Court File No.: T-2506-14

FEDERAL COURT

BETWEEN:

ANIZ ALANI

Applicant

and

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

Respondents

RESPONDENTS' MOTION RECORD
[June 22, 2016 hearing re: Mootness]
Volume I of II

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INDEX - MOTION RECORD

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NOTICE OF MOTION

TAKE NOTICE THAT the Respondents will make a motion to the Court on June 22, 2016, at 9:30 A.M. as directed by order of the Court (Lafrenière P.) dated February 11, 2016, at Vancouver, British Columbia.

THE MOTION IS FOR:

1. an order dismissing the application for judicial review as moot; and

2. costs of the judicial review application.

THE GROUNDS FOR THE MOTION ARE:

1. The application for judicial review alleges that a decision was made on December 4, 2014, by then Prime Minister Stephen Harper to impose a moratorium on Senate appointments (the "December 4 Comments").

2. Following the October 19, 2015 federal general election, a new government was formed with the Right Honourable Justice Trudeau serving as Prime Minister.

3. On December 3, 2015, the Honourable Maryam Monsef, Minister of Democratic Institutions, announced a plan to establish an Independent Advisory Board for Senate Appointments (the "Advisory Board"). The Minister announced that five vacancies were to be filled in early 2016 pursuant to a transitional process, and the remaining outstanding vacancies were to be filled later in 2016.

4. On January 19, 2016, the Governor in Council established the Advisory Board. Also on that date, the Minister of Democratic Institutions announced the appointment of the Advisory Board's members, and confirmed the government's intention to recommend individuals for Senate appointment pursuant to a transitional process in early 2016 and to fill the remaining outstanding vacancies later in 2016.

5. On March 18, 2016, Prime Minister Trudeau announced that he would recommend seven individuals to the Governor General for appointment as Senators pursuant to the transitional process, each of whom was subsequently appointed to the Senate by the Governor General.

6. Any moratorium on recommendations for Senate appointments that existed in the past has now ended.

7. If there ever was a live controversy between the parties in relation to the December 4 Comments, which is denied, then that controversy has ended and the application for judicial review has become moot.

8. This is not a matter the Court should exercise its discretion to hear notwithstanding its mootness.

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

a) Affidavit of Lyse Cantin sworn on May 12, 2016.

b) Affidavit of Karen Wong affirmed on May 6, 2016.

DATE: May 16, 2016

William F. Pentney, Q.C.
Deputy Attorney General of Canada
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Solicitor for the Respondents

TO: Aniz Alani
[redacted]

Applicant

Court File No. T-2506-14

FEDERAL COURT

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA and THE GOVERNOR GENERAL OF CANADA

Respondents

AFFIDAVIT OF LYSE CANTIN

I, Lyse Cantin, Director of Communications of the Department of Justice, British Columbia Region, 900 – 840 Howe Street, in the City of Vancouver, in the Province of British Columbia, SWEAR THAT:

1. I am the Director of Communications of the Department of Justice Canada, British Columbia Region. I have been employed in this position since January 2, 2001. As such, I have personal knowledge of the matters deposed to in this affidavit, except where those matters are stated to be based on information and belief, in which case I believe them to be true.

2. I have reviewed an unofficial transcript prepared by the Media Centre at the Privy Council Office (the "Unofficial Transcript") of a July 24, 2015, press conference held in Regina, Saskatchewan, involving Prime Minister Stephen Harper (the "Press Conference"), as well as contemporaneous news reports covering the Press Conference, and verily believe to be true that Prime Minister Harper announced at the Press Conference a policy of a moratorium on further Senate appointments, to last until such time as provincial agreement is reached on reform or abolition of the Senate, or until the Government is no longer able to pass legislation through the Senate. Attached as **Exhibit "A"** to this affidavit is a true copy of a news story entitled "Stephen Harper vows not to make any Senate Appointments", by Steven Chase, published in the Globe and Mail on July 24, 2015, and retrieved from http://www.theglobeandmail.com on May 12, 2016. Attached as **Exhibit "B"** to this affidavit is a true copy of the Unofficial Transcript.

3. I have reviewed the website of the Minister of Democratic Institutions, http://www.democraticinstitutions.gc.ca, and verily believe to be true that on December 3, 2015, the

Minister of Democratic Institutions announced a plan to establish the Independent Advisory Board for Senate Appointments (the "Advisory Board"). Attached as **Exhibit "C"** to this affidavit is a true copy of the news release dated December 3, 2015, posted on the website of the Minister of Democratic Institutions, announcing the plan to establish the Advisory Board (the "December 3 News Release"). Attached as **Exhibit "D"** to this affidavit is a true copy of the related "Backgrounder" document linked from the December 3 News Release and also posted on the website of the Minister of Democratic Institutions.

4. I have reviewed website of the Privy Council Office, http://www.pco-bcp.gc.ca/, and verily believe to be true that on January 19, 2016, Order in Council 2016-0011 ("OIC 2016-2011") was issued by the Governor General in Council, establishing the Advisory Board. Attached to OIC 2016-2011 is the Mandate of the Independent Advisory Board for Senate Appointments and Terms and Conditions of Appointment of Members (the "Terms of Reference"). Attached as **Exhibit "E"** to this affidavit is a true copy of OIC 2016-2011. Attached as **Exhibit "F"** to this affidavit is a true copy of the Terms of Reference.

5. I have reviewed the website of the Minister of Democratic Institutions, http://www.democraticinstitutions.gc.ca, and verily believe to be true that on January 19, 2016, the Minister of Democratic Institutions announced the establishment of the Advisory Board and the appointment of members to the Advisory Board. Attached as **Exhibit "G"** to this affidavit is a true copy of the news release dated January 19, 2016, posted on the website of the Minister of Democratic Institutions, announcing the establishment of the Advisory Board (the "January 19 News Release). Attached as **Exhibit "H"** to this affidavit is a true copy of the related "Frequently Asked Questions" document linked from the January 19 News Release and also posted on the website of the Minister of Democratic Institutions.

6. I have reviewed the website of the Prime Minister of Canada, http://pm.gc.ca, and verily believe to be true that on March 18, 2016, Prime Minister Trudeau announced that he would recommend to the Governor General for appointment to the Senate seven new Senators: Raymonde Gagné, Justice Murray Sinclair, V. Peter Harder, Frances Lankin, Ratna Omidvar, Chantal Petitclerc, and André Pratte (the "Seven Recommended Appointees"). Attached as **Exhibit "I"** to this affidavit is a true copy of a news release dated March 18, 2016, posted on the website of the Prime Minister of Canada announcing these recommendations.

7. I have reviewed the website of the Minister of Democratic Institutions and verily believe to be true that on March 31, 2016, se published a document entitled "Transitional Process Report" (the "Transitional Process Report"). Attached as **Exhibit "J"** to this affidavit is a true copy of the Transitional Process Report retrieved from the website of the Minister of Democratic Institutions.

8. I have reviewed the website of the Parliament of Canada, http://www.parl.gc.ca, and verily believe to be true that between March 23, 2016, and April 2, 2016, each of the Seven Recommended Appointees were appointed to the Senate by the Governor General. Attached as **Exhibit "K"** to this affidavit is a true copy of a webpage titled "Current Senators" available on the website of the Senate of Canada, showing the date of nomination of each of the Seven Recommended Appointees.

SWORN before me at the City of Vancouver,
in the Province of British Columbia, this
12th day of May, 2016.

Commissioner for Taking Affidavits
within British Columbia

Lyse Cantin

Oliver Pulleyblank
Legal Counsel
Department of Justice
#900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9
Phone: 604-666-6671 / Fax: 604-775-7557

This is Exhibit "A" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

THE GLOBE AND MAIL

July 24, 2015

Stephen Harper vows not to make any Senate appointments

By STEVEN CHASE

The Conservative Leader is a long-time proponent of reforming the Red Chamber, but his credentials as champion of a more accountable Senate have been tarnished by a scandal over improper expense claims that has engulfed several of the people he appointed

Prime Minister Stephen Harper is vowing not to make any more Senate appointments, an effort to distance himself from the scandal-plagued Red Chamber and to goad provinces into agreeing to reform or abolish the discredited legislative body.

"Let me be kind of blunt about this: The number of vacancies in the Senate will continue to rise, and other than some voices in the Senate, and some people who want to be appointed to the Senate, no one's going to complain," Mr. Harper announced after meeting Saskatchewan Premier Brad Wall in Regina.

He noted he has not handed out any Senate seats in more than two years.

"We have 22 vacancies now and how many people are noticing?" he said. "What are the problems this is creating? None."

The Conservative Leader is a long-time proponent of reforming the Red Chamber, but his credentials as champion of a more accountable Senate have been tarnished by a scandal over improper expense claims that has engulfed several of the people he appointed. Mike Duffy, most notably, is charged with fraud and his trial is set to resume on Aug. 12.

Mr. Harper has been stymied in his efforts to reform the Senate, with most provinces opposing his plan to elect senators, and a Supreme Court ruling last year that confirmed the bar is high for getting approval for an overhaul. The court said reform would require a constitutional amendment approved by at least seven provinces with 50 per cent of the population. It also said abolition would require unanimous consent of all provinces.

The Conservatives hope this moratorium gives Mr. Harper a way to deflect questions about Mr. Duffy's trial, in which former Prime Minister's Office chief of staff Nigel Wright is set to take the stand next month.

Support for the NDP under Thomas Mulcair, who has vowed to scrap the Senate, has risen in the polls, and the Conservatives appear to be betting this ban on appointments gives them a defensible policy on the Red Chamber, with an election call expected in the weeks ahead.

Shortly before Mr. Harper's announcement on Friday, Mr. Mulcair said in Waterloo, Ont., he would hold off appointments and negotiate with provinces to abolish the chamber if he becomes prime minister. He called the Senate undemocratic and unaccountable, and said that during the election campaign, he will seek a mandate to

abolish it.

New Democrats pointed out that the NDP chief has talked of discontinuing appointments to the Senate in the past. "We could let the thing die on the vine – just wither away by attrition, name no one else to the Senate," Mr. Mulcair told CBC in July, 2014.

Friday was the second time Mr. Harper has promised to starve the Senate of appointments. He pledged this in the 2006 election campaign, but changed his mind after the 2008 election, citing the need for enough Tory legislators to pass his government's legislation.

As vacancies rise, the Senate will be increasingly unable to perform its legislative task of scrutinizing and passing legislation.

The chamber is about one-fifth empty. The number of vacant seats jumps to 34 by the end of 2017, when 71 senators would be left. Emmett Macfarlane, a University of Waterloo political scientist, predicted the Senate would be having "clear problems" functioning by then.

Mr. Harper's moratorium is indefinite. He acknowledged the Red Chamber would need some senators to function, but did not say how long he would let the situation continue.

The Prime Minister said this will save money, noting that Senate expenses are down $6-million annually since vacancies began piling up.

He also hopes to prod provinces into agreeing to reform or scrap the Red Chamber. "The ball is in their court ... [to] come up with a plan of comprehensive reform or to conclude the only way to deal with the status quo is abolition," the Prime Minster said.

Saskatchewan Premier Brad Wall, who favours abolition, backed the announcement.

"It will be up to premiers ... to respond to this now."

Liberal Leader Justin Trudeau, who has promised an independent advisory body to recommend non-partisan nominees to the Senate, noted on Friday that Mr. Harper installed 59 Senators in the Red Chamber after saying in the 2006 election campaign he would appoint none.

"Mr. Harper is trying to distract people from his inability to deal with the economy," Mr. Trudeau said.

With a file from the Canadian Press

Wildfires/ Senate/ Economy_Harper_Wall (CBC-NN, CTV-N 16h06)

Date / Date : July 24, 2015

Time / Heure : 16h06

Network / Chaîne : CBC-NN, CTV-N

Topics Discussed / Sujets discutés : Wildfires/ Senate/ Economy

With / Avec : PM Stephen Harper, SK Premier Brad Wall

This is Exhibit "B" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

Brad Wall: And I'll let the prime minister comment on what he saw there. But what I can report to this group is something you likely know well and that is that we have had an amazing response to this fire from across province from many agencies. We were significantly aided with the arrival of the Canadian forces. I remember being in la ronge not very long ago, it was a Friday, and the so-called egg fire had not sort of wheeled around back on la ronge yet and even then there was the concern about the number of personnel. People who had been on duty a long time were moving out and was there enough to have them come in. So I reached out to the prime minister the next day on a Saturday and good call back immediately and an indication from him that he would check with the armed forces as to how quickly they can be deployed and to what extent. I can tell you this. That was a Saturday. Wednesday morning there were boots on the ground. Canadian forces, firefighters and a complement of 800 were utilized. 600 actually fighting fires and we just simply say to the rest of the country, to the prime minister and our Canadian forces, thank you very much. We -- we've chatted as you know in the past about the potential, if there is a big area of the public involved in firefighting, cloud be perhaps a national cache that our provinces would partner with the federal government that so we don't run out of equipment. Typically we share. The provinces give to other provinces. But what is the course of action, what is the contingency in an event like we had this summer or perhaps one that's worse where we're all fighting fires and we can't share. And so we had a bit of a chat about that as well in a meeting, and I'm grateful the federal government will look at that possibilities and I hope the provinces would partner in that. We're grateful that the prime minister is here.

Brad Wall: We're grateful for the federal response to the fires and for the debrief afterwards and maybe even some next steps as I've touched on. This is a completely different subject, but before I turn things over to prime minister Harper I have not yet had the chance to thank him personally for what we were able to witness in Ottawa earlier this spring with the signing of a uranium deal between Canada, between cameco, more specifically, tan Indian government. And the visit of prime minister Modi to our country with prime minister Harper was historic on many levels. Never in the history of Canada has a prime minister done more personally to open the door for our uranium in markets where they have a robust civilian nuclear build out. That includes China where now, because of those efforts on the part of the prime minister, hopefully we help ad lib. But the prime minister had to raise it with his counterparts in China. 50 million pounds of Saskatchewan uranium will move into the electrical generation industry exclusively in the next 10 to 15 years and the agreement with prime minister Modi was for 7ŁŁ million. This is significant in an industry for northern Saskatchewan where

44% of those on the front lines are first nations and métis employed in that industry and a great contributor to our economy. It's unique and it's important now that you are here in Saskatchewan I thank you for that good work and just turn things over and welcome you back to Saskatchewan.

Prime Minister Harper: I appreciate those comments, Brad. I also want to thank you for your hospitality today, for hosting me here. We were talking about this on the way over, this magnificent building. I was first here as an 11-year-old with my parents and brother. We toured western Canada. It was always memorable seeing this building built when this was a very small place. It is really equipment a monument to the importance of this province in our country. I also want to congratulate you for the leadership you've shown in the last few weeks over this difficult time. This is one of the worst years for forest fires on record in Saskatchewan and other parts of western Canada. It has been an effective and coordinated response. I saw that in la ronge where we met not just with local officials -- [banging] Co-ordinating and working together and that is also a tribute to the leadership that has been shown at the top in terms of response. Here today, earlier in la ronge, yesterday in Kelowna, to survey the damage done by the devastating fires and the response to them. Obviously we've been very concerned this summer by what we have seen. We've been following this very closely across the country. And we are genuinely obviously making progress. I had a chance to thank some people directly in Kelowna and in la ronge, but I wanted to be able to give our heart-felt thanks to the thousands of firefighters, Canadian armed forces members and other emergency responders who have been out there working so hard to bring the situation under control and often doing so through difficult circumstance and at some considerable risk to themselves. It truly is a remarkable effort.

PM Harper: Our government is prepared to provide assistance to any province and any that's right asks for federal assistance to fight wildfires and we're very pleased to work with the provinces and territories to find appropriate means to respond when there are wildfires in the future. Does stand by and is ready to assist any province or territory that requests federal assistance in fighting forest fires. We're happy to work with the provinces and territories on ways to better help them respond to forest fires in the future, the premier mentioned some of the ideas and we certainly had an opportunity to talk about some of those. When the dust settles, that is definitely something we're going review, a better way to respond, mitigate, whatever these types of incidents. In the meantime, obviously our thoughts and prayers will continue to be with all of those who have been affected.

Reporter: [Inaudible].

Prime Minister Harper: Well, let me be very clear on what I have said repeatedly. All through my political career and over the last several years as prime minister, I've said repeatedly over a very long time that the senate must be reformed. If it cannot be reformed, it should be abolished. The fact of the matter is, as you know, Canadians remain divided over whether they want a reform or abolish the senate. On reform versus abolition the Supreme Court ruled that both reform and abolition would require unanimous approval of the provinces. So, that is the situation we're in. What I take from this is the following. Canadians are not divided on their opposition to the status quo. That is to an unelected, unaccountable senate. The government is not going to take any action going forward that would do anything to further entrench that unelected, unaccountable senate. For the past two and a half years, since the Supreme Court decision and prior, I have not made any appointments to the senate. There are now 22 vacancies in the senate. And let me be clear, it will be our policy to formalize that. We will have a moratorium on further senate appointments. This has two advantages. The first, it saves costs. In fact, senate expenses are now down some $6 million from what they were. It's still a long way to go, but they have come down. And they're going to come down more. But the second advantage of this approach is, I think it will force the provinces over time who, as you know, have been resistant to any reforms in most cases. To either come up with a plan of comprehensive reform or to conclude that the only way to deal with the status quo is abolition. So, that is the path we're going to take, moratorium on future appointment of senators.

PM Harper: Perhaps I should repeat my answer. Once again. Throughout my political career, I've been saying this with respect to the senate. The senate must be reformed. And if the senate cannot be reformed, then the senate must be abolished. The reality is that the people of Canada are divided with respect to reform or abolition and the Supreme Court ruled that those two options require consent from the provinces in order to be realised. At the same time, Canadians are not divided with the current reality in the senate. Canadians are united on an unelectable, unaccountable senate is not acceptable and that is a widespread opinion among Canadians. For that reason, the government will not be taking any action. That would continue the senate under its current form. For the last two and a half years, I have appointed no senators and there are, therefore, now 22 vacancies in the senate. And our position is to make that formal. It is not our intention to appoint anymore senators to an unelected, unreformed senate unless -- obviously we have to get let legislation through. But there are 22 vacancies and there are two advantages to that approach. The first is that it allows us to reduce the cost and expenses associated with the senate, expenses which have already been reduced by some $6 million, primarily because of those vacancies and there are other long-term benefits as well in that this will force the provinces to review this issue. And to really develop a reform plan because thus far, provinces have rejected reform or they would have to understand that the only way forward is abolition. Let me say one other thing about the government's position. We will not name senators as long as we can pass government legislation. And looking at the number in the senate that should not be a problem for several years.

Brad Wall: May I just say this. And the position, of course, of the government of Saskatchewan is similar. In terms of preferring reform, meaningful reform, what's called triple E. Reform. A senate that would be elected, that would be effective and that would be equal. In other words, we already have representation by population in the House of Commons. And it is the view of many western Canadians that the senate ought to be a place where is there would be representations for units tan provinces and some-to-some extent for the territories. And so we responded when the prime minister and current government moved towards reform. There was incremental steps taken by the government and it was up to provinces to respond, for example, we would pass legislation enabling senators and the prime minister to appoint those dully elected by the province where is those occurred. Two provinces headed down that road. Alberta was already there and then Saskatchewan passed its legislation. By the way, we since revoked it and here's why.

Brad Wall: We've come to the view, given what I've seen around the provincial table, the table of the premiers, that there is no chance, I believe with all my heart, there is no chance for us to achieve a triple E. Senate and I worry actually that legitimatizing a senate with partial reform, perhaps without making sure that it's equal, provides the system a redundancy the federation as I mentioned, is already mentioned in the house of commons by representation by population and, frankly the way the seats are distributed, there's a representation by population element in the senate as well and that doesn't make sense. I think what the prime minister just said is it's up to the provinces and I hope they respond. If we simply can't come an agreement on how this thing can be meaningfully reformed, then surely we must be able to decide that in 2015, this country, the modern democracy that it is, GHT not to provide decision-making authority to an appointed body, however it's constituted. That doesn't make any sense. It will be up to premiers to, I think, responding to this now and I appreciate the support the fact that no further senators will be appoint.

Reporter: This is for the prime minister. Prime minister P the Canadian dollar is on a record low. The economy is not doing so well. What's your plan right now to address this.

Prime Minister Harper: Well, first of all, let me be very clear as I have been. What the current circumstances are. We have a slowdown in the global economy. Obviously we have a bad situation in Europe. We have seen very slow growth out of the United States in the first quarter. Slower than Canada. Slowdown in China and elsewhere. So, this is obviously had an effect on us and had primarily an effect through lower commodity prices and lower oil and gas prices. I don't think there's any doubt about what the causes are. I think the government's policy response to this is the appropriate one. And that is, as the bank of Canada noted, we've done some specific things that have helped growth in the Canadian economy over this year, specifically the

federal infrastructure programme that we launched, the additional Federal infrastructure spending in the fall, which is going into the economy and obviously the major benefits we passed for families with children. And those things are both sustaining economic activity.

PM Harper: Beyond that, you know, every analyst internationally believes the long-term prospects of this economy are good. Answer we believe the government is following the appropriate approach to realise those benefits and that is a low tax policy with balanced budgets, with key investments in training, in obviously trade, opening up trade. The premier spoke about that, in innovation, particularly manufacturing and in infrastructure. That is the right policy. This is -- this is not the time, having a bit of a slowdown because of commodity prices not a time to plunge the country into massive deficits or begin hiking taxes. Countries that have done that in response end up in disastrous circumstance. And obviously that's not what we urge for this country. Let me also say a word about the financial position. As you know we project add small surplus for this fiscal year. I noticed there's been some discussion whether with the current numbers that will hold up. The department of finance believes it will. I think it is more than speculating it will. We have the first two months of data for this year and we've run a surplus for the first few months of this fiscal year. As I say, that -- you know, I think that tells us that -- you know, our budgeting is very conservative and we're well on track to realise a balanced budgets this year.

Reporter: Hi, this is a question for the prime minister. When it comes to the talking about a national strategy for the wildfire response, environment Canada has been saying that because we might not see an end to the wildfires until snow hit this is year. This year they started earlier than expected. What kind of reassurance can you give provinces or territories that they'll have a response before these same provinces are hit with this problem next year.

Prime Minister Harper: It wouldn't be responsible to speculate on what fires we may or may not have. I was telling the premier earlier, every year I get a briefing in the early spring about what our risks are and it always seems that is risk of fire or risk of flood. Either a bit too much water or too little. That's just the reality of economic -- of the geographic conditions in this country. There is already significant coordination between levels of government. We have the Canadian interagency fire fighting sentence which works with provinces to move the various resources and equipment back and forth as the situations arrive. Obviously we responded here with the additional provision of Canadian forces asset. There are lots of things we can do. Look, I do think while our focus has to be now on putting out the fires we have, we should sit back. Premier Clark has suggested the things we could be doing together and we'll give an examination of those things as we move forward.

Reporter: Prime minister, you mentioned formally entrenching your policy on the senate F. You do win another term, does that mean another four-plus years, no appointments, and by what method would you entrench, would it become law, for example?

Prime Minister Harper: Well, we'll entrench it simply in this way, which is we're just not going make the appointments and the number of vacancies will continue to rise. Let me be kind of blunt about this. The number of vacancies will continue to rise and other than some voices in the senate and some people want to be appointed to the senate, no one's going complain. And I think that is gog to put our costs in the senate are going to fall and that is going put increased pressure ton provinces. As premier wall has mentioned, all of whom but Alberta and Saskatchewan, have fought the government's reforms. Let's remember what this government proposed in terms of reform. We proposed that senators be elected. Answer every province went to courts to fight that. If you're not going to make those reforms, I don't know what reforms you are going to make. Look, they have a chance. The ball is in their court. They can now propose reforms. In the meantime, the membership in the senate is going to continue to shrink. And Canadians will ask the question if you don'ts have a programme for reform, why not just abolish it and I think that is -- you know, that is -- that is the pressure that is going to rise. I can't formalize nonappointment. That would be a constitutional change.

Under the constitution today, the prime minister has the authority to appoint or not appoint. That is an authority. The numbers are such. We have a good majority. The numbers are such that we don't need name senators. I don't believe we will need to name senators so we can leave nit that situation. With 22 vacancies now, and how many people are noticing? What are the problems this is creating? None. So, you know, look. I think it is time for people to act. If you have a programme of reform and elect the senate and make it, as the premier said, a 21st century institution, a legislatures are elected in the 2 S century. If you have a programme to do that, show it to us. If you don't, take the other set of action.

Reporter: [Inaudible].

Prime Minister Harper: Many provinces -- excuse me?

Brad Wall: If I could just add. The point is well made perform eventually Canadians are, I think, going to apply a bit more pressure to their respective provincial governments. I think that is happening already. I've noticed it and eke debt Loi. I advocated triple E. Reform and many others are moving off of that as they see no prospect of that being achieved and rather they're left with the reality of having a triple U. Reality for the foreseeable future, under elected, unaccountable and under investigation. They will be reaching out to their premiers F they're not already, saying that thing cannot be fixed.

Prime Minister Harper: And your other plan was about Atlantic Canada?

Reporter: [Inaudible].

Prime Minister Harper: Our which, sorry?

Reporter: [Inaudible].

Prime Minister Harper: Yeah, look. Time will tell. As I said, I think public pressure will rise. I know that some in Atlantic Canada, some premiers and others have argued this gives us more weight in parliament. This protects the number of seats we have in the House of Commons. Let's be clear about this. The number of senators you have today in the current institution gives no real weight in parliament. Decisions are made for all practical purposes in the House of Commons. Secondly T argument that some provinces back, P.E.I. For instance, I've heard this, well the number of senators protects the number of seats we have in the house of commons. That is not actually true. The number of seat prospected in the house of commons is based on senate representation in 1982, It doesn't matter whether the senate exists in 2082. Those numbers are protected regardless of whether the senate exists. As I say, those who are advocating keep the senate, but they don't propose any way of reform, I think they're going to have an increasing problem making that argument. You can't be both against abolition and against reform. The one thing we know Canadians will not support, this government will never support, is simply keeping a sa status quo senate.

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Centre des médias / Media Centre
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This is Exhibit "C" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

15

Government of Canada / Gouvernement du Canada

Canada

Democratic Institutions

Government Announces Immediate Senate Reform

Ottawa, Ontario, December 3, 2015 - In order to bring real change to the Senate, the Honourable Maryam Monsef, Minister of Democratic Institutions, with the Honourable Dominic LeBlanc, Leader of the Government in the House of Commons, announced today the establishment of a new, non-partisan, merit-based process to advise on Senate appointments.

Under the new process, an Independent Advisory Board on Senate Appointments will be established to provide advice to the Prime Minister on candidates for the Senate. The Independent Advisory Board will be guided by public, merit-based criteria, in order to identify Canadians who would make a significant contribution to the work of the Senate. The criteria will help ensure a high standard of integrity, collaboration, and non-partisanship in the Senate.

The Government is moving quickly to reform the Senate, recognizing its fundamental role in the representation of regional and minority interests in the legislative process. The new, independent appointments process will contribute to creating a less partisan and more effective institution to serve Canadians.

The new appointments process will be implemented in two phases. In the transitional phase, five appointments will be made early in 2016 to immediately reduce partisanship in the Senate and improve the representation of the provinces with the most vacancies (i.e., Manitoba, Ontario and Quebec). A permanent process will then be implemented with further enhancements to replenish the remaining vacancies, and will include an application process open to all Canadians.

As part of demonstrating its commitment to the new appointments process, the Government will seek to appoint a Representative from among the initial, independent appointees. This person would work within existing Senate rules to ensure Senate business can be effectively coordinated in a new Parliament.

Quotes

"Government must always stay focused on serving Canadians and solving their problems. Canadians have been clear: the Senate needs real change, and we are acting decisively on this commitment. The new, merit-based appointment process will reduce partisanship in the Senate, improve its capacity to serve Canadians, and help restore public confidence."

The Honourable Maryam Monsef, Minister of Democratic Institutions

"We need to end the partisan nature of the Senate, and the new, merit-based appointments will help to bring real change to the Senate. Canadians voted for new leadership and a new tone in Ottawa, and the Government looks forward to working with all Senators to implement our positive plan for a strong and growing middle class."

The Honourable Dominic LeBlanc, Leader of the Government in the House of Commons

Quick Facts

- There are currently 22 vacancies in the Senate. Ontario, Quebec and Manitoba have the largest number of vacancies.

- Under the Constitution, the Governor General appoints individuals to the Senate. By convention, Senators are appointed on the advice of the Prime Minister.

Related Products

- Backgrounder
- Annex: Qualifications and Merit-Based Assessment Criteria
- Frequently Asked Questions

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- News Releases

17

This is Exhibit "D" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

Government of Canada / Gouvernement du Canada

Canada

Democratic Institutions

Backgrounder - Senate Appointments Process

The Senate of Canada plays a fundamental role in the legislative process, providing sober, second thought complementary to the elected House of Commons. The Senate also plays a key role in the representation of regions and minorities.

Under the Constitution, the Governor General has the power to appoint Senators, and by convention this power is exercised on the advice of the Prime Minister. The Constitution specifies the requirements for appointment. The constitutional roles, qualifications and fundamental functions of the Senate will be maintained under the new, non-partisan, merit-based appointment process.

There are currently 22 vacancies in the Senate. The provinces with the largest number of vacancies are Ontario (seven of 24 seats), Quebec (six of 24 seats) and Manitoba (three of six seats).

The Independent Advisory Board on Senate Appointments

An Independent Advisory Board on Senate Appointments will be established to provide the Prime Minister with a non-binding shortlist of nominees. The Advisory Board will be guided by **merit-based criteria** in evaluating all candidates. The criteria are set out in the annex.

The Advisory Board will be composed of five members appointed by the Prime Minister. This includes three federal members serving for terms of two years, one of which will be appointed as Chair. The initial appointments would vary in length to permit the staggering of terms in the future: the Chair would be appointed for 30 months, and the other two permanent members for terms of 24 and 18 months respectively.

The federal members will be joined by two *ad hoc* members, each serving for one-year terms, from the province or territory of the vacancy(ies) to be filled. Advisory Board members will have knowledge of the legislative process and the Senate's role, be able to conduct their work in a non-partisan manner, and to the extent possible, be representative of Canadian society.

Implementation

The new appointments process will be implemented in two phases. To **reduce partisanship and increase provincial representation** in the Senate in the early stages of the new Parliament, a transitional process will be established to provide advice to the Prime Minister on the selection of five new appointees from the provinces with the most vacancies: two from Manitoba, two from Ontario, and one from Quebec. These initial appointments will happen in early 2016. During the transitional phase, the Advisory Board will be required to consult broadly in order to solicit high-quality candidates from within the province. This would include consultations with, for example, local community and Indigenous organizations, elected leaders in the community, and others.

The remaining vacancies will be filled later in 2016 as part of a permanent process. Enhancements will be implemented to the appointments process at this time, including **a newly-launched application process** that will allow individual Canadians to apply for appointment to the Senate, as well as broader consultations to inform the Independent Advisory Board members. Further adjustments will be brought to the appointments process, taking into consideration the lessons learned and comments received during the transitional phase.

In both phases, the composition of the Advisory Board (i.e., three federal members and two *ad hoc* members from the province or territory of vacancy) and the merit-based criteria for evaluating Senate

candidates will be the same. The Advisory Board will be asked to submit a public report within three months of the completion of each cycle of appointments. For example, it would submit a report after the transitional process, after the process initiated to fill the remaining 17 vacancies, and after it is convened by the Prime Minister in a subsequent cycle to fill a defined set of future vacancies.

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Canada

This is Exhibit "E" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

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PC Number: 2016-0011
Date: 2016-01-19

Whereas the Senate of Canada has the constitutional responsibility to provide sober second thought in the legislative process in a manner that complements the House of Commons as the democratically-elected chamber;

Whereas the Government of Canada is committed to an independent, non-partisan and merit-based process that identifies Canadians who would make a significant contribution to the work of the Senate, have the ability to act independently of partisanship and patronage, reflect a diversity of backgrounds and expertise and would represent the interests of Canada's regions and minorities;

Whereas an independent advisory board will provide non-binding, merit-based recommendations to the Prime Minister on Senate nominations, without interfering with the constitutional powers of the Governor General to appoint senators on the advice of the Prime Minister;

And whereas the members of the independent advisory board are to be appointed under paragraph 127.1(1)(*c*) of the *Public Service Employment Act* as special advisers to the Prime Minister;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Prime Minister, establishes the Independent Advisory Board for Senate Appointments, the mandate of which as well as the terms and conditions of appointment of the members of the Board are set out in the schedule to this Order.

Attendu que le Sénat du Canada a la responsabilité constitutionnelle d'être un lieu de réflexion indépendante, sereine et attentive en ce qui concerne le processus législatif d'une manière qui est complémentaire à la Chambre des communes élue de façon démocratique;

Attendu que le gouvernement du Canada s'est engagé à mettre en place un processus indépendant, non-partisan et fondé sur le mérite qui identifierait des Canadiens et des Canadiennes qui pourraient contribuer de manière considérable au travail du Sénat, être capables d'agir indépendamment de tout intérêt partisan et favoritisme, refléter une diversité d'expériences et de compétences et représenter les intérêts des régions du Canada et des groupes minoritaires;

Attendu qu'un comité consultatif indépendant fournira au premier ministre des recommandations non contraignantes fondées sur le mérite en ce qui concerne les nominations au Sénat, sans porter atteinte au pouvoir constitutionnel du gouverneur général de nommer les sénateurs sur recommandation du premier ministre;

Attendu que les membres de ce comité doivent être nommés à titre de conseillers spéciaux du premier ministre en vertu de l'alinéa 127.1(1)*c*) de la *Loi sur l'emploi dans la fonction publique*,

À ces causes, sur recommandation du premier ministre, Son Excellence le Gouverneur général en conseil constitue le Comité consultatif indépendant sur les nominations au Sénat, dont le mandat et les modalités de nomination sont précisés à l'annexe ci-jointe.

[Return to Search]

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20

Government of Canada / Gouvernement du Canada

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Privy Council Office

PC Number: 2016-0011
Date: 2016-01-19

SCHEDULE

Mandate of the Independent Advisory Board for Senate Appointments and Terms and Conditions of Appointment of Members

Mandate

1 The Independent Advisory Board for Senate Appointments ("Advisory Board") is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Senate nominations.

Composition of the Advisory Board

2 (1) Members of the Advisory Board are appointed pursuant to paragraph 127.1(1)(c) of the *Public Service Employment Act* as special advisers to the Prime Minister.
(2) The Advisory Board is to consist of
(a) three permanent federal members ("federal members"), one of which is to be appointed as Chairperson; and
(b) two *ad hoc* members chosen from each of the provinces or territories where a vacancy is to be filled ("provincial members").
(3) The federal members must participate in deliberations relating to all existing and anticipated Senate vacancies.
(4) The provincial members must participate only in deliberations relating to existing and anticipated Senate vacancies in their respective province or territory.

Length of Advisory Board Terms

3 (1) The federal members of the Advisory Board are to be appointed for two-year terms. Provincial members are to be appointed for terms not exceeding one year.
(2) Despite subsection (1), the initial appointments of the federal members will vary in length in order to permit the staggering of terms, as follows:
(a) the term of the first Chairperson is 30 months;
(b) the terms of each of the first two other federal members are 24 months and 18 months respectively.
(3) The terms of Advisory Board members may be renewed.
(4) The Advisory Board is to be convened at the discretion and on the request of the Prime Minister who may establish, revise or extend any of the timelines set out in this mandate.

Support

4 The Advisory Board is to be supported by the Privy Council Office. The head of the Senior Personnel Secretariat, or his or her delegate, acts as an *ex officio* secretary to the Advisory Board.

Recommendations

5 In accordance with the terms of this mandate, the Advisory Board must provide to the Prime Minister for his consideration, within the time period set by the Prime Minister upon the convening of the Advisory Board, a list of five qualified candidates for each vacancy in the Senate with respect to each province or territory for which there is a vacancy or anticipated vacancy and for which the Advisory Board has been convened. The Prime Minister may take into consideration all of the qualified candidates with respect to all vacancies for that province or territory.

Recommendation Process

6 The members of the Advisory Board must:
(a) at all times, observe the highest standards of impartiality, integrity and objectivity in their consideration of all potential candidates;
(b) meet at appropriate intervals to set out its agenda, assess candidates, and engage in deliberations;
(c) apply fairly and with consistency the criteria provided by the Prime Minister in assessing whether potential candidates meet the qualifications, including those set out in the *Constitution Act, 1867*, for Senate appointments;
(d) interview potential candidates, at the Advisory Board's discretion, and verify any references provided by potential candidates;
(e) in establishing a list of qualified candidates, seek to support the Government of Canada's intent to achieve gender balance and to ensure representation of Indigenous peoples and linguistic, minority and ethnic communities in the Senate; and
(f) comply with the *Privacy Act*, the *Conflict of Interest Act*, and the *Ethical and Political Activity Guidelines for Public Office Holders*.

7 (1) The members of the Advisory Board must declare any direct or indirect personal interest or professional or business relationship in relation to any candidate if such an interest or relationship could reasonably be considered to represent an actual or perceived conflict of interest.
(2) The declaration set out in subsection (1) must include a statement as to any gifts or hospitality received by the member from the candidate.
(3) If such a declaration is made, the Advisory Board must decide, having regard to the nature of the relationship, if the member must withdraw from any deliberation about the candidate.
(4) If the Advisory Board decides that the member must withdraw from any deliberation in relation to a candidate, those deliberations are undertaken by the remaining members of the Advisory Board, provided the number of members is not less than three.

Consultations

8 (1) In this mandate, "transitional process" means the initial recommendations to be made by the Advisory Board in early 2016 for the appointment of five Senators in order to fill two vacancies in Ontario, one in Quebec and two in Manitoba.
(2) Under the transitional process, the Advisory Board must undertake consultations, which could include groups which represent Indigenous peoples and linguistic, minority and ethnic communities, provincial, territorial and municipal organizations, labour organizations, community-based service groups, arts councils, and provincial or territorial chambers of commerce, in order to ensure that a diverse slate of individuals, with a variety of backgrounds, skills, knowledge and experience desirable for a well-functioning Senate are brought forward for the consideration of the Advisory Board.
9 Subsequent to the transitional process, an open application process is to be established to allow Canadians to apply for appointment to the Senate.
10 Advisory Board members may travel for the purpose of performing their functions, including for meeting with candidates and individuals or groups as part of their consultations.

Confidentiality

11 (1) All personal information provided to, and deliberations of, the Advisory Board are confidential and must be treated in accordance with the provisions of the *Privacy Act*.
(2) Any records created or received by the Advisory Board members that are under the control or will be under the control of the Privy Council Office are subject to the *Access to Information Act* and the *Privacy Act*.
(3) The members of the Advisory Board must maintain as confidential any information brought before them in the conduct of their work.
(4) Members of the Advisory Board must sign a confidentiality agreement as a precondition of their appointment.

12 No candidate is to be named publicly without their prior written consent.

Reporting

13 (1) Within three months after submitting the names of qualified candidates to the Prime Minister, under the transitional process and following each subsequent appointment process, the Advisory Board must provide a report, in both official languages, to the Prime Minister that contains information on the process, including on the execution of the terms of reference, the costs relating to the Advisory Board's activities and statistics relating to the applications received.
(2) In addition, the report may provide recommendations for improvements to the process.
(3) The report must be made public.

ANNEXE

Mandat du Comité consultatif indépendant sur les nominations au Sénat et modalités de nomination des membres

Mandat

1 Le Comité consultatif indépendant sur les nominations au Sénat (le « Comité consultatif ») est un organisme indépendant et non partisan qui a pour mandat de fournir au premier ministre des recommandations non contraignantes fondées sur le mérite en ce qui concerne les nominations au Sénat.

Composition du Comité consultatif

2 (1) Les membres du Comité consultatif sont nommés à titre de conseillers spéciaux du premier ministre en vertu de l'alinéa 127.1(1)c) de la *Loi sur l'emploi dans la fonction publique*.
(2) Le Comité consultatif est composé :
a) de trois membres permanents fédéraux (« membres fédéraux »), dont l'un est nommé président;
b) de deux membres *ad hoc* provenant de chacune des provinces et de chacun des territoires pour lesquels les sièges sont à pourvoir (« membres provinciaux »).
(3) Les membres fédéraux participent aux délibérations liées à tous les sièges vacants ou qui le deviendront.
(4) Les membres provinciaux participent uniquement aux délibérations liées aux sièges vacants ou qui le deviendront dans leur province ou territoire.

Durée des mandats

3 (1) Les membres fédéraux sont nommés pour un mandat de deux ans et les membres provinciaux sont nommés pour un mandat maximal d'un an.
(2) Malgré le paragraphe (1), la durée des mandats des premiers membres fédéraux sont les suivants, afin de permettre l'échelonnement des mandats :
a) le premier président a un mandat de trente mois;

b) en ce qui concerne les deux autres premiers membres fédéraux, l'un a un mandat de 24 mois et l'autre, un mandat de 18 mois.
(3) Le mandat des membres du Comité consultatif peut être renouvelé.
(4) Le Comité consultatif est convoqué à la discrétion et à la demande du premier ministre, qui peut établir, revoir ou reporter les échéances établies dans le mandat.

Soutien

4 Le Comité consultatif reçoit le soutien du Bureau du Conseil privé. Le chef du Secrétariat du personnel supérieur ou son délégué agit d'office comme secrétaire du Comité consultatif.

Recommandations

5 Conformément au présent mandat, le Comité consultatif soumet à l'examen du premier ministre, dans la période que ce dernier précise lors de la constitution du Comité consultatif, une liste de cinq candidats qualifiés pour chaque siège qui est vacant au Sénat ou qui le deviendra à l'égard d'une province ou d'un territoire et pour lequel le Comité consultatif a été constitué. Le premier ministre peut évaluer l'ensemble des candidats qualifiés à l'égard de tous les postes vacants pour cette province ou ce territoire.

Processus de recommandation

6 Les membres du Comité consultatif :
a) respectent en tout temps les normes les plus strictes d'impartialité, d'intégrité et d'objectivité dans l'examen des candidatures;
b) se rencontrent à une fréquence appropriée pour établir l'ordre du jour, évaluer les candidats et délibérer;
c) appliquent équitablement et uniformément les critères énoncés par le premier ministre afin de déterminer si les candidats possèdent les qualifications nécessaires pour être nommés au Sénat, y compris celles prévues par la *Loi constitutionnelle de 1867*;
d) convoquent, à leur discrétion, les candidats en entretien et vérifient les références fournies par ceux-ci;
e) pour établir la liste de candidats qualifiés, cherchent à appuyer le gouvernement du Canada dans son intention d'atteindre l'équilibre entre hommes et femmes et d'assurer la représentation des peuples autochtones et des groupes linguistiques, minoritaires et culturels au Sénat;
f) respectent la *Loi sur la protection des renseignements personnels*, la *Loi sur les conflits d'intérêts* et les *Lignes directrices en matière d'éthique et d'activités politiques à l'intention des titulaires de charge publique*.

7 (1) Les membres du Comité consultatif doivent déclarer tout intérêt personnel et toute relation professionnelle ou d'affaires, qu'ils soient directs ou indirects, à l'égard de tout candidat, s'il est raisonnable de croire que cet intérêt ou cette relation pourrait constituer un conflit d'intérêts réel ou une apparence de conflit d'intérêts.
(2) La déclaration visée au paragraphe (1) fait état de tout cadeau ou marque d'hospitalité reçus du candidat.
(3) En cas de telle déclaration, le Comité consultatif décide, selon la nature de la relation, si le membre doit se retirer de toute délibération concernant le candidat.
(4) Si le Comité consultatif décide que le membre doit se retirer de toute délibération concernant le candidat, ces délibérations sont entreprises par les autres membres du Comité consultatif, à condition qu'ils soient au moins trois.

Consultations

8 (1) Dans le présent mandat, le « processus de transition » vise les premières recommandations formulées par le Comité consultatif au début de 2016 en vue de la nomination de cinq sénateurs pour

pourvoir à deux sièges vacants en Ontario, un siège vacant au Québec et deux sièges vacants au Manitoba.
(2) Dans le cadre du processus de transition, le Comité consultatif mène des consultations, lesquelles peuvent être menées auprès de groupes qui représentent les peuples autochtones, de groupes linguistiques, minoritaires et culturels, d'organisations provinciales, territoriales et municipales, d'organisations syndicales, de groupes de service communautaire, de conseils des arts et de chambres de commerce provinciales et territoriales, pour veiller à ce qu'un éventail de personnes d'horizons variés et possédant les compétences, les connaissances et l'expérience voulues pour assurer le bon fonctionnement du Sénat soient soumises à l'examen du Comité consultatif.

9 Une fois le processus de transition terminé, un processus de sélection ouvert sera mis en place afin de permettre aux Canadiens et aux Canadiennes de présenter leur candidature au Sénat.

10 Les membres du Comité consultatif peuvent voyager pour remplir leur mandat, notamment pour rencontrer des candidats, des individus ou des groupes dans le cadre des consultations.

Confidentialité

11 (1) Les délibérations du Comité consultatif ainsi que tous les renseignements personnels qui lui sont communiqués sont confidentiels et sont traités conformément à la *Loi sur la protection des renseignements personnels*.
(2) Tout document créé ou reçu par un membre du Comité consultatif et qui est ou devient sous le contrôle du Bureau du Conseil privé est assujetti à la *Loi sur l'accès à l'information* et à la *Loi sur la protection des renseignements personnels*.
(3) Les membres du Comité consultatif assurent la confidentialité de tout renseignement dont ils sont saisis dans l'exercice de leurs fonctions.
(4) La signature d'une entente de confidentialité est une condition préalable à la nomination des membres du Comité consultatif.

12 Les noms des candidats ne sont pas annoncés publiquement sans le consentement écrit des candidats concernés.

Rapport

13 (1) Dans les trois mois suivant la remise des noms de candidats qualifiés au premier ministre dans le cadre du processus de transition et suivant chaque processus de nomination subséquent, le Comité consultatif lui présente un rapport dans les deux langues officielles, contenant de l'information sur le processus, notamment sur l'exécution du mandat, sur les frais liés aux activités, et sur les statistiques relatives aux candidatures reçues.
(2) En outre, le rapport peut contenir des recommandations visant à améliorer le processus.
(3) Le rapport est rendu public.

[Return to Search]

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Government of Canada / Gouvernement du Canada

Democratic Institutions

Minister of Democratic Institutions Announces Establishment of the Independent Advisory Board for Senate Appointments

Ottawa, Ontario, January 19, 2016 - The Honourable Maryam Monsef, Minister of Democratic Institutions, today announced the establishment of the Independent Advisory Board for Senate Appointments (Advisory Board).

The Advisory Board will be an independent and non-partisan body whose mandate is to provide the Prime Minister with merit-based recommendations on Senate nominations.

The Board will be chaired by **Ms. Huguette Labelle**, Emeritus Governor of the University of Ottawa, a Companion of the Order of Canada, and a recipient of the Outstanding Achievement Award of the Public Service of Canada.

The following members are being appointed to the Advisory Board:

- **Dr. Indira Samarasekera** as Federal Member – served as the President and Vice-Chancellor of the University of Alberta.
- **Professor Daniel Jutras** as Federal Member – Dean of Law, Full Professor, Wainwright Chair in Civil Law at the Faculty of Law, McGill University.
- **Mr. Murray Segal** as provincial member for Ontario – former Ontario Deputy Attorney General and Ontario Deputy Minister Responsible for Aboriginal Affairs.
- **Dr. Dawn Lavell Harvard** as provincial member for Ontario – President of the Native Women's Association of Canada.
- **Ms. Sylvie Bernier** as provincial member for Quebec – Olympic gold medalist, media contributor and Healthy Lifestyle Ambassador.
- **Dr. Yves Lamontagne** as provincial member for Quebec – an accomplished psychiatrist and leading figure in the field of medicine.
- **Ms. Susan Lewis** as provincial member for Manitoba – worked for over 40 years with the United Way of Winnipeg, including as President from 1985 to 2014.
- **Ms. Heather Bishop** as provincial member for Manitoba – an accomplished musician/singer-songwriter, independent recording artist, and entrepreneur.

The establishment of the Advisory Board is the first step in the Government's comprehensive plan to create a new and non-partisan process to provide the Prime Minister with non-binding recommendations on Senate appointments. The Board will undertake broad consultations within the three provinces with the greatest number of vacancies in the Senate. It is hoped that five vacancies (two in Manitoba, two in Ontario and one in Quebec) will be filled by early 2016.

The permanent process will be established later in 2016 and will include an application process open to all Canadians. The Advisory Board will be guided by public, merit-based criteria, in order to identify Canadians who would make a significant contribution to the work of the Senate – with the end goal of ensuring a high standard of integrity, collaboration, and non-partisanship in the Senate.

Quotes

"The Government is acting rapidly to reform the Senate. I am very pleased to establish this important new Advisory Board, and it is truly inspiring that such eminent Canadians have agreed to serve on it. The new, independent process will help inject a new spirit of non-partisanship into the Senate. I believe that this new process will immediately begin to restore the confidence of Canadians in an institution that plays an essential role in our parliamentary system."
--Hon. Maryam Monsef, Minister of Democratic Institutions

Quick Facts

- There are currently 22 vacancies in the Senate. Ontario, Quebec and Manitoba have the largest number of vacancies.
- Under the Constitution, the Governor General appoints individuals to the Senate. By convention, Senators are appointed on the advice of the Prime Minister.

Related Products

- Biographical notes on the Members of the Advisory Board
- Terms of Reference for the Advisory Board
- Frequently Asked Questions

For further information on the Advisory Board and the new process to advise on Senate appointments, please refer to the News Release and Backgrounder (with "Annex: Qualifications and Merit-Based Assessment Criteria"), released on December 3, 2015.

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Categories:

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Frequently Asked Questions

General information

Why is the Government introducing a new, independent Senate appointment process?

The Government is acting on its commitment to create a new, non-partisan, merit-based process for Senate appointments in order to end the partisan nature of the Senate, which has affected its reputation and effectiveness over recent years. Despite the good work of many past and current Senators, Canadians have been clear that the Senate needs to change.

A phased-in approach to the process will permit that change to begin now and to learn from the transitional phase before opening up the permanent process more broadly.

What is the new independent process for Senate appointments?

The Independent Advisory Board for Senate Appointments has been established to provide advice to the Prime Minister on candidates for Senate appointments.

The new appointments process will be implemented in two phases. During the immediate transitional phase, five vacancies will be filled from the provinces with the most vacancies (two from Manitoba, two from Ontario, and one from Quebec) by early 2016. The permanent process will be established later in 2016 and will include an application process open to all Canadians.

Does this process require a constitutional amendment?

No. Under the Constitution, the power to appoint Senators rests with the Governor General. By constitutional convention, the Governor General's power is exercised on the advice of the Prime Minister.

The Independent Advisory Board will be preparing a non-binding short-list for the Prime Minister's consideration for each vacancy to be filled.

Are the provinces and territories included in the process?

Two of the five Advisory Board members will be selected from the province or territory in which a vacancy arises. For the transitional process, the provinces have been consulted on provincial members for the Advisory Board.

How many vacancies are to be filled?

As of January 2016, there are 22 vacancies in the Senate from seven provinces (British Columbia, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Prince Edward Island). Manitoba, Ontario, and Quebec have the most vacancies and their representation will be improved as part of the transitional process.

It is hoped that five vacancies in those provinces will be filled under the transitional process by early 2016. The remaining 17 vacancies will be filled later in 2016.

Why is a transitional process being established to fill vacancies in Ontario, Manitoba, and Quebec?

Ontario, Manitoba, and Quebec have the greatest number of vacancies in proportion to their seats in the Senate. The first set of appointments to the Senate will bring those provinces up to a level of representation comparable to the other provinces with vacancies.

Can I apply to become a Senator?

During the current transitional phase, the Advisory Board will consult within Manitoba, Ontario and Quebec in order to seek candidates for the Senate. This could include consultations with groups which represent Indigenous peoples and linguistic, minority and ethnic communities, provincial, territorial and municipal organizations, labour organizations, community-based service groups, arts councils, and provincial or territorial chambers of commerce.

For the permanent process to be launched later in 2016, individual Canadians can apply. A webpage will outline how Canadians may submit applications for consideration by the Advisory Board. Applicants must meet the published criteria to be considered by the Advisory Board.

What are the requirements to become a Senator?

The Constitution provides for qualifications with respect to citizenship, age, property, and residence.

In addition, the Advisory Board will review candidates against a transparent and published set of merit-based criteria.

Are the Board's recommendations to the Prime Minister binding?

No. The decision to recommend to the Governor General persons for appointment to the Senate rests with the Prime Minister.

What will happen once the Advisory Board provides its recommendations to the Prime Minister?

The Prime Minister will take into consideration the names recommended by the Advisory Board and recommend to the Governor General persons for appointment to the Senate.

A permanent process will then be launched later in 2016 with further enhancements. We will also consider the lessons learned and comments received during the transitional phase and on an ongoing basis. The permanent process will include an application process open to all Canadians.

The Independent Advisory Board for Senate Appointments

What is the mandate of the Independent Advisory Board for Senate Appointments?

The Independent Advisory Board for Senate Appointments is an independent and non-partisan body whose mandate is to provide non-binding, merit-based recommendations to the Prime Minister on Senate nominations.

What is the role of the Independent Advisory Board for Senate Appointments?

During the transitional phase, the Advisory Board will consult within the province of vacancy in order to seek candidates for the Senate. These consultations will be undertaken to ensure that a diverse slate of individuals, with a variety of backgrounds, skills, knowledge and experience desirable for a well-functioning Senate are brought forward for the consideration of the Advisory Board.

Subsequent to the transitional process, an open application process is to be established to allow Canadians to apply for appointment to the Senate.

The Advisory Board will assess potential candidates based on public, merit-based criteria, in order to identify Canadians who would make a significant contribution to the work of the Senate. The criteria will help ensure a high standard of integrity, collaboration, and non-partisanship in the Senate.

How many members will sit on the Advisory Board?

The Advisory Board has five members: a federal Chair and two other federal members and two *ad hoc* provincial or territorial members for the province or territory where a vacancy is being filled.

How are members appointed to the Advisory Board?

For the transitional process, the Governor in Council, on the recommendation of the Prime Minister, has appointed the three federal members. The two provincial members of the Advisory Board from Ontario, Quebec, and Manitoba were appointed following consultations with those provinces.

During the permanent process, broad consultations will be undertaken in order to inform the appointment of Independent Advisory Board members.

How long is each member's term?

Federal members of the Advisory Board will each serve for two year terms and the provincial or territorial members will each serve for one year terms. However, the initial terms of the first federal members appointed will vary to avoid turnover of all members at the same time in the future. The initial terms are 30 months, 24 months, and 18 months respectively.

May a member's term be renewed?

Yes.

How many names will the Board recommend to the Prime Minister for each Senate vacancy?

Five.

How can Canadians engage with the Advisory Board and what will the Advisory Board do to reach out to Canadians?

During the transitional phase, the Advisory Board will undertake broad consultations within the province of vacancy to ensure that a diverse slate of individuals, with a variety of backgrounds, skills, knowledge and experience desirable for a well-functioning Senate are brought forward for the consideration of the Advisory Board. This could include consultations with groups which represent Indigenous peoples and linguistic, minority and ethnic communities, provincial, territorial and municipal organizations, labour organizations, community-based service groups, arts councils, and provincial or territorial chambers of commerce.

Subsequent to the transitional process, an open application process will be established to allow Canadians to apply to the Advisory Board for appointment to the Senate.

Are members of the Advisory Board paid?

Advisory Board members are entitled to a per diem rate which is consistent with the Remuneration Guidelines for Part-Time Governor in Council Appointees in Agencies, Boards and Commissions. This per diem range is $375-450 for members and $550-$650 for the Chairperson.

What is the timeline for the Advisory Board to provide its recommendations to the Prime Minister?

Under the transitional process, it is expected that the Advisory Board will provide its recommendations to the Prime Minister in late February 2016. Appointments should be made shortly thereafter to immediately reduce partisanship in the Senate and improve the representation of the provinces with the most vacancies. The remaining vacancies will be filled later in 2016 through the permanent process.

This is Exhibit "I" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

PRIME MINISTER ANNOUNCES INTENTION TO RECOMMEND THE APPOINTMENT OF SEVEN NEW SENATORS

Ottawa, Ontario – 18 March 2016

The Prime Minister, Justin Trudeau, today announced that he will recommend the appointment of seven new Senators to the Governor General. The new, independent Senators will fill two vacancies in Manitoba, three in Ontario, and two in Quebec.

The following are the individuals who will be recommended for appointment to the Senate:

- **Raymonde Gagné (Manitoba)** (/eng/news/2016/03/18/biographical-notes#Raymonde_Gagné)
- **Justice Murray Sinclair (Manitoba)** (/eng/news/2016/03/18/biographical-notes#Murray_Sinclair)
- **V. Peter Harder (Ontario)** (/eng/news/2016/03/18/biographical-notes#Peter_Harder)
- **Frances Lankin (Ontario)** (/eng/news/2016/03/18/biographical-notes#Frances_Lankin)
- **Ratna Omidvar (Ontario)** (/eng/news/2016/03/18/biographical-notes#Ratna_Omidvar)

PHOTO GALLERY

Prime Minister Justin Trudeau attends the Official Portrait Unveiling Ceremony for the Right Honourable Paul Martin (/eng/photo-gallery/prime-minister-justin-trudeau-attends-official-portrait-unveiling-ceremony-right)

See all photo galleries ... (/eng/photos)

RELATED ITEMS

- **NEWS RELEASES (/ENG/NEWS?FIELD_NEWS_CATEGORY_TID%5B%5D=6970) - 18 MARCH 2016**
  Prime Minister announces intention to recommend the appointment of seven new Senators (/eng/news/2016/03/18/prime-minister-announces-intention-recommend-appointment-seven-new-senators)
- **BACKGROUNDERS (/ENG/NEWS?**

- **Chantal Petitclerc (Quebec)** (/eng/news/2016/03/18/biographical-notes#Chantal_Petitclerc)
- **André Pratte (Quebec)** (/eng/news/2016/03/18/biographical-notes#André_Pratte)

Biographical notes hyperlinked above.

Over the last three months, the Independent Advisory Board for Senate Appointments undertook broad consultations in Manitoba, Ontario, and Quebec – and provided the Prime Minister with a number of non-binding recommendations. From that pool of candidates, the Prime Minister selected the seven new Senators he will recommend to the Governor General.

The Prime Minister also announced today that he intends to appoint V. Peter Harder as Government Representative in the Senate. Mr. Harder will act as the Government's Representative in the Senate in order to facilitate the introduction and consideration of Government legislation, and would be sworn in as a Privy Councillor.

The new independent Senators will be expected to make a significant contribution to the work of the Senate, and to contribute to the ultimate goal that ensures a high standard of integrity, collaboration, and non-partisanship.

Quotes

"The Government is today taking further concrete steps to follow through on its commitment to reform the Senate, restore public trust, and bring an end to partisanship in the appointments process."
– Rt. Hon. Justin Trudeau, Prime Minister of Canada

"The Senate appointments I have announced today will help advance the important objective to transform the Senate into a less partisan and more independent institution that can perform its fundamental roles in the legislative process more effectively–including the representation of regional and minority interests–by removing the element of partisanship, and ensuring that the interests of Canadians are placed before political allegiances."
– Rt. Hon. Justin Trudeau, Prime Minister of Canada

Quick Facts

FIELD_NEWS_CATEGORY_TID%5B%5D=6974) - 18 MARCH 2016
Biographical notes (/eng/news/2016/03/18/biographical-notes)

IMPORTANT LINKS

ALBERTA WILDFIRES – GET THE LATEST
(https://www.canada.ca/en/services/policing/alberta-wildfires.html?utm_source=PS&utm_medium=canada-carousel&utm_campaign=Alta-wldfrs)

CANADIAN CONTENT IN DIGITAL WORLD
(http://canada.pch.gc.ca/eng/1460573328032)

CLIMATE CHANGE ENGAGEMENT
(http://letstalkclimateaction.ca/ideas)

FOLLOW @CANADIANPM ON TWITTER
(https://twitter.com/canadianpm)

- Taking today's announcements into account, there are 17 vacancies in the Senate. Up until today's announcements, Manitoba, Ontario and Quebec have had the largest number of vacancies.
- Under the Constitution, the Governor General appoints individuals to the Senate. By convention, Senators are appointed on the advice of the Prime Minister.
- The Advisory Board, which recommended these individuals to the Prime Minister, is an independent and non-partisan body whose mandate is to provide the Prime Minister with merit-based recommendations on Senate nominations. The Prime Minister thanked the Advisory Board for all of its extensive and diligent work to consult widely, assess, and recommend these eminent individuals for appointment to the Senate.

Related Product

- (/eng/news/2016/03/18/biographical-notes#André_Pratte)Biographical notes (/eng/news/2016/03/18/biographical-notes)

Associated Link

- For further information on the new Senate appointments process and the Advisory Board, please refer to the news releases and related background materials released on January 19, 2016 and December 3, 2015 and available at http://www.democraticinstitutions.gc.ca/ (http://www.democraticinstitutions.gc.ca/)

RETURN TO NEWS (/ENG/NEWS)

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Media Advisories (/eng/news?field_news_category_tid%5B%5D=6975)
The Briefing Room (/eng/news?field_news_category_tid%5B%5D=6976)
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(https://www.canada.ca/en.html)

INDEPENDENT ADVISORY BOARD FOR SENATE APPOINTMENTS

This is Exhibit "J" referred to in the affidavit of Lyse Cantin sworn before me at Vancouver this 12th day of May 20 16

Transitional Process Report

MARCH 31, 2016

Report of the Independent Advisory Board for Senate Appointments
Transitional Process (January – March 2016)

The Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington Street
Ottawa, ON
K1A 0A2

March 31, 2016

Dear Prime Minister,

Pursuant to our Terms of Reference, the Independent Advisory Board for Senate Appointments submits to you this report about the transitional process for providing recommendations for appointments to the Senate of Canada. We thank you for your confidence and for the opportunity to serve such an important process.

Respectfully,

Huguette Labelle
Chair

Federal members:
Daniel Jutras
Indira Samarasekera

Ontario members:
Dawn Lavell Harvard
Murray Segal

Manitoba members:
Heather Bishop
Susan Lewis

Quebec members:
Sylvie Bernier
Yves Lamontagne

Report of the Independent Advisory Board for Senate Appointments Transitional Process (January – March 2016)

1. Introduction

This report has been prepared pursuant to paragraph 13 of the Terms of Reference of the Independent Advisory Board for Senate Appointments (Advisory Board) which states:

> ***Reporting***
>
> **13 (1)** Within three months after submitting the names of qualified candidates to the Prime Minister, under the transitional process and following each subsequent appointment process, the Advisory Board must provide a report, in both official languages, to the Prime Minister that contains information on the process, including on the execution of the terms of reference, the costs relating to the Advisory Board's activities and statistics relating to the applications received.
> **(2)** In addition, the report may provide recommendations for improvements to the process.
> **(3)** The report must be made public.

This is the first report of the Advisory Board and covers the "transitional process" described in the Terms of Reference.

2. Establishment of the Advisory Board and the Transitional Process

The Independent Advisory Board for Senate Appointments was established January 19, 2016

The Advisory Board is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Senate nominations.

The Advisory Board was established by the Governor in Council (GIC) on January 19, 2016 (Order in Council PC 2016-0011). The Terms of Reference for the Advisory Board were also approved by the GIC and made public through the same Order in Council. Members of the Advisory Board are appointed pursuant to paragraph 127.1(1)(c) of the *Public Service Employment Act* as special advisers to the Prime Minister.

The Minister of Democratic Institutions (the Minister) announced the establishment of the Advisory Board and the appointment of the members on January 19, 2016 by issuing a News Release (see Annex A for News Release, biographical notes on members and Terms of Reference).

The Advisory Board is to consist of: three permanent federal members, one of which is to be appointed as Chairperson, and two *ad hoc* members chosen from each of the provinces where a vacancy is to be

filled. The federal members are to participate in deliberations related to all vacancies, whereas the *ad hoc* members are to participate in deliberations related to vacancies in their respective province. The initial appointment duration of the federal members varied to allow the staggering of terms (30 months for Chairperson, 24 months for one member and 18 months for the other). *Ad hoc* members were appointed for a period of one year. Members' terms can be renewed. For the transitional process, provinces were consulted on provincial members of the Advisory Board.

The Terms of Reference defined the transitional process as the "initial recommendations to be made by the Advisory Board in early 2016 for the appointment of five Senators in order to fill two vacancies in Ontario, one in Quebec and two in Manitoba." The Prime Minister exercised his prerogative in recommending the appointment of a higher number of Senators than had been originally planned.

Subsequent to the transitional process, an open application process is to be established for individuals to apply for appointment to the Senate (permanent process).

3. Meetings of the Advisory Board

We held three in-person meetings in Ottawa during the transitional process, as well as numerous teleconferences. The first in-person meeting served to orient members to their role and mandate, to provide information on the Senate (composition, demographics, etc), and to discuss the parameters of the transitional process. Subsequent meetings were held to discuss issues, to provide updates on the status of activities, to prepare this report, and to get ready for the next phase. The use of teleconferences between in-person meetings allowed the members to interact regularly in a cost-efficient manner.

As noted in the Terms of Reference, the Advisory Board is supported by the Privy Council Office (PCO) and the head of the Senior Personnel Secretariat (or his/her delegate) acts as the *ex officio* secretary to the Advisory Board. For the transitional process, the Assistant Secretary to Cabinet (Senior Personnel) fulfilled this role.

4. Communications, Media and Public Affairs

To support the appointment of Senators to the provinces with most vacancies as quickly as possible, the transitional process had a short timeline. Therefore, we undertook our work quickly to define the approach for the transitional process during our first meeting, held on January 21, 2016. We issued a News Release (see Annex B) on January 29, 2016 which announced the launch of the transitional process (Phase 1).

On the same date, we launched a webpage that provided information on the Advisory Board, its purpose/mandate, as well as the Phase 1 approach to nominate candidates for the Senate. The news release and webpage also served to inform Canadians that the nomination process was open to all organizations interested in recommending a worthy candidate for the Senate.

The creation of the Advisory Board and the launch of Phase 1 generated some media interest. Coverage of the Advisory Board over the period was moderate. Coverage was highest at the end of January, shortly following the announcement of the board. Media attention included newspaper articles (print and online) as well as radio interviews.

Finally, pursuant to Standing Orders 110 and 111 of the House of Commons, and a motion adopted on February 18, 2016, the three federal members of the Advisory Board were invited to appear before the Committee on Procedure and House Affairs (PROC) so the members of the committee could study the credentials of the Order in Council appointments. Huguette Labelle appeared on February 4, 2016, Daniel Jutras on February 25, 2016, and Indira Samarasekera on March 8, 2016.

5. Consultations and Outreach

Paragraph 8 of the Terms of Reference directed us to undertake consultations during the transitional process to support the appointment of Senators for Manitoba, Ontario and Quebec. We worked quickly to set an approach to seek the support of organizations in identifying exceptional candidates for the Senate in each of the three provinces where vacancies are to be filled. We undertook significant engagement and outreach with more than 400 national, provincial and local organizations, both rural and urban, which represented Indigenous peoples, women and LGBTQ groups, linguistic, minority and ethnic communities, service groups, educational and academic organizations, as well as groups representing labour and business interests. A full list of the organizations that received a direct email communication from the Advisory Board is included at Annex C. Furthermore, Board members had extensive individual contact with a broad spectrum of individuals and organizations. The vast majority of this engagement and outreach was undertaken in the first week following the launch of the nomination and application process.

> Direct outreach to more than 400 national, provincial and local organizations

These consultations were undertaken to ensure that a diverse slate of individuals, with a variety of backgrounds, skills, knowledge and experience that could contribute to a well-functioning Senate, were nominated for the consideration of the Advisory Board. Approaching organizations with a large member base, as well as those that serve as umbrella groups, allowed a multiplier effect, as many of these associations disseminated the information broadly within their networks and amongst their members. When contacted, organizations seemed genuinely pleased to be included in this concrete demonstration of a new, non-partisan, merit-based process to put forward names of candidates to be considered for Senate appointments.

In addition to these significant efforts to reach a variety of organizations, the Board's webpage and news release served to complement direct outreach efforts. We invited any organization to participate in the nomination process through information disseminated on our webpage. This formal and informal outreach allowed information about the process to be disseminated in manner which supported both top-down and bottom-up approaches for nominations. The outcome of the engagement proved

successful. Furthermore, many of the organizations and individuals communicated their anticipation about the permanent phase and open application process.

6. Nominations and applications

In the first phase, the Board established a requirement that candidates be nominated by an organization to be considered for appointment. The nomination process supported the broad dissemination of our mandate and assisted in the screening of applicants as the nomination forms helped to validate the merits of candidates.

The individual being nominated also had to complete and submit an application form with the required supporting documentation, through which they provided information to confirm their constitutional eligibility, as well as to help us assess merit, per the criteria defined by the Government (see Annex D for Constitutional Requirements and Merit-Based Criteria). Finally, three (3) reference letters were required to attest to the validity of information contained in the application package, as well as the character and suitability of the individual for a position in the Senate.

The application/nomination period was open from January 29, 2016 to February 15, 2016. Application/nomination information was received by email and processed by staff at the Privy Council Office. More than 150 requests for information/inquiries were received from Canadians about the process during this time.

284 candidacies

A total of 284 candidacies were received during the application and nomination period and all were considered by the Advisory Board. Here are a few key facts about the number of candidacies:

- 49% female candidates and 51% male candidates;
- Based on self-identification: 10% Indigenous, 16% visible minorities, 4% persons with a disability;
- 72% Anglophone and 26% Francophone (2% did not specify); and
- 51 candidacies received for Manitoba, 194 candidacies received for Ontario and 39 candidacies received for Quebec.

Additional details and analysis on the candidacies can be found in Annex E.

Given the short timelines for the transitional phase, the application period was made as long as possible, while also allowing a quick turnaround for the processing of candidate information and a suitable review of candidacies, all in compliance with the timeline established by the government. Templates were provided to support individuals in completing their applications and organizations in completing their nominations.

We were very pleased with the number of candidacies, as well as with the high calibre of individuals who were nominated. We have learned that outreach was extremely important and will identify any additional outreach activities that are required moving forward – to target a broad spectrum of

communities. Furthermore, the Board will review the documentation requirements in order to both ensure a straightforward format and to provide an effective basis for the Board to evaluate candidates.

7. Review process

All members performed a complete and thorough review of all candidates submitted for their consideration within the accelerated timeline.

The review process first involved an individual examination of candidacies by Advisory Board members. The federal members reviewed all 284 candidacies, while provincial members reviewed the candidacies from only the province they represented. A merit-based review was completed to assess the suitability of each of the recommended candidates, in accordance with the Terms of Reference, and members identified a list of priority candidates which they deemed best met the criteria. We used the nominations, reference letters, resumes/biographies, and personal statements as the basis for our assessment.

Each provincial Advisory Board (federal and *ad hoc* members from that province) then met to discuss their "shortlists" and to deliberate on the recommendations to the Prime Minister. In discussing their individual assessments, members noted an interesting level of consistency in assessments and in highly-rated candidates. No interviews were conducted as part of the transitional process.

We applied fairly and with consistency the criteria provided by the Prime Minister for Senate appointments in assessing potential candidates against the qualifications, including those set out in the *Constitution Act, 1867*. Decisions were achieved using a consensus approach. Each committee carefully considered a number of additional key factors in making its recommendations, such as gender, diversity, language, age, civic involvement and professional background, as well as the candidate's ability to contribute to the work of the Senate in a non-partisan fashion. The typical due diligence required for candidates seeking public office was undertaken on the proposed list of candidates to confirm their suitability.

8. Recommendation process

In accordance with the Terms of Reference, the Prime Minister set a time period for the production of recommendations when the Advisory Board was convened. For the transitional process, the Prime Minister asked the Advisory Board to provide recommendations by February 25, 2016. This timeframe was respected.

We established a list of five qualified candidates for each vacancy and provided our advice to the Prime Minister, in accordance with the Terms of Reference. Recommended candidates were not prioritized; the proposed candidates were listed in alphabetical order. The advice included a short synopsis detailing the merits of each recommended candidate, as well as more detailed information from their candidacy submission.

Additional due diligence was undertaken to confirm candidates' ability to meet constitutional requirements before appointment to the Senate.

After submitting our recommendations to the Prime Minister, we appreciated the opportunity to participate in a telephone meeting with him. We also were very pleased that the Prime Minister made his recommendations from the list of candidates that we had provided to him.

9. Costs

The costs of Phase 1 relate primarily to travel and personnel (administrative support). Additional costs were minimized as the transitional process was short-term in nature and, as such, could rely heavily on existing support and infrastructure. The permanent process will require some investments for elements such as Information Technology and dedicated secretariat resources that will be detailed in future reports.

Given that the Advisory Board was only constituted in mid-January and this report is being issued in March, expenses and operational costs are still being received and tabulated. However, it is estimated that the expenditures related to the Advisory Board for the transitional process will be approximately $170,000. This includes travel expenditures related to the Board's work and per diems (within the range of $550 - $650 for the Chairperson and $375 - $450 for the other members), totaling in the range of $70,000 - $80,000, and the remainder incurred by the Privy Council Office to support the Advisory Board (including salaries and translation costs for the transitional phase). The Advisory Board's next report will provide the final costs relating to the transitional process. It is recognized that some costs incurred during the transitional period will pertain to the preparations and planning for the permanent process.

10. Post-announcement

Letters are being issued to all candidates who were not appointed to the Senate to thank them for their participation in this initial process. Candidates will be welcome to communicate their interest in being considered under the permanent process to be launched later in 2016, as all three provinces included in the transitional process have more vacancies to be filled.

We would also like to express our appreciation to the organizations that nominated candidates and look forward to their continued engagement in this important undertaking.

11. Confidentiality

In keeping with the Terms of Reference, the conduct of the Advisory Board's activities is done under strict confidentiality. Information that is brought before the members must be held in confidence and information on candidacies cannot be disclosed, pursuant to the provisions of the *Access to Information Act* and *Privacy Act*. Therefore, the Advisory Board will not share publicly any information pertaining to candidates, nor will it disclose any information about the nominating organizations as these are related to the individual candidacies and subject to the same protection provisions.

12. Conclusion and Next Steps

The Board appreciates the opportunity to serve its country on such an important initiative and looks forward to continuing its work in providing independent advice to the Prime Minister as part of the permanent process to be launched later this spring.

Annex A - Information on the Establishment of the Advisory Board

Minister of Democratic Institutions Announces Establishment of the Independent Advisory Board for Senate Appointments

Ottawa, Ontario, January 19, 2016 - The Honourable Maryam Monsef, Minister of Democratic Institutions, today announced the establishment of the Independent Advisory Board for Senate Appointments (Advisory Board).

The Advisory Board will be an independent and non-partisan body whose mandate is to provide the Prime Minister with merit-based recommendations on Senate nominations.

The Board will be chaired by **Ms. Huguette Labelle**, Emeritus Governor of the University of Ottawa, a Companion of the Order of Canada, and a recipient of the Outstanding Achievement Award of the Public Service of Canada.

The following members are being appointed to the Advisory Board:

- **Dr. Indira Samarasekera** as Federal Member – served as the President and Vice-Chancellor of the University of Alberta.
- **Professor Daniel Jutras** as Federal Member – Dean of Law, Full Professor, Wainwright Chair in Civil Law at the Faculty of Law, McGill University.
- **Mr. Murray Segal** as provincial member for Ontario – former Ontario Deputy Attorney General and Ontario Deputy Minister Responsible for Aboriginal Affairs.
- **Dr. Dawn Lavell Harvard** as provincial member for Ontario – President of the Native Women's Association of Canada.
- **Ms. Sylvie Bernier** as provincial member for Quebec – Olympic gold medalist, media contributor and Healthy Lifestyle Ambassador.
- **Dr. Yves Lamontagne** as provincial member for Quebec – an accomplished psychiatrist and leading figure in the field of medicine.
- **Ms. Susan Lewis** as provincial member for Manitoba – worked for over 40 years with the United Way of Winnipeg, including as President from 1985 to 2014.
- **Ms. Heather Bishop** as provincial member for Manitoba – an accomplished musician/singer-songwriter, independent recording artist, and entrepreneur.

The establishment of the Advisory Board is the first step in the Government's comprehensive plan to create a new and non-partisan process to provide the Prime Minister with non-binding recommendations on Senate appointments. The Board will undertake broad consultations within the three provinces with the greatest number of vacancies in the Senate. It is hoped that five vacancies (two in Manitoba, two in Ontario and one in Quebec) will be filled by early 2016.

The permanent process will be established later in 2016 and will include an application process open to all Canadians. The Advisory Board will be guided by public, merit-based criteria, in order to identify Canadians who would make a significant contribution to the work of the Senate – with the end goal of ensuring a high standard of integrity, collaboration, and non-partisanship in the Senate.

Quotes

"The Government is acting rapidly to reform the Senate. I am very pleased to establish this important new Advisory Board, and it is truly inspiring that such eminent Canadians have agreed to serve on it. The new, independent process will help inject a new spirit of non-partisanship into the Senate. I believe that this new process will immediately begin to restore the confidence of Canadians in an institution that plays an essential role in our parliamentary system."
--Hon. Maryam Monsef, Minister of Democratic Institutions

Quick Facts

- There are currently 22 vacancies in the Senate. Ontario, Quebec and Manitoba have the largest number of vacancies.

- Under the Constitution, the Governor General appoints individuals to the Senate. By convention, Senators are appointed on the advice of the Prime Minister.

Related Products

- Biographical notes on the Members of the Advisory Board
- Terms of Reference for the Advisory Board
- Frequently Asked Questions

For further information on the Advisory Board and the new process to advise on Senate appointments, please refer to the News Release and Backgrounder (with "Annex: Qualifications and Merit-Based Assessment Criteria"), released on December 3, 2015.

Biographical notes on the Members of the Advisory Board

Huguette Labelle

Huguette Labelle holds a PhD (education) degree from the University of Ottawa, has honorary degrees from twelve Canadian universities, and from the University of Notre Dame, United States. She is a Companion of the Order of Canada. In addition, she is a recipient of the Order of Ontario, the Vanier Medal of the Institute of Public Administration of Canada, the Outstanding Achievement Award of the Public Service of Canada, the McGill University Management Achievement Award and the Francophonie's Ordre de la Pléiade.

Ms. Labelle is Emeritus Governor of the University of Ottawa, and was Chancellor of the University of Ottawa from 1994 to 2012. She is currently Chair of the Corporate Reporting Dialogue, Vice-Chair of the Rideau Hall Foundation Board, Vice-Chair of the International Senior Advisory Board of the International Anti-Corruption Academy, member of the Advisory Group to the Asian Development Bank on Climate Change and Sustainable Development, member of the Executive Board of the Africa Capacity Building Foundation, member of the Board of the Global Centre for Pluralism, Board member of Global Financial Integrity, Board member of the Aga Khan Museum, member of the Advisory Committee of the Order of Ontario and Chair of the Selection Committee for Master's Scholarships on Sustainable Energy Development. Ms. Labelle is also a member of the Advisory Group to the Secretary General of the Organisation for Economic Co-operation and Development (OECD) on Integrity and Anti-Corruption, the University of Ottawa President's International Advisory Board, and the University of Ottawa Campaign Cabinet. She is also a former Chair of Transparency International, as well as a former Board member of UN Global Compact.

Ms. Labelle also served for a period of nineteen years as Deputy Minister of different Canadian Government departments including Secretary of State, Transport Canada, the Public Service Commission and the Canadian International Development Agency.

Indira Samarasekera

Indira Samarasekera served as the 12th President and Vice-Chancellor of the University of Alberta, from 2005 to 2015. She also served as Vice-President Research at the University of British Columbia from 2000 to 2005. She is currently a Senior Advisor for Bennet Jones LLP and serves on the Board of Directors of the Bank of Nova Scotia, and Magna International. She serves on the boards of the Asia-Pacific Foundation, the Rideau Hall Foundation, the Perimeter Institute of Theoretical Physics and the selection panel for Canada's Outstanding CEO of the Year. She is also a Distinguished Fellow in Residence at the Liu Institute for Global Issues at the University of British Columbia.

Dr. Samarasekera is internationally recognized as one of Canada's leading metallurgical engineers for her groundbreaking work on process engineering of materials, especially steel processing. She held the Dofasco Chair in Advanced Steel Processing at the University of British Columbia. She has consulted widely for industry worldwide leading to the implementation of her research discoveries.

Dr. Samarasekera has also devoted her career to advancing innovation in higher education and the private sector, providing national and international leadership through invited lectures and participation on national and international boards and councils.

She was awarded the Order of Canada in 2002 for outstanding contributions to steel process engineering. In 2014, she was elected to the National Academy of Engineering in the United States, the profession's highest honour. As a Hays Fulbright Scholar, she earned an MSc from the University of California in 1976. In 1980, she was granted a PhD in metallurgical engineering from the University of British Columbia.

Daniel Jutras

Daniel Jutras joined the Faculty of Law, McGill University in 1985 after clerking with Chief Justice Antonio Lamer at the Supreme Court of Canada. He has been the Dean of the Faculty of Law since March 2010, after serving briefly as interim Dean after June 2009. Professor Jutras became as Associate Professor in 1991, and was promoted to the rank of Full Professor in 2001. Since 2011, he has held the Arnold Wainwright Chair in Civil Law. He is a former Director of the Institute of Comparative Law and has served as Associate Dean (Admissions and Placement), and Associate Dean (Academic) in the Faculty of Law.

From 2002 to 2004, Professor Jutras was on leave from the Faculty of Law, and acted as personal secretary to the Chief Justice of Canada, the Right Honourable Beverley McLachlin, in the position of Executive Legal Officer of the Supreme Court of Canada.

Professor Jutras' teaching and research interests are in civil law and comparative law, and he now conducts research in the law of obligations from a comparative and pluralist perspective. He is also pursuing research projects on judicial institutions and civil procedure. Professor Jutras is frequently invited to speak on these issues before judicial and academic audiences in Canada and in Europe.

Professor Jutras is a graduate of Harvard Law School, and of Université de Montréal, where he received the Governor General's Gold Medal. In 2013, Professor Jutras was appointed by the Supreme Court of Canada to serve as *amicus curiæ* in the *Reference re Senate Reform*. The same year, he was awarded a Queen Elizabeth II Diamond Jubilee Medal. In 2014, the Barreau du Québec awarded Dean Jutras the Advocatus Emeritus (Ad. E.) distinction.

Murray Segal

Following a distinguished career with the Ontario government, including eight years as Deputy Attorney General of Ontario and former Deputy Minister Responsible for Aboriginal Affairs, Murray Segal now practices as independent legal counsel and consultant in Toronto. He is also counsel to Henein Hutchinson LLP. His practice includes assisting the public and broader public service in improving the delivery of services.

Mr. Segal was the chief legal advisor to the Government of Ontario and advisor to Cabinet, the Attorney General, other Ministers, and Deputy Ministers. He oversaw all government litigation and is experienced in developing legislation.

Prior to his time as the Deputy Attorney General, Mr. Segal was the Chief Prosecutor for the Province of Ontario, leading the largest prosecution service in Canada.

Mr. Segal is certified as a Criminal Law Specialist by the Law Society of Upper Canada and is the author of numerous legal publications including in the areas of the *Canadian Charter of Rights and Freedoms*, disclosure, and procedure. He is also a frequent participant in continuing education programs.

Mr. Segal is co-chair of Ontario's Aboriginal Justice Advisory Committee, and he is also on the Board of Directors of the Canadian Mental Health Association of Toronto and on the Board of Trustees of the Centre for Addiction and Mental Health. In 2013, he was appointed as a member of the Ontario Review Board. In October, 2015 Mr. Segal released a Report to the Province of Nova Scotia on the justice system's handling of the Rehtaeh Parsons matter.

Sylvie Bernier

A native of Sainte-Foy, Quebec, Sylvie Bernier won gold in 3-metre springboard diving at the 1984 Olympic Games in Los Angeles. It was Canada's first—and to date the only—gold medal in that event. She is also the first Canadian diver ever to be inducted into the International Swimming Hall of Fame.

Following her athletic career, Ms. Bernier obtained a Bachelor's degree in Business Administration and a Master's in International Health Management. She has been working in radio and television for over 30 years.

She served as Canada's Assistant Chef de Mission at the 2006 Olympic Games in Turin and 2012 in London. She also served as Chef de Mission at the Beijing 2008 Olympics Games.

A recipient of the Order of Quebec and the Order of Canada, Ms. Bernier has collaborated with numerous companies, including Investors Group, for many years. She works with *Québec en forme* as a Healthy Lifestyle Ambassador, as well as chairing two Quebec organizations promoting physically active lifestyles and healthy diets (i.e., the *Table de concertation intersectorielle permanente spécifique au mode de vie physiquement actif* and the *Table québécoise sur la saine alimentation*).

Ms. Bernier is the mother of three young adults and dreams that, someday, "eating better and moving more" will become the norm in our society.

Yves Lamontagne

President and CEO of the *Collège des médecins du Québec* from 1998 to October 2010, Dr. Yves Lamontagne first worked as a professor in the Faculty of Medicine at the University of Montreal and as President of the *Association des médecins psychiatres du Québec*. He is the founder of the Fernand-Seguin Research Centre of the Louis-H. Lafontaine Hospital and founding Chair of the Mental Illness Foundation.

After completing his medical studies, he worked in Africa overseeing the Biafran children's camps during that tragic war. Following that, he embarked on his psychiatric studies, which he completed at the Institute of Psychiatry in London.

The author of over 200 articles in Canadian, American and European medical journals, Dr. Lamontagne has also published 37 books and contributed 30 chapters to various collections. Over the years, he has had a career simultaneously combining research, teaching, communications and administration.

His work has earned him numerous awards and decorations both within Canada and in the United States, and he is a recipient of both the Order of Canada and the Order of Quebec. He was named Great Montrealer for 2003 in the social sector. Currently, Dr. Lamontagne is called upon as a consultant by various organizations and as a speaker within the health sector and for the general public.

Dawn Lavell Harvard

Dr. Dawn Lavell Harvard, PhD, was elected President of the Native Women's Association of Canada at its 41st Annual General Assembly, held in July 2015 in Montreal, Quebec. She had been Interim President of the Native Women's Association of Canada since February 2015 and was Vice-President for almost three years.

She is a proud member of the Wikwemikong First Nation, the first Aboriginal Trudeau Scholar, and has worked to advance the rights of Aboriginal women as the President of the Ontario Native Women's Association for 11 years.

Dr. Lavell Harvard is a full-time mother of three girls. She has followed in the footsteps of her mother Jeannette Corbiere Lavell, a noted advocate for Indigenous women's rights. Since joining the Board of the Ontario Native Women's Association as a youth director in 1994, Dr. Lavell Harvard has been working toward the empowerment of Aboriginal women and their families.

She was co-editor of the original volume on Indigenous Mothering entitled "Until Our Hearts Are on the Ground: Aboriginal Mothering, Oppression, Resistance and Rebirth" and has also recently released a new book, along with Kim Anderson, entitled "Mothers of the Nations."

Susan Lewis

Susan Lewis worked for over 40 years in various roles with the United Way of Winnipeg, including as President and CEO from 1985 to 2014. She received United Way Centraide Canada's Excellence Award, United Way's highest honour.

Over the years, she has served on the boards and committees of a variety of charities and organizations, including: the Winnipeg Poverty Reduction Council, End Homelessness Winnipeg, the St-Boniface Hospital board, University of Manitoba Distinguished Alumni Selection Panel and the Senate Committee on Honorary Degrees.

Nationally she was a board member and Vice Chair of Imagine Canada from 2008 –2012 and continues to sit on the Advisory Council.

Ms. Lewis is a member of the Order of Manitoba and Order of Canada, and a recipient of the Red Cross Humanitarian of the Year Award and the Manitoba Museum Tribute Honouree and the University of Manitoba Distinguished Alumni Award.

Heather Bishop

Heather Bishop is an accomplished musician/singer-songwriter with 14 albums to her credit, along with numerous music industry awards. She is also a keynote speaker, social activist, visual artist, independent recording artist, educator, and entrepreneur who has been running her own music recording company for 40 years. She holds a Bachelor of Arts degree with a Fine Arts major from the University of Regina.

Ms. Bishop has served as Chair of the Advisory Council to the Order of Manitoba; Chair of the Manitoba Film Classification Board; Finance Chair and Director of the Manitoba Film & Sound Recording Development Corporation; and Board Chair, Finance Chair and Director of Manitoba Music, a community based non-profit industry association to promote and foster growth in the Manitoba sound recording industry. She has also dedicated her time to innumerable benefits and fundraisers in the community, as well as serving with the Manitoba Cultural Society of the Deaf.

Among her many honours, Ms. Bishop was awarded the Order of Canada in 2005, the Order of Manitoba in 2001, an Honourary Doctorate of Laws in 2011, a Queen Elizabeth II Diamond Jubilee Medal in 2012, the Western Canadian Music Industry Builder Award in 2006, and the YM/YWCA Woman of Distinction Award in 1997.

In 2011 Ms. Bishop released her first book, an edition of her artwork entitled "My Face is a Map of My Time Here". Her vision is of a socially just, environmentally sound, and spiritually fulfilling world for all.

Terms of Reference for the Advisory Board

Mandate

1 The Independent Advisory Board for Senate Appointments ("Advisory Board") is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Senate nominations.

Composition of the Advisory Board

2 (1) Members of the Advisory Board are appointed pursuant to paragraph 127.1(1)(c) of the *Public Service Employment Act* as special advisers to the Prime Minister.
(2) The Advisory Board is to consist of
(a) three permanent federal members ("federal members"), one of which is to be appointed as Chairperson; and
(b) two *ad hoc* members chosen from each of the provinces or territories where a vacancy is to be filled ("provincial members").
(3) The federal members must participate in deliberations relating to all existing and anticipated Senate vacancies.
(4) The provincial members must participate only in deliberations relating to existing and anticipated Senate vacancies in their respective province or territory.

Length of Advisory Board Terms

3 (1) The federal members of the Advisory Board are to be appointed for two-year terms. Provincial members are to be appointed for terms not exceeding one year.
(2) Despite subsection (1), the initial appointments of the federal members will vary in length in order to permit the staggering of terms, as follows:
(a) the term of the first Chairperson is 30 months;
(b) the terms of each of the first two other federal members are 24 months and 18 months respectively.
(3) The terms of Advisory Board members may be renewed.
(4) The Advisory Board is to be convened at the discretion and on the request of the Prime Minister who may establish, revise or extend any of the timelines set out in this mandate.

Support

4 The Advisory Board is to be supported by the Privy Council Office. The head of the Senior Personnel Secretariat, or his or her delegate, acts as an *ex officio* secretary to the Advisory Board.

Recommendations

5 In accordance with the terms of this mandate, the Advisory Board must provide to the Prime Minister for his consideration, within the time period set by the Prime Minister upon the convening of the Advisory Board, a list of five qualified candidates for each vacancy in the Senate with respect to each province or territory for which there is a vacancy or anticipated vacancy and for which the Advisory Board has been convened. The Prime Minister may take into consideration all of the qualified candidates with respect to all vacancies for that province or territory.

Recommendation Process

6 The members of the Advisory Board must:
(a) at all times, observe the highest standards of impartiality, integrity and objectivity in their consideration of all potential candidates;
(b) meet at appropriate intervals to set out its agenda, assess candidates, and engage in deliberations;
(c) apply fairly and with consistency the criteria provided by the Prime Minister in assessing whether potential candidates meet the qualifications, including those set out in the *Constitution Act, 1867*, for Senate appointments;
(d) interview potential candidates, at the Advisory Board's discretion, and verify any references provided by potential candidates;
(e) in establishing a list of qualified candidates, seek to support the Government of Canada's intent to achieve gender balance and to ensure representation of Indigenous peoples and linguistic, minority and ethnic communities in the Senate; and
(f) comply with the *Privacy Act*, the *Conflict of Interest Act*, and the *Ethical and Political Activity Guidelines for Public Office Holders*.
7 (1) The members of the Advisory Board must declare any direct or indirect personal interest or professional or business relationship in relation to any candidate if such an interest or relationship could reasonably be considered to represent an actual or perceived conflict of interest.
(2) The declaration set out in subsection (1) must include a statement as to any gifts or hospitality received by the member from the candidate.
(3) If such a declaration is made, the Advisory Board must decide, having regard to the nature of the relationship, if the member must withdraw from any deliberation about the candidate.
(4) If the Advisory Board decides that the member must withdraw from any deliberation in relation to a candidate, those deliberations are undertaken by the remaining members of the Advisory Board, provided the number of members is not less than three.

Consultations

8 (1) In this mandate, "transitional process" means the initial recommendations to be made by the Advisory Board in early 2016 for the appointment of five Senators in order to fill two vacancies in Ontario, one in Quebec and two in Manitoba.
(2) Under the transitional process, the Advisory Board must undertake consultations, which could include groups which represent Indigenous peoples and linguistic, minority and ethnic communities, provincial, territorial and municipal organizations, labour organizations, community-based service groups, arts councils, and provincial or territorial chambers of commerce, in order to ensure that a diverse slate of individuals, with a variety of backgrounds, skills, knowledge and experience desirable for a well-functioning Senate are brought forward for the consideration of the Advisory Board.
9 Subsequent to the transitional process, an open application process is to be established to allow Canadians to apply for appointment to the Senate.
10 Advisory Board members may travel for the purpose of performing their functions, including for meeting with candidates and individuals or groups as part of their consultations.

Confidentiality

11 (1) All personal information provided to, and deliberations of, the Advisory Board are confidential and must be treated in accordance with the provisions of the *Privacy Act*.
(2) Any records created or received by the Advisory Board members that are under the control or will be

under the control of the Privy Council Office are subject to the *Access to Information Act* and the *Privacy Act*.
(3) The members of the Advisory Board must maintain as confidential any information brought before them in the conduct of their work.
(4) Members of the Advisory Board must sign a confidentiality agreement as a precondition of their appointment.
12 No candidate is to be named publicly without their prior written consent.

Reporting

13 (1) Within three months after submitting the names of qualified candidates to the Prime Minister, under the transitional process and following each subsequent appointment process, the Advisory Board must provide a report, in both official languages, to the Prime Minister that contains information on the process, including on the execution of the terms of reference, the costs relating to the Advisory Board's activities and statistics relating to the applications received.
(2) In addition, the report may provide recommendations for improvements to the process.
(3) The report must be made public.

Annex B – News Release from the Independent Advisory Board for Senate Appointments

Consultations launched to seek nominations for Senate positions representing Manitoba, Ontario and Quebec

January 29, 2016 - Ottawa, Ontario - The Independent Advisory Board for Senate Appointments (Advisory Board) is pleased to announce the launch of consultations with Canadian organizations to identify exceptional individuals who could fill current vacancies in Senate positions for Manitoba, Ontario and Quebec.

The Advisory Board will engage in consultations with a wide range of organizations in Manitoba, Ontario and Quebec to ensure that candidates with a variety of backgrounds, skills, knowledge and experience have the opportunity to be nominated for vacant positions.

In this round of consultations, nominations for Senate candidates will be accepted until 12:00 p.m. Eastern Standard Time on February 15, 2016. The nomination process is two-fold. An organization must complete and submit a form nominating a potential candidate. The individual being nominated must complete and submit an application form with the required supporting documentation requested in that form. Application forms from individuals without a corresponding nomination from an organization will not be considered, but individuals will have an opportunity to apply once the permanent phase of the new Senate appointments process is launched later this spring.

The Advisory Board was created as part of a new and non-partisan process to provide the Prime Minister with non-binding recommendations on Senate appointments. It was established on January 19, 2016 and consists of three permanent federal members, including the Advisory Board's Chair, and two members chosen from each province or territory for which a vacancy is to be filled.

Quick Facts:

- The nomination and application forms and related instructions can be found on the Advisory Board's website.
- For Phase 1, the Advisory Board will engage in consultations with non-profit organizations, associations and institutions, groups such as gender-based, Indigenous peoples, linguistic, minority and ethnic communities, community service organizations, chambers of commerce, as well as professional, business, arts, environmental, labour, faith and sports organizations, and educational institutions such as universities and colleges.
- Members of the Advisory Board currently include federal members Huguette Labelle (Chair), Indira Samarasekera, Daniel Jutras, and provincial members Murray Segal and Dawn Lavell Harvard representing Ontario, Sylvie Bernier and Yves Lamontagne representing Quebec and, Susan Lewis and Heather Bishop representing Manitoba.

Backgrounder: Senate Appointment Process

Under the Constitution, the Governor General appoints individuals to the Senate. By convention, Senators are appointed on the advice of the Prime Minister.

The Independent Advisory Board for Senate Appointments is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Senate nominations.

As previously announced by the Minister of Democratic Institutions, the new Senate appointments process will be implemented in two phases.

In the transitional phase (Phase 1), five appointments will be made early in 2016 to improve the representation of the provinces with the most vacancies (i.e., Manitoba, Ontario and Quebec). These appointments will be based on the nominations submitted further to the Advisory Board's consultations with a broad range of Canadian organizations. During Phase 1, individuals must be nominated by an organization in order to be eligible to apply.

A permanent process (Phase 2) will then be implemented to fill the remaining vacancies, and will include an application process open to all Canadians.

There are currently 22 vacancies in the Senate. Manitoba, Ontario and Quebec have the largest number of vacancies.

Annex C – Outreach: list of organizations

Building on the guidance for the transitional process included in the Terms of Reference, the Board chose to undertake broad-based outreach efforts to communicate information about the nomination and application process for this first round of its recommendations for Senate appointments. The list below was developed by the Board immediately before the launch of the process and only includes those organizations that received an official e-mail communication from the Board inviting nominations and applications. Additional outreach was undertaken by individual members through both direct and indirect communication approaches, such as e-mail, social media and in-person contact.

ORGANIZATION NAME (in language submitted by Advisory Board member)		
A & O: Support Services for Older Adults	Association for Manitoba Archives	Caledon Institute of Social Policy
Aboriginal Business Education Partners	Association franco-ontarienne des conseils scolaires catholiques (AFOCSC)	Canada's Association for the Fifty-Plus (CARP)
Aboriginal Chamber of Commerce	Association of Community Colleges of Canada	Canada's National Artillery Museum
Aboriginal Health and Wellness Centre of Winnipeg Inc.	Association of Management, Administrative and Professional Crown Employees of Ontario	Canadian Academy of Engineering
Aboriginal Social Work Society in Manitoba	Association of Municipalities of Ontario	Canadian Association of Chiefs of Police
Aboriginal Vision for the North End	Association québécoise du loisir municipal	Canadian Association of Management Consultants
ACOMI (African Communities of Manitoba Inc.)	Association québécoise pour le loisir des personnes handicapées	Canadian Association of Social Workers
Aga Khan Council for Canada	Associations of Colleges and Universities	Canadian Association of University Teachers
Aga Khan Foundation Canada	Ateliers cinq épices	Canadian Bar Association
Andrews Street Family Centre	Aurora Family Therapy Centre	Canadian Chamber of Commerce
AODA Alliance	Awaasis Agency of Northern Manitoba	Canadian Christian Relief and Development Association
Association Québécoise des CPE (AQCPE)	Banque de Montréal	Canadian Community Economic Development Network-Manitoba
Art City	Banques alimentaires du Québec	Canadian Council of Churches
Arthritis Society (Manitoba Division)	Barreau du Québec	Canadian Council of Muslim Women - Winnipeg Chapter
Artscape	Big Brothers Big Sisters of Winnipeg	Canadian Council on International Cooperation
Assemblée des Premières Nations du Québec et du Labrador	Bishop's University	Canadian Education Association
Assembly of First Nations	Boys & Girls Clubs of Winnipeg	Canadian Ethnocultural Council
Association des conseils scolaires des écoles publiques de l'Ontario (ACEPO)	Brandon University	Canadian Federation of Independent Business
Association des enseignantes et des enseignants franco-ontariens (AEFO)	Brock University	Canadian Federation of Students(CFS)
Association des Manufacturiers et exportateurs du Québec (AMEQ)	Business Council of Canada	Canadian Foundation for Health Care Improvement
Association des services de garde en milieu scolaire	Business Council of Manitoba	Canadian Labour Congress

Canadian Manufacturers and Exporters	CBA – MB (CBA division for Manitoba)	Commission de la Santé et des Services Sociaux des Premières Nations
Canadian Medical Association	CBA Québec	Commission des droits de la personne et de la jeunesse du Québec
Canadian Mennonite University	Centraide du Grand Montréal	Community Education Development Association
Canadian Mental Health Association	Centrale des syndicats du Québec (CSQ)	Community Financial Counselling Services
Canadian Mental Health Association - Winnipeg Region	Centre culturel franco-manitobain	Community Foundations of Canada
Canadian Museum Association	Centre francophone de Toronto	Community Living Ontario
Canadian Muslim Women's Institute	Centre Renaissance Centre	Community Living Winnipeg
Canadian Nurses Association	Chambre des notaires	Community Ownership Solutions Inc.
Canadian Paraplegic Association (Manitoba)	Chief Justice of Manitoba	Community Unemployed Help Centre
Canadian Psychological Association	Chiefs of Ontario (COO)	Concordia University
Canadian Public Health Association	Child Caring Agency	Confédération des syndicats nationaux (CSN)
Canadian Red Cross	Christian Horizons	Congress of Aboriginal People
Canadian Red Cross Society (Manitoba Region)	Canadian International Pharmacy Association	Congress of Black Women of Manitoba Inc.
Canadian School Boards Association	City of Toronto	Conseil de la magistrature du Canada
Canadian Teacher's Federation	Club de la médaille d'or	Conseil de la magistrature du Québec
Canadian Union of Public Employees (CUPE)	CNIB	Conseil du statut de la femme
Canadian Vehicle Manufacturers Association (CVMA)	Coalition québécoise sur la problématique du poids	Conseil québécois du loisir
Cancer Care Ontario	Collège des médecins	COSTI Immigrant Services
Capsana	Colleges Ontario	Council of Women of Winnipeg c/o Provincial Council of Manitoba Inc.
CARE	Commissaire à la santé	Croquarium
Carleton University	Commission d'enquête sur les femmes disparues ou assassinées	CUSO
Carrefour action municipale	Commission de développement des Ressources Humaines des PN	Daily Bread Food Bank

EGALE Urban Transition Centre	Fédération des Chambres de commerce du Québec (FCCQ)	Grand Chief MKO
École de Technologie supérieure	Fédération des femmes du Québec	Groupe entreprises en santé
École nationale d'administration publique	Fédération des syndicats de l'enseignement (CSQ)	Guid'amies franco-manitobains
École Polytechique	Fédération des travailleurs et travailleuses du Québec (FTQ),	Habitat for Humanity
Education Quality and Accountability Office	Fédération éducateurs physiquesenseignants au Québec	HEC Montreal
Education Workers' Alliance of Ontario - Alliance des travailleuses et travailleurs en education de l'Ontario (EWAO-ATEO)	Fédération kinésiologues du Québec	IESO (Independent Electricity System Operator)
Égale Action	Federation of Canadian Municipalities	IMAGINE Canada
Egale Canadian Human Rights Trust	Federation of Law Societies	ImagineAbility
Elementary Teachers' Federation of Ontario (ETFO)	Fédération professionnelle des journalistes du Québec	Immigrant & Refugee Community Organization of Manitoba (IRCOM)
Elizabeth Fry Society of Manitoba	Fédération québécoise des municipalités	Immigrant Centre Manitoba Inc.
Elmwood Community Resource Centre and Area Association Inc.	Fire Fighters Association of Ontario	Immigrant Women's Association of Manitoba
End Homelessness Winnipeg	Fondation des maladies du coeur et de l'AVC	Les Impatients
Engineering Institute of Canada	Fondation du Grand Montréal	Independent Living Resource Centre
Equal Voice	Fondation OLO	Institut Armand Frappier
Équiterre	Fondation père Raymond Bernier	Institut national de la recherche scientifique
Extenso	Fort Garry Women's Resource Centre	Institute for International Women's Rights – Manitoba
Eyaa-Keen Healing Centre Inc.	Girl Guides - Three Areas of Winnipeg	Institute of Chartered Accountants
FADOQ	Global Diversity Exchange (GDX)	International Institute for Sustainable Development - IISD
Family Dynamics	Good Neighbours Active Living Centre	International Institute of Women's Rights - Manitoba
Fédération comité de parents Québec	Governance Research & Resources Institute of Corporate Directors	Inuit Tapiriit Kanatami
Fédération Commissions scolaires Québec	Government & Foundation Relations TIFF	Jamaican Canadian Association
Fédération de l'Age D'Or du Québec (FADOQ)	Graffiti Art Programming	Jewish Child and Family Services

Jewish Foundation of Manitoba	Manitoba 4-H Council Office	Marymound
Jewish Heritage Centre of Western Canada	Manitoba Archaeological Society	MATCH International
John Howard Society of Manitoba	Manitoba Arts Council	Maytree Foundation
Kã Ni Kãnichihk	Manitoba Association for Rights and Liberties	MB League for Persons with Disabilities
Kildonan Youth Activity Centre	Manitoba Chamber of Commerce	McGill University
Knowles Centre Inc.	Manitoba Council for International Cooperation	McMaster University
Keewatin Tribal Council (KTC)	Manitoba Farm Women's Conference	Meals on Wheels of Winnipeg
L'Assemblée de la francophonie de l'Ontario	Manitoba Federation of Labour	Mediation Services: A Community Resource for Conflict Resolution
l'Assemblée des PN du Québec et du Labrador	Manitoba Film & Music	Métis National Council
La fédération des communautés francophones et acadiennes du Canada	Manitoba Foundation	Metrolinx
La Survivance	Manitoba Genealogical Society	Manitoba Metis Federation (MMF)
Lakehead University	Manitoba Heritage Council	Mood Disorders Association of Manitoba
L'Arche Winnipeg Inc	Manitoba Historical Society	Mount Carmel Clinic
Laurentian University	Manitoba Immigrant and Refugee Settlement Sector Association (MIRSSA)	Multiple Sclerosis Society of Canada - Winnipeg Chapter
Law Society of Manitoba	Manitoba Interfaith Immigration Council	Nation Tribal Health
Law Society of Upper Canada	Manitoba School Improvement Program	National Screen Institute
Le Cercle Moliere	Manitoba Women's Institute	National Wildlife Federation
Learning Disabilities Association of Manitoba Inc.	Manitoba Writers' Guild	Native Women's Association of Canada
Ma Mawi Wi Chi Itata Centre	Manitoba Film and Music	Native Women's Transition Centre
Ma mow we tak friendship centre	Maples Youth Activity Centre	Nature Canada
Macdonald Youth Services	Marlene Street Resource Centre	Ndinawemaaganag Endaawaad
Main Street Project	Martin Prosperity Institute	New Directions for Children, Youth, Adults and Families

New Life Ministries	Ontario Long Term Care Association	Plan Canada
North End Community Renewal Corporation	Ontario Medical Association	Pluri-elles (Manitoba)
North End Women's Centre	Ontario Nurses Association (ONA)	Police Association of Ontario (PAO)
North Point Douglas Women's Centre	Ontario Professional Fire FightersAssociation	Powerstream
Northern Association of Community Councils	Ontario Provincial Police Association	Pregnancy & Family Support Services
NorWest Co-op Community Health	Ontario Public School Boards' Association (OPSBA)	Provincial Council of Women ofManitoba, Inc.
OBA (CBA division for Ontario)	Ontario Public Service Employees Union	Public Policy Forum
Observatoire de la qualité de l'offre alimentaire	Ontario Secondary School Teachers' Federation (OSSTF)	Rainbow Resource Centre
Opaskwayak Cree Nation (OCN)	Ontario Teachers' Federation	RCMP
Ontario Energy Board (OEB)	Opportunities for Employment	Reaching E-Quality Employment Services
Office des professions du Québec	Ordre des administrateurs agréés	Red River College
Office of Francophone Affairs	Ordre des infirmières et infirmiers	Regroupement des cuisines collectives du Québec
Ogijiita Pimatiswin Kinamatwin	Ordre des notaires	Réseau action femmes (French)
Ontario Catholic School Trustees' Association (OCSTA)	Ordre professionnel diététistes du Québec	Réseau québécois de Villes et Villages en santé
Ontario Chamber of Commerce (OCC)	Oshki-Giizhig	Resource Assistance for Youth
Ontario Council of Agencies Serving Immigrants (OCASI)	Ottawa University	Rural Ontario Municipal Association (ROMA)
Ontario Council of Educational Workers - Conseil des Travailleurs de l'Education de l'Ontario (OCEW-CTEO)	OUSA – Ontario Undergraduate Student Alliance	Rose & Max Rady Jewish Community Centre
Ontario English Catholic Teachers Association (OECTA)	OXFAM	Rossbrook House
Ontario Federation of Agriculture	Oyate Tipi Cumini Yape Inc.	Royal Aviation Museum of Western Canada
Ontario Federation of Labour	Palliative Manitoba	Royal Manitoba Theatre Centre
Ontario Hospital Association (OHA)	Participaction	Réseau du sport étudiant du Québec (RSEQ)
Ontario Judicial Council	Philanthropic Foundations of Canada	Samara Canada

Save the Children	The Council of Ontario Universities	Université du Québec à Abitibi-Témiscamingue
School of Public Policy and Governance, University of Toronto	The Humanitarian Coalition	Université du Québec à Chicoutimi
Science North	The Laurel Centre	Université du Québec à Montréal
SCTC	The Manitoba Museum	Université du Québec à Rimouski
SEED Winnipeg	The Ontario Federation of Indigenous Friendship Centres (OFIFC)	Université du Québec à Trois-Rivières
Sexuality Education Resource Centre	The Pas Friendship Centre	Université du Québec en Outaouais
SMD Self-Help Clearinghouse	The Winnipeg Chamber of Commerce	Université Laval
SMD Services	The Winnipeg Foundation	Université Sherbrooke
Social Planning Council of Winnipeg	Toronto Board of Trade	Université St-Boniface
Société de soins palliatifs	Toronto Hydro	University College of the North
Soroptimist International of Winnipeg	Transportation Association of Canada	University of Manitoba
Soulpepper	Trent University	University of Manitoba Press
South Winnipeg Family Information	True North Sports and Entertainment Ltd.	University of Toronto
Spence Neighbourhood Association	Union des Municipalités du Québec (UMQ)	University of Winnipeg
Sport Manitoba	UNIFOR	University Women's Club of Winnipeg
Sports Québec	Union des artistes	Urban Circle Training Centre Inc.
Stroke Recovery Association of Manitoba	United Way Centraide Canada	Urban Indigenous Theatre Company Inc.
Syndicat de la fonction publique et parapublique du Québec (SFPQ)	United Way of Greater Toronto	Vélo Québec
Tablée des chefs	United Way Toronto & York Region	Villa Rosa Inc.
Teen Stop Jeunesse	United Way Winnipeg	Vivre en ville
Télé Université	Université de Montréal	Volunteer Manitoba
Assembly of Manitoba Chiefs	Université du Québec	Wellesley Institute

West Broadway Youth Outreach
West Central Community Program
West Central Women's Resource Centre
Windsor University
Winnipeg Art Gallery
Winnipeg Central Park Women's Resource Centre
Winnipeg Labour Council
Winnipeg Public Library
Wolseley Family Place
Women's Enterprise Centre of Manitoba (WECM)
Women's Health Clinic
World Vision
World Wildlife Fund - WWF
WUSC - World University of Canada
YMCA/YWCA of Winnipeg
Youth Agencies Alliance

Annex D – Qualifications and Merit-Based Assessment Criteria

Age

A nominee must be a minimum of 30 years of age and be less than 75 years of age.

Citizenship

A nominee must be a citizen of Canada.

Net Worth in Real and Personal Property

A nominee must own property with a net value of $4,000 in the province for which he or she is appointed, and have an overall net worth of $4,000 in real and personal property.

In the case of Quebec, a nominee must have his or her real property qualification in the electoral division for which he or she is appointed, or be resident in that electoral division.

- Senators from Quebec must represent one of 24 electoral divisions.

Residency

A nominee must be a resident of the province for which he or she is appointed.

- A nominee must have his or her place of permanent residence in the province or territory of vacancy at the time of application and appointment. The permanent residence of a nominee is where the person is ordinarily present and has made his or her home for a minimum period of two years leading up to the application. The nominee must provide documentation of residence in the province or territory.
- Despite rule 1, an exception to the two-year requirement may be made in a case where a nominee is temporarily absent from the province or territory of vacancy for reasons of employment or education but can provide satisfactory proof he or she intends to return to his or her permanent residence in the province or territory of vacancy.

Gender, Indigenous and Minority Balance

Nominees will be considered with a view to achieving gender balance in the Senate. Priority consideration will be given to nominees who represent Indigenous peoples and linguistic, minority and ethnic communities, with a view to ensuring representation of those communities in the Senate consistent with the Senate's role in minority representation.

Non-Partisanship

Nominees will be asked to demonstrate to the Advisory Board that they have the ability to bring a perspective and contribution to the work of the Senate that is independent and non-partisan. They will also have to disclose any political involvement and activities. Past political activities would not disqualify a nominee.

Knowledge Requirement

Nominees must demonstrate a solid knowledge of the legislative process and Canada's Constitution, including the role of the Senate as an independent and complementary body of sober second thought, regional representation and minority representation.

Personal Qualities

Nominees must demonstrate outstanding personal qualities, including adhering to the principles and standards of public life, ethics, and integrity.

Nominees must demonstrate an ability to make an effective and significant contribution to the work of the Senate, not only in their chosen profession or area of expertise, but the wide range of other issues that come before the Senate.

Qualifications Related to the Role of the Senate

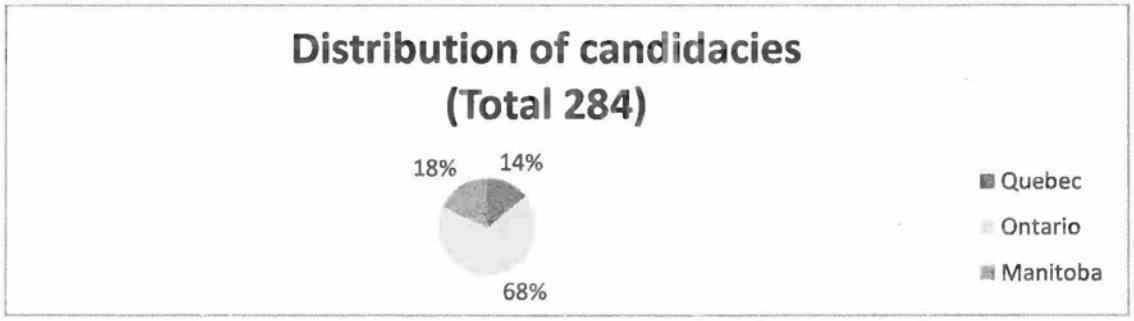
A nominee must demonstrate one of the following criteria:

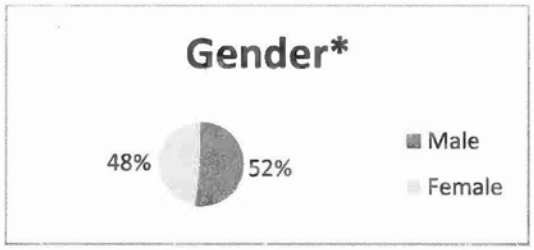
- a high level of experience, developed over many years, in the legislative process and public service at the federal or provincial/territorial level; and/or,
- a lengthy and recognized record of service to one's community, which could include one's Indigenous, ethnic or linguistic community; and/or,
- recognized leadership and an outstanding record of achievement in the nominee's profession or chosen field of expertise.

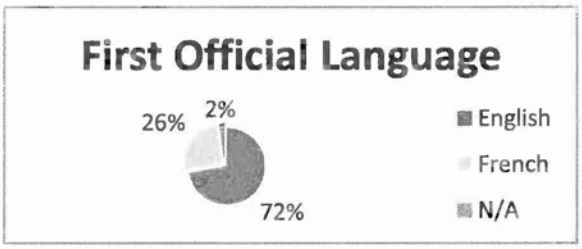
Asset Qualifications

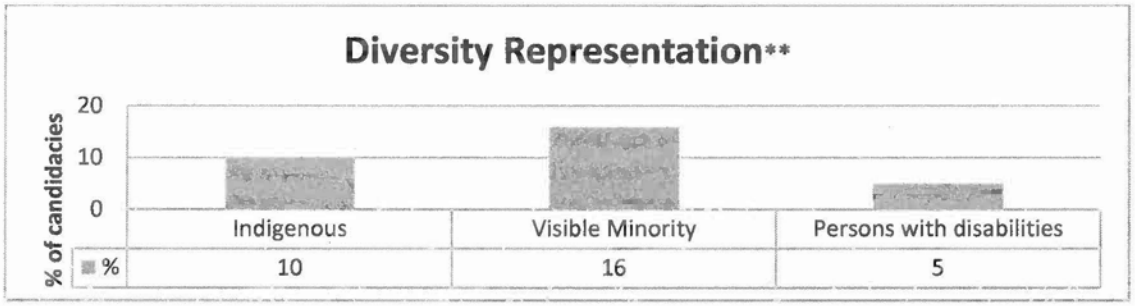
Bilingualism: fluency in both official languages will be considered an asset.

Annex E - Statistics on Candidacies for the Transitional Phase









Demographic and diversity information (excluding gender) was optional and was provided on a voluntary basis by candidates.

Key facts (based on 2011 Census data***):

- Gender and Persons with Disabilities representation is consistent with Canadian workforce population
- Indigenous representation is above Canadian workforce population (10% vs 3.5%)
- Visible Minorities representation is slightly below Canadian workforce population (16% vs 18%)
- French as a first Official Language is slightly higher than Canadian population representation (26% vs 23%)

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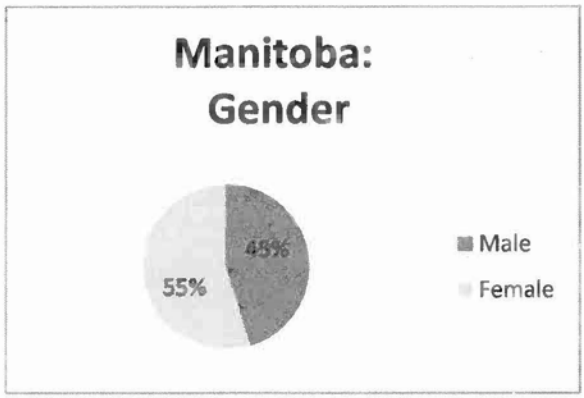
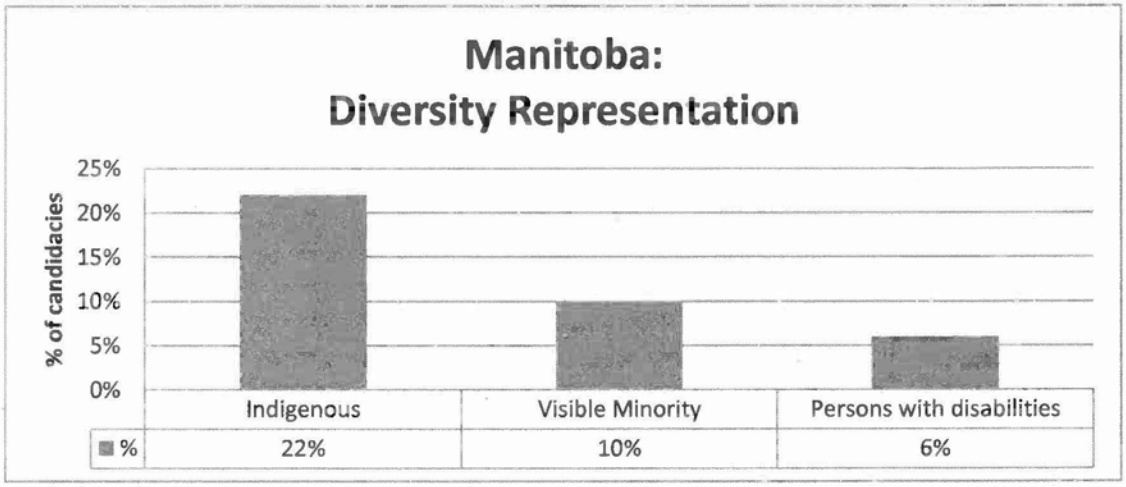
* All candidates self-identified as either female or male

** A small number of candidates provided additional diversity information (for example sexual orientation) within the narrative of their applications and a limited number self-identified as part of cultural, linguistic or other communities. Aggregate data is not available.

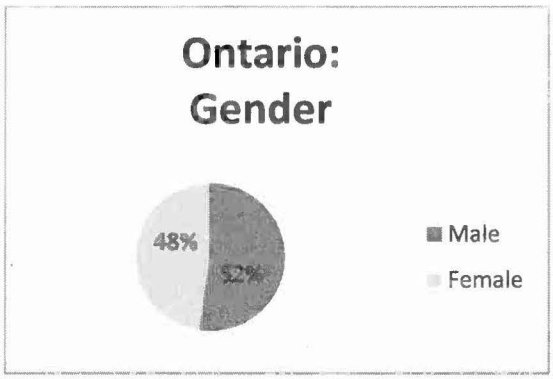
*** http://officiallanguages.gc.ca/en/statistics/province-territory
http://www.labour.gc.ca/eng/standards_equity/eq/pubs_eq/eedr/2011/report/tables/table03.shtml

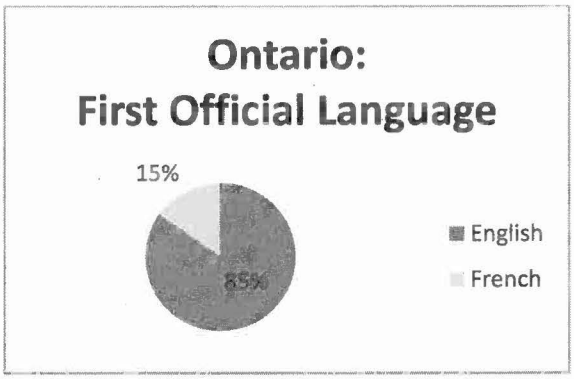


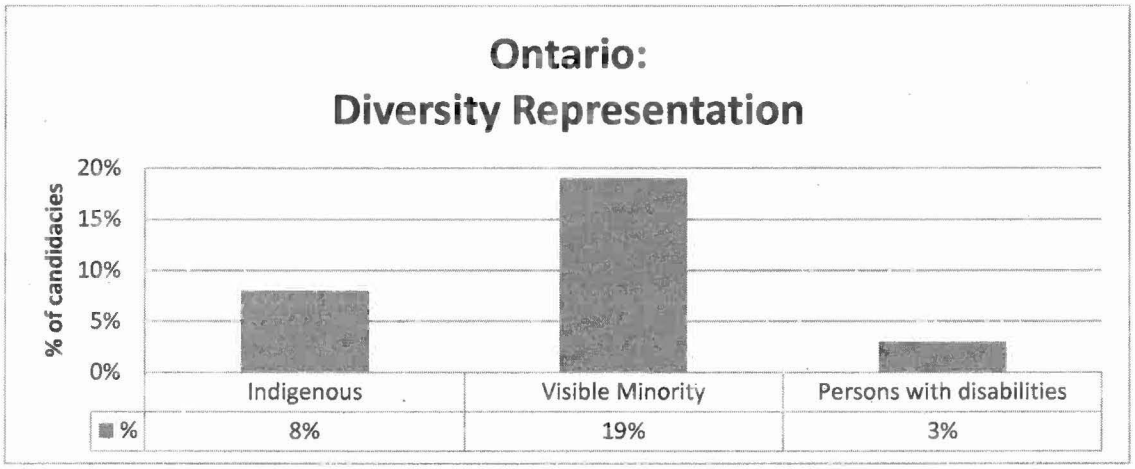


Key facts (based on 2011 Census data):

- Female representation is above Manitoba workforce population (55% vs 48%)
- Indigenous representation is well above Manitoba workforce population (22% vs 12%)
- Visible Minorities representation is slightly below Manitoba workforce population (10% vs 13%)
- Persons with Disabilities representation is consistent with Manitoba population 15-64 yrs of age
- French as a first Official Language is much higher than Manitoba representation (22% vs 3.5%)

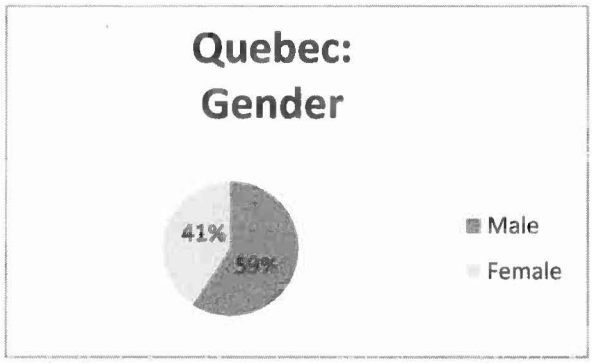


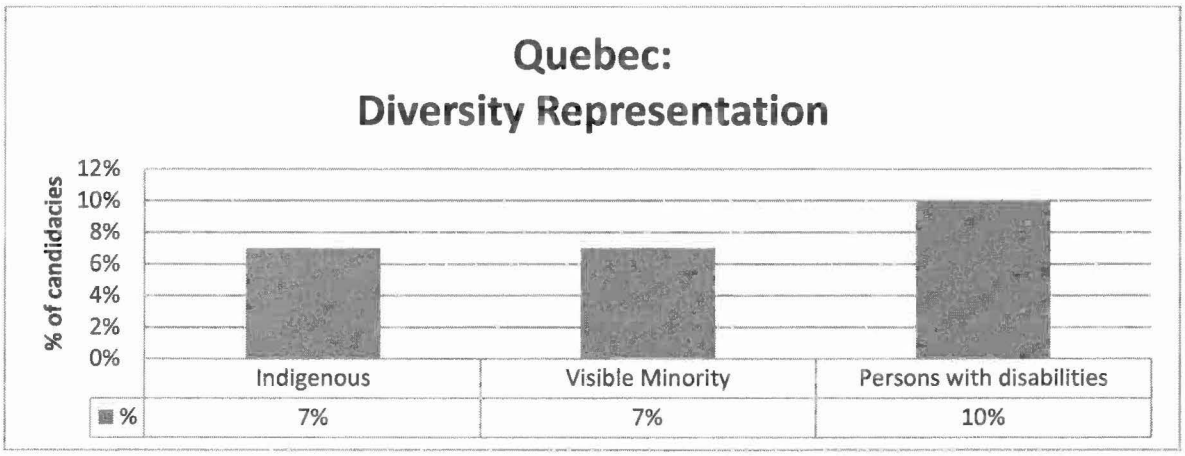




Key facts (based on 2011 Census data):

- Gender representation is consistent with Ontario workforce population
- Indigenous representation is above Ontario workforce population (8% vs 2%)
- Visible Minorities representation is below Ontario workforce population (19% vs 24%)
- Persons with Disabilities representation is below Ontario population 15-64 yrs of age (3% vs 5.5%)
- French as a first Official Language is much higher than Ontario representation (15% vs 4.3%)





Key facts (based on 2011 Census data):

- Female representation is below Quebec workforce population (41% vs 48%)
- Indigenous representation is above Quebec workforce population (7% vs 2%)
- Visible Minorities representation is below Quebec workforce population (7% vs 10%)
- Persons with Disabilities representation is above Quebec population 15-64 yrs of age (10% vs 3%)
- English as a first Official Language is slightly below Quebec representation (11% vs 13.5%)

67

This is Exhibit "K" referred to in the affidavit of Lyse Castin sworn before me at Vancouver this 12th day of May 20 16

Current Senators

Contact information | Standings in the Senate

Sort By: Please select **Go to:** A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Name	Affiliation	Province (Designation)	Date of nomination	Date of retirement	Appointed on the advice of:
A					
Andreychuk, Raynell	C	Saskatchewan	1993-03-11	2019-08-14	Mulroney, Brian (PC)
Ataullahjan, Salma	C	Ontario (Toronto)	2010-07-09	2027-04-29	Harper, Stephen (C)
B					
Baker, George	Lib.	Newfoundland and Labrador	2002-03-26	2017-09-04	Chrétien, Jean (Lib.)
Batters, Denise	C	Saskatchewan	2013-01-25	2045-06-18	Harper, Stephen (C)
Bellemare, Diane	Ind.	Quebec (Alma)	2012-09-06	2024-10-13	Harper, Stephen (C)
Beyak, Lynn	C	Ontario	2013-01-25	2024-02-18	Harper, Stephen (C)
Black, Douglas	C	Alberta	2013-01-25	2027-05-10	Harper, Stephen (C)
Boisvenu, Pierre-Hugues	Ind.	Quebec (La Salle)	2010-01-29	2024-02-12	Harper, Stephen (C)
Brazeau, Patrick	Ind.	Quebec (Repentigny)	2009-01-08	2049-11-11	Harper, Stephen (C)
C					
Campbell, Larry W.	Ind.	British Columbia	2005-08-02	2023-02-28	Martin, Paul (Lib.)
Carignan, Claude	C	Quebec (Mille Isles)	2009-08-27	2039-12-04	Harper, Stephen (C)
Cools, Anne C.	Ind.	Ontario (Toronto Centre-York)	1984-01-13	2018-08-12	Trudeau, Pierre Elliott (Lib.)
Cordy, Jane	Lib.	Nova Scotia	2000-06-09	2025-07-02	Chrétien, Jean (Lib.)
Cowan, James S.	Lib.	Nova Scotia	2005-03-24	2017-01-22	Martin, Paul (Lib.)
D					
Dagenais, Jean-Guy	C	Quebec (Victoria)	2012-01-17	2025-02-02	Harper, Stephen (C)
Dawson, Dennis	Lib.	Quebec (Lauzon)	2005-08-02	2024-09-28	Martin, Paul (Lib.)
Day, Joseph A.	Lib.	New Brunswick (Saint John-Kennebecasis)	2001-10-04	2020-01-24	Chrétien, Jean (Lib.)

Demers, Jacques	Ind.	Quebec (Rigaud)	2009-08-27	2019-08-25	Harper, Stephen (C)
Downe, Percy E.	Lib.	Prince Edward Island (Charlottetown)	2003-06-26	2029-07-08	Chrétien, Jean (Lib.)
Doyle, Norman E.	C	Newfoundland and Labrador	2012-01-06	2020-11-11	Harper, Stephen (C)
Duffy, Michael	Ind.	Prince Edward Island (Cavendish)	2009-01-02	2021-05-27	Harper, Stephen (C)
Dyck, Lillian Eva	Lib.	Saskatchewan	2005-03-24	2020-08-24	Martin, Paul (Lib.)
E					
Eaton, Nicole	C	Ontario	2009-01-02	2020-01-21	Harper, Stephen (C)
Eggleton, Art	Lib.	Ontario	2005-03-24	2018-09-29	Martin, Paul (Lib.)
Enverga, Tobias C. Jr.	C	Ontario	2012-09-06	2030-12-02	Harper, Stephen (C)
F					
Fraser, Joan	Lib.	Quebec (De Lorimier)	1998-09-17	2019-10-12	Chrétien, Jean (Lib.)
Frum, Linda	C	Ontario	2009-08-27	2038-01-13	Harper, Stephen (C)
Furey, George J.	Ind.	Newfoundland and Labrador	1999-08-11	2023-05-12	Chrétien, Jean (Lib.)
G					
Gagné, Raymonde	Ind.	Manitoba	2016-04-01	2032-01-07	Trudeau, Justin (Lib.)
Greene, Stephen	C	Nova Scotia (Halifax - The Citadel)	2009-01-02	2024-12-08	Harper, Stephen (C)
H					
Harder, Peter	Ind.	Ontario (Ottawa)	2016-03-23	2027-08-25	Trudeau, Justin (Lib.)
Housakos, Leo	C	Quebec (Wellington)	2009-01-08	2043-01-10	Harper, Stephen (C)
Hubley, Elizabeth	Lib.	Prince Edward Island	2001-03-08	2017-09-08	Chrétien, Jean (Lib.)
J					
Jaffer, Mobina S.B.	Lib.	British Columbia	2001-06-13	2024-08-20	Chrétien, Jean (Lib.)
Johnson, Janis G.	C	Manitoba	1990-09-27	2021-04-27	Mulroney, Brian (PC)
Joyal, Serge	Lib.	Quebec (Kennebec)	1997-11-26	2020-02-01	Chrétien, Jean (Lib.)
K					
Kenny, Colin	Lib.	Ontario (Rideau)	1984-06-29	2018-12-10	Trudeau, Pierre Elliott (Lib.)
L					
Lang, Daniel	C	Yukon	2009-01-02	2023-04-03	Harper, Stephen (C)
Lankin, Frances	Ind.	Ontario	2016-04-01	2029-04-16	Trudeau, Justin (Lib.)
Lovelace Nicholas, Sandra M.	Lib.	New Brunswick	2005-09-21	2023-04-15	Martin, Paul (Lib.)
M					
MacDonald, Michael L.	C	Nova Scotia (Cape Breton)	2009-01-02	2030-05-04	Harper, Stephen (C)
Maltais, Ghislain	C	Quebec (Shawinegan)	2012-01-06	2019-04-22	Harper, Stephen (C)
Manning, Fabian	C	Newfoundland and Labrador	2011-05-25 [1]	2039-05-21	Harper, Stephen (C)
Marshall, Elizabeth	C	Newfoundland and Labrador	2010-01-29	2026-09-07	Harper, Stephen (C)
Martin, Yonah	C	British Columbia	2009-01-02	2040-04-11	Harper, Stephen (C)
Massicotte, Paul J.	Lib.	Quebec (De Lanaudière)	2003-06-26	2026-09-10	Chrétien, Jean (Lib.)

69

McCoy, Elaine	Ind.	Alberta	2005-03-24	2021-03-07	Martin, Paul (Lib.)
McInnis, Thomas Johnson	C	Nova Scotia	2012-09-06	2020-04-09	Harper, Stephen (C)
McIntyre, Paul E.	C	New Brunswick	2012-09-06	2019-11-02	Harper, Stephen (C)
Mercer, Terry M.	Lib.	Nova Scotia (Northend Halifax)	2003-11-07	2022-05-06	Chrétien, Jean (Lib.)
Merchant, Pana	Lib.	Saskatchewan	2002-12-12	2018-04-02	Chrétien, Jean (Lib.)
Meredith, Don	Ind.	Ontario	2010-12-18	2039-07-13	Harper, Stephen (C)
Mitchell, Grant	Ind.	Alberta	2005-03-24	2026-07-19	Martin, Paul (Lib.)
Mockler, Percy	C	New Brunswick	2009-01-02	2024-04-14	Harper, Stephen (C)
Moore, Wilfred P.	Lib.	Nova Scotia (Stanhope St. / South Shore)	1996-09-26	2017-01-14	Chrétien, Jean (Lib.)
Munson, Jim	Lib.	Ontario (Ottawa / Rideau Canal)	2003-12-10	2021-07-14	Chrétien, Jean (Lib.)
N					
Nancy Ruth	C	Ontario (Cluny)	2005-03-24	2017-01-06	Martin, Paul (Lib.)
Neufeld, Richard	C	British Columbia	2009-01-02	2019-11-06	Harper, Stephen (C)
Ngo, Thanh Hai	C	Ontario	2012-09-06	2022-01-03	Harper, Stephen (C)
O					
Ogilvie, Kelvin Kenneth	C	Nova Scotia (Annapolis Valley - Hants)	2009-08-27	2017-11-06	Harper, Stephen (C)
Oh, Victor	C	Ontario (Mississauga)	2013-01-25	2024-06-10	Harper, Stephen (C)
Omidvar, Ratna	Ind.	Ontario	2016-04-01	2024-11-05	Trudeau, Justin (Lib.)
P					
Patterson, Dennis Glen	C	Nunavut	2009-08-27	2023-12-30	Harper, Stephen (C)
Petitclerc, Chantal	Ind.	Quebec (Grandville)	2016-04-01	2044-12-15	Trudeau, Justin (Lib.)
Plett, Donald Neil	C	Manitoba (Landmark)	2009-08-27	2025-05-14	Harper, Stephen (C)
Poirier, Rose-May	C	New Brunswick (Saint-Louis-de-Kent)	2010-02-28	2029-03-02	Harper, Stephen (C)
Pratte, André	Ind.	Quebec (De Salaberry)	2016-04-01	2032-05-12	Trudeau, Justin (Lib.)
R					
Raine, Nancy Greene	C	British Columbia (Thompson-Okanagan-Kootenay)	2009-01-02	2018-05-11	Harper, Stephen (C)
Ringuette, Pierrette	Ind.	New Brunswick	2002-12-12	2030-12-31	Chrétien, Jean (Lib.)
Rivard, Michel	Ind.	Quebec (The Laurentides)	2009-01-02	2016-08-07	Harper, Stephen (C)
Runciman, Bob	C	Ontario (Thousand Islands and Rideau Lakes)	2010-01-29	2017-08-10	Harper, Stephen (C)
S					
Seidman, Judith G.	C	Quebec (De la Durantaye)	2009-08-27	2025-09-01	Harper, Stephen (C)
Sibbeston, Nick G.	Ind.	Northwest Territories	1999-09-02	2018-11-21	Chrétien, Jean (Lib.)
Sinclair, Murray	Ind.	Manitoba	2016-04-02	2026-01-24	Trudeau, Justin (Lib.)
Smith, David P.	Lib.	Ontario (Cobourg)	2002-06-25	2016-05-16	Chrétien, Jean (Lib.)
Smith, Larry	C	Quebec (Saurel)	2011-05-25 [2]	2026-04-28	Harper, Stephen (C)
	C	New Brunswick	2009-08-27	2021-07-27	Harper, Stephen (C)

Stewart Olsen, Carolyn					
T					
Tannas, Scott	C	Alberta	2013-03-25	2037-02-25	Harper, Stephen (C)
Tardif, Claudette	Lib.	Alberta	2005-03-24	2022-07-27	Martin, Paul (Lib.)
Tkachuk, David	C	Saskatchewan	1993-06-08	2020-02-18	Mulroney, Brian (PC)
U					
Unger, Betty E.	C	Alberta	2012-01-06	2018-08-21	Harper, Stephen (C)
V					
Verner, Josée	C	Quebec (Montarville)	2011-06-13	2034-12-30	Harper, Stephen (C)
W					
Wallace, John D.	Ind.	New Brunswick (Rothesay)	2009-01-02	2024-03-26	Harper, Stephen (C)
Wallin, Pamela	Ind.	Saskatchewan	2009-01-02	2028-04-10	Harper, Stephen (C)
Watt, Charlie	Lib.	Quebec (Inkerman)	1984-01-16	2019-06-29	Trudeau, Pierre Elliott (Lib.)
Wells, David M.	C	Newfoundland and Labrador	2013-01-25	2037-02-28	Harper, Stephen (C)
White, Vernon	C	Ontario	2012-02-20	2034-02-21	Harper, Stephen (C)

[1] Manning, Fabian was also a senator from 2009-01-02 to 2011-03-28
[2] Smith, Larry was also a senator from 2010-12-18 to 2011-03-25

Court File No. T-2506-14

FEDERAL COURT

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA and THE GOVERNOR GENERAL OF CANADA

Respondents

AFFIDAVIT OF KAREN WONG

I, Karen Wong, Legal Assistant, of the Department of Justice, 900 – 840 Howe Street, in the City of Vancouver, in the Province of British Columbia, SWEAR THAT:

1. I am a legal assistant employed by the Department of Justice, and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be made upon information and belief and, where so stated, I verily believe the same to be true.

2. On May 29, 2015, Mr. Alani wrote a letter to the Federal Court, copied to counsel for the respondents, with the subject line "June 1st Case Management Conference to Discuss Timetable" (the "May 29 Letter"). Attached as **Exhibit "A"** is a true copy of the May 29 Letter.

3. On June 11, 2015, Mr. Alani wrote an email to counsel for the respondents, with the subject line "RE: Alani v. Canada" (the "June 11 Email"). Attached as **Exhibit "B"** is a true copy of the June 11 Email.

4. On June 24, 2015, Mr. Alani filed written representations in support of his motion to abridge timelines (the "Written Representations"). Attached as **Exhibit "C"** is a true copy of the Written Representations.

5. On January 19, 2016, the Federal Court of Appeal, in Court file A-265-15, an interlocutory appeal in this matter brought by the respondents, released a direction seeking the position of the parties on whether the appeal had been rendered moot (the "FCA Direction"). Attached as **Exhibit "D"** is a true copy of the FCA Direction.

6. On January 21, 2016, counsel for the respondents wrote to Mr. Alani, extending a "With Prejudice" settlement offer (the "Settlement Letter"). Attached as **Exhibit "E"** is a true copy of the Settlement Letter.

7. On January 22, 2016, counsel for the respondents wrote to the Federal Court of Appeal in response to the FCA Direction (the "Respondents' January 22 Letter"). Attached as **Exhibit "F"** is a true copy of the Respondent's January 22 Letter.

8. Also on January 22, 2016, Mr. Alani wrote to the Federal Court of Appeal in response to the FCA Direction ("Mr. Alani's January 22 Letter"). Attached as **Exhibit "G"** is a true copy of Mr. Alani's January 22 Letter.

9. On March 1, 2016, Mr. Alani posted an open letter to Prime Minister Trudeau on his website, www.anizalani.com, copied to the Respondents (the "Open Letter"). Attached as **Exhibit "H"** is a true copy of the Open Letter.

SWORN before me at the City of Vancouver,
in the Province of British Columbia, this
6th day of May, 2016.

Commissioner for Taking Affidavits
within British Columbia

Karen Wong

Oliver Pulleyblank
Legal Counsel
Department of Justice
#900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9
Phone: 604-666-6671 / Fax: 604-775-7557

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

SUBMITTED ELECTRONICALLY

May 29, 2015

This is Exhibit "A" referred to in the affidavit of Karan Wong sworn before me at Vancouver this 6th day of May 20 16

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

Attention: Courts Administration Service

Dear Sirs/Mesdames:

Re: ALANI, Aniz v. Canada (Prime Minister) et al.
Court No: T-2506-14
June 1st Case Management Conference to Discuss Timetable

I write in respect of the Case Management Conference scheduled for June 1, 2015 by direction of the Court (Lafrenière P.) dated May 25, 2015.

To facilitate the discussion at the Case Management Conference of the fixing of a timetable for the remaining steps in the proceeding, including the potential fixing of a hearing date prior to the perfection of application records, I offer the following outline of submissions in response to the letter from counsel for the Respondents dated May 29, 2015.

I would be grateful if these submissions could be forwarded to the Court for its consideration at the June 1st Case Management Conference.

The applicable test

Counsel for the Respondents refer to *Canada (Canadian Wheat Board) v. Canada (Attorney General)*, 2007 FC 39 [*CWB*] and *Conacher v. Canada*, 2008 FC 1119 [*Conacher*].

The Absence of Delay in Conducting the Litigation

Before outlining how this proceeding meets the test for urgency set out in those cases, I must emphasise that in both *CWB* and *Conacher*, the Court expressed disappointment that the applicants in each case had unnecessarily delayed in bringing their respective proceedings.

In *Conacher*, the applicants filed their notice of application 19 days after the issuing of Writs of Election and six days before the hearing of their motion to expedite. They had requested that the case be heard in less than a week, on October 8, 2008 ahead of an election fixed for October 14, 2008. (par. 18).

In *CWB*, the applicant commenced an application in respect of a barley plebisicite until 34 days after the Minister announced it and the applicant was aware of it. The applicant also "waited another month after filing its application for judicial review before bringing [its] motion for an expedited hearing". (par. 19). The applicant had requested that the case be heard within a month.

In this case, the application for judicial review was filed on December 8, 2014 – less than two business days after the Prime Minister announced that he did not intend to fill Senate vacancies on December 4, 2014, and 3 calendar days after the applicant learned of the announcement on December 5, 2014.

In accordance with the Notice to Profession, the applicant first wrote to counsel for the respondents on January 5, 2015 proposing that early hearing dates be jointly requested in anticipation of the application being perfected on April 27, 2015 in accordance with the default time limits set out in the *Federal Courts Rules*. (See attached).

Counsel for the Respondents advised by letter dated January 15, 2015 of their view that it was premature and unnecessary to address my request of January 5th pending the determination of the Respondents' motion to strike. (See attached).

At the case management conferenced held February 15, 2015, I requested that the motion to strike be adjourned to the outset of the hearing of the application itself as was ordered by Milczynski P. in Court File T-1476-14 on August 15, 2014 in respect of another application that was the subject of a motion to strike on grounds of justiciability and jurisdiction. That request was dismissed, and, as a result, all remaining steps in the proceeding were effectively held in abeyance for over four months from the filing of the Respondents' motion to strike on January 15, 2015 to the dismissal of said motion on May 21, 2015.

As indicated in correspondence dated May 21, 2015, a copy of which was enclosed with my letter to the Court dated May 22, 2015 requesting a case management conference, I wrote to counsel for the Respondents proposing an abridged timetable for the remaining steps in the application the very same day that the motion to strike was dismissed.

I respectfully submit that my conduct throughout this proceeding has consistently reflected the urgency of the proceeding and a demonstrated intention to avoid unnecessary delays in obtaining an expedient resolution of the merits of the application.

The Four Questions

Both *CWB and Conacher* identify the following four questions to be asked when exercising the Court's discretion:

1. Is the proceeding really urgent or does the moving party simply prefer that the matter be expedited?

2. Will the respondent be prejudiced if the proceeding is expedited?

3. Will the proceeding be rendered moot if not decided prior to a particular event?

4. Would expediting the proceeding result in the cancellation of other hearings?

Is the Proceeding Really Urgent?

The application asserts that the Prime Minister's failure to advise the Governor General to fill vacancies in the Senate is a violation of the Constitution of Canada. The notice of application has already survived a motion to strike, in the course of which it was determined that it is not plain and obvious that the issues raised are either non-justiciable or beyond the Court's jurisdiction.

As of June 3, 2015, vacancies in the Senate will have been accumulating for 1,000 days. There are currently 20 vacancies in the Senate, with two additional Senators due to retire no later than June 30 and July 4, 2015 respectively. The constitutionally guaranteed representation of seven provinces is currently denied by the failure to fill vacancies from those provinces.

I respectfully submit that, as the application raises a significant issue of the constitutional validity of government action, time is of the essence.

In accordance with the *Canada Elections Act*, a federal election is to take place on October 19, 2015.

The respondents have taken the position that the failure to fill Senate vacancies is a purely political issue and that the breach of a convention that the Prime Minister advise the Governor General in respect of such appointments can carry only political consequences.

If the ordinary time limits under the *Federal Courts Rules* are applied, the Respondents' record would be due to be served and filed by September 22, 2015.

If the Court accepts the Respondents' position in this regard and dismisses the application for judicial review after a hearing on its merits, it is in the public interest that the pronouncement of such judgment occur prior to the election of October 19, 2015 – as would more likely have been the case in the absence of the four month delay occasioned by the Respondents' unsuccessful motion to strike.

Finally, the Applicant's personal family circumstances are such that his availability to prepare for and attend in Court will likely be significantly reduced as of November 2015 when my wife is expected to deliver our second child.

Will the Respondents be Prejudiced?

The Respondents have had notice of the application since December 8, 2014.

With respect to the transmittal of Rule 318 material, it was the Respondents' choice, not the Applicant's, to defer compliance with the Rule 317 request in the Notice of Application until after the motion to strike was adjudicated. There was nothing to prevent the Respondents to begin to gather the requested tribunal material prior to the service of an Amended Notice of Application on May 25, 2015. In any event, no abridgment of the time limit for transmitting Rule 318 material has been requested or proposed.

With respect to the time limit for the service of any further Applicant's affidavits, and the time required for the Respondents to prepare responding affidavits, I can advise that the only affidavit material intended to be filed is in respect of issues specifically raised by the Respondents at the hearing of the motion to strike.

In particular, I propose that such affidavit material will address the following issues:

- The Applicant's eligibility for standing by setting out citizenship, residency, and occupation (all of which were raised by counsel for the Respondents at the hearing of the motion to strike)

- How and when the Applicant became aware of the Prime Minister's alleged decision not to appoint Senators (i.e., by reading media reports on December 5, 2014)

- The Applicant's lack of affiliation with any political party or partisan organization

- The Applicant's request to the Prime Minister to advise the Governor General to fill Vacancies in accordance with the *Constitution Act, 1867*

- With respect to costs:

    - The public interest nature of the litigation (as questioned by counsel for the Respondents at the hearing of the motion to strike) as evidenced by national media reporting of this proceeding to be attached as exhibits

    - The Applicant's reasonable conduct of the litigation as reflected in correspondence between the Applicant and counsel for the Respondents and the Court, all of which are already in the possession of counsel for the Respondents

With respect to the time limit for the Respondents' affidavits, the Respondents have had notice of this proceeding since December 8, 2014. But for the motion to strike, the Respondents' affidavits would have been served by February 25, 2015. Any facts relevant to the Respondents' defence have presumably been within their knowledge far enough in advance of the proposed due date of June 29, 2015 to eliminate any potential prejudice arising from an abridgement of the time limit.

To the extent the Respondents may require additional time to respond to "new" facts contained in the Applicant's affidavit material beyond those already summarized above, I would propose that this could be accommodated as necessary through a tailored extension of time for doing so.

Finally, with respect to the timing of the Respondents' record, the issues of justiciability and jurisdiction were already thoroughly argued according to the "plain and obvious" test in the context of the Respondents' motion to strike. Since these same issues will need to be re-argued, notwithstanding the Court's suggestion (per Lafrenière P.) that the objections would be *res judicata* following the motion to strike, there can be no prejudice to the Respondents arising from an abridgement of time to prepare written submissions on these identical issues. They have

already been prepared and argued, both in writing and orally, albeit in the context of a motion that did nothing to resolve the issues raised.

Beyond the issues of justiciability and jurisdiction, the remaining issues of statutory interpretation, remedy and costs are, I submit, relatively straightforward. If a self-represented litigant is prepared to commit to addressing these issues within an Application Record according to an equally abridged timeline, it is difficult to see what prejudice would befall the Respondents, who are currently represented by two counsel within the largest law department in Canada.

Will the proceeding be rendered moot if not decided prior to a particular event?

As noted above, if the Respondents are correct in their position that only "political consequences" flow from the Prime Minister's impugned inaction, and that judicial intervention is thereby precluded, the timing of the election may render moot the most obvious expression of political dissatisfaction citizens may choose to express in light of a determination that the Prime Minister's inaction is unconstitutional but not subject to a judicial remedy.

Moreover, if the Prime Minister fills the vacancies but only after the election, or if a change in government results in a change in the policy of the government of the day in respect of Senate appointments, or a continuation of the existing policy of inaction but without a clear expression of that policy or "decision", the underlying issues raised in the application concerning the constitutional requirement to advise the Governor General to fill Senate vacancies may reasonably be expected to become moot after the election.

Would expediting the proceeding result in the cancellation of other hearings?
The Applicant is not aware of the Court's existing availability to hear the application following the perfection of records either according to the default time limits or according to the proposed abridge timeline. It is therefore difficult to point to the likelihood of cancellation of other hearings as a result of an abridgement.

Noting the Court's publically available Western hearing list, however, it appears that the Court is presently scheduled to sit in Vancouver for a total of twelve sitting days between the week following the proposed filing of the Respondents' record and the federal election of October 19 (i.e., August 12, 13, 17, 26-27, September 21-22, 30, October 1-2, 7-8).

Appropriateness of a Case Management Order

At the time the Court considered motions to abridge time limits in *CWB* and *Conacher*, neither proceeding was subject to case management as is the current proceeding. Having regard to Rules 3 of the *Federal Courts Rules* and s. 18.1(4) of the *Federal Courts Act*, I respectfully submit that it is desirable and appropriate to fix a timetable by case management order rather than require the parties to prepare and file motion records.

Indeed, the potential delays occasioned by the preparation of motion records and the scheduling of a court hearing to determine what is frequently dealt with through case management may render moot the request for an expedited timetable. In my respectful submission, this is time and effort that could be better served addressing the application on its merits.

Fixing of a Court Hearing before Perfection of Records

As the Notice to Profession contemplates, hearing dates may be set following a timetable fixed by consent or through case management. Accordingly, in the alternative that the Court is not prepared to abridge time limits, either as proposed or at all, I would respectfully request that hearing dates be reserved and fixed in light of the ordinary time limits applicable under the *Rules* (i.e., as soon as practicable after September 22, 2015).

Sincerely,

Aniz Alani

Encl.

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

Gmail by Google

Aniz Alani [redacted]

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

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

Dear Mr. Alani,

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

Yours sincerely,

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

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

Messrs. Pulleyblank and Brongers:

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

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

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

January 15, 2015: Rule 318 material transmitted

January 26: Applicant's affidavits served

February 25: Respondents' affidavits served

March 17: cross-examination on affidavits to be completed

April 7: Applicant's record served and filed

April 27: Respondents' record served and filed

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

I look forward to hearing from you.

Thank you and best regards,

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

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

Sandra" <Sandra.Boire@justice.gc.ca> 9
Subject: RE: Alani v. The Prime Minister of Canada et al. / Court File T-2506-14 - Proposal re: admission of historical fact evidence

Dear Mr. Alani:

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

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

Kind regards,

Oliver

Oliver Pulleyblank

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

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

Oliver,

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

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

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

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

Thank you and best regards,

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

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

Our File: 7755923

January 15, 2015

BY E-MAIL and COURIER

Aniz Alani
[redacted]

Dear Mr. Alani:

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

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

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

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

Yours sincerely,

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

JB/sb

Encl.

Wong, Karen

From: Aniz Alani <senate.vacancies@anizalani.com>
Sent: 2015-Jun-11 12:04 PM
To: Brongers, Jan; Pulleyblank, Oliver
Cc: Corrigall, Sandra; Mukai, Tami
Subject: RE: Alani v. Canada

Dear Mr. Brongers:

Thank you for your note below. I accept your point, which would appear to be consistent with para. 2 the Court's June 9th order, that the timeline for the remaining procedural steps would be calculated relative to the extended deadline for production of the respondents' affidavits.

As indicated in my correspondence to the Court of May 29th, I have concerns that if the hearing of the application does not take place in advance of the scheduled federal election of October 19th the issues raised in the application may become moot. It may be the case that a hearing date can be accommodated before October 19th without any further modifications to the timetable, depending on the parties' and Court's availability and whether an early hearing date is requested as contemplated in the Practice Direction already referenced.

Before taking steps to determine whether this is the case, including, if necessary, by way of a formal Rule 8 motion to abridge time limits as necessary to accommodate a hearing date before October 19th, I note that you referred at the June 1st case management conference to being prepared to make submissions regarding why the issues in the application may not become moot after October 19. Those submissions were not heard.

If I have understood correctly that the respondents take the position that the issues would not necessarily be moot after the election, I would respectfully request that you provide me with the basis for that position. If we can agree that mootness will not be an issue, it may not be necessary in my view to take any further steps to fix a hearing date at this time.

Yours sincerely,

This is Exhibit "B" referred to in the affidavit of Karen Wong
sworn before me at Vancouver
this 6th day of May 20 16

Aniz Alani
T: 604.600.1156
E: senate.vacancies@anizalani.com
-------- Original message --------
From: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>
Date: 2015-06-09 3:19 PM (GMT-08:00)
To: 'Aniz Alani' <senate.vacancies@anizalani.com>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>
Cc: "Corrigall, Sandra" <Sandra.Corrigall@justice.gc.ca>, "Mukai, Tami" <Tami.Mukai@justice.gc.ca>
Subject: RE: Alani v. Canada

Dear Mr. Alani:

Thank you for your e-mail below, and for communicating to the Court your consent to our informal request for an extension of time for the production of the Respondents' affidavits. We now await the Court's adjudication of this request.

It is our understanding that if the request is granted, "subsequent steps shall be taken within the timelines provided in Part 5 of the *Federal Courts Rules* or as otherwise ordered by the Case Management Judge" (as per paragraph 4 of the Court's June 2 order). These timelines include Rule 308, which provides for a 20-day deadline for the completion of cross-examinations calculated from the date of production of the respondents' affidavits. If these affidavits are produced on July 31st, the deadline for completion of cross-examinations on affidavits will be August 20, 2015 (not August 13th, as you suggest below).

Accordingly, we think it preferable to await the completion of the parties' affidavit material before committing to a position on whether extensions or abridgements would be appropriate for the remaining procedural steps in this application.

Yours sincerely,

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

From: Aniz Alani [mailto:senate.vacancies@anizalani.com]
Sent: Monday, June 08, 2015 3:01 PM
To: Brongers, Jan; Pulleyblank, Oliver

Cc: Corrigall, Sandra; Mukai, Tami
Subject: Re: Alani v. Canada

Further to my note below, could you please confirm that the respondents are agreeable to proceeding according to the ordinary time limits for the remaining steps in the proceeding, subject to further Order of the Court or consent under Rule 7, with the sole exception of the 7 day extension (by consent) for serving the respondents' affidavits and filing proof of service thereof?

If so, by my reckoning, the following time limits would apply:

June 15, 2015: Transmittal of Rule 318 material

June 24, 2015: Service of applicants' affidavits and filing of proof of service thereof

July 31, 2015: Service of respondents' affidavits and filing of proof of service thereof

August 13, 2015: Cross-examination on affidavits completed

September 2, 2015: Applicant's record served and filed

September 22, 2015: Respondents' record served and filed

October 2, 2015: Requisition of hearing to be filed

For clarity, I have not proposed extending the time limit for completing cross-examinations on affidavits to reflect the extension of time in respect of the respondents' affidavits.

If we are *ad idem* regarding the timetable, it would be preferable in my view to communicate this to the Court for case management purposes.

I look forward to your response.

Yours truly,

Aniz Alani

c: 604.600.1156

e: senate.vacancies@anizalani.com

w: www.anizalani.com/senatevacancies

On Mon, Jun 8, 2015 at 12:37 PM, Aniz Alani <senate.vacancies@anizalani.com> wrote:

Please be advised that I will consent to the respondents' informal request to extend the time limit for serving affidavits and filing proof of service thereof to July 31, 2015, without prejudice to my ability to object to the admissibility of the affidavits including, but not limited to, on the basis that the content of the convention(s) addressed in the affidavits was not considered by the decision maker at the time of the alleged decision not to advise the Governor General to fill vacancies in the Senate.

I plan to confirm this consent by way of letter to the Court but may not have the means to do so during business hours today. Please feel free to reference my position as set out above on support of the respondents' request for an extension of time.

Yours truly,

Aniz Alani

T: 604.600.1156

E: senate.vacancies@anizalani.com

-------- Original message --------
From: "Corrigall, Sandra" <Sandra.Corrigall@justice.gc.ca>
Date: 2015-06-08 12:26 PM (GMT-08:00)
To: "'senate.vacancies@anizalani.com'" <senate.vacancies@anizalani.com>
Cc: "Brongers, Jan" <Jan.Brongers@justice.gc.ca>, "Pulleyblank, Oliver" <Oliver.Pulleyblank@justice.gc.ca>, "Mukai, Tami" <Tami.Mukai@justice.gc.ca>
Subject: Alani v. Canada

Good afternoon Mr. Alani,

Please see attached correspondence of today's date.

Regards,

Sandra Corrigall
Senior Paralegal

Regional Director General's Office - BC Region
Department of Justice Canada | Ministère de la Justice Canada
900 - 840 Howe Street | 900- 840 rue Howe
Vancouver, B.C. V6Z 2S9
Phone | Tél. (604) 666-4434 Fax |Telec. (604) 666-1585
Government of Canada | Gouvernement du Canada

Court File No. T-2506-14

FEDERAL COURT

BETWEEN:

ANIZ ALANI

Applicant

and

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

Respondents

WRITTEN REPRESENTATIONS OF THE APPLICANT

(Motion for Abridgment of Time and Expedited Hearing)

Aniz Alani
[redacted]

Applicant

On his own behalf

Department of Justice
Regional Director General's Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Solicitor for the Respondents

Jan Brongers and Oliver Pulleyblank
Counsel

This is Exhibit " C **" referred to in the affidavit of** Karan Wong **sworn before me at** Vancouver **this** 6th **day of** May **20** 16

_____

OVERVIEW

1. According to the *Federal Courts Rules*, all procedural steps in an application for judicial review – from the filing of a Notice of Application to the requisition for a hearing – must be completed within 130 days absent consent or order of the Court.[1]

2. Given the statutory requirement under section 18.4(1) of the *Federal Courts Act* that applications "shall be heard and determined without delay and in a summary way",[2] obtaining resolution according to a timeframe that reflects the 130 day default timeline is not naively idealistic but a legitimate expectation of reasonably diligent litigants.

3. In this proceeding, the application's timeline stood still and was disrupted for 126 days to indulge the Respondents' election to invoke an extraordinary pre-hearing tool said to be reserved for an exceptional category of the very clearest of cases: an interlocutory motion to strike and dismiss the application for judicial review before a hearing on its merits.

4. The Applicant, meanwhile, has consistently demonstrated a clear intention to have the application heard and determined in an expeditious manner. The Applicant has complied with every time limit and has not requested a single extension of time.

5. The Respondents' motion to strike now having been dismissed,[3] the Applicant moves this Court to reclaim just a few of the days already lost such that the application can be heard in less than 315 days from when it began and, significantly, before the federal election scheduled to be held on October 19, 2015.[4]

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[1] *Federal Courts Rules*, ss. 7, 8, 304-306, 308- 310, 314, 317-318.
[2] *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 18.4(1).
[3] *Alani v. Canada (Prime Minister)*, 2015 FC 649.
[4] *Canada Elections Act*, S.C. 2000, c. 9, s. 56.1(2).

PART I – STATEMENT OF FACTS

6. On Monday, December 8, 2014, the Applicant filed a notice of application for judicial review seeking, *inter alia*, a declaration that the Prime Minister must advise the Governor General to summon a qualified Person to the Senate within a reasonable time after the Vacancy happens.[5]

7. The proceeding was commenced within one business day of the Applicant having first learned through media reports of the Prime Minister's public statements indicating that he did not intend to "name more Senators right about now" to fill the 16 vacancies then existing in the Senate.[6]

8. On January 5, 2015, the Applicant sought to avail of the Court's procedure for requesting a hearing date before the perfection of the application as set out in the Notice to the Parties and the Profession entitled "Early Hearing Dates for Applications in the Federal Court" issued by Lutfy C.J., as he then was, on November 18, 2010.

9. To do so, the Applicant wrote to counsel for the Respondents seeking confirmation of agreement as to the ordinary timetable provided by the *Federal Courts Rules* as follows:

"January 15, 2015:	Rule 318 material transmitted
January 26:	Applicant's affidavits served
February 25:	Respondents' affidavits served
March 17:	cross-examination on affidavits to be completed
April 7:	Applicant's record served and filed
April 27:	Respondents' record served and filed"[7].

---

[5] Affidavit of Aniz Alani ("Alani Affidavit"), Exhibit B.
[6] Alani Affidavit, paras. 2-3, Exhibit A.
[7] Alani Affidavit, para. 8, 10, Exhibit D.

10. The Applicant sought the Respondents' agreement "to jointly requesting hearing dates in anticipation of the application being perfected along the timeline indicated above, or with any modifications [they] would like to discuss."[8]

11. On January 15, 2015, the deadline for the transmittal by the Prime Minister of "a certified copy of the record of all materials placed before and considered by the Prime Minister in making the decision not to advise the Governor General to fill the currently existing Vacancies",[9] the Respondents served a Notice of Motion to strike the application for judicial review.[10]

12. Despite the Applicant's efforts to resolve the scope and merits of the Respondents' objection to transmitting material under Rule 318, and the impact of the pending motion to strike on the timetable for remaining steps in the application, these issues were deferred until after the adjudication of the Respondents' motion to strike.[11]

13. The Applicant voiced his concerns that a motion to strike was not appropriate in the context of the present application, would frustrate the objective of obtaining a just, speedy and expeditious determination of the issues, and may result in the unnecessary delay and duplication of argument if the Respondents were unsuccessful in establishing that the "plain and obvious" test for striking an application had been met.[12] To mitigate this, the Applicant offered various proposals to the Respondents and to the Court, including:

    i) that the Respondents' motion be disposed of in writing, with an oral hearing scheduled only if the Court determines it to be appropriate upon review of the materials;[13]

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[8] Alani Affidavit, para. 8, 10, Exhibit D.
[9] Alani Affidavit, Exhibit B; *Federal Courts Rules*, ss. 317-318.
[10] Alani Affidavit, para. 11, Exhibit E.
[11] Alani Affidavit, paras. 13, 17-19, 25-29, Exhibits G, K, L, M, S, T, U, V.
[12] Alani Affidavit, paras. 12-20, 25, Exhibits F-N, S.
[13] Alani Affidavit, Exhibit F.

ii) that the parties discuss mutually satisfactory amendments to the notice of application to reflect a further articulation of the grounds for the application to the extent they would satisfy the Respondents' concerns as to justiciability and jurisdiction;[14]

iii) that the hearing of the motion to strike be adjourned and heard at the outset of the hearing of the application itself.[15]

14. In the course of a case management conference held on February 16, 2015, Prothonotary Lafrenière commented that the discrete objections raised in the Respondents' motion to strike would be *res judicata* such that they could not be re-argued at the hearing of the application, and that it should be possible to arrange for hearing dates relatively quickly, if the motion were unsuccessful.[16]

15. Although the Respondents did not indicate a contrary view during a case management conference, they were unwilling to stipulate as to whether their objections would be *res judicata* until after they had reviewed the reasons for judgment following the Court's determination of the motion to strike.[17]

16. At the hearing of the Respondents' motion to strike on April 23, 2015, Harrington J. commented that, with respect to the Respondents' ability to re-argue the same objections following an unsuccessful motion to strike, although "[i]t might be unfortunate that this is the state of our law", the Respondents "can argue the darn thing over again".[18]

17. On May 21, 2015, Harrington J. dismissed the Respondents' motion to strike.[19]

18. That same day, the Applicant wrote to counsel for the Respondents to solicit

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[14] Alani Affidavit, Exhibit G.
[15] Alani Affidavit, Exhibit S.
[16] Alani Affidavit, paras 27-28, Exhibit U.
[17] Alani Affidavit, paras. 30-31, Exhibits W-X, Z.
[18] Alani Affidavit, Exhibit Z.
[19] Alani Affidavit, para. 34.

feedback on a timetable for the remaining steps in the application as follows:

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

19. On May 22, 2015, counsel for the Respondents responded that they did "not see any justification for abridging them in the manner" proposed.[21]

20. The same day, Applicant requested a case management conference to discuss the possibility of fixing dates for the remaining steps in the proceeding, including the potential fixing of a hearing date.[22]

21. On May 25, 2015, the Applicant served and filed an Amended Notice of Application.[23]

22. By letter to the Court dated May 29, 2015, counsel for the Respondents provided submissions opposing the adjudication of the Applicant's request other than by way of a formal Rule 8 motion.[24]

23. The same day, the Applicant responded with submissions in support of an abridgement of time limits and the fixing of a hearing date, as well as the appropriateness of a case management order to resolve these issues.[25]

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[20] Alani Affidavit, para. 35, Exhibit Y.
[21] Alani Affidavit, para. 35, Exhibit Y.
[22] Alani Affidavit, para. 36, Exhibit Z.
[23] Alani Affidavit, para. 37, Exhibit AA; Amended Notice of Application.
[24] Alani Affidavit, para. 38, Exhibit BB.
[25] Alani Affidavit, para. 39, Exhibit CC.

24. Also on May 29, 2015, the Respondents filed a Notice of Appeal of Harrington J.'s Order dismissing the Respondents' motion to strike.[26]

25. A case management conference was held on June 1, 2015, during which counsel for the Respondents advised the Court that the Respondents anticipated commissioning an expert to provide affidavit evidence to address issues relating to constitutional conventions and might need additional time to do so. [27]

26. The Court ordered that the Respondents advise the Court no later than June 8, 2015 when they anticipated being able to produce their affidavits. The Court also ordered that Rule 317 material be transmitted by June 15, 2015, any further Applicant's affidavits be produced by June 24, 2015, and that subsequent steps be taken within the timelines provided in Part 5 of the *Federal Courts Rules* or as otherwise ordered by the Case Management Judge.[28]

27. On June 8, 2015, the Respondents advised that they expected to be able to serve their responding affidavit evidence and file proof of service by July 31, 2015. The Respondents indicated: "While it is our hope that this reasonable request will meet with the consent of the Applicant and can be adjudicated informally by the Court, the Respondents are prepared to file a formal Rule 8 motion if necessary."[29]

28. The same day, the Applicant consented to the Respondents' informal request for an extension of time.[30]

29. Also on the same day, the Applicant wrote to counsel for the Respondents to request confirmation of the timetable for the remaining steps in the

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[26] Alani Affidavit, para. 40.
[27] Alani Affidavit, para. 41.
[28] Alani Affidavit, para. 42, Exhibit DD.
[29] Alani Affidavit, para. 43, Exhibit EE.
[30] Alani Affidavit, paras. 44-45, Exhibit FF.

proceeding.[31]

30. The Court granted the Respondents' request by Order dated June 9, 2015.[32]

31. On June 9, 2015, counsel for the Respondents clarified that the period for completion of cross-examination on affidavits would end on August 20, 2015 if the Respondents' affidavits were produced on July 31, 2015. Counsel also indicated, in part:

> "…[W]e think it preferable to await the completion of the parties' affidavit material before committing to a position on whether extensions or abridgements would be appropriate for the remaining procedural steps in this application."[33]

32. On June 11, 2015, the Applicant wrote to counsel for the Respondents regarding the potential mootness of the application after the federal election, stating in part:

> "As indicated in my correspondence to the Court of May 29th, I have concerns that if the hearing of the application does not take place in advance of the scheduled federal election of October 19th the issues raised in the application may become moot. It may be the case that a hearing date can be accommodated before October 19th without any further modifications to the timetable, depending on the parties' and Court's availability and whether an early hearing date is requested as contemplated in the Practice Direction already referenced.
>
> Before taking steps to determine whether this is the case, including, if necessary, by way of a formal Rule 8 motion to abridge time limits as necessary to accommodate a hearing date before October 19th, I note that you referred at the June 1st case management conference to being prepared to make submissions regarding why the issues in the application may not become moot after October 19. Those submissions were not heard.
>
> If I have understood correctly that the respondents take the position that the issues would not necessarily be moot after the election, I would respectfully request that you provide me with the basis for that position. If we can agree that mootness will not be an issue, it may not be necessary in my view to take any further steps to fix a hearing date

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[31] Alani Affidavit, para. 46, Exhibit II.
[32] Alani Affidavit, para. 47, Exhibit GG.
[33] Alani Affidavit, para. 48, Exhibit II.

at this time."[34]

33. On June 15, 2015, the Respondents advised the Court that no material would be transmitted under Rule 318 because "…[T]here was no 'decision not to advise the Governor General to fill the currently existing [Senate] Vacancies'…".[35]

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

> "In the absence of a formal motion to expedite or any evidence in support of your assertions, we see no utility in engaging in an academic debate on the merits of your apparent position at this time. Suffice it to say that, in our respectful submission, we find neither of the grounds you have raised to be persuasive. They certainly do not provide a justification for denying either party the opportunity to properly prepare their respective cases. In sum, it is our position that the timing of the next federal election is not a factor that ought to govern the determination of either the procedural deadlines or the hearing date of this application."[36]

35. On June 15, 2015, the Applicant wrote to counsel for the Respondents reiterating his intention to request through case management a direction as to whether the Court can accommodate a hearing date between the current time limit for service and filing of the Respondents' Record (i.e., September 29, 2015) and October 19, 2015.[37]

36. Referring to the Notice to the Parties and the Profession dated November 18, 2010, the Applicant inquired as to counsel's time estimate for the hearing of the application and counsel's availability for a hearing after September 29, 2015.[38]

37. By reply dated June 16, 2015, counsel for the Respondents declined to provide a time estimate for the hearing of the application or advise as to their availability for a hearing until after the production of the Respondents' record

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[34] Alani Affidavit, para. 49, Exhibit II.
[35] Alani Affidavit, para. 52, Exhibit HH.
[36] Alani Affidavit, para. 50, Exhibit II.
[37] Alani Affidavit, para. 51, Exhibit II.
[38] Alani Affidavit, para. 51, Exhibit II.

under Rule 310.[39]

38. Counsel also indicated that, if the Applicant brought a Rule 8 motion to expedite the proceeding, it was likely that the Respondents would cross-examine on any supporting affidavit. [40]

39. By reply dated June 16, 2015, the Applicant confirmed his intention to first ask the Court whether it could accommodate a hearing date between September 29, 2015 and October 19, 2015, which, if so, would obviate the need for a Rule 8 motion to abridge time limits.[41]

40. By further reply dated June 16, 2015, counsel for the Respondents advised that they were both not available to attend a hearing from September 28 to October 16 inclusive.[42]

41. The Applicant served and filed a Notice of Motion in respect of the present motion on June 17, 2015.[43]

42. The current time periods fixed by Order of the Court and the *Federal Courts Rules* are as follows:

July 31, 2015 – Respondents to serve affidavits and file proof of service

August 20, 2015 – Cross-examination on affidavits to be completed

September 9, 2015 – Applicant to serve and file application record

September 29, 2015 – Respondents to serve and file Respondents' record

43. A federal general election is scheduled to be held on October 19, 2015.[44]

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[39] Alani Affidavit, para. 53, Exhibit II.
[40] Alani Affidavit, para. 53, Exhibit II.
[41] Alani Affidavit, para. 54, Exhibit II.
[42] Alani Affidavit, para. 55, Exhibit II.
[43] Alani Affidavit, para. 17; Notice of Motion (A.M.R.).
[44] *Canada Elections Act*, S.C. 2000, c. 9, s. 56.1(2).

PART II – ISSUES

44. There are two issues before the Court on this motion:

i) Should a hearing date for the application be fixed?

ii) Should the Court exercise its discretion to abridge time periods for the remaining procedural steps in the application to accommodate a hearing date before October 19, 2015?

PART III – SUBMISSIONS

A. BACKGROUND

45. The application proceeds against the backdrop of 20 vacancies[45] having accumulated in the 105-member Senate -- the effects of which include that the guaranteed level of regional representation set out in the *Constitution Act, 1867*[46] is denied in respect of seven of Canada's provinces -- and the Prime Minister's stated intention not to appoint any more Senators.

46. By the time this motion is heard, a 21st vacancy will have arisen by the mandatory retirement of Senator Fortin-Duplessis on June 30, 2015. That same week, Senator LeBreton's retirement will create a 22nd vacancy.[47]

47. The application seeks declaratory relief interpreting and giving effect to s. 32 of the *Constitution Act, 1867* and, in particular, determining whether the requirement to summon qualified persons to the Senate "when a Vacancy happens" imposes an obligation to cause appointments to be made within a

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[45] Library of Parliament, "Party Standings in the Senate – Forty-first (41st) Parliament", online: Parliament of Canada <abbreviated URL: http://bit.ly/SenateStandings41>; retrieved: June 23, 2015

[46] *Constitution Act, 1867*, ss. 21-22.

[47] "Senators by Date of Retirement", online: Parliament of Canada <URL: http://www.parl.gc.ca/SenatorsBio/default.aspx?Language=E&sortord=R>; retrieved: June 23, 2015.

reasonable time.[48]

48. Section 18.4(1) of the *Federal Courts Act* requires that applications "be heard and determined without delay and in a summary way".

49. Rule 3 of the *Federal Courts Rules* declares:

3. General Principle – These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.	**3. Principe general** – Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

B. FIXING OF HEARING DATE BEFORE PERFECTION OF APPLICATION

50. Before undertaking an analysis of why the abridgement of time is justified in this proceeding, it is helpful to consider at the outset what options for abridgment might be considered – and whether any abridgment of time is required at all in order to grant the Applicant's overarching request for a hearing date that facilitates the determination of the issues in the application ahead of the federal election scheduled for October 19, 2015.

51. The extent to which time periods might be abridged to accommodate a hearing of the application before the federal election of October 19, 2015 depends in part on the following variables:

i) the Court's availability to hear the application before October 19, 2015;

ii) the amount of time the Court requires for review of the application records before the hearing of the application; and

iii) the availability of counsel.

52. The first of these two variables are to be determined by the Court itself.

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[48] Amended Notice of Application.

53. With respect to the third variable, counsel for the Respondents has advised that they are both unavailable between the current time limit for production of the Respondents' record (i.e., September 29) and October 16, 2015.[49]

54. Set out below are three illustrative examples of potential options for achieving an expedited hearing date with and without abridgments of time periods.

Option 1: No order for abridgment of time necessary; hearing date fixed on or after September 10, 2015

55. It may be possible that an early hearing date can be set in advance of the October 19th election without any abridgment of time periods under Rule 8.

56. Pursuant to the Order of the Court (Lafrenière P.) of June 9, 2015 and Part V of the *Federal Courts Rules*, the existing time periods for the steps currently remaining in the proceeding are as follows:

i) July 31, 2015: Respondents to serve affidavits and file proof of service

ii) August 20, 2015: Cross-examination on affidavits to be completed

iii) September 9, 2015: Applicant to serve and file application record

iv) September 29, 2015: Respondents to serve and file Respondents' record

v) October 9, 2015: Requisition for hearing to be filed

57. It is noteworthy that the time period for the service and filing of the Respondents' record under Rule 310 is defined as 20 days after service of the Applicant's record. If, for example, the Applicant's record were served on the due date for cross-examinations to be completed (i.e., August 20, 2015), the Respondents' record would by default be required to be served and filed on September 9, 2015.

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[49] Alani Affidavit, para. 55, Exhibit II.

58. Under this or a substantially similar timetable, to which the Applicant would be prepared to commit if a hearing date were to be fixed accordingly, the Court could hear the application after the perfection of the application on September 9. Twenty days of time would be "reclaimed" by the Applicant's unilateral commitment to producing his application record earlier than required.

59. Subject to the Court's and counsel's availability, this would yield 39 days between the perfection of the application and the October 19th election in which to conduct a pre-hearing review of the materials, hear the application, and potentially render judgment.

Option 2: Time period for cross-examinations expedited and abridged

60. With respect to cross-examination on affidavits, the Applicant has already produced the totality of his Rule 306 affidavits. But for the prohibition under Rule 84 against cross-examining deponents of an affidavit before having served every affidavit a party intends to rely on and against filing affidavits after cross-examining the deponent of an affidavit, the Respondents would be free to cross-examine the deponents of the Applicant's Rule 306 affidavits at any time.

61. The Applicant is prepared to consent to waive the requirements of Rule 84 in order to obtain an expedited hearing date. To that end, the Applicant seeks an order granting leave under Rules 84(1) and (2) as necessary to modify the time periods to accommodate an early hearing date as requested on this motion.

62. The Applicant is also prepared to present for cross-examination on his own Rule 306 affidavit forthwith if the Respondents seek to cross-examine him.

63. As the Respondents' affidavits are currently due on or before July 31, 2015, and the Applicant does not oppose an early cross-examination on his Rule 306 affidavits, the Applicant proposes that the time period for cross-examinations

to be completed be abridged from August 20, 2015 to such earlier date as the Court determines to be appropriate in the circumstances.

Option 3: Time period for production of application records to be abridged

64. If additional time is required between the perfection of the application an early hearing date as requested beyond that which might be "saved" through any combination of Options 1 and 2 above, the Applicant proposes that the 20 day time period for the production of each party's record be abridged at the Court's discretion.

65. As indicated above, the Applicant is prepared to commit to producing his record on or shortly after the time period for completing cross-examinations. Subject to the need to cross-examine the Respondents' affiants at all, and their availability to attend for cross-examination, this could reasonably include producing the Applicant's record shortly after the current July 31, 2015 time limit for the production of the Respondents' affidavits.

C. GENERAL PRINCIPLES GOVERNING THE ABRIDGMENT OF TIME

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

Extension or abridgement	**Délai prorogé ou abrégé**
8. (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.	**8.** (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.

67. Rule 8 does not codify factors constraining the Court's discretion to abridge time.[50] However, the Court's jurisprudence has established that the following non-exhaustive factors may be considered:

i) the effect of the abridgement on the respondent generally and on its ability

[50] *Canadian Wheat Board v. Canada (Attorney General)*, 2007 FC 39 at para. 13 ["*Wheat Board*"].

to defend its legal position;[51]

ii) whether the proceeding would be rendered moot if not decided prior to a particular event;[52]

iii) evidence that the applicant has acted expeditiously in the proceeding;[53]

iv) an urgent reason to proceed quickly;[54]

v) whether it is in the public interest to have a speedy determination of the issues;[55] and

vi) the effect of abridgment on other matters pending before the Court.[56]

i) The proposed abridgments will not unduly prejudice the Respondents in the circumstances of this case

68. The Respondents have had notice of the application since it was filed on December 8, 2014.

69. With respect to the time limit for the Respondents' affidavits, the Respondents have already sought and obtained, on consent, an extension of time to July 31, 2015 to produce affidavits. But for the motion to strike, the Respondents' affidavits would have been served by February 25, 2015.

70. The Applicant does not propose that the current time limit for the Respondents' affidavits to be produced.

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[51] *Wheat Board* at para. 13; *Conacher v. Canada (Prime Minister)*, 2008 FC 1119 at para. 16 ["*Conacher*"]; *Gordon v. Canada (Minister of National Defence)*, 2004 FC 1642,
[2004] F.C.J. No. 2000 (Q.L.) at para. 11 ["*Gordon*"]; *May v. CBC/Radio Canada*, 2011 FCA 130 at para. 14 ["*May*"].
[52] *Wheat Board* at para. 13; *Conacher* at para. 16.
[53] *Winnicki v. Canadian Human Rights Commission*, 2007 FCA 3 at para. 3.
[54] *Wheat Board* at para. 13; *Conacher* at para. 16; *Gordon* at para. 11.
[55] *May* at para. 17; *Trotter v. Canada (Auditor General)*, 2011 FC 498 at para. 17 ["*Trotter*"].
[56] *Wheat Board* at para. 13; *Conacher* at para. 16.

71. However, it must be noted that the Respondents will have had ample opportunity to prepare and present an evidentiary record in response to the application. No prejudice to the Respondents can fairly be said to arise on this account.

72. With respect to the timing of the Respondents' record, the issues of justiciability and jurisdiction were already thoroughly argued according to the enhanced "plain and obvious" test in the context of the Respondents' motion to strike.

73. Since these same issues will need to be re-argued if the Respondents maintain their position on justiciability and jurisdiction, there can be no prejudice to the Respondents arising from an abridgement of time to prepare written submissions on these identical issues. They have already been prepared and argued, both in writing and orally, albeit in the context of a motion that did nothing to resolve the issues raised.

74. The Applicant has also provided counsel for the Respondents with a certified copy of a transcript of the hearing of the motion to strike. With the benefit of a verbatim account of the parties' oral submissions on these issues, any potential prejudice arising from an abridgment of time to prepare the Respondents' memorandum of fact and law is mitigated accordingly.

75. Beyond the issues of justiciability and jurisdiction, the principal remaining issues of statutory interpretation, remedy and costs are relatively straightforward. These are primarily legal issues to be argued and in respect of which the Respondents are well positioned to defend fully through their able representation by two counsel within the largest legal department in Canada.

ii) Whether the proceeding would be rendered moot if not decided prior to a particular event

76. While neither party nor the Court can predict with certainty the impact of the October 19th federal election on this proceeding, the Applicant submits the

following as reasonable hypotheticals that could realistically render the proceeding moot:

i) If shortly before the election the Prime Minister resiles from his stated intention not to appoint Senators, it is reasonably foreseeable that the Respondents may raise mootness as a bar to proceeding with the application;

ii) If the Prime Minister remains in office following the election and thereafter resiles from his stated intention not to appoint Senators, it is also reasonably foreseeable that the Respondents may raise mootness as a bar to proceeding with the application; and

iii) If the Prime Minister does not remain in office following the election, it is reasonably foreseeable that the Respondents may raise ripeness as a bar to proceeding with the application unless and until the new Prime Minister states a similar intention not to appoint Senators.

iii) Evidence that the applicant has acted expeditiously in the proceeding

77. In each of the Court's reasons in *Wheat Board*, *Conacher*, *Gordon*, *May*, *Trotter*, and *Winnicki*, the applicants' requests for an expedited timetable were denied on the basis that the applicants had each failed to bring and conduct proceedings in a timely manner.

78. The evidence tendered in support of this motion establishes that, in contrast to the cases referenced above, the Applicant has acted expeditiously throughout this proceeding.

79. As a result, the time abridgment sought by this motion in order to accommodate the Applicant's request for an early hearing date – if abridgments are needed at all – is relatively minor compared to the significant abridgments requested in the cases referenced above in which the Court was unwilling to exercise its discretion under Rule 8.

80. In *Wheat Board*, the applicant waited 34 days to commence an application in respect of a barley plebisicite after the Minister announced it and the applicant was aware of it. The applicant also "waited another month after filing its application for judicial review before bringing [its] motion for an expedited hearing". The applicant had requested that the case be heard within a month of the Rule 8 motion.[57]

81. In *Conacher*, the applicants filed their notice of application 19 days after the issuing of Writs of Election and six days before the hearing of their motion to expedite. They had requested that the case be heard in less than a week, on October 8, 2008, ahead of an election fixed for October 14, 2008.[58]

82. In *Gordon*, Lafrenière P. found that the urgency suggested by the applicants was refuted by their failure to take steps to protect their asserted *Charter* rights between the commencement of tribunal proceedings on October 8, 2004 and the applicants' request for access during the first week of November.[59] As a result, the Court concluded: "The applicants have created an artificial sense of urgency through their own delay."[60]

83. The Federal Court of Appeal, per Nadon J.A., dismissed a motion for an expedited hearing brought by Green Party leader Elizabeth May in respect of an application for judicial review of a CRTC policy that had the effect of excluding her from participating in televised leaders' debates. In doing so, Nadon J.A. noted that the applicant could have brought her application before the election writ was dropped rather than waiting until 12 days before the first leaders' debate.[61] In that case, the applicant sought a timetable that would have had records produced, the application heard, and judgment issued within

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[57] *Wheat Board*, para. 19.
[58] *Conacher*, para. 18.
[59] *Gordon*, para. 14.
[60] *Gordon*, para. 15.
[61] *May* at paras. 8, 11.

6 days of the Rule 8 motion being heard.[62]

84. In *Trotter*, an application filed April 26, 2011 seeking to make public a report of the Auditor General ahead of a general election scheduled for May 2, 2011 was the subject of a Rule 8 motion.[63] While Nöel J. expressed doubts about whether the application could could be prepared and heard in time,[64] he indicated that "This situation would have been different had the Applicant not filed her application less than a week before the election", noting that the Auditor General's refusal had "been public and unequivocal since at least April 11, 2011."[65]

85. In *Winnicki*, Nöel J.A. rejected a motion for an expedited hearing where the applicant was in a position to proceed with its application since November 24, 2006, but, for reasons unexplained, failed to do so until December 22, 2006. As a result, the Court concluded that the applicant's "desire to expedite the application only arises because it failed to present the application earlier."[66]

86. In this case, the application for judicial review was filed on December 8, 2014 – less than two business days after the Prime Minister announced that he did not intend to fill Senate vacancies on December 4, 2014, and 3 calendar days after the applicant learned of the announcement on December 5, 2014.[67]

87. The Applicant in this proceeding clearly and consistently demonstrated an intention to avoid unnecessary delays in bringing forward the application to a hearing on its merits.

88. With respect to the fixing of hearing dates for the application, the Applicant attempted at various stages of the proceeding to apply the Court's guidance set out in its Notice to the Parties and the Profession of November 18, 2010,

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[62] *May* at paras. 15-16.
[63] *Trotter* at para. 3, 12.
[64] *Trotter* at para. 14.
[65] *Trotter* at para. 15.
[66] *Winnicki* at para. 3.
[67] Alani Affidavit, paras. 2-4.

which contemplates that parties may request that a hearing date for an application be set prior to the filing of their application records[68] rather than waiting to file a requisition for hearing under Rule 314.

89. The Notice states: "The Court will endeavour to accommodate early requests for hearing dates whenever possible." The key prerequisite for such a request is the parties' agreement to a schedule of steps required for the perfection of the application.

90. On January 5, 2015, the Applicant sought the Respondents' consent to a timetable and to jointly request hearing dates in anticipation of the application being perfected according to the ordinary time periods set out in the *Federal Courts Rules* – without the need for any abridgments of time. Under the Rules, the application at that time would have been perfected on or before April 27, 2015.[69]

91. The Applicant's first attempt to confirm a timetable and request hearing dates accordingly was ultimately thwarted by the filing of the Respondents' motion to strike the application on January 15, 2015.

92. Subsequent efforts to avail of the option for requesting early hearing dates after the dismissal of the Respondents' motion to strike -- including without the necessity of abridging time limits – were rejected by the Respondents. They took the position that it would not be appropriate to discuss time estimates for the hearing – or even their counsel's availability for a hearing – until after their responding application record had been filed and the requirement for a Rule 314 requisition for hearing was triggered.[70]

93. Unlike in previous cases where the Court has denied abridgments under Rule 8, the Applicant has not created a false sense of urgency by failing to act

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[68] Notice to the Parties and the Profession: "Early Hearing Dates for Applications in the Federal Court" issued November 18, 2010 [*"Early Hearing Dates Notice"*].
[69] Alani Affidavit, para. 8, Exhibit D.
[70] Alani Affidavit, paras. 51, 53-56, Exhibit H.

expeditiously in bringing and conducting the proceeding.

iv) An urgent reason to proceed quickly

94. In their motion to strike, the Respondents took the position that the Prime Minister's advice to the Governor General regarding Senate appointments is non-justiciable and that any remedy related to the Prime Minister's actions must be found in the political realm.

95. If the Court determines after a hearing of the application on its merits that the Respondents are correct in this regard, it follows that individual voters will be left to determine the constitutional significance of the Prime Minister's refusal to appoint Senators as a "ballot box" issue.

96. If the issues in the application are not determined until after the election and the Court concludes that the Prime Minister's inaction is non-justiciable, the Canadian voting public may be deprived of a singular opportunity to effect an obviously available political remedy.

97. The nature of the application itself, which raises a significant constitutional issue of public interest,[71] also militates in favour of exercising the Court's discretion to order an expedited hearing.

98. Finally, the Applicant's personal family circumstances are such that his own availability to prepare for and attend a hearing of the application will likely be curtailed for some time as of mid-November 2015.[72]

v) Whether it is in the public interest to have a speedy determination of the issues

99. National media coverage of the status of the Senate vacancies discloses uncertainty among political leaders and academics alike – and presumably, in turn, among Canadians generally – as to whether there is any constitutional

[71] Alani Affidavit, para. 73.
[72] Alani Affidavit, paras. 70-72.

barrier to the Prime Minister's refusal to appoint Senators to fill vacancies.[73]

100. This proceeding has itself generated national interest through media coverage.[74] Accordingly, it is reasonable to anticipate that the determination of the issues raised in the application will be effective in removing the public uncertainty that exists with respect to the alleged constitutional requirement that the Prime Minister advise the Governor General to fill vacancies within a reasonable time.

101. Unlike in several of the Rule 8 cases referenced above, this is not a case in which the public interest in having a significant constitutional issue decided will be harmed by an aggressively expedited timetable or an incomplete record to be considered by the Court.

102. On the contrary, as the application largely centers on a question of statutory interpretation against the backdrop of a publicly available and easily referenced history of Senate vacancies, there is no real risk that the Court will be asked to decide issues "on the fly" without the benefit of full legal argument and the relevant evidentiary record.

vi) The effect of abridgment on other matters pending before the Court

103. The Applicant is not aware of the Court's existing availability to hear the application following the perfection of records either according to the default time limits or according to abridged timelines. It is therefore difficult to point to the likelihood of cancellation of other hearings as a result of an abridgement.

104. Noting the Court's publicly available Western hearing list, however, it appears that the Court is presently scheduled to sit in Vancouver for a total of 13 sitting days during September and October 2015.[75]

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[73] Alani Affidavit, paras. 58-69, Exhibits JJ-TT.
[74] Alani Affidavit, para. 73.
[75] Alani Affidavit, para. 74, Exhibit UU.

PART IV – ORDER SOUGHT

105. The Applicant respectfully requests the Court to issue an order that:

i) a hearing of the application be scheduled for the earliest practicable date;

ii) the times for the remaining steps in the proceeding be abridged on terms that the Court deems just;

iii) leave be granted to the Respondents under Rule 84(1) and (2) to cross-examine the deponents of the Applicant's affidavits forthwith and in advance of serving and filing proof of service of the Respondents' affidavits; and

iv) costs of this motion payable to the Applicant in an amount to be fixed by the Court, or, alternatively, costs to the Applicant in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Aniz Alani
Applicant

June 24, 2015

Wong, Karen

From: Information FCA-CAF <Information@cas-satj.gc.ca>
Sent: 2016-Jan-19 12:42 PM
To: Brongers, Jan; senate.vacancies@anizalani.com
Subject: A-265-15 // Hearing Vancouver January 25, 2016 // PRIME MINISTER OF CANADA and GOVERNOR GENERAL OF CANADA v. ANIZ ALANI

Importance: High

Dear Mr. Brongers and Mr. Alani,

As per our conversation of today's date, please find below the Court's Oral Direction dated January 19, 2016:

"The Court indicates that the parties be asked if the appeal is not made moot by the Minister's January 19, 2016 announcement with respect to the establishment of an independent commission to advise the Government on Senate appointments, together with the Government's undertaking to fill the current vacancies within the calendar year. If they agree that the matter has become moot, would they please advise us as soon possible. If not, they should come prepared to argue the issue of mootness as a preliminary question."

Regards,

Marie-Josée Young
A. Senior Registry Officer / Agent principal du greffe p.i.
Federal Court of Appeal / Cour d'appel fédérale Court Martial Appeal Court of Canada / La cour d'appel de la cour martiale du Canada Courts Administration Services / Services administratifs des tribunaux judiciaires
90 Sparks Street
Ottawa, Ontario K1A 0H9
Tel: (613) 996-6795
Fax: (613) 952-7226

This is Exhibit "D" referred to in the affidavit of Karen Wong
sworn before me at Vancouver
this 6th day of May 20 16

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

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

Our Files: 7755923
8045829

January 21, 2015

This is Exhibit "E" referred to in the affidavit of Karen Wong
sworn before me at Vancouver
this 6th day of May 20 16

WITH PREJUDICE

BY E-MAIL: senate.vacancies@anizalani.com

Aniz Alani
[redacted]

Dear Mr. Alani:

Re: ALANI, Aniz v. Canada
Federal Court File No. T-2506-14
Federal Court of Appeal File No. A-265-15

Further to the Federal Court of Appeal's direction of January 19th, please be advised that it is Canada's position that the Government's announcement of the establishment of the Independent Advisory Board for Senate Appointments and its intention to fill all of the outstanding vacancies in the Senate by the end of 2016 means that there is no longer any live controversy between the parties. As such, we understand and share the Court's concern that the parties are nevertheless still poised to expend time and resources on this litigation in the absence of a live controversy.

Accordingly, we are proposing that the parties resolve this matter by immediately discontinuing their respective proceedings before the Federal Court and the Federal Court of Appeal. Furthermore, we propose that these discontinuances be effected on a without costs basis. As you know, since the costs to which Canada would be entitled further to a discontinuance of your application are significantly greater than the costs to which you would be entitled further to a discontinuance of Canada's appeal, we trust that you will agree that such an offer is more than equitable in the circumstances.

We respectfully request a response to this offer no later than **Friday, January 22 at 10 a.m. (Pacific Standard Time)**, as this will permit the parties to file their respective notices of discontinuance and spare the Federal Court of Appeal the need to conduct a hearing next Monday.

Finally, we ask that you please note that this offer is made on a with prejudice basis and that Canada reserves the right to bring it to the attention of the Courts should it be refused. That said, it remains our sincere hope that you will agree to resolve this matter as proposed above and that this will not be necessary.

We look forward to hearing from you.

Yours sincerely,

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

JB/kw

Department of Justice Canada
Ministère de la Justice Canada

900 – 840 Howe Street
Vancouver, BC V6Z 2S9

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

Our File: 8045829

January 22, 2016

BY FAX: (604) 666-8181 & (613) 952-6439

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

This is Exhibit "F" referred to in the affidavit of Karen Wong sworn before me at Vancouver this 6th day of May 20 16

Attention: Courts Administration Services

Dear Sir/Madam:

Re: CANADA (Prime Minister and Governor General) v. ALANI, Aniz
Federal Court of Appeal No. A-265-15
Response to Court Direction of January 19, 2016

On behalf of the Appellants ("Canada"), I write further to the Court's direction of January 19, 2016 requesting the parties' position on whether the Government's announcement of that day renders their litigation moot.

It is Canada's position that the Government's announcement of the establishment of the Independent Advisory Board for Senate Appointments and its intention to fill all of the outstanding vacancies in the Senate by the end of 2016 means that there is no longer any live controversy between the parties. As such, Canada understands and shares the Court's concern that the parties are nevertheless still poised to expend time and resources on this litigation in the absence of a live controversy.

Accordingly, we have proposed to Mr. Alani that the parties resolve this matter by immediately discontinuing their respective proceedings before the Federal Court and the Federal Court of Appeal, on a without costs basis. We requested that Mr. Alani provide his response to this proposal by 10 a.m. (Vancouver time) today. As of the time of writing (11:00 a.m), Mr. Alani has not responded to Canada's proposal.

In the circumstances, Canada is prepared to proceed with its appeal on Monday. With respect to the issue of mootness, as noted above, it is Canada's position that Mr. Alani's application before the Federal Court is indeed moot. However, as Mr. Alani has not discontinued his application, the same cannot be said of Canada's appeal before the Federal Court of Appeal. So long as the underlying application remains, Canada maintains its position on appeal that the Federal Court motions judge erred by not dismissing the application for non-justiciability and lack of jurisdiction.

We would be grateful if this information could be forwarded to the Court.

Yours sincerely,

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

JB/kw

c.c. Aniz Alani
Respondent

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

January 22, 2016

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

Attention: Courts Administration Service

This is Exhibit "G" referred to in the affidavit of Karen Wong
sworn before me at Vancouver
this 6th day of May 20 16

Dear Sirs/Mesdames:

Re: ***Canada (Prime Minister) et al. v. Alani***
Court No: A-265-15
Response to Court's Direction issued January 19, 2016

I write in my capacity as Respondent in the above referenced appeal, which is currently scheduled to be heard in Vancouver on Monday, January 25, 2016 at 9:30am.

On January 19, 2016, the Court issued the following Oral Direction:

> "The Court indicates that the parties be asked if the appeal is not made moot by the Minister's January 19, 2016 announcement with respect to the establishment of an independent commission to advise the Government on Senate appointments, together with the Government's undertaking to fill the current vacancies within the calendar year. If they agree that the matter has become moot, would they please advise us as soon possible. If not, they should come prepared to argue the issue of mootness as a preliminary question."

Further to the Direction, I advised counsel for the Appellants on January 19th that, in my view, the Minister's announcement did not make the appeal moot. I also proposed that, subject to counsel's comments, correspondence be provided to the Court advising of the lack of agreement among the parties as to mootness.

In response to the Court's Direction, and as a courtesy to the Appellants, I have included below a preliminary outline of the submissions I intend to make on the preliminary issue of mootness as contemplated by the Court's Direction of January 19th.

1. The Minister's announcement does not render moot the appeal or the underlying application.
2. The Federal Court is the appropriate forum for determining mootness in the circumstances of this case

3. If this Court nevertheless concludes that the Minister's announcement makes the appeal or the application moot, the Court ought to exercise its discretion to hear the appeal and permit the Federal Court to exercise its discretion as to whether to hear the underlying application.
4. If this Court declines to hear the appeal, or allows the appeal on the new ground of mootness, costs ought to be awarded in favour of the Respondent in this Court and below.

The Minister's announcement does not render moot the appeal of the underlying application

The Court's Direction refers to "the Government's undertaking to fill the current vacancies within the calendar year". In fact, nothing in the Minister's news release commits to filling the current vacancies within the current year, or at all.[1]

The news release accompanying the Minister's announcement indicates that an Advisory Board has been established to recommend to the Prime Minister nominees for five of the existing 22 vacancies. With respect to timing, the news release also states: "It is hoped that five vacancies (two in Manitoba, two in Ontario and one in Quebec) will be filled by early 2016." [Emphasis added]. It goes on to state: "The permanent process will be established later in 2016 and will include an application process open to all Canadians."

Notwithstanding the reference in the Court's Direction to the Government's "undertaking", the news release is silent on the Government's intentions regarding:

a) when an Advisory Panel will be established to recommend nominees for 17 of the 22 existing vacancies,

b) when the 17 remaining vacancies will actually be filled,

c) when Advisory Panels will be established to recommend nominees for any of vacancies that will necessarily arise as a result of the upcoming mandatory retirements of:

   i. the Hon. Senator Irving Gerstein (Ontario) on February 10, 2016;

   ii. the Hon. Senator C. Hervieux-Payette (Quebec) on April 22, 2016;

   iii. the Hon. Senator David P. Smith (Ontario) on May 16, 2016;

   iv. the Hon. Senator Michel Rivard (Quebec) on August 7, 2016;

   v. the thirty other Senators whose mandatory retirement will occur before the next scheduled federal election.

In its Reasons for Order declining to expedite the hearing of the underlying application to occur before the federal election of October 19, 2015, the Federal Court (Gagné J.) stated:

> "However, if [the Applicant's] real intention is to have a declaration from the Court dealing with a Prime Minister's duties and obligations with respect to Senate

[1] Government of Canada, "Minister of Democratic Institutions Announces Establishment of the Independent Advisory Board for Senate Appointments", January 19, 2016 (News Release): http://news.gc.ca/web/article-en.do?nid=1028349

> appointments, this application for judicial review might not be moot if the vacancies are filled before a final judgment is rendered."[2]

It follows, *a fortiori*, that neither the appeal nor the application is made moot by the announcement of an *intention* to fill some of the vacancies, and which is devoid of any commitment, reflected in an Order-in-Council, statute, or otherwise, to fill all existing vacancies according to any stated timeline.

In sum, the *raison d'être* of the application has not disappeared. All of the relief claimed in the amended notice of application remains relevant.[3]

The Federal Court is the appropriate forum for determining mootness in the circumstances of this case

The hearing of the underlying application, which has already been perfected with complete memoranda of fact and law, affidavit evidence, transcripts of cross-examination, has been adjourned generally by consent pending disposition of this interlocutory appeal from a dismissed motion to strike the application.

Unlike an appeal from a final judgment, the record before this Court lacks the factual record and written representations of the parties on all of the issues raised in the application rather than merely the written representations of the parties on the narrow issues raised in the appeal.

It would be appropriate to defer the issue of mootness to the Federal Court where the parties may have the benefit of preparing fulsome arguments and referring to a complete factual record.

Moreover, as this Court recently noted in *Cathay Pacific Airways Limited v. Air Miles International Trading B.V.*, it is preferable to have some determinations made by the Federal Court, which are then subject to appeal to this Court:

> "As a practical matter, since the Federal Court's decision is subject to appeal to this court, both the Court and the parties are entitled to have the Federal Court's assessment of the probative value of the new evidence. If this Court finds that the Federal Court erred in a way which justifies its intervention, the absence of that assessment is a factor which militates for the return of the matter to the Federal Court for redetermination, rather than for the exercise of this Court's discretion under subparagraph 52(1)(b)(i) of the *Federal Courts Act*, R.S.C. 1985 c. F-7."[4]

The Court ought to exercise its discretion to hear the appeal and permit the Federal Court to exercise its discretion as to whether to hear the underlying application

In the alternative that the Court determines that the Minister's announcement of the government's intentions regarding some of the existing vacancies renders the appeal moot, the Court ought nevertheless to exercise its discretion to permit the underlying application to proceed in order to resolve the underlying issue, which has been fully canvassed in the application already perfected.

As Sopinka J. wrote in *Borowski* "...an expenditure of judicial resources is considered warranted in cases which although moot are of a recurring nature but brief duration. In order to ensure than

[2] *Alani v. Canada (Prime Minister)*, 2015 FC 859 at para. 24.
[3] See *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342 at 357 [*Borowski*].
[4] 2015 FCA 253 at para. 19.

an important question which might independently evade review be heard by the court, the mootness doctrine is not applied strictly."[5]

As the Supreme Court of Canada observed in *Borowski*, there are a category of cases where "[i]f the point was ever to be tested, it almost had to be in a case that was moot."[6]

The scope of the Prime Minister's constitutional obligation to recommend Senate appointments within a reasonable time is such a case. If the doctrine of mootness were applied strictly, the question could evade review by the judiciary, whose duty it is "to ensure that the constitutional law prevails",[7] by requiring fresh proceedings each time a single Senate vacancy is filled, or, in this case, the government announces an *intention* to fill some of the existing vacancies at some indeterminate point in the future.

As for this specific appeal itself, subject to the Appellants' election to discontinue their appeal, the procedural issues raised are of general interest to other Federal Court litigants and ought to be resolved in any event.

In particular, this appeal provides this Court with an opportunity to clarify whether the preliminary motions to strike applications for judicial review ought to be encouraged, as the Appellants contend, rather than raising objections on points of law to be determined at the hearing of an application on its merits.

Costs ought to be awarded in favour of the Respondent in this Court and below

If this Court determines that the appeal is moot, or allows the appeal on the new ground that the underlying application is moot, and declines to exercise its discretion to hear the appeal or permit the Federal Court to exercise its discretion to hear the underlying application, costs ought to be awarded to the Respondent.

If the issues in the underlying litigation have become moot with the passage of time, it was through no fault of the Respondent. Throughout this proceeding and in the Court below, each time limit has been complied with, and not once has an extension of time been sought, by the Respondent. A motion to expedite the underlying application was brought, without success, to recover some of the delay occasioned by the Appellants' motion to strike. Meanwhile, the scope and timing of the Minister's announcement has presumably been known to the Appellants for some time. Nevertheless, the Appellants did nothing to raise the issue of mootness in advance of the hearing of this appeal. If the Court determines that any of its or the parties' time and resources were needlessly expended, such loss was occasioned solely by the Appellants.

Finally, as the Supreme Court of Canada recently confirmed in *Caron v. Alberta*, it is open to a Court to exercise its discretion, in appropriate circumstances, to award costs on appeal and in the courts below regardless of the outcome. As in *Caron*, this litigation has raises issues of considerable public interest and has served an important public function.[8]

* * *

I respectfully request an opportunity to elaborate upon or supplement these submissions in response to any arguments raised by the Appellants at the hearing of this appeal.

[5] *Borowski*, *supra* at 360.
[6] *Ibid.* at 360-361.
[7] *Re Manitoba Language Rights*, [1985] 1 SCR 721 at 745.
[8] *Caron v. Alberta*, 2015 SCC 56 at paras. 109-114.

Sincerely,

Aniz Alani

cc: Counsel for the Appellants (by e-mail)

Aniz Alani

[redacted]

March 1, 2016

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Langevin Block
80 Wellington Street
Ottawa, ON K1A 0A3

This is Exhibit "H" referred to in the affidavit of Karen Wong sworn before me at Vancouver this 6th day of May 2016

Dear Prime Minister:

Re: Vacancies in the Senate

As Prime Minister, you inherited from your predecessor an unprecedented accumulation of Senate vacancies and a pending constitutional challenge to the delay in filling them.

In your open letter to Canadians of November 4th, you immediately sought to differentiate your leadership style by committing to "an open, honest government that is accountable to Canadians, lives up to the highest ethical standards, brings our country together, and applies the utmost care and prudence in the handling of public funds."

This letter invites you to demonstrate that commitment by being more transparent about your government's approach to filling Senate vacancies. In particular, do you share or disagree with Mr. Harper's view that, as Prime Minister, you ought to have untrammeled discretion over how long vacancies in the Senate remain unfilled?

I also offer a modest proposal to avoid further public expense defending a court challenge that your government can resolve through clear commitments on its own terms.

The Senate Vacancies Challenge You've Inherited

As things stand, your government and I have conflicting positions on whether there is a legally enforceable obligation on the Prime Minister to advise the Governor General to fill Senate vacancies within a reasonable time.

This letter is not an attempt to persuade you to reconsider the legal merits of your government's position or the advice provided through your able counsel copied on this letter.* Rather, I suggest some steps your government could take to promote positive governance outcomes and reinforce its commitment to constitutionalism and respect for the rule of law.

* Notably, however, both the Federal Court and Federal Court of Appeal have overruled objections raised in the government's bid to dismiss court proceedings aimed at determining this very question.

On December 4, 2014, former prime minister Stephen Harper indicated he wasn't planning to appoint any more Senators. There were then 16 vacancies in the Upper Chamber. For his part, then opposition leader Tom Mulcair suggested the Senate be left to "wither on the vine" through attrition.

Earlier that year, as leader of the Liberal Party of Canada, you announced the expulsion from caucus of all Liberal Senators. You also proposed an "open, transparent, non-partisan process" that would see all Senators sit as independents.

Although the Liberal Party was the only major national political party whose plans for the Senate weren't, in my view, obviously unconstitutional, it was also limited at the time to third-party status. If memory serves, it was not long after that polling models projected only a 0.7% chance that you would lead a majority government following the October 2015 election.

When confronted with the news that a sitting Prime Minister was by all appearances defiantly flouting the Constitution – and without any other mechanism for accountability obviously available – I brought an application for judicial review of the Prime Minister's decision not to advise the Governor General to fill Senate vacancies and asked the Federal Court to issue a declaration that the Prime Minister must provide such advice within a reasonable time after a vacancy happens.

This litigation was brought on my own behalf and at my own expense. The lawsuit did not seek any damages -- just a decision from the courts declaring what the law requires from a Prime Minister when it comes to filling Senate vacancies.

As the case made its way through the court process, the government responded by seeking to have the case dismissed outright before the application could be heard. The government lost, then appealed, and then, most recently (after the election) lost again on appeal. The case is now scheduled to be heard by the Federal Court on June 22-23, 2016.

Steps Your Government has Taken to Address Senate Vacancies

Two months after your Cabinet was sworn in, the Hon. Minister Monsef announced the establishment of the Independent Advisory Board for Senate Appointments and expressed hope that five vacancies would be filled by early 2016 with a permanent process set up later in 2016.

I applaud your government's willingness to confront some of the challenges affecting the Senate, including the perception many Canadians have that the Senate is a patronage dumping ground for partisan hacks. I hope this experiment works and, assuming it does, that it serves as a persuasive blueprint for future Prime Ministers to consider adopting. But let's not forget it's an experiment in its very early stages.

More can and should be done to protect the integrity and functioning of the Senate, which you have recognized can be "[a] place that allows for reflective deliberation on legislation, in-depth studies into issues of import to the country, and, to a certain extent, provide a check and balance on the politically driven House of Commons." You have also reminded us that "in Canada, better is always possible."

With today's resignation for health reasons of Senator Chaput from Manitoba, there are 24 vacancies in the 105-seat Senate. Never since Confederation has there been as many empty seats

as exists today. While most of those vacancies accumulated before you took office as Prime Minister, the fact remains that the level of representation guaranteed by the Constitution has worsened, not improved, during your watch.

Share Your Rationale for a Staggered Approach to Filling Senate Vacancies

I am not suggesting that it's unreasonable that your government appears to be proceeding cautiously with its bold experiment. I understand that the initial recommendation of five Senators was focused on the three provinces with the greatest number of unfilled vacancies: Manitoba, Ontario and Quebec.

But, as far as I'm aware, your government has not explained why Advisory Boards haven't been struck to consider recommendations for the 17 (now 19) other existing vacancies, or the six others that will occur due to mandatory retirements in the next year alone.

What concerns me is not that the new process your government has begun to implement is causing unreasonable delay in addressing the existing and forthcoming vacancies, but that your absence of public justification for the delay undermines respect for the Constitution.

As you know, Canada wasn't born out of revolution but was created through a series of orderly negotiations resulting in terms of Confederation. The specific formula for regional representation in the Senate has been described as the *sine qua non* of this uniquely Canadian nation-building exercise. It's also part of the supreme law of Canada, which nobody can choose to ignore. With the greatest of respect, that includes you.

I therefore urge you to share publicly the reasons why proceeding with a staggered approach to appointments supports rather than undermines the constitutional role of the Senate, and by what criteria you consider yourself accountable for ensuring the vacancies are filled in a reasonable time. By doing so, you can demonstrate that your government does not consider the express terms of the Constitution to be mere suggestions but rather an integral part of your job descriptions not to be taken lightly.

Make Yourself Accountable

As things stand, the government's position as indicated in its response to the pending judicial review application appears to be that a Prime Minister can take as long as he or she wants to fill each Senate vacancy. Mr. Harper went so far as to say last July that "under the Constitution of the day, the Prime Minister has the authority to appoint or not appoint" Senators.

Whether the government's legal arguments supporting this position will be accepted by the courts remains to be seen. But, law aside: does giving the Prime Minister unbounded discretion to decide if and when to fill empty Senate seats strike you as good public policy? Given the Senate's role in providing a check against the power of the Prime Minister and Cabinet, and the promise of regional representation bargained for at Confederation, does this cohere with your view of Canada as "a nation of fairness, of justice and of the rule of law"?

I expect that a court declaration as to a Prime Minister's obligation to advise the Governor General to fill Senate vacancies would provide enduring guidance and prevent the sort of overt obstructionism advocated by Messrs. Harper and Mulcair. But waiting for the Courts to consider weighing in is not the only option, and it's certainly not the most cost-effective option. As Prime

Minister, you are uniquely positioned to set standards for when Senate vacancies will be filled now and in the future.

Legislation establishing time limits for filling Senate vacancies would provide a brake on a subsequent administration committed to stalling (or eliminating) appointments. A Prime Minister might succeed in commanding a majority in the House of Commons to repeal these time limits, but he or she would also require the Senate's approval to do so. Whatever the partisan (or non-partisan) makeup of the Senate, one would hope sober second thought would guard against doing this absent clear justification.

As it happens, a bill imposing a time limit within which the Prime Minister must advise the Governor General to fill Senate vacancies has already been introduced and debated in Parliament. In 2007, Senator Wilfred Moore introduced Bill S-224 to clarify the law in response to Mr. Harper's unwillingness to fill the 14 vacancies that existed at the time. It proposed a statutory obligation that the Prime Minister recommend to the Governor General a fit and qualified person for appointment to the Senate within 180 days after a vacancy happens.

Bill S-224 was debated and approved by the Senate in 2008 but died on the Order Paper in the House of Commons.

I urge you to consider supporting similar legislation during your term as Prime Minister, even if it means recognizing a limit on your own power.

Recognize the Value and Cost of Public Interest Litigation

Some commentators have suggested, cynically, that Mr. Harper may have welcomed a constitutional challenge to his moratorium on Senate appointments because a court ruling would provide him with political cover to appoint Senators while allowing him to cater to populist sentiments favouring abolition by stealth. Whatever his motivation, I trust you don't need a court ruling to do what you feel is right, even if it's unpopular.

I similarly prefer to believe that you would not abide the halfhearted defence of a constitutional challenge your government inherited, of which a potential outcome would embarrass your political opponents -- even if "lost" while on your government's watch.

Holding government accountable through litigation takes time and isn't free. Under the court's existing rules, the most I could possibly hope for if successful is to recover my out-of-pocket expenses. Conversely, the government has consistently argued that I should be ordered to reimburse its legal expenses. Dangling the threat of a significant legal bill if I'm unsuccessful – the amount of which has never been shared publicly– the government has on numerous occasions encouraged me to withdraw the constitutional challenge on a "without costs" basis.

I'm not asking your government to fund a challenge to the legality of its own actions, as was asked (and agreed to) for example in the case of Mr. Edgar Schmidt's pending challenge to the Minister of Justice's vetting of proposed legislation for compliance with the *Charter*, or as seems to be reflected in your direction to your Ministers of Justice and Canadian Heritage to restore a modern Court Challenges Program.

I do, however, ask you to consider whether the threat of being required to personally fund the government's defence of a public interest test case is consistent with your commitment to leading an open, transparent and accountable government.

An Alternative to Further Public Expense

Finally, although I'm prepared to follow through with the court case scheduled to be heard this June – the evidence and main argument having already been prepared and filed before the election took place – I respect your commitment to prudence in the handling of public funds. I am not rigidly attached to the idea of litigation for the sake of litigation, even though as a lawyer interested in the development of the law I would be very interested to see these constitutional issues addressed. I offer what I'm certain will be a less expensive alternative.

If your government is willing to firmly commit itself to the path it has proposed for filling Senate vacancies by establishing clear, measurable timelines for implementation that demonstrate an appropriate regard for the promise of regional representation reflected in the Constitution, I would accept that it's unnecessary to engage the court process further at this time.

Rather than incurring further public expense in seeking a court decision, the legal arguments and evidence already developed could be kept "shelf ready" for a future challenge if and when a Prime Minister appears unwilling to fulfill his or her obligations regarding the Senate within a reasonable time.

As for the time and expenses I've already incurred, any modest amount your government is prepared to contribute to partially offset these, as token acknowledgment of the public interest served by raising this issue, would be accepted without objection.

Tell Us Where You Stand

I appreciate that you and your government have a busy and ambitious agenda to implement in the months and years ahead. I also realize that, absent the obligation to respond to the ongoing court challenge, the issue of Senate vacancies may not be one that your government feels strong public pressure to address.

Nevertheless, I urge you, in the interests of openness and transparency, to be clear with Canadians about your intentions and where you stand as Prime Minister, either in solidarity or in contrast to your predecessor from whom these issues were inherited:

1. If you agree with Mr. Harper's position that it's good public policy to defer to the Prime Minister's sole discretion to determine if and when Senate vacancies are filled, explain why.

2. If you disagree, say so and do something about it. Make clear the criteria by which you consider yourself accountable. Better yet, make yourself (and your successors) accountable through clear and transparent legislation.

3. If you remain opposed to the ongoing constitutional challenge to unfilled Senate vacancies, consider withdrawing your government's demand to recover its legal costs.

4. As an alternative to incurring further litigation costs at public expense, consider setting clear timelines for filling Senate vacancies so that a court decision isn't required.

Thank you for your time and consideration.

Sincerely,

Aniz Alani

cc: Messrs. Jan Brongers and Oliver Pulleyblank
Department of Justice Canada, B.C. Regional Office

Court File No.: T-2506-14

FEDERAL COURT

BETWEEN:

ANIZ ALANI

APPLICANT

and

THE PRIME MINISTER OF CANADA and THE GOVERNOR GENERAL OF CANADA

RESPONDENTS

WRITTEN REPRESENTATIONS OF THE RESPONDENTS
[Respondents' Motion to Dismiss for Mootness Returnable June 22, 2016]

William F. Pentney, Q.C.
Deputy Attorney General of Canada
Per: Jan Brongers
Oliver Pulleyblank
Department of Justice
B.C. Regional Office
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Solicitor for the Respondents
(Moving Parties)

OVERVIEW

1. Following the October 19, 2015 federal general election, the Government of Canada ended the moratorium on Senate appointments that had been in effect pursuant to the policy of the former Prime Minister. A new process for appointing Senators involving an independent advisory board has now been put in place, and seven new Senators have been appointed by the Governor General on the advice of the Prime Minister. The Government of Canada has committed to filling the remaining outstanding Senate vacancies before the end of this year.

2. These developments notwithstanding, Mr. Alani refuses to abandon his application for judicial review. Mr. Alani still wants the Federal Court to provide him with an academic opinion on the constitutionality of now-spent political decisions of a former Prime Minister whose Government is no longer in office.

3. There is no valid reason for this moot application to proceed to judgment. If there ever was a truly live controversy between the parties, which Canada denies because of the standing, justiciability and jurisdiction issues discussed in Canada's main application record, that controversy ended when the former Prime Minister's moratorium on Senate appointments concluded. This is not an exceptional case that warrants being heard notwithstanding the fact that a judgment will have no practical effect. The application should be dismissed for mootness.

PART I - STATEMENT OF FACTS

4. On December 4, 2014, an article was published in the Toronto Star (the "Toronto Star Article") that reported former Prime Minister Harper's comments on outstanding vacancies in the Senate. Prime Minister Harper is quoted to have said, "I don't think I'm getting a lot of calls from Canadians to name more senators right about now" and "[w]e will be looking at this issue, but for our government the real goal is to ensure the passage of our legislation by the Senate and thus far, the Senate has been perfectly capable of fulfilling that duty" (the "December 4 Comments").[1]

5. Mr. Alani became aware of the Toronto Star Article and, on December 8, 2014, filed a notice of application seeking judicial review "in respect of the decision of the Prime Minister, as communicated publicly on December 4, 2014, not to advise the Governor General to summon fit and qualified Persons to fill existing vacancies in the Senate."[2]

6. Mr. Alani later sought to divorce his application for judicial review from the December 4 Comments, and brought a motion for leave to amend his notice of application to delete any reference to a decision made by the Prime Minister. On April 23, 2015, Justice Harrington heard, along with Canada's motion to strike (the "Motion to Strike"), Mr. Alani's motion to amend. Justice Harrington dismissed the Motion to Strike, and allowed Mr. Alani to make certain amendments. However, he refused to allow Mr. Alani to delete the references to a decision of the Prime Minister, holding that to do such would impermissibly turn the judicial review application into a private reference.[3]

7. On May 29, 2015, Canada filed a notice of appeal in the Federal Court of Appeal from the Motion to Strike (the "Strike Appeal").

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[1] Affidavit of Aniz Alani, affirmed June 23, 2015 ("Alani Affidavit"), Exhibit "B", Applicant's Application Record, Tab 3, page 206.
[2] Amended Notice of Application, Applicant's Application Record, Tab 2, Page 5.
[3] *Alani v. Canada (Prime Minister)*, 2015 FC 649 ("*Alani, Motion to Strike and Amend*"), at paras. 45 and 46, Respondents' Motion Record, Vol. 2, Tab 1.

8. Mr. Alani did not, in either the original or the amended application for judicial review, assert that any particular Senate seat had been left vacant for too long. Rather, apart from costs, the sole relief sought in the amended notice of application is a "declaration that the Prime Minister of Canada must advise the Governor General to summon a qualified Person to the Senate within a reasonable time after a Vacancy happens in the Senate."[4]

9. On May 29, 2015, Mr. Alani wrote to the Federal Court suggesting an abbreviated timetable for the remaining steps in the litigation so as to allow it to be heard before the October 2015 federal election (the "May 29 Letter"). In that letter he observed:

> ***Will the proceeding be rendered moot if not decided prior to a particular event?***
>
> As noted above, if the Respondents are correct in their position that only "political consequences" flow from the Prime Minister's impugned inaction, and that judicial intervention is thereby precluded, the timing of the election may render moot the most obvious expression of political dissatisfaction citizens may choose to express in light of a determination that the Prime Minister's inaction is unconstitutional but not subject to a judicial remedy.
>
> Moreover, if the Prime Minister fills the vacancies but only after the election, or if a change in government results in a change in the policy of the government of the day in respect of Senate appointments, or a continuation of the existing policy of inaction but without a clear expression of that policy or "decision", the underlying issues raised in the application concerning the constitutional requirement to advise the Governor General to fill Senate vacancies may reasonably be expected to become moot after the election.
>
> [Emphasis added].[5]

10. On June 11, 2015, Mr. Alani wrote to counsel for Canada seeking to expedite the hearing. He again raised concern that if the matter was not heard before the upcoming federal election, the issues raised in the application may become moot.[6]

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[4] Amended Notice of Application, Applicant's Application Record, Tab 2, Page 5.
[5] Affidavit of Karen Wong, affirmed May 6, 2016 ("Wong Affidavit"), Respondents' Motion Record, Vol. 1, Tab 3, para 2 and Exhibit "A", page 77.
[6] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 3 and Exhibit "B", page 84.

11. On June 17, 2015, Mr. Alani filed a motion seeking to abridge timelines and set the application for hearing at the earliest possible date (the "Motion to Expedite").

12. In his written representations in support of the Motion to Expedite, Mr. Alani submitted that the Court should expedite the proceeding as it might be rendered moot by the upcoming federal election. He submitted:

> While neither party nor the Court can predict with certainty the impact of the October 19th federal election on this proceeding, the Applicant submits the following as reasonable hypotheticals that could realistically render the proceeding moot:
>
> i) If shortly before the election the Prime Minister resiles from his stated intention not to appoint Senators, it is reasonably foreseeable that the Respondents may raise mootness as a bar to proceeding with the application;
> ii) If the Prime Minister remains in office following the election and thereafter resiles from his stated intention not to appoint Senators, it is also reasonably foreseeable that the Respondents may raise mootness as a bar to proceeding with the application; and
> iii) If the Prime Minister does not remain in office following the election, it is reasonably foreseeable that the Respondents may raise ripeness as a bar to proceeding with the application unless and until the new Prime Minister states a similar intention not to appoint Senators.[7]

13. On July 14, 2015, Justice Gagné released a judgment dismissing the Motion to Expedite.[8]

14. On July 24, 2015, Prime Minister Harper announced a policy of a moratorium on further Senate appointments, pending sufficient provincial agreement on reform or abolishment of the Senate, or until appointments become necessary in order for government legislation to be passed by the Senate (the "Moratorium Announcement").[9] Mr. Alani did not seek judicial review of the Moratorium Announcement, apparently choosing instead to pursue his challenge to the December 4 Comments.

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[7] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 4 and Exhibit "C", pages 105-106.
[8] *Alani v. Canada (Prime Minister)*, 2015 FC 859 (*"Alani, Motion to Expedite"*), Respondents' Motion Record, Vol. 2, Tab 2.
[9] Affidavit of Lyse Cantin, sworn May 12, 2016 ("Cantin Affidavit"), Respondents' Motion Record, Vol. 1, Tab 2, para 2 and Exhibits "A" and "B" at pages 10-11.

15. On October 19, 2015, the Forty-Second General Election was held for the House of Commons. This resulted in the formation of a new government with the Right Honourable Justin Trudeau serving as Prime Minister.

16. On December 3, 2015, the Honourable Maryam Monsef, Minister of Democratic Institutions, announced a plan to establish an Independent Advisory Board for Senate Appointments (the "Advisory Board"). The Minister set out that the Advisory Board would be established to provide the Prime Minister with advice on appointees to the Senate, guided by public, merit-based criteria.[10] Further, the Minister announced that the new appointments process would be implemented in two phases, with five appointments made in early 2016 during a transitional process to improve representation of the provinces with the most vacancies, followed by a permanent process to replenish the remaining vacancies later in 2016, including an application process open to all Canadians (the "Minister's December 3 Announcement").[11]

17. On January 19, 2016, by Order in Council PC 2016-0011 ("OIC 2016-0011"), the Governor in Council established the Advisory Board. Attached as a schedule to OIC 2016-0011 are the Terms of Reference of the Advisory Board (the "Terms of Reference").[12]

18. The Terms of Reference set out the mandate of the Advisory Board:

> 1. The Independent Advisory Board for Senate Appointments ("Advisory Board") is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Senate nominations.[13]

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[10] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 3 and Exhibits "C" and "D" at pages 15-18.
[11] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 3 and Exhibit "D" at page 17.
[12] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 4 and Exhibits "E" and "F" at pages 19-21.
[13] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 5 and Exhibit "F" at page 20.

19. The Terms of Reference set out that the Advisory Board is to be composed of three permanent federal members, one of whom is appointed as Chairperson, and two *ad hoc* members chosen from each of the provinces or territories where a vacancy is to be filled.[14]

20. The Terms of Reference set out the duty on the Advisory Body to make recommendations, stating that:

> 5. … the Advisory Board must provide to the Prime Minister for his consideration, within the time period set by the Prime Minister upon the convening of the Advisory Board, a list of five qualified candidates for each vacancy in the Senate with respect to each province or territory for which there is a vacancy or anticipated vacancy and for which the Advisory Board has been convened. The Prime Minister may take into consideration all of the qualified candidates with respect to all vacancies for that province or territory.[15]

21. The Terms of Reference also set out a transitional process by which recommendations were to be made in early 2016 to fill two vacancies in Ontario, one in Quebec, and two in Manitoba (the "Transitional Process"). [16]

22. On January 19, 2016, the Minister of Democratic Institutions announced the establishment of the Advisory Board, as well as the appointment of the Advisory Board's members (the "Minister's January 19 Announcement").[17] Attached to the news release setting out the Minister's January 19 Announcement was a document entitled "Frequently Asked Questions", which set out that recommendations under the transitional process would be made in early 2016, and the remaining vacancies will be filled later in 2016 through a permanent process for which individual Canadians may apply.[18]

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[14] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 5 and Exhibit "F" at page 20.
[15] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 5 and Exhibit "F" at page 21.
[16] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 5 and Exhibit "F" at page 21.
[17] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 6 and Exhibits "G" and "H" at pages 25 - 29.
[18] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 6 and Exhibit "H" at pages 28 - 29.

23. Also on January 19, 2016, the Federal Court of Appeal, apparently concerned with whether the issue of Senate vacancies had been rendered moot by the Minister's January 19 Announcement, and without prompting from either party, issued a direction stating:

> The Court indicates that the parties be asked if the appeal is not made moot by the Minister's January 19, 2016 announcement with respect to the establishment of an independent commission to advise the Government on Senate appointments, together with the Government's undertaking to fill the current vacancies within the calendar year. If they agree that the matter has become moot, would they please advise us as soon as possible. If not, they should come prepared to argue the issue of mootness as a preliminary question.
>
> (the "FCA Direction re Mootness")[19]

24. On January 22, 2016, counsel for Canada wrote to the Federal Court of Appeal in response to the FCA Direction re Mootness, setting out Canada's position that the application for judicial review was rendered moot by the Minister's January 19 Announcement. On the other hand, Canada took the position that the appeal was not moot unless or until Mr. Alani withdrew his underlying application.[20] Canada also informed the Court that a with prejudice offer had been extended to Mr. Alani that this litigation be resolved on the basis that both parties discontinue their respective application and appeal, on a without costs basis.[21]

25. On January 22, 2016, Mr. Alani wrote to the Federal Court of Appeal stating his position that the Minister's January 19 Announcement did not make the appeal moot, and that whether the matter was moot should be determined by the Federal Court, not the Federal Court of Appeal (the "Applicant's January 22 Letter").[22]

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[19] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 5 and Exhibit "D", at page 113.
[20] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 7 and Exhibit "F", at page 116.
[21] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 6 and Exhibit "E", at page 114.
[22] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 8 and Exhibit "G", at page 118 - 122.

26. As Mr. Alani refused to withdraw his application, the Strike Appeal proceeded on January 25, 2016. The Federal Court of Appeal dismissed the Strike Appeal, on the basis that Justice Harrington did not err in concluding it was not plain and obvious that the application was bound to fail.[23]

27. On March 1, 2016, Mr. Alani posted an open letter to Prime Minister Trudeau on his website, www.anizalani.com (the "Open Letter to the Prime Minister"). In the letter he proposed that the government adopt "[l]egislation establishing time limits for filling Senate vacancies". He then stated that he would be willing to abandon this case if the

> ...government is willing to firmly commit itself to the path it has proposed for filling Senate vacancies by establishing clear, measurable timelines for implementation that demonstrate an appropriate regard for the promise of regional representation reflected in the Constitution.[24]

28. On March 18, 2016, Prime Minister Trudeau announced that he would recommend to the Governor General for appointment seven Senators, based on the transitional process recommendations of the Advisory Board (the "Transitional Process Appointees"). The Transitional Process Appointees are:

    a. Raymonde Gagné (Manitoba)
    b. Peter Harder (Ontario)
    c. Frances Laskin (Ontario)
    d. Ratna Omidvar (Ontario)
    e. Chantal Petitclerc (Quebec)
    f. André Pratte (Quebec)
    g. Murray Sinclair (Manitoba)[25]

29. The Transitional Process Appointees were each appointed to the Senate by the Governor General between March 23, 2016, and April 2, 2016.[26]

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[23] *Canada (Prime Minister) v. Alani*, 2016 FCA 22, Respondent's Motion Record, Vol. 2, Tab 5.
[24] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 9 and Exhibit "H", at pages 123 - 128.
[25] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 6 and Exhibit "I" at pages 30 - 31.
[26] Cantin Affidavit, Respondents' Motion Record, Vol. 1, Tab 2, para 8 and Exhibit "K" at pages 67 – 70.

PART II - ISSUES

30. This motion raises a single issue: should the application for judicial review be dismissed as moot?

31. Canada's position on this issue is complicated by the fact that there never was, in Canada's estimation, a properly justiciable live controversy between the parties to begin with. Rather, as set out in Canada's memorandum of fact and law on the application, Mr. Alani has no standing to bring this matter forward, the relief sought does not raise a justiciable question, and there is no decision of a Federal Board, Commission or other Tribunal in issue that is within the jurisdiction of the Federal Court to judicially review. This is not an otherwise viable case that has been overtaken by subsequent events and rendered moot; this proceeding has been fundamentally flawed from its inception.

32. However, Canada says that even if the case raised a justiciable issue and Mr. Alani had standing to bring it forward, both of which are denied, the application for judicial review has been rendered moot by the announced intention of the Government to recommend Senators for appointment, formalized in OIC 2016-0011. The mootness was underscored when the Transitional Process Appointees were appointed to the Senate. This is also not a case where it would be appropriate for the Court to exercise its discretion to hear the matter notwithstanding the mootness of the issues raised.

PART III - SUBMISSIONS

Mootness: The Legal Framework

33. The leading authority on when a court should refuse to hear a matter that is or has become moot is the decision of the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*.[27] The plaintiff, Mr. Borowski, was an opponent of abortion. He brought a challenge to certain amendments to the *Criminal Code* that permitted abortion when authorized by a therapeutic abortion committee, arguing that these laws deprived the unborn child of rights protected under the *Charter of Rights and Freedoms*. He was unsuccessful at trial and at the Saskatchewan Court of Appeal.

34. Before Mr. Borowski's case was heard by the Supreme Court of Canada, that Court struck down the impugned legislation in its judgment in *R. v. Morgantaler*.[28] However, the *Morgantaler* ruling had the effect of removing barriers to access to abortion, the opposite of what Mr. Borowski hoped to accomplish. He therefore asked the Court to still consider the constitutional question raised by his case, which had been framed as "Does a child en ventre sa mère have the right to life as guaranteed by Section 7 of the Canadian Charter of Rights and Freedoms?".[29]

35. The Supreme Court of Canada declined to do so, finding the matter moot as the impugned provision had been struck down. Sopinka J. wrote for the unanimous Court. In an often cited passage, he described the doctrine of mootness and set out a two-step test for determining if a matter should be dismissed for being moot. He observed:

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the

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[27] *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 ("*Borowski*") Respondents' Motion Record, Vol. 2, Tab 4.
[28] *R. v. Morgantaler*, [1988] 1 S.C.R. 30, Respondents' Motion Record, Vol. 2, Tab 7.
[29] *Borowski*, at S.C.R. 351, Respondents' Motion Record, Vol. 2, Tab 4.

> time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.
>
> The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.[30]
>
> [Emphasis added].

36. Sopinka J. went on to discuss when a court might exercise its discretion to hear a case that is moot. He noted that when deciding whether to depart from the ordinary rule against deciding a matter without a live controversy, the Court should bear in mind the principal rationales for why such cases are not usually heard, specifically:

    a. that court's competence to resolve disputes is rooted in the adversary system;
    b. concern for judicial economy; and
    c. the need for the Court to demonstrate a measure of awareness of its proper role as the adjudicative branch in our political framework, and not intrude into the role of the legislative branch.[31]

37. These factors are not to be applied mechanically, and in exercising its discretion to hear moot cases the court should consider the extent that each of these rationales for the

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[30] *Borowski,* at S.C.R. 353, Respondents' Motion Record, Vol. 2, Tab 4.
[31] *Borowski,* at S.C.R. 358 – 363, Respondents' Motion Record, Vol. 2, Tab 4.

enforcement of the mootness doctrine exists.[32] This framework is routinely applied by this Court to determine whether a matter is moot.[33]

Applying the *Borowski* Analysis

The Case is Moot

38. As set out in *Borowksi*, a case is moot if the court's decision would not have any effect on resolving a live controversy between the parties.[34]

39. Canada's position is, first, that there never was a live controversy between the parties. As set out in Canada's memorandum of fact and law, Mr. Alani does not have standing to bring this matter forward, the judicial review application is outside of the Federal Court's jurisdiction, and the relief sought fails to raise a justiciable issue.

40. However, if there ever was a live controversy between the parties, it related to a moratorium on Senate appointments that has ended. OIC 2016-0011 and the Minister's December 3 and January 19 Announcements set out the new government's policy on making Senate appointments, and the appointment of the Transitional Process Appointees confirmed that the former Prime Minister's moratorium is no longer in effect.

41. As submitted in Canada's memorandum of fact and law, this matter has always been in substance a private reference on a point of law, not a true application for judicial review. That this is the essential nature of the proceeding is underscored by Mr. Alani's desire that the matter continue following the end of the moratorium on Senate appointments. There is no potential practical consequence to anyone of proceeding with this hearing. Mr. Alani

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[32] *Borowski,* at S.C.R. 363, Respondents' Motion Record, Vol. 2, Tab 4.
[33] See *e.g. Harvan v. Canada,* 2015 FC 1026 ("*Harvan*") Respondents' Motion Record, Vol. 2, Tab 6; *Osakpamwan v. Canada,* 2016 FC 267 ("*Osakpamwan*") Respondents' Motion Record, Vol. 2, Tab 8; *Azhaev v. Canada,* 2014 FC 219 ("*Azhaev*") Respondents' Motion Record, Vol. 2, Tab 3.
[34] *Borowski,* at S.C.R. 353 Respondents' Motion Record, Vol. 2, Tab 4; *Harvan,* at para. 7, Respondents' Motion Record, Vol. 2, Tab 6; *Osakpamwan,* at para. 23, Respondents' Motion Record, Vol. 2, Tab 8.

invites the Court to offer an opinion on a matter that might be an interesting subject of academic debate in the law reviews, but not one that ought to be formally adjudicated by the courts.

42. This Court has recognized that a challenge to a moratorium that has ended does not raise a live controversy. In *Schwarz Hospitality Group Ltd. v. Canada,*[35] the applicant sought judicial review of a decision to implement a one-year development moratorium in Banff National Park. By the time the application for judicial review was heard, the moratorium had long since expired. The Court observed:

> [27] I have earlier determined that the moratorium was a one-year development moratorium on commercial accommodation facilities outside park communities... The one-year moratorium has now long since expired... There is absolutely no evidence before the Court that the moratorium has been extended, or that a new moratorium has been imposed…
>
> [28] In all of the circumstances, I conclude that there remains no "live controversy" regarding the moratorium between the parties that are before the Court. I further conclude that no purpose whatsoever would be served by examining at any length whether or not the moratorium was invalid or unlawful or of no force and effect as it purported to relate to the Storm Mountain Lodge redevelopment proposal.
>
> [Emphasis added].

43. It is not readily apparent as to why Mr. Alani desires to persist with this application for judicial review, and rejected Canada's offer to allow him to withdraw the application on a without-costs basis following the Minister's January 19 Announcement. However, some clue as to the basis for Mr. Alani's position is provided in both his January 22 Letter, sent to the Federal Court of Appeal in response to its direction inquiring if the matter is not made moot by the Minister's January 19 Announcement, and the March Open Letter to the Prime Minister.

44. In the January 22 Letter, Mr. Alani first suggests that the case is not moot because "nothing in the Minister's news release commits to filling the current vacancies within the current

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[35] *Schwarz Hospitality Group Ltd. v. Canada,* 2001 FCT 112 ("*Schwarz Hospitality*") Respondents' Motion Record, Vol. 2, Tab 10.

year, or at all". That however is mistaken; the Minister's January 19 Announcement is accompanied by a related "Frequently Asked Questions" document that states:

> **What is the timeline for the Advisory Board to provide its recommendations to the Prime Minister?**
>
> Under the transitional process, it is expected that the Advisory Board will provide its recommendations to the Prime Minister in late February 2016. Appointments should be made shortly thereafter to immediately reduce partisanship in the Senate and improve the representation of the provinces with the most vacancies. The remaining vacancies will be filled later in 2016 through the permanent process.

45. Next in the January 22 Letter, Mr. Alani notes that no timeline has been established setting out when an advisory panel will be established to recommend nominees for current or expected vacancies, or for when those vacancies will be filled. However, this is not a case about whether the Prime Minister is subject to some undefined, and previously unheard of, obligation to set specific timelines for all current or expected Senate vacancies. It is rather a judicial review of the alleged December 4 "decision" by former Prime Minister Harper "not to advise the Governor General to summon fit and qualified Persons to fill existing vacancies in the Senate". As set out by Justice Harrington, "[t[he whole basis on which this application has proceeded is that it is a judicial review of a decision." If there ever was a reviewable decision at that time, it has been rendered moot, and the fact that Mr. Alani does not know precisely when every vacancy will be filled does not constitute a live controversy between the parties.

46. Finally, in his January 22 Letter Mr. Alani refers to the reasons of Justice Gagné in the Motion to Expedite, where she observed:

> [24] However, if [Mr. Alani's] real intention is to have a declaration from the Court dealing with a Prime Minister's duties and obligations with respect to Senate appointments, this application for judicial review might not be moot if the vacancies are filled before a final judgment is rendered.[36]

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[36] *Alani, Motion to Expedite*, Respondents' Motion Record, Vol. 2, Tab 2.

47. Mr. Alani suggests that "[i]t follows, *a fortiori,* that neither the appeal nor the application is made moot by the announcement of an *intention* to fill some of the vacancies, and which is devoid of any commitment, reflected in an Order-in-Council, statute, or otherwise, to fill all existing vacancies according to any stated timeline." (emphasis in the original)[37]

48. However, Mr. Alani's apparent view that his application is not moot notwithstanding the Government of Canada's stated intention to fill all existing Senate vacancies is unfounded. Indeed, his application was framed as a judicial review of a statement alleged to reveal the former government's intention in relation to Senate appointments. However, the present Government of Canada clearly has not maintained that intention, as demonstrated by the Minister's December 3 and January 19 Announcements and the adoption of OIC 2016-0011. This new intention was further confirmed by the appointment of the Transitional Process Appointees. In sum, Mr. Alani sought to judicially review the former Prime Minister's intentions with regard to Senate appointments, and that review became unquestionably moot when the new Prime Minister demonstrated that his intentions are markedly different from those of his predecessor.

49. Further, with regard to Justice Gagné's comments, it is not sufficient simply to say that a *legal issue* raised by a case may not be moot in order for a matter to proceed in the absence of a live controversy between the parties. Indeed, moot cases nearly always present a legal issue of at least some continuing interest. *Borowski,* for example, raised the issue of whether the unborn possess *Charter* rights, which the Court described as "a question of great public importance".[38] Nevertheless, despite continuing interest in the question, the matter was declared moot because of the absence of a live controversy within which to consider the issue. Indeed, the more important the legal issue, the more prudent it is to be especially wary of deciding the matter in the absence of a live controversy.

50. Finally, it appears from the Open Letter to the Prime Minister that Mr. Alani is of the view that his case will never be moot unless Parliament passes legislation establishing timelines for Senate appointments. However, to suggest that a litigation matter is not moot until

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[37] Wong Affidavit, Respondents' Motion Record, Vol. 1, Tab 3, para 8 and Exhibit G, at page 120.
[38] *Borowski,* at S.C.R. 364, Respondents' Motion Record, Vol. 2, Tab 4.

legislation is adopted to address the subject of the underlying case misunderstands the role of the judiciary in Canada's democratic system of government. It is not the function of the courts to conduct a reference at the behest of any citizen who thinks there ought to be a law governing a particular situation, nor is it the court's function to decide a moot issue in order to compel legislative action in relation to constitutional convention.

51. To conclude on mootness, Mr. Alani has framed his application as a challenge to the now-ended moratorium on Senate appointments by the former Prime Minister. The first paragraph of Mr. Alani's memorandum of fact and law filed in support of his application reads:

> 1. The Prime Minister of Canada has notoriously declared a moratorium on filling vacancies in the Senate of Canada by refusing to provide advice to the Governor General necessary to effect such appointments. This application for judicial review seeks a declaration as to the legality of the Prime Minister's unilateral action.

52. Mr. Alani also candidly acknowledged that a change of government policy on Senate appointments would likely render the matter moot. As set out by Mr. Alani in his May 29 Letter sent to the Federal Court:

> Moreover,... if a change in government results in a change in the policy of the government of the day in respect of Senate appointments... the underlying issues raised in the application concerning the constitutional requirement to advise the Governor General to fill Senate vacancies may reasonably be expected to become moot after the election.

53. Accordingly, it is not plausible for Mr. Alani to assert now that the lack of a judicially enforceable deadline for the making of Senate appointments results in a justiciable live controversy. This matter is moot and the only remaining question is whether the Court ought nevertheless to exercise its residual discretion to adjudicate it notwithstanding its mootness.

The Court Should Not Exercise its Discretion to Hear This Moot Case

54. As set out above, in determining whether to hear a moot case the Court should consider the degree to which the three principal criteria for declining to hear a moot matter are

present. Canada says that each of the criteria in this case weigh heavily against entertaining and deciding this judicial review application.

A. The absence of an adversarial context

55. The first such criterion is that, as set out in *Borowski*, "a court's competence to resolve legal disputes is rooted in the adversary system". The Court noted that "The requirement of an adversarial context is a fundamental tenet of our legal system and helps guarantee that issues are well and fully argued by parties who have a stake in the outcome."[39]

56. In the present case there is no proper adversarial context. As set out in the standing argument, Mr. Alani never had a stake in the outcome of this case. Indeed, he does not even attempt to claim private interest standing, asking instead that the Court grant him public interest standing, or, alternatively, decide the case even though he has no standing at all.[40] As noted in Canada's memorandum of fact and law, Mr. Alani confirmed under cross examination on his affidavit that:

a. he is not interested in becoming a Senator;
b. he has no expectation of being made a Senator;
c. he has not been involved in any campaign or lobbying efforts to have a particular individual appointed to the Senate;
d. he has not suffered any personal prejudice from Senate vacancies;
e. he has not experienced any negative economic or psychological impacts from Senate vacancies;
f. he has not been deprived of any *Charter* right he enjoys, including democratic rights, as a result of Senate vacancies; and
g. he has never asked anything of the Senate or been involved with the Senate's business such that he might be denied a benefit or a service he would otherwise be entitled to as a result of Senate vacancies.

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[39] *Borowski,* at S.C.R. 358 – 359, Respondents' Motion Record, Vol. 2, Tab 4.
[40] Applicant's Memorandum of Fact and Law, Applicant's Application Record, Tab 5, at para. 61.

57. Furthermore, Mr. Alani's approach to this litigation has not been consistent with what would be expected from an individual with a real direct stake in the outcome. Specifically:

    a. Mr. Alani filed a notice of application for judicial review just three days after learning for the first time about the issue of Senate vacancies, based only on "some initial research into the status and history of vacancies in the Senate".

    b. The notice of application contained no factual information about the case at all, apart from the simple number of outstanding vacancies in the Senate.

    c. Mr. Alani provided no evidence, expert or otherwise, on the scope or existence of the constitutional conventions put in issue by the case, even after Justice Harrington, in deciding the Motion to Strike, indicated that the Court was in need of such evidence.

58. Further, the case law makes clear that an adversarial context is not established simply because the party alleging the matter is not moot claims an interest in a legal issue raised. Rather, the Court looks for some tangible collateral consequence that will affect the individual if the matter is decided. This was explained in *Azhaev v. Canada,* in the following fashion:

> [22] While this Court has room to exercise its discretion to hear the merits of the instant application, as guided by the principles in *Borowski*, I disagree with the Applicant that there is an adversarial context remaining in this matter. In *Borowski*, the Court discussed an adversarial context as one where "collateral consequences" arise in related proceedings. For example, if the resolution of an issue in an otherwise moot proceeding determines the availability of liability or prosecution in a related proceeding between the parties, there remains an adversarial context between them. In the instant application, no collateral consequences will arise as a result of whether the Officer erred in his decision.

59. Mr. Alani had no personal stake in the outcome of this case when it was started, and he certainly has no stake in its outcome now that there is no moratorium on Senate appointments in effect. Granting the relief sought would have no direct or collateral consequence to Mr. Alani. This is a case that perhaps retains some personal, academic, or political interest to Mr. Alani, but there is no adversarial context rendering it an appropriate matter for the Court's attention.

B. Concern for Judicial Economy

60. The second reason that courts decline to hear moot cases discussed in *Borowski* is a recognition that judicial resources are finite, and a concern for judicial economy. Scarce judicial resources are rationed amongst many claimants. The courts' attention should generally be allocated to live controversies, not moot issues. Further, the Supreme Court in *Borowski* made clear that it is no answer to simply say that the record is prepared and the matter is ready to proceed to hearing, something that is true of many cases that have become moot.[41]

61. The Court in *Borowski* outlined several circumstances where hearing a moot case could be an efficient use of judicial resources. None of those exceptions apply in this case.

62. First, the Court noted the concern over scarce resources could be partially answered where the court's decision will have some practical effect on the rights of the parties.[42] As discussed above, this case will have no practical effect on Mr. Alani's rights.

63. Second, the Court noted that an expenditure of judicial resources may be warranted in cases which, though moot, are of a recurring nature and a brief duration. The mootness doctrine is relaxed so as to "ensure that an important question which might independently evade review be heard by the court".[43] While Senate appointments are a recurring matter, Mr. Alani's case is founded on a concern that Senate vacancies might be left outstanding for too long—that is to say for an *insufficiently brief* duration. If the issue evades judicial review because the moratorium on appointments was brief, that simply illustrates that the concern animating this application has resolved.

64. Finally, the Court in *Borowski* noted an "ill-defined basis for justifying the deployment of judicial resources" in matters which "raise an issue of public importance of which a

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[41] *Borowski,* at S.C.R. 363, Respondents' Motion Record, Vol. 2, Tab 4.
[42] *Borowski,* at S.C.R. 360, Respondents' Motion Record, Vol. 2, Tab 4.
[43] *Borowski,* at S.C.R. 360, Respondents' Motion Record, Vol. 2, Tab 4.

resolution is in the public interest".[44] However, the Court made clear that it is not enough to simply show that a matter raises an issue of national importance; rather, there must be "the additional ingredient of social cost in leaving the matter undecided".[45]

65. The federal bicameral system of parliamentary government has been operating since Confederation without a judicial ruling on whether a declaration should be made that the "Prime Minister of Canada must advise the Governor General to summon a qualified Person to the Senate within a reasonable time after a Vacancy happens in the Senate". There is no obvious social cost to Canadians in leaving this matter undecided.

66. No compelling reason exists to expend finite judicial resources on this case instead of matters that raise live controversies. As this Court concluded in *Schwarz Hospitality Group,* "no purpose whatsoever" is served by reviewing a moratorium that has since ended.[46]

C. The Court's Proper Role

67. Finally, the Court in *Borowski* noted the need for the Court to remain mindful of its role within the Canadian constitutional and democratic framework. The Court's role is adjudicative, and "[p]ronouncing judgments in the absence of a dispute affecting the rights of the parties may be viewed as intruding into the role of the legislative branch".[47]

68. It is within this context that the Court in *Borowski* made clear that a case must not be allowed to turn into a private reference on a constitutional question. The Court held:

> One element of this third factor is the need to demonstrate some sensitivity to the effectiveness or efficacy of judicial intervention. The need for courts to exercise some flexibility in the application of the mootness doctrine requires more than a consideration of the importance of the subject matter. The appellant is requesting a legal opinion on the interpretation of the *Canadian Charter of Rights and Freedoms* in the absence of legislation or other governmental action which would

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[44] *Borowski,* at S.C.R. 361, Respondents' Motion Record, Vol. 2, Tab 4.
[45] *Borowski,* at S.C.R. 362, Respondents' Motion Record, Vol. 2, Tab 4.
[46] *Schwarz Hospitality,* at para. 28, Respondents' Motion Record, Vol. 2, Tab 10.
[47] *Borowski,* at S.C.R. 362, Respondents' Motion Record, Vol. 2, Tab 4.

> otherwise bring the *Charter* into play. This is something only the government may do. What the appellant seeks is to turn this appeal into a private reference.[48]

69. If this case is allowed to proceed notwithstanding the fact that there is no longer any moratorium on Senate appointments, it will unquestionably be nothing more than a private reference. Further, Mr. Alani's private reference would not consider any tangible issue, such as whether any particular Senate vacancy had been left open too long. Rather, the reference would be in respect of a series of constitutional questions posed in a factual vacuum, including the Court's role in recognizing and enforcing constitutional conventions, whether the Prime Minister's conventional power to recommend has turned into a duty to recommend, and, if so, whether any rule regarding timing of such advice has arisen by convention. Indeed, even if these questions were placed before the Court by a government in a proper reference, the Court must remain mindful of its place in the constitutional system and may decline to decide them on the basis of non-justiciability.[49] Such matters are plainly then not properly the subject of judicial consideration in a judicial review application lacking a live controversy.

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[48] *Borowski,* at S.C.R. 365, Respondents' Motion Record, Vol. 2, Tab 4.
[49] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at paras. 26 – 30, Respondents' Motion Record, Vol. 2, Tab 9.

PART IV - ORDER SOUGHT

70. That the motion be allowed.

71. That the application for judicial review be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of May, 2016.

Jan Brongers and **Oliver Pulleyblank**

Counsel for the Respondents

PART V - LIST OF AUTHORITIES

1. *Alani v. Canada (Prime Minister)*, 2015 FC 649
2. *Alani v. Canada (Prime Minister)*, 2015 FC 859
3. *Azhaev v. Canada*, 2014 FC 219
4. *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342
5. *Canada (Prime Minister) v. Alani*, 2016 FCA 22
6. *Harvan v. Canada*, 2015 FC 1026
7. *R. v. Morgantaler*, [1988] 1 S.C.R. 30
8. *Osakpamwan v. Canada*, 2016 FC 267
9. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217
10. *Schwarz Hospitality Group Ltd. v. Canada*, 2001 FCT 112