

FEDERAL COURT OF APPEAL

CLASS PROCEEDING

BETWEEN:

BRUCE WENHAM

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at place where Federal Court or Appeal (or Federal Court) ordinarily sits.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is

self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

September 27, 2021

Issued by: _____

Address of 180 Queen St W.
local office: Toronto, ON M5V 1Z4

TO: The Attorney General of Canada
Department of Justice Canada
Ontario Regional Office
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order of the Honourable Justice Phelan dated June 28, 2021 denying the Appellant's motion for an order declaring the Respondent to be in breach of Article 4.02(e) of the Settlement Agreement approved by the Federal Court on May 8, 2020, pursuant to the *Federal Courts Rules*, SOR/98-106 (the "**Rules**").

THE APPELLANT ASKS:

1. That the Order of the Justice Phelan be set aside;
2. That the Federal Court of Appeal declare the Attorney General of Canada, through its agent Epiq Class Action Services Canada Inc. that acts as the Thalidomide Survivors Support Program ("**CTSSP**") Administrator ("**CTSSP Administrator**"), is in breach of article 4.02(e) of the settlement agreement approved by the Federal Court in its order and reasons dated May 8, 2020 (the "**Settlement Agreement**")
3. That the Federal Court of Appeal order the Respondent to provide lawful reasons upon denying the application of any Class Member at Step 2 of the CTSSP application process, or direct the CTSSP Administrator to so, including on:
 - a. All of the possible answers to the questions listed under the valiDATE analysis document;
 - b. What the "probable" standard under the valiDATE algorithm means as a standard of proof; and
 - c. How the informational inputs to the valiDATE algorithm are weighed in determining whether an applicant is given a "probable finding" be in breach of Article 4.02 of the Settlement Agreement approved by the Federal Court on May 8, 2020; and

4. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. This appeal arises out of the Appellant's motion for an order declaring the Respondent (on its own and through the CTSSP Administrator) to be in breach of Article 4.02(e) of the Settlement Agreement arising out of a certified class proceeding on behalf of all individuals who had claims for compensation denied by the Thalidomide Survivors Contribution Program ("**TSCP**") for failing to provide the required proof of eligibility.

2. The settlement agreement was approved by the Federal Court on May 8, 2020 and provided Class Members with a right to reasons where a final decision is made to deny an application for compensation under the CTSSP at any step of the three-step process involved in determining eligibility for compensation under the program.

3. Justice Phelan heard the motion and ordered that the Applicant's motion be dismissed (the "**Order**"). In making the Order, the Honourable Judge made the following errors of principle and palpable and overriding errors:

- (a) failing to find that the Step 2 rejection letters issued are so devoid of substance as to not be reasons at all;
- (b) finding that the reasons provided class members a basis for reconsideration and review;
- (c) interpreting Article 4.02(e) as not requiring the Respondent to provide reasons that are justifiable, intelligible and transparent or otherwise in accordance with administrative law principles;
- (d) finding that the requirement for justifiable, intelligible and transparent reasons or reasons otherwise in accordance with administrative law principles under Article 4.02(e) had to be specifically negotiated;

- (e) finding that the requirement for justifiable, intelligible and transparent reasons or reasons otherwise in accordance with administrative law principles do not arise as a matter of necessary implication; and
- (f) finding that there was no evidence to support the Applicant's interpretation of Article 4.02(e).

The Court's Jurisdiction is:

- 4. *Federal Courts Act*, R.S.C. 1985, c F-7, specifically sections 27 and 52;
- 5. *Federal Courts Rules*, SOR/98-106, specifically Part 5.1;
- 6. such further and other grounds as the Appellant advises and this Honourable Court may permit
- 7. THE APPELLANT REQUESTS that this appeal be heard at Toronto, Ontario.



September 27, 2021

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Solicitors for the Appellant

Federal Court of Appeal File No. _____
Federal Court File No. T-1499-16

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(Filed this 27th day of September, 2021)

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