

FEDERAL COURT

**AUGUST 10, 2015
VANCOUVER, BC**

BETWEEN:

ANIZ ALANI

APPLICANT

AND:

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

RESPONDENTS

**CROSS-EXAMINATION ON AFFIDAVIT
OF
ANIZ ALANI**

APPEARING ON HIS OWN BEHALF:

A. ALANI

APPEARING FOR THE RESPONDENTS:

**J. BRONGERS
O. PULLEYBLANK**



**CROSS-EXAMINATION ON AFFIDAVIT
OF
ANIZ ALANI
AUGUST 10, 2015**

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*****Reporter's interpretation of outstanding requests*****

No requests made.

1
Aniz Alani (affiant)
Cross-exam by Mr. Brongers

August 10, 2015
Vancouver, BC

(PROCEEDINGS COMMENCED AT 11:59 P.M.)

ANIZ ALANI, affiant, duly
affirmed.

CROSS-EXAMINATION BY MR. BRONGERS:

Q This is the cross-examination of Aniz Alani on his affidavit affirmed June 23rd, 2015, for the purpose of federal court application T-2506-14, Aniz Alani versus the Prime Minister of Canada, the Governor General of Canada and the Queen's Privy Council for Canada.

Mr. Alani, you solemnly affirm to answer my questions truthfully and you're now testifying under oath; correct?

A That's correct.

Q Just to confirm, you are the applicant in this proceeding; right?

A I am.

Q And also to confirm you are representing yourself in this proceeding?

A That's correct.

Q So you're not receiving any advice in respect of this proceeding from a lawyer?

A I'm representing myself. I may seek advice from various people, including lawyers, and I may receive advice, so I -- to answer your answer truthfully and fully, I am receiving advice, but I'm not represented in this, and I certainly don't have legal representation.

Q Understood. So just to be certain, then, you don't claim to have solicitor/client privilege with any other lawyer with respect to this file, do you?

A I don't.

Q Now, you do, however, state at paragraph 6 of your affidavit that you are a lawyer by profession; correct?

A That's correct.

Q And it says at paragraph 15, just to confirm, you are a member of the Law Society of British Columbia?

A I am.

1 Q At that same paragraph you say that you were
2 called to the bar in December of 2007, which, if
3 my math is right, means that you've been a member
4 of the bar for over seven years?

5 A That's correct.

6 Q And, Mr. Alani, do you have experience as a
7 litigator, do you not?

8 A I do.

9 Q What type of litigation have you done?

10 A Generally civil litigation of various types. If
11 you want me to go into detail in terms of specific
12 sub areas of civil litigation, I'd be happy to do
13 so.

14 Q Let me ask this: I just want to confirm whether
15 or not you have any experience in public advocacy
16 litigation. I would assume you do not but
17 perhaps -- I don't know.

18 A I guess it really depends on what you term "public
19 advocacy litigation." I'm not sure I've ever
20 heard that term before.

21 Q Well, have you ever represented a non-governmental
22 organization in court or an individual bringing a
23 charter challenge? Or is your litigation
24 experience in terms of when you've been
25 representing individuals or companies is better
26 defined as private litigation, private disputes?

27 A I'm thinking back, particularly to the earlier
28 days of my practice, and I think it's probably
29 fair to say that I would have been involved either
30 as junior counsel on a file or some other legal
31 capacity on files where public law issues were
32 raised and -- in other words, issues other than a
33 bit of a merely private nature were before the
34 courts or were otherwise being advocated.

35 Q Do you have any experience conducting
36 constitutional law litigation?

37 A Not as sole counsel of record, no.

38 Q And you don't purport to be an expert in
39 constitutional law litigation, do you?

40 A Not an expert within, you know -- I would
41 certainly not seek to be qualified as an expert
42 witness. I wouldn't advertise myself as -- you
43 know, for marketing purposes as a lawyer who has
44 expertise in constitutional law either.

45 Q So there are no reported cases in which you've
46 represented a client in which a constitutional law
47 at issue was decided, is there?

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1 A I don't believe so, or I'm certainly not aware of
2 any, no.
3 Q But you do have experience appearing as counsel of
4 record in court; correct?
5 A I do.
6 Q Before which courts?
7 A The Provincial Court of British Columbia, the
8 British Columbia Supreme Court, the British
9 Columbia Court of Appeal. I attended as
10 co-counsel in proceedings in the federal court,
11 and I believe -- oh, the Ontario Court of Justice.
12 Q Just to be clear, you mean the Ontario Superior
13 Court of Justice?
14 A No, I think I mean the Ontario Court of Justice.
15 Q That's a provincial court?
16 A I believe so. As far as I recall that would be
17 the extent of the courts before which I've
18 appeared as counsel.
19 Q But it would be fair to say, though, that you have
20 a strong understanding of federal court practice
21 and procedure. Would that be correct?
22 A I don't know that I'd say that generally,
23 certainly not with respect to all the various
24 categories of cases that come before the federal
25 court. For example, I wouldn't claim to have any
26 particular knowledge, certainly not current
27 knowledge, of federal court procedure in respect
28 of immigration proceedings, patented medicine
29 proceedings, admiralty proceedings or similar
30 matters.
31 Q I'd just refer you to paragraphs 17 and 18 of your
32 affidavit in which you explain that you reviewed
33 the *Federal Courts Act* and the *Federal Court*
34 *Rules*, and you determined that based on your own
35 knowledge, capacity, time and interest, that they
36 were sufficient to conduct the proceeding through
37 to determination on its merits. Based on these
38 assertions would you say it's fair to say that you
39 do have a good understanding of federal court
40 rules of practice and procedure?
41 A I have endeavoured to understand the rules and
42 procedures that seemed applicable to this
43 particular proceeding, and I hope that my
44 understanding of those rules is good. I know in
45 my own experience, counsel, I've -- on first
46 impression on reviewing certain specific
47 provisions of the *Federal Courts Rules* I would

- 1 have thought that they might be interpreted one
2 way or might require a particular course of
3 action, but unfortunately, counsel, I know you've
4 been quite helpful in presenting alternate
5 readings which have, on reflection, demonstrated
6 that my initial understanding was incorrect.
- 7 Q You do understand, though, that as an applicant in
8 this proceeding it's your burden to demonstrate in
9 fact and in law your entitlement to the remedies
10 that you seek?
- 11 A I do.
- 12 Q And you've represented to me, as counsel for the
13 respondents, that the only factual evidence that
14 you're relying upon in support of your application
15 is that set out in your affidavit of June 23rd,
16 2015, that is the subject of today's cross-
17 examination. Have you confirmed that this is the
18 case?
- 19 A No, I don't. I've confirmed to you that the
20 extent of the affidavit evidence on which I intend
21 to rely in support of my application is this
22 June 23rd, 2015 affidavit, but I think it would be
23 incorrect to say that that is the extent of the
24 factual evidence or the factual information on
25 which I might rely.
- 26 Q What other factual evidence are you going to be
27 relying on?
- 28 A I don't yet know with certainty, but of course, as
29 I'm sure you're aware, in addition to evidence
30 that might be introduced through affidavit there
31 are other forms of evidence that the court might
32 receive as well, for example, through judicial
33 notice.
- 34 Q That's fair enough. But other than through
35 judicial notice, what I want to be certain at this
36 point in time, since we are supposed to be
37 completing our cross-examination on affidavits,
38 that there are no other affidavits that may be
39 coming with respect to this application. This is
40 the entirety of your affidavit evidence that you
41 intend to rely upon?
- 42 A Yes, that's correct.
- 43 Q And in making this affidavit, you understood the
44 importance of ensuring that the affidavit is
45 truthful?
- 46 A Yes.
- 47 Q And as a self-represented litigant who is also a

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1 practising lawyer, when you prepared your
2 affidavit you understood the importance of
3 ensuring that it is complete and that it does not
4 omit any facts that are relevant to your case?
5 A Yes.
6 Q So, Mr. Alani, at paragraph 4 you testify that you
7 have been a citizen and resident of Canada since
8 your birth; right?
9 A That is what I deposed.
10 Q When were you born?
11 A September 5th, 1981.
12 Q Where were you born?
13 A It was then known as Grace Hospital in Vancouver,
14 British Columbia. It's of course not my personal
15 knowledge; it's based on information I've received
16 from my parents, which I believe to be true.
17 Q So you were a Canadian citizen by birth, then?
18 A Yes.
19 Q And just to confirm, you have never renounced your
20 Canadian citizenship and you are still a Canadian
21 citizen today?
22 A That is correct.
23 Q Paragraph 5 of your affidavit you say that you are
24 ordinarily resident and own property in Vancouver,
25 British Columbia; right?
26 A That is correct.
27 Q For how long have you been a resident of
28 Vancouver, British Columbia?
29 A I suppose it depends on the contextual definition
30 of "residency." As I mentioned, I was born in
31 Vancouver. The only times I didn't live
32 specifically in Vancouver were for a few months
33 when I was eight years old when I lived in
34 Kamloops, British Columbia. I also would have
35 lived in Winnipeg, Manitoba during my first year
36 of law school, and in Toronto for my second and
37 third year of law school, and in Ottawa for one
38 year following my graduation from law school. But
39 aside from those times, I have either lived in
40 Vancouver itself or in its immediately surrounding
41 suburbs.
42 Q Now, when you say that you own property in
43 Vancouver, what do you mean by that? What kind of
44 property?
45 A I mean that I am a joint tenant of property held
46 in fee simple of a residential property that I
47 occupy as my principal residence.

- 1 Q And how long have you owned that property?
2 A This specific property, I believe, was purchased
3 in 2011.
4 Q Have you owned any other residential property in
5 the past?
6 A Yes.
7 Q When?
8 A The residential property I owned immediately
9 before my current property was in Richmond,
10 British Columbia, and I would have owned that for,
11 I believe, just around two years.
12 Q So you've been a residential property owner in
13 British Columbia since 2009; correct?
14 A It might have been 2008.
15 Q And have you owned any other residential property
16 anywhere in Canada?
17 A I think there was a time during which -- and it
18 would have been -- I'd have to look up the dates,
19 but circa 2006 to maybe around 2008 when I believe
20 I was listed along with my sister as registered
21 owner of a property in which my father resided.
22 Q Where was that located?
23 A Also in Vancouver.
24 Q So you've never owned residential property outside
25 of British Columbia?
26 A Not in my personal name, no.
27 Q Paragraph 6 of your affidavit you say that you are
28 a lawyer by profession, and I'm going to ask you
29 about your legal career and experience. And just
30 to assist with this, I'm going to put to you your
31 publicly available LinkedIn profile, which I
32 downloaded from the internet on August 8th, so two
33 days ago. I've placed before you a paper copy of
34 a screenshot off your LinkedIn profile page.
35 Could you just review it and confirm that this is
36 indeed a current copy of your publicly available
37 LinkedIn profile page?
38 A I believe it is.
39 Q And when I say "publicly available," I mean the
40 version that anyone can access on the internet
41 without signing in as a LinkedIn member as opposed
42 to a LinkedIn full profile, which I understand can
43 only be accessed by a person who signs in as a
44 member of LinkedIn. And you would agree with me
45 that there is a distinction between this publicly
46 available profile and a full profile; right?
47 A Yes.

1 Q Did you prepare this profile?

2 A I did.

3 Q And when preparing it did you take care to ensure
4 that the information in the profile is accurate?
5 A Materially accurate. I can see on reviewing it,
6 for example, there is a period from July 2007 to
7 December '08 when I am listed as being a lawyer at
8 Davis LLP, and I was called to the bar in December
9 2007, so I didn't specifically distinguish between
10 the period when I was an articling student and a
11 lawyer for the sake of simplicity.

12 Q But you would agree with me, Mr. Alani, that as a
13 lawyer it's important to accurately set out your
14 professional experience in a publicly available
15 material like a LinkedIn profile; right?

16 A Yes.

17 Q And it's important not to exaggerate your
18 professional experience; right?

19 A That is correct.

20 Q And would you not think it important, then, to
21 correct this to make it clear that rather than the
22 one year and six months you claim to have been a
23 lawyer at Davis, that you were in fact only a
24 lawyer there for one year?

25 A I hadn't really thought about it that way. My
26 recollection from completing the LinkedIn profile
27 is it asks you what company you were at and the
28 period during which you were at that company, and
29 then I think there is an option of specifying your
30 position there. As best as I recall, it didn't
31 seem convenient to separate out shorter periods of
32 time within that overall range. Of course now
33 that you've drawn it to my attention and in case
34 there might be any material confusion to the
35 public, I will certainly investigate that further.

36 Q Are there any other inaccuracies in the profile,
37 Mr. Alani?

38 A Well, I see, for example, that LinkedIn appears to
39 have some form of algorithm by which it
40 approximates the period of time. So, for example,
41 it will say that a position was held from a month
42 and year to another month and year, and then it
43 summarized in parentheses that duration. A lot of
44 the work on here was, for example, during summer
45 jobs, and so I'm not sure it will always be
46 strictly accurate to say, for example, that I
47 worked in a particular position for four whole

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Cross-exam by Mr. Brongers

months, even though the months during which I was an employee in those positions would be correct. But other than that, I don't see any obvious inaccuracies.

MR. BRONGERS: Madam Court Reporter, can we please mark this document -- this screenshot of Mr. Alani's publicly available LinkedIn profile as exhibit 1 to this cross-examination.

EXHIBIT 1: Screenshot of Aniz Alani's publicly available LinkedIn profile

MR. BRONGERS:

Q So, Mr. Alani, where did you go to law school?

A I went to law school at the University of Manitoba and the University of Toronto.

Q What years did you attend those institutions?

A I attended the University of Manitoba from September 2003 to, I guess, approximately May 2004, and the University of Toronto from September 2004 to approximately May 2006.

Q If we could just go back to your LinkedIn profile, I note that you've indicated that you attended the University of Toronto, and it indicates that you were there from 2004 to 2006, but no mention is made of the University of Manitoba. Is there a reason for that omission?

A Yes. Again, as I recalled the administrative process of setting up a LinkedIn profile, in the education section it asks what degrees you have. There is an option to indicate degrees received, and so I included a reference to my law degree, which was received from the University of Toronto. I mean, I wasn't trying to hide something by omitting the University of Manitoba, but it's just not there. I mean, I wanted to avoid, I suppose, the impression that I had two law degrees by listing a second law school.

Q Would you agree with me that this, though, gives the impression that you completed a law degree in just two years rather than the ordinary three-year period?

A No, I don't agree with that at all.

Q Mr. Alani, where did you do your articles?

A I completed my articles at a combination of the federal court and what was then known as Davis LLP.

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1 Q And what were the dates during which you did your
2 articles at those two institutions?

3 A To the best of my recollection, I began at the
4 federal court in September 2006, and I completed
5 my clerkship term probably officially sometime in
6 August of 2007, although I was on vacation for
7 pretty much the last month of that, so I left
8 Ottawa in July of 2007. I began -- or I guess I
9 should say resumed my articles at Davis, if I
10 recall correctly, in August of 2007 -- I might
11 have to go back and check that -- and would have
12 completed them upon my call to the bar in December
13 of 2007. There was a period of time when I was
14 completing the professional legal training course
15 and I simply can't remember whether that's
16 considered part of the articling term or not, but
17 in any event, I would have completed the PLTC
18 course in 2006.

19 Q Now, you -- so you were called to the bar in
20 December 2007, and we agree that you were not a
21 lawyer prior to that date. What was your first
22 law job upon being called to the bar in December
23 2007?

24 A I was at Davis LLP.

25 Q And I assume you were an associate there and not a
26 partner; is that correct?

27 A Well, actually, upon my call to the bar they
28 called me a called clerk.

29 Q I'm sorry, I didn't understand the word. A called
30 clerk?

31 A A called clerk.

32 Q C-a-l-l-e-d, a called clerk?

33 A Yes.

34 Q Okay.

35 A And I would have continued with that title until
36 the end of the normal articling period that
37 applied to other articling students in my same
38 cohort at Davis. I believe I began officially as
39 an associate in -- again, I'd have to go back and
40 check, but it would have been, I think, April or
41 May of 2008.

42 Q And is there a distinction between being a called
43 clerk and a lawyer?

44 A To the external world, I don't think so.

45 Q I'm just interested because again does that mean
46 you were really just a lawyer at Davis & Company
47 from the time you received this title of lawyer in

10
Aniz Alani (affiant)
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1 April of that year, which would mean in fact you
2 were only a lawyer there for about eight months?
3 A No, I don't think that would be true.
4 Q You think you were a lawyer even while you were a
5 called clerk?
6 A I am certain that I was a lawyer when I was a
7 called clerk.
8 Q You left Davis & Company in December of 2008;
9 correct?
10 A Yes.
11 Q And what was your next job after working at
12 Davis & Company?
13 A I was corporate counsel at British Columbia
14 Transmission Corporation.
15 Q How long did you work there?
16 A I -- well, my position was folded into the British
17 Columbia Hydro and Power Authority on the coming
18 into force of certain provisions in the Clean
19 Energy Act in July of 2010. So by operation of
20 law my employer changed.
21 Q Now, in your LinkedIn profile you describe your
22 work at BC Transmission as a "corporate counsel."
23 What does that mean, and specifically how does
24 being a corporate counsel differ from being a
25 lawyer?
26 A Corporate counsel is a lawyer. Corporate counsel
27 is the designation that my employer gave me much
28 like -- it's probably not fair to say that there's
29 a difference between being a lawyer and senior
30 general counsel; one is simply a subset of the
31 other.
32 Q On your LinkedIn profile, though, it gives the
33 impression that you worked for BC Transmission
34 Corporation as a corporate counsel from January
35 2009 to July 2010 and then you changed jobs in
36 July 2010 to become a lawyer at BC Hydro, but as
37 you've explained, in fact there was simply a
38 corporate reorganization in 2010 and your job
39 didn't in fact change at that time; is that
40 correct?
41 A My specific job responsibilities changed, but I
42 was still a lawyer. It's just the internal title
43 changed. I could say my internal designation at
44 BC Hydro is not lawyer. It's just for the
45 essential purposes of a LinkedIn profile I used
46 the description "lawyer."
47 Q But you say your job substantively changed as well

11
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1 at that time in July of 2010, or was it simply a
2 corporate reorganization; the name of your
3 employer changed but your substantive job was the
4 same?
5 A Well, again, I went from being a lawyer with one
6 company to being a lawyer with another company,
7 given that it was going from a legal department of
8 four to six lawyers to a department of over 20
9 lawyers. The specific areas for which I was
10 responsible certainly changed, but as I've said a
11 few times, I was still a lawyer.
12 Q I'd like to ask you about your educational
13 background prior to law school.
14 A Yes.
15 Q Where did you do your undergraduate degree?
16 A I didn't complete my undergraduate degree, but my
17 undergraduate work was at the University of
18 British Columbia.
19 Q What was your area of study?
20 A I was -- it was a bachelor of arts program, and my
21 concentrations were in political science and
22 philosophy.
23 Q Paragraph 34(g) of your affidavit --
24 A Yes.
25 Q -- you mention an article in the March 2, 2015,
26 edition of *Canadian Lawyer* magazine titled "Taking
27 on the Big Guns," written by Richard Foot;
28 correct?
29 A Yes.
30 Q And in fact you gave an interview to Mr. Foot for
31 the purposes of this article; right?
32 A I did.
33 Q So I've printed out a copy of this article from
34 the online edition of *Canadian Lawyer* magazine,
35 which I'm showing to you now.
36 A M'mm-hmm.
37 Q Can you confirm that this is indeed the article
38 you reference at paragraph 34(g) of your
39 affidavit?
40 A It appears to be.
41 MR. BRONGERS: Madam Court Reporter, can we please mark
42 this document which is an article from *Canadian*
43 *Lawyer* magazine titled "Taking on the Big Guns" as
44 exhibit 2 to this cross-examination.

45
46 **EXHIBIT 2: Article from *Canadian Lawyer* magazine**
47 **titled "Taking on the Big Guns"**

1
2 MR. BRONGERS:

3 Q Mr. Alani, if we could just turn to the second
4 page, the fifth paragraph, it says in the article
5 that you, quote, grew up in Vancouver where you
6 cultivated since childhood a quirky obsession with
7 the constitution and a fervent belief in the rule
8 of law.

9 Do you agree with this characterization that
10 you have a quirky obsession with the constitution
11 and a fervent belief in the rule of law?

12 A I would not have described in my own words that my
13 obsession with the constitution is either an
14 obsession or that it's quirky.

15 Q Yet the author felt that that was a proper way of
16 characterizing what he had told you; right?

17 A Yes, and I certainly have a belief in the rule of
18 law. I suppose "fervent" is a reasonably accurate
19 description of my belief in the rule of law, but
20 it varies somewhat from day to day.

21 Q But you would say you have a strong interest in
22 the constitution, would you not?

23 A I would.

24 Q Now, it appears that the author, Mr. Foot,
25 interviewed a man named David Hunnings who was
26 described as your junior high school debating
27 coach. Is that a fair and accurate description of
28 Mr. Hunnings?

29 A It is. He was also my English teacher and my
30 journalism teacher.

31 Q So were you then a competitive debater in high
32 school?

33 A I was.

34 Q And just to be clear, because like you I went to
35 high school in Vancouver, and I don't remember
36 there ever being any junior highs. Was this in
37 fact simply a high school debating teacher?

38 A No, he was a junior high school teacher.

39 Q You attended junior high?

40 A Yes, school district 43, which covers Coquitlam,
41 Port Moody, Port Coquitlam, Anmore and Belcarra,
42 had at the time junior secondary schools. At some
43 point, I believe when I moved to senior secondary,
44 there was a slight reconfiguration, so junior high
45 schools became middle schools, but I can assure
46 you that when I was there it was a junior high
47 school.

Q And did you continue debating in senior high school as well?

A I can't remember.

Q Now, this article says that years later when you were an undergraduate, Mr. Hunnings gave you a personal copy of Professor Peter's Hogg's second edition of *Constitutional Law of Canada*. Is this true?

A It's true.

Q And after noting that that book is thousands of pages long, you were quoted as saying that, quote:

I read it cover to cover and then I went off to law school.

Unquote.

Is that correct that you read *Constitutional Law of Canada* by Peter Hogg cover to cover at a time when you didn't even know if you would be practising law?

A That is correct.

Q So even prior to going to law school you had studied political science, you had a strong interest in constitutional law and you were a competitive debater; is that correct?

A That is correct.

Q Now, when you were a student, Mr. Alani, did you participate in any other organized activities related to your interest in politics and law? For example, were you a member of a youth parliament?

A I was.

Q Which one?

A I was a member of the British Columbia Youth Parliament, I was a member of the Lower Mainland East Youth Parliament, I was a member of the Western Canada Youth Parliament, and in various capacities I would have been a member of several other youth parliaments. I'd have to think of all of their various names.

Q And approximately what period of time were you members of these youth parliaments, while you were in high school, while you were in undergrad?

A I first became a member of the Lower Mainland East Youth Parliament I believe when I was in grade 10, junior high school, and I continued to be a member of one or more youth parliaments up until -- I know there's an age limit for the British Columbia

Youth Parliament, so you have to be 16 to 21, so I would have ceased being a member after that point. I think I was invited to be the speaker of the Western Canada Youth Parliament perhaps a year or so after that while I was in law school. Most recently a few years ago I was invited to be the speaker of the British Columbia Youth Parliament, which is technically a member of youth parliament but not really.

Q When did that occur, sorry?

A Certainly within the last three or four years. I would have to check my records to know the exact year, but it would have been December 27th to the 31st of one of the last few years.

Q Mr. Alani, you have a Twitter account; right?

A I do.

Q And in your Twitter account you describe yourself as:

Vancouver in-house litigation lawyer, casual observer of #cdnpoli --

Or Canadian poli.

-- #bcpoli --

Or BC poli.

-- and #cdnlaw.

Or Canadian law.

Current project:
anizalani.com/senatevacancies.

Is that correct?

A That is correct.

Q So clearly it would be fair to say that you have a strong personal interest in Canadian politics as well; right?

A Yes.

Q Paragraph 7 of your affidavit, Mr. Alani, you say that you are eligible to vote in federal elections in Canada; right?

A Yes.

Q When did you first become eligible to vote in federal elections?

- 1 A I'm not sure. I would have to form a recollection
2 based on -- I can't remember whether the federal
3 voting age is 18 or 19. I think it's 18, but I'd
4 have to -- and I don't remember what the rules are
5 for whether you immediately become eligible on
6 your 18th birthday or whether there actually has
7 to be a live election underway, but it would have
8 been -- I certainly would have been eligible to
9 vote in the first federal election following my
10 18th or 19th birthday, whichever one counts.
- 11 Q That's what I'm trying to ascertain, and based on
12 my understanding of there being an 18-year voting
13 age for federal elections and the fact that you
14 were born in 1981, you would have become eligible
15 to vote in a federal election in 1999. Would you
16 accept that?
- 17 A I would.
- 18 Q And based on my understanding of Canadian history,
19 the first federal election that occurred after
20 1999 was the 2000 election. Just to assist your
21 recollection, that was the election in which Prime
22 Minister Chrétien won his third majority. And my
23 question to you is did you actually vote in that
24 election? I don't want to know who you voted for;
25 I just want to know if you actually exercised your
26 right to vote.
- 27 A Well, I can't specifically recall whether I voted
28 in that election. To the best of my recollection,
29 there has never been a federal election in which I
30 was eligible to vote and I did not exercise that
31 right.
- 32 Q So you would say that to the best of your
33 knowledge, the answer is yes, you did vote in the
34 2000 federal election?
- 35 A I believe so.
- 36 Q And just for the record I'll go through the other
37 ones. Would you have voted in the 2004 federal
38 election, then?
- 39 A I believe so.
- 40 Q Would have you voted in the 2006 federal election,
41 then?
- 42 A I believe so.
- 43 Q Would you have voted in the 2008 federal election?
- 44 A I believe so.
- 45 Q Would have you voted in the 2011 election?
- 46 A I believe so.
- 47 Q Paragraph 9 of your affidavit you say you have

- 1 never been a member of a political party, nor have
2 you donated to any political party. Have you ever
3 actively campaigned for a person seeking to be
4 elected?
- 5 A I don't believe so. I don't recall actively
6 campaigning for any person running for --
7 certainly not federal office. I don't recall
8 actively campaigning for anyone in provincial or
9 municipal elections either. Yeah, I don't recall
10 having that type of involvement. I never had,
11 like, a lawn sign. I've never gone door to door,
12 yeah.
- 13 Q Have you ever been involved in a political
14 organization, that is to say, a non-governmental
15 organization devoted to effecting political
16 change, for example, the Canadian Taxpayers
17 Federation or Amnesty International or Greenpeace,
18 something like that?
- 19 A I believe I have.
- 20 Q Which ones?
- 21 A I'm trying to remember if I was ever a member of
22 Amnesty International or whether I would have just
23 subscribed to an email distribution list, and I
24 certainly don't recall paying any membership fees.
25 I think there was a period of time during which I
26 donated to Doctors Without Borders, but I don't
27 know if that meets your definition.
- 28 Q So you donated to Doctors Without Borders and that
29 you subscribed to a mailing list of Amnesty
30 International, but beyond that can you recall any
31 other involvement in any political organizations
32 of that kind?
- 33 A Not of that kind, no.
- 34 Q Have you ever run for elected office?
- 35 A I think perhaps in elementary school and in
36 university, and of course within the British
37 Columbia Youth Parliament and Lower Mainland East
38 Youth Parliament. If you mean a publicly held
39 office, certainly not federal or provincial or
40 municipal.
- 41 Q Have you ever been politically active in any other
42 way such as part of a student organization or
43 organizing a rally or a protest or writing blogs,
44 any of those kinds of political activities?
- 45 A Yes.
- 46 Q Could you explain.
- 47 A I don't think I've ever assisted with the

organization of a protest -- well, that's not true. When I was in secondary school I had a deep concern that students within the main building of the school were kind of walking in in an unorganized, unsafe way, and I thought it would be simpler for everyone involved if there were lane markings within the -- on the floors of the school, and in protest of the absence of such signs I organized an initiative in which lane markings were temporarily installed to demonstrate for that purpose. Certainly no public protests. Sorry, I'm trying to remember the other categories of public participation you indicated.

Q I indicated student organizations and by that I of course mean political, not being a member of the chess club or something like that --

A Right.

Q -- but student organizations. Organizing rallies, protests, you seem to have covered that, that you were once active in secondary school. And writing blogs was my third example. These are not intended to be exhaustive but --

A Right.

Q -- to try and assist you.

A I've certainly written in blogs and blog-like forums for -- over various times. I can't remember all of them, and I honestly can't even remember the specific subject matter of all of those blogs.

Q So it can't have been a significant endeavour, then, if you didn't -- if you can't even remember what the blogs were about?

A I certainly wasn't getting directly paid for it if that's what you mean.

Q I'm wondering what other causes, if any, you've been politically active in.

A It's hard to answer. I mean, there's I suppose various causes I've felt strongly about in the course of my life so far.

Q And just in terms of publicly verifiable political activity -- that's the nature of my question --

A Right.

Q -- you certainly don't mention any of that in your affidavit, so I'm trying to --

A Right. No, I can't think of anything substantive, certainly nothing that would appear to me to be relevant to the current proceeding.

1 Q Now, Mr. Alani, you wrote to the prime minister
2 about the issue of senate vacancies. You
3 explained that at paragraph 19 of your affidavit,
4 an email that you sent on December 8th, 2014.
5 Other than on that occasion, have you ever written
6 or otherwise communicated with a member of
7 parliament or their office?

8 A I certainly have.

9 Q You have?

10 A Yes.

11 Q And could you list those occasions.

12 A I can tell you it wouldn't have been on this
13 topic. When I was involved in youth parliament,
14 one of my roles was to solicit written or verbal
15 greetings from various public officials, including
16 elected representatives, and so I would have
17 communicated with various such individuals and
18 their offices in that capacity. I don't
19 specifically recall any occasion on which I have
20 written to an elected official, specifically
21 seeking on my own behalf or, you know, lobbying
22 for a particular political outcome.

23 Q And what about on behalf of others? It sounds to
24 me that indeed other than this letter, that you
25 have never written a political communication to a
26 member of parliament in the past.

27 A I don't recall having done so, no.

28 Q And have you ever written or otherwise
29 communicated with a senator or their office?

30 A I have.

31 Q And was that with respect to a political matter or
32 a non-political matter such as asking them to
33 speak or attend one of these youth parliament
34 meetings?

35 A Both.

36 Q And when did you communicate with a senator?

37 A For the ...

38 Q Political purposes.

39 A Following the commencement of this proceeding.

40 Q What date?

41 A I don't recall specifically, but it would have
42 been on various dates between the filing of the
43 application and now.

44 Q And these communications I assume related
45 exclusively to the issue of senate vacancies that
46 is the subject of this litigation, is that right,
47 or were there other political issues that you

- 1 discussed with them?
- 2 A No, they're political issues that I'm aware of.
- 3 Q And these all occurred after the start of your
- 4 litigation?
- 5 A That's correct.
- 6 Q Now, just to confirm, Mr. Alani, you've never
- 7 worked for parliament, have you, as an employee,
- 8 say, for example, as a page?
- 9 A No, I have not.
- 10 Q And other than your clerkship at the federal
- 11 court, you have never worked for the federal
- 12 public service, have you?
- 13 A I have.
- 14 Q And in what capacity did you work for the federal
- 15 public service?
- 16 A I worked as a summer employment officer for I
- 17 believe what was then Human Resources Development
- 18 Canada and as a media relations officer, also for
- 19 Human Resources Development Canada.
- 20 Q And you mentioned that in your LinkedIn profile,
- 21 right, at -- you say media relations officer with
- 22 HRSDC from May 2003 to August 2003, four months;
- 23 correct?
- 24 A Yes, the media relations officer position is
- 25 included in my LinkedIn profile. The summer
- 26 employment officer is not.
- 27 Q Mr. Alani, are you running as a candidate in the
- 28 upcoming federal election?
- 29 A I am not.
- 30 Q Are you campaigning for any candidates or
- 31 political parties in the upcoming federal
- 32 election?
- 33 A I suppose that depends on what you mean by
- 34 "campaigning." As far as I know not within the
- 35 meaning of the *Elections Act*.
- 36 Q Do you intend to be politically active in any way
- 37 in the upcoming election?
- 38 A I will probably tweet about it, but I have no
- 39 specific plans currently to otherwise be involved
- 40 in the upcoming election.
- 41 Q And you will tweet about it. What issues will you
- 42 be tweeting about with respect to the next -- to
- 43 the upcoming election?
- 44 A I guess I won't know until the issues arise. You
- 45 know, on any particular day I may see or may
- 46 become aware of an issue that is of topical
- 47 interest and as is the nature of Twitter,

20
Aniz Alani (affiant)
Cross-exam by Mr. Brongers

1 sometimes you interact and join in in those
2 discussions.
3 Q Do you intend to publicize in any way the issue of
4 senate vacancies --
5 A I do.
6 Q -- during the election campaign? And how do you
7 intend to do that?
8 A I occasionally post updates regarding this
9 proceeding on my Twitter account on a website that
10 I maintain that, as you pointed out, is referenced
11 in my Twitter profile. And discussions generally
12 considering -- sorry, concerning senate vacancies
13 I have discussed on Twitter.
14 Q Other than Twitter, do you intend to draw interest
15 to this issue in any other way, for example, by
16 having rallies or advertisements, that sort of
17 thing?
18 A I am not planning any rallies or advertisements,
19 no.
20 Q Mr. Alani, are you interested in obtaining a
21 senate appointment?
22 A Am I interested in obtaining?
23 Q Yes.
24 A Are you offering one?
25 Q Just answer the question, please.
26 A I'm not seeking any senate appointment. I don't
27 expect to be summoned to the senate. I'm
28 certainly not planning my life around the
29 possibility of being summoned to the senate. If I
30 were invited to join the senate, I don't know that
31 I would be in a position to accept.
32 Q Have you ever made inquiries about obtaining a
33 senate appointment?
34 A I have not.
35 Q Have you ever been offered a senate appointment?
36 A I have not.
37 Q Have you ever had a discussion about you being
38 appointed as senator with anyone?
39 A I think in various contexts I have been involved
40 in discussions about what it might be like to be a
41 senator, so to the extent that constitutes what
42 you're describing, then yes.
43 Q But you wouldn't say that you've had a discussion
44 with somebody who might have some influence over
45 the process of being named a senator in respect of
46 your potential appointment to the senate?
47 A Absolutely not.

1 Q Do you know any senators, either currently sitting
2 ones or past, on a personal or professional level?

3 A No.

4 Q Do you know anyone who is interested in obtaining
5 a senate appointment?

6 A Not specifically -- I don't know of anyone who is
7 specifically interested in obtaining a senate
8 position. Of the various people I know, I
9 wouldn't be shocked if some of them were
10 interested. Of the various people I know, I'm
11 certain there are people who are specifically not
12 interested. But to answer your question, I don't
13 know of anyone who is specifically interested in
14 becoming a senator.

15 Q You've never had a formal discussion with somebody
16 about potentially assisting them to become a
17 senator, that sort of thing?

18 A I've never had such a formal conversation or an
19 informal conversation.

20 Q Right. So just to cover it off, other than your
21 letters to the prime minister mentioned in your
22 affidavit have you ever been involved in an
23 attempt to encourage a specific senate appointment
24 say by lobbying or writing letters or any other --

25 A No, I have not.

26 Q Now, Mr. Alani, at paragraphs 10 to 12 of your
27 affidavit you say that you were not aware prior to
28 December 5th, 2014, that 16 vacancies had
29 accumulated in the senate; right?

30 A That is what I deposed.

31 Q But given your strong interest in politics and
32 constitutional law, you must have been aware that
33 even before December 2014 that sometimes senate
34 seats will be vacant for certain periods of time,
35 would you not?

36 A I don't remember it coming as a specific surprise
37 that there had historically been periods when
38 senate vacancies existed, but I was not
39 specifically aware that there were 16 vacancies or
40 that the practice that -- or the practice leading
41 up to December 4th, 2014, was that there was what
42 appeared to be a deliberate accumulation of
43 vacancies.

44 Q Again, given your strong interest in politics and
45 constitutional law, you must have known that
46 senate vacancies aren't always filled immediately
47 after senate positions become vacant; right?

1 A I don't remember whether I specifically had ever
2 turned my mind to that before December 5th, 2014.
3 It certainly doesn't -- when I specifically turned
4 my mind to the historical reality, that was not
5 surprising, no.

6 Q Because you're certainly now familiar with the
7 historical data on senate vacancies. For example,
8 you've read Professor Manfredi's affidavit in
9 which he attaches data from the Parliament of
10 Canada website on vacancies; right?

11 A Yes.

12 Q You're familiar with that document?

13 A Yes.

14 Q And you would agree with me that historically that
15 there have been several periods during which
16 senate vacancies had accumulated; right?

17 A That's correct.

18 Q For example, in 2008 under Prime Minister Harper's
19 government, at one point the number of senate
20 vacancies reached 18, specifically on November 10th,
21 2008. You would agree with me; right?

22 A I would.

23 Q And when you started this application for judicial
24 review in December of 2014, there were actually
25 only 16 vacancies, two fewer than there were in
26 2008; right?

27 A Yes, that's correct.

28 Q And in 2008 you were already a lawyer; right?

29 A I was.

30 Q Yet you never brought a lawsuit in respect of
31 senate vacancies prior to this one, have you?

32 A I have not.

33 Q And prior to filing this lawsuit on December 8th,
34 2014, you never publicly expressed any
35 dissatisfaction with senate vacancies, did you?

36 A Like I said, prior to December 5th, 2014, I was
37 never specifically aware that there had been an
38 accumulation of senate vacancies. There was
39 really nothing to complain about.

40 Q All right. If you could just turn to paragraph 13
41 of your affidavit.

42 A Yes.

43 Q So you say that after reading the December 2014
44 media reports which indicated that the prime
45 minister did not intend to name more senators to
46 fill existing vacancies in the senate, you then
47 form the view that the prime minister's apparent

1 refusal to appoint senators was a violation of the
2 *Constitution of Canada*; right?

3 A That is what I deposed.

4 Q And what qualified you to form that view?

5 A Well, it was my view. Whether I was qualified to
6 form that view and what qualified me to form that
7 view I suppose depends on what context in which my
8 view is important. You know, if I were -- I
9 certainly wouldn't be able to suggest that I would
10 be qualified as an expert in Canadian law, for
11 example, in a foreign proceeding to offer that
12 view, but it is nevertheless my personal view.

13 Q But again, I'm asking what qualified you to form
14 that view. You deposed this, so it's --

15 A Yes.

16 Q -- obviously something that you feel is important
17 and relevant to this case, and I'm sure you would
18 agree with me that there are some subject matters
19 in which you would not be comfortable forming an
20 opinion, per se, for example, about whether a
21 particular food is prepared properly or something
22 like that if you're not an expert in cuisine.

23 A Right.

24 Q So it's a simple question, I think. On what basis
25 do you think you are qualified to reach this
26 determination that the prime minister's apparent
27 refusal actually violates the *Constitution of*
28 *Canada*?

29 A Well, I can certainly begin to identify some
30 elements in my background that were relevant and
31 helpful in coming to that view. For example, my
32 understanding of constitutional law, my review of
33 the Supreme Court of Canada's judgment in the
34 senate reform reference, my legal training, were
35 all factors that assisted me in forming that view.
36 Whether or not it's a qualified view is I suppose
37 a legal question.

38 Q Paragraph 14 you depose that you were also
39 concerned that:

40
41 A political solution would not materialize to
42 remedy what I understood to be an ongoing
43 violation of the *Constitution of Canada*.
44

45 What do you mean when you were concerned that a
46 political situation would not materialize to
47 remedy the violation? Specifically I'm curious

1 what would remedy the violation.

2 A Right. Well, assuming it is a violation, which I
3 will -- for the purposes of answering this
4 question, it occurred to me that possible ways in
5 which it could be resolved include, one, the
6 governor general exercising some power specific to
7 his office that would break the log jam, as it
8 were; two, other political parties might call into
9 question the legality of the prime minister's
10 apparent refusal to appoint senators; three, a
11 province or a number of provinces or territories
12 might apply political pressure on the federal
13 government to remedy the situation. Those were
14 some options that I considered but was concerned
15 would not materialize.

16 I suppose another possible political
17 solution, and is one that apparently historically
18 was attempted to be used in the past, was that the
19 senate itself might take steps to call attention
20 to the accumulation of vacancies and use its
21 processes to effect a political solution, but my
22 assessment was that none of those solutions were
23 likely to materialize.

24 Q But concretely could you explain what is the
25 remedy that, in your view, would be sufficient to
26 obviate the need for this lawsuit? Would it be
27 the naming of senators? Would it be a change of a
28 policy? I'm trying to understand what you're
29 saying in paragraph 14, specifically about remedy,
30 how politically your concerns could be remedied.
31 What are you looking for?

32 A Well, I think there's a distinction between what I
33 am looking for is a judicial remedy in this
34 particular proceeding and what might constitute a
35 political remedy or an overall remedy to the
36 immediate situation. I think you know the -- it's
37 set out in the application materials the judicial
38 remedy I'm seeking is a declaration.

39 Q Yes, but again, paragraph 14 is not about the
40 judicial --

41 A No.

42 Q -- remedy, it's about the political solution.
43 What sort of a political solution could remedy
44 your lawsuit?

45 A One remedy might be the seeking by the federal
46 government of a reference to the Supreme Court of
47 Canada or a reference by a provincial government

1 to its court of appeal seeking a determination of
2 the constitutionality of the prime minister's
3 refusal to appoint senators. Other political
4 remedies might be the enactment of legislation
5 that would provide some guidance or specify when
6 senate vacancies must be filled. Other political
7 remedies might simply be filling the vacancies and
8 declaring a policy or expectation that future
9 vacancies would be filled within a certain amount
10 of time or specify the sorts of considerations
11 that would go into determining how long vacancies
12 would remain unfilled.

13 Q Now, at paragraphs 15 and 16 you reference the
14 barristers and solicitors oath, and you assert at
15 paragraph 16 of your affidavit that you consider
16 it your professional obligation as a lawyer to
17 promote respect for the rule of law. Is it your
18 position, then, that had you not brought this
19 litigation you would have violated the barristers
20 and solicitors oath?

21 A No, I don't read the obligation that way.

22 Q Now, as a lawyer who is familiar with the *Federal*
23 *Courts Act and Rules*, you know that there is a
24 30-day deadline for seeking judicial review of a
25 federal order or decision calculated from the date
26 of its communication. Would you agree with me on
27 that?

28 A I would have to check the legislation, but I do
29 understand that there is a 30-day time limit in
30 respect of certain decisions based on when they're
31 communicated, yes.

32 Q And it is your position that the prime minister's
33 comments about senate vacancies reported in the
34 December 4th, 2014, edition of the *Toronto Star* is
35 a decision or order that can be the subject of a
36 judicial review application before the federal
37 court; right?

38 A Sorry, could you repeat that.

39 Q Sure. I understand that the decision that you are
40 challenging in this application is the
41 December 4th, 2004 reported comments of the prime
42 minister with respect to the filling of senate
43 vacancies. We can look at your notice of
44 application, if it assists. You describe in the
45 first paragraph of your application that this is
46 an application for judicial review in respect of
47 the decision of the prime minister as communicated

- 1 publicly on December 24th, 2014, not to advise the
2 governor general to summon fit and qualified
3 persons to fill existing vacancies in the senate.
4 That is the decision you are challenging; correct?
5 A That's what the application states. I mean, I'm
6 here to give evidence. I'm -- you know, if you're
7 requesting particulars, then you can go ahead and
8 do that, but I'm not going to provide evidence as
9 to my legal position in this proceeding.
- 10 Q You would agree with me, then, that given that you
11 are challenging a December 4th, 2014 decision,
12 that ordinarily under the Federal Court Act, the
13 30-day deadline for challenging that decision
14 would then expire on January 3rd, correct, of
15 2015?
- 16 A Not necessarily.
- 17 Q You could obtain an extension of time, that is
18 true, but the ordinary deadline would be
19 January 3rd of 2015; right?
- 20 A If it were a decision to which the 30-day time
21 limit applied, I would agree.
- 22 Q Correct. And so given that January 3rd, 2015,
23 fell on a Saturday this year, that would in fact
24 mean that the 30-day deadline for filing a
25 judicial review application of this decision would
26 not have expired until Monday, January 5th; right?
- 27 A I believe that would be correct.
- 28 Q But in spite of the fact that you had until
29 January 5th of 2015 to file your notice of
30 application for judicial review in federal court,
31 you chose to file it on December 8th, 2014; right?
- 32 A That is the case.
- 33 Q So essentially, if I understand your affidavit
34 correctly, you learned of this decision on
35 December 5th, 2014, and just three days later, on
36 December 8th of 2014, you commenced your judicial
37 review application; right?
- 38 A That's correct.
- 39 Q Just turn to paragraph 19 of your affidavit.
- 40 A Yes.
- 41 Q So you say here that before the notice of
42 application was filed, having noted that the prime
43 minister had stated that he was not receiving many
44 calls from Canadians asking him to name more
45 senators, that you wrote to the prime minister by
46 email on December 8th, 2014, urging him to -- and
47 I'll paraphrase, to recommend senate appointments;

- 1 right?
- 2 A Yeah, I mean, you've -- in your paraphrasing
- 3 you've obviously omitted certain portions of the
- 4 request, but that's essentially correct.
- 5 Q So how much time did you actually wait for a
- 6 response to your email to the prime minister
- 7 before you filed your notice of application?
- 8 A I didn't. I had already submitted it for filing
- 9 when I sent the email, if I recall correctly.
- 10 Q But you said that before the notice of application
- 11 was filed --
- 12 A That's correct. I didn't --
- 13 -- you wrote to the prime minister --
- 14 A I didn't say before it was submitted for filing; I
- 15 said before it was filed.
- 16 Q Can you explain to me the distinction.
- 17 A Absolutely. I submitted the notice of application
- 18 electronically to the federal court registry for
- 19 filing. It is not actually filed until the
- 20 registry accepts it for filing. So what I'm
- 21 saying is when I sent the email to the prime
- 22 minister I had already submitted it to the
- 23 registry for filing, but it is not the case that
- 24 it had already been filed. So to answer your
- 25 question, your previous question, I did not wait
- 26 for a response from the prime minister before
- 27 either submitting it from filing or actually
- 28 filing it. It had already been submitted for
- 29 filing.
- 30 Q So in spite of the wording of paragraph 19, which
- 31 seems to imply that you were giving the prime
- 32 minister a chance to respond to your political
- 33 concerns, in fact you had already started your
- 34 lawsuit and had no intention of waiting for the
- 35 prime minister to respond politically to your
- 36 concerns; is that correct?
- 37 A Well, first of all, I disagree with your
- 38 characterization of the implication of
- 39 paragraph 19. The fact is the prime minister did
- 40 not respond. It was submitted for filing but not
- 41 accepted for filing, and in fact I don't believe
- 42 it was accepted for filing, I think, until a
- 43 couple of days later. If the prime minister had
- 44 written back to me or had otherwise communicated
- 45 some intention to resile from his earlier stated
- 46 position, I have no doubt that I would have
- 47 considered withdrawing the pending filing

1 submission.

2 Q Well, just to be clear, then, so you are not
3 representing to the court, as in many judicial
4 review applications, that first of all, a request
5 for the government to address the concern was made
6 and there was either a refusal or a deemed refusal
7 and then you brought the application. In fact
8 what you are saying here is you had already filed
9 or submitted for filing your notice of application
10 for judicial review, and then only afterwards did
11 you write to the prime minister bringing this
12 issue to his attention; right?

13 A Yes, I was not considering -- or I was not waiting
14 for the prime minister's refusal or deemed refusal
15 to be in itself a judicially reviewable decision.

16 Q And this -- even though you had until January 3rd
17 to file your notice of application, you had no
18 intention of waiting?

19 A Well, first of all, I -- I'm not sure I agreed
20 that I had until January of 2015 to file the
21 application. I agree that if the 30-day time
22 limit applies to the decision, if the December 4th
23 statement is a decision, then that is the time
24 limit that would apply, but I -- it was certainly
25 not clear to me that I had until January to file
26 the application.

27 Q But for you the real intention is to try to have
28 the federal court issue a ruling on the
29 constitutionality of senate vacancies; right?

30 A That's correct.

31 Q You don't really care if the senate vacancies are
32 filled or not?

33 A I am seeking a determination from the federal
34 court as to whether the senate vacancies
35 effectively need to be filled. If the court
36 issues a decision which, you know, sets out a
37 rationale for why they do not, then I would be
38 persuaded in those circumstances that the senate
39 vacancies don't need to be filled. My concern is
40 that the requirements of the constitution be
41 complied with. If it's the court's determination
42 that constitution does not require that the senate
43 vacancies be filled, then I agree it's secondary
44 to me that the vacancies then be filled, at least
45 from a rule of law perspective.

46 Q Because it's more important for you to be able to
47 run a lawsuit and obtain a federal court judgment

- 1 on senate vacancies than it is to actually have
2 those vacancies filled; right?
- 3 A No.
4 Q Well, you'll recall that you argued before Madam
5 Justice Gagné that one of the reasons that, in
6 your view, this case should be heard before the
7 next election is that it might become moot if the
8 senate vacancies are filled. So obviously for you
9 the bigger concern is you would like to get a
10 ruling from the federal court. That's more
11 important to you than actually having the
12 vacancies filled. Would you agree with me?
- 13 A If the vacancies were filled immediately and as a
14 result of the filling of those vacancies the
15 government successfully argued or the court
16 otherwise chose not to consider the application on
17 grounds of mootness, I would be disappointed that
18 the ongoing -- or I should say -- I would be
19 concerned that a situation that has occurred and
20 can occur again would not have any lasting
21 guidance from the courts in terms of whether it's
22 constitutional or not, but I think it's unfair to
23 suggest that I don't want the senate vacancies to
24 be filled, because that is the only thing allowing
25 me to proceed with this litigation.
- 26 Q Mr. Alani, at paragraph 34(f) of your affidavit,
27 you mention an article in the January 29, 2015,
28 edition of the Canadian Bar Association's *National*
29 *Magazine* entitled "Filling Senate Vacancies" and
30 written by Justin Ling; right?
- 31 A That's -- yes, yes.
32 Q And in fact you gave an interview to Mr. Ling for
33 the purposes of this article; right?
- 34 A Correct.
35 Q Now, I printed out a copy of this article from the
36 online edition of the CBA *National Magazine* which
37 I'm showing to you now. Can you confirm that this
38 is indeed the article that you reference at
39 paragraph 34(f) of your affidavit.
- 40 A I believe it is.
41 MR. BRONGERS: Madam Court Reporter, could we please
42 mark this document, an article from *Canadian*
43 *Lawyer* magazine entitled "Filling Senate
44 Vacancies" as exhibit 3 to this cross-examination.
45

46 **EXHIBIT 3: Article from *Canadian Lawyer* magazine**
47 **entitled "Filling Senate Vacancies"**

1
2 MR. BRONGERS:

3 Q If we could just look about three quarters of the
4 way down the first page, the paragraph which
5 starts with the sentence:

6
7 So with no clear direction -- except
8 convention -- detailing what the prime
9 minister is required to do, Alani is asking
10 for clarity from the courts.

11
12 Do you see that sentence?

13 A Yes.

14 Q And then you're quoted as having said:

15
16 My goal is really to just have the courts
17 step in and confirm if there is a requirement
18 at all, he says. We can fight about the
19 timeframe later.

20
21 Did you in fact say that?

22 A I believe I did.

23 Q So you admit that your only goal in bringing this
24 lawsuit is to obtain a court decision as opposed
25 to obtaining any practical relief, saying "We can
26 fight about the timeframe later"?

27 A No, I disagree.

28 Q Mr. Alani, you don't assert in your notice of
29 application that you've suffered any personal
30 prejudice from senate vacancies, do you?

31 A I do not.

32 Q And your affidavit doesn't assert that you've
33 suffered any personal prejudice from senate
34 vacancies be it economic, psychological or
35 otherwise; is that correct?

36 A No.

37 Q Indeed you've never suffered any economic
38 prejudice from the senate vacancy, never lost
39 money or a job or financial opportunity as a
40 result of these senate vacancies?

41 A Not directly, no.

42 Q And you've never suffered any psychological
43 prejudice from senate vacancies, no emotional
44 distress or psychological illnesses that require
45 treatment, anything like that?

46 A Not that I know of.

47 Q And this isn't a *Charter of Rights* case, is it,

1 Mr. Alani? You aren't asserting that any of your
2 rights that are protected by the charter,
3 including democratic rights, have been impacted by
4 senate vacancies; right?

5 A Not specifically under the charter, no.

6 Q And you've never asked anything of a specific
7 senator in terms of some tangible benefit or
8 assistance; right? You said earlier you've never
9 had a political communication with them, so I
10 assume that you've never asked --

11 A That's correct.

12 Q -- a senator for anything.

13 A Right. Always had the option, though.

14 Q And you've never asked anything of the senate
15 generally; correct? You've never written to the
16 speaker or to the body as a whole asking for any
17 tangible benefit or assistance?

18 A Not prior to this, no.

19 Q And you've never been involved in a senate
20 committee, have you, Mr. Alani?

21 A I have not.

22 Q And you've never been the subject of a senate
23 report, have you, Mr. Alani?

24 A Not that I know of.

25 Q And you're not alleging that the vacancies in the
26 senate have ever denied you anything that you've
27 expected to receive from the senate, are you?
28 That's not an allegation you're making?

29 A It is the case. It's not specifically alleged.

30 Q And how so have you been denied something by the
31 senate vacancies?

32 A Well, I think any Canadian, including myself, has
33 a reasonable expectation that the society in which
34 they live will be governed in accordance with the
35 constitution and the rule of law, and if it is the
36 case that the prime minister's refusal to appoint
37 senators is a violation of the constitution, then
38 I would be confirmed, in my view, that I am denied
39 the benefit of being governed in accordance with
40 the constitution, which includes a senate that
41 is -- that exists and is maintained in accordance
42 with the constitution.

43 Q But other than that general observation, which you
44 would agree with me in principle could be made by
45 any Canadian, you haven't suffered any personal
46 prejudice that would be unique to you or a smaller
47 group from senate vacancies. Otherwise you would

- 1 have set that out in your affidavit; right?
2 A I agree.
3 Q Turning to paragraph 8 of your affidavit, you say
4 that you were acting on your own behalf in this
5 proceeding, that you were not asked by any person,
6 company or organization to commence this
7 proceeding, that your conduct of this litigation
8 has been without expectation of fee or reward, and
9 that you do not take instructions regarding the
10 conduct of this proceeding from any person or
11 organization. Is that still true?
12 A It's true.
13 Q So just to confirm, then, you are not part of any
14 formal organization concerned about Canada's
15 senate?
16 A No.
17 Q And also to confirm, to your knowledge there is no
18 public advocacy or other organization devoted to
19 the issue of filling senate vacancies, is there?
20 That you're aware of anyway.
21 A Not that I'm aware of.
22 Q And you would agree with me that your interest in
23 senate vacancies arose only in December of last
24 year; correct?
25 A Correct.
26 Q If we could just go back to Mr. Ling's article,
27 the "Filling Senate Vacancies," if you go about
28 halfway down the page there is a paragraph that
29 begins with the words:
30
31 Alani, who serves as in-house counsel for a
32 BC Crown corporation, is launching the case
33 on his own behalf. He admits he did it on a
34 bit of a whim, recalling that he saw the
35 issue crop up on Twitter one morning.
36
37 So you admit, then, Mr. Alani, that you brought
38 this case essentially on a whim; right?
39 A Well, those weren't my words, as far as I recall,
40 but insofar as hearing about a situation and
41 determining that it was problematic and deciding
42 to do something about it within a relatively short
43 period of time might be characterized as a "whim,"
44 then it is nevertheless accurate.
45 Q So you're not saying that Mr. Ling misrepresented
46 your words when he says you admitted that you did
47 this on a bit of a whim?

- 1 A I don't recall that he either put those specific
2 words to me and that I admitted to it or that I
3 offered that choice of words. I'm saying that on
4 reflection the -- it is probably not inaccurate to
5 say that the circumstances in which I decided to
6 commence my lawsuit might be described as being on
7 a bit of a whim. But like I said, those weren't
8 my words and they weren't words that were then put
9 to me in preparation of this article that I
10 specifically admitted to.
- 11 Q But you read this article after it was published;
12 right?
- 13 A I did.
- 14 Q And you never wrote or otherwise communicated to
15 Mr. Ling to ask him to correct and retract that
16 sentence, did you?
- 17 A Well, there's a number of errors in the article,
18 including typographical errors, and I didn't think
19 it was necessary or appropriate for me to respond
20 or follow up with an individual reporter. It just
21 didn't seem material. In all the media coverage
22 that is arisen out of this proceeding, not all of
23 which I have seen, but a lot of which I have seen
24 I have noticed a number of things that aren't
25 strictly speaking true, and it's not my practice
26 to follow up with individual journalists to get
27 them to tweak specific language.
- 28 Q So the answer is no, you did not ask him to
29 correct this?
- 30 A I did not.
- 31 Q And, Mr. Alani, you don't hold yourself out as an
32 expert on the senate, do you?
- 33 A Not directly, no. I mean ...
- 34 Q Because you have no training or experience that
35 would make you uniquely qualified to opine on
36 senate issues any more than any other Canadian, do
37 you?
- 38 A I think I'm probably more qualified or have more
39 awareness and knowledge of the senate than some
40 Canadians, perhaps even some lawyers, but, I mean,
41 I wouldn't market myself as being an expert on the
42 senate.
- 43 Q And you would agree with me that there has been
44 some media interest in your case, no doubt?
- 45 A I would agree that there has been some media
46 coverage.
- 47 Q And you've made some efforts to publicize your

- 1 case; right?
2 A I have.
3 Q You have a webpage, do you not?
4 A I do.
5 Q And you've already told us that you have a Twitter
6 account and you would admit that you tweet about
7 your lawsuit on that Twitter account; right?
8 A Correct.
9 Q And you have agreed to do media interviews,
10 obviously; correct?
11 A I have.
12 Q And it isn't always the media that approaches you;
13 right? Sometimes you take the initiative, you
14 contact the media yourself to tell them about the
15 steps that you're taking in this litigation?
16 A Correct.
17 Q But in spite of all this publicity, there is still
18 no organization devoted to the naming of senators,
19 right, or the filling of senate vacancies?
20 A As far as I know, no.
21 Q And, Mr. Alani, you said you have a webpage
22 devoted to your senate vacancy litigation, and
23 just to confirm, its web address is
24 www.anizalani.com/senatevacancies; is that right?
25 A That's correct.
26 Q How long has this webpage been publicly
27 accessible, the senate vacancy's webpage?
28 A I'm ...
29 Q I'm assuming since you filed the lawsuit in
30 December of 2014. Maybe you've started it before
31 that. I don't know.
32 A It wasn't before, and it wasn't at the same time.
33 I don't think I thought to set it up until
34 sometime afterwards. I'd have to check my
35 records, but I believe it probably would have been
36 in late December that I set up the site.
37 Q And on that site you've -- you invite visitors to
38 post publicly visible comments, do you not?
39 A Correct.
40 Q And so would you say, then, it's been up for six
41 months, seven months?
42 A If you'd like, I could quickly consult with my
43 records. I can't recall when it went live.
44 Q But you believe it was probably around February or
45 March?
46 A No, I think it was probably around -- to the best
47 of my recollection, I would have thought it would

be late December.

Q As early as late December, so it could be as long as nine months, then, since we're in August now?

A Yes.

Q So after nine months then how many posts or written comments from individuals who have been willing to be publicly identified have you received on your website from individuals who support your position?

A On the website I don't think there are more than currently about three such comments, and I don't know that those are necessarily all people who necessarily support my position either.

Q I think that's a fair answer, but, Mr. Alani, on August 8th, so two days ago, I printed out screen shots from your webpage which seem to indicate that you've received only two posts in support of your position: one from a certain Catherine Pluard, P-l-u-a-r-d, and the other from a certain Mark Timm, T-i-m-m. Would you agree with that?

A Yes, those two are comments on the front page of the website. Each individual page on the website -- or at least many if not most of the individual pages on the website also have a commenting feature, and I believe the third comment I was referring to was specifically in response to a post that was referencing a recent proposal to the respondents whereby the proceeding could be resolved by way of a reference to the Supreme Court of Canada.

Q Indeed, I will show you another screenshot that I took with respect to what you call the "Open Letter Calling on Prime Minister to Refer Legality of Senate Moratorium To Supreme Court Of Canada." And there is indeed a post from a certain James O'Grady, who appears to run a social media website called UnpublishedOttawa.com. He writes asking whether he can share your letter with his audience, but he does not actually express support for your position. Would that be fair?

A Yes.

MR. BRONGERS: So, Madam Court Reporter, I'd like to ask that this -- let's mark it as a single document unless Mr. Alani has an objection and wants them marked as two separate ones.

THE WITNESS: No objection.

MR. BRONGERS: Let's mark this document, a screenshot

from Mr. Alani's webpage as exhibit 4 to the cross-examination.

EXHIBIT 4: Screenshot from Aniz Alani's webpage

MR. BRONGERS:

Q I'd just like to turn back to Mr. Foot's article in *Canadian Lawyer* magazine.

A Yes.

Q Mr. Alani, if you could just turn to the top of the second page --

A Yes.

Q -- where Mr. Foot wrote:

Average Canadians, Alani knows, couldn't care less about the senate.

Did you say that to Mr. Foot?

A I don't recall specifically saying those words, no.

Q So is it an inaccurate quote? I mean, he's saying:

Average Canadians, Alani knows, couldn't care less about the senate.

Implying certainly that he got that information from you. Would you say that this is a misquote? Well, it's not a quote at all. It's a description of a general sentiment, which I confirmed to him to be accurate, that sentiment being that average Canadians are not terribly concerned about the senate.

Q So it is your view that the average Canadians couldn't care less about the senate; right?

A It was at the time of the interview.

Q Mr. Alani, at paragraphs 36 and 39 of your affidavit you indicated that you've written not once but twice to all of the provincial and territorial attorneys general to ask whether they're interested in intervening in your lawsuit against the Government of Canada regarding senate vacancies; isn't that right?

A That's correct.

Q And your first letter was sent on December 27th, 2014, and then you sent a second letter along with a formal notice of constitutional question on

1 June 11th of 2015; right?

2 A Correct.

3 Q And, Mr. Alani, as of today you would agree with
4 me that none of the provincial or territorial
5 attorneys general have intervened in your case;
6 right?

7 A That is correct.

8 Q And would it be correct to say that none of the
9 provincial or territorial attorneys general have
10 indicated to you that they have any intention of
11 intervening in this proceeding? Because otherwise
12 of course you would have mentioned that in the
13 affidavit; right?

14 A It is correct that as of now no province has
15 indicated an intention to apply for leave to
16 intervene.

17 Q Or territory?

18 A Or territory. I mean, I know they're watching the
19 case very closely, some it would seem on an almost
20 daily basis, and I have had ongoing discussions
21 with members of specific provincial attorneys
22 general's department, but to answer your question,
23 at this point none have seen fit to apply for
24 leave to intervene.

25 Q And which attorneys general have you had these
26 conversations with?

27 A Most particularly Quebec.

28 Q Just the Quebec attorney general or any other
29 attorneys general?

30 A Well, there has been correspondence with various
31 provincial and territorial attorneys general, most
32 of them are fairly limited to either acknowledging
33 receipt of my correspondence, some have
34 specifically said that at the time they're not
35 intending to intervene, and some have been silent
36 on the issue, including Quebec. I mean, Quebec
37 hasn't written to me saying they plan to apply for
38 leave to intervene.

39 Q Quebec has written to you saying that they are
40 planning to apply --

41 A No, they have not.

Reporter's certification

MR. BRONGERS: Understood.

I have no further questions. Thank you very much, Mr. Alani. The cross-examination is concluded.

(PROCEEDINGS ADJOURNED AT 1:33 P.M.)

(TOTAL TIME: 1 HOUR, 34 MINUTES)

Reporter's certification:

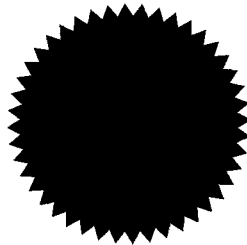
I, Leanne N. Kowalyk, RCR, Official Reporter in the Province of British Columbia, Canada, BCSRA No. 606, do hereby certify:

That the proceedings were taken down by me in shorthand at the time and place herein set forth and thereafter transcribed, and the same is a true and accurate and complete transcript of said proceedings to the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name and seal this 17th day of August, 2015.



Leanne N. Kowalyk, RCR
Official Reporter



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Aniz Alani

Vancouver, Canada Area Legal Services

Previous BC Transmission Corp., Davis LLP, Federal Court

Education University of Toronto

489
connections**Join LinkedIn and access Aniz's full profile. It's free!**

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- Contact Aniz directly

[View Aniz's Full Profile](#)**Experience****Lawyer**

BC Hydro

July 2010 – Present (5 years 2 months)

**Corporate Counsel**

BC Transmission Corp.

January 2009 – July 2010 (1 year 7 months)

Lawyer

Davis LLP

July 2007 – December 2008 (1 year 6 months)

**Law Clerk**

Federal Court

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Researcher

Centre for Innovation Law and Policy

September 2005 – April 2006 (8 months)

Review Officer Intern

Worksafe BC

May 2005 – August 2005 (4 months)

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2004 – 2006



Activities and Societies: Gale Cup Moot, Laskin Moot Associate Editor, University of Toronto Faculty of Law Review (Public Law Group) Assistant Editor, Indigenous Law Journal

The University of British Columbia

Political Science, Philosophy

1999 – 2003

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 Date: August 13, 2015
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Taking on the big guns

Cross Examined

Written by Richard Foot

Posted Date: March 2, 2015

Aniz Alani says he's "just a guy with a credit card and some vacation time."

So why isn't the 33-year-old husband and father taking his young family off to Disney World? Wouldn't that be an easier way to spend his free time and money — certainly more fun, than say, taking the prime minister to court?



Photo: Kim Stallknecht

For most Canadians, even most lawyers, the choice would be obvious. But for Alani, challenging Stephen Harper in Federal Court, on his own dime and in his own time, is perfectly normal behaviour. "It's very much in character for Aniz," says Geoff Moysa, a former law school classmate who now practises with McMillan in Toronto. "I figured it was only a matter of time before Aniz got involved in a pursuit like this."

In December, Alani leapt from obscurity from his post as an in-house counsel in Vancouver onto the national stage — garnering headlines for launching a legal action against what he calls the prime minister's "deliberate failure" to fill empty seats in the Senate.

A former Davis LLP associate, Alani now makes his living as an in-house litigator for a British Columbia Crown corporation, which, he makes clear, has nothing to do with his Harper-Senate crusade. Alani was disturbed by comments made in early December by Harper that he had no interest in appointing new senators — even though there were 16 vacancies at the time in the 105-seat Senate.

As political pundits have explained, the last thing Harper wants ahead of an upcoming 2015 election is to be more closely associated with the unpopular, scandal-plagued Senate. By February, Harper hadn't made a Senate appointment since March 2013. And with a Conservative majority already secure in the upper chamber, why would Harper change course now?

Because, says Alani — the Constitution requires it. The Constitution Act, 1867, gives provinces specific numbers of Senate seats to provide for equal representation in Parliament for each of the country's four major regions (plus additional seats for the Territories and Newfoundland and Labrador). By refusing to advise the governor general to fill vacant seats within a reasonable time, says Alani, Harper is "breaching the principles of federalism, democracy, constitutionalism, the rule of law, and the protection of minorities."

Alani's application for judicial review of the matter by the Federal Court adds: the "Prime Minister's decision not to recommend appointments . . . reflects an impermissible attempt to make changes to the Senate" without following the amending formulas set out in the Constitution — namely, getting the approval of most or all the provinces.

Average Canadians, Alani knows, couldn't care less about the Senate. But what they should care about, he says, is the sanctity of the Constitution, and what he calls Harper's quiet bid to ignore Parliamentary institutions and constitutional conventions, by governing outside the rule of law. "Whatever people think of the Senate," he says, "I hope that all Canadians share in the belief that our Constitution should be followed, certainly by the people governing us. If we get to the point where the Constitution no longer reflects what we want Canada to look like, then we should take steps to change it."

Harper has said there's no need to fill vacancies because, "From the government's standpoint, we're able to continue to pass our legislation through the Senate."

In January, government lawyers filed a motion to dismiss Alani's application, arguing the matter is not justiciable because a court can't enforce a constitutional convention. And in any case, they say, the Federal Court lacks jurisdiction over a prime minister's advice to a governor general.

Whatever the merits of Alani's complaint, it takes a rare kind of lawyer to step out, alone, and challenge a prime minister, especially on a matter unlikely to rally public opinion to his side. Yet Alani seems perfectly groomed for the job.

The son of Ugandan immigrants — who fled that country following the dictator Idi Amin's expulsion of Asians in 1972 — Alani grew up in Vancouver where he cultivated, since childhood, a quirky obsession with the Constitution and a fervent belief in the rule of law. David Hunnings, his junior high school debating coach, says Alani was a skilled but unusual member of the team. Unlike his self-assured and gung-ho peers, Alani "was the sort of guy who would sit at the back of the room and just listen to everybody." But Hunnings says this shy behaviour masked a "steely centeredness that you wouldn't see right away."

Years later, when Alani was an undergraduate, Hunnings gave him a personal copy of professor Peter Hogg's second edition of the *Constitutional Law of Canada*. Although thousands of pages long, "I read it cover to cover," says Alani, "and then I went off to law school."

At the University of Toronto, Alani revealed to classmates like Moysa his strange passion for constitutional and procedural arcana. "He's got a natural curiosity about procedure, to a greater extent than in a lot of lawyers I've seen," says Moysa. "I don't think [the Senate case] is a partisan thing. He'd do it regardless of who is in office. He just cares deeply about procedures."

Alani wanted to become a constitutional lawyer, but "realized very quickly that it's not necessarily the easiest practice with which one might pay one's bills." Instead, he clerked at the Federal Court (giving him insights into the institution where he is now challenging the PM), became a litigator at Davis in Vancouver, and then switched to his current, in-house job.

Alani says he was inspired in his Senate case in no small way by Rocco Galati, the constitutional crusader who successfully challenged the Harper government's decision to appoint Justice Marc Nadon to the Supreme Court. "If it weren't for the example that he set — in breaking the mould and illustrating that individual lawyers may be well suited to raising legal and constitutional issues that might not be raised in any other way — I'm not sure I would have thought of this otherwise."

As he waits for his application to work its way through court, whatever the outcome of the case and its impact on his legal reputation, Alani says he has no regrets. "I take great comfort that we live in a country where there is a system of the rule of law. Any person, whether they are a lawyer or not

— obviously it's easier if they're a lawyer — can bring people to account. No one's above the law," he says. "I take great comfort in the fact that it's possible to do this."

NATIONALLegal Insights &
Practice TrendsExhibit 1 for IdentificationWitness: ANIZ ALANIDate: August 10, 2015Reporter: LEANNE KOWALYK
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Filling Senate vacancies

BY AUSTIN LUNG January 29, 2015

The Prime Minister is in no rush to appoint new senators. But is it really his prerogative?

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The Senate of Canada currently has 17 vacancies. It will have at least 19 by the time the next election rolls around. The Prime Minister has promised that he will not fill them, at least not during his current mandate.

Aniz Alani is trying to rectify that. The Vancouver lawyer has sent in an application for judicial review in December, seeking to have the Federal Court pronounce itself on whether or not the Prime Minister is offending the Constitution by letting the Senate slowly empty.

It's an ironic damned-if-you-do, damned-if-you-don't scenario for Stephen Harper, who stopped appointing senators after the Supreme Court of Canada informed him that substantive and real changes to the make-up of the Senate — such as holding nominally non-binding elections to allow Canadians to have a direct say in who the Prime Minister appoints — would need to be approved by the constitutional amending process.

Indeed, the Court told the Prime Minister that any move that would substantively alter the make-up of the Senate cannot be done unilaterally, even if it still, strictly speaking, adheres to the language of the law. The Court said his plan "privileges form over substance."

Not appointing new senators, Alani argues, would offend that decision.

"The Prime Minister's decision not to recommend appointments to the Senate to fill the vacancies reflects and 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 set out in the *Senate Reform Reference*," Alani writes in his application for judicial review sent to the Federal Court.

Alani, who serves as in-house counsel for a BC Crown corporation, is launching the case on his own behalf. He admits he did it on a bit of whim, recalling that he saw the issue crop up on Twitter one morning. He saw a statement from the Prime Minister, saying that he had no intention to appoint new senators until at least the next election — "I don't think I'm getting a lot of call from Canadians to name more senators right about now," Harper said — and, Alani says, "it struck a chord with me."

Alani says he was rather incredulous that the Prime Minister thinks it's even his decision, though he admits that there's ambiguity over how the process exactly works.

The *Constitution Act* sets out 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."

It doesn't set out a timeframe, however, stipulating only that the Senate should normally have 105 members — never more than 113 — and 15 senators for quorum.

Prime Ministers have, generally, rushed to appoint senators in order to leverage their party's standings in the upper chamber. Over time, the conventional understanding developed that the Prime Minister would appoint senators in "reasonable time," with no clear definition of what that means.

So, with no clear direction — except convention — detailing what the Prime Minister is required to do, Alani is asking for clarity from the courts. "My goal is really to just have the court step in and confirm if there is a requirement at all," he says. "We can fight about the timeframe later." Even so, he points to language that governs by-elections. The *Elections Act* requires House of Commons by-elections to be called within 180 days of the vacancy.

He figures he has a pretty good case. After all, he says, the Supreme Court's ruling in the *Senate Reform Reference* has a fairly broad application to everything to do with the Senate, "but thinks that the courts may just shy away from trying to legally enforce him to act, based solely on convention."

The court may never hear it, though. Ottawa has filed motion to strike the case. Alani, though, is "fairly confident" that the Federal Court will hear the case.

Ermert MacFarlane, an assistant professor of political science at the University of Waterloo and the author of *Governing from the Bench*, isn't so sure.

"Courts have been pretty unwilling to interfere directly with executive prerogative powers, and although there is a legitimate claim rooted in the Constitution's text, I'd be surprised to see a judicial order made that compels the prime minister to make appointments, at least at this point," he says.

That said, MacFarlane thinks "there is a fairly strong legal case to be made that the Prime Minister is constitutionally obligated to make regular appointments to the Senate," but thinks that the courts may just shy away from trying to legally enforce him to act, based solely on convention.

"If the court rules that the Prime Minister's role is solely 'convention,' rather than something derived from the text, then a judge might acknowledge the existence of the convention but would refuse to make a legal order based on it," he says.

"It's a very interesting issue, and I'd like to see the Federal Court at least hear the case," Macfarlane says. "I'm not sure if it will, though."

If the court decides to hear Alan's application, he expects they'll be submitting applications in April, and a hearing will be held by May.

Justin Ling is a regular contributor based in Ottawa.

Filed Under: [Features](#)

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Senate Vacancies

*Is the Prime Minister obliged to fill
Senate vacancies?*

About the Case***Is the Prime Minister of Canada legally required to fill Senate vacancies?***

On December 8, 2014, a Notice of Application for Judicial Review was filed in the Federal Court seeking a declaration that, among other things, the Prime Minister of Canada is constitutionally required to recommend appointments to fill the (then) 16 vacancies in the Senate of Canada. (An Amended Notice of Application was filed on May 25, 2015.)

The judicial review application followed public comments made by Prime Minister Stephen Harper on December 4, 2014 indicating that he did not intend to fill the vacancies so long as the Senate remained able to pass government legislation.

On April 23, 2015, the Federal Court heard arguments on whether the application should be dismissed at a preliminary stage for lack of justiciability and jurisdiction.

On May 21, 2015, Mr. Justice Sean Harrington of the Federal Court issued an order and reasons for order dismissing the Attorney General of Canada's motion to strike the application for judicial review on the basis that it raised a non-justiciable issue and was outside the jurisdiction of the Federal Court.

A copy of the reasons for order are available here. A copy of the transcript from the hearing is available here.

As of May 29, 2015, the Federal Court's dismissal of the motion to strike is under appeal to the Federal Court of Appeal.

In response to a number of inquiries from friends, colleagues, the media, academics and others regarding the content and status of the judicial review application, this web site was set up to provide background information, and updates on the court proceeding.

Except as indicated in a court order or reasons for judgment, nothing in the materials linked from this site should be considered to be a finding of law or fact.

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3 Responses to *About the Case*

Catherine Pluard says:

Exhibit 4 for Identification
 Witness: ANITA ALANI
 Date: AUGUST 10, 2015
 Reporter: LEANNE KOWALYK
 REPORTEX AGENCIES LTD.
 Ph: (604) 684-4347 • www.reportexagencies.com

July 3, 2015 at 10:40 am

Thank you for taking on this action against the federal government. I have a question. If this lawsuit is successful, will every bill voted on and passed by the senate be subject to repeal or be considered invalid? My thought is that if the vacancies are unconstitutional, then recent Senate voting outcomes would be unconstitutional as well. Thank you for your time and thank you again for taking on the federal Conservatives.

[Reply](#)

admin says:

July 28, 2015 at 9:44 pm

Thanks for posting your comment and sorry for the delay in responding.

To answer your question, I don't think the application, if successful, would have any impact on the validity of bills passed by the Senate while vacancies existed. Indeed, throughout Canadian history it has often been the case that some vacancies have existed. What's unprecedented, however, is a stated policy of deliberately failing to fill vacancies indefinitely. It's that deliberate failure to advise the Governor General to fill vacancies that is alleged to be unconstitutional, not the vacancies themselves or the Senate's competence to sit and vote on legislation in the meantime.

Finally, I should clarify that the litigation is not against the "federal Conservatives" but rather the Prime Minister as office holder.

Thanks again for your interest and taking the time to visit.

[Reply](#)

Mark Timm says:

July 25, 2015 at 10:48 am

I also thank you for taking the federal government to task.

Question: If the court rules it unconstitutional to Not appoint senators and the PM ignores that order what do you believe would happen?

The reason for asking this is I see a crisis coming for our constitution that will be created by the PM if he wins another majority. I just hope others can see what has been happening as I am very very tired of our elected government breaking the constitution on our behalf.

[Reply](#)

Senate Vacancies

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Senate Vacancies

*Is the Prime Minister obliged to fill
Senate vacancies?*

Open Letter calling on Prime Minister to Refer Legality of Senate Moratorium to Supreme Court of Canada






Posted on [July 27, 2015](#) by [admin](#)

On July 27, 2015, an open letter to the Department of Justice was sent proposing to resolve the issues in the Federal Court judicial review proceeding and related appeal before the Federal Court of Appeal by inviting the Prime Minister to submit the legality of his recently announced moratorium on Senate appointments to the Supreme Court of Canada by way of a reference proceeding.

Mr. Alani offered to waive costs associated with the ongoing proceedings if a reference was submitted to the Supreme Court before the issuance of the next writ of election.

A copy of the proposal is available [for download](#).

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2 Responses to *Open Letter calling on Prime Minister to Refer Legality of Senate Moratorium to Supreme Court of Canada*

James OGrady says:

July 27, 2015 at 5:22 am

Hi- Great letter! I'd like to ask if we can publish your letter on UnpublishedOttawa.com, a social media website for current affairs in Canada, so we can share it with our audience.

Please let me know.

Thanks!

James O'Grady

[Reply](#)

admin says:

July 27, 2015 at 5:51 am

Of course. Feel free to make use of any materials posted here online.

[Reply](#)

