Court File No. T-2506-14

**FEDERAL COURT**

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA and
THE QUEEN'S PRIVY COUNCIL FOR CANADA

Respondents

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**APPLICANT'S MOTION RECORD**

**(Motion for Abridgment of Time and Expedited Hearing)**

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**Aniz Alani**, on his own behalf
[redacted]
Tel: 604.600.1156

Applicant

William F. Pentney
Deputy Attorney General of Canada
Per: **Jan Brongers/Oliver Pulleyblank**
Department of Justice
B.C Regional Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Tel: 604.666.0110
Fax: 604.666.1585

Solicitor for the Respondents

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## NOTICE OF MOTION

**(Motion for Abridgement of Time and Expedited Hearing)**

**TAKE NOTICE THAT** the Applicant will make a motion to the Case Management Court on Tuesday, June 30, 2015 at 09:30 in the forenoon, or as soon thereafter as the motion can be heard or on such other date as may be fixed by the Case Management Judge pursuant to paragraph 385(1)(b) of the *Federal Courts Rules*, at 701 West Georgia Street, 3rd Floor, Vancouver, British Columbia.

**THE MOTION IS FOR:**

1. an order abridging the time fixed by the Order of the Court (Lafrenière P.) issued June 9, 2015 for the remaining steps in the proceeding so as to accommodate a hearing of the application on its merits on or before October 19, 2015;

2. an order pursuant to Rule 84(1) of the *Federal Courts Rules* granting leave to the Respondents to cross-examine the deponent of an affidavit filed in the application on behalf of the Applicant before the Respondents have served every affidavit on which the Respondents intend to rely in the application;

3. an order pursuant to Rule 84(2) of the *Federal Courts Rules* granting leave to the Respondents to file affidavits in the application after having cross-examined the deponent of an affidavit filed in the application on behalf of the Applicant;

4. an order fixing the date for the hearing of the application on its merits on or before October 19, 2015;

5. costs of this motion payable by the Respondents to the Applicant; and

6. such further and other relief as the Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

1. The Applicant has sought judicial review in respect of the decision of the Prime Minister, as communicated publicly on December 4, 2014, not to advise the Governor General to summon fit and qualified Person to fill existing Vacancies in the Senate.

2. In the context of this judicial review, the Applicant seeks declaratory relief pursuant to section 18 and 18.1 of the *Federal Courts Act* to the effect that the Prime Minister of Canada must advise the Governor General to summon a fit and qualified Person to the Senate within a reasonable time after a Vacancy happens in the Senate.

3. Section 18.4(1) of the *Federal Courts Act* requires that "Subject to subsection (2), an application or reference to the Federal Court under any of sections 18.1 to 18.3 shall be heard and determined without delay and in a summary way."

4. Rule 3 of the *Federal Courts Rules* provides that "These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits."

***Discretion to abridge time***

5. Rule 8(1) of the *Federal Courts Rules* provides:

> **8. (1) Extension or abridgement** – On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

6. The abridgement of time periods to the extent necessary to accommodate a hearing of the application on or before October 19, 2015 is justified having regard to the following non-exhaustive factors:

    a. The absence of delay in the Applicant's conduct of the litigation and the seeking of an abridgement of time, particulars of which conduct are set out in paragraphs 7 to 37 below;

    b. The urgency of the proceeding in light of:

        i. the ongoing alleged unconstitutionality of the matters complained of in the application;

        ii. the public interest in having the issues in the proceeding

heard before the general federal election to take place on October 19, 2015 in accordance with the *Canada Elections Act*, including in light of the Respondents' position that the Prime Minister's actions impugned in the application can only carry political consequences; and

iii. the Applicant's personal family circumstances being such that his availability to prepare for and attend in Court will be reduced and uncertain as of mid-November 2015.

c. The abridgment will not unfairly prejudice the Respondents in their ability to defend their legal position given:

i. the notice the Respondents have had of the issues to be determined,

ii. the ample time the Respondents have had to prepare their case, and

iii. the Respondents' conduct of this proceeding including the misuse of time and expense occasioned by the Respondents' unmeritorious motion to strike;

d. The reasonable possibility that the proceeding will be rendered moot if not decided before the federal election on October 19, 2015; and

e. It is not apparent that expediting the proceeding would result in the cancellation of other hearings.

***Conduct of the Proceeding***

7. The notice of application was filed on December 8, 2014.

8. By letter dated December 27, 2014, the Applicant served all provincial and territorial attorneys general with a copy of the notice of application and notice under Rule 110(a) of the *Federal Courts Rules* of a potential question of general importance raised therein.

9. On January 5, 2015, the Applicant wrote to counsel for the Respondents seeking agreement as to calculation of the periods provided by the *Federal Courts Rules*, up to and including the service and filing of the Respondents' Record on or before April 27, 2015, so as to facilitate a request that hearing dates be set before the perfection of the application as contemplated in the Court's Notice to the Parties and to the Profession dated November 18, 2010 entitled "Early Hearing Dates for Applications in the Federal Court".

10. On January 15, 2015, the Respondents brought a motion seeking, *inter alia*, an order striking out the Applicant's notice of application and an order dismissing the Applicant's application on the basis that "the Applicant's application for judicial review is so clearly improper as to be bereft of any possibility of success, and therefore deserves to be struck out and dismissed summarily by means of a preliminary motion".

11. The Respondents took the position that the remaining procedural steps in the proceeding should be deferred pending resolution of the Respondents' motion to strike.

12. On January 15, 2015, the Applicant wrote to counsel for the Respondents, stating, in part:

> "Regarding the delivery of tribunal materials, may I respectfully propose that if the respondents are prepared to stipulate that the only objection to producing materials requested under Rule 317 is that the application for judicial review is fundamently flawed for the reasons set out in the respondents' Notice of Motion and that the materials will otherwise be available to be transmitted in their entirety without further objection in the event the respondents' motion is not granted, immediately upon the determination of the motion, I would agree that there is no practical utility in requiring that a separate document be provided under Rule 318(2). This approach would in my view further the objective of the Rules in providing an expeditious process for judicial review applications.
>
> If the respondents are not prepared to stipulate accordingly, I would respectfully request that an exhaustive statement of the respondents' grounds of objection be provided for the record as contemplated under Rule 318(2).
>
> As to timing, while your offer to not insist on strict compliance with the time limits is appreciated, I have made arrangements to have my affidavit materials served and filed in accordance with the Rules and, aside from being unable to append as an exhibit to an affidavit any of [the] materials requested under Rule 317 before I receive them, the respondents' motion to strike does not affect my ability to comply with the time limits or detract from my interest in having this matter proceed as expeditiously as reasonably possible. …"

13. On January 19, 2015, counsel for the Respondents responded, in part:

> "The respondents' position remains as set out in the notice of motion to strike filed January 15th and we have nothing to add to what has already been stated in our previous correspondence. We now await the direction of the Court with regard to the scheduling of the motion to strike and will govern ourselves accordingly."

14. On January 18, 2015, the Applicant served an affidavit and filed proof of service in accordance with Rule 306 of the *Federal Courts Rules*.

15. By letter to the Court dated January 22, 2015, counsel for the Respondents stated, in part:

> "Second, with respect to the timelines for the remaining procedural steps in this application, the Respondents respectfully propose that they be addressed, if necessary, following adjudication of the Respondents' motion. We have already communicated to Mr. Alani that the Respondents will not insist on strict compliance with procedural deadlines while their motion to strike is pending.
>
> Similarly, we have indicated to him that, in the event the Respondents' motion to strike is dismissed, the parties can discuss proposing to the Court a reasonable schedule for the completion of the remaining procedural steps at that time. In our view, such an approach is consistent with the parties' mutual interest in conducting this litigation is a manner that is most likely to secure the just, most expeditious and least expensive determination of this proceeding."

16. By Direction of the Chief Justice dated January 29, 2015, the Court directed that the Respondents' motion to strike would be made returnable before the Court on April 23, 2015 at a special sitting of four hours in duration.

17. By letter to the Court dated February 5, 2015, the Applicant informally requested a case management conference be held to consider, *inter alia*, an adjournment of the hearing of the Respondents' motion to strike such that it be heard at the outset of the hearing of the application of the merits, as was ordered by Prothonotary Milczynski in her capacity as case management judge in Court File No. T-1476-14 in respect of a similar motion to strike an application on grounds of justiciability and jurisdiction without the need for a separate hearing.

18. The Applicant also requested, in the alternative, that the Court consider reserving hearing dates, on an anticipatory basis, for the underlying application in order to minimize any delay in securing an expeditious determination of the application on its merits in the event that the Respondents' motion to strike be dismissed.

19. By Order issued February 16, 2015, the Court (Lafrenière P.) dismissed the Applicant's informal request that the hearing of the Respondents' motion to strike be adjourned and heard at the outset of the hearing of the application.

20. On May 21, 2015, the Court (Harrington J.) dismissed the Respondents' motion to strike.

21. On May 21, 2015, the Applicant again wrote to counsel for the Respondents to propose a timetable for the remaining steps in the application as follows:

May 25, 2015 – Applicant to serve and file amended notice of application

June 15, 2015 – Rule 318 material to be transmitted

June 22, 2015 – Applicant to serve any further supporting affidavits

June 29, 2015 – Respondents to serve any affidavits

July 6, 2015 – Cross-examination on affidavits to be completed

July 20, 2015 – Applicant to serve and file application record

August 4, 2015 – Respondents to serve and file Respondents' record

22. By reply dated May 22, 2015, counsel for the Respondents advised of their understanding that the timetable for the remaining steps was prescribed by the Court's Order of May 21, 2015 and position that they did "not see any justification for abridging them in the manner" proposed.

23. By letter to the Court dated May 22, 2015, the Applicant requested a case management conference to canvass the possibility of fixing dates for the remaining steps in the proceeding, including the potential fixing of a hearing date prior to the perfection of the application as contemplated by the Notice to the Parties and to the Profession dated November 18, 2010.

24. On May 25, 2015, the Applicant served and filed an Amended Notice of Application pursuant to the Order of the Court (Harrington J.) issued May 21, 2015.

25. On May 29, 2015, the Respondents filed a Notice of Appeal of the Court's order dismissing the Respondents' motion to strike.

26. Following a case management conference held on June 1, 2015, the Court (Lafrenière P.) by Order issued June 2, 2015 ordered that:

    a. the Respondents submit a letter on or before June 8, 2015 indicating when they expect to be able to serve their responding affidavit evidence and file proof of service;

    b. the timeline for transmission of any material under Rule 318 is extended to June 15, 2015;

    c. the timeline for the Applicant to serve any further affidavit material and file proof of service is extended to June 24, 2015;

d. subsequent steps shall be taken within the timelines provided in Part 5 of the *Federal Courts Rules* or as otherwise ordered by the Case Management Judge.

27. By letter to the Court dated June 8, 2015, counsel for the Respondents advised that they expect to be able to serve their responding affidavit evidence and file proof of service by July 31, 2015. Counsel for the Respondents stated that "[t]his brief extension is necessary because of the complex nature of the affidavit evidence the Respondents intend to tender, namely, evidence in relation to the existence and scope of an alleged constitutional convention (as referenced by the Court (Harrington J.) in paragraphs 23 and 24 of its May 21, 2015 order dismissing the Respondents' motion to strike)." The Respondents indicated: "While it is our hope that this reasonable request will meet with the consent of the Applicant and can be adjudicated informally by the Court, the Respondents are prepared to file a formal Rule 8 motion if necessary."

28. By letter to the Court dated June 8, 2015, the Applicant consented to the Respondents' informal request for an extension of time (i.e., of 7 days).

29. On June 8, 2015, the Applicant wrote to counsel for the Respondents to request confirmation of the timetable for the remaining steps in the proceeding.

30. On June 9, 2015, counsel for the Respondents wrote to the Applicant to clarify the timeline for completion of cross-examination on affidavits (i.e., by August 20, 2015). Counsel also indicated, in part:

> "…[W]e think it preferable to await the completion of the parties' affidavit material before committing to a position on whether extensions or abridgements would be appropriate for the remaining procedural steps in this application."

31. On June 11, 2015, the Applicant wrote to counsel for the Respondents, stating in part:

> "As indicated in my correspondence to the Court of May 29th, I have concerns that if the hearing of the application does not take place in advance of the scheduled federal election of October 19th the issues raised in the application may become moot. It may be the case that a hearing date can be accommodated before October 19th without any further modifications to the timetable, depending on the parties' and Court's availability and whether an early hearing date is requested as contemplated in the Practice Direction already referenced.
>
> Before taking steps to determine whether this is the case, including, if necessary, by way of a formal Rule 8 motion to abridge time limits as necessary to accommodate a hearing date before October 19th, I note

> that you referred at the June 1st case management conference to being prepared to make submissions regarding why the issues in the application may not become moot after October 19. Those submissions were not heard.
>
> If I have understood correctly that the respondents take the position that the issues would not necessarily be moot after the election, I would respectfully request that you provide me with the basis for that position. If we can agree that mootness will not be an issue, it may not be necessary in my view to take any further steps to fix a hearing date at this time."

32. On June 15, 2015, the Respondents wrote to the Court to advise:

> "…[T]here was no "decision not to advise the Governor General to fill the currently existing [Senate] Vacancies" as alleged by Mr. Alani. Accordingly, Rule 317 is not applicable (as per *Alberta Wilderness Association v. Canada*, 2013 FCA 190) and no material will be transmitted to either the Registry or the Applicant pursuant to Rule 318.

33. By letter dated June 15, 2015, counsel for the Respondents stated, in part:

> "In the absence of a formal motion to expedite or any evidence in support of your assertions, we see no utility in engaging in an academic debate on the merits of your apparent position at this time. Suffice it to say that, in our respectful submission, we find neither of the grounds you have raised to be persuasive. They certainly do not provide a justification for denying either party the opportunity to properly prepare their respective cases. In sum, it is our position that the timing of the next federal election is not a factor that ought to govern the determination of either the procedural deadlines or the hearing date of this application."

34. On June 15, 2015, the Applicant wrote to counsel for the Respondents reiterating his intention to request through case management a direction as to whether the Court can accommodate a hearing date between the current time limit for service and filing of the Respondents' Record (i.e., September 29, 2015) and October 19, 2015. Referring to the Notice to the Parties and the Profession dated November 18, 2010, the Applicant inquired as to counsel's time estimate for the hearing of the application and counsel's availability for a hearing after September 29, 2015.

35. By reply dated June 16, 2015, counsel for the Respondents stated, in part:

> "In our view, the appropriate time to discuss the anticipated duration and the parties' availability for the hearing is following the production of the respondents' Rule 310 record as this triggers the applicant's

obligation to prepare a Rule 314 requisition for hearing which contains such information. Furthermore, the parties will be better placed to estimate the time needed for the hearing once they both have had the opportunity to produce their full written arguments."

36. By reply dated June 16, 2015, the Applicant confirmed his intention to:

> "… submit [his] inquiry as to whether the Court can accommodate a hearing date between September 29, 2015 and October 19, 2015, which, if so, would obviate the need for a Rule 8 motion to abridge time limits."

37. By further reply dated June 16, 2015, counsel for the Respondents advised:

> "That said, in light of your stated intention to inquire whether the Court can accommodate a hearing between September 29 and October 19, 2015, please be advised that Mr. Pulleyblank and I are not available from September 28 to October 16 inclusive as a result of previously scheduled court hearings and out-of-town business travel commitments."

***Statutory provisions and Rules relied upon***

38. *Federal Courts Act*, especially s. 18.4(1).

39. *Federal Courts Rules*, especially Rules 3, 8(1), 84(1), 84(2), 385 and 401.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) Affidavit of Aniz Alani

Date: June 17, 2015

**Aniz Alani, Applicant**

[redacted]

E-mail: senate.vacancies@anizalani.com
Tel: 604-600-1156

**TO:**

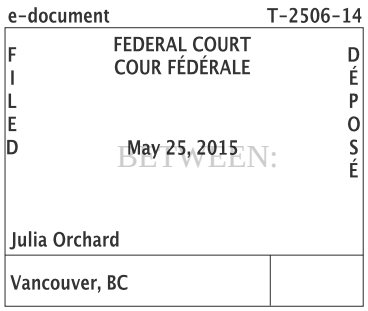
Department of Justice
B.C. Regional Office
Attn: Jan Brongers and Oliver Pulleyblank
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

**Solicitor for the Respondents**

***Amended with leave pursuant to Rule 75 and the Order of Harrington J dated May 21, 2015***

Court File No. T-2506-14

**FEDERAL COURT**




BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA and
THE QUEEN'S PRIVY COUNCIL FOR CANADA

Respondents

**AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court in Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of *the Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by: _____
(Registry Officer)

Address of local office: Federal Court
Courts Administration Service
P.O. Box 11065, 3rd Floor
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO:

THE PRIME MINISTER OF CANADA
80 Wellington Street
Ottawa, ON K1A 0A2

THE QUEEN'S PRIVY COUNCIL FOR CANADA
85 Sparks Street
Ottawa, ON K1A 0A3

THE GOVERNOR GENERAL OF CANADA
1 Sussex Drive
Ottawa, ON K1A 0A1

ATTORNEY GENERAL OF CANADA
284 Wellington St.
Ottawa, ON K1A 0H8

DEPARTMENT OF JUSTICE CANADA
British Columbia Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

## APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the decision of the Prime Minister, as communicated publicly on December 4, 2014, not to advise the Governor General to summon fit and qualified Persons to fill existing Vacancies in the Senate.

THE APPLICANT makes application for:

1) A declaration that:

a) 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.

~~b) the deliberate failure to advise the Governor General to summon a fit and qualified Person to fill a Vacancy in the Senate within a reasonable time after the Vacancy happens~~

~~i) is contrary to section 32 of the *Constitution Act, 1867*;~~

~~ii) is contrary to section 22 of the *Constitution Act, 1867*~~

~~(1) to the extent the Vacancies when considered in the aggregate deny a province or territory of the proportion of regional representation set out in section 22 of the *Constitution Act, 1867*, and~~

~~(2) to the extent that a Vacancy deprives a province or territory of the minimum number of representatives in the Senate set out in section 22 of the *Constitution Act, 1867*;~~

~~iii) undermines and breaches the principles of~~

~~(1) federalism,~~

~~(2) democracy,~~

~~(3) constitutionalism,~~

~~(4) the rule of law, and~~

~~(5) the protection of minorities,~~

~~and underlying constitutional imperatives, as enunciated by the Supreme Court of Canada in *the Quebec Secession Reference*; and~~

~~iv) is unlawful absent an amendment to the Constitution of Canada according to the constitutional formula as set out in section 41 of the *Constitution Act, 1982*;~~

2) An Order for costs of this application on a basis that this Honourable Court deems just; and

3) Such further or other relief as this Honourable Court deems just.

THE GROUNDS for the application are:

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."

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) There are currently ~~16~~ 20 Vacancies in the Senate.

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

5) Of the 105 Senate positions, the constitutionally established allocation and the currently existing actual distribution among the provinces and territories, not excluding suspensions, are as follows:

| Province or Territory | Number of Senators Allocated by Section 22 of *Constitution Act, 1867* | Actual Current Distribution of Senators | Current Vacancies |
|---|---|---|---|
| Ontario | 24 | 18 | 6 |
| Quebec | 24 | 19 | 5 |
| Nova Scotia | 10 | 8 | 2 |
| New Brunswick | 10 | 8 | 2 |
| Prince Edward Island | 4 | 3 | 1 |
| Manitoba | 6 | 3 | 3 |
| British Columbia | 6 | 5 | 1 |
| Saskatchewan | 6 | 6 | 0 |
| Alberta | 6 | 6 | 0 |
| Newfoundland and Labrador | 6 | 6 | 0 |
| Yukon Territory | 1 | 1 | 0 |
| Northwest Territories | 1 | 1 | 0 |
| Nunavut | 1 | 1 | 0 |
| **Total** | **105** | **85** | **20** |

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

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

8) Vacancies happen in the Senate upon the resignation, death, or disqualification of a Senator, when a Senator reaches the age of 75, and upon the addition of four or eight Senators where permitted by section 26 of the *Constitution Act, 1867*.

9) The text of section 24 of the *Constitution Act, 1867* provides for the formal appointment of Senators by the Governor General:

> **24.** The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

10) In the *Senate Reform Reference*, the Supreme Court of Canada confirmed: "In

practice, constitutional convention requires the Governor General to follow the recommendations of the Prime Minister of Canada when filling Senate vacancies."

~~11) By constitutional convention, appointments to the Senate are made on the advice of the Prime Minister.~~

12) The Prime Minister's decision not to recommend appointments to the Senate to fill the Vacancies reflects an impermissible attempt to make changes to the Senate without undertaking the constitutional reforms required in light of the amending formula set out in the *Constitution Act, 1982* as interpreted by the Supreme Court of Canada in the *Senate Reform Reference*.

13) The failure to summon a fit and qualified Person to fill a Vacancy in the Senate within a reasonable time after the Vacancy happens undermines and breaches sections 21, 22 and 32 of the *Constitution Act, 1867*, and the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities, and underlying constitutional imperatives, as enunciated by the Supreme Court of Canada in *the Quebec Secession Reference*.

14) Section 18(1) of the *Federal Courts Act* grants the Federal Court exclusive jurisdiction to grant declaratory relief against any federal board, commission or other tribunal, and to hear and determine any application or other proceeding for relief against a federal board, commission or other tribunal.

15) Section 18.1(3) of the *Federal Courts Act* empowers the Federal Court to order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing.

16) The Prime Minister, or alternatively the Queen's Privy Council for Canada acting on the recommendation of the Prime Minister, is a federal board, commission or other tribunal, being a body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or

under an order made pursuant to a prerogative of the Crown, when providing advice to the Governor General regarding the appointment of Senators.

17) Such further and other grounds as the applicant may identify and this Honourable Court may consider.

THIS APPLICATION will be supported by the following material:

1) Affidavit of Ashley Morton, sworn January 16, 2015, and served;

2) Affidavit of Aniz Alani;

3) The record before the Prime Minister of Canada in determining when, if at all, to fill each of the currently existing Vacancies in the Senate; and

4) Such further and other material as the applicant may advise and this Honourable Court may allow.

THE APPLICANT REQUESTS the Prime Minister of Canada to send a certified copy of the record of all materials placed before and considered by the Prime Minister of Canada and the Queen's Privy Council for Canada in making the decision not to advise the Governor General to fill the currently existing Vacancies, to the applicant and to the Registry.

Dated at Vancouver, British Columbia this 8th day of December, 2014.
Amended: May 25, 2015

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

Court File No. T-2506-14

**FEDERAL COURT**

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA and
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Respondents

**AFFIDAVIT OF ANIZ ALANI**

I, Aniz Alani, barrister and solicitor, of the City of Vancouver in the Province of British Columbia, AFFIRM THAT:

1. I am the Applicant in this proceeding and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and, where so stated, I verily believe them to be true.

## A. CHRONOLOGY AND CONDUCT OF LITIGATION

### *i) The Notice of Application*

2. On Friday, December 5, 2014, I became aware of media reports that the Prime Minister of Canada made a public statement in Markham, Ontario on Thursday, December 4, 2014 indicating that he did not intend to name more Senators to fill existing vacancies in the Senate.

3. Attached as Exhibit "**A**" to this Affidavit is a copy of an article published in the Toronto Star on December 4, 2014 and printed for the purposes of attaching to this Affidavit on June 19, 2015. To the best of my recollection, the attached copy is

substantially similar to the version I remember reading for the first time on December 5, 2014.

4. On Monday, December 8, 2014, I transmitted to the Registry of the Federal Court for filing the Notice of Application that commenced the within proceeding. Attached as Exhibit "**B**" to this Affidavit is a copy of the filed Notice of Application.

***ii) Communications regarding evidentiary and scheduling matters, and notice to provinces as potential intervenors***

5. On December 22, 2014, I wrote to counsel for the Respondents by e-mail to request the Respondents' position with respect to the proposed admission into evidence in the proceeding of the historical standings, including vacancies, in the Senate since 1867 as prepared and published by the Library of Parliament.

6. On December 23, 2014, Mr. Pulleyblank, counsel for the Respondents, advised by e-mail that "carriage of this litigation on behalf of the respondents has been assigned to my colleague Jan Brongers and me" and that he would discuss my query of December 22nd with Mr. Brongers upon his return to the office on December 29th.

7. By letter dated December 27, 2014, I wrote to the attorneys general for all provinces and territories to provide notice of a potential question of general importance raised in the within proceeding. A copy of my letter, excluding the enclosed copy of the Notice of Application, is attached as Exhibit "**C**" to this Affidavit.

8. On January 5, 2015, I wrote to counsel for the Respondents by e-mail to follow up on my query of December 22nd and to request their position on confirming a timetable by consent and requesting a hearing date in anticipation of the application being perfected by April 27, 2015 as contemplated in the Practice Direction entitled "Early Hearing Dates for Applications in the Federal Court" dated November 18, 2010.

9. On January 6, 2015, counsel for the Respondents advised by e-mail that they were seeking instructions.

10. Attached as Exhibit "**D**" to this Affidavit is a copy of the e-mail thread containing the correspondence referenced in paragraphs 5, 6, 8 and 9 above.

***iii) Respondents' Motion to Strike***

11. By letter dated January 15, 2015, a copy of which is attached as Exhibit "**E**" to this Affidavit, counsel for the Respondents served a notice of motion to strike seeking dismissal of the application. The letter also advised of their view that "...pending the determination of the Respondents' motion to strike, it is premature and unnecessary to address the procedural questions [I] raised in [my] correspondence of December 22nd and January 5th." Finally, the letter enclosed a copy of counsel's correspondence to the Court of January 15, 2015.

12. Attached as Exhibit "**F**" to this Affidavit is a copy of my letter to the Court dated January 15, 2015, in which I proposed that the Respondents' motion be disposed of in writing and indicating my availability for an oral hearing, if necessary, on February 6, 2015.

13. Attached as Exhibit "**G**" to this Affidavit is a copy of an e-mail thread containing four e-mail messages exchanged between me and counsel for the Respondents on January 15, 2015 regarding the status and scope of any objection to transmitting materials under Rule 318, the timing of further steps in the proceeding including the production of affidavits, the appropriateness of a motion to strike in the context of an application for judicial review, and the merits of the Respondents' objections set out in their motion to strike.

14. Attached as Exhibit "**H**" to this Affidavit is a copy of correspondence from counsel for the Respondents' to the Court dated January 16, 2015 opposing my request to have the motion disposed of in writing.

15. Attached as Exhibit "**I**" to this Affidavit is a copy of my correspondence to the Court dated January 16, 2015 requesting directions.

16. Attached as Exhibit "**J**" to this Affidavit is a copy of correspondence from counsel for the Respondents to the Court dated January 20, 2015 containing further submissions opposing my request to have the motion disposed of in writing.

17. Attached as Exhibit "**K**" to this Affidavit is a copy of an e-mail thread containing four e-mail messages exchanged between me and counsel for the Respondents between January 18-21, 2015 regarding service of an affidavit in support of the application, the Respondents' response to my e-mail message of June 15, 2015 referenced in paragraph 13 above, and the impact of certain Minutes of Council and a recent decision of the Federal Court of Appeal on the Respondents' position regarding justiciability and jurisdiction.

18. Attached as Exhibit "**L**" to this Affidavit is a copy of my correspondence to the Court dated January 21, 2015 requesting directions regarding the procedure for making submissions with respect to an objection under Rule 318(2) of the *Federal Courts Rules* and the timelines for remaining steps in the proceeding.

19. Attached as Exhibit "**M**" to this Affidavit is a copy of correspondence from counsel for the Respondents to the Court dated January 22, 2015 setting out the Respondents' position regarding the transmittal of Rule 317 tribunal material and proposal to address the timelines for remaining procedural steps in the application, if necessary, following the determination of the Respondents' motion to strike.

20. Attached as Exhibit "**N**" to this Affidavit is a copy of an e-mail thread containing two e-mail messages exchanged between me and counsel for the Respondents between January 28-29, 2015 regarding anticipated proposed amendments to the Notice of Application.

21. Attached as Exhibit "**O**" to this Affidavit is a copy of the Order of the Court issued January 29, 2015 (per Crampton C.J.) ordering that the proceeding be specially managed with Prothonotary Lafrenière assigned as Case Management Judge.

22. Attached as Exhibit "**P**" to this Affidavit is a copy of correspondence from the Court dated January 30, 2015 confirming the Direction of the Court (per Crampton C.J.) setting out the timetable for the Respondents' motion to strike.

23. Attached as Exhibit "**Q**" to this Affidavit is a copy of correspondence from me to counsel for the Respondents dated February 2, 2015, excluding enclosure, requesting consent to proposed amendments to the Notice of Application.

24. Attached as Exhibit "**R**" to this Affidavit is a copy of correspondence from counsel for the Respondents to me dated February 5, 2015 regarding my proposed amendments to the Notice of Application.

***iv) The First Case Management Conference***

25. Attached as Exhibit "**S**" to this Affidavit is a copy of my correspondence to the Court dated February 5, 2015 requesting that a case management conference be held.

26. Attached as Exhibit "**T**" to this Affidavit is a copy of correspondence from counsel for the Respondents to the Court dated February 10, 2015 regarding the requested case management conference.

27. On February 16, 2015, a case management conference was held before Prothonotary Lafrenière by conference call. During the case management conference, the case management judge indicated as follows:

a. I should include any request for and submissions regarding amendments to the Notice of Application in my responding motion record;

b. The Rule 318 objection and a timetable for remaining steps would be dealt with after the motion to strike;

c. The hearing of the motion to strike would not be adjourned to the outset of the hearing of the application on its merits;

d. It should be possible to set down a hearing of the application relatively quickly;

e. The issues raised in the motion to strike would be *res judicata*;

f. The request for a dispute resolution conference would wait until after the motion to strike;

g. The issue of adverse costs immunity could be revisited after the motion to strike.

h. I can speak to an affidavit to which I depose without leave of the Court

because I am "not counsel" but a "self-represented litigant".

i. My responding motion record was due on March 20, 2015 and that I could come back to Court if more time was needed.

28. Attached as Exhibit "**U**" to this Affidavit is a copy of my handwritten notes taken contemporaneously during the case management conference of February 16, 2015.

29. Attached as Exhibit "**V**" to this Affidavit is a copy of the Order of the Court (Lafrenière P.) issued February 16, 2015.

30. Attached as Exhibit "**W**" to this Affidavit is a copy of correspondence from me to counsel for the Respondents dated February 18, 2015 requesting the Respondents' view of whether the issues raised in the motion to strike would be final and conclusive for the purpose of the application for judicial review.

31. Attached as Exhibit "**X**" to this Affidavit is a copy of correspondence from counsel for the Respondents to me dated February 20, 2015 advising that the Respondents would await the Court's reasons for judgment before deciding what specific positions they will take.

32. On April 23, 2015, the Court (Harrington J.) heard the Respondents' motion to strike and reserved judgment.

33. On May 14, 2015, I obtained a certified copy of a transcript of the April 23, 2015 hearing and provided an electronic copy of same to counsel for the Respondents.

34. On May 21, 2015, the Court (Harrington J.) ordered that the Respondents' motion to strike be dismissed.

***v) Timetable for Remaining Steps Post-Dismissal of Motion to Strike***

35. Attached as Exhibit "**Y**" to this Affidavit is a copy of an e-mail thread containing three e-mail messages exchanged between me and counsel for the Respondents between May 21-22, 2015 regarding the timeline for remaining steps in the proceeding.

36. Attached as Exhibit "**Z**" to this Affidavit is a copy of my correspondence to the Court dated May 22, 2015 requesting that a case management conference be held to discuss fixing a timetable for the remaining steps in the proceeding including the fixing of a hearing date for the application on its merits.

37. Attached as Exhibit "**AA**" to this Affidavit is a copy of an e-mail thread containing two e-mail messages exchanged between me and counsel for the Respondents on May 25, 2015 regarding service of an Amended Notice of Application and acknowledgment of same.

38. Attached as Exhibit "**BB**" to this Affidavit is a copy of correspondence from counsel for the Respondents to the Court dated May 29, 2015 opposing the Court's adjudication of a request to expedite the hearing of the application at a case management conference.

39. Attached as Exhibit "**CC**" to this Affidavit is a copy of my correspondence to the Court dated May 29, 2015 outlining submissions in response to counsel for the Respondents' correspondence of the same date.

40. On May 29, 2015, the Respondents filed a Notice of Appeal of the Order of Harrington J. dismissing the Respondents' motion to strike.

41. On June 1, 2015, a case management conference was held before Prothonotary Lafrenière. During that case management conference, counsel for the Respondents indicated that the Respondents might need additional time to arrange for an expert affidavit to address issues relating to constitutional conventions. To the best of my recollection, counsel indicated that two to three months may be required for this purpose.

42. Attached as Exhibit "**DD**" to this Affidavit is a copy of the Order of the Court (Lafrenière P.) issued June 2, 2015.

43. Attached as Exhibit "**EE**" to this Affidavit is a copy of correspondence from counsel for the Respondents to the Court dated June 8, 2015 advising that the Respondents expected to be able to serve their responding affidavits and file proof of service by July 31, 2015. The Respondents informally requested an extension of time

for this purpose.

44. On June 8, 2015, I wrote to counsel for the Respondents by e-mail to advise that I would be consenting to the Respondents' informal request for an extension of time.

45. Attached as Exhibit "**FF**" to this Affidavit is a copy of my correspondence to the Court dated June 8, 2015 consenting to the Respondents' informal request for an extension of time.

46. On June 8, 2015, I wrote to counsel for the Respondents by e-mail requesting confirmation as to the timetable for the remaining steps in the proceeding.

47. Attached as Exhibit "**GG**" to this Affidavit is a copy of the Order of the Court (Lafrenière P.) issued June 9, 2015 extending the time limit for the Respondents' affidavits.

48. On June 9, 2015, counsel for the Respondents by e-mail to clarify the calculation of time limits under the *Federal Courts Rules* and the Order of the Court. Counsel also advised that they "...think it preferable to await the completion of the parties' affidavit material before committing to a position on whether extensions or abridgements would be appropriate for the remaining procedural steps in this application."

49. On June 11, 2015, I wrote to counsel for the Respondents by e-mail regarding concerns about mootness of the issues raised in the application if it was not heard before the federal election scheduled for October 19, 2015.

50. On June 15, 2015, counsel for the Respondents wrote by e-mail advising of their position that "the timing of the next federal election is not a factor that ought to govern the determination of either the procedural deadlines or the hearing date of this application."

51. On June 15, 2015, I wrote to counsel for the Respondents by e-mail re-iterating my intention to request through case management a direction as to whether a hearing date could be accommodated between the current time limit for service and filing of the Respondents' record (i.e., September 29, 2015) and October 19, 2015. I

requested counsel's estimate for the duration of the hearing and availability for a hearing after September 29, 2015.

52. Attached as Exhibit "**HH**" to this Affidavit is a copy of correspondence from counsel for the Respondents to the Court dated June 15, 2015 advising that no material would be transmitted to either the Registry or the Applicant pursuant to Rule 318.

53. On June 16, 2015, counsel for the Respondents wrote by e-mail advising, among other things, of their view that "...the appropriate time to discuss the anticipated duration and the parties' availability for the hearing is following the production of the respondents' Rule 310 record as this triggers the applicant's obligation to prepare a Rule 314 requisition for hearing which contains such information." Counsel also indicated that "...it is likely that [they] will cross-examine on any affidavit [I] tender in support of [my] motion...".

54. On June 16, 2015, I wrote to counsel for the Respondents by e-mail to state my position regarding the requirements for requesting a hearing date before the perfection of an application and to confirm that I would "...submit my inquiry as to whether the Court can accommodate a hearing date between September 29, 2015 and October 19, 2015, which, if so, would obviate the need for a Rule 8 motion to abridge time limits."

55. On June 16, 2015, counsel for the Respondents responded by e-mail. In that e-mail, counsel stated, in part:

> "...[I]n light of your stated intention to inquire whether the Court can accommodate a hearing between September 29 and October 19, 2015, please be advised that Mr. Pulleyblank and I are not available from September 28 to October 16 inclusive as a result of previously scheduled court hearings and out-of-town business travel commitments."

56. Attached as Exhibit "**II**" to this Affidavit is a copy of an e-mail thread containing ten e-mail messages exchanged between me and counsel for the Respondents between June 8-16, 2015 including the correspondence referenced in paragraphs 44, 46 and 48-51 and 53-55 above.

57. On June 17, 2015, I served the Respondents via counsel with a Notice of Motion to abridge timelines and for ancillary relief.

## B. LEGAL UNCERTAINTY REGARDING THE PRIME MINISTER'S NON-APPOINTMENT OF SENATORS

58. It is my understanding and belief that there exists uncertainty and disagreement within Canada as to whether it is constitutionally permissible for the Prime Minister to delay, postpone, or refuse to effect the appointment of Senators to fill vacancies in the Senate by recommending appointments to the Governor General. The source of my understanding and belief is based in part on the fact of statements made in the published reports and articles referenced in paragraphs 59 to 69 below.

59. Attached as Exhibit "**JJ**" to this Affidavit is a copy of an article published in the Toronto Star on November 14, 2013 entitled "Let Canadian Senate die of attrition", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

60. Attached as Exhibit "**KK**" to this Affidavit is a copy of an article published on Looniepolitics.com on December 23, 2013 entitled "Vacant senate seats breaking Confederation's promises", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

61. Attached as Exhibit "**LL**" to this Affidavit is a copy of an article published by CBC News on July 8, 2014 entitled "Stephen Harper under pressure to fill Senate vacancies", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

62. Attached as Exhibit "**MM**" to this Affidavit is a copy of an article published by CBC News on July 10, 2014 entitled "Is Stephen Harper obliged to fill empty Senate seats", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

63. Attached as Exhibit "**NN**" to this Affidavit is a copy of an article published by CBC News on July 12, 2014 entitled "Brad Wall says Senate 'atrophy is not a bad end game'", which I retrieved and printed for the purposes of attaching to this

Affidavit on June 19, 2015.

64. Attached as Exhibit "**OO**" to this Affidavit is a copy of an article published by Macleans on July 16, 2014 entitled "Brazen populism can't kill the Senate", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

65. Attached as Exhibit "**PP**" to this Affidavit is a copy of an article published by Winnipeg Free Press on March 27, 2015 entitled "Abolition by stealth", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

66. Attached as Exhibit "**QQ**" to this Affidavit is a copy of an article published by National Post on April 24, 2015 entitled "The Canadian Senate – the dinner guest who won't go home", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

67. Attached as Exhibit "**RR**" to this Affidavit is a copy of an article published by The Globe and Mail on May 21, 2015 entitled "Stephen Harper's game of Senate appointment make-believe will end", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

68. Attached as Exhibit "**SS**" to this Affidavit is a copy of an article published by Blacklock's Reporter on June 2, 2015 entitled "Feds Appeal Senate Lawsuit", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

69. Attached as Exhibit "**TT**" to this Affidavit is a copy of an article published by Ottawa Sun on June 14, 2015 entitled "Canada's war on the Senate? Just say no.", which I retrieved and printed for the purposes of attaching to this Affidavit on June 19, 2015.

## C. PERSONAL FAMILY CIRCUMSTANCES

[redacted]

[redacted]

## D. PUBLIC INTEREST IN THE ISSUES RAISED IN THE APPLICATION

73. It is my belief that the issues raised in the application have attracted public attention on a national scale. My belief is based on the fact that this litigation proceeding has been the subject of media coverage that includes the following publications and broadcasts of which I am aware:

a. CBC News, December 15, 2014: "Stephen Harper's unappointed Senate seats unconstitutional, Vancouver lawyer says".

b. CBC Radio One, The Early Edition, December 15, 2014.

c. CKNW 980 Radio (Vancouver), The Drex Live Show, December 15, 2014.

d. Le Devoir, December 16, 2014: <<Le Sénat encore devant les tribunaux>>, by Hélène Buzzetti.

e. Le Devoir, December 17, 2014: <<Abolir le Sénat une retraite à la fois?>> by Hélène Buzzetti.

f. CBA National Magazine, January 29, 2015: "Filling Senate Vacancies" by Justin Ling.

g. Canadian Lawyer Magazine, March 2, 2015: "Taking on the Big Guns" by Richard Foot.

h. Le Devoir, March 21, 2015: "Nominations au Sénat: Ottawa demande de rejeter la cause" by Hélène Buzzetti.

i. Canadian Press, April 9, 2015: "PM's Refusal to Fill Senate Vacancies Challenged Amid Duffy Trial" by Joan Bryden.

j. Canadian Press, April 13, 2015: "Outrage spurs calls for reform, abolition of Senate but easier said than done" by Joan Bryden.

k. CBC Radio One, As It Happens, April 21, 2015.

l. CBC News, April 23, 2015: "Prime Minister Stephen Harper sued by B.C. lawyer for not filling senate seats" by Greg Rasmussen.

m. Canadian Press, May 21, 2015: "Court case to fill Senate vacancies pushes forward" by Joan Bryden.

n. The Globe and Mail, May 21, 2015: "Stephen Harper's game of Senate appointment make-believe will end" by Campbell Clark.

o. La Presse, May 21, 2015: "Nominations au Sénat: la Cour fédérale accepte d'entendre un recours" by Hugo de Grandpré.

p. Agence QMI, May 22, 2015: "Nominations au Sénat: le gouvernement devra s'expliquer en cour".

q. Maclean's On the Hill (Podcast), May 22, 2015.

r. Radio-Canada Midi express,May 22, 2015: "Un avocat de Vancouver demande au premier ministre de nommer de nouveaux sénateurs".

s. Blacklock's Reporter, May 22, 2015: "Sues to Fill Senate Vacancies" by Dale Smith.

t. CBC Power and Politics, May 22, 2015: "Off the Radar: Court case on Senate appointments gets green light".

u. Canadian Press, June 1, 2015: "Feds appeal judge's refusal to dismiss court case on Senate vacancies" by Joan Bryden.

v. Blacklock's Reporter, June 2, 2015: "Feds appeal Senate lawsuit" by Dale Smith.

w. Lawyers Weekly Canada, June 12, 2015 issue: "Novel lawsuit could reverberate beyond Senate to bench choices" by Cristin Schmitz.

x. Maclean's, June 9, 2015: "Is this the end of the Senate as we know it?" by Aaron Wherry.

## E. CURRENTLY SCHEDULED COURT SITTINGS

74. I am informed and verily believe that the Federal Court is currently scheduled to sit in Vancouver for 13 sitting days during September and October, 2015 on September 2, 3, 9, 10, 15, 21-22, 30, October 1-2, 7-8, and 21. The source of my belief is the Western Sittings Hearing List last updated on Friday, June 19, 2015 at 7:15am, a copy of which I retrieved and printed on June 19, 2015, and which is attached as Exhibit "**UU**" to this Affidavit.

Affirmed before me at Vancouver in the Province of British Columbia on June 22, 2015.

Commissioner for Taking Affidavits
for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Aniz Alani

News / Canada

# Stephen Harper in no rush to fill Senate vacancies

Prime Minister Stephen Harper and new Senate Speaker Pierre Claude Nolin have different views on the role of the Upper Chamber.

This is Exhibit A referred to in the affidavit of Aziz Alani made before me on this 22 day of June 2015

A Commissioner for taking Affidavits for British Columbia
JAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

ADRIAN WYLD / THE CANADIAN PRESS FILE PHOTO

Senate Speaker Pierre Claude Nolin says multiple vacancies can affect the funtioning of the Senate. ""The idea is to have the fullest contingent possible so that the role of regional representation can be carried out by my colleagues as best as possible and the best way to achieve this is to have the complete contingent."

**By: Joanna Smith** Ottawa Bureau reporter, Published on Thu Dec 04 2014

OTTAWA—Prime Minister Stephen Harper says he is in no rush to fill the empty seats in the Senate.

"I don't think I'm getting a lot of calls from Canadians to name more senators right about now," Harper told reporters in Markham, Ont. Thursday.

"We will be looking at this issue, but for our government the real goal is to ensure the passage of our legislation by the Senate and thus far, the Senate has been perfectly capable of fulfilling that duty," Harper said.

That assessment stands in contrast to the one new Senate Speaker Pierre Claude Nolin told reporters earlier Thursday, when he said the number of vacancies in the Senate — 16 out of 105 seats — is affecting the proper functioning of the institution and the balance between regions.

"Does it affect the functioning of the institution? I think yes. The idea is to have the fullest contingent possible so that the role of regional representation can be carried out by my colleagues as best as possible and the best way to achieve this is to have the complete contingent," Nolin told reporters at a news conference in the Senate Chamber Thursday.

Nolin, who is undergoing experimental treatment for cancer, assumed his new role as speaker last week — replacing Conservative Sen. Noël Kinsella — and said he is making it his mission to help his

colleagues better understand their roles.

"I need to provoke my colleagues to make sure we will understand the role of the institution and what our role is as individuals," said Nolin.

His view once again differs with the one expressed by Harper, in that he views the Senate as doing more than simply passing legislation proposed by the elected government.

"We had a very interesting discussion," Nolin said, when asked whether he had shared his views with Harper.

Nolin said the Supreme Court of Canada reference rejecting the Conservative government's proposals for Senate reform in April shaped his own understanding, especially when the judges referred to its independence, its non-elected nature and that it is "one of Canada's foundational political institutions" that "lies at the heart of the agreements that gave birth to the Canadian federation."

Nolin said he is not sure all his Senate colleagues read those words or really understand what they mean in terms of being independent from their elected — and partisan — colleagues across the way in the House of Commons.

"They understand that we have a legislative role. To what extent we can be independent from the other place, that's why we think we need to explore that," Nolin said.

When asked whether he thinks some senators are too tied to directives from their parties, Nolin said: "I don't want to judge and to pass judgment on the decisions that are taken by my colleagues, but I want them to properly understand that they have a role to play like it was stated by the Supreme Court and they can do it. If they want to do it, it's up to them."

Nolin said partisanship itself is not a problem, but it can become one when it clouds their judgment.

"I don't want my colleagues to be blinded by partisanship," he said.

The new speaker also believes the days of spending scandals in the Senate dominating headlines are over, even though the auditor general is expected to release his report into expenses next March.

"I think the big stories are behind us," said Nolin.

Nolin said he expects the report to uncover minor things like staff mistakenly claiming a per diem when a senator has already expensed a lunch, disagreements over what a senator would define as a parliamentary function and the higher cost of stamps to mail Christmas cards to the United States.

"Our processes are good," he said.

Nolin, who was appointed to the Senate on the advice of former prime minister Brian Mulroney in 1993, also spoke about his experience in the Conservative caucus room during the Oct. 22 attack on Parliament Hill.

"I was glad that those doors were quite thick," said Nolin.

"I saw my prime minister becoming white, pale and that was a shock for me," he said.

This is Exhibit B referred to in the affidavit of Aniz Alani made before me on this 22 day of July 20 15

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Court File No.: T-2506-14

e-document T-2506-14

FILED / DÉPOSÉ
FEDERAL COURT / COUR FÉDÉRALE
Dec 8, 2014
Linda Laberge
Vancouver, BC

Court File No.

**FEDERAL COURT**

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA and
THE GOVERNOR GENERAL OF CANADA

Respondents

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court in Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of *the Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by: _____
(Registry Officer)

Address of local office: Federal Court
Courts Administration Service
P.O. Box 11065, 3rd Floor
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO:

THE PRIME MINISTER OF CANADA
80 Wellington Street
Ottawa, ON K1A 0A2

THE GOVERNOR GENERAL OF CANADA
1 Sussex Drive
Ottawa, ON K1A 0A1

ATTORNEY GENERAL OF CANADA
284 Wellington St.
Ottawa, ON K1A 0H8

DEPARTMENT OF JUSTICE CANADA
British Columbia Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

## APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the decision of the Prime Minister, as communicated publicly on December 4, 2014, not to advise the Governor General to summon fit and qualified Persons to fill existing Vacancies in the Senate.

THE APPLICANT makes application for:

1) A declaration that:

   a) 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.

   b) the deliberate failure to advise the Governor General to summon a fit and qualified Person to fill a Vacancy in the Senate within a reasonable time after the Vacancy happens

      i) is contrary to section 32 of the *Constitution Act, 1867*;

      ii) is contrary to section 22 of the *Constitution Act, 1867*

         (1) to the extent the Vacancies when considered in the aggregate deny a province or territory of the proportion of regional representation set out in section 22 of the *Constitution Act, 1867*, and

         (2) to the extent that a Vacancy deprives a province or territory of the minimum number of representatives in the Senate set out in section 22 of the *Constitution Act, 1867*;

      iii) undermines and breaches the principles of

         (1) federalism,

         (2) democracy,

(3) constitutionalism,

(4) the rule of law, and

(5) the protection of minorities,

and underlying constitutional imperatives, as enunciated by the Supreme Court of Canada in *the Quebec Secession Reference*; and

iv) is unlawful absent an amendment to the Constitution of Canada according to the constitutional formula as set out in section 41 of the *Constitution Act, 1982*;

2) An Order for costs of this application on a basis that this Honourable Court deems just; and

3) Such further or other relief as this Honourable Court deems just.

THE GROUNDS for the application are:

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."

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) There are currently 16 Vacancies in the Senate.

4) By constitutional convention, appointments to the Senate are made on the advice of the Prime Minister.

5) The Prime Minister's decision not to recommend appointments to the Senate to fill the Vacancies reflects an impermissible attempt to make changes to the Senate

without undertaking the constitutional reforms required in light of the amending formula set out in the *Constitution Act, 1982* as interpreted by the Supreme Court of Canada in the *Senate Reform Reference*.

6) Such further and other grounds as the applicant may identify and this Honourable Court may consider.

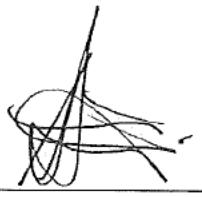
THIS APPLICATION will be supported by the following material:

1) The record before the Prime Minister of Canada in determining when, if at all, to fill each of the currently existing Vacancies in the Senate; and

2) Such further and other material as the applicant may advise and this Honourable Court may allow.

THE APPLICANT REQUESTS the Prime Minister of Canada to send a certified copy of the record of all materials placed before and considered by the Prime Minister of Canada in making the decision not to advise the Governor General to fill the currently existing Vacancies to the applicant and to the Registry.

Dated at Vancouver, British Columbia this 8th day of December, 2014.



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

This is Exhibit C referred to in the affidavit of Aniz Alani made before me on this 2 day of June 2015

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Aniz Alani
[redacted]
Tel.: 604.600.156
E-Mail: senate.vacancies@anizalani.com

9 pages including this page

**BY FAX: 780-422-6621**

Attorney General of Alberta
Department of Justice
403 Legislature Building
Edmonton, AB T5K 2B6

**BY FAX: 250-387-6411**

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

**BY FAX: 204-945-2517**

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

**BY FAX: 506-~~444-2661~~ 453-3651**

Attorney General of New Brunswick
Department of Justice
PO Box 6000
Fredericton, NB E3B 5H1

**BY FAX: 709-729-2129**

Attorney General of Newfoundland
4th Floor, Confederation Bldg. E.
PO Box 8700
St. John's, NL A1B 4J6

**BY FAX: 867-873-0306**

Attorney General of the Northwest Territories
Dept. of Justice - Northwest Territories
PO Box 1320
Yellowknife, NT X1A 2L9

**BY FAX: 902-424-7596**

Attorney General of Nova Scotia
4th Floor, 5151 Terminal Rd.
P.O. Box 7
Halifax, NS B3J 2L6

**BY FAX: Fax: 867-975-6195**

Attorney General of Nunavut
Department of Justice
Court House
P.O. Bag 1000, Stn 500
Iqaluit, NU X0A 0H0

**BY FAX: Fax: 416-326-4007**

Attorney General of Ontario
720 Bay St., 11th Floor
Toronto, ON M5G 2K1

**BY FAX: Fax: 902-368-4910**

Attorney General of Prince Edward Island
4th Floor, Shaw Building, North
P.O. Box 2000
105 Rochford St.
Charlottetown, PE C1A 7N8

**BY FAX: 418-646-0027**

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

**BY FAX: 306-787-1232**

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

**BY FAX: 867-393-6379**

Attorney General of Yukon
Department of Justice
PO Box 2703 (J-1)
Whitehorse, YK Y1A 2C6

December 27, 2014

[Distribution List on previous page]

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. The Prime Minister of Canada et al.**
**Court No: T-2506-14**

I write to serve notice in accordance with Rule 110(a) of the *Federal Courts Rules*, SOR/98-106, of a potential question of general importance raised in the above referenced proceeding.

For your ease of reference, Rule 110 provides:

> 110. Where a question of general importance is raised in a proceeding, other than a question referred to in section 57 of the Act,
>
> (a) any party may serve notice of the question on the Attorney General of Canada and any attorney general of a province who may be interested;
>
> (b) the Court may direct the Administrator to bring to the attention of the Attorney General of Canada and any attorney general of a province who may be interested; and
>
> (c) the Attorney General of Canada and the attorney general of a province may apply for leave to intervene.

In my view, notice of a constitutional question is not required in this proceeding under section 57 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, because the relief sought in the notice of application does not call into question the "constitutional validity, applicability or operability of an Act of Parliament or of the legislature of any province, or of regulations thereunder" within the meaning of that section: see, for example, *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2004 FCA 66 at paras. 70-81 (per Sharlow J.A., dissenting, but not on this point).

I am also not aware of any judicial or statutory interpretation of the phrase "question of general importance" as used in Rule 110(a), which I note is permissive in respect of notice being served in any event.

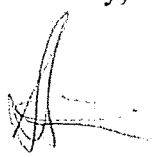
Out of an abundance of caution, therefore, and in particular to avoid any unnecessary obstacle to securing the just, most expeditious and least expensive determination of this proceeding on its merits, I am enclosing a copy of the Notice of Application filed on December 8, 2014 and served on the respondents under Rule 133.

If your respective province or territory intends to apply for leave to intervene in accordance with Rules 109 or 110, kindly advise at your earliest convenience.

For expediency, I would be especially grateful if any correspondence regarding this matter could be sent by email to senate.vacancies@anizalani.com.

Kindly acknowledge service of this notice by signing and returning the duplicate copy of this page enclosed for this purpose.

Sincerely,



Aniz Alani

Encl.

- Notice of Application

cc: Department of Justice Canada, attn: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents (via email: jan.brongers@justice.gc.ca and oliver.pulleyblank@justice.gc.ca)

Gmail by Google

Aniz Alani [redacted]

# RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

**Brongers, Jan** <Jan.Brongers@justice.gc.ca> Tue, Jan 6, 2015 at 3:27 PM
To: Aniz Alani <senate.vacancies@anizalani.com>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Cc: "Nacu, Norma" <norma.nacu@justice.gc.ca>, "Boire, Sandra" <Sandra.Boire@justice.gc.ca>

Dear Mr. Alani,

Thank you for your e-mails. We are seeking instructions and will respond to you once they are provided.

Yours sincerely,

This is Exhibit D referred to in the affidavit of Aniz Alani made before me on this 2 day of June 2015

A Commissioner for taking Affidavits for British Columbia

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

---

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Monday, January 05, 2015 5:05 PM
**To:** Pulleyblank, Oliver; Brongers, Jan
**Cc:** Nacu, Norma; Boire, Sandra
**Subject:** RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Messrs. Pulleyblank and Brongers:

Further to my note of December 22nd below, I am writing to inquire as to whether you have had a chance to consider my query regarding the proposed use of historical standings from the Parliament website.

On another administrative note, I would appreciate having your position on confirming a timetable by consent and requesting a hearing date based on that timetable as contemplated in the Practice Direction entitled "Early Hearing Dates for Applications in the Federal Court" dated November 18, 2010.

By my reckoning, and subject to any developments that would cause a departure from the default timeline, the following timeline would presumptively apply:

January 15, 2015: Rule 318 material transmitted

January 26: Applicant's affidavits served

February 25: Respondents' affidavits served

March 17: cross-examination on affidavits to be completed

April 7: Applicant's record served and filed

April 27: Respondents' record served and filed

On that basis, and without limiting the ability to apply to vary the timetable as needed, I wonder if you would be agreeable to jointly requesting hearing dates in anticipation of the application being perfected along the timeline indicated above, or with any modifications you would like to discuss.

I look forward to hearing from you.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

-------- Original message --------
From: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Date: 2014-12-23 4:13 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>
Cc: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>, "Nacu, Norma" <norma.nacu@justice.gc.ca>, "Boire,

Sandra" <Sandra.Boire@justice.gc.ca>
Subject: RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Dear Mr. Alani:

Thank you for your e-mail. Please be advised that carriage of this litigation on behalf of the respondents has been assigned to my colleague Jan Brongers and me. Kindly send all future correspondence to both of our attention.

Mr. Brongers is out of the office until December 29th. I will discuss your query with him upon his return.

Kind regards,

Oliver

**Oliver Pulleyblank**

Counsel | Avocat
Department of Justice | Ministère de la Justice
900 - 840 Howe St. | 900 - 840, rue Howe
Vancouver, BC V6Z 2S9
Telephone | Téléphone: (604) 666-6671
Facsimile | Télécopieur: (604) 775-7557
email | couriel: oliver.pulleyblank@justice.gc.ca
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** 2014-Dec-22 5:03 PM
**To:** Pulleyblank, Oliver
**Subject:** Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Oliver,

I write to request the respondents' position with respect to the proposed admission into evidence in the above referenced proceeding of the historical standings, including vacancies, in the Senate since 1867 as prepared and published by the Library of Parliament.

I note that the Library of Parliament has compiled an online record of each change in standings since 1867 at http://www.parl.gc.ca/Parlinfo/lists/PartyStandingsHistoric.aspx?Section=b571082f-7b2d-4d6a-b30a-b6025a9cbb98. The page also includes a link entitled "Changes to party standings" below each of the tables separated by Parliament, which provides the date and details of each appointment, resignation, retirement, death and change of affiliation.

In my view it would be helpful and appropriate to place this data before the Court. Unless this information is otherwise contained in the certified tribunal record requested in the Notice of Application, it seems to me that it would be open to the Court to take judicial notice of its content given that the underlying facts giving rise to the online report are easily verifiable. However, in order to avoid any controversy as to their admissibility by way of affidavit or otherwise, and having regard to the spirit of Rule 3, I write to request the respondents' consent to admit the referenced web page and the party standing details as linked therefrom for the truth of their contents in this proceeding.

Kindly advise of the respondents' position in this regard at your earliest convenience.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

January 15, 2015

**BY E-MAIL and COURIER**

Aniz Alani
[redacted]

This is Exhibit E referred to in the affidavit of Aniz Alani
made before me on this 20
day of July 20 15
A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Dear Mr. Alani:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**

We have now had an opportunity to consider your application and effect the necessary consultations. Please be advised that we have been instructed to respond with a motion to strike seeking dismissal of the application.

To that end, please find enclosed for service the Respondents' notice of motion to strike, along with a copy of our correspondence to the Court of today's date. As the notice of motion requests a special hearing date pursuant to Rule 35(2), you may wish to indicate to the Court your availabilities in order to ensure that the matter is not set down on a date that is inconvenient to you.

Finally, it is our view that, pending the determination of the Respondents' motion to strike, it is premature and unnecessary to address the procedural questions you raised in your correspondence of December 22nd and January 5th.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

Encl.

**Court File No. T-2506-14**

# FEDERAL COURT

**BETWEEN:**

**Aniz ALANI**

**Applicant**

**and**

**THE PRIME MINISTER OF CANADA and THE GOVERNOR GENERAL OF CANADA**

**Respondents**

## NOTICE OF MOTION

TAKE NOTICE THAT the Respondents will make a motion to the Court on a special hearing date to be set by the Judicial Administration pursuant to Rule 35(2)(b) as it is likely to be lengthy. The estimated duration of the motion is ½ day (up to 4 hours) and the Respondents request that it be heard in Vancouver, British Columbia..

THE MOTION IS FOR the following relief:

(a) an order striking out the Applicant's notice of application;

(b) an order dismissing the Applicant's application;

(c) costs of this motion payable by the Applicant to the Respondents fixed in the amount of $1,000.00; or

(d) such further and other relief as the Court deems just.

THE GROUNDS FOR THE MOTION ARE:

(a) the Applicant has sought judicial review of an alleged "decision" of the Prime Minister "not to advise the Governor General to summon fit and qualified Persons to fill existing Vacancies in the Senate";

(b) in the context of this judicial review, the Applicant seeks declaratory relief to the effect 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", and that the alleged "deliberate failure" to do so is unlawful;

(c) as the Applicant properly concedes in his notice of application, advice by the Prime Minister regarding appointments to the Senate is a matter of constitutional convention;

(d) the Applicant's application is fundamentally flawed because it constitutes a request to a Court to legally enforce a constitutional convention, a matter that is not justiciable;

(e) in addition, because the Prime Minister is not a "federal board, commission or other tribunal" as defined by s. 2 of the *Federal Courts Act* when he provides advice to the Governor General regarding Senate appointments, the Federal Court has no jurisdiction to conduct judicial review in respect of such advice;

(f) accordingly, the Applicant's application for judicial review is so clearly improper as to be bereft of any possibility of success, and therefore deserves to be struck out and dismissed summarily by means of a preliminary motion;

(g) the *Federal Courts Act,* in particular ss. 2, 18 and 18.1;

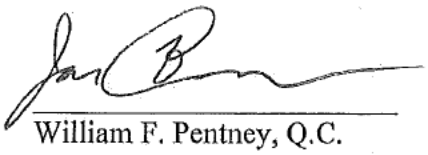
(h) the *Federal Courts Rules,* in particular Rules 3, 4 and 221;

(i) such further and other grounds as the Respondents may suggest and which may be accepted by the Court.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) None.

Date: January 15, 2015



William F. Pentney, Q.C.
Deputy Attorney General of Canada
Per: **Jan Brongers**
**Oliver Pulleyblank**
Department of Justice
B.C. Regional Office
900 – 840 Howe Street
Vancouver, British Columbia
V6Z 2S9
Tel: 604-666-0110
Fax: 604-666-1585

Solicitor for the Respondents

TO: **Aniz Alani**

[redacted]

Applicant

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

January 15, 2015

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**

I write in my capacity as counsel for the Respondents to the above-referenced matter, an application for judicial review in respect of the Prime Minister's role in the appointment of Senators. Please find enclosed for filing the Respondents' notice of motion to strike along with proof of service.

The Respondents respectfully request an appointment of a special time and place for a judge to hear this motion pursuant to Rule 35(2) as it is likely to be lengthy. In particular, the Respondents estimate that it may take up to half a day (4 hours) for the motion to be heard. The motion is to be presented in Vancouver, British Columbia.

Counsel for the Respondents are available for such a hearing on any day between February 2nd and April 29th, with the exception of the following dates:

- February 4th to 5th
- February 11th
- February 23rd to March 13th.

By copy of this letter to the Applicant, we invite him to provide his availabilities to the Court as well.

With respect to the parties' motion records, the Respondents note that Rules 364 and 365 provide that they must be produced at least 3 days before the hearing of the motion (in the case of the moving party), and no later than 2:00 p.m. on the day that is two days before the hearing of the motion (in the case of the responding party). Given the nature of this particular motion, however, the Respondents respectfully suggest that it would be of assistance to the Court and the parties if the deadlines for production of the motion records were advanced as follows:

- Respondents' (moving party) motion record is to be filed and served 2 weeks prior to the scheduled hearing date for the motion.

- Applicant's (responding party) motion record is to be filed and served 1 week prior to the scheduled hearing date for the motion.

We would be grateful if these requests could be forwarded to the Court for its consideration.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

c.c. Aniz Alani
Applicant

Aniz Alani
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com



This is Exhibit F referred to in the affidavit of Aniz Alani made before me on this 15 day of Jan 2015.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Services

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**

I write further to Mr. Brongers' correspondence dated January 15, 2015 in the above-referenced matter enclosing the Respondents' notice of motion to strike.

I would respectfully propose that in the interest of time and in order to obtain a just, speedy and expeditious determination of the issues on the merits the respondents' motion might be disposed of in writing under pursuant to Rule 369. If respondents' counsel is agreeable, the respondents' motion record could be served and filed on Friday, January 23 as would be the case if a special sitting were held on February 6 and counsel's proposal to advance the deadline for the respondents' motion record to two weeks prior to the hearing were adopted. I would then propose that the applicant's responding motion record be served and filed ten days later in accordance with Rule 369(2). If upon review of the materials the Court determines it to be appropriate, a date and place could be fixed for an oral hearing on some or all issues raised in the motion as contemplated by Rule 369 (4).

In addition, further to counsel's invitation to provide my availability to the Court, I can advise at this time that I would be available for a hearing on February 6, 2015. If the motion will not proceed under Rule 369, I would also be agreeable to advancing the deadlines for production of the motion records on the basis proposed by counsel for the Respondents if a hearing can be accommodated on February 6, 2015.

I agree that the hearing of the motion should not exceed a half-day.

If a special sitting on February 6, 2015 cannot be accommodated, I would respectfully request an opportunity to canvass alternate dates. As I am self-represented in this matter and necessarily require seeking a leave of absence from my employment in order to make myself available for court appearances in this proceeding and to arrange for time to prepare a responding motion record outside of business hours, I regrettably am unable to confirm a range of additional specific dates with the same efficiency that might normally be expected of counsel.

I would be grateful if this correspondence could be forwarded to the Court for its consideration.

Sincerely,

Aniz Alani

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents

This is Exhibit G referred to in the affidavit of Aniz Alani made before me on this 2nd day of June 2015.

A Commissioner for taking Affidavits for British Columbia

CHRISTOPHER RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Gmail by Google

Aniz Alani [redacted]

# Alani v. Canada

**Aniz Alani** <senate.vacancies@anizalani.com> Thu, Jan 15, 2015 at 3:11 PM
To: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>, "Boire, Sandra" <Sandra.Boire@justice.gc.ca>

Mr. Brongers,

Thank you for your email below.

Regarding the delivery of tribunal materials, may I respectfully propose that if the respondents are prepared to stipulate that the only objection to producing materials requested under Rule 317 is that the application for judicial review is fundamently flawed for the reasons set out in the respondents' Notice of Motion and that the materials will otherwise be available to be transmitted in their entirety without further objection in the event the respondents' motion is not granted, immediately upon the determination of the motion, I would agree that there is no practical utility in requiring that a separate document be provided under Rule 318(2). This approach would in my view further the objective of the Rules in providing an expeditious process for judicial review applications.

If the respondents are not prepared to stipulate accordingly, I would respectfully request that an exhaustive statement of the respondents' grounds of objection be provided for the record as contemplated under Rule 318(2).

As to timing, while your offer to not insist on strict compliance with the time limits is appreciated, I have made arrangements to have my affidavit materials served and filed in accordance with the Rules and, aside from being unable to append as an exhibit to an affidavit any of thr materials requested under Rule 317 before I receive them, the respondents' motion to strike does not affect my ability to comply with the time limits or detract from my interest in having this matter proceed as expeditiously as reasonably possible. If the motion is dismissed and the only materials not already included on my affidavits for inclusion in my application record are the materials requested under Rule 317, I trust there would be no objection to providing those materials in a supplementary affidavit upon receipt of same.

In the same spirit of avoiding unnecessary motions and narrowing the issues to be determined, I note that the respondents' motion is grounded on objections that appointments to the Senate are a matter of constitutional convention and thus not justiciable, and that the Federal Court lacks jurisdiction as the Prime Minister is not a federal board, commission or other tribunal when giving advice to the Governor General regarding Senate appointments.

The reference to constitutional convention in the notice of application relates solely to the Governor General's appointment of Senators being subject to the advice of the Prime Minister. I would agree that what, if anything, the Governor General does with the advice once given is not itself justiciable, but that is not the subject of the application for judicial review.

I would draw to your attention the Memorandum Regarding Certain of the Functions of the Prime Minister adopted by Order-in-Council P.C. 3374 dated 25 October 1935, which codifies the prerogative power of the Prime Minister with respect to the appointment of Senators. I understand that comparable orders were issued under previous administrations dating back to one issued on the advice of Sir Charles Tupper on May 1, 1896. So far as I am aware, the order has not been repealed.

It is my position that this Order-in-Council establishes that the Prime Minister is a "person having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown..." within the meaning of the definition of "federal board, commission or other tribunal" in section 2 of the Federal Courts Act.

If I am incorrect in this regard and it is determined that the lack of jurisdiction under section 18 is the only obstacle to proceeding, I intend to ask the Court to convert the application to an action under s. 17 as permitted

under s. 18.4(2).

To the extent that a further articulation of these grounds for the application for judicial review would satisfy the respondents' concerns, I would propose that we discuss mutually satisfactory amendments to the notice of application to reflect accordingly since it will be necessary for the Court on a motion to strike to consider what if any amendments would cure the defects identified in any event.

Given the extensive case law indicating that objections to an application for judicial review ought to be reserved for the hearing on its merits except on a very exceptional basis in the clearest of cases, it is my very strong preference to avoid any unnecessary delay and costs that would be caused by the respondents' pursuit of this motion that may undermine the statutory requirement under section 18.4 that applications be heard and determined without delay and in a summary way.

Of course, if the foregoing assists to narrow the issues in dispute such that any of the objections raised in the respondents' motion may be withdrawn, please advise.

Best regards,

---

Aniz Alani
T: 604.600.1156
E: senate.vacancies@anizalani.com

-------- Original message --------
From: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Date: 2015-01-15 1:27 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>, "Boire, Sandra" <Sandra.Boire@justice.gc.ca>
Subject: RE: Alani v. Canada

Dear Mr. Alani,

Thank you for your e-mail below.

With respect to your remarks in the final paragraph, it is the Respondents' position that the filing of the notice of motion to strike on the basis that the application is fundamentally flawed both because it is not justiciable and because the Federal Court lacks jurisdiction amounts to communication of the Respondents' objection to the Rule 317 request contained in your notice of application. We trust you will agree that in the circumstances there would be no utility in preparing a separate document confirming the fact that the Respondents will not be transmitting any material pursuant to Rule 318 because of the justiciability and jurisdictional concerns with this application that are already clearly identified in the notice of motion to strike.

In the same vein, and in the interest of minimizing costs for the parties, please rest assured that the Respondents will not insist on strict compliance with the upcoming procedural deadlines set out in the *Federal Courts Rules* while the motion to strike is pending, including the Rule 306 deadline for the applicant's affidavits. In the event the Respondents' motion is dismissed, the parties can discuss proposing to the Court a reasonable schedule for the completion of the remaining procedural steps at that time.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Thursday, January 15, 2015 12:14 PM
**To:** Boire, Sandra
**Cc:** Brongers, Jan; Pulleyblank, Oliver
**Subject:** Re: Alani v. Canada

I acknowledge receipt by email of correspondence of today's date enclosing the respondents' motion to strike and related correspondence to the registry regarding the scheduling of a hearing of same.

I will respond to the Court and you with my availability once I have had an opportunity to determine same.

As the motion to strike does not operate as a stay of the obligation to produce material under Rule 318, I trust that the ordinary time limit for transmitting the requested material or submitting an objection remains in effect.

Regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

-------- Original message --------
From: "Boire, Sandra" <Sandra.Boire@justice.gc.ca>
Date: 2015-01-15 8:41 AM (GMT-08:00)
To: senate.vacancies@anizalani.com
Cc: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Subject: Alani v. Canada

Dear Mr. Alani,

Please see attached correspondence.

Regards,

**Sandra Boire**

Legal Assistant

Department of Justice Canada | Ministère de la Justice Canada

Regional Director General's Office | Bureau du directeur general regional

900 - 840 Howe Street | 840, rue Howe, pièce 900

Vancouver, BC V6Z 2S9 | Vancouver (C.-B.) V6Z 2S9

Tel. 604-666-5433 | Fax: 604-666-1585



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**OiC re Prerogatives of the PM - PC 3374 - Oct 25 1935.pdf**
240K

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

January 16, 2015

This is Exhibit H referred to in the affidavit of Aniz Alani made before me on this 16 day of July 2015.

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**BY FAX: (604) 666-8181**

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Scheduling of Motion to Strike**

In my capacity as counsel for the Respondents, I write in response to the letter of the Applicant, Mr. Alani, dated yesterday (January 15, 2015) in respect of the scheduling of the Respondents' motion to strike.

The Respondents are opposed to Mr. Alani's request to convert the Respondents' oral motion brought pursuant to the standard motion hearing rules into a Rule 369 motion in writing. In the Federal Court, motions are presumptively heard orally unless the moving party requests that the motion be decided on the basis of written representations alone. In keeping with this presumption, the *Federal Courts Rules* expressly contemplate at Rule 369(2) & (4) the possibility that a respondent to a written motion may object to its disposition in writing and provides the Court with the discretion to hold an oral hearing of such a motion. On the other hand, the *Federal Courts Rules* make no mention of the possibility that a respondent to an ordinary oral motion can object to an oral hearing and request that the motion be disposed of exclusively in writing. Similarly, the *Federal Courts Rules* do not expressly provide that the Court can deny a moving party an oral hearing of a motion on the basis that the responding party would prefer it to be dealt with in writing instead.

Like Mr. Alani, the Respondents are interested in having this matter resolved in a just and expeditious manner. It is the Respondents' position that this can best be accomplished if the Court has the benefit of both written representations and oral argument on the complex legal questions of justiciability and jurisdiction raised by the motion to strike, which has the potential for fully resolving this proceeding. Indeed, the undersigned was one of the counsel who appeared on behalf of the defendant Prime Minister in the matter of *Conrad BLACK v. CANADA (Prime Minister)* (2000), 47 O.R. (3d) 532 (S.C.); aff'd (2001), 54 O.R. (3d) 215 (C.A.), which was a similar motion to strike that was brought on grounds of justiciability and jurisdiction. That

motion was the subject of an oral hearing before then Ontario Superior Court Chief Justice LeSage, during which questions were posed by the Court to counsel which undoubtedly facilitated its adjudication. Furthermore, the motion led to a complete resolution of the proceeding, which was upheld on appeal. The Respondents respectfully submit that the present motion to strike Mr. Alani's application against the Prime Minister, a motion brought on similar grounds of justiciability and jurisdiction, also merits being afforded a full oral hearing by the Federal Court.

We would be grateful if these submissions could be forwarded to the Court for its consideration.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

c.c. Aniz Alani
Applicant

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

January 16, 2015

This is Exhibit I referred to in the affidavit of Aniz Alani made before me on this 16 day of Jan 20 15
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Services

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**

I write to seek the Court's directions concerning the procedure to be followed under the Rules in response to Mr. Brongers' correspondence of today's date regarding the Respondents' opposition to converting the motion to strike to a Rule 369 motion in writing.

I respectfully submit that the "complex legal questions" that counsel for the Respondents acknowledges are raised by the motion to strike illustrate that justice would be better served by allowing the application judge to deal with all of the issues raised by the judicial review application, as the Court of Appeal has indicated to be the appropriate procedure in judicial review proceedings: e.g., *David Bull Laboratories (Can.) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588. (C.A.). The complexity of the legal questions raised underscores the challenge the Respondents face in establishing that the application is so clearly improper as to be bereft of *any possibility of success* such that the notice of application is among those "very exceptional" clearest of cases in which an order to strike is appropriate.

Moreover, if the Respondents' motion is unsuccessful, much of the argument expended on a motion to strike would necessarily be duplicative of arguments that would be raised at the hearing of the application itself, as stated by Mr. Justice Hughes in *Chrysler Canada Inc. v. Canada*, 2008 FC 1049. If the motion is not granted, the half day of oral argument requested by the Respondents to consider whether it is *beyond doubt* that the application cannot succeed for lack of jurisdiction or justiciability would be matched by oral argument on the merits of those same objections at the hearing of the application.

If the obviousness of the notice of application's impropriety cannot be clearly articulated on the basis of written representations, I submit that the motion itself is bound to fail and would be a waste of the Court's and parties' time and resources.

I offer these reasons in reply to the Respondents' opposition to converting the motion to a Rule 369 motion in writing, which, I respectfully submit, is open to the Court to consider in the exercise of its inherent jurisdiction and having regard to Rule 3 and section 18.4(1). In this

regard, I note that the Court's inherent jurisdiction is already invoked as the Rules do not expressly contemplate that a motion to strike is available in respect of applications, as the Rule 221 cited in the Notice of Motion applies only to actions, not applications.

To the extent necessary for the Court to issue directions on the procedure to be followed in respect of the Respondents' motion to strike, I respectfully request that this letter be considered as my submissions on same and that the requirement, if any, for a motion record in respect of this request be dispensed with.

I would be grateful if this correspondence could be forwarded to the Court for its consideration.

Sincerely,

Aniz Alani

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

January 20, 2015

**BY FAX: (604) 666-8181**

This is Exhibit...J.....referred to in the affidavit of...Aniz Alani.....
made before me on this.....20th.....
day of...January.....
.....
A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Scheduling of Motion to Strike**

Further to communication received yesterday from Registry Officer Julie Gordon, it is my understanding that the Court has invited the Respondents to respond to Mr. Alani's letter of January 16th, which we had initially understood as his final reply to the Respondents' request that a special hearing date for set for their motion to strike (already the subject of two letters from each of the parties, dated January 15 and 16).

Briefly, the Respondents maintain that it would most efficient and just to permit them to present their motion to strike orally, and not be limited to written submissions alone as proposed by Mr. Alani. Furthermore, there is no merit to Mr. Alani's apparent assertion that any motion to strike whose adjudication could benefit from oral submissions and questions from the bench to address legal questions is "bound to fail". There are several examples of legally complex issues that the Courts have found to be suitable for disposition by motion to strike, including *Conrad BLACK* v. *Canada*[1] (referenced in our letter of January 15th) and *Operation Dismantle v. The Queen.*[2] Indeed, simply because a proceeding may be legally complex does not mean that it cannot be "plain and obvious" that it is bound to fail no matter what evidence could theoretically be tendered by the applicant.

We would be grateful if these submissions could be forwarded to the Court for its consideration.

[1] (2001), 54 O.R. (3d) 215 (C.A)
[2] [1985] 1 S.C.R. 441

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

c.c. Aniz Alani
Applicant

Gmail by Google

Aniz Alani [redacted]

# Alani v. Canada - Federal Court File No. T-2506-14 - Applicant's affidavit

**Brongers, Jan** <Jan.Brongers@justice.gc.ca> Wed, Jan 21, 2015 at 4:09 PM
To: Aniz Alani <senate.vacancies@anizalani.com>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>, "Boire, Sandra" <Sandra.Boire@justice.gc.ca>

This is Exhibit K referred to in the affidavit of Aniz Alani made before me on this day of June 20 15

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE
A Commissioner for taking Affidavits for British Columbia

Dear Mr. Alani,

Thank you for your e-mail below.

Please be advised that the respondents maintain their position with respect to the justiciability of your application, and the Federal Court's jurisdiction with respect thereto.

In particular, we are of the view that the Federal Court of Appeal's decision in *Hupacasath First Nation v. Canada* does not impact upon the well established principle that matters of constitutional convention are not justiciable. It also does not address the question of the Federal Court's jurisdiction to conduct judicial review of such matters if they were justiciable.

We also respectfully disagree with your views regarding the Minute-in-Council referenced in your earlier e-mail, a document which does not provide authority for the proposition that Prime Ministerial advice in respect of Senate appointments is a matter of Crown prerogative.

In sum, the respondents will not be withdrawing or amending the motion to strike.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Monday, January 19, 2015 12:35 PM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Subject:** RE: Alani v. Canada - Federal Court File No. T-2506-14 - Applicant's affidavit

Thank you for your email message below.

I draw your attention to the very recently issued decision of the Federal Court of Appeal in Hupacasath First Nation v. Canada (Attorney General), 2015 FCA 4.

In my view, the Court's decision is determinative of the issues of justiciability and jurisdiction raised in the respondents' notice of motion, particularly in light of the Order-in-Council to which I drew your attention in my correspondence of January 15, 2015 at 3:11pm. I invite the respondents to reconsider their position on the motion to strike accordingly.

I reserve the right to bring this correspondence to the attention of the Court with respect to the determination of costs of the motion.

Regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

-------- Original message -------
From: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Date: 2015-01-19 10:10 AM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Subject: RE: Alani v. Canada - Federal Court File No. T-2506-14 - Applicant's affidavit

Dear Mr. Alani,

We acknowledge service of the Ashley Morton affidavit effective Monday, January 19.

We also acknowledge your e-mail of January 15, 2015 received at 3:11 p.m. The respondents' position remains as set out in the notice of motion to strike filed January 15th and we have nothing to add to what has already been stated in our previous correspondence. We now await the direction of the Court with regard to the scheduling of the motion to strike and will govern ourselves accordingly.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Sunday, January 18, 2015 8:51 PM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Subject:** Alani v. Canada - Federal Court File No. T-2506-14 - Applicant's affidavit

Messrs. Brongers and Pulleyblank:

Please find attached for service upon the respondents the Affidavit of Ashley Morton with exhibits A, B and C sworn January 16, 2015 under Rule 306 in the above referenced proceeding.

Kindly acknowledge service of this email and attached affidavit by reply email.

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

January 21, 2015

This is Exhibit L referred to in the affidavit of Aniz Alani made before me on this 20 day of Jan 20 15
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**BY FAX: 604.666.8181**

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Services

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**
**Directions re: Objection to Producing Tribunal Materials under Rule 318**

I write to request the Court's directions as to the procedure for making submissions with respect to an objection under Rule 318(2).

Based on correspondence with counsel for the Respondents, I understand that the Respondents take the position that the filing of the Respondents' notice of motion to strike amounts to a communication of the Respondents' objection to the request for materials made under Rule 317 and contained in the notice of application.

In light of the Respondents' apparent objection, it would be helpful in my view to obtain a determination of the following issues:

1. Is the Respondents' objection to produce materials pending the determination of the motion to strike sustainable?

2. What time period applies to:

    a. the transmission of Rule 317 materials,

    b. the communication of any further objections beyond those already contained in the Respondents' notice of motion to strike the Application, and

    c. the service and filing of the Applicant's Rule 306 affidavit appending Rule 317 materials to the extent the Applicant intends to rely on them.[1]

[1] The Applicant's supporting affidavits and documentary exhibits other than those dependent upon receipt of the Rule 317 materials have already been served under Rule 306 with proof of service submitted for filing.

I would be grateful if this correspondence could be forwarded to the Court for its consideration.

Sincerely,

Aniz Alani

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

January 22, 2015

**BY FAX: (604) 666-8181**

This is Exhibit M referred to in the affidavit of Aniz Alani made before me on this 22 day of June 2015.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Applicant's Request for Directioms**

We are in receipt of a copy of Mr. Alani's letter of yesterday (January 21st) requesting certain directions in respect of this matter, an application for judicial review in relation to the Prime Minister's role in appointing Senators. The application is the subject of a pending motion to strike brought by the Respondents, and the parties are currently awaiting the scheduling of a hearing date for this motion.

To assist the Court with Mr. Alani's request, the Respondents confirm and propose the following.

First, it is indeed the Respondents' position that their filing of a motion to strike this application on the basis that it is: (1) not justiciable; and (2) outside the jurisdiction of the Federal Court because the Prime Minister is not a "federal board, commission or other tribunal" when he provides advice on Senate appointments constitutes communication of their objection to Mr. Alani's Rule 317 request for "tribunal" material. Mr. Alani has clearly been put on notice that his Rule 317 request will not result in the transmission of any material because of these two issues, which we anticipate will likely be resolved when the Court adjudicates the Respondents' motion to strike.

Second, with respect to the timelines for the remaining procedural steps in this application, the Respondents respectfully propose that they be addressed, if necessary, following adjudication of the Respondents' motion. We have already communicated to Mr. Alani that the Respondents will not insist on strict compliance with procedural deadlines while their motion to strike is pending. Similarly, we have indicated to him that, in the event the Respondents' motion to strike is dismissed, the parties can discuss proposing to the Court a reasonable schedule for the completion of the remaining procedural steps at that time. In our view, such an approach is

consistent with the parties' mutual interest in conducting this litigation is a manner that is most likely to secure the just, most expeditious and least expensive determination of this proceeding.

We would be grateful if these submissions could be forwarded to the Court for its consideration.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

c.c. Aniz Alani
Applicant

Gmail by Google

Aniz Alani [redacted]

# Alani v. Canada - Proposed amended notice of application

**Brongers, Jan** <Jan.Brongers@justice.gc.ca> Thu, Jan 29, 2015 at 4:39 PM
To: Aniz Alani <senate.vacancies@anizalani.com>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>

Dear. Mr. Alani,

This is Exhibit N referred to in the affidavit of Aniz Alani made before me on this 22 day of July 20 15.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Thank you for your e-mail below.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Wednesday, January 28, 2015 8:59 AM
**To:** Brongers, Jan
**Cc:** Pulleyblank, Oliver
**Subject:** Alani v. Canada - Proposed amended notice of application

Mr. Brongers,

I am considering some amendments to the notice of application to refine the relief sought and clarify the grounds for the application.

Given the timetable for determining the motion to strike, I was going to propose sending you a draft amended notice of application and to solicit the respondents' position on whether some or all of the amendments might go

by consent, and failing which whether the respondents have a preference as to whether I bring a motion for leave to amend to be determined before or during the hearing of the motion to strike, or alternatively that I put them before the Court as a proposed set of amendments to be considered if the motion to strike is granted without prejudice to amend the notice of application. It may be that procedurally nothing turns on it, but I thought that having the draft amendments in hand might assist the parties when preparing submissions.

Recognizing of course that the respondents may not be in a position to advise before having an opportunity to review the proposed amendments, I simply wanted to provide you with the courtesy of notice of my intention to forward same to you for review in the coming days.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

Federal Court | Cour fédérale

**Date: 20150129**

**Docket: T-2506-14**

**Ottawa, Ontario, January 29, 2015**

**PRESENT: The Chief Justice**

**BETWEEN:**

**ANIZ ALANI**

**Applicant**

**and**

**THE PRIME MINISTER OF CANADA AND THE GOVERNOR GENERAL OF CANADA**

**Respondents**

**ORDER**

**PURSUANT** to Rules 47 and 384 of the *Federal Courts Rules*;

**IT IS HEREBY ORDERED THAT:**

1. This proceeding shall continue as a specially managed proceeding.

This is Exhibit O referred to in the affidavit of Aniz Alani made before me on this 2 day of June 2015

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

2. Pursuant to Rule 383, Prothonotary Roger R. Lafrenière is assigned as Case Management Judge in this matter.

"Paul S. Crampton"
Chief Justice

Federal Court | Cour fédérale

Ottawa, Ontario
K1A 0H9

January 30, 2015

Dear Sir/Madam:

**RE: ANIZ ALANI v. THE PRIME MINISTER OF CANADA et al**
**Court File No: T-2506-14**

---

This is to advise you of the Chief Justice direction, dated January 29, 2015:

"The Respondents' motion (document #13) to strike will be made returnable before this Court at the Pacific Centre – 3rd floor, 701 Georgia Street West, in the City of Vancouver, British Columbia, on Thursday, April 23, 2015 at 9:30 in the forenoon for a duration of four (4) hours.

The respondents' motion record will be served and filed no later than February 20, 2015.

The applicant's responding motion record will be served and filed no later than March 20, 2015."

Yours truly,

Lise Lafrance
Registry Assistant

This is Exhibit P referred to in the
affidavit of Aniz Alani
made before me on this
day of June 20 15
A Commissioner for taking
Affidavits for British Columbia

ROBERT RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Pursuant to section 20 of the *Official Languages Act* all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la *Loi sur les langues officielles*, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

ADDRESS ALL COMMUNICATIONS TO THE CHIEF ADMINISTRATOR - ADRESSER TOUTE CORRESPONDANCE À L'ADMINISTRATEUR EN CHEF

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

February 2, 2015

This is Exhibit Q referred to in the affidavit of Aniz Alani made before me on this 2 day of June 20 15.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Department of Justice
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Attention: Jan Brongers

Dear Mr. Brongers:

**Re: ALANI, Aniz v. The Prime Minister of Canada et al.**
**Court No: T-2506-14**
**Amended Notice of Application**

Further to my e-mail correspondence of January 28, 2015, I enclose a draft amended notice of application in respect of the above referenced proceeding.

The amendments contemplated in the enclosed draft document reflect the position I intend to take in response to the respondents' notice of motion to strike the notice of application and, in particular, the objections raised by the respondents with respect to justiciability and jurisdiction.

It is my view that the Court can and ought to consider *potential* amendments to the notice of application when determining a motion to strike to the extent such amendments might address flaws in the notice of application as originally filed. I believe it would be most efficient to facilitate that consideration by effecting amendments intended to respond to the objections raised before the hearing of the motion to strike, and, if possible, before the parties have submitted their motion records.

For these reasons, I respectfully request the respondents' consent to amending the notice of application as set out in the enclosed draft. If the respondents do not consent, please advise as to any preferences with respect to procedure to be followed for requesting leave to amend.

Thank you and best regards.

Sincerely,

Aniz Alani

Encl.

Department of Justice Ministère de la Justice
Canada Canada

900 – 840 Howe Street
Vancouver, B.C. V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 4387565

February 5, 2014

**BY E-MAIL (senate.vacancies@anizalani.com)**

Aniz Alani
[redacted]

This is Exhibit B referred to in the affidavit of Aniz Alani
made before me on this 2nd day of June, 20 15
A Commissioner for taking Affidavits for British Columbia
TAMSEN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Dear Mr. Alani:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**

Thank you for your letter of February 2, 2015, your e-mail of February 3, 2015, and your voice-mail of February 4, 2015 in which you seek the Respondents' views with your respect to your proposed cross-motion to amend your application in response to the Respondents' motion to strike.

Please be advised that we do not agree that the proposed amendments, if allowed, would cure the defective application. In particular, such an amended application would still not be justiciable and would still be outside of the jurisdiction of the Federal Court.

With respect to the scheduling of your cross-motion, it is our position that it should be presented to the motions judge at the same time as the hearing of the Respondents' motion to strike.

Finally, we note that pursuant to the January 29, 2015 order of the Chief Justice, this application is now a specially managed proceeding. Accordingly, should you decide to proceed with your cross-motion, the matter of its scheduling, including the timing of the parties' motion records, should be raised by presenting a written request for directions to the Case Management Judge (Lafrenière P.).

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

February 5, 2015

**SUBMITTED ELECTRONICALLY**

This is Exhibit S referred to in the affidavit of Aniz Alani made before me on this 1st day of June 20 15.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Services

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**
**Request for Case Management Conference**

Further to the Order of Chief Justice Crampton dated January 29, 2015 that the above referenced proceeding continue as a specially managed proceeding with Prothonotary Lafrèniere assigned as Case Management Judge, I write to propose and respectfully request that a case management conference be held to consider the following issues:

1. **Leave to Amend Notice of Application**

   In order to assist in the determination of the real questions in controversy, I propose to amend the Notice of Application in the form set out in Schedule "A" to this letter.

   I have provided respondents' counsel with notice of my intention to seek these amendments and understand the respondents' preference to be that the proposed amendments be presented to the motions judge at the same time as the hearing of the respondents' motion to strike.

   In my view, it would be advantageous to the parties and to the Court that the amendments, if leave is granted, take effect as soon as possible in order that the parties may take the amendments into account in preparing their motion records for the respondents' motion to strike.

2. **Directions regarding Rule 318 Objection**

   In my correspondence to the Court dated January 21, 2015, I requested directions as to the procedure for making submissions with respect to the respondents' objection to producing materials pending the determination of the motion to strike.

I propose that the issues referenced in my letter as #1 (i.e., is the objection sustainable?), #2a (i.e., time period for transmission of Rule 317 materials), and #2b (i.e., time period for communication of any further objections under Rule 318) be canvassed at a case management conference.

With respect to the issue referenced in my letter as #2c (i.e., time period for Rule 306 affidavit appending Rule 318 materials), I have since noted that Rule 309(2)(e.1) now expressly permits Rule 318 materials to be included in an applicant's record without the need to attach the materials as an exhibit to an affidavit. Accordingly, I respectfully withdraw my request for directions on this issue.

**3. Timetable for Remaining Steps**

In order to streamline the process for the remaining steps in this proceeding, I would respectfully propose that the hearing of the respondents' motion to strike, currently scheduled to be heard at a special sitting on April 23, 2015 for a duration of four hours, be adjourned so that it be heard at the outset of the hearing of the application.

I note that a similar order was issued by Prothonotary Milczynski in her capacity as Case Management Judge in Court File No. T-1476-14. In that case, an application for judicial review of the decision of the Governor General to grant royal assent to Bill C-24, the *Strengthening Canadian Citizenship Act*, was dismissed on its merits on grounds of justiciability and jurisdiction without the need for a separate hearing: *Azevedo v. Canada (Governor General)*, 2015 FC 91.

In the alternative, I respectfully ask the Court to consider reserving hearing dates, on an anticipatory basis, for the underlying application in order to minimize any delay in securing an expeditious determination of the application on its merits in the event that the respondents' motion to strike is dismissed.

**4. Dispute Resolution Services**

I respectfully propose that the Court canvas the feasibility and appropriateness in the circumstances of conducting a dispute resolution conference, and, in particular, a confidential early neutral evaluation of the proceeding under Rule 387(b) to evaluate the relative strengths and weaknesses of the positions advanced by the parties and render a non-binding opinion as to the probable outcome of the proceeding.

**5. Adverse Costs Immunity**

Finally, in light of the fact that the respondents have sought costs in their notice of motion to strike the notice of application, I intend to apply for an adverse costs immunity order in respect of this proceeding and seek the Court's directions as to the proper procedure for seeking same.

I am available for such a case management conference in Vancouver on any day between February 16 and April 23, with the exception of the following dates:

February 18 (unavailable during morning only)
March 9 (afternoon only), 11, 13 (afternoon only)

In addition, I will be travelling on family vacation during the week of February 9-13 but would be available for a teleconference during this time upon notice.

I would be grateful if this correspondence could be forwarded to Prothonotary Lafrèniere as Case Management Judge for consideration.

Sincerely,

Aniz Alani

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents

## Schedule "A"

Court File No. T-2506-14

**FEDERAL COURT**

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA,
THE QUEEN'S PRIVY COUNCIL FOR CANADA,
THE ATTORNEY GENERAL OF CANADA and
THE GOVERNOR GENERAL OF CANADA

Respondents

**AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court in Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of *the Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by: _____
(Registry Officer)

Address of local office: Federal Court
Courts Administration Service
P.O. Box 11065, 3rd Floor
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO:

THE PRIME MINISTER OF CANADA
80 Wellington Street
Ottawa, ON K1A 0A2

THE QUEEN'S PRIVY COUNCIL FOR CANADA
85 Sparks Street
Ottawa, ON K1A 0A3

THE GOVERNOR GENERAL OF CANADA
1 Sussex Drive
Ottawa, ON K1A 0A1

ATTORNEY GENERAL OF CANADA
284 Wellington St.
Ottawa, ON K1A 0H8

DEPARTMENT OF JUSTICE CANADA
British Columbia Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

## APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the ~~decision~~ failure, refusal or unreasonable delay of the Prime Minister, or alternatively the Queen's Privy Council for Canada acting on the recommendation of the Prime Minister, ~~as communicated publicly on December 4, 2014, not~~ to advise the Governor General to summon fit and qualified Persons to fill existing Vacancies in the Senate.

THE APPLICANT makes application for:

1) A declaration that a qualified Person must be summoned to the Senate within a reasonable time after a Vacancy happens in the Senate;~~:~~

~~a) 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.~~

~~b) the deliberate failure to advise the Governor General to summon a fit and qualified Person to fill a Vacancy in the Senate within a reasonable time after the Vacancy happens~~

~~i) is contrary to section 32 of the *Constitution Act, 1867*;~~

~~ii) is contrary to section 22 of the *Constitution Act, 1867*~~

~~(1) to the extent the Vacancies when considered in the aggregate deny a province or territory of the proportion of regional representation set out in section 22 of the *Constitution Act, 1867*, and~~

~~(2) to the extent that a Vacancy deprives a province or territory of the minimum number of representatives in the Senate set out in section 22 of the *Constitution Act, 1867*;~~

~~iii) undermines and breaches the principles of~~

~~(1) federalism,~~

~~(2) democracy,~~

~~(3) constitutionalism,~~

~~(4) the rule of law, and~~

~~(5) the protection of minorities,~~

~~and underlying constitutional imperatives, as enunciated by the Supreme Court of Canada in *the Quebec Secession Reference*; and~~

~~iv) is unlawful absent an amendment to the Constitution of Canada according to the constitutional formula as set out in section 41 of the *Constitution Act, 1982*;~~

2) An Order for costs of this application on a basis that this Honourable Court deems just; and

3) Such further or other relief as this Honourable Court deems just.

THE GROUNDS for the application are:

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."

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) There are currently ~~16~~ 18 Vacancies in the Senate.

4) There are currently 87 Senators in the Senate, exclusive of suspensions.

5) Of the 105 Senate positions, the constitutionally established allocation and the currently existing actual distribution among the provinces and territories, exclusive of suspensions, are as follows:

| Province or Territory | Number of Senators Allocated by Section 22 of *Constitution Act, 1867* | Actual Current Distribution of Senators | Current Vacancies |
|---|---|---|---|
| Ontario | 24 | 19 | 5 |
| Quebec | 24 | 20 | 4 |
| Nova Scotia | 10 | 8 | 2 |
| New Brunswick | 10 | 8 | 2 |
| Prince Edward Island | 4 | 3 | 1 |
| Manitoba | 6 | 3 | 3 |
| British Columbia | 6 | 5 | 1 |
| Saskatchewan | 6 | 6 | 0 |
| Alberta | 6 | 6 | 0 |
| Newfoundland and Labrador | 6 | 6 | 0 |
| Yukon Territory | 1 | 1 | 0 |
| Northwest Territories | 1 | 1 | 0 |
| Nunavut | 1 | 1 | 0 |
| **Total** | **105** | **87** | **18** |

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

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

8) Vacancies happen in the Senate upon the resignation, death, or disqualification of a Senator, when a Senator reaches the age of 75, and upon the addition of four or eight Senators where permitted by section 26 of the *Constitution Act, 1867*.

9) The text of section 24 of the *Constitution Act, 1867* provides for the formal appointment of Senators by the Governor General:

> **24.** The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the

Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

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

~~11) By constitutional convention, appointments to the Senate are made on the advice of the Prime Minister.~~

12) The constitutional convention requiring the Governor General to follow the Prime Minister's recommendations when filling Senate vacancies is complemented by the prerogative power regarding the appointment of Senators, reserved to the Prime Minister, as codified by various Orders in Council including but not limited to:

(a) Order in Council regarding Prerogatives of the Prime Minister (1935), P.C. 3374, approved 25th October, 1935;

(b) Memorandum regarding certain of the Functions of the Prime Minister, approved 13th July, 1896; and

(c) Memorandum regarding certain of the Functions of the Prime Minister, approved 1st May, 1896.

13) The Prime Minister's ~~decision not~~ failure to recommend appointments to the Senate to fill the Vacancies reflects an impermissible attempt to make changes to the Senate without undertaking the constitutional reforms required in light of the amending formula set out in the *Constitution Act, 1982* as interpreted by the Supreme Court of Canada in the *Senate Reform Reference*.

14) The failure to summon a fit and qualified Person to fill a Vacancy in the Senate within a reasonable time after the Vacancy happens undermines and breaches sections 21, 22 and 32 of the *Constitution Act, 1867*, and the principles of federalism, democracy, constitutionalism and the rule of law,

and the protection of minorities, and underlying constitutional imperatives, as enunciated by the Supreme Court of Canada in *the Quebec Secession Reference*.

15) Section 18(1) of the *Federal Courts Act* grants the Federal Court exclusive jurisdiction to grant declaratory relief against any federal board, commission or other tribunal, and to hear and determine any application or other proceeding for relief against a federal board, commission or other tribunal.

16) Section 18.1(3) of the *Federal Courts Act* empowers the Federal Court to order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing.

17) The Prime Minister, or alternatively the Queen's Privy Council for Canada acting on the recommendation of the Prime Minister, is a federal board, commission or other tribunal, being a body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an order made pursuant to a prerogative of the Crown, when providing advice to the Governor General regarding the appointment of Senators.

18) Such further and other grounds as the applicant may identify and this Honourable Court may consider.

THIS APPLICATION will be supported by the following material:

1) Affidavit of Ashley Morton, sworn January 16, 2015, and served;

2) The record before the Prime Minister of Canada in determining when, if at all, to fill each of the currently existing Vacancies in the Senate; and

3) Such further and other material as the applicant may advise and this Honourable Court may allow.

THE APPLICANT REQUESTS the Prime Minister of Canada to send a certified copy of the record of all materials placed before and considered by the Prime

Minister of Canada and the Queen's Privy Council for Canada in making the decision not to advise the Governor General to fill the currently existing Vacancies, to the applicant and to the Registry.

Dated at Vancouver, British Columbia this 8th day of December, 2014.
Amended:

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

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

February 10, 2015

**BY FAX: (604) 666-8181**

This is Exhibit "T" referred to in the affidavit of Aniz Alani made before me on this 10 day of February 2015

A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Applicant's Request for a Case Management Conference**

Further to communication received yesterday from Registry Officer Julie Gordon, it is my understanding that the Court (Lafrenière P.) has invited the Respondents to respond to Mr. Alani's letter of February 5, 2015. In this letter, Mr. Alani requests a case management conference to consider the following five issues:

1. Mr. Alani's proposed amendments to his notice of application;
2. Mr. Alani's proposed challenge to the respondents' objection to Mr. Alani's Rule 317 request for tribunal documents;
3. Mr. Alani's proposed adjournment of the respondents' motion to strike;
4. Mr. Alani's proposed holding of a dispute resolution conference; and
5. Mr. Alani's proposed motion for an adverse costs immunity order.

We understand that the purpose of the proposed case management conference would be simply to discuss the appropriate procedure to be followed in the event Mr. Alani decides to pursue any or all these matters, including the scheduling of motions to request the relief Mr. Alani may be seeking. It is not for the purpose of adjudicating these matters, all of which are contentious.

Mr. Alani has indicated his availabilities for such a case management conference in Vancouver between February 16 and April 23. Counsel for the respondents are available during this period, with the exception of February 23 to March 13 when the undersigned will be in trial on another matter.

We would be grateful if this information could be forwarded to the Case Management Judge (Lafrenière P.) for his consideration.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

c.c. Aniz Alani
Applicant

Alani v. Canada - CMC - February 16, 2015

- Proth: Don't request CMC's until canvassing w/ counsel.

1. Leave to Amend -
   - Include in responding motion record
   - identify amendments needed to cure defects

2. Rule 318 Objection
   - Deal with after motion to strike.

3. Timetable for remaining steps - deal w/ after application
   - Will set down hearing application relating generally.
   - Proth. says issues would be res judicata.

4. Dispute Resolution Service
   - Respondents oppose.
   - Want until after motion.

This is Exhibit U referred to in the affidavit of Aziz Alani made before me on this 22 day of June 2015.
A Commissioner for taking Affidavits for British Columbia
T. GILLIAN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

5. Adverse Costs Immunity
   - R: make argument on motion to strike.
   - decision after motion.

Affidavit
- Can depose to Affidavit w/o leave. Not counsel. Self-represented litigant.

Direction:
March 20th 2015 - if need more time, come back to Court.

Federal Court | Cour fédérale

**Date: 20150216**

**Docket: T-2506-14**

**Vancouver, British Columbia, February 16, 2015**

**PRESENT: Case Management Judge Roger R. Lafrenière**

This is Exhibit V referred to in the affidavit of Aniz Alani made before me on this 23 day of June 2015

A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**BETWEEN:**

**ANIZ ALANI**

**Applicant**

**and**

**THE PRIME MINISTER OF CANADA AND THE GOVERNOR GENERAL OF CANADA**

**Respondents**

## ORDER

**UPON** a case management conference having been held this day by teleconference with counsel for the parties, and upon hearing the submissions of the Applicant and counsel for the Respondents;

**THIS COURT ORDERS that:**

1. The Applicant's informal request that the hearing of the Respondents' motion to strike be adjourned and heard at the outset of the hearing of the application is dismissed.

2. Any application or submissions that the Applicant may wish to make with respect to amendments to the Notice of Application or adverse costs immunity should be included in the Applicant's motion record in response to the Respondents' motion to strike.

3. The matters of the procedure for making submissions with respect to the Respondents' Rule 318 objection and the possibility of referring the proceeding to a dispute resolution conference are deferred pending disposition of the Respondents' motion to strike.

"Roger R. Lafrenière"
Case Management Judge

**I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the Registry of the Federal Court the 16 day of Feb, A.D. 2015.**

**Dated this 16 day of Feb, 2015.**

**Tamsin Ramsay, Registry Officer**

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

February 18, 2015

**BY E-MAIL**

This is Exhibit W referred to in the affidavit of Aniz Alani made before me on this 20 day of June 20 15
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Department of Justice Canada
B.C. Regional Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Attention: Mr. Jan Brongers, Senior General Counsel
Mr. Oliver Pulleyblank, Counsel

Dear Sirs:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**
**Respondents' Motion to Strike**

During the case management conference held in this proceeding on February 16, 2015, I had understood Prothonotary Lafrenière to have indicated his view that the discrete issues of justiciability and jurisdiction raised in the Respondents' motion to strike would be *res judicata* and could therefore not be raised again by the Respondents in response to the application for judicial review if the motion to strike were to be dismissed.

It was partially on the basis of Prothonotary Lafrenière's expressed view of the "conclusiveness" of these issues, in my view, that the various proposals set out in my request for a case management conference were deferred pending disposition of the motion to strike.

But for Prothonotary Lafrenière's comments in this regard, I would not have understood a dismissal of a motion to strike to preclude the Respondents from re-arguing the same objections at the hearing of the application on its merits. This is because I had understood the test to be applied on a motion to strike an application for judicial review to be the same as the "plain and obvious" test applied on a motion for summary dismissal of an action, the latter having been described by the Supreme Court of Canada in *Hunt v. Carey*, [1990] 2 S.C.R. 959 and applied in cases such as *Hildebrand v. Fox*, 2008 BCCA 434, in which I appeared as co-counsel.

In particular, I was mindful of the case law warning Courts under the latter approach to avoid the "investigation of serious questions of law or questions of general importance" on a motion for summary dismissal, such questions being appropriate for determination through, for example, a summary trial, determination on a point of law, or after a trial in the ordinary course.

However, in light of Prothonotary Lafrenière's comments, my review of the Respondents' written representations and authorities cited therein, and a further review of the Federal Court's

jurisprudence including in *Rocky Mountain Ecosystem Coalition v. Canada (National Energy Board)*, 1999 CanLII 8615 (FC), I acknowledge – perhaps belatedly - the possibility that the practice in the Federal Court may well be to dispose conclusively of threshold questions such as justiciability and jurisdiction on a "motion to strike" an application for judicial review as if the Court were being asked to determine those threshold issues in an action by way of a summary trial under Rule 218 or to determine a question of law under Rule 220.

While Prothonotary Lafrenière's comments made during the case management conference with respect to the conclusiveness of the motion to strike and the doctrine of *res judicata* would not strictly speaking be binding on the parties, I note that you did not express disagreement with those comments at the time.

I would be grateful if you would kindly advise as to whether, in the Respondents' view, the determination of the issues raised in the motion to strike are final and conclusive for the purpose of the application for judicial review, subject to such amendments as may be permitted by the motions judge and subject, of course, to the determination being varied on appeal.

If so, I concede that many if not all of the concerns I have expressed previously in my correspondence to you and the Court regarding the appropriateness of the motion to strike would necessarily be resolved.

Your confirmation or clarification in this regard is appreciated as it assists in determining the case to be met on the motion to strike, and, in particular, whether it is sufficient for a motion respondent to simply demonstrate that a reasonable prospect of success exists on the issues of justiciability and jurisdiction – with such issues potentially not being determined conclusively until the hearing of the application on its merits – or whether the application is, as a matter of law to be determined conclusively on the motion, justiciable and within the jurisdiction of the Federal Court.

Thank you for your consideration of this request. I understand that Mr. Brongers has conduct of the upcoming lengthy trial in the *Allard v. HMTQ* matter and appreciate that your ability to respond before or during that proceeding may be limited accordingly.

Sincerely,

Aniz Alani

Department of Justice Ministère de la Justice
Canada Canada

900 – 840 Howe Street
Vancouver, B.C. V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 4387565

February 20, 2014

**BY E-MAIL (senate.vacancies@anizalani.com)**

This is Exhibit X referred to in the affidavit of Aniz Alani made before me on this 20th day of July 2015
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Aniz Alani
[redacted]

Dear Mr. Alani:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**

We acknowledge receipt of your letter of February 18, 2015 requesting the respondents' position with respect to whether they will agree that, in the event their motion to strike is dismissed, the issues of justiciability and jurisdiction will be *res judicata*.

In our view, it is not reasonable for either party to ask the other to hypothesize and stipulate, in advance, what their position will be on this issue should the motion to strike be dismissed. Accordingly, please be advised that the respondents will await the Court's reasons for judgment before deciding what specific positions they will take in the event continued litigation ensues following disposition of the motion to strike.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

Gmail by Google

Aniz Alani [redacted]

# RE: Alani v. Canada - T-2506-14 - Timetable for remaining steps

**Aniz Alani** <senate.vacancies@anizalani.com> Fri, May 22, 2015 at 3:54 PM
To: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>

Mr. Brongers,

Thank you for your note below.

I respectfully disagree with the proposition that Mr. Justice Harrington's reasons have the effect of precluding a timetable being set by consent or by order. I understand his comments referenced below to merely set out the default time limits to apply in the absence of such an order.

Indeed, during the hearing of the motion to strike, Mr. Justice Harrington specifically referred (at p. 171) to the timetable being an issue that could be discussed with Prothonotary Lafrenière as case management judge.

This is also consistent with your previous correspondence to me and your representations to Prothonotary Lafrenière during the case management conference that the issue of timing would be discussed following the determination of the motion to strike. Responding to your representation and my concern that the motion to strike would delay the proceeding, Prothonotary Lafrenière indicated that the Court could accommodate a hearing relatively soon if the motion was dismissed.

If you feel the respondents require more time than proposed to complete certain steps, mindful of the fact that notice of the application has been provided since early December, I am certainly open to reasonable accommodation.

It is my intention therefore to seek a case management order setting out a timetable for the remaining steps in the proceeding.

This is Exhibit "Y" referred to in the affidavit of Aniz Alani made before me on this 22 day of June 20 15.

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

---
Aniz Alani
T: 604.600.1156
E: senate.vacancies@anizalani.com

-------- Original message --------
From: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Date: 2015-05-22 3:37 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Subject: RE: Alani v. Canada - T-2506-14 - Timetable for remaining steps

Dear Mr. Alani,

Thank you for your e-mail below.

It is our understanding that the Federal Court (Harrington J.) prescribed the timetable for the remaining procedural steps in your application at para. 49 of the reasons for order issued on May 21, 2015:

"This amended application is to be formally served and filed forthwith. Thereafter the normal delays set out at Rule 304 and following of the *Federal Courts Rules* shall be followed" (our emphasis).

From our perspective, we see no reason at this time why the ordinary procedural deadlines applicable to applications ought not be followed in the case at bar. Furthermore, while we are certainly willing to accommodate any reasonable requests for extending these deadlines, we do not see any justification for abridging them in the manner you have proposed below.

Accordingly, we will await service of your amended notice of application with the understanding that calculation of the remaining deadlines will commence on that date in accordance with the Part V Rules.

Finally, we see no need for the parties or the Court to incur the time and expense of convening a case management conference to discuss scheduling in light of Mr. Justice Harrington's direction.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Thursday, May 21, 2015 4:50 PM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Subject:** Alani v. Canada - T-2506-14 - Timetable for remaining steps

Dear Sirs:

Further to our previous correspondence and representations to the Court regarding the discussion of a proposed timetable for the remaining steps in the event the respondents' motion to strike is dismissed, I write to propose

the following timetable for your consideration and comment:

May 25th - Applicant to serve and file amended notice of application

June 15th - Rule 318 material to be transmitted

June 22nd - Applicant to serve any further supporting affidavits

June 29th - Respondents to serve any affidavits

July 6th - Cross-examination on affidavits to be completed

July 20th - Applicant to serve and file application record

August 4th - Respondents to serve and file respondents' record

Kindly advise as to the respondents' position in this regard. If it would be helpful to canvass the timetable issue at a case management conference, I am available to attend one by conference call next week for this purpose.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

**BY FAX: (604) 666-8181**
(14 pages including this page)

May 22, 2015

This is Exhibit "Z" referred to in the affidavit of Aniz Alani made before me on this 22 day of June 20 15
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Service

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**
**Request for Case Management Conference to Discuss Timetable**

I write to respectfully request a case management conference by telephone to discuss fixing a timetable for the remaining steps in the above referenced proceeding, including the fixing of a hearing date for the application on its merits, in light of the Order dated May 21, 2015 of Mr. Justice Harrington dismissing the respondents' motion to strike.

In correspondence to the Court dated January 22, 2015, counsel for the respondents stated as follows:

> Second, with respect to the timelines for the remaining procedural steps in this application, the Respondents respectfully propose that they be addressed, if necessary, following adjudication of the Respondents' motion. We have already communicated to Mr. Alani that the Respondents will not insist on strict compliance with procedural deadlines while their motion to strike is pending. Similarly, we have indicated to him that, in the event the Respondents' motion to strike is dismissed, the parties can discuss proposing to the Court a reasonable schedule for the completion of the remaining procedural steps at that time. In our view, such an approach is consistent with the parties' mutual interest in conducting this litigation is a manner that is most likely to secure the just, most expeditious and least expensive determination of this proceeding.

During the case management conference of February 15, 2015, I expressed my concern that the deferral of all steps occasioned by the respondents' motion to strike would unduly delay the proceeding and requested that the hearing of the motion be accordingly adjourned to the outset of the hearing of the application on the merits. In dismissing this informal request, it is my recollection that Prothonotary Lafrenière noted that a hearing of the application on the merits could be arranged in a relatively short time frame should the motion to strike be dismissed.

On May 21, 2015, following the issuance of Justice Harrington's order and reasons for dismissing the motion to strike, I wrote to counsel for the respondents to seek their position on the following proposed timetable:

| | |
|---|---|
| May 25, 2015 | Applicant to serve and file amended notice of application |
| June 15, 2015 | Rule 318 material to be transmitted |
| June 22, 2015 | Applicant to serve any further supporting affidavits |
| June 29, 2015 | Respondents to serve any affidavits |
| July 6, 2015 | Cross-examination on affidavits to be completed |
| July 20, 2015 | Applicant to serve and file application record |
| August 4, 2015 | Respondents to serve and file respondents' record |

On May 22, 2015, counsel for the respondents responded to the foregoing proposal by expressing the view that the timetable for the remaining procedural steps was, by virtue of Mr. Justice Harrington's comments at paragraph 49 of the reasons for order, fixed by the *Federal Courts Rules*. A copy of the parties' exchange of correspondence on this issue is enclosed.

In my respectful submission, Mr. Justice Harrington's reference to the "normal delays" set out in Rule 304 and following provides that the time limits in the *Rules* apply by default – i.e., in the absence of a case management order made pursuant to Rule 385(1)(b), which permits a case management judge or prothonotary to "notwithstanding any period provided for in these Rules, fix the period for completion of subsequent steps in the proceeding".

I do not read his reasons to preclude seeking an abridged timetable through the case management process, especially in light of Mr. Justice Harrington's comments during the hearing that issues of timing "...would be something to discuss with Prothonotary Lafrenière..." after noting that the setting of a timetable was "one of the benefits of case management". An extract of a certified copy of the transcript is enclosed for ease of reference.

I therefore respectfully request a case management conference to fix dates for the remaining steps in the proceeding including on a reasonably abridged basis. I also request consideration of fixing a hearing date prior to the perfection of application records as contemplated by the Notice to the Parties and to the Profession dated November 18, 2010, a copy of which is enclosed.

I am available to attend a case management conference by telephone during the week of May 25-29, 2015 and generally between June 1-3, 2015.

I would be grateful if this correspondence could be brought to the attention of Prothonotary Lafrenière as case management judge for consideration.

Sincerely,

Aniz Alani

Encl.

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents (by e-mail)

Gmail by Google

Aniz Alani [redacted]

# RE: Alani v. Canada - T-2506-14 - Timetable for remaining steps

**Aniz Alani** <senate.vacancies@anizalani.com> Fri, May 22, 2015 at 3:54 PM
To: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>

Mr. Brongers,

Thank you for your note below.

I respectfully disagree with the proposition that Mr. Justice Harrington's reasons have the effect of precluding a timetable being set by consent or by order. I understand his comments referenced below to merely set out the default time limits to apply in the absence of such an order.

Indeed, during the hearing of the motion to strike, Mr. Justice Harrington specifically referred (at p. 171) to the timetable being an issue that could be discussed with Prothonotary Lafrenière as case management judge.

This is also consistent with your previous correspondence to me and your representations to Prothonotary Lafrenière during the case management conference that the issue of timing would be discussed following the determination of the motion to strike. Responding to your representation and my concern that the motion to strike would delay the proceeding, Prothonotary Lafrenière indicated that the Court could accommodate a hearing relatively soon if the motion was dismissed.

If you feel the respondents require more time than proposed to complete certain steps, mindful of the fact that notice of the application has been provided since early December, I am certainly open to reasonable accommodation.

It is my intention therefore to seek a case management order setting out a timetable for the remaining steps in the proceeding.

---
Aniz Alani
T: 604.600.1156
E: senate.vacancies@anizalani.com

-------- Original message --------
From: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Date: 2015-05-22 3:37 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>
Cc: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Subject: RE: Alani v. Canada - T-2506-14 - Timetable for remaining steps

Dear Mr. Alani,

Thank you for your e-mail below.

It is our understanding that the Federal Court (Harrington J.) prescribed the timetable for the remaining procedural steps in your application at para. 49 of the reasons for order issued on May 21, 2015:

"This amended application is to be formally served and filed forthwith. Thereafter the normal delays set out at Rule 304 and following of the *Federal Courts Rules* shall be followed" (our emphasis).

From our perspective, we see no reason at this time why the ordinary procedural deadlines applicable to applications ought not be followed in the case at bar. Furthermore, while we are certainly willing to accommodate any reasonable requests for extending these deadlines, we do not see any justification for abridging them in the manner you have proposed below.

Accordingly, we will await service of your amended notice of application with the understanding that calculation of the remaining deadlines will commence on that date in accordance with the Part V Rules.

Finally, we see no need for the parties or the Court to incur the time and expense of convening a case management conference to discuss scheduling in light of Mr. Justice Harrington's direction.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Thursday, May 21, 2015 4:50 PM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Subject:** Alani v. Canada - T-2506-14 - Timetable for remaining steps

Dear Sirs:

Further to our previous correspondence and representations to the Court regarding the discussion of a proposed timetable for the remaining steps in the event the respondents' motion to strike is dismissed, I write to propose

the following timetable for your consideration and comment:

May 25th - Applicant to serve and file amended notice of application

June 15th - Rule 318 material to be transmitted

June 22nd - Applicant to serve any further supporting affidavits

June 29th - Respondents to serve any affidavits

July 6th - Cross-examination on affidavits to be completed

July 20th - Applicant to serve and file application record

August 4th - Respondents to serve and file respondents' record

Kindly advise as to the respondents' position in this regard. If it would be helpful to canvass the timetable issue at a case management conference, I am available to attend one by conference call next week for this purpose.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

# FEDERAL COURT OF CANADA

(BEFORE THE HONOURABLE MR. JUSTICE HARRINGTON)

VANCOUVER, B.C.
APRIL 28, 2015

T-2506-14

BETWEEN:

ANIZ ALANI,

APPLICANT;
(RESPONDENT)

AND:

THE PRIME MINISTER OF CANADA
AND THE GOVERNOR GENERAL OF CANADA,

RESPONDENTS.
(MOVING PARTY)

---

## MOTION

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Mr. A. Alani, Appearing On His Own Behalf;

Mr. J. Brongers,
Mr. O. Pulleyblank, Appearing For The Respondents.

"In the *Senate Reform Reference*, the Supreme Court of Canada confirmed in practice constitutional convention requires the governor general to follow the recommendation of the prime minister of Canada in filling Senate vacancies."

I just wanted to respond to any concern that I was backing off of the position on the applicability of the convention.

Of course, the *Paradis* decision also talks about the appropriateness of considering a proposed amendment on a motion to strike, so that the court has an idea of what amendments might be made. I haven't provided a draft statement of claim in case you only accept my second alternative argument that's got to be made under Section 17. Frankly, that was because I didn't want to be put to the hassle of taking another run at drafting a document that would never see the light of day, in case you accept my Section 18 argument.

JUSTICE: Now, we don't have a time bar issue here that you're worried about, or you --

MR. ALANI: Well, I think there is always, you know, perhaps the doctrine of *laches*, and that sort of thing.

JUSTICE: You were pretty quick. You were three or four days after this declaration by the prime minister, in filing.

MR. ALANI: Yes, and in the relief

that I -- the proposed order on this motion, I think I -- on page 32, I suggested that any leave to amend, given myself ten days to do that. That, of course, is largely out of my -- I think, like the respondents, I'd like this matter to move forward as quickly as possible. When I originally reckoned, and this goes to the appropriateness of a motion to strike, there is a practice direction that lets counsel know on judicial review applications, you don't necessarily have to wait until application records are perfected before you ask and before you file the requisition for a hearing. You can get consent on a timetable and then knowing when everything is going to --

JUSTICE: And this is one of the benefits of case management.

MR. ALANI: Right.

JUSTICE: That would be something to discuss with Prothonotary Lafrenière, I guess, who is case-managing this. Is it?

MR. ALANI: Right. My point was simply that I looked at what the ordinary time limits that would have applied to this application, the responding application record would have been perfected next week, and I think on April 27th. And so in the ordinary course, but for this motion to strike, an application of the merits would have been heard following a hearing some time after April 27th, if the ordinary time limits applied.

I think the only relevance of that here is, frankly, an issue for costs. The courts referred to the test being plain and obvious. One of the things I set out in my motion record is, like, first of all neither the motion -- the Rule that allows for motions to strike, that Rule doesn't strictly apply to applications. It's only under the court's inherent jurisdiction that this motion could even be considered, and that's fair enough. *David Bull* says that.

But what I suggest at paragraph -- I suggest it at paragraph 12 and 13 of my motion record, you know, the same objections to justiciability and jurisdiction could have been brought as a motion under Rule 20 for a preliminary determination of a question of law -- questions of law being is this justiciable, and is this --

JUSTICE: I don't think you'll get far there. Like, 108(a) is saying the respondent's motion is dismissed with prejudice to raising the same issues.

MR. ALANI: That's if you agree to grant that order, yes. If it --

JUSTICE: I can't possibly do that. There is a case of *Toney*, for example. *Toney* in Alberta, in this court. It was a boating accident where it was alleged that -- well, a young girl died.

MR. ALANI: Mm-hmm.

JUSTICE: And it was alleged that the

government of Alberta had a rescue boat and they operated it negligently, and that's why she died. There was an action in the Federal Court. There was a motion to dismiss on the grounds that this court lacked jurisdiction, and I said it's plain and obvious that this is a matter of navigation and shipping. Dismissed the motion. Went to the Court of Appeal. Dismissed the motion. Then they came for -- they came under a preliminary determination of a point of law, shifted things a little bit to argue that Her Majesty in Right of Alberta had never consented to be sued in the Federal Court. Lost in the first instance, but succeeded in appeal.

So if I dismiss this motion --

MR. ALANI: Mm-hmm.

JUSTICE: -- the respondent is fully entitled, on a hearing of the merits, to argue every single point they've argued before me today.

MR. ALANI: Right.

JUSTICE: Because I'm not deciding who's right or who's wrong, I'm just deciding, have you got a case?

MR. ALANI: Right. And I accept that that may be your only option, and to that, I just have two submissions to make.

JUSTICE: All right.

MR. ALANI: The first is, and it came up in the context of the case management conference,

where again one of my requests was, like they did in the *Galati* case, the case management judge made a direction that -- because there was a motion to strike in that case for jurisdiction and justiciability. And the case management judge, who, I believe, was Prothonotary Milczynski ordered the motion to strike is going to be heard at the beginning of the application on the merits.

JUSTICE: Could have done that. I have done that.

MR. ALANI: Right. So what I asked at the case management conference is, can we do that? So that we don't come here, spend four hours arguing these two things on the plain and obvious test, and then potentially re-arguing those same four hours at the allocation on the merits, in case the motion is dismissed.

The Prothonotary's response was, "Well, the objections are going to be *res judicata*." I thought that was odd, but I didn't take issue with it during the case management conference. I followed up by letter to respondent's counsel following the case management conference and, you know, do you agree that these would be *res judicata* in the event the motion is dismissed? And the response back was, "We're not going to speculate until we see the reasons."

JUSTICE: Do we have the reasons?

MR. ALANI: I'm sorry, the reasons from you.

JUSTICE: Oh, from me.

MR. ALANI: From you. And there were no --

MR. BRONGERS: We certainly weren't willing to stipulate in advance of a court ruling what our position would be.

JUSTICE: Yes. No, no. I don't know what the context of what Prothonotary Lafrenière was saying, but my experience is clear. You can argue the darn thing over again. It might be unfortunate that this is the state of our law, but that *Toney* case, frankly, irritates me.

MR. ALANI: And I don't take issue with that, that may well be a decision of law. It certainly -- I suspected it was, and I was very concerned about the -- I mean, like I said, the application records would have been perfected but for this motion to strike.

JUSTICE: True.

MR. ALANI: And so I would have had a hearing, you know, perhaps over the summer. There is an election in October. If the respondents are right, and the only remedy here is political, the courts can't hear this -- well, now we're potentially not going to know that until after the election.

JUSTICE: However I decide on this point, I'm certainly not going to say that the motion on behalf of the respondents is frivolous or vexatious.

Federal Court  Cour fédérale

**November 18, 2010**

**NOTICE TO THE PARTIES AND THE PROFESSION**

**Early Hearing Dates for Applications in the Federal Court**

The goal of the Federal Court is to be ready to hear applications as soon as litigants are ready.

Applications for judicial review in the Federal Court are to be heard and determined in a summary way. The inherent flexibility of the *Federal Courts Rules*, enables the Court to determine applications in an expeditious, fair and cost efficient manner.

Parties may, on consent or through case management, seek a hearing date prior to the filing of their application records.

If at the outset of, or during, a proceeding, they agree to a schedule setting out the steps required for the perfection of the application, the parties may seek a hearing date, at any time, by writing to the office of the Judicial Administrator of the Federal Court. The letter must:

- include a copy of the schedule agreed to by all of the parties;
- indicate whether a notice of constitutional question will be required;
- indicate the place at which the hearing should be held;
- set out the maximum number of hours or days required for the hearing;
- provide a list of the dates on which the parties are available and not available during the 90 days following the date on which the application will be ready for hearing;
- include the name, address for service and telephone number of each solicitor or, where a party is unrepresented, the address and telephone number of the party; and,

- indicate whether the language used in the application will be English, French or both.

The Court will endeavour to accommodate early requests for hearing dates whenever possible.

This direction is not intended to replace the current practice for abridging timelines pursuant to rule 8. Parties may continue to seek orders expediting applications in urgent circumstances pursuant to rule 8.

This practice direction is not applicable to applications made pursuant to the *Immigration and Refugee Protection Act* or the *Patented Medicines (Notice of Compliance) Regulations*.

"Allan Lutfy"
Chief Justice

Gmail by Google

Aniz Alani [redacted]

# Alani v. Canada (Prime Minister) et al. - T-2506-14 - Amended Notice of Application

**Brongers, Jan** <Jan.Brongers@justice.gc.ca> Mon, May 25, 2015 at 11:59 AM
To: Aniz Alani <senate.vacancies@anizalani.com>
Cc: "Mukai, Tami" <Tami.Mukai@justice.gc.ca>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>

Dear Mr. Alani:

We acknowledge service of the amended notice of application effective today (May 25, 2015).

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

This is Exhibit AA referred to in the
affidavit of Aniz Alani
made before me on this 2
day of June 2015.
A Commissioner for taking
Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Monday, May 25, 2015 9:43 AM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Subject:** Alani v. Canada (Prime Minister) et al. - T-2506-14 - Amended Notice of Application

Dear Sirs:

Please see attached for service upon the respondents an amended notice of application in the above referenced proceeding in accordance with the Order of Harrington J. issued May 21, 2015.

Please acknowledge service by reply e-mail.

Sincerely,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

May 29, 2015

**BY FAX: (604) 666-8181**

This is Exhibit BB referred to in the affidavit of Aniz Alani made before me on this 29 day of June 2015
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Applicant's Request to Expedite and June 1st Case Management Conference**

In my capacity as counsel for the Respondents, I write in respect of the June 1st Case Management Conference scheduled by direction of the Court (Lafrenière P.) dated May 25, 2015. This Conference was requested by the Applicant, Mr. Alani, in a letter dated May 22, 2015.

In his letter, Mr. Alani indicates that the purpose of the conference is to "canvass the possibility of fixing dates for the remaining steps in the proceeding." However, Mr. Alani also indicates that "[t]his includes the potential fixing of a hearing date prior to the perfection of application records as contemplated by the Notice of the Parties and to the Profession dated November 18, 2010 ["Notice to the Profession] ...". Mr. Alani's letter further makes reference to an expedited schedule for the pre-hearing procedural steps which contains significant abridgments of time, a schedule that is not acceptable to the Respondents because, *inter alia,* it does not afford sufficient time for the preparation of responding affidavit material. We also note that Mr. Alani has not indicated why there is any urgency to this matter that would justify expediting this matter in accordance with the established test set by this Court in *Canada (Canadian Wheat Board) v. Canada (Attorney General),* 2007 FC 39 at para. 13, let alone provided any evidence in support of such an assertion. Furthermore, it is of some interest that the Court (Aronovitch P.) dismissed a contested motion to expedite the hearing of an application challenging a Prime Ministerial decision alleged to contravene a constitutional convention in *Conacher v. Canada,* 2008 FC 1119, a subject similar to the one in issue in the case at bar.

While the Respondents would be pleased to discuss at the June 1st Case Management Conference the fixing of a reasonable schedule that affords the parties the time they require to properly prepare their cases, we submit that it would not be appropriate for the Court to issue an aggressively expedited schedule or to set an early hearing date over the objection of one of the parties. The latter would amount to a circumvention of Rule 8(1) which requires that a motion be brought to

abridge the Court's ordinary deadlines. Furthermore, while the November 18, 2010 Notice to the Profession does contemplate the possibility of setting early hearing dates on consent or through case management, the Notice does not repeal Rule 8 of the *Federal Courts Rules* or eliminate the obligation on a party who seeks abridgements of time to lead evidence in support of such requests in the absence of consent by the other party.

In sum, the Respondents submit that it would be prejudicial and contrary to the *Federal Courts Rules* if the Court were to adjudicate a request by Mr. Alani to expedite the hearing of his application at next Monday's Case Management Conference. If Mr. Alani wishes to pursue such relief, he should prepare a formal Rule 8 motion, as was done by the applicants in *Conacher*. If necessary, the scheduling of such a motion could be discussed at the Case Management Conference.

We would be grateful if these submissions could be forwarded to the Court for its consideration at the June 1st Case Management Conference.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

c.c. Aniz Alani
Applicant

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

**SUBMITTED ELECTRONICALLY**

May 29, 2015

This is Exhibit..CC..referred to in the affidavit of..Aniz Alani..
made before me on this.....
day of..June.....20.15.
.....
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Service

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**
**June 1st Case Management Conference to Discuss Timetable**

I write in respect of the Case Management Conference scheduled for June 1, 2015 by direction of the Court (Lafrenière P.) dated May 25, 2015.

To facilitate the discussion at the Case Management Conference of the fixing of a timetable for the remaining steps in the proceeding, including the potential fixing of a hearing date prior to the perfection of application records, I offer the following outline of submissions in response to the letter from counsel for the Respondents dated May 29, 2015.

I would be grateful if these submissions could be forwarded to the Court for its consideration at the June 1st Case Management Conference.

**The applicable test**

Counsel for the Respondents refer to *Canada (Canadian Wheat Board) v. Canada (Attorney General)*, 2007 FC 39 [*CWB*] and *Conacher v. Canada*, 2008 FC 1119 [*Conacher*].

***The Absence of Delay in Conducting the Litigation***

Before outlining how this proceeding meets the test for urgency set out in those cases, I must emphasise that in both *CWB* and *Conacher*, the Court expressed disappointment that the applicants in each case had unnecessarily delayed in bringing their respective proceedings.

In *Conacher*, the applicants filed their notice of application 19 days after the issuing of Writs of Election and six days before the hearing of their motion to expedite. They had requested that the case be heard in less than a week, on October 8, 2008 ahead of an election fixed for October 14, 2008. (par. 18).

In *CWB*, the applicant commenced an application in respect of a barley plebisicite until 34 days after the Minister announced it and the applicant was aware of it. The applicant also "waited another month after filing its application for judicial review before bringing [its] motion for an expedited hearing". (par. 19). The applicant had requested that the case be heard within a month.

In this case, the application for judicial review was filed on December 8, 2014 – less than two business days after the Prime Minister announced that he did not intend to fill Senate vacancies on December 4, 2014, and 3 calendar days after the applicant learned of the announcement on December 5, 2014.

In accordance with the Notice to Profession, the applicant first wrote to counsel for the respondents on January 5, 2015 proposing that early hearing dates be jointly requested in anticipation of the application being perfected on April 27, 2015 in accordance with the default time limits set out in the *Federal Courts Rules*. (See attached).

Counsel for the Respondents advised by letter dated January 15, 2015 of their view that it was premature and unnecessary to address my request of January 5th pending the determination of the Respondents' motion to strike. (See attached).

At the case management conferenced held February 15, 2015, I requested that the motion to strike be adjourned to the outset of the hearing of the application itself as was ordered by Milczynski P. in Court File T-1476-14 on August 15, 2014 in respect of another application that was the subject of a motion to strike on grounds of justiciability and jurisdiction. That request was dismissed, and, as a result, all remaining steps in the proceeding were effectively held in abeyance for over four months from the filing of the Respondents' motion to strike on January 15, 2015 to the dismissal of said motion on May 21, 2015.

As indicated in correspondence dated May 21, 2015, a copy of which was enclosed with my letter to the Court dated May 22, 2015 requesting a case management conference, I wrote to counsel for the Respondents proposing an abridged timetable for the remaining steps in the application the very same day that the motion to strike was dismissed.

I respectfully submit that my conduct throughout this proceeding has consistently reflected the urgency of the proceeding and a demonstrated intention to avoid unnecessary delays in obtaining an expedient resolution of the merits of the application.

***The Four Questions***

Both *CWB and Conacher* identify the following four questions to be asked when exercising the Court's discretion:

1. Is the proceeding really urgent or does the moving party simply prefer that the matter be expedited?

2. Will the respondent be prejudiced if the proceeding is expedited?

3. Will the proceeding be rendered moot if not decided prior to a particular event?

4. Would expediting the proceeding result in the cancellation of other hearings?

*Is the Proceeding Really Urgent?*

The application asserts that the Prime Minister's failure to advise the Governor General to fill vacancies in the Senate is a violation of the Constitution of Canada. The notice of application has already survived a motion to strike, in the course of which it was determined that it is not plain and obvious that the issues raised are either non-justiciable or beyond the Court's jurisdiction.

As of June 3, 2015, vacancies in the Senate will have been accumulating for 1,000 days. There are currently 20 vacancies in the Senate, with two additional Senators due to retire no later than June 30 and July 4, 2015 respectively. The constitutionally guaranteed representation of seven provinces is currently denied by the failure to fill vacancies from those provinces.

I respectfully submit that, as the application raises a significant issue of the constitutional validity of government action, time is of the essence.

In accordance with the *Canada Elections Act*, a federal election is to take place on October 19, 2015.

The respondents have taken the position that the failure to fill Senate vacancies is a purely political issue and that the breach of a convention that the Prime Minister advise the Governor General in respect of such appointments can carry only political consequences.

If the ordinary time limits under the *Federal Courts Rules* are applied, the Respondents' record would be due to be served and filed by September 22, 2015.

If the Court accepts the Respondents' position in this regard and dismisses the application for judicial review after a hearing on its merits, it is in the public interest that the pronouncement of such judgment occur prior to the election of October 19, 2015 – as would more likely have been the case in the absence of the four month delay occasioned by the Respondents' unsuccessful motion to strike.

Finally, the Applicant's personal family circumstances are such that his availability to prepare for and attend in Court will likely be significantly reduced as of November 2015 [redacted]

*Will the Respondents be Prejudiced?*

The Respondents have had notice of the application since December 8, 2014.

With respect to the transmittal of Rule 318 material, it was the Respondents' choice, not the Applicant's, to defer compliance with the Rule 317 request in the Notice of Application until after the motion to strike was adjudicated. There was nothing to prevent the Respondents to begin to gather the requested tribunal material prior to the service of an Amended Notice of Application on May 25, 2015. In any event, no abridgment of the time limit for transmitting Rule 318 material has been requested or proposed.

With respect to the time limit for the service of any further Applicant's affidavits, and the time required for the Respondents to prepare responding affidavits, I can advise that the only affidavit material intended to be filed is in respect of issues specifically raised by the Respondents at the hearing of the motion to strike.

In particular, I propose that such affidavit material will address the following issues:

- The Applicant's eligibility for standing by setting out citizenship, residency, and occupation (all of which were raised by counsel for the Respondents at the hearing of the motion to strike)

- How and when the Applicant became aware of the Prime Minister's alleged decision not to appoint Senators (i.e., by reading media reports on December 5, 2014)

- The Applicant's lack of affiliation with any political party or partisan organization

- The Applicant's request to the Prime Minister to advise the Governor General to fill Vacancies in accordance with the *Constitution Act, 1867*

- With respect to costs:

    - The public interest nature of the litigation (as questioned by counsel for the Respondents at the hearing of the motion to strike) as evidenced by national media reporting of this proceeding to be attached as exhibits

    - The Applicant's reasonable conduct of the litigation as reflected in correspondence between the Applicant and counsel for the Respondents and the Court, all of which are already in the possession of counsel for the Respondents

With respect to the time limit for the Respondents' affidavits, the Respondents have had notice of this proceeding since December 8, 2014. But for the motion to strike, the Respondents' affidavits would have been served by February 25, 2015. Any facts relevant to the Respondents' defence have presumably been within their knowledge far enough in advance of the proposed due date of June 29, 2015 to eliminate any potential prejudice arising from an abridgement of the time limit.

To the extent the Respondents may require additional time to respond to "new" facts contained in the Applicant's affidavit material beyond those already summarized above, I would propose that this could be accommodated as necessary through a tailored extension of time for doing so.

Finally, with respect to the timing of the Respondents' record, the issues of justiciability and jurisdiction were already thoroughly argued according to the "plain and obvious" test in the context of the Respondents' motion to strike. Since these same issues will need to be re-argued, notwithstanding the Court's suggestion (per Lafrenière P.) that the objections would be *res judicata* following the motion to strike, there can be no prejudice to the Respondents arising from an abridgement of time to prepare written submissions on these identical issues. They have

already been prepared and argued, both in writing and orally, albeit in the context of a motion that did nothing to resolve the issues raised.

Beyond the issues of justiciability and jurisdiction, the remaining issues of statutory interpretation, remedy and costs are, I submit, relatively straightforward. If a self-represented litigant is prepared to commit to addressing these issues within an Application Record according to an equally abridged timeline, it is difficult to see what prejudice would befall the Respondents, who are currently represented by two counsel within the largest law department in Canada.

***Will the proceeding be rendered moot if not decided prior to a particular event?***

As noted above, if the Respondents are correct in their position that only "political consequences" flow from the Prime Minister's impugned inaction, and that judicial intervention is thereby precluded, the timing of the election may render moot the most obvious expression of political dissatisfaction citizens may choose to express in light of a determination that the Prime Minister's inaction is unconstitutional but not subject to a judicial remedy.

Moreover, if the Prime Minister fills the vacancies but only after the election, or if a change in government results in a change in the policy of the government of the day in respect of Senate appointments, or a continuation of the existing policy of inaction but without a clear expression of that policy or "decision", the underlying issues raised in the application concerning the constitutional requirement to advise the Governor General to fill Senate vacancies may reasonably be expected to become moot after the election.

***Would expediting the proceeding result in the cancellation of other hearings?***
The Applicant is not aware of the Court's existing availability to hear the application following the perfection of records either according to the default time limits or according to the proposed abridge timeline. It is therefore difficult to point to the likelihood of cancellation of other hearings as a result of an abridgement.

Noting the Court's publically available Western hearing list, however, it appears that the Court is presently scheduled to sit in Vancouver for a total of twelve sitting days between the week following the proposed filing of the Respondents' record and the federal election of October 19 (i.e., August 12, 13, 17, 26-27, September 21-22, 30, October 1-2, 7-8).

**Appropriateness of a Case Management Order**

At the time the Court considered motions to abridge time limits in *CWB* and *Conacher*, neither proceeding was subject to case management as is the current proceeding. Having regard to Rules 3 of the *Federal Courts Rules* and s. 18.1(4) of the *Federal Courts Act*, I respectfully submit that it is desirable and appropriate to fix a timetable by case management order rather than require the parties to prepare and file motion records.

Indeed, the potential delays occasioned by the preparation of motion records and the scheduling of a court hearing to determine what is frequently dealt with through case management may render moot the request for an expedited timetable. In my respectful submission, this is time and effort that could be better served addressing the application on its merits.

**Fixing of a Court Hearing before Perfection of Records**

As the Notice to Profession contemplates, hearing dates may be set following a timetable fixed by consent or through case management. Accordingly, in the alternative that the Court is not prepared to abridge time limits, either as proposed or at all, I would respectfully request that hearing dates be reserved and fixed in light of the ordinary time limits applicable under the *Rules* (i.e., as soon as practicable after September 22, 2015).

Sincerely,

Aniz Alani

Encl.

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents (by e-mail)

Gmail by Google

Aniz Alani [redacted]

# RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

**Brongers, Jan** <Jan.Brongers@justice.gc.ca> Tue, Jan 6, 2015 at 3:27 PM
To: Aniz Alani <senate.vacancies@anizalani.com>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Cc: "Nacu, Norma" <norma.nacu@justice.gc.ca>, "Boire, Sandra" <Sandra.Boire@justice.gc.ca>

Dear Mr. Alani,

Thank you for your e-mails. We are seeking instructions and will respond to you once they are provided.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

---

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Monday, January 05, 2015 5:05 PM
**To:** Pulleyblank, Oliver; Brongers, Jan
**Cc:** Nacu, Norma; Boire, Sandra
**Subject:** RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Messrs. Pulleyblank and Brongers:

Further to my note of December 22nd below, I am writing to inquire as to whether you have had a chance to consider my query regarding the proposed use of historical standings from the Parliament website.

On another administrative note, I would appreciate having your position on confirming a timetable by consent and requesting a hearing date based on that timetable as contemplated in the Practice Direction entitled "Early Hearing Dates for Applications in the Federal Court" dated November 18, 2010.

By my reckoning, and subject to any developments that would cause a departure from the default timeline, the following timeline would presumptively apply:

January 15, 2015: Rule 318 material transmitted

January 26: Applicant's affidavits served

February 25: Respondents' affidavits served

March 17: cross-examination on affidavits to be completed

April 7: Applicant's record served and filed

April 27: Respondents' record served and filed

On that basis, and without limiting the ability to apply to vary the timetable as needed, I wonder if you would be agreeable to jointly requesting hearing dates in anticipation of the application being perfected along the timeline indicated above, or with any modifications you would like to discuss.

I look forward to hearing from you.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

-------- Original message -------
From: "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Date: 2014-12-23 4:13 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>
Cc: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>, "Nacu, Norma" <norma.nacu@justice.gc.ca>, "Boire,

Sandra" <Sandra.Boire@justice.gc.ca>
Subject: RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Dear Mr. Alani:

Thank you for your e-mail. Please be advised that carriage of this litigation on behalf of the respondents has been assigned to my colleague Jan Brongers and me. Kindly send all future correspondence to both of our attention.

Mr. Brongers is out of the office until December 29th. I will discuss your query with him upon his return.

Kind regards,

Oliver

**Oliver Pulleyblank**

Counsel | Avocat
Department of Justice | Ministère de la Justice
900 - 840 Howe St. | 900 - 840, rue Howe
Vancouver, BC V6Z 2S9
Telephone | Téléphone: (604) 666-6671
Facsimile | Télécopieur: (604) 775-7557
email | couriel: oliver.pulleyblank@justice.gc.ca
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** 2014-Dec-22 5:03 PM
**To:** Pulleyblank, Oliver
**Subject:** Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Oliver,

I write to request the respondents' position with respect to the proposed admission into evidence in the above referenced proceeding of the historical standings, including vacancies, in the Senate since 1867 as prepared and published by the Library of Parliament.

I note that the Library of Parliament has compiled an online record of each change in standings since 1867 at http://www.parl.gc.ca/Parlinfo/lists/PartyStandingsHistoric.aspx?Section=b571082f-7b2d-4d6a-b30a-b6025a9cbb98. The page also includes a link entitled "Changes to party standings" below each of the tables separated by Parliament, which provides the date and details of each appointment, resignation, retirement, death and change of affiliation.

In my view it would be helpful and appropriate to place this data before the Court. Unless this information is otherwise contained in the certified tribunal record requested in the Notice of Application, it seems to me that it would be open to the Court to take judicial notice of its content given that the underlying facts giving rise to the online report are easily verifiable. However, in order to avoid any controversy as to their admissibility by way of affidavit or otherwise, and having regard to the spirit of Rule 3, I write to request the respondents' consent to admit the referenced web page and the party standing details as linked therefrom for the truth of their contents in this proceeding.

Kindly advise of the respondents' position in this regard at your earliest convenience.

Thank you and best regards,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

January 15, 2015

**BY E-MAIL and COURIER**

Aniz Alani
[redacted]

Dear Mr. Alani:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**

We have now had an opportunity to consider your application and effect the necessary consultations. Please be advised that we have been instructed to respond with a motion to strike seeking dismissal of the application.

To that end, please find enclosed for service the Respondents' notice of motion to strike, along with a copy of our correspondence to the Court of today's date. As the notice of motion requests a special hearing date pursuant to Rule 35(2), you may wish to indicate to the Court your availabilities in order to ensure that the matter is not set down on a date that is inconvenient to you.

Finally, it is our view that, pending the determination of the Respondents' motion to strike, it is premature and unnecessary to address the procedural questions you raised in your correspondence of December 22nd and January 5th.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/sb

Encl.

Federal Court  Cour fédérale

**Date: 20150602**

**Docket: T-2506-14**

**Vancouver, British Columbia, June 2, 2015**

**PRESENT: Case Management Judge Roger R. Lafrenière**

This is Exhibit..DD..referred to in the affidavit of..Aniz Alani..... made before me on this.....12..... day of..June.....20.15.

.....
A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**BETWEEN:**

**ANIZ ALANI**

**Applicant**

**and**

**THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA AND
THE QUEEN'S PRIVY COUNCIL FOR CANADA**

**Respondents**

**ORDER**

**UPON** a case management conference having been held by teleconference with the Applicant and counsel for the Respondents on June 1, 2015;

**AND UPON** hearing the submissions of the Applicant and counsel for the Respondents;

**THIS COURT ORDERS that:**

1. The Respondents shall submit to the Court on or before June 8, 2015 a letter indicating when they expect to be able to serve their responding affidavit evidence and file proof of service.

2. The timeline for the transmission of any material under Rule 318 is extended to June 15, 2015.

3. The timeline for the Applicant to serve any further affidavit material and file proof of service is extended to June 24, 2015.

4. Subsequent steps shall be taken within the timelines provided in Part 5 of the *Federal Courts Rules* or as otherwise ordered by the Case Management Judge.

"Roger R. Lafrenière"
Case Management Judge

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

June 8, 2015

**BY FAX: (604) 666-8181**

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

This is Exhibit EE referred to in the affidavit of Aniz Alani made before me on this 8 day of July 20 15.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Timing of Respondents' Affidavit Evidence**

Further to paragraph 1 of the June 2, 2015 order of the Court (Lafrenière P.), the Respondents advise that they expect to be able to serve their responding affidavit evidence and file proof of service by **July 31, 2015.**

As paragraph 3 of the above-referenced order sets the Applicant's deadline for his affidavit material for June 24, 2015, the Respondents' respectfully request that the Court order a brief extension of time to the ordinary 30-day period set by Rule 307 in respect of responding affidavits. Such an order would provide that the timeline for the Respondents to serve their affidavit material and file proof of service is extended to July 31, 2015.

This brief extension is necessary because of the complex nature of the affidavit evidence the respondents intend to tender, namely, evidence in relation to the existence and scope of an alleged constitutional convention (as referenced by the Court (Harrington J.) in paragraphs 23 and 24 of its May 21, 2015 order dismissing the Respondents' motion to strike).

While it is our hope that this reasonable request will meet with the consent of the Applicant and can be adjudicated informally by the Court, the Respondents are prepared to file a formal Rule 8 motion if necessary.

We would be grateful if these submissions could be forwarded to the Case Management Judge (Lafrenière P.) for his consideration.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

JB/tm

Encl.

c.c. Aniz Alani
Applicant

**Aniz Alani**
[redacted]
Tel.: 604.600.1156
E-Mail: senate.vacancies@anizalani.com

**SUBMITTED ELECTRONICALLY**

June 8, 2015

This is Exhibit FF referred to in the affidavit of Aniz Alani
made before me on this 10
day of June 20 15
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Court
701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Courts Administration Service

Dear Sirs/Mesdames:

**Re: ALANI, Aniz v. Canada (Prime Minister) et al.**
**Court No: T-2506-14**
**Timing of Respondents' Affidavit Evidence**

Further to the correspondence of June 8, 2015 to the Court from counsel for the Respondents, I write to advise that I **consent** to the Respondents' request to extend the time period for serving their responding affidavit evidence and filing proof of service to **July 31, 2015** without prejudice to the Applicant's ability to object to the admissibility of the affidavit(s) including, but not limited to, on the basis that any constitutional convention addressed therein may not have been considered by the decision maker at the time of the alleged decision not to advise the Governor General to fill vacancies in the Senate.

With respect to the other remaining procedural steps in the application, I can further advise that I have communicated directly with counsel for the respondents regarding a proposed timetable for same based on the ordinary time limits set out in the *Federal Courts Rules* as modified by the June 2, 2015 order of the Court (Lafrenière P.)

I would be grateful if this correspondence could be forwarded to the Case Management Judge (Lafrenière P.) for his consideration.

Sincerely,

Aniz Alani

Encl.

cc: Messrs. Jan Brongers and Oliver Pulleyblank, counsel for the Respondents (by e-mail)

Federal Court  Cour fédérale

**Date: 20150609**

**Docket: T-2506-14**

**Vancouver, British Columbia, June 9, 2015**

**PRESENT: Case Management Judge Roger R. Lafrenière**

This is Exhibit GG referred to in the affidavit of Aniz Alani made before me on this 23 day of June 2015

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**BETWEEN:**

**ANIZ ALANI**

**Applicant**

**and**

**THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA AND
THE QUEEN'S PRIVY COUNCIL FOR CANADA**

**Respondents**

## ORDER

**UPON** reading correspondence dated June 8, 2015 from counsel for the Respondents requesting an extension of time to July 31, 2015 to serve the Respondents' affidavits and file proof of service;

**AND UPON** noting the consent of the Applicant;

**THIS COURT ORDERS that:**

1. The Respondents are granted an extension of time to July 31, 2015 to serve their affidavit evidence and file proof of service.

2. Subsequent steps shall be taken within the timelines provided in Part 5 of the *Federal Courts Rules*, unless otherwise ordered by the Case Management Judge.

"Roger R. Lafrenière"
Case Management Judge

**I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the Registry of the Federal Court the 9 day of June, A.D. 2015.**

**Dated this 9 day of June, 2015.**

for **Tamsin Ramsay, Registry Officer**

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-0110
Facsimile: (604) 666-1585

Our File: 7755923

June 15, 2015

Federal Court
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

This is Exhibit HH referred to in the affidavit of Aniz Alani made before me on this 15 day of June 20 15.
A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

**Attention: Courts Administration Services**

Dear Sir/Madam:

**Re: ALANI, Aniz v. Canada**
**Federal Court File No. T-2506-14**
**Respondents' Response to Rule 317 Request for Certified Tribunal Record**

On May 25, 2015, the Applicant, Mr. Alani, filed an amended Notice of Application for "judicial review in respect of the decision of the Prime Minister, as communicated publicly on December 4, 2014, not to advise the Governor General to summon fit and qualified Persons to fill existing Vacancies in the Senate." In my capacity as counsel for the Respondents, I write in respect of the Applicant's Rule 317 request for a certified tribunal record contained in this amended Notice of Application which is worded as follows:

> THE APPLICANT REQUESTS the Prime Minister of Canada to send a certified copy of the record of all materials placed before and considered by the Prime Minister of Canada and the Queen's Privy Council for Canada in making the decision not to advise the Governor General to fill the currently existing Vacancies, to the applicant and the Registry.

In response to this Rule 317 request, the Respondents advise that there was no "decision not to advise the Governor General to fill the currently existing [Senate] Vacancies" as alleged by Mr. Alani. Accordingly, Rule 317 is not applicable (as per *Alberta Wilderness Association v. Canada,* 2013 FCA 190) and no material will be transmitted to either the Registry or the Applicant pursuant to Rule 318.

Yours sincerely,

Jan Brongers
Senior General Counsel, B.C. Regional Office

JB/tm

c.c. Aniz Alani
Applicant

Gmail by Google

Aniz Alani [redacted]

# Alani v. Canada

**Brongers, Jan** <Jan.Brongers@justice.gc.ca> Tue, Jun 16, 2015 at 2:30 PM
To: Aniz Alani <senate.vacancies@anizalani.com>
Cc: "Corrigall, Sandra" <Sandra.Corrigall@justice.gc.ca>, "Mukai, Tami" <Tami.Mukai@justice.gc.ca>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>

Dear Mr. Alani:

Thank you for your e-mail.

We accept and respect that the parties evidently have a divergence of views on the extent to which the November 18, 2010 Notice to the Parties and to the Profession operates to modify the *Federal Courts Rules* in the situation where the parties disagree over the urgency of the underlying proceeding. Furthermore, we see no value in debating the matter further at this stage.

That said, in light of your stated intention to inquire whether the Court can accommodate a hearing between September 29 and October 19, 2015, please be advised that Mr. Pulleyblank and I are not available from September 28 to October 16 inclusive as a result of previously scheduled court hearings and out-of-town business travel commitments.

Yours sincerely,

**This is Exhibit** II **referred to in the affidavit of** Aniz Alani **made before me on this** 22 **day of** July **20**15.

**A Commissioner for taking Affidavits for British Columbia**

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Tuesday, June 16, 2015 1:58 PM
**To:** Brongers, Jan
**Cc:** Corrigall, Sandra; Mukai, Tami; Pulleyblank, Oliver
**Subject:** Re: Alani v. Canada

Dear Mr. Brongers:

Thank you for your e-mail.

With respect, I disagree with your apparent premise that an application must be "exceptional and urgent" in order for it to be scheduled for a hearing prior to perfection. The Notice to the Parties and to the Profession of November 18, 2010 does not suggest that an application must be "exceptional" or "urgent" in order for a party to request a hearing date. Rather, the Notice affirms that "[t]he goal of the Federal Court is to be ready to hear applications as soon as litigants are ready" and states that "The Court will endeavour to accommodate early requests for hearing dates **whenever**

**possible.**" (Emphasis added).

Moreover, Prothotonary Lafrenière indicated at the case management conference of June 1, 2015 that he was open to fixing a hearing date for the application once there was a reasonable indication of the time required for the remaining procedural steps. At that time, the only procedural step for which timing was unclear was the provision of the respondents' affidavits, in respect of which timing the respondents were ordered to advise the Court by June 8, 2015. The resulting request for an extension of time for producing the respondents' affidavits to July 31, 2015 was granted, by consent, on June 9, 2015, with a further order that the subsequent steps be carried out in accordance with the time limits set out in Part V of the *Federal Courts Rules* unless otherwise ordered by the case management judge.

In my respectful submission, the only relevant prerequisite for requesting a hearing date prior to the perfection of application records is that the parties agree to a schedule setting out the steps required for the perfection of the application. In this case, the timetable for the steps required for the perfection of the application has been set by Order of the case management judge as noted above.

I note your apparent objection to providing a time estimate for the hearing or your availability for a hearing after September 29, 2015 until after the respondents produce their Rule 310 record due on September 29, 2015. With respect, it is common practice in the Federal Court for parties to discuss and provide time estimates for the hearing of applications, including complex judicial reviews raising constitutional issues, in advance of the production of written arguments. Moreover, I respectfully submit that your apparent unwillingness to discuss anticipated duration and availability for the hearing until after the perfection of application records misses the point of the practice direction.

As indicated below, I will submit my inquiry as to whether the Court can accommodate a hearing date between September 29, 2015 and October 19, 2015, which, if so, would obviate the need for a Rule 8 motion to abridge time limits.

Yours sincerely,

---

**Aniz Alani**

c: 604.600.1156

e: senate.vacancies@anizalani.com

w: www.anizalani.com/senatevacancies

On Tue, Jun 16, 2015 at 1:03 PM, Brongers, Jan <Jan.Brongers@justice.gc.ca> wrote:

> Dear Mr. Alani:
>
> Thank you for your e-mail.
>
> Please be advised that we respectfully disagree with your apparent premise that your application is so exceptional and urgent that it must be scheduled for hearing now prior to perfection, thereby prioritizing it ahead of pending litigation brought by others seeking access to justice before the Federal Court. In other words, this is not a case that warrants "jumping the queue".
>
> In our view, the appropriate time to discuss the anticipated duration and the parties' availability for the hearing is following the production of the respondents' Rule 310 record as this triggers the applicant's obligation to prepare a Rule 314 requisition for hearing which contains such information. Furthermore, the parties will be better placed to estimate the time needed for the hearing once they both have had the opportunity to produce their full written arguments. Indeed, as the parties still have yet to produce their affidavits or conduct cross-examinations, it would not be productive to speculate now about how much court time this matter will require.
>
> That said, you are certainly entitled to attempt to persuade the Federal Court that your case ought to be prioritized over others by bringing a Rule 8 motion to expedite. Given that this proceeding is specially managed, it is our understanding that, generally speaking, Rule 385(1)(d) requires "all motions arising prior to the assignment of a hearing date" to be heard by the case management judge. As such, the scheduling of your proposed motion should be the subject of a request to Prothonotary Lafrenière so that it can be heard at a time and location that is convenient to him as well as the parties. With respect to our June/July availabilities for such a motion, we are available the week of June 29 to July 2, and during the period from July 13 to July 31. Finally, as it is likely that we will cross-examine on any affidavit you tender in support of your motion, we request that you propose hearing dates that will allow sufficient time for cross-examination in advance of production of the motion records.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Monday, June 15, 2015 1:50 PM
**To:** Brongers, Jan
**Cc:** Corrigall, Sandra; Mukai, Tami; Pulleyblank, Oliver

**Subject:** Re: Alani v. Canada

Mr. Brongers,

Thank you for your note below.

As anticipated by my previous correspondence, I will be requesting through case management a direction as to whether the Court can accommodate a hearing date between the current time limit for service and filing of the Respondents' Record (i.e., September 29, 2015) and October 19, 2015. Having regard to the Notice to the Parties and the Profession dated November 18, 2010, would you please advise as to whether you agree that 2.5 days is the maximum required for the hearing of the application as well as your availability for a hearing after September 29, 2015.

Please be advised that, in the alternative that the Court is unable to accommodate a hearing date before October 19, 2015 based on the current timetable, I intend to bring a motion to abridge time limits to the extent necessary to accommodate a hearing date before October 19, 2015. Accordingly, please indicate your availability for a Rule 8 motion. Unless the case management judge directs otherwise, and if the parties are agreeable, I will request that the motion be heard at a general sitting in Vancouver on a mutually convenient date.

Yours sincerely,

---

**Aniz Alani**

c: 604.600.1156

e: senate.vacancies@anizalani.com

w: www.anizalani.com/senatevacancies

On Mon, Jun 15, 2015 at 1:09 PM, Brongers, Jan <Jan.Brongers@justice.gc.ca> wrote:

> Dear Mr. Alani:
>
> Further to your query below, the burden to persuade the Court that an expedited hearing is justified falls upon the moving party who must satisfy the four-part test set out in *Canada (Canadian Wheat Board) v. Canada (A.G.),* 2007 FC 39 at para. 13 and *Conacher v. Canada,* 2008 FC 1119 at para. 16. The third part of the test is "will the proceeding be rendered moot if not decided prior to a particular event". In your letter to the Court of May 29th, you appear to allege that your application may become moot if it is not decided prior to the next federal election because (1) the electorate may not be able to express its "political dissatisfaction" with Senate vacancies in the absence of a Federal Court judgment that adjudicates your particular case; and (2) there may be further political developments regarding Senate vacancies following the election. You have not advanced any other reason as to why you would satisfy the third part of the expedited hearing test.
>
> In the absence of a formal motion to expedite or any evidence in support of your assertions, we see no utility in engaging in an academic debate on the merits of your apparent position at this time. Suffice it to say that, in our respectful submission, we find neither of the grounds you have raised to be persuasive. They certainly do not provide a justification for denying either party the opportunity to properly prepare their respective cases. In sum, it is our position that the timing of the next federal election is not a factor that ought to govern the determination of either the procedural deadlines or the hearing date of this application.
>
> Yours sincerely,
>
> Jan Brongers
> Senior General Counsel | Avocat général principal

Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique
840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Thursday, June 11, 2015 12:04 PM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Cc:** Corrigall, Sandra; Mukai, Tami

**Subject:** RE: Alani v. Canada

Dear Mr. Brongers:

Thank you for your note below. I accept your point, which would appear to be consistent with para. 2 the Court's June 9th order, that the timeline for the remaining procedural steps would be calculated relative to the extended deadline for production of the respondents' affidavits.

As indicated in my correspondence to the Court of May 29th, I have concerns that if the hearing of the application does not take place in advance of the scheduled federal election of October 19th the issues raised in the application may become moot. It may be the case that a hearing date can be accommodated before October 19th without any further modifications to the timetable, depending on the parties' and Court's availability and whether an early hearing date is requested as contemplated in the Practice Direction already referenced.

Before taking steps to determine whether this is the case, including, if necessary, by way of a formal Rule 8 motion to abridge time limits as necessary to accommodate a hearing date before October 19th, I note that you referred at the June 1st case management conference to being prepared to make submissions regarding why the issues in the application may not become moot after October 19. Those submissions were not heard.

If I have understood correctly that the respondents take the position that the issues would not necessarily be moot after the election, I would respectfully request that you provide me with the basis for that position. If we can agree that mootness will not be an issue, it may not be necessary in my view to take any further steps to fix a hearing date at this time.

Yours sincerely,

---

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

------- Original message -------
From: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Date: 2015-06-09 3:19 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Cc: "Corrigall, Sandra" <Sandra.Corrigall@justice.gc.ca>, "Mukai, Tami" <Tami.Mukai@justice.gc.ca>
Subject: RE: Alani v. Canada

Dear Mr. Alani:

Thank you for your e-mail below, and for communicating to the Court your consent to our informal request for an extension of time for the production of the Respondents' affidavits. We now await the Court's adjudication of this request.

It is our understanding that if the request is granted, "subsequent steps shall be taken within the timelines provided in Part 5 of the *Federal Courts Rules* or as otherwise ordered by the Case Management Judge" (as per paragraph 4 of the Court's June 2 order). These timelines include Rule 308, which provides for a 20-day deadline for the completion of cross-examinations calculated from the date of production of the respondents' affidavits. If these affidavits are produced on July 31st, the deadline for completion of cross-examinations on affidavits will be August 20, 2015 (not August 13th, as you suggest below).

Accordingly, we think it preferable to await the completion of the parties' affidavit material before committing to a position on whether extensions or abridgements would be appropriate for the remaining procedural steps in this application.

Yours sincerely,

Jan Brongers
Senior General Counsel | Avocat général principal
Department of Justice | Ministère de la Justice
British Columbia Regional Office | Bureau régional de la Colombie-Britannique

840 Howe, Suite 900 Vancouver, BC Canada V6Z 2S9
jan.brongers@justice.gc.ca
Telephone | Téléphone 604-666-0110 / Fax | Télécopieur 604-666-1585
Government of Canada | Gouvernement du Canada

**From:** Aniz Alani [mailto:senate.vacancies@anizalani.com]
**Sent:** Monday, June 08, 2015 3:01 PM
**To:** Brongers, Jan; Pulleyblank, Oliver
**Cc:** Corrigall, Sandra; Mukai, Tami
**Subject:** Re: Alani v. Canada

Further to my note below, could you please confirm that the respondents are agreeable to proceeding according to the ordinary time limits for the remaining steps in the proceeding, subject to further Order of the Court or consent under Rule 7, with the sole exception of the 7 day extension (by consent) for serving the respondents' affidavits and filing proof of service thereof?

If so, by my reckoning, the following time limits would apply:

| | |
|---|---|
| June 15, 2015: | Transmittal of Rule 318 material |
| June 24, 2015: | Service of applicants' affidavits and filing of proof of service thereof |
| July 31, 2015: | Service of respondents' affidavits and filing of proof of service thereof |
| August 13, 2015: | Cross-examination on affidavits completed |
| September 2, 2015: | Applicant's record served and filed |
| September 22, 2015: | Respondents' record served and filed |
| October 2, 2015: | Requisition of hearing to be filed |

For clarity, I have not proposed extending the time limit for completing cross-examinations on affidavits to reflect the extension of time in respect of the respondents' affidavits.

If we are *ad idem* regarding the timetable, it would be preferable in my view to communicate this to the Court for case management purposes.

I look forward to your response.

Yours truly,

---

**Aniz Alani**

c: 604.600.1156

e: senate.vacancies@anizalani.com

w: www.anizalani.com/senatevacancies

On Mon, Jun 8, 2015 at 12:37 PM, Aniz Alani <senate.vacancies@anizalani.com> wrote:

> Please be advised that I will consent to the respondents' informal request to extend the time limit for serving affidavits and filing proof of service thereof to July 31, 2015, without prejudice to my ability to object to the admissibility of the affidavits including, but not limited to, on the basis that the content of the convention(s) addressed in the affidavits was not considered by the decision maker at the time of the alleged decision not to advise the Governor General to fill vacancies in the Senate.
>
> I plan to confirm this consent by way of letter to the Court but may not have the means to do so during business hours today. Please feel free to reference my position as set out above on support of the respondents' request for an extension of time.
>
> Yours truly,
>
> ---
>
> Aniz Alani
>
> T: 604.600.1156
>
> E: senate.vacancies@anizalani.com
>
> ------- Original message -------
> From: "Corrigall, Sandra" <Sandra.Corrigall@justice.gc.ca>
> Date: 2015-06-08 12:26 PM (GMT-08:00)
> To: "'senate.vacancies@anizalani.com'" <senate.vacancies@anizalani.com>
> Cc: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>, "Mukai, Tami" <Tami.Mukai@justice.gc.ca>
> Subject: Alani v. Canada
>
> Good afternoon Mr. Alani,

Please see attached correspondence of today's date.

Regards,

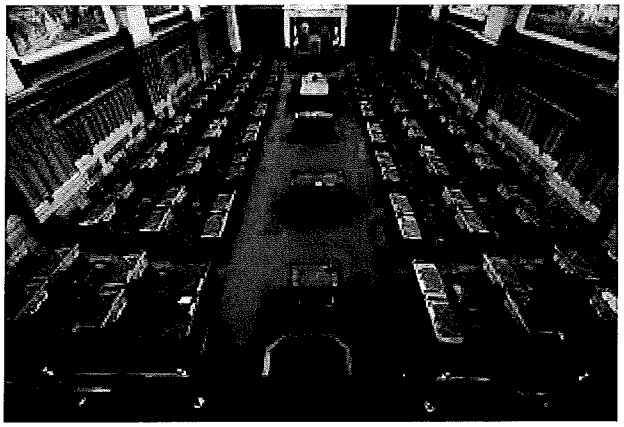
Sandra Corrigall
Senior Paralegal

Regional Director General's Office - BC Region
Department of Justice Canada | Ministère de la Justice Canada
900 - 840 Howe Street | 900- 840 rue Howe
Vancouver, B.C. V6Z 2S9
Phone | Tél. (604) 666-4434 Fax |Telec. (604) 666-1585
Government of Canada | Gouvernement du Canada

Opinion

# Let Canadian Senate die of attrition: Goar

Contrary to public belief, there is a simple way to put an end to the Senate: stop appointing members.



ADRIAN WYLD / THE CANADIAN PRESS

If Stephen Harper had pledged when he took office in 2006 to forswear Senate appointments, there would be 57 vacancies in the 105-seat upper chamber of Parliament today.

This is Exhibit JJ referred to in the affidavit of Aniz Alani made before me on this 15 day of June 20 15

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTERED OFFICER
AGENT DU GREFFE

**By: Carol Goar** Star Columnist, Published on Thu Nov 14 2013

There is a foolproof way to abolish the Senate.

It doesn't require a reference to the Supreme Court, a change to the Constitution or provincial consent.

All it requires is an unequivocal commitment from every current and future candidate for the Prime Minister's office never to appoint a senator.

It would take time — but not as much as you might think. If Stephen Harper had pledged when he took office in 2006 to forswear Senate appointments, there would be 57 vacancies in the 105-seat upper chamber of Parliament today.

If he were to stop appointing senators now, there would be 11 vacancies (more in the event of criminal convictions) by the end of his current term.

If all three national party leaders made a commitment in the 2015 election to appoint no senators, there would be 38 vacancies by 2019 — probably more taking into account voluntary departures and deaths.

If the same tripartisan resolve prevailed in the 2019 election, there would be at least 81 empty seats within 10 years. That would still be enough senators for a quorum — only 15 members are required to convene a meeting of the upper house — but it's unlikely the last two dozen stragglers would want to

prop up a dying institution.

The process could be accelerated with voluntary buyouts.

This approach would not solve Harper's immediate political problem: a still-unfolding Senate expense scandal involving three of his highest profile appointees and his most senior aides. Nor would it satisfy those who want the Senate abolished by fiat.

But it is a simple, effective way to resolve a dilemma that has stymied politicians, lawyers and academics for generations. Best of all, it would put power where it belongs: in the hands of the people. If Canadians genuinely believe the Senate has no useful role in their system of government, all they have to do is vote against any federal party leader who refuses to guarantee that he/she will make no appointments to the upper house.

If this seems naive, think back 20 years. It seemed inconceivable then that any political leader would relinquish his/her power to raise taxes at will. Today no politician dares increase taxes, even as concerns mount that government austerity has gone too far.

It is also worth remembering that seven provinces — Ontario (then known as Upper Canada), Quebec, Manitoba, Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island — once had upper legislative chambers. None exist today.

History has a way of imbuing decisions made by querulous, self-interested politicians with a mythic quality. Canada's appointed Senate was the product of partisan haggling between Sir John A. Macdonald and George Brown over the terms of Confederation. Brown, a Liberal, fought for an appointed upper chamber, thinking it would deprive Macdonald's moneyed friends of the legitimacy and stature that flowed from an earned mandate. At the same time, he argued against an upper chamber for Ontario because he did not think it was important enough to preserve.

There was nothing elegant or far-sighted about Brown's reasoning. It served his interests at the time. Within less than 10 years his own party, led by his protégé, Prime Minister Alexander Mackenzie, wanted to extricate itself — and Canada — from the arrangements Brown had made.

He tried, as did many of the prime ministers who followed him. None succeeded.

As defenders of the Senate point out, it has made a contribution to the affairs of the nation: drafting thoughtful reports, holding respectful public hearings, looking into complex, long-term issues and, in its better days, demonstrating civility and cross-party co-operation in politics.

But in recent years, the excesses of prominent senators, their assumption of entitlement to public funds, and the "jobs for the boys" mentality articulated by former prime minister Brian Mulroney and exemplified by Harper have pushed many once-ambivalent Canadians into the abolitionist camp.

If they are serious, they have the means to achieve what they want.

If Harper is serious about abolition, he doesn't have to wait for permission from the Supreme Court, the premiers or anyone else. He can publicly announce right now that he has made his last Senate appointment — ever.

*Historical research provided by Star librarian Astrid Lange.*

***Carol Goar**'s column appears Monday, Wednesday and Friday.*

(http://looniepolitics.com)

LOONIE POLITICS

This is Exhibit KK referred to in the affidavit of Aziz Alani made before me on this 20 15 day of June

A Commissioner for taking Affidavits for British Columbia

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

June 19, 2015

# Vacant senate seats breaking Confederation's promises

December 23, 2013 - By Dale Smith

(http://looniepolitics.com/wp-content/uploads/2013/12/Parliament-Hill-2-e1386637988678.jpg)

Click here for more political news headlines. (http://looniepolitics.com)

In the wake of the Senate spending scandals, Stephen Harper has decided that he's not going to fill any Senate vacancies for the time being, apparently unaware that he's in abeyance of his constitutional obligations to do so. But more than that, he is both precipitating a future crisis for the chamber, and breaking the promises made by the

Fathers of Confederation almost 150 years ago.

It has become the fashion among the pundit class and certain opposition MPs lately to declare that Harper should just keep refusing to appoint senators in the hopes that one day the attrition will simply force the upper chamber to wither away simply vanish from lack of membership, and that it can be done without a constitutional amendment. Problem solved, ingeniously! Of course, anyone with half a clue about the way our system of government works also realizes that this is not only unrealistic, but is simply a recipe for legislative paralysis since it's explicitly written in our constitution that Parliament consists of the Commons, the Senate, and the Queen, and that legislation must pass all three before it can become law. If you want to change that order of things then guess what – you're going to need to change the constitution.

Undaunted, would-be clever commentators and partisans have wondered whether the constitution dictates that there be a minimum number of senators, and if one could simply adhere to that bare minimum in order to keep legislation flowing and leave it at that. And while one could reply that quorum in the Senate is 15, one wonders why you would really want to concentrate that much power in the hands of 15 individuals with few constraints, institutional independence, and an absolute veto over legislation. It hardly seems wise. The real answer, however, is that the minimum number of Senators is really 105 – just as there is no "minimum number" of MPs in the Commons, and why it has been mandated that by-elections be held to fill vacancies within six months.

Vacant senate seats are as anathema as they would be in the Commons because the Senate exists for a purpose under our constitution. In fact, it was the deal-breaker when it came to Confederation because the minority provinces and populations in this country demanded the protections that the Senate afforded them that the Commons could not if it was to be based around the principles of representation by population. When a prime minister doesn't appoint senators to fill vacancies, he or she is not only denying those provinces of their rightful representatives, but he or she is also breaking the terms by which Confederation came to be.

Oh, but they're not elected, so how can they be representative? Such an attitude presumes that there is really only one type of representation that can happen. People seem to forget that there had been elected members of the Legislative Councils – the pre-confederation upper chambers of the colonies – and that they had largely soured on the experience. One of the best descriptors of these elected proto-senators was that they were Triple-R: rich, rural, and reactionary. It was becoming a problem the amount of money that they had to raise and spend in order to wage an election campaign across the whole of the colony rather than a defined electoral district like an MP. And when the time came, the Fathers decided to go a different route, choosing appointed representatives that had the institutional independence enough to speak truth to power, and who could best represent minorities in a way that elected officials could not because that minority representation was guaranteed by virtue of appointment. And yes, they have as much constitutional legitimacy as a representative as an elected MP does.

There is a further problem with the increasing number of vacant senate seats in that a large influx of new members when they are filled causes a shock to the system. This happened in 2009, when Harper appointed eighteen senators in one fell swoop after previously refusing to appoint any senators who hadn't been elected in a provincial process (Michael Fortier excepted). While the Senate can easily absorb two or three members at a time without disruption, and give those new senators time to learn the ways of the upper chamber – a process that can take up to three years – a full fifth of its membership at once caused a shock to the system.

It's one of the reasons why the independence of the Senate has been so damaged in recent years – too many new senators without a sense of their roles, being told by their senate leadership that they can be whipped like MPs can, and acting out of a sense of obligation to the prime minister that appointed them. So many at once is why the Senate became more of an echo of the backbenches of the Commons, with pliant senators willing to do the Prime Minister's bidding unquestioned, and why it's only now that those senators are starting to get a firmer grasp of their roles and responsibilities and are starting to exercise more independence, as we've seen increasingly over the past few months.

But Harper is on course to repeat this shock to the system as the current number of vacancies sits at nine, with more on the way. Sure, Harper has a right to be nervous, given that his track record on appointments can't exactly be called stellar, and so much of that is his own fault – the first batch of 18 weren't properly vetted because he abdicated that responsibility until he panicked and made those appointments before an opposition coalition could do it for him. But he has the time and the people who can do the vetting properly now.

By leaving these seats vacant, Harper is not only looking to create more problems with the system down the road, but he is breaking the covenants of confederation. Canadians should care about this because it's their representatives, their parliament, and their country that is ultimately being underserved.

———-

**Other articles by Dale Smith**

A bashful Speaker Scheer helps no one (http://looniepolitics.com/bashful-speaker-scheer-helps-one/)

Rent-a-Tories, Liberal Supporters, and the death of accountability (http://looniepolitics.com/rent-tories-liberal-supporters-death-accountability/)

The "Reform Act's" missing link (http://looniepolitics.com/reform-acts-missing-link/)

Follow Dale Smith on twitter: @journo_dale (https://twitter.com/journo_dale)

# Stephen Harper under pressure to fill Senate vacancies

**Retirements and resignations will soon leave 17 seats empty in the red chamber**

By Rosemary Barton, CBC News Posted: Jul 08, 2014 9:00 PM ET Last Updated: Jul 08, 2014 9:00 PM ET

Prime Minister Stephen Harper may soon be grappling with a whole new problem inside the Senate.

He has already endured a Senate expenses scandal that cost him his chief of staff and suffered another setback in his attempts to reform the upper chamber thanks to a recent Supreme Court decision.

Now, with 11 current vacancies and looming retirements, Harper is faced with 17 empty seats in the red chamber by the end of the year — not to mention the three former Conservative Senators who have been suspended for ineligible housing and living expenses.

And CBC News has learned Harper is under growing pressure from a number of Conservative senators to fill those empty seats.

The senators cite concerns about how the Senate, and committees in particular, will be able to operate. They also question whether the regions are being fairly represented given the vacancies.

By the end of July, Prince Edward Island will lose Senator Catherine Callbeck to retirement. With Mike Duffy's suspension, that means P.E.I. will be reduced to half of its active representation.

Premier Robert Ghiz says the island will be underrepresented in Ottawa and while he admits the Senate has not been operated as well as it could, he believes the prime minister could do something about that in the next round of appointments.

"This time, I would try to stay away from the partisan route or attack dogs," suggests Ghiz. "I think there are a lot of quality people out there who want to make a difference in our country, who want to contribute, and hopefully the PM will look at someone of that quality."

P.E.I. is not alone in losing out on regional representation. The province of Manitoba will also be down to half of its Senate seats in the coming weeks, with three out of six seats vacant. By contrast, Nova Scotia and New Brunswick each have only two seats vacant out of 10.

But while Conservative senators may be gently pushing him to name appointees, the prime minister has given no sign he intends to do so.

## No constitutional requirement

Harper's stated preference is to send elected senators to the upper chamber. He has urged the provinces to hold elections for senate nominees, but only Alberta has proved willing to do so.

When the Supreme Court delivered its opinion that the federal government could not reform the Senate without the support of at least seven provinces, Harper said it meant Canada was "stuck in the status quo for the time being."

The Prime Minister's Office goes further, saying that as long as the Senate continues to be able to deal

with government legislation there is no plan to fill any of those seats.

Hugh Segal, who recently resigned his seat from the Senate to head up Massey College at the University of Toronto, points out there is no constitutional requirement for the prime minister to fill the vacancies, nor does he think Harper should rush into it.

But the former senator does think Harper has an opportunity to make the Senate a different place — and to send a message.

"You and I could make a list of people from the sciences, from the arts, from business, from philanthropy, from community service, some of whom may have been involved politically — that's not a bad thing — some of whom may have had no partisan involvement ever in their lives, but who could be expected to be absolutely reasonable and thoughtful senators who would vote on matters based on their merits," Segal suggests.

Segal also says context is important.

"I think every prime minister has to look at the context in which he or she is operating, what is necessary — what's in the best interest of the country at the time."

Harper has named 59 senators since he became prime minister in 2006.

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Analysis



# Is Stephen Harper obliged to fill empty Senate seats?

By James Cudmore, CBC News Posted: Jul 10, 2014 5:00 AM ET Last Updated: Jul 10, 2014 5:00 AM ET

Pity the poor prime minister.

Stephen Harper, pre-disposed as he is to dislike an unreformed and now not-easily reformable Senate, is faced with yet another difficult constitutional question.

He's allowed the 11 vacancies to build up in red chamber — there'll be 17 by the end of the year — and the feeling is he is not all that interested in filling them.

- **Harper faces growing pressure to fill Senate vacancies**
- **What the constitution says about Senate appointments**

Harper's majority there remains intact and by not making appointments to the now unpopular and scandal-ridden upper chamber, he can avoid having to answer uncomfortable questions about patronage and power, and perhaps, expenses.

But can the prime minister keep holding on? And if so, for how long?

CBC News reported Tuesday Harper is under pressure from Conservative senators to start filling up those empty seats.

They argue work is becoming difficult — not enough senators to fill up committees — and besides that, the regional balance is starting to go wonky: An unacceptable situation in what's supposed to be the House of the Provinces.

But the prime minister has shown no interest so far in meeting those requests and it's not clear he even has to.

Opposition leader Thomas Mulcair argues Harper could turn his back on the Senate and simply walk away, leaving that piece of our Parliament to wane from neglect.

"There's no constitutional requirement to fill them," Mulcair told host Rosemary Barton on CBC News Network's *Power & Politics*. "We could let the thing die on the vine — just wither away by attrition, name no one else to the Senate."

## 'Summon qualified persons'

Of course, that fits with the NDP leader's view of the place: That the thing should be abolished. But the prospect of a Senate starved of money, membership and legitimacy would likely not keep with the constitution.

Yes, it's true the prime minister is not by name required to appoint senators, but the constitution does spell out the Governor General's responsibility to ensure qualified Canadians are brought forward as new members.

Section 24 says the Governor General, "shall, from time to time, in the Queen's name, by instrument under the great seal of Canada, summon qualified persons to the Senate." And, as everyone knows, in our system, the GG doesn't do that sort of thing without the prime minister's advice.

Political scientist Emmett Macfarlane argues the imperative placed on the shoulders of the Governor General is, in practical terms, actually a constitutional burden the prime minister must wear.

"I wouldn't say that it is black and white crystal clear that there is an obligation to name senators," Macfarlane said.

But, he says, if you interpret Section 24 in practical terms, it does begin to look an obligation.

The Governor General politically is unable to act without the support of the prime minister. To act on his own would lead to a separate set of constitutional problems that would shake the foundations of Canada's democracy.

Macfarlane argues a long-term refusal by the prime minister to name new Senators for the Governor General to appoint would lead to an inconsistency between constitution and convention that cannot stand.

"I would personally argue that the phrasing in the text speaks of a constitutional requirement to make regular Senate appointments, and I think the conventions certainly speak to that as well," Macfarlane said.

"Whether the Supreme Court would agree with me is an entirely different matter."

## A role for the Supreme Court?

Tuesday, former Conservative senator Hugh Segal told CBC News he didn't think there was any obligation to name senators to sit in the 105-member chamber, as long as its membership didn't dip below the quorum of 15 bums in cushy red seats.

Renowned constitutional lawyer and professor Peter Hogg takes a position in line with Segal.

There's no legal obligation for Harper to name new names, Hogg says. But the prime minister could have trouble following that road to its end.

The Supreme Court in the recent Senate reference ruling said the government could not make changes to the Senate that have the effect of amending the Constitution without undertaking a full-blown bit of Constitutional reform.

So, if the Senate was diminished to such a degree that it could not do its work or serve its Constitutional function, then that diminishment would be unconstitutional in itself.

Phew.

It's here Peter Hogg says the Supreme Court might think about beginning to act — but, he says, that would be an extreme case.

"Where the Senate has effectively been abolished by the refusal of the PM to recommend appointments,

perhaps that is one instance where the [Supreme Court] might be tempted to grant a remedy," Hogg wrote in an e-mail.

"Not because of a general duty to make appointments, but because the constitution assumes a functioning upper house and the PM by unilateral inaction should not be allowed to effectively amend the constitution."

But, possessed as it's said to be of "neither the purse nor the sword," the Supreme Court would not be able to make those appointments itself. The prime minister technically doesn't make the appointments and the Governor General likely can't be ordered to — so what then?

University of Ottawa political scientist Philippe Lagasse says if by refusing to name so many new senators the prime minister unconstitutionally altered the architecture and operation of Canada's Parliament, the Governor General would be left with no choice.

"The Governor General at that point would effectively recognize that the prime minister of Canada was acting unconstitutionally. If the GG found the PM just totally refused, then he would have grounds to dismiss him."

The nuclear option, one might say.

## Where's the guidebook?

It's this sort of conundrum that highlights a failure in the administration of our constitution.

There's been no codification of the conventions that flow from the old and arcane bits of the act.

There are a few key opinions that all Canadians seems to share that offer general guidance — that the Governor General can't willy-nilly start ignoring the advice of democratically elected leaders, for instance, lest our system of government fail, or that the prime minister can't ignore the will of Parliament expressed through a vote, lest our democracy fail. But there are no guidebooks for how the other bits must be run.

Lagasse says there is such a guidebook for the United Kingdom. The Cabinet Manual, as it's called, "sets out the main laws, rules and conventions affecting the conduct and operation," of the government of the U.K. — even defining the relationship between the government, the Sovereign and the judiciary.

Canada, Lagasse says, could use such a book.

In the meantime, you might as well be asking: How many senators can dance on the head of a pin?

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# Brad Wall says Senate 'atrophy is not a bad end game'

**Prime Minister Stephen Harper has been under pressure to fill the growing number of Senate vacancies**

CBC News Posted: Jul 12, 2014 7:00 AM ET Last Updated: Jul 12, 2014 7:00 AM ET

Saskatchewan Premier Brad Wall says not many people would be outraged if Prime Minister Stephen Harper decided to stop appointing senators.

CBC News reported this week that some Conservative members of the upper chamber are putting pressure on Harper to fill Senate vacancies. There are currently 11 empty seats, and there will be 17 by the end of the year. That doesn't included suspended Senators Patrick Brazeau, Mike Duffy and Pamela Wallin.

- **Listen to CBC Radio's The House**

"Atrophy is not a bad end game as well for the Senate as far as we're concerned," Wall told CBC Radio's *The House*. "We don't think the Prime Minister should be in any particular hurry to appoint any senators," he said.

Wall has advocated for Senate abolition in the past. Saskatchewan's official position is that the red chamber should be eliminated.

"I don't think we'd have a problem if he (Stephen Harper) came out emphatically and said: 'Look, we're... we just think this institution is not relevant, it's unelected, and for the reasons I've just mentioned, we're not going to be appointing any more senators for the life of this government,'" Wall told guest host Terry Milewski. "It's a long goodbye but it is a goodbye," he said.

## Does the PM have to appoint senators?

The prime minister seems to be in no rush to fill the current vacancies. His office says that as long as the Senate continues to be able to its work, there is no plan to fill any of those seats.

Experts are divided about whether the prime minister has a constitutional obligation to fill the seats. Section 24 of the Constitution says the Governor General, "shall, from time to time, in the Queen's name, by instrument under the great seal of Canada, summon qualified persons to the Senate."

Former Conservative senator Hugh Segal told CBC News this week that he didn't think there was any obligation to name senators to the 105-member chamber, as long as its membership didn't dip below the quorum of 15.

There's no ambiguity for the leader of the Official Opposition Tom Mulcair. "There's no constitutional requirement to fill them," Mulcair told CBC News Network's *Power & Politics* this week. "We could let the thing die on the vine — just wither away by attrition, name no one else to the Senate."

Despite all this, the pressure to appoint senators will not go away, especially when it comes to some provinces.

With Senator Catherine Callbeck about to retire and Mike Duffy currently suspended from the Senate,

Prince Edward Island will soon find itself with half the representation it's entitled to. Premier Robert Ghiz has expressed concerns about that upcoming under-representation. Manitoba will also be down to half of its Senate seats in the coming weeks, with three out of six seats vacant.

MACLEAN'S



# Brazen populism can't kill the Senate

Why the red chamber won't die of simple neglect

Nick Taylor-Vaisey

July 16, 2014

Chris Wattie/Reuters

If the Senate haters have their way, the chamber bathed in royal red will sit empty, indefinitely, come May 4, 2030. Here's how it might play out: On that date, Michael L. MacDonald, a Nova Scotia businessman who once served as the former vice-president of the Conservative party, would celebrate his 75th birthday and retire. The Senate, its numbers having dwindled for some 17 years since Prime Minister Stephen Harper last appointed anyone to the upper chamber, would lose quorum. Down to the last 14 senators (one fewer than the Constitution says must be present to exercise the Senate's powers), the remaining 12 Conservatives, a single Liberal and a single Independent would be powerless to do any business. They'd leave one of the most beautiful rooms in the land unoccupied.

There are a lot of variables in that scenario, of course—some current senators may die, wind up behind bars or resign for other reasons—but it would only come to pass if Harper refuses to appoint new senators ever again, and each prime minister who follows shows the same restraint. Harper, who has said he has no plans to appoint more senators, is no stranger to the art of intentional neglect. He may have named 59 senators between late 2008 and early 2013, but he also allowed 18 vacancies to pile up during his first two years in office. Even that didn't set the empty-seats record. During Pierre Trudeau's last year in office, he let the number rise to 21, meaning there was a time when 20 per cent of the Senate's seats collected dust. Democracy didn't verge on collapse.

But now, after layers of scandal have tarnished the unelected chamber's reputation, a debate has gripped Ottawa over whether or not a prime minister is obliged to fill Senate vacancies, and to what extent neglecting the Senate might be a valid tactic to abolish it. This week in Saskatchewan, the country's most popular premier, Brad Wall, said he openly favours abolition and that atrophy is "a long goodbye, but it is a goodbye."

The issue has flared up amid rumours that some restless Tories are concerned about the growing number of vacancies. NDP Leader Tom Mulcair has been quick to weigh in, claiming there is no constitutional requirement forcing the Prime Minister's hand. Toronto MP Craig Scott, the NDP's democratic reform critic, explained the party's position. The Constitution, he says, mandates only that the Governor General "shall from time to time...summon qualified persons to the Senate." Scott claims the "time to time" provision "gives the Prime Minister a wide degree of latitude" to turn a blind eye to attrition.

If that argument seems as though it's splitting hairs, Emmett Macfarlane, an assistant professor of political science at the University of Waterloo, says that's because it amounts to "constitutional sabotage. These are smart people and, frankly, they should know better." He says the Supreme Court's ruling on Senate reform and abolition earlier this year concluded that "any fundamental change" to the upper house requires provincial consent. A Senate unable to function due to a shortage of warm bodies, he says, would constitute fundamental change. To wit: Senate rules dictate that each of the 16 standing committees requires a minimum of four senators. Eventually, the whole enterprise would collapse under the weight of so many overworked senators and reach a point where it could no longer properly conduct its business. "I suspect, by the time the Senate itself starts to complain that its capacities and function have been damaged, that we have hit unconstitutional waters," says Macfarlane.

What complicates matters is that, apart from that definitive lack of quorum, there's no consensus on when the Senate would reach a tipping point of parliamentary incapacitation. However, it's almost certain that, long before then, a citizen, accompanied by an activist lawyer, would launch a court challenge to compel Harper or a future prime minister to act. "Conceivably, a case could be brought forward by...any citizen who's able to get public-interest standing before the court," says Macfarlane. "You have to identify a pressing constitutional concern. Standing has been liberalized to the extent that I think a court would allow the case to proceed."

When pollsters ask Canadians about the Senate, two-thirds say the red chamber serves no "necessary and useful political function." Against that backdrop, Senate opponents are hungry to see it disappear by any means necessary. But if that means abolition by neglect, the inevitable court challenge will spark a slow-motion crisis that pits brazen populism against the country's founding principles. Whoever wins, there's no guarantee anyone will be better off.

Winnipeg Free Press

PRINTTHIS

This is Exhibit PP referred to in the affidavit of Aziz Alani made before me on this 22 day of June 2015

A Commissioner for taking Affidavits for British Columbia

DAMIAN PAPUGA
REGISTRY OFFICER
AGENT DU GREFFE

Analysis

# Abolition by stealth

By: Linda Trimble
Posted: **03/27/2015 3:00 AM** |

No one could fault Canadians for thinking the sky had suddenly fallen on Senate reform last April. "Did the Supreme Court just kill Senate reform?" asked a columnist for Maclean's magazine, and his answer was an unequivocal "yes."

Prime Minister Stephen Harper agreed, blaming the court for slamming the door on his government's attempt to "elect" senators and limit their terms in office. Following the court's ruling, Harper announced the federal government would cease its attempts to renovate the upper house.

But it seems the prime minister has not in fact given up on reshaping the Senate. Harper is undertaking a covert demolition of the red chamber. Delivered a smack-down by the court, told it cannot unilaterally achieve its vision for Senate reform, the government is engaging in abolition by stealth.

The prime minister has stopped appointing senators. The last appointment was made two years ago, and there are now 18 vacancies. Harper says he is in no hurry to fill the empty seats. So, if the Conservative Party wins another majority government and holds power until Oct. 21, 2019, another 27 senators will have reached the mandatory age of retirement. And if the three suspended senators are given the boot, there will be at least 48 empty seats in a 105-member chamber. In a few short years, half of the Senate will have withered away.

Starving the Senate in this manner is a sneaky way of doing an end run around the Constitution. The Supreme Court's opinion was unequivocal: The federal government must have the agreement of all 10 provinces to abolish the Senate. But the PM doesn't want to talk to the premiers about constitutional reform, and he certainly doesn't want to put the Senate in the intense media spotlight that would undoubtedly shine on constitutional talks about vanquishing the upper house. After all, the upcoming trials of the malfeasant senators will cause the government enough embarrassment.

A slow and silent dismemberment of the chamber is the Harper government's way of making the problem go away.

Why should we care that the PM is furtively "disappearing" the Senate? After all, as public-opinion polls conducted in the wake of the Senate expenses scandal showed, fully half of Canadians were so disgusted by the bad behaviour of a few senators they wanted to scrap the institution entirely.

But most people don't know what senators do on a daily basis, nor can they identify the role of the Senate in the Canadian parliamentary system. If they understood how Parliament works, Canadians would be deeply concerned about the extreme concentration of power in the Prime Minister's Office.

The type of careful legislative oversight the Senate is designed to provide is crucial given the fusion of powers in the executive branch. Given the Harper government's flagrant disregard of judicial oversight, any limited checks and balances offered by the Senate are welcome. Indeed, the Senate may prove to be an important bulwark against Bill C-51, the profoundly scary anti-terrorism act.

Fortunately for Canadians, abolition by stealth is unconstitutional. Although retired Conservative senator Hugh Segal believes the prime minister has no obligation to name senators as long as the upper house meets its quorum of 15 members, provincial governments and legal scholars beg to differ.

Making appointments is not an option, but a duty, argues constitutional expert Emmett Macfarlane. The premier of P.E.I. has urged the prime minister to fill his province's vacant seats, and a Vancouver lawyer filed an application in the Federal Court to contest the government's inaction.

That the PM's refusal to appoint senators has received little media scrutiny is dismaying, albeit unsurprising; surreptitious abolition is not nearly as dramatic as the spectacle offered by the coming Duffy trial. More astounding is the support for Harper's tactics from purported champions of democracy.

Saskatchewan Premier Brad Wall, once a vocal proponent of Senate reform, feels "atrophy is not a bad end game for the Senate." The New Democratic Party also seems to be onside: "We could just let the thing die on the vine -- just wither away, name no one else to the Senate," NDP Leader Tom Mulcair told the CBC.

This would be a mistake. Canada desperately needs a national dialogue on the fate of the Senate. Yet abolition by stealth seems expressly designed to avoid this conversation and to divert attention from the rapidly declining health of parliamentary democracy in Canada. It's an underhanded way of denying Canadians a meaningful voice in the design and operation of our governing institutions.

*Linda Trimble is a political science professor at the University of Alberta*

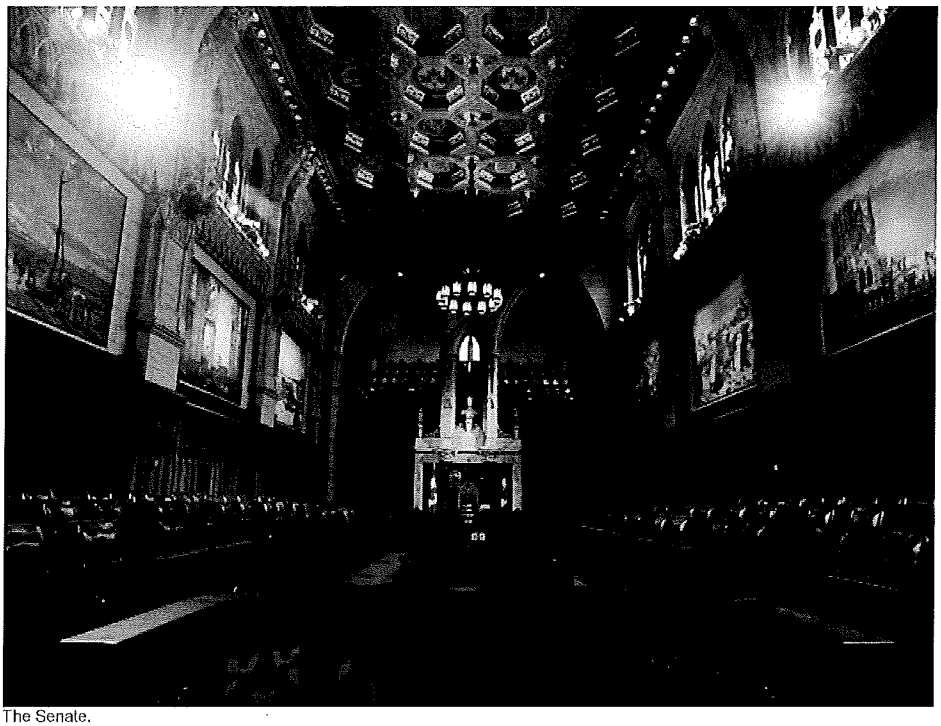
# FULL COMMENT



# National Post View: The Canadian Senate — the dinner guest who won't go home

NP NATIONAL POST VIEW | April 24, 2015 7:39 PM ET
More from National Post View





The Senate. THE CANADIAN PRESS/Adrian Wyld



Canada's Senate has become the dinner guest who won't go home, the distant relative who comes for a visit and refuses to vacate the guest room. Its future has become a choice between two unattractive alternatives: is the annoyance of putting up with it better or worse than the trouble involved in making it go away?

A new front was opened Thursday when a Vancouver lawyer appeared in court to argue that Prime Minister Stephen Harper should be forced to appoint new senators to the growing ranks of empty seats, whether he wants to or not. Aniz Alani, a self-professed constitutional buff, says other prime ministers have allowed empty seats to accumulate, but Harper is the first to openly declare his unwillingness to fill them. Harper hasn't named any new senators since 2013, and said in December he wasn't "getting a lot of calls from Canadians" urging him to do so.

It's not clear whether Alani has a case. Constitutional experts say there is no law requiring the prime minister to act. True, the Constitution Act, 1867, states that "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." Practically speaking, however, the governor general cannot act without the approval of the prime minister, making the whole issue yet another bog of constitutional uncertainty.

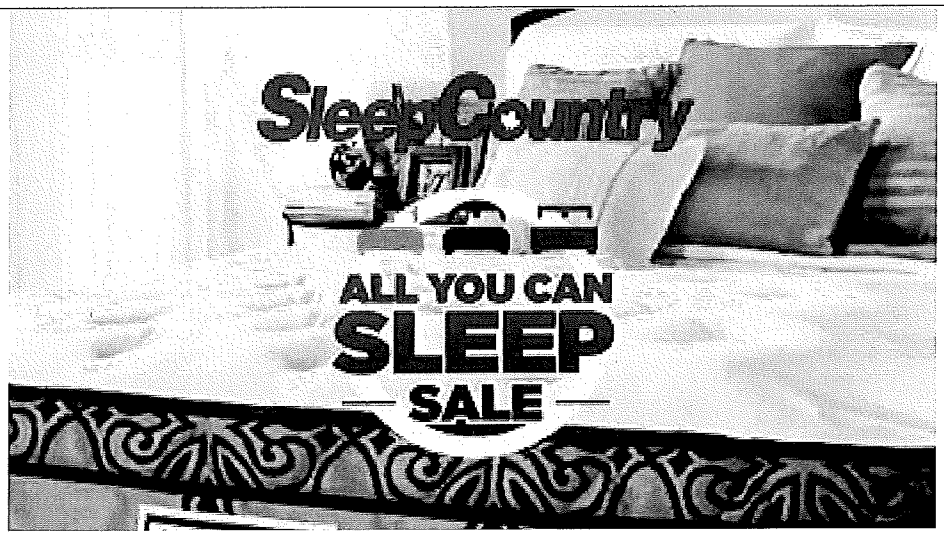
## Related

Living expenses meant for senators who actually pay out of pocket to live in Ottawa, Duffy trial hears

Majority of Canadians support either abolished or reformed Senate: poll

It highlights the overwhelming mess the Senate issue has become. Rarely has anything Canadians cared so little about occupied so much national attention. With six months to go before the next election, the trial of Senator Mike Duffy is reminding voters once again of everything they dislike about the place. On Friday the court was told the disgraced senator charged per diems even when staying at his son's home on "Senate business" that coincided with the birth of his grandson. While scheduled for another three weeks, the case could well extend beyond that point, a constant threat to a government that would prefer Canadians forget it had anything to do with Duffy's appointment.






Neither the Liberals nor NDP are any more keen on filling the vacancies in the upper House — now at 19 and counting — that senators say will soon affect their ability to do their job. Liberal leader Justin Trudeau has banished his party's senators from his caucus, while NDP leader Thomas Mulcair objects to the very existence of the chamber. Yet a Supreme Court ruling last year appeared to make dramatic reform out of the question, barring a constitutional amendment with the support of at least seven of the provinces — a prospect for which no party would appear to have any appetite.

Some suggest the unloved institution could be allowed to wither away from simple neglect. Former Senator Hugh Segal says Harper could probably avoid any new appointments until the 105-member chamber fell below the quorum of 15. At that point, however, if not before, the prime minister could be found in violation of the Constitution — the Senate having effectively ceased to function — and a whole new battle could begin.

There are alternatives, however. One is to reform the appointment system. While attempts to create an elected Senate have failed, a more open, less partisan appointment process, at arms-length from the prime minister of the day, would improve the quality of appointees while insulating future prime ministers from blame for appointments that went horribly wrong, a la Duffy.

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A second, as proposed in these pages by constitutional scholars Andrew Heard and Adam Dodek, would ask the Senate to reform itself: pass resolutions restricting its ability to overturn legislation passed by the Commons, to tighten the rules on expenses and partisan activity, and to make its proceedings more transparent. If the prime minister threw his support behind it, it is hard to see how it would not happen.

Harper may be reluctant to touch this file, having been burned before. But he can hardly claim the status quo is working, even for him.

National Post

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Topics: Full Comment, Canadian Politics, Mike Duffy, Politics, Senate, Stephen Harper

THE GLOBE AND MAIL

POLITICS

# Stephen Harper's game of Senate appointment make-believe will end



**CAMPBELL CLARK**
OTTAWA — The Globe and Mail
Published Thursday, May 21, 2015 8:43PM EDT
Last updated Thursday, May 21, 2015 11:24PM EDT

Stephen Harper is playing at pre-election make-believe with Senate appointments. We have a Vancouver lawyer to thank for calling us back to reality.

The Prime Minister's game of pretend is in declaring he won't appoint senators. The unloved, disrespected Red Chamber has caused him a spot of bother, notably because of ill-advised appointees such as Mike Duffy and Patrick Brazeau. So Mr. Harper stopped appointing new senators back in 2013. There are now 20 vacant seats.

It is, for Mr. Harper, a way to avoid uncomfortable optics and deflect uncomfortable questions about the Senate. But the catch is that it's Mr. Harper's job to appoint senators. And one day, he will have to appoint lots of senators – at least if he's re-elected in October.

Nonetheless, Mr. Harper has said publicly that he won't. Then along came Vancouver lawyer Aniz Alani, who asked the Federal Court of Canada to declare that the PM (technically the Governor-General) must appoint senators within a reasonable time. He felt Mr. Harper was refusing to do what the Constitution requires. "For me, it's really a rule-of-law issue," Mr. Alani said in a phone interview.

Government lawyers tried to get the case dismissed, on the grounds that Mr. Alani's court action has no hope of success. But on Thursday, Federal Court judge Sean Harrington disagreed. He noted that the Senate is sometimes "a source of embarrassment" to the government, but that doesn't mean it has no duty to appoint senators.

"I know of no law which provides that one may not do what one is otherwise obliged to do simply because it would be embarrassing," Justice Harrington said.

Mr. Harper has shrugged off questions about the vacancies, saying he doesn't get a lot of calls from the public asking him to appoint senators, and doesn't need more to pass legislation.

Mr. Alani was surprised. The Constitution says the Governor in Council "shall" appoint senators to fill vacancies, and that word means they must. "It can't just be that we've got a Constitution nobody

follows because on any given day it doesn't poll very well," Mr. Alani said. Politicians wouldn't make an issue of it; Mr. Alani decided he would. The 33-year-old was once a clerk to the Federal Court, so he knows this kind of law and, he said, was willing to put in the time.

Mr. Harper's unwillingness to appoint senators clashes with the fact that he's named scads of them – 59 in all. And if past practice is any guide, once he's past the election – if he wins – his reluctance will subside.

He also let Senate vacancies pile up in his first term. But after the 2008 election, he appointed 18 new senators three days before Christmas, including Mr. Duffy and Mr. Brazeau, Pamela Wallin, his chief fundraiser, Irving Gerstein, and a key Quebec political organizer, Leo Housakos.

That's not very different from what his predecessors did – Liberal and Conservative. Perhaps that's also noteworthy. In his early days in office, Mr. Harper vowed to reform the Senate. Since the Supreme Court ruled last year that Senate reform requires the consent of the provinces, he has given up. His approach to the Senate now comes down to the kind of senators he appoints.

In fact, if he's re-elected, he'll not only have to fill the 20 currently vacant seats, but 25 more due to open up in the next four-year term. All told, that would make 104 Harper appointments, more than any other PM ever.

There's no point pretending there'll be no new appointees. For that matter, any party leader should be telling us how they'd fill those 45 vacancies. That includes NDP Leader Thomas Mulcair, who vows to abolish the Senate. He wouldn't be able to accomplish that in the first few months, and would have to appoint senators.

It's possible the courts won't step in. They're often reluctant to define these kinds of Crown powers. But a PM who refused to appoint senators indefinitely would risk a crisis: He or she would be advising the Governor-General to ignore the Constitution. In theory, a Governor-General has to dismiss a prime minister who gives unacceptable advice. But that's all theoretical, of course, in a world of pre-election pretend. After Oct. 19, it's a safe bet there will be new senators.

## More Related to this Story

- Harper says he is in no hurry to appoint more senators
- POLITICS PMO urged changes to Duffy audit, RCMP officers say
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## Topics:

- Patrick Brazeau

BLACKLOCK'S Reporter
MINDING OTTAWA'S BUSINESS



This is Exhibit "55" referred to in the affidavit of Aniz Alani made before me on this 15th day of June 20 15.

A Commissioner for taking Affidavits for British Columbia



**Tuesday, June 2, 2015**

# Feds Appeal Senate Lawsuit

Cabinet is widening a legal battle over whether Senate vacancies must be filled by the Prime Minister. The government is appealing a Federal Court ruling that the case proceed after federal attorneys argued the claim was frivolous.

"It's difficult to avoid the inference that the respondents are trying to drag this out," said Aniz Alani, a Vancouver attorney who filed the original lawsuit to appoint more senators. There are currently 20 vacancies in the 105-seat chamber, with another five senators due to leave within a year as they reach the mandatory retirement age of 75.

Prime Minister Stephen Harper halted all new Senate appointments last August 23 after three Conservative senators were suspended in an expense scandal. Two – Patrick Brazeau and Mike Duffy – subsequently faced criminal charges, still unproven in court.

Alani said he'd hoped to have his legal claim settled by this October's federal election till the government responded with a series of challenges, first arguing the lawsuit should be dismissed as pointless, and then appealing the ruling of a federal judge that it was worthy enough to proceed.

"They have in correspondence vigorously opposed any effort to expedite the hearings," said Alani; "I suppose I always considered it was a possibility they could do that, but wanted to give them the benefit of the doubt."

Alani argues that under the 1867 *Constitution Act* the Prime Minister has no choice but to immediately fill Senate vacancies as they occur. Under section 32 of the Act, "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."

Prof. Adam Dodek of the University of Ottawa law faculty said the lawsuit illustrates a valid constitutional point. "The case raises the important issue of whether there is any legal recourse if the Prime Minister simply refuses to appoint persons to the Senate," Dodek said. "In other words, is it legally permissible for the Prime Minister to simply let the Senate wither away into nothingness?"

Federal Judge Sean Harrington, who earlier rejected the government's claim the issue was not a court matter, wrote that new senators will eventually have to be appointed as age and attrition take their toll. "Certainly at some stage senators have to be appointed," Harrington wrote. "If there were to be no quorum, Parliament could not function as it is composed of both the House of Commons and Senate."

The Senate requires a quorum of 15 members. It currently has 82.

By Dale Smith



LAROCQUE

# Canada's war on the Senate? Just say no.

BY COREY LAROCQUE, OTTAWA SUN

FIRST POSTED: SUNDAY, JUNE 14, 2015 07:49 PM EDT | UPDATED: SUNDAY, JUNE 14, 2015 07:54 PM EDT

Let the Senate die on the vine.

Senate reform is on the tips of Canadians' tongues now because of last week's report by the Auditor General on the dubious expense claims of senators, the never-ending courtroom saga of Sen. Mike Duffy and the prospect more members of the so-called chamber of sober second thought might land before a judge.

There's no longer any doubt. The Senate can't continue the way it is.

After the beating it took last week, it's impossible to imagine Senate reform not being an issue in the looming federal election campaign.

Yet Canada's political leaders aren't giving Canadians the straight goods about Senate reform.

Prime Minister Stephen Harper has been talking Senate reform for more than a decade, but today Parliament's upper house is more the same than ever.

The NDP's Tom Mulcair pledged to work toward its abolition even though experts have warned it's not a realistic option.

And Liberal Leader Justin Trudeau is lost in the woods with a plan to appoint independent senators.

When Harper's Conservative party first formed the government in the House of Commons, the resistance the Liberal-dominated Senate gave to Conservative bills rankled Canada's new government.

So, the outspoken Senate critic used his prime ministerial powers to stack upper chamber with his friends. Over time, he swung its membership so that it's now dominated by members of his party.

In fact, Harper, supposedly a fierce critic of the Senate, has appointed 59 members.

When Harper asked the Supreme Court of Canada whether the federal government could act alone to scrap it, he didn't like their advice.

A prime minister can't act unilaterally.

Abolishing the Senate or any major overhaul would require the consent of the federal government and all 10 provinces.

So, Canada needs a practical solution that's constitutional, practical and realistic.

Here it is: Just stop appointing senators.

If a prime minister stopped naming replacements every time there's room for one more hog at the trough, the darned thing would go away on its own.

The average age of the Canadian senator is 65. If a prime minister simply stopped filling vacancies, over time, the Senate's membership would dwindle.

It might take 10 years, but by the ravages of time or by senators hitting their mandatory retirement age of 75, Canada could clean house in its upper house.

Technically, Canada would still have an upper house, but nobody would be home.

Canada's Constitution requires Parliament have an upper house -- the Senate -- whose members are appointed, rather than elected like the members in the lower house, the House of Commons.

Traditionally, the Senate has been thought of as the "chamber of sober second thought" because its role is to review the laws passed by the elected members of the House of Commons, occasionally suggest changes, and apply the brake to the government's agenda.

However, there doesn't seem to be anything preventing a prime minister from leaving vacancies empty when they arise.

Filling Senate vacancies is the sole responsibility of the prime minister.

(Technically, the governor general "summons" qualified members to sit in Parliament's upper house, but he does that on the prime minister's advice).

To satisfy the constitutional requirement that a Senate exist, the government could leave a token handful of senators.

They'd hang around like Maytag repairmen, not doing anything.

But at least it would reduce the cost of the red chamber to a paltry $1 million a year from its current annual cost of about $100 million and Canadians wouldn't hear as many horror stories about expense scandals.

Twitter: @Corey_Larocque

# Hearing Lists / Rôle

## WESTERN SITTINGS / SÉANCES DE L'OUEST

*Last updated on FRIDAY, JUNE 19, 2015 at 07:15 A.M.*
*Dernière mise à jour le VENDREDI 19 JUIN 2015 à 7h15*

This is Exhibit UU referred to in the affidavit of Aziz Alavi made before me on this 22 day of June 2015

A Commissioner for taking Affidavits for British Columbia
TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

Vancouver Edmonton Calgary Winnipeg Saskatoon Regina Standoff

| Court Number/ Numéro de dossier | Style of Cause/ Intitulé de cause | Day/ Jour | Time/ Heure | Duration/ Durée |
|---|---|---|---|---|
| **Vancouver** | | | | |
| **June/Juin 2015** | | | | |
| **T-2072-14** | HWLITSUM FIRST NATION ET AL. v. AGC ET AL.<br>(M-English) / (R-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 15 | 09:30 | 4d |
| **T-1972-14** | COMMUNITIES AND COAL SOCIETY ET AL. v. VANCOUVER FRASER PORT AUTHORITY ET AL<br>(OBJEC-English) / (OPPOS-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 19 | 13:00 | 1h |
| **IMM-2681-15** | MPSEP v. SHENG JU YANG<br>(M-English) / (R-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB - Immigration Division***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Section de l'immigration*** | 22 | 09:30 | 1h 30min |
| **IMM-7555-14** | ALEKSEI BELOKOPYTOV v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 22 | 11:00 | 2h |
| **T-2488-14** | COLUMBIA SPORTSWEAR NORTH AMERICA INC. ET AL v. DUVET COMFORT INC. AND ET AL<br>(M-English) / (R-Anglais)<br>***Patent Infringement***<br>***Brevet - Contrefaçon*** | 23 | 09:30 | 30min |
| **T-921-15** | THE MINISTER OF NATIONAL REVENUE v. DERROLD NORGAARD<br>(M-English) / (R-Anglais)<br>***Others - Income Tax [Applications]***<br>***Autres - Impôt sur le revenu [Demandes]*** | 23 | 09:30 | 15min |

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| **T-962-15** | GEORGE WILCOX v. MINISTER OF FOREIGN AFFAIRS AND OTHERS<br>(M-English) / (R-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 23 | 09:30 | 2h |
| **T-1784-12** | CHIEF EUGENE HORSEMAN ET AL v. HER MAJESTY THE QUEEN<br>(CMC/TC-English) / (CGINS/TC-Anglais)<br>***Aboriginal Law (v. Queen)***<br>***Droit autochtone (c. Reine)*** | 23 | 11:00 | 1h |
| **T-1963-13** | HOSPIRA HEALTHCARE CORPORATION v. THE MINISTER OF HEALTH ET AL<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 24 | 09:30 | 3d |
| **T-501-14** | HOSPIRA HEALTHCARE CORPORATION v. THE MINISTER OF HEALTH EL AL<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 24 | 09:30 | 3d |
| **T-1736-10** | APOTEX INC. v. PFIZER CANADA INC. ET AL<br>(M-English) / (R-Anglais)<br>***Intellectual Property - Others [Actions]***<br>***Propriété intellectuelle - Autres [Actions]*** | 26 | 09:00 | 2h |
| **IMM-8050-14** | NADIA HASNIN DEWAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB -Immigration Appeal Division***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Section appel de l'imm.*** | 29 | 09:30 | 2h |
| **IMM-7708-14** | MJM v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 29 | 11:00 | 2h |
| **T-2506-14** | ANIZ ALANI v. THE PRIME MINISTER OF CANADA ET AL.<br>(M-English) / (R-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 30 | 09:30 | 1h |
| **July/Juillet 2015** | | | | |
| **T-1725-14** | AGC v. CHRIS HUGHES AND CANADIAN HUMAN RIGHTS COMMISSION<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review*** | 02 | 09:30 | 1d |

***Art. 18.1 Demande de contrôle judiciaire***

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| **IMM-7976-14** | MUHAMMAD AFZAL SADIQ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Arising outside Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Originant à l'étranger*** | 06 | 09:30 | 2h |
| **T-2186-14** | OTTO RAUL GODINEZ OVALLE v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Citizenship (Appeal by Applicant)***<br>***Citoyenneté (appel par le requérant)*** | 08 | 09:30 | 2h |
| **IMM-8423-14** | YU LAN XIA v. MINISTER OF CITIZENSHIP AND IMMIGRATION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB -Immigration Appeal Division***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Section appel de l'imm.*** | 08 | 11:00 | 2h |
| **T-833-13** | MNR v. JOHN KARLSSON<br>(H-English) / (A-Anglais)<br>***Others - Income Tax [Applications]***<br>***Autres - Impôt sur le revenu [Demandes]*** | 09 | 09:30 | 1d |
| **T-1297-13** | UPS ASIA GROUP PTE LTD dba UPS ASIA OCEAN SERVICES v. BELAIR FABRICATION LTD<br>(M-English) / (R-Anglais)<br>***Admiralty - Contract***<br>***Amirauté - Contrat*** | 13 | 09:30 | 1d |
| **T-2115-14** | JEAN JAMES v.CANADA (ATTORNEY GENERAL)<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 15 | 09:30 | 4h |
| **T-109-15** | CANPOTEX SHIPPING SERVICES LIMITED v. MARINE PETROBULK LTD. ET AL.<br>(M-English) / (R-Anglais)<br>***Admiralty - Others [Actions]***<br>***Amirauté - Autres [Actions]*** | 16 | 09:30 | 1d |
| **T-1393-14** | MIKISEW CREE FIRST NATION ET AL v. MIN OF THE ENVIRONMENT OF CANADA ET AL<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 20 | 09:30 | 5d |
| **T-2292-14** | DOIG RIVER FIRST NATION,AND OTHERS v.AGC,AND OTHERS<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review*** | 20 | 09:30 | 5d |

***Art. 18.1 Demande de contrôle judiciaire***

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| **T-2300-14** | PEACE VALLEY LANDOWNER ASSOCIATION v. AGC,AND OTHERS<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 20 | 09:30 | 5d |
| **T-2333-14** | MIKISEW CREE FIRST NATION ET AL. v. AGC ET AL.<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 20 | 09:30 | 5d |
| **IMM-217-15** | BALJINDER SINGH RAI v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Arising outside Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Originant à l'étranger*** | 20 | 09:30 | 2h |
| **IMM-7958-14** | TIMOTHY DAVID LANGENBERG v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 20 | 11:00 | 2h |
| **IMM-415-15** | ALI ALVIN FAROON v. MCI ET AL.<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 22 | 09:30 | 2h |
| **IMM-283-15** | AMIN SIDDIQUI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB - Refugee***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Réfugié*** | 23 | 09:30 | 2h |
| **IMM-573-15** | THI THANH TRANG LE v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Arising outside Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Originant à l'étranger*** | 23 | 11:00 | 2h |
| **IMM-262-15** | JASINDER SINGH MANN v. MINISTER OF CITIZENSHIP AND IMMIGARTION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 27 | 09:30 | 2h |
| **T-1580-13** | HELLMANN WORLDWIDE LOGISTICS INC. v. KNOLLY BIKES INC.<br>(MED-English) / (MÉD-Anglais)<br>***Others - not provided for anywhere else [Actions]***<br>***Autres - code n'existe nulle part ailleurs [Actions]*** | 27 | 10:00 | 1d |

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| **T-1892-13** | MCI v. KAMRAN MODARESI (AKA KAMRAN LADBON)<br>(M-English) / (R-Anglais)<br>***Citizenship (section 18 Revocation) [Actions]***<br>***Citoyenneté (article 18 annulation] [Actions]*** | 28 | 09:30 | 4h |

**August/Août 2015**

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| **T-1736-14** | VIRGINIA HILLIS ET AL v. THE ATTORNEY GENERAL OF CANADA ET AL<br>(M-English) / (R-Anglais)<br>***Others - Income Tax [Actions]***<br>***Autres - Impôt sur le revenu [Actions]*** | 04 | 09:30 | 2d |
| **T-2412-14** | JOSEPHAKIS CHARALAMBOUS v. ATTORNEY GENERAL OF CANADA<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 10 | 09:30 | 2h |
| **IMM-815-15** | KATHIYE ABDULLAH ELMI v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Pre-removal risk assessment***<br>***Imm - Dem. d'autoris. & contrôle jud.- Éval. risque avant renvoi*** | 10 | 11:00 | 2h |
| **T-477-13** | GRIEG SEAFOOD LTD. ET AL v. DIVECO MARINE (2007)LTD "NANAIMO FLYER"<br>(PTC-English) / (CPI-Anglais)<br>***Admiralty - Collision***<br>***Amirauté - Collision*** | 11 | 11:30 | 3h |
| **T-653-13** | CHANEL S. DE R.L. ET AL. v. LAM CHAN KE COMPANY LTD. ET AL.<br>(M-English) / (R-Anglais)<br>***Trade Mark Infringement***<br>***Marque de commerce - Violation*** | 12 | 09:30 | 1d |
| **T-1723-14** | PACIFIC WESTERN BREWING COMPANY LTD. v. CERVECERIA DEL PACIFICO<br>(JR-English) / (CJ-Anglais)<br>***Trade Mark Expungement***<br>***Marque de commerce - Radiation*** | 13 | 09:30 | 1d |
| **T-1084-13** | MARK TAYLOR AND OTHERS v. THE VESSEL "AFTER WORK" AND OTHERS<br>(PTC-English) / (CPI-Anglais)<br>***Admiralty - Damage (Property & Facilities)***<br>***Amirauté - Dommage (propriété et aménagements)*** | 13 | 10:00 | 3h |
| **IMM-705-15** | APPLE MAHMUD v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 17 | 09:30 | 2h |
| **IMM-618-15** | DENISE NDABEMEYE v. MCI | 17 | 11:00 | 2h |

(JR-English) / (CJ-Anglais)
***Imm - Appl. for leave & jud. review - Other Arising in Canada***
***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada***

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| **IMM-7666-14** | CHUN JIE KUANG v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB -Immigration Appeal Division***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Section appel de l'imm.*** | 24 | 09:30 | 2h |
| **IMM-8296-14** | PUNEET KAUR KAREER v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Arising outside Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Originant à l'étranger*** | 24 | 11:00 | 2h |
| **T-1646-14** | JARRETT DERKSEN v. ATTORNEY GENERAL OF CANADA<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 26 | 09:30 | 2d |
| **IMM-602-15** | KHWAJAABDULLAH SEDIQI v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB - Refugee***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Réfugié*** | 31 | 09:30 | 2h |
| **IMM-1302-15** | SUKHRAJ SINGH v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Arising outside Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Originant à l'étranger*** | 31 | 11:00 | 2h |

**September/Septembre 2015**

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| **IMM-1334-15** | NITISH GUPTA v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 02 | 09:30 | 2h |
| **IMM-1471-15** | DALBIR SINGH DHAMI v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 02 | 11:00 | 2h |
| **IMM-951-15** | LEN VAN HEEST v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 03 | 09:30 | 2h |
| **IMM-1133-15** | THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. BAHAREH ESFAND | 09 | 09:30 | 2h |

(JR-English) / (CJ-Anglais)
***Imm - Appl. for leave & jud. review - IRB - Refugee***
***Imm - Dem. d'autoris. & contrôle jud.- CISR - Réfugié***

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| **IMM-1073-15** | MENGTING GAO v. MINISTER OF CITIZENSHIP AND IMMIGRAITON<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 09 | 11:00 | 2h |
| **IMM-1591-15** | VINCENT BAZIMER BANANZI v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - IRB - Refugee***<br>***Imm - Dem. d'autoris. & contrôle jud.- CISR - Réfugié*** | 10 | 09:30 | 2h |
| **IMM-1661-15** | GURBAKSH KAUR v. MCI<br>(JR-English) / (CJ-Anglais)<br>***Imm - Appl. for leave & jud. review - Other Arising in Canada***<br>***Imm - Dem. d'autoris. & contrôle jud.- Autre originant au Canada*** | 10 | 11:00 | 2h |
| **T-2291-14** | PAUL CHRISTOPHER DOROSHENKO v. RCMP "E" DIVISION AND OTHERS<br>(M-English) / (R-Anglais)<br>***Others - not provided for anywhere else [Actions]***<br>***Autres - code n'existe nulle part ailleurs [Actions]*** | 15 | 09:30 | 1h |
| **T-1273-14** | RECALL TOTAL INFORMATION MANAGEMENT INC. v. MNR<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 21 | 09:30 | 2d |
| **T-2184-14** | P & S HOLDINGS LTD. ET AL. v. HMTQ ET AL.<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 30 | 09:30 | 3d |

**October/Octobre 2015**

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| **T-1051-14** | GCT CANADA LIMITED PARTNERSHIP ET AL. v. VANCOUVER FRASER PORT AUTHORITY<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 07 | 09:30 | 2d |
| **T-2008-14** | RICHARD WILKINSON v. LESLIE PALM AND OTHERS<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 21 | 09:30 | 1d |
| **T-2009-14** | CLIFF WELLICOME v. LESLIE PALM AND OTHERS<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 21 | 09:30 | 1d |

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| **T-2010-14** | INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 500 v. LESLIE PALM ET AL<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review***<br>***Art. 18.1 Demande de contrôle judiciaire*** | 21 | 09:30 | 1d |

**November/Novembre 2015**

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| **T-50-12** | MERCURY LAUNCH & TUG LTD. AND OTHERS v. SOUTHERN RAILWAY OF B.C. AND OTHERS<br>(T-English) / (P-Anglais)<br>***Admiralty - Collision***<br>***Amirauté - Collision*** | 16 | 09:30 | 8d |
| **T-133-15** | COLDWATER INDIAN BAND and others v. MIAND and others<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review (Aboriginal Law)***<br>***Art. 18.1 Contrôle judiciaire (Droit autochtone)*** | 18 | 09:30 | 2d |
| **T-1863-12** | COASTAL FLOAT CAMPS LTD v. NORTHBRIDGE GENERAL INSURANCE CORPORATION ET AL<br>(T-English) / (P-Anglais)<br>***Admiralty - Others [Actions]***<br>***Amirauté - Autres [Actions]*** | 23 | 09:30 | 10d |

**June/Juin 2016**

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| **T-1908-07** | JJM CONSTRUCTION LTD. ET AL v. TEXADA QUARRYING LTD. ET AL<br>(T-English) / (P-Anglais)<br>***Admiralty - Damage (Property & Facilities)***<br>***Amirauté - Dommage (propriété et aménagements)*** | 06 | 09:30 | 8d |

## Edmonton

**July/Juillet 2015**

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| **ITA-5322-07** | ITA v. MARK CERKOWNIAK<br>(M-English) / (R-Anglais)<br>***Certificate - ITA***<br>***Certificat - LIR*** | 13 | 09:30 | 20min |
| **T-2047-14** | MNR v. JOHN CHARLES BEIMA<br>(M-English) / (R-Anglais)<br>***Others - Income Tax [Applications]***<br>***Autres - Impôt sur le revenu [Demandes]*** | 13 | 09:30 | 1h |
| **T-32-15** | ANDREW ORR AND PAUL HOULE v. PEERLESS TROUT FIRST NATION<br>(JR-English) / (CJ-Anglais)<br>***S. 18.1 Application for Judicial Review (Aboriginal Law)***<br>***Art. 18.1 Contrôle judiciaire (Droit autochtone)*** | 14 | 09:30 | 4h |
| **T-2214-14** | DAN MASON v. AGC | 15 | 09:30 | 3h |

Court File No. T-2506-14

**FEDERAL COURT**

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA and
THE QUEEN'S PRIVY COUNCIL FOR CANADA

Respondents

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**WRITTEN REPRESENTATIONS OF THE APPLICANT**
**(Motion for Abridgment of Time and Expedited Hearing)**

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Aniz Alani
[redacted]

Applicant

On his own behalf



Department of Justice
Regional Director General's Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Solicitor for the Respondents

Jan Brongers and Oliver Pulleyblank
Counsel

## OVERVIEW

1. According to the *Federal Courts Rules*, all procedural steps in an application for judicial review – from the filing of a Notice of Application to the requisition for a hearing – must be completed within 130 days absent consent or order of the Court.[1]

2. Given the statutory requirement under section 18.4(1) of the *Federal Courts Act* that applications "shall be heard and determined without delay and in a summary way",[2] obtaining resolution according to a timeframe that reflects the 130 day default timeline is not naively idealistic but a legitimate expectation of reasonably diligent litigants.

3. In this proceeding, the application's timeline stood still and was disrupted for 126 days to indulge the Respondents' election to invoke an extraordinary pre-hearing tool said to be reserved for an exceptional category of the very clearest of cases: an interlocutory motion to strike and dismiss the application for judicial review before a hearing on its merits.

4. The Applicant, meanwhile, has consistently demonstrated a clear intention to have the application heard and determined in an expeditious manner. The Applicant has complied with every time limit and has not requested a single extension of time.

5. The Respondents' motion to strike now having been dismissed,[3] the Applicant moves this Court to reclaim just a few of the days already lost such that the application can be heard in less than 315 days from when it began and, significantly, before the federal election scheduled to be held on October 19, 2015.[4]

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[1] *Federal Courts Rules*, ss. 7, 8, 304-306, 308- 310, 314, 317-318.
[2] *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 18.4(1).
[3] *Alani v. Canada (Prime Minister)*, 2015 FC 649.
[4] *Canada Elections Act*, S.C. 2000, c. 9, s. 56.1(2).

## PART I – STATEMENT OF FACTS

6. On Monday, December 8, 2014, the Applicant filed a notice of application for judicial review seeking, *inter alia*, a declaration that the Prime Minister must advise the Governor General to summon a qualified Person to the Senate within a reasonable time after the Vacancy happens.[5]

7. The proceeding was commenced within one business day of the Applicant having first learned through media reports of the Prime Minister's public statements indicating that he did not intend to "name more Senators right about now" to fill the 16 vacancies then existing in the Senate.[6]

8. On January 5, 2015, the Applicant sought to avail of the Court's procedure for requesting a hearing date before the perfection of the application as set out in the Notice to the Parties and the Profession entitled "Early Hearing Dates for Applications in the Federal Court" issued by Lutfy C.J., as he then was, on November 18, 2010.

9. To do so, the Applicant wrote to counsel for the Respondents seeking confirmation of agreement as to the ordinary timetable provided by the *Federal Courts Rules* as follows:

| | |
|---|---|
| "January 15, 2015: | Rule 318 material transmitted |
| January 26: | Applicant's affidavits served |
| February 25: | Respondents' affidavits served |
| March 17: | cross-examination on affidavits to be completed |
| April 7: | Applicant's record served and filed |
| April 27: | Respondents' record served and filed" [7]. |

[5] Affidavit of Aniz Alani ("Alani Affidavit"), Exhibit B.
[6] Alani Affidavit, paras. 2-3, Exhibit A.
[7] Alani Affidavit, para. 8, 10, Exhibit D.

10. The Applicant sought the Respondents' agreement "to jointly requesting hearing dates in anticipation of the application being perfected along the timeline indicated above, or with any modifications [they] would like to discuss."[8]

11. On January 15, 2015, the deadline for the transmittal by the Prime Minister of "a certified copy of the record of all materials placed before and considered by the Prime Minister in making the decision not to advise the Governor General to fill the currently existing Vacancies",[9] the Respondents served a Notice of Motion to strike the application for judicial review.[10]

12. Despite the Applicant's efforts to resolve the scope and merits of the Respondents' objection to transmitting material under Rule 318, and the impact of the pending motion to strike on the timetable for remaining steps in the application, these issues were deferred until after the adjudication of the Respondents' motion to strike. [11]

13. The Applicant voiced his concerns that a motion to strike was not appropriate in the context of the present application, would frustrate the objective of obtaining a just, speedy and expeditious determination of the issues, and may result in the unnecessary delay and duplication of argument if the Respondents were unsuccessful in establishing that the "plain and obvious" test for striking an application had been met.[12] To mitigate this, the Applicant offered various proposals to the Respondents and to the Court, including:

    i) that the Respondents' motion be disposed of in writing, with an oral hearing scheduled only if the Court determines it to be appropriate upon review of the materials;[13]

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[8] Alani Affidavit, para. 8, 10, Exhibit D.
[9] Alani Affidavit, Exhibit B; *Federal Courts Rules*, ss. 317-318.
[10] Alani Affidavit, para. 11, Exhibit E.
[11] Alani Affidavit, paras. 13, 17-19, 25-29, Exhibits G, K, L, M, S, T, U, V.
[12] Alani Affidavit, paras. 12-20, 25, Exhibits F-N, S.
[13] Alani Affidavit, Exhibit F.

ii) that the parties discuss mutually satisfactory amendments to the notice of application to reflect a further articulation of the grounds for the application to the extent they would satisfy the Respondents' concerns as to justiciability and jurisdiction;[14]

iii) that the hearing of the motion to strike be adjourned and heard at the outset of the hearing of the application itself.[15]

14. In the course of a case management conference held on February 16, 2015, Prothonotary Lafrenière commented that the discrete objections raised in the Respondents' motion to strike would be *res judicata* such that they could not be re-argued at the hearing of the application, and that it should be possible to arrange for hearing dates relatively quickly, if the motion were unsuccessful.[16]

15. Although the Respondents did not indicate a contrary view during a case management conference, they were unwilling to stipulate as to whether their objections would be *res judicata* until after they had reviewed the reasons for judgment following the Court's determination of the motion to strike.[17]

16. At the hearing of the Respondents' motion to strike on April 23, 2015, Harrington J. commented that, with respect to the Respondents' ability to re-argue the same objections following an unsuccessful motion to strike, although "[i]t might be unfortunate that this is the state of our law", the Respondents "can argue the darn thing over again".[18]

17. On May 21, 2015, Harrington J. dismissed the Respondents' motion to strike.[19]

18. That same day, the Applicant wrote to counsel for the Respondents to solicit

[14] Alani Affidavit, Exhibit G.
[15] Alani Affidavit, Exhibit S.
[16] Alani Affidavit, paras 27-28, Exhibit U.
[17] Alani Affidavit, paras. 30-31, Exhibits W-X, Z.
[18] Alani Affidavit, Exhibit Z.
[19] Alani Affidavit, para. 34.

feedback on a timetable for the remaining steps in the application as follows:

> May 25, 2015 – Applicant to serve and file amended notice of application
>
> June 15, 2015 – Rule 318 material to be transmitted
>
> June 22, 2015 – Applicant to serve any further supporting affidavits
>
> June 29, 2015 – Respondents to serve any affidavits
>
> July 6, 2015 – Cross-examination on affidavits to be completed
>
> July 20, 2015 – Applicant to serve and file application record
>
> August 4, 2015 – Respondents to serve and file Respondents' record[20]

19. On May 22, 2015, counsel for the Respondents responded that they did "not see any justification for abridging them in the manner" proposed.[21]

20. The same day, Applicant requested a case management conference to discuss the possibility of fixing dates for the remaining steps in the proceeding, including the potential fixing of a hearing date.[22]

21. On May 25, 2015, the Applicant served and filed an Amended Notice of Application.[23]

22. By letter to the Court dated May 29, 2015, counsel for the Respondents provided submissions opposing the adjudication of the Applicant's request other than by way of a formal Rule 8 motion.[24]

23. The same day, the Applicant responded with submissions in support of an abridgement of time limits and the fixing of a hearing date, as well as the appropriateness of a case management order to resolve these issues.[25]

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[20] Alani Affidavit, para. 35, Exhibit Y.
[21] Alani Affidavit, para. 35, Exhibit Y.
[22] Alani Affidavit, para. 36, Exhibit Z.
[23] Alani Affidavit, para. 37, Exhibit AA; Amended Notice of Application.
[24] Alani Affidavit, para. 38, Exhibit BB.
[25] Alani Affidavit, para. 39, Exhibit CC.

24. Also on May 29, 2015, the Respondents filed a Notice of Appeal of Harrington J.'s Order dismissing the Respondents' motion to strike.[26]

25. A case management conference was held on June 1, 2015, during which counsel for the Respondents advised the Court that the Respondents anticipated commissioning an expert to provide affidavit evidence to address issues relating to constitutional conventions and might need additional time to do so. [27]

26. The Court ordered that the Respondents advise the Court no later than June 8, 2015 when they anticipated being able to produce their affidavits. The Court also ordered that Rule 317 material be transmitted by June 15, 2015, any further Applicant's affidavits be produced by June 24, 2015, and that subsequent steps be taken within the timelines provided in Part 5 of the *Federal Courts Rules* or as otherwise ordered by the Case Management Judge.[28]

27. On June 8, 2015, the Respondents advised that they expected to be able to serve their responding affidavit evidence and file proof of service by July 31, 2015. The Respondents indicated: "While it is our hope that this reasonable request will meet with the consent of the Applicant and can be adjudicated informally by the Court, the Respondents are prepared to file a formal Rule 8 motion if necessary."[29]

28. The same day, the Applicant consented to the Respondents' informal request for an extension of time.[30]

29. Also on the same day, the Applicant wrote to counsel for the Respondents to request confirmation of the timetable for the remaining steps in the

[26] Alani Affidavit, para. 40.
[27] Alani Affidavit, para. 41.
[28] Alani Affidavit, para. 42, Exhibit DD.
[29] Alani Affidavit, para. 43, Exhibit EE.
[30] Alani Affidavit, paras. 44-45, Exhibit FF.

proceeding.[31]

30. The Court granted the Respondents' request by Order dated June 9, 2015.[32]

31. On June 9, 2015, counsel for the Respondents clarified that the period for completion of cross-examination on affidavits would end on August 20, 2015 if the Respondents' affidavits were produced on July 31, 2015. Counsel also indicated, in part:

> "…[W]e think it preferable to await the completion of the parties' affidavit material before committing to a position on whether extensions or abridgements would be appropriate for the remaining procedural steps in this application."[33]

32. On June 11, 2015, the Applicant wrote to counsel for the Respondents regarding the potential mootness of the application after the federal election, stating in part:

> "As indicated in my correspondence to the Court of May 29th, I have concerns that if the hearing of the application does not take place in advance of the scheduled federal election of October 19th the issues raised in the application may become moot. It may be the case that a hearing date can be accommodated before October 19th without any further modifications to the timetable, depending on the parties' and Court's availability and whether an early hearing date is requested as contemplated in the Practice Direction already referenced.
>
> Before taking steps to determine whether this is the case, including, if necessary, by way of a formal Rule 8 motion to abridge time limits as necessary to accommodate a hearing date before October 19th, I note that you referred at the June 1st case management conference to being prepared to make submissions regarding why the issues in the application may not become moot after October 19. Those submissions were not heard.
>
> If I have understood correctly that the respondents take the position that the issues would not necessarily be moot after the election, I would respectfully request that you provide me with the basis for that position. If we can agree that mootness will not be an issue, it may not be necessary in my view to take any further steps to fix a hearing date

[31] Alani Affidavit, para. 46, Exhibit II.
[32] Alani Affidavit, para. 47, Exhibit GG.
[33] Alani Affidavit, para. 48, Exhibit II.

at this time."[34]

33. On June 15, 2015, the Respondents advised the Court that no material would be transmitted under Rule 318 because "…[T]here was no 'decision not to advise the Governor General to fill the currently existing [Senate] Vacancies'…".[35]

34. By letter dated June 15, 2015, counsel for the Respondents stated, in part:

> "In the absence of a formal motion to expedite or any evidence in support of your assertions, we see no utility in engaging in an academic debate on the merits of your apparent position at this time. Suffice it to say that, in our respectful submission, we find neither of the grounds you have raised to be persuasive. They certainly do not provide a justification for denying either party the opportunity to properly prepare their respective cases. In sum, it is our position that the timing of the next federal election is not a factor that ought to govern the determination of either the procedural deadlines or the hearing date of this application."[36]

35. On June 15, 2015, the Applicant wrote to counsel for the Respondents reiterating his intention to request through case management a direction as to whether the Court can accommodate a hearing date between the current time limit for service and filing of the Respondents' Record (i.e., September 29, 2015) and October 19, 2015.[37]

36. Referring to the Notice to the Parties and the Profession dated November 18, 2010, the Applicant inquired as to counsel's time estimate for the hearing of the application and counsel's availability for a hearing after September 29, 2015.[38]

37. By reply dated June 16, 2015, counsel for the Respondents declined to provide a time estimate for the hearing of the application or advise as to their availability for a hearing until after the production of the Respondents' record

[34] Alani Affidavit, para. 49, Exhibit II.
[35] Alani Affidavit, para. 52, Exhibit HH.
[36] Alani Affidavit, para. 50, Exhibit II.
[37] Alani Affidavit, para. 51, Exhibit II.
[38] Alani Affidavit, para. 51, Exhibit II.

under Rule 310.[39]

38. Counsel also indicated that, if the Applicant brought a Rule 8 motion to expedite the proceeding, it was likely that the Respondents would cross-examine on any supporting affidavit. [40]

39. By reply dated June 16, 2015, the Applicant confirmed his intention to first ask the Court whether it could accommodate a hearing date between September 29, 2015 and October 19, 2015, which, if so, would obviate the need for a Rule 8 motion to abridge time limits.[41]

40. By further reply dated June 16, 2015, counsel for the Respondents advised that they were both not available to attend a hearing from September 28 to October 16 inclusive.[42]

41. The Applicant served and filed a Notice of Motion in respect of the present motion on June 17, 2015.[43]

42. The current time periods fixed by Order of the Court and the *Federal Courts Rules* are as follows:

July 31, 2015 – Respondents to serve affidavits and file proof of service

August 20, 2015 – Cross-examination on affidavits to be completed

September 9, 2015 – Applicant to serve and file application record

September 29, 2015 – Respondents to serve and file Respondents' record

43. A federal general election is scheduled to be held on October 19, 2015.[44]

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[39] Alani Affidavit, para. 53, Exhibit II.
[40] Alani Affidavit, para. 53, Exhibit II.
[41] Alani Affidavit, para. 54, Exhibit II.
[42] Alani Affidavit, para. 55, Exhibit II.
[43] Alani Affidavit, para. 17; Notice of Motion (A.M.R.).
[44] *Canada Elections Act*, S.C. 2000, c. 9, s. 56.1(2).

## PART II – ISSUES

44. There are two issues before the Court on this motion:

i) Should a hearing date for the application be fixed?

ii) Should the Court exercise its discretion to abridge time periods for the remaining procedural steps in the application to accommodate a hearing date before October 19, 2015?

## PART III – SUBMISSIONS

### A. BACKGROUND

45. The application proceeds against the backdrop of 20 vacancies[45] having accumulated in the 105-member Senate -- the effects of which include that the guaranteed level of regional representation set out in the *Constitution Act, 1867*[46] is denied in respect of seven of Canada's provinces -- and the Prime Minister's stated intention not to appoint any more Senators.

46. By the time this motion is heard, a 21st vacancy will have arisen by the mandatory retirement of Senator Fortin-Duplessis on June 30, 2015. That same week, Senator LeBreton's retirement will create a 22nd vacancy.[47]

47. The application seeks declaratory relief interpreting and giving effect to s. 32 of the *Constitution Act, 1867* and, in particular, determining whether the requirement to summon qualified persons to the Senate "when a Vacancy happens" imposes an obligation to cause appointments to be made within a

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[45] Library of Parliament, "Party Standings in the Senate – Forty-first (41st) Parliament", online: Parliament of Canada <abbreviated URL: http://bit.ly/SenateStandings41>; retrieved: June 23, 2015

[46] *Constitution Act, 1867*, ss. 21-22.

[47] "Senators by Date of Retirement", online: Parliament of Canada <URL: http://www.parl.gc.ca/SenatorsBio/default.aspx?Language=E&sortord=R>; retrieved: June 23, 2015.

reasonable time.[48]

48. Section 18.4(1) of the *Federal Courts Act* requires that applications "be heard and determined without delay and in a summary way".

49. Rule 3 of the *Federal Courts Rules* declares:

| | |
|---|---|
| **3. General Principle** – These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits. | **3. Principe general** – Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible. |

## B. FIXING OF HEARING DATE BEFORE PERFECTION OF APPLICATION

50. Before undertaking an analysis of why the abridgement of time is justified in this proceeding, it is helpful to consider at the outset what options for abridgment might be considered – and whether any abridgment of time is required at all in order to grant the Applicant's overarching request for a hearing date that facilitates the determination of the issues in the application ahead of the federal election scheduled for October 19, 2015.

51. The extent to which time periods might be abridged to accommodate a hearing of the application before the federal election of October 19, 2015 depends in part on the following variables:

i) the Court's availability to hear the application before October 19, 2015;

ii) the amount of time the Court requires for review of the application records before the hearing of the application; and

iii) the availability of counsel.

52. The first of these two variables are to be determined by the Court itself.

[48] Amended Notice of Application.

53. With respect to the third variable, counsel for the Respondents has advised that they are both unavailable between the current time limit for production of the Respondents' record (i.e., September 29) and October 16, 2015.[49]

54. Set out below are three illustrative examples of potential options for achieving an expedited hearing date with and without abridgments of time periods.

***Option 1: No order for abridgment of time necessary; hearing date fixed on or after September 10, 2015***

55. It may be possible that an early hearing date can be set in advance of the October 19th election without any abridgment of time periods under Rule 8.

56. Pursuant to the Order of the Court (Lafrenière P.) of June 9, 2015 and Part V of the *Federal Courts Rules*, the existing time periods for the steps currently remaining in the proceeding are as follows:

i) July 31, 2015: Respondents to serve affidavits and file proof of service

ii) August 20, 2015: Cross-examination on affidavits to be completed

iii) September 9, 2015: Applicant to serve and file application record

iv) September 29, 2015: Respondents to serve and file Respondents' record

v) October 9, 2015: Requisition for hearing to be filed

57. It is noteworthy that the time period for the service and filing of the Respondents' record under Rule 310 is defined as 20 days after service of the Applicant's record. If, for example, the Applicant's record were served on the due date for cross-examinations to be completed (i.e., August 20, 2015), the Respondents' record would by default be required to be served and filed on September 9, 2015.

[49] Alani Affidavit, para. 55, Exhibit II.

58. Under this or a substantially similar timetable, to which the Applicant would be prepared to commit if a hearing date were to be fixed accordingly, the Court could hear the application after the perfection of the application on September 9. Twenty days of time would be "reclaimed" by the Applicant's unilateral commitment to producing his application record earlier than required.

59. Subject to the Court's and counsel's availability, this would yield 39 days between the perfection of the application and the October 19th election in which to conduct a pre-hearing review of the materials, hear the application, and potentially render judgment.

***Option 2: Time period for cross-examinations expedited and abridged***

60. With respect to cross-examination on affidavits, the Applicant has already produced the totality of his Rule 306 affidavits. But for the prohibition under Rule 84 against cross-examining deponents of an affidavit before having served every affidavit a party intends to rely on and against filing affidavits after cross-examining the deponent of an affidavit, the Respondents would be free to cross-examine the deponents of the Applicant's Rule 306 affidavits at any time.

61. The Applicant is prepared to consent to waive the requirements of Rule 84 in order to obtain an expedited hearing date. To that end, the Applicant seeks an order granting leave under Rules 84(1) and (2) as necessary to modify the time periods to accommodate an early hearing date as requested on this motion.

62. The Applicant is also prepared to present for cross-examination on his own Rule 306 affidavit forthwith if the Respondents seek to cross-examine him.

63. As the Respondents' affidavits are currently due on or before July 31, 2015, and the Applicant does not oppose an early cross-examination on his Rule 306 affidavits, the Applicant proposes that the time period for cross-examinations

to be completed be abridged from August 20, 2015 to such earlier date as the Court determines to be appropriate in the circumstances.

***Option 3: Time period for production of application records to be abridged***

64. If additional time is required between the perfection of the application an early hearing date as requested beyond that which might be "saved" through any combination of Options 1 and 2 above, the Applicant proposes that the 20 day time period for the production of each party's record be abridged at the Court's discretion.

65. As indicated above, the Applicant is prepared to commit to producing his record on or shortly after the time period for completing cross-examinations. Subject to the need to cross-examine the Respondents' affiants at all, and their availability to attend for cross-examination, this could reasonably include producing the Applicant's record shortly after the current July 31, 2015 time limit for the production of the Respondents' affidavits.

## C. GENERAL PRINCIPLES GOVERNING THE ABRIDGMENT OF TIME

66. Rule 8(1) of the *Federal Courts Rules* provides:

| **Extension or abridgement** | **Délai prorogé ou abrégé** |
|---|---|
| **8.** (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order. | **8.** (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance. |

67. Rule 8 does not codify factors constraining the Court's discretion to abridge time.[50] However, the Court's jurisprudence has established that the following non-exhaustive factors may be considered:

i) the effect of the abridgement on the respondent generally and on its ability

[50] *Canadian Wheat Board v. Canada (Attorney General)*, 2007 FC 39 at para. 13 ["*Wheat Board*"].

to defend its legal position;[51]

ii) whether the proceeding would be rendered moot if not decided prior to a particular event;[52]

iii) evidence that the applicant has acted expeditiously in the proceeding;[53]

iv) an urgent reason to proceed quickly;[54]

v) whether it is in the public interest to have a speedy determination of the issues;[55] and

vi) the effect of abridgment on other matters pending before the Court.[56]

***i) The proposed abridgments will not unduly prejudice the Respondents in the circumstances of this case***

68. The Respondents have had notice of the application since it was filed on December 8, 2014.

69. With respect to the time limit for the Respondents' affidavits, the Respondents have already sought and obtained, on consent, an extension of time to July 31, 2015 to produce affidavits. But for the motion to strike, the Respondents' affidavits would have been served by February 25, 2015.

70. The Applicant does not propose that the current time limit for the Respondents' affidavits to be produced.

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[51] *Wheat Board* at para. 13; *Conacher v. Canada (Prime Minister)*, 2008 FC 1119 at para. 16 ["*Conacher*"]; *Gordon v. Canada (Minister of National Defence)*, 2004 FC 1642,
[2004] F.C.J. No. 2000 (Q.L.) at para. 11 ["*Gordon*"]; *May v. CBC/Radio Canada*, 2011 FCA 130 at para. 14 ["*May*"].
[52] *Wheat Board* at para. 13; *Conacher* at para. 16.
[53] *Winnicki v. Canadian Human Rights Commission*, 2007 FCA 3 at para. 3.
[54] *Wheat Board* at para. 13; *Conacher* at para. 16; *Gordon* at para. 11.
[55] *May* at para. 17; *Trotter v. Canada (Auditor General)*, 2011 FC 498 at para. 17 ["*Trotter*"].
[56] *Wheat Board* at para. 13; *Conacher* at para. 16.

71. However, it must be noted that the Respondents will have had ample opportunity to prepare and present an evidentiary record in response to the application. No prejudice to the Respondents can fairly be said to arise on this account.

72. With respect to the timing of the Respondents' record, the issues of justiciability and jurisdiction were already thoroughly argued according to the enhanced "plain and obvious" test in the context of the Respondents' motion to strike.

73. Since these same issues will need to be re-argued if the Respondents maintain their position on justiciability and jurisdiction, there can be no prejudice to the Respondents arising from an abridgement of time to prepare written submissions on these identical issues. They have already been prepared and argued, both in writing and orally, albeit in the context of a motion that did nothing to resolve the issues raised.

74. The Applicant has also provided counsel for the Respondents with a certified copy of a transcript of the hearing of the motion to strike. With the benefit of a verbatim account of the parties' oral submissions on these issues, any potential prejudice arising from an abridgment of time to prepare the Respondents' memorandum of fact and law is mitigated accordingly.

75. Beyond the issues of justiciability and jurisdiction, the principal remaining issues of statutory interpretation, remedy and costs are relatively straightforward. These are primarily legal issues to be argued and in respect of which the Respondents are well positioned to defend fully through their able representation by two counsel within the largest legal department in Canada.

***ii) Whether the proceeding would be rendered moot if not decided prior to a particular event***

76. While neither party nor the Court can predict with certainty the impact of the October 19th federal election on this proceeding, the Applicant submits the

following as reasonable hypotheticals that could realistically render the proceeding moot:

i) If shortly before the election the Prime Minister resiles from his stated intention not to appoint Senators, it is reasonably foreseeable that the Respondents may raise mootness as a bar to proceeding with the application;

ii) If the Prime Minister remains in office following the election and thereafter resiles from his stated intention not to appoint Senators, it is also reasonably foreseeable that the Respondents may raise mootness as a bar to proceeding with the application; and

iii) If the Prime Minister does not remain in office following the election, it is reasonably foreseeable that the Respondents may raise ripeness as a bar to proceeding with the application unless and until the new Prime Minister states a similar intention not to appoint Senators.

***iii) Evidence that the applicant has acted expeditiously in the proceeding***

77. In each of the Court's reasons in *Wheat Board*, *Conacher*, *Gordon*, *May*, *Trotter*, and *Winnicki*, the applicants' requests for an expedited timetable were denied on the basis that the applicants had each failed to bring and conduct proceedings in a timely manner.

78. The evidence tendered in support of this motion establishes that, in contrast to the cases referenced above, the Applicant has acted expeditiously throughout this proceeding.

79. As a result, the time abridgment sought by this motion in order to accommodate the Applicant's request for an early hearing date – if abridgments are needed at all – is relatively minor compared to the significant abridgments requested in the cases referenced above in which the Court was unwilling to exercise its discretion under Rule 8.

80. In *Wheat Board*, the applicant waited 34 days to commence an application in respect of a barley plebisicite after the Minister announced it and the applicant was aware of it. The applicant also "waited another month after filing its application for judicial review before bringing [its] motion for an expedited hearing". The applicant had requested that the case be heard within a month of the Rule 8 motion.[57]

81. In *Conacher*, the applicants filed their notice of application 19 days after the issuing of Writs of Election and six days before the hearing of their motion to expedite. They had requested that the case be heard in less than a week, on October 8, 2008, ahead of an election fixed for October 14, 2008.[58]

82. In *Gordon*, Lafrenière P. found that the urgency suggested by the applicants was refuted by their failure to take steps to protect their asserted *Charter* rights between the commencement of tribunal proceedings on October 8, 2004 and the applicants' request for access during the first week of November.[59] As a result, the Court concluded: "The applicants have created an artificial sense of urgency through their own delay."[60]

83. The Federal Court of Appeal, per Nadon J.A., dismissed a motion for an expedited hearing brought by Green Party leader Elizabeth May in respect of an application for judicial review of a CRTC policy that had the effect of excluding her from participating in televised leaders' debates. In doing so, Nadon J.A. noted that the applicant could have brought her application before the election writ was dropped rather than waiting until 12 days before the first leaders' debate.[61] In that case, the applicant sought a timetable that would have had records produced, the application heard, and judgment issued within

[57] *Wheat Board*, para. 19.
[58] *Conacher*, para. 18.
[59] *Gordon*, para. 14.
[60] *Gordon*, para. 15.
[61] *May* at paras. 8, 11.

6 days of the Rule 8 motion being heard.[62]

84. In *Trotter*, an application filed April 26, 2011 seeking to make public a report of the Auditor General ahead of a general election scheduled for May 2, 2011 was the subject of a Rule 8 motion.[63] While Nöel J. expressed doubts about whether the application could could be prepared and heard in time,[64] he indicated that "This situation would have been different had the Applicant not filed her application less than a week before the election", noting that the Auditor General's refusal had "been public and unequivocal since at least April 11, 2011."[65]

85. In *Winnicki*, Nöel J.A. rejected a motion for an expedited hearing where the applicant was in a position to proceed with its application since November 24, 2006, but, for reasons unexplained, failed to do so until December 22, 2006. As a result, the Court concluded that the applicant's "desire to expedite the application only arises because it failed to present the application earlier."[66]

86. In this case, the application for judicial review was filed on December 8, 2014 – less than two business days after the Prime Minister announced that he did not intend to fill Senate vacancies on December 4, 2014, and 3 calendar days after the applicant learned of the announcement on December 5, 2014.[67]

87. The Applicant in this proceeding clearly and consistently demonstrated an intention to avoid unnecessary delays in bringing forward the application to a hearing on its merits.

88. With respect to the fixing of hearing dates for the application, the Applicant attempted at various stages of the proceeding to apply the Court's guidance set out in its Notice to the Parties and the Profession of November 18, 2010,

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[62] *May* at paras. 15-16.
[63] *Trotter* at para. 3, 12.
[64] *Trotter* at para. 14.
[65] *Trotter* at para. 15.
[66] *Winnicki* at para. 3.
[67] Alani Affidavit, paras. 2-4.

which contemplates that parties may request that a hearing date for an application be set prior to the filing of their application records[68] rather than waiting to file a requisition for hearing under Rule 314.

89. The Notice states: "The Court will endeavour to accommodate early requests for hearing dates whenever possible." The key prerequisite for such a request is the parties' agreement to a schedule of steps required for the perfection of the application.

90. On January 5, 2015, the Applicant sought the Respondents' consent to a timetable and to jointly request hearing dates in anticipation of the application being perfected according to the ordinary time periods set out in the *Federal Courts Rules* – without the need for any abridgments of time. Under the Rules, the application at that time would have been perfected on or before April 27, 2015.[69]

91. The Applicant's first attempt to confirm a timetable and request hearing dates accordingly was ultimately thwarted by the filing of the Respondents' motion to strike the application on January 15, 2015.

92. Subsequent efforts to avail of the option for requesting early hearing dates after the dismissal of the Respondents' motion to strike -- including without the necessity of abridging time limits – were rejected by the Respondents. They took the position that it would not be appropriate to discuss time estimates for the hearing – or even their counsel's availability for a hearing – until after their responding application record had been filed and the requirement for a Rule 314 requisition for hearing was triggered.[70]

93. Unlike in previous cases where the Court has denied abridgments under Rule 8, the Applicant has not created a false sense of urgency by failing to act

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[68] Notice to the Parties and the Profession: "Early Hearing Dates for Applications in the Federal Court" issued November 18, 2010 [*"Early Hearing Dates Notice*"].
[69] Alani Affidavit, para. 8, Exhibit D.
[70] Alani Affidavit, paras. 51, 53-56, Exhibit II.

expeditiously in bringing and conducting the proceeding.

***iv) An urgent reason to proceed quickly***

94. In their motion to strike, the Respondents took the position that the Prime Minister's advice to the Governor General regarding Senate appointments is non-justiciable and that any remedy related to the Prime Minister's actions must be found in the political realm.

95. If the Court determines after a hearing of the application on its merits that the Respondents are correct in this regard, it follows that individual voters will be left to determine the constitutional significance of the Prime Minister's refusal to appoint Senators as a "ballot box" issue.

96. If the issues in the application are not determined until after the election and the Court concludes that the Prime Minister's inaction is non-justiciable, the Canadian voting public may be deprived of a singular opportunity to effect an obviously available political remedy.

97. The nature of the application itself, which raises a significant constitutional issue of public interest,[71] also militates in favour of exercising the Court's discretion to order an expedited hearing.

98. Finally, the Applicant's personal family circumstances are such that his own availability to prepare for and attend a hearing of the application will likely be curtailed for some time as of mid-November 2015.[72]

***v) Whether it is in the public interest to have a speedy determination of the issues***

99. National media coverage of the status of the Senate vacancies discloses uncertainty among political leaders and academics alike – and presumably, in turn, among Canadians generally – as to whether there is any constitutional

[71] Alani Affidavit, para. 73.
[72] Alani Affidavit, paras. 70-72.

barrier to the Prime Minister's refusal to appoint Senators to fill vacancies.[73]

100. This proceeding has itself generated national interest through media coverage.[74] Accordingly, it is reasonable to anticipate that the determination of the issues raised in the application will be effective in removing the public uncertainty that exists with respect to the alleged constitutional requirement that the Prime Minister advise the Governor General to fill vacancies within a reasonable time.

101. Unlike in several of the Rule 8 cases referenced above, this is not a case in which the public interest in having a significant constitutional issue decided will be harmed by an aggressively expedited timetable or an incomplete record to be considered by the Court.

102. On the contrary, as the application largely centers on a question of statutory interpretation against the backdrop of a publicly available and easily referenced history of Senate vacancies, there is no real risk that the Court will be asked to decide issues "on the fly" without the benefit of full legal argument and the relevant evidentiary record.

***vi) The effect of abridgment on other matters pending before the Court***

103. The Applicant is not aware of the Court's existing availability to hear the application following the perfection of records either according to the default time limits or according to abridged timelines. It is therefore difficult to point to the likelihood of cancellation of other hearings as a result of an abridgement.

104. Noting the Court's publicly available Western hearing list, however, it appears that the Court is presently scheduled to sit in Vancouver for a total of 13 sitting days during September and October 2015.[75]

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[73] Alani Affidavit, paras. 58-69, Exhibits JJ-TT.
[74] Alani Affidavit, para. 73.
[75] Alani Affidavit, para. 74, Exhibit UU.

## PART IV – ORDER SOUGHT

105. The Applicant respectfully requests the Court to issue an order that:

i) a hearing of the application be scheduled for the earliest practicable date;

ii) the times for the remaining steps in the proceeding be abridged on terms that the Court deems just;

iii) leave be granted to the Respondents under Rule 84(1) and (2) to cross-examine the deponents of the Applicant's affidavits forthwith and in advance of serving and filing proof of service of the Respondents' affidavits; and

iv) costs of this motion payable to the Applicant in an amount to be fixed by the Court, or, alternatively, costs to the Applicant in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Aniz Alani
Applicant

June 24, 2015