

Federal Court



Cour fédérale

**Date: 20200508**

**Docket: T-1499-16**

**Citation: 2020 FC 587**

**Ottawa, Ontario, May 8, 2020**

**PRESENT: The Honourable Mr. Justice Phelan**

**CLASS PROCEEDING**

**BETWEEN:**

**BRUCE WENHAM**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**ORDER**  
**(Settlement Approval)**

**WHEREAS** the Applicant and the Respondent have entered into a Final Settlement Agreement dated October 22, 2019 [the Settlement Agreement] in respect of the claims of the Representative Applicant and the Class against the Respondent;

**AND WHEREAS** this Honourable Court approved the form of notice of certification and opt out process in this class proceeding by Order dated March 28, 2019 and has since approved

the form and plan for distribution of the notice of this motion [the Approval Hearing Notice Order];

**UPON BEING ADVISED** of the Parties' consent to the form and content of this Order;

**AND WHEREAS** the motion for approval of the Settlement was heard on February 26, 2020 in Toronto and by video conference from the Federal Court Registries in Vancouver, Montreal and Fredericton, and was available for viewing by webcast facilitated by the Federal Court;

**AND UPON HEARING** the oral submissions of counsel for the Parties, and all interested parties, including any objections, written and oral; and

**AND THE COURT HAVING** issued Reasons for Order approving the Settlement;

**THIS COURT ORDERS that:**

1. For the purposes of this Order, the following definitions shall apply:

**“Approval Date”** means the date that this Order is executed;

**“Canada”** or **“Government of Canada”** means Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants, including in particular, Health Canada as represented by the Attorney General of Canada;

**“Class Counsel”** means Koskie Minsky, LLP;

**“Class Members”** mean all persons who meet the class definition set out in paragraph 3 below and who did not opt out of the proceeding;

**“Notice of Settlement Approval”** means the notice to the Class of the approval of the Settlement and discontinuance of this application substantially in the form attached as Appendix “C” and Appendix “D” (French).

**“Opt Out Deadline”** means May 27, 2019;

**“Settlement Agreement”** means the final Settlement Agreement, including the Schedules listed at Section 1.07 thereof, executed between the parties on October 22, 2019, and attached as Appendix “A” to this Order.

**“Third Party Administrator”** means the entity with which the federal Health Minister has entered into an agreement for the purposes of administering the Canadian Thalidomide Survivors Support Program [CTSSP], and which previously administered the Thalidomide Survivors Contribution Program [TSCP];

2. All applicable parties have adhered to and acted in accordance with the Approval Hearing Notice Order.

#### **Class Definition and Revocation of Opt-Outs**

3. The certified class is defined as “all individuals whose applications to the Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility” pursuant to the Order of the Federal Court of Appeal dated November 1, 2018.
4. Any Class Member who wished to opt out of this class proceeding was required to do so by May 27, 2019, pursuant to the Order of this Court dated March 28, 2019.
5. Any Class Member who now wishes to revoke their opt out in order to benefit from the settlement shall deliver a Revocation of Opt Out Form substantially in

the form attached as Appendix “B” to this Order, to Class Counsel post-marked no later than August 6, 2020 [the Revocation Deadline]. Class Counsel shall, within 15 days of the Revocation Deadline, serve on Canada, and file with the Court, an affidavit with the Court which lists the individuals who have revoked their opt outs and attaches the forms received.

6. Mr. O'Neil, Mr. Declavasio, and Mr. Porto, each of whom filed notices of motion seeking an extension of time to commence individual judicial review applications, bearing court file numbers 17-T-12, 17-T-13 and 17-T-14 respectively, which matters were stayed by Order of the Court of April 11, 2017, are deemed to be Class Members upon discontinuing their respective motions for extension of time.

#### **Settlement Approval**

7. The Settlement of this application on the terms set out in the Settlement Agreement, as attached as Appendix “A” and which is expressly incorporated by reference into this Order, is fair and reasonable and in the best interests of Class Members as a whole, and is approved, on the consent of the parties.
8. The Settlement Agreement shall be implemented in accordance with its terms, this Order and any further orders of this Court.
9. The Settlement and this Order, including the release referred to in paragraph 17 below, are binding on the Parties and on the Representative Applicant and every Class Member, including persons under a disability, unless they opted out on or before the expiry of the Opt Out Period and have not revoked their opt out, and is binding whether or not such Class Member claims or receives an *ex gratia* payment under the CTSSP upon application to that program.

10. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this proceeding, the Applicant, the Class Members and the Respondent for the limited purposes of implementing and enforcing the Settlement Agreement and this Order, subject to the terms of the Settlement Agreement.
11. Mr. Bruce Wenham shall receive the sum of \$10,000 as an honorarium to be paid in accordance with section 6.01 of the Settlement Agreement.

**Notice**

12. Notice of Settlement Approval shall be provided directly by the Applicant to all Class Members and to all individuals who have opted out of the Application within the Opt Out Deadline, within ten (10) days after the Approval Order as follows:
  - (a) by delivery by Class Counsel by regular mail or email to the Class Members on the class list provided by Canada on March 7, 2019 pursuant to the Order of the Court of February 26, 2019;
  - (b) by forwarding by email or regular mail to any person who requests it from Class Counsel or the Respondent;
  - (c) by being posted on Class Counsel's Website devoted to this proceeding: <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/>; and
  - (d) by being posted prominently on the Health Canada website: <https://www.canada.ca/en/health-canada/services/thalidomide-survivors->

contribution-program.html and the CTSSP website: <https://tsspcanada.ca/>;  
and

(e) by being referenced in a press release to be issued via the CNW Group - Canadian Basic Network which press release shall advise of the Settlement Approval, and direct the reader to Class Counsel's website (paragraph 1(c) above) for a copy of the Notice of Settlement Approval.

13. The above notice provisions satisfy the requirements of Rules 334.23, 334.32, 334.34, 334.35 and 334.37 of the *Federal Courts Rules* and constitutes sufficient and adequate notice to the Class Members and other affected parties.
14. Notice of Settlement Approval shall be given generally in the form(s) attached as Appendix "C" (English) and Appendix "D" (French) to this Order.
15. Canada shall pay the reasonable costs of notice of approval of the settlement, which under no circumstances may exceed twelve thousand, five hundred dollars (\$12,500.00).

#### **Discontinuance and Release**

16. The present application, and the claims of the Class Members and the Class as a whole, are discontinued against the Respondent and Canada.
17. The discontinuance of this application shall be with prejudice to the Class, and such discontinuance shall be a defence and absolute bar to any subsequent application, action or claim against the Respondent in respect of any of the claims or any aspect of the claims made in this Application and relating to the subject matter hereof, and are hereby released against Canada. In particular, each Class Member, their estate executors and their respective legal representatives,

successors, heirs and assigns fully, finally and forever release and discharge Canada from any and all actions, suits, proceedings, causes of action, pursuant to common law, Quebec civil law or statute, equitable obligations, contracts, claims, losses, costs (except pursuant to paragraph 18 below), grievances and complaints and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs (except pursuant to paragraph 18 below), expenses and interest which any Class Member, their estate executors or their respective legal representatives, successors, heirs and assigns may ever have had, may now have, or may in the future have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned rights or otherwise with respect to or in relation to any aspect of this Application. This release includes any such claim made or that could have been made in any proceeding including this Application whether asserted directly by the Class Member, their estate executors and their respective legal representatives, successors, heirs and assigns or by any other person, group or legal entity on behalf of such person. For greater clarity this release shall not impact a Class Member's right or entitlement to bring any court proceedings with respect to the CTSSP or decisions thereunder.

**Legal Fees and Disbursements and Costs**

18. Class Counsel's entitlement to and the quantum of legal fees, disbursements and taxes payable by Class Members, and the Applicant's entitlement to, and the quantum of any costs payable by the Respondent, shall be dealt with by separate order(s) of the Court.

"Michael L. Phelan"

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Judge



## **Appendix “A” – Settlement Agreement**

Court File No. T-1499-16

**FEDERAL COURT**  
**CLASS PROCEEDING**

**BETWEEN:**

**BRUCE WENHAM**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

**SETTLEMENT AGREEMENT**

WHEREAS the representative Applicant, Bruce Wenham, initiated this application on behalf of all individuals whose applications to the Thalidomide Survivors Contribution Program ("TSCP") were rejected on the basis of failing to provide the required proof of eligibility;

AND WHEREAS the Federal Court of Appeal certified this proceeding as a class application by Order dated November 1, 2018;

AND WHEREAS the application seeks declaratory and other relief in respect of the process established by the Minister of Health for determining who may be eligible for payments under the TSCP;

AND WHEREAS the Governor in Council, on April 5, 2019, issued the Canadian Thalidomide Survivors Support Program Order, which sets out the parameters for a

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federal financial support program for victims of Thalidomide, P.C. 2019-0271, which program replaces the TSCP;

AND WHEREAS the Parties have agreed to resolve the issues in this Class Application by way of a discontinuance of the Application, and upon the terms contained in this Agreement; and

**NOW THEREFORE**, in consideration of the mutual agreements, covenants and undertakings set out in this agreement the Parties agree with each other as follows:

## SECTION I - INTERPRETATION

### 1.01 Definitions

In this Settlement Agreement, the following terms will have the following meanings:

**“Approval Order”** means the judgment of the Federal Court, a draft of which is attached as **Schedule “A”**, approving this Settlement Agreement as fair, reasonable and in the best interests of the Class Members as a whole, and approving the Applicant’s discontinuance of this Application.

**“Canada”** or **“Government of Canada”** means Her Majesty the Queen in Right of Canada, and includes the Minister of Health.

**“Canadian Thalidomide Survivors Support Program”** or **“CTSSP”** means the program established by the Governor in Council to provide *ex gratia* payments pursuant to the Canadian Thalidomide Survivors Support Program Order, P.C. 2019-0271”.

**“Class Counsel”** means Koskie Minsky LLP.

**“Class Members”** means all individuals whose applications to the Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility and who did not opt out of the class proceeding.

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“**Court**” means the Federal Court of Canada.

“**Diagnostic Algorithm**” means the diagnostic algorithm for thalidomide embryopathy chosen by the Third Party Administrator and referred to in section 3 of the OIC.

“**Multi-disciplinary Committee**” means the committee comprised of medical and legal experts selected by the Third Party Administrator to provide recommendations to the Third Party Administrator pursuant to section 3(7) of the OIC.

“**Notice Plan**” means the program of notice to Class Members set out in **Schedule “B”**.

“**Opt Out Deadline**” means May 27, 2019.

“**Order in Council**” or “**OIC**” means the Order in Council, dated April 5, 2019, titled the Canadian Thalidomide Survivors Support Program Order, P.C. 2019-0271.

“**Parties**” means the Applicant and Canada.

“**Program**” means the Canadian Thalidomide Survivors Support Program that is established by the Order in Council, dated April 5, 2019, titled the Canadian Thalidomide Survivors Support Program Order, P.C. 2019-0271.

“**Settlement Agreement**” means this document entitled “Settlement Agreement” including the schedules listed in **Section 1.07**.

“**Thalidomide Survivors Contribution Program**” or “**TSCP**” means the contribution program established by the Minister of Health in 2015 pursuant to Crown prerogative to provide *ex gratia* payments to individuals determined to be thalidomide survivors pursuant to that program.

“**Third Party Administrator**” means an entity with which the Minister has entered into an agreement for the purposes of administering the CTSSP.

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**1.02 Headings**

The division of this Settlement Agreement into Sections and Schedules and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Settlement Agreement.

**1.03 Interpretation**

The Parties acknowledge that they have reviewed and participated in settling the terms of this Settlement Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting parties is not applicable in interpreting this agreement.

**1.04 Day for any Action**

Where the day or date on or by which any action required to be taken by this Agreement expires or falls on a day that is not a Business day, such action may be taken on the next day that is a Business Day.

**1.05 When Order Final**

For the purposes of this Settlement Agreement, a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken, or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired. For greater clarity, the Approval Order will be final sixty (60) days from the date of the Approval Order, subject to any appeals.

**1.06 Currency**

All references to currency in this Settlement Agreement are to the lawful money of Canada.

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**1.07 Schedules**

The following Schedules to this Settlement Agreement are incorporated into and form part of it by this reference as if contained in the body of the Settlement Agreement.

Schedule "A" -	Draft Approval Order
Schedule "B" -	Notice Plan
Schedule "C" -	Notice of Hearing to Approve the Settlement Agreement
Schedule "D" -	Notice of Settlement Approval
Schedule "E" -	Participation Form

**SECTION II – EFFECTIVE DATE**

**2.01 Date when Binding and Effective**

This Settlement Agreement will become effective and be binding on all the Parties and the Class Members on the date the Approval Order is final.

**2.02 Effective in Entirety**

None of the provisions of this Settlement Agreement will become effective unless and until the Court approves all of the provisions of this Settlement Agreement.

**SECTION III – NOTICE AND REVOCATION OF OPT OUTS**

**3.01 Notice Plan**

The Parties have agreed to the Notice Plan attached as Schedule "B", which entails two phases:

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- (a) Notice of the hearing to approve the Settlement Agreement and discontinuance of the application; and
- (b) Notice of the approval of the Settlement.

**3.02 Costs of Notice**

Canada has agreed to pay up to twenty five thousand dollars (\$25,000) for the costs of implementation of the Notice Plan for both phases of notice described in section 3.01.

**3.03 Form and Content of Notices**

Notice of the settlement approval hearing will be substantially in the form attached as **Schedule "C"**.

Notice of the approval of the Settlement will be substantially in the form attached as **Schedule "D"**.

The Participation Form will be substantially in the form attached as **Schedule "E"**.

**3.04 Revocation of Opt Out**

The Parties have agreed that any person who submitted a valid opt out form before the Opt Out Deadline may be permitted to revoke their opt out no later than 30 days from the date the Approval Order is final (the "Revocation Deadline"). Within 15 days of the Revocation Deadline, Class Counsel agrees to serve on Canada, and file with the Court, an affidavit which lists the individuals who have revoked their opt outs and attaches the Forms received.

**3.05 Status of certain Class Members confirmed**

The Parties have agreed that Mr. O'Neil, Mr. Declavasio, and Mr. Porto, each of whom filed notices of motion seeking an extension of time to commence individual judicial

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review applications, bearing court file numbers 17-T-12, 17-T-13 and 17-T-14 respectively, which matters were stayed by Order of the Court of April 11, 2017, are deemed to be Class Members upon discontinuing their respective motions for extension of time.

#### **SECTION IV – ADMINISTRATION OF THE CANADA THALIDOMIDE SURVIVORS SUPPORT PROGRAM**

##### **4.01 Consultations regarding composition of the Multi-disciplinary Committee**

Canada agrees that it will invite the Applicant or such other Class Member, as the Applicant designates, to provide input with respect to the attributes, knowledge, experience and expertise of the members of the Multi-disciplinary Committee to be established by the Third Party Administrator.

##### **4.02 Process for determining Eligibility for the Canada Thalidomide Survivors Support Program**

Canada agrees to take all necessary steps to ensure that the process established by the Third Party Administrator to determine eligibility pursuant to subparagraph 3(1)(c) of the OIC, is consistent with the following parameters, provided that in so doing, the discretion of the Third Party Administrator to act pursuant to the terms of the OIC is not fettered in any way:

- (a) the Third Party Administrator will determine whether a person is eligible under the Program by using the three-step process set out in subparagraph 3(5) of the OIC;
- (b) the Third-party administrator will use a balance of probability standard in its preliminary assessment to determine whether the nature of the person's congenital malformations are consistent with known characteristics of congenital malformations linked to thalidomide;



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- (c) the Diagnostic Algorithm referred to in subparagraphs 3(5) and 3(6) of the OIC that is intended to be used at the second stage of the process as a diagnostic tool by the Third Party Administrator, is known as the Diagnostic Algorithm for Thalidomide Embryopathy also referred to as (DATE); and it shall be considered by the Multi-disciplinary Committee referred to in the OIC in determining a person's eligibility under the Program pursuant to subparagraph 3(1)(c) of the OIC;
- (d) in the event the Diagnostic Algorithm results in a finding by the algorithm other than "probable", the Third Party Administrator shall provide the applicant with reasonable opportunities to present more information before it denies the application on the basis that the information does not produce a finding of 'probable'; and
- (e) 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.

#### **4.03 Priority of Class Members' applications**

Applications submitted by Class Members shall be processed in priority to applications from other individuals.

#### **4.04 Retroactive Payments – Class Members under 3(1)(c)**

Class Members who are found by the Third Party Administrator to be eligible under subparagraph 3(1)(c) of the OIC shall be paid their annual payments as provided in subparagraph 5(b) of the OIC retroactive to June 3, 2019.

#### **4.05 Reconsideration process**

Class Members whose applications to the CTSSP are denied by the Third Party Administrator at the first or second step of the three step process set out in

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subparagraphs 3(5)(a) or (b) of the OIC, shall have the right to seek reconsideration upon presentation of new evidence. Class Members whose applications are denied at the third stage described in subparagraph 3(7) of the OIC, after recommendation by the Multi-disciplinary Committee, shall be entitled to provide written submissions and/or an oral hearing with Third Party Administrator and at least one representative of the Multi-disciplinary Committee. Oral hearings shall be conducted by teleconference or videoconference or, in person at the applicant's own expense, if they so request.

For greater clarity, the above reconsideration process may be sought by a class member at any time within the five years of the operation of the Program, which ceases on June 3, 2024.

**4.06 Payments to estates of deceased class members in exceptional circumstances**

Class Members who die after the Third Party Administrator has determined that the Class Member is eligible under subparagraph 3(1)(c) shall have the lump sum payment referred to in subparagraph 5(a) of the OIC paid to his or her estate, but the estate shall have no right to any annual payment referred to in subparagraphs 5(b) or 5(c) that would otherwise be payable were the Class Member living.

**SECTION V – RELEASE AND SETTLEMENT APPROVAL**

**5.01 Deemed release of Canada by all class members**

Upon approval by the Court of this Settlement Agreement, the Applicant agrees that all current and future legal proceedings, actions and claims, based on the matters pleaded or which could have been pleaded in the Application or asserted through other proceedings, with respect to known or unknown acts or omissions related to determinations of eligibility pursuant to the TSCP, are barred, and that all Class Members, Estate Executors, and immediate family members of all deceased Class

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Members who have not opted out by the Opt Out Deadline, will be bound by the deemed release in the form set out in **Schedule "A"** - Approval Order.

#### **5.02 Cessation of litigation**

The parties agree to adjourn the hearing of this Application pending a determination by the Court on whether to approve this Settlement Agreement.

The Applicant agrees to take all necessary steps to obtain or effect a discontinuance of the Class Application concurrent with the approval of this agreement. In particular, upon execution of the Settlement Agreement the Applicant and Class Counsel will cooperate with Canada and make best efforts to obtain approval of this Settlement Agreement and discontinuance of the application.

Class Counsel further undertakes not to commence or assist or advise on the commencement or continuation of any applications, actions or other proceedings against Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants calculated to or having the effect of undermining this Settlement Agreement in respect of the TSCP.

In the event that the Court does not approve the Settlement Agreement or the Settlement Approval Order does not become final, the application will continue and the parties agree to seek a date for the hearing of the application.

#### **5.03 Settlement approval**

The Parties agree that they will seek the Court's approval of this Agreement in full and final settlement of this application.

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**5.04 Approval of motion materials**

Upon execution of the Settlement Agreement, the parties will prepare the motion for approval of this Settlement Agreement, which materials must be agreed upon by both parties prior to being filed with the Court.

**SECTION VI - HONORARIUM**

**6.01 Honorarium**

Within fifteen (15) days after the Approval Order is final, Canada will pay the sum of ten thousand dollars (\$10,000), to Mr. Bruce Wenham as an honorarium for acting as the representative applicant.

**SECTION VII – LEGAL FEES**

**7.01 Legal fees and disbursements**

Class Counsel may bring a motion to determine entitlement to and quantum of legal fees, disbursements and taxes payable by the Class Members, at the same time as the settlement approval motion, and Canada reserves the right to seek to make submissions to the Court on that motion. Nothing in this Settlement Agreement precludes the Applicant from bringing a motion for costs.

**SECTION VIII - GENERAL**

**8.01 Applicable law**

This Settlement Agreement will be governed by and construed in accordance with the laws of Ontario.

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**8.02 No admission of liability**

This Settlement Agreement is not to be construed as an admission of liability by Canada.

**8.03 Entire agreement**

This Settlement Agreement constitutes the entire agreement among the Parties with respect to the subject matter of the Application and cancels or supersedes any prior or other understandings or agreements between or among the Parties. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter of the Application other than as expressly set forth or referred to in this Settlement Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Settlement Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Attorney General of Canada.**

Signed this 22<sup>nd</sup> day of **October, 2019** at Toronto, Ontario, Canada.

BY:   
(ATTORNEY GENERAL OF CANADA) Per: Christine Mohr  
For the Respondent

**THE APPLICANT, as represented by Class Counsel, Koskie Minsky, LLP.**

Signed this 22<sup>nd</sup> day of **October, 2019** at Toronto, Ontario, Canada.

BY:   
Koskie Minsky, LLP  
Per: David Rosenfeld  
For the Applicant

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**SCHEDULE "A" – DRAFT APPROVAL ORDER**

Court File No.: T-1499-16

**FEDERAL COURT**

Class Proceeding

**Date:** 2019

**Toronto, Ontario**

**PRESENT:** The Honourable

BRUCE WENHAM

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

**ORDER**

**WHEREAS** the Applicant and the Respondent have entered into a Final Settlement Agreement dated October 22, 2019 (the "Settlement Agreement") in respect of the claims of the Representative Applicant and the Class against the Respondent;

**AND WHEREAS** this Honourable Court approved the form of notice of certification and opt out process in this class proceeding by Order dated March

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28, 2019 and has since approved the form and plan for distribution of the notice of this motion (the "Approval Hearing Notice Order");

**UPON BEING ADVISED** of the Parties' consent to the form and content of this Order; and

**AND UPON HEARING** the motion made by oral submissions of counsel for the Parties, and all interested parties, including any objections, written and oral;

**THIS COURT ORDERS THAT:**

1. For the purposes of this Order, the following definitions shall apply:

**"Approval Date"** means the date that this Order is executed;

**"Approval Orders"** means this Order and the Order approving counsel fees in this matter;

**"Canada"** or **"Government of Canada"** means Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants, including in particular, Health Canada as represented by the Attorney General of Canada;

**"Class Counsel"** means Koskie Minsky, LLP;

**"Class Members"** mean all persons who meet the class definition set out in paragraph 3 below and who did not opt out of the proceeding;

**"Notice of Settlement Approval"** means the notice to the Class of the approval of the Settlement and discontinuance of this application substantially in the form attached as **Appendix "D"** and **Appendix "E"** (French).

**"Notice Plan"** means the program of notice to Class Members set out in **Appendix "C"**.

**"Opt Out Deadline"** means May 27, 2019;

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**“Settlement Agreement”** means the final **Settlement Agreement**, including the Schedules listed at **Section 1.07** thereof, executed between the parties on October 22, 2019, and attached as **Appendix “A”** to this Order.

**“Third Party Administrator”** means the entity with which the federal Health Minister has entered into an agreement for the purposes of administering the Canadian Thalidomide Survivors Support Program (“CTSSP”), and which previously administered the Thalidomide Survivors Contribution Program (“TSCP”);

2. All applicable parties have adhered to and acted in accordance with the Approval Hearing Notice Order.

#### **CLASS DEFINITION AND REVOCATION OF OPT OUTS**

3. The certified class is defined as “all individuals whose applications to the Thalidomide Survivors Contribution Program were rejected on the basis of failing to provide the required proof of eligibility” pursuant to the Order of the Federal Court of Appeal dated November 1, 2018.

4. Any Class Member who wished to opt out of this class proceeding was required to do so by May 27, 2019, pursuant to the Order of this Court dated March 28, 2019.

5. Any Class Member who now wishes to revoke their opt out in order to benefit from the settlement shall deliver a Revocation of Opt Out Form substantially in the form attached as **Appendix “B”** to this Order, to Class Counsel post-marked no later than thirty (30) days from the dissemination of Notice of the Approval of the Settlement (“Revocation Deadline”). Class Counsel shall, within 15 days of the Revocation Deadline, serve on Canada, and file with the Court, an affidavit with the Court which lists the individuals who have revoked their opt outs and attaches the forms received.



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6. Mr. O'Neil, Mr. Declavasio, and Mr. Porto, each of whom filed notices of motion seeking an extension of time to commence individual judicial review applications, bearing court file numbers 17-T-12, 17-T-13 and 17-T-14 respectively, which matters were stayed by Order of the Court of April 11, 2017, are deemed to be Class Members upon discontinuing their respective motions for extension of time.

#### **SETTLEMENT APPROVAL**

7. The Settlement of this application on the terms set out in the Settlement Agreement, as attached as **Appendix "A"** and which is expressly incorporated by reference into this Order, is fair and reasonable and in the best interests of Class Members as a whole, and is approved, on the consent of the parties.

8. The Settlement Agreement shall be implemented in accordance with its terms, this Order and any further orders of this Court.

9. The Settlement and this Order, including the release referred to in paragraph 18 below, are binding on the Parties and on the Representative Applicant and every Class Member, including persons under a disability, unless they opted out on or before the expiry of the Opt Out Period and have not revoked their opt out, and is binding whether or not such Class Member claims or receives an *ex gratia* payment under the CTSSP upon application to that program.

10. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this proceeding, the Applicant, the Class Members and the Respondent for the limited purposes of implementing and enforcing the Settlement Agreement and this Order, subject to the terms of the Settlement Agreement.

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11. Mr. Bruce Wenham shall receive the sum of \$10,000 as an honorarium to be paid in accordance with section 6.01 of the Settlement Agreement.

#### **NOTICE**

12. Notice of Settlement Approval shall be provided directly by the Applicant to all Class Members and to all individuals who have opted out of the Application within the Opt Out Deadline in accordance with the Notice Plan attached as **Appendix "C"**.

13. The Notice Plan satisfies the requirements of rules 334.23, 334.32, 334.34, 334.35 and 334.37 of the *Federal Courts Rules* and constitutes sufficient and adequate notice to the Class Members and other affected parties.

14. Notice of Settlement Approval shall be given generally in the form(s) attached as **Appendix "D"** (English) and **Appendix "E"** (French) to this Order.

15. Canada shall pay the reasonable costs of notice of approval of the settlement, which under no circumstances may exceed twelve thousand, five hundred dollars (\$12,500.00).

#### **DISCONTINUANCE AND RELEASE**

16. The present application, and the claims of the Class Members and the Class as a whole, are discontinued against the Respondent and Canada.

17. The discontinuance of this application shall be with prejudice to the Class, and such discontinuance shall be a defence and absolute bar to any subsequent application, action or claim against the Respondent in respect of any of the claims or any aspect of the claims made in this Application and

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relating to the subject matter hereof, and are hereby released against Canada. In particular, each class member, their estate executors and their respective legal representatives, successors, heirs and assigns fully, finally and forever release and discharge Canada from any and all actions, suits, proceedings, causes of action, pursuant to common law, Quebec civil law or statute, equitable obligations, contracts, claims, losses, costs (except pursuant to paragraphs 18 and 19 below), grievances and complaints and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs (except pursuant to paragraphs 18 & 19 below), expenses and interest which any class member, their estate executors or their respective legal representatives, successors, heirs and assigns may ever have had, may now have, or may in the future have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned rights or otherwise with respect to or in relation to any aspect of this Application. This release includes any such claim made or that could have been made in any proceeding including this Application whether asserted directly by the Class Member, their estate executors and their respective legal representatives, successors, heirs and assigns or by any other person, group or legal entity on behalf of such person. For greater clarity this release shall not impact a Class Member's right or entitlement to bring any court proceedings with respect to the CTSSP or decisions thereunder.

#### **LEGAL FEES AND DISBURSEMENTS**

18. Class Counsel's entitlement to and quantum of legal fees, disbursements and taxes payable by the Class Members shall be determined by way of a motion brought by Class Counsel at the same time as the motion to approve the Settlement. Canada shall have the right to seek to make submissions to the Court on both entitlement to and quantum of legal fees,

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disbursements and taxes. A determination of Canada's right to make submissions on such motion will be made by the Court.

19. Nothing in this Order precludes the Representative Applicant from bringing a motion for costs of this proceeding payable by Canada.

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**Appendix A – Settlement Agreement [to be appended]**

**Appendix “B” – Revocation of Opt Out Form**

**REVOCATION OF OPT OUT FORM**

**DEADLINE FOR REVOKING OPTING OUT: [REVOCATION DEADLINE]**

**TO: THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM CLASS PROCEEDING**

**Koskie Minsky LLP, 20 Queen Street West, Suite 900, M5H 3R3**

Completing this REVOCATION OF OPT OUT FORM will mean that YOU WILL be considered a Class Member and you will be entitled to any benefits extended to Class Members in the settlement agreement that was approved by the Federal Court.

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR LEGAL RIGHTS, PLEASE CONTACT CLASS COUNSEL at the address or phone number above.**

**You must fill out the form below by checking all the boxes provided**

**I previously opted out of the proceeding,      Yes                   No**   
**and now wish to revoke that opt out.**

I understand that by opting back into this class proceeding, I may be eligible to receive the benefits of the settlement that was approved by the Federal Court but that I will be bound by the deemed release and will not be eligible to pursue any legal action against Canada in relation to the denial of my application to the Thalidomide Survivors Contribution Program.

I understand that by opting back into this class proceeding, I may be required to contribute to the payment of Class Counsel fees, disbursements and taxes.

Full Name:

Date:

Signature:

Email Address:

Address:

Phone Number:

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**Appendix "C" – Notice Plan [to be appended]**

**Appendix "D" – Notice of Settlement Approval – English [to be appended]**

**Appendix "E" – Notice of Settlement Approval – French [to be appended]**

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### SCHEDULE "B" – NOTICE PLAN

Notice of the Settlement Approval Hearing and Notice of Settlement Approval shall be disseminated in the following manner:

1. Notice of the Settlement Approval Hearing shall be disseminated in accordance with this Notice Plan within ten (10) days of the issuance of the order approving the notice of the Settlement Approval Hearing;
2. Notice of Settlement Approval shall be disseminated in accordance with this Notice Plan within ten (10) days after the Approval Order
3. Notice of the Settlement Approval Hearing (substantially in the form attached as **Schedule "C"** to the Settlement Agreement) and Notice of Settlement Approval (substantially in the form attached as **Schedule "D"** to the Settlement Agreement) shall be disseminated, within the respective times set out in paragraphs 1 and 2 above, as follows:
  - (a) by delivery by Class Counsel by regular mail or email to the Class Members on the class list provided by Canada on March 7, 2019 pursuant to the Order of the Court of February 26, 2019;
  - (b) by forwarding by email or regular mail to any person who requests it from Class Counsel or the Respondent;
  - (c) by being posted on Class Counsel's Website devoted to this proceeding: <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/> ; and
  - (d) by being posted prominently on the Health Canada website: <https://www.canada.ca/en/health-canada/services/thalidomide-survivors-contribution-program.html> and the CTSSP website: <https://tsspcanada.ca/> ; and
  - (e) by being referenced in a press release to be issued via the CNW Group – Canadian Basic Network which press release shall advise of the Settlement Approval Hearing, and of the Settlement Approval, as

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applicable, and direct the reader to Class Counsel's website (paragraph 3(c) above) for a copy of the Notice of the Settlement Approval Hearing or the Notice of Settlement Approval, as applicable.



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**SCHEDULE "C" - NOTICE OF SETTLEMENT APPROVAL HEARING**

**THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM CLASS PROCEEDING**

**NOTICE OF THE SETTLEMENT APPROVAL HEARING**

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. A judge of the Federal Court is overseeing this case.

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.

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## **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.

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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](mailto:thalidomideclassaction@kmlaw.ca)

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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 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](mailto:thalidomideclassaction@kmlaw.ca)

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

**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 establishment by the Third Party Administrator;

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- (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 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) That the application for judicial review will be discontinued, 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.

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**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 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 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**      If you support the Settlement Agreement, you do not have to do anything right now.

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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.

**2. Submit a statement of support or objection**

If you do not wish to attend the hearing, but you would like to explain why you either support or object to the settlement or 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/>.

You must send this Form to Class Counsel at Koskie Minsky LLP by mail to 20 Queen Street West, Suite 900, M5H 3R3 or by email to [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca) and it must be received or postmarked no later than **[DATE - 10 days prior to Settlement Approval Hearing]**.

**3. Participate at the settlement hearing**

You can attend the approval hearing at the **Federal Court in Toronto, at 180 Queen St. West, on [DATE] at 9:30 a.m.** 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.

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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 [DATE - 10 days before the approval hearing] 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, M5H 3R3

thalidomideclassaction@kmlaw.ca

The Court will hold a hearing to decide whether to approve the settlement and the request for legal fees. You may attend and you may ask to speak, but you do not have to.



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

The court will hold an approval hearing on [DATE] 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.

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:

Telephone: 1-866-474-1741

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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

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**SCHEDULE "D" - NOTICE OF SETTLEMENT APPROVAL**

**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.

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

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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;

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- (h) That Class Members who die after the administrator of the CTTSP 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;
- (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.

#### **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 [DATE] 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.

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## **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)?**

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In June 2019, the Government of Canada launched a new financial support program for eligible Canadian thalidomide survivors (the CTSSP).

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 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

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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  
M5H 3R3

**7. What does the Settlement Provide?**



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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 to be established by the Third Party Administrator 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;

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- (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 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 [DATE] by filing the Revocation of Opt Out Form, available [HERE] or 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 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.

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**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?**

[TO BE COMPLETED FOLLOWING DETERMINATION BY THE COURT ON THE APPROVAL MOTION].

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

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

You can send your questions to:

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

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**SCHEDULE "E" – PARTICIPATION FORM**

**PARTICIPATION FORM**

**THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM**

**CLASS PROCEEDING**

**ONLY USE THIS FORM IF YOU WANT TO REGISTER YOUR SUPPORT OR OBJECTION TO THE PROPOSED SETTLEMENT OR LEGAL FEES**

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

My name is \_\_\_\_\_

- I applied for compensation under the Thalidomide Survivors Contribution Program and was denied on the basis that that I did not provide the required proof of eligibility.

For the reasons stated below, I:

- SUPPORT** the terms of settlement       **OBJECT TO** the terms of settlement  
 **SUPPORT** the legal fees                       **OBJECT TO** the legal fees

I am supporting or objecting to the Proposed Settlement or legal fees for the following reasons (please attach extra pages if you require more space):

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- I have enclosed copies of documentation supporting my support or objection. (You do not have to attach any documents).
- I have **NOT** enclosed documentation supporting my objections and I do not intend to provide any.
- I do **NOT** intend to appear at the hearing of the motion to approve the proposed settlement, and I understand that my Participation Form will be filed with the court prior to the hearing of the motion on [DATE] in Toronto, Ontario.
- I intend to appear, in person or by counsel, and to make submissions at the hearing on [DATE] in Ottawa, Ontario.

**MY ADDRESS FOR SERVICE IS:**

Name:  
Address:  
Tel.:  
Fax:  
Email:  
Date:

**MY LAWYER'S ADDRESS FOR SERVICE IS  
(if applicable, but you do not need a  
lawyer to object):**

Name:  
Address:  
Tel.:  
Fax:  
Email:  
Signature:

## **Appendix “B” – Revocation of Opt Out Form**

**REVOCAION OF OPT OUT FORM**

**DEADLINE FOR REVOKING OPTING OUT: [DATE]**

**TO: THALIDOMIDE SURVIVORS CONTRIBUTION PROGRAM CLASS PROCEEDING**

**Koskie Minsky LLP, 20 Queen Street West, Suite 900, M5H 3R3**

Completing this REVOCATION OF OPT OUT FORM will mean that YOU WILL be considered a Class Member and you will be entitled to any benefits extended to Class Members in the settlement agreement that was approved by the Federal Court.

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR LEGAL RIGHTS, PLEASE CONTACT CLASS COUNSEL at the address or phone number above.**

**You must fill out the form below by checking all the boxes provided**

**I previously opted out of the proceeding, and now wish to revoke that opt out.**      Yes       No

I understand that by opting back into this class proceeding, I may be eligible to receive the benefits of the settlement that was approved by the Federal Court but that I will be bound by the deemed release and will not be eligible to pursue any legal action against Canada in relation to the denial of my application to the Thalidomide Survivors Contribution Program.

I understand that by opting back into this class proceeding, I may be required to contribute to the payment of Class Counsel fees, disbursements and taxes.

Full Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**Appendix “C” – Notice of Settlement Approval (English)**



**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.

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;

- (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.

**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 [date] 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 June 2019, the Government of Canada launched a new financial support program for eligible Canadian thalidomide survivors (the CTSSP).

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 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  
M5H 3R3

**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 to be established by the Third Party Administrator 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;
- (j) That Class Counsel will bring a motion at the same time as the motion to approve the Settlement for the approval of his 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 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 [date] 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 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?**

[TO BE COMPLETED FOLLOWING DETERMINATION BY THE COURT ON THE FEE APPROVAL MOTION].

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



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

You can send your questions to:

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

**Appendix “D” – Notice of Settlement Approval (French)**

**RECOURS COLLECTIF CONCERNANT LE PROGRAMME DE CONTRIBUTION POUR LES  
SURVIVANTS DE LA THALIDOMIDE**

**AVIS D'APPROBATION DE L'ENTENTE DE RÈGLEMENT ET DÉSISTEMENT DE LA  
DEMANDE**

AVIS

**AVEZ-VOUS DEMANDÉ UNE AIDE FINANCIÈRE QUI VOUS A ÉTÉ REFUSÉE AUPRÈS DU  
PROGRAMME DE CONTRIBUTION POUR LES SURVIVANTS DE LA THALIDOMIDE ?**

Une entente de règlement a été approuvée par la Cour. Veuillez lire attentivement le présent avis.

Une entente de règlement entre le gouvernement fédéral du Canada (« **Canada** ») et Bruce Wenham de Toronto (Ontario) (le « **représentant du groupe demandeur** ») a été approuvée par la Cour fédérale.

Dans le recours collectif introduit par M. Wenham, il est allégué que le Programme de contribution pour les survivants de la thalidomide était inéquitable en raison des restrictions injustes imposées à l'égard des éléments de preuve qu'un demandeur pouvait présenter pour établir son admissibilité à ce programme. La présente entente de règlement ne doit pas être interprétée comme étant l'aveu de la part du Canada selon lequel PCST était inéquitable. Toutefois, le 5 avril 2019, le gouvernement du Canada a remplacé le PCST par un nouveau programme, appelé le Programme canadien de soutien aux survivants de la thalidomide, auquel vous pouvez participer.

**QUI EST VISÉ?**

L'entente de règlement accorde certains avantages et indemnisations aux personnes suivantes (« **membres du groupe** ») :

Toutes les personnes dont la demande présentée au titre du Programme de contribution pour les survivants de la thalidomide a été rejetée au motif qu'elles n'avaient pas fourni

la preuve d'admissibilité requise sauf les personnes qui ont choisi de s'exclure du règlement ou qui sont réputées avoir choisi de s'exclure en vertu du par. 334.21(2) des *Règles des Cours fédérales*.

Tous les membres du groupe seront liés par l'entente de règlement et seront couverts par les quittances accordées dans le cadre de l'entente de règlement. Ils n'auront pas le droit de présenter une demande de contrôle judiciaire ou d'intenter une action civile contre le Canada pour les préjudices allégués causés par le refus de leur demande d'indemnisation dans le cadre du PCST.

#### **QUE PRÉVOIT LE RÈGLEMENT?**

Le règlement prévoit ce qui suit :

- (a) Le représentant du groupe demandeur ou un autre membre du groupe désigné peut formuler des commentaires au sujet des capacités, des connaissances, de l'expérience et de l'expertise des membres du comité multidisciplinaire à l'étape initiale de la constitution par le tiers administrateur;
- (b) Les demandeurs qui ne reçoivent pas de conclusion « probable » au moyen de l'algorithme de diagnostic qui détermine l'admissibilité auront l'occasion de présenter des renseignements supplémentaires pour qu'ils soient examinés par le tiers administrateur avant que leur demande ne soit rejetée;
- (c) Les demandes des membres du groupe présentées à l'égard du PCSST feront l'objet d'une décision par le tiers administrateur en priorité par rapport à d'autres demandes;
- (d) Le tiers administrateur aura recours à la norme de la prépondérance des probabilités dans son évaluation préliminaire en vue de déterminer si la nature des malformations congénitales du demandeur correspond aux caractéristiques connues de malformations congénitales liées à la thalidomide;
- (e) Lorsqu'une décision définitive de rejeter une demande est rendue à un stade du processus en trois étapes, le tiers administrateur informe le demandeur des motifs du rejet et donne à la personne une occasion de présenter des renseignements supplémentaires ou des observations écrites pour qu'un nouvel examen soit effectué;
- (f) Les membres du groupe dont les demandes au titre du PCSST ont été rejetées ont le droit de demander qu'un nouvel examen soit effectué sur présentation de nouveaux éléments de preuve, pour autant que les demandes soient reçues avant le 3 juin 2024;
- (g) Les membres du groupe qui sont jugés admissibles au titre du PCSST reçoivent leurs paiements annuels rétroactifs au 3 juin 2019, sans égard au moment où ils ont présenté leur demande pour autant que celle-ci est présentée avant le 3 juin 2024;

- (h) Si un membre du groupe décède après que l'administrateur du PCSST a déterminé qu'il est admissible à recevoir du soutien au titre du PCSST, mais avant que les paiements commencent, le montant forfaitaire est versé à la succession du membre du groupe. La succession n'aura droit à aucun paiement annuel;
- (i) La demande de contrôle judiciaire sera désistée dès que le règlement est approuvé, et les membres du groupe sont réputés avoir donné quittance au Canada pour toutes les procédures, actions et demandes en justice actuelles et futures, selon les termes de l'entente de règlement et de l'ordonnance d'approbation;
- (j) Les avocats du groupe présenteront une requête parallèlement à la requête visant à obtenir l'approbation de l'entente de règlement pour ce qui est de leur droit aux frais juridiques, débours et taxes ainsi que du montant de ceux-ci, qui est payable par les membres du groupe. Le Canada a le droit de demander de présenter des observations à la Cour sur le droit aux frais juridiques, débours et taxes ainsi que sur le montant de ceux-ci.

#### **QUE SE PASSE-T-IL SI JE NE VEUX PAS ÊTRE LIÉ PAR LES CONDITIONS DE L'ENTENTE DE RÈGLEMENT?**

Si vous ne vous êtes pas exclu de la demande avant le 27 mai 2019, vous serez lié par l'entente de règlement.

Si vous avez participé à une instance qui soulève les mêmes points que les points communs énoncés par la Cour dans la présente instance et que vous ne vous êtes pas désisté avant le 27 mai 2019, vous êtes réputé vous être exclu et ne seriez pas lié par l'entente de règlement.

Si vous vous êtes déjà exclu du recours collectif mais souhaitez maintenant révoquer votre exclusion, vous pouvez le faire jusqu'au [DATE] en remplissant et déposant le formulaire de révocation de l'exclusion, que vous trouverez à l'adresse <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/?lang=fr>

#### **VOUS DÉSIREZ DE PLUS AMPLES RENSEIGNEMENTS?**

Pour obtenir de plus amples renseignements, consultez le site suivant : <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/?lang=fr>. Vous pouvez également communiquer par courriel avec les avocats du groupe à l'adresse [thalidomideclassaction@kmlaw.ca](mailto:thalidomideclassaction@kmlaw.ca) ou appeler au numéro 1-866-474-1741.

## **FOIRE AUX QUESTIONS**

### **RENSEIGNEMENTS DE BASE**

#### **1. Pourquoi ai-je reçu cet avis?**

La Cour fédérale a autorisé l'envoi de cet avis pour vous faire savoir qu'un règlement a été approuvé dans le cadre de la présente demande de contrôle judiciaire qui a été autorisée comme recours collectif. La demande a été intentée par Bruce Wenham au nom de toutes les personnes dont la demande à l'égard du Programme de contribution pour les survivants de la thalidomide a été rejetée.

Cet avis explique la nature de la demande de contrôle judiciaire et le processus qui doit être utilisé par ceux qui veulent révoquer leur exclusion.

#### **2. En quoi consiste le Programme de contribution pour les survivants de la thalidomide (PCST) de 2015?**

Le 22 mai 2015, la ministre de la Santé a donné des précisions concernant le PCST. Ce programme accorde des paiements à deux groupes de bénéficiaires admissibles :

- 1) Les personnes qui ont reçu des paiements en 1991 au titre du Régime d'aide extraordinaire;
- 2) Les personnes qui ont présenté une demande avant le 31 mai 2016 et qui répondent à un des mêmes trois critères appliqués par le Régime d'aide extraordinaire de 1991.

Les personnes admissibles au titre du **PCST** ont reçu ce qui suit :

- 1) Un montant forfaitaire de 125 000 \$, libre d'impôt, pour leur permettre de subvenir aux besoins immédiats en matière de santé;
- 2) Des paiements de soutien continus, à vie, en fonction du degré d'invalidité de la personne;
- 3) Un accès au Fonds d'aide médicale extraordinaire pour les aider à payer les coûts extraordinaires.

#### **3. En quoi consiste le Programme canadien de soutien aux survivants de la thalidomide (PCSST) de 2019?**

En juin 2019, le gouvernement du Canada a lancé un nouveau programme de soutien financier pour les Canadiens admissibles ayant survécu à la thalidomide (le PCSST).

Le nouveau programme, le Programme canadien de soutien aux survivants de la thalidomide (le PCSST), remplace le PCST. Le PCSST comprend un processus en trois étapes permettant de déterminer l'admissibilité : (1) une évaluation préliminaire par l'administrateur en fonction de tous les éléments de preuve présentés par le demandeur, (2) l'application d'un algorithme de diagnostic et (3) un examen effectué par un comité multidisciplinaire. Le programme comprend un paiement forfaitaire, libre d'impôt, accordé à chaque survivant pour l'aider à couvrir les coûts urgents associés aux soins de santé dont il a besoin, des paiements annuels continus selon le degré d'invalidité et un Fonds d'aide médicale extraordinaire (le FAME) pour aider les survivants à couvrir les dépenses extraordinaires, telles que des adaptations apportées au domicile ou au véhicule, ou des chirurgies spécialisées qui ne sont pas par ailleurs couvertes par les régimes de soins de santé provinciaux ou territoriaux.

Les membres du groupe qui sont admissibles au PCSST recevront un paiement forfaitaire de 250 000 \$, libre d'impôt, et des paiements continus, libres d'impôt. En outre, pour tenir compte d'une augmentation prévue du nombre de survivants à la thalidomide reconnus, les fonds disponibles dans le FAME passeront de 500 000 \$ à 1 000 000 \$ par année.

La période pour présenter une demande à l'égard du PCSST est de cinq ans. Elle a commencé le 3 juin 2019 et restera ouverte jusqu'au 3 juin 2024.

#### **4. En quoi consiste la demande de contrôle judiciaire?**

Dans la demande, il était allégué que les critères d'admissibilité et les restrictions imposées en matière de preuve par le **Programme de contribution pour les survivants de la thalidomide de 2015** étaient erronés, déraisonnables et illégaux, et que toutes les décisions de rejet fondées sur ces motifs doivent être annulées.

Le recours collectif demandait que le gouvernement fédéral procède à un nouvel examen de toutes les demandes rejetées pour ces motifs au moyen de critères plus raisonnables.

Le gouvernement fédéral a nié les allégations. Les allégations figurant dans la demande n'ont pas été prouvées et la Cour ne s'est pas encore prononcée sur le fond de la demande.

#### 5. En quoi consiste une demande de contrôle judiciaire comme recours collectif?

Dans une demande de contrôle judiciaire comme recours collectif, une ou plusieurs personnes appelées des « **représentants du groupe demandeur** » introduisent une demande de contrôle judiciaire d'une décision ou d'une ordonnance d'un office, d'un tribunal ou d'un autre décideur fédéral qui touche un groupe particulier. Lorsque la demande a été autorisée en tant que recours collectif, la Cour a autorisé le représentant du groupe demandeur à agir au nom du « **groupe** » ou des « **membres du groupe** » qui répondent à la définition du groupe. La Cour tranchera ensuite les questions juridiques soulevées par la cause à l'égard de toutes les personnes touchées, sauf celles qui s'excluent d'elles-mêmes de l'action intentée.

La Cour fédérale a nommé Bruce Wenham, de Toronto (Ontario), à titre de **représentant du groupe demandeur** dans cette affaire. Il est possible de communiquer avec M. Wenham par l'intermédiaire des avocats du groupe :

Téléphone : 1-866-474-1741

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

Par écrit : Recours collectif à l'égard du Programme de contribution pour les survivants de la thalidomide  
Koskie Minsky LLP  
20, rue Queen Ouest, bureau 900  
Toronto (Ontario)  
M5H 3R3

#### 6. Suis-je membre du groupe?

Le groupe est défini comme étant constitué de **toutes les personnes dont la demande présentée au titre du Programme de contributions pour les survivants de la thalidomide (PCST) de 2015 a été rejetée au motif qu'elles n'avaient pas fourni la preuve d'admissibilité requise et qui n'ont pas demandé leur exclusion du recours collectif.**

Si vous n'êtes pas certain de répondre à la définition du groupe, veuillez communiquer avec les avocats du groupe de la manière suivante :

Téléphone : 1-866-474-1741



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

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## 7. Que prévoit l'entente de règlement?

L'entente de règlement conclue entre le gouvernement et M. Wenham prévoit ce qui suit :

- (a) Le représentant du groupe demandeur ou un autre membre du groupe désigné peut formuler des commentaires au sujet des capacités, des connaissances, de l'expérience et de l'expertise des membres du comité multidisciplinaire devant être constitué par le tiers administrateur à l'étape initiale de sa constitution par le tiers administrateur.
- (b) Les demandeurs qui ne reçoivent pas de conclusion « probable » au moyen de l'algorithme de diagnostic qui détermine l'admissibilité auront l'occasion de présenter des renseignements supplémentaires pour qu'ils soient examinés par l'administrateur avant que leur demande ne soit rejetée;
- (c) Les demandes des membres du groupe présentées à l'égard du PCSST feront l'objet d'une décision par l'administrateur en priorité par rapport à d'autres demandes;
- (d) L'administrateur aura recours à la norme de la prépondérance des probabilités dans son évaluation préliminaire en vue de déterminer si la nature des malformations congénitales du demandeur correspond aux caractéristiques connues de malformations congénitales liées à la thalidomide;
- (e) Lorsqu'une décision définitive de rejeter une demande est rendue à un stade du processus en trois étapes, le tiers administrateur informe le demandeur des motifs du rejet et donne à la personne une occasion de présenter des renseignements supplémentaires ou des observations écrites pour qu'un nouvel examen soit effectué;
- (f) Les membres du groupe dont les demandes au titre du PCSST ont été rejetées ont le droit de demander qu'un nouvel examen soit effectué sur présentation de nouveaux éléments de preuve, pour autant que les demandes soient reçues avant le 3 juin 2024;
- (g) Les membres du groupe qui sont jugés admissibles au titre du PCSST reçoivent leurs paiements annuels rétroactifs au 3 juin 2019, sans égard au moment où ils ont présenté leur demande pour autant que celle-ci est présentée avant le 3 juin 2024;

- (h) Si un membre du groupe décède après que l'administrateur du PCSST a déterminé qu'il est admissible à recevoir du soutien au titre du PCSST, mais avant que les paiements commencent, le montant forfaitaire est versé à la succession du membre du groupe. La succession n'aura droit à aucun paiement annuel;
- (i) La demande de contrôle judiciaire a été abandonnée, et les membres du groupe sont réputés avoir donné quittance au Canada pour toutes les procédures, actions et demandes en justice actuelles et futures, selon les termes de l'entente de règlement et de l'ordonnance d'approbation;
- (j) Les avocats du groupe présenteront une requête parallèlement à la requête visant à obtenir l'approbation de l'entente de règlement pour ce qui est de leur droit aux frais juridiques, débours et taxes ainsi que du montant de ceux-ci, qui est payable par les membres du groupe. Le Canada a le droit de demander de présenter des observations à la Cour sur le droit aux frais juridiques, débours et taxes ainsi que sur le montant de ceux-ci.

**8. Comment dois-je m'y prendre si je ne veux pas faire partie du groupe?**

Le délai pour demander l'exclusion du groupe est expiré. Si vous ne vous êtes pas exclu de la demande avant le 27 mai 2019, vous serez lié par le règlement.

Si vous avez participé à une instance qui soulève les mêmes points que les points communs énoncés par la Cour dans la présente instance et que vous ne vous êtes pas désisté avant le 27 mai 2019, vous êtes réputé vous être exclu.

**9. Qu'en est-il si je me suis déjà exclu du recours collectif?**

Si vous vous êtes déjà exclu du recours collectif mais souhaitez maintenant révoquer votre exclusion, vous pouvez le faire jusqu'au [DATE] en remplissant et déposant le formulaire de révocation de l'exclusion, que vous trouverez à <https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/?lang=fr>

**10. L'exclusion m'empêche-t-elle de demander une indemnisation au titre du Programme canadien de soutien aux survivants de la thalidomide de 2019?**

Non. La demande de contrôle judiciaire se rapporte uniquement au Programme de contribution pour les survivants de la thalidomide de 2015 (le PCST). Vous pouvez demander une indemnisation au titre du nouveau programme, sans égard au fait que vous vous êtes exclu ou non du recours collectif concernant l'ancien programme.

Si vous vous étiez exclu et avez été ultérieurement jugé admissible au PCSST, vous ne serez pas admissible à recevoir les paiements rétroactifs annuels jusqu'au 3 juin 2019 ou votre succession ne sera pas admissible à recevoir des paiements si vous décédez pendant que la procédure de demande est en cours.

**11. Que se passe-t-il si je ne fais rien?**

Si vous ne faites rien, vous ferez automatiquement partie du groupe et serez lié par tout jugement rendu à la suite de l'audience d'approbation, y compris en ce qui a trait aux frais juridiques des avocats.

**12. Qui sont les avocats du groupe?**

Les avocats du groupe sont :

- Koskie Minsky LLP de Toronto (Ontario);

Si vous souhaitez qu'un autre avocat vous représente ou vous donne des conseils, vous pouvez retenir ses services pour qu'il se présente à la Cour pour votre compte, à vos frais.

**13. Comment les frais juridiques des avocats seront-ils payés?**

[À REMPLIR APRÈS LA DÉCISION DE LA COUR CONCERNANT LA REQUÊTE EN APPROBATION].

**14. Comment puis-je obtenir de plus amples renseignements?**

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

Vous pouvez envoyer vos questions aux avocats du groupe de la manière suivante :

Téléphone : 1-866-474-1741

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