

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

XXXXXX (minor)

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

AMENDED REPORT

1. Ms. xxxx xxxxhas submitted an application for compensation under the Walkerton Compensation Plan on behalf of her minor daughter, xxxx xxxx, (the "Applicant"). The Applicant was a resident of Walkerton between July 24, 2000 and December 5, 2000¹ and she was supplied with water by the Walkerton P.U.C. The Applicant claimed compensation for disturbance due to

¹ By correspondence dated October 20, 2006, I was advised by Plan Counsel that my original Award, dated April 27, 2005, contained an error with respect to the duration of the Applicant's residency in Walkerton. That Award indicated that the "Applicant" resided in Walkerton throughout the period of May 21st to December 5th, 2000 rather than the correct period of July 24 to December 5, 2000. I am therefore issuing an amended Award to correct this accidental error. My Award has also been amended to reflect the Administrator's offer of compensation based on a pro-rated sum for water disruption. In so doing, I would note that the Applicant, through her guardian, had accepted the Administrator's offer of \$2035.80, however, arbitration was required due to her failure to submit the necessary supporting affidavit.

water disruption; she 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 she received \$2000.00 as an initial minimum. The Administrator subsequently made an Offer of Compensation for water disruption in the pro-rated amount of \$2035.80, 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 water disruption. This offer was accepted on behalf of the Applicant; however, her guardian did not return a sworn Affidavit attesting to the acceptance of the offer as fair and reasonable compensation for xxxxx claim under the Walkerton Compensation Plan.
3. An Arbitration to determine this matter was convened on April 19, 2005. Neither the Applicant nor her 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 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.

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 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.
6. 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 fair and reasonable compensation for disturbance arising from the disruption of the water supply to Walkerton residents from May 21 to December 5, 2000 was \$6000.00 for adults and \$3000.00 for minors. The Administrator's offer of compensation is based on this mediated amount and is a pro-rated sum to reflect a reduced residency period.

Award of Compensation

7. 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 system³. In her application for compensation, xxxx did not claim to have become ill as a result of consuming contaminated water; however, she has claimed compensation for the disturbance caused by the disruption of water for the period of July 24, 2000 to December 5, 2000.

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.

³ Between April 1, 2000 and December 5, 2000.

8. The Applicant's Stage 2 application described the impact of the water disruption on her as follows: "We were inconvenienced during bath time. Constantly having to make sure xxxx was in no way having water in her mouth. We were also on edge whenever she was ill or had diarrhea, always watching for signs".
9. Many claims have been resolved under 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 all 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"⁴.
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 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 and her parents. 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 \$2035.80 is appropriate compensation for the disturbance due to water disruption suffered by the Applicant. This amount represents a pro-rated sum based on the Applicant's actual residency in Walkerton from July 24 to December 5, 2000.

Order

11. The Applicant, xxxx xxxx is awarded \$2035.80, less the \$2000.00 advance previously provided by the Plan, plus the applicable pre-judgment

⁴ 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.

interest, as compensation under the Walkerton Compensation Plan for water disruption between July 24 and December 5, 2000.

12. This Order, as amended, will replace the original Order issued on April 27, 2005.

Dated November 6, 2006

A handwritten signature in black ink, appearing to read 'R. Devins', with a stylized flourish at the end.

Reva Devins,
Court Appointed Arbitrator/Referee