

**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 son, ***** ***** (the "Applicant"). The Applicant was a resident of Walkerton between April 1, 2000 and December 5, 2000 and he was supplied with water by the Walkerton P.U.C. The Applicant claimed compensation for disturbance due to water disruption; he did not submit a claim for illness arising from the consumption of contaminated water.

2. The Applicant was classified as a Class Member under section 1(a) of the Plan and he received \$2000.00 as an initial minimum. The Administrator subsequently made an Offer of Compensation for water disruption 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 water disruption. This offer has not been accepted on behalf of the Applicant.
3. Pursuant to the Directions of Mr. Justice Winkler¹, two Status Review Hearings were scheduled with respect to this application. The first hearing was set down for September 23, 2004 and a second Hearing was scheduled for November 10, 2004. Neither the Applicant nor his guardian, Ms. ***** ***** attended the Hearings. On the basis of evidence provided at the hearings, the Referee was satisfied that Ms. ***** ***** 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 the second scheduled Hearing². Both Status Review Hearings were adjourned.
4. An Arbitration to determine this matter was convened on April 19, 2005. Neither the Applicant nor his guardian attended. A Notice of Proceedings 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 the Plan had confirmed 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.

² The first Status Hearing was adjourned after Ms. ***** advised the Administrator that she was unable to attend on that date.

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 Walkerton Compensation Plan, Class Members are entitled to receive full and complete compensation, in accordance with Ontario law, for losses sustained because of contaminated water in Walkerton. The Administrator is obliged to assess individual claims and to offer compensation, in accordance with Ontario law, 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 Winkler³ resulted in an understanding that fair and reasonable compensation for disturbance arising from the disruption of the water supply to Walkerton residents was \$6000.00 for adults and \$3000.00 for minors. The Administrator's offers of compensation are based on this mediated amount.

³ 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. The Applicant was a resident of Walkerton and received water delivered by the Walkerton P.U.C. at the time that water borne pathogens were found to be in the system⁴. In his application for compensation, ***** did not claim to have become ill as a result of consuming contaminated water, however, he has claimed compensation for the disturbance caused by the disruption of water throughout the period of May 21st to December 5th, 2000.
9. The Applicant's Stage 2 application described the impact of the water disruption on him as follows: “***** was 7 months old at the time. We boiled water to kill all germs, and used bottle (sic) water to feed and bathe him. Alternate day care was required for [redacted] outside of Walkerton”.
10. Many claims have been resolved on the basis of the offer system developed for the most common experiences of inconvenience and stress arising from the crisis itself. It is in this overall context, that applications for compensation must be assessed. In particular, claims for compensation must be considered 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”⁵.
11. 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 application that would warrant an award of compensation in excess of the mediated amount offered by the Administrator. I have no doubt that this period was a stressful time for the Applicant's parents and consequently for him.

⁴ Between April 1, 2000 and December 5, 2000.

⁵ 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.

Ultimately, money is always a poor substitute for peace of mind. Nonetheless, the Court has approved an offer system to compensate individuals in a fair and equitable manner. In this instance, I am satisfied that an award of \$3000.00 is appropriate compensation for the disturbance due to water disruption suffered by the Applicant.

Order

12. 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 water disruption between May 21 and December 5, 2000.

Dated April 27, 2005

Reva Devins,
Court Appointed Arbitrator/Referee