

CASE NOTE*

**REFERENCE RE SECESSION OF QUEBEC FROM CANADA:[†]
BREAKING UP IS HARD TO DO**

I. INTRODUCTION

They say that what goes around, comes around. Canadians have been 'going around' their Constitution for most of this century. Indeed, since Canada's accession to independence in 1926, constitutional debate has been continuously on the political agenda, its frequency and stridency having become particularly noted since 1968. In the heated days of the 1981 constitutional patriation¹ debate the federal government sought the opinion of the Supreme Court of Canada on whether it could unilaterally patriate the Constitution without provincial consent.² The Court held that, while technically this would be legal, it would violate a constitutional convention which required the 'substantial' agreement of the provinces. The Court declined to say precisely in what manner 'substantial' was to be quantified, but it did say that the consent of the two provinces then consenting (Ontario and New Brunswick) was not enough. Writing about the judgment after his departure from office as Prime Minister, Pierre Trudeau stated:

It has often been remarked by commentators - to the point of having become, so to speak, conventional wisdom, echoed as usual by the media - that in taking their stand the majority judges provided the framework within which a political settlement eventually became possible. Having rejected unilateralism and unanimity, the Court embraced the "Canadian way," supporting both sides and forcing a political compromise.³

* Rosemary Rayfuse, Senior Lecturer in International Law, Faculty of Law, University of New South Wales.

† The decision of the Supreme Court of Canada may be found at <<http://www.droit.umontreal.ca/doc/csc-scc/en/rec/html/renvoi.en.html>>. References in this casenote are to paragraph numbers in the decision.

1 'Patriate' was the term chosen rather than 'repatriate' to reflect the fact that the *British North America Act 1867*, had never been in Canada but had originated and resided only in the UK.

2 *Reference re Resolution to Amend the Constitution* [1981] 1 SCR 753 (the *Patriation Reference*).

3 P. Trudeau, *Fatal Tilt: Speaking Out About Sovereignty* (1991), quoted in JR Hurley, *Amending Canada's Constitution: History, Processes, Problems and Prospects*, Canada Communication Group Publishing (1996) pp 59-60.

In *Reference re Secession of Quebec from Canada*,⁴ the Supreme Court of Canada appears to have delivered the federal and provincial governments another lesson in political settlement making. The Court has once again rejected unilateralism and, although this is less clear, unanimity. Admittedly the holding is reversed. In 1981 the Court held that unilateralism was legal but against convention. In its 1998 opinion the Court finds that unilateralism is illegal but that if a unilateral act of secession occurs then, by what essentially amounts to an international convention of recognition, it may become a *fait accompli*. The effect of the judgment is, however, the same: to force the parties to come to a political compromise, or bear the dire consequences of an illegal unilateral act of secession should they fail to do so. The decision is important both for its domestic constitutional aspects and for what it says about international law and its role in the Quebec issue.

II. BACKGROUND TO THE CASE

Quebec's disenchantment with its position in Canada is well known. Since the May 1980 referendum in which the Quebec government sought, but failed to obtain, a mandate to negotiate an undefined 'sovereignty association' with Canada there have been ongoing, and continually unsuccessful, attempts to reconfigure Canada to satisfy Quebec. When the Constitution was patriated to Canada in 1982 Quebec refused to participate. The Meech Lake Accord of 1987 and the 1992 Charlottetown Accord, both of which sought to substantially amend the Constitution to meet the needs and desires of Quebec, failed, respectively, on the floors of two provincial legislatures and at the altar of a nationwide referendum. In 1995 a second referendum in Quebec on the sovereignty issue was defeated by only the narrowest of margins. Having so narrowly failed, the Parti Québécois in Quebec is committed to holding another referendum on the issue as soon as practicable. The next time it is sure it will be given the mandate it seeks.

Given the continued failure of Quebec and the rest of Canada to resolve their constitutional differences, it has become increasingly clear that it is not a question of whether Quebec will go, but of when and how. The federal government has thus been forced to contemplate the legal parameters for, and ramifications of, Quebec's secession if it is to ensure a democratic and orderly separation which protects both minorities and the interests of all other Canadians. The issue of legality has become equally important to Quebec sovereignists to whom a legal secession will give legitimacy and ensure international recognition.⁵

4 *In the matter of Section 53 of the Supreme Court Act, RSC, 1985, CS-26; and in the matter of A Reference by the Governor in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada, as set out in Order in Council PC 1996-1497, dated September 30 1996*, Supreme Court of Canada. The decision was handed down in August 1998: see note † *supra*.

5 See J Webber, "The Legality of a Unilateral Declaration of Independence under Canadian Law" (1997) 42 *McGill Law Journal* 281 at 284-7.

III. THE QUESTIONS ASKED

Quebec sovereignists have long argued that Quebec has a unilateral right to secede from Canada under both domestic and international law and that the manner of its departure is for Quebec alone to decide. The legitimacy of Quebec's claim to a right of unilateral secession on the basis of a right to self-determination under international law has been contested by most international lawyers, including Quebec's own legal advisors. Likewise, its claim of a right to unilateral secession under the Canadian Constitution has been challenged by many.

In an effort to clarify the legal situation (and, no doubt, influence political processes), in 1996 the federal government submitted a Reference to the Supreme Court of Canada seeking the Court's guidance. The Court was asked to address three questions:

1. Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?
2. Does international law give the National Assembly, legislature government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?
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?

The Court found that no right to unilateral secession exists under the Canadian Constitution. Secession of a province would, *ipso facto*, involve an amendment to the Constitution and would require "principled negotiation with other participants in Confederation within the existing constitutional framework".⁶ On the international law question, the Court found that a right to unilateral secession arises only in the exceptional situation of an oppressed or colonial people or of a definable group suffering gross human rights violations. As no such exceptional circumstances exist in Quebec, unilateral secession would be illegal under international law as well. In view of its findings on the first two questions the Court did not answer the third.

6 Note † *supra* at [149].

IV. THE OPINION

The Court's opinion is relatively short; a mere 155 paragraphs. However, in those few paragraphs the Court delivers a breathtaking lesson on the meanings of federalism, democracy, constitutionalism, the rule of law, and respect for minorities; and on the requirements of political co-existence. Quebec, which refused to participate in the proceedings and was represented by an *amicus curiae*, is not likely to appreciate the decision, which resolutely denies the unilateralist position. Others, too, will be wont to criticise the Court for straying too far from the legal or, alternately, for answering nothing and not straying far enough. Nevertheless, the decision is carefully structured and, on the surface at least, meticulously *legal*. And, importantly, it is unanimous; the three Quebec justices forming part of that unanimity.

A. The Preliminary Objections

Before turning to the main questions the Court deals with a number of preliminary objections that were raised by the *amicus curiae* relating to the Court's ability to hear the case. The constitutional validity of the Court's 'reference' jurisdiction was challenged as was its ability to deal with questions of international law. A third objection related to the justiciability of the issues which, it was argued, were speculative, political and, in any event, not ripe for judicial decision. The Court deals with these objections relatively quickly and succinctly and, while there is undoubtedly much fodder here for constitutional, administrative and international lawyers alike, these issues will be only briefly canvassed here.

In dismissing the first objection the Court refers to the *Reference Appeal*⁷ in which the Privy Council dismissed the argument that as "a general court of appeal" the Supreme Court of Canada had no original, advisory jurisdiction. While acknowledging that that function was not a 'judicial' one and that the "answers are only advisory and will have no more effect than the opinions of the law officers"⁸ the Privy Council held, nonetheless, that such a power could be conferred by statute.

Revisiting the issue, the Court finds no reason to depart from that decision. The Court notes that s 53 of the *Supreme Court Act* which grants the reference power must be taken to be enacted pursuant to Parliament's power under s 101 of the *Constitution Act* 1867 to create a "general court of appeal" for Canada. The Court finds that exercise of original jurisdiction in exceptional cases is not incompatible with its appellate jurisdiction⁹ and that other courts both in Canada

7 *A-G Ontario v A-G Canada* [1912] AC 571.

8 *Ibid* at 589.

9 According to Hogg, this objection appears never to have been raised before this case, "and the long acceptance of that [the Court's Reference] jurisdiction must be regarded as an implicit rejection of that objection": P Hogg, *Constitutional Law of Canada*, Carswell Co (4th ed 1997) p 226.

and abroad engage in this practice.¹⁰ There is thus “no plausible basis on which to conclude that a court is, by its nature, inherently precluded from undertaking another legal function in tandem with its judicial duties”.¹¹ Nor does the reference jurisdiction conflict with the original jurisdiction of provincial courts as Parliament’s plenary power under s101 must be taken as having priority over the provinces’ power to control the administration of justice in s 92(14) of the *Constitution Act* 1867. The constitutional validity of the Reference jurisdiction is therefore upheld. This part of the decision, at least, should be uncontentious.

The second objection is dismissed on the grounds that (1) the Court will not be acting as an international tribunal in that its decision will “not purport to bind any other state or international tribunal that might subsequently consider a similar question”,¹² and (2) that the question asked is not one of “pure” international law but is rather one that “seeks to determine the legal rights and obligations of the National Assembly, legislature or government of Quebec”.¹³ The Court refers to a number of cases in which it has been required, in determining domestic legal issues, to look at international law and concludes that a consideration of international law in the context of a Reference “about the legal aspects of the unilateral secession of Quebec is not only permissible but unavoidable”.¹⁴

In the first aspect, the Court is on firm ground. Indeed, a Reference opinion does not even bind the domestic parties to it; although in practice the legal parameters which they set appear never to have been deviated from.¹⁵ The second aspect of the Court’s response is rather more problematic. The exact parameters of the right of self-determination are a vexed issue in international law and in answering the second Reference question the Court could not help but be determining an international law issue which even the International Court of Justice has not yet seen fit to pass on. The Court’s assumption of power to answer this question can, apparently, only be rationalised on the basis that this is a Reference opinion.

10 The notion of a reference, or advisory, jurisdiction is familiar to international lawyers. Although not referred to by the Court, the International Court of Justice, the judicial organ of the United Nations, possesses an advisory jurisdiction which has often been utilised to provide opinions on legal questions confronting the international community. A recent example is the Advisory Opinion rendered at the request of the UN General Assembly in 1996 on *The Legality of the Threat of Use of Nuclear Weapons*. The Court does, however, refer to the practice of the European Court of Justice, the European Court of Human Rights, and the Inter-American Court of Human Rights, all of which possess an advisory jurisdiction, and to the courts of a number of European States. The High Court of Australia has refused to exercise such a jurisdiction on the basis that it is not a judicial function (see *Re Judiciary and Navigation Act* (1921) 29 CLR 257) and the United States Supreme Court has likewise declined to do so on the basis of an express limitation in Article III(2) of the Constitution restricting that Court’s jurisdiction to actual cases or controversies (see for example, *Muskrat v United States*, 219 US 346 (1911)). However, several individual US states do grant advisory jurisdiction to their supreme courts and the Court refers to Delaware and Alabama in this regard.

11 Note † *supra* at [14].

12 *Ibid* at [20].

13 *Ibid* at [23].

14 *Ibid*.

15 P Hogg, note 9 *supra*, p 227.

In dismissing the third objection the Court sums up in a nutshell the meaning of “non-justiciability”. Pointing out that what is appropriate for a court to answer in an adversarial proceeding or one disposing of cognizable rights differs from what is appropriate for answer on a reference, the Court notes that it should decline to answer on the basis on non-justiciability if (1) “to do so would take the Court beyond its proper role” or, (2) if the answer would lie outside the area of its expertise: “the interpretation of law”.¹⁶ In dismissing an analogy to the US ‘political questions’ doctrine the Court concludes that its proper role is to determine the legal framework only in which certain political actions may then be taken. While there may be extra-legal aspects to the question, the Court is at liberty to interpret the question so as to answer only its legal aspects or to decline to answer the question. The Court notes that it has generally declined to answer questions where they have been too imprecise or ambiguous to permit a proper legal answer, or where insufficient information has been provided, and concludes that none of these circumstances exist in the present case. The Court has often been criticised for failing to exercise its discretion to decline more often and undoubtedly some commentators will criticise the Court for having provided answers in this case. However, in the Court’s opinion, given the “fundamental public importance” of the issues it was “duty bound in the circumstances” to do so.¹⁷

B. Unilateral Secession under the Canadian Constitution

The question to which the Court gives the bulk of its attention is whether, under the Canadian Constitution, Quebec has the unilateral right to secession. Unlike some States, the written text of the Canadian Constitution is silent on the matter. The Court might have simply answered the question by stating that the Constitution takes no position on the matter. However, as is well accepted in Canadian constitutional law, the written document is not the end of the story. The Constitution embraces unwritten rules as well; those “rules and principles which govern the exercise of constitutional authority in the whole and in every part of the Canadian State”.¹⁸ The identification of those rules and principles lies in an “understanding of the constitutional text itself, the historical context, and previous judicial interpretations of constitutional meaning”.¹⁹

The Court then gives a stirring lesson in the meaning of federalism and democracy. After briefly examining the historical context and the significance of confederation, a process brought about by, and continued with, the will of all of the people in Canada, the Court identifies and discusses four constitutional principles which it considers underlie the written Constitution and which, by virtue of the preamble to the Constitution, can be used to “[fill] the gaps in the express terms of the constitutional text”.²⁰ federalism, democracy,

16 Note † *supra* at [26(i)], [26(ii)].

17 *Ibid* at [31].

18 *Ibid* at [32] quoting *Patriation Reference*, note 2 *supra* at 874.

19 *Ibid*.

20 *Ibid* at [53] quoting *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3 (*Provincial Judges Reference*).

constitutionalism and the rule of law, and respect for minority rights. The Court is not here talking about legal conventions which may not be enforced by the courts. On the contrary, it is talking about underlying normative principles which are binding on both courts and government.

Federalism, the Court says, is the "lodestar"²¹ of Canadian constitutional structure and interpretation, recognising diversity and autonomy both within individual provinces and nationally. Democracy is more than just majority rule or an issue of governmental process. It "accommodates cultural and group identities" and is "connected to substantive goals" including the promotion of self-government.²² It requires institutions elected by popular franchise and a continuing process of negotiation to ensure the continuing legitimacy of those institutions and their actions and to ensure the continuing accommodation of the interests of citizens on both a provincial and a national scale. In these respects it interacts with the principles of federalism and of the rule of law. The rule of law "vouchsafes to the citizens and residents of a country a stable, predictable and ordered society in which to conduct their affairs",²³ while constitutionalism requires that all government action be in accordance with the Constitution, the supreme law of the land. A division of powers in a constitution "would be defeated if the democratically elected levels of government could usurp the powers of the other simply by exercising its legislative power to allocate additional political power to itself unilaterally".²⁴ These underlying principles mean that a Constitutional amendment "requires some form of substantial consensus" or "enhanced majority" which, in turn ensures "that minority interests must be addressed before proposed changes which would affect them may be enacted".²⁵

The Court goes on to discuss the operation of these principles in the secession context. Noting that secession is both a legal and a political act the Court holds that, in legal terms, secession must be considered to require an amendment to the Constitution as it would "purport to alter the governance of Canadian territory in a manner which undoubtedly is inconsistent with our current constitutional arrangements".²⁶ The democratic principle would require, though not exclusively, "considerable weight to be given to a clear expression by the people of Quebec of their will to secede".²⁷ When combined with the federalism principle such an expression would "give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire".²⁸ Negotiations would be governed by the four principles outlined above and would require the reconciliation of the rights and obligations of both the "clear majority of the population of Quebec, and the clear majority of Canada as

21 *Ibid* at [56].

22 *Ibid* at [64] referring to *Reference re Provincial Electoral Boundaries (Sask)* [1981] 2 SCR 158 at 188.

23 *Ibid* at [70].

24 *Ibid* at [74].

25 *Ibid* at [77].

26 *Ibid* at [84].

27 *Ibid* at [87].

28 *Ibid* at [88].

a whole".²⁹ Under the Constitution then: unilateralism is out; a negotiated constitutional amendment is required; and participants in those negotiations must "work to reconcile the rights, obligations and legitimate aspirations of all Canadians within a framework that emphasises constitutional responsibilities as much as it does constitutional rights".³⁰

Having answered the question, the Court then throws the ball back into the federal government's lap by making it clear that the political aspects of the negotiations are not subject to its (the Court's) supervision. For example, what constitutes a "clear majority on a clear question in favour of secession" is a matter subject to political evaluation, as is the reconciliation of the various constitutional interests discussed. Likewise, the Court does not indicate which part of the amending formula provided for in the *Constitution Act* 1982 must be used but rather seems to say that that, too, is a matter for negotiation.³¹ While commentators may bemoan this omission, the Court is careful to make clear that it has not been asked to consider how a secession can be achieved constitutionally, but only whether a unilateral secession would be illegal under the Constitution. Nevertheless, this distinction seems difficult to sustain. The Court has said that secession requires an amendment to the Constitution. It would not seem to be beyond the realm of the possible for the Court to have indicated which amending formula would apply. The Court has chosen, however, to demur "unless and until sufficiently clear facts exist to squarely raise an issue for judicial determination".³² Perhaps the Court does not wish to be seen to be encouraging a secessionist move. Or, perhaps it wants to ensure that the matter, should Quebec vote for secession, does come back before it. Then again, perhaps the Court is just being sensitive to the fact that it was disagreement over the amending formula that caused Quebec to reject the patriated Constitution in 1982.³³

C. Self-determination and Unilateral Secession in International Law

The Court's answer to the second question is a textbook discussion of an extremely complex issue. Where component parts of a State agree to go their separate ways, international law generally takes no position on the matter.³⁴ However, international law neither specifically confirms nor specifically denies a unilateral right to secession. *Uti posseditis*, or the rule of the territorial integrity of States, is a fundamental rule of international law but its operation

29 *Ibid* at [93].

30 *Ibid* at [104].

31 The matter of which formula would apply is by no means free from doubt. Articles 38-49 of the *Constitution Act* 1982 provide a variety of means although the two most likely candidates are the Articles 38 requirement of a two-thirds majority of provinces having at least 50 per cent of the population, or the Article 41 unanimity requirement. Webber argues in favour of the Article 41 formula: see J Webber, note 5 *supra*.

32 Note † *supra* at [105].

33 See P Hogg, "Is the Canadian Constitution Ready for the 21st Century?" *Background Studies of the York University Constitutional Reform Project Study No 1*, York University Centre for Public Law and Public Policy (1991); and JR Hurley, note 3 *supra*.

34 The breakup of Czechoslovakia into the Czech and Slovak Republics is an example of such a situation

may be modified in certain exceptional circumstances. The question is whether the right of self-determination is one of those exceptional circumstances and, if so, whether it applies to give Quebec a right to unilateral secession.³⁵

As the Court notes, the right of self-determination is recognised as a fundamental rule of international law. However, the manner in which that right might be exercised, and by whom, is not always clear. With respect to who may exercise the right, the Court notes that international law grants the right to "peoples" and, although there is as yet no settled definition of the word, this might include only a portion of the population of a State. Accordingly, much of Quebec's population might qualify as a "people" for the purposes of the right of self-determination. But, says the Court, given the manner in which the right may be exercised, it is quite unnecessary to examine the issue.

The Court then turns to an examination of the scope of the right of self-determination. Referring to various international legal documents embodying the right, and the 'internal/external' analysis of the right adopted by many scholars,³⁶ the Court concludes that international law requires that self-determination be exercised by peoples internally, that is "within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those States".³⁷ It notes that two recognised exceptions give rise to a right of 'external' self-determination, or secession: the right of colonial peoples to free themselves of their colonial masters and the right of a people subject to alien subjugation, domination or exploitation outside a colonial context.³⁸ The Court also acknowledges the possibility of third exception which it describes as occurring "when a people is blocked from the meaningful exercise of its right to self-determination internally".³⁹ However, even if this third category exists the Court finds that the circumstances in Quebec do not meet the threshold test. The people of Quebec can hardly be considered an 'oppressed' people. They are not suffering massive violations of their human rights and are not subject to attacks or threats to their physical integrity or existence. Nor are they denied participation or representation in the domestic political processes. As the Court says:

The population of Quebec cannot plausibly be said to be denied access to government. Quebecers occupy prominent positions within the government of Canada. Residents of the province freely make political choices and pursue economic, social and cultural development within Quebec, across Canada, and throughout the world. The population of Quebec is equitably represented in legislative, executive and judicial institutions. In short, to reflect the phraseology of the international documents that address the right of self-determination of peoples, Canada is a "sovereign and independent state conducting itself in compliance with the principle of equal rights and self-determination of peoples and thus possessed of

35 See for example, D Murswiek, "The Issue of a Right of Secession - Reconsidered" in C Tomuschat (ed), *Modern Law of Self-Determination*, Martinus Nijhoff (1993) 21.

36 On this point see for example, A Rosas, "Internal Self-Determination" in C Tomuschat, *ibid* 225.

37 Note † *supra* at [122].

38 See for example, S Blay, "Self-determination versus Territorial Integrity in Decolonisation" (1996) 18 *New York University Journal of International Law and Politics* 441.

39 Note † *supra* at [134].

a government representing the whole people belonging to the territory without distinction.⁴⁰

Thus, even if the population of Quebec can be characterised as a “people” or “peoples”, they have no right under international law to invoke the right to self-determination to unilaterally secede from Canada. Nor does the continuing failure to reach agreement on constitutional amendments acceptable to Quebec constitute a denial of the right of self-determination.

Whatever one thinks of the propriety of the Court answering the question, at least the Court has ‘got it right’. International lawyers have long disagreed with Quebec’s assertion that the self-determination principle operated in its case to permit unilateral secession. Admittedly, the issue has been clouded in the last decade by the dissolution of the former USSR and the former Yugoslavia. However, the prevailing trend amongst international lawyers has been to characterise these break-ups as based on consent, decolonisation, termination of occupation of previously independent republics, or the illegitimate, unilateral use of force recognised *ex post facto* as a political *fait accompli* rather than a legal act.⁴¹ Having approached the zenith of the early 1990s, international law has clearly indicated an unwillingness to recognise any further extension of the exceptions to the prohibition on unilateral secession noted by the Court.

V. CONCLUSION

One might wonder whether such lofty erudition reflects the understanding of ordinary Canadians of the society in which they live. Nevertheless, the opinion is something of a judicial *tour de force*; both for what it says and for what it does not say. Quebec may decide on its own to go, but its going and its manner of doing so are matters which affect the interests of all Canadians and are therefore matters for all Canadians to agree upon. In this way the Court neatly sidesteps the issue of whether the aboriginal people of Quebec have a right to remain with Canada or might, themselves, have a right to secede from a seceding Quebec,⁴² and the fears of anglophone and other minorities in Quebec.⁴³ Their interests must be taken into account in the negotiations. Surely there is no contest here. The Court does recognise that agreement might not be possible, in which case extra-legal considerations and consequences arise. However, it rightly refuses to speculate on their cause or outcome. The opinion is a clarion call for cool heads, common sense, and decency to prevail.

40 *Ibid* at [136].

41 See for example, D Murswiek, note 35 *supra*.

42 For discussion on this point see for example, D Sanders, “If Quebec Secedes from Canada Can the Cree Secede from Quebec?” (1995) 29 *University of British Columbia Law Review* 1; B Miller, “Quebec’s Accession to Sovereignty and its Impact on First Nations” (1994) 43 *University of New Brunswick Law Journal* 261.

43 See for example, D Richardson, “The Quebec Independence Vote and its Implications for English Language Legislation” (1997) 26 *Georgia Journal of International and Comparative Law* 521.

It is not immediately clear what the federal government will have gained from the decision. The answers to the reference questions are hardly surprising and, unfortunately, are likely to be as rejected by Quebec sovereignists as, undoubtedly, they will be embraced by the federalists. Whether this game of brinksmanship will bring the parties to the table to negotiate a renewed Canadian federation acceptable to Quebec and the rest of Canada, or will simply further entrench the sovereignists' resolve to separate, remains to be seen. Needless to say, neither outcome will be easily achieved, although breaking up in a constitutionally legal manner after 130 years of economic, cultural, social and political marriage may be particularly difficult and, ultimately, counterproductive.⁴⁴ In any event, the framework methodology established by the Court and a mutually acceptable negotiated outcome, whatever that might be, are infinitely preferable to the alternatives.

The world has watched in bewilderment for years, not understanding why one of the most civilised and highly developed countries in the world would want to tear itself apart. The Court's opinion gives no answers to these questions, and it will certainly not stop a rupture if rupture is what is wanted. But in a world plagued by bloody secessionist struggles, the Court has established a legal framework by which Quebec's departure, should it decide to go, can be achieved, taking into account the interests of all Canadians; in other words, the 'Canadian way'. Perhaps the Canadian constitutional debate is finally set to 'come around'.

44 For a discussion of some of the issues involved see for example, D Drache and R Perin (eds) *Negotiating with a Sovereign Quebec*, J Lorimer & Co (1992); J Webber, *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution*, McGill - Queen's University Press (1994).