

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

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Applicant

AND:

The Court Appointed Administrator

Respondent

Appearances:

On behalf of the Applicant: Charlene Stephens, Counsel
(by teleconference call)

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

COURT APPOINTED ARBITRATOR:

Reva Devins

REPORT

1. The Applicant, ***** , a minor, has submitted a Stage Two application for compensation under the Walkerton Compensation Plan. The Applicant was not a resident of Walkerton, however, he claims that he was ill between May 17 and May 27, 2000 as a result of consuming water in Walkerton. The Applicant seeks compensation for illness arising from his consumption of contaminated water.
2. ***** 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 his damages as a result of minor illness and is in keeping with offers of compensation made to other similarly situated applicants.

3. An Arbitration to determine this matter was convened on April 19, 2005. Neither the Applicant nor his guardian attended, however, the Applicant was represented by counsel, Ms. Charlene Stephens of Stan Tick and Associates. Ms. Stephens confirmed that the Applicant's guardian was aware of these proceedings and understood that the Applicant's application for compensation under the Plan would be finally determined.

The Plan

4. 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.

5. 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.

6. In order to facilitate the fair and expeditious resolution of similar cases, a mediation effort requested by Mr. Justice Winkler¹ 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.

Facts

7. ***** was not a resident of Walkerton, however, the Administrator has accepted that he consumed water delivered by the Walkerton P.U.C. and that he became ill as a result. In his application for compensation, John stated that he experienced diarrhea, vomiting, fever and cramping between May 17 and 27, 2000. There was some suggestion in the Application and accompanying medical documents of ongoing recurrences of diarrhea. At the Arbitration, the Applicant's counsel confirmed that the Applicant was not pursuing compensation for illness beyond May 2000. Counsel advised that ***** symptoms had in fact resolved after May 27, 2000 and that there was no further recurrence of any symptoms related to the consumption of contaminated water.

Submissions

8. Counsel for the Applicant and the Plan jointly submitted that the Applicant's illness was less than 30 days and that the Administrator's offer of \$3000.00 compensation was appropriate.

Award of Compensation

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

¹ 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.

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"².

10. Having reviewed the Stage 1 and Stage 2 Applications submitted on behalf of the Applicant, and having heard the submissions of counsel, 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. I am satisfied that ***** was ill for less than 30 days, that his condition improved and that he has suffered no subsequent long term effects from his illness. An award of \$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. On consent, the Applicant, ***** is awarded \$3000.00, less the \$2000.00 advance previously provided by the Plan, plus the applicable pre-judgment interest, as compensation for illness caused by contaminated water in Walkerton.

Dated April 27, 2005

Reva Devins,
Court Appointed Arbitrator/Referee

² 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.