

NOTICE OF SETTLEMENT APPROVAL HEARING

THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM CLASS PROCEEDING

NOTICE OF THE SETTLEMENT APPROVAL HEARING ON FEBRUARY 26-27, 2020

LEGAL NOTICE

**DID YOU APPLY FOR, AND WERE DENIED, SUPPORT PAYMENTS
UNDER THE THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM?**

A settlement has been reached by the parties in this class proceeding. Please read this notice carefully.

The class proceeding between Bruce Wenham of Toronto, Ontario (the “**Representative Applicant**”) and the Federal Government of Canada (“**Canada**”) regarding the 2015 Thalidomide Survivors Contribution Program has been settled.

The class application commenced by Mr. Wenham alleged that the Thalidomide Survivors Contribution Program was unfair in that it unfairly restricted what evidence an applicant could submit to prove eligibility to that program. The settlement reached is not to be construed as an admission on the part of Canada that the TSCP was unfair. However, on April 5, 2019, the Government of Canada replaced the TSCP with a new program, called the Canadian Thalidomide Survivors Support Program, which is made available to you.

This case is known as *Wenham v Attorney General of Canada*, Court File No. T-1499-16. The Honourable Justice Michael L. Phelan of the Federal Court is overseeing this case.

The settlement approval hearing will be on **February 26 and 27, 2020 at 9:30 a.m. Eastern Time.**

More Information can be found at Class Counsels’ website:

<https://kmlaw.ca/cases/thalidomidesurvivors-contribution-program-class-action>; at Health Canada’s website: <https://www.canada.ca/en/health-canada/services/thalidomide-survivors-contribution-program.html>; and on the CTSSP website: <https://tsspcanada.ca>.

1. Why did I get this notice?

The Federal Court authorized this notice because you have a right to know about the proposed settlement and about your options before the Court decides whether to give final approval to the settlement. This notice explains the lawsuit, the settlement and your legal rights.

2. What is the 2015 Thalidomide Survivors Contribution Program (TSCP)?

On May 22, 2015, the Minister of Health announced details of the Thalidomide Survivors Contribution Program. This program provides payments to two classes of eligible recipients:

- 1) Individuals who received payments in 1991 pursuant to the Extraordinary Assistance Plan; and
- 2) Individuals who submitted applications before May 31, 2016, and who met one of the same three criteria as applied by the Extraordinary Assistance Plan of 1991.

Individuals eligible under the **TSCP** received:

- 1) An 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 costs.

3. What is the 2019 Canada Thalidomide Survivors Support Program (CTSSP)?

The Government of Canada launched a new financial support program for eligible Canadian thalidomide survivors

The new program, the Canadian Thalidomide Survivors Support Program (CTSSP), replaces the TSCP. The CTSSP includes a three-step process to determine eligibility: (1) a preliminary assessment by the administrator based on all the evidence submitted by the applicant; (2) the application of a diagnostic algorithm; and (3) a review by a multi-disciplinary committee.

The program includes a tax-free, lump sum payment to each survivor to help cover the cost of urgent health care needs, ongoing annual payments based on level of disability, and an Extraordinary Medical Assistance Fund (EMAF) to support survivors with extraordinary expenses such as home or vehicle adaptations, or specialized surgery not otherwise covered by provincial/territorial health care plans.

Class Members who are eligible for the CTSSP will receive tax-free payment of \$250,000, and ongoing tax-free payments. In addition, to account for an anticipated increase in the number of recognized thalidomide survivors, funds available through the EMAF will increase from \$500,000 to \$1,000,000 per year.

The application period for the CTSSP launched June 3, 2019 and will remain open for five years until June 3, 2024.

4. What is the application for judicial review about?

The application alleges that the eligibility criteria and evidentiary restrictions imposed by the **2015 Thalidomide Survivors Contribution Program** were incorrect, unreasonable and 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 allegations in the application have not been proven and the Court has not determined the merits of the application.

5. What 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 application, 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 appointed Bruce Wenham of Toronto, Ontario as the **Representative Applicant** in this matter. Mr. Wenham may be contacted through counsel for the Class:

Telephone: 1-866-474-1741

Email: thalidomideclassaction@kmlaw.ca

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

6. Am I a member of the class?

The class is defined as all individuals whose applications to the 2015 Thalidomide Survivors Contribution Program (TSCP) were rejected on the basis of failing to provide the required proof of eligibility and did not opt out.

If you previously opted out of the class, but now wish to be included, you may be able to rejoin the Class. More information will be available if the settlement is approved.

If you are not sure whether you meet the Class Definition, contact Class Counsel:

Telephone: 1-866-474-1741

Email: thalidomideclassaction@kmlaw.ca

In writing: Thalidomide Survivors Contribution Program Class
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Koskie Minsky LLP
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7. What does the Settlement provide?

The agreement between the government and Mr. Wenham provides:

- (a) That the Representative Applicant or such other Class Members as may be designated, may provide input with respect to the attributes, knowledge, experience and expertise of the members of the Multi-disciplinary Committee made up of medical and legal experts, at the initial stage of establishment by Epiq Class Action Services Canada Inc., who is the Administrator of the CTSSP (“Administrator”);
- (b) That those applicants who do not receive a "probable" finding by the Diagnostic Algorithm determining eligibility will be given opportunity to provide more information for the consideration by the Administrator before their application is denied;
- (c) That Class Members’ applications to the CTSSP will be determined by the Administrator in priority to other applications;
- (d) That the Administrator will use a balance of probability standard in its preliminary assessment to determine whether the nature of an applicant’s congenital

malformations are consistent with known characteristics of congenital malformations linked to thalidomide;

- (e) That where a final decision is made to deny an application at any step of the three-step process, the Administrator shall advise an applicant of the reasons for the denial and shall afford the person an opportunity to provide additional information or submissions in writing for reconsideration;
- (f) That Class Members whose applications to the CTSSP are denied shall have the right to seek reconsideration upon presentation of new evidence, so long as such applications are received prior to June 3, 2024;
- (g) That Class Members who are found eligible under the CTSSP shall receive their annual payments retroactive to June 3, 2019, regardless of when they submit their application so long as it is submitted prior to June 3, 2024;
- (h) That Class Members who die after the administrator of the CTSSP has determined that they are eligible for support under the CTSSP, but before payment has been made, shall have the lump sum paid to their estate. The estate will have no right to annual payments. No payment will be made to the estate of a Class Member who dies before the administrator of the CTSSP has determined eligibility; and
- (i) That the application for judicial review will be discontinued at the time the settlement is approved, and Class Members will be deemed to have released Canada from all current and future legal proceedings, actions, and claims as set out in the Settlement Agreement and the Approval Order; and
- (j) That Class Counsel will bring a motion at the same time as the motion to approve the Settlement for the approval of their entitlement to and the quantum of his legal fees, disbursements and taxes payable by the Class Members. Canada shall have the right to seek to make submissions to the Court on Class Counsels' entitlement to, and the quantum of, legal fees, disbursements and taxes.

8. What am I giving up in the settlement?

Unless you previously opted out of the class proceeding, if the Settlement is approved you will give up your right to sue Canada for any harms related to the rejection of your application to the 2015 Thalidomide Survivors Contribution Program or to challenge those prior decisions by way of judicial review.

This will not impact your right to challenge any decision you may receive on an application you submit to the 2019 Canadian Thalidomide Survivors Support Program.

9. What if I don't want to be part of the Class?

The time for opting out has passed. If you did not opt out of the Application prior to May 27, 2019, you will be bound by the Settlement.

If you had a proceeding that raises the same issues as the common issues stated by the court in this proceeding, and did not discontinue that proceeding prior to May 27, 2019, you are deemed to have opted out.

If you did Opt Out but now wish to revoke your Opt Out, you will be provided an opportunity to do so if the Settlement is approved.

10. Does having opted out prevent me from applying for compensation under the 2019 Canadian Thalidomide Survivors Support Program?

No. The judicial review application only relates to the 2015 Thalidomide Survivors Contribution Program (TSCP). You may apply for compensation under the new program whether or not you chose to Opt Out of the class proceeding concerning the old program.

If the settlement is approved and if you have opted out and are subsequently found eligible under the CTSSP you will not be eligible for the retroactive annual payments to June 3, 2019 or payments to your estate in the event of your death during the application process.

11. What are my legal rights and options?

1. Do nothing	<p>If you support the Settlement Agreement, you do not have to do anything right now.</p> <p>By doing nothing, you will give up any right to object to the settlement and you will give up the right to challenge any prior decisions under the TSCP or to sue Canada in relation to the TSCP.</p>
2. Submit a statement of support or objection	<p>If you do not wish to attend the hearing, but you would like to explain why you either support or object to (1) the settlement; and/or (2) to the legal fees, you can complete a Participation Form. This form will include your name, address, and the reasons why you support the settlement. The Participation Form can be found at https://kmlaw.ca/cases/thalidomidesurvivors-contribution-program-class-action/.</p> <p>You must mail this Form to Class Counsel at Koskie Minsky LLP 20 Queen Street West, Suite 900, Toronto, Ontario, M5H 3R3 or by email to thalidomideclassaction@kmlaw.ca and it must be received or postmarked no later than February 12, 2020.</p>

3. Participate at the settlement hearing

You can attend the approval hearing at the **Federal Court in Toronto, at 180 Queen St. West, on February 26-27, 2020 at 9:30 a.m.** Eastern Time, to participate in the proceeding and voice your support or objection to the proposed settlement or legal fees in person.

The Court will decide if you will be permitted to make oral submissions at the time of the hearing. However, in order to be eligible to participate, you must have completed and submitted the participation form setting out your reasons for supporting or objecting to the proposed settlement or legal fees.

12. Who are the lawyers for the Class?

The lawyers for the Class are Koskie Minsky LLP of Toronto, Ontario.

If you want to be represented by or receive advice from another lawyer, you may hire one to appear in court for you at your own expense.

13. How will the lawyers be paid?

Legal fees are typically deducted from any compensation that the class ultimately receives as a result of a successful judgment. Class counsel's retainer agreement with the Representative Applicant provides for a contingency fee of 25% of any recovery received by Class Members that is a result of this case.

As the settlement agreement makes no provision for legal fees, disbursements and taxes to be paid to Class Counsel, the Federal Court will ultimately decide the amount of fees and disbursements to be paid to Class Counsel out of any recovery received by Class Members. Class Counsel will not be paid until the Federal Court declares that the proposed legal fees, disbursements and costs are fair and reasonable.

Class Counsel will bring a motion at the same time to approve the Settlement for the approval of their entitlement to and the quantum of legal fees, disbursements and taxes payable by the Class Members. Canada shall have the right to seek to make submissions to the Court on both entitlement to and quantum of legal fees, disbursements and taxes.

The Applicant intends on seeking costs against Canada to contribute to any such legal fees, if ordered.

14. What if I don't like the Settlement or the request for legal fees?

You can file a "Participation Form" to indicate your support or objection to the settlement or the legal fees if you don't like some part of them. The Court will consider your views. To object, you must submit a Participation Form in writing that includes the following:

- your name, address and telephone number;

- a statement saying that you either support or object to the settlement and/or to the request for legal fees; and
- the reasons you support or object, along with any supporting materials.

Participation Forms are available at: <https://kmlaw.ca/cases/thalidomide-survivors-contributionprogram-class-action/>

You can submit a Participation Form by **February 12, 2020** by mail or by email.

You must submit your Participation Form to:

Thalidomide Survivors Contribution Program Class Proceeding
Koskie Minsky LLP
20 Queen Street West, Suite 900,
Toronto, Ontario, M5H 3R3
thalidomideclassaction@kmlaw.ca

The Court will hold a hearing on **February 26-27, 2020 at 9:30 a.m. Eastern Time** to decide whether to approve the settlement and the request for legal fees. You may attend in person, or through counsel alone, and you may ask to speak, but you do not have to.

15. When and where will the Court decide whether to approve the Settlement?

The court will hold an approval hearing on **February 26-27, 2020 at 9:30 a.m. Eastern Time** at the Federal Court in Toronto, Ontario located at 180 Queen Street West, Toronto, Ontario. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/> or to call 1-866-474-1741 in advance if you are planning to attend.

You may request to attend the hearing via video-conferencing at a Federal Court building located in your province or territory. You must make your request to Class Counsel by January 31, 2020 and you will be advised thereafter whether video-conferencing will be available and where.

At the hearing the Court will consider whether the settlement is fair, reasonable, and in the best interests of the class. If any Class Member wishes to speak to either support or object to the settlement, the Court will consider the request and may hear from Class Members who have asked to speak at the hearing.

The Court will also decide whether and how much legal fees and expenses should be paid to Class Counsel. After the hearing, the Court will decide whether to approve the Settlement and the request for legal fees. It is not known how long these decisions will take.

16. Do I have to attend the hearing?

No. Class Counsel and the Attorney General of Canada will answer questions the Court may have. However, you or your own lawyer are welcome to attend at your own expense. If you submit a Participation Form, you do not have to come to Court to talk about it. As long as you submitted your Participation Form on time, the Court will consider it.

17. How do I get more information?

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

Health Canada's website: <https://www.canada.ca/en/health-canada/services/thalidomide-survivors-contribution-program.html>

The CTSSP website: <https://tsspcanada.ca>

You can send your questions to Class Counsel at:

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