

# Thalidomide Survivors Contribution Program Class Application

## Frequently Asked Questions March 28, 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 the 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, Toronto, ON 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 **May 27, 2019**.

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 **May 27, 2019** 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 at 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 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.

#### **14. 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:

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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, Toronto, ON M5H 3R3**

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