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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JAIME SMITH, ALANA DALTON, JAMIE MCDONALD and IRENE SALES INC., OPERATING AS THE HARTLEY HOUSE	)	*Harvey T. Strosberg, Q.C.* and *Heather Rumble Peterson*, Class Counsel Representative
Plaintiffs	)	
-AND-	)	
THE CORPORATION OF THE MUNICIPALITY OF BROCKTON, THE BRUCE-GREY-OWEN SOUND HEALTH UNIT, STAN KOEBEL, THE WALKERTON PUBLIC UTILITIES COMMISSION and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO	)	*F. Paul Morrison* and *Linda Shin* for Her Majesty the Queen in Right of Ontario
	)	*Bruce Lee* and *Dan Fife*, Plan Counsel
Defendants	)	*L. Leslie Dizgun* and *Steven H. Goldman* for Maple Creek Landscaping Inc., Applicant under the Walkerton Compensation Plan
-AND-	)	
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	)	Heard: December 9, 2002 and February 17, 2003
Third Parties	)	
Proceeding under the *Class Proceedings Act, 1992*	)	

REASONS FOR DECISION

WINKLER J.:

THE MOTIONS AND THE PARTIES

[1] The present motions arise from the ongoing administration of the settlement agreement in the class proceeding brought on behalf of all those persons affected by the bacterial contamination of the Walkerton, Ontario water supply. On March 19, 2001, Chief Justice LeSage approved the settlement of the class action as encompassed in the Walkerton Compensation Plan.

[2] The Plan has been in operation since in or about April of 2001. It provides a means for compensating all those persons who were affected by and suffered a loss from the contamination of the Walkerton water supply. The purpose of the Plan is set out in the Overview preamble:

> "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."

It is contemplated that businesses suffering losses as a result of the water contamination are included among those who may make claims under the Plan.

[3] Since its inception, the Plan has distributed over $34,000,000 as compensation to Class Members, mostly residents of Walkerton, and primarily in respect of individual claims for the disruption and illnesses caused by the water contamination. The Plan has three unique and highly significant elements. It provides for compensation without proof of fault. It enables Class Members to make subsequent claims if additional damages relating to the the effects of the contamination occur or are discovered after a claim has been paid. Lastly, the Plan provides that claimants are entitled to recover "reasonable legal costs" incurred in advancing their claims.

[4] Maple Creek Landscaping Inc. is a claimant for business losses under the Plan. Its claim has been rejected by the Administrator. Maple Creek requested arbitration of its claim pursuant to the Plan but it also sought payment of its legal fees and expenses, on an interim basis, ostensibly so that it could properly pursue its claim through the arbitration. The issue of the interim fees was referred by the arbitrator to the Honourable Robert Montgomery, Q.C., who was designated by this court to assess the reasonable legal costs of eligible claimants under the Plan. Mr. Montgomery heard and dismissed the application of Maple Creek for interim fees. In his reasons, he expressed some reservation as to whether he had the jurisdiction to award interim fees, particularly to a claimant in the position of Maple Creek, whose eligibility as a Class Member was in issue in the proceeding, because its claim was based on alleged but unproven business loss.

[5] As a result of the ruling of Mr. Montgomery, Maple Creek brought two motions. The first seeks advice and directions with respect to its status under the Plan, its right to recover reasonable legal costs and its right to be paid interim fees and disbursements. In addition, Maple Creek also brought a second motion to oppose the confirmation of the Report of Mr. Montgomery.

[6] The motions of Maple Creek came on for hearing on December 9, 2002. During the course of

argument, counsel for the Government of Ontario took the position that Maple Creek, as a claimant, did not have standing to seek advice and directions under the terms of the Plan. However, prior to a decision on the point, the parties consented to an adjournment to permit Mr. Strosberg, the Class Counsel Representative, who was also appearing on the motions, to deliver an additional Notice of Motion seeking advice and directions, on behalf of the class, in the same vein as those sought by Maple Creek so as to foreclose any standing issues. Mr. Strosberg subsequently delivered his Notice of Motion and the matter was rescheduled for hearing on February 17, 2003.

[7] The motion brought on behalf of the class seeks advice and directions in respect of four matters:

> (a) Can a person be a Class Member without first establishing that damages are payable from the Fund? That is, if a person is determined by the Administrator to be eligible following evaluation of the Stage I application, is he, she or it a Class Member?
>
> (b) If a person is an eligible Class Member following successful completion of the Stage I application process, is he, she or it entitled to recover reasonable legal costs under the Plan, even if he, she or it fails to establish that damages are payable?
>
> (c) If a person is an eligible Class Member following the successful completion of the Stage I application process, is he, she or it also therefore an "eligible person" within the meaning of that term as used in the order of Mr. Justice Winkler dated April 16, 2001?
>
> (d) Is Ontario required to apply to the court to determine the "terms and manner" in which it may participate in place of the Administrator in a proceeding under section 3.2.7 of the Plan? If yes, who is to be given notice of the application?

[8] At the commencement of the hearing on February 17, 2003, counsel for Ontario conceded that the first three questions raised in the motion of the Class Counsel Representative should be answered in the affirmative. Notwithstanding the concession, I would have reached the same conclusion and accordingly, I so find. This result disposes of 3 of the 4 questions raised by Class Counsel and 2 of the issues raised by Maple Creek in its motion. For present purposes, Maple Creek is a Class Member and is entitled to be paid its reasonable legal costs under the Plan.

[9] This leaves the following issues to be determined. In respect of Class Counsel's motion, question (d) regarding Ontario's participation, as set out above remains, and in respect of Maple Creek's motion, there are two points remaining in issue, namely, (i) is Maple Creek entitled to interim fees and disbursements and (ii) should the court decline to confirm the decision of the Mr. Montgomery dismissing the application for interim fee payments?

THE MOTIONS FOR DIRECTIONS - ANALYSIS AND DISPOSITION

(i) Are directions necessary on a case by case basis for Ontario's participation

[10] I turn first to the question raised by Class Counsel as to whether Ontario must seek directions from the court before participating in a claims proceeding for business losses over $25,000 or diminution of real property value. Insofar as this question contemplates that the court will be involved in issuing directions on a case by case basis, the answer is no. The burden imposed by such a requirement would have a negative effect on the Plan. It would alter the role of the Court from that of a general overseer, to that of a hands-on case-manager of each case. Arbitrators have been appointed by the Court to perform that task, consistent with the purpose and objectives of the Plan. For further guidance to the arbitrators and participants, draft rules of procedure on arbitrations have been prepared pursuant to a direction from this court. These will be finalized shortly.

(ii) Directions generally

[11] Consistent with the court's role as a general overseer of the Plan, and in response to the motions for directions, the factual matrix of the present matter provides an appropriate background within which to provide the requested guidance. In that respect, the following provisions from the Overview section of the Plan are instructive:

> "[Under the Plan, 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."
>
> "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." (Emphasis added.)
>
> "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."

[12] As its title suggests, the Walkerton settlement is a compensation plan. It must be treated as such rather than as a framework for continued adversarial litigation. There are no issues of fault to be determined. Applicants are entitled to "full and complete compensation, without regard to fault,

in accordance with Ontario law". The purpose of the plan in general, and the mediation / arbitration process in particular, is to provide a means for a fair, simple, fast and inexpensive resolution of the claims of the class members. To this end, the arbitrators must be proactive in case managing the arbitrations, to avoid unnecessary costs, delays, technicalities and prolonged proceedings.

[13] It is possible that there will be arbitrations where the parties will find it necessary to adduce expert evidence relating to the losses claimed. If at all possible, the claimants and the opposing party on an arbitration, whether the Administrator or Ontario, should agree on the appointment of a neutral expert for this purpose. If agreement cannot be reached, and no neutral expert has been appointed by the Court in respect of the category of loss in question, the arbitrator should consider appointing such an expert. Clear directions should be issued to that expert to ensure that the report is indeed done on a neutral basis. The arbitration process was not intended to devolve into a battle of competing experts with the associated costs and delays. The fees of the expert appointed by the arbitrator will be paid by the Plan.

[14] Any issues that are likely to either increase the costs of the proceeding or cause delays in the determination should be addressed, and dealt with, by the arbitrator at a case conference prior to the hearing. Such an approach is consistent with the objectives of the Plan to provide an "efficient, timely and impartial" compensation process for the actual loss suffered by the Class Member.

[15] The foregoing will provide guidance as to how arbitrations dealing with compensation issues are to be conducted. The general principles must also be applied to those arbitrations held for the purpose of appealing the administrator's decision on the eligibility. From the regular reporting of the Administrator, it appears that approximately 450 claims have been rejected to date. Should any of those persons proceed to arbitration regarding the denial, they should be provided with the same type of fair, simple, fast and inexpensive hearing by the arbitrators.

(iii) Reasonable legal costs of claimants counsel

[16] This discussion also speaks to the fourth ground of the motion brought by Class Counsel. However, I find that there are general concerns underlying his motion for directions, as well as the remaining issues in the Maple Creek motions, which require comment. In particular, these general concerns related to the interpretation of the provisions in the Plan providing for the payment of the legal fees of claimants. The Overview preamble, as excerpted above, of the Plan and s. 4(3) both provide that "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." Some context and analysis must be applied to this provision.

[17] In applying the necessary context and analysis, I will be relying on the information provided to the court by the parties in the record filed on the motion, but in addition, where more general observations are concerned, I will also incorporate information from the reports concerning the implementation of the Plan that have been provided to the court from time to time, at my direction and in conjunction with the supervisory jurisdiction of the court over the administration of the settlement both under the Plan and the *Class Proceedings Act.*

[18] It was apparent from the outset of the implementation of the settlement that fixing an arbitrary tariff for legal fees for claimants, in a factual vacuum, could work an injustice. Accordingly, in an exercise of the jurisdiction granted to me under s. 17 of the Plan, on April 16, 2001, I appointed the Honourable Robert Montgomery, Q.C., one of the previously appointed arbitrators for the claims process under the Plan, "to determine the reasonable legal fees and disbursements of counsel for persons eligible under the Walkerton Compensation Plan until further order of the court". This provides consistency while at the same time permiting a case by case determination.

[19] The fees regime has been further advanced as a result of proactive steps taken by a group of counsel representing the majority of the claimants on the one hand, and the Administrator and Plan Counsel, on the other, in attempting to find a way to deal with the prospect of expediting the resolution of thousands of claims in the most efficient manner. To this end, after a substantial number of the claims submitted had been initially reviewed by the Administrator, Mr. Strosberg in his role as Class Counsel Representative organized a meeting in June of 2001, at which counsel for the claimants agreed to a method for resolving most of the claims for minor illness and water disruption. An offer system, replete with a standard tariff amount for legal fees was put in place.

[20] The offers to be made were based on the high end of the range for compensation under Ontario law for the losses covered, in order to be as fair as possible for all concerned. Thus, it was not contemplated that anyone would be paid less than they were entitled to receive, but it may have been the case that some would receive more. However, the differences per individual would amount to hundreds rather than thousands or tens of thousands of dollars. Given the terms of the Plan and the very real costs associated with even the fastest and most simple arbitrations, the overall effect was to provide more money to claimants by way of compensation, while reducing legal expenses, overheads and resulting in the same, or lower, approximate net cost for funding purposes.

[21] As a result of these efforts, the Plan has, to date, paid out approximately $34,000,000 in direct compensation to claimants while less than 8% of that amount has been paid by way of legal fees related to the claims. This underscores the point that the true purpose of the Plan is to provide compensation for losses suffered by eligible claimants rather than disproportionate legal fees.

[22] Ensuring that the purpose of the Plan is met on an ongoing basis requires that the term "reasonable legal costs" be interpreted in the context of the other provisions of the Plan. The word "reasonable" is a modifier, or limitation, that must be viewed in a specific case, not only in terms of quantum of the fee sought, but also the proportionality between the fee and the compensation payment and the fees paid in respect of other similar claims. Consideration must also be given to the fact that the Plan has eliminated any issues relating to fault or one-time only settlements. Taking these factors into account is the best method for combating abuses of the Plan or a diversion of its true purpose, that of providing compensation to eligible claimants, to one of providing ongoing retainers to counsel to the detriment of claimants expecting, and entitled to, an "efficient and timely" determination of their claims.

[23] Some expansion on the foregoing is warranted. The term reasonable as it applies to fees of

claimants counsel imports that the proportionality of the fee to the result must be considered. Also, whether the fees incurred are "reasonable" will depend, among other things, on the issues involved and the manner in which the claim was advanced. Examples of factors to be taken in to account could include whether it was reasonable to commence an unsuccesful claim to begin with; whether an offer was made by the administrator in respect of a claim so that an arbitration was necessary; or whether a reasonable offer was made but rejected by the claimant. In addition, steps taken which prolong the proceeding rather than advance the matter to a resolution are a relevant consideration. The obligation to have the claims resolved in a "timely and efficient" manner does not rest only with the Administrator, or Ontario where it is involved in place of the Administrator. It is shared by counsel for the claimants as well and counsel cannot seek to increase legal fees through a failure to meet this obligation.

[24] Similar claims also provide a useful guide for determining the reasonableness of the legal fees incurred. Class proceedings by their nature are based on a significant degree of commonality in the claims of class members. In Walkerton, there were exceptional cases where contamination resulted in tragic loss of life and others where severe illness with lasting effects resulted. Clearly cases of this nature require individual treatment. However, the claims of the majority of class members have significant elements in common. All class members suffered disruption and inconvenience. A substantial portion of the class members suffered from illness without apparent lasting effects and from which the debilitation would be classed as minor, although certainly acutely felt in the period in which it occurred.

[25] Many of the minor illness and water disruption claims have now been settled, most under the offer system referred to above. These cases provide guidance for both compensation amounts and reasonable legal costs. As stated, the offer system set compensation at the high end of the range "in accordance with Ontario law". Exceptional cases may warrant different treatment. However, if an offer is found to have been unduly rejected, this should be taken into account in determining the reasonableness of a fee.

[26] Because of the nature of the Plan and the obligation to pay reasonable legal fees, where an offer is refused and the matter proceeds to arbitration with the result that a disposition is received which exceeds the offer but not sufficiently so as to justify the added cost and delay this should be reflected in the fee. The Plan uses different terms to describe the compensation objective itself. Although the preamble to the Plan describes its purpose as ensuring that Class Members receive "full and complete compensation", that term is modified by the additional clause in the preamble that states that individuals will have access to "fair compensation through an efficient, timely and impartial process." These terms, particularly the emphasis on fairness and efficiency, when considered in the context of the scheme as a whole and along with the obligation to pay "reasonable legal costs", leads to the conclusion that the Plan does not contemplate the expenditure of disproportionate legal fees to achieve minimal gains. Accordingly, an approach to assessing reasonable legal fees based on principles applied under Rule 49 of the Rules of Civil Procedure is not appropriate.

[27] The assessment of the reasonableness of legal fees should also be guided by the terms of the

Plan relating to fault and future claims. As stated above, there are no issues of fault to be determined. Further, under s. 2.3, Class Members are entitled to seek additional compensation, despite having settled a claim, if they suffer "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."

[28] In individual tort claims, significant expenses are often incurred because of the need to prove fault and the need to ensure that plaintiffs receive proper compensation in a one-time only damages award. Where the plaintiff will have damages assessed only once, there is a considerable onus on his or her counsel to make sure that all losses, whether realized or potential, are included in the calculation of those damages. Often, this means that counsel must delay proceeding with a case until the damages have crystallized, so as to ensure that a proper assessment can be made. Also, there may be substantial expense incurred for expert assessment of the full impact of the injury. Neither approach is necessary in dealing with claims under the Walkerton compensation Plan. The Plan contemplates settlements for the injuries that are evident or discoverable at the point of the settlement. Further applications for compensation may be made where subsequent developments provide a basis for additional compensation. The elimination of the standard tort-based final settlement is a unique element of the Plan. It must be given effect. It is simply the wrong approach to complicate a proceeding because of a concern based on the concept of one-time settlement in tort cases. In so far as that misguided approach results in additional legal fees or expenses, such fees or expenses are not "reasonable" in the context of the Plan.

[29] However, I note that the fact that fault is not in issue does not mean that causation will not be an issue in some cases. In certain cases, there will be a live issue with respect to whether the damages or injury for which compensation is claimed were caused by the water contamination.

[30] There is one remaining point that must be addressed in concluding this analysis. Although the Plan refers to "reasonable legal costs", it clearly means fees reasonably incurred by the Class Members in advancing their claims, rather than "costs" as that term is used in ordinary litigation. The principles upon which costs awards are made to indemnify the successful party in normal adversarial litigation, have no application in determining the amounts that Class Members are entitled to be paid for the legal fees and expenses incurred in seeking compensation. Subject only to the qualification that the term reasonable imparts to the analysis of their legal expenses, and the exercise of discretion in determining the reasonable fee in the total context of the claim, the Class Members are entitled to indemnification for their legal expenses.

MAPLE CREEK'S CLAIM FOR INTERIM COSTS

[31] Lastly, I turn to the matters raised by Maple Creek. It claims compensation under the Plan for business losses it says were sustained as a result of the water contamination in Walkerton. Its business premises are located at the townline of Walkerton in the Municipality of Brockton. Maple Creek did not receive its water from the contaminated Walkerton municipal water supply during the relevant period of May to December 2000. Nonetheless, Maple Creek alleges that it suffered losses because of the decline in sales following the contamination of the Walkerton water system. Those

losses have been quantified by Maple Creek in its claim as ranging between $800,000 to $1,200,000.

[32] Maple Creek has incurred substantial expenses to date, legal and otherwise, in the pursuit of its claim. It estimates that it will incur much more in the conduct of the arbitration. As a result, it made application to Mr. Montgomery for approval of payment for its fees and expenses, on an interim basis, pending determination of the underlying claim through the arbitration process. Mr. Montgomery declined to make an award for payment of interim fees. In consequence, Maple Creek brought the present motions before this court seeking to have a determination of its right to legal fees and expenses on an interim basis and to oppose the confirmation of the report of Mr. Montgomery. For the reasons that follow, I have concluded that although interim fees may be awarded in exceptional cases, I am in agreement with the disposition that none should be awarded in this case. The report of Mr. Montgomery will be confirmed.

(i) Maple Creek's standing

[33] As stated above, the first hearing of the Maple Creek motion was adjourned, because of an objection by Ontario as to Maple Creek's standing, on the consent of the parties, without a determination of that issue. Despite the delivery of the additional motion materials, that objection has not been formally withdrawn. I deal with it as a preliminary matter. Simply put, I am unable to accede to the objection. Maple Creek's Stage I application was accepted by the Administrator and, as now accepted by Ontario, Maple Creek is a Class Member. Given the nature of its claim, whether it eventually establishes an entitlement to compensation is another matter, but that does not alter its status before this court.

[34] The objection as to standing appears to be founded on s. 17(b) of the Plan, which states in part that "[t]he Administrator, the Class Counsel Representative or Ontario may apply to the Judge for directions concerning the proper administration or operation of this Plan". However, this language is clearly permissive rather than imperative and exclusionary. In other words, although specific parties have been enumerated as entitled to bring motions for directions, no other parties have been specifically excluded, especially Class Members. In a Plan of this nature, I would require the clearest of language to bar a Class Member from seeking the direction of this court given the supervisory jurisdiction it has over the proceeding. Accordingly, I find that Maple Creek has standing to bring its motion.

(ii) Jurisdiction to award interim fees

[35] Maple Creek seeks directions as to its entitlement to payment for its interim legal fees and expenses. Since its other motion asks to have the court refuse confirmation of the Report of Mr. Montgomery, which rejected the application for such payment, the motions appear to be two halves of a whole and must be dealt with together.

[36] Although I am not persuaded that the provisions of the Plan preclude the payment of interim fees on an absolute basis, the stipulation that "reasonable legal costs" will be paid, requires that such payments must be granted in only the most exceptional of cases. What is "reasonable" in terms

of fees accrued by counsel will vary depending on the particular facts of the case, and a consideration in that context of the factors that I have outlined earlier in these reasons. Obviously, the factors relating to business losses may invoke different considerations than are applicable where compensation for personal injuries is claimed but, nonetheless, the analysis most often will have to be conducted after the claim has been determined and the case is concluded. The fee assessment is an exercise of discretion and as such, it is difficult to conceive of how this can be achieved outside of the factual context within which the discretion will be exercised. This is especially so where there is a live issue as to whether there has been any compensable loss.

(iii) Maple Creek's entitlement to interim fees

[37] The instant matter is a case in point. The losses claimed are significant and may or may not be provable. The amount of fees incurred to date, and estimated to be necessary in future to conclude the case, are significant. The claimant has utilized the services of two senior counsel, from two separate law firms, to advance its claim, and even though it contends that the matter is a "test case", the elements that could be properly related to that aspect of the matter are points of law. The expenditures in terms of time and resources necessary to establish that point would likely be minor when compared with the expenditures related to the proof of the loss claimed.

[38] There is at present no real basis for determining what the final fee will be. Maple Creek estimated, in its application to Mr. Montgomery, that its costs may run as high as $160,000 through to the completion of the arbitration. This is not a case where the fees sought are such and the claim for compensation sufficiently clear that proportionality of fee and result, reasonableness of time and resources expended, will not be issues to be determined in exercising discretion under the general rubric of reasonableness. These questions must be answered contextually. At this preliminary stage that cannot be done nor will that be possible in most instances. Here the present and projected costs of litigation and resources expended seem inordinately high. Hence Mr. Montgomery's, and this courts, reluctance to grant an interim fee.

[39] Although Mr. Montgomery did express some doubt as to whether he had the discretion to award interim fees, a doubt which should be resolved by these reasons, he indicated that he would have declined to exercise that discretion in favour of awarding interim fees in any event. In all of the circumstances, I find that his refusal to award interim fees was justified.

[40] Moreover, in view of the general guidelines set out above, which should be applied in the continuation of the arbitration, I am not certain that the costs estimated to be incurred by Maple Creek will or should come to pass in any event, either in the conduct of the hearing generally, or in the retention of experts in particular.

SUMMARY AND CONCLUSIONS

[41] By way of summary, I emphasize the following points:

(a) The Plan provides for a compensation scheme, rather than a framework for continued

adversarial litigation.

(b) Arbitrations should be conducted in a manner that ensures that the Plan's true purpose, to provide fair compensation on a timely basis to eligible claimants, at a reasonable cost, is advanced and not defeated.

(c) The use of the word "reasonable" with respect to the legal fees incurred by claimants is a modifier that must be interpreted, in specific cases, in light of a number of factors including the proportionality of the legal fees claimed to the disposition or settlement reached, prior offers of compensation, the guidance provided by settlements in other similar claims and the scheme and parameters of the Plan, in particular those provisions dealing with fault and future claims.

(d) Principles developed in relation to costs awards in ordinary, adversarial litigation have no application in determining the amounts payable for claimants legal fees under the Plan.

(e) Interim legal fees may be paid in rare, exceptional cases. However, such payments will be the exception rather than the norm.

[42] In conclusion, I must state unequivocally that nothing in these reasons should be taken as criticism of the operation or implementation of the Plan to date. To the contrary, it is remarkable that given the complex nature of the settlement and its ambitious objectives, in almost two years of operation this is the first occasion requiring directions from the court.

[43] All of the parties involved in the implementation and ongoing operation of the Plan, including the Administrator, Plan Counsel, the mediators and arbitrators, the Class Counsel Representative and the Government of Ontario and its counsel, have taken a constructive approach to resolving the problems that inevitably arise in a compensation plan of this magnitude. In particular, the Government of Ontario has honoured its undertaking to this Court in relation to the settlement in every respect thus ensuring that the Class Members receive fair compensation, consistent with the purpose of the Plan. I am hopeful that these directions will assist in ensuring that the Plan continues smoothly on its now well-established course.

[44] The motions of Maple Creek resulting in this proceeding seeking directions on a broader scale were necessary and served to both frame and, as a result of these reasons, clarify certain issues regarding the implementation of the Plan. Accordingly, Maple Creek shall be entitled to its "reasonable legal costs" incurred in bringing the motions, which shall be fixed by this court, following the receipt of brief submissions in writing together with supporting dockets from its counsel.

WINKLER J.

Released: March 18, 2003