January 2015 Updates to *Canadian Politics: Critical Approaches, 7th edition*

Chapter 2: Institutional Foundations and the Evolution of the State

p. 20 – Regarding the Royal Proclamation of 1763, it would be more correct to say that it was the British governors, *on the ground*, who resisted the idea of imposing the English language and Protestant religion on such a homogenous French-Catholic population.

Chapter 3: Regionalism

p. 52 – The Alberta oil sands continue to expand production, but the incapacity of pipelines to take the oil to market has become a serious problem. The proposed Northern Gateway pipeline to the B.C. coast accumulated much opposition in its review by the NEB, but was approved with 209 conditions. The Harper government gave the project unenthusiastic approval in mid-2014, with the same conditions attached, but court cases may well delay its construction. The proposed Keystone XL pipeline to the U.S. Gulf coast continues to be suspended by President Obama. These question marks have inspired much discussion of a new west-to-east oil pipeline between Alberta and New Brunswick, which would serve the refineries in Quebec and Saint John. Besides the environmental issues in the Fort McMurray region itself, serious pipeline leaks in several locations and the disaster at Lac-Mégantic, Quebec—the explosion of a train carrying oil—have not helped the oil sands cause. Meanwhile, the United States is becoming increasingly self-sufficient in oil. All of the above was complicated by a severe decline in the world price for oil at the end of 2014, which would have a serious impact on the government revenues and economic activity in Alberta, Saskatchewan, and Newfoundland and Labrador, and reduce regional economic disparities to some extent.

p. 54 – The Harper government signed a deal with the Northwest Territories that took effect in April 2014 under which the territory would receive an additional $130 million a year and gain greater autonomy over its resources. This was supplemented by a second agreement to give Aboriginal governments in the NWT a share of such resource revenues. Later in the year, the government announced its intention to begin negotiations that would give the territory of Nunavut greater control over its resources and royalties.

Chapter 4: Aboriginal Peoples

p. 73 - Ceremonies were held in 2013 to mark the 250th anniversary of the Royal Proclamation of 1763, which was described as a framework of values or principles that has served to guide Aboriginal issues in Canada. But at the same time, both in its concrete terms and in its spirit (“…the several Nations or Tribes of Indians…who live under Our Protection, should not be molested or disturbed…; to the End that the Indians may be convinced of Our Justice, and
determined Resolution to remove all reasonable Cause of Discontent…”), its implementation has left much to be desired.

p. 75 – To exacerbate the residential schools tragedy, it has recently been revealed that shortly after the Second World War, the federal government engaged in nutritional experiments on a number of reserve communities and in several residential schools. Discovering the evidence of serious hunger, federal researchers conducted tests in which some subjects were given various vitamin supplements and others were not; in other cases, dental services were withdrawn so as not to distort the results. The number of school children who died in residential schools has now been estimated at over 4,000, but is expected to increase. At the same time as it was withholding certain government records about residential schools from the Truth and Reconciliation Commission, the federal government gave the Commission an additional year in which to prepare its report (to June 2015).

p. 87 – Calling the Assembly of First Nations ineffective, Derek Nepinak, Grand Chief of the Assembly of Manitoba Chiefs, created a new First Nations organization—the National Treaty Alliance—in July 2013. The new organization would be more radical in dealing with governments, and focus on the fulfilment of treaty rights.

p. 88 – In January 2013, the Federal Court of Canada ruled that Métis and non-status Indians are included in the term “Indians” in the Constitution Act, 1867 (Daniels v. Canada). If upheld by higher courts, this decision would clarify that these two groups fall under federal rather than provincial jurisdiction, although many implications of the decision remain unclear. The Federal Court of Appeal only agreed with half of the decision, the part dealing with Métis; and an appeal to the Supreme Court of Canada has been launched.

p. 89 – Besides the problems listed, another major Aboriginal issue is the federal government’s refusal to provide the same level of child welfare services to First Nations children as the provinces provide for other Canadian children. This disparity has led to a large increase in the number of Aboriginal children forced into foster care rather than remaining with their families.

In June 2014, in the case of Tsilhqot’in Nation v. British Columbia (sometimes called the William case), the Supreme Court of Canada addressed this First Nation’s 20-year opposition to logging and mining on what it claimed as its land. In what was probably the most significant Aboriginal case ever heard, the Court clarified the meaning of Aboriginal title and the concept of “consult and accommodate,” giving Aboriginals a virtual veto over resource development once Aboriginal title has been established. The Court ruled that all the territory in question fell under the ownership of the Tsilhqot’in First Nation, and that the granting of Aboriginal title confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses.” The land use must also be consistent with the needs and interests of future
generations. Government incursion on such Aboriginal title lands is still possible, but the Crown must demonstrate a compelling and substantial public need and prove that the government action is consistent with the fiduciary duty owed by the Crown to the Aboriginal group. The decision was expected to have significant effects on current and future resource development projects, perhaps most immediately to scuttle the proposed Northern Gateway pipeline.

Two weeks later, in July, in the *Grassy Narrows First Nation v. Ontario (Natural Resources)* case, the Supreme Court took a narrower view of Aboriginal rights based on a treaty rather than those based on Aboriginal title. It held that the province of Ontario had a legitimate role to play in natural resource development in the location involved, although it must “exercise its powers subject to the fiduciary duties that lie on the Crown in dealing with Aboriginal interests.”

The Harper government unveiled a bill on First Nations education in February 2014, which was given cautious support by the Assembly of First Nations. While the bill would have increased funding and autonomy on the issue, it did not go as far as many Aboriginal leaders wanted. In May, AFN Grand Chief Shawn Atleo resigned because of divisions within the Aboriginal community, after which the government put a hold on the bill. In December 2014, the AFN elected a new National Chief, Perry Bellegarde, the former chief of the Federation of Saskatchewan Indian Nations.

The United Nations Special Rapporteur on the Rights of Indigenous Peoples spent a week in Canada in October 2013 and filed a formal report in May 2014. While noting certain advances over the past 10 years, he found little improvement in housing conditions, access to basic needs and services, and the high levels of social ills on reserves. He touched on the education legislation and the Truth and Reconciliation Commission issues mentioned above, called for a public inquiry into missing and murdered Aboriginal women, and advocated a clear policy on consultation and accommodation before allowing major resource projects to proceed. The RCMP now admits the existence of nearly 1,200 cases of missing and murdered Aboriginal women over the past 30 years, adding to the pressure to establish a comprehensive inquiry into the tragedy. When the Harper government insisted that these cases be treated as individual crimes, the premiers proposed that a national round table be established to discuss the broader question. It is planned for February 2015, and both the premiers and the AFN urged the federal government to participate.

Another issue to hit the headlines in December 2014 was that of food insecurity in Nunavut. Although the problem has long existed, and the high cost of food is easily explained, the Auditor General noted that the existing policy was not working, and one Nunavut official revealed that some who could not afford to buy food were scavenging for it at the local dump.

**Chapter 5: French Canada and the Quebec Question**
The proportion of the Canadian population that is officially bilingual actually fell slightly in the 2011 census, primarily due to the high degree of immigration in recent years.

The Commissioner of Official Languages, Graham Fraser, recently issued a report on the insufficient number of bilingual judges in Ontario and New Brunswick. He also warned the government to restrain its glorification of the Canadian contributions to the First World War (the 100th anniversary of which occurred in 2014) because it was a very divisive chapter in Canadian history.

The most controversial aspect of Marois PQ government’s 19 months in office (September 2012-April 2014) was the unveiling of the Charter of Quebec Values. That government decided that all Quebec state personnel would be prohibited from wearing conspicuous religious headgear, clothing, or adornments while on duty. The attire in question included Muslim hijabs and niqabs, Sikh turbans, Jewish kippas, and large Christian crucifixes. The only religious symbols the government would allow public servants to bear were finger rings, earrings, and small pendants. Marois then called an election for April 2014 on the assumption that the Charter would help her consolidate the nationalist francophone vote and give her a majority government. Instead, partly because of the general opposition to the prospect of another referendum on sovereignty, the federalist Quebec Liberal party won a majority government under Philippe Couillard, and the Charter never made it to the statute books. Couillard promised to protect the French language and culture while pursuing Quebec’s strong attachment to Canada and full participation in the Canadian federation, so that no major constitutional battles are anticipated over the next four years. Meanwhile, the BQ was reduced to two seats in the House of Commons, primarily due to resignations brought about by the extremist views of new party leader, Mario Beaulieu.

**Chapter 6: Ethnocultural Minorities**

The Wellesley Institute recently issued a report on the working lives of newcomers to Toronto which found low wages, poor working conditions, violations of labour laws, irregular hours, being paid under the table, and the lack of recognition of foreign credentials.

Many observers thought that besides the general principle of public service neutrality (laïcité), the evidence of increasing Muslim immigration, including the veils worn by Muslim women, was a particular inspiration for that Charter.

In an interesting (non-Charter) refugee case, the Supreme Court of Canada ruled in July 2013 that a person cannot be denied refugee status merely as a result of association with a
government that commits war crimes. Instead, to be so denied, a person must have voluntarily made a significant and knowing contribution to an organization’s criminal purpose (Ezokola v. Canada (Citizenship and Immigration), [2013] 2 S.C.R. 678. In another judicial decision, the Federal Court of Canada ruled that the Harper government’s denial of health-care coverage for refugee claimants constituted “cruel and unusual” punishment in violation of the Charter of Rights and Freedoms. While the government appealed the decision, it resumed most such health-care coverage temporarily. In a third case, the Federal Court of Appeal allowed customs officers to use their on-the-job experience related to the behaviour of persons of certain ethnic origins in deciding who to stop and search at airports.

The Harper government unveiled a major overhaul of the Citizenship Act in February 2014. The Act would make it more difficult to become a Canadian citizen in terms of residency requirements; it would also correct technical problems in order to streamline the process, increase penalties for fraud, and give the minister increased power to revoke citizenship.

Chapter 7: Gender

p. 147 - Another example of a leading female in the senior ranks of the private sector is Kathleen Taylor, the new Chair of the Board of the Royal Bank of Canada. Still, her appointment also re-emphasized the enormous gender gap in the Canadian corporate elite. By 2014, women accounted for 17.1 percent of directors of companies on the FP500 list, while the proportion of visible minorities fell to two percent.

p. 152 – Between February 2013 and November 2013, Canada had six female premiers in office simultaneously: the four mentioned, plus Kathleen Wynne in Ontario and Eva Aariak in Nunavut. But by May 2014, the number was down to two, Clark and Wynne, as Aariak and Marois were defeated in elections and Redford and Dunderdale were forced to resign by their own parties.

p. 155 – Much controversy arose in recent years over the plans of Trinity Western University, a private evangelical Christian institution in B.C., to establish a law school. The University’s code of conduct for all staff and students that prohibits sexual intimacy “violating the sacredness of marriage between a man and a woman,” is widely seen as discriminatory against gays and lesbians. After the (Ontario) Law Society of Upper Canada and the Nova Scotia Barristers’ Society both voted to deny future graduates of the program from practicing law in their provinces, the BC Law Society changed its position as well, and in November 2014, the provincial government withdrew authorization for the new law school. The university announced that it would appeal this decision.

Chapter 8: Class
In November 2014, Finance Minister Joe Oliver approved a $550 million tax credit for small business without conducting any internal analysis to discover how many jobs it would create. The Minister relied solely on the estimate of the Canadian Federation of Independent Business, whose estimates were contradicted by the Parliamentary Budget Officer.

All three major political parties are focusing on the ill-defined middle class as they approach the 2015 federal election. Liberal leader Justin Trudeau has been most explicit in this quest.

The CAW and the Communications, Energy and Paperworkers Union have merged to form a new union, Unifor, becoming the third largest union in Canada and the largest private-sector union, with a membership of approximately 300,000.

The labour movement suffered another legal defeat in 2012 when the Supreme Court of Canada ruled that several public sector unions were not entitled to a $28 billion surplus in their pension plan that the government had raided in the 1990s in order to help reduce its deficit (Professional Institute of the Public Service of Canada v. Canada (Attorney General), [2012] 3 S.C.R. 660. The Supreme Court made other recent decisions, however, that were more favourable to labour. In Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd., [2013] 2 S.C.R. 458, a majority ruled that mandatory random alcohol testing by breathalyzer was not permitted even though it was limited to employees in safety-sensitive positions. The Court said that in a unionized setting any rule or policy unilaterally adopted by an employer and not subsequently agreed to by a union must be reasonable and consistent with the collective agreement. For random alcohol testing to be reasonable, the employer must first establish that there is a substance abuse problem in a safety-sensitive work environment. In Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401 [2013] 3 S.C.R. 733, the Supreme Court ruled that during a lawful strike, the union could videotape individuals crossing the picket line. Other cases are headed to the Court dealing with whether the Charter right of freedom of association carries with it the right to strike.

The temporary foreign workers program became especially controversial in 2014 and the government scrambled to make adjustments to it.

A report from the Canadian Medical Association in mid-2013 concluded that poverty is the greatest barrier to good health, affected as it is by poor housing, malnourishment, and social isolation. The Globe and Mail ran a comprehensive series on “The Wealth Paradox” in late 2013. The National Household Survey (however flawed) issued considerable data on income in Canada in September 2013, and a year later, Statistics Canada developed a new measure of income disparity called the Canadian Income Survey. While warning that its results should not be
compared with previous studies, it found that in 2012, 4.7 million people or 13.8 percent of the population lived with low incomes.

p. 181 – Statscan reported in 2014 that the “one percent,” a group starting at a threshold of $215,365, gained 10.3 percent of the total national income in Canada in 2012.

Chapter 9: Urban/Rural Location, Religion, and Age

p. 197 – In a complicated case in December 2012 that balanced the Charter right of a fair trial with freedom of religion, the Supreme Court had to decide whether a witness could testify with her face covered by wearing a niqab. The majority resolved the dilemma by ruling that the issue would have to be settled by the trial judge on a case-by-case basis. (R. v. N.S., [2012] 3 S.C.R. 726).

See the discussion in Chapters 5 and 6 above on the Quebec Charter of Values.

p. 202 – Canada Post has announced that it will eventually eliminate door-to-door urban mail delivery, a decision that would most disadvantage seniors and mobility-challenged persons. A Canada Post spokesperson suggested that walking to retrieve their mail from a community mailbox would provide good exercise for seniors! Meanwhile, a recent Ipsos-Reid poll revealed that a strong majority of Canadians aged 45 and older are anxious about their financial future and the quality of health care they are likely to receive.

Chapter 10: Canada’s External Environment: The United States and the World

p. 208 – In November 2013, the WTO upheld the EU ban on the import of seal products from Canada. Even though the ban “undermines the principles of fair trade,” the WTO found it justified because it “fulfills the objective of addressing EU public moral concerns on seal welfare.” It also admitted that the exemption for Inuit seal products is not applied evenly and is often overshadowed by the broader prohibition. Canada appealed the decision without success.

p. 214 – Just as the Afghan mission came to a final conclusion in mid-2014, Canada sent 6 CF-18 fighter jets to a NATO base in Romania as a sign of concern with Russian “expansionism and militarism” in the wake of its annexation of Crimea and possibly other parts of Ukraine. Then, in October 2014, the Harper government persuaded a majority in the House of Commons to support a Canadian military combat role against the Islamic State (ISIS) in Iraq. On October 20, a Canadian soldier died after being run down in a parking lot near Montreal, and two days later, a reservist standing guard at the National War Memorial was shot dead before the gunman stormed into the Parliament Buildings. The two killers, apparently deranged and radicalized “lone wolves,” were themselves killed in the process.
p. 215 – In a historic shift, the Harper government announced in November 2013 that it would make “economic diplomacy” in service of private industry the centrepiece of Canada’s foreign policy. “All diplomatic assets of the Government of Canada will be marshalled on behalf of the private sector.”

p. 220 - After having rejected two earlier foreign takeovers of Canadian firms, the Harper government rejected a third in the case of the proposed takeover of MTS Allstream Inc. by the Egyptian company Accelero Capital Inc. In this case, the rejection was based on national security grounds. Other foreign investment proposals, especially from China, were discouraged in advance.

p. 223 – Several new cases of U.S. companies suing the Canadian government under Chapter 11 of NAFTA have been filed.

p. 224 - Canada and the European Union signed a free trade deal in October 2013 called the Comprehensive Economic and Trade Agreement (CETA). Although it was described as the biggest trade deal Canada had ever signed, and even had the support of the provinces, it was actually less significant than the free trade agreement with the United States because Canada will always trade much more with the U.S. It will also take another two years or so to finalize the details of the agreement, and then probably longer to be ratified by each member of the EU. Prime Minister Harper later signed a free trade deal with South Korea, while many other such negotiations are in progress.

Chapter 11: The Canadian Political Culture

p. 257 - The question of whether the Harper government has rendered the Canadian political culture more conservative remains hotly debated. For a view that it has not, see an EKOS poll for Canada 2020: www.ekospolitics.com/wp-content/uploads/rethinking_the_public_interest_october_2_2014.pdf

Chapter 12: Political Socialization, the Mass Media, and Public Opinion Polls

p. 271 – Table 12.1: In 2014, Quebecor/Sun Media sold its English-language daily newspapers to the Postmedia Network, so that as of January 1, 2015, Postmedia owned 43 daily newspapers, including the Suns and most of the smaller dailies in Ontario.

p. 274 – Reversing a previous policy, in early 2014 the CRTC ordered Canadian cable companies to include the Sun News Network in their offerings.
p. 276 – Table 12.2: In 2014, partly related to Pierre Karl Péladeau entering Quebec provincial politics, his Quebecor company sold its English-language newspapers to Postmedia, but retained ownership of its other media assets, at least for the time being.

p. 280 – The Harper government is indeed interested in knowing what the media say about it. Over the period 2013-14, it spent about $20 million on media monitoring contracts.

Chapter 13: Elections and the Electoral System

p. 292 – The current distribution of seats in the House of Commons is as follows: 106 Ontario, 75 Quebec, 36 British Columbia, 28 Alberta, 14 Manitoba, 14 Saskatchewan, 11 Nova Scotia, 10 New Brunswick, 7 Newfoundland and Labrador, 4 Prince Edward Island, and 1 each for Yukon, Northwest Territories, and Nunavut.

p. 298 – Inuit Canadians were actually enfranchised in 1950.

p. 299 – The judge in the first “Robocall case” agreed that an effort at vote suppression had been widespread in the 2011 campaign, but found that the scale of the fraud did not ultimately affect the outcome or warrant annulling the results. In the second robocall case, PC worker Michael Sona was found guilty of trying to prevent non-Conservative voters from reaching the polls. In sentencing him to nine months in jail in November 2014, the judge added that he did not believe Sona acted alone. The Commissioner of Canada Elections has since said that there will be no other robocall charges, even though additional evidence continues to surface. In November 2014, Dean Del Mastro, the Conservative MP for Peterborough, was found guilty of overspending during the 2008 election. He resigned his seat in the Commons rather than face expulsion and loss of his pension.

The Harper government introduced its so-called Fair Elections bill in February 2014. While many of its provisions objectively improved the electoral process, other aspects of the bill were highly contentious and seemed to be designed in the interests of the Conservative party. At first, Democratic Reform Minister Pierre Poilievre rejected any amendments as he tried to rush the bill through the parliamentary process, but the pressure from almost all expert witnesses and media commentators and from some Conservative MPs and senators eventually persuaded him to accept several alterations. Still, many aspects of the final bill were intended to suppress the casting of ballots by people unlikely to support the Conservative party (for example, in its restrictions on forms of voter ID), and to restrict the powers of Elections Canada (such as to encourage turnout and to compel witness testimony in investigating fraud). As many political scientists pointed out in this debate, and as Stephen Harper once said himself, electoral law is at the core of Canada’s democratic system, and should be an exception of the usual expectation of partisan wrangling.
Chapter 14: Political Parties and the Party System

p. 327 – At a historic convention in April 2013, the NDP approved a revision to the party’s preamble, essentially ceasing to call itself a “democratic socialist” party whose objective is to direct the production and distribution of goods and services to “meeting the social and individual needs of people…and not to the making of profit.” The new preamble speaks of building “a country of greater equality, justice, and opportunity…. We believe in a rules based economy, nationally and globally, in which governments have the power to address the limitations of the market in addressing the common good, by having the power to act in the public interest, for social and economic justice, and for the integrity of the environment.”

p. 329 – The evidence of a “social conservative” wing of the Harper party was revealed in discussions in the House of Commons in 2013 on various aspects of the abortion issue. A new book by Donald Gutstein, Harperism: How Stephen Harper and his Think Tank Colleagues Have Transformed Canada (Lorimer: Toronto, 2014), makes the argument that neo-liberalism does not want to reduce the role of the state so much as to use the state to create and enforce markets and maximize economic freedom.

p. 330 – In a column in the Globe and Mail, Lawrence Martin identified policy areas in which Stephen Harper has “moved the dial” in a conservative direction: law and order (crime bills), the economy (tax cuts, free trade agreements), the environment (minimal action on climate change), the military (defence buildup), foreign policy (Middle East, United Nations), federal-provincial relations (decentralization), science (muzzling), labour (anti-union), and jurisprudence (judicial appointments). While some Conservatives complain that Harper is not a true conservative, but rather a pragmatic incrementalist leading a brokerage party, others find his policies consistently right-wing.

p. 331-2 – The Liberal Party selected Justin Trudeau as its new leader in April 2013, and the Bloc Québécois elected Mario Beaulieu as its new leader in June 2014. The latter’s election led to the resignation of two BQ MPs.

p. 335 – The Conservative party convention in October 2013 was somewhat overshadowed by the PMO-Senate expenses scandal. The party passed resolutions attacking unions and public service workers, against gender-selection abortions, euthanasia, or assisted suicide, and reinforcing the legitimacy of private ownership of firearms.

Chapter 15: The Election Campaign, Voting, and Political Participation

p. 351 – Susan Delacourt has recently written a book, Shopping for Votes: How Politicians Choose Us and We Choose Them, in which she demonstrates the new emphasis that political
parties put on targeting specific segments of voters. With its massive collection of information on the identity of individual voters, the Conservative party is particularly well placed to engage in the practice of dividing the electorate into tiny slices or groups of customers, finding out what they want, and promising it to them. All of this is at the expense of offering broad policies in the public interest. She distinguishes between advertising and political marketing—the former consisting of promoting the party’s own policies, while the latter seeks to discover what prospective supporters want and then shaping party policies around voter demand.

p. 353 – Brad Lavigne has recently written a book, Building the Orange Wave: The Inside Story Behind the Historic Rise of Jack Layton and the NDP, in which he details the successful NDP campaign in the 2011 federal election.

p. 358 – The accusation is sometimes made that Canadian foreign policy is designed in the interests of domestic political support for the party in power. Canada’s aggressive stance against the Russian invasion of Ukraine in 2014 is cited as an example, given that there are over 1.2 million Canadians of Ukrainian descent, many living in strategically located constituencies.

p. 363 – Concern continues to be felt about the low voter turnout rate of young Canadians. Elections Canada conducted a survey after the 2011 election in which it found that young people who discussed politics with their family and friends or who took a civics course in high school reported higher voting rates than others, and thus endorses strengthening civic education in the country’s schools and positive family discussions about the political system.

Chapter 16: Advocacy Groups, Social Movements, and Lobbying

p. 392 – The very first conviction under the Lobbying Act occurred in July 2013 in the case of an official of a national health charity who failed to register as a lobbyist. Although this was a rather insignificant case, it might have the effect of cleaning up much questionable lobbyist behaviour. The Commissioner of Lobbying released proposed revisions to the Lobbyists’ Code of Conduct in late 2014.

Chapter 17: The Canadian Constitution and Constitutional Change

p. 424 – Canada joined other countries that recognize Elizabeth II was their head of state in changing the line of succession (making it gender-neutral) prior to the birth of the first child of William and Kate, the Duke and Duchess of Cornwall. The Harper government did so by means of the Succession to the Throne Act, a simple act of Parliament. But some constitutional scholars claim that a formal constitutional amendment was required under Section 41 of the Constitution Act, 1982, which would necessitate unanimous provincial consent. The issue is now before the courts and the subject of much academic discussion.
Somewhat similarly, after arguing that its bills to reform the Senate with a simple act of Parliament were constitutionally valid and did not require a constitutional amendment involving some degree of provincial approval, the Harper government sent a reference case to the Supreme Court of Canada on the matter. The case was heard in November 2013, with a decision released in April 2014. The court unanimously ruled that to introduce a nine-year term in place of appointment to age 75 and to add consultative elections at the provincial level to guide the PM in making appointments were both changes that affected the fundamental nature and role of the Senate, and could only be achieved with the approval of at least seven provinces representing at least 50 percent of the population; moreover, the unanimity of the provinces would be necessary for abolition of the chamber. (see below – Chapter 23).

When the Harper government tried to amend the Supreme Court Act with a clause in the omnibus budget implementation bill in the spring of 2014, the Supreme Court again ruled that such a change required unanimous provincial consent. (see below – Chapter 24).

**Chapter 18: The Federal System**

p. 451 – As part of its partial withdrawal from the health sector, the Harper government announced in 2013 that it would no longer help fund the Health Council of Canada.

p. 456 – At the meeting of the Council of the Federation in July 2013, provincial premiers were particularly critical of the proposed federal Canada Jobs Grant program, which cut federal transfers to the provinces for skills training. This conflict proceeded until March 2014, when federal Employment Minister Jason Kenney came to an agreement with Council under which he would negotiate bilateral arrangements with the provinces. In the case of Quebec, then on the eve of an election call, the province signed a separate (asymmetrical) agreement. At their meetings in 2013, the premiers also sought more federal funding for disaster mitigation after devastating floods in Alberta and Ontario, generally supported a new west-to-east national oil pipeline, objected to federal infrastructure transfers on a project-by-project basis, and remained opposed to the Employment Insurance changed introduced in 2012. In addition, they were concerned about such issues as reform of the Canada Pension Plan, uncertainties in foreign investment rules, and the general state of federal-provincial relations. At the 2014 meeting in Charlottetown, the premiers singled out the increased burden of financing health care (especially for seniors) and the need for greater federal funding for infrastructure projects.

In her 2014 budget, Ontario premier Kathleen Wynne complained that the Harper government had imposed over 100 cuts on that province, and much of her election campaign was centred on federal-provincial relations. The Parliamentary Budget Officer confirmed that the federal government is shortchanging Ontario by some $1.2 billion under the equalization payments formula alone. Harper and Wynne continued to spat throughout the rest of 2014, and the
provinces asked for billions of dollars more in infrastructure funding, with Finance Minister Joe Oliver announcing in December that Ontario would receive an extra $1.25 billion in 2015-16.

Chapter 19: The Charter of Rights and Freedoms

p. 469 – In February 2013, the Supreme Court of Canada tried to clarify the law with respect to “hate speech” in dealing with a Saskatchewan man who frequently distributed anti-gay pamphlets. The Court ruled that the Charter right of freedom of expression allows the expression of ideas that are only “offensive,” but not those that a reasonable person would view as likely to expose the targeted group to “detestation and vilification.” In this case, William Whatcott was convicted on two charges and acquitted on two others (Saskatchewan (Human Rights Commission) v. Whatcott, [2013] 1 S.C.R. 467).

p. 472 – The issue of assisted suicide returned to the Supreme Court in October 2014 in the case of Lee Carter, et al. v. Attorney General of Canada, et al., with a decision expected in early 2015. Meanwhile, the province of Quebec passed Bill 52, which allowed people to request assisted death from a physician if a number of strict criteria were met. In a non-Charter end-of-life decision, the Supreme Court ruled (5-2) in the Rasouli case that life support can be discontinued only with the consent of the patient or the substitute decision maker. In this case, doctors proposed palliative care rather than life support because they saw no prospect of recovery for Mr. Rasouli, who had been unconscious and supported in a near-vegetative state for three years, but the family demanded that he be kept in Intensive Care (Cuthbertson v. Rasouli, [2013] 3 S.C.R. 341).

p. 472-3 – The Supreme Court and the Harper Government’s “tough-on-crime” Agenda: Since it came to power in 2006, the Harper government has passed many laws to make the criminal justice system more punitive. Unfortunately for that agenda, the Supreme Court of Canada has declared many aspects of these laws unconstitutional. Here is the list of eight cases, mostly at the Supreme Court level, which in one way or another interfered with the Harper agenda, not all of them specifically based on the legal rights section of the Charter:
-Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101 – in which Canada’s prostitution laws were declared unconstitutional as a violation of security of the person and a violation of the principles of fundamental justice of the sex workers involved. The government was given a year to pass new legislation in this field. Such a bill was passed, but most observers felt that it did not meet the standards outlined by the Supreme Court in the Bedford case.
-Canada (Attorney General) v. Whaling (March 20, 2014) - in which the Supreme Court struck down a law that retroactively limited parole for non-violent offenders.
-Reference re Supreme Court Act, ss. 5 and 6 (March 21, 2014) - in which the Supreme Court denied the Harper government’s appointment of Marc Nadon, not because he was necessarily in favour of the “tough on crime” agenda or a judge who was likely to hold that the Court should be
cautious in overturning legislation of any kind, but rather that he did not meet the requirements of an appointee from Quebec—that the nominee be a current member of the Quebec bar or Quebec bench—see Chapter 24 below.

-Mission Institution v. Khela (March 27, 2014) - in which the Supreme Court gave federal inmates wide latitude to go to court to challenge the conditions of their detention, such as a transfer from one institution to another to placement in segregation

-R. v. Summers (April 11, 2014) - in which the Supreme Court upheld the discretion available to judges to reduce sentences for time served before sentencing.

-R. v. Spencer (June 13, 2014) - at the same time that Parliament was debating the government’s new cyberbullying bill in June 2014, which gave broad new surveillance powers to the police, and which was criticized by the new Privacy Commissioner, the Supreme Court ruled that police cannot obtain basic information about customers from Internet providers without a judge-issued search warrant.

-R. v. Taylor (July 18, 2014) - the Supreme Court told police officers that they need to be prompt and proactive in helping suspects find a telephone to call their lawyer.

- A number of judges in different provinces have refused to levy the mandatory victim surcharge on convicted offenders who were clearly unable to pay. In at least one case, the judge ruled that the surcharge constituted “cruel and unusual punishment.”

p. 474 – As mentioned in Ch. 9, in a complicated case in December 2012 that balanced the Charter right of a fair trial with freedom of religion, the Supreme Court had to decide whether a witness could testify with her face covered by wearing a niqab. The majority resolved the dilemma by ruling that the issue would have to be settled by the trial judge on a case-by-case basis (R. v. N.S., [2012] 3 S.C.R. 726).

p. 475 – In April 2013, the Harper government resurrected two anti-terrorism powers that had been part of the original Anti-Terrorism Act, but that had expired in 2007, and in May 2014, the Supreme Court ultimately upheld the use of security certificates in the case of Mohamed Harkat. The Court admitted that the security-certificate system is imperfect, and said that judges have the responsibility to use their discretion to keep the hearings fair for the suspected terrorists. It was also noted that no security certificates have been issued since 2008 and that Harkat’s deportation to Algeria could still be halted if he could prove that it would put his life in danger.

p. 476 – In a “disability case” somewhat similar to Eldridge, the Supreme Court ruled in 2012 that a North Vancouver school board had discriminated against a dyslexic child who was not given adequate help to obtain literacy. The Board was ordered to reimburse the family for several years of private school tuition (Moore v. British Columbia (Education), [2012] 3 S.C.R. 360).

p. 485 – An official of the Justice Department, Edgar Schmidt, has challenged the practices of the department in meeting its obligation to inform Parliament when new legislation is likely to
violate the Charter. After complaining that such a report has never been made, Schmidt was suspended without pay, and has launched a case in the Federal Court.

Other recent Charter cases are mentioned in Chapters 4, 6, 8, 9, and 21.

**Chapter 20: The Policymaking Process and Policy Instruments**

p. 499 – The dramatic fall in the price of oil at the end of 2014 would significantly reduce federal revenues, but the Harper government made massive cuts in public expenditures such that it still expected to balance the 2015 budget.

p. 511 – The recent reduction in greenhouse gas emissions from the Canadian coal industry, especially in Ontario, has been promising, but increased emissions from the Alberta oil sands have wiped out advances in other industries and in other parts of the country. The current Canadian commitment, made in the 2009 Copenhagen Accord, is to reduce greenhouse-gas emissions by 17 percent from 2005 levels by 2020. After repeatedly promising new federal regulations on emissions from the oil and gas sector, however, the Harper government now claims that its efforts must be done in concert with the United States, and the Canadian government’s own reports admit that the 2020 target will not be met. The only recent improvement came with new regulations dealing with transport of oil after the Lac-Mégantic disaster.

**Chapter 21: The Executive: Crown, Prime Minister, and Cabinet**

p. 516 – The Ontario Court of Appeal has upheld the validity of the oath to the Queen required of new citizens. The Court ruled that the oath did not violate Charter rights of freedom of expression or religion because the Queen should be seen as symbolic of the whole Canadian constitutional system.

p. 521 – Stephen Harper prorogued Parliament in 2013 after a two-year session that started after the 2011 election. The prorogation in itself was uncontroversial, but given the PMO-Senate scandal, the decision to delay the start of the next session until mid-October was widely criticized. The delay appeared to be designed to deny the Opposition the opportunity to ask pointed questions of the PM on this and other questions.

p. 534 – Stephen Harper shuffled his Cabinet during the summer of 2013, replacing some of the older ministers with younger ones and adding a few more women. The Cabinet now has 39 ministers, of whom 12 are women. To distance himself from the Senate expenses scandal, Harper decided that the government leader in the Senate would no longer be a member of Cabinet.

p. 541 – In May 2013, the head of the PMO, Nigel Wright, resigned after it was revealed that he had given Senator Mike Duffy a personal cheque for $90,000 so that Duffy could repay the Senate for the illegal housing and travel expenses for which he had been reimbursed. Wright was succeeded as Harper’s Chief of Staff by Ray Novak.

The PMO-Senate Scandal
The Senate’s rules on residence and reimbursement of accommodation expenses of its members have been notoriously ambiguous and rarely enforced. Senators are supposed to live in the province they represent, and they can therefore be reimbursed for their accommodation expenses while in Ottawa on Senate business. Many have pursued life-long careers in the national capital, however, and actually live there, leading to some confusion and abuse in their claims for reimbursement. A somewhat similar ambiguity and lack of enforcement extends to travel and other expenses, since many Senators have partisan and personal economic interests beyond their work in the chamber. In 2013, four sitting Senators were singled out for claiming inappropriate reimbursement of accommodation and/or other expenses: Mike Duffy, Pamela Wallin, Patrick Brazeau, and Mac Harb. Harb soon resigned from the Senate, and the other three were later suspended without pay for the length of the current session of Parliament, expected to conclude with the 2015 federal election. Protesting her innocence, Wallin repaid some $140,000 in contested expenses, while Brazeau refused to do so. But the case of Mike Duffy was a more complicated matter.

Duffy represented Prince Edward Island in the Senate, but essentially lived in Ottawa. Because he owned a cottage in PEI, however, he submitted claims for accommodation in Ottawa, along with claims for reimbursement for questionable travel, food, and other expenses. When these became public knowledge and he became an embarrassment to the Harper government, he was told to repay them. The Senate also hired the Deloitte accounting firm to perform a forensic examination of questionable senator expenses, and it fell to Nigel Wright, as Chief of Staff to the Prime Minister, to “solve the problem.” When Duffy claimed to be unable to pay, Wright consulted the party’s chief fundraiser, Senator Irving Gerstein, and it was agreed that the party would reimburse the public purse. The PMO then inappropriately asked Gerstein to contact the Deloitte investigators to see if Duffy would be excluded from their report if he repaid, as well as inappropriately pressuring the sub-committee of the Senate Internal Economy Committee to remove Duffy from the list of senators in its draft report once he had repaid. However, when Gerstein discovered that the amount owing was in the $90,000 range rather than the $30,000
range, as had been anticipated, he refused to pay from party funds. Wright, Duffy, other Senators, and other members of the PMO then engineered a complex secret scheme in which Wright ultimately paid the $90,000 out of his own personal funds, while giving the impression that Duffy had repaid the amount from a bank loan. Besides the immoral and possibly illegal nature of this attempted cover-up, the question was: did the Prime Minister know about it and did he support it? Harper vehemently denied knowing about it, tried to blame it all on Wright and Duffy, and parted ways with his Chief of Staff. But most observers believed that the PM knew more than he let on, given that everyone around him was deeply involved and given his reputation for micro-management of the whole government apparatus. Finally, emails uncovered by the RCMP gave credence to the view that Wright had consulted with Harper about the problem, and the RCMP said that Wright and Duffy were guilty of bribery, fraud, and breach of trust. Harper was under intense interrogation from Opposition Leader Tom Mulcair for weeks on end, changed the details of his explanation several times, and either instigated or supported the Senate motion to suspend Duffy, Wallin, and Brazeau without pay. The RCMP has laid 31 charges against Duffy, including bribery, fraud, and breach of trust, but the force implicitly announced that it would not press criminal charges against Wright.

p. 541 – Janice Charette took over as Clerk of the Privy Council and Secretary to the Cabinet in September 2014.

Chapter 22: The Bureaucracy

p. 576 – Many provisions in the fall 2013 Speech from the Throne and omnibus budget bill were seen as an attack on federal bureaucrats. In what was called a change in the balance of power in relations between the government and public service unions, the bill would allow the government to unilaterally designate parts of the bureaucracy as essential services that cannot strike; it would make it harder for unions to seek arbitration for labour disputes; and it required arbitrators setting pay levels to give preponderant weight to “fiscal circumstances.” More generally, the government planned to make more cuts to the federal public service and bring public service compensation into line with the private sector. While the 2012 budget promised to eliminate 19,200 federal government jobs over three years, some 25,000 were actually cut by mid-2014, with plans for 8,900 more to be gone by 2017.

Chapter 23: Parliament

p. 589 – It is increasingly common for a session of parliament to last two years, rather than one; at least the Harper government had one session from the 2011 election to mid-2013, and started another in October 2013 that was expected to extend to the election of 2015.
After facing what is usually described as the most rigid party discipline in Canadian history, some Conservative backbenchers began to challenge the edicts of the PMO and party whip in early 2013. Most prominent were statements and actions about abortion, an issue which Prime Minister Harper repeatedly claimed would not be re-opened on his watch. A private member’s bill from Stephen Woodworth providing for a debate on when life begins was widely seen as a rejection of Harper’s promise, and most observers were surprised that when it came to a vote, even the Cabinet was split. A second Conservative private member, Mark Warawa, introduced a motion condemning sex-selective abortions that was sidelined by the PMO in agreement with other parties. Conservative backbenchers also complained that they were not allowed to make members’ statements without the approval of the PMO. In response to a question of privilege from Warawa, Speaker Andrew Scheer told MPs that he would not be tied to speaking lists submitted to him by party whips with respect to members’ statements or even Question Period. He indicated that while he would continue to be guided by party lists, other MPs could stand up and “catch his eye” to be recognized. Finally Brent Rathgeber, MP for Edmonton-St. Albert, resigned from the Conservative caucus to sit as an Independent. In addition to his support of the other complaints, he was upset that his private member’s bill to require disclosure of high bureaucratic salaries had been watered down by his own party, and he referred to Conservative backbenchers as “trained seals.” Rathgeber soon penned a book, Irresponsible Government: The Decline of Parliamentary Democracy in Canada (Toronto: Dundurn, 2014). A new book by Alison Loat and Michael MacMillan, Tragedy in the Commons: Former Members of Parliament Speak Out About Canada’s Failing Democracy reveals what former MPs think about the Canadian parliamentary process.

For 2014-15, the base salary for an MP rose to $163,700, while that of a Senator increased to $138,200.

The first Parliamentary Budget Officer, Kevin Page, took the government to the Federal Court when it refused to provide detailed information regarding the $5.2 billion in cuts made in the 2012 budget. Based on a technicality, Page lost his case, but in the course of the decision, the judge rejected most of the government’s arguments, including the one that the PBO had no right to take the government to court to secure such information. Shortly afterward, NDP leader Tom Mulcair presented a private member’s bill to make the PBO an independent agent of Parliament, but it was narrowly defeated by the Conservative majority in the Commons. By the end of 2014, the new PBO still had not received full information on how the budget cuts of 2012 affected individual programs.

To distance himself from the Senate expenses scandal, Harper decided in his 2013 shuffle that the government leader in the Senate would no longer be a member of Cabinet.
p. 618 – A Conservative private member’s bill sponsored by Ross Hiebert that would force unions to disclose salaries above $100,000 and all payments made to outside groups or individuals above $5,000 was amended by the Senate in 2013, but the prorogation of Parliament prevented the Commons from deciding how to deal with the amended bill. Somewhat similarly, an NDP private member’s bill that would make attacks on transgender people subject to hate-crimes provisions in the Criminal Code and grant them protection under the Canadian Human Rights Act was passed by the Commons, but did not get through the Senate before prorogation, and has been shelved until 2015.

Many of the people Stephen Harper has appointed to the Senate, such as Irving Gerstein and Pamela Wallin, have maintained corporate interests on the side, reinforcing to some extent the traditional reputation of the chamber as over-representing business interests. On the other hand, with a Conservative majority in the Commons as well, legislation coming from the lower chamber was already corporate-friendly. Indeed, two private members’ bills from the Commons that attacked labour unions were diluted by amendments in the Senate.

p. 619 - Somewhat similar to Harper’s attempt to distance himself from the Senate scandals, Liberal leader Justin Trudeau divorced the Liberals in the Senate from those in the Commons in January 2014. He ruled that senators could no longer attend meetings of the Liberal caucus, were no longer subject to Liberal party discipline, and could no longer hold party offices or act as party organizers and fundraisers. Although they are officially now Independents, the former Liberal senators continue to function as a party caucus. Trudeau proposed that future senators should be appointed after an "open, transparent, non-partisan process" along the lines recommended in this text.

p. 620 – After arguing that its bills to reform the Senate with a simple act of Parliament were valid and did not require a constitutional amendment involving some degree of provincial approval, the Harper government sent a reference case to the Supreme Court of Canada on the matter. In April 2014, and echoing a similar reference opinion delivered by the Quebec Court of Appeal, the Supreme Court ruled that because both the changes affected the fundamental nature and role of the Senate, the approval of at least seven provinces representing at least 50 percent of the population would be required; moreover, unanimity of the provinces would be necessary for abolition of the chamber.

As noted in Ch. 21 above, the cause of Senate reform was bolstered by the revelation of expense scandals involving several members of the chamber in early 2013. Some instances of fraud centred on claiming an accommodation allowance in Ottawa for time spent “away from home,” when in fact their primarily residence was actually in the national capital. Others involved fraudulent travel claims when the members were not actually involved in “Senate business.” As a result, Mike Duffy, Patrick Brazeau, and Pamela Wallin resigned from the Conservative caucus,
as did Mac Harb from the Liberal caucus. The Duffy scandal precipitated the resignation of Nigel Wright, Prime Minister Harper’s Chief of Staff, who cut Duffy a personal cheque for $90,000 to reimburse the Senate for his illegal claims. In the end, the cases were referred to the RCMP to see if the actions were criminal in nature, and the Auditor General promised to review the expense claims of all members of the chamber. Mac Harb later resigned from the chamber, while by a majority vote in the Senate, Duffy, Brazeau, and Wallin were suspended without pay until the end of the current session of Parliament. Duffy has been charged with bribery, fraud, and breach of trust, and faces trial in April 2015.

Chapter 24: The Judiciary

p. 630 – Because the cost of going to court has become out of reach for many of those in need, a recent report by the Canadian Bar Association calls on the federal government to restore legal aid funding to the level it was in 1994.

p. 638 – Morris Fish retired from the Supreme Court of Canada in 2013 and Louis LeBel in 2014. See below.

p. 641 – The appointment of female judges has dropped off precipitously under the Harper government, and studies indicate that it has appointed only three non-white judges out of about 200 appointments to the superior courts in the provinces since 2008. One of the controversial white male appointments was that of former public safety minister Vic Toews to the Manitoba Court of Queen’s Bench. The government has also appointed many more prosecutors than defence counsel.

p. 643 – After the retirement of Morris Fish, Marc Nadon was appointed to the Supreme Court following the same procedure as his immediate predecessors. However, this appointment was controversial for several reasons. First, he had served some 20 years on the Federal Court, dealing with federal legal cases and becoming an expert in maritime law, but according to the Supreme Court Act, a judge representing Quebec had to come from a Quebec court or be a lawyer currently practicing in Quebec. Second, Nadon was already semi-retired, and many felt that he might not be up to the heavy workload of the Supreme Court. Third, many observers expected a female judge to be appointed to restore gender balance on the Court. Fourth, those who studied Nadon’s previous decisions were unimpressed, the judgments being deemed “mediocre” or “ideological.” Harper and MacKay realized there might be a problem so they asked two retired SCC judges and constitutional expert Peter Hogg for their opinions on the matter, and they all said there was just a technicality—after all, Nadon had once practiced law in Quebec. His selection was challenged by the government of Quebec as well as by a Toronto lawyer, after which the Harper government added a declaratory provision to the Supreme Court Act by means of its budget implementation bill to take out the requirements that were potentially prohibitive. At the same time, Prime Minister Harper asked the other eight judges on the
Supreme Court to rule on whether or not the appointment was legal. In the meantime, Nadon was not allowed to take his seat.

The Supreme Court ruled 6-1 that Nadon was not qualified to be appointed because he was neither a Quebec judge nor a current practicing Quebec lawyer. The point of the clause in the Act was that the three judges on the SCC from Quebec should be experts in the Quebec civil law system, whereas Nadon had spent 20 years on the Federal Court; this clause was a crucial aspect of the Confederation bargain, and no mere technicality. “This analysis…reflects the historical compromise that led to the creation of the Supreme Court as a general court of appeal for Canada and as a federal and bijural institution. Section 6 seeks (i) to ensure civil law expertise and the representation of Quebec’s legal traditions and social values on the Court, and (ii) to enhance the confidence of Quebec in the Court.” It also ruled that the Supreme Court Act could not be amended by Parliament alone by a clause in the budget implementation bill. An amendment to the composition (and eligibility requirements) of the Supreme Court constituted a formal constitutional amendment which required the unanimous consent of provincial legislatures.

Sometime later, the PMO issued an unprecedented press release accusing the Chief Justice of interfering in the case by attempting to phone the Minister of Justice in the process of Nadon’s appointment. The Chief Justice responded that the incident happened long before Nadon’s name had ever been raised, and that she merely wanted to warn the Minister about a potential issue of eligibility of Federal Court judges from Quebec.

In June, 2014, the government filled the vacant Quebec spot on the Supreme Court of Canada with Clément Gascon. Although it did not follow the recent practice of parliamentary participation in the appointment, the government did consult the government of Quebec and various legal authorities in that province. In December 2014, the government filled the new Quebec vacancy with Suzanne Côté, whose appointment brought the female cohort on the Court back to four. She was appointed from the practicing bar without any judicial experience, and without any parliamentary involvement.