

October 13, 2026

2026 Referendum: UCP Grievance Politics and A Binding Vote Against Separation

By: Shaun Fluker

Matter Commented On: [Alberta's 2026 Provincial Referendum](#)

Elections Alberta sets out the ten questions on the 2026 referendum [here](#). The UCP government's description of the referendum questions is [here](#), and this description labels the questions into three groups: (1) four 'constitutional questions'; (2) five 'immigration questions'; and (3) one 'separation question'. These questions have been the subject of an immense amount of media commentary. CBC News provides a brief overview of each question [here](#) and has a dedicated webpage for all its referendum coverage [here](#). Much of the commentary seeks to understand the policy implications of the referendum vote (see e.g., [Explaining about all 10 questions on the referendum](#)). One implication is certain: a majority of votes for Option 1 (Alberta should remain a province of Canada) on the 'separation question' is binding on this UCP government (and not just while Danielle Smith remains premier, as she suggested in an interview with CBC News [here](#)), and should legally preclude any further scratching of the separation itch within the UCP party and the government [caucus](#) until after the next general election.

Under the *Referendum Act*, [RSA 2000, c R-8.4](#), a referendum is either constitutional or non-constitutional. A question cannot be both under the Act. Constitutional referendums are binding on the government, and non-constitutional referendums are binding only if the Lieutenant Governor in Council decides to make the vote binding. The 'separation question' is a constitutional referendum by law under the *Referendum Act*. A majority vote for Option 1 (Alberta should remain a province of Canada) is binding on the government *by operation of law* because implementing the outcome would not be unconstitutional and no further steps need to be taken by the government for implementation. A majority vote for Option 2 (The Government of Alberta should commence the legal process required under the Canadian Constitution to hold a binding provincial referendum on whether or not Alberta should separate from Canada) is not binding on the government *by operation of law*. Why not? Because we know from two rulings by the Court of King's Bench that constitutional issues arise should the UCP government commence a process that could lead to Alberta secession and the words of Option 2 acknowledge the need for further steps to be taken by the government which it may deem to be inadvisable.

The Legal Framework for the 2026 Referendum Questions

A referendum is a form of direct democracy: it provides the electorate with a direct voice on a question that should inform the direction of public policy. The question typically seeks this direction by asking for a binary YES or NO response. This is an exceptional tool in a representative

democracy where the norm is that voters elect representatives in an election, and those representative members then decide on the direction of public policy and seek to implement that policy with legislation in the elected assembly. A referendum is particularly exceptional in a representative democracy where the outcome is set as binding on the government, because in those cases the basic premise of a representative government has been overtaken by direct democracy. Populism on steroids.

While a referendum can perform an effective and important deliberative function in a democracy, this effectiveness is highly dependent on how the referendum is carried out. If done poorly, a referendum can be harmful to democratic dialogue by facilitating the spread of misinformation or exacerbating divisions in society. Pitfalls for a government seeking to use a referendum as a form of deliberative democracy include asking bad or divisive questions, ill timing, confusing voters with too many or poorly worded questions, or not providing voters with adequate information to make an informed choice on the question(s).

One can think of many questions that might properly find their way onto a referendum ballot in Alberta. For example, should Alberta implement a provincial sales tax? However, none of the 2026 questions should be on a referendum ballot. They all suffer from many of the pitfalls noted above, including an absolute failure by the UCP government to give Albertans the necessary context and information to make informed choices on how to answer these questions.

The *Referendum Act* governs the conduct of a provincial referendum in Alberta. Sections 1 and 5.1 give the Lieutenant Governor in Council (i.e., the provincial cabinet consisting of the premier and ministers) power to order that a referendum be held on a question(s). Section 1 is for a so-called ‘constitutional question’, and section 5.1 is for all other questions:

1 The Lieutenant Governor in Council may order that a referendum be held on any question relating to the Constitution of Canada or relating to or arising out of a possible change to the Constitution of Canada.

5.1(1) If the Lieutenant Governor in Council considers that an expression of public opinion is desirable on any matter of public interest or concern, other than a question referred to in section 1, the Lieutenant Governor in Council may order that a referendum be conducted in accordance with this Act and the regulations.

When is a referendum result binding on the government? That depends on the question. Section 4(1) states that a referendum on a ‘constitutional question’ held pursuant to an order issued under section 1 is binding. Section 5.2(1) states that a referendum on a question other than a ‘constitutional question’ is binding if the Lieutenant Governor in Council declares the outcome to be binding. So, the legislation tells us that the outcome of a ‘constitutional question’ is always binding, and all other questions are only binding if the Lieutenant Governor in Council decides to be bound by the outcome.

However, there are two additional caveats to whether any referendum question is truly binding. First, sections 4(3) and 5.2(3) state that the government is not required to implement the results of a referendum if doing so would contravene the *Charter* or Aboriginal and treaty rights in sections

1 to 35.1 of the *Constitution Act, 1982*, [Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#). And second, whether these referendum questions are binding in the sense of requiring action in accordance with the result seems questionable given the language in sections 4(2) and 5.2(2) which qualify binding as “the government that initiated the referendum shall, as soon as practicable, take any steps within the competence of the Government of Alberta that it considers necessary or advisable to implement the results of the referendum.” Justice Woolley also makes this observation on qualifying bindingness in *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, [2026 ABCA 216 \(CanLII\)](#). So, there is a legislated constitutional guardrail and some additional wiggle room for the executive to Houdini the government out of implementing a referendum result that would be unconstitutional or that it otherwise does not prefer.

These are significant observations to note about setting the 2026 referendum questions and the legal status of the outcome; however, I would say that the most important contribution of the *Referendum Act* are the procedural requirements set out in the Act associated with the holding of a referendum. These are more important because they impose some guardrails and accountability on the holding of the referendum. These are requirements on matters such as timing of a referendum (s 5), referentially incorporating applicable rules governing general elections (set out in the *Election Act*, [RSA 2000, c E-1](#)) (s 6), and election campaigns (set out in *Election Finances and Contributions Disclosure Act*, [RSA 2000, c E-2](#)) (s 7.1).

This focus on process highlights a significant amendment made to the *Referendum Act* by the UCP government in 2025 which weakened the constitutional guardrail on referendums. Sections 2 and 3 were repealed by section 11 of the *Election Statutes Amendment Act*, [2025, SA 2025, c 7](#). These sections formerly read as follows:

2(1) The Lieutenant Governor in Council shall order the holding of a referendum before a resolution authorizing an amendment to the Constitution of Canada is voted on by the Legislative Assembly.

(2) The motion for the resolution may be introduced in the Legislative Assembly before the referendum is held.

3 The question or questions to be put to the electors at a referendum ordered under section 1 or 2 shall be determined by a resolution of the Legislative Assembly on the motion of a member of the Executive Council.

These amendments made in 2025 seem to foretell the 2026 referendum. Prior to its repeal, section 3 required that a constitutional referendum question had to be debated in the Legislative Assembly *before* it was put to the electorate. Had section 3 still been in the *Referendum Act* in 2026, the merits of each of the four ‘constitutional questions’ and (I argue here) the ‘separation question’ would have been the subject legislative debate and the UCP government would have been required to take questions from the Alberta New Democrats. The repeal of section 3 in 2025 freed the executive from this democratic guardrail and conveniently eliminated the need for the government to debate the merits of the 2026 referendum questions in the elected assembly. This is called putting your boot on the throat of democracy, and it is why I consider the 2026 referendum to be a veiled form of authoritarianism.

Some will point out that while the ‘separation question’ on the referendum ballot was chosen and drafted by the Lieutenant Governor in Council, the origins for this question are really a citizen petition.

Indeed, a referendum question in Alberta can be initiated by an elector under the *Citizen Initiative Act*, [SA 2021, c C-13.2](#) (an ‘elector’ is defined in the Act as a Canadian citizen who is 18 years of age or older and ordinarily resident in Alberta). My colleague Nigel Bankes explains the mechanics of the *Citizen Initiative Act* in [When is a Citizen Initiative Petition a Dead Parrot?](#), wherein he comments on several important legal moments over the past 12 months which occurred in relation to the beginnings of the ‘separation question’: (1) the decision made by Justice Colin Feasby in *Chief Electoral Officer of Alberta v Sylvestre*, [2025 ABKB 712 \(CanLII\)](#), ruling that the first iteration of a separation question as proposed by an elector petition was unlawful under the *Citizen Initiative Act* (as it read at the time of Justice Feasby’s decision); (2) the hasty amendments to the *Citizen Initiative Act* made by the UCP government in the *Justice Statutes Amendment Act, 2025*, [SA 2025, c 22](#), as an immediate response to Justice Feasby’s decision, to remove the requirement that a referendum question proposal made by an elector must be constitutional; and (3) the decision made by Justice Shaina Leonard in *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, [2026 ABKB 375 \(CanLII\)](#), to quash the approval given by Alberta’s Chief Electoral Officer to the second (or first?) iteration of the elector proposed referendum question on separation. The upshot here is that the elector petition for a separation question to be put to Albertans in a referendum was halted by the Court of King’s Bench. The petitioner and the UCP government have appealed Justice Leonard’s decision.

The premier’s response to *Athabasca Chipewyan First Nation* was to make an astounding [statement](#) to Albertans on May 21, 2026, that described the judgment as a “legal mistake by a single judge” and “an erroneous court decision that interferes with the democratic rights of hundreds of thousands of Albertans ...” The premier also used this statement to announce that the Lieutenant Governor in Council would put its own separation question on the referendum ballot.

In summary, the *Citizen Initiative Act* provides a process by which an elector can collect a prescribed number of signatures from electors and, upon obtaining the prescribed number of signatures, require the Lieutenant Governor in Council to order a referendum on a ‘constitutional question’ under section 1 of the *Referendum Act* (s 16 of the *Citizen Initiative Act*). None of the questions on the 2026 referendum ballot are a direct outcome of a citizen initiative process; however, the ‘separation question’ on the 2026 referendum ballot has close ties to the unsuccessful elector bid for a referendum on Alberta secession from Canada, and as I argue below, the ‘separation question’ on the ballot is a section 1 question under the *Referendum Act*.

The 2026 Referendum Questions

The referendum questions were set out in three Orders in Council: [Order in Council 109/2026](#) issued on March 31, 2026, under section 1 of the *Referendum Act* which orders the four ‘constitutional questions’; [Order in Council 110/2026](#) issued on March 31, 2026, under section 5.1 of the *Referendum Act* which orders the five ‘immigration questions’; and [Order in Council 160/2026](#) issued on May 28, 2026, purportedly under section 5.1 of the *Referendum Act* which

orders the ‘separation question’. The Lieutenant Governor in Council ordered the ‘constitutional questions’ and the ‘immigration questions’ on March 31 on its own initiative, and then after Justice Leonard’s decision in *Athabasca Chipewyan First Nation*, the Lieutenant Governor in Council ordered its own ‘separation question’ on May 28.

The referendum questions reek of the same grievance politics to attack Canadian federalism and the judiciary that were practiced by Danielle Smith as a leadership candidate in the UCP (see [The Alberta Sovereignty Act and the Rule of Law](#)) and then by the Smith government since 2022 (see [Running Afoul the Separation, Division, and Delegation of Powers: The Alberta Sovereignty Within a United Canada Act](#)). The questions are also divisive, racist, and discriminatory, which is stunning given that these questions (each of which is a terrible word salad) were chosen and drafted by the premier and her cabinet. The government’s mailouts, website, and advertisements read more like Orwellian propaganda that fuels the grievances and divisiveness underlying the questions themselves. This is not democracy in action; it is veiled authoritarianism cloaked in shallow democratic process.

OC 110/2026, which orders the ‘immigration questions’, properly identifies section 5.1 of the *Referendum Act* as its source of legislative authority. The Order states that the outcome of voting on these five questions is not binding on the government. But what should really be noted here is that because the legislated source for these questions is section 5.1, this means these are questions for which the Lieutenant Governor in Council (i.e., the premier and all Cabinet ministers) believes an expression of public interest is “desirable” (as per the language of section 5.1). That these would be considered “desirable” discussions by an elected government in a liberal democracy governed by the rule of law is outrageous, particularly given that all five of these questions are discriminatory, and they suggest the UCP government is contemplating legislation that will deny public services and benefits on the basis of immigration status alone. Moreover, any legislative action taken by the UCP government to implement these proposed measures would surely contravene section 15 of the *Charter* and not be saved by section 1. The only possible pathway to implement any of these ‘immigration questions’ would be for the UCP government to [once again](#) invoke the section 33 notwithstanding clause and attempt to shield its legislation from judicial scrutiny.

OC 109/2026 which orders the ‘constitutional questions’, identifies section 1 of the *Referendum Act* as its source of legislative authority. Accordingly, as per section 1 these questions are binding on the government. However, whether they are truly binding in any meaningful sense is doubtful because each question merely asks Albertans to vote yes or no as to whether they support the government working with other willing provinces to seek constitutional changes, and there is the constitutional guardrail on implementation and ‘wiggle room’ embedded in the *Referendum Act* itself (see above).

Nonetheless, the subject matter of these ‘constitutional questions’ is familiar terrain for the UCP government and its continual attacks on federalism and the judiciary. The question on appointing superior court justices is just more of the same attack on the independence of the justice system (see [Alberta’s independent justice system is under attack](#)) which led the Chief Justices to issue an unprecedented statement to the public in January of this year (see [here](#)). The response to these questions from the legal profession, and in particular the question on appointing judges, has been underwhelming (see e.g., [CBA Alberta Referendum Analysis - Home](#)), and the [Law Society of](#)

[Alberta](#) seems to be ducking this referendum altogether. Needless to say, Albertans deserve better from the legal profession and the Law Society on helping them to better understand the context and possible ramifications of these ‘constitutional questions’.

OC 160/2026 which orders the ‘separation question’, identifies section 5.1 of the *Referendum Act* as its source of legislative authority and states that the outcome of this question is not binding on the government. The source of authority for any referendum question is a question of law, and the Lieutenant Governor in Council does not change this by simply asserting that section 5.1 is the legislated authority for the ‘separation question’.

The ‘separation question’ clearly relates to the Constitution, as it asks Albertans to select either Option 1 (Alberta should remain a province of Canada) or Option 2 (Alberta should commence a legal process to hold a binding referendum on separation). Accordingly, the legislative authority for this question is section 1 of the *Referendum Act*. Recall that section 1 states it is legislated authority for “any question relating to the Constitution of Canada or relating to or arising out of a possible change to the Constitution of Canada.” Also, section 5.1 explicitly states it is for any question “other than a question referred to in section 1.” So read together, sections 1 and 5.1 are mutually exclusive on referendum questions – the legislated authority for a question cannot be both section 1 and section 5.1. Given the explicit constitutional content of the ‘separation question’ on the referendum ballot, the only reasonable interpretation of the *Referendum Act* is that it is a section 1 constitutional question.

Option 1 of the ‘Separation Question’ is Binding on the UCP Government

Under the *Referendum Act*, constitutional referendums are binding on the government, and non-constitutional referendums are binding only if the Lieutenant Governor in Council decides to make the vote binding. The ‘separation question’ is a constitutional referendum by law under the *Referendum Act*. A majority vote for Option 1 (Alberta should remain a province of Canada) is binding on the government *by operation of law* because implementing the outcome would not be unconstitutional and no further steps need to be taken by the government for implementation.

This begs the question of why OC 160/2026 wrongly identifies section 5.1 as the source of legislated authority for the ‘separation question’. I think this was done by the executive as an attempt to avoid the scenario where the UCP government is hoisted on its own petard. A majority of votes for Option 1 should legally preclude the UCP government from taking any steps towards proceeding with a binding referendum on separation. And given that separatists have likely asserted control of the UCP party and are essentially the impetus for the 2026 referendum (see [The Alberta question: How separatists took hold of the province’s governing party](#)), any outcome of the referendum whereby the UCP government is precluded by law from continuing to pursue Alberta secession seems to be a recipe for discontent within the UCP party.

This post may be cited as: Shaun Fluker, “2026 Referendum: UCP Grievance Politics and A Binding Vote Against Separation” (13 October 2026), online: ABlawg, http://ablawg.ca/wp-content/uploads/2026/10/Blog_SF_Referendum.pdf

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>

Follow us on Twitter [@ABlawg](#)