

Federal Court



Cour fédérale

Ottawa, February 13, 2024 – The Honourable Justice Henry S. Brown of the Federal Court issued a decision today in file T-1274-23:

IN THE MATTER OF YAVAR HAMEED

v.

THE PRIME MINISTER AND THE MINISTER OF JUSTICE

Summary: The Applicant is a human rights lawyer in Ottawa who regularly litigates in the Federal Court, the Ontario Superior Court of Justice, and the Court of Appeal for Ontario.

The Applicant requested a writ of *mandamus* to compel the Prime Minister and the Minister of Justice [the Respondents] to appoint judges to fill 79 vacancies in the superior courts across Canada, including the Federal Courts. Second, the Applicant requested declarations that appointments be made within certain timelines.

The Applicant argued that over the past several years, he has experienced significant delays in litigation proceedings in the Superior Courts on behalf of vulnerable clients. The Applicant also submitted into evidence a letter from the Chief Justice of Canada and Chair of the Canadian Judicial Council to the Prime Minister of Canada dated May 3, 2023.

In the letter, the Chief Justice of Canada and Chair of the Canadian Judicial Council used the words “appalling” and “untenable” to describe the impact of the ongoing failure to fill judicial vacancies in a timely manner, fearing a “crisis” in the justice system. The Court accepts this evidence.

The Respondents filed no evidence to rebut the submissions of the Applicant or the contents of the letter from the Chief Justice of Canada and Chair of the Canadian Judicial Council. The Respondents raised a number of procedural and technical objections, all of which the Court found to be without merit.

The Court concluded that while the legal jurisdiction and power to fill vacancies in the federally appointed judiciary lies with the Governor General under section 96 of the *Constitution Act, 1867* and with the Governor in Council under section 5.2 of the *Federal Courts Act*, constitutional conventions place those decisions in practice on Cabinet, in the hands of the Prime Minister, and the Minister of Justice.

While the Court did not grant *mandamus*, the Court issued the following declarations:

1. All federal judicial appointments are made by the Governor General on the advice of Cabinet. In turn, Cabinet acts on the advice of the Minister of Justice. In the case of appointment of Chief Justices and Associate Chief Justices, it is the Prime Minister who provides the advice to Cabinet.
2. Appointments to fill judicial vacancies under section 96 of the *Constitution Act, 1867* and section 5.2 of the *Federal Courts Act* must be made within a reasonable time of the vacancy.

3. Appointments to fill current judicial vacancies are required for the reasons set out in the letter from the Chief Justice of Canada and Chair of the Canadian Judicial Council to the Prime Minister of Canada dated May 3, 2023.
4. The Court makes Declarations 2 and 3 above in its expectation that the number of said judicial vacancies will be materially reduced within a reasonable time such that the total number of judicial vacancies returns to the mid-40s, that is, to the number of federal judicial vacancies in the Spring of 2016; in this manner the Court expects the untenable and appalling crisis and critical judicial vacancy situation found by this Court as identified by the Chief Justice and Chair of the Canadian Judicial Council will be resolved.

The decision is posted on the [News Bulletins page](#) of the Federal Court website.