

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



## Press Release

### Nine Questions for Tom Mulcair on the Clarity Act

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For Immediate Release

[www.thespecialcommittee.com](http://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  
The Hon. Peter Goldring, MP for Edmonton East and founder of the Western Canada Chapter of The Special Committee

When: Tuesday, September 22nd at 2:00 p.m.

Where: Charles Lynch Press Theater, #607, 150 Wellington St., Ottawa, ON

Canadians must know what they are voting for. In the spirit of clarity, it is imperative that federalist parties and the media question the NDP about its position on Quebec secession and its responsibilities to Canadians resident in the province.

#### Nine Questions for the NDP

The first responsibility of the Canadian Government is to protect the sovereignty and territorial integrity of Canada, its Constitution and its Government by law established. It must protect and defend them against attack from abroad and from within the country. In sum, the Canadian Government must protect the state, the law, and the society against war, invasion, and insurrection.

**Question 1: Do you accept that this is the obligation of every Government of Canada, and so is the New Democratic Party, and is any Government it may form, absolutely committed to comply with this obligation?**

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The Sherbrooke Declaration (Part 6) states: "The NDP recognizes Quebec's right to self-determination, which implies the right of the people of Quebec to decide freely its own political and constitutional future. This right can be expressed in various ways and can go as far as achieving sovereignty.... "... Also, the N.D.P. would recognize a majority decision (50% + 1) of the Quebec people in the event of a referendum on the political status of Quebec." Bill C-470 refers to Quebec Province as a "nation" and asserts that "the Quebec nation has the right to democratically decide its own future". It also would require the Government of Canada to negotiate with the Government of Quebec on the basis (section 5 ( c ) ) of "the majority of valid votes cast in favour of the proposed change". This brings us to:

**Question 2: The Supreme Court of Canada, which we quote, has taken a very different view from your own as to the conditions required for secession. Will you now unconditionally accept these rulings of the Supreme Court of Canada and will you and your caucus, and any NDP Government, accept and comply with them completely?**

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Former Ontario NDP premier Bob Rae stated it took a 66% vote to change the name of the NDP.

**Question 3: Why does the NDP believe it takes a super majority to change the name of its party and only 50% + 1 to dismember Canada?**

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A constitutional amendment is required for secession. Of the constitutional amendment procedures in Part V of the *Constitution Act, 1982* only two are possibly applicable. One is the general procedure in section 38, requiring, in addition to the Houses of the federal Parliament, the assent of the legislative assemblies of two-thirds of the provinces with at least fifty per cent of the population of all the provinces. The other is section 41, which requires the assent of all the provincial assemblies. The Supreme Court decision in *Reference re Senate Reform*, [2014] 1 S.C.R. 704, held that the Senate can be abolished only under section 41, that is, with unanimous consent of all provinces. Its reasons strongly suggest that this would apply to secession of a province. The Supreme Court also declared: “Nobody seriously suggests that our national existence, seamless in so many aspects, could be effortlessly separated along what are now the provincial boundaries of Quebec.”

**Question 4: Given the need of a national (as distinct from a unilateral provincial or federal) constitutional amendment to achieve secession, do you accept that secession is a matter for the Canadian people as a whole; that the *Canadian people through their institutions can say Yes or No to secession, and if they do say Yes, they can do so on any terms and conditions they please, including changes to the boundaries of Quebec?***

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Pierre Trudeau famously stated: “If Canada is divisible, so is Quebec.”

**Question 5: Does the NDP believe that Quebec could be partitioned to accommodate aboriginal peoples and loyal Canadians who do not wish to be part of an independent new country?**

The Clarity Act stipulates that “No Minister of the Crown shall propose a constitutional amendment to effect the secession of a province from Canada unless the Government of Canada has addressed, in its negotiations, the terms of secession that are relevant in the circumstances, including the division of assets and liabilities, any changes to the borders of the province, the rights, interests and territorial claims of the Aboriginal peoples of Canada, and the protection of minority rights.”

**Question 6: Why has the NDP dropped any reference to changes to the borders of the province from its proposed Bill C-470?**

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Parti Québécois leader Pierre-Karl Péladeau has recently restated separatist claims to Canadian assets in Quebec in the event of secession. He also suggested Quebec would assume an unspecified amount of Canadian debt. The Clarity Act stipulates that “the division of assets and liabilities” will be a specific requirement of negotiations.

**Question 7: Why has the NDP’s proposed Bill C-470 dropped all reference to such negotiations over the division of assets and liabilities?**

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In 1999 the Parliament of Canada adopted the Clarity Act, which the NDP’s Bill C-470 repeals. In riposte, Quebec’s separatist premier Lucien Bouchard adopted Bill 99, An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State. That law (1999) categorically states: “the Quebec nation has the right to democratically decide its own future,” a principle repeated word for word in the NDP’s Bill C-470 (2013). Quebec’s Bill 99 also states: “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.” The Attorney-General for Canada has filed a plea supportive of Petitioner in the case of *Henderson v. A.-G. Quebec*, now pending in the Quebec Superior Court, in Record No. 500-05-065031-013. This litigation seeks to establish the constitutional invalidity of several provisions of the Quebec Act, Statutes of Quebec 2000, c. 46 (“Bill 99”).

**Question 8: If you form a Government, do you promise that you will maintain the plea already filed, and instruct counsel to appear in support of its text and its principles?**

**Question 9: Bill C-470 proposes to repeal the federal *Clarity Act*, which Bill 470 falsely alleges does not accurately reflect the Supreme Court decision in the *Secession Reference*. Will you now abandon Bill C-470 and any similar measure, and promise to leave the *Clarity Act* in place?**

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**Conclusion:**

Quebec is never more than one election away from the risk of a referendum. Governments lose power for all kinds of reasons, and inevitably lose power sooner or later. A separatist government in power can create crises and build popular support for independence by making demands of Ottawa, which the federal government cannot or should not accede to. Nevertheless, sympathizers with Quebec nationalist aspirations, such as McGill's Antonia Maioni writing in the *Globe and Mail*, believe no time should be spent raising the nine questions above. "In the absence of these clear and present dangers – a PQ decimated in the past provincial election, a Liberal government that sometimes seems more federalist than the Conservatives in Ottawa and a BQ that is literally in tatters – why does Liberal Leader Justin Trudeau still feel it necessary to play the sovereignty card?" However, these are not "old quarrels." Separatism is very much alive. On April 23 of this year, Montreal's *La Presse* reported on a just completed CROP poll: "Le score de la souveraineté oscille souvent dans les intentions de vote. Le Oui au referendum aurait obtenu 41 % ce mois-ci, une hausse de six points par rapport à mars. Il avait atteint ce score en septembre 2014, pour retomber à un plancher de 31% en décembre." The Special Committee for Canadian Unity, the only legally recognized Committee Affiliated with the NO in 1995, has a long track record of demanding answers. We believe there is no better time than a federal election – and federal all-party debates – to seek them.

## **The Supreme Court on Secession: Point by Point**

To keep this short, we quote only some of the key passages from the Supreme Court's decision, *Reference re Secession of Quebec*: [1998] 2 S.C.R. 217, but anyone can look up the decision on Canlii website and see that nothing is taken out of context: <https://www.canlii.org/en/>.

### **On the right of self-determination of peoples, which for Quebec means only self-determination within the Canadian state:**

"... Although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the "people" issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of peoples at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. ... Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the National Assembly, the legislature or the government of Quebec do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally." [1998] 2 S.C.R. 217 at 295-96 (para 154).

### **On the need of a national constitutional amendment as a necessary condition to permit secession, ignored or rejected in the Sherbrooke Declaration and in Bill C-470:**

*Reference re Secession of Quebec*: [1998] 2 S.C.R. 217 at pp. 263-64 (para. 84): "... The fact that those changes would be profound, or that they would purport to have a significance with respect to international law, does not negate their nature as amendments to the Constitution of Canada...."; [1998] 2 S.C.R. at p. 265 (para. 87): "to initiate the Constitution's amendment process in order to secede by constitutional means"; [1998] 2 S.C.R. 217 at p. 270 (para. 97): "Under the Constitution, secession requires that an amendment be negotiated". "The secession of a province from Canada must be considered, in legal terms, to require an amendment to the Constitution ...." [para. 84, p. 263].

### **That any right to have a constitutional negotiation on secession depends on "a clear majority" answering a clear question; that a "clear majority" obviously means something more than a majority of one vote, as has been your position; and that whether a clear majority exists will be a matter for evaluation by the "political actors", namely the federal and provincial governments who will be the negotiating parties:**

The "initial impetus for for negotiation, namely a clear majority on a clear question in favour of secession" [1998] 2 S.C.R. at p. 271, para. 100] in a referendum is itself "subject only to political evaluation" [*ibid.*] by the actors having the duty to negotiate. So too are "the political aspects of constitutional negotiations" over which "the Court has no supervisory role" (*ibid.*).

### **That no referendum majority, however great, can either effect secession or create an entitlement to secession:**

The right of the Government and population with the referendum mandate is a right "to pursue secession" [paras. 88, 92; pp. 265, 267]. States the Court: The "referendum, in itself and without more, has no direct legal effect, and could not in itself bring about unilateral secession" [para. 87, p. 265]. The Court [para. 90, pp. 266-67] also *rejects* the proposition "that there would be a legal obligation on the other provinces and federal government to accede to the secession of a province subject only to negotiation of the logistical details of secession".

For further explications of Mr. Mulcair's position, click on the following link:

<http://news.nationalpost.com/full-comment/william-johnson-on-separation-thomas-mulcair-is-not-speaking-at-the-level-one-would-expect-of-a-leader>