

For Danielle Smith and Alberta separatists, no clear path left for referendum after court loss

Pressure mounting for premier to commit to the vote her UCP base wants, but First Nations have blocked

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Premier Danielle Smith has not ruled out initiating a separatism referendum herself, after a court decision quashed a petition to force a vote on the ballot. She plans to consult her UCP caucus first. (Spencer Colby/The Canadian Press)

For the last torrid year in Alberta politics, so much seemed to be building toward a separation referendum this fall.

Premier Danielle Smith eased the rules repeatedly for a pro-separatist petition to succeed. Right before a court first ruled against petitioners in December because of constitutional issues, her government rewrote a law to make that moot.

She scheduled a series of other referendums on immigration and constitutional reforms on Oct. 19, making that a de-facto “save the date” notice for that much more consequential ballot question.



If Alberta's independence vote had become a big rig hurtling relentlessly toward its destination, Justice Shaina Leonard's ruling this week proverbially bombed the key bridge on the route to Oct. 19.

It's not clear what the path is now, with many more potential hazards ahead.

Leonard quashed the separation petition and its 301,000 (unverified) Albertans' signatures. She sided with the Athabasca Chipewyan First Nation and the Blackfoot Confederacy by ruling that the government failed in its duty to consult First Nations before setting Alberta on a process that could substantially impact Indigenous treaties with Canada.

The Court of King's Bench judge's ruling was still fresh in email inboxes Wednesday when Smith and key separatist lawyer Jeffrey Rath separately promised they'd appeal the ruling, each claiming it had errors in law.

But the wheels of justice have been known to move slowly.

There would be no obligation for a court to hear those appeals on an expedited basis to accommodate Smith's hoped-for Oct. 19 referendum timing. (The referendum petition's own timeline made those wheels churn faster on the First Nations' initial challenge.)

Rath told CBC News he'll ask for a legal stay to allow Elections Alberta to verify those 301,000 signatures in the meantime, but that would not remedy the overall timing of an appeal of Leonard's decision.



Jeffrey Rath, a lawyer for the separatist movement, says he'll appeal the ruling against the Stay Free Alberta petition because the judge misunderstands the constitutional obligation to consult First Nations on major decisions. (Jason Franson/The Canadian Press)

Then there's the long-touted Plan B for the separatist group Stay Free Alberta — persuade Smith to circumvent the stalled petition process and have the government call a separatist referendum itself, as it's done for the nine other questions scheduled for October.

But the lawyer who won the decision for the Athabasca Chipewyan suggests that any Alberta First Nation could quickly challenge a government-ordered referendum with the same “duty to consult” argument.

“Putting a question on the ballot of this magnitude — with sweeping implications for treaty rights and the treaty relationship — without first consulting First Nations is simply not lawful,” said Kevin Hille of Olthuis Kleer Townshend LLP in Toronto.

Rath said there is a clearer path to a Smith-led referendum, as he pursues his parallel appeal, on the basis that constitutional obligations to consult First Nations aren't triggered until later down the road to separatism.



“The problem is that she [Leonard] doesn’t understand the way that the duty to consult works in Canadian law,” Rath told CBC’s *Power and Politics*.

Constitutional scholar Dwight Newman agreed that the judge was incorrect.

“More than 300,000 signatures cannot be thrown in the garbage based on an unreflective application of a legal test to circumstances outside its appropriate sphere,” the University of Saskatchewan law professor wrote in the *National Post*.

But two judges, in December and May, have already decided that the risk to treaties is relevant at this stage.

“They’ve been called out twice by the courts for bypassing First Nations,” Hille said.

This makes Smith calling a referendum herself a legally perilous option, on top of the risk of more directly putting her political stamp on separatism, while two-thirds of Albertans oppose leaving Canada, many of them strongly.

But in addition to the duty to consult, Smith must reckon with another type of obligation — a political one. It may be that only 27 per cent of Albertans tell pollsters they back secession, but it’s a majority position among UCP supporters, according to last month’s Janet Brown Opinion Research poll.

Smith has spent a year channeling those independence believers in that one direction, toward a separatism vote that they — not she — would put on the ballot. Now, those same 301,000 (unverified) Albertans who signed that petition — with a promise it would lead to an independence vote — might be channeled into a different direction: trying to push Smith out of a job.

Separatist leaders have been encouraging their base to join hers and become UCP members, if they weren’t already. With that, they’d pressure her with an ultimatum: call the referendum, or they call for her head.

“Danielle is literally facing politically what I consider an existential choice — or an existential turning point in her leadership,” Rath said.

When past Quebec premiers scheduled independence votes, it was because they believed in the cause. Smith says she opposes separatism, and has professed she wants the petition signatories’ wishes to be respected. Critics, however, will accuse her of calling a referendum for the sake of political self-preservation.



Prime Minister Mark Carney said Alberta belongs in Canada, adding that the federal government supports provinces' ability to hold referendums — so long as they follow the rules. 'That means respecting the rights of Indigenous peoples, respecting the right of people to privacy,' Carney said. 'If it's a referendum on separation in any province, it needs to be consistent with the Clarity Act.'

But if Smith does call the referendum herself, and then a third judge quashes it, would that pair of events rankle both the majority of Albertans who don't want to separate, as well as the majority of her supporters who do?

The premier has said her caucus and cabinet will make the decision on next steps after Leonard's legal blow to the referendum push. Their next meetings are next week.

United Conservative MLAs got elected in 2023, when separatism was largely a non-issue. None of them are openly separatist, even if one promoted the independence petition.

Smith's caucus and cabinet mates are more prone to celebrate progress toward her pipeline and climate policy deal with Prime Minister Mark Carney.

When the premier announces success on that front on Friday, she'll likely repeat her refrain that this proves Canada works — even if one week later, Smith opens the door wider to Albertans who are convinced Canada is failed and must break apart.