THE QUEBEC SECESSION REFERENCE: GOODBYE TO PART V?

Donna Greschner

Since 1982 Canadians have possessed a complex set of amending formula in Part V of the *Constitution Act, 1982.* From its inception Part V has been afflicted with controversy. The government of Quebec's refusal to formally approve the 1982 *Act* rests, in part, on its dismay about losing its veto on constitutional change. Amendments binding on more than one province have proven almost impossible, with only one relatively small change successfully overcoming the obstacles posed by the formulas.[1] The rigidity stems partly from section 41, which requires all units of Confederation to agree to amendments pertaining to several matters, including changes to Part V itself.[2] The unanimity rule prevented adoption of the Meech Lake Accord. Moreover, several legislatures have supplemented Part V with statutory requirements to hold referenda on constitutional change.[3] These statutory promises to facilitate direct democracy contributed to the demise of the Charlottetown Accord. More recently, Parliament has enacted restrictions on its power to initiate and approve constitutional change.[4] The legal rules of amendment, both constitutional and statutory, have acquired such Byzantine dimensions that they seem designed to prevent amendments rather than permit them.

Against this backdrop of rigidity and failure, the *Quebec Secession Reference*[5] presented the Court with its first opportunity in over 15 years to consider the critical process of constitutional amendment. Question 1 asked: Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally? The Court's response does not delve into the intricacies of Part V. Even though the Court states that "our Constitution is primarily a written one" (para. 49), that "there are compelling reasons to insist upon the primacy of the written constitution" (para. 53), and that constitutional texts "have a primary place in determining constitutional rules" (para. 32), it writes 70 paragraphs without any explicit reference to a specific written provision on constitutional amendment. Instead, the Court emphasizes constitutional principles. It describes four foundational principles that underlie constitutional rules and practice: federalism, democracy, constitutionalism and the Rule of Law, and the protection of minorities. These principles generate legal duties for Confederation parties.

The proffered reason for the inclusion and emphasis on principles is instructive. For the Court, the constitutional framework must include principles because a written text cannot provide for every situation that might arise in the future. "These supporting principles and rules, which include constitutional conventions and the workings of Parliament, are a necessary part of our Constitution because problems or situations may arise which are not expressly dealt with by the text of the Constitution. In order to endure over

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1 Several amendments that pertain only to one province have been passed pursuant to s.43, which requires resolutions only by the Senate, the House of Commons and the legislative assembly of the affected province.

2 Section 41 reads: "An Amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:
(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
(b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;
(c) subject to section 43, the use of the English or the French language;
(d) the composition of the Supreme Court of Canada;
(e) an amendment to this Part."

3 Both Alberta and British Columbia require a binding referendum before their respective Legislative Assemblies adopt a constitutional resolution. As well, many other provinces and Parliament have legislation permitting referenda.

4 *An Act respecting constitutional amendments*, S.C. 1996, c.1.

5 (1998) 161 D.L.R. (4th) 385. Bracketed numbers in this paper's text refer to paragraph numbers in the opinion.

time, a constitution must contain a comprehensive set of rules and principles which are capable of providing an exhaustive legal framework for our system of government" (para. 32). This reason is not self-evident. The application of unwritten principles is not essential for the stated purpose; it is not the only method of ensuring that a constitution adapts to changing circumstances. The formal process of constitutional amendment permits a constitution to keep up with the times. A constitution with an unworkable amending formula will require other methods of adjustment, however, such as constitutional principles. By implication, the Court is faulting Part V for not delivering the flexibility necessary to deal with new problems and situations.

THE FUNCTIONS OF PRINCIPLES

The Court assigns two functions to constitutional principles. First, principles generate a duty to negotiate an amendment to permit lawful secession: "The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties of Confederation to negotiate constitutional changes to respond to that desire" (para. 88). If the two-fold trigger of a clear referendum question and a clear majority in favour of secession is met, then other Confederation parties must come to the negotiating table.[6] The Court notes that the *Constitution Act, 1982*, gives each party to Confederation the right to initiate constitutional change and that this right gives rise to a corresponding duty to engage in constitutional discussions (para. 69). Presumably the Court was referring to section 46(1), which states that the Senate or the House of Commons, or a legislative assembly, may initiate the amending process by passing a resolution.[7] But it does not identify the provision. In any event, the constitutional text is a secondary source of the duty: "This duty is inherent in the democratic principle which is a fundamental predicate of our system of government" (para. 68).

Duties to discuss constitutional provisions and proposals have been part of the written constitutional text since enactment of the *Constitution Act, 1982*.[8] For instance, section 49 required First Ministers to meet no later than 1997 to discuss the operation of the amending formula. Section 35.1 requires a constitutional conference of First Ministers and Aboriginal representatives before any amendments are made to the Aboriginal rights provisions. Section 37 required a conference no later than April 17, 1983, to identify and define Aboriginal rights, a provision which led to a constitutionally-entrenched requirement to hold three more conferences by April 17, 1987.[9]

The Court does not buttress the duty to negotiate with express mention of section 46 or reliance on the entrenched promises to negotiate. Perhaps a reference to any specific amending provision, even the important words of section 46, would have proven impolitic in Quebec because of the National Assembly's refusal to accept the *Constitution Act, 1982*, and its ongoing sensitivity about patriation of the constitution over the objections of the National Assembly and the loss of the Quebec veto. Perhaps connecting the duty to negotiate with explicit constitutional promises to discuss constitutional change was too politically charged in other quarters. After all, the First Ministers gave only lip service to section 49's entrenched promise to discuss the

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[6] The Court does not discuss whether the referendum result would automatically activate the duty to negotiate, or whether the National Assembly would need to introduce a secession resolution, pursuant to s.46 of the *Constitution Act, 1982*, in order to bring the other parties to the table. Besides the political difficulties with the latter option, it seems a bit formalistic because the referendum has clearly indicated a desire for change. Moreover, the purpose of negotiations is to settle on the terms of the amendment. To insist on a formal resolution under s.46 before commencing negotiations likely would cause the initiating party to introduce a very general, temporary one, which would be supplanted by the precise text of the amendment agreed to after negotiations. However, in a non-secession context the application of the duty to negotiate would involve different considerations. Confederation parties might want a resolution in order to determine the strength of the initiating party's desire for constitutional change.

[7] Section 46 (1) reads: "The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

[8] For an excellent analysis of promises to negotiate as a feature of Canadian constitutionalism, see Dwight Newman, "Reconstituting Promises to Negotiate in Canadian Constitution-Making" (1999) National Journal of Constitutional Law (forthcoming). He points out that these entrenched promises to negotiate have arisen in circumstances of mistrust and division. People believe that further constitutional change is necessary but do not trust other parties to engage in those discussions willingly.

[9] Both the failed Meech Lake and Charlottetown Accords contained even more extensive provisions about ongoing constitutional discussions. For instance, the Meech Lake Accord would have required annual First Ministers' conferences to discuss the economy, Senate reform, fisheries and other matters agreed upon by the parties. The Charlottetown Accord would have required four conferences on Aboriginal issues.

amending formula at a constitutional conference no later than 1997.[10]

Perhaps the Court does not cite section 46 because it did not wish to state unequivocally that the duty-holders are the federal and provincial legislative bodies, since they are the only parties with the right to initiate constitutional change under section 46. Not even the Territories, who have been full participants in constitutional discussions for several years, are duty-holders under section 46, let alone Aboriginal organizations or other groups.[11] Although at several places in the decision the Court refers to governments and other participants (paras. 92, 94), the opinion assumes that the negotiating parties are the eleven units of Confederation, Canada and the provinces. Or, perhaps section 46 is absent not because it limits the duty-holders to the eleven units of Confederation, but because it bestows the duty on the legislative branch of government, rather than the executive. In contrast, the entrenched promises to discuss constitutional proposals, such as section 35.1 and the defunct section 49, place the obligation on First Ministers, not on the legislative branches of government. Many questions are raised by locating the duty in legislative bodies. For instance, do the Senate and the House of Commons create, authorize, and control the federal negotiating team? What if they disagree? By not stressing section 46 as the source or limit on the duty, the Court may have given political actors more flexibility in designing the negotiation process.

Perhaps another reason the Court avoids any reference to the written text is because some of the provisions do not have the flexibility necessary to allow the constitution to endure over time. Section 41, with its underlying principle of equality of the provinces, is a prime example. It was inserted because many provinces would only accommodate Quebec's insistence on a veto over important constitutional changes by having a veto of their own. A veto for one became a veto for all, with the result that a change desired by many must be desired by all.

For whatever reason, the Court emphasizes principles as the source of the duty to negotiate. Part V is noticeable by its absence.

The second function of principles is to impose standards of conduct on the negotiating parties: "The conduct of the parties in such negotiations would be governed by the same constitutional principles which give rise to the duty" (para. 90). Principles will shape and assess every aspect of negotiations, from the agenda to the position of parties. For instance, the fourth principle, protection of minorities, will compel the parties to discuss various methods of ensuring protection for minority groups. The Court is clear that the duty to negotiate in a manner consistent with the principles is a legal obligation (paras. 98, 102).[12] Therefore, it trumps the desire of political actors to follow the wishes of their voters. Presumably, a ROC party could not refuse to negotiate because its electorate had rejected the very idea of secession negotiations in a referendum. Nor could any party refuse to discuss a particular proposal on the grounds that its electorate was opposed to the proposal, or to having the item even on the agenda. A referendum, plebiscite or opinion poll could not dictate a party's bargaining position and forestall sincere efforts to negotiate a new arrangement in response to a genuine desire for change. In a result consistent with the facilitation of change, a referendum in one province may trigger the duty to negotiate, while a referendum in another province may not block or unreasonably confine the duty.

By constraining the position that parties may take in negotiations, principles also limit or restrain the exercise of the parties' legal rights. The Court stresses that a party's failure to abide by the principles puts at risk the legitimacy of that party's assertion of its rights (paras. 93, 95). In determining whether the exercise of rights is legitimate, "the conduct of the parties assumes primary constitutional significance" (para. 94). By implication, the provinces and Canada must exercise their legal rights under section 41 or section 38 in a manner consistent with the four principles. For instance, if a matter is subject to section 41, a province has a legal right to veto a proposal for constitutional amendment.

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[10] For a stinging critique of the purported compliance with the s.49 obligation, see John Whyte, "'A Constitutional Conference...Shall Be Convened...': Living with Constitutional Promises" (1996) 8 Constitutional Forum 15.

[11] The Territories would undoubtably exert considerable political pressure to become full participants in secession negotiations. As well, the political pressure to add Aboriginal groups would be extremely strong because of s. 35.1 of the *Constitution Act, 1982*, and the Charlottetown Accord precedent, in which 4 Aboriginal groups participated in negotiations. The fourth principle (protection of minorities) would support adding Aboriginal groups and others, such as minority linguistic groups, as participants in the negotiations. At a minimum, non-Confederation groups would insist on active involvement in the negotiating sessions, perhaps as members of the official 11 delegations. Having other parties around the table or in delegations makes negotiations more difficult, but not impossible. The constitutional principles "must inform the actions of *all* the participants in the negotiation process" (para. 94) (emphasis in original).

[12] For the Court, the non-justiciability of the parties' conduct is grounded in an appreciation of its proper role, not any purported non-legal nature of the duty (para. 99).

However, now it must exercise that right in a manner consistent with its duty to negotiate, which requires conformity with the principles. A party could not exercise its veto because it clung to the view that Quebec has no right to secede, or because it insisted on unreasonable terms on a specific item. If it did so, its veto could reasonably be challenged as illegitimate. Principles now act as the overriding judge of political actions.

If a party fails to conform to the four principles, the remedy for its illegitimate exercise of rights lies in the political arena. The decision about whether a party has breached the principles will be difficult. The breadth and generality of the principles mean that they admit of several reasonable interpretations, and a dissenting province could easily argue that its position merely represents a different understanding of them rather than a breach. At the end of the day, the international community, in determining whether to recognize the new state of Quebec, will decide on the legitimacy of each party's positions (para. 103).

By requiring negotiations to conform to principles, the Court sends a clear signal to ROC parties, especially the provinces, that they should not insist upon their strict legal rights under Part V, whether under the unanimity rule or the 7/50 formula. The implicit warning to them is that Quebec's remedy would be to declare independence, relying on the illegitimate actions of intransigent provinces for speedier international recognition. This warning is connected to the Court's definition of unilateral secession, which I will discuss below. Overall, the Court's message will put pressure on parties to act reasonably in negotiations. It supports the principle of the rule of law, which promotes orderly change. That principle is firmly placed as the overriding one.

THE FUNCTIONS OF THE DUTY TO NEGOTIATE

The Court gives the duty to negotiate two roles. First, negotiation is a condition precedent for amendment. The Court says that an amendment "perforce requires negotiation" (para. 84). This requirement supplements the provisions in Part V, which do not require negotiations prior to the introduction of a resolution in Parliament or the legislatures. The past practice has been that when one party passes a resolution, other parties may respond either by passing their own identical resolutions or simply doing nothing. For instance, several provinces have passed resolutions proposing the entrenchment of property rights, which have been ignored by other provinces and Parliament.[13] However, this new condition precedent for amendment does not entail that an amendment passed pursuant to Part V but without prior negotiation would be unconstitutional, unless the Court decides in the future to enforce the duty to negotiate.

Second, and more important, the presence or absence of prior negotiations determines the legality of the act of secession. The Court is explicit in its definition of unilateral secession: "[W]hat is claimed by a right to secede unilaterally is the right to effectuate secession without prior negotiations with the other provinces and the federal government" (para. 86). For the Court, the lack of negotiation is a definitional component of unilateral secession: "[T]he secession of Quebec from Canada cannot be accomplished ... unilaterally, that is to say, without principled negotiations, and be considered a lawful act" (para. 104). Unilateral secession is not one that is attempted without compliance with the Part V amending formula, but one attempted without principled negotiations beforehand. Conversely, a non-unilateral secession is one preceded by negotiations and, to use the Court's phrase, will "be considered a lawful act."

The implications of this definition are unclear. On the one hand, the Court admits that negotiations may not lead to agreement (para. 97), even if all parties follow the principles and act reasonably in negotiations. It notes: "We need not speculate here as to what would then transpire. Under the Constitution, secession requires that an amendment be negotiated" (para. 97). This passage could be read as contemplating that lawful secession requires consent under Part V. On the other hand, the emphasis on principled negotiations, and recognition that parties only have an obligation to negotiate, not to reach agreement, leads to a different conclusion. If principled negotiations do not produce an amendment to permit secession, a declaration of secession after the end of negotiations would be lawful, at least to the extent that lawfulness is measured by the legal principles of the constitution. Quebec can lawfully secede without obtaining the consent of other Confederation parties, and without justifying their wrath, because it has lived up to its constitutional obligation to engage in principled negotiations. Other parties will not be able to charge Quebec with illegality or breach of the rule of law by its assertion of independence without their consent. This result is consistent with the Court's view that "the Constitution is not a straitjacket" (para. 150).

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[13] See Jean McBean, "The Implications of Entrenching Property Rights in Section 7 of the Charter of Rights" (1988) 26 Alta. L. Rev. 548 at 550.

If this interpretation holds sway, the Court has changed the political and legal discourse of secession. By defining unilateral secession as one that is not preceded by negotiation, rather than one that does not comply with the Part V amending formula, the Court further increases the pressure on the ROC units of Confederation to act reasonably in negotiations. They would no longer have available the rhetoric of unlawfulness in the public relations campaigns that would follow Quebec's declaration of independence.

GOODBYE TO PART V?

Overall, the Court's description of the functions of principles and the duty to negotiate, when coupled with the absence of Part V in the reasoning, leads to the inference that in the secession context the strict application of Part V rules will give way to broader principles. The Court's message to political actors is that the written rules, and the rights of parties that flow from the rules, are not as important as underlying constitutional principles. The application of principles softens the existing amending rules, and thus fulfills their *raison d'être* of facilitating change.

The diminished importance of Part V makes sense in the context of secession. The amending procedures do not fit comfortably with secession because they were not designed for the purpose of creating two new countries. Consider the many questions about the application of Part V that would arise in secession negotiations. For instance, does Quebec count as one province for the seven required by the 7/50 provision in section 38? Until the secession amendment takes effect, it is still a province and legally must count in the formula. For it to count under the 7/50 formula would mean that Ontario's consent would not be necessary to meet the conditions of the formula. It seems inconsistent with the democratic principle that the most populous province becomes bound by an agreement that Quebec is negotiating as a potential new state, not merely as a province. To count Quebec in the 7/50 formula does not make obvious sense. Moreover, at the moment that the secession agreement takes effect, the 7/50 formula would disappear.

Part V also presents difficulties with respect to delineating the negotiating parties for secession amendments. The Court assumes that the negotiating parties are the Confederation units who possess rights under section 46. Yet, throughout the negotiations, Quebec will be wearing two hats: one as a province and another as an emerging new country. At the same time, other provinces will be simultaneously in two roles: one as units of the old Canada, and another as units of a new Canada. Who will represent ROC as a whole? The Part V formula does not give the responsibility to anybody. Can the federal government represent an entity which may be coming into being during the process of negotiation? Will it have the authority, or the inclination, to represent both the old Canada (with Quebec) and the new Canada (without Quebec)? These questions are fundamental and complex, and Part V has little to say about them. Nor, for that matter, does the Court.[14]

One potentially pertinent question in the future is whether principles are available to trump the written provisions, in order to resolve deadlock and permit orderly change after the referendum. We know principles can fill in the gaps between rules and structure the exercise of discretion bestowed by rules. Can principles also contradict or override the written rules of the constitution? Overall, the opinion's message is that principles are more important than rules, notwithstanding the pronouncements about the primacy of the text (para. 53). The Court states that an agreement requires support from the "majority of Canadians as a whole, whatever that might mean" (para. 93) and that negotiation requires reconciliation of rights and obligations between "two legitimate majorities, namely the majority of the population of Quebec, and that of Canada as a whole" (para. 152). In an opinion obviously written with considerable care, these comments are not accidental. They may hint that the Court will dispense with Part V, especially the unanimity rule, if it stands in the way of peaceful transition. The Court deliberately does not address how secession could be achieved in a constitutional manner (para. 105). By emphasizing principles and assigning them legal force, the Court has given itself the tools to put principles first when they conflict with rules.

Practically, this could occur in several ways without completely shredding the text. The Court may yet become involved in assessing the conduct of the negotiating parties, which is of "primary constitutional significance," notwithstanding its protestations about the non-justiciability of evaluating conduct, and its lack of a "supervisory role over the political aspects of constitutional negotiations" (para. 100). Moreover, it has full jurisdiction over legal aspects of negotiations. It may be unable or unwilling to declare an agreement in force in the absence of compliance with Part V, which has "binding status" as part of the "surrounding constitutional framework" (para. 102). But the Court has the power to issue declarations about illegality, including violations of legally binding principles, and

[14] For a more extended discussion, see Alan Cairns, "The Quebec Secession Reference: The Constitutional Obligation to Negotiate" (1998) 10 Constitutional Forum 26.

thus coax or urge the parties back to the bargaining table. If non-legal conventions are subject to judicial pronouncements, with consequences for political discourse and actions,[15] legal principles necessarily are subject, as well.

REFERENDA AFTER AN AGREEMENT

Several provinces require referenda to approve constitutional change before a resolution is approved in their legislatures. More generally, democratic practice has evolved toward increased direct involvement by the people in constitutional change. Amendment is no longer viewed as the prerogative of governments, whether the executive or legislative branch. Will these statutory constraints prevent the implementation of a secession agreement?

The answer likely is no. The Court does not grapple with referenda as obstacles to secession amendments. However, it is reasonable to surmise that if constitutional principles are available to supplement, constrain and, perhaps, even trump the entrenched constitutional text, they have at least equal power with respect to statutory rules.[16] In this context, a legislature may violate its duty to negotiate if it enacts such onerous requirements for passage of a constitutional resolution that amendment becomes practically impossible. One could reasonably conclude that this hypothetical legislature is not sincerely interested in responding to a genuine desire for change. Quebec could legitimately secede if other parties refused to pass resolutions because of referenda outcomes. No other result is consistent with the Court's proclamation that "the Constitution is not a straitjacket" (para. 150).

The principles buttress this conclusion. The principles of constitutionalism and the rule of law would favour passage of resolutions despite referenda promises, rather than uncertainty and disruption of the legal order occasioned by failure to implement the amendment. Statutes requiring binding referenda could be repealed by the legislatures, or struck down by the courts as inconsistent with the Constitution. Nor would the principle of democracy support tenacious adherence to referenda approval of a deal. The Court emphasizes that the fundamental value of democracy is not encapsulated by the notion of majority rule, but contains both substantive and procedural aspects. Democracy requires "a continuous process of discussion" (para. 68), with governments building majorities by compromise and negotiations that take into account dissenting voices. It is not merely a matter of toting up ballots. The Canadian conception involves representative government, with citizens having the right to participate in the political process as voters (para. 65). In the secession context, elected representatives have the duty to respond to one party's initiative with respect to constitutional change by engaging in negotiations. The people do not negotiate directly. That responsibility is for their elected representatives.

In this instance, what the principles ignore are the political consequences for legislators who break their promises. In the event of secession, however, these promises to engage in direct democracy may quickly become insignificant. The secession amendments will give birth to two new countries. As Bob Young has argued in his comprehensive and sophisticated analysis of secession, the legislators and people of each unit of old Canada outside Quebec will have far more interest in reconstituting Canada than in time-consuming procedures for ratifying the terms of secession amendments.[17]

At first glance the Court's opinion may seem stuck in a 1982 time frame: Ottawa and provinces negotiating amendments without popular ratification. But, if anything, it returns to a pre-1982 time frame, when amendment required federal approval and substantial provincial consent, not unanimity, and many people thought Quebec had a veto over constitutional change. Now Quebec exercises its veto by legitimate exit.

THE ROAD AHEAD

Few people will disagree with the Court that negotiations after a referendum would be exceedingly difficult. Two different countries are being born: reconstituted Canada and Quebec. There would be two sets of negotiations, although likely not simultaneously. One set would negotiate the terms of secession with Quebec while the other would involve units from ROC negotiating the terms of their new arrangements. Both

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[15] *Patriation Reference*, [1981] 1 S.C.R. 753. The Court's opinion in the *Secession Reference* also makes conventions irrelevant and obsolete as constitutional norms. For instance, Canadians no longer need a convention to restrict the legal right of the Governor General to withhold Royal assent to bills. The constitutionally binding principle of democracy does the job directly. Henceforth, conventions will merely illustrate or signal constitutional principles.

[16] In any event, s.52 of the *Constitution Act, 1982* declares that any law inconsistent with the Constitution is of no force and effect. There is no legal reason why ordinary statutes pertaining to constitutional amendment cannot be challenged as violating the Constitution itself.

[17] Robert A. Young, *The Secession of Quebec and the Future of Canada* (Montreal & Kingston: McGill-Queen's University Press, 1995) at 250-251.

sets, especially the ROC one, would have numerous parties. The Court shows political realism in signaling that amending rules designed for a united Canada must soften during the emergence of two new countries. In February 1998, the Toronto Star reported the Attorney General of Canada, Anne McLellan, as having said that the "extraordinary nature" of secession would require one to determine "what process would be pursued at that point."[18] By stressing principles, and the legal obligations that flow from them in the face of Part V rights, the Court essentially has agreed with her.[19]

Perhaps if a majority of Quebeckers vote to leave Canada, political activity will occur so quickly that the Court's opinion will play a minor role in the debates, deliberations, and decisions necessitated by the rupture of Canada. However, between now and then, the opinion may influence debate amongst the political elite and the general public. Whether the opinion will reduce the likelihood of a Yes vote in a future Quebec referendum, and thus contribute positively to the federal Plan B strategy, is open to debate. Any optimism must be tempered with realism. For smaller provinces, one implication of the opinion is that they ought to begin preparing now for both sets of negotiations, as well as continuing with the Plan A strategy currently underway with the Social Union negotiations. In the secession context, their influence will depend on their persuasiveness, not on their legal rights under an almost-obsolete amending formula. And when power turns on persuasiveness, good preparation is essential.❑

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Of the many people who have discussed the opinion with me over the past two months, I wish to thank especially George Peacock, Q.C., for his perspicacious analysis and, in particular, close critique of an earlier draft. While he would still not agree with some points in this paper, it is richer and, I hope, more persuasive because of his generosity and erudition.

[18] "New Hurdle for Quebec" *The [Toronto] Star* (16 February 1998) 1.

[19] In argument, federal counsel insisted that the Attorney General held fast to her view that Question 1 was a legal question. The Court proved her correct by giving a legal answer, but one that flowed from principle, not written text.