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F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE March 14, 2024 - 14 mars 2024 Samantha Chojnacki
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Court File No.: A-

FEDERAL COURT OF APPEAL

BETWEEN:

PRIME MINISTER AND MINISTER OF JUSTICE

Appellants

and

YAVAR HAMEED

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellants. The relief claimed by the Appellants appears on the following pages.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Appellants. The Appellants request that this appeal be heard in Ottawa.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the Appellants' solicitor, or where the Appellants are self-represented, on the Appellants, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

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

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

Dated: March 14, 2024

Issued by: _____
(Registry Officer)

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APPEAL

THE APPELLANTS APPEAL to the Federal Court of Appeal pursuant to sections 27(1)(a) and 52(b) of the *Federal Courts Act*, R.S., 1985, c. F-7 (*Federal Courts Act*), and Rules 335(a) and 337 of the *Federal Courts Rules*, SOR/98-106 (*Federal Courts Rules*), from the judgment and order of the Honourable Justice Brown of the Federal Court issued on February 13, 2024, in Federal Court file T-1274-23 (*Yavar Hameed v Prime Minister and Minister of Justice*), by which the Court granted in part the Respondent's application and declared: (1) that appointments to fill judicial vacancies under section 96 of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3 (*Constitution Act, 1867*), and section 5.2 of the *Federal Courts Act*, must be made within a reasonable time of the vacancy; and (2) that it expects that the number of said judicial vacancies will be materially reduced in a reasonable time such that the total number of judicial vacancies returns to the mid-40s, *i.e.*, to the number of federal judicial vacancies in Spring 2016.

THE APPELLANTS ASK FOR:

1. an order setting aside the Federal Court's judgment and dismissing the underlying application for judicial review;
2. in the alternative, an order referring the matter back to the Federal Court for a new determination with such directions as this Court may deem appropriate;
3. the costs of this appeal; and

4. such further and other relief as the Appellants may request and this Honourable Court may permit.

THE GROUNDS OF APPEAL ARE AS FOLLOWS:

1. The Federal Court erred in fact and law by recognizing a constitutional convention that does not exist, including by:
 - a. Failing to apply the judicially recognized test for identifying a constitutional convention; and
 - b. Treating constitutional conventions as enforceable legal duties and tantamount to judge-made common law rules.
2. The Federal Court erred in fact and law by overstepping its constitutionally limited role and acting without jurisdiction, including by:
 - a. Misapplying the test for establishing its jurisdiction and disregarding binding Supreme Court of Canada precedent on the application of the test;
 - b. Reading in a timeliness requirement to section 96 of the *Constitution Act, 1867* and section 5.2 of the *Federal Courts Act*;
 - c. Substituting its own view on the timeliness of federal judicial appointments for that of the executive branch; and
 - d. Attempting to compel the executive branch to comply with a constitutional convention under the guise of declaratory relief.

3. The Federal Court erred in fact and law by relying on a letter from the judiciary to inform the contents of the constitutional convention it sought to enforce, including by:
 - a. Construing the content of the letter as expert evidence;
 - b. Interpreting the Prime Minister's and Minister of Justice's nonresponse to the letter as a reviewable decision that would warrant relief from the Court; and
 - c. Relying on hearsay facts and opinion contained in the letter despite recognizing that the letter was inadmissible for the truth of its contents.
4. The Federal Court erred in fact and law by misapplying the test for public interest standing, including by weighing the test's three factors independently rather than cumulatively; and
5. Such further and other grounds as the Appellants may advise and this Court may permit.
6. The Appellants will rely on the following statutory provisions:
 - a. *Constitution Act, 1867*, ss. 96 & 101;
 - b. *Federal Courts Act*, ss. 2, 4, 5, 5.2, 18.1, 27(1)(a) & 52(b);
 - c. *Federal Courts Rules*, r. 52.1–52.6, 335 & 337;
 - d. *Courts of Justice Act*, RSO 1990, c C.43, s. 12;
 - e. *Courts of Justice Act*, CQLR, c T-16, s. 21;
 - f. *Court of Queen's Bench Act*, RSA 2000, c C-31, s. 3;
 - g. *Supreme Court Act*, RSC 1985, c S-26, s. 3; and

h. *Tax Court of Canada Act*, RSC 1985, c T-2, s. 3.

The Appellants propose that this appeal be heard in Ottawa.

DATED at Ottawa, this 14th day of March 2024.



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