

Reconsider giving police a say in judicial appointments

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Stephen Harper's Conservatives, who shut down funding for Charter challenges and abolished the Law Commission of Canada, clearly have some "interesting" plans for the justice agenda -- including ramming through changes to the judicial-appointments process by giving police an official say in who gets appointed to the bench.

Our entire justice system depends on the police being supervised by the courts. When police officers act arbitrarily or illegally, it is judges who have to respond. Only independent judges can perform that function. Giving the police a say in the judicial-appointments process, and thereby creating an impression that judges are beholden to the police, is just wrong.

"The voices of police are critical in our legal system," then-justice minister Vic Toews observed last November, adding that the time had come to change Canada's judicial-appointments process by adding representatives from the law-enforcement community to the independent judicial advisory committees. The subtext could not have been more clear: Appointing judges who believed in "law and order" was the government's priority.

What Mr. Toews failed to understand is that judges decide cases according to the law. To be sure, they bring a lifetime of experience to that process, but it is the obligation of the judiciary to apply the law, regardless of personal views or political leanings. Permitting an interest group, any interest group -- and make no mistake, the police are an interest group -- to participate in the appointment process with the stated goal of influencing legal outcomes sends the message that this government thinks it is acceptable for political ideals to influence judicial results.

Reaction was predictable. The Canadian Association of Chiefs of Police, whose motto is "Leading Progressive Change in Policing," warmly welcomed the reform. The police chiefs liked the idea of giving the police representation on committees previously comprised of members of the law society, the judiciary, the Canadian Bar Association and, of course, lay people appointed by the minister himself. But just about no one else did.

And so, last week, the government announced the new committee members, among them a Vancouver detective, the president of the Ontario Provincial Police Association, and the former head of the Toronto Police Association, the union representing uniformed and civilian employees in Toronto. Their job: to assess the fitness of applicants for the federal bench and then to recommend to the minister who gets the nod.

The independent judicial advisory committees were established in the late 1980s to depoliticize the appointment process. Adding representatives of law enforcement organizations will have the exact opposite effect. The committees have always had lay

members. And there is absolutely nothing wrong with that lay membership including people from the law-enforcement community. But conferring upon that group automatic institutional membership on our independent, judicial advisory committees is not only misguided, it is dangerous. And it is wrong.

Men and women should be selected for the bench because of their legal skills and character. They must have 10 years experience as lawyers, and as they are selected from among the bar, that provides ample opportunity for the independent judicial advisory committees to ensure a fully representative bench, given the increasing diversity within the legal profession. Giving privileged status to the police in judicial appointments does the opposite. It is also a political fraud.

Once appointed, we depend on our judges, among their other important duties, to serve as a bulwark against the arbitrary actions of the state. Canadian police are professional and serve the public well. I admire and respect police officers. I just don't want them selecting judges. By putting the police on the committees, we are sending out a bad message: that their approval is required to establish fitness for the judiciary. The last thing we need as a qualification for appointment as a judge is a litmus test of police approval. One side in disputes about the Charter and the criminal law -- the police -- should have no role to play in determining who judges their conduct.

The government was encouraged by the likes of the Canadian Bar Association and Canada's Supreme Court Chief Justice to consult before proceeding. It decided not to. It must have thought it knew better. It is hard to imagine what will come next (from this government or its replacement). Mandatory representation from victims' rights organizations and other special-interest pleaders, depending on the stripe of the party in power? It is a slippery slope. The new Minister of Justice, Rob Nicholson, should reconsider.

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