



Court File No.

Electronically issued : 16-Feb-2021
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Toronto

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

THE THALIDOMIDE SURVIVORS' TASK GROUP, LIANNE POWELL, LEE ANN DALLING, COLLEEN GALLAGHER, MARY RYDER, ALEXANDRA NIBLOCK AND FIONA SAMPSON

Plaintiffs

-and-

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

IF YOU ARE SERVED in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served out of Canada and the United States of America, the period is sixty days.

INSTEAD OF serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED IF it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the Court.

Date: February 16, 2021

Issued by: _____
Local Registrar

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CLAIM

1. The plaintiffs claim against the defendant, Her Majesty the Queen in Right of Canada, represented in the matter by the Attorney General of Canada:
 - (a) a declaration that the defendant has violated the individual plaintiffs' rights under ss. 7 and/or 15 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") with respect to its provision of services to the individual plaintiffs as Thalidomide survivors, its mismanagement of the impact of Thalidomide on the individual plaintiffs, and its establishment, funding, operation, management, administration, supervision and control of the Canadian Thalidomide Survivors Support Program ("**CTSSP**");
 - (b) a declaration that the defendant has violated the individual plaintiffs' rights under ss. 7 and/or 15 of the *Charter* with respect to its provision of services to the individual plaintiffs as Thalidomide survivors, its mismanagement of the impact of Thalidomide on the individual plaintiffs, and its establishment, funding, operation, management, administration, supervision and control of the Extraordinary Medical Assistance Fund ("**EMAF**") under the CTSSP;
 - (c) damages for physical and mental injuries suffered by the individual plaintiffs as a result of the defendant's actions, including:
 - (i) general damages in the amount of \$12,000,000;
 - (ii) special damages in an amount to be advised before trial; and
 - (iii) aggravated damages in the amount of \$12,000,000;
 - (d) damages for the future medical treatment, rehabilitation, counselling and other care and support required by the individual plaintiffs as a result of the defendant's actions, in the amount of \$36,000,000;

- (e) damages pursuant to s. 24 of the *Charter* for the defendant's breach of the individual plaintiffs' rights under ss. 7 and 15 of the *Charter*, in the amount of \$36,000,000;
- (f) an order that Thalidomide survivors be provided with an option to receive an unconditional, tax free lump sum payment in lieu of funding under the CTSSP and EMAF;
- (g) such other remedy as the Court may consider just and appropriate pursuant to s. 24 of the *Charter*;
- (h) pre-and-post judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43;
- (i) costs of this action on a substantial indemnity basis; and
- (j) such further and other relief as counsel may advise and this Honourable Court may permit.

Overview

2. The individual plaintiffs are documented Thalidomide survivors, victims of the worst medical disaster in Canadian history.
3. As repeatedly recognized over the past six decades by the Government of Canada, represented in the matter by the Attorney General of Canada (the "**Government**"), the individual plaintiffs have a unique relationship with the Government. This unique relationship is a direct result of the Government's negligence related to the distribution and marketing of Thalidomide within Canada.
4. Since they were born, the individual plaintiffs have received repeated undertakings and commitments from the Government, stating that it would provide full support for them and their families, and would respect their rights and dignity in doing so.

For the past 58 years, the Government has failed or refused to comply with these undertakings and commitments.

5. The plaintiff survivors received no support from the Government prior to the partial and incomplete annual support payments initiated through the Thalidomide Survivors' Contribution Program (the "TSCP") in 2015, except for the receipt of a lump sum payment in 1991 of approximately \$90,000, depending on the individual survivor's level of disability.
6. Over the past several years, the individual plaintiffs have been harassed, assaulted and insulted by the Government's representatives and employees, as the individual plaintiffs attempted to persuade the Government to comply with its undertakings to provide full support.
7. The Government's continued failure or refusal to comply with its undertakings to provide full support to the individual plaintiffs, and its treatment of the plaintiffs, have compounded the original harms caused by Thalidomide, which are a direct result of the Government's negligence.
8. The Government's funding programs that are currently in place create artificial distinctions between, and categories among, Thalidomide survivors, and exacerbate the disadvantage experienced by an already marginalized group of individuals living with significant disabilities.
9. The individual plaintiffs currently receive incomplete and inadequate funding under the CTSSP. The individual plaintiffs have either applied for and been denied funding under the EMAF, or refused to apply for funding under the EMAF because of the discriminatory and offensive nature of the program. The support provided under the CTSSP and the EMAF has not met the needs of the plaintiff Thalidomide survivors, and has not complied with the undertakings and commitments made by the Government.

10. The CTSSP and EMAF are unduly bureaucratic and inaccessible. The CTSSP and EMAF are not health benefits, but unique funding programs that are directly related to the unique relationship the Government has created with the plaintiffs as Thalidomide survivors. The purpose of the unique funding programs at issue is to fulfill “the clear moral obligation” the Government has to Thalidomide survivors, and to help them “age with dignity”.
11. The Government’s treatment of the plaintiff Thalidomide survivors has been degrading and arbitrary, and further exacerbates the physical, psychological, financial and economic disadvantage experienced by the individual plaintiffs over the past six decades.

The Parties

The Individual Plaintiffs

12. The plaintiff, Lianne Powell, is 58 years old and is a documented Thalidomide survivor. As a result of Thalidomide, Ms. Powell does not have a right leg, right kidney, reproductive organs on her right side, her right lung is 25% of normal size, she has scoliosis, and an undersized pelvis resulting in the Caesarean delivery of her children, and she has a significantly smaller right breast. As a child, Ms. Powell was institutionalized for significant periods of time as a direct result of her Thalidomide-related injuries. Ms. Powell has applied for and received inadequate funding under the CTSSP. Ms. Powell has applied for and received some funding under the EMAF, and has also applied for and been denied funding under the EMAF.
13. The plaintiff, Lee Ann Dalling, is 58 years old and is a documented Thalidomide survivor. Ms. Dalling was born with no hip sockets, shortened femurs, two dislocated knees, three fused wrist bones on each hand, and the thumbs on both of Ms. Dalling’s hands were replaced with fingers. As a child, Ms. Dalling was institutionalized for months at a time due to her Thalidomide-related injuries. Ms.

Dalling has applied for and received inadequate funding under the CTSSP and the EMAF.

14. The plaintiff, Colleen Gallagher, is 58 years old and is a documented Thalidomide survivor. Ms. Gallagher has one lung, impaired hearing, and very short arms, and was institutionalized as a child as a result of her Thalidomide-related injuries. Ms. Gallagher has applied for and received inadequate funding under the CTSSP and the EMAF.
15. The plaintiff, Mary Ryder, is 58 years old and is a documented Thalidomide survivor. At birth, Ms. Ryder's left arm was six inches shorter than her right arm, her left elbow was permanently bent, and her left hand was badly bent with a locked wrist bent inwards. Ms. Ryder was born with five fingers on her left hand, with one finger growing out of her index finger. Ms. Ryder's right hand has no thumb, and just has a very long finger in its place. Two toes on Ms. Ryder's right foot do not bend. Ms. Ryder was institutionalized as a child as a result of her Thalidomide-related injuries. Ms. Ryder has applied for and received inadequate funding under the CTSSP and the EMAF.
16. The plaintiff, Alexandra Niblock, is 58 years old and is a documented Thalidomide survivor. Ms. Niblock was born with six-inch arms, no thumbs, only five functional fingers, a cleft soft palate, clubbed feet and dislocated hips. At age 28, Ms. Niblock had breast reduction surgery to address the fact that she was essentially unable to reach around her breasts with her short arms and consequently, she was more limited in her ability to function independently. Ms. Niblock was institutionalized for weeks as a child as a result of her Thalidomide-related injuries. Ms. Niblock has undergone years of therapy, including hospitalization, due to the trauma of her thalidomide injuries. Ms. Niblock has applied for and received inadequate funding under the CTSSP. Ms. Niblock has not applied for or received funding under the EMAF, as the EMAF application process is unduly burdensome and discriminatory, and requires Ms. Niblock to relive the psychological and emotional trauma that she experienced as a child as a result of Thalidomide. Ms. Niblock has

not applied for increased CTSSP support because it would require her to relive the psychological and emotional trauma that she experienced as a child as a result of Thalidomide.

17. The plaintiff, Fiona Sampson, is 58 years old and is a documented Thalidomide survivor. Ms. Sampson was born with malformed shoulders, arms and hands, her right leg shorter than her left, and intestinal and bowel malformation. Ms. Sampson received institutional care as a child as a result of her Thalidomide-related injuries. Ms. Sampson has applied for and received inadequate funding under the CTSSP. Ms. Sampson has not applied for or received funding under the EMAF, as the EMAF application process is unduly burdensome and discriminatory, and requires Ms. Sampson to relive the psychological and emotional trauma that she experienced as a child as a result of Thalidomide.

The Thalidomide Survivors' Task Group

18. The plaintiff, the Thalidomide Survivors' Task Group ("TSTG") is an unincorporated collective of Thalidomide survivors whose participants include the individual named plaintiffs. TSTG participants include approximately 45 Canadian Thalidomide survivors, a vulnerable group with which the Government has created a special relationship over the past six decades.
19. The objects of TSTG are to protect and promote the rights, dignity and quality of life of Thalidomide survivors in Canada. Among other things, TSTG engages in advocacy work and public education, assists individual survivors in obtaining government funding, and supports individual survivors in addressing violations of their rights.
20. TSTG has sufficient interest to be granted public interest standing, in that:
 - (a) this claim raises a serious challenge to the constitutional validity of the Government's actions vis-à-vis Thalidomide survivors, including the constitutional validity of the Government's funding programs that are currently in place;

- (b) TSTG has a demonstrated, serious and genuine interest in the subject matter of this litigation;
- (c) the scope of the constitutional rights to equality, life, liberty and security is relevant to all Thalidomide survivors, regardless of their current state of health, geographic location and economic status, particularly given that all Thalidomide survivors are apparently eligible for funding under the Government's funding programs;
- (d) TSTG is comprised of approximately 45 Thalidomide survivors. All of TSTG's participants are apparently eligible for funding under the Government's funding programs;
- (e) the resources and expertise of TSTG confirm its capacity to bring forward the claim and to ensure that the issues will be presented in a sufficiently concrete and well-developed factual setting;
- (f) while individual Thalidomide survivors could, in theory, commence their own individual claims, it is unreasonable to expect individuals with significant physical and emotional trauma caused by the Government's actions, to bring forward and carry through to completion, a lengthy and complex legal challenge of the type set out in this claim;
- (g) the claim raises issues in the public interest that transcend the interests of any single Thalidomide survivor who may be impacted by the Government's actions; and
- (h) the claim is, in all of the circumstances, a reasonable and effective means of bringing the matter before the court.

The Government

21. The Government was, at all times, responsible for the provision of services and funding to Thalidomide survivors, its treatment of the individual plaintiffs as Thalidomide survivors, and the establishment, funding, operation, management, administration, supervision and control of the CTSSP and the EMAF.

22. The Government was responsible for the distribution of Thalidomide in Canada, and made repeated undertakings starting in 1963 to provide “full support” to Thalidomide victims, and to respect and protect their rights and dignity.
23. Over the past 58 years, the Government has continuously failed or refused to comply with those undertakings.

The Distribution and Subsequent Removal of Thalidomide from the Market

24. Thalidomide was synthesized in West Germany in the 1950s and was distributed in Canada under the brand-names “Kevadon” in 1959 (for clinical investigation) and in 1960 (to be marketed on a prescription basis), and “Talimol” in 1961.
25. When taken during pregnancy, Thalidomide causes severe birth defects, including but not limited to missing or severely stunted limbs, missing organs, deafness, and blindness.
26. The Government allowed the distribution and marketing of Thalidomide within Canada, without applying the due diligence standards that were applied in other jurisdictions, such as the United States, which prevented Thalidomide from being approved and marketed to the public in those jurisdictions.
27. In 1960, British medical journals warned that Thalidomide might cause irreversible peripheral neuropathy.
28. In 1961, the producers of Kevadon, Richardson-Merrell, warned that the drug might cause congenital malformations. Also in 1961, the Canadian Food and Drug Directorate approved the sale of Thalidomide to treat nausea in pregnant women.
29. In December of 1961, Kevadon was taken off the market in England. After Thalidomide was taken off the market in England, Australia and New Zealand, Richardson-Merrell wrote to Canadian doctors warning that the drug was contraindicated for pregnant women. A follow-up letter was sent in February of 1962.

30. Despite having received information regarding the significant risks of Thalidomide, and despite 18 references in British and European medical journals linking Thalidomide to severe birth defects between December, 1961 and February 1962, the Government continued to permit Thalidomide to be distributed, prescribed and administered in Canada.
31. The Government delayed recalling Thalidomide for more than three months after other countries, such as the U.K., Germany and Australia, recalled the drug. Thalidomide remained available in Canada until May 1962.

The Government's Historical Response to Thalidomide Survivors

32. Since 1963, the Government has repeatedly undertaken to provide full support to Thalidomide survivors.
33. In 1963, the Government's Health Minister undertook to support Thalidomide survivors "to the fullest extent possible".
34. In 1991, as a result of efforts by Thalidomide survivors and War Amps of Canada, the Government developed the "Extraordinary Assistance Plan" ("EAP"), through which Health Canada undertook to provide documented Thalidomide survivors with a lump sum payment ranging from \$65,000 to \$90,000, depending on the survivor's level of disability, which was unilaterally determined by the Government.
35. Since 2014, the plaintiffs have pursued ongoing efforts in earnest to persuade the Government to fulfill its commitments to provide Thalidomide survivors with full support and to respect their rights and dignity.
36. From 2014 through 2019, the plaintiffs travelled to Toronto and Ottawa, at their own cost, to meet with members of the Government, including Cabinet Ministers and civil servants. The plaintiffs were repeatedly provided with assurances and

commitments that the Government would comply with its undertakings to provide full support to Thalidomide survivors.

37. In response to the 2014 “Right the Wrong” Thalidomide advocacy campaign, Parliament unanimously voted to provide “full support” to Thalidomide survivors, and to respect the rights and dignity of Thalidomide survivors. The full annual support payments associated with the unanimous Parliamentary vote ranged from \$75,000 to \$150,000 per year, per Thalidomide survivor, depending on the survivor’s level of disability, which was unilaterally determined by the Government.
38. In March 2015, the Minister of Health announced a package of financial assistance for those affected by Thalidomide, the Thalidomide Survivors Contribution Program (“TSCP”). The TSCP provided for annual support payments ranging from \$25,000 to \$100,000, depending on the survivor’s level of disability, which was unilaterally determined by the Government. These annual support payments represented approximately 33-66% of the full support referenced in Parliament’s 2014 unanimous vote.
39. On October 17, 2017, the plaintiffs met with the Government’s Minister for Persons with Disabilities, Kent Hehr, to discuss the Government’s failure to comply with its undertakings to provide full support to Thalidomide survivors. During this meeting, which lasted approximately 30 minutes, Minister Hehr made offensive comments to the plaintiffs regarding their disabilities and limited life expectancy, and sexually harassed one of the plaintiffs.
40. Minister Hehr’s statements included a statement that “everyone has a sob story”, and that “Thalidomiders only have ten years left to live – that’s good news for the government.” Minister Hehr’s comments and conduct were illustrative of the discriminatory nature of Government’s conduct towards the plaintiffs and their fellow Thalidomide survivors.

41. Prime Minister Justin Trudeau and the Government failed or refused to address Minister Hehr's conduct and comments, further compounding the damages resulting from the Government's unfulfilled undertakings to the plaintiffs related to the Government's promised financial support.
42. In August 2018, the Office of the Prime Minister stated to the Chair of the TSTG that if the issue of providing full support to Thalidomide survivors "was not resolved by Christmas", this would constitute "a colossal failure". To date, the issue of providing full support to Thalidomide survivors remains outstanding.

The Canadian Thalidomide Survivors Support Program

43. On April 5, 2019, the Government established the Canadian Thalidomide Survivors Support Program (the "CTSSP") by Order in Council, P.C. 2019-0271. The CTSSP replaced the TSCP.
44. The CTSSP is delivered by an independent third party service provider called Epiq Class Action Services Canada (the "**Administrator**") and is intended to provide ongoing lifetime support for Thalidomide survivors in the form of:
- (i) an initial *ex gratia* tax-free, lump sum payment of \$250,000 (or a \$125,000 "top-up" if a survivor had already been compensated under the TSCP);
 - (ii) ongoing annual tax-free payments in an amount ranging from \$25,000 to \$100,000 per year, dependant on individual's the level of disability; and
 - (iii) continued access to the Thalidomide Extraordinary Medical Assistance Fund (the "**EMAF**").
45. The amount of ongoing annual payments for which a Thalidomide survivor is eligible depends on the individual's "Disability Level".
46. A survivor's Disability Level is assessed by reviewing identified functional limitations and how the survivor's need for assistance has changed as a result of the

degeneration of his or her birth or secondary injuries due to Thalidomide since the last assessment.

47. Health practitioners associated with the Administrator also review health records to evaluate the survivor's current physical condition. Decisions are based on identified functional limitations and need for assistance.
48. Thalidomide survivors whose health condition worsens are required to undergo an onerous assessment and review process in order to qualify for additional annual funding under the CTSSP.
49. The amount of annual support payments remains unchanged from the payments previously provided under the TSCP. The annual support payments do not comply with the Government's undertaking to provide "full support" to Thalidomide survivors.
50. The estates of deceased Thalidomide survivors are not eligible for financial support under the CTSSP.

The Extraordinary Medical Assistance Fund

51. The EMAF, a program administered as part of the CTSSP, is "intended to help cover extraordinary health support costs, not otherwise provided for through provincial/territorial health coverage, of Canadian Thalidomide Survivors who have needs such as specialized surgeries or home or vehicle adaptations".
52. The EMAF provides Thalidomide survivors with limited funding on a "first come first served basis" and on the arbitrary basis of the "extraordinary" nature of the survivor's need.
53. Survivors may submit a maximum of two EMAF applications per fiscal year unless there is urgent need, which will be evaluated on a case by case basis.

54. There is an annual cap on the amount of EMAF funds that each Thalidomide survivor may receive, and funding is limited to a prescribed list of one-time expenses. The EMAF will only cover 90% of funding for those Thalidomide survivors with an annual income between \$25,001-\$45,000, and will cover only 80% of funding for those with an annual income of more than \$40,000/year or unidentified annual income.
55. Only select medical expenses, such as some prescriptions, attendant care, massage, and physiotherapy are covered under the EMAF. However, these expenses are capped.
56. Many Thalidomide survivors, including the individual plaintiffs, require these treatments on a regular basis in order to manage their Thalidomide-related injuries. The funding provided under the EMAF for such expenses is insufficient and does not meet the needs of Thalidomide survivors.
57. On January 9, 2019, the Government announced an increase to the total funds allocated to the EMAF to accommodate newly recognized, undocumented Thalidomide survivors, who would potentially be eligible to qualify for EMAF support. The amount that Thalidomide survivors could claim under the EMAF was not increased.
58. To date, the Government continues to violate the *Charter* rights of the individual plaintiffs and other Thalidomide survivors. The Government has failed or refused to provide any explanation for its continuing failure to provide Thalidomide survivors with full support. The Government has only stated that it is “not afraid of Thalidomide victims”.
59. In response to being questioned why full support was not included as part of the CTSSP in 2019, the Government merely stated that “[t]hat’s just the way we decided to go.”

The Impact of the Government's Treatment of Thalidomide Survivors, the CTSSP, and the EMAF on the Plaintiff Survivors' Lives

60. Thalidomide survivors, including the individual plaintiffs, are a unique and vulnerable group of disabled Canadians. Thalidomide has impacted every aspect of the plaintiff survivors' lives, including their physical health and life expectancy, their mental health, their ability to complete everyday tasks and activities, and their financial status and earning capacity. The Government's actions have not only caused, but have also compounded, the vulnerable health status and disadvantage experienced by the plaintiff Thalidomide survivors.
61. In the first year following the 2014 Right the Wrong campaign, seven of the original 96 documented Thalidomide survivors who were alive at the time the campaign started had died. Several others were hospitalized, some were admitted to the intensive care unit, and one Thalidomide survivor attempted suicide.

The Physical Impacts of the Government's Actions on the Plaintiff Survivors' Lives

62. Thalidomide has resulted in significant physical disabilities, including missing or malformed limbs, malformed ears, partial or total deafness, and missing or malformed internal organs. The individual plaintiffs require assistance for everyday tasks such as getting dressed, toileting, eating, personal care, and household chores.
63. As a result of their injuries, the individual plaintiffs require regular and ongoing treatment, including physiotherapy, massage therapy, psychological therapy, dental and eye care. They also require assistive devices, specialized equipment, and professional homecare.
64. The individual plaintiffs have insufficient or no access to treatments that would improve their health. Cost is the main obstacle to obtaining the care, treatment and equipment required to complete everyday tasks and live independent lives, defined by dignity.

65. The needs of the individual plaintiffs are exacerbated over time. As a result of their injuries, the survivors have to use certain parts of their bodies more than the general population in order to compensate for one or more functional limitations. This has resulted in the premature onset of physical degeneration, increased pain, as well as comorbidities and hospitalizations.
66. In order to qualify for additional support from the Government, the individual plaintiffs must over-exert and deteriorate their bodies to the point of their situation being “extraordinary” enough to justify receiving funding under the EMAF. They must intentionally place themselves in a position that is, by definition and expectation, “extraordinary” in order to benefit from the Government’s inadequate attempts to comply with its undertaking.
67. The individual plaintiff, Lianne Powell, suffers from the following physical impacts, as a direct result of the Government’s actions:
- (a) As a result of Thalidomide, Ms. Powell does not have a right leg, right kidney, reproductive organs on her right side, her right lung is 25% of a normal size lung, she has scoliosis and an undersized pelvis, and has a significantly smaller right breast.
 - (b) Ms. Powell spent years as a child institutionalized for periods of up to six months in Toronto, Ontario while her family lived in London, Ontario. While institutionalized as a child, Ms. Powell was regularly subjected to physical, sexual, emotional and psychological abuse. For example, she was regularly forced to march on one leg with a crutch, in her underwear, with her private parts exposed, in front of stadium-style audiences for “grand rounds”.
 - (c) As a child, Ms. Powell spent approximately 5.5 months of each six-month period of institutionalization in a bed in a full-body cast. While institutionalized and in a full-body cast, she was repeatedly sexually assaulted.

- (d) Due to the extent of her disabilities and the Government's failure or refusal to provide appropriate funding and support, Ms. Powell now faces the possibility of again being institutionalized as an adult.
 - (e) Due to her Thalidomide-related injuries, Ms. Powell was unable to sustain a full-term pregnancy. As a result, her daughter was born at 25 weeks gestation and lives with cerebral palsy.
 - (f) Ms. Powell has been hospitalized on multiple occasions over the past several years due to her Thalidomide-related injuries. As Ms. Powell could not afford homecare, after each hospital stay, she was required to care for herself. This unnecessarily compromised Ms. Powell's recovery process and placed her health status in further jeopardy.
68. The individual plaintiff, Lee Ann Dalling, suffers from the following physical impacts, as a direct result of the Government's actions:
- (a) As a result of Thalidomide, Ms. Dalling was born with no hip sockets, shortened femurs, two dislocated knees, three fused wrist bones on each hand, and the thumbs on both of Ms. Dalling's hands were replaced with fingers. Ms. Dalling was advised to never become pregnant because of her compromised joints.
 - (b) When she was born, Ms. Dalling's physicians believed that she had dislocated hips, and placed Ms. Dalling in casts with two large boards between them. Once the casts were removed, Ms. Dalling experienced unimaginable pain.
 - (c) Beginning at age the age of three, Ms. Dalling was required to travel from her home in Nova Scotia to Montreal, where she was institutionalized for months at a time and subjected to numerous medical tests and treatments.
 - (d) While institutionalized, Ms. Dalling was tranquilized and restrained, and would often go hungry. She suffered excruciating pain as her legs were repeatedly stretched by medical practitioners in an effort to cure her Thalidomide-related injuries.

- (e) Ms. Dalling was employed for the past 30 years. As a result of her Thalidomide-related injuries, Ms. Dalling strapped on a heavy corset until grade 12 and wore steel leg braces, weighing ten pounds, until 2008 when a massive blood clot led to post phlebotic syndrome.
69. The individual plaintiff, Colleen Gallagher, suffers from the following physical impacts, as a direct result of the Government's actions:
- (a) Ms. Gallagher has one lung, impaired hearing, and very short arms.
 - (b) As a child, Ms. Gallagher was institutionalized in Toronto, as her parents were unable to care for her at home.
 - (c) Ms. Gallagher founded and operated her own non-governmental organization for street youth, which she ran successfully for several years until she was forced to retire early as a result of her Thalidomide related injuries.
 - (d) Ms. Gallagher's mother committed suicide as a result of the guilt that she felt relating to Ms. Gallagher's Thalidomide related injuries.
 - (e) As a result of her Thalidomide-related injuries and her deteriorating health, it is nearly impossible for Ms. Gallagher to complete everyday tasks. For example, Ms. Gallagher was previously able to clean her bathtub with her feet in a few minutes. Due to the nature and extent of her injuries, Ms. Gallagher now requires more than an hour to clean her bathtub with her feet, and this task leaves her exhausted.
 - (f) As a result of her Thalidomide-related injuries, throughout her life, Ms. Gallagher is required to use her teeth to complete tasks that others would complete with their arms or hands. Ms. Gallagher applied for EMAF funds for new teeth, due to the undue strain that has been placed on her existing teeth. Ms. Gallagher was repeatedly denied EMAF funds for new teeth. Only after Ms. Gallagher's doctor wrote the EMAF administrators informing them that Ms. Gallagher could not eat solid food, and her health was in serious jeopardy as a result, did the EMAF provide partial funding for Ms. Gallagher to replace her teeth.

- (g) Ms. Gallagher was recently diagnosed with thyroid cancer, the effects of which are compounded due to Ms. Gallagher's Thalidomide-related injuries, as the cancer has metastasized to her one lung.

70. The individual plaintiff, Mary Ryder, suffers from the following physical impacts, as a direct result of the Government's actions:

- (a) Ms. Ryder was born with significant deformities and underdeveloped lungs, and weighed less than three pounds at birth.
- (b) Ms. Ryder's mother had only taken one Thalidomide pill, which she was given in the form of a sample package to assist with morning sickness and sleeping. Ms. Ryder was thereafter referred to as a sample baby.
- (c) At birth, Ms. Ryder's left arm was six inches shorter than her right arm, her left elbow was permanently bent, and her left hand was badly bent with a locked wrist bent inwards. Ms. Ryder was born with five fingers on her left hand, with one finger growing out of her index finger. Ms. Ryder's right hand has no thumb, and just has a very long finger in its place. Two toes on Ms. Ryder's right foot do not bend. After thirteen surgeries on her left arm and hand, Ms. Ryder still has very little function on her left arm and hand.
- (d) Ms. Ryder also has scoliosis and an extremely small pelvis. Due to the size of her pelvis, Ms. Ryder's two children were delivered by caesarean section.

71. The individual plaintiff, Alexandra Niblock, suffers from the following physical impacts, as a direct result of the Government's actions:

- (a) Ms. Niblock's was born with six-inch arms, no thumbs, and only five functional fingers.
- (b) As a result of her Thalidomide-related injuries, Ms. Niblock requires a dressing stick, which she did not obtain until she was in her teens, for all personal care, including dressing and undressing, toileting, and reaching items beyond the grasp

of her six-inch arms. Without her dressing stick, Ms. Niblock is entirely dependent on the assistance of others.

- (c) In addition to deforming her arms, Thalidomide caused the bones that make up Ms. Niblock's hands to be only connected to her shoulder with tissue, and not bone. Thalidomide also caused Ms. Niblock to be born with a cleft soft palate, congenital dislocation of her hips, foot deformities, narrowed Eustachian tubes, and mild throat paralysis.
- (d) As a result of her Thalidomide-related injuries, Ms. Niblock was institutionalized for weeks at a time at a very young age. Ms. Niblock was repeatedly made to sit on an examination table, in front of a sea of white-coated men in a tiered lecture theatre, wearing only her panties, alone and without her mother, under bright lights, while she was examined and studied.
- (e) Ms. Niblock is a single mother. After she gave birth to her daughter, she was required to change her daughter's diapers with her feet and teeth, as her arms were not long enough to do so.
- (f) As a result of her Thalidomide-related injuries, Ms. Niblock must bend, twist, turn, use her legs, feet, head and teeth to complete everyday tasks that most people use their hands and arms to complete. Ms. Niblock's continual use of her other body parts has exacerbated her injuries and caused significant pain, for which Ms. Niblock takes pain medication on a daily basis.
- (g) As a result of her need to use her teeth to complete tasks that most people would use their hands and arms to complete, Ms. Niblock's mostly capped and crowned teeth are chipped and worn to the metal foundations in numerous places. Ms. Niblock's few remaining teeth are well worn into the dentin chamber of the tooth.

72. The individual plaintiff, Fiona Sampson, suffers from the following physical impacts, as a direct result of the Government's actions:

- (a) Ms. Sampson was born with malformed shoulders, arms and hands, her right leg shorter than her left, and intestinal and bowel malformation.
- (b) As a result of her Thalidomide-related injuries, Ms. Sampson is dependant almost entirely on loved ones, her spouse, and her mother until she died, to perform daily activities.
- (c) Ms. Sampson received institutional care as a child as a result of her thalidomide related injuries.
- (d) As a result of her Thalidomide-related injuries, Ms. Sampson must bend, twist, turn, use her legs, feet, head and teeth to complete everyday tasks that most people use their hands and arms to complete. Ms. Sampson's continual use of her other body parts has exacerbated her injuries and caused significant pain, for which Ms. Sampson takes pain medication on a daily basis.

The Psychological Impacts of the Government's Actions on the Plaintiff Survivors' Lives

- 73. Thalidomide-related disabilities have had a substantial psychological impact on the plaintiff survivors, who have experienced social isolation, depression and mental illness over the course of several decades.
- 74. While the psychological impact of Thalidomide is a direct result of the Government's failure to appropriately regulate the distribution of Thalidomide, the Government's subsequent actions over several decades have further exacerbated the psychological impact on Thalidomide survivors.
- 75. The individual plaintiffs have also experienced the intergenerational impacts of Thalidomide. Some have experienced abuse from their parents, who suffered from depression and mental illness as a result of their child's Thalidomide-related injuries. Some of the plaintiff survivors have given birth to children with disabilities due to the impact of Thalidomide on survivors' internal organs. Some of the plaintiffs have been unable to have children because of Thalidomide.

76. The individual plaintiff survivors experienced institutionalization as children, as a direct result of their Thalidomide related injuries. The prospect of re-institutionalization if inadequate support is not provided has also had a significant psychological impact on the individual plaintiffs.
77. The individual plaintiff, Ms. Powell, suffers from the following psychological impacts, as a direct result of the Government's actions:
- (a) Ms. Powell has been institutionalized and hospitalized on multiple occasions throughout her life due to her Thalidomide-related injuries. The indignities suffered as a result of the Government's actions significantly impacted Ms. Powell on a psychological and emotional level, and invoked memories of the trauma and abuse she experienced when she was institutionalized as a child.
 - (b) The prospect of having to demonstrate that her body has deteriorated to an "extraordinary" enough extent to justify receiving additional support from the Government has further exacerbated the psychological impact of the Government's actions on Ms. Powell.
78. The individual plaintiff, Ms. Dalling, suffers from the following psychological impacts, as a direct result of the Government's actions:
- (a) Ms. Dalling has been institutionalized and/or hospitalized on multiple occasions throughout her life. Ms. Dalling was institutionalized for one three-month period as a child, and experienced annual institutional visits as an outpatient.. Ms. Dalling suffered significant psychological harm as a result of her Thalidomide-related injuries and treatment.
 - (b) During her institutional visits, Ms. Dalling was repeatedly humiliated by being required to be in a constant state of undress. For example, at the age of nine, Ms. Dalling was made to walk back and forth in front of a large screen as she was filmed naked.

- (c) In addition to the trauma suffered while institutionalized, Ms. Dalling was regularly mocked and humiliated as a result of her Thalidomide-related injuries.
 - (d) The psychological harm experienced by Ms. Dalling has been further exacerbated by the Government's failure or refusal to fulfill its commitments of support, including the Government's requirement that she demonstrate "extraordinary" need in order to qualify for funding under the EMAF.
79. The individual plaintiff, Ms. Gallagher, suffers from the following psychological impacts, as a direct result of the Government's actions:
- (a) Ms. Gallagher suffered significant psychological harm as a result of her Thalidomide-related injuries and treatment. While institutionalized in Toronto as a child, Ms. Gallagher was treated as a medical specimen and was publicly humiliated by being placed on display in her underwear.
 - (b) While institutionalized, Ms. Gallagher was subjected to regular abuse that has left her terrified of having to return to an institution later in her life if the Government fails or refuses to comply with its undertakings to provide full support to Thalidomide survivors.
 - (c) The psychological harm experienced by Ms. Gallagher has been further exacerbated by the Government's actions. As a direct result of the Government's failure to comply with its undertaking to provide adequate support, Ms. Gallagher has suffered injury to her dignity, independence and self-respect. For example, Ms. Gallagher applied for funding for new teeth under the EMAF, and her application was denied twice. Ms. Gallagher's application was subsequently accepted on a partial basis, only after her physician wrote to the Administrator to confirm that Ms. Gallagher was unable to eat solid foods, and would remain unable to do so until she received new teeth.
 - (d) Ms. Gallagher does not have the time, physical and emotional energy, expertise, or resources to complete bureaucratic applications, collect supporting evidence, obtain

quotes, and negotiate with the Administrators to obtain inadequate and conditional funding.

80. The individual plaintiff, Ms. Ryder, suffers from the following psychological impacts, as a direct result of the Government's actions:

- (a) After Ms. Ryder was born, her mother refused to accept her as her baby. Ms. Ryder's Thalidomide-related injuries significantly impacted her relationship with her mother, and she was made to feel like the bane of her mother's existence due to her deformities. As a result of her Thalidomide-related injuries, Ms. Ryder became the victim of her mother's verbal and emotional abuse.
- (b) During her first twelve years of life, Ms. Ryder endured thirteen surgeries. She spent many months institutionalized, and her earliest memories were being tied in a rocking chair. While institutionalized, Ms. Ryder had to be restrained so she would not run after her parents when they left her at the institution. She has several memories of being tied in a chair while institutionalized. Ms. Ryder was later told that she did not want to leave the institution with her parents, as she was confused as to who they were.
- (c) While institutionalized, Ms. Ryder endured the constant scrutiny of several medical practitioners. She was often paraded in front of strangers as a case study, and was required to wear a sign around her neck that said "DO NOT FEED", when she was scheduled to have surgery the following day. While institutionalized as a child, Ms. Ryder felt afraid, sad, confused and lonely, and has been significantly impacted by this childhood trauma.

81. The individual plaintiff, Ms. Niblock, suffers from the following psychological impacts, as a direct result of the Government's actions:

- (a) Ms. Niblock struggled with a very heavy menstrual cycle, and for decades, had to deal with the stress and trauma of placing and removing tampons with her dressing stick. The struggle and suffering experienced by Ms. Niblock to cope with her

natural bodily functions has significantly impacted Ms. Niblock on a psychological level.

- (b) While institutionalized as a child, Ms. Niblock was made to stay at the institution for several weeks without her parents, so she could be “trained” to use her new prosthetic arms. Ms. Niblock has been significantly impacted by this childhood trauma, and fears the prospect of being re-institutionalized as an adult due to her Thalidomide-related injuries.
- (c) As a child, Ms. Niblock was the victim of bullying and emotional and psychological abuse by her peers as a direct result of her Thalidomide-related injuries. She almost never went to the toilet while at school in order to avoid further abuse and bullying. She was regularly required to beg her classmates, the same ones who bullied and abused her, for assistance with toileting, and with undressing and changing into her gym strip.
- (d) As a young child, Ms. Niblock wore prosthetic arms. The weight of the prosthetic arms often caused Ms. Niblock to fall on her back, instead of on her knees or bottom. In this position, she was unable to lift herself off the ground without the assistance of others. This experience left Ms. Niblock feeling humiliated and helpless.
- (e) The psychological harm experienced by Ms. Niblock has been further exacerbated by the Government’s actions. In order to qualify for support from the Government, Ms. Niblock is required to re-live her childhood trauma and the indignity of begging for assistance.

82. The individual plaintiff, Ms. Sampson, suffers from the following psychological impacts, as a direct result of the Government’s actions:

- (a) Ms. Sampson received institutional care as a child as a result of her Thalidomide related injuries. As a young child, Ms. Sampson was stood in the centre of an institutional examination room, in her underwear, while medical professionals

surrounded her, physically handling her entire body, and lining up to handle her, so that she could be studied and discussed.

- (b) Ms. Sampson was repeatedly poked and prodded in front of crowds of people as they took hold of different parts of her body and discussed what could be cut, sliced, diced and removed to try to make her "normal". Ms. Sampson was so impacted by the indignity of the experience that she refused to speak. She was taken to the same institution for speech therapy.
- (c) Upon examination for hearing and speech issues, the examining doctor declared that Ms. Sampson had no hearing or speech conditions. After the speech and hearing examination, the doctor asked Ms. Sampson, who was approximately four years of age at the time, if she would come back to the institution and continue to visit the doctors there. Ms. Sampson replied in a loud and clear voice, "No, thank you very much." Ms. Sampson's mother never took her to the institution again.
- (d) Ms. Sampson was significantly impacted by the indignities experienced through institutional care, and fears the prospect of experiencing further indignities, including being re-institutionalized as an adult due to her Thalidomide-related injuries.
- (e) Ms. Sampson has been largely dependant upon her mother and spouse to perform daily functions throughout her life. Ms. Sampson has experienced guilt and anxiety about the burden she has placed on the people she loves as a result of her Thalidomide related injuries. The frustration and indignity of being dependant on others to perform basic activities such as washing hair, brushing teeth, cooking, cleaning, inserting and removing tampons, has had a significant impact on Ms. Sampson's psychological health.
- (f) Ms. Sampson's mother died approximately nine years ago, apologizing for the Thalidomide experience on her death bed. Ms. Sampson is now dependant entirely on her spouse for daily living support.

- (g) Ms. Sampson has significant anxiety and fear associated with the future, should her spouse not be able to care for her. Ms. Sampson also has considerable frustration and anger associated with the fact that she is dependant on her spouse for her personal care, and regrets that she is a burden to her spouse and needs to impose on him regularly for help and support.
- (h) Ms. Sampson was sexually assaulted at age 14 because she was unable to defend herself as a result of her Thalidomide related injuries. Because of this past sexual assault resulting from inability to defend herself, Ms. Sampson has a heightened fear of loss of independence requiring institutionalization where, as a physically disabled woman, she would be vulnerable to more abuse.
- (i) Ms. Sampson made a conscious decision not to have children because she couldn't care for herself, and feared she would not be able to care for a child. Ms. Sampson became pregnant unexpectedly at the age of 40. Shortly after she became pregnant her husband was hospitalized with a life-threatening condition.
- (j) Ms. Sampson felt she had no choice but to have an abortion because she believed that she could not care for an infant even with her spouse's support, and if her spouse died, she would not be able to cope. The psychological impact of having an abortion, and being denied the opportunity to have children, has had a significant psychological impact on Ms. Sampson.
- (k) Ms. Sampson has a difficult time asking for help from friends and strangers to assist with simple tasks such as opening bottles or jars. The stigmatization of any infringement on her independence is psychologically painful for Ms. Sampson.
- (l) Recently, during the COVID-19 pandemic, Ms. Sampson attempted to do her grocery shopping on her own, a task usually undertaken by her spouse, because her spouse was caring for his elderly mother. Ms. Sampson was denied entry to a local grocery store because the gloves provided by the store would not fit on her hands. This kind of indignity has a profound psychological impact on Ms. Sampson.

- (m) The psychological harm experienced by Ms. Sampson has been further exacerbated by the Government's actions. In order to qualify for support from the Government, Ms. Sampson is required to re-live the indignity of begging for assistance, which she has endured throughout her lifetime as a direct result of the Government's actions.

The Financial and Economic Impacts of the Government's Actions on the Plaintiff Survivors' Lives

83. Thalidomide has directly impacted the individual plaintiffs' ability to live independently, earn an income achieve financial independence, and maximize on their financial potential. The impact of Thalidomide on the survivors' ability to earn an income will further impact their quality of life on a long-term basis.
84. Care, treatment and equipment are required by the individual plaintiffs to complete everyday tasks and live independent lives, defined by dignity. The Government's failure or refusal to comply with its undertakings to provide the plaintiff survivors with adequate support has effectively denied the individual plaintiffs access to preventative healthcare, and has further exacerbated the disadvantage that they experience.
85. The individual plaintiff, Ms. Powell, suffers from the following financial and economic impacts, as a direct result of the Government's actions:
- (a) After Ms. Powell's multiple hospitalizations, she was unable to afford homecare, and was required to care for herself.
 - (b) The prohibitive costs of healthcare and therapeutic treatments have placed an undue financial burden on Ms. Powell.
86. The individual plaintiff, Ms. Dalling, suffers from the following financial and economic impacts, as a direct result of the Government's actions:

- (a) Upon graduating high school, Ms. Dalling was accepted into a Veterinary Medicine program. The program was too physically demanding for Ms. Dalling and the campus was not accessible. As a result, Ms. Dalling could not complete Veterinary school, and had to reconsider her career path.
 - (b) Although Ms. Dalling was able to find employment, and has been employed for the past 30 years, she was only able to work part time due to her Thalidomide-related injuries. As a result, Ms. Dalling does not have a pension or significant savings for retirement. Ms. Dalling retired in March 2018, largely due to health issues caused by her Thalidomide-related injuries.
 - (c) The prohibitive costs of healthcare and therapeutic treatments have placed an undue financial burden on Ms. Dalling.
87. The individual plaintiff, Ms. Gallagher, suffers from the following financial and economic impacts, as a direct result of the Government's actions:
- (a) As a result of the Government's failure or refusal to comply with its undertakings to provide support, Ms. Gallagher is unable to afford homecare, a support person to assist with household chores, or taxis to travel to the hospital for her radiation appointments and cancer treatments.
 - (b) The prohibitive costs of healthcare and therapeutic treatments have placed an undue financial burden on Ms. Gallagher.
88. The individual plaintiff, Ms. Ryder, suffers from the following financial and economic impacts, as a direct result of the Government's actions:
- (a) Ms. Ryder has worked part-time and full-time for over 28 years. In 2010, she was forced to retire early, as she was experiencing extreme knee pain, shoulder pain, and difficulty with her left arm and hand, as well as insomnia and PTSD due to her childhood trauma. Ms. Ryder's retirement in 2010 was a direct result of her Thalidomide-related injuries, and has had a significant financial and economic impact on her and her family.

- (b) As everyday tasks became more difficult for Ms. Ryder to complete, she required full-time care at home. In 2017, Ms. Ryder's husband made the difficult decision to retire seven years earlier than he had anticipated in order to care for Ms. Ryder on a full-time basis. As a result of the unplanned loss of income, Ms. Ryder and her husband have been required to spend their retirement savings much earlier than they planned.

89. The individual plaintiff, Ms. Niblock, suffers from the following financial and economic impacts, as a direct result of the Government's actions:

- (a) Aside from the cost of three sets of prosthetic arms, Ms. Niblock has not received any assistance or support from the Government. At age 10, Ms. Niblock and her family decided she would manage better without her prosthetic arms. As a result of this decision, the Government ceased providing her and her family with any additional services or assistance to aid with her Thalidomide-related injuries.
- (b) The prohibitive costs of healthcare and therapeutic treatments have placed an undue financial burden on Ms. Niblock. Ms. Niblock has incurred significant medical expenses in order to mitigate the pain and harm caused by her continual use of her other body parts to complete everyday tasks that most people complete with their arms and hands.
- (c) Although the costs associated with regular massage, chiropractic and acupuncture treatments are extraordinary, these expenses are not considered "extraordinary" under the EMAF qualification criteria.
- (d) As a result of her need to use her teeth to complete tasks that most people would use their hands and arms to complete, Ms. Niblock has required significant dental work, and has spent approximately \$50,000 on dental work over the past 25 years. She now requires additional dental work, which will cost approximately \$70,000.
- (e) Ms. Niblock's annual income does not sufficiently cover the cost of the dental treatment she requires. However, Ms. Niblock does not have the time, physical and emotional energy, expertise, or resources to complete bureaucratic applications,

collect supporting evidence, obtain quotes, and negotiate with the Administrators to obtain inadequate and conditional funding for her dental work.

90. The individual plaintiff, Ms. Sampson, suffers from the following financial and economic impacts, as a direct result of the Government's actions:
- (a) Ms. Sampson has worked full time for 25 years. Ms. Sampson was able to attend university, law school and grad school, and work for the past 25 years only with the full-time support of her mother and spouse.
 - (b) Ms. Sampson's mother worked tirelessly to provide Ms. Sampson with the physical care and support she needed to attend university and to work full time, including cooking, cleaning, shopping, and helping her dress.
 - (c) Ms. Sampson's spouse has also worked tirelessly to support Ms. Sampson, assuming increasing responsibility for her care, and her mother's care, as her mother aged and Ms. Sampson was unable to care for her because of her Thalidomide related injuries. Ms. Sampson's spouse's dedication to her care, providing physical and professional support over the past 30 years, has come at a cost to his own career advancement.

The Government's Unconstitutional Treatment of the Plaintiffs is Compounded by COVID-19

91. The Government's unconstitutional treatment of the plaintiffs has been further demonstrated by its actions in response to the COVID-19 pandemic. On December 10, 2020, the Government announced that it will implement a pan-Canadian no-fault vaccine injury support program for all Health Canada approved vaccines to ensure that all Canadians have fair access to support in the rare event that they experience an adverse reaction to a vaccine.
92. The vaccine injury support program stands in stark contrast to the support programs established by the Government for Thalidomide survivors, who have waited for six decades to receive fair access to support.

93. COVID-19 has also exacerbated the disadvantage experienced by the plaintiffs on an individual level.
94. COVID-19 has exacerbated the disadvantage experienced by Ms. Niblock as a result of the Government's failure to fulfill its Thalidomide-related support undertakings. Specifically, Ms. Niblock has been disadvantaged as follows:
- (a) As a result of her Thalidomide-related injuries, Ms. Niblock needs to use her teeth to complete tasks that most people would use their hands and arms to complete.
 - (b) Ms. Niblock is unable to safely or easily don or doff a mask or face covering. Furthermore, due to the importance of her face and mouth to her independence and quality of life, Ms. Niblock is unable to wear a mask, and must place her face and mouth on objects that have been touched by other individuals and not been sterilized.
 - (c) As a result of her reliance on her face and mouth, Ms. Niblock is unable to safely complete daily tasks such as shopping for groceries or other essentials.
 - (d) Ms. Niblock has rarely left her house since March 2020. She has lost her independence, and has suffered from significant stress and anxiety due to her existing vulnerabilities, which have been exacerbated by COVID-19.
95. COVID-19 has also exacerbated the disadvantage experienced by Ms. Ryder as a result of her Thalidomide-related injuries. Specifically, Ms. Ryder has been disadvantaged as follows:
- (a) Throughout her life, Ms. Ryder has experienced psychological challenges as a result of being bullied and ostracized because of her Thalidomide-related injuries. Ms. Ryder has worked hard to assert her status as an independent individual and an active and social member of her community.
 - (b) COVID-19, and the self-isolation requirements associated with it for individuals with underlying health conditions, have resulted in additional mental challenges for

Ms. Ryder, as she has been alienated and isolated from her community, compounding her experience as a social outlier.

- (c) Ms. Ryder is receiving counselling to address the impact of COVID-19 as it relates to her Thalidomide-related injuries.
- (d) Ms. Ryder works hard to maintain her physical fitness to preserve her limited mobility and functionality. As a result of COVID-19 and her restricted mobility and access to fitness options, Ms. Ryder has experienced reduced physical capacity and increased complications relating to her Thalidomide injuries.

96. COVID-19 has exacerbated the disadvantage experienced by Ms. Sampson as a result of the Government's failure to fulfill its Thalidomide-related support undertakings. Specifically, Ms. Sampson has been disadvantaged as follows:

- (a) Ms. Sampson's Thalidomide-related injuries include a weakened immune system and asthma. These conditions have left her especially vulnerable to COVID-19, and have required her to self-isolate at home.
- (b) COVID-19 has increased Ms. Sampson's need for support and magnified her pre-existing disadvantage that resulted from the Government's treatment of her as a Thalidomide survivor. For example, Ms. Sampson's inability to access yoga therapy during the pandemic has had a detrimental impact on her physical strength and flexibility, resulting in muscle atrophy and increased headaches.
- (c) COVID-19 has also greatly impacted Ms. Sampson's mental health.

97. COVID-19 has also exacerbated the disadvantage experienced by Ms. Dalling as a result of her Thalidomide-related injuries. Specifically, Ms. Dalling has been disadvantaged as follows:

- (a) Ms. Dalling lives alone, and the months of mandated self-isolation since the start of the pandemic have significantly impacted her mentally, emotionally, physically and psychologically.

- (b) Ms. Dalling relies heavily on gym workouts to maintain her physical and mental health. As a result of gym closures, and without a home gym, her mobility has significantly decreased, and she currently has difficulty walking within her house.
 - (c) Ms. Dalling's inability to exercise has resulted in chronic pain and has significantly impacted her mental health.
 - (d) As a result of her Thalidomide-related injuries, Ms. Dalling has acute asthma, is on a maximum dose of three steroid puffers, and is at a high risk of contracting chronic lung and bronchial infections.
 - (e) Ms. Dalling has been unable to leave her home and has suffered from significant stress and anxiety due to her existing vulnerabilities, which have been exacerbated by COVID-19.
98. COVID-19 has exacerbated the disadvantage experienced by Ms. Powell as a result of the Government's failure to fulfill its Thalidomide-related support undertakings. Specifically, Ms. Powell has been disadvantaged as follows:
- (a) Ms. Powell has only one fully functioning lung as a result of Thalidomide. This has left her especially vulnerable to COVID-19.
 - (b) Because of her Thalidomide-related injuries, Ms. Powell has been required to quarantine and stay home alone, and is entirely reliant on home delivery of all essentials.
 - (c) As a result of her Thalidomide-related injuries, Ms. Powell fell on June 25, 2020, and broke two bones in her shoulder. Ms. Powell was unable to take advantage of the support of public health care professionals to assist in her recovery from her injuries because she was required to quarantine and could not permit such professionals into her home due to the risk of contracting COVID-19. As a result, Ms. Powell's recovery from her fall has been restricted and limited, thereby compounding the disadvantage of her pre-existing Thalidomide injuries.

(d) Experiencing COVID-19 as a Thalidomide victim has resulted in additional stress, anxiety and expenses for Ms. Powell.

99. COVID-19 has also exacerbated the disadvantage experienced by Ms. Gallagher as a result of her Thalidomide-related injuries. Specifically, Ms. Gallagher has been disadvantaged as follows:

(a) Because Ms. Gallagher has only one lung as a result of Thalidomide, she is especially vulnerable to COVID-19.

(b) Ms. Gallagher also has cancer, including lung cancer, and is presently in hospital.

The Government's Further Exacerbation of the Plaintiff's Disadvantages

100. The physical, psychological, financial and economic disadvantages experienced by the plaintiff survivors as a result of the Government's conduct are further exacerbated by the Government's continuing treatment of them as survivors. The Government's unfulfilled undertakings to provide full support that would allow for independence and dignity, and the plaintiffs' reliance on such undertakings, have resulted in significant injury to the individual plaintiffs' dignity, feelings and self-respect.

101. Specifically, the disadvantages and injuries experienced by the plaintiff survivors have been further exacerbated by five years of protracted discussions between the plaintiffs and the Government, leading to further unfulfilled undertakings, and humiliating, offensive and abusive comments regarding the individual plaintiffs' disabilities and limited life expectancy.

102. The emotional, psychological, physical and financial costs of the plaintiffs' advocacy efforts have injured the individual plaintiffs' dignity and created stress, anxiety, and exhaustion for the individual plaintiffs, who relied on the Government's previous undertakings and commitments, which were communicated to the plaintiffs by high-ranking individuals within the Government.

103. The disadvantages and injuries experienced by the plaintiff survivors have also been exacerbated by the Government's public announcements of its undertakings to provide full support, which provided the false impression with the Canadian public that the Government had fully supported the individual plaintiffs and had restored their ability to live with independence and dignity.
104. The Government's repeated broken commitments have misled the plaintiffs with the false hope of funds that would provide for independence and dignity. This has left the plaintiffs feeling deceived, disrespected and worthless. The ignominy of each breached undertaking has sent the message that the plaintiffs are inconsequential nonentities, of no value.
105. The impact and indignity of the Government's repeated broken commitments have compounded over the course of several decades. The Government's broken commitments have had a serious psychological and discriminatory impact on the plaintiffs, and have exacerbated the indignity already experienced by them as victims of the Government's negligence. In addition to being denied access to necessary health-related support, the plaintiffs have suffered significant injury to their dignity, feelings and self-respect.
106. The disadvantages and injuries experienced by the plaintiff survivors have also been exacerbated by the Government's structuring of the CTSSP as an annual payment program, instead of providing the individual plaintiffs with lump sum payments, as it did for victims of the Government's negligence in other cases. This differential treatment infantilizes the plaintiff survivors, and treats them as incompetent and unable to manage their own finances. As a result, the structure of the CTSSP has significantly impacted the individual plaintiffs' independence and dignity.
107. The plaintiff survivors have been further disadvantaged by the Government's arbitrary eligibility criteria for the EMAF, which provides limited medical support in limited circumstances. Specifically, the EMAF requires Thalidomide survivors

to apply for funding on a “first come first served basis”, convincing the Administrators that their individual needs are more “extraordinary” than the needs of other survivors. This structure infantilizes the individual plaintiffs, and treats them as incompetent and unable to manage their own finances.

108. The structure of the EMAF also exacerbates the impact of the Government’s actions on the individual plaintiffs’ dignity, feelings and self-respect, by effectively obligating them to demonstrate that their individual needs are more “extraordinary” than the needs of other survivors.
109. The EMAF ignores the reality that many Thalidomide survivors, including the individual plaintiffs, do not have the capacity, energy, expertise or resources to make repetitive claims for assistance from a program that incentivizes the “extraordinary” deterioration of one’s own health in order to qualify for support.

The Government’s Treatment of Thalidomide Survivors and the CTSSP and EMAF is Unconstitutional

110. From December 1961 through May 1962, the Government failed to appropriately regulate the distribution of Thalidomide, despite having knowledge of Thalidomide’s contra-indications and the substantial risk that the drug posed to pregnant women. Although other countries, such as the U.K., Germany and Australia, promptly recalled the drug, Thalidomide remained available in Canada until May 1962.
111. The physical, psychological and sexual abuse, and the physical and psychological suffering experienced by the Thalidomide survivors are a direct result of the Government’s failure to appropriately regulate the distribution of Thalidomide.
112. The Government’s failings throughout the six decades following its decision to remove Thalidomide from the market have further exacerbated the injuries experienced by Thalidomide survivors.

113. As a result of its repeated undertakings since 1963 and its provision of funding through unique funding programs, the Government has developed a unique relationship with Thalidomide survivors, including the individual plaintiffs, since they were born. As previously recognized by the Government, the purpose of the unique funding programs is to fulfill the “clear moral obligation” the government has toward Thalidomide survivors, and to help them “age with dignity”.
114. The Government’s treatment of the individual plaintiffs since they were born, including its repeated undertakings to provide support and a failure to fulfill such undertakings, is unconstitutional.
115. CTSSP and EMAF are delivered by a third party service provider, but they were established, and are funded, operated, managed and supervised by the Government.
116. The Government’s unconstitutional treatment of Thalidomide survivors, and its failure or refusal to prioritize the needs of survivors, is further demonstrated by the Government’s actions in response to the COVID-19 pandemic.
117. The Government recently announced that it will implement a pan-Canadian no-fault vaccine injury support program to ensure that all Canadians have fair access to support in the rare event that they experience an adverse reaction to a COVID-19 vaccine. Through this support program, healthy Canadians, the majority of whom have a remote risk of suffering any significant adverse reaction to a COVID-19 vaccine, have pre-emptively been guaranteed fair access to Government support. In contrast, Thalidomide survivors, all of whom have significant disabilities that are a direct result of the Government’s own negligence, have been denied fair access to support for six decades.
118. The Government’s treatment of the plaintiffs, its ongoing mismanagement of the impacts of its actions on the individual plaintiffs, its mismanagement of related funding, and the structure and administration of the CTSSP and EMAF breach s. 7

of the *Charter*, as they are degrading and arbitrary, and violate the right to life, liberty and security of the person.

119. The Government's treatment of the plaintiffs, its ongoing mismanagement of the impacts of its actions on the individual plaintiffs, its mismanagement of related funding, and the structure and administration of the CTSSP and EMAF also constitute discrimination on the grounds of age and disability, in breach of s. 15 of the *Charter*.
120. The Government's treatment of the plaintiffs has breached ss. 7 and 15 of the *Charter* by violating the individual plaintiffs' right to life, liberty, security of the person, and equality by:
- (a) delaying the provision of services and funding for 58 years;
 - (b) providing inequitable and insufficient funding for required services;
 - (c) making repeated undertakings and commitments, upon which the plaintiffs have relied, and failing to comply with these undertakings and commitments;
 - (d) subjecting the individual plaintiffs to an arbitrary, unreasonable, undignified and cruel test to qualify for inadequate services and support, which fail to take into account the plaintiffs' individual disabilities;
 - (e) insulting, ignoring and demeaning the plaintiffs during the course of five years of protracted discussions with the plaintiffs;
 - (f) relying upon outdated and discriminatory stereotypes in structuring its service and funding programs targeted towards the plaintiffs; and
 - (g) perpetuating the disadvantage of a significantly vulnerable and marginalized group of individuals, and exacerbating existing physical and psychological injuries previously caused by the Government.

121. The Government's breaches of ss. 7 and 15 of the *Charter* cannot be demonstrably justified in a free and democratic society.
122. The Government's treatment of the plaintiffs also constitutes a breach of the *Convention on the Rights of Persons with Disabilities*. Among other things, the *Convention on the Rights of Persons with Disabilities* guarantees:
- (a) equality and protection against all discrimination on the basis of disability;
 - (b) protection against all discrimination against women and girls with disabilities;
 - (c) the ability of persons with disabilities to live independently and participate fully in all aspects of life;
 - (d) protection against unlawful or arbitrary deprivation of liberty and security;
 - (e) protection of and respect for the physical and mental integrity of persons with disabilities on an equal basis with others;
 - (f) protection of the equal right of all persons with disabilities to live independently in the community, with choices equal to others, including access to a range of in-home, residential and other community support services, which includes the personal assistance necessary to support living and inclusion in the community;
 - (g) enjoyment of the highest attainable standard of health without discrimination on the basis of disability; and
 - (h) the right of persons with disabilities to an adequate standard of living for themselves and their families.
123. This human rights treaty, which Canada has ratified, places positive obligations on Canada to take reasonable and effective measures to ensure the realization of the rights set out above.

124. International human rights instruments that Canada has ratified are relevant and persuasive sources for interpreting the provisions of the *Charter*. Canada's international human rights commitments inform the interpretation of the scope of protection under the *Charter*. The *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents that Canada has ratified.
125. The provisions of the *Charter* should be interpreted in light of, and in a way that is consistent with, Canada's human rights obligations regarding the rights of persons with disabilities. In particular, the rights to life, liberty and security of the person under s. 7 of the *Charter* and the right to equality under s. 15 of the *Charter* should be interpreted in light of Canada's international human rights obligations regarding the rights of persons with disabilities.
126. The Government's treatment of the individual plaintiffs since they were born, and since the initial undertakings to provide support were made, has been offensive and inadequate. The support provided has not met the individual plaintiffs' needs, and has not complied with the undertakings and commitments made by the Government.
127. The Government has failed or refused to provide adequate funding for preventative treatments, such as physiotherapy, massage therapy, psychological therapy, dental and eye care, which would mitigate the premature onset of physical degeneration, as well as comorbidities and hospitalizations.
128. The CTSSP and EMAF are also unduly bureaucratic and inaccessible, and are degrading and arbitrary.
129. The structure of the EMAF requires Thalidomide survivors to prove they are more disadvantaged than each other, and to demonstrate a more urgent and severe need for financial aid than their fellow Thalidomide survivors. The structure and administration of the EMAF exacerbate the disadvantage experienced by

Thalidomide survivors in society, and create further inequalities within the group of Thalidomide survivors.

130. The plaintiff survivors have been arbitrarily denied EMAF funding that was otherwise granted to their fellow Thalidomide survivors in similar circumstances.
131. In addition to being arbitrary, the current funding model under the CTSSP and EMAF has had a significant psychological impact on the individual plaintiffs. Specifically, the overly-medicalized application process requires survivors to re-live past trauma and injury to dignity associated with begging for assistance.
132. The application process under the CTSSP and the EMAF requires the individual plaintiffs to agree to being the object of study by the Administrator for purposes of the Administrator's "education". The process also requires the individual plaintiffs to repeatedly justify and explain the severity and nature of their disabilities in order to potentially qualify for limited support.
133. In cases where funds are provided to an individual survivor, the EMAF is policed by the fund administrator, creating the insulting impression that Thalidomide survivors are not to be trusted to properly manage or use the funds.

The Plaintiffs Have Suffered Damages

134. As a result of the Government's *Charter* breaches, the plaintiffs have suffered significant injuries, for which they claim damages in the amount of at least \$60,000,000. This figure is based on the past support owed to the individual plaintiffs under the CTSSP and EMAF, and on the severity of the past injuries suffered by the individual plaintiffs since the introduction of s. 15 of the *Charter*. The plaintiffs specifically claim:
- (i) general damages in the amount of \$12,000,000;
 - (ii) special damages in an amount to be advised before trial; and

(iii) aggravated damages in the amount of \$12,000,000.

135. The injuries suffered by the plaintiffs that give rise to such damages include:

- (i) impairments of physical, mental and emotional health that have compounded pre-existing to severe and permanent disabilities;
- (ii) exacerbation of mental illness;
- (iii) development of new mental illness;
- (iv) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders created and exacerbated by the Government's actions;
- (v) infringement on liberty rights;
- (vi) alienation from family;
- (vii) an impairment of the capacity to function in society, participate in the workplace and earn income;
- (viii) denial of funding that would have provided support and increased independence in the past, and will provide support and increased independence in the future;
- (ix) injury to dignity, feelings and self-respect; and
- (x) pain and suffering.

136. As a consequence of the Government's *Charter* breaches, the individual plaintiffs require, and will continue to require, further medical treatment, rehabilitation, counselling and other care and support, for which they claim full indemnity, compensation and payment from the Government. The cost of these supports, treatments and services for the next 30 years is estimated to be at least \$36,000,000.

137. The plaintiffs are entitled to monetary damages in an amount equivalent to at least \$36,000,000 for violation of their constitutional rights and freedoms. The plaintiffs seek these damages pursuant to s. 24(1) of the *Charter* in order to:

- (i) compensate them for their pain and suffering and injury to dignity, feelings and self-respect;
- (ii) compensate them for past financial support owed, and future support owing on a tax-free basis;
- (iii) vindicate their fundamental rights; and
- (iv) deter systemic violations of a similar nature.

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Court File No.

THE THALIDOMIDE SURVIVORS' TASK GROUP ET. AL.

- and -

ATTORNEY GENERAL OF CANADA

Plaintiffs

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

STATEMENT OF CLAIM

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