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Canada and other states, and thus give rise to legal questions; but this does not mean that the principle of effectivity with the second aspect of the rule of law identified by this Court in the Manitoba Language Rights Reference, supra, at p. 753, namely, avoidance of a legal vacuum. In that Reference, it will be recalled, this Court declined to strike down all of Manitoba's legislation for its failure to comply with constitutional dictates, out of concern that this would leave the province in a state of chaos. In so doing, we recognized that the rule of law is a constitutional principle which permits the courts to address the practical consequences of their actions, particularly in constitutional cases. The similarity between that principle and the principle of effectivity, it was argued, is that both attempt to refashion the law to meet social reality. However, nothing of our concern in the Manitoba Language Rights Reference about the severe practical consequences of unconstitutionality affected our conclusion that, as a matter of law, all Manitoba legislation at issue in that case was unconstitutional. The Court's declaration of unconstitutionality was clear and unambiguous. The Court's concern with maintenance of the rule of law was directed in its relevant aspect to the appropriate remedy, which in that case was to suspend the declaration of invalidity to permit appropriate rectification to take place. 146 The principle of effectivity operates very differently. It proclaims that an illegal act may eventually acquire legal status if, as a matter of empirical fact, it is recognized on the international plane. Our law has long recognized that through a combination of acquiescence and prescription, an illegal act may at some later point be accorded some form of legal status. In the law of property, for example, it is well known that a squatter on land may ultimately become the owner if the true owner sleeps on his or her right to repossess the land. In this way, a change in the factual circumstances may subsequently be reflected in a change in legal status. It is, however, quite another matter to suggest that a subsequent condonation of an initially illegal act retroactively creates a legal right to engage in the act in the first place. The broader contention is not supported by the international principle of effectivity or otherwise and must be rejected. C. Question 3 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? 147 In view of our answers to Questions 1 and 2, there is no conflict between domestic and international law to be addressed in the context of this Reference. IV. Summary of Conclusions 148 As stated at the outset, this Reference has required us to consider momentous questions that go to the heart of our system of constitutional government. We have emphasized that the Constitution is more than a written text. It embraces the entire global system of rules and principles which govern the exercise of constitutional authority. A superficial reading of selected provisions of the written constitutional enactment, without more, may be misleading. It is necessary to make a more profound investigation of the underlying principles that animate the whole of our Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities. Those principles must inform our overall appreciation of the constitutional rights and obligations that would come into play in the event a clear majority of Quebecers votes on a clear question in favour of secession. 149 The Reference requires us to consider whether Quebec has a right to unilateral secession. Those who support the existence of such a right found their case primarily on the principle of democracy. Democracy, however, means more than simple majority rule. As reflected in our constitutional jurisprudence, democracy exists in the larger context of other constitutional values such as those already mentioned. In the 131 years since Confederation, the people of the provinces and territories have created close ties of interdependence (economically, socially, politically and culturally) based on shared values that include federalism, democracy, constitutionalism and the rule of law, and respect for minorities. A democratic decision of Quebecers in favour of secession would put those relationships at risk. The Constitution vouchsafes order and stability, and accordingly secession of a province "under the Constitution" could not be achieved unilaterally, that is, without principled negotiation with other participants in Confederation within the existing constitutional framework. 150 The Constitution is not a straitjacket. Even a brief review of our constitutional history demonstrates periods of momentous and dramatic change. Our democratic institutions necessarily accommodate a continuous process of discussion and evolution, which is reflected in the constitutional right of each participant in the federation to initiate constitutional change. This right implies a reciprocal duty on the other participants to engage in discussions to address any legitimate initiative to change the constitutional order. While it is true that some attempts at constitutional amendment in recent years have faltered, a clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize. 151 Quebec could not, despite a clear referendum result, purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation. The democratic vote, by however strong a majority, would have no legal effect on its own and could not push aside the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy in the other provinces or in Canada as a whole. Democratic rights under the Constitution cannot be divorced from constitutional obligations. Nor, however, can the reverse proposition be accepted. The continued existence and operation of the Canadian constitutional order could not be indifferent to a clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada. The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession, should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others. The negotiations that followed such a vote would address the potential act of secession as well as its possible terms should in fact secession proceed. There would be no conclusions predetermined by law on any issue. Negotiations would need to address the interests of the other provinces, the federal government, Quebec and indeed the rights of all Canadians both within and outside Quebec, and specifically the rights of minorities. No one suggests that it would be an easy set of negotiations. 152 The negotiation process would require the reconciliation of various rights and obligations by negotiation between two legitimate majorities, namely, the majority of the population of Quebec, and that of Canada as a whole. A political majority at either level that does not act in accordance with the underlying constitutional principles we have mentioned puts at risk the legitimacy of its exercise of its rights, and the ultimate acceptance of the result by the international community. 153 The task of the Court has been to clarify the legal framework within which political decisions are to be taken "under the Constitution", not to usurp the prerogatives of the political forces that operate within that framework. The obligations we have identified are binding obligations under the Constitution of Canada. However, it will be for the political actors to determine what constitutes "a clear majority on a clear question" in the circumstances under which a future referendum vote may be taken. Equally, in the event of demonstrated majority support for Quebec secession, the content and process of the negotiations will be for the political actors to settle. The reconciliation of the various legitimate constitutional interests is necessarily committed to the political rather than the judicial realm precisely because that reconciliation can only be achieved through the give and take of political negotiations. To the extent issues addressed in the course of negotiation are political, the courts, appreciating their proper role in the constitutional scheme, would have no supervisory role. 154 We have also considered whether a positive legal entitlement to secession exists under international law in the factual circumstances contemplated by Question 1, i.e., a clear democratic expression of support on a clear question for Quebec secession. Some of those who supported an affirmative answer to this question did so on the basis of the recognized right to self-determination that belongs to all "peoples". Although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the "people" issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of peoples at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states. Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the National Assembly, the legislature or the government of Quebec do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally. 155 Although there is no right, under the Constitution or at international law, to unilateral secession, that is secession without negotiation on the basis just discussed, this does not rule out the possibility of an unconstitutional declaration of secession leading to a de facto secession. The ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition. Such recognition, even if granted, would not, however, provide any retroactive justification for the act of secession, either under the Constitution of Canada or at international law. 156 The reference questions are answered accordingly. Judgment accordingly. Solicitor for the Attorney General of Canada: George Thomson, Ottawa. Solicitors appointed by the Court as amicus curiae: Joli-C[œ]ur Lacasse Lemieux Simard St-Pierre, Sainte-Foy. Solicitor for the intervener the Attorney General of Manitoba: The Department of Justice, Winnipeg. Solicitor for the intervener the Attorney General for Saskatchewan: W. Brent Cotter, Regina. Solicitor for the intervener the Minister of Justice of the Northwest Territories: Bernard W. Funston, Gloucester. Solicitor for the intervener the Minister of Justice for the Government of the Yukon Territory: Stuart J. Whitley, Whitehorse. Solicitor for the intervener Kitigan Zibi Anishinabeg: Agnès Laporte, Hull. Solicitors for the intervener the Grand Council of the Crees (Eeyou Estchee): Robinson, Sheppard, Shapiro, Montréal. Solicitors for the intervener the Makivik Corporation: Hutchins, Soroka & Dionne, Montréal. Solicitor for the intervener the Chiefs of Ontario: Michael Sherry, Toronto. Solicitors for the intervener the Minority Advocacy and Rights Council: Scott & Ayles, Toronto. Solicitors for the intervener the Ad Hoc Committee of Canadian Women on the Constitution: Eberts Symes Street & Corbett, Toronto; Centre for Refugee Studies, North York. Solicitors for the intervener Guy Bertrand: Guy Bertrand & Associés, Québec; Patrick Monahan, North York. Solicitors for the interveners Roopnarine Singh, Keith Owen Henderson, Claude Leclerc, Kenneth O'Donnell and Van Hoven Petteaway: Stephen A. Scott, Montréal. Solicitors for the intervener Vincent Pouliot: Paquette & Associés, Montréal. [Source: Supreme Court of Canada, Ottawa, 20 August 1998]





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