

FEDERAL COURT OF APPEAL

CERTIFIED CLASS ACTION

Between:

EUGENE KELLY TIPPETT

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
F I L E D	24-DEC-2021 Robert M'vondo
REGINA, SK	-1-

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

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

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Regina.

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 appellant's solicitor, or where the appellant is self-represented, on the appellant, **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.**

DEC 24 2021

December _____, 2021

Issued By:
(Registry Officer)

Robert M'Vondo
REGISTRY OFFICER
AGENT DU GREFFE



Address of local office:

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TO:

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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of The Honourable Mr. Justice Southcott dated December 1, 2021 (in Federal Court No. T-541-18) dismissing the Appellant's motion to amend the certified class definition and common issues.

THE APPELLANT ASKS that the order be set aside, and that:

- (a) the definition of the class in this certified proceeding be amended to read:

All persons whom participated in the juvenile delinquent sentencing program "Developing Adolescence Strengthening Habits" or any Sea Cadets program operated at HMCS Quadra in British Columbia from 1980-1986 and who suffered injury due to sexual abuse, assault, or harassment by Canadian Armed Forces members while participating in either program.

- (b) the first common issue be revised as follows:

Did the Defendant owe a duty of care to the Plaintiff and the Class, including a duty of care in the administration of the DASH Program or the Sea Cadets program, and if so, what was the nature of that duty of care?

- (c) leave be granted, if necessary, to file the Second Amended Statement of Claim as proposed (which makes related amendments required only if the class definition and common issues are so modified).

THE GROUNDS OF APPEAL are that the Court erred:

1. In law at ¶¶18 and 41 by holding that a certification order may not be amended pursuant to Rule 334.19 to seek different relief (e.g. for a different class or in respect of different common issues) on the basis of the same evidentiary record which had been presented when certification was first determined by the Court.

2. In law at ¶¶18, 41, 44, and 45 by failing to accord weight to the fact that the additional evidence tendered by the Appellant on the motion to amend was discovered by way of preliminary document disclosure from the Respondent, and was evidence that the Respondent had strategically opted *not* to disclose in the context of the original certification application.

3. In fact and law at ¶¶38, 41, 44 and 45 by misapprehending the evidence of the Appellant and holding that the fresh evidence tendered by the Appellant did not “add anything to the evidence that was available on the Certification Motion ... that, like DASH Program participants, the sea cadets were also in harm’s way.”

4. In law by not applying the *some basis in fact* test to the assessment of the asserted *some basis in fact* by weighing and determining the *merits* of an evidentiary issue at ¶¶41 and 42.

December 24, 2021

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