most influential global nation.<sup>3</sup> Secession by the Southern Confederacy would have resulted in a different United States than we know today.<sup>4</sup>

Now the northern boundary of the United States is confronted by a possible secession. The predominately French speaking people of Quebec want to secede from Canada and form an independent state in the international community.<sup>5</sup> Cultural and linguistic differences divide the province of Quebec from the rest of English speaking Canada.<sup>6</sup> The basic differences between Quebec and the rest of Canada extend to include trivial matters such as traffic regulations and electricity consumption.<sup>7</sup> All of these differences deepen the Quebecers' perception that Quebec has a unique and distinct French culture.<sup>8</sup> The Separatist political party of Quebec, the Patri Quebecosis (PQ), believes that the interests of French Canadians are being ignored by the national

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1. Timeline of the Civil War (visited Oct. 16, 1999) <<http://www.civilwar.com/timebot.htm>>.

2. ROGER GIBBINS, REGIONALISM: TERRITORIAL POLITICS IN CANADA AND THE UNITED STATES 13 (1982).

3. See generally GIBBINS, *supra* note 2, at 170.

4. Gita Pullapilly, *Indiana's Contribution to the Civil War Detailed in Roundtable Discussion*, SOUTH BEND TRIB., Aug. 3, 1998, at H4.

5. See generally Anthony DePalma, *Canadian Court Rules Quebec Cannot Secede on Its Own*, N.Y. TIMES, Aug. 21, 1998, at A3.

6. Anthony DePalma, *Quebeckers Revel in Differences*, ORANGE COUNTY REG., Nov. 29, 1998, at A34.

7. *Id.* "Quebec is the only province in Canada that does not allow drivers to make a right turn at a red light." This is for safety reasons. As for electricity consumption, people in Quebec use more electric heat than any other province in Canada. *Id.*

8. *Id.*

government.<sup>9</sup> The Separatists in power promote secession as the only way for the French Canadians to survive and flourish.<sup>10</sup> However, on August 20, 1998, the Supreme Court of Canada decided that Quebec could not unilaterally secede from Canada.<sup>11</sup>

The Supreme Court relied in part on international law to make its decision.<sup>12</sup> In areas of the world with oppression and fundamental violations of human rights, “secession is associated with freedom, democracy, and the aspirations of a better life with political freedom.”<sup>13</sup> International law recognizes secession as a last resort for “peoples” in extremely dire situations.<sup>14</sup> “Peoples” refers to a group of people, sharing a distinct language and culture, who are not free to participate in the national government’s economic, social, and political endeavors.<sup>15</sup> In this context, Quebec does not have such a claim.

If Quebec successfully seceded from Canada, it would amount to a failed experiment in tolerance and diversity. In a recent report, UNESCO World Commission on Culture and Development recognized Canada as a world leader in the area of multiculturalism.<sup>16</sup> Secession would send the message that diversity within a nation cannot work anywhere if it cannot work in a place like Canada.<sup>17</sup>

The American Civil War was a victory for nationalism and future success. Past generations of Americans fought the Civil War to prove that the South had no right to end the Union based on territorial differences.<sup>18</sup> Canada is now at a crucial stage in its nation’s history, in the ultimate fight for a national identity

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9. See *infra* notes 164-69 and accompanying text.

10. See *infra* notes 382-91 and accompanying text.

11. See *infra* notes 199-201 and accompanying text.

12. See *infra* notes 220-30 and accompanying text.

13. Thomas H. Naylor, *Latvia Did It; Scotland’s Doing It; Why Not Vermont?*, BOSTON GLOBE, July 20, 1998, at A9.

14. See *infra* note 269 and accompanying text.

15. See *infra* notes 280-89 and accompanying text.

16. See *Facts on Canada, Multiculturalism* (visited Feb. 8, 2000) <<http://canada.cio-bic.gc.ca/facts/multi-e.html>>. In 1988, the Canadian government passed the Canadian Multiculturalism Act. The policy behind this Act “affirms that Canada *recognizes and values* its rich ethnic and racial diversity. The *Canadian Multiculturalism Act* gives specific direction to the federal government to work toward achieving equality in the economic, social, cultural and political life of the country. Through its multiculturalism policy, the government wants to help build a more inclusive society based on respect, equality and full participation of all citizens, regardless of race, ethnic origin, language, or religion.” *Id.* See *CIA-The World Fact Book, Appendix A: Abbreviations* (visited Feb. 13, 2000) <<http://www.cia.gov/cia/publications/factbook/appa.html>>. UNESCO is the abbreviation for the United Nations Educational, Scientific, and Cultural Organization. *Id.*

17. See *infra* notes 235-36, 261-62 and accompanying text.

18. *Quebec Can’t Just Quit*, BOSTON HERALD, Aug. 22, 1998, at O14.

for its future generations.<sup>19</sup> On an international scale, secession is a last resort for people in oppressive and politically discriminatory situations and the people in Quebec are not in such a situation.<sup>20</sup> However, the people of Canada must form a national identity, one that celebrates the cultural distinctiveness of both the English and French in the nation of Canada. This is a lesson that was learned over the past 135 years from the United States' defeat of a secessionist movement and formation of a national identity.<sup>21</sup>

This Comment provides an explanation and evaluation of the legality of the secession of Quebec from Canada under domestic and international law.<sup>22</sup> The reality of the consequences of secession for Quebec and the rest of the world is also examined.<sup>23</sup> The possibility of secession has aroused the concerns of the international community as the fragmentation of states disrupts the present world order of peace, security, and stability.<sup>24</sup> All of this is examined against the background of the United States' experience with the American Civil War.<sup>25</sup> Part II of this Comment first analyzes the history of both the United States and Canada to find in its constitutional development the roots planted for secession.<sup>26</sup> Part II then compares the idea of how the Civil War, a defeat of secession, was a victory for a nationalistic America, with Canada's territorial conflicts, especially in Quebec, which have proven to be a barrier to a sense of nationalism.<sup>27</sup>

Part III of this Comment begins with the decision of the legality of secession of Quebec in Canada's Supreme Court.<sup>28</sup> It analyzes the underlying meaning of the Court's decision to Canada and its impact on the international community.<sup>29</sup> Part IV expands on the concept of secession in an international law context. Part IV also addresses the balance between the territorial integrity of sovereign states, like Canada, and the right of self-determination of "peoples" as applied to the people of Quebec.<sup>30</sup> Part V evaluates the two alternatives for Quebec: the consequences of Quebec's decision if it secedes from the rest of Canada for Quebec, and the consequence if Quebec remains a

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19. *See generally id.*

20. *See infra* notes 267-69, 294-99 and accompanying text.

21. *See infra* 83-86 and accompanying text.

22. *See infra* Part III.

23. *See infra* Part V.

24. *See infra* notes 270-73 and accompanying text.

25. *See infra* notes 59-86 and accompanying text.

26. *See infra* Part II.

27. *See infra* Part II.

28. *See infra* notes 200-02 and accompanying text; *see also* DePalma, *supra* note 5, at A3. "This is believed the first time a democratic country has ever tested in advance the legal terms of its own dissolution." *Id.*

29. *See infra* Part II.

30. *See infra* Part IV.

part of Canada.<sup>31</sup> The Comment concludes that secession is not in the best interest of Quebec or Canada as a whole.<sup>32</sup>

## II. HISTORY AND BACKGROUND

When looking at the issue of secession, it is imperative to begin by examining the historical background of the seceding state.<sup>33</sup> A state's history often explains its character with respect to the culture, politics, and economic realities of the present day.<sup>34</sup> A recurring problem throughout history has been the effect of such different attitudes and backgrounds on the unity of states.<sup>35</sup>

More than a hundred years ago, the United States dealt with the problem of how to unify the individual states.<sup>36</sup> It would eventually take a civil war to suppress the separatist movement in the southern states in favor of a union.<sup>37</sup> Now Canada and Quebec grapple with similar issues of national identity. The recent movement toward Quebec's secession is a defining time in the future of Canada as a nation.

### A. *America's History of Secession*

#### 1. Formation of the United States Constitution

The United States Articles of Confederation in 1781 formed a loose association of sovereign states.<sup>38</sup> The agreement formed a compact among states, which voluntarily observed national law.<sup>39</sup> However, the main weakness of the Articles of Confederation was that it vested the states with the majority of the power instead of the national government.<sup>40</sup> For example, the federal government lacked the ability to unify policies and laws among the states to create a strong union.<sup>41</sup> Under the Articles of Confederation, the federal government did not have the power to tax in order to raise revenue; as a result of lacking monetary support, the Union could not survive.<sup>42</sup>

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31. *See infra* Part V.

32. *Id.*

33. *See generally infra* Part II.

34. *See infra* notes 38-86 and accompanying text (discussing the historical background of the United States); *see infra* notes 87-121 and accompanying text (discussing the historical background of Canada).

35. *See infra* notes 38-86.

36. *See generally* GIBBINS, *supra* note 2, at 12-13, 170-71.

37. *See generally id.* at 170.

38. *Id.* at 8.

39. *See id.*

40. *See* GIBBINS, *supra* note 2, at 9.

41. *See generally id.* at 9-10. *See also* LEONARD W. LEVY, *ESSAYS ON MAKING THE CONSTITUTION* xii-xiii (1969) (discussing the new powers of the central government and the inadequacy of the Articles of the Confederation).

42. *See generally* LEVY, *supra* note 41, at xii.

In 1787, recognizing the flaws of the Articles of Confederation, state government delegates gathered in Philadelphia with the goal of improving American nationalism.<sup>43</sup> Under the guidance of James Madison, the new Constitution was drafted to enable the national government to administer laws directly on individual citizens rather than through state governments.<sup>44</sup> However, at the convention, two conflicting philosophies emerged.<sup>45</sup> One view demanded a centralized government with a “close union and a common national citizenship,” while the other view required a decentralized and loose association of autonomous states.<sup>46</sup> The goal of the convention was to balance these two philosophies.<sup>47</sup> The compromise was federalism, in which a union of states was under the control of a central government.<sup>48</sup> Each state would have elected representatives in the federal government.<sup>49</sup>

a. Doctrine of States’ Rights

“The evolution of American federalism can be traced through the doctrine of states’ rights.”<sup>50</sup> The doctrine of states’ rights encompassed the ideology that the Union was a formation of sovereign states, which retained autonomy over their internal affairs.<sup>51</sup> In July of 1831, John Calhoun, who became the most famous spokesman of states’ rights, stated his view that “the Constitution was a compact made by the states in a sovereign capacity rather than people in a national capacity.”<sup>52</sup> This philosophy stemmed from a fear of an over intrusive government and political centralization.<sup>53</sup> However, the new Constitution addressed this fear by directing the federal government’s powers at the people instead of at the states.<sup>54</sup> In the United States’ Constitution, powers not delegated to the federal government nor prohibited to the states are

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43. See GIBBINS, *supra* note 2, at 9.

44. *Id.* LEVY, *supra* note 41, at xiii (1969). The Articles of Confederation failed because they only required voluntary observance of federal law by all states. Something that could not be hoped for with state governments already set up. *Id.* at xii-xiii.

45. GIBBINS, *supra* note 2, at 9.

46. DAVID G. SMITH, THE CONVENTION AND THE CONSTITUTION 35 (1965).

47. *Id.* at 35. See also GIBBINS, *supra* note 2, at 9. This disagreement foreshadowed the battle that lay ahead for the Union. *Id.*

48. See generally GIBBINS, *supra* note 2, at 9.

49. *Id.* Although states were given representative power, the Constitution made the state governments “subordinate” to the national government (quoting WILLIAM H RIKER, DEMOCRACY IN THE UNITED STATES 492, 493 (1965) “[T]he federalism of 1787 achieved a converse effect, however, for it subordinated the member governments and created a nation. Thus, state governments could not override national decisions. The federal government had a binding effect on all states, thus a nation was created). *Id.*

50. GIBBINS, *supra* note 2, at 20.

51. *Id.*

52. *Id.*

53. *Id.*

54. See *id.* at 9.

reserved for the states.<sup>55</sup> The separation of powers between the national government and individual states limited the centralized government and protected freedom.<sup>56</sup> As organized, the central government would not be big enough to usurp states' power and consume individual freedoms.<sup>57</sup> Thus, the principle of federalism allowed a means by which state governments were preserved, and it allowed a system in which state interests could be represented in a national government with power over the people comprising the Union.<sup>58</sup>

*B. The North and the South: Diverging Interests*

As federalism evolved during the 1800s, the central government in Washington D.C. was not as influential throughout the Union as was hoped.<sup>59</sup> Acceptance of the Constitution faced resistance from state governments, which had pre-dated the national government.<sup>60</sup> These states, prior to the Union, had "built up solid self-interests and loyalties."<sup>61</sup> Thus, United States' citizens did not favor a centralized government in Washington.<sup>62</sup> Prior to the 1860s two very different societies in the North and South emerged.<sup>63</sup>

In the South, this philosophy of states' rights took a strong hold.<sup>64</sup> While the northern states developed as the industrial centers of the Union, the southern states held on to their plantations and slavery.<sup>65</sup> Emancipation of slaves in northern states gradually gained popularity as people in the North began to recognize "all men as free and equal" while slavery continued to be an integral part of the economic life of the South.<sup>66</sup> In 1858, Abraham Lincoln, as a candidate for the Republican Party for the United States Senate, made a speech in which he declared "a house divided against itself cannot stand. I believe this Government cannot endure, permanently half *slave* and half *free*. I do not expect the Union to be dissolved—I do not expect the house to *fall*—but

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55. *Gibbins*, *supra* note 2, at 10. Under the Tenth Amendment, "the powers not delegated to the United States by the Constitution are reserved to the states, nor prohibited by it to the states, are reserved to the states respectively or to the people." *Id.*

56. *Id.* at 11.

57. *Id.*

58. *See generally* SMITH, *supra* note 46, at 53. *See also* GIBBINS, *supra* note 2, 9-11.

59. GIBBINS, *supra* note 2, at 12.

60. *Id.* at 29.

61. *Id.*

62. GIBBINS, *supra* note 2, at 12.

63. *Id.*

64. *Id.* at 13.

65. *Id.* at 12.

66. *See generally* *Inaugural Addresses of the Presidents of the United States 1989*, Abraham Lincoln First Inaugural Address Monday March 4, 1861 (visited Oct. 16, 1999) <<http://www.bartleby.com/124/pres31.html>>; *Early Antislavery, Aboard the Underground Railroad* (visited Oct. 16, 1999) <<http://www.cr.nps.gov/nr/underground/antislav.htm>> (discussing how the Northern states as "free regions" attracted many slaves from the South).

I do expect it will cease to be divided.”<sup>67</sup> Lincoln’s election as President in 1860 of the United States was the final straw for Southern states, who sensed that with Lincoln as President, the federal government would take away their right to own slaves as property.<sup>68</sup> The foreshadowing at the Convention of two diverging philosophies had come full circle in the Civil War. The secession of the Southern states followed, creating the Confederate States of America.<sup>69</sup> In 1861, thirteen states from the South gave Ordinances of Secession, which were actual declarations of causes in which each state disclosed its reason for wanting to sever from the Federal Union.<sup>70</sup>

As the common thread of these ordinances, each charged the federal government with “dangerous infractions of the Constitution.”<sup>71</sup> Seceding states felt the fear of a large controlling federal government in Washington D.C. infringing on the individual state’s common peace and security.<sup>72</sup> Northern states’ interests were represented, while the belief in the southern states was that their interests were being ignored.<sup>73</sup> Southerners perceived the North destroying the guarantees of the Constitution, in respect to property rights.<sup>74</sup> For example, citizens of the northern states confiscated southerners’ property by freeing their slaves.<sup>75</sup> The soon to be confederacy felt that by allowing violations of such rights, the federal government had failed to

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67. *Speeches by Abraham Lincoln, House Divided Speech* (visited Oct. 16, 1999) <<http://www.netins.net/showcase/creative/lincoln/speeches/house.htm>>. This is an excerpt from Lincoln’s “House Divided Speech,” given on June 16, 1858 in Springfield, Illinois before the Republican delegates. Later that day, the Republicans chose him as their candidate for U.S. Senate. *Id.*

68. See WILLIAM ANDERSON, *THE NATION AND STATES, RIVALS OR PARTNERS?* 97 (1955); see also The U.S. Civil War Center, La. St. U., *Ordinances of Secession* (visited Sept. 9, 1998) <<http://www.cwc.lsu.edu/>> (discussing the Alabama Ordinance of Secession).

69. *Id.* The Ordinances of Secession were the actual legal language by which the seceded states severed with the federal union. The Declaration of Causes was where each state gave their reason for secession.

70. *Id.* The thirteen seceding states were as follows: South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, North Carolina, Tennessee, Missouri, and Kentucky. *Id.*

71. *Id.* The language quoted in the accompanying text is from Alabama’s Ordinance. The language of all the ordinances shared the sentiment of the national governments usurping the power reserved to the states as the cause of secession. *Id.*

72. *Id.* See also GIBBINS, *supra* note 2, at 20-21.

73. GIBBINS, *supra* note 2, at 10.

74. ANDERSON, *supra* note 68, at 97. See also *Abraham Lincoln, The Emancipation Proclamation* (Sept. 22, 1862), reprinted in *Abraham Lincoln, The Emancipation Proclamation (1863)* (visited Oct. 16, 1999) <<http://odur.let.rug.nl/-usaP/all6/writings/emancip.htm>>. This proclamation provided for the freedom of the slaves. This angered the Southern States, as they were the slave owners. Slaves were held as their property. *Id.*

75. ANDERSON, *supra* note 68, at 97. See also *Ordinances of Secession, supra* note 68. This is inferred from the language in the Texas Ordinance.



accomplish the purposes of the compact of the Union between the states.<sup>76</sup> The federal government was seen as “a weapon with which to strike down the interests and property of the people” of the southern slave holding states.<sup>77</sup> Southerners believed that the federal government had usurped the power of the states, and as a result, interfered with the rights and liberties of these states.<sup>78</sup> In contrast, Northerners viewed the United States as a compact among people, where the people had delegated a portion of their sovereignty to the state government and a portion to the national government.<sup>79</sup>

The young Union was suffering an identity problem and its only outlet to resolve these tensions was civil war.<sup>80</sup> The South, fighting for states’ rights, had to defeat the North in a military battle in order to dissolve the Union.<sup>81</sup> Lincoln was willing to fight to save the Union and establish national supremacy.<sup>82</sup>

The Civil War established the supremacy of the national government’s dominance over states as sovereign units. The sacrifice of 700,000 lives evidenced that states were not sovereign entities in a loose alliance, but part of a single nation.<sup>83</sup> Thus, the evolution of federalism in America can be seen as the erosion of states’ rights.<sup>84</sup> The outcome of the Civil War legitimized the view that the Constitution comes from the sovereign people, not the states.<sup>85</sup> This philosophy is expressed in the preamble of the Constitution, namely “We the people of the United States,” has become the supreme and nationalizing force in the American identity.<sup>86</sup>

### C. *Canada’s History of Secession*

#### 1. Discovery of Quebec

In 1608, the French geographer and explorer Samuel de Champlain traveled the St. Lawrence River and founded Quebec City, in an area that

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76. *Id.* This is inferred from the language of the Texas Ordinance.

77. *Id.*

78. *Ordinances of Secession*, *supra* note 68. The Kentucky ordinance addressed how the states were given residual powers in the Constitution and the federal government was usurping these powers. *Id.*

79. *See generally* ANDERSON, *supra* note 68, at 79. *See also* GIBBINS, *supra* note 2, at 8-9, 21.

80. GIBBINS, *supra* note 2, at 12-13.

81. *Quebec Can’t Just Quit*, *supra* note 18, at O14.

82. *Id.*

83. GARTH STEVENSON, UNFULFILLED UNION: CANADIAN FEDERALISM AND NATIONAL UNITY 20 (1982).

84. *Id.*

85. ANDERSON, *supra* note 79, at 85.

86. GIBBINS, *supra* note 2, at 21-22.

would be known as New France.<sup>87</sup> The purpose of settlement was to reap the benefits of the fur trade for France.<sup>88</sup> Quebec had become France's first permanent Canadian colony in the "New World."<sup>89</sup> Champlain had taken French colonists to settle there.<sup>90</sup> However, the French were not alone in their discovery of Canada. In the early 1500s, the English claimed right of discovery to Newfoundland, on the eastern coast of North America, and neighboring regions.<sup>91</sup> The English were after the riches of the fur trade as well.<sup>92</sup> The English, who dominated the Hudson Bay area, were threatened by the expansion of the French settlement.<sup>93</sup>

The English and French rivalry eventually erupted in war, with the fall of Quebec City to British forces in 1759.<sup>94</sup> New France became a British colony after the "conquest."<sup>95</sup> However, the British now faced an immediate problem because the area that it had captured was the home to more than 60,000 new French speaking subjects.<sup>96</sup> To rectify this situation, the English Parliament passed by Royal Proclamation, the Quebec Act of 1774, which recognized French civil law, guaranteed religious freedom, and authorized the use of French language, as well as increasing the size of Quebec.<sup>97</sup> As English Loyalists settled into the western area of Quebec, they wanted British civil law and the English language not French civil law or use of the French language.<sup>98</sup>

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87. See generally C.E. HEINDENREICH, *EXPLORATION AND MAPPING OF SAMUEL DE CHAMPLAIN 1603-1630* 1-4 (1976). See also *Canada, The Founding of New France* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>. Champlain administered the affairs of Quebec, France's first permanent Canadian colony, Acadia. *Id.*

88. See *Canada, The Founding of New France*, *supra* note 87. The new methods of processing fur in Europe provided the "encouragement" to continue the fur trade in Canada. *Id.*

89. See *id. supra* note 87. See generally *Canada, Discovery of Canada* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>.

90. *Canada, The Founding of New France*, *supra* note 87.

91. *Canada, Rediscovery and Exploration* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>. The English voyages were called the Cabot voyages, which were intended to find a new trade route to the Orient for King Henry VII of England.

92. *Canada, French and English Rivalry* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>.

93. *Id.*

94. See *National Library of Canada, Towards Confederation: Lower Canada (1791-1842), Conquest and a Fledgling Regime* (visited Feb. 8, 2000) <<http://www.nlc-bnc.ca/confed/lowercan/elowrcan.htm>> [hereinafter *Towards Confederation, Conquest*]. See also *Canada, The Final Struggle for the Continent* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>.

95. See *Towards Confederation, Conquest*, *supra* note 94.

96. *Canada, Early British Rule* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>.

97. See *Towards Confederation, Conquest*, *supra* note 94.

98. See *Canada, The United Empire Loyalists* (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>. Following the American Revolution,

Thus, the Quebec Act became difficult to enforce among the influx of English settlers.<sup>99</sup> Therefore, to satisfy English interests, the Constitutional Act of 1791 divided this Canadian territory into two parts: a mostly English-speaking Upper Canada, Ontario, and a mostly French-speaking Lower Canada, today known as Quebec.<sup>100</sup> After rebellious acts in both regions against the English Army in 1837, Great Britain reunited Upper and Lower Canada into one province by the Union Act in 1840.<sup>101</sup> The purpose of the Union Act was to assimilate the two Canadian colonies under British rule.<sup>102</sup> Furthermore, the Union Act mandated English as the only official language in the newly united Canada.<sup>103</sup> The Union Act favored British colonization, and “French Canadians began their existence as a minority.”<sup>104</sup> Thus, they would remain united until 1867, when they would once again be divided into separate provinces: Quebec and Ontario.<sup>105</sup>

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thousands of British loyalists left the United States and immigrated into the lands above the St. Lawrence River and north of Lake Ontario. They were known as the United Empire Loyalists. Their immigration into Canada was the “first major wave of English-speaking settlers since the days of New France.” *Id.* See also *Towards Confederation, Conquest, supra* note 94.

99. See *Towards Confederation, Conquest, supra* note 94.

100. See *National Library of Canada, Towards Confederation: Lower Canada (1791-1842), The Constitutional Act of 1791* (visited Feb. 8, 2000) <<http://www.nlc-bnc.ca/confed/lowercan/elowrcan.htm>>. At this time, population in Lower Canada was 160,000 of which 20,000 were English. *Id.*

101. See *Towards Confederation, Towards Confederation: Lower Canada (1791-1842), A History of Lower Canada* (visited Feb. 8, 2000) <<http://www.nlc-bnc.ca/confed/lowercan/elowrcan.htm>>. However, Upper Canada and Lower Canada conflicted with each other. There was debate over the amount of subsidies and custom duties allocated to each colony. Lower Canada looked to Great Britain for help in these situations. However, Great Britain provided no assistance. Thus, each colony felt deprived, fueling ethnic tensions. Radicals began to attack the English Army stationed in Lower Canada. Uprisings also took place in Upper Canada. See also *National Library of Canada, Towards Confederation: Lower Canada (1791-1842), A History of Lower Canada, The Durham Report (1839)* (visited Feb. 8, 2000) <<http://www.nlc-bnc.ca/confed/lowercan/elowrcan.htm>>. “To put Canadians in a state of political subordination, London introduced the Union Act in 1840.” *Id.*

102. See *National Library of Canada, Towards Confederation: Lower Canada (1791-1842), A History of Lower Canada, The Union Act 1840* (visited 2/8/00) <<http://www.nlc-bnc.ca/confed/lowercan/elowrcan.htm>>. The names West Canada and East Canada replaced the names Upper and Lower Canada, respectively. *Id.*

103. See also *National Library of Canada, Towards Confederation: Lower Canada (1791-1842), A History of Lower Canada, The Durham Report (1839)*, *supra* note 101.

104. *National Library of Canada, Towards Confederation: Lower Canada (1791-1842), A History of Lower Canada, The Union Act 1840*, *supra* note 102.

105. See *infra* note 106; see also *Canada, The Confederation Idea*, (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>. Under the Union Act, it was difficult for east and west Canada, with two conflicting agendas, to share political representation in Parliament. Thus, no government was able to gain a majority in Parliament. *National Library of Canada, The Path to Confederation* (visited Feb. 8, 2000) <<http://www.nlc-bnc.ca/confed/path.html>>. At this same time, the Maritime Provinces of New Brunswick, Nova

## 2. Constitutional Formation

Canada as a new federal state came into existence in 1867 with the passage of the British North America Act (BNA Act).<sup>106</sup> A constitutional arrangement was needed to protect the interests of the French Canadians, who had formed Canada East, from the English majority, while at the same time uniting the French and English cultures under a new Canadian nation.<sup>107</sup> To achieve this goal, a model of American federalism was used.<sup>108</sup>

In witnessing the Civil War in the United States over states' rights, Canadians observed a near dissolution of the United States.<sup>109</sup> The onset of the Civil War demonstrated how American states were given too many residual powers in the Constitution.<sup>110</sup> The Canadian framers believed that the flaws of the American system could be corrected by strengthening the Canadian national government.<sup>111</sup> However, Canada, unlike the United States, did not have state governments that predated the national form of government.<sup>112</sup> Quebec and Ontario were already a single political unit as a result of the Union Act in 1840.<sup>113</sup> Thus, the philosophy of states before the central government,

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Scotia, and Prince Edward Island were considering a union of these provinces. In June of 1864, East and West Canada met with the Maritime Provinces in Quebec to discuss a proposed union of British North American colonies. From October 10-27, 1864, the province of Canada met with the Maritime Provinces at the Quebec Conference. These 72 Resolutions were set forth as the basis of the Confederation Debates. Furthermore, these resolutions formed the basis of the British North America Act. *Id.*

106. EDWARD MCWHINNEY, *QUEBEC AND THE CONSTITUTION 1960-1978*, 10 (1979). The Canadian Constitution, the Constitution Act of 1887, is embodied in the British North America Act of 1867. It is a statute of the United Kingdom Parliament. In 1931, in the Statute of Westminster, the United Kingdom formally gave Canada its self-governing status. *Id.* See also Canada, *Dominion from Sea to Sea*, (visited Feb. 12, 2000) <[http://www.optonline.com/comptons/ceo/00804\\_A.html](http://www.optonline.com/comptons/ceo/00804_A.html)>. The BNA Act was passed by the Imperial Parliament and proclaimed in Canada. The BNA Act provided for the Dominion of Canada to be divided into four provinces: Quebec, Ontario, New Brunswick, and Nova Scotia. *Id.* See also *National Library of Canada, Dominion of Canada, 1873* (visited Feb. 8, 2000) <<http://www.nlc-bnc.ca/confed/map1873.htm>>. Manitoba in 1870, British Columbia in 1871, and Prince Edward Island in 1873 joined the dominion of Canada. *Id.* See *Facts on Canada, Canada* (visited Feb. 8 2000) <<http://canada.cio-bic.ga.ca/facts/canadagen-e.html>>. Since this time, Alberta, Saskatchewan, and Newfoundland have joined Canada. The ten provinces and three territories that make-up Canada cover the world's second largest country in terms of land mass. Canada is second only to the Russian Federation. *Id.*

107. GIBBINS, *supra* note 2, at 24-25.

108. *Id.* at 26.

109. *Id.*

110. *Id.*

111. P.B. WAITE, *THE CONFEDERATION DEBATES IN THE PROVINCE OF CANADA* 47-48 (1963). See also MCWHINNEY, *supra* note 106, at 12 (describing Section 91 of the BNA Act as a major source of legislative power).

112. GIBBINS, *supra* note 2, at 29.

113. See *supra* notes 101-05 and accompanying text.

in which loyalties and self-interests had not been built into separate provinces, was not a major contention point. According to Gibbins, “there were no vested interests attached to provincial autonomy in what became Ontario and Quebec since governments did not exist in each province.”<sup>114</sup>

Although most power was conferred to the national government in Section 91 of the BNA Act, the federal features of the BNA Act were geared toward protecting French interests.<sup>115</sup> According to Smiley, “the establishment of a federal system . . . was the response of the Fathers of the Confederation to the circumstances of cultural dualism and the most important provincial powers related directly to matters involving cultural differences.”<sup>116</sup> Under the BNA Act, French Canadians were assured that their interests and culture were protected under the Confederation.<sup>117</sup> The BNA Act delegated the primary French Canadian concerns, such as education, property, and civil rights to the Quebec Provincial Legislature.<sup>118</sup> Quebec was allowed to keep its French based civil law system and was not forced to adopt the common law British judicial system.<sup>119</sup> Also, the use of the French language in the legislature and the courts of Quebec, as well as the Parliament and the Federal Courts was constitutionally protected.<sup>120</sup> The purpose was to remove sectional conflicts, stemming from French Canadian interests in Quebec from the rest of the interests of English Canadians, and keep them from impairing Canada’s movement forward.<sup>121</sup>

a. Comparison of Constitutions Forming a Sense of Nationalism

The main priority of the BNA Act was to protect and to promote French interests on a national scale.<sup>122</sup> However, the BNA Act is not a constitution in the sense of the American Constitution; it was “merely a British statute passed for the purpose of confederating three of Britain’s colonies in British North America.”<sup>123</sup> Therefore, it did not have the effect of nationalizing Canada as a symbol of cultural diversity.<sup>124</sup> The intention was there but the symbolism and

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114. STEVENSON, *supra* note 83, at 29.

115. GIBBINS, *supra* note 2, at 26.

116. DONALD V. SMILEY, *THE CANADIAN POLITICAL NATIONALITY* 6 (1987).

117. GIBBINS, *supra* note 2, at 28.

118. STEVENSON, *supra* note 83, at 32.

119. GIBBINS, *supra* note 2, at 28.

120. *Id.*

121. *Id.*

122. *Id.*

123. THOMAS A. HOCKIN, *GOVERNMENT IN CANADA* 15 (1975). *See also* MCWHINNEY, *supra* note 106, at 10. The colonies united were Lower Canada (Quebec), Upper Canada (Ontario), Nova Scotia, and New Brunswick. The remaining provinces have joined Canada since that time. *Id.*

124. GIBBINS, *supra* note 2, at 28-29. *See also* STEVENSON, *supra* note 83, at 34.

idealism behind it was inadequate.<sup>125</sup> Residents of the United States have a patriotic intensity and belief in what the American Constitution stands for in American life and society.<sup>126</sup> The American Civil War affirmed the supremacy of the national political community over sub national territorial units.<sup>127</sup> The American Constitution is likewise a symbol of national identification.<sup>128</sup> Being American is associated with strength and the national values of wealth, progress, and success.<sup>129</sup> Leadership in the international community and the frontiers of science, technology, and space fosters nationalism.<sup>130</sup> Canada, on the other hand, has not experienced a crisis like the Civil War to give the BNA Act such an identity to all Canadians.<sup>131</sup>

Immediately following the Civil War, the United States experienced the weakness of territorial identification, especially in the Southern Region, where poverty, frustration, and military defeat made the Southern States different to the developing Northern and Western states.<sup>132</sup> As the South evolved with social and economic change, it was able to embrace somewhat the essential features of nationalism.<sup>133</sup> Canada, especially Quebec, is still dealing with regional identity. For example, a person from Quebec considers himself or herself as a Quebecker, and not a Canadian.<sup>134</sup> The ethnic and linguistic differences have inhibited growth of Canadian nationalism.<sup>135</sup> To Quebec's French Canadians, Canadian nationalism is seen as a threat to French culture.<sup>136</sup> With the potential secession of Quebec, Canada is now dealing with an identity issue of Canadian unification, which may ultimately give meaning to the BNA Act to all Canadians.

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125. *Id.* at 174.

126. GIBBINS, *supra* note 2, at 170, 174.

127. *See id.* at 170; *see also* ANDERSON, *supra* note 68 at 79, 98. The victory of the Unionist side of the War was a decisive victory for "nationalism, national unity, and national nullification." *Id.*

128. *Id.* at 28.

129. *See generally id.* at 170.

130. GIBBINS, *supra* note 2, at 170. (As nationalism evolves "state boundaries are little more than lines on a map" and interstate mobility reduce "subnational territorial attachments." (quoting DANIEL J. ELAZAR, IN THIRD CENTURY: AMERICA AS A POST INDUSTRIAL SOCIETY 92-93 (1979)).

131. *Id.* at 174.

132. *Id.* at 170.

133. *Id.* at 171. (discussing how as territorial differences eroded between the South and North, the South has been able to share a common identity with the rest of the nation. "The South was *American* long before it was *Southern*." (quoting C. VANN WOODWARD, IN THE SOUTH AND SECTIONAL POLITICS 174 (1967)).

134. GIBBINS, *supra* note 2, at 177.

135. *See id.* at 174.

136. *See id.*

### 3. From Quiet Revolution to Separatism

Although French Canadians were given enumerated powers in the BNA Act regarding language and law, Canadian society and Quebec were “thus divided within itself, not only culturally, but economically as well.”<sup>137</sup> While Quebec developed as a large manufacturing sector in wood products and leather, its technological and industrial development was slow as compared to the rest of Canada.<sup>138</sup> People were employed as a large working class in the manufacturing area with little room for advancement.<sup>139</sup> However, the English minority in Quebec held most of the managerial positions.<sup>140</sup>

Contributing to the lagging economic conditions of Quebec was the unfavorable situation of education.<sup>141</sup> For example, moving into the early 1960s, Quebec did not have a Minister of Education or even a Department of Education within its provincial government.<sup>142</sup> If a young person wanted to attend high school, fees had to be paid, which may have proved difficult for many families during this time of very slow economic growth.<sup>143</sup> At this time, the French Canadians, making up the majority of the population of Quebec, had the fewest upper class and self-employed professionals.<sup>144</sup> The French believed that they were dealing with an English dominated central government whose main concern was English advancement.<sup>145</sup> The only solution seen at the time was a stronger, more active provincial government in Quebec.<sup>146</sup>

The 1960s became a period known as the Quiet Revolution in which the Quebec government fought for a massive increase in activities of the state at the provincial level.<sup>147</sup> The BNA Act delegated most powers to the central

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137. STEVENSON, *supra* note 83, at 87.

138. *See generally id.* at 87-88. *See also Industry Profiles, Canada: A Leader in Mining and Mineral Processing* (visited Feb. 8, 2000) <<http://www.edc.ca/export/profile.html>>. Canada as a nation is the largest producer of hydroelectric power in the world. The second largest hydroelectric powerplant in Canada, La Grande 2, is located in the James Bay Region of Quebec. This is among one of the top ten largest plants in the world. *Id.*

139. *Id.* at 88.

140. *See id.*

141. *See generally* STEVENSON, *supra* note 83, at 89-90.

142. *Id.* at 90. Public libraries were also scarce, as censorship was the norm in Quebec during this period.

143. *See generally id.* at 88-90.

144. *Id.* *See also* RAYMOND BRENTON ET. AL., CULTURAL BOUNDARIES AND THE COHESION OF CANADA 149 (1980). The average employment income of male workers in 1961 was \$5824 for English origin, \$5374 for Irish origin and \$3879 for French origin. Income levels were indicative of standard of living levels in Quebec. *Id.*

145. *See generally supra* notes 136-43 and accompanying text.

146. STEVENSON, *supra* note 83, at 89.

147. KENNETH MCROBERTS, MISCONCEIVING CANADA: THE STRUGGLE FOR NATIONAL UNITY 32-33 (1997). *See* DALE POSGATE & KENNETH MCROBERTS, QUEBEC: SOCIAL CHANGE AND POLITICAL CRISIS 94-101 (1976). The Quiet Revolution was not only a change in political structure, but it was a change in ideologies, i.e. “beliefs about the purpose and character of society

government to avoid the mistakes of the American Constitution.<sup>148</sup> However Quebec, with a similar identity to that of the Southern American society lagging behind the developments of the North, wanted more autonomy.<sup>149</sup> The Canadian government sought a wide range of changes to the 1867 Constitutional form of government that included: the withdrawal of the central government in areas of provincial control, higher equalization payments, participation in international relations, and an increase in fiscal control.<sup>150</sup> With the authority to make its own fiscal decisions, Quebec believed that it would be in a better position to have economic success, while promoting French Canadians from the working class to a more educated and respected class.<sup>151</sup>

In 1960, Jean Lesage's Liberal Government took over power in Quebec during the Quiet Revolution.<sup>152</sup> His government brought education, research, and exploration to the province of Quebec.<sup>153</sup> During his tenure, a Ministry of Education and a Ministry of Cultural Affairs were appointed to advance French Canadian interests.<sup>154</sup> A student loan program was also created so students could afford to be educated and earn a better living.<sup>155</sup> His government lobbied American investors for capital investment in Quebec to provide economic stability.<sup>156</sup> As changes in Quebec were made on a provincial level,

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and polity." *Id.* at 94. The mainstream of French Canadians held these beliefs, as opposed to just being held by a few groups of intellectuals. *Id.* The French-Canadian society had been characterized as a "rural and agrarian" society. Thus, the Quiet Revolution sparked the spirit in French-Canadians to become a "highly efficient technological society led by French-Canadians." The goal was "catching up to social and economic development elsewhere." *Id.* at 95.

148. GIBBINS, *supra* note 2, at 27.

149. *See* POSGATE & MCROBERTS, *supra* note 147, at 145 (discussing Quebec's lack of technological and economic development in the rest of Canada); GIBBINS, *supra* note 2, at 12.

150. GIBBINS, *supra* note 2, at 40.

151. *See* POSGATE & MCROBERTS, *supra* note 147, at 98-99. According to Posgate, "the most frequently cited change has been the emergence of a new bureaucratic middle class, which arise primarily within the Church's educational, health, and welfare institutions." *Id.* These institutions needed to employ people to administer their services, which helped to create jobs and a new societal class. *Id.* *See also* STEVENSON, *supra* note 83, at 91.

152. MCROBERTS, *supra* note 147, at 33. *See also* STEVENSON, *supra* note 83, at 92. The Lesage government was reelected in November of 1962. Following the 1962 election, most of Lesage's achievements took place. *Id.*

153. *Id.* at 33. *See also* STEVENSON, *supra* note 83, at 93.

154. STEVENSON, *supra* note 83, at 92-93.

155. *Id.* at 93.

156. *Id.* During this time of economic turnaround in Quebec, "the privately owned hydro-electric utilities were expropriated and turned over to the Quebec government as Hydro-Quebec." *Id.* This was Quebec's strongest resource, and it now was set up as another revenue source for the government. *See also* POSGATE & MCROBERTS, *supra* note 147, at 100-01. Nationalization of industries, like Hydro Quebec, provided new opportunities for French Canadians to attain managerial positions. Before this nationalization of industries, English Canadians owned the



the Canadian federal government became increasingly insignificant to the people of Quebec.<sup>157</sup> The Quiet Revolution led to the notion of “province building” and a barrier to “nation building” for the French Canadians in Quebec.<sup>158</sup> The Quiet Revolution began a new period of “political tension as the province sought to assume greater control over its economy and institutions.”<sup>159</sup>

#### 4. Separatist Movement Begins

Even with all of the success of the Lesage government, there was internal conflict in the government of Quebec during the 1960s.<sup>160</sup> The Liberal Party split into two fronts: a nationalist front and a more moderate front.<sup>161</sup> The Nationalists were the Separatists who viewed the BNA Act as a constitution safeguarding the position of the English minority in Quebec.<sup>162</sup> The moderates saw the need for more provincial power but not to the extreme of secession.<sup>163</sup> For the first time, secession was a practical reality. The Nationalists or Separatist party emphasized that secession was necessary due to the current situation of Quebec in relation to the rest of Canada.<sup>164</sup> Quebec had become a minority in the realm of English-speaking Canada.<sup>165</sup> At the same time, Quebec lost residents as the English fled the potential turmoil.<sup>166</sup> Thus, as the population declined, so did Quebec’s power proportion in the central government.<sup>167</sup> Quebec was left with a limited voice within a dominant

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corporations, thus they held most of the managerial positions in Quebec. This had limited the growth of a middle class among French-Canadians in Quebec. *Id.*

157. *See id.* at 93.

158. *See* STEVENSON, *supra* note 83, 104-05. “Province building” is the process of the increasing in the power and importance of the provincial governments since the Confederation. It can be viewed as “the defensive responses to policies of the central government.” *Id.* at 104. On the other hand, “nation building” is “an effort to shape a socioeconomic entity to which some degree is self-contained and self-directed by intensifying internal patterns of interdependence and by restricting or regulating ties with the outside world.” *Id.* at 104-05. Thus, there was emphasis on more of a central government instead of each particular provincial government.

159. *Facts On Canada, Quebec* (visited Feb. 8, 2000) <<http://canada.cio-bic.gc.ca/facts/quebec-e.html>>.

160. STEVENSON, *supra* note 83, at 94.

161. *Id.* at 94.

162. *Id.* at 97 (discussing how the BNA Act protected the anglophone minority in Quebec and the Roman Catholic Church).

163. *See id.* at 94, 97; *see also* GIBBINS, *supra* note 2, at 40-41 (discussing how the moderates were calling for “greater provincial powers and responsibilities”).

164. *See id.* at 95-97.

165. STEVENSON, *supra* note 83, at 95-96.

166. *Id.* at 96-97.

167. *Id.*

English speaking government.<sup>168</sup> The Separatists felt that the BNA Act could no longer protect French interests under these circumstances.<sup>169</sup>

a. Separatism in Power

During the 1960s, the Quebec government sought a restructuring of federal government and the abandonment of the 1867 centralized government formation.<sup>170</sup> In 1976, Quebec's demands for more provincial powers became a reality with the election of the PQ, Separatist party in Quebec.<sup>171</sup> In 1968, the PQ party formed from various separatist organizations, such as the Union Nationale party.<sup>172</sup> The PQ party ran on the platform of complete separation of Quebec from the rest of Canada.<sup>173</sup> Although other provincial governments were in favor of more provincial power, they did not support a separatist movement and the fragmentation of Canada.<sup>174</sup> Other provincial governments were in favor of more international trade powers not independence from Canada.<sup>175</sup>

The leaders of the PQ party believed that secession was the only alternative for Quebec. Thus, referendums for secession were held in both 1980 and 1995.<sup>176</sup> The 1980 referendum was a meaningful defeat for the separatists with only forty-percent of voters in favor of secession.<sup>177</sup> The PQ separatists came closer to getting a majority vote for independence in the 1995 referendum.<sup>178</sup> The 1995 referendum posed this question to Quebec voters: "do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the

168. *Id.*

169. *See generally* STEVENSON, *supra* note 83, at 97. With limited representation in the central government, the French protections in the BNA Act could no longer be assured from being assimilated into the English majority.

170. *See* GIBBINS, *supra* note 2, at 40 (discussing the onset of the Quiet Revolution sought changes to the federal government in terms of more provincial power, however, the PQ Party called for the withdraw of Quebec from the confederation).

171. MCROBERTS, *supra* note 147, at 148.

172. GIBBINS, *supra* note 2, at 160. *See also* STEVENSON, *supra* note 83, at 94.

173. *Id.* at 40. *See also* STEVENSON, *supra* note 83, at 100. The first government proposal was the adoption of the statute of the Charter of French language. The statute eliminated English from official language status in the courts and legislature. The Supreme Court struck this down. But in the private sector and education system, it was allowed to stand. *Id.*

174. GIBBINS, *supra* note 2, at 40 (discussing how states wanted more provincial powers and responsibilities that had been limited in the BNA Act).

175. *See id.* at 40.

176. DePalma, *supra* note 5, at A3.

177. *Id.* The 1980 referendum was only held in the province of Quebec. Since the 1960s, the separatist movement appeared to "gain momentum." However, with forty percent of the votes the referendum was defeated.

178. *The Wording of the Next Quebec Independence*, ASSOCIATED PRESS POL. SERV., Sept 1, 1998, available in 1998 WL 7441336.

scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?"<sup>179</sup> The question resulted in forty-nine and a half percent of voters saying yes, and only a fifty percent plus one majority was necessary for secession at the time.<sup>180</sup> The referendum outcome caused a realization in the federal government that Quebec was serious.<sup>181</sup>

### III. THE SUPREME COURT DECISION ON THE ISSUE OF THE SECESSION OF QUEBEC

#### A. *Background of the Case*

The threatening result of the 1995 referendum proved to be enough provocation for the Prime Minister of Canada, Jean Chretien, to present the issue of secession to the Supreme Court in Canada.<sup>182</sup> In 1995, the Supreme Court was asked to give its opinion on the legalities of unilateral secession.<sup>183</sup> According to Prime Minister Chretien, the Quebec separatist government's threat to act unilaterally "outside any reference to Canadian law" posed the "most serious risk for public order as well as the democratic rights of individual citizens."<sup>184</sup> The intention of the Canadian Central Government is to set ground rules for any future referendum.<sup>185</sup>

The Supreme Court of Canada besides being "Canada's court of final appeal" has the function of hearing references if asked by the Governor in Council.<sup>186</sup> A reference is "to consider important questions of law such as the constitutionality or interpretation of federal or provincial legislation, or the division of powers between the federal and provincial levels of government."<sup>187</sup> In addition, "any point of law may be referred to this Court."<sup>188</sup> Thus, the unilateral secession of Quebec from the rest of Canada is considered a reference for the Supreme Court.<sup>189</sup> References are rare, but the

179. *Id.*

180. *Id.*

181. *Canadian Ruling Preserves Stable Trade*, BUFFALO NEWS, Aug. 26, 1998, at B2.

182. *Id.*

183. DePalma, *supra* note 5, at A3. A federalist in Quebec with the Ottawa (federal or national) government filed suit in 1996 asking the Supreme Court of Canada for an opinion on the constitutional legality of a unilateral Quebec secession. *Id.*

184. John Urquhart, *A Unilateral Quebec Secession Is Barred*, WALL ST. J., Aug. 21, 1998, at A12.

185. *See generally id.*

186. *The Supreme Court Today, References* (visited Feb. 2, 2000) <<http://www.scc-csc.gc.ca/brochure/english/html/Today.html>>. The Supreme Court of Canada, which is Canada's highest court, has jurisdiction that includes the civil law of Quebec as well as the common law of the rest of the provinces and territories in Canada. *Id.*

187. *Id.*

188. *Id.*

189. DePalma, *supra* note 5, at A3.

Court's decision on such matters "can be of great importance."<sup>190</sup> Therefore, although the Court's decision regarding the secession of Quebec is not legally binding, the decision does carry the weight of "the moral and legal authority of the court."<sup>191</sup>

### 1. Questions Presented to the Court

On February 17, 1998, the Canadian Supreme Court began hearing arguments on whether Quebec has the right to unilaterally secede.<sup>192</sup> Of the nine justices, three are from Quebec, including Chief Justice Antonio Lamer.<sup>193</sup> Three questions were referred to the Supreme Court. Question one dealt with the legality of unilateral secession under domestic law, "[U]nder the Constitution of Canada, can the National Assembly, legislature, or government of Quebec effect the secession of Quebec from Canada unilaterally?"<sup>194</sup> Question two considered whether Quebec had this right under the parameters of international law; "[d]oes international law give the National Assembly, legislature or government of Quebec the right to effect secession of Quebec from Canada unilaterally?"<sup>195</sup> Here, the right to self-determination is at issue.<sup>196</sup> The third question submitted to the Supreme Court was, "in the event of a conflict between domestic and international law on the right of the National Assembly, legislature, or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?"<sup>197</sup> These questions go to the heart of the Canadian system of constitutional government and the future of Canada.<sup>198</sup>

### 2. Decision Delivered by the Court

On August 20, 1998, the Supreme Court of Canada gave guidance as to the underlying principles for the Canadian Constitution with respect to Quebec

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190. *The Supreme Court Today, References*, *supra* note 186. *See also* DePalma, *supra* note 5, at A3. Since 1892, only seventy four references have been issued by the Canadian Supreme Court. *Id.*

191. DePalma, *supra* note 5, at A3.

192. *What's News, World-Wide*, WALL ST. J., Feb. 17, 1998, at A1.

193. DePalma, *supra* note 5, at A3.

., Feb. 17, 1998, at A1.

193. DePalma, *supra* note 5, at A3.

194. *Reference Re Secession of Quebec*, 2 (visited Aug 26, 1998) <<http://www.droit.umontreal.ca/doc/csc-scc/en/rec/html/renvoi.en.html>>. This is the actual opinion of the court given on August 20, 1998. To answer Question one, the Court examined the evolution of the Canadian Union and the principles underlying the Constitution. Thus, these "principles of operation" were applied in the secession context. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

secession.<sup>199</sup> The Court ruled that Quebec had no right to secede unilaterally.<sup>200</sup> However, if a clear majority of Quebec residents supported a referendum vote to a clear question on secession, the rest of Canada, including the central government, the nine provincial governments, and the citizens of the rest of Canada would be obligated to enter into negotiations.<sup>201</sup> The Court left it up to the politicians to decide the requirements of a clear question and a clear majority.<sup>202</sup> The Supreme Court decision considered the legality of Quebec's secession under three separate questions including domestic law, international law, and if necessary, conflict of laws. Thus, the following provides what the Court determined under each of the above-mentioned questions.

a. Question One: Right to Secede under Domestic Law

The Supreme Court examined the underlying principles of the Canadian Constitution: federalism, democracy, constitutionalism, the rule of law, and respect for minorities.<sup>203</sup> As noted before, the BNA Act was an act of nation building, the first step in the transition from colonies to a unified and independent political state.<sup>204</sup> In this case, the Court focused upon the operation of constitutional principles in the secession context.<sup>205</sup> The Canadian Constitution does not explicitly prohibit or allow a province to secede from the Confederation.<sup>206</sup> However, the Court noted that secession would alter Canada, as it is known today internationally.<sup>207</sup>

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199. *Reference Re Secession of Quebec*, *supra* note 194, at 148.

200. *Id.* at 86. See also Jeffrey Simpson, *The Court Finds the Right Tradeoff*, *GLOBE & MAIL*, Aug. 25, 1998, at A12.

201. Simpson, *supra* note 200, at A12.

202. *Id.* The Supreme Court's vague requirement of a clear majority to a clear question has initiated much debate among the political parties. The PQ party believes a clear majority means fifty percent plus one, but the current Prime Minister of Canada Chretien believes it would take a more convincing margin. For example, a recent referendum proposed secession of Nevis from St. Kitts, two Caribbean islands joined by the British more than 100 years ago, a clear question was presented to the voters: "Do you approve of the Nevis secession bill and Nevis becoming an independent state separate from St. Kitts?" A two-thirds majority was necessary for the referendum to pass. Secession failed in Nevis with sixty-two percent of citizens voting "yes." This is an example of a "clear majority to a clear question". *Id.*

203. *Reference Re Secession of Quebec*, *supra* note 194, at 49.

204. See *supra* notes 157-58 and accompanying text (defining "nation building"); *supra* notes 106-14 and accompanying text (discussing BNA Act's impact on Canada).

205. See *Reference Re Secession of Quebec*, *supra* note 194, at 49.

206. *Id.* at 84.

207. *Id.* at 59. The Court looks at the costs of secession not only for Quebec but also for Canada with an uncertain identity. After more than a century of being a cultural diverse society, Canada would lose a major component of its diversity. *Id.*

A unilateral secession would undoubtedly alter the present constitutional arrangement quite drastically.<sup>208</sup> As stated in the Court's opinion, "the right to secede unilaterally means the right to achieve secession without prior negotiations or approval of the federal government of Canada, and the other provinces."<sup>209</sup> The Court reasoned, although the democracy principle in the Constitution gives the Separatists in Quebec the right to secede, negotiations are necessary to respect the interests of the federal government, Quebec, and the other provinces as well as the rights of all Canadians inside and outside the borders of Quebec.<sup>210</sup> Thus, requiring a clear majority of Quebec citizens in favor of secession would impose obligations upon all Canadians, including the central and provincial governments, to negotiate the secession of Quebec from the rest of Canada.<sup>211</sup> As a democracy, the Canadian Government cannot ignore the clear expression of the citizens of Quebec that they no longer wish to remain in Canada.<sup>212</sup> Similarly, Quebec must respect the interdependence of the provinces by participating in negotiations with the rest of Canada for successful secession.<sup>213</sup>

The vision of the Canadian founding fathers expressed the advantages of interdependence among the provinces under a central government.<sup>214</sup> The Attorney General from Saskatchewan expanded on this theme from the founding fathers in his oral submission to the Canadian Supreme Court as follows:

A nation is built when the communities that comprise it make commitments to it, when they forego chances and opportunities on behalf of a nation, . . . when the communities that comprise it make compromises, when they offer each other guarantees, when they make transfers and perhaps most pointedly, when they receive from others the benefits of national solidarity. The threads of a thousand acts of accommodations are the fabric of a nation<sup>215</sup>

However, if a majority of the people of Quebec expressed their clear intent to secede, negotiations would follow, without Quebec, and the national solidarity

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208. *See id.* at 83, 84.

209. *See id.* at 86.

210. *See Reference Re Secession of Quebec, supra* note, 194 at 92. "Canada as a whole is also a democratic community in which citizens construct and achieve goals on a national scale through a federal government acting within the limits of its jurisdiction." *Id.* Even though democracy expresses the sovereign will of the people, Quebec would have to respect the interdependence of achieving national goals and participate in negotiations with the rest of Canada.

211. *Id.* at 66.

212. *Id.* at 92.

213. *See id.* at 92, 95.

214. *Id.* at 96.

215. *Reference Re Secession of Quebec, supra* note 194, at 96. The interdependence argument emphasized how the founders of the Confederation viewed the Canadian nation, where national interests are put first before state interests.

of Canada would be weakened.<sup>216</sup> After more than a century of Confederation, a high level of integration in economic, political, and social institutions across Canada has occurred.<sup>217</sup> Therefore, the Court considered the difficulties in negotiations concerning the national debt, the national economy, and the boundaries of Quebec with the rest of Canada.<sup>218</sup> Consequently, the constitutional principles, which united Canada as a nation, could be used to dissolve Quebec in the negotiations following a potential referendum.<sup>219</sup>

b. Question Two: The Right of Secession under International Law

The Court also considered the existence or non-existence of a right of unilateral secession by a province of Canada in the context of international law. The Court observed that international law does not explicitly imply a right to secession nor deny a right to secession to be permitted under the right of self-determination.<sup>220</sup> However, the Declaration on Principles of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter of the United Nations recognizes that nations belonging to the United Nations respect the principle of the self-determination of peoples.<sup>221</sup> It provides in part, “[a]ll peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”<sup>222</sup>

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216. *See id.* at 96, 97.

217. *See id.* at 96.

218. *Id.* at 96, 97.

219. *See id.* at 148. In negotiations for secession, the Court would use the same principles of federalism, democracy, constitutionalism, the rule of law, and respect for minorities to negotiate the secession of Quebec from the rest of Canada. *Id.* Both Quebec and the rest of Canada would be obliged to participate in “good faith” recognizing these principles. *Id.* at 92, 95. *See also* Kenneth McRoberts, *The Supreme Court’s Ruling: Putting Things Straight*, GLOBE & MAIL, Aug. 21, 1998, at A19.

220. *Reference Re Secession of Quebec*, *supra* note 194, at 112.

221. MILAN SAHOVIC ed., PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND COOPERATION 442 (1972).

222. *Id.* An excerpt of the Declaration On Principles of International Law Concerning Friendly Relations and Co-Operation Among States In Accordance With the Charter Of The United Nations proclaims that:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social, and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

*Id.*

The Court addressed whether the citizens of Quebec constitute a “peoples” under international law.<sup>223</sup> “Peoples” are a group with an identity, stemming from a common language or common traditions that is separate from the rest of the country’s population.<sup>224</sup> The French Canadians of Quebec are a minority in Canada based on their French language and culture.<sup>225</sup> Quebec citizens are not considered colonial and oppressed peoples.<sup>226</sup> Therefore, the population of Quebec cannot claim to be denied access to the government since they have proportionate representation in the federal government.<sup>227</sup> Additionally, the citizens of Quebec have the freedom to participate in economic, social, and political endeavors throughout the rest of Canada and the world.<sup>228</sup> Residents have the freedom to make political choices. Thus, the “peoples” composing the population of Quebec are not oppressed or denied meaningful access to government. In considering these factors, the Supreme Court of Canada concluded that under international law, the right to self-determination does not apply to the residents of Quebec.<sup>229</sup>

In light of the answers to Question one and Question two, the Court found no conflict between domestic and international law.<sup>230</sup>

#### B. *Significance of the Supreme Court’s Decision In Respect to Canada*

The Court’s decision under domestic and international law sends a message to Quebec Separatists that secession from Canada would be difficult. The legal framework of a clear majority of voters to a clear question of secession is a tough legal obstacle for Quebec to overcome before declaring its

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The General Assembly of the United Nations passed this declaration as UN General Assembly 2625 (XXV), 1883rd Plenary Meeting, 24th Oct. 1970. *See also* Neil Finkelstein et al., *Does Quebec Have a Right to Secede at International Law?*, 74 CANADIAN B. REV. 240 (1993). “The Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations is the most important modern document in conventional international law on the right to self-determination.” *Id.* This Declaration was the result of a Special Committee who wanted to expand “the scope of the principle of self-determination to justify secession where the metropolitan State has, through discriminatory behavior, violated the secessionist group’s right to political representation.” *Id.*

223. *See infra* notes 279-81 and accompanying text.

224. *See infra* notes 282-93 and accompanying text (expanding on the objective and subjective criteria of the determination of a “peoples”).

225. *See supra* notes 117-20 and accompanying text; *see also infra* note 284 and accompanying text.

226. *See infra* notes 299-302 and accompanying text.

227. *Id.* Quebec is represented in all three branches of government including legislative, executive, and judicial institutions.

228. *See generally id.*

229. *Id.* This section discusses in further detail why Quebec does not have a right to secession under international law.

230. *See Reference Re Secession of Quebec, supra* note 194, at 147.



independent status.<sup>231</sup> Recognizing the seriousness of the consequences of secession, Quebec must clearly state its will to become an independent state.<sup>232</sup> The definition of secession used by the Court states, “[s]ecession is 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.”<sup>233</sup> From the standpoint of the Court, the citizens of Quebec need to reflect on exactly what they are about to embark on.<sup>234</sup>

Quebec is an important province to the composition of Canada.<sup>235</sup> It has unique and diverse features that add character to Canada.<sup>236</sup> The Court cannot make Quebec stay, but the decision will make it a difficult process for Quebec to achieve secession to preserve the order and stability that the Constitution represents.<sup>237</sup> Since 1867, Canada has been built upon the principles of interdependence in respect to economics, politics, and social institutions.<sup>238</sup> The Court reasoned that Quebec is too important to the identity of Canada to withdraw itself from the Confederation without a clear showing by the citizens of Quebec of their intent to leave.<sup>239</sup> If the intent is clear by the majority of the people of Quebec, negotiations with all participants in the Confederation of Canada will take place.<sup>240</sup>

The Supreme Court added a “new weapon” against secession by not only requiring a clear majority to a clear question, but also by requiring that all Canadians take part in the negotiations.<sup>241</sup> Thus, the negotiations could prove difficult after more than a century of integration in reference to dividing the national debt and assets of Canada.<sup>242</sup> A major contention point would be the aboriginal population of Quebec, such as the Cree Indians in northern

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231. See *supra* notes 197-200 and accompanying text.

232. See *Reference Re Secession of Quebec*, *supra* note 194, at 87. The Court wants the people voting for secession to know exactly what they are doing. They will no longer be a part of the Canadian Confederation. See *id.*

233. See *id.* at 83.

234. See *id.* at 87.

235. See *id.* at 96.

236. *Id.* at 59. See also DePalma, *supra* note 6, at A34. For example, Quebec provides a unique culture in respect to its French language and French culture, like its own television shows.

237. See generally Kenneth McRoberts, *The Supreme Court's Ruling: Putting Things Straight*, GLOBE & MAIL, Aug. 21, 1998, at A19. See also DePalma, *supra* note 5, at A3. Secession of Quebec would be “difficult, painful, and costly.” According to the justices, “[T]he devil would be in the details.” *Id.*

238. See *supra* notes 216-19 and accompanying text.

239. See *supra* notes 208-13 and accompanying text.

240. See *Quebec Just Can't Quit*, *supra* note 18, at O14.

241. Josee Legault, *How to Deny Quebec's Right to Self-Determination With the Supreme Court's Opinion: We have Entered the Realm of Colonial Federalism*, GLOBE & MAIL, Aug. 21, 1998, A19.

242. See *id.*; see also *Reference Re Secession of Quebec*, *supra* note 194, at 96.

Quebec.<sup>243</sup> The Cree Indians assert that with Quebec independence, they would resist the imposition of Quebec's sovereignty over them.<sup>244</sup> Thus, the boundary issue of Quebec would be a very complex issue to negotiate with three different groups, Canadians, Quebecers, and the Crees, arguing for the right to the same land.

On January 26, 1996, Lucien Bouchard, leader of the PQ Separatist party and current Premier of Quebec claimed the Court's decision as a victory for legitimizing secession.<sup>245</sup> Although the Court provided the legal framework for Quebec to secede from the union, it offered guidance for maintaining a unified Canada.<sup>246</sup> The holding of the Court emphasized that the legal requirements of a successful secession from Canada would not be simple.<sup>247</sup> According to Prime Minister Chretien, "Canada is not a prison. . .but we have established a barrier you have to go over. Canadians will never force anyone to stay. It is not their nature."<sup>248</sup> Essentially the Court is saying that Canada is not easily divisible, only a strong Canada brought together with shared principles will be successful.<sup>249</sup> Thus, Quebec is necessary to the success of Canada as a nation.

#### 1. What Is A Clear Question and A Clear Majority

The Canadian Supreme Court stresses in its opinion at least thirteen times that before negotiation, a referendum must obtain a "clear majority" and refers thirteen times to a "clear expression" and twice to a "clear repudiation of the existing constitutional order" as well as once to a "strong majority."<sup>250</sup> The

243. See MCROBERTS, *supra* note 147, at 231-33, 270-71.

244. See *id.* at 231; see also *Supreme Court of Canada Confirms Cree Position on Unilateral Secession*, CAN. NEWSWIRE, Aug. 20, 1998. (discussing the situation of the aboriginals, like the Cree Indians in relation to Quebec's secession).

245. See *Quebec Separatists Hail Ruling, Canada's Highest Court Rejected Unilateral Secession, But Said Other Provinces Would Likely Negotiate If Most Quebecers Want Out*, ORLANDO SENTINEL, Aug. 22, 1998, at A15; see also *Lucien Bouchard* (visited Oct. 17 1999) <<http://www.canoe.ca/CNEWSQuebecElection/bouchard.html>>.

246. See MCROBERTS, *supra* note 237, at A19.

247. See generally DePalma, *supra* note 5, at A4. In this article, DePalma recaps the Canadian Supreme Court's decision that that "separation would be difficult, painful, and costly." *Id.*

248. Edward Greenspon & Anne McLroy, *Quebec Premier says Supreme Court's Ruling Helps Sovereignists; Chretien Insists it Imposes a Crucial Barrier to Secession*, GLOBE & MAIL, Aug. 22, 1998, at A1.

249. See generally *id.* See also *Reference Re Secession of Quebec*, *supra* note 194, at 96-97.

250. See *Minister Dion Stresses the Need to Respect the Supreme Court's Opinion in its Entirety*, CAN. NEWSWIRE (visited Aug. 26, 1998) <[www.pco-bcp.gc.ca/aia](http://www.pco-bcp.gc.ca/aia)>. Minister Dion is the Minister of Intergovernmental Affairs. He sent an open letter to Quebec Premier Lucien Bouchard, leader of the Separatist Party, regarding his opinion of the Court's ruling. He felt that Bouchard had not taken it seriously only as legitimizing his claim of secession. Minister Dion

size of the majority must be sufficient to legitimize such a radical change that would commit not just present citizens of Quebec but the future generations causing to them give up Canadian citizenship and a prosperous and developed nation.<sup>251</sup> Therefore, a clear majority is necessary.

A clear majority “is a question of mathematics that adds up to a united Canada.”<sup>252</sup> Prime Minister Chretien and the National Assembly believe that a successful referendum would require the support of about sixty-six percent of all voters in Quebec who would have to vote yes to a question on secession.<sup>253</sup> This would mean that at least eighty percent of all French Canadians in Quebec based on the make-up of the population would have to vote yes to secession.<sup>254</sup> In the 1995 sovereignty referendum, about sixty percent of French Canadians voted in favor of secession.<sup>255</sup> In formulating a clear question, the Court rejected the vagueness of the previous referendum questions.<sup>256</sup> A clear question could not refer to secession as a “sovereignty association” or “sovereignty with an offer of political and economic partnership.”<sup>257</sup> The Court found it imperative that voters know exactly what they were doing: separating from the rest of Canada.<sup>258</sup> Therefore, the question must be explicitly clear, so there is no ambiguity regarding what the people of Quebec are deciding for their future status.<sup>259</sup>

The Supreme Court of Canada with its authority has stated that Quebec is too important to the rest of Canada to secede without all Canadians taking a

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urges Bouchard actually to examine the opinion, especially the difficulty in achieving the hurdles of the legal requirements like the clear question, clear majority, and good faith negotiations. *Id.*

251. *See generally id.*

252. *See* LuAnn LaSalle, *It's a Question of Mathematics That Adds Up to a United Canada*, ASSOCIATED PRESS POL. SERV., Aug. 31, 1998, available in 1998 WL 7441183.

253. *Id.*

254. *See id.*

255. *See id.* In the 1995 Referendum, the Separatists in total received 49.4 % of the vote. *Id.*

256. *The Wording of the Next Quebec Independence*, *supra* note 178. The 1995 referendum question contained forty words and asked, “[D]o you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and of the agreement signed June 12, 1995?” *Id.* According to Prime Minister Chretien, the question was so unclear that “many people who voted “yes” didn’t understand what they were endorsing.” *Id.*

257. *See generally Minister Dion Stresses the Need to Respect the Supreme Court’s Opinion in its Entirety*, *supra* note 250. Here, the Minister discusses the fact that Lucien Bouchard must ask a question that clearly provides that “Quebeckers want to give up Canada.” Thus, negotiations with the rest of Canada could not take place if the negotiations were based on vague concepts as “sovereignty-association” or “sovereignty with an offer of political and economic partnership.” *Id.*

258. *Id.* *See also* Greenspoon and McIlroy, *supra* note 248, at A1. The referendum question must get at the heart of what secession is. Secession is the complete withdrawal from the Canadian Confederation. There is no partnership or association with secession. *Id.*

259. *Id.*

part in its withdrawal.<sup>260</sup> Quebec has been there from the creation of Canada and it plays a large role as part of the identity of Canada.<sup>261</sup> Canada is a confederation that embraces diversity and is a symbol to the rest of the world that diversity can work and even flourish within the borders of one nation.<sup>262</sup> The Supreme Court of Canada has forced the people of Quebec to reflect on what Quebec means to Canada.

#### IV. APPLICATION OF INTERNATIONAL LAW

The Supreme Court determined the legality of Quebec's secession under international law. In this section, the right of secession under international law is further examined in terms of principles and its application in more detail to Quebec's situation. International law applies to the potential secession of Quebec because it involves the right of self-determination, which all nations are to respect.<sup>263</sup>

##### A. *The Right to Self-determination Contrary to "Territorial Integrity"*

Under international law, the Canadian Supreme Court examined the legitimacy of Quebec's claim of secession as a right to self-determination.<sup>264</sup> The United Nations Charter recognizes both a "peoples" right to self-determination and the right of a sovereign state's territorial integrity.<sup>265</sup> Assertions of self-determination stem from the fact that many states are multiethnic.<sup>266</sup> Besides Canada, major European powers are also faced with

260. See *Quebec Can't Just Quit*, *supra* note 18; *supra* notes 208-13 and accompanying text.

261. See *supra* notes 208-13 and accompanying text.

262. See *Slowing Secession Quebec will have to Negotiate a Divorce from Canada*, PITTSBURGH POST-GAZ., Aug. 31, 1998, at A10.

263. See *Reference Re Secession of Quebec*, *supra* note 194, at 83. "It is also argued that international law is a relevant standard by which the legality of a purported act of secession may be measured." *Id.*; see *infra* notes 265-67 and accompanying text. In the United Nations Charter, the right of self-determination is to be respected by all nations; therefore, this is a facet of international law.

264. *Reference Re Secession of Quebec*, *supra* note 194, at 111.

265. See U.N. CHARTER art. 1, para. 2. "The Purposes of the United Nations are: (2) to develop friendly relations among nations based on the respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." See U.N. CHARTER art. 2, para. 4 (stating the principle of "territorial integrity.") (see also in Finkelstein, *supra* note 222, at 238. "The Charter of the United Nations, adopted in 1945, was the first international law instrument to formally recognize the concept of self-determination."). See Dr. Bryan Schwartz & Susan Waywood, *A Model Declaration On The Right Of Secession*, 11 N.Y.U. J. INT'L L. & POL. 1, 16 (1998). The U.N. Charter states the purposes and principles of the United Nations. The UN Charter does not define either "self-determination" or "peoples". See *supra* notes 220-22. Thus, to understand concepts, a person may look to declarations of the United Nations to find further explanation of the Charter concepts.

266. Schwartz, *supra* note 265, at 16.

secessionist movements, including the Scots, Irish, and Welsh in the United Kingdom and Basques and Catalans of Spain.<sup>267</sup> As many states throughout the world invoke their right of self-determination to claim independent statehood, secession in general has the potential to disrupt the present world order.<sup>268</sup> In the international community, secession is regarded as a last resort for peoples in an oppressive situation.<sup>269</sup>

The wider international community has an interest in limiting the fragmentation of states.<sup>270</sup> The transaction costs of negotiating and monitoring international agreements rise as more states enter the international scene.<sup>271</sup> Further, trying to achieve the goals of the international community like the negotiation of free trade agreements and the regulation of military weapons becomes more difficult with a greater number of states. The best interest of the international order is to limit the number of states and make globalization possible.<sup>272</sup> “Secession in general is only valid as a last resort” as states have a particular place in the “web of international legal and political relationships.”<sup>273</sup>

A major principle of international law is the respect of sovereignty of existing states or “territorial integrity” as recognized in the Charter of the United Nations.<sup>274</sup> Territorial integrity involves the right of an existing state to be free of external interference from other states on its territory.<sup>275</sup> However, recognition is contrary to the principle of territorial sovereignty.<sup>276</sup> Recognition is the acceptance of a new state by the international community of the independence of the state.<sup>277</sup> Therefore, another state is interfering in an existing, sovereign state’s control over its own affairs within its boundaries.

267. *Id.* at 44.

268. *Id.* at 2.

269. *Id.* at 18-19.

270. Gerry J. Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, 32 STAN. J. INT’L L. 255 (1996).

271. Schwartz & Waywood, *supra* note 265, at 2.

272. *Id.* at 2.

273. *Id.* at 18-19.

274. See U.N. CHARTER art. 2, para. 4.

275. BRANAMIR M. JANKOVIC, PUBLIC INTERNATIONAL LAW 172 (1984).

276. Finkelstein, *supra* note 222, at 233. To be a state in international law, an entity “should possess the following qualifications: a. a permanent population; b. a defined territory; c. government . . . ; d. capacity to enter into relations with other states.” *Id.* at 230. (The qualifications are quoted from Article 1 of the Montevideo Convention).

277. JANKOVIC, *supra* note 275, at 97. Recognition has been argued as either a political and diplomatic or legal matter between states. *Id.* at 99. Recognition is the formal act of acknowledging a new state and its legal existence in the international community. *Id.* at 98. See generally, Gerald McGinley, “The Creation and Recognition of States” in PUBLIC INTERNATIONAL LAW: AN AUSTRALIAN PERSPECTIVE 207 (Sam Blay et al. eds., 1997). Non-recognition of a state keeps a state from entering into many international agreements and functioning as a world player. *Id.*

For these reasons, recognition of separatist movements is limited to “a secessionist unit who have a history of oppression and discrimination.”<sup>278</sup>

*B. International Law applied to Quebec’s Claim of Secession*

The right to self-determination as expressed by the United Nations Charter is limited to “peoples.”<sup>279</sup> Not every ethnic, religious, or linguistic group can claim statehood without the international system of peace and security being threatened.<sup>280</sup> “Peoples” are a group with a self-defined identity from the rest of the country.<sup>281</sup> Objective criteria for the determination of a “peoples” are a group with “common traditions, common language, common religion, and - perhaps most important - common enemies.”<sup>282</sup> Applied to Quebec, the common French language and political traditions would arguably satisfy the objective criteria of a “people.”<sup>283</sup> However, people other than French-speaking people live in Quebec, like English-speaking people and the aboriginal population, such as the Cree Indians.<sup>284</sup> This shows that there is a lack of homogeneity in the Quebec population.<sup>285</sup> If a “peoples” were only defined on the objective criteria, each of these groups could make a claim of self-determination as a “people.”<sup>286</sup> That is why more is needed than merely an objective belief to justify the exercise of self-determination. A subjective

278. Finkelstein, *supra* note 223, at 231-33. “The rights of existing or metropolitan, states to preserve their territorial integrity and sovereignty are jealously protected at international law . . . . As a result, international law, which consists of conventions and practices of states and state-run institutions, treats premature recognition of prospective states as an unlawful violation of territorial integrity. The international community *may* be entitled to intervene and recognize the secessionist unit in some situations where there has been a history of oppression and discrimination.” *Id.*

279. U.N. CHARTER art. 1, para. 2.

280. LOUIS HENKIN ET AL., INTERNATIONAL LAW 304 (1993). In 1992, the U.N. Secretary-General warned about the dangers of separatist movements. “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 even more difficult to achieve.” *Id.*

281. *See generally* Finkelstein, *supra* note 222, at 248-49.

282. *Id.* at 248.

283. *Id.*

284. *Id.* at 249. *See also Supreme Court of Canada Confirms Cree Position on Unilateral Secession*, CAN. NEWSWIRE, Aug. 20, 1998 (discussing the situation of the aboriginals, like the Cree Indians in relation to Quebec’s secession). *See Facts on Canada, French Language and Identity: A Vibrant Presence* (visited Feb. 8, 2000) <<http://canada.cio-bic.gc.ca/facts/frenchid-e.html>> (“According to the 1991 census, French is the mother tongue of 82% of Quebec’s population and is spoken at home by 83% of Quebecers.”). *Facts on Canada, Canada* (visited Feb. 8, 2000) <<http://canada.cio-bic.gc.ca/facts/canadagen-e.html>>. In Canada, “English is the mother tongue of about 59% of Canadians, and French is the first language of 23% of the population.” The Official Languages Act makes English and French the official languages of Canada. *Id.*

285. *Id.* Quebec’s population includes English, French, and natives.

286. *See generally id.* at 248-49.

belief of the people requires that they believe the only way to prosper is as an independent state.<sup>287</sup>

The subjective criteria used to designate a “people” are 1) whether the people have manifested an unequivocal will to live together, and 2) have expressed a desire be recognized as distinct.<sup>288</sup> An election or referendums are tools to determine the criteria.<sup>289</sup> For example, referendums used in the Baltic States’ declarations of independence included ninety percent of Lithuanians, seventy-eight percent of Estonians, and seventy-four percent of Latvians.<sup>290</sup> These overwhelming results indicate an unequivocal will to live together as a sovereign state.<sup>291</sup> In 1991, ninety-three percent of Croatians favored complete secession from Yugoslavia.<sup>292</sup> In contrast, the results of both Quebec’s previous referendums were under fifty percent.<sup>293</sup> In comparing these statistics, it is difficult to make the argument under both the objective criteria, which lack homogeneity, and the subjective criteria, which lack an expressed clear intent of secession, that the people of Quebec have a right to self-determination.

The international community has recognized the secessions of Bangladesh from Pakistan, the Baltic States from the former U.S.S.R., and Croatia, Slovenia, and Bosnia-Hercogovina from former Yugoslavia.<sup>294</sup> For example, the secession of Croatia, Slovenia, and Bosnia-Hercogovina from Yugoslavia is a clear example of a successful secession based upon the right to self-determination.<sup>295</sup> Here, the states seceding were “politically disempowered and discriminated against.”<sup>296</sup> There were few problems with recognition because ethnic cleansing was used as an attempt by the Yugoslav federal military to increase Serbian territory by attempting to force all non-Serbs out of territories, which were occupied by Serbs or contiguous to the Yugoslav republic.<sup>297</sup>

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287. *Id.* at 249-50.

288. *See* Finkelstein, *supra* note 222, at 248.

289. *Id.*

290. *Id.* at 250.

291. *Id.*

292. *Id.*

293. *See supra* notes 144-49 and accompanying text.

294. *See* Finkelstein, *supra* note 222, at 245. These are the examples of successful secessionist movements based upon the right of self-determination. *Id.*

295. *Id.* at 246. (quoting Eastwood, “it represents the first time widespread international state practice has favoured secession movements still engaged in armed struggle for independence outside the colonial context.”). *Id.*

296. *See id.* at 247. When a political system enforces internal discrimination, the state may be found to have violated the right to self-determination. The right to be politically represented has been taken away. *Id.*

297. *Id.*

In these previous examples, the facts supporting secession are clearly stronger than the present situation in Quebec.<sup>298</sup> The same conditions do not exist in Canada. Quebec is fairly represented within the framework of the federal government.<sup>299</sup> Quebec's politicians have dominated the office of Prime Minister since 1948 for about thirty-four of the last forty-seven years.<sup>300</sup> And three of the nine justices on the Supreme Court are reserved for Quebecois, even though the population of Quebec makes up only one-quarter of the population.<sup>301</sup> In addition, the Constitution Act 1982 reaffirmed Canada's commitment to the protection of minority rights in the Canadian Charter of Rights and Freedoms.<sup>302</sup> With all of these protections and no evidence of human rights violations, Quebec lacks a serious claim to secession under international law, where secession is generally only recognized as a last resort.<sup>303</sup>

#### V. ALTERNATIVES FOR THE FUTURE OF QUEBEC AND CANADA

The Supreme Court's decision will have a significant impact on not only Quebec's future but also the future of Canada as a nation. Two alternatives are possible for the future of Canada and Quebec: Quebec secedes from Canada, assuming the conditions set forth by the Supreme Court are met or Quebec could stay as a part of Canada. After discussing these two alternatives for the future of Quebec and Canada, the most likely alternative will be discussed.

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298. *Id.* at 255. Another example is Pakistan. "West Pakistan exercised political dominance over East Pakistan and exploited its natural resources." *Id.* at 253. West Pakistan during the Civil War with East Pakistan practiced genocide. *Id.* "West Pakistan engaged in clear human rights' violations, . . . a wholesale denial of human rights as a result of a deliberate policy of the existing state." *Id.* East Pakistan had a valid claim of self-determination. *Id.*

299. *See infra* notes 300-03 and accompanying text.

300. *See* Finkelstein, *supra* notes 222 & 255 (construing R.S.C. 1985, c. S-26, s. 5). Pursuant to the Supreme Court Act, three of the nine justices on the Supreme Court of Canada were appointed from the bar of Quebec. *Id.*

301. *See id.* (stating Quebec is the only province with this entitlement). In addition, Quebec's one third of the judges on the Court exceeds its proportionate share of the Canadian population by about twenty-five percent.

302. CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms). In section 16, the Charter recognized "English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada." *See also Facts on Canada, Multiculturalism* (visited Feb. 10, 2000) <<http://canada.cio-bic.gc.ca/facts/canadagen-e.html>>. Canada became the first country to adopt a multiculturalism policy. The policy affirms that Canada "recognizes and values its rich ethnic and racial diversity." *Id.*

303. *See supra* notes 237-52 and accompanying text.



### 1. Secession of Quebec from Canada

Under international law standards, Quebec lacks a serious claim of a unilateral declaration of independence from Canada.<sup>304</sup> The Separatist leaders hope that after a declaration of independence, the rest of the world would recognize the reality of Quebec as an independent republic.<sup>305</sup> However, the principles of non-recognition would apply to the secession of Quebec. Secession is used in situations of last resort for oppressed and politically discriminated people.<sup>306</sup> Quebec does not fit this description; therefore, it is unlikely that the international community would be willing to recognize Quebec. Since countries from around the world are heavily invested in the Canadian economy, it is likely that many countries would be extremely cautious of offending the Canadian government by recognizing Quebec.<sup>307</sup> Furthermore, recognizing Quebec without just cause would violate the sovereignty of Canada.<sup>308</sup> For example, the United States' position on the secession of Quebec has been one of strict nonintervention, i.e. without the consent of Canada, it is unlikely that the United States would recognize an independent Quebec.<sup>309</sup>

Without the recognition of the United States, Quebec would arguably experience economic hardships.<sup>310</sup> The United States is Canada's largest trading partner through the North America Free Trade Agreement (NAFTA), which allows for freedom of movement of goods between the United States, Canada, and Mexico.<sup>311</sup> As a sovereign country outside of Canada and without the recognition of the United States, Quebec would lose its most significant trading partner.

However, if Quebec were to satisfy the legal requirements set out by the Supreme Court, Canada would be obligated to enter into good faith negotiations with Quebec.<sup>312</sup> It is possible that Canada's recognition of Quebec's independence would encourage other states, including the United

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304. *See id.*

305. *See* Schwartz & Waywood, *supra* note 265, at 12. *See* Anthony DePalma, *Vote in Quebec May Be Last Fling With Secession*, N.Y. TIMES, Nov. 23, 1998, at A1, A10.

306. *See supra* notes 267-69 and accompanying text.

307. *See* ROBERT A. YOUNG, *THE SECESSION OF QUEBEC AND THE FUTURE OF CANADA* 112-13 (1995).

308. *See* Finkelstein et al., *supra* note 222, at 230.

309. DePalma, *supra* note 5, at A4.

310. *See infra* notes 311, 317-29 and accompanying text.

311. *See* HENKIN ET AL., *supra* note 280, at 1408-11, 1546-48 (expanding on the treaty of NAFTA, including dispute settlements and its principle features). Further, NAFTA eliminates "barriers to agricultural, manufacturing, and services trade, to remove investment restrictions, and to protect effectively intellectual property rights." *Id.* at 1409. *See generally* CIA-*The World Fact Book, Canada* (visited Feb. 13, 2000) <<http://www.cia.gov/cia/publications/factbook/ca.html>>. NAFTA became effective in 1994.

312. *See supra* notes 200-02 and accompanying text.

States, to be more willing to recognize Quebec. Quebec, as an independent nation, would possibly be able to join trade agreements as a recognized independent state depending on the provisions of the treaties, like a Quebec-Canada Partnership.<sup>313</sup> However, even with a negotiated secession, Canada may object to the addition of Quebec as a party to NAFTA as an independent sovereign.<sup>314</sup> Further Canada may erect trade barriers against Quebec to stifle its trading opportunities.<sup>315</sup> Consequently, the United States would be in a position of choosing whether to protect NAFTA by preventing these trade barriers.<sup>316</sup>

Another possibility following secession negotiations is the division of Quebec's assets among the rest of Canada by the Canadian government.<sup>317</sup> Also, Canada without Quebec would now have a smaller economy and population, therefore, Canada might not be able to offer the same amount and quantity of goods that the United States had expected.<sup>318</sup> As a result, the United States could consider this a fundamental change in circumstances and re-negotiate the trade agreements to the possible disadvantage of Canada as a new smaller nation.<sup>319</sup>

Not only may Quebec be negatively affected by finding itself without trade partners, but also as an independent state, it would no longer enjoy the protected status of being part of the eighth largest economy as a province within Canada.<sup>320</sup> Unlike the benefits of a common integrated economy where an international economic downturn would be absorbed by all provinces to lessen the effects under secession, Quebec would now stand-alone.<sup>321</sup> After secession, the people of Quebec would possibly no longer maintain their status as Canadian citizens.<sup>322</sup> Thus, they would no longer be entitled to receive the

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313. See generally MCRROBERTS, *supra* note 147, at 225-26.

314. See YOUNG, *supra* note 307, at 111.

315. See generally MCRROBERTS, *supra* note 147, at 257.

316. *Id.*

317. *Id.* at 270 (discussing Quebec as part of Canada shares in an integrated community and economy). See also Richard H. Leach, *Canadian Federalism Revisited in CANADIAN FEDERALISM FROM CRISIS TO CONSTITUTION* 15 (Harold Walker et al. eds., 1984).

318. Schwartz & Waywood, *supra* note 265, at 3. See generally MCRROBERTS, *supra* note 147, at 272.

319. See Jan Linehan, *Law of Treaties*, in *Public INTERNATIONAL LAW: AN AUSTRALIAN PERSPECTIVE* 111-12 (Sam Blay et al. eds., 1997); see also YOUNG, *supra* note 307, at 37. Without Quebec's contribution to the economy, Canada as a nation may have less to offer in trade agreements. *Id.*

320. MCRROBERTS, *supra* note 147, at 273.

321. Schwartz & Waywood, *supra* note 265, at 2. See also Leach, *supra* note 317, at 15 (discussing how protectionist measures of the provinces stifle the benefits of an integrated economy).

322. See YOUNG, *supra* note 307, at 110.

benefits of Canadian citizenship, like federally funded programs.<sup>323</sup> To Canada's detriment, tax burdens on its citizens would increase by 3.3% in order to provide the current level of government services without the contribution of Quebec.<sup>324</sup> In addition, Quebec would not receive the benefits of the strong economic growth of Canada, such as social benefits, and the right to vote in Canadian elections.<sup>325</sup>

Furthermore, Quebec will find itself in control of all levels of its economic development and growth.<sup>326</sup> This may result with Quebec finding itself with its fair share of the national debt. Quebec as part of Canada contributed to the national debt of Canada and with secession, the debt may be divided.<sup>327</sup> Following the declaration of the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts, Quebec would be allocated an "equitable portion" of debt.<sup>328</sup> Furthermore, Quebec as a newly independent nation would lose its bargaining strength and international prominence in the international community itself when compared to the influence it had as part of Canada.<sup>329</sup> Therefore, Quebec may find it more difficult to find favorable trading agreements because potential trading partners would be unsure of Quebec's economic stability.

The secession of Quebec from Canada would be costly for Quebec as a province and the rest of Canada.<sup>330</sup> The supporters of secession in Quebec view independence as associated with greater opportunities to express their unique culture outside the sphere of the English dominant society.<sup>331</sup> However, each citizen of Quebec and citizens in the rest of Canada will pay a price for secession.<sup>332</sup> The average Quebec citizen may find that his or her personal, educational, and professional opportunities will decrease because

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323. MCROBERTS, *supra* note 147, at 273. *See also* YOUNG, *supra* note 307, at 32. As a sovereign state, Quebec would collect all its taxes within its borders. There would be no more payments or transfers from Canada, resulting in a decrease in the revenue for Quebec programs. *Id.*

324. *A Joint Venture: The Economics of Constitutional Options*, ECONOMIC COUNCIL OF CANADA, 84-85 (1991), in YOUNG, *supra* note 307, at 32.

325. MCROBERTS, *supra* note 147, at 273.

326. *See* YOUNG, *supra* note 307, at 32.

327. MCROBERTS, *supra* note 147, at 270.

328. *See* YOUNG, *supra* note 307, at 110. However, many states have not yet ratified the Convention. Customary international law holds the remaining state responsible for national debts. In this case, Quebec could secede without assuming any of the national debt. *Id.*

329. *See* Schwartz & Waywood, *supra* note 265, at 53. *See generally* YOUNG, *supra* note 307, at 37.

330. *See infra* notes 332-35 and accompanying text.

331. *See generally* Schwartz & Waywood, *supra* note 265, at 2. *See* Christopher J. Chipello, *Quebec's Language Feud*, WALL ST. J., Aug. 22, 1996, at A11.

332. *See* Schwartz & Waywood, *supra* note 265, at 2.

these resources will be smaller than what was available in Canada.<sup>333</sup> Also, the residents of Quebec would likely become poorer due to outflow of capital and people. Although, fragmentation of states involves costs in growth opportunities, for the majority of Canadian citizens, a “smaller” Canada would mean a less diverse and limited realm of opportunities for everyone in the remaining provinces of Canada.<sup>334</sup>

## 2. Quebec Remains a Part of Canada

The second alternative for Quebec is that it remains part of Canada. Current politics are relevant to this alternative because the popularity of the separatist movement in Quebec relies upon who has the political power in Quebec.<sup>335</sup> Lucien Bouchard of the PQ Separatist party, retained power as the Premier of Quebec in the Premier election in Quebec on November 30, 1998.<sup>336</sup> He defeated the leader of the Liberal Party, Jean Charest.<sup>337</sup> Charest vowed that he would not present another referendum for secession to the people of Quebec.<sup>338</sup> He appeals to those who do not want to leave Canada and believe that Quebec can maintain its cultural diversity within the Canadian framework.<sup>339</sup> Although Bouchard and his Separatist party retained control, he only received 42.8% of the vote while Charest received 43.6% of the vote.<sup>340</sup> The popular vote can be indicative of the strength of the secessionist movement.<sup>341</sup> In the 1995 referendum, secession of Quebec had received close to fifty percent of the voters.<sup>342</sup> In this sense, the separation movement is losing strength.

The fight for secession is also losing momentum with “even the staunchest Quebec separatists.”<sup>343</sup> Very few people, especially the younger generations, bear the fleur-de-lis: the symbol of the Quebec independence movement.<sup>344</sup> People in Quebec, starting with the younger generations, are realizing that

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333. *See id.*

334. *See id.*

335. *See generally infra notes 336-39, 387-92 and accompanying text.*

336. Anthony DePalma, *Separatist Premier Keeps Control in Quebec's Provincial Election*, N.Y. TIMES, Dec. 1, 1998 at A1.

337. *Id.*

338. DePalma, *supra* note 305, at A1.

339. DePalma, *supra* note 336, at A3. The Liberal Party is the anti-separatist party in Quebec.

340. *Id.* Of the 125 provincial assembly seats, the Separatists control 77, the Liberals 46, and the Democratic Action 1 seat.

341. *See id.* at A1, A3.

342. *See supra* notes 179-80 and accompanying text.

343. DePalma, *supra* note 305, at A10.

344. *Id.*

there are other issues that affect them more than secession.<sup>345</sup> Quebec as part of Canada can take advantage of the opportunities that abound in such an influential and diverse country.<sup>346</sup> The younger generations realize for the most part the importance of strengthening the unity of Canada, evidenced by the numbers in the most recent election.<sup>347</sup> Many people view Quebec as too small a place to settle.<sup>348</sup> The election results show that although the separatists still retain power the pride and passion of the movement is waning.<sup>349</sup>

With the Supreme Court's requirement of a clear majority to a referendum question regarding secession, it is unlikely that the support of a clear majority will be attainable. Even Bouchard recognizes that a referendum will not happen anytime soon.<sup>350</sup> Many voters have viewed this past election not as a vote for independence, but as a vote for which party will control the provincial government, in respect to issues lobbied for.<sup>351</sup> Some of the people who did vote for Bouchard support the Separatist movement as leverage against the Federal government.<sup>352</sup> They believe the threat of the separatists in power can be used as a bargaining tool for changes and concerns of the voters.<sup>353</sup> In this way, Quebec as a province will continue to have its interests protected in the national government. With a dropping percentage of the vote favoring the separatist power and the uncertainty surrounding the motivation behind voting, all indications suggest that Quebec will remain committed to Canada.

As part of Canada, Quebec shares in a developed and successful economy.<sup>354</sup> Thus, the resources and opportunities available in a unified

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345. Christopher J. Chipello, *Gains in Canada Undermine Claim It Can't Help Province*, WALL ST. J., Oct. 31, 1997, at A18.

346. See *infra* notes 299-310 and accompanying text.

347. Chipello, *supra* note 345, at A18. See also DePalma, *supra* note 305, at A1.

348. DePalma, *supra* note 305, at A10. The attitude of the young Quebeckers is sarcastically, "I'm going to live in this province and nowhere else." Thus, supporting a unified Canada as opposed to the idea of an independent Quebec. *Id.*

349. See generally *id.* See also Chipello, *supra* note 345, at A18.

350. See Anthony DePalma, *Quebec's Election Failed to Give Clear Idea of Where Province Is Heading* (visited Jan. 1, 1999) <<http://www.nytimes.com/library/world/americas/>>. Bouchard recognizes that these are not times of "winning conditions" for the next referendum for separation. Even though the separatists retained power in Quebec, they were not able to attain a plurality of the vote. *Id.*

351. DePalma, *supra* note 305, at A1, A3. "What appeared to be taking place is that Quebeckers see this election as a vote on government, not on independence, so separatist emotions are in check." However, by voting for the separatist party, many people feel that Quebec can have influence in negotiating changes to the shape of Canadian federalism. *Id.*

352. See *id.*

353. See *id.*

354. See generally *CIA-The World Fact Book, Canada* (visited Feb.13, 2000) <<http://www.cia.gov/cia/publications/factbook/ca.html>>. As an affluent, high-tech industrial society, Canada today closely resembles the US in its market-oriented economic system, pattern

Canada, with a population of over thirty million people, are greater when compared with the amount of resources and opportunities available in an independent Quebec nation of just over seven million.<sup>355</sup> Firms have the ability of scale economies and specialization, which results in efficiency and decreased costs of production.<sup>356</sup> The competitive environment provides for the availability of superior products at reasonable prices. Also, within a larger economic union, the flow of information and innovation encourages economic progress.<sup>357</sup> Within the economic framework of Canada, goods, services, and the factors of production flow relatively freely within it.<sup>358</sup> Canada's sheer size makes this production efficient to satisfy the needs of its citizens.

For example, a major defeat to the Separatist movement came during the ice storm of 1998.<sup>359</sup> Hydro-Quebec, a hydro-electricity plant, has been the pride of Quebec, since the Quiet Revolution in the 1960s.<sup>360</sup> It has been a source of proof for the people of Quebec that they have the resourcefulness to be an independent nation.<sup>361</sup> "The province of Quebec relies on electricity for forty-one percent of its energy consumption, more than double the national average."<sup>362</sup> However, during the ice storm, 1.4 million customers were without power.<sup>363</sup> Quebec was left with a repair bill of over \$1 billion to fix the electricity problem.<sup>364</sup> Quebec was forced to look to the federal

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of production, and high living standards." Canada as a nation has had strong growth in the areas of manufacturing, mining, and service sectors. As of December 1998, the unemployment rate nationwide was 7.8%. Canada's Gross Domestic Product (GDP) as of 1998 is approximately \$688.3 billion. *Id.*

355. *Population, Quebec et Canada 1851-1999* (visited Oct. 12, 1999). <<http://www.stat.gov.qc.ca/donstat/demograp/general/102.htm>>. As of October 1999, Canada's population was 30,567,962 (53rd most populous country in the world) and Quebec's population was 7,363,262. *Id.*

356. DOUGLAS MCTAGGART ET AL., *ECONOMICS* 10.14 (3rd ed. 1997).

357. *See generally id.* at 11.15, 11.19, 11.20 and 12.7 – 12.9; *see generally* YOUNG, *supra* note 308, at 32-37.

358. *See id.* at 2.2. Factors of production include labor, land, and capital are converted into goods and services. *Id.*

359. Anthony DePalma, 'Q' for Quebec Electric Loses Political Glow, Too, N.Y. TIMES, Jan. 15, 1998, at A6. *See also* Dennis Bueckert, *Ice Storm Damage Tallied* (visited Feb. 9, 2000) <[http://www.canoe.ca/CNEWSIceStorm/icestorm\\_dec15\\_cp.html](http://www.canoe.ca/CNEWSIceStorm/icestorm_dec15_cp.html)>. (expanding on the damage of the storm, which resulted in economic losses for Montreal alone at \$585 million).

360. *Id.* Stemming from the Quiet Revolution, most Quebeckers believe that the plant should only have as its chief executive a "French speaking supporter of the Separatist cause." Lucien Bouchard, current leader of the Separatist party and Premier of Quebec, has his office in the Hydro-Quebec headquarters in Montreal. *Id.*

361. *See generally id.*

362. *Id.*

363. DePalma, *supra* note 359, at A6.

364. *Ottawa, Quebec Fight Over Blackout Compensation* (visited Feb. 8, 2000) <[http://www.canoe.ca/CNEWSIceStorm/feb9\\_icestorm.html](http://www.canoe.ca/CNEWSIceStorm/feb9_icestorm.html)>.

government to provide disaster relief to rebuild Hydro-Quebec's network.<sup>365</sup> For Quebec, Hydro-Quebec is "the symbol of our engineering know-how and the flagship of Quebec's economy."<sup>366</sup> However, after the devastating storm, Quebec's claim to self-sufficiency may be questioned.<sup>367</sup>

Quebec, if committed to the Canadian Confederation, will strengthen Canada's influence in the international community as a symbol of "tolerance and diversity."<sup>368</sup> In contrast, the future implications of secession by the fragmentation of a prosperous and influential country like Canada, would have a rippling affect on the international scene. Secession of Quebec would put secession in the spotlight for other countries.<sup>369</sup> The message to be sent is that diversity within a union does not work.

For example, in the United States the idea of secession has been recently revisited. The people of Hawaiian descent, about twenty percent of the population, have felt ignored by the United States and state government.<sup>370</sup> They feel that their native language and culture is endangered.<sup>371</sup> However, after Hawaii became a state in 1959, an amendment in 1978 made Hawaiian the second official language of the state.<sup>372</sup> In addition, two state agencies were created specifically to address the needs of the native population.<sup>373</sup> Still "bitterness remains" over the protection of native Hawaiians distinctive interests and culture in the government.<sup>374</sup> This sentiment, similar to Quebec, fuels the growth of native pride. As native pride grows, secession could become an option.<sup>375</sup> However, this option is unlikely as only such a small percentage of the Hawaiian population is interested in such a movement.<sup>376</sup>

This demonstrates how the secession of Quebec from Canada would be seen as an example of how diversity and tolerance failed within a nation.<sup>377</sup> To

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365. *Id.*

366. DePalma, *supra* note 359, at A6.

367. *Id.* Separatists in Quebec make the claim that English-speaking federalists will view this situation as a major obstacle in the Separatist movement, but the Separatists will use it as a way "to show the resourcefulness of the Quebec people." *Id.*

368. Schwartz & Waywood, *supra* note 265, at 49.

369. *See generally id.* at 2.

370. Michael Tighe, *Hawaii Marks Painful Anniversary*, BOSTON GLOBE, Aug. 11, 1998, at A3. On August 12, 1898, the islands of Hawaii were annexed to the United States. Many natives believed this to be an illegal transaction. Those who favored annexation wanted their sugar plantations to flourish. *Id.*

371. *Id.*

372. *Id.* Schools throughout the islands teach Hawaiian. *Id.*

373. *Id.*

374. *Id.*

375. Tighe, *supra* note 370, at A3.

376. *Id.* Hawaii is one separatist group in Hawaii who were planning for 1999 sovereignty convention to be held to gather support for secession.

377. *See generally supra* notes 15-16, 261-63, 247-49 and accompanying text.

the native population of Hawaii, the secession of Quebec may make secession in the United States even more appealing. If this should occur, the cultural vitality that gives an identity to many nations would be jeopardized. With the defeat of such a publicized secessionist movement in Canada, many leaders of possible secessionist movements may think twice about their situation and evaluate whether independence is their last resort.<sup>378</sup>

### 3. Likely Future of Canada and Quebec

Given the two alternatives for the future of Quebec and Canada, the likely scenario is that Quebec will continue to remain committed to Canada as a province of the Canadian Confederation. As discussed above, secession is an alternative that does not make much economic sense for Quebec.<sup>379</sup> Sacrificing the advantages of belonging to an established state engaged in economic treaties and the economic resourcefulness of a large nation is not in Quebec's best interest.<sup>380</sup> This is taken in the light of the evidence that Quebec's distinctive interests and culture are explicitly represented in the federal government.<sup>381</sup>

Bouchard the leader of the PQ party, the Separatist party, has been the fuel behind the most recent separatist movement.<sup>382</sup> He comes from the distant northern hills of Quebec, where he really did not see the rest of Canada until he was forty-six.<sup>383</sup> To Bouchard, Quebec is already a separate nation, which in his view is cut off from the rest of Canada culturally and socially.<sup>384</sup> He is idealistic about promoting the French interests but not realistic about the outcomes of secession. He sells secession to the people of Quebec as an easy process, in which they would retain economic, political, and diplomatic advantages of the Canadian Confederation.<sup>385</sup> However, resulting from the Supreme Court decision, secession would not be a simple process for Quebec.<sup>386</sup>

Thus, the Separatist movement has been promoted as a political manifestation more than the will of the people of Quebec.<sup>387</sup> The Separatist movement politicians of Quebec, like Bouchard, have used the idea of

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378. See generally *supra* notes 387-403 and accompanying text.

379. See *supra* notes 310-34 and accompanying text.

380. See *supra* notes 313-16, 326-29 and accompanying text.

381. See *supra* notes 299-303 and accompanying text.

382. *Id.* See also DePalma, *supra* note 305, at A10. Bouchard has stated, "The only true solution for Quebec is Quebec sovereignty." *Id.*

383. *Id.* at A10.

384. *Id.*

385. DePalma, *supra* note 336, at A3.

386. See *supra* notes 200-01, 241-43 and accompanying text.

387. GIBBINS, *supra* note 2, at 187-88.



secession to maintain cultural and provincial borders.<sup>388</sup> Further, they have created a barrier to any Canadian nationalism in Quebec.<sup>389</sup> Politicians of the separatist movement have ignored issues, such as abortion, pollution control, capital punishment, and prison reform, which are non-territorial but national in character.<sup>390</sup> By concentrating on cultural differences rather than national issues important to all Canadians, the separatist leaders of the past thirty years of Quebec have promoted secession as the only alternative to preserve the French culture from being assimilated into the culture of the English majority.<sup>391</sup> Although, Canada's identity has always been one of bi-culturalism, Bouchard continues to ignore the costs of secession flowing from the Supreme Court decision.<sup>392</sup>

The failure of the hydro-electric power plant during the ice storm in 1998 provides an example of the unrealistic aspirations that Bouchard has for Quebec as an independent state.<sup>393</sup> The failure of Hydro-Electric in Quebec during the ice storm takes away from the Separatist belief in Quebec's self-sufficiency.<sup>394</sup> However, Bouchard, even with the evidence that Quebec cannot survive on its own as an independent state, continues to pursue his goal of separation. Clearly, from the economic standpoint, secession is not in the best interest of the people of Quebec, which is a facet of separation that Bouchard and his party continue to ignore.

Although Bouchard retained his power as Premier, his separatist movement is waning in support.<sup>395</sup> Jean Charest, who received close to forty-three percent of the vote in the last election, comes from the Eastern Townships of Quebec where there is pride in accepting differences and coexistence.<sup>396</sup> In this area, the English and French have lived side by side since the emergence of Quebec.<sup>397</sup> This is the realistic expectation that Charest has for Quebec and the rest of Canada: unified as a nation, as opposed to the unrealistic expectations that Bouchard has for Quebec as an independent state.<sup>398</sup>

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388. *Id.* See *DePalma*, *supra* note 305, at A10. (discussing Bouchard's passion for a sovereign Quebec).

389. *See id.*; see also *Chipello*, *supra* note 345, at A18. (discussing the "more important priorities" than secession, like the unemployment rate in Quebec).

390. *See generally* GIBBINS, *supra* note 2, 186-88.

391. *See generally* *DePalma*, *supra* note 305, at A1, A10.

392. *Id.*

393. *See generally supra* notes 359-67 and accompanying text.

394. *Id.*

395. *DePalma*, *supra* note 305, at A1.

396. *See generally id.*

397. *Id.*

398. *Id.*

After thirty years, the people of Quebec want to move on to other issues like health care, education, and deficit reduction.<sup>399</sup> Promoting national issues and phasing out territorial, cultural issues will form a national Canadian identity, which will eventually bring an end the Separatist movement. Thus, the Supreme Court in deciding the legality of Quebec's secession from the rest of Canada provided an opportunity for national interests to become prominent over provincial issues thereby making a successful secession of Quebec from Canada difficult.<sup>400</sup> Although, it did not prohibit secession, the legal requirements make it unlikely.<sup>401</sup> Especially as the Separatist party loses support, reaching the number of a clear majority becomes unfeasible. The result of the last election only attained a little more than forty percent of the vote, nothing close to the numbers now needed for secession.<sup>402</sup> Also, there was some indication that some voters in the last election voted for the separatist party not for secession but for leverage in the central government.<sup>403</sup> Therefore, with a clear question on secession, it looks as if numbers would drop even more. The obstacles of the legal requirements of a successful secession set out by the Supreme Court in Canada will keep Quebec as a part of Canada. For the time being, Quebec will continue to contribute to the cultural vitality of Canada.<sup>404</sup>

## VI. CONCLUSION

Thomas Jefferson in the Declaration of the Independence pointed out, "[w]hensoever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it, and to institute new Government."<sup>405</sup> This is the philosophy that gave Americans their independence from Britain. Ironically, the South used the same principle in its attempt to secede from the North in the American Civil War from 1861 to 1865.<sup>406</sup> The South believed that they were states first, and the central government could not infringe on states' rights, especially the right to own slaves.<sup>407</sup> President Lincoln went to war to preserve the supremacy of the

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399. See *supra* notes 343-44, 389-91 and accompanying text.

400. See *generally supra* Part III.

401. See *generally supra* notes 250-62 and accompanying text.

402. See *supra* notes 338-41 and accompanying text.

403. See *supra* notes 350-53 and accompanying text.

404. *Id.* See *also supra* notes 343-53 and accompanying text.

405. The Declaration of Independence (cited in *The Declaration of Independence* (visited Feb. 22, 2000) <<http://leweb2.loc.gov/const/declar.html>>). These "Ends" referred to in the Declaration of Independence are "certain unalienable rights," such as "Life, Liberty, and the Pursuit of Happiness." *Id.*

406. See *generally supra* notes 64-86 and accompanying text.

407. See *supra* notes 76-79 and accompanying text.

Constitution and the national government.<sup>408</sup> The Civil War laid the foundation for the future success of America.<sup>409</sup>

Today, a secessionist movement is taking hold across the northern boundary of the United States where the idea of secession had its roots 135 years earlier. Since the Confederation of Canada in 1867, Canada has been recognized as a cultural diverse state. The French, minority, have had their rights explicitly protected in the provincial and federal governments. However, a political movement evolved in Quebec, promoting territorial differences. Now in Quebec the PQ with their leader Lucien Bouchard, are in power, bringing the separatist movement to the forefront.<sup>410</sup>

The strength of the Canadian Confederation has been tested not in a physical battle, but in the Supreme Court of Canada. The Court with its influential and carefully crafted opinion said a United Canada is in the best interest of Quebec and the rest of Canada. Although these justices did not prohibit secession, they made secession difficult. If the people of Quebec show a clear intent to separate in a referendum, then all of Canada will have the opportunity to negotiate the terms of secession. Splitting up 131 years of interdependence will not be easy. The Supreme Court has recognized Quebec's contribution to the cultural vitality of Canada.<sup>411</sup>

Canada's role on the international plane is that of a major industrialized nation that is an example of tolerance and ethnic diversity.<sup>412</sup> This is Canada's global identity. The separation of Quebec from Canada would send a message that diversity and tolerance cannot prosper together. If a modern industrialized nation cannot be held together over minority interests, secession is seen as an alternative that would disrupt the international system of peace, security, and stability.<sup>413</sup>

The Supreme Court of Canada has laid down the foundation for the defeat of the thirty- year separatist movement in Quebec. The identity of Canada will continue to be one of tolerance and diversity within a national boundary. The United States more than a century ago laid its foundation for future success through the Civil War. Canada is now at its defining moment to confirm its identity as a country that embraces diversity with unity.<sup>414</sup>

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408. *See supra* notes 83-84 and accompanying text.

409. GIBBINS, *supra* note 2, at 12.

410. *See supra* notes 335-42, 382-85 and accompanying text.

411. *See supra* notes 235-40 and accompanying text.

412. *See supra* notes 16, 216-63 and accompanying text.

413. *See supra* notes 268-70 and accompanying text.

414. *See generally Re Reference in Secession of Quebec, supra* note 194.