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

June 14, 2024

Issued by: \_\_\_\_\_  
(Registry Officer)

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**The Respondent**

**NOTICE OF APPEAL**

**THE APPELLANT APPEALS** to the Federal Court of Appeal from the Order of Madam Justice Fuhrer (“Motion Judge”) dated June 5, 2024, in Court File T-925-19 (“Order”), by which she dismissed the Appellant’s motion to amend the Statement of Defence and Cross-claim to plead ss. 269 and 270 of the *National Defence Act*, R.S.C., 1985, c. N-5 (“Act”).

**THE APPELLANT ASKS:**

1. That the Order be set aside;
2. That the Appellant be granted leave to amend the Statement of Defence and Cross-claim (“Statement of Defence”) to plead the limitation period set out in s. 269 and the statutory bar set out in s. 270 of the *Act*;
3. That this Appeal be consolidated, or heard together with or immediately after, the appeal in Court File No. A-150-24;
4. That this Appeal and the appeal in Court File No. A-150-24 be heard on an expedited basis; and
5. Such further and other relief as this Honourable Court may deem just in the circumstances.

**THE GROUNDS OF APPEAL** are as follows:

1. The co-defendant in the action, Dominic Alexander is a former member of the Canadian Armed Forces (“CAF”). The Plaintiff alleges that Mr. Alexander, abused her physically, emotionally, sexually, and psychologically during the course of their relationship, which ended in mid-January 2006.
2. In June 2019, the Plaintiff brought an action against Mr. Alexander and the Appellant. In her action, the Plaintiff alleges that the CAF is liable to her in negligence, under the *Occupiers Liability Act*, R.S.O. 1990, c. O.2, for breach of s. 7 of the *Charter*, and for breach of fiduciary duty.

3. Rule 75(1) of the *Federal Courts Rules*, SOR/98-106 (“*Rules*”) provides that a Court may, on a motion, at any time, allow a party to amend a document on such terms that will protect the rights of all parties.
4. In March 2024, the Appellant brought a motion for leave to amend the Statement of Defence pursuant to Rule 75 of the *Rules* to plead the limitation period in s. 269 and the statutory bar in s. 270 of the *Act*.
5. The Motion Judge dismissed the Appellant’s motion in large part on the ground that the Plaintiff would suffer an injustice non-compensable in costs if the amendments to plead these defences were allowed because the Plaintiff would be denied the opportunity to conduct discoveries prior to trial. The trial was then scheduled to begin on April 29, 2024, for ten days.
6. On April 24, 2024, the Federal Court adjourned the trial to begin December 2, 2024, for 15 days, following a motion brought by the Plaintiff.
7. With the trial date having been adjourned for 7 months, the Appellant brought a fresh motion for leave to amend the Statement of Defence pursuant to Rule 75 of the *Rules*, to plead ss. 269 and 270 of the *Act*, on the basis that the adjournment of the trial was a material change in circumstances.
8. The Motion Judge dismissed the Appellant’s fresh motion on the basis that the motion was an abuse of process.
9. The Motion Judge erred by denying the Appellant leave to plead the limitation period in ss. 269 and 270 of the *Act*.
10. The Motion Judge erred by misapplying and misapprehending the applicable principles governing the exercise of the Court’s discretion under Rule 75 of the *Rules*.
11. The Motion Judge erred in finding that the Appellant was required to provide evidence establishing what the Appellant, His Majesty the King, “may or may not have thought about ss. 269 and 270 of the *Act* at the time the Statement of

Defence was prepared.”

12. The Motion Judge erred in dismissing the fresh motion on the ground that the omission in pleading ss. 269 and 270 of the *Act* was not “unknowable” by His Majesty the King at the time the Statement of Defence was prepared.
13. The Motion Judge erred in failing to consider the prejudice to the Appellant by not permitting him to raise the defences in ss. 269 and 270 of the *Act*.
14. The Motion Judge erred by imposing an onus on the Crown to show evidence about whether His Majesty the King, knew about ss. 269 and 270 of the *Act* at the time the Statement of Defence was prepared.
15. The Motion Judge erred by ruling that the Appellant could not rely on the material change of circumstances resulting from the adjournment of the trial.
16. The Motion Judge erred in finding that the doctrine of issue estoppel applied to preclude Canada’s fresh motion for leave to amend the Statement of Defence.
17. The Motion Judge erred in finding that the Appellant’s motion was frivolous, vexatious and an abuse of process.
18. The Motion Judge erred in dismissing the fresh motion on the grounds that the Appellant appealed the Motion Judge’s Order dismissing the Appellant’s earlier motion for leave to amend the Statement of Defence, and in finding that allowing the Appellant’s motion would “foster judicial inconsistency and result in an unnecessary waste of scarce judicial resources”.
19. Such further grounds as counsel may advise and this Court may permit.

Dated: June 14, 2024



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