

Appendix 3

Clarity Act

2000, c. 26

An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference

Assented to 29th June, 2000

Preamble

WHEREAS the Supreme Court of Canada has confirmed that there is no right, under international law or under the Constitution of Canada, for the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally;

WHEREAS any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;

WHEREAS the government of any province of Canada is entitled to consult its population by referendum on any issue and is entitled to formulate the wording of its referendum question;

WHEREAS the Supreme Court of Canada has determined that the result of a referendum on the secession of a province from Canada must be free of ambiguity both in terms of the question asked and in terms of the support it achieves if that result is to be taken as an expression of the democratic will that would give rise to an obligation to enter into negotiations that might lead to secession;

WHEREAS the Supreme Court of Canada has stated that democracy means more than simple majority rule, that a clear majority in favour of secession would be required to create an obligation to negotiate secession, and that a qualitative evaluation is required to determine whether a clear majority in favour of secession exists in the circumstances;

WHEREAS the Supreme Court of Canada has confirmed that, in Canada, the secession of a province, to be lawful, would require an amendment to the Constitution of Canada, that such an amendment would perforce require negotiations in relation to secession involving at least the governments of all of

the provinces and the Government of Canada, and that those negotiations would be governed by the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities;

WHEREAS, in light of the finding by the Supreme Court of Canada that it would be for elected representatives to determine what constitutes a clear question and what constitutes a clear majority in a referendum held in a province on secession, the House of Commons, as the only political institution elected to represent all Canadians, has an important role in identifying what constitutes a clear question and a clear majority sufficient for the Government of Canada to enter into negotiations in relation to the secession of a province from Canada;

AND WHEREAS it is incumbent on the Government of Canada not to enter into negotiations that might lead to the secession of a province from Canada, and that could consequently entail the termination of citizenship and other rights that Canadian citizens resident in the province enjoy as full participants in Canada, unless the population of that province has clearly expressed its democratic will that the province secede from Canada;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

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| House of Commons to consider question | <p>1. (1) The House of Commons shall, within thirty days after the government of a province tables in its legislative assembly or otherwise officially releases the question that it intends to submit to its voters in a referendum relating to the proposed secession of the province from Canada, consider the question and, by resolution, set out its determination on whether the question is clear.</p> |
| Extension of time | <p>(2) Where the thirty days referred to in subsection (1) occur, in whole or in part, during a general election of members to serve in the House of Commons, the thirty days shall be extended by an additional forty days.</p> |
| Considerations | <p>(3) In considering the clarity of a referendum question, the House of Commons shall consider whether the question would result in a clear expression of the will of the population of a province on whether the province should cease to be part of Canada and become an independent state.</p> |
| Where no clear expression of will | <p>(4) For the purpose of subsection (3), a clear expression of the will of the population of a province that the province cease to be part of Canada could not result from</p> <ul style="list-style-type: none">(a) a referendum question that merely focuses on a mandate to negotiate without soliciting a direct expression of the will of the population of that province on whether the province should cease to be part of Canada; or(b) a referendum question that envisages other possibilities in addition to the |

secession of the province from Canada, such as economic or political arrangements with Canada, that obscure a direct expression of the will of the population of that province on whether the province should cease to be part of Canada.

Other views to be considered (5) In considering the clarity of a referendum question, the House of Commons shall take into account the views of all political parties represented in the legislative assembly of the province whose government is proposing the referendum on secession, any formal statements or resolutions by the government or legislative assembly of any province or territory of Canada, any formal statements or resolutions by the Senate, any formal statements or resolutions by the representatives of the Aboriginal peoples of Canada, especially those in the province whose government is proposing the referendum on secession, and any other views it considers to be relevant.

No negotiations if question not clear (6) The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada if the House of Commons determines, pursuant to this section, that a referendum question is not clear and, for that reason, would not result in a clear expression of the will of the population of that province on whether the province should cease to be part of Canada.

House of Commons to consider whether there is a clear will to secede **2.** (1) Where the government of a province, following a referendum relating to the secession of the province from Canada, seeks to enter into negotiations on the terms on which that province might cease to be part of Canada, the House of Commons shall, except where it has determined pursuant to section 1 that a referendum question is not clear, consider and, by resolution, set out its determination on whether, in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada.

Factors for House of Commons to take into account (2) In considering whether there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada, the House of Commons shall take into account

- (a) the size of the majority of valid votes cast in favour of the secessionist option;
- (b) the percentage of eligible voters voting in the referendum; and
- (c) any other matters or circumstances it considers to be relevant.

Other views to be considered (3) In considering whether there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada, the House of Commons shall take into account the views of all political parties represented in the legislative assembly of the province whose government proposed the referendum on secession, any formal statements or

resolutions by the government or legislative assembly of any province or territory of Canada, any formal statements or resolutions by the Senate, any formal statements or resolutions by the representatives of the Aboriginal peoples of Canada, especially those in the province whose government proposed the referendum on secession, and any other views it considers to be relevant.

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| No negotiations unless will clear | (4) The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada unless the House of Commons determines, pursuant to this section, that there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada. |
| Constitutional amendments | 3. (1) It is recognized that there is no right under the Constitution of Canada to effect the secession of a province from Canada unilaterally and that, therefore, an amendment to the Constitution of Canada would be required for any province to secede from Canada, which in turn would require negotiations involving at least the governments of all of the provinces and the Government of Canada. |
| Limitation | (2) 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. |

Available at <http://lois.justice.gc.ca/en/c-31.8/34467.html>