

The Clarity Act Is No Roadmap to Independence

By Jim Mason and George Koch

As Alberta moves closer to a [public vote on separation](#), one assumption has become increasingly common among independence supporters. Win a referendum, the thinking goes, and the federal [Clarity Act](#) will set in motion a clear negotiating process with Ottawa leading to a constitutional amendment and, before long, an independent Alberta. The *Clarity Act* does no such thing.



Clear-eyed scrutiny of the legislation suggests the opposite. Far from providing a roadmap to provincial independence, the Act creates a political and legal obstacle course in which nearly every important decision is handed to Ottawa. Before Albertans debate whether they should leave Canada, they ought to understand that the federal law governing such a process

was not designed to make separation straightforward.

Many separatists appear to envision a referendum victory as the beginning of an orderly transition to nationhood. Some have even proposed detailed timelines. One recent commentator described a [“365-day playbook”](#) that would supposedly carry Alberta from a successful vote through negotiations, constitutional amendments and eventual independence.

Such scenarios assume that the *Clarity Act* establishes a predictable process. But the legislation is remarkably vague on the questions that matter most.

The *Act* requires a “clear” referendum question and a “clear majority” in favour of separation. It defines neither term.

Instead, the House of Commons – which means, in practice, the Prime Minister’s Office – is empowered to decide whether a proposed referendum question is sufficiently clear. The *Act* identifies two types of questions that would automatically fail. Beyond that, it offers no meaningful criteria. Parliament is also instructed to consider various opinions and viewpoints from other provinces and any other source it chooses before reaching a decision, and is given broad discretion in determining what those opinions mean and how much weight they should carry.

If the referendum question is approved, then the same situation will repeat after the vote.

The *Clarity Act* empowers the House of Commons to determine whether a referendum result constitutes “a clear expression” of support for secession by “a clear majority” of the province’s population. Yet again, the legislation provides no threshold. Other than saying a simple majority of 50-percent-plus-one-vote won’t be enough, it does not specify what percentage of support would be sufficient. It does not establish a turnout requirement. It does not explain how regional divisions, the concerns of First Nations and other

minorities, or other political factors should be weighed.

Instead, Parliament is told to consider whatever factors it deems relevant, with input from all the other provinces and territories and anyone else it wants to consult.

That means the most important questions in the entire process are not answered by the *Act* itself. They are deferred to political judgment in Ottawa.

This alone should dispel the popular notion that a referendum victory automatically triggers negotiations. It does not. Under the *Act*, negotiations can begin only after Ottawa determines that both the question and the result satisfy its requirements.

Even if that hurdle is cleared, the path forward remains anything but straightforward.

The *Act* does not envision simple bilateral negotiations between Alberta and the federal government. Rather, it states that any negotiations concerning secession must involve at least the Government of Canada and all provincial governments. Other participants may also be included. In practical terms, Alberta would not be negotiating with a single counterpart. It could find itself facing a large coalition of governments and interests, all of which are likely to oppose separation altogether.

Nor does the legislation provide a clear endpoint.

Before any constitutional amendment could be introduced to effect secession, Ottawa must be satisfied that numerous issues have been addressed, including finances, borders, Indigenous interests and minority rights. Yet the *Act* never defines what it means for these matters to be satisfactorily "addressed". Nor does it establish how disagreements are to be resolved or when negotiations can be considered complete.

In fact, the legislation contains no mechanism at all for wrapping things up. The words “conclusion”, “agreement”, “memorandum of understanding”, “treaty” or “deal” are all absent from the *Clarity Act*.

Supporters of Alberta independence may regard the *Clarity Act* as a safeguard ensuring that Ottawa cannot simply ignore a referendum result. That might be true in a narrow sense. But it's no talisman, silver bullet or one-way ticket out the door. Federalists may see it as a necessary protection against a reckless rush toward separation. That, it certainly seems to be.

But both sides should recognize what the *Act* actually does. It does not create a clear constitutional pathway to independence. It creates a framework in which Ottawa exercises extraordinary discretion over every critical stage of the process. That may well have been the intention all along.

Whatever one's view of Alberta separation, the first step toward an informed debate is understanding the rules. The *Clarity Act's* title promises clarity. Its contents promise something else entirely.

The [*original, full-length version*](#) of this article was recently published in [*C2C Journal*](#).

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