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Ottawa supports Quebec constitutional change, PM says

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Prime Minister Justin Trudeau's assertion that Quebec can unilaterally amend the Constitution to advance its plans to bolster the use of French is being disputed by some constitutional experts, who say the proposal would have to be approved by Parliament.

In his first comments since the announcement of Quebec's most notable language policy in decades, Mr. Trudeau said Tuesday that the province can amend part of the Constitution to underscore that it is a nation and that its official language is French - adding that both things have already been recognized by Ottawa.

"In regards to the Constitution, our initial analysis, in terms of the Justice Department, has highlighted that it is perfectly legitimate for a province to modify the section of the Constitution that applies specifically to them," Mr. Trudeau said when pressed on the issue at a news conference.

"That is something they can do while ensuring the rest of the Constitution including the sections that protect linguistic minorities like anglophones in Quebec continue to be respected."

But Errol Mendes, a professor of constitutional and international law at the University of Ottawa, said Quebec would need parliamentary approval to proceed

if it wanted to use Section 43(b) of the Constitution "as the vehicle for the strengthened Bill 101 plus the 'nation' addition."

"They would need the Parliament of Canada because ultimately it is passed through the House and given Royal assent."

Prof. Mendes pointed out that under Section 43, an amendment in relation to any provision that applies to the use of the English or the French language within a province may be made by proclamation issued by the GovernorGeneral only when authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

He added that Section 41 allows the legislature of each province to exclusively make laws amending the constitution of the province, and that Quebec Premier François Legault could proceed claiming he is just amending the constitution of the province. But Prof.

Mendes said in an e-mail exchange that "Quebec really does not have a single document that is the provincial constitution."

Political scientist Emmett Macfarlane of the University of Waterloo said the unilateral option is not permissible, referring to provincial action on language.

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"The Prime Minister's claim that Quebec can unilaterally amend the federal Constitution is an abdication of democracy and the rule of law as embodied by the amending formula. If indeed he received advice that Quebec is free to unilaterally amend the Constitution Act, 1867, then he has received bad advice."

Under Section 43, he said the language provision can only be passed by the House and Senate - not by the Quebec National Assembly alone.

As for nationhood, Prof. Macfarlane said Quebec is certainly free to pass legislation recognizing Quebecers as a nation. "But it is not free to have the national Constitution confer that recognition via unilateral amendment, without the other partners of Confederation having their say," he said.

In Quebec, Premier Legault said he is pleased with Mr. Trudeau's remarks.

His government's Bill 96 includes establishing a minister and commissioner of French, requiring immigrants to interact with the government in French after six months in the country and tightening commercial-sign rules already in place to require larger French text to accompany company trademarks in English.

"I'm happy. He confirmed we were right when we said we can unilaterally amend the Constitution to say two things: First that Quebec is a nation, and second that French is the official language of Quebec," Mr. Legault told a news conference.

"We are happy to see the Prime Minister of Canada confirms we have the right to do so."

The issue arises in a year during which

a federal election is expected, with the major parties looking to Quebec for seats that could significantly affect the outcome.

Other parties, on Tuesday, were supportive of Quebec's plans.

"A Conservative government will always respect the jurisdiction of the provinces, including the sections of the Constitution reserved for specific provinces which the Constitution allows them to modify unilaterally," Erin O'Toole, leader of the federal Conservatives, said in a statement issued by his office.

NDP Leader Jagmeet Singh urged the federal government to work with Quebec on the language file.

"If the Quebec government wants to make modifications to the Constitution to better protect the French language, and the culture of Quebec, the federal government should work with the province to make it happen. The French language is an integral part of Canada's social fabric, and we must work together to protect it."

In Quebec, the Quebec Community Groups Network, an association of anglophone groups, expressed concern through a spokesperson.

Former Liberal senator Joan Fraser, speaking as a member of the network's board of directors, said the organization supports the protection, promotion and preservation of the French language and culture in Quebec, but views Bill 96 as veering into the suppression of English rights.

She said the organization is hoping for "lots of amendments" including the

withdrawal of the use of the notwithstanding clause, which she described as "truly deplorable."

Ms. Fraser said Mr. Trudeau appeared to be being quite careful in his remarks.

"It seems to me that he did not specifically support or, for that matter oppose, the actual proposition in Bill 96. That, to me, suggests they are still doing their analysis - as, indeed, are we."