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File Number:

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

**AMNESTY INTERNATIONAL CANADA and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Applicants

- and -

**CHIEF OF THE DEFENCE STAFF
FOR THE CANADIAN FORCES,
MINISTER OF NATIONAL DEFENCE,
and ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

(Filed pursuant to Rule 25(1)(a) of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the Applicants, Amnesty International Canada and the British Columbia Civil Liberties Association, hereby apply for leave to appeal to the Court, pursuant to section 40 of the *Supreme Court Act*, from the judgment of the Federal Court of Appeal (File number A-149-08), made December 17, 2008, or any further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

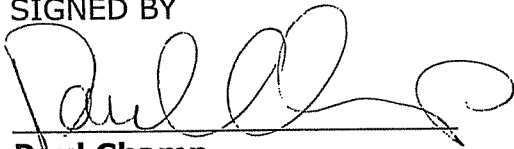
1. Canada has been engaged in an armed conflict in Afghanistan since 2001. As part of that operation, Canadian Forces ("CF") are apprehending individuals and detaining them in a facility that is under CF command and control. Current CF practice is to interrogate the detainees and then transfer them into the hands of Afghanistan authorities, despite evidence that torture is widespread in Afghan custody. Canadian officials have received direct, credible first-hand reports that detainees transferred from CF have been tortured by Afghan authorities.
2. The Applicants initiated an application for judicial review in the Federal Court concerning this practice, and asked for relief on the basis that the human rights of individuals held in detention by the CF in Afghanistan were protected by the *Canadian Charter of Rights and Freedoms*.
3. On a motion to determine a question of law, the Federal Court dismissed the application by ruling on March 12, 2008, that the *Charter* cannot apply extraterritorially in these circumstances, regardless of whether detainees were being exposed to a substantial risk of torture. The Federal Court of Appeal affirmed this judgment in a decision rendered December 17, 2008.
4. There is enormous public interest and concern regarding the issues raised by the case at bar. Canadians have followed the issue of CF detainee transfers very closely. Media reporting has been extensive, with newspapers from across Canada publishing hundreds of stories.
5. Parliament has debated the factual and legal issues raised by this case on numerous occasions over the past two years. The House of Commons Hansard indicates that the issue was debated on at least 75 different days in 2006 to 2008. Parliamentary Standing Committees have also held hearings, called witnesses and issued reports. The Military Police Complaints Commission has also launched public interest hearings into the practice of

transferring detainees to Afghan authorities despite the known risk of torture.

6. The present case is the first time Canadian courts have considered whether individuals detained by the Canadian military on foreign soil can claim the protections of the *Canadian Charter of Rights and Freedoms*. While this situation is new to Canada, the issue of jurisdiction and detention by military forces acting abroad has been addressed by the courts of Canada's closest allies, the United States of America and the United Kingdom. In addition, United Nations bodies such as the Committee Against Torture and the Human Rights Committee have found that the relevant human rights treaties apply to the detention of individuals by military forces on foreign soil.
7. The case at bar raises matters of national importance and public interest. It also holds great precedential value with respect to future Canadian military operations abroad. Further, given the extent to which Canada operates in conjunction with its allies, it is important for Canadian jurisprudence to consider and reconcile the different approaches of the American and British legal systems to human rights protections for military detainees.

Dated at Ottawa, Ontario, this 17th day of February, 2009.

SIGNED BY



Paul Champ

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NOTICE TO THE RESPONDENTS: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the *Supreme Court Act*.