

# **WALKERTON COMPENSATION PLAN**

**CLASS ACTION SETTLEMENT**

**CLASS ACTION FILE #00-CV-192173CP**



## WALKERTON COMPENSATION PLAN

### OVERVIEW

The Government of Ontario is committed to providing financial support and compensation to any individuals who became sick or lost loved ones or otherwise incurred certain out-of-pocket expenses or losses, because of contaminated water in Walkerton. Money cannot redress some of the losses that have been suffered as a result of the tragic events in Walkerton, but the Government of Ontario wants to do what it can to provide financial compensation to those who have suffered loss.

The purpose of this Walkerton Compensation Plan is to pay to the Applicants full and complete compensation, without regard to fault, in accordance with Ontario law and with the terms and conditions herein, provided, however, that no amount shall be paid for aggravated, exemplary or punitive damages.

Individuals will have access to fair compensation through an efficient, timely, and impartial process. Applications will be individually evaluated and, if necessary, resolved through a mediation process, and where unsuccessful, independent arbitration. In the case of serious injury or death, an assessment of damages by a judge of the Ontario Superior Court of Justice is also available.

Levels of compensation for physical injury or death will be determined with reference to ordinary legal principles applied in courts. Compensation is being offered on a compassionate basis regardless of issues of fault and therefore compensation is not an admission of legal liability. All awards are for the purpose of compensating individuals who have suffered losses. Thus, duplicate compensation will not be offered where an Applicant is entitled to be paid compensation under another plan or program.

The Government of Ontario will pay reasonable legal costs for an Applicant's lawyer as provided for under the Walkerton Compensation Plan, and ensure that individuals have access to independent legal advice.

The Walkerton Compensation Plan is to be interpreted broadly to accomplish its objectives.

### 1. DEFINITIONS

In the Walkerton Compensation Plan,

**“Administrator”** means Crawford Adjusters Canada Inc. (“Crawford”).

**“Applicant”** means a Class Member or Family Class Member who applies for compensation under this Plan.

**“Applicant’s Data”** means all data, records, medical, personal and financial information, files, addresses, claims payment history, and all other information of any nature and kind whether in paper, recorded or electronic form or in any other medium including all individual personal identifying and non-personal identifying information and any compilation, selection, co-ordination or arrangement of individual information into an original, derivative or collective work or works capable of being reviewed, perceived, reproduced or otherwise communicated directly or indirectly with the aid of a machine or device or capable of being fixed in any tangible medium of expression now known or later developed or transmitted or displayed even for a transitory period.

**“Application Form”** means an application for compensation in the appropriate form prescribed by the Administrator.

**“Approval Date”** means the date on which the Judgment approving the settlement of the Class Action becomes final.

**“Arbitrators”** means persons selected from a roster of retired judges at ADR Chambers for the purpose of conducting arbitrations under this Plan.

**“Certified Defendants”** means The Corporation of the Municipality of Brockton, The Bruce-Grey-Owen Sound Health Unit, Stan Koebel and The Walkerton Public Utilities Commission.

**“Class Action”** means Court File No. 00-CV-192173CP.

**“Class Counsel Representative”** means counsel appointed by the Judge on the recommendation of the solicitors of record for the plaintiffs in the Class Action.

**“Class Member”** means:

- (a) all persons, except the defendants and third parties, who were ordinarily resident in the area in the Corporation of the Municipality of Brockton formerly known as the Town of Walkerton (“Walkerton”), who consumed or used water delivered by the Walkerton PUC, at any time in the period April 1, 2000 to December 5, 2000;
- (b) all persons, except the defendants and third parties, who were not ordinarily resident in Walkerton, who consumed or used water delivered by the Walkerton PUC at any time in the period April 1, 2000 to June 27, 2000 and who became ill or died as a result thereof;
- (c) all persons, except the defendants and third parties, who were infected with gastroenteritis or a similar type of illness by exposure to a person described in (a) or (b) above; and

- (d) any and all persons, except the defendants and third parties, who are not described in (a), (b) and (c) above or in the definition of a Family Class Member, who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the contamination of the water delivered by the Walkerton PUC in the period from April 1, 2000 to December 5, 2000.

**“Compensation Offer”** means a written offer of compensation made by the Administrator to an Applicant, with respect to all or part of the loss claimed by the Applicant.

**“Contamination”** means the presence of disease-causing organisms in the water delivered by the Walkerton PUC during the period from April 1, 2000 to December 5, 2000.

**“Estate”** means the estate of a Class Member or Family Class Member.

**“Family Class Member”** means the spouse or same-sex partner, child, grandchild, parent, grandparent and sibling of someone described in subparagraphs (a), (b) or (c) of the definition of a Class Member.

**“Family Law Act”** means the *Family Law Act*, R.S.O. 1990, c. F.3, as amended.

**“Insured Services”** means insured services as defined in the *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended.

**“Judge”** means the Honourable Mr. Justice Warren K. Winkler or a judge of the Ontario Superior Court of Justice designated by him, or in the event of Mr. Justice Winkler’s unavailability, a judge of the Ontario Superior Court of Justice appointed by the Chief Justice.

**“Judgment”** means the Judgment approving the settlement of the Class Action.

**“Mediators”** means persons selected from a roster of mediators, from Mediated Solutions Inc. or elsewhere, for the purpose of conducting mediations under this Plan.

**“Ontario”** means Her Majesty the Queen in Right of Ontario.

**“Plan”** means the Walkerton Compensation Plan approved by the Judge, as amended, supplemented or restated from time to time.

**“Plan Counsel”** means counsel appointed by the Administrator to represent it at mediations, arbitrations and assessments of damages under this Plan.

**“Retainer Agreements”** means the letter agreement Ontario and ADR Chambers Inc. dated August 23, 2000 and agreement between Ontario and Mediated

Solutions Inc. effective August 8, 2000, dated December 22, 2000.

**“Same-sex partner”** means either of two persons of the same sex who have cohabited:

- (a) continuously for a period of not less than three years; or
- (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

**“Service Agreement”** means the contract between Ontario and Crawford effective July 25, 2000.

**“Spouse”** means either of a man and woman who:

- (a) are married to each other, or
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person relying on this clause to assert a right under this Plan; or
- (c) are not married to each other but have cohabited:
  - (i) continuously for a period of not less than three years; or
  - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

**“Third Parties”** means Ian D. Wilson Associates Limited, Davidson Well Drilling Limited, Earth Tech (Canada) Inc., Conestoga-Rovers & Associates Limited, B. M. Ross And Associates Limited, Gap EnviroMicrobial Services Inc., A & L Canada Laboratories East, Inc., David Biesenthal and Carolyn Biesenthal.

**“Walkerton”** means the area in the Corporation of the Municipality of Brockton formerly known as the Town of Walkerton.

## **2. COMPENSATION, ELIGIBILITY AND COVERAGE**

### **2.1 BASIS OF COMPENSATION**

- (1) Under this Plan, the right to and the amount of compensation payable shall be determined in accordance with the legal principles applied in Ontario courts without regard to issues of fault, liability or contributory negligence but there shall be no payment for or entitlement to payment for aggravated, exemplary or punitive

damages.

- (2) An Estate may apply for any compensation the Class Member or Family Class Member could have applied for, but for his or her death.

## **2.2 INCLUDED INJURIES AND LOSSES**

### **2.2.1 CLASS MEMBERS WHO BECAME ILL OR DIED**

A Class Member who became ill or died may apply for compensation arising from any injury or loss for which an Ontario court would award damages, not paid or payable pursuant to any other plan or program, including the following:

- (a) pain and suffering, including physical injury, nervous shock or mental distress;
- (b) past and future lost income;
- (c) past and future health expenses which are not Insured Services; and
- (d) pecuniary losses;

caused by the Contamination.

### **2.2.2 CLASS MEMBERS WHO DID NOT BECOME ILL OR DIE**

Where, in the absence of any physical illness or death, a Class Member suffered mental distress or incurred expenses or lost income or suffered pecuniary loss or incurred reasonable expenses for preventative health care measures caused by the Contamination, not paid or payable pursuant to any other plan or program, the Class Member may apply for compensation for such losses under this Plan.

### **2.2.3 OTHER LOSSES OF CLASS MEMBERS**

A Class Member may apply for compensation for any other losses, including economic losses, caused by the Contamination, not otherwise described in Section 2.2.1 or 2.2.2 of this Plan, not paid or payable pursuant to any other plan or program, provided that such loss is proven by the Class Member on the facts and provided that the loss is recoverable under Ontario law.

### **2.2.4 FAMILY CLASS MEMBERS**

A Family Class Member may apply for compensation for pecuniary

losses, other than those paid or payable pursuant to any other plan or program, resulting from an injury to or death of a Class Member caused by the Contamination, including, as set out in subsection 61(2) of the Family Law Act:

- (a) actual expenses reasonably incurred for the benefit of the Class Member who was injured or who has died;
- (b) actual funeral expenses reasonably incurred as a result of the death of the Class Member and not otherwise reimbursed to the Estate of the Class Member under this Plan;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the Class Member during his or her treatment or recovery;
- (d) a reasonable allowance for loss of income or for the value of services where, as a result of the injury, the Family Class Member provides nursing, housekeeping or other services for the Class Member; and
- (e) an amount to compensate for the loss of guidance, care and companionship that the Family Class Member might reasonably have expected to receive from the Class Member if the injury or death had not occurred.

### **2.3 FURTHER APPLICATIONS TO THIS PLAN PERMITTED**

A Class Member or Family Class Member who receives a payment under this Plan may make further applications and seek further damages if he, she or it suffers damages occurring or materializing after, or not reasonably discovered before, the date of the latest prior application, for which compensation has not previously been assessed or paid.

## **3. PROCESS FOR DETERMINING COMPENSATION**

The process of this Plan provides for up to five stages: application, evaluation, mediation, arbitration, and, in cases of serious injury or death, assessment of damages by a Judge.

### **3.1 APPLICATION**

#### **3.1.1 GENERAL**

An Applicant who wishes to apply for compensation must do so by submitting an Application Form to the office of the Administrator in Walkerton.

#### **3.1.2 APPLICANTS UNDER A DISABILITY AND ESTATES**

- (1) Applications on behalf of an Applicant under a disability must, in

the case of a minor, be completed by a person having custody of the minor, or in other cases such representative as the Administrator decides.

- (2) Applications on behalf of Estates must be completed by an estate trustee.

### **3.1.3 SUPPORTING DOCUMENTATION AND INFORMATION**

- (1) The Application Form is designed to provide to the Administrator the information necessary to assess each claim. However, Applicants or their representatives will be required to provide any supporting documentation, including receipts, income information and medical documentation, to establish their claim and to enable the Administrator to understand and evaluate the application fully and efficiently. The Administrator's understanding and evaluation of larger claims involving more serious injuries will be greatly facilitated by the provision of all relevant supporting information and documentation.
- (2) The Administrator may also need to obtain information or documentation directly from health professionals, hospitals or other parties. Applicants may be asked to complete a consent form authorizing the Administrator to obtain information directly from third parties.
- (3) If the Administrator has questions regarding an application or requires other supporting information or documentation, the Administrator may contact Applicants, or their legal representatives, and request further information and documents.

### **3.1.4 CONSENTS REGARDING PERSONAL INFORMATION**

- (1) A Class Member must consent to his or her personal information being released to the Administrator, or
  - (a) where the personal information is about a deceased person, the consent of the deceased person's personal representative must be provided;
  - (b) where the personal information is about a child under 16 years of age, the consent of a person having lawful custody of the child must be provided;
  - (c) where the personal information is about an individual under a continuing power of attorney or a power of attorney for

personal care, the consent of the individual's attorney must be provided; and

- (d) where the personal information is about an individual (not a minor under the age of 18) who has a guardian of the person or guardian of the property, the consent of the guardian must be provided.

- (2) A Class Member must, or a person authorized under the *Personal Health Information Privacy Act, 2000*, may consent to the release of the personal health information on behalf of the Class Member.

#### **3.1.5 EXPENSES INCURRED FOR MEDICAL REPORTS**

If requested by an Applicant, the Administrator will pay directly to health professionals and hospitals their reasonable costs for the preparation and delivery of any reports or records provided by them. So, too, the Administrator will reimburse Applicants for their reasonable costs incurred in obtaining relevant hospital records and medical reports.

### **3.2 EVALUATION OF APPLICATIONS**

#### **3.2.1 ADMINISTRATOR'S EVALUATION**

- (1) The Administrator will determine eligibility and evaluate each application in accordance with the provisions of the Plan.
- (2) The Administrator will evaluate each application individually, taking into account the particular facts in each application. The evaluation will be independent of Ontario.
- (3) The Administrator may also meet with an Applicant for a better understanding of the Applicant's individual circumstances.
- (4) The Administrator shall not make a decision as to entitlement to compensation until all necessary proof is completed and submitted to the satisfaction of the Administrator.

#### **3.2.2 PROOF OF CLAIMS AND STANDARD OF REVIEW OF APPLICATION**

The Administrator will only offer compensation when satisfied, on a balance of probabilities, that:

- (a) the Applicant is an eligible person under this Plan;
- (b) the physical injury or other loss was caused by the Contamination;
- (c) the damages claimed were suffered; and
- (d) the damages are payable in accordance with Ontario law under this Plan.

### 3.2.3 COMPENSATION OFFER

- (1) The Administrator will decide whether compensation is payable and, if so, in what amount. The Administrator will communicate its decision to the Applicant by delivering a Compensation Offer. If the Administrator does not make a Compensation Offer, the Administrator will communicate to the Applicant its reasons in writing for deciding to deny compensation.
- (2) Each Class Member who is entitled to compensation under the Plan, other than someone described in subparagraph (d) of the definition of Class Member, shall receive the amount of \$2,000 upon proof of qualification.
- (3) If the Class Member believes that his, her or its damage would be assessed in an amount greater than \$2,000, the Class Member may accept the \$2,000 as a payment on account and seek further compensation in accordance with the terms of this Plan.
- (4) In order to receive any further compensation over and above the \$2,000 payment, the Class Member must prove that his, her or its losses, compensable in accordance with the provisions of this Plan, exceed the \$2,000 payment on account.
- (5) For greater certainty, the \$2,000 payment shall be considered a minimum payment on account of compensation for any and all forms of injury, loss or damages suffered by a Class Member compensable under this Plan, and any interest thereon.

### 3.2.4 RESPONSE TO COMPENSATION OFFER

- (1) The Compensation Offer will include a Response Portion to be completed by the Applicant. Prior to completing the Response Portion, the Applicant may meet with a representative of the Administrator, propose a counter-offer, and attempt to arrive at a mutually agreed upon resolution. By completing and delivering the Response Portion to the Administrator, the Applicant may:
  - (a) accept the Compensation Offer;
  - (b) reject the Compensation Offer and request mediation, to be followed by arbitration if the mediation is unsuccessful;
- (2) If mediation is unsuccessful, the Applicant shall proceed to arbitration.
- (3) Notwithstanding section 3.2.4(2), if mediation is unsuccessful and

if the Applicant's claim relates to serious injury or death, the Applicant may request assessment of damages by the Judge.

- (4) A Class Member who is entitled to a minimum payment of \$2,000 pursuant to the provisions of section 3.2.3 of this Plan, and who rejects an Offer of Compensation as set out above, shall receive the minimum payment of \$2,000 pending further resolution of the Class Member's claim.

**3.2.5 ACCEPTANCE AND PAYMENT OF COMPENSATION**

- (1) If the Applicant accepts the Compensation Offer, the Administrator will pay the compensation within 30 days of the date of acceptance of the Compensation Offer, unless court approval is required.
- (2) In the case of a settlement reached at mediation, or an award made by an Arbitrator or Judge under this Plan, the Administrator will pay the compensation within 30 days of the later of court approval, if required, the expiry of any appeal period or a final appeal order.

**3.2.6 COURT APPROVAL OF COMPENSATION TO PERSONS UNDER DISABILITY AND TO**

**ESTATES**

- (1) No court approval is necessary for a payment under section 3.2.3(2), if the amount is payable to a minor, estate trustee, guardian of property of an incapable person or attorney for property under a continuing power of attorney.
- (2) Where the compensation payable under section 3.2.3(2) is for a minor only, the payment will be delivered by the Administrator to the Applicant for the direct benefit of the minor.
- (3) Court approval shall be obtained for any payment to a litigation administrator of an estate.
- (4) Court approval of any amount in addition to the payment under section 3.2.3(2) shall be obtained by an Applicant for a minor, a guardian of property of an incapable person, an attorney for property under a continuing power of attorney or an estate trustee without a will.
- (5) No court approval is required for an estate trustee appointed under a will or codicil or pursuant to a Certificate of Appointment of Estate Trustee.
- (6) This Plan will pay the reasonable costs associated with obtaining court approval.

### **3.2.7 PARTICIPATION BY ONTARIO**

In any application seeking compensation for business loss over \$25,000 or for diminution in the value of real property, the Administrator shall give notice of such claim to Ontario and Ontario may participate in the place of the Administrator in any proceeding relating to such a claim including the initiation of mediation, arbitration or an appeal therefrom, on such terms and in such manner as the Judge may direct.

## **3.3 MEDIATION, ARBITRATION AND ASSESSMENTS**

### **3.3.1 MEDIATION**

- (1) If an Applicant rejects a compensation offer and proceeds to mediation, mediation will take place in accordance with rules set by the Judge, to include a provision that costs shall never be awarded against an Applicant.
- (2) If a mediation does not successfully resolve the Applicant's claim, subject to section 3.2.4(3), the Applicant shall proceed to arbitration.

### **3.3.2 ARBITRATION**

If an Applicant proceeds to an arbitration, arbitration will take place in accordance with rules set by the Judge. The rules shall include a provision permitting an appeal to the Judge from an arbitration award on a question of law, a question of fact, or a question of mixed fact and law, and that costs shall never be awarded against an Applicant.

### **3.3.3 ASSESSMENT OF DAMAGES BY THE JUDGE**

If an Applicant proceeds to an assessment of damages by the Judge under section 3.2.4(3), costs shall never be awarded against an Applicant.

### **3.3.4 PARTIES TO A MEDIATION, ARBITRATION OR ASSESSMENT**

Except as provided in Section 3.2.7:

- (1) At a mediation or an arbitration, the parties shall be the Administrator and the Applicant.
- (2) At an assessment of damages, the parties shall be the Administrator and the Applicant.
- (3) At a mediation, arbitration or assessment of damages, the Applicant may be represented by counsel or a representative. At any mediation, the Administrator may be represented by Plan Counsel

or a representative. At any arbitration or assessment of damages, the Administrator shall be represented by Plan Counsel.

#### **3.4 ELECTION TO ARBITRATE**

If the Administrator rejects an application for compensation on the basis that the application is made by a person who is not a Class Member or Family Class Member or if the Administrator determines that no Compensation Offer will be made to a person, that person may elect to have his, her or its entitlement and/or compensation determined at an arbitration by delivering to the Administrator an election in prescribed form.

#### **3.5 PRELIMINARY DETERMINATION**

If an Applicant requests an assessment of damages by a Judge under section 3.2.4(3) above, Plan Counsel may request the Judge to decide on a preliminary basis whether the Applicant's claim relates to a serious injury or death caused by the Contamination and is therefore eligible for assessment of damages by the Judge.

### **4. LEGAL ASSISTANCE TO APPLICANTS**

- (1) Applicants may be represented by lawyers for the purpose of seeking compensation under this Plan.
- (2) In the event an Applicant is not represented by counsel, the Administrator shall encourage the Applicant to seek independent legal advice.
- (3) The Plan will pay reasonable legal costs for an Applicant's lawyer or for independent legal advice in accordance with a tariff to be approved by the Judge.

### **5. NO ADMISSION OF LIABILITY**

Neither the establishment of this Plan nor the payment of any compensation under this Plan constitutes an admission of liability by Ontario, any Certified Defendant or any Third Party.

### **6. CONFIDENTIALITY OF INFORMATION**

Any information created or obtained by any person, organization or governmental body, (including the Administrator, Mediators, Arbitrators and the Judge conducting an assessment of damages under section 3.2.4(3) herein) involved in administering this Plan is confidential and, except as required by law, shall be used and disclosed only for the purpose of administering this Plan.

**7. RETENTION AND DISPOSAL OF RECORDS**

- (1) The Administrator, Mediators and Arbitrators will maintain all Applicants' Data and all other information created, compiled or obtained in the course of administration of this Plan as the Judge shall direct.

- (2) On the termination of this Plan, all documents collected or compiled in the course of the administration of this Plan will be dealt with as the Judge directs.

## **8. CO-ORDINATION WITH ONTARIO'S OTHER COMPENSATION PLANS**

Notwithstanding the other provisions of this Plan, an Applicant cannot claim payment for expenses or losses already reimbursed from or through the:

- (a) Brockton Response Centre,
- (b) Brockton Emergency Personal Claims Assistance,
- (c) Brockton Emergency Assistance for Business, or
- (d) Walkerton Compensation Plan prior to the date of Judgment,

and no amount will be payable for those damages under this Plan unless, and then only to the extent that, the Applicant's entitlements under this Plan exceed the payments so received.

## **9. CONSENT TO RELEASE OF INFORMATION**

- (1) Each Applicant must consent in the prescribed form to allow the Administrator:
  - (a) to verify independently whether or not the Applicant applied for compensation through the Brockton Response Centre, the Brockton Emergency Personal Claims Assistance, or the Brockton Emergency Assistance for Business; and
  - (b) to examine all records relating to the payment of compensation under any of the Brockton Response Centre, the Brockton Emergency Personal Claims Assistance, or the Brockton Emergency Assistance for Business.
- (2) An Applicant will not be paid under this Plan for losses compensable under those programs unless and until such consent in prescribed form is delivered to the Administrator.

## **10. INTEREST**

Under this Plan, interest is payable and is to be calculated in accordance with the provisions of s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended. Interest payable under this Plan must be calculated on the basis of simple, not

compound, interest.

## **11. FIRST CLAIM DEADLINE**

- (1) After January 2, 2002, no person may make an application for compensation under this Plan for the first time unless the application is made within one year:
  - (a) of the person claiming to be a Class Member attaining his or her age of majority;
  - (b) of an incapable person claiming to be a Class Member having a guardian of property, attorney for property or litigation guardian authorized to make the application;
  - (c) following the date upon which the person claiming to be a Class Member first learned that he or she sustained serious or permanent bodily injury caused by the Contamination; or
  - (d) following the date of death of the person claimed to be a Class Member.
- (2) If a Class Member qualifies under (a), (b), (c) or (d) above, then his or her Family Class Members may make an application for compensation after that date but not otherwise.

## **12. TERMINATION OF THIS PLAN**

This Plan shall terminate on a date to be ordered by the Judge.

## **13. RELEASES ALREADY OBTAINED**

Notwithstanding any release signed by a Class Member or a Family Class Member prior to the Approval Date, any such Class Member or Family Class Member may take the benefit of this Plan, by submitting an Application Form.

## **14. COLLATERAL BENEFITS**

- (1) If an Applicant is or was entitled to be paid compensation under this Plan and is or was also entitled to be paid compensation under an insurance policy or other plan or program in any way relating to or arising directly or indirectly from the Contamination, the compensation payable under this Plan will be reduced by the amount of the compensation that the Applicant is entitled to be paid under the insurance policy or other plan or program.
- (2) Notwithstanding the provisions of the previous paragraph, life insurance payments received by the Applicant will not be taken into account for any purposes whatsoever under this Plan.

## **15. SUBROGATION RIGHTS**

- (1) Ontario shall provide a blanket waiver in writing of all Applicants obligations to assert subrogation pursuant to subsection 31(a) of the *Health Insurance Act*.
- (2) No Applicant shall assert a claim for subrogation on behalf of the Ministry of Health for the cost of Insured Services.
- (3) No subrogation payment of any nature or kind will be paid, directly or indirectly, under this Plan, and without restricting the generality of this provision:
  - (a) no government and no department of a government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under this Plan;
  - (b) no municipality and no department of a municipality will be paid under this Plan;
  - (c) no person exercising a right of subrogation will be paid under this Plan; and
  - (d) no Applicant will be paid compensation if the claim is being asserted as a subrogated claim or if the Applicant will hold any money paid under this Plan in trust for any other party exercising a right of subrogation or, if a payment under this Plan will lead to a reduction in other payments from an insurer for which the Applicant would otherwise qualify.

## **16. APPOINTMENT AND SUPERVISION OF THE ADMINISTRATOR, ARBITRATORS AND MEDIATORS**

- (1) The Judge shall have the power to appoint and replace the Administrator, the Mediators and the Arbitrators from time to time, as may be necessary for the proper administration and operation of the Plan.
- (2) The Service Agreement and the Retainer Agreements shall continue. Notwithstanding the terms of the Service Agreement and the Retainer Agreements, the Judge shall issue all necessary directions, protocols, instructions, decisions or orders for the proper implementation, administration and execution of this Plan and any such directions, protocols, instructions, decisions and orders shall apply to, amend or supersede the terms of the Service Agreement and/or the Retainer Agreements where inconsistent therewith, provided however that the

obligation of Ontario to pay under the Service Agreement and the Retainer Agreements shall continue.

- (3) The Administrator shall administer this Plan and shall report to the Judge in a manner that the Judge directs.
- (4) The Administrator shall submit a budget for the operation of this Plan to the Judge for approval and shall pass its accounts from time to time but no less frequently than once per year.
- (5) The Judge may appoint an auditor and order an audit of the records of the Administrator relating to the administration of this Plan.
- (6) Ontario may audit the Administrator's records of this Plan from time to time with the consent of the Judge on such terms as the Judge may impose. Any such audit shall take place at the Administrator's place of business.

## **17. ADMINISTRATION OF THIS PLAN**

The Judge may issue orders in such form as is necessary to implement and enforce the provisions of this Plan and will supervise the ongoing administration and operation of this Plan, and without limiting the generality of the foregoing:

- (a) The Judge may make any order he considers necessary for the administration or operation of this Plan upon notice to the Administrator, the Class Counsel Representative and Ontario.
- (b) The Administrator, the Class Counsel Representative or Ontario may apply to the Judge for directions concerning the proper administration or operation of this Plan, including the determination of eligibility and evaluation of applications, at any time.
- (c) The Judge may appoint an assistant and this Plan shall pay the reasonable costs of that assistant as fixed by the Judge.
- (d) The Judge shall approve all rules, protocols and the tariffs with respect to legal costs necessary for the administration or operation of this Plan on notice to the Class Counsel Representative, the Administrator and Ontario.
- (e) The Class Counsel Representative shall present his or her accounts to the Judge and this Plan shall pay the reasonable costs of the Class Counsel Representative as fixed by the Judge for services related to the administration or operation of the Plan.

## **18. COSTS OF THIS PLAN**

Ontario has undertaken to the court to pay all the costs of this Plan, and if there

are any disputes about payment of these costs, such disputes shall be resolved by the Judge. The undertaking shall subsist until the termination of this Plan or until such time as the Judge releases Ontario from its undertaking.

**19. AMENDMENT OF THIS PLAN**

Other than sections 2.1, 2.2 and the amount of the \$2,000 minimum payment set out in section 3.2.3(2), this Plan may be amended by order of the Judge, in accordance with the provisions of this Plan and the provisions of the *Class Proceedings Act, 1992*, on notice to the Administrator, the Class Counsel Representative and Ontario.