

Press Clippings for the period of July 17th to August 4th, 2015  
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*Here are articles and opinion pieces that might be of interest to AJC members  
Voici quelques articles et textes d'opinion qui pourraient intéresser les membres de l'AJJ*

## **2015 Federal Election – Élection fédérale 2015**

# **Sixty percent of Canadians' votes up for grabs, poll suggests**

**Campbell Clark, The Globe and Mail, August 3, 2015**

It's unsettled, unpredictable and wide open. This election campaign is not only a three-way race – most voters are still up for grabs.

Only 40 per cent of Canadians have picked a party and say that's the only one they'll consider. Most voters, three-fifths of the electorate, are still considering voting for two or more parties, or aren't sure who they might pick, according to Nanos Research data from rolling surveys that provide an insight into potential swing votes. In fact, 20 per cent of those surveyed would still consider voting for any one of three or more parties.

It's a sign that the relatively tight, nose-to-nose horse race masks a volatile electorate. Voters are still flirting with more than one option, and big swings are possible.

“Although people have leanings, they're open to changing their mind,” said pollster Nik Nanos. “A campaign is a trial by fire for all the federal party leaders, and what this shows is how much damage a leader can do to his own campaign if he missteps.”

It's not the same for every party.

After a decade in office, Mr. Harper's Conservatives have the most devoted group of supporters, who are less likely to see other parties as an option. In fact, even when asked to list a second choice, 31.5 per cent of Conservative voters say they have none – more than the backers of any other party. At its core, Mr. Nanos said, the Conservatives have “an almost unshakeable base” that has stuck with the party through episodes like the Mike Duffy scandal.

But the Tories also have limited growth potential compared with the other two major parties: the pool of people who say they would consider voting Conservative is smaller.

Both the New Democrats and the Liberals have less committed support – and there’s a lot of crossover potential among supporters of the two parties. New Democrats tend to see the Liberals as their second choice, and vice versa.

“There’s a lot of cross-pollination between New Democrat and Liberal supporters, who are probably just seeing either of those parties as vehicles to try to stop Stephen Harper,” Mr. Nanos said.

The Nanos Research data also provides some potential clues as to why Mr. Harper’s Conservatives focused their pre-election advertising on knocking back Liberal Leader Justin Trudeau, rather than taking aim at the new front-runner, the NDP’s Thomas Mulcair.

One reason is that weakening the NDP before the campaign would be more likely to help the Liberals than the Tories. Only 12 per cent of NDP supporters list the Conservatives as their second choice, while 40.6 per cent see the Liberals as the best alternative – so if voters leave Mr. Mulcair, the lion’s share can be expected to turn to Mr. Trudeau.

When the Liberals fall, however, the Conservatives can expect to do somewhat better, because 29.2 per cent of Liberal supporters rate the Tories second.

That still leaves Mr. Harper with a tough challenge to win a majority government, however. He doesn’t have that kind of level of support yet, Mr. Nanos noted, and in order to emerge as the clear winner, he needs both Mr. Mulcair and Mr. Trudeau to do poorly. Right now, besting one of them mostly helps the other. His Conservatives are rarely voters’ second choice.

For Mr. Mulcair, that’s also the best path to victory: he clearly has to target Mr. Harper, the incumbent, but his party is most likely to gain if the Liberals lose support. More than 45 per cent who favour the Liberals see the NDP as second choice, and only 29 per cent would choose the Conservatives. By contrast, Mr. Trudeau’s Liberals are the most popular second choice, and can gain from either the left or right – so if the Tories decline, the Liberals are likely to gain.

The Nanos data, based on rolling surveys of 1,000 Canadians conducted between June 28 and July 25, is something of a flip side of standard horse-race poll numbers, which show the party the respondents intend to vote for, plus a number of undecided voters. Respondents were asked both who they would consider voting for, and to rank their choices. It shows most voters are still open to a second choice – and will track how voters’ choices solidify during the campaign.

There is also another 6.4 per cent who say they aren't considering any party, or are unsure how to answer – usually those who are confused or uninterested in politics. “These are the people who are very unlikely to vote,” Mr. Nanos said.

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## Harper s'en prend au NPD, Trudeau cible Harper

**La Presse, Presse Canadienne, le 3 août 2015**

Tandis que Stephen Harper démolissait la crédibilité des troupes de Thomas Mulcair au Québec, le chef libéral Justin Trudeau débarquait dans le fief du chef conservateur, à Calgary, en déclarant que les heures de ce dernier étaient comptées.

Seuls deux chefs des principaux partis fédéraux avaient prévu des activités publiques lundi, au lendemain du déclenchement de la plus longue campagne électorale de l'histoire moderne du Canada, qui s'échelonne sur 78 jours au total.

M. Harper a donné le coup d'envoi à cette deuxième journée en présentant le groupe de députés québécois du Nouveau Parti démocratique (NPD) comme le plus «inefficace» de «toute l'histoire» politique canadienne.

Il a ajouté qu'il n'y avait «pas une seule étoile» dans le caucus québécois de M. Mulcair et qu'en revanche, les cinq seuls députés conservateurs du Québec élus aux dernières élections de mai 2011, eux, avaient livré la marchandise.

Mais «évidemment, pour être un gouvernement plus fort, nous, les conservateurs, on a besoin de plus de représentation du Québec à la table des décisions», a-t-il plaidé en marge d'une annonce économique dans une entreprise de Laval.

Stephen Harper a tenu ces propos quelques heures après la publication, dans le Toronto Star, du tout premier sondage de la campagne. Le coup de sonde de Forum Research donne au NPD une avance de 11 points sur le Parti conservateur à l'échelle nationale.

Le chef néo-démocrate Thomas Mulcair n'a pas riposté à ces salves, ayant décidé de consacrer sa journée à la préparation en vue du premier débat des chefs organisé par le magazine Maclean's, qui aura lieu jeudi.

Son lieutenant québécois Alexandre Boulerice, qui copréside la campagne du NPD, l'a fait à sa place en entrevue téléphonique avec La Presse Canadienne lundi après-midi.

«Quand vous êtes la cible de votre adversaire politique, c'est bon signe. Ça veut dire que vous lui faites peur. Je pense que M. Harper sent la soupe chaude un peu, et déjà, il part sur un mode très négatif», a-t-il analysé.

Et des étoiles, il y en a plusieurs au sein de la députation québécoise, a assuré le député de Rosemont-La Petite-Patrie, se disant très fier du bilan de l'opposition officielle à la Chambre des communes.

«Hélène Laverdière (députée sortante de Laurier-Sainte-Marie) pourrait être ministre des Affaires étrangères demain matin. Marie-Josée Lemieux (candidate dans Marc-Aurèle-Fortin), qui était vice-présidente de l'Ordre des psychologues du Québec, pourrait être ministre de la Santé. On a un paquet de gens qui sont au courant de leurs dossiers», a illustré M. Boulerice.

Thomas Mulcair n'a pas été le seul à disparaître du radar médiatique quelques heures à peine après la dissolution du Parlement: le chef du Bloc québécois, Gilles Duceppe, n'a participé à aucune activité publique, lundi. Il a cependant accordé plusieurs entrevues au cours de la journée.

Ce ne fut pas le cas de Justin Trudeau, qui a prononcé un discours dans un rassemblement partisan en terrain hostile, à Calgary - une allocution qu'il a conclue en servant à Stephen Harper une mise en garde semblable à celle qu'avait lancée son prédécesseur Michael Ignatieff.

«Le temps de M. Harper est écoulé, et il est temps que nous ayons un meilleur gouvernement», a-t-il lancé après avoir promis qu'aucune circonscription canadienne, même les plus conservatrices, ne serait laissée pour compte par les libéraux.

Il a fait valoir que le plan économique des conservateurs s'était soldé par un «échec», alors que la menace d'une récession plane sur le Canada, et a invité la population à adhérer au changement plutôt que d'opter pour la stabilité que préconisait encore lundi matin le premier ministre sortant.

«Stephen Harper n'avait pas de plan B pour faire face à la déroute des marchés financiers et à la chute des prix du pétrole. Et maintenant il demande aux Canadiens de garder le cap? (...) Quand le plan ne fonctionne pas, le véritable risque est le statu quo», a-t-il lancé.

Les hostilités reprendront avec davantage de joueurs sur la glace, mardi, puisque Thomas Mulcair et Gilles Duceppe reprendront du service.

Le premier fera une annonce à Montréal - où il doit répondre pour la première fois de la campagne aux questions des représentants des médias - tandis que le second parlera du tracé de l'oléoduc d'Énergie Est dans une conférence de presse à Vaudreuil-Dorion.

Pour sa part, Justin Trudeau sera du côté de Mississauga, dans la grande région de Toronto, en début de matinée. L'horaire du chef conservateur Stephen Harper n'avait pas été précisé lundi en fin de journée.

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## Leaders battle to define key issues in 78-day campaign

Mark Kennedy, Ottawa Citizen, August 4, 2015

Canada's political leaders are jockeying this week to define the overriding issue of Canada's 42nd election and have hunkered down for the longest federal campaign in over a century.

The first battle will occur Thursday evening — just four days into the 78-day race — as leaders gather in Toronto for a debate that will likely set a fierce and competitive tone for the election.

But already, the political rivals are making it clear what they want voters to be thinking about when they enter the voting booth on Oct. 19.

Stephen Harper, whose Conservative government is seeking a fourth straight mandate, hopes to convince Canadians that only he can manage the Canadian economy and protect citizens from Jihadist terrorism. In speeches and news conferences both Sunday and Monday, Harper painted a grim picture if he loses power — claiming that his opponents would spend recklessly, raise taxes and leave Canadians with the economic calamity people are experiencing in Greece.

NDP leader Tom Mulcair, who did not campaign Monday, launched his campaign Sunday with a carefully written speech in Gatineau, Que. Playing a front-runner's game, he was the only leader who chose to not answer reporters' questions. Still, his message was clear: Harper's economic record is miserable and an NDP government would do much better.

Liberal leader Justin Trudeau, who campaigned in Calgary on Monday and in Vancouver on Sunday, also promised policies to put money into the hands of middle class voters. And he went out of his way to attack two opponents — Harper, whose government is “tired and out of ideas”, and Mulcair, whose promises of change are nothing but a “mirage”.

And underlying all of these messages is a simmering question: What are the additional costs to taxpayers from Harper's decision to stage an 11-week campaign — instead of the usual five weeks — for his own tactical advantage?

Harper met with Gov.-Gen. David Johnston at Rideau Hall on Sunday morning and asked for the dissolution of Parliament to make way for the election. Soon after, he emerged to confirm that the race was formally underway.

Harper said he will campaign throughout the race on two key issues: the economy and security.

“It's time to maintain the direction. It's time to stick to the plan.”

But opposition leaders blasted Harper's record in office, accusing him of poor economic management and of ignoring the plight of Canada's jobless and of middle class Canadians who have seen their incomes stagnate.

It will be the longest federal campaign since 1872. And it promises to be a historic, costly, and likely nasty race that could determine the political futures of all three main party leaders.

More importantly, the outcome will set the country on a course that either solidifies a decade of change under Harper's Conservatives on everything from taxes to foreign policy, or rejects the ideology behind those policies and embraces a more progressive approach promised by Mulcair's New Democrats and Trudeau's Liberals.

Simply put, it will be a campaign that leaves voters with a stark choice at the ballot box: Do they want change, or the status quo?

At an event in Laval, Que. Monday, Harper suggested he isn't worried about how the Canadian economy has been shrinking recently. He said everyone knew that falling oil prices would impact certain sectors, but that these are only "temporary effects."

"The choice is very simple," he said of the election.

"We know there is instability in the world. That is not a reason to ditch a plan that is working and start to embark on out-of-control spending, tax hikes and spiraling deficits. We know where that takes us.

"It's time to stick to our plan, make wise investments, control our spending, lower taxes, and make sure our fiscal situation is balanced and strong."

In his first news conference of the race, on Sunday, Harper fended off questions about why he is calling such a long campaign — something that will play to the Conservatives' own advantage as the party with the biggest war chest, but also leaves taxpayers forced to ante up millions of dollars more than usual through the rebates they will be required to give parties and candidates to help defray campaign costs.

Harper said he was acting properly because his political rivals were already in campaign mode and it would be improper for leaders to use their government or parliamentary budgets to finance those activities.

Harper is allowing just five questions at his daily news conferences, a practice that reflects the tightly scripted nature of how he is planning his bid for re-election.

Canadians who wish to attend one of his campaign events will need to seek permission to attend and be vetted in advance by Conservative officials. Only once that happens, and they receive a bar-coded ticket bearing their name, will voters will allowed inside a Harper campaign event.

The opposition parties have scoffed at Harper's warnings about the risk of change.

Mulcair, whose party's popularity has surged in the past several months, is promising a fiscally responsible government that offers a \$15-an-hour minimum wage for federally regulated workers and a child care program that costs parents just \$15 a day per child.

Speaking from the Canadian Museum of History in Gatineau, with Parliament Hill across the river, Mulcair launched his campaign with a speech that focused the attack on Harper. He said Harper has the worst job creation record of any prime minister since the Second World War.

"In this election campaign, Canadians have a clear choice," said Mulcair. "Four more years of Mr. Harper and the Conservatives, or my plan for change."

Mulcair said that as he has travelled the country in recent weeks, he has seen calls for change grow louder.

“And it isn’t difficult to see why. Wages are falling, incomes are stagnant, and household debt is skyrocketing. Middle class families are working harder than ever but can’t get ahead.”

Mulcair said Canadians are ready for a change and should look to the New Democrats as the party that will provide solid government based on “enduring” values such as “hard work, living within your means, (and) accountability.”

“We will replace fear and division with hope and optimism.”

Mulcair’s launch was tightly-scripted and cautious — an apparent reflection of his party’s standing in the polls, in which the NDP is either slightly ahead, or essentially tied with the Conservatives for first place. After delivering his statement, in which he made repeated criticisms of Harper but did not mention Trudeau at all, Mulcair walked away from reporters and did not take any questions.

Trudeau’s Liberals, who have dropped to third place in the polls, are also appealing to the middle class, and families with children, with a tax plan they say is better than the Conservative and NDP policies.

In Vancouver Sunday, Trudeau promised a Liberal government would help middle class families so they can grow the economy. The Liberal approach would be fairer, he said.

“We will stop sending cheques to millionaires just because they have families.”

Trudeau blasted Mulcair’s economic plan, saying the NDP’s minimum wage promise would not affect most workers. Furthermore, he said Mulcair’s plan for corporate tax hikes would be disastrous.

“That means fewer jobs and less innovation. The NDP would put the brakes on the economy at the worst possible time.”

This year’s election comes after nearly a decade of Conservative rule on Parliament Hill. Harper was first elected with a minority in January 2006 and then re-elected with another minority in 2008.

He secured his goal of a majority government in 2011 and has spent the last four years putting his stamp on the country — with lower taxes, a tough law-and-order agenda, and a foreign policy that embraces Israel and castigates Vladimir Putin’s Russia.

If Harper wins on Oct. 19, he will be making history. It would be the first time since Sir Wilfrid Laurier in 1908 that a prime minister won four consecutive elections.

The standings at the dissolution of Parliament are as follows: Conservatives, 159; NDP, 95; Liberals, 36; Green, 2; Bloc Québécois, 2; Force et Democratie, 2; Independent, 8; vacant: 4.

With this election, the House of Commons is being increased to 338 seats from 308. That means Harper, or either of his rivals, must win 170 seats to command a majority in the Commons.

This political objective is particularly germane for Harper; it's widely believed that if he only wins a minority — particularly if it is a slim minority — the opposition NDP and Liberals would be under pressure to quickly defeat his government.

In that possible scenario, they would then approach the governor general and urge him to skip another immediate election so that the Official Opposition gets to form a government with the support of the other party.

This year's campaign will be fought on several fronts:

- negative ad wars that the parties launch on TV, radio and online, with the Tories expected to be the most aggressive and heavily financed;
- five leaders' debates, starting Thursday in Toronto (although Green leader Elizabeth May and Bloc Québécois leader Gilles Duceppe are not invited to all the debates);
- ground battles involving thousands of candidates in each of the country's 338 ridings;
- and traditional leaders tours aimed at attracting national media attention.

This is Harper's fifth national campaign as leader (he lost in his first outing, in 2004). It's the first campaign as leader for Mulcair and Trudeau, the third for May, and the seventh for Duceppe, who recently came out of political retirement.

In recent weeks, Harper has boasted of how the government has balanced the budget and provided increased child care benefits for families that began arriving in mailboxes this summer.

But Harper is in danger of losing much-needed political credibility on his economic record. The economy has been contracting for five straight months and it's widely expected that new data will soon confirm that Canada is in recession.

Moreover, it's believed the sluggish economy has reduced federal revenues — meaning that despite Harper's claims, his government is still carrying a deficit, not enjoying a surplus.

On Sunday, Harper said he has a better economic plan than his opponents and his rivals will not suitably protect Canadians from the threat of terrorism.

“Now is not the time for political correctness, inexperienced governance or an ideological unwillingness to act. Now is the time to face those who threaten us with moral clarity, strength and resolve.”

In Sidney, British Columbia, May urged voters to remember that while the Greens have strong credentials on the environment, they are not a one-issue party.

As well, she blasted Harper for the “cynical” motivations that led him to call a lengthy campaign. She said the Tories — with their reliance on attack ads — will be able to count on taxpayer rebates to help put those ads on air.

“Every single attack ad, we're paying for now,” she said.

“I say shame on you Stephen Harper for doing that.”



Harper rolled the dice Sunday, apparently believing that a long campaign will give him the time — in hard-hitting attack ads and through his own performance on the hustings — to convince voters that it's too risky to opt for change.

Already, for weeks Canadians have been carpet-bombed with Tory ads that question Trudeau's capabilities. Now, a new round of ads that portray Mulcair as an opportunistic "career" politician are being released.

Trudeau has promised his party's ads will avoid low personal blows and focus on comparative policies, while the NDP has already released a sharp-edged ad that draws attention to ethical scandals that have plagued the governing Conservatives.

Under federal law, Harper was obliged to schedule a campaign that lasts a minimum of five weeks. That has been the norm in recent campaigns.

Instead, he has opted for an 11-week race. The decision is purely tactical. His party has more money in the bank to finance a long campaign than his political opponents.

The longer campaign will come at a cost to Canadian taxpayers, who will have to pick up the tab for Harper's decision.

Elections Canada will have to spend more than the \$375 million it was expecting to spend in a normal campaign.

As well, under a clause by the Tories in their Fair Elections Act, the longer campaign will increase the spending cap imposed on parties.

The 11-week campaign effectively doubles the \$25 million spending cap placed on each party, and also doubles the \$100,000 spending cap placed on each candidate.

Meanwhile, the parties still get to claim 50 per cent in taxpayer-funded rebates for their increased spending, and candidates get to claim 60 per cent in rebates for their costs.

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## **Federal election: By the Numbers**

**The Ottawa Citizen, August 2, 2015**

Welcome to the 2015 federal election. Here is your quick guide to some key data:

- 308: Number of ridings in the 2011 election
- 338: Number of ridings in the 2015 election
- 155: Number of seats needed for a majority in the 2011 election
- 170: Number of seats needed for a majority in the 2015 election
- 159: Number of seats held by the Conservative party at dissolution
- 95: Number of NDP seats at dissolution
- 36: Number of Liberal seats
- 8: Number of independent MPs

- 2: Number of Green MPs
- 2: Number of Bloc Québécois MPs
- 2: Number of Forces et Démocratie MPs
- 4: Number of vacant seats in the House of Commons
- 18: Number of registered political parties for the 2015 election
- 6: Number of new seats in British Columbia
- 6: Number of new seats in Alberta
- 15: Number of new seats in Ontario
- 3: Number of new seats in Quebec
- 87: Percentage of ridings whose boundaries have changed in the 2015 election
- 43: Number of languages in which Elections Canada is providing voter information
- \$25 million: What each party is allowed to spend for a five-week campaign (this increases for a longer campaign – to as much as \$50 million depending on the length of the campaign)
- \$1,500: Maximum an individual can contribute to federal parties each year
- \$5,000: Maximum a candidate can contribute to his or her own campaign
- 12: Number of hours voting stations are open on election day (Oct. 19)
- 4: Number of days when advance polls will be open
- 61.1: Voter turnout percentage in the 2011 federal election
- 73.1: Voter turnout percentage in the 1867 election
- 37: Minimum number of days required by law for a federal election
- \$375 million: Elections Canada's rough estimate of how much the 2015 election would cost if it were a 37-day campaign
- \$291 million: Cost of 2011 federal election
- 1-800-463-6868: The number to call for general information from Elections Canada. (or go to [www.elections.ca](http://www.elections.ca))

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## **Marco Mendicino faces tough fight in bid to defeat finance minister**

**Now that he has beaten Eve Adams, Marco Mendicino has his sights set on unseating federal Finance Minister Joe Oliver.**

**Donavan Vincent, The Toronto Star, July 28, 2015**

Fresh from his win Sunday over Eve Adams in a scrappy nomination battle, Liberal Marco Mendicino now has his sights firmly locked on defeating Conservative incumbent Joe Oliver in October's federal election.

Mendicino, a Toronto lawyer who has never held political office, faces an uphill climb trying to seize the federal Eglinton-Lawrence riding back for the Liberals and unseat the federal finance minister.

Improved Liberal party fortunes under Justin Trudeau, shifting demographics in the riding, and wild cards such as the amount of resources the parties throw into the battle for Eglinton-Lawrence, will all be factors in the race, observers say.

Rocco Piccininno, the president of the Liberal riding association in Eglinton-Lawrence said Sunday that the association faces a "tremendously, tremendously" difficult battle this fall trying to unseat Oliver in the Oct. 19 election.

"Joe Oliver has put together a massive team with Harper. It's going to be shocking, the amount of effort they're putting toward beating us in this riding. Oliver is (Prime Minister Stephen) Harper's guy," Piccininno told party members during the nomination.

The riding was a Liberal stronghold for decades until Oliver's breakthrough win in 2011, when he captured 47 per cent of the vote to Joe Volpe's 38 per cent (the NDP and Green earned 12 per cent and 3 per cent respectively).

Oliver finished 4,062 votes ahead of Volpe.

But Lorne Bozinoff, president of Forum Research, predicts that if the current polling data from his firm hold true until October, Eglinton-Lawrence will be one of the ridings to fall back into Liberal hands because of its history of support for the party.

It'll be one of the regional shifts, Bozinoff said.

He theorizes that the Liberals, nation-wide, will gain about 40 seats more than what they were left with after being demolished in the 2011 election when Michael Ignatieff was leader.

The Liberals are currently tied nationally with the Tories in public support at around 30 per cent, according to Forum Research.

"I think this riding is going to be one of the 40 (the Liberals) pick up," he said.

Pundits are thinking aloud about the role demographics in Eglinton-Lawrence may also play in come Oct. 19. The riding has a large Italian population, and large Jewish component.

Mendicino is Italian, and Oliver Jewish.

But the riding's ethnic makeup is shifting, with a growing Filipino community, as well as noticeable increases in residents of Somali, Caribbean and Chinese backgrounds.

Emilia Valentini, a local business owner and long-time resident who ran unsuccessfully for the Ontario Progressive Conservatives two decades ago, says that while there's no

question the Italian community's presence is very strong in the riding, she's not certain about how that will affect the final results there.

"I don't know if the Italian factor is going to be the deciding factor as it might have been years ago. Certainly with Mr. Volpe (an Italian) that played into his long reign in this riding.

"But I think this time you'll see a stronger choice made based on the strength of the individual candidate," says Valentini, who plans to vote for Oliver.

Dislodging a sitting federal finance minister is a rare event. Charles Avery Dunning lost his in 1930, and Gilles Loiselle was defeated in 1993.

Oliver was unavailable for comment Monday, but his staff released a statement from him in which he touted his work as finance minister and four years as a Toronto MP.

"I advocated for Mayor John Tory (open John Tory's polycard)'s Smart Track project, for which the prime minister recently announced a federal investment of \$2.6 billion," Oliver said in a statement Monday. He said the "transformative project" will help cut traffic congestion in Toronto and the GTA.

Mendicino, a Toronto lawyer, says his experience as a former federal prosecutor enabled him to help improve community safety.

"I've contributed to safer streets by fighting gangs and prosecuting terrorists," he says.

Mendicino has been launching salvos at Harper and Oliver's management of the economy, calling it a "woeful record."

### **Marco Mendicino**

- Age: 42
- Occupation: Former federal prosecutor, lawyer in private practice
- Family: Married with two daughters, ages 7 and 4
- Political experience: Never held elected office

### **Joe Oliver**

- Age: 75
- Occupation: Investment banker
- Family: Married with two sons from his first marriage, and two stepsons who are the children of his wife.
- Political experience: Former Natural Resources minister, first elected MP in 2011

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## **Stephen Maher: Eve Adams' nomination loss puts end to harmful blunder by Justin Trudeau**

**By Stephen Maher, PostMedia, July 28, 2015**

Back in February, when the Liberals were a dozen points ahead of the NDP in the polls, Justin Trudeau held a news conference in Ottawa to announce a surprise star candidate: Conservative MP Eve Adams!

Adams said she could no longer put up with the mean-spirited, divisive leadership of Stephen Harper, and praised Trudeau and his “kind, generous and strong leadership.”

Trudeau returned the favour, in what Andrew Coyne accurately described as a “crawlingly demeaning performance,” praising Adams’ “passion and commitment to her constituents,” behaving as if he had outfoxed his opponents.

But he had actually taken a huge problem off the hands of the Conservatives. Conservative campaign manager Jenni Byrne even sent a bouquet of flowers to Trudeau advisor Gerry Butts.

Adams and her spouse, former Harper aide Dimitri Soudas, had been caught cheating twice in an effort to get her a Conservative nomination. When party brass finally threw up their hands and disqualified her, suddenly she was next to Trudeau, saying she could no longer support the nasty Conservatives.

The stated reasons were transparently bogus, requiring the kind of suspension of disbelief that only dedicated partisans can muster.

Even Liberals could drop the pretence as of Sunday evening, when Liberals in Eglinton-Lawrence voted for Marco Mendicino over Adams in a hard fought nomination battle.

Mendicino is Italian, like many of the voters in the Toronto riding. He’s a former mob-fighting prosecutor who helped put the Toronto 18 behind bars; a strong candidate to challenge the incumbent, Finance Minister Joe Oliver.

Mendicino’s people say that when they door-knocked the voters Adams signed up — mostly new Canadians — many of them didn’t know they had joined the party and they certainly hadn’t paid to do so. This is the same tactic that got Adams disqualified by the Tories.

At the school where the battle was held on Sunday, Adams and Soudas were hustling all afternoon, trying to get their instant Liberals — mostly Somalis and south Asians — to the polling place, while Mendocino’s people — mostly Italian — watched apprehensively. They were ahead all day, but she had signed up more people. If they all showed up, Mendocino would have lost. They didn’t show.

As supporters waited for results to be announced, Adams’ supporters chanted: “We need more women in Parliament.” A Mendicino supporter shouted: “But we don’t need more Tories.”

Trudeau lucked out when Mendicino won, since he stands a better chance against Oliver.

But what was he thinking back in February? What possessed him to recruit Adams?

The darkest theory is that he wanted intel from Soudas, who might know all kinds of interesting things

Trudeau's people say that's nonsense. It was a simple political calculation. Trudeau wanted a name, the kind of candidate who makes it easier to bring down a cabinet minister.

The party encouraged her to run in Milton but she wanted Eglinton-Lawrence, where Mendicino beat her. End of story.

Even if this is the whole story, it's not impressive that Trudeau would be prepared to take someone who cheated too much for the party that had Dean Del Mastro's back right up until the bailiffs put him in chains.

And was Trudeau too full of himself to see that nobody would be convinced by her words of praise?

He is now trailing in the polls, and his party is sharpening knives and complaining about him and his team, while the other parties are out looking for votes.

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## **Défaite d'Eve Adams: des libéraux clament avoir aidé le parti**

**La Presse, La Presse canadienne, le 27 juillet 2015**

Les libéraux qui ont participé à la défaite d'Eve Adams dans sa tentative de remporter l'investiture du parti dans une circonscription de Toronto affirment avoir rendu service au chef Justin Trudeau.

Mais un politologue et les conservateurs disent que M. Trudeau va quand même se faire critiquer lors de la prochaine élection fédérale pour avoir accueilli dans ses rangs une transfuge conservatrice.

Mme Adams a tenté d'être choisie comme candidate libérale dans la circonscription d'Eglinton-Lawrence afin de faire face à son ancien collègue conservateur, le ministre des Finances Joe Oliver.

Mais Mme Adams, qui a été accueillie chez les libéraux par Justin Trudeau en février après une querelle politique avec les conservateurs, a été défaite le week-end dernier lors d'une assemblée d'investiture: c'est le libéral de longue date, Marco Mendicino, qui l'a emporté.

Le député libéral provincial Mike Colle dit que M. Trudeau devrait remercier les partisans de M. Mendicino pour avoir fait en sorte que Mme Adams ne l'emporte pas.

Mais le professeur de science politique de l'Université de Toronto Peter Loewen prédit que le chef libéral pourrait néanmoins subir les contrecoups de cette défection.

Déjà, le ministre de la Défense Jason Kenney a dit que M. Trudeau devrait être tenu responsable pour son mauvais jugement puisqu'il a permis à Eve Adams de siéger aux Communes comme libérale.

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# Observers split over effect of Eve Adams loss on Trudeau campaign

**Globe and Mail, Canadian Press, July 27, 2015**

Liberals who helped defeat Eve Adams in her bid to run as the party's candidate in a Toronto riding said Monday they've done Liberal Leader Justin Trudeau "a big favour."

But Trudeau will still face criticism in the upcoming federal election for taking the Tory defector under his wing in the first place, say a Toronto political scientist and the Conservatives.

Adams had sought the Liberal nomination in Eglinton-Lawrence to run against her former fellow Conservative caucus mate, Finance Minister Joe Oliver.

But Adams, who was welcomed into the Liberal fold by Trudeau in February after she had a falling out with the Tories, was defeated in a weekend nomination vote won by Marco Mendicino.

"I think we did Trudeau a big favour by bringing in and having a candidate here who really is a genuine Liberal," said Ontario MPP Mike Colle, who once told The Canadian Press that Adams would win the federal nomination over his dead body.

"I'm happy to be alive and standing. I'm very glad to have survived that," Colle joked Monday.

But Trudeau could still be shadowed by the Adams defection through the as-yet unofficial election campaign, University of Toronto political science professor Peter Loewen predicted.

"I think it was a mistake for (Trudeau) ever to invite her in. He should have asked his caucus and given the caucus a chance to pass judgment on her membership," said Loewen.

"It was a strategic mistake, it was a political mistake on values. It was just a bad mistake all around."

Already, Conservatives are hinting they aren't about to forget the defection and Trudeau's subsequent acceptance of Adams and are honing their messaging around the affair.

Oliver was quick to rub salt in, issuing a statement on the heels of Adams's defeat accusing Trudeau of trying to override the wishes of local Liberals.

And at an appearance in Saint-Jean-sur-Richelieu, Que., Monday to make a defence-related announcement, Tory cabinet minister Jason Kenney said Trudeau must take responsibility for what he termed a "slightly bizarre decision."

"It's proof of his bad political judgment that he endorsed Ms. Adams," Kenney said.

Still, it was to Trudeau's credit that the nomination process appeared to be an open one, said Loewen.

"It appears the fix wasn't in," he said.

And the nomination battle may have galvanized support for the Liberals, at least in the Eglinton-Lawrence riding, say political watchers.

Volunteers came out in droves "like I've never seen before," to keep the nomination from Adams, Colle said.

Adams left the Harper Conservatives amid allegations of dirty tricks related to a Tory nomination battle last year.

Her public embrace by Trudeau raised eyebrows in Liberal circles.

But while some suggested she was, in fact, a good catch, there was widespread speculation at the time that Trudeau really accepted her as a secondary prize to the real target — her fiance Dimitri Soudas. He is a former spokesman for Prime Minister Stephen Harper and is said to have inside knowledge about every Conservative riding in the country.

Soudas left the Conservative party establishment and has since become a Liberal supporter.

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## **Other News – Autres nouvelles**

# **This is the one government elevator that traps Ottawa's public servants most often**



*One of the elevators in St. Andrew's Tower at 275 Sparks Street, the Justice Department headquarters, has trapped people 11 times in the span of just over a year, more than any other elevator in Ottawa's federal government-owned buildings. (Michael Woods/Metro)*



**By Michael Woods, Metro News Ottawa, July 27, 2015**

Every workplace has its share of ups and downs, but workers in one building in downtown Ottawa have to deal with the frustration of being neither up nor down.

Pity the poor public servants who work in the Justice Department headquarters on Sparks Street. Newly released documents show one of the elevators in their building has trapped occupants more often than any other lift in a government building in the nation's capital.

Metro obtained copies of reports that detail each time an elevator has broken down in a building owned or operated in the National Capital Region under the Access to Information Act.

There were a total of 106 reports of people getting stuck in elevators since January 2014. The average length of time people were trapped was 25 minutes.

Eleven of those were in a single elevator: Elevator 2 at St. Andrew's Tower at 275 Sparks Street.

That elevator also trapped people for the longest amount of time. The average length of time occupants were stuck in that elevator was 42 minutes – although on five occasions, the entrapments were an hour or more.

The reports show the early part of 2014 was a rough time for Elevator 2. It trapped people six times in January and February alone, and there was another incident in March. Many of those were caused by the elevator overshooting its destination.

None of the 106 incidents required medical attention for people who were stuck. And there hasn't been an incident since January of this year, perhaps suggesting any problems may have been fixed.

Public Works and Government Services Canada has yet to respond to a request for comment.

Building management denied Metro permission to photograph the elevator on Monday, and commissionaires on site declined to comment.

Overall, among federal government-owned buildings, St. Andrew's Tower was the lead offender, with 15 entrapments among its four elevators. Next was the adjacent East Memorial Building on Wellington Street, with 10 entrapments.

Three buildings had eight entrapments each: the Sir William Logan Building on Booth Street, the C.D. Howe Building at 235 Queen Street, and the Sir Charles Tupper Building at Riverside Drive and Heron Road.

It's unclear how comprehensive the records are. Some federal government buildings did not have any inspection reports. And there were gaps in time, with some months not returning any incidents reports.

The incidents don't often cost anything and are usually part of an elevator maintenance contract. But they do cost valuable time and productivity for employees.

Four bad elevator experiences

Tight quarters: Thirteen employees of the Pest Management Regulatory Agency spent 35 minutes trapped in an elevator at the Sir Charles Tupper building on Riverside Drive at Heron Road on Feb. 11, 2015. It must have been cramped, but no medical attention was required when everyone got out. The cause was the control system motor overload tripped.

Carry the 10: Ten Statistics Canada employees were stuck in an elevator at the R.H. Coats Building at Tunney's Pasture for 33 minutes. Again, no medical attention was required. The cause of the Jan. 17, 2014 incident was a misaligned pit switch.

That's a long time: In the longest incident of someone trapped in an elevator, a contractor spent an hour and 20 minutes stuck in elevator 2 at St. Andrew's Tower on Jan. 18, 2014.

Nickel for your thoughts: In one of the stranger causes of an elevator malfunctioning, someone was trapped in an elevator for nearly an hour at 1 Sandridge Road, the site of the Canadian Police Academy. The reason, the inspection report says: "A nickel was found lodged in the elevator track, which caused the entrapment." No word on whether the trapped person got to keep the five cents.

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## Appointment of Russ Brown extends Harper's influence on Supreme Court

Sean Fine, *The Globe and Mail*, July 27, 2015

Prime Minister Stephen Harper has named Russ Brown, a conservative judge from Alberta, to the Supreme Court of Canada – the third appointment in 15 months to the country's most powerful court without parliamentary involvement.

In his early 50s, Justice Brown gives Mr. Harper the possibility of a quarter-century of influence on the court. Some see him as a future chief justice when Alberta-born Beverley McLachlin reaches the mandatory retirement age of 75 in four years.

With a doctorate in juridical science from the University of Toronto, Justice Brown has been fast-tracked by the Conservative government. He was associate dean of the University of Alberta law school when the government appointed him in February, 2013, along with another rising conservative star, lawyer Thomas Wakeling, to the Court of Queen's Bench. Just 13 months later, the two were promoted again to Alberta's top court, the Court of Appeal.

The married father of two is a former member of the advisory board of a conservative legal group in Alberta, the Justice Centre for Constitutional Freedoms. Its website says its core views include a belief in "economic liberty," including property rights as part of the Charter of Rights and Freedoms – which has never been accepted by the Supreme Court. It also says equality before the law means "special privileges for none," which also runs counter to the Supreme Court's view that the Charter's equality clause is primarily for individuals from historically disadvantaged groups and its second part permits affirmative action for the disadvantaged.

“Current events remind us that the notion of limited government – particularly as it pertains to freedom of conscience and freedom of expression – can never be taken for granted in Canada,” Justice Brown said in a website endorsement of the JCCF and its executive director, John Carpay, a former candidate for the Wildrose Party in Alberta.

His endorsement appeared to have been removed from the website Monday evening. Justice Brown could not be reached for comment.

Justice Brown has criticized Alberta for passing a law that he said infringed on the property rights of landowners to favour oil companies.

Explaining why property rights matter, Justice Brown once said in a radio interview: "Property rights are important because property is one of two things that we have to advance our own idea of how we want to get through life. We have two things, fundamentally. We have ourselves and we have the things that we assert control over and make ours. That's all we have when you strip away everything else. What I have is myself and I have my property. Those are the two things through which I pursue my own idea of how I want to live my life. That's why property rights matter."

Deborah Hatch, Past President of the Criminal Trial Lawyers' Association in Alberta, said the appointment is welcomed by both the defence and Crown prosecutors.

"I have appeared many times before Justice Brown and have always been impressed by his thoughtfulness, his keen intellect, his sense of fairness and restraint, and his respect for and understanding of judicial discretion," she said in an email. "He is definitely worthy of a position as important to a parliamentary democracy as a seat on the Supreme Court of Canada."

An Alberta source said he has the respect of other judges for being a hard-working, excellent judge with a strong personality. "Nobody's going to push him around down there," the source said of Ottawa. "He's a good guy but he's strong."

A criminal defence lawyer, Brian Hurley, said his impression of Justice Brown is that he is a balanced, thoughtful, academically minded judge. "The left-wing defence lawyers I know breathed a sigh of relief," expecting a more right-wing judge to be chosen.

The Prime Minister's announcement does not say whether Justice Brown is bilingual – though Canada does not require that of its Supreme Court judges.

By convention, the appointment was to be made from a Western province. Some in Saskatchewan hoped that province would be tapped because it has been decades since the last judge from Saskatchewan, Emmett Hall, retired from the Supreme Court in 1973.

Justice Brown served as the thesis supervisor for John Rooke, Associate Chief Justice of the Alberta Court of Queen's Bench, when as a sitting judge he obtained his master's from the University of Alberta. Justice Rooke had political connections to the Harper government, and the experience would have helped Justice Brown earn the government's trust.

Mr. Harper promised to bring in parliamentary hearings for new appointees to the Supreme Court – and he did, in 2006, for Justice Marshall Rothstein of Manitoba, his first appointee. But after The Globe and Mail revealed his secret short list of candidates from

which he made the failed appointment of Justice Marc Nadon in 2013 (the Supreme Court said Justice Nadon lacked the legal qualifications to join), the government cancelled the hearings and Parliament's involvement in the selection process. Since then, justices Clément Gascon and Suzanne Côté from Quebec and now Justice Brown have been chosen without parliamentary involvement.

Justice Brown's specialty is economic loss in tort law. He replaces Justice Rothstein, a conservative member of the court who specialized in commercial law. The replacement will not alter the balance between conservative and liberal members of the court. Mr. Harper has appointed all but two members of the nine-person court.

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## **Harper nomme le juge de l'Alberta Russell Brown à la Cour suprême du Canada**

**La Presse, La Presse canadienne, le 27 juillet 2015**

Le premier ministre Stephen Harper a fait une nouvelle nomination à la Cour suprême du Canada, désignant comme magistrat au plus haut tribunal le juge de la Cour d'appel de l'Alberta Russell Brown.

M. Brown, ancien avocat et professeur de droit, prendra le relais du juge Marshall Rothstein, qui quitte le 31 août prochain, a indiqué M. Harper, lundi, par communiqué.

Membre du barreau de la Colombie-Britannique et du barreau de l'Alberta, M. Brown est installé à Edmonton, où il est aussi juge de la Cour d'appel pour les Territoires du Nord-Ouest et juge de la Cour d'appel du Nunavut. Il a également siégé à la Cour du Banc de la Reine de l'Alberta.

Le juge Brown sera le deuxième juge de la Cour suprême du Canada venant d'une province de l'Ouest, en plus de la juge en chef, Beverley McLachlin.

Il compte un diplôme de baccalauréat de l'Université de la Colombie-Britannique et une maîtrise en droit et un doctorat en sciences juridiques de l'Université de Toronto.

Le prédécesseur de M. Brown avait été désigné par M. Harper en mars 2006. M. Rothstein représentait la première nomination de M. Harper au plus haut tribunal, peu après la prise de pouvoir par le gouvernement conservateur. M. Harper a désormais nommé sept des neuf juges de la Cour suprême du Canada.

Sa précédente nomination en novembre dernier, celle de la juge Suzanne Côté, avait mis fin à plus d'une année de controverse sur la composition du plus haut tribunal. La proposition initiale du juge Marc Nadon par M. Harper pour le siège vacant du Québec - la province en compte trois - avait été contestée et ultimement rejetée comme anticonstitutionnelle par la Cour suprême elle-même.

«Le juge Brown apporte à la Cour sa vaste expérience comme professeur de droit et comme expert en droit, comme avocat, comme juge de première instance et de cour d'appel. Sa nomination est l'aboutissement de vastes consultations auprès de membres

réputés du milieu juridique et nous sommes confiants qu'il sera un atout solide pour le plus haut tribunal du Canada», a dit le premier ministre, lundi, par communiqué.

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## **Brown brings 'open mind' to top court bench**

**By Jennifer Brown, Legal Feeds Blog, Canadian Lawyer, July 28, 2015**

In what many are calling a controversial and conservative choice, Prime Minister Stephen Harper has appointed Alberta judge Russell Brown to the Supreme Court of Canada, replacing Justice Marshall Rothstein.

The appointment is effective Aug. 31 when Rothstein will be stepping down. Rothstein was appointed to the SCC on March 1, 2006.

“I’m a fan,” says Craig Jones, professor of law at Thompson Rivers University in Kamloops, B.C. “I think it’s a great long-term appointment.”

Brown, a former associate dean at the Faculty of Law at the University of Alberta, was a guest lecturer at TRU in February. Jones and Brown share an academic interest in what Jones calls “the very sticky field of causation in tort law.”

Associate professor Margaret Hall of the Faculty of Law at Thompson Rivers University called Brown “a truly outstanding scholar.”

“I have known Russell Brown since young and carefree undergraduate days at UBC. To my delight, we both grew up to become torts professors and became re-acquainted with each other in that professional and intellectual capacity,” she says.

While there’s some criticism that Brown has been a judge for just 2.5 years, others note he’s not the first to have an expedited path to the SCC.

Chief Justice Beverly McLaughlin was appointed at the age of 45 (Brown is 50), and both with experience from private practice and academia, says Eugene Meehan of Supreme Advocacy LLP in Ottawa and a former executive legal officer at the SCC.

“With the court’s current workload mainly criminal, he will adjust, but his academic experience of critically analyzing and writing about the law will serve him well,” says Meehan.

He adds Brown’s time as an associate dean will help him in terms of “building relationships and putting out fires.”

University of Alberta law school professor Peter Sankoff says Brown’s varied background will benefit the SCC.

“Anytime someone makes a rapid rise to the Supreme Court there’s always controversy and it’s not unprecedented,” says Sankoff. “Sometimes having someone who has done a

lot of different things and then moves to the judicial ranks in a short time can bring different perspectives to the bench.”

Sankoff, a professor and author of criminal law, wouldn't comment on whether Brown has “conservative” leanings, saying rather he sees him as “a guy with an open mind.”

“I've read a lot of his decisions on the bench and I'm reluctant to peg him as an ideologue of one sort or another,” he says. “What surprised me was how rigorous and well thought out a lot of his criminal law decisions [are]. It doesn't mean I agreed with every one of them but at the end of the day I couldn't deny they were well thought out.

“He is a hard working guy. I think he has a strong will and strong thought about things but I know he's open.”

Brown was appointed to the Court of Appeal in Edmonton last year after just 13 months on the Court of Queen's Bench. He also serves as a judge of the Court of Appeal for the Northwest Territories and a judge of the Court of Appeal of Nunavut. He previously served on the Court of Queen's Bench of Alberta.

Before being appointed to the bench, Brown served as an associate professor and associate dean at the University of Alberta Faculty of Law. He was also associate counsel with Miller Thomson LLP in Edmonton and practised at Carfra & Lawton LLP and Davis & Co. (now DLA Piper LLP) in Vancouver.

Brown's appointment has also raised eyebrows in part due to his connection as an adviser in 2012 to the Justice Centre for Constitutional Freedoms, a conservative legal group.

“He was a very well regarded lawyer and he is an excellent teacher,” says Jones. “What makes him a great judge is he is an extremely down to earth, pragmatic, very human guy and he brings that, notwithstanding people's concerns about this or that connection to the JCCF.”

Sankoff says judicial labels get thrown around a lot and there are different types of conservatives. His view is Brown has a “healthy respect for judicial precedent” which he says is the traditional view of a conservative.

“He has a healthy respect for the rule of law and precedent and that's a welcome trait to add to the Supreme Court. That is what conservative used to mean. That can be both good and bad.”

Jones predicts Brown will be “leading some advances in less spectacular but very important areas of the law” such as tort law.

“While it [tort law] hasn't been neglected, the approach of the Supreme Court of Canada has been tentative and inconsistent. I think he has a very strong understanding of the sort of ebbs and flows of the tort jurisprudence and a way of harmonizing it into a concept that serves social objectives and maintain some intellectual integrity,” he says.

“He has a really good way of boiling things down to common ideas and looking through threads of cases for some sort of conceptual integrity and often nails it.”

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# Mackay declines to give specific reasons for Supreme Court choice

Sean Fine and Eric Andrew-Gee, *The Globe and Mail*, July 29, 2015

Justice Minister Peter MacKay is declining to provide a detailed explanation behind the government's choice for the Supreme Court this week of Justice Russ Brown, a conservative libertarian who has two years of experience as a judge.

Mr. MacKay told *The Globe* on Wednesday that he was impressed by some of Justice Brown's judgments – but he would not specify them.

“Oh, I'm not going to refer to which ones,” he said.

The government has said little to explain or justify Prime Minister Stephen Harper's choice of Justice Brown, a former law professor at the University of Alberta and before that a business lawyer in Vancouver, Victoria and Edmonton. The Prime Minister issued a one-paragraph quotation, along with biographical details about the judge, which was similar to the one-paragraph quotations he issued when he named Suzanne Côté, Clément Gascon and Marc Nadon to the Supreme Court.

Justice Brown himself, once a formidable blogger at the University of Alberta law school – mocking Canada's Anglican Church as “dogmatically PC” and “nauseatingly self-righteous” and explaining that he views himself as a conservative libertarian – has declined to be interviewed.

By Canadian convention on regional representation on the court, Mr. Harper had a wide field to choose from – Manitoba, Saskatchewan and Alberta. Justice Marshall Rothstein, whose retirement at age 75 created the opening, is from Manitoba. Some in the legal community in Saskatchewan hoped Mr. Harper would consider top judges from that province, such as Chief Justice Robert Richards, or Court of Appeal Justice Georgina Jackson, or others with ties to Saskatchewan, such as Justice Michael Ryer of the Federal Court of Appeal in Ottawa.

No Saskatchewan judge has been appointed since Emmett Hall in 1962. He retired in 1973. If Mr. Brown, who is turning 50 in September, serves until mandatory retirement, it will be 2040 before a Saskatchewan judge has another chance.

Brent Cotter, a law professor at the University of Saskatchewan, served on a nine-member parliamentary screening committee that created an unranked short list of three names, which led to Mr. Harper's 2006 selection of Justice Rothstein, who then went before a parliamentary committee in a televised hearing, the first of its kind in Canada.

Prof. Cotter said he did not see it as Saskatchewan's “turn,” but felt that candidates from the province were deserving of serious consideration. It was “a great disappointment, to say the least,” that they were passed over, he said.

The former deputy attorney-general for Saskatchewan said the appointment process has deteriorated.

“I think it’s fair to say that the process for screening candidates and recommending a short list for the Supreme Court of Canada has become either no process at all or a shambles, notwithstanding the commitments of various governments and celebration of some of the processes they actually instituted and then walked away from.”

Mr. MacKay did offer a brief overview of what the government liked about Justice Brown: “He’s an outstanding jurist. He has been involved in his community actively. He’s also served not only the bench in Alberta, he serves in the North, he’s spent time in British Columbia, so he has certainly deep roots in the region, which is one of the requirements, one of the considerations for his elevation. And so he has distinguished himself in the law, and for that reason, on balance, and taking in a number of other important considerations, he now will join the Supreme Court of Canada, which is the pinnacle of our judiciary in Canada.”

But Prof. Cotter said Mr. MacKay should do more to inform Canadians of why the government chose a particular judge. “I would have liked to have heard that Mr. MacKay was prepared to say how he and the Prime Minister exercised their appointing authority in this case. We repose a fair amount of authority in our cabinet ministers but we also are entitled to have a degree of accountability.”

Mr. Harper promised before he came to office to allow parliamentarians to ask questions of an appointee. He kept that promise with his first appointment, of Justice Rothstein, and again with justices Michael Moldaver, Andromache Karakatsanis, Richard Wagner and Justice Nadon – failing to hold a hearing for just one appointee in his first six, Thomas Cromwell, in 2008.

But then came the failed appointment of Justice Nadon, whom the Supreme Court rejected as legally unqualified. Afterward, The Globe published a story on the secret short list behind his appointment, and the government responded by cancelling parliamentary involvement in screening, according to a Justice Department document released in response to a Liberal Party request. It also cancelled the public hearings of appointees. Justice Brown is the third judge appointed to the Supreme Court in 15 months without parliamentary involvement.

Before the Conservative government shut down the parliamentary screening committees, candidates were asked to choose five judgments in various categories, including constitutional law, to show the committee. The appointee’s selection of five judgments then became publicly available online to Canadians.

Parliament’s involvement in the selection process began in 2004 under the Liberal government of Paul Martin. After a Supreme Court appointment was announced, then-justice minister Irwin Cotler appeared before a parliamentary committee to explain the government’s choice.

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## **Ideology has limited role on Supreme Court, say experts**



**Ian MacLeod, Ottawa Citizen, July 28, 2015**

People shouldn't attach too much significance to the conservative ideology of Supreme Court nominee Russell Brown, say legal scholars.

The Alberta appellate court judge is to replace retiring Justice Marshall Rothstein of Manitoba, another conservative-minded jurist who was Prime Minister Stephen Harper's first high-court appointment in 2006. Brown is Harper's eighth selection.

Yet the court has consistently ruled against Harper's government on important constitutional issues in recent years. That includes landmark judgments striking down laws against prostitution and assisted suicide.

So where does judicial ideology fit in?

Judges' political and moral perspectives certainly can influence their reasoning, says Emmett Macfarlane, a University of Waterloo political scientist and author of *Governing from the Bench*, which documents the inner workings of the court (UBC Press, 2013).

"How do you deal with an issue like assisted suicide and pretend that there's an objective way to approach that?" he said Tuesday.

In the broader scheme of things, however, he said it is not particularly useful to view the court in a conservative-liberal dichotomy. Individual justices in the past have voiced "conservative" opinions on some issues before the court and gone "liberal" on others.

Now, and especially over the past two years, the "Harper" court "is a court that the liberal judges of the '80s, like Bertha Wilson, would be proud of," said Macfarlane. "I want to push back on this idea that we see some sort of conservative revolution on the court or in the judiciary writ large. (Some) regard this as a new (political) phenomenon, (but) Pierre Trudeau sought out reformers and activists even before the Charter came into play."

Michael Plaxton, a law professor at the University of Saskatchewan, said most legal academics and lawyers tend to roll their eyes "at all of this emphasis on ideology. These things get overstated quite a lot. Who is to be identified as conservative? The economic conservative or the social conservative?"

He said Harper's Supreme Court nominees have all been highly credible appointments. "There's just nothing there that leaps out at me and says anybody there is other than committed to a traditional conception of what judges do."

Macfarlane speculated Harper has sought Supreme Court appointees with reputations for judicial restraint and reliance on precedent rather than those who might want to expand the scope of the Charter and plow other new legal territory.

"It's not about liberal or conservative restraint, but about an idea about what the institution ought to be in relation to the other branches of government."

He cited to the 2010 Supreme Court ruling that the government had violated the constitutional rights of Omar Khadr, the accused Canadian war criminal detained by the U.S. military at Guantanamo Bay. "But the court (also) decided it was not going to order the government to seek Khadr's repatriation to Canada out of deference to the role the executive plays in foreign affairs. That is an example of restraint."

Plaxton said “you’d have to be a bit naïve to think (ideology) doesn’t make any difference at all to judging. You’re going to run into hard cases where these kinds of ideological preferences or political philosophies may make the difference in how you interpret this or that constitutional right or how you see the kind of limit imposed on a right by a piece of legislation. There will be cases like that where it makes a sort of tangible difference.

“But for the most part, even in the hard cases, what you’re more likely to find is that judges get pulled together by a certain set of ideas about how you’re supposed to go about the art of judging. Ideas concerning the importance of precedent, ideas concerning how appropriate it is for you to, as it were, insert your own policy preferences into the analysis.”

The current court, in fact, has a remarkable record for achieving consensus. A review by the Macdonald-Laurier Institute of 10 significant court decisions last year found only two had dissenting reasons. The enormously controversial rulings on prostitution last year and assisted suicide this year were both unanimous.

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## **The Gargoyle – New Supreme Court appointee blogged on Khadr, called Trudeau "unspeakably awful," hoped for Harper majority**

**Glen McGregor, Ottawa Citizen, July 31, 2015**

Prime Minister’s Stephen Harper’s latest appointment to the Supreme Court was a prolific blogger who regularly offered opinions on Senate reform, the federal government’s role in health care, elections law, the Omar Khadr case and other matters that could come before him in his new role on the bench.

Russell Brown, appointed to the top court last week, was an active contributor to a blog shared by faculty members at the University of Alberta law school.

Numerous posts made under the name “Russ Brown” between 2007 and 2008 appear to have since vanished from the blog but still appear in Internet caches. The cached pages also include numerous comments Brown made on other faculty members’ posts.

Brown’s political orientation and Libertarian perspective are clearly in evidence in many of the posts.

In one 2008 post, he says he hopes Harper wins a majority government and does, in fact, hold a “hidden agenda.”

In another post regarding successors to outgoing Liberal leader Stéphane Dion, Brown disses potential contender Justin Trudeau.

“As someone who hopes the Grits just fade away by the next election, I’m cheering for Justin Trudeau or Joe Volpe. Or have I missed a possible candidate who is as unspeakably awful?”

Brown wrote the posts when he was an assistant professor with the Faculty of Law. The Conservative government first named him to the Alberta bench in 2013 and last year elevated him to the Alberta Court of Appeal and the appeal courts for the Northwest Territories and Nunavut.

In less than three years, he has risen from a job teaching law to a seat on the highest court in the land.

Brown could not be reached for comment on Friday.

There is, of course, nothing wrong with future judges holding personal views on politics and other matters of national importance. But it is unusual — and perhaps a symptom of the digital age — for an incoming Supreme Court judge to have left such a verbose record of opinion that could be used to question his neutrality on cases that come before him on the court.

Consider, for example, the federal jurisdiction in health care, an issue that has arisen in past Supreme Court cases. In a blog post, Brown called the Canada Health Act “an inappropriate [federal] intrusion into sacrosanct provincial swimming pools.”

Or Senate reform, a topic on which the Supremes last year handed down guidance, Brown wrote in 2008: “My own preference would be to democratize the Senate (thus presumably throwing out the deadwood and injecting new life into the place) and give it more work to do (i.e. vetting SCC nominations). Still, abolition is better than the status quo.”

He also weighs in on third-party spending limits on election campaigns, an issue that Prime Minister Stephen Harper, when he was head of the National Citizens Coalition, challenged unsuccessfully at the Supreme Court.

“I do hope Harper gets a majority and reforms the Canada Elections Act, starting with those odious third party spending limits,” Brown wrote on September 29, 2008.

In comments on the blog, Brown also suggests that that the Canadian Bar Association called for the U.S. to release Khadr from prison because it didn’t like the Conservative government. He says that CBA position on Khadr was at odds with other cases involving Canadians detained abroad, including Zahra Kazemi in Iran and William Sampson in Saudi Arabia.

Nevertheless, he commented, “... his case shows how woolly terms like ‘unlawful enemy combatants’ pose practical problems for judicial and quasi-judicial tribunals when asked to make concrete determinations about someone’s status...”

When he takes his place on the Supreme Court bench, Brown may be called to sit in judgment of Khadr’s case, which has already come before the court three times

A strong Libertarian perspective is found in many of the blog posts and comments posted by Brown. He posted on issues including climate change, banking deregulation, and U.S. vice-presidential candidate Sarah Palin,

Other opinions he expressed...

On a colleague's opposition to a new federal agency for mental health: "Let me (albeit predictably) chime in: for what it's worth, you are correct, those of us who see the Canada Health Act as an inappropriate [federal] intrusion into sacrosanct provincial swimming pools don't find that argument convincing." (September 1, 2007)

On public health care and personal liberty: "Where, however, health care is furnished within an involuntary, non-alternative state-imposed context, reconciliation must be achieved of the supposed primacy of the patient's negative liberty – his or her private self – with a publicly funded health care system, instantiating the state's imposition of a public self." (August 26, 2008)

On a reference to the Supreme Court on Quebec secession: "Parliament conferred upon the Court powers to interpret the rules of the game, not to determine how and when someone can quit the game. If there ever was a question for legislatures and parliaments to sort out for themselves, subscription to and disassociation from a federal structure is surely it, no?" (June 22, 2007)

On Harper's elimination of the per-vote subsidy for political parties: "... it's only the cash-per-vote scheme that's going, but it's a step in the right direction. That said, none of the party subsidization schemes are as objectionable as the restriction on private expenditure during elections." (November 28, 2008)

On whether Canadians want a majority Conservative government: "As to whether the Conservatives are 'scary', I don't see it. Admittedly, I harbour some hope for a hidden agenda, but I doubt it's going to happen." (September 8, 2008)

On the Charter of Rights and Freedoms and Supreme Court appointments: "No matter who is appointed, we should – for the sake of good lawmaking – hope that the prime minister will focus on something other than (or at least in addition to) the Charter when considering a person's potential contribution to the Court." (March 10, 2008)

On the Canadian Bar Association calling for the U.S. to release Canadian prisoner from Guantanamo Bay: "The case of Omar Khadr: Does the CBA speak for all of us?... Aside from the possibility of a "conversion on the road to (ahem) Damascus", two obvious possibilities present themselves (both of which I'm sure the CBA would want to disavow): (1) it's all about which offshore party is interning Canadians at the relevant time. Or (2) it's all about which onshore party is governing Canadians at the relevant time. Personally, I subscribe to the second option as the likely motivation."

On Dalton McGuinty and climate change: "Hot Air on Climate Change... No surprise, then, that Ontario's selectively-green-Premier-who-subsidizes-muscle-cars also opposes emissions limits or higher tailpipe emission standards. But cap-and-trade schemes? He's all over them, of course." (December 10, 2007)

On a possible coalition government: "I agree that the proposed coalition would be legal, constitutional, yadda, yadda, yadda. There is, however, one non-legal, non-constitutional

aspect in which the ‘undemocratic’ rap sticks.... Rather, I think the serious political problem for the proposed coalition is that it is propelling Stephane Dion into the office of PM.” (December 4, 2008)

On free speech and human rights commissions: “Like any other right, freedom of expression is not absolute, but I would rather see any limits considered by courts of law and not by puritanical functionaries.” (August 21, 2008)

On Liberal MP Bob Rae welcoming new leader Michael Igantieff with a kiss: “Maybe Iggy should make a Sexual- Harassment -in -the -Workplace Complaint?” (April 1, 2008)

On Liberal senator’s bill to deem suicide bombings acts of terror: “I guess this is one of those ‘just-in-case-the-obvious-wasn’t-obvious-enough’ amendments. One can only hope that the courts will follow Parliament’s lead and impose the severest possible sanctions on people who kill themselves.” (May 01, 2008)

On Tibet and its Bhuddist religious leaders: “I hope [the West] makes the case for democracy in Tibet and concomitantly for freezing the mediaeval nutcases from power... Otherwise, we simply replace a distinctly modern totalitarianism with a Himalayan version of the ayatollahs.”

On war criminals who came to Canada after WWII: “... fuelled by the anti-Semitism of federal immigration bureaucrats and of Canada’s Liberal prime minister of the time (in the far left of the photo, next to some unidentified travelling companions)” (post includes a photo Prime Minister Mackenzie King next to uniformed Nazis saluting, September 2, 2007)

On the death penalty for child rapists in the U.S.: “My own view on this case is that there is no obvious reason for the death penalty to be confined to cases of homicide, unless we presuppose that a victim’s death is the worst of all possible outcomes (which is not, at least to me, obviously true, when compared to, say, a lingering, vegetative existence). In other words, the punishment of death may in fact be proportionate to the offence of raping a child.”

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## **Harper fumed privately about Supreme Court activism: book**

**Mark Kennedy, Ottawa Citizen, August 4, 2015**

Prime Minister Stephen Harper has privately fumed to his inner circle that under the leadership of Chief Justice Beverly McLachlin, the Supreme Court of Canada has become a “sociology seminar” that emasculates the power of Parliament, according to a new book.

The biography, titled Stephen Harper, provides a thorough account of Harper’s personal life and political career.

It explores his legendary temper and mood swings while also chronicling how Harper turned the once-divided conservative movement into a political success story that allowed him to win three elections, govern for a decade, and change the country.

The book, written by Globe and Mail journalist John Ibbitson, was originally set for publication in September. But with the early call of the Oct. 19 election, it is now available Tuesday as an e-book and hard copies will be in stores Aug. 18.

Among the issues covered in the book is Harper's distrust of the courts and legal community — and his unprecedented public criticism last year of McLachlin, which critics said was an effort to intimidate the court.

“The nadir of Stephen Harper's prime ministership came not during the Senate expenses scandal, but in the spring of 2014, when he got himself into a very public dust-up with Beverly McLachlin,” writes Ibbitson.

Harper alleged that McLachlin tried to interfere in the appointment of Federal Court Judge Marc Nadon to the top court — an allegation she denied and which drew broad support from the legal community.

Ibbitson writes that Harper's criticism of the chief justice set a “dangerous precedent” and now ranks as one of his “most discreditable acts” as prime minister.

“Not only did he lose the fight; he tarnished his reputation and damaged what should be the sacrosanct separation of powers between executive and judiciary.”

In his book, Ibbitson writes of how Harper's distrust of judges stems from a long-standing concern over judicial activism in the wake of the Charter of Rights and Freedoms.

The book reveals that once Harper took power in 2006, he grew increasingly frustrated with how the court's rulings were overturning his legislative policies, and how it had established itself as the “unofficial opposition” to his government.

“Harper has repeatedly complained to his inner circle that, under Chief Justice Beverly McLachlin, the Court has become a sociology seminar, with the judges/professors able to turn their theories into laws, and Parliament unable to stop them,” according to the book.

Ibbitson writes that Conservatives lamented the advent of the Charter in the 1980s, fearing that courts would override Parliament.

The top court “obliged their worst fears” with rulings that have limited police powers, struck down the abortion law, and extended civil rights to gays and lesbians.

“For Stephen Harper, this was simply another way in which liberal urban elites in Toronto and Ottawa and Montreal imposed their agenda on the rest of the country.”

Ibbitson writes that while Liberal governments accepted judicial activism, Harper was furious.

“Harper had seethed against the smug, stifling certainty of these elites all his adult life. That is why, once he came to power, he set out to radically reform the justice system.”

Under the Conservative government’s law-and-order agenda, Harper moved to transform the justice system with mandatory minimum sentences for crimes involving guns, drugs and sexual assaults, and with new rules that gave convicts less credit for time served before their conviction.

But the court has imposed limits on some of Harper’s tough-on-crime laws.

The “breaking point” came with Harper’s appointment of Nadon, who had a record of “judicial deference.”

A legal challenge to Nadon’s eligibility — he was not a member of the Quebec bar and was being appointed to a constitutionally protected spot for a Quebecer — found its way right to the Supreme Court.

The court ruled in March 2014 that Nadon was ineligible.

“Harper was furious with the ruling. The Court had set itself up as the unofficial opposition to his prime ministership.”

The book says Harper was “convinced” McLachlin had meddled in Nadon’s selection process.

“Staff talked the prime minister down from launching a full, public assault on the impartiality of the Court, but he still went pretty far.”

Harper’s office released a statement saying the prime minister had refused to take a call from McLachlin about the appointment because it would be “inadvisable and inappropriate.”

McLachlin insisted it was customary for her to be consulted, that she only wanted the government to be aware of eligibility issues, and she had never expressed her own opinions about possible appointees.

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## Harper’s constitutional disobedience a dangerous game to play

**Adam Dodek, Contribution to The Globe and Mail, July 27, 2015**

*Adam Dodek is a founding member of the University of Ottawa’s Public Law Group and the author of The Canadian Constitution (Dundurn 2013).*

One of my favorite short stories is Herman Melleville’s Bartleby the Scrivener. Bartleby works for a lawyer as a “scrivener”, a human Xerox in an age before photocopiers. He spends his days copying out legal documents until one day when asked to perform a task, he simply says “I prefer not to.” And Bartleby refuses to do any more work.

Prime Minister Stephen Harper has pulled a Bartleby in announcing a moratorium on appointing Senators to the Red Chamber.

Constitutionally, Mr. Harper does not have this power to refuse to appoint Senators. Our Constitution vests a lot of formal power in the Governor-General: the power to appoint Senators; the power to dissolve or prorogue Parliament; the power to appoint members of cabinet; the power to add members to the Senate; name and remove a Speaker; and provide Royal Assent to bills.

In each of these cases (save with possible exceptions of prorogation and dissolution in extreme situations), the Governor-General acts only on the advice of the Prime Minister.

What happens when the Prime Minister refuses to provide such advice? In extreme cases, there is no question that the Governor-General would be forced to exercise such power without advice. For instance, the Constitution provides that no House of Commons shall last longer than five years (except in cases of real or apprehended war, invasion or insurrection). There is no question that if a Prime Minister refused to advise the Governor-General to dissolve Parliament before that deadline, the Governor-General would have not only the power but also the duty to do so.

In announcing a moratorium on further Senate appointments, the Prime Minister is committing an act of constitutional disobedience. His justifications simply do not pass muster. The asserted cost savings of \$6-million annually does not compare well with the bevy of spending on government advertising and other government initiatives. The other assertion is that the moratorium will force the provinces over time to come to an agreement regarding reform or abolition. Considering that the Prime Minister has never met with the premiers to discuss Senate reform, let alone made any concerted effort to find common ground with the provinces, this justification is similarly baseless.

It is not as if the Prime Minister is stymied by the Senate: the Prime Minister controls appointments; the Prime Minister controls Senate proceedings by virtue of his party having a majority in the Upper Chamber; and as the Senate expenses scandal has shown, the PMO involves itself in the minutiae of Senate operations.

Mr. Harper's announcement of a moratorium is another example of this Prime Minister's penchant for federal unilateralism – the desire to act alone without consultation or co-operation with other relevant constitutional actors, in this case the provinces. Federal unilateralism is both the theme and the explanation for the Senate reform.

The problem is that our Constitution requires cooperative federalism – the federal government and the provinces working together – on a host of issues.

Many of the “rules” of our Constitution are unwritten. Some are so obvious that they had never been discussed before: the Prime Minister cannot simply let the Senate wither away and die. The Prime Minister seems intent on challenging this and other constitutional rules by his acts of overt constitutional disobedience. In so doing, he is not only making it much harder for government lawyers to defend his policies in court, but he is playing a game of constitutional chicken.

Our Constitution is based on the notion that the prime minister advises the Governor-General. But it also makes the Governor-General a sort of constitutional 9-1-1 in cases of emergency. The more the Prime Minister shirks his constitutional duties, the more he



provides a basis for the Governor General to exercise independent powers that are normally held in reserve.

In the end, Bartebly simply “prefers not to” eat and eventually dies. This is the fate that awaits the Senate if the Prime Minister continues his acts of constitutional disobedience. It is a dangerous game of constitutional chicken that is best avoided.

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## **Legal observers urge Ottawa to revamp judicial appointment process**

**Sean Fine, The Globe and Mail, July 26, 2015**

Merit is too often trumped by political considerations in judicial appointments, leaders in the legal community say in calling for the federal government to overhaul the process.

Among the simpler proposals: Putting ordinary Canadians on the committees that screen future judges, and restoring the right of these committees to say which ones they “highly recommend.” They are now limited to recommend or not recommend.

Some legal observers say the importance of politics in appointments could be further reduced by adopting models like Ontario’s, or Britain’s, in which independent committees give short lists of candidates from which the government must choose. Still, other critics like the current model, but say the justice minister needs to act as an impartial leader in the legal system, taking less direction from the prime minister.

The Conservative government has appointed about 600 of the country’s 840 full-time federally appointed judges, on provincial courts of appeal, superior courts and the Federal Court. The Globe reported this weekend, based on extensive interviews with participants in the closed-door appointment process, that the government has tried to reshape the judiciary by looking for cautious, technically minded judges it believes will be less inclined to challenge its tough crime laws and defend individual rights. The judges can remain on the bench until the age of 75, and form an important legacy for Prime Minister Stephen Harper as they continue to issue judgments even if other parties form government.

“Merit in judicial appointments has given way to ideology. Some legacy!” Toronto lawyer Ron Atkey, a former Progressive Conservative MP and cabinet minister who has been involved in the appointments of judges, said by e-mail.

J.J. Camp, a Vancouver lawyer and former president of the Canadian Bar Association, which represents 37,000 lawyers, said in an interview he is fearful that “we are not getting the best and the brightest anymore. I think it’s driven in part by a government agenda that is concerned about activist judges.”

Under the current system, judicial advisory committees composed of legal and judicial experts make recommendations to the government on whom to appoint. Of the 300 judges recommended by screening committees across the country in 2013-14, the government appointed 65, after a process involving recommendations from cabinet

ministers serving as scouts in each region, scrutiny by the justice minister and the Prime Minister's Office, and a decision by cabinet.

"Judicial appointments are a matter for the executive and will continue to be," the Justice Minister's office said in a statement.

"All judges are appointed based on merit and legal excellence and on recommendations made by the 17 Judicial Advisory Committees across Canada."

The system's chief weakness, according to Michele Hollins, the Canadian Bar Association's current president, is that what happens after the judicial advisory committees make their recommendations is a mystery.

"What happens after that is particularly difficult to decipher. It is shrouded in secrecy and I think leaves too much room for people to imagine what's going on."

The screening committees were established by the Progressive Conservative government of Brian Mulroney in 1988 to be a neutral, independent voice in the process. That came after a Canadian Bar Association report in 1985 found that appointments were "overly dominated by political considerations." The committees had representatives of law societies, bar associations, provincial governments, a chief justice or other judge and federal representatives. To that, Mr. Harper's Conservatives, in the first year they came to office, added a police representative and took away the judge's vote – giving federal appointees a majority vote. They also took away the "highly recommended" category. In 2013-14, there were 75 "highly recommended" judges, or about enough to fill all positions.

The screening committee "is the most politically neutral part of the process. It seems to me that you'd want the very best intelligence from that level," Ms. Hollins said in an interview, calling for the "highly recommended" category to be restored.

Among the bar association's wide-ranging proposals for change, she would like to see non-lawyers on the committees. "If you're talking about Canadians having confidence in the process, I don't know why you wouldn't consider that."

Archie Kaiser, a law professor at Dalhousie University's Schulich law school, called for the creation of an all-party committee to study the best models in Canada and abroad for judicial appointments. He said the system "routinely betrays the principle that the public deserves the best qualified judges, for indefensible reasons."

William Trudell, chair of the Canadian Council of Criminal Defence Lawyers, was a member of Ontario's judicial screening committee for five years. "It was probably one of the most remarkable experiences of my life. There was no politics in that room."

Mr. Atkey said that people close to the process have told him that under the current system, "Everything is run out of the PMO [Prime Minister's Office]. I think the Minister of Justice is just a figurehead and if the Minister of Justice wanted to appoint somebody that was unacceptable to the PMO he wouldn't. And the converse is true. If the PMO wants somebody and the Minister of Justice doesn't get particularly good vibes or reports, too bad."

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# Lawyer challenges Harper over refusal to appoint senators

Joan Bryden, *The Canadian Press, The Globe and Mail*, July 27, 2015

Prime Minister Stephen Harper is being challenged to ask the Supreme Court of Canada whether his moratorium on Senate appointments is constitutional.

Aniz Alani, a Vancouver lawyer who is already in court trying to compel Harper to fill Senate vacancies, says he'll drop his case — and swallow his legal costs — if the Prime Minister agrees to send a reference to the top court, seeking its advice on the matter.

Harper announced Friday that he's imposing a moratorium on Senate appointments — formalizing his practice for the past two and a half years of refusing to fill vacancies in the scandal-plagued, unelected upper house.

There are currently 22 vacancies in the 105-seat chamber.

Alani is already in Federal Court, seeking a declaration that the Prime Minister has a constitutional obligation to fill vacancies within a reasonable time; the Harper government is currently appealing Justice Sean Harrington's refusal to dismiss the case.

Given that his case is likely to lead to further appeals and delays, Alani argues that a reference to the Supreme Court would be the quickest and most cost-effective way to resolve the matter.

“In my opinion, the Prime Minister can declare a moratorium on filling Senate vacancies no more validly than he can declare an end to the granting of Royal Assent to bills approved by Parliament or the use of French or English as an official language of Canada,” Alani says in a letter to Justice Department lawyers.

“In such cases, the requirements of the Constitution remain in effect and binding within Canada unless and until amended in accordance with the constitutional amending formulae.”

On Friday, Harper asserted that the Constitution gives the prime minister “the authority to appoint or not appoint” senators and vowed not to fill any vacancies so long as his government continues to be able to pass its legislation through the chamber.

Harper appears to think he has “untrammelled discretion whether to appoint or not appoint Senators as he sees fit,” Alani says in his letter.

He begs to differ, noting that the Constitution specifies that the governor general “shall” fill a vacancy when it arises. By convention, the governor general acts only upon the recommendation of the prime minister.

Alani emphasizes that his determination to pursue his case should not be doubted. But to save time and money, he offers to discontinue his case and waive his right to seek compensation from the government for his legal costs if Harper agrees to send the matter directly to the Supreme Court.

Harper has already sought the Supreme Court's advice on what it would take to reform or abolish the upper house.

In a landmark ruling last year, the top court ruled that reforming the Senate would require a constitutional amendment approved by at least seven provinces representing 50 per cent of the population. Abolishing the Senate would require unanimous provincial consent.

In that ruling, the court also made clear that Harper's policy of refusing to fill vacancies can not continue indefinitely. It said the Senate can't be abolished indirectly by letting its numbers drop to zero.

Harper said Friday his moratorium is intended to put pressure on the provinces, who have opposed his attempts to reform the Senate, to either come up with their own reform proposals or conclude that abolition is the only answer.

However, some constitutional experts have predicted that one or more provinces will eventually go to court to demand that Harper fill their constitutionally-entrenched share of Senate seats.

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## **Stephen Harper invité à soumettre son «moratoire» en Cour suprême**

**Le Devoir, La Presse canadienne, le 27 juillet 2015**

Un avocat de Vancouver qui souhaite que la Cour fédérale oblige Stephen Harper à combler les sièges vacants au Sénat est prêt à retirer sa plainte si le premier ministre demande à la Cour suprême de se prononcer sur la validité constitutionnelle de ce « moratoire ».

Aniz Alani promet même d'assumer les frais déjà engagés dans sa requête en Cour fédérale si M. Harper décide de renvoyer la question en Cour suprême.

Le premier ministre a indiqué vendredi dernier qu'il imposait un moratoire sur toute nomination de nouveaux sénateurs, confirmant ainsi une pratique déjà observée depuis deux ans et demi. Il y a actuellement 22 sièges vacants sur 105 au Sénat, la chambre haute du Parlement, qui est secouée par des scandales relativement aux dépenses de certains de ses membres, non élus. M. Harper est partisan d'une réforme majeure du Sénat, voire de son abolition pure et simple.

Me Alani a demandé à la Cour fédérale de statuer qu'en vertu de la Constitution, le premier ministre a l'obligation de combler dans un délai raisonnable les sièges vacants au Sénat. Le gouvernement Harper a d'entrée de jeu demandé à la Cour de rejeter cette requête, mais le juge Sean Harrington a refusé, et le fédéral en appelle de cette décision.

### **Voie rapide, moins coûteuse**

Comme cette cause risque ainsi de s'éterniser en requêtes et appels, Me Alani soutient qu'un renvoi en Cour suprême constituerait la voie la plus rapide et la moins coûteuse

pour régler le problème sur le fond — la nomination de sénateurs dans un délai raisonnable.

« À mon avis, le moratoire du premier ministre sur les nominations au Sénat est tout aussi invalide [...] que s'il décrétait la fin du bilinguisme officiel au Canada [...] sans respecter la procédure de modification constitutionnelle », plaide Me Alani dans une lettre aux procureurs du ministère de la Justice.

À la suite d'un renvoi du gouvernement Harper, la Cour suprême a déjà statué l'an dernier que toute réforme du Sénat nécessitait une modification de la Constitution qui exigerait le consentement d'au moins sept provinces représentant 50 % de la population. L'abolition du Sénat, elle, exigerait le consentement unanime des provinces.

La Cour suprême a par ailleurs indiqué que le refus du premier ministre de nommer de nouveaux sénateurs ne peut durer éternellement, et que le Sénat ne peut être aboli d'une manière détournée, petit à petit, par attrition. M. Harper a expliqué vendredi qu'il souhaitait ainsi forcer les provinces à dénouer l'impasse entre elles, ou à convenir que l'abolition du Sénat constitue la seule avenue possible.

Vendredi dernier, M. Harper soutenait qu'en vertu de la Constitution, le premier ministre a toute « autorité pour nommer ou non » des sénateurs, et il a promis de ne pas combler les sièges vacants au Sénat tant que son gouvernement pourra faire adopter ses lois aux Communes.

M. Alani, lui, plaide qu'en vertu de la Constitution, le gouverneur général « remplira la vacance quand un siège deviendra vacant au Sénat par démission, décès ou toute autre cause ». Or, par tradition au Canada, le gouverneur général exerce ce pouvoir sur recommandation du premier ministre.

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## **Senate reform? There's just the teensy problem of the Constitution.**

**Both Stephen Harper and Thomas Mulcair have plans to reform the Senate that may prove unconstitutional. Now what?**

**John Geddes, MacLean's, July 31, 2015**

After the Supreme Court of Canada ruled last year that his unilateral push for Senate reform wasn't allowed, Prime Minister Stephen Harper might have been expected to take pains to stay within constitutional bounds in any future bid to overhaul the upper chamber. Harper had tried to move alone on imposing term limits and electing senators, but the court said he needed support from seven provinces with 50 per cent of the population. Harper seems undaunted, though. His new strategy is to refuse to name any new senators. And some experts say that's not permitted under the Constitution, either.

Harper had already let 22 vacancies go unfilled in the 105-seat Senate before he announced, in a news conference last week with Saskatchewan Premier Brad Wall, that he will let attrition keep hollowing out the place as its patronage appointees die or retire. “It will force the provinces over time,” the Prime Minister said, “to either come up with a plan of comprehensive reform, or to conclude that the only way to deal with the status quo is abolition.”

Harper didn’t explain exactly why dwindling Senate ranks will alarm premiers so much that they will finally coalesce around a common reform or abolition plan. In fact, Harper even said senators don’t really do much now for their home provinces. It came up when he was asked if provincial governments might object to his refusal to fill vacancies from their turf. “The number of senators [that provinces] have today, in the current institution, gives no real weight in Parliament,” he said. “Decisions are made, for all practical purposes, in the House of Commons.”

Beyond the paradox in Harper’s position—senators are useless to provinces, yet premiers won’t tolerate empty Senate seats—are serious doubts that the Constitution permits this course of inaction. “I think that for him to refuse to appoint senators is manifestly unconstitutional—he can’t do that,” said University of Ottawa law professor Carissima Mathen. University of Waterloo political science professor Emmett Macfarlane, author of *Governing from the Bench: The Supreme Court of Canada and the Judicial Role* (and a *Maclean’s* contributor) agreed that naming new senators is “absolutely an obligation” for any prime minister.

That obligation is set out in the Constitution Act, where Section 32 says, “When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor General shall . . . fill the vacancy.” By convention, of course, the Governor General acts only on the Prime Minister’s advice. Beyond this requirement, there’s the Senate’s constitutionally defined role, which includes representing provinces and regions and reviewing legislation passed by the House. If Harper leaves the Senate with too few members to do its job, Macfarlane says he will be “unilaterally impairing its essential function.” And that isn’t likely to survive a legal challenge.

But it will take a court, in the end, probably the Supreme Court, to make that ruling. Aniz Alani, a Vancouver lawyer, had already launched a case to try to force Harper to appoint senators before he made the moratorium an explicit policy. Mathen says judges might have been reluctant to come down firmly against the Prime Minister, if the case forced them to interpret what lies behind his reluctance to fill Senate vacancies and consider how quickly constitutional convention requires him to act. But, now that he has openly framed his refusal to name senators as a tactic for bringing provinces to the constitutional bargaining table, the facts that any court will confront are less ambiguous. “With his open avowal that he doesn’t think he has a duty to appoint, that’s where it gets tricky,” Mathen says. “Now, a province like Prince Edward Island or Manitoba can say, ‘He apparently has no intention of fulfilling our allotment under the Constitution.’ ”

Remarkably, Harper is not politically isolated in his willingness to just let the Senate wither. NDP Leader Thomas Mulcair has said that if his party wins this fall’s election, he would negotiate with the provinces to try to reach the unanimity needed to scrap the Senate—likely a long, hard slog—and would not appoint senators while he tried to win every single premier over to the NDP’s long-standing position. But the NDP has also suggested a more direct assault on the Senate’s ability to function: cutting off its funding.

A motion tabled by Manitoba NDP MP Pat Martin to deny the Senate \$57 million of its total 2015-16 budget of \$88.7 million was voted down by Liberal and Tory MPs in the House early last month. "So Harper and Mulcair are on the same page now," Macfarlane says. "We have a very rare situation, maybe unprecedented, where the Prime Minister and the official Opposition leader are advocating plainly unconstitutional action."

That leaves Liberal Leader Justin Trudeau playing the only hand on Senate reform that stays safely within the constitutional rules of the game. Early last year, for starters, he kicked Liberal senators out of his parliamentary caucus. If he becomes PM, Trudeau vows that his Senate appointments would be guided by a new "independent-minded, non-partisan" panel's recommendations. If his position doesn't generate the I'm-fed-up heat of a moratorium on appointments or an abolition pledge, it has the advantage of being constitutionally allowed and politically doable. The question is whether Trudeau, now trailing at third in the polls, can turn a practical alternative into a campaign-trail asset.

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## England: Barristers Begin Strike Over Cuts To Legal Aid

**@Report 24.ca, July 2015**

There are fears of disruption throughout the criminal justice system as criminal barristers begin striking today in protest over cuts to legal aid.

Barristers will begin refusing to take on Crown Court cases, in solidarity with criminal defence solicitors, who now face cuts of 8.75% to their fees.

Solicitors have already been striking since 1 July when the cuts came in - initially refusing all new work in both Magistrates and Crown Courts, and have staged a series of protests outside courts nationwide.

Many claim the cuts, which make it harder for small, high street law firms to survive, will make it more difficult to access justice, creating a two-tier system that favours the better off.

Jonathan Black, president of the London Criminal Court Solicitors Association, said: "Hundreds of solicitors' firms around the country will close down, developing instead into mass justice warehouses, legal aid warehouses, where cases will be packed high and sold cheap.

"High street firms that ordinary people know how to access will be decimated."

The legal aid system - which sees lawyers paid from public funds to provide representation for people facing legal proceedings - has suffered repeated cuts under the past two governments.

In a series of austerity measures that began under the last Labour government, fees for both barristers and solicitors have been reduced and some areas of law removed from eligibility for legal aid altogether.

Gemma Blythe from Young Legal Aid Lawyers, warned: "Those who cannot afford to pay for a solicitor, and those who are denied legal aid, are suffering at the hands of the Government."

Although criminal defence barristers are not directly affected by the latest round of cuts, a majority voted to strike in what was hailed by many as an unprecedented show of solidarity between the two main branches of the legal profession.

According to Joanne Cecil, a barrister at Garden Court Chambers, criminal justice is "on its knees and broken" as a result of the austerity measures.

"This is really not about our fees, it's about the wider impact on society," she said.

"The impact of these cuts to legal aid is not just to defendants, but also victims of crime and witnesses, who have to deal with what is a creaking justice system."

The Government said the cuts were "challenging" but necessary, and that they would be reviewed next year.

A Ministry of Justice spokesperson said: "The changes we are making to criminal legal aid are designed to deliver value for money to taxpayers and do not impact on the availability of high quality legal advice to those who need it most.

"Although we recognise that the transition will be challenging for lawyers, these changes will put the profession on a sustainable footing for the long term. We have already pledged that an independent review looking at the impact of the new arrangements will begin in July 2016."

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