

FEDERAL COURT

B E T W E E N :

BRUCE WENHAM

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

Proposed Class Proceeding

NOTICE OF MOTION

TAKE NOTICE THAT THE APPLICANT will make a motion to the Court on a date to be determined or as soon thereafter as the motion can be heard, at 180 Queen West, Toronto, Ontario.

THE MOTION IS FOR:

1. an order certifying this application as a class proceeding pursuant to Rule 334.16 the *Federal Courts Rules*, S.O.R./98-106, as amended (the "*Rules*");
2. an order defining the class as "all individuals whose applications to the Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility";
3. an order that the within proceeding is certified on the basis of the following common issues:
 - (a) Is the establishment and/or application of the evidentiary criteria or documentary proof requirements by Canada in the Thalidomide Contribution Program unlawful pursuant to section 18.1(4) of the Federal Courts Act?

(b) If the answer to (a) is answered in the affirmative, what remedies are the Class entitled to?

4. an order appointing Bruce Wenham as representative plaintiff for the class;
5. an order approving the proposed litigation plan;
6. an order declaring that no other class proceeding based upon the facts giving rise to this proceeding may be commenced without leave of the court;
7. an order staying all other proceedings based upon the same facts and common issues giving rise to this proceeding, pending a determination of this motion or further order of the court;
8. an order approving the form, content and method of dissemination of notice to the class;
9. an order granting leave to amend the Notice of Application amended November 3, 2016 to add the heading "*Proposed Class Proceeding*" pursuant to section 334.12(1) of the *Rules*; and,
10. such other relief that counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. On September 12, 2016 the Applicant commenced an application for judicial review in respect of the decision of the Thalidomide Survivors Contribution Program ("TSCP") Administrator dated August 12, 2016.
2. The Applicant filed an amended Notice of Application on November 3, 2016.
3. The Government of Canada established evidentiary criteria ("Evidentiary Criteria") and documentary proof requirements ("Documentary Proof Requirements") for applicants to the TSCP to meet to be eligible for compensation;

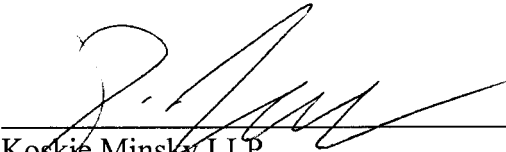
4. The Evidentiary Criteria and Documentary Proof Requirements applied to all applicants to the TSCP;
5. It is alleged that the establishment and application of the Evidentiary Criteria and Documentary Proof Requirements by the Respondent was unlawful pursuant to section 18.(4) of the *Federal Courts Act*;
6. There are two or more individuals whose applications to the TSCP were rejected by the Respondent on the basis of failing to provide the required proof of eligibility;
7. The class is objectively defined, membership being comprised of those who have been denied compensation by the Thalidomide Survivors Contribution Program Administrator pursuant to the Evidentiary Criteria and Documentary Proof Requirements.
8. There is a rational relationship between the class and the common issues and the class is not unnecessarily broad.
9. The Notice of Application raises common issues, the determination of which will move the litigation substantially forward.
10. In light of the access to justice concerns and with regard to achieving judicial economy, a class proceeding is not only the preferable procedure for resolving these claims but is the only manner by which these claims can be realistically adjudicated.
11. A class proceeding in this case would constitute the fairest, most efficient and manageable means of adjudication of the common issues.
12. A class proceeding will ensure that all remedies available pursuant to subsection 18.1(3) of the *Federal Courts Act* be applicable to all class members.

13. The proposed representative plaintiff, Bruce Wenham, can fairly and adequately represent the interests of the class with whom he has no conflict on the common issues.
14. The plaintiff has produced a workable litigation plan for advancing the claims on behalf of the class up to the common issues and afterwards.
15. The amendment to the Notice of Application proposed by the applicant:
 - (a) is procedural amendment to comply with rule 334.12(1);
 - (b) will serve the interest of justice;
 - (c) will not cause prejudice to the Respondent; and
 - (d) is being brought at an early stage of this proceeding.
16. Part 5.1 and Rules, 3, 4 and 75 of the *Federal Courts Rules*, S.O.R./98-106;
17. Section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c F-7.
18. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Bruce Wenham;
2. the Notice of Application amended November 3, 2016;
3. Such other and further evidence as counsel may submit and this Honourable Court may permit.

December 23, 2016



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FEDERAL COURT

BRUCE WENHAM

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondents

**NOTICE OF MOTION
(CERTIFICATION)**

(Filed this ____ day of December, 2016)

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