

QUEBEC PUBLIC OPINION AND THE SUPREME COURT OF CANADA: WILL THE DECISION BE IMPARTIAL?

BY GUY LACHAPELLE

Historically, the Supreme Court of Canada has always tried to strike a balance between the power of the provinces and those of the federal government. Through its statement on 28 September 1981 that the unilateral patriation of the Canadian Constitution was legal but not "constitutional", the Supreme Court gave itself a new role as the final arbitrator in political conflicts. The

Court argued that the participation and agreement of all provinces was constitutionally necessary because the new *Charter of Rights* could limit the powers of the provinces. But when the Trudeau government denied the federal principle evoked by the Court, it clearly demonstrated that the Court could also become an instrument of political power.

While it is getting ready to

hear the federal government's arguments on the legality of Quebec sovereignty, the Supreme Court has been assigned a new function: to give its opinion on the very foundations of Canadian sovereignty. The inability of Canada's political class to understand the Quebec situation became evident after the October 1995 referendum when the Canadian government chose the legal route to respond to Quebec's democratic aspirations. By asking the Court to deal with this issue, the Canadian government hopes to make the conditions of the next referendum more difficult.

Moreover, since the Court has agreed to hear Guy

Bertrand's arguments in favour of the partitionist cause and to appoint an *amicus curiae* to present the counter-arguments, the public is wondering about the Court's ability to reach a non-biased judgment. That is why we thought it useful to do a survey on how Quebecers perceive the role of the highest tribunal. Can it be neutral toward the federal government's case?

Quebeckers have always been suspicious of the Supreme Court. In 1968, the Quebec government proposed a constitutional court composed of 15 judges, with 5 being appointed by Quebec, since it thought that constitutional decisions should be left

QUEBEC FRANCOPHONE PUBLIC OPINION ON THE LEGAL STRATEGY OF THE CANADIAN GOVERNMENT

	QUESTION 1 IMPARTIALITY OF THE SUPREME COURT				QUESTION 2 STRATEGY OF QUEBEC GOVERNMENT				QUESTION 3 IMPORTANCE OF JUDGMENT			
	YES		NO		AGREE		DISAGREE		A LOT OF IMPORTANCE/ SOME IMPORTANCE		LITTLE IMPORTANCE/ NO IMPORTANCE AT ALL	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
18-24	35.7	(26)	64.3	(47)	71.4	(61)	28.6	(24)	65.2	(56)	34.8	(30)
25-34	48.2	(50)	51.8	(54)	68.9	(81)	31.1	(27)	51.7	(64)	48.3	(60)
35-44	37.3	(65)	62.7	(109)	67.5	(132)	32.5	(64)	54.3	(111)	45.7	(93)
45-55	49.6	(74)	50.4	(76)	63.6	(117)	36.4	(67)	52.1	(117)	47.9	(71)
55-64	42.2	(41)	57.8	(57)	56.4	(67)	43.6	(53)	57.5	(73)	42.5	(54)
65+	55.0	(52)	45.0	(42)	50.0	(64)	50.0	(65)	64.1	(83)	35.9	(47)
PRIMARY	52.5	(33)	47.5	(30)	60.6	(52)	39.4	(34)	53.6	(59)	46.4	(43)
SECONDARY	44.5	(116)	55.5	(147)	62.2	(205)	37.8	(124)	65.0	(215)	35.0	(116)
COLLEGE	45.3	(84)	54.7	(102)	63.0	(139)	37.0	(82)	60.0	(138)	40.0	(92)
UNIVERSITY	42.6	(81)	57.4	(109)	62.6	(128)	37.4	(76)	51.1	(105)	48.9	(101)
MEN	39.1	(143)	60.9	(222)	66.2	(174)	33.8	(140)	51.9	(217)	49.1	(200)
WOMEN	50.9	(172)	49.1	(166)	58.8	(153)	41.2	(177)	65.6	(295)	34.4	(155)
TOTAL	44.8	(315)	55.2	(388)	62.5	(526)	37.5	(317)	59.0	(513)	41.0	(355)

Question 1: The federal government has asked the Supreme Court of Canada to judge the right of Quebec to separate. Do you personally think that the Supreme Court will be impartial in its judgment?

Question 2: Quebec has decided not to be represented in this case because it argues that only Quebecers have the right to decide their future. Do you totally agree or simply agree, totally disagree or simply disagree with the decision of the Quebec government?

Question 3: Will you give the decision of the Supreme Court—which will soon become public—a lot of importance, some importance, little importance, or no importance at all?

Source: Survey SONDA GEM - Lachapelle conducted September 5-10, 1997 with 1042 informants.

to a specialized tribunal rather than the judiciary. One may also wonder whether the Supreme Court is competent to

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hear this cause when the Quebec government is challenging the Court's authority to render a decision on such a fundamental matter by boycotting the entire process. In other words, when the Supreme Court renders its decision, will it end up discrediting its impartiality and compromising its authority? One thing is certain: its decision will satisfy no one.

In our survey, Quebecers generally remain divided when asked about the impartiality of the highest tribunal, with 51.8% believing that the Supreme Court judgment will not be impartial while 48.2% think it will be. Regarding the strategy of the Quebec government not to represent itself, 57.7% agree with this decision while 42.3% disagree. As to the importance of the Court's judgment, 71.3% of Quebecers think it will have a lot or some importance. Clearly, Quebecers are divided about the legitimacy of the legal approach and the political wisdom of the Quebec government in not participating.

It is also interesting to note that the francophone population has less trust for the Supreme Court than the anglophone or allophone

groups in Quebec: 55.2% of francophones estimate that the Court will not be able to make an impartial decision on the three questions asked by the federal government, whereas 75.8% of the anglophone group and 58.4% of the allophone group believe that the judgement will be impartial. Francophones between the ages of 18-24 are the most suspicious, while only those francophones 65 years or older or those with primary school education believe in the impartiality of the Supreme Court.

It is also interesting to note a gap between the views of francophone men and women. Francophone women are evenly divided, whereas 60.9% of men think that the Court will not be able to be impartial. This seems to parallel the results of the referendum itself, where francophone women showed only a small preference for the "Yes" side whereas men overwhelmingly voted "Yes". Further, the older and the less educated a person is, the less likely that person will have a view on these issues.

Asked about the strategy of the Quebec government not to be represented before the Supreme Court, 62.5% of the francophone group agrees with this position while 79% of anglophones disagree. The younger a francophone is, the more likely s/he is to agree with the Quebec government's decision, with 71.4% of the 18-24 age group supporting the decision. All age groups within the francophone population support the position of the Quebec government, with the exception of the over-65 group where opinion is equally divided. The level of education does not affect one's views on the issue. Amongst francophone women, 58.8% support the decision, as com-

pared to 66.2% of men.

Despite the fact that Quebecers think that the decision of the Supreme Court will be important, 59% of francophones (as compared to 76.7% of anglophones) say that they will give a lot or some importance to this judgment. Young francophones under 25 and francophones 65 and over say they will regard the decision as most important, whereas the 25-54 group is very divided. People holding a university or college degree will give importance to this decision, women more than men.

[W]hatever the substance of the judgment in the end, many jurists think that it is unlikely to make any significant difference in finding a solution to the fundamental choices that Canada and Quebec will have to make. When the Court decides the reference case, many Quebecers are of the view that it will give greater legitimacy to Quebec's right to secede.

The fact that, in contrast to the anglophones and allophones, the francophones of Quebec doubt the ability of the Supreme Court to be impartial, clearly shows the debate between law and democracy to be more of a political than a legal one. Two societies with sharply divergent views exist in Quebec: one believing in participatory de-

mocracy and the other one in legalistic federalism. If the Supreme Court chooses not to play the political game by refusing to answer certain questions, it will be more likely to maintain its credibility and legitimacy as an institution. In that event, the Court will find itself at the centre of the political rather than the legal arena. This is going to be a hard sell for Ottawa to defend before a bewildered English-Canadian public opinion, which mistakenly believed that the Court would deliver clear answers to complex issues.

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This article was translated from French by Professor Marilyn Lambert.