

Ontario and Quebec nix Senate reform without provincial consent

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OTTAWA (CP) - Canada's two largest provinces have waded forcefully into the Senate reform debate, arguing that Prime Minister Stephen Harper must obtain provincial consent to change the upper chamber.

Ontario and Quebec have joined New Brunswick in contending that the Harper government cannot unilaterally tinker with the make-up of the so-called chamber of sober second thought.

And Quebec is going further: Premier Jean Charest wants the federal government to withdraw Bill C-43, aimed at creating a process for electing senators. He also wants the government to suspend work on bill S-4, which would impose an eight-year limit on senatorial terms, until it gets provincial consent.

Harper has made Senate reform one of his priorities. Western Canadians in particular see reforming the upper house as keystone constitutional issue. But Quebec, which did not sign the Constitution when former prime minister Pierre Trudeau repatriated the document, believes other constitutional issues are more pressing.

"The government of Quebec does not oppose a modernization of the Senate," the province says in a written submission to the Senate's legal and constitutional affairs committee.

"But if we're looking to modify the essential characteristics of this institution, the only avenue is to launch a co-ordinated constitutional process on the federal-provincial level that brings together the constitutional players, including Quebec."

Ontario is not quite as unequivocal in insisting that provincial consent is legally required. Nevertheless, in a separate submission, Ontario Intergovernmental Affairs Minister Maria Bountrogianni says her government concurs with Quebec's "grave concerns" about the unilateral way in which the Harper government is proceeding.

"The government of Ontario does not support the federal government's unilateral and incremental approach to Senate reform," she says.

"The federal government should meaningfully involve provinces and territories in any discussions regarding changes to institutions such as the Senate, whether constitutionally required or not, and obtain provincial consent where appropriate."

Bountrogianni also says that Ontario "generally endorses the constitutional and other concerns" raised by New Brunswick Premier Shawn Graham. In a submission to the Senate's legal and constitutional affairs committee last month, Graham argued that it's unconstitutional for the federal government to proceed unilaterally, without provincial consent, with term limits.

It was Graham's blunt assessment which prompted the Liberal-dominated committee to seek comment from other provinces on the term limit bill. Tory committee members were furious with the manoeuvre, dismissing it as a stalling tactic by Liberals who've been dragging their feet on S-4 for just over a year.

Liberal Leader Stephane Dion indicated several months ago that his party would support S-4 with amendments to increase the term to 12 to 15 years and to ensure that no senator could sit for more than one term. But Liberal senators have been in no rush to embrace the reform and the negative response from the country's two largest provinces may now embolden them to simply defeat it.

The Tories launched new television attack ads against Dion this week, portraying him as a weak leader because he's been unable to persuade Liberal senators to support term limits.

Backed up by federal justice officials and some legal experts, the Harper government maintains that imposing term limits is a minor reform. As such, Parliament can unilaterally approve the change, in the same

way that in 1965 it unilaterally imposed mandatory retirement at age 75 on senators, who were originally entitled to serve until death.

The Tories have received some support for their position from British Columbia and Saskatchewan, although the two province's endorsements are decidedly unenthusiastic.

In a letter to the Senate committee, Saskatchewan Government Relations Minister Harry Van Mulligen says his province "does not support an incremental approach to reforming the Senate and does not support Bill S-4."

Nevertheless, he says his province's legal advice has concluded that the government is entitled to proceed unilaterally.

B.C.'s intergovernmental relations minister, John van Dongen, says Senate reform is not a high priority for his province, which would rather abolish the Senate than reform it. He says B.C. "does not have strong views on either the substance of the bill or its constitutional implications."

However, should it be decided that provincial consent is necessary, van Dongen notes that B.C. is legally required hold a referendum to seek popular approval for any constitutional amendment.

The Tories argue that Bill C-43 doesn't need provincial consent either because it doesn't technically change the constitutional requirement that senators be appointed by the prime minister. The prime minister would continue to appoint senators, albeit only those who win election.

However, Quebec argues in its submission that there's a "well-established legal principle that one cannot do indirectly what one cannot do directly."

Bountrogianni contends that S-4 and C-43 are "inextricably linked" and must be considered as a package.

"Without term limits, senators would be effectively elected for life; without elections, the prime minister's appointment power would be excessive," she says.

"Together, the inevitable changes occasioned by these pieces of legislation would fundamentally alter the functioning of Parliament by changing the essential character of the Senate. Yet the federal government introduced legislation without meaningfully consulting provinces or obtaining provincial consent."

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