

Federal Court



Cour fédérale

**Date: 20190328**

**Docket: T-1499-16**

**Citation: 2019 FC 383**

**Ottawa, Ontario, March 28, 2019**

**PRESENT: The Honourable Madam Justice McDonald**

**PROPOSED CLASS PROCEEDING**

**BETWEEN:**

**BRUCE WENHAM**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**ORDER AND REASONS**

[1] On November 1, 2018, the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199, certified this as a class proceeding and appointed the Applicant, Bruce Wenham, as the representative of the following class: “all individuals whose applications to the Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility” (at para 66).

[2] On this Motion, the Applicant seeks an order to disseminate notice of certification to the 168 class members who had claims denied under the 2015 Thalidomide Survivors Contribution Program (TCSP). The Applicant also asks that a Dispute Resolution Conference (DRC) pursuant to Rule 386 be scheduled.

[3] Following the Federal Court of Appeal decision certifying this as a class proceeding, on January 9, 2019, the Government announced that a new program, the Canadian Thalidomide Survivors Support Program (CTSSP), would be launched in the Spring of 2019. This was announced without prior notice to the Applicant or Class counsel. This program would presumably target the potential class members.

[4] To date, no further details of the CTSSP have been announced.

[5] The Respondent opposes the Applicant's Motion and argues that until the details of the CTSSP program are announced, notice to the class should be postponed. The Respondent filed an Affidavit from Cindy Moriarty who is an Executive Director at Health Canada with responsibilities for the TCSP. In her Affidavit dated March 20, 2019, she states: "I expect the details of the new program to be available for release in April 2019."

[6] According to the Respondent, as an announcement on the new CTSSP program is imminent, service of notice of certification to the class members would cause confusion. The Respondent therefore asks that the notice to the class be held off until after the details of the new program are announced.

[7] The Applicant argues that notice to the class should not be delayed and any confusion that may result when the details of the CTSSP program are announced can be addressed in the information provided to class members. The Applicant seeks an Order directing that notice of certification be disseminated immediately and that an opt-out period be set.

## ANALYSIS

### *Notice of Certification*

[8] The Notice requirements are outlined in Rules 334.32(1) and (5) as follows:

**334.32 (1)** Notice that a proceeding has been certified as a class proceeding shall be given by the representative plaintiff or applicant to the class members.

[ ... ]

**(5)** The notice shall

(a) describe the proceeding, including the names and addresses of the representative plaintiff or applicant, and the relief sought;

(b) state the time and manner for a class member to opt out of the proceeding;

(c) describe the possible financial consequences of the proceeding to the class and

**334.32 (1)** Lorsqu'une instance est autorisée comme recours collectif, le représentant demandeur en avise les membres du groupe

[ ... ]

**(5)** L'avis comporte les éléments suivants

a) un sommaire de l'instance, notamment une mention des nom et adresse du représentant demandeur et des réparations demandées;

b) des instructions quant à la façon dont les membres du groupe peuvent s'exclure du recours collectif et la date limite pour le faire;

c) un énoncé des conséquences financières possibles de l'instance pour les membres du

subclass members;

(d) summarize any agreements respecting fees and disbursements:

(i) between the representative plaintiff or applicant and that representative's solicitor, and

(ii) if the recipient of the notice is a member of a subclass, between the representative plaintiff or applicant for that subclass and that representative's solicitor;

(e) in the case of an action, describe any counterclaim being asserted by or against the class or any subclass, including the relief sought in the counterclaim;

(f) state that the judgment on the common questions of law or fact for the class or subclass, whether favourable or not, will bind all of the class members or subclass members who do not opt out of the proceeding;

(g) describe the right, if any, of the class or subclass members to participate in the proceeding; and

(h) give an address to which class members may direct inquiries about the proceeding.

groupe et du sous-groupe;

d) un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre :

(i) le représentant demandeur et l'avocat inscrit au dossier,

(ii) le représentant demandeur du sous-groupe et l'avocat inscrit au dossier, dans le cas où le destinataire de l'avis est membre d'un sous-groupe;

e) s'agissant d'une action, un sommaire des demandes reconventionnelles présentées par ou contre le groupe ou le sous-groupe, y compris les réparations qui y sont demandées;

f) une mention portant que le jugement rendu sur les points de droit ou de fait communs liera tous les membres du groupe ou du sous-groupe non exclus du recours collectif, qu'il soit favorable ou défavorable;

g) un énoncé du droit éventuel de chaque membre du groupe ou du sous-groupe de participer à l'instance;

h) l'adresse où les membres du groupe peuvent envoyer toute question relative à l'instance.

[9] Rule 334.21 of the *Federal Courts Rules*, SOR/98-106 states as follows regarding opting-out and exclusion:

**334.21 (1)** A class member involved in a class proceeding may opt out of the proceeding within the time and in the manner specified in the order certifying the proceeding as a class proceeding.

**334.21 (1)** Le membre peut s'exclure du recours collectif de la façon et dans le délai prévus dans l'ordonnance d'autorisation.

(2) A class member shall be excluded from the class proceeding if the member does not, before the expiry of the time for opting out specified in the certifying order, discontinue a proceeding brought by the member that raises the common questions of law or fact set out in that order.

(2) Le membre est exclu du recours collectif s'il ne se désiste pas, avant l'expiration du délai prévu à cette fin dans l'ordonnance d'autorisation, d'une instance qu'il a introduite et qui soulève les points de droit ou de fait communs énoncés dans cette ordonnance.

[10] The Supreme Court of Canada at paragraph 42 of *Canada Post Corp v Lépine*, 2009 SCC

16 noted the importance of the notice procedure in class proceedings as follows:

A class action takes place outside the framework of the traditional duel between a single plaintiff and a single defendant. In many class proceedings, the representative acts on behalf of a very large class. The decision that is made not only affects the representative and the defendants, but may also affect all claimants in the classes covered by the action. For this reason, adequate information is necessary to satisfy the requirement that individual rights be safeguarded in a class proceeding. The notice procedure is indispensable in that it informs members about how the judgment authorizing the class action or certifying the class proceeding affects them, about the rights — in particular the possibility of opting out of the class action — they have under the judgment, and sometimes, as here, about a settlement in the case....

[11] As stated in *Lépine* the notice procedure is indispensable to provide class members with adequate information so that they can fully understand how the class proceeding affects their rights and to consider the possibility of opting-out.

[12] The Respondent argues that the parties will be in a better position to provide a more accurate notice to the class members when the details of the new program are released. However, that position fails to acknowledge that this class proceeding is a judicial review of a refusal under the 2015 Thalidomide Survivors Contribution Program. How the underlying judicial review application will be impacted by the, as yet undetailed, 2019 TCSSP program, is unknown.

[13] Accordingly, in my view, the impending announcement of a “new program” is not a valid reason to withhold notice of the class proceeding which relates to the 2015 TSCP and which was certified in November 2018. It is in the best interests of all concerned that notice of certification be issued without further delay.

[14] Ensuring class members have sufficient time to consider any new program can be addressed by providing a lengthier opting-out period.

[15] Furthermore, if the new program provides class members with an alternate remedy to the class proceedings, having received notice of the class proceedings in advance, the class members will then be in a position to make a fully informed decision.

[16] The parties have largely agreed on the form and content of notice of certification. The main point of contention was the timing of when the notice of certification ought to be disseminated.

[17] Accordingly, pursuant to Rule 334.32, I am ordering that notice be provided to class members. Where the parties disagree on the wording of the notice and the attached schedules, I have chosen the Applicant's wording of these documents.

[18] I have also decided that given the possibility that the new program will be announced while the notice to class members is being disseminated, it is appropriate to provide a lengthier opt-out period of 60 days rather than the 30 days proposed by the Applicant.

#### *Dispute Resolution Conference*

[19] A DRC was initially scheduled for March 12, 2019, but it did not proceed as the Respondent was not in a position to discuss a resolution until the details of the TCSSP program are announced.

[20] Although the Court is prepared to facilitate a DRC on short notice, until such time as the new program details are disclosed it is premature to reschedule a DRC.

**ORDER in T-1499-16**

**THIS COURT ORDERS that:**

1. Notice of certification substantially in the form attached as Schedule “A” together with the Frequently Asked Questions document substantially in the form attached as Schedule “B” shall be disseminated within fourteen (14) days of this Order as follows:
  - a. Delivered by Class Counsel by regular mail and email to the Class Members on the list of names and last known contact information as required to be provided by the Respondent to Class Counsel pursuant to the Order of this Court of February 26, 2019;
  - b. Forwarded by email or regular mail to any person who requests it from the Respondent or Class Counsel;
  - c. Posted on Class Counsel’s website;
  - d. Posted on the Respondent’s website for the Thalidomide Survivors Contribution Program; and
  - e. Issued by press release via the CNW Group – Canadian Basic Network.
  
2. A Class Member may opt-out of the class proceeding by returning a signed Opt-Out Form, in substantially the same form as attached as Schedule “C”, postmarked or otherwise received within sixty (60) days of the date of this Order (the “Opt-Out Deadline”), to the Class Counsel.



3. No Class Member may opt-out of the class proceeding after the Opt-Out Deadline, except with leave of the Court.
4. Class Counsel shall serve on the Respondent and file with the Court, within fourteen (14) days after the expiry of the Opt-Out Deadline, an affidavit listing all persons who have opted-out of the class proceeding, if any.
5. The cost of distributing notice of certification pursuant to this Order shall be paid by the Respondent.
6. The request for a Dispute Resolution Conference is denied.

"Ann Marie McDonald"

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Judge

**SCHEDULE "A"**  
**-NOTICE OF CERTIFICATION**

*This notice was approved by the Federal Court*

**Did your application to the 2015  
Thalidomide Survivors Contribution  
Program get rejected?**

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**A Class Proceeding May Affect Your Legal  
Rights.**

If your application to the 2015 Thalidomide Survivors Contribution Program was rejected by the Federal Government on the basis of failing to provide the required proof of eligibility, you are a class member in this class proceeding.



The class proceeding is known as *Wenham v. Canada*, File T-1499-16.

The class proceeding alleges that the eligibility criteria and evidentiary restrictions imposed by the Thalidomide Survivors Contribution Program were incorrect, unreasonable or unlawful and all rejections on those bases ought to be set aside. The class proceeding is asking that all applications rejected on those bases be reconsidered by the Federal Government using more reasonable criteria.

The Federal Government has responded to the class proceeding and has denied the allegations. The Applicant's allegations have not been proven and the Court has not yet determined the merits of the application.

The Federal Court has appointed Bruce Wenham of Toronto, Ontario, as the representative applicant in this matter. Mr. Wenham may be contacted at: c/o Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON, M5H 3R3, 1-866-474-1741.



The definition for the class included in the application is:

**"all individuals whose applications to the 2015 Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility."**

If you meet this definition, you are automatically included in the class proceeding.

If you do not wish to be included in the application, you must remove yourself by opting-out by [INSERT DATE]. If you opt-out, you will not be entitled to benefit from any remedy ordered if the class proceeding is successful.

**\*\*\*THIS CLASS PROCEEDING RELATES TO THE 2015 THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM. YOU MAY APPLY FOR COMPENSATION UNDER THE 2019 CANADIAN THALIDOMIDE SURVIVORS SUPPORT PROGRAM WHETHER OR NOT YOU PARTICIPATE IN OR OPT OUT OF THIS CLASS PROCEEDING. HOWEVER, THE ELIGIBILITY CRITERIA AND EVIDENTIARY REQUIREMENTS OF THE 2019 CANADIAN THALIDOMIDE SURVIVORS SUPPORT PROGRAM HAVE NOT BEEN ANNOUNCED. IT IS NOT KNOWN AT THIS TIME WHETHER THE NEW CRITERIA AND REQUIREMENTS WILL ADDRESS THE CONCERNS OUTLINED IN THIS PROCEEDING.**

To opt-out of the application, you need to fill out an opt-out form, which is available online at <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>, or can be obtained from Class Counsel at the contact information below.

Class members who stay in the class proceeding will be bound by any decision of the Court on the merits and/or by any settlement reached and approved by the Court.

If the Application is dismissed, you are not responsible for any legal costs. If the Application is allowed or is settled by the parties, Class Counsel will seek to have their legal fees deducted from any money ultimately recovered by class members following a re-determination of their applications, based on a contingency fee agreement that is subject to the approval of the court. The lawyers are seeking 25% of any recovery received by class members that is a result of this case.

If you have any questions about the proceeding, this notice or whether you may be a member of the Class, please contact Class Counsel at the contact information provided below. **DO NOT** contact the Federal Court.

**<https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>**

by phone: 1-866-474-1741

by email: [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca)

writing to: **Thalidomide Survivors Contribution Program Class Proceeding, Koskie Minsky LLP, 20 Queen Street West, Suite 900, M5H 3R3**

## SCHEDULE “B”

# Thalidomide Survivors Contribution Program Class Application

## Frequently Asked Questions March 18, 2019

### BASIC INFORMATION

#### 1. Why did I get this notice?

The Federal Court authorized this notice to let you know that an application for judicial review that may impact you was certified as a class proceeding.

The class proceeding has been brought by Bruce Wenham on behalf of all persons whose applications to the 2015 Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility.

This notice explains the nature of class proceeding and the opt out process.

#### 2. What is the 2015 Thalidomide Survivors Contribution Program?

On May 22, 2015, the Minister of Health announced details of the Thalidomide Survivors Contribution Program (2015 TSCP).

Individuals eligible under the 2015 TSCP received:

1. A tax-free lump-sum of \$125,000.00 to help support immediate health needs;
2. Ongoing support payments, based on level of disability, throughout the course of the individual’s lifetime; and
3. Access to the Extraordinary Medical Assistance Fund for assistance with extraordinary health costs.

#### 3. What is the class proceeding about?

The class proceeding alleges that the eligibility criteria and evidentiary restrictions imposed by the **2015 TSCP** were incorrect, unreasonable and unlawful.

The class proceeding is asking that all applications rejected on those bases be set aside and reconsidered by the Federal Government using more reasonable criteria.

The Federal Government has responded to the class proceeding and has denied the allegations. The allegations in the application have not been proven and the Court has not yet determined the merits of the application.

#### **4. What is a Class Judicial Review Application?**

This class proceeding is a class judicial review application. In a class judicial review application, one or more people called “**Representative Applicants**” apply for judicial review of a decision or order of a federal board, tribunal or other decision-maker that affects a particular group.

When an application has been certified to go forward as a class proceeding, the Court has authorized the Representative Applicant(s) to act on behalf of the “**Class**” or “**Class Members**” who fall within the class definition. The court will then decide the legal issues raised in the case for everyone affected, except for those who exclude themselves from the lawsuit.

The Federal Court has appointed Bruce Wenham of Toronto, Ontario as the **Representative Applicant** in this matter to act on behalf of all individuals whose applications to the 2015 TSCP were rejected on the basis of failing to provide the required proof of eligibility.

The next step in this matter is to determine whether the eligibility criteria and evidentiary requirements of the 2015 TSCP were incorrect, unreasonable and unlawful and whether all applications rejected on that basis should be reconsidered pursuant to more reasonable criteria.

#### **5. Am I a member of the class?**

The class is defined as "all individuals whose applications to the 2015 Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility."

If you are not sure whether you meet this definition, contact Koskie Minsky LLP, the lawyers for the Class:

by phone: 1-866-474-1741

by email: [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca)

writing to: **Thalidomide Survivors Contribution Program Class Proceeding, Koskie Minsky LLP, 20 Queen Street West, Suite 900, M5H 3R3**

#### **6. What if I don't want to be part of the Class?**

If you meet the class definition and do not wish to be a part of the class proceeding you must “Opt Out” before the [**Opt Out deadline**].

Opting out means you will not be bound by any order made by the Court and you will not be eligible for any relief that is provided by the Court if the class proceeding is successful.

You will be able to hire and pay for your own lawyer and commence your own application if you deem appropriate.

If you want to commence your own application you must Opt Out. If you Opt Out, you must abide by all applicable limitation periods and should consult a lawyer.

### **7. What if I do nothing?**

If you do nothing, you will automatically be a part of the Class and you will be bound by any judgment or settlement issued after the hearing, including in respect of legal fees.

### **8. How do I Opt-Out?**

To opt out of the settlement, you must submit an Opt Out Form to the lawyers for the Class. A copy of the Opt Out Form is available at:

**<https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>**

If you have commenced a legal proceeding against Canada relating to the 2015 Thalidomide Survivors Contribution Program, and you do not discontinue it on or before [Opt Out Deadline ] you will be deemed to have Opted Out of the Application.

### **9. Who are the lawyers for the Class?**

The lawyers for the Class are: Koskie Minsky LLP of Toronto, Ontario. You can contact the lawyers for the class at [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca) or 1-866-474-1741. Please also visit the lawyer's website for this case at: <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/> .

If you want to receive advice from another lawyer, you may hire one to your own expense. If you want to opt out and commence your own application and want to hire another lawyer to represent you in that application, you can do so at your own expense.

### **10. How will the lawyers for the Class be paid?**

Legal fees are typically deducted from any compensation that the class ultimately receives as a result of a successful judgment or settlement. The lawyers for the class are seeking 25% of any recovery received by class members that is a result of this case.

The Federal Court will decide the amount of fees and disbursements to award. Class Counsel will not be paid until the Federal Court declares that the proposed legal fees are fair and reasonable.

## **11. What is the 2019 Canada Thalidomide Survivors Support Program?**

On January 9, 2019 the Minister of Health announced that a new program called the Canadian Thalidomide Survivors Support Program for thalidomide survivors (2019 CTSSP). The announcement stated that the CTSSP would provide eligible applicants with an ex gratia payment of \$250,000, ongoing tax-free annual payments based on level of disability and an Extraordinary Medical Assistance Fund (EMAF).

The announcement noted that those survivors already approved and receiving support through the 2015 TSCP will automatically transfer to the 2019 CTSSP, will continue to receive their benefits and will receive an ex gratia payment of \$125,000 to equalize the ex gratia payments to survivors under the two programs.

The Minister of Health noted that the 2019 CTSSP would replace the 2015 TSCP. The Applicant is of the view that the 2019 CTSSP is simply a revision to the 2015 TSCP. That is a matter of dispute between the parties.

While the announcement stated that the 2019 CTSSP would "provide a fair and comprehensive approach to identifying thalidomide survivors that is based on international best practices" no details of the eligibility criteria or evidentiary requirements of the 2019 CTSSP were announced.

As of the date of these FAQs no such details have been announced or shared with the court appointed representative of the class.

The announcement noted that the application period for the CTSSP would launch in spring 2019 and remain open for five years. The announcement noted that more information would be made available when the program is launched.

## **12. How does the 2019 Canada Thalidomide Survivors Support Program impact this class proceeding?**

At this time, it is not clear how the 2019 CTSSP will impact this class proceeding.

While the announcement stated that the 2019 CTSSP would "provide a fair and comprehensive approach to identifying thalidomide survivors that is based on international best practices" no details of the eligibility criteria or evidentiary requirements of the CTSSP were announced. As of the date of these FAQs no such details have been announced or shared with the court appointed representative of the class.

It is not clear to the Representative Applicant whether the eligibility criteria or evidentiary requirements of the 2019 CTSSP will be fair. It is not clear whether the eligibility criteria or evidentiary requirements of the 2019 CTSSP will be fairer than what can be achieved by this class proceeding in relation to the 2015 TSCP.

Based on the announcement of the 2019 CTSSP, it appears possible that a successful reconsideration of an application to the 2015 TSCP will result in eligibility to the 2019 CTSSP and the increase ex gratia payment associated therewith.

Until the details of the 2019 CTSSP are revealed, the impact to this class proceeding is not known. However, the court has appointed a Representative Applicant to act in this

proceeding on behalf of all those who were rejected from the 2015 TSCP on the basis of failing to provide the required proof of eligibility.

**13. Does Opting Out prevent me from applying for compensation under the 2019 2019 Canada Thalidomide Survivors Support Program?**

The Federal Government's announcement about the 2019 CTSSP suggests that one may apply to the 2019 CTSSP whether or not you participate in or opt out of this proceeding. This class proceeding only relates to the 2015 TSCP.

In addition, based on the announcement about the 2019 CTSSP, it appears possible that a successful reconsideration of an application to the 2015 TSCP will result in eligibility to the 2019 CTSSP and the increased ex gratia payment associated therewith.

**13. How do I get more information?**

This notice summarizes the Opt Out Process. More details available at:

<https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>

You can send your questions to the lawyers for the Class:

by phone: 1-866-474-1741

by email: [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca)

by writing to: **Thalidomide Survivors Contribution Program Class Proceeding, Koskie Minsky LLP, 20 Queen Street West, Suite 900, M5H 3R3**

**KM-3643869v2**



**SCHEDULE "C"  
(OPT-OUT FORM)**

TO: Thalidomide Survivors Contribution Program Class Proceeding  
Koskie Minsky LLP  
20 Queen Street West, Suite 900  
Toronto, Ontario M5H 3R3  
Tel: 1-866-474-1741  
Email: [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca)

This is NOT a claim form.

Completing this OPT-OUT FORM will EXCLUDE you from receiving any benefit from a settlement or judgment in the class proceeding named *Bruce Wenham v. The Attorney General of Canada*, Federal Court File No. T-1499-16.

**\*\*\*THIS CLASS PROCEEDING RELATES TO THE 2015 THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM. YOU MAY APPLY FOR COMPENSATION UNDER THE 2019 CANADIAN THALIDOMIDE SURVIVORS SUPPORT PROGRAM WHETHER OR NOT YOU PARTICIPATE IN OR OPT OUT OF THIS CLASS PROCEEDING. HOWEVER, THE ELIGIBILITY CRITERIA AND EVIDENTIARY REQUIREMENTS OF THE 2019 CANADIAN THALIDOMIDE SURVIVORS SUPPORT PROGRAM HAVE NOT BEEN ANNOUNCED. IT IS NOT KNOWN AT THIS TIME WHETHER THE NEW CRITERIA AND REQUIREMENTS WILL ADDRESS THE CONCERNS OUTLINED IN THIS PROCEEDING.**

I do not want to participate in the class proceeding styled as *Wenham v Canada*, alleging that the rejection of my application to the 2015 Thalidomide Survivors Contribution Program was unfair, should be set aside and reconsidered.

**I understand that by opting-out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding and will not be entitled to benefit from any remedy ordered by the Federal Court if the case is successful. I confirm that if I opt-out, and if I wish to seek judicial review in respect of a decision rejecting my application for compensation under the 2015 Thalidomide Survivors Contribution Program I may be subject to the applicable time limits, and I will be responsible to pursue the application on my own and to hire my own counsel.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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Address

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City, Province, Postal Code

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Telephone

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Email

This Notice must be delivered (or postmarked) by regular mail or email on or before \_\_\_\_\_, 2019 to be effective.

**KM-3630298v3**

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**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1499-16

**STYLE OF CAUSE:** BRUCE WENHAM v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 26, 2019

**ORDER AND REASONS:** MCDONALD J.

**DATED:** MARCH 28, 2019

**APPEARANCES:**

David Rosenfeld  
Janeta Zurakowski

FOR THE APPLICANT

Melanie Toolsie  
Christine Mohr

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Koskie Minsky LLP  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Department of Justice Canada  
Ontario Regional Office  
Toronto, Ontario

FOR THE RESPONDENT