

# Veto

Disputes over the existence and use of vetoes have played an important part in Canada's constitutional development. During the Patriation Round, Quebec asserted the existence of a [convention](#) requiring unanimous provincial consent to constitutional amendments that would alter the [division of powers](#) between the provinces and federal government; if this convention existed, it would have given each province a 'veto'.<sup>[1]</sup> The existence of this convention was twice considered by the Supreme Court of Canada. In the *Patriation Reference (Re Resolution to Amend the Constitution)*,<sup>[2]</sup> the Court confirmed the existence of a convention requiring "a substantial degree of provincial consent", but in the *Quebec Veto Reference (Reference re Amendment of the Canadian Constitution)*, the Court clarified that this was not a requirement of unanimity.<sup>[3]</sup>

Notwithstanding these holdings, the [amending formulas](#) in Part V of the *Constitution Act, 1982* create two sets of vetoes.<sup>[4]</sup> First, all constitutional amendments (except those to provincial constitutions, which provinces can amend unilaterally under section 45) require the consent of the federal government, giving it a 'veto' over constitutional change. Second, amendments covered by the 'unanimity formula' in section 41 require unanimous provincial consent. The scope of the unanimity formula, albeit important, is somewhat limited. However, section 41 has been amplified in importance by the practice, both during the Quebec and Canada Rounds, of bundling packages of constitutional amendments that trigger different amendment formulas. In the Quebec Round, it was widely accepted that the individual amending formulas operated cumulatively to all the amendments in a package, so that one amendment requiring unanimity would require unanimous consent for the package as a whole. It is argued by some that the growth of 'mega-constitutional politics', which makes such packages the norm, has accordingly rendered the amendment of the Constitution exceedingly difficult, and perhaps impossible.<sup>[5]</sup>

<sup>[1]</sup> Katherine Swinton, "Amending the Canadian Constitution: Lessons from Meech Lake" (1992) 42:2 UTLJ 139 at 141, n 10.

<sup>[2]</sup> *Re Resolution to amend the Constitution*, [1981] 1 SCR 753, 1981 CanLII 25 (SCC).

<sup>[3]</sup> *Reference re Amendment to the Canadian Constitution*, [1982] 2 SCR 793, 1982 CanLII 218 (SCC).

<sup>[4]</sup> *Constitution Act, 1982*, ss 38-49, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

<sup>[5]</sup> For this paragraph, see generally: P Russell, *Constitutional Odyssey*, 2d ed (Toronto: University of Toronto Press, 1993).