The Special Committee for Canadian Unity
Le Comité Spécial pour l'Unité Canadienne

Press Release

Why the Dallaire Decision on Bill 99 must be Appealed

Need for reference to the Supreme Court

May 11, 2018 **www.thespecialcommittee.com**
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Who: Keith Henderson, Chairman of the Special Committee for Canadian Unity
Stephen Scott, Professor emeritus of Constitutional Law, McGill University (ret.) and Founder of the Special Committee for Canadian Unity
Brent Tyler, Human Rights Lawyer
William Johnson, Journalist

When: Tuesday, May 15th at 2:00 p.m.

Where: Charles Lynch Room, 130-S, Center Block, Parliament, Ottawa, ON

Quebec separatism is on the wane, but that trend may not last forever, as Scotland and Catalonia prove. For decades, members of the Quebec élite, both separatist *and* federalist, have spread the notion that the province of Quebec is free to separate from Canada *at will,* should a sufficient majority vote in favour of a clear question. Bill 99, "An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State" is the most forceful expression of that notion. "The Québec people has the inalienable right to freely decide the political regime and legal status of Québec. The Québec people, acting through its own political institutions, shall determine alone the mode of exercise of its right to choose the political regime and legal status of Québec." In her decision, Justice Claude Dallaire of the Quebec Superior Court found these provisions entirely and completely constitutional. Our arguments show why she is wrong; national unity may depend on our proving she is wrong.

In its Reference Case on Unilateral Secession, the Supreme Court of Canada wrote: "The secession of a province from Canada must be considered, in legal terms, to require an amendment to the Constitution…." The Court found Quebec has no right to declare independence unilaterally. However, Justice Dallaire bases her opinion on an extremely narrow and tendentious definition of the term "unilateral declaration of independence" or UDI. For her, a UDI in Canada is any declaration of independence made by a provincial government *before* it has attempted to open good faith negotiations to achieve secession by constitutional means. Should such negotiations fail, in her judgment, the government of Quebec would then be free to declare independence without further reference to constitutional procedures, i.e. without the necessity of a constitutional amendment. Such a declaration would not be "unilateral" in Justice Dallaire's view, because an attempt at negotiation had been made.

That judicial conclusion by Justice Dallaire is erroneous in law and represents the basis of our appeal. There cannot be two standards of rights and prerogatives in Canada, one requiring adherence to the constitution's amending formula, the other evading it. Plainly stated by the Supreme Court, it is for the people of Canada, through the amending formula, not for the people of Quebec through referendums, to decide whether or not the secession of a province occurs. Justice Dallaire's decision is a "rolling stop" through Canada's constitutional amending formula and the "enhanced majority" the Supreme Court has ruled is required. For that reason alone, the Dallaire decision subverts the rule of law in the country and must be challenged. To speed the process of clarifying the confusion sown by the judgement, which also impugns the Clarity Act, we are calling upon the Prime Minister to refer the matters raised directly to the Supreme Court.