

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
THE WALKERTON COMPENSATION PLAN**

Applicant

AND:

The Court Appointed Administrator

Respondent

Appearances:

On behalf of the Applicant: No one attended on behalf of the Applicant

On behalf of the Administrator: Milena Protich, Plan Counsel
Heather Batchilder, Evaluator

COURT APPOINTED ARBITRATOR:

Reva Devins

REPORT

1. Ms. ***** ***** has submitted an application for compensation under the Walkerton Compensation Plan on behalf of her minor daughter, *****, (the "Applicant"). The Applicant was not a resident of Walkerton, however, she was a frequent visitor and she claims that she became ill as a result of consuming water in Walkerton in May 2000. The Applicant seeks compensation for illness arising from her consumption of contaminated water.

2. The Administrator accepted that the Applicant became ill as a result of consuming contaminated water. ***** was classified as a Class Member under section 1(b) of the Plan and received \$2000.00 as an initial minimum. The Administrator subsequently made an Offer of Compensation for minor illness in the amount of \$3000.00, less the \$2000.00 advance. The Administrator takes the position that this amount would adequately compensate the Applicant for her damages as a result of minor illness and is in keeping with offers of compensation made to other similarly situated applicants. This offer was not accepted.
3. Pursuant to the Directions of Mr. Justice Winkler¹, a Status Review Hearing was scheduled with respect to this application. The hearing was set down for November 10, 2004. Neither the Applicant nor her guardian, ***** ***** attended the Hearing. On the basis of evidence provided at the hearings, the Referee was satisfied that the Applicants' guardian received notice of the hearing and that she did not contact the Administrator to advise of any reason why she was unable to attend at the designated time and place for her Hearing. The Status Review Hearing was adjourned.
4. An Arbitration to determine this matter was convened on April 19, 2005. Neither the Applicant nor her guardian attended. A Notice of Proceeding was sent to the Applicant's guardian by Registered Mail on March 22, 2005. Heather Batchilder, Claim Evaluator with the Walkerton Compensation Plan, testified that the Notice of Proceeding was not returned and that mail previously sent to that address had been received by the Applicant's guardian. On the basis of this evidence, I was satisfied that notice of the Arbitration had been provided to the Applicant's guardian.

¹ Supplementary Directions issued March 30, 2004 following a Case Conference held on February 18, 2004 and Reasons and Directions issued February 27, 2004 by Winkler, J., Ontario Superior Court of Justice.

The Plan

5. The Overview to the Walkerton Compensation Plan provides, in part, as follows:

The Government of Ontario is committed to providing financial support and compensation to any individual 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.

6. Under the terms of the Plan, Class Members are entitled to receive full and complete compensation for losses sustained because of contaminated water in Walkerton, in accordance with Ontario law. The Administrator is obliged to assess individual claims and to offer compensation to address the losses of those who suffered through the Walkerton water emergency. The Plan is designed as a compensation scheme without the trappings of the traditional adversarial model.
7. In order to facilitate the fair and expeditious resolution of similar cases, a mediation effort requested by Mr. Justice Winkler² resulted in an understanding that for minor illness claims, an offer of \$500 was considered to be fair and reasonable if the primary symptoms of diarrhea, vomiting and cramps lasted less than 72 hours, and that \$3000.00 would be offered where a Class Member experienced these primary symptoms for more than 72 hours but for no more than 30 days. The Administrator's offers of compensation are based on this mediated amount.

² This mediation took place on June 11 and 12, 2001 and involved the Administrator, Class Counsel Representative, Plan counsel and counsel from Tick and Garcia, Siskinds and Harrison Pensa.

Award of Compensation

8. In her application for compensation, ***** claimed that she became ill with bloody diarrhea between May 17 and May 19, 2000 as a result of consuming contaminated water in Walkerton. The Applicant's Stage 2 application described her illness as lasting a "few days" resulting in her missing about a week of school. The symptoms of her illness fully resolved and she has not experienced any recurrence of symptoms. A Health Practitioner's Information Form submitted by the Applicant's physician confirmed that ***** suffered from bloody diarrhea and abdominal cramps in May 2000.
9. Many claims have been resolved under the offer system developed for the most common complaints of diarrhea and abdominal cramping shared by many Class Members who consumed tainted water. It is in this overall context, that all applications for compensation must be assessed. In particular, I must consider this claim for compensation in light of Mr. Justice Winkler's direction that the offer system developed under the Plan "set compensation at the high end of the range 'in accordance with Ontario law'", acknowledging that "Exceptional cases may warrant differential treatment"³.
10. Having reviewed the Stage 1 and Stage 2 Applications submitted on behalf of the Applicant, I do not find that there is anything "exceptional" in the circumstances of this Applicant that would warrant an award of compensation in excess of the mediated amount offered by the Administrator. Her application indicates that ***** was ill for a brief period in May 2000, that her condition improved after a few days and that she has suffered no subsequent long term effects from her illness. Ultimately, money is always a poor substitute for good health, however, ***** was fortunate to recover quickly from her exposure to contaminated water and she has not suffered any sustained symptoms. I am satisfied that an award of

³ Winkler, J. commenting on the administration of the Plan in a Motion for direction brought by Maple Creek Landscaping Inc., *Smith v. Brockton (Municipality)*, Court File No. 00-CV-192173CP, Reasons for Judgment issued on March 19, 2003, at paragraph 25.

\$3000.00 is appropriate compensation for the short term illness suffered by the Applicant and is consistent with the offer system approved by the Court to compensate individuals in a fair and equitable manner.

Order

11. The Applicant, ***** is awarded \$3000.00, less the \$2000.00 advance previously provided by the Plan, plus the applicable pre-judgment interest, as compensation under the Walkerton Compensation Plan for short term illness as a result of consuming contaminated water in May 2000.

Dated April 27, 2005

Reva Devins,
Court Appointed Arbitrator/Referee