

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230928

Docket: A-358-21

Citation: 2023 FCA 198

**CORAM: GLEASON J.A.
WOODS J.A.
HECKMAN J.A.**

BETWEEN:

EUGENE KELLY TIPPETT

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Regina, Saskatchewan, on September 28, 2023.
Judgment delivered from the Bench at Regina, Saskatchewan, on September 28, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Regina, Saskatchewan, on September 28, 2023).

GLEASON J.A.

[1] The appellant appeals from the order of the Federal Court in *Tippett v. Canada*, 2021 FC 1338 (*per* Southcott J.) in which the Federal Court dismissed the appellant's motion to broaden the scope of the class definition in the class action that was certified earlier by the Federal Court in *Tippett v. Canada*, 2019 FC 869.

[2] The class, as originally certified, comprised:

All persons who participated in the juvenile delinquent sentencing program “Developing Adolescence Strengthening Habits” operated at HMCS Quadra in British Columbia [the DASH Program] and suffered injury due to sexual abuse, assault, or harassment by Canadian Armed Forces members while participating in said juvenile delinquent sentencing program.

[3] In his motion to amend this class definition, the appellant sought to broaden the class to also include all persons who participated in the Sea Cadets Tall Ships program or any Sea Cadets program, operated at HMCS Quadra in British Columbia from 1980-1986, and suffered injury due to sexual abuse, assault, or harassment by Canadian Armed Forces members while participating in the programs.

[4] The Federal Court dismissed this motion, holding that none of the new evidence tendered supported the existence of a basis in fact to broaden the class as proposed by the appellant.

[5] We see no reviewable error in the Federal Court’s order.

[6] Although the appellant alleges that the Federal Court made an error of law in requiring substantively “new” or “different” evidence to amend an existing certification order, we disagree that this issue arises on this appeal. Given the way in which the Federal Court held that the motion was argued, it was logical for the Federal Court to focus primarily on the effect of the new evidence tendered by the appellant. Since the motion was argued on the basis of the import of new evidence, the appellant cannot submit on appeal that it was somehow an error of law for the Federal Court to have adopted the approach that it did.

[7] Nor do we see any palpable and overriding error in the Federal Court's conclusion that there was no basis in fact in the new evidence for the amended class definition. We reach this conclusion in light of the highly deferential nature of the palpable and overriding standard of review and the lack of any new evidence supporting that any Sea Cadets in the programs operated at HMCS Quadra suffered abuse similar to that endured by the appellant or were similarly situated to him.

[8] This case is similar to *Canada v. Greenwood*, 2021 FCA 186, [2021] FCJ No 1006 (QL), where the representative plaintiffs' experience and evidence could not be extrapolated to provide some basis in fact for including non-RCMP employees or non-indeterminate public service employees in the class. Here, in a similar fashion, it was open to the Federal Court to have concluded that there was no basis in fact in the new evidence for extrapolating the experience of the participants in the DASH Program to the Sea Cadets.

[9] This appeal will accordingly be dismissed.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-358-21

STYLE OF CAUSE: EUGENE KELLY TIPPETT v. HIS MAJESTY THE KING

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: SEPTEMBER 28, 2023

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WOODS J.A.
HECKMAN J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

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