

***Who fears Quebecers' Democratic Determination?* Brief by Joseph Facal, Minister for Canadian Intergovernmental Affairs, presented before the Legislative Committee of the House of Commons entrusted with reviewing Bill C-20 (An Act to give effect to the requirement for clarity as set out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference), Ottawa, February 24, 2000.**

[Translation]

On October 30, 1995, 2,308,360 Quebecers voted YES in answer to the question you now know so well. Today the federal government would have you—the 301 elected members of the federal Parliament—wield the power to decree that these 2,308,360 people did not understand the aforementioned question and that they must therefore be protected from themselves.

“Heavenly Father, forgive them for they know not what they do.” That is the Bill C-20 message being sent to Quebecers.

Thus it is believed that this Canadian disorder may be swept from sight, while ignoring to face the fact that more Quebecers voted YES than there are electors to be found in Saskatchewan, Manitoba, Newfoundland, Nova Scotia and Prince Edward Island, all rolled into one.

C-20 will not sweep sovereignty away, nor the idea that Québec will one day become a country. How simplistic!

Yet as the government of Québec stands represented here today, it acts in the same capacity as previous Québec governments have done, regardless of their constitutional options, as a government deriving its legitimacy from the National Assembly, sole depository of the Québec people's right to choose their political status by themselves.

C-20 is unacceptable for so many reasons: This Bill seeks to subject the people

of Québec to a federal trusteeship; it negates basic democratic principles; it is an insult to the intelligence of all Quebecers; it installs a system of arbitrary power; and lastly, it bears within itself the seeds of bitter disillusionment for you.

••• **Subjecting the People of Québec to a federal trusteeship**

Québec's existence as a political entity dates from long before the creation of the Canadian federation. Québec exercised its right to freely choose its political status when it contributed to the formation of Canada. This must always be borne in mind!

By adhering to this federation, the people of Québec neither renounced their right to choose another political status nor sought to subject its destiny for all times to come to a Parliament whose majority of members originate from outside Québec.

Yet section 1 of Bill C-20—which indirectly dictates the referendum question—allows a majority of MPs from outside Québec to rule on the adequacy of the question's clarity, then to act on such ruling despite the will of the National Assembly and Quebecers' determination, that having deemed it clear, had answered positively to it.

Some will still maintain that the Québec National Assembly remains free to ask any question it so desires. Blatantly not so! C-20 renders the 1980 and 1995 questions unacceptable, as well as the Brussels question evoked by Robert Bourassa.

In section 2 of the Bill, the federal Parliament invests itself with the power to decide what elected majority may be sufficient, even if the population of Québec were to accept the results and rally to them.

Finally, section 3 confers upon the Parliament of any other province an absolute right of veto upon the future of the Québec people through the amendment formula contained in a Canadian constitution of dubious legitimacy since it was

imposed on Québec and never ratified by a Québec government.

Three sections, three schemes for derailing a democratically expressed determination.

••• Renewed negation of a basic democratic principle

C-20 also questions the universally accepted rule of democracy of 50% + 1, despite the fact that all referendums validly held in Canada to date have been based on the very same rule.

Abroad, Canada has recognized the legitimacy of many emerging countries, as always based on the 50% + 1 rule, which in fact is the standard rule by which the United Nations operates when it supervises referendums on accession to sovereignty.

The act of imposing any other rule would be tantamount to giving more weight to a federalist vote than to a sovereigntist vote, which amounts to discrimination on the basis of political opinion. The principle of a common standard for electors' rights is thereby compromised.

••• An insult to the intelligence of Quebecers

C-20 states that Quebecers must be protected against their government but also against themselves because they would be unable to weigh the issues set forth in a referendum question. By the same token, it becomes more important to take the opinion of a Manitoba or Saskatchewan MP into account whose insights into clarity and obscurity exceed those of the Québec electorate. He knows best.

Ladies and gentlemen, members of the federal Parliament, do you realize what a ridiculous situation the authors of C-20 have created for you? Do you realize that you are on the eve of enshrining a legislative principle by which the judgment of elected members will be held superior to that of their electors?

C-20 is also an insult because it is a dismal distortion of the Supreme Court's opinion.

Nowhere in the referral does the Supreme Court confer upon the federal Parliament the right to oversee the content of a referendum question by authorizing Parliament to rule upon clarity even before the National Assembly has adopted the question.

Nowhere in the referral does the Supreme Court give the federal Parliament the right to impose a question that must expressly exclude any reference to an offer of partnership.

Nowhere does the Supreme Court give authority to the federal Parliament to determine a posteriori and of its own accord the required majority.

Nowhere does the Supreme Court give authority to the federal Parliament to unilaterally dictate the content of postreferendum negotiations.

The federal government played with fire when it made its referral to the Supreme Court. It got burned and thereafter found itself faced with acknowledgement of the fact that the territory of Canada can be divided based on provincial territories, with recognition of the legitimacy of the sovereigntist option, with the creation of an obligation to negotiate on an equal footing, and with the admission that in the case of bad faith on the part of the federal government, international recognition of a sovereign Québec would be facilitated.

Today the federal government is asking you, Members of Parliament, to blot out its mistake by rewriting the referral.

••• Enter the arbitrary wielding of power

The Bill C-20 initiator has also strongly emphasized respect for the rule of law.

Yet the true rule of law precludes resorting to arbitrary power. As it stands, C-20 is a monument condoning the use of

arbitrary power. It wants to empower the House of Commons to declare a question unclear on the basis of "any other views it considers to be relevant." Whose views are we talking about? Likewise, it would empower you to assess a requisite majority in light of "any other matters or circumstances [that you may deem] relevant." What are the criteria for relevance?

What will the new roll of the dice be if 50% + 1 no longer stands: 55%, 60%, 65%... Faced with such random guidelines, how is a citizen to conduct him or herself? The message that C-20 sends to electors is that votes only count when you decide to recognize them.

••• Seeds of bitter disillusionment

C-20 creates illusions: that the territory of Québec will be divisible and that votes may be counted according to ethnic, linguistic or geographic criteria. This is just plain false.

The day that Quebecers will decide to form a new country, C-20 will not stand in their way. Thinking the contrary is a pure illusion. The Soviet Union tried this subterfuge in 1991 and the rest is history.

••• Conclusion

Not only is Bill C-20 unacceptable for Québec, but it is also unacceptable for all parties represented in the National Assembly.

The Québec government does not recognize any legitimacy on the part of the federal government when it comes to such interference in Quebecers' right to decide for themselves what their future will be.

The National Assembly will adopt the question it wants to adopt. As in the past, the Québec people alone will decide what constitutes clarity. The victorious option will be the one with votes clearing the 50% + 1 of validly expressed ones. Who fears Quebecers' democratic determination?

I remain firmly convinced that in the wake of a positive result, voices will resound throughout Canada for respecting Quebecers' decision and the need for negotiations carried out in good faith in the best interest of all parties.

Source: Text of the brief.