

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

**WALKERTON COMPENSATION PLAN
(The “Administrator”)**

- and -

S. P., D. P., and T. P.

**MARTIN TEPLITSKY, Q.C.
Arbitrator**

APPEARANCES:

**On behalf of the
Adminsitrator**

**Daniel J. Fife, Counsel
Kim Chalmers**

**On behalf of
The P. Family**

Chris Collins, Counsel

Hearing held Monday, February 28, 2004.

The P. family has raised a number of claims. Their counsel has organized these in tabular form and I propose to discuss each claim in the same order as these appear in his summary.

S. P. is the mother of the other claimants. She is 44 years old. She is divorced and has custody of her children. Both of her children suffered from cramping and diarrhea from the contaminated water. She did not. Unfortunately, in July, 2000, her house was flooded first with contaminated water and then with sewage. As a result, her children's problems were exacerbated and she suffered from headaches, weight loss, extreme fatigue, sore throat, irritated eyes and skin irritation. Because the clean-up of her house proceeded at a very slow pace, these conditions persisted unabated until the beginning of 2001 when a competent cleaning company was finally engaged. Although these symptoms improved, they did not disappear until October 2002 when the family left their home in Walkerton and moved to Barrie.

Additionally, she suffered from stress, anxiety attacks and an adjustment disorder. All of these conditions were the direct result of the water problems. She worried about her children and whether their problems would resolve and/or reoccur. She believes that her life was destroyed.

I accept Dr. Mount's prognosis that her symptoms should be resolved within 6 months of this award.

The total period of time in which Mrs. P.'s enjoyment of life has been significantly affected will be five years. This loss of enjoyment of life includes her being in her contaminated house for more than two years; her suffering during this period; her anxiety about her children; her incessant attempts to resolve the problem which was not of her making; her having to move from Walkerton and her inability to work.

The Administrator suggests that her general damages should be assessed at \$40,000.00 (i.e. \$8,000 for each year). Mrs. P.'s counsel submits that \$100,000.00 would be appropriate (i.e. \$20,000.00 for each year).

Mrs. P. also claimed that she broke her foot in falling to the ground because of the malaise she was experiencing from the contamination. Although I accept that she collapsed on the ground, there is no basis for me to conclude that any causal connection exists between her breaking her metatarsal and the water problem. She also claims that she lost two teeth because of the contamination. Her dentist's report denies any causal connection between the loss of her teeth and the contamination. In assessing her damages I have excluded these matters.

Giving the matter the best consideration I can, I have concluded that all of her claims for general damages should be assessed at \$65,000.00 including any Family Law Act claims.

D. P. the son, is now 13 years old. His birth date is xx/xx/91. He suffered from diarrhea, cramps and bloody diarrhea for about a week. However, he has continuing irritable bowel

syndrome which is fortunately controlled by diet.

Additionally, after the flood, he experienced headaches, fatigue, sore throat, irritated eyes, skin irritations and loss of appetite. The move to Barrie has been very upsetting. He experienced some depression and anger with the situation his family found themselves in. All in all, it has been a very difficult experience. Fortunately, after the move to Barrie, his symptoms, other than the IBS and mental distress, disappeared.

I assess his damages for IBS at \$10,000.00 and his other damages at \$12,250.00 for a total of \$22,500.00 including Family Law claims.

T. P. is now 15 years old. She had a bout of diarrhea which quickly resolved. Unfortunately her asthma, which had been largely dormant for some years, was exacerbated by the conditions at home after the flood. She also experienced headaches, fatigue, sore throat, skin irritations and irritated eyes. These problems resolved after the move to Barrie. She also experienced mental distress related to these problems. Although she has no ongoing problem, her physical suffering was greater than her brother's. I also assess her damages at \$22,500.00, including Family Law claims.

Business Loss: The parties agreed that the sum of \$63,000.00 appropriately compensated this loss and I so award.

Housing Costs: The Walkerton house was not sold until the spring of 2004. During this time, Mrs. P. incurred \$7,000.00 of carrying costs.

Her accommodation costs in Barrie until the house was sold were \$23,000.00.

The Administrator submits that I should award \$7,000.00. Mrs. P. submits that I should award \$16,000.00. (\$23,000.00 - \$7,000.00) for this loss.

I have concluded that the proper measure of the loss from having to leave Walkerton is the cost of carrying the Walkerton house. It is neither fair nor reasonable for the Administrator to pay additional accommodation costs in a different environment. Where Mrs. P. chose to live and how much she chose to spend were up to her. She cannot be criticized for her choices. But, she is not entitled to be compensated on this basis.

She should be compensated for the cost of carrying the Walkerton house and I award \$7,000.00 for this claim.

Out-of-Pocket Expenses: A brief of out-of-pocket expenses was provided broken down into 11 categories.

In category 1, "Sewage Backup Expenses", the Administrator objects to the sum of \$2,647.63 for an air cleaner on the basis that no medical evidence was submitted to justify the

need for this expense. I am satisfied that the claimant acted reasonably in attempting to improve her living conditions which were causing her problems. However, she still has this appliance and I do not think that she should be allowed its total cost. I reduce this amount by \$1,000.00.

The next objection is to two items in Paragraph 4—Moving Expenses-Walkerton-Barrie. One is for \$364.71 for items lost or damaged in the move. The other is for \$426.48 for items needed for the new premises. I allow \$364.71 because it was foreseeable that some loss would be sustained in the move. However, the cost of purchasing items for the town house is not compensable. I deduct \$426.48.

The Administrator objects to job search and course expenses of \$1,895.68. Although in the result this expense did not generate income, it was, nevertheless, a reasonable bona fide effort at mitigation. Accordingly, I allow the sum as claimed.

The Administrator objects to skin supplements in the amount of \$1,309.45. The claimant sought to ameliorate the skin condition which was caused either by chlorine in the water or contaminates in her house.. There was no medical evidence to support this claim. Again, in my opinion, the claimant acted reasonably in trying to overcome her problem. I award her \$1,309.45 as requested.

The claimant sought \$1,285.72 for car repairs as a result of poor road conditions in Walkerton caused by attempts to address the water problem by replacing water pipes. The

Honourable Robert Montgomery dismissed an identical claim in an award dated August 12, 2003. I agree with his decision. This claim is dismissed.

In Item 11, a number of miscellaneous items are claimed. Their relevance to the problems in some cases is not clear. I reduce the claim by \$400.00.

In the result, I award, for out-of-pocket expenses, the sum of \$10,978.91.

There is also a claim for disbursements. I allow these as claimed save and except for the Kirwin Report. The amount claimed by the appraiser is \$48,623.58. In my opinion, the value of an appraisal of a residential property is in the \$2,500.00 to \$5,000.00 range. I allow \$5,000.00 inclusive of GST and disbursements. The appraiser was invited to attend the arbitration and declined. Any disbursements already paid should be deducted from the amount of \$11,547.39 allowed for disbursements.

Costs: If the parties cannot agree, I will remain seized on consent.

I shall also remain seized if any issues of addition or implementation arise.

DATED: March 2, 2005

MARTIN TEPLITSKY, Q.C.
Arbitrator