

Quebec's input on Supreme Court appointments a win-win for Harper and Couillard

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It's rare that a prime minister so neatly paints himself into a corner with something as politically straightforward as a Supreme Court appointment.

Now, Stephen Harper is counting on Quebec's new premier, Philippe Couillard, to help get him out. It's a marriage of convenience. Mr. Couillard gets something, too.

Mr. Harper is running out of time, and he needs a new process for picking a Supreme Court justice from Quebec.

So Mr. Harper's leaving it to Mr. Couillard to draw up the shortlist. Then he can say he got the candidates through consultation. And Mr. Couillard, in turn can claim he obtained satisfaction of a long-standing Quebec demand.

Two months have passed since the Supreme Court ruled his previous choice, Marc Nadon, ineligible because he hailed from the Federal Court of Appeal, rather than one of Quebec's own higher courts. The prime minister is under pressure to fill a nine-month-old vacancy, pronto.

But he's got a used shortlist with only one name on it. And the process usually used to create such a list, with a multi-party committee of MPs, is time-consuming and so tainted by the way Mr. Nadon's appointment was handled that the opposition might be unwilling to take part.

Enter Mr. Couillard, who can step in to help Mr. Harper – and take credit for achieving a long-standing goal of Quebec nationalists, to boot.

Both he and Mr. Harper should count themselves lucky at the way opportunity knocked.

Giving the Quebec government a say in the appointment of Supreme Court justices is one of the so-called "traditional demands" that political parties of all stripes in Quebec's National Assembly have long made for more powers.

The failed Meech Lake Accord would have guaranteed just that – that Quebec's premier draw up a shortlist when Quebec's three places on the court are filled, from which the Prime Minister would have to choose.

So now the freshly-elected federalist premier can say he's quickly managed to obtain a long-sought role in selecting a Supreme Court justice. And when Quebec confirms the justice chosen came from their list, Mr. Harper can show his government didn't just make up a list of its favourites.

That's crucial now, since it's clear that the government didn't bind itself the suggestions of Quebec's government and legal community the last time, when Mr. Harper nominated Mr. Nadon. Instead, they put forward a list packed with their own favourites, from which a committee of MPs had to make a shortlist.

For the moment, however, it's a marriage of convenience.

Mr. Harper didn't let the Parti Quebecois government of Pauline Marois have the same role when he selected Mr. Nadon. It's not clear if he'll make it a precedent to be followed when he picks another Supreme Court justice from Quebec. But the test will come soon enough, since Justice Louis LeBel has said he will retire in November.

And of course it still doesn't really provide the checks that vetting by a multi-party committee of MPs is supposed to provide – to ensure the candidates are deemed acceptable across party lines. It replaces it with closed-door dealings between Quebec City and Ottawa which could, if repeated, simply become part of the backroom trade-offs between premiers and PMs.

That's far from the kind of open judicial selection process Mr. Harper and his party favoured in opposition. But Mr. Harper should consider it a lucky escape.

Usually, Supreme Court appointments in Canada are simple enough. They're not like the politically-charged debates over justices the United States. They rarely cause controversy.

But Mr. Harper packed the Nadon nomination process with so much scheming he bumped into himself coming around a corner. He named a little-known semi-retired judge after his government ignored consultations and rigged the list of initial candidates.

That shows that this time he had developed a keen, driving desire to appoint Supreme Court justices to his liking – more conservative, more deferential to government than the obvious choices. It also indicates he didn't want to make that choice openly, by boldly claiming the prime ministerial prerogative to name a judge of his choosing; instead he tried to force it through a loaded consultation and multi-party vetting process.

Now that process is in tatters. Mr. Harper needed someone to help find a new one, soon. Lucky for him Mr. Couillard came along at just the right time.