

B: Overview: statutory authority, procedures and forms

The Public Guardian and Trustee's statutory authority with respect to the review of settlements for minors is set out in the Infants Act, R.S.B.C. 1996, c.223 and amendments thereto. The Infants Act gives the Public Guardian and Trustee jurisdiction to approve settlements for settlements of \$50,000 or under, exclusive of interest and costs, without court approval. The Infants Act also requires the Public Guardian and Trustee to provide comments to the court where a settlement exceeds \$50,000. Settlements include personal injury claims, wrongful death claims with respect to an infant's deceased parent(s) and other claims for unliquidated damages. Most claims relate to motor vehicle accidents and these guidelines are prepared from this perspective. Submissions for other claims should be adapted as appropriate. For more information, readers are referred to the Continuing Legal Education of BC publication Public Guardian and Trustee Handbook.

Section 40 of the Infants Act creates four categories of settlements, two where the settlement amount, excluding interest and costs, is \$50,000 or under and two where the settlement amount, excluding interest and costs, is over \$50,000.

Under section 3 of the Public Guardian and Trustee Act, the Public Guardian and Trustee or the Deputy Public Guardian and Trustee is authorized to sign settlement documents.

1. Settlements: \$50,000 or under

- a. No court action commenced (s. 40(4))

Procedure:

Where the proposed settlement, excluding interest and costs, is \$50,000 or under and no court action has been commenced, the guardian with parental responsibility for settling a proceeding relating to the minor, with the consent of the Public Guardian and Trustee, may enter into a Guardian Settlement

Agreement and Release which is binding on the minor. The Deputy Public Guardian and Trustee will sign the agreement and affix the Public Guardian and Trustee's corporate seal.

Required documents for PGT:

- i. Submission letter with enclosures and review fee
 - ii. Guardian settlement agreement and release
- b. Court action commenced (s.40 (7))

Procedure:

Where the proposed settlement is \$50,000 or under, excluding interest and costs, and a court action has been commenced, the solicitors for all parties of record sign a Consent Dismissal Order which is then forwarded to the Public Guardian and Trustee for the Deputy Public Guardian and Trustee's signature. The signed order is returned to counsel and the order can then be filed with the Supreme Court as a desk order. See Supreme Court Civil Rules 8-3(1) and 17-1(2).

Required documents for PGT:

- i. Submission Letter with enclosures and review fee
- ii. Consent Dismissal Order

2. Settlements over \$50,000

See also Practice Direction 12 dated 2010/07/01 – Infant Settlements and Fee Agreements – Application for Approval

- a. No court action commenced (s.40 (5))

Procedure:

Where the proposed settlement is greater than \$50,000, excluding interest and costs, and no court action has been commenced, counsel requests Statutory Comments from the Public Guardian and Trustee regarding

the proposed settlement, pursuant to section 40(10) of the Infants Act. settlement, pursuant to section 40(10) of the Infants Act. Applications for approval of settlements for minors and solicitors' fee agreements may be made by desk order. The party must file, in addition to a draft order and requisition, the following documentation (See Supreme Court Civil Rule 17-1):

- i. evidence of the consent of all parties. This may include a letter or statutory declaration signed by the guardian with parental responsibility for settling a proceeding relating to the minor, confirming approval of the proposed settlement and the proposed fees to be charged;
- ii. evidence to support the propriety or reasonableness of the settlement. This will include affidavit material, including experts' reports, estimates, correspondence, offers to settle, and any other information that may be relevant to the granting of the approvals sought;
- iii. affidavit material in support of the reasonableness of the legal fees; and
- iv. the Public Guardian and Trustee's Statutory Comments. The application for court approval should not be set for hearing until counsel has ascertained when the Public Guardian and Trustee's Statutory Comments will be available. The Public Guardian and Trustee may require additional information regarding the proposed settlement before recommendations to the court can be prepared.

Required documents for PGT:

- i. Submission letter with enclosures and review fee
 - ii. Requisition and supporting affidavits, with the Public Guardian and Trustee's Statutory Comments attached as an Exhibit
- b. Court action commenced (s.40 (8))

Procedure:

Where the proposed settlement is greater than \$50,000, excluding interest and costs, and a court action has been commenced, counsel requests Statutory Comments from the Public Guardian and Trustee regarding the proposed settlement, pursuant to section 40(10) of the Infants Act.

Counsel prepares and files an Application and supporting affidavits seeking Court approval of the settlement. The Public Guardian and Trustee's Statutory Comments are usually marked as an Exhibit to the supporting affidavit, although they may be separately filed with the court. In either case, counsel should ensure that the Court Action number and Registry appear in the top right hand corner of each page of the Statutory Comments.

The application for court approval should not be set for hearing until counsel has ascertained when the Public Guardian and Trustee's Statutory Comments will be available. The Public Guardian and Trustee may require additional information regarding the proposed settlement before recommendations to the court can be prepared.

Required documents for PGT:

- i. Submission letter with enclosures and review fee
- ii. Application and supporting affidavits, with the Public Guardian and Trustee's Statutory Comments attached as an Exhibit
- iii. Draft order

Provided that the application for court approval of a settlement over \$50,000 is consistent with the Public Guardian and Trustee's Statutory Comments, the Public Guardian and Trustee will not need to be served with the Application and supporting material. The Public Guardian and Trustee will request a copy of the entered order. A cheque in the amount of the net settlement proceeds should be made payable to the 'Public Guardian and Trustee in trust for [the minor]' unless the court has appointed a trustee under s. 179 of the Family Law Act.

Once the Public Guardian and Trustee has provided Statutory Comments to counsel, the Public Guardian and Trustee has no further role in the case and, therefore, should not be asked to endorse the court order unless the Public Guardian and Trustee, or its counsel, will attend the hearing.

3. When the PGT does not recommend approval of settlement (s. 42 of the Infants Act)

Where the Public Guardian and Trustee is not prepared to recommend approval of a settlement, regardless of the settlement amount and whether or not court proceedings have been commenced, counsel may set down an application for court approval upon giving ten (10) days' notice **in writing** to the Public Guardian and Trustee, of the intention to do so.

The Public Guardian and Trustee will provide comments to the court in the form of Statutory Comments pursuant to section 42 of the Infants Act. The Public Guardian and Trustee must be served with the court documents pertaining to a section 42 application and may be represented by counsel at the court application.

An application for court approval pursuant to section 42 is also available where the Public Guardian and Trustee unreasonably delays in providing Statutory Comments.

4. Dismissing an action

Where it appears that the minor does not have a claim for damages but an originating proceeding has been filed with the Court, the minor's litigation guardian may, with the agreement of the Public Guardian and Trustee, consent to the dismissal of the minor's claim pursuant to section 40 (11) of the Infants Act. The Public Guardian and Trustee must be clearly satisfied that the minor has no claim before consenting to a dismissal and signing a Consent Dismissal Order. The Order should be signed by all counsel of record before being forwarded to the Deputy Public Guardian and Trustee for signature.

A detailed submission explaining why the claim (or partial claim) should be dismissed should be included in the submission. The submission should also include applicable case law and copies of the evidence supporting the dismissal, including:

- a description of the claim and why that claim (or that part of the claim) has not developed as hoped;
- copies of all relevant reports and evidence relating to the dismissal request;
- confirmation that the remaining defendants have sufficient resources or insurance to satisfy any outstanding claim the minor may have, where applicable;
- confirmation of an indemnity agreement to protect the minor if a dismissed defendant is brought back into the action by another party, where applicable; and
- advice about the outcome on costs, where applicable. Required documents:
 - i. Submission letter with enclosures and review fee
 - ii. Consent Dismissal Order signed by all counsel of record

5. Payment of funds to Public Guardian and Trustee in trust

Since August 2, 1994, the Court Registries have not accepted settlement funds for minors. The present procedure is to forward funds for minors to the Public Guardian and Trustee's office. Under s. 178 of the Family Law Act and with the consent of the defendant, funds \$10,000 or under may be paid to a guardian to be held in trust for the minor. The court may appoint a trustee other than the Public Guardian and Trustee pursuant to s. 179 of the Family Law Act.

Where an application is being made to appoint someone other than the Public Guardian and Trustee as trustee of the trust for the minor, please see the [Applications to appoint a trustee of a trust for a child under the Family Law Act](#) publication on our website. After a settlement has been approved by the court, forward the following to the Public Guardian and Trustee:

- i.** a Payment Notice (this will be provided by the Public Guardian and Trustee)
- ii.** the cheque for the net settlement proceeds payable to the 'Public Guardian and Trustee in trust for [the minor]'
- iii.** a copy of the entered court order

The Public Guardian and Trustee cannot accept settlement funds for a minor until it has a copy of the entered court order.

If the Public Guardian and Trustee has approved a settlement \$50,000 or under where no court action was commenced, a letter will be sent advising that the settlement has been approved and enclosing a copy of the endorsed Guardian Settlement Agreement and Release and the Payment Notice. Please forward:

- i.** completed Payment Notice
- ii.** a cheque for the net settlement proceeds payable to the 'Public Guardian and Trustee in trust for [the minor]'

A copy of the Payment Notice will be returned to the sender of the cheque in due course.