

Letter to South China Morning Post, Hong Kong, November 2016. (Unpublished)

The recent controversy over taking of the Oath by localist members of the Hong Kong Council is reminiscent of events in Canada and Quebec where duly elect separatist members faced a constitutional requirement to swear allegiance to Queen Elizabeth.

The Canadian Constitution provides that both federal and provincial members swear or affirm allegiance as follow: I, A.B. do solemnly, sincerely, and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second.

Failure or Refusal to Take the Oaths

When 7 members of the pro -independence Parti Québécois (out of 110) were elected in 1970 they initially said they would decline to take the Oath of Allegiance. However, according to press reports, members of the Parti Québécois, faced with the necessity of taking the oath, resolved it by “crossing their fingers” while doing so. They also took a second unofficial oath of allegiance to the people of Quebec.

No one raised the issue of bad faith or insincerity and this practice was continued by the 6 PQ members elected in 1973. After the PQ formed government in 1976 it amended Section 15 of the *National Assembly Act*, R.S.Q., A-23.1, to provide: “No member may sit in the Assembly before making the oath provided in Schedule I.” Schedule I sets out the following oath or affirmation:

I, (name of the Member), declare under oath that I will be loyal to the people of Québec and that I will perform the duties of Member honestly and justly in conformity with the constitution of Québec.

According to the Members’ Manual of the Quebec National Assembly:the oath of allegiance to the Queen required by section 128 of the *British North America Act* refers to allegiance to the country, while the oath required by section 15 of the *National Assembly Act* is an oath of allegiance to the people and Constitution of Quebec.

The adoption of the second oath appears to have resolved the issue in the province of Quebec.

In 1990, the first pro-independence member was elected to the House of Commons in a by-election. Gilles Duceppe was immediately asked if he would take the oath of allegiance. In an interview he dismissed the oath to the sovereign. “I mean, it’s a formality, a technicality, just like Labour has been doing for years in the British Parliament, even if half of them are asking for the abolition of the monarchy.”_

This led to a question of privilege in the Canadian House of Commons over whether he had taken the oath in bad faith and therefore it would be invalid. The Speaker held that the chair was “not empowered to make a judgment on the circumstances or the sincerity with which a duly elected member takes the oath of allegiance,” and that “only the

House can examine the conduct of its members and only the House can take action if it decides action is required.” No further action was taken.

There have been repeated attempts by Members of House of Commons to introduce private Members’ bills proposing various changes to the oath of allegiance. Because of the difficulty of achieving a constitutional amendment, most bills have sought to amend the *Parliament of Canada Act*.

Some pro independence members of the House have taken it upon themselves to make such a pledge, within their own ridings, and in the company of their constituents. Others have chosen simply to add a second pledge after the required constitutional pledge, without it being required by law.

In 2005 Senator Raymond Lavigne added the words “and to my country, Canada” when taking the constitutionally prescribed oath. This led to questions in the Chamber, and the Senator was obliged to take the oath a second time without altering the text as it read in the Constitution.

Obviously the taking or refusal to take a parliamentary oath is an emotional and highly symbolic issue. This was no less true in Canada years ago than in Hong Kong today. The lesson of the Canadian experience is that there may be ways, albeit imperfect, to accommodate the wishes and interest of those who engage in these fights over oaths and to allow the body politic to move on until cooler heads or better long term solutions are reached..