

## THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM CLASS PROCEEDING

### NOTICE OF APPROVAL OF SETTLEMENT AND DISCONTINUANCE OF THE APPLICATION

#### LEGAL NOTICE

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

A settlement has been approved by the court. Please read this notice carefully.

A settlement between the Federal Government of Canada (“**Canada**”) and Bruce Wenham of Toronto, Ontario (the “**Representative Applicant**”) has been approved by the Federal Court and is now final.

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. This settlement agreement 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.

#### **WHO IS INCLUDED?**

The settlement provides for certain benefits and compensation to the following individuals (“**Class Members**”):

All individuals whose applications to the Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility except those who have validly opted out of the settlement or who are deemed to have opted out pursuant to rule 334.21(2) of the *Federal Courts Rules*.

All Class Members will be bound by the settlement and will be covered by the releases in the settlement, and will not have the right to bring a judicial review application, or civil action against Canada for alleged harm caused by the denial of their application for compensation under the TSCP.

## WHAT DOES THE SETTLEMENT PROVIDE?

The settlement 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 at the initial stage of its establishment by the Third Party Administrator;
- (b) That those applicants who do not receive a "probable" finding by the Diagnostic Algorithm in determining eligibility will be given the opportunity to provide more information for the consideration by the Third Party Administrator before their application is denied;
- (c) That class members' applications to the CTSSP will be determined by the Third-party administrator in priority to other applications;
- (d) That the Third-party 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 Third party 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; and
- (i) The application for judicial review has been discontinued and Class Members are deemed to have released Canada from all current and future legal proceedings, actions, claims and proceedings as further set out in the Settlement Agreement and the Approval Order.

## **WHAT IF I DO NOT WANT TO BE BOUND BY THE TERMS OF THE SETTLEMENT?**

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 and would not be bound by the settlement.

If you did opt out but now wish to revoke your Opt Out, you may do so no later than **July 12, 2021** by filing the Revocation of Opt Out Form, available at <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>

## **WANT MORE INFORMATION?**

Information is available at: <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>. You can consult class counsel at [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca) or call 1-866-474-1741.

## **FREQUENTLY ASKED QUESTIONS**

### **BASIC INFORMATION**

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

The Federal Court authorized this notice to let you know that a settlement has been approved in this application for judicial review that was certified as a class proceeding. The application was brought by Bruce Wenham on behalf of all persons whose applications were denied under the 2015 Thalidomide Survivors Contribution Program.

This notice explains the nature of the judicial review application and the process for those who wish to revoke their opt out.

#### **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 provided 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)?**

In April 2019, 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 specialized surgeries, ongoing health support treatments and home or vehicle adaptations, not otherwise covered by provincial/territorial health care plans.

Class Members who are eligible for the CTSSP will receive a lump sum 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 on 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 alleged 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 asked that all applications rejected on those bases be reconsidered by the Federal Government using more reasonable criteria.

The Federal Government 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](mailto:thalidomideclassaction@kmlaw.ca)

In writing: Thalidomide Survivors Contribution Program Class  
Proceeding  
Koskie Minsky LLP  
20 Queen Street West, Suite 900  
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 are not sure whether you meet this definition, contact Class Counsel:

Telephone: 1-866-474-1741

Email: [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca)

In writing: Thalidomide Survivors Contribution Program Class  
Proceeding  
Koskie Minsky LLP  
20 Queen Street West, Suite 900  
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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 at the initial stage of its establishment by the Third Party Administrator;
- (b) That those applicants who do not receive a "probable" finding by the Diagnostic Algorithm in determining eligibility will be given the opportunity to provide more information for the consideration by the Third Party Administrator before their application is denied;
- (c) That Class Members' applications to the CTSSP will be determined by the Third Party Administrator in priority to other applications;

- (d) That the Third-party 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 Third Party 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 payment 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; and
- (i) The application for judicial review has been discontinued and Class Members are deemed to have released Canada from all current and future legal proceedings, actions, claims and proceedings as further set out in the Settlement Agreement and the Approval Order.

## **8. 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.

## **9. What if I have already Opted Out?**

If you did Opt Out but now wish to revoke your Opt Out, you may do so no later than **July 12, 2021** by filing the Revocation of Opt Out Form, available at <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>.

## **10. Does Having Opted Out prevent me from applying for compensation under the 2019 Canada 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 application concerning the old program.

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

## **11. 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 issued after the Approval Hearing, including in respect of legal fees.

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

The lawyers for the Class are:

- Koskie Minsky LLP of Toronto, Ontario; and

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?**

The Federal Court ordered that 15% of any amounts to be paid to class members under the CTSSP are to be paid to Class Counsel up to a maximum of 10 years' of annual payments and up to a total maximum of \$2,131,297.05 (consisting of a maximum of \$1,850,000 in fees, plus HST of \$240,500 and disbursements of \$40,797.05).

## **14. How do I get more information?**

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

You can send your questions to:

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Email: [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca)

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