Court File No. A-265-15

FEDERAL COURT OF APPEAL

BETWEEN:

THE PRIME MINISTER OF CANADA and
THE GOVERNOR GENERAL OF CANADA

Appellants

and

ANIZ ALANI

Respondent

NOTICE OF CONSTITUTIONAL QUESTION

The Respondent intends to question the constitutional validity, applicability or effect of such law, order, regulation, instrument of advice, minute of council, common law rule, convention, practice, usage, custom, grant of discretion, or policy (together, the "**Impugned Enabling Law**") that enables or authorizes the policy, act or decision of the Prime Minister of Canada, or alternatively the Queen's Privy Council for Canada acting on the recommendation of the Prime Minister of Canada, reflecting or resulting in the refusal to advise the Governor General to summon fit and qualified persons to the Senate within a reasonable time after a vacancy happens in the Senate.

The Respondent seeks a declaration pursuant to the *Federal Courts Act* that the Prime Minister of Canada must advise the Governor General to summon a qualified person to the Senate within a reasonable time after a vacancy happens in the Senate.

The within appeal is brought against the Order of the Honourable Justice Harrington of the Federal Court dated May 21, 2015 dismissing the Appellants' motion to strike the Respondent's underlying application for judicial review, reasons for which dismissal are reported at *Alani v. Canada (Prime Minister)*, 2015 FC 649.

The question is to be argued at a time and place to be fixed by the Judicial Administrator. The Appellants have requested that the appeal be heard at Vancouver.

The following are the material facts giving rise to the constitutional question:

1. There are currently 20 vacancies in the Senate.

2. There are currently 85 Senators in the Senate, not excluding suspensions.

3. There are currently six vacancies in Ontario, five vacancies in Quebec, three vacancies in Manitoba, two vacancies from each of Nova Scotia and New Brunswick, and one vacancy from each of Prince Edward Island and British Columbia.

4. The Senate has not had 105 appointed Senators since September 6, 2012.

5. No person has been appointed to the Senate since March 25, 2013.

6. On December 4, 2014, the Prime Minister of Canada communicated publicly that he did not intend to advise the Governor General to summon fit and qualified persons to fill existing vacancies in the Senate.

The following is the legal basis for the constitutional question:

1. Section 32 of the *Constitution Act, 1867* provides:

   "**When** a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General **shall** by Summons to a fit and qualified person fill the Vacancy." [Emphasis added].

2. Section 21 of the *Constitution Act, 1867* provides that "[t]he Senate shall, subject to the Provisions of this Act, consist of One Hundred and five members, who shall be styled Senators."

3. Section 22 of the *Constitution Act, 1867* provides that each province and territory "shall be entitled to be represented in the Senate" as follows:

   a. 24 Senators shall be appointed from each of Ontario and Quebec;
   b. 10 from each of Nova Scotia and New Brunswick,
   c. six from each of Manitoba, British Columbia, Alberta, Saskatchewan, and Newfoundland and Labrador;
   d. four from Prince Edward Island; and
   e. one from each of Yukon Territory, Northwest Territories, and Nunavut.

4. Section 24 of the *Constitution Act, 1867* provides for the formal appointment of Senators by the Governor General.

5. However, as the Supreme Court of Canada confirmed in the *Senate Reform Reference*, "In practice, constitutional convention requires the Governor General to follow the recommendations of the Prime Minister of Canada when filling Senate vacancies."

6. A reduction in the number of Senators requires formal constitutional amendment in accordance with the amending formula set out in the *Constitution Act, 1982*.

7. The Governor General has a prerogative power or common law right to receive, and the Prime Minister of Canada, or alternatively the Queen's Privy Council for Canada acting on the recommendation of the Prime Minister of Canada, has a corresponding prerogative power or common law duty to provide advice necessary to enable the Governor General to comply with the formal legal duty under section 32 of the *Constitution Act, 1867* in light of the constitutional convention described in paragraph 5 above.

8. Having regard to:

    a. the aforesaid constitutional convention,

    b. the aforesaid prerogative or common law rights, powers and duties,

    c. the internal architecture of the Constitution of Canada, and

    d. the principles underlying the Constitution of Canada as described by the Supreme Court of Canada including the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities,

    the Prime Minister of Canada, or alternatively the Queen's Privy Council for Canada acting on the recommendation of the Prime Minister of Canada, cannot fail or refuse to provide, or unreasonably delay in providing advice to the Governor General regarding the appointment of fit and qualified persons to fill vacancies in the Senate.

9. An Impugned Enabling Law that purports to authorize or enable the Prime Minister of Canada or the Queen's Privy Council for Canada to fail or refuse to provide, or unreasonably delay in providing advice to the Governor General regarding the appointment of fit and qualified persons to fill vacancies in the Senate, such Impugned Enabling Law is inconsistent with the Constitution of Canada and is, to the extent of the inconsistency, of no force or effect.

June 11, 2015

ANIZ ALANI, Respondent
[redacted]
Tel: (604) 600-1156
E-Mail: senate.vacancies@anizalani.com

TO:

William F. Pentney, Q.C.
Deputy Attorney General of Canada
Per: Jan Brongers and Oliver Pulleyblank
Department of Justice
British Columbia Regional Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Tel: 604.666.0110
Fax: 604.666.1585
E-Mail: jan.brongers@justice.gc.ca and oliver.pulleyblank@justice.gc.ca

Solicitor for the Appellants

AND TO:

Attorney General for British Columbia
Parliament Buildings, Room 234
PO Box 9044, Stn. Prov. Govt.
Victoria, BC V8W 9E2
Fax: 250.387.6411

Minister of Justice and Solicitor General for Alberta
403 Legislative Building
Edmonton, AB T5K 2B6
Fax: 780.422.6621

Attorney General of Saskatchewan
355 Legislative Building
Regina, SK S4S 0B3
Fax: 306.787.1232

Attorney General of Manitoba
104 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8
Fax: 204.945.2517

Attorney General of Ontario
720 Bay Street, 11th Flr.
Toronto, ON M5G 2K1
Fax: 416.326.4007

Attorney General of Quebec
1200 route de l'Eglise, 6ième étage
Québec, QC G1V 4M1
Fax: 418.646.0027

Attorney General for Newfoundland and Labrador
4th Floor, Confederation Building, East Block
PO Box 8700
St. John's, NL A1B 4J6
Fax: 709.729.2129

Attorney General of New Brunswick
PO Box 6000
Fredericton, NB E3B 5H1
Fax: 506.453.3651

Attorney General of Northwest Territories
4th Floor, Courthouse
4903 – 49th Street
PO Box 1320
Yellowknife, NT X1A 2L9
Fax: 867.873.0306

Attorney General of Nova Scotia
P.O. Box 7
Halifax, NS B3J 2L6
Fax: 902.424.7596

Attorney General of Prince Edward Island
Fourth Floor, Shaw Building, South
95 Rochford Street
P.O. Box 2000
Charlottetown, PEI C1A 7N8
Fax: 902.368.6488

Minister of Justice of Yukon
Box 2703
Whitehorse, YT Y1A 2C6
Fax: 867.393.6379

Minister of Justice for Nunavut
Department of Justice
P.O. Box 1000, Stn 500
Iqaluit, NU X0A 0H0
Fax: 867.975.6195