

## INFANT SETTLEMENT SUBMISSIONS PUBLIC GUARDIAN AND TRUSTEE'S REQUIREMENTS

### CHECKLIST OF ITEMS COMMONLY REQUIRED FOR REVIEW

1. The infant's full name, address and date of birth (and the infant's social insurance number if available)
2. Concise narrative description of the accident;
3. A discussion of liability if it is in issue; copies of witness statements; police reports; discovery transcripts; photographs or diagrams of the accident site; material damage repair sheets for all vehicles and copies of photographs, etc.;
4. A brief description of the infant's injuries and advice on the infant's current medical status, i.e., treatment, recovery and prognosis;
5. Copies of all medical information, including:
  - a) hospital records;
  - b) all medical-legal reports;
  - c) photographs of scarring.
  - d) Ambulance crew reports;
6. Head Injury Symptoms form, if any blow to the head occurred;
7. Parent/Guardian Questionnaire (particularly useful in smaller claims where there may not be a full medical – legal report on the infant);
8. Case law supporting both the liability assessment and quantum assessment;
9. Details of legal fees and disbursements, including where possible, copies of any contingency fee agreement, as well as time records or any estimate of the hours expended, together with the lawyer's hourly rate and any Bill of Costs;
10. Originals of settlement agreement and court order, duly executed;
11. Where the child has suffered severe injuries, the following additional medical-legal information should be included:
  - a) Actuarial reports
  - b) Vocational assessments
  - c) Rehabilitation assessments
  - d) Costs of future care reports



PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA

- e) Details of any proposal to manage the infant's funds, e.g. structured settlement options including any rationale.

## STATUTORY AUTHORITY, PROCEDURES AND FORMS

The Public Guardian and Trustee's statutory authority with respect to review of infant settlements 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 infant settlements, without court approval, for settlements totaling \$50,000.00 exclusive of interest and costs.

Section 40 of the *Infants Act* creates four categories of infant settlements, two where the settlement amount, excluding interest and costs, is \$50,000.00 or less and two where the settlement amount is over \$50,000.00.

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. At present, the Deputy Public Guardian and Trustee signs all legal documents pertaining to infant settlements.

### 1. Settlements Under \$50,000.00

- a) s.40(4): no court action has been commenced, and the settlement is \$50,000.00 or less, exclusive of interest and costs:

*Procedure:*

Where the proposed settlement is \$50,000.00 or less and no Court action has been commenced, the legal guardian of an infant, with the consent of the Public Guardian and Trustee, signified by the Deputy Public Guardian and Trustee's signature and the Public Guardian and Trustee's corporate seal, may enter into a Guardian Settlement Agreement and Release which is binding on the infant.

*Required Documents:*

- (i) Submission letter with enclosures and review fee
  - (ii) Guardian Settlement Agreement and Release
- b) s.40 (7): court action has been commenced and the settlement is \$50,000.00 or less, exclusive of interest and costs.

*Procedure:*

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 Public Guardian and Trustee will return the signed Order and the Order can then be filed with the Supreme Court as a desk Order pursuant to Rule 41(16) of the Supreme Court Rules.

*Required Documents:*

- (i) Submission letter with enclosures and review fee
- (ii) Consent Dismissal Order

**2. Settlements Over \$50,000.00**

- a) s.40 (5): no court action has been commenced and the settlement is greater than \$50,000.00, exclusive of interest and costs.

*Procedure:*

Counsel requests Statutory Comments from the Public Guardian and Trustee regarding the proposed settlement, pursuant to section 40(10) of the *Infants Act*.

Applications for approval of settlements for infants and solicitors' fee agreements may be made by desk order. The party must file, in addition to a draft order and requisition:

- (1) a letter signed by the litigation guardian or an affidavit sworn by the litigation guardian confirming approval of the proposed settlement and the proposed fees to be charged;
- (2) affidavit material in support of the reasonableness of the proposed settlement, including experts' reports, estimates, correspondence, offers to settle, and any other information that may be relevant to the granting of the approvals sought;
- (3) affidavit material in support of the reasonableness of the legal fees; and
- (4) a letter from the Public Guardian and Trustee providing written comments concerning the proposed settlement and legal fees.

Counsel may put the Public Guardian and Trustee on notice that the application will be brought, either by desk order or by application to the court, on or after a date not less than 60 days from the date of the notice. The 60-day period is intended to give the Public Guardian and Trustee time to prepare the submissions required.

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:*

- (i) Submission letter with enclosures and review fee

- (ii) Petition and supporting Affidavits with the Public Guardian and Trustee’s Statutory Comments attached as an Exhibit
- b) s.40(8): court action has been commenced and the settlement greater than \$50,000.00, exclusive of interest and costs.

*Procedure:*

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 a Notice of Motion and supporting Affidavit 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:*

- (i) Submission letter with enclosures and review fee
- (ii) Notice of Motion and supporting Affidavits with the Public Guardian and Trustee’s Statutory Comments attached as an Exhibit

Provided that the application for Court approval of a settlement over \$50,000.00 is consistent with the Public Guardian and Trustee’s Statutory Comments, the Public Guardian and Trustee will not need to be served with the Petition or Notice of Motion and supporting material. The Public Guardian and Trustee will request a copy of the entered Order and a cheque in the amount of the net settlement proceeds payable to the “Public Guardian and Trustee in trust for *the infant*”.

Once the Public Guardian and Trustee has provided Statutory Comments to counsel, the Public Guardian and Trustee has no further official role in the case and, therefore, should not be asked to endorse the Court Order or the Guardian Settlement Agreement and Release which is executed by the infant’s guardian or litigation guardian.

### **3. Section 42 of the Infants Act**

Where the Public Guardian and Trustee is not prepared to recommend approval of a settlement, 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 present his views 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 Infant's Action**

Where it appears that the infant does not have a claim for damages but an originating process has been filed with the Court, the infant's litigation guardian may, with the agreement of the Public Guardian and Trustee, consent to the dismissal of the infant's claim pursuant to section 40 (11) of the *Infants Act*. The Public Guardian and Trustee has to be clearly satisfied that the infant has no claim before he will consent to a dismissal and sign 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.

##### *Required Documents:*

- (i) Submission letter with enclosures and review fee
- (ii) Consent Dismissal Order signed by all counsel of record

#### **5. Payment of Infants Funds in Trust**

Since August 2, 1994, the Court Registries have not accepted infants' settlement funds. The present procedure is to forward infants' funds to the Public Guardian and Trustee's office. Cheques should be made payable to the "Public Guardian and Trustee in Trust for *the infant*".

After a settlement has been approved by the Court, please 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
- (iii) a copy of the entered Court Order

***THE PUBLIC GUARDIAN AND TRUSTEE CANNOT ACCEPT INFANT SETTLEMENT FUNDS UNTIL WE HAVE A COPY OF THE ENTERED COURT ORDER.***

If the Public Guardian and Trustee has approved a settlement under \$50,000.00 where no Court action was commenced, you will receive a letter advising that the settlement has been approved and a copy of the endorsed Guardian Settlement Agreement and Release and Payment Notice. Please forward:

- (i) completed Payment Notice
- (ii) a cheque for the net settlement proceeds

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

## SUBMISSION LETTER SEEKING PUBLIC GUARDIAN AND TRUSTEE APPROVAL OF AN INFANT SETTLEMENT

The Public Guardian and Trustee reviews the assessment of **liability, quantum** and the **legal fees** claimed in an infant's case. In order to assess whether a settlement falls within a reasonable range of damages, the Public Guardian and Trustee must have access to the same information that the parties had in arriving at their settlement figure.

The party submitting the infant settlement for approval should include the following information in their submission letter:

1. The infant's full name, date of birth and address;
2. A concise narrative description of the accident;
3. If liability is in issue, enclose copies of witness statements, police reports, discovery transcripts, photographs or diagrams of the accident site, etc., along with an analysis of the liability issue and case law supporting any negligence attributed to the infant;
4. A description of the infant's injuries and advice on the infant's current medical status and copies of all medical-legal information such as:
  - ambulance crew report
  - hospital admitting records
  - all medical-legal reports
  - clear, close-up photographs of scarring
  - Head Injury Symptoms Form
  - letters from parents (particularly useful in very small claims where there may not be a full medical-legal report on the infant);

In serious injury cases please also include:

- actuarial reports
  - vocational assessments
  - economic reports re: loss of opportunity
  - rehabilitation assessments
  - cost of future care reports
5. In serious injury cases, details should be provided as to how it is proposed the infant's funds should be managed over time (e.g. lump-sum payment vs. structured settlement). Include details of and rationale for any proposed structured settlement;
  6. Caselaw supporting assessment of quantum; and



7. Details of legal fees and disbursements including, where possible, copies of the contingency fee contract with the infant's litigation guardian and computerized time records and/or an estimate of hours expended together with the lawyer's hourly rate.

## **SPECIFIC MATTERS**

### **1. Contingency Fee Agreements and Legal Fees**

Under section 40(1) of the *Infants Act*, counsel may be authorized to enter into a binding fee agreement for an infant at the outset of a case. The Public Guardian and Trustee's consent is required if the fees will be not greater than \$10,000.00. Court approval is required if the fees will be over \$10,000.00. Public Guardian and Trustee or Court pre-approval of a contingency fee contract involving an infant only extends to the fairness of the contract. See

Commonwealth Investors Syndicate Ltd. v Laxton (1992), 76 B.C.L.R. (2d) 1 (S.C.), affirmed (1994), 94 B.C.L.R. (2d) 177 (C.A.) and Harrington (Guardian ad litem of) v Royal Inland Hospital (1995) 14 B.C.L.R. (3d) 20 (C.A.)

A contingency fee agreement entered into with an infant's litigation guardian, on behalf of an infant, is not binding on the infant in the usual course. It is, nevertheless, the practice for counsel to enter into such contingency fee agreements, knowing that the fees and disbursements will be reviewed at the conclusion of the case, by the Public Guardian and Trustee and the Court (if the settlement is greater than \$50,000).

When the Public Guardian and Trustee reviews legal fees and disbursements, he considers the factors set out in Yule v. Saskatoon (1955), 16 W.W.R. 35 (Sask. Q.B.), affirmed (1955), 17 W.W.R. 296 (Sask. C.A.) including:

- (1) the ability of the minor's guardian to pay. For individuals who will have difficulty paying counsel, their own recourse in pursuing their claim is to hire counsel willing to operate under a contingency fee agreement;
- (2) counsel's responsibility for the disbursements if the lawsuit is unsuccessful, since the claimant will have no resources;
- (3) the complexity and difficulty of the issues of liability and quantum of damages;
- (4) whether liability was a contentious issues and would be vigorously defended at trial;
- (5) the risk assumed by the counsel in exposing himself or herself to the possibility that there would be no payment for work done and disbursements paid if the claim was unsuccessful;
- (6) the experience of counsel in the field;
- (7) the time expended by counsel on the claim;

- (8) the stage at which the claim was resolved and whether preparation for trial was required;
- (9) the importance of the claim to the minor plaintiff and the family;
- (10) the success of the litigation and whether the settlement achieved was a good one which benefited the minor plaintiff;
- (11) remuneration to counsel who undertakes the prosecution of a difficult claim of uncertain prospects due to the various issues of liability, causation, and damages should be substantial in order to make up for those cases taken which do not result in success; and
- (12) legal fees should be determined taking into consideration all of the circumstances existing up to the time of the conclusion of the retainer.

When an application is made for approval of a minor's claim and for approval of the amount of the contingency fee, counsel must make full and complete disclosure to both the Public Guardian and Trustee and to the court. This disclosure must include all relevant information, including information addressing the above factors concerning the legal fees. (See Harrington at 273)

## 2. Family Compensation Act

In general, the Public Guardian and Trustee will require counsel to break down the infant's claim as to the various heads of damage and provide information in support of his or her assessment. For example:

- Loss of love, guidance and affection - information regarding the relationship between the infant and the deceased parent.
- Loss of household services - details of the services provided by the deceased parent, including household chores, maintenance and childcare. Actuarial reports quantifying same should be included.
- Loss of financial support - employment history and actuarial reports should be provided.
- Loss of inheritance – historical pattern of saving. Courts have made nominal awards even in cases of low income earners with no savings, therefore counsel should provide a rationale if no settlement under this head of damage is proposed.

While the loss of financial support is often made available to the surviving parent for the support of the infant during the years of his or her dependency, the Public Guardian and Trustee takes the position that compensation for loss of guidance and loss of inheritance should not be utilized for maintenance of the infant, and therefore, should be paid to the "Public Guardian and Trustee in trust for *the infant*" until the infant reaches at age nineteen.

## 3. Head Injuries

In cases where the infant has sustained a blow to the head, the Public Guardian and Trustee often requests that the infant’s parents or guardian complete a Head Injury Symptoms Form. Pre- and post-accident school records and hospital admitting records may also be helpful.

Where it appears that there may have been a serious head injury with permanent consequences, a neuropsychological report will likely be requested.

## 4. Native Indian Infants

An informal agreement exists between the Department of Indian Affairs and the Public Guardian and Trustee whereby settlements made on behalf of Native infants are now reviewed by the Public Guardian and Trustee in the same manner as settlements for non-Native infants.

## 5. Litigation Guardian

Rule 6 of the Supreme Court Rules deals with persons under disability. Rule 6(2) states “a person under legal disability shall commence or defend a proceeding by his or her litigation guardian.”

Rule 6(5) provides that a person ordinarily resident in the Province may be a litigation guardian of a person under disability without being appointed by the court.

Where no one is willing or able to act as litigation guardian for an infant, the Public Guardian and Trustee may be requested to act as litigation guardian.

If a child is in the continuing custody of the Director of Child, Family and Community Service or has no guardian, or if the guardian is dead, or is incompetent by law to act, the Public Guardian and Trustee is guardian of the estate of the child and is therefore the litigation guardian in any legal proceeding (section 29(3) *Family Relations Act* and Section 50(1) *Child, Family and Community Services Act*).

## 6. Administration of Infant Funds

Funds paid to the Public Guardian and Trustee earn interest and are subject to the standard commissions set out in the *Public Guardian and Trustee Fees Regulation*, BC Regulation 312/2000, including 5% on capital and income and a .04 of 1% per year asset management fee. For further information see “Your Child’s Trust Fund: A Guide to Working with the Public Guardian and Trustee” on our website.

Section 14(1) of the *Infants Act* gives the Public Guardian and Trustee discretion to release part or all of the funds held by the Public Guardian and Trustee in trust for an infant, for the infant’s maintenance, education or benefit prior to the infant turning 19.

Requests by parents or infants for release of funds may be made in writing to the Child and Youth Services Department at the Public Guardian and Trustee.

When considering requests for funds, the Public Guardian and Trustee will bear in mind the obligations of those charged with the support and maintenance of an infant and their ability to meet those obligations.

A few weeks prior to an infant turning 19, the Public Guardian and Trustee's will send the infant a computer statement of their trust account and release documents for the infant to sign at age 19. The infant returns the signed release documents to the Public Guardian and Trustee's office along with a copy of proof of age such as a birth certificate, passport, certificate of Canadian citizenship, or driver's license. Upon receipt of the documentation from the infant, a cheque will be mailed.

## **7. Public Guardian and Trustee's Review Fee**

The Public Guardian and Trustee's review fees are described in the Public Guardian and Trustee Act Fee Regulations. The fees are authorized under the *Public Guardian and Trustee Act Fees Regulation*, BC Regulation 83/2003, as amended from time to time.

**CHILD/PARENT/GUARDIAN  
QUESTIONNAIRE**

**Name of Child:** \_\_\_\_\_

The information you provide in this questionnaire will be used, along with medical reports, to assess your child’s claim for damages. Please be as accurate as possible. It may be helpful for you to discuss your child’s condition with him/her prior to completing the form.

If the form does not provide you with sufficient space, please feel free to attach additional pages or write on the back of the form.

**1. Circumstances**

Please advise what exactly happened in the accident (where was your child situated? Was he/she wearing a seatbelt? What was the estimated speed at the time of impact? Was it a two car collision? etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Injuries**

Please describe in detail the injuries your child sustained as a result of this motor vehicle accident.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Degree of Pain/Suffering**

Please answer the following questions:

a) In which parts of his/her body did your child experience pain?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) How frequently did your child experience pain?

---

c) When your child experienced pain, how long did it last?

---

d) Was your child’s pain worse at certain times of the day?

---

e) Did the pain interfere with your child’s sleep?

---

**4. Treatment**

a) If your child suffered a soft tissue injury, please indicate what treatment your child underwent by ticking the relevant box.

- |                         |                          |                 |                          |
|-------------------------|--------------------------|-----------------|--------------------------|
| medications             | <input type="checkbox"/> | chiropractic    | <input type="checkbox"/> |
| heat/ice                | <input type="checkbox"/> | massage therapy | <input type="checkbox"/> |
| rest/refrain activities | <input type="checkbox"/> | acupuncture     | <input type="checkbox"/> |
| home exercises          | <input type="checkbox"/> | Back Institute  | <input type="checkbox"/> |
| physiotherapy           | <input type="checkbox"/> | other           | <input type="checkbox"/> |

Please provide the names of your child’s treatment providers and indicate the number of appointments attended with each one:

---

---

---

---

b) If your child suffered another type of injury, please advise what treatment was provided and who provided it.

---

---

---

---

**5. School Missed**

Did your child miss school as a result of the accident? If so, how many days were missed?

---

**6. Effect on Activities**

a) Did the pain interfere with your child’s ability to engage in physical education, sports or other types of activities? Please describe (e.g. how was your child limited or restricted? Which activities were restricted? etc.).

---

---

---

---

b) Was your child unable to participate in physical education classes, sports or other activities because of pain caused by their injuries? If yes, please tell us what activities your child could not participate in.

---

**5. On what date did your child no longer experience any pain from their injuries?**

---

**6. Is there anything further you would like to add? (for example, how did the injury affect your child’s life?)**

---

---

---

---

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

## HEAD INJURY SYMPTOMS FORM

Name of Infant: \_\_\_\_\_

If your answer is “yes” to any of the following questions, please provide as much detail as possible. For example, how often is this a problem? How severe is the symptom when it occurs? How long does the symptom last? Generally speaking, has this symptom improved over time?

Did your child experience any of the following symptoms after the motor vehicle accident?

Loss of consciousness

Inability to recall the accident and/or subsequent events

Headaches

Dizziness

Blurred vision

Excessive fatigue

Problems with memory



Problems with concentration

**Head Injury Symptoms Form cont.**

Problems with judgement

Problems with social relationships

Problems with behaviour

Problems with his/her academic performance

Do you wish to add any further comments?

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



**Order for Infant Settlement (over \$50,000), Writ Filed***[Style of Proceeding]***ORDER**

|                            |   |                                |
|----------------------------|---|--------------------------------|
| BEFORE THE                 | } |                                |
| HONORABLE                  | } | <i>[day]</i> day the           |
| <i>[MR,/MADAM]</i> JUSTICE | } | <i>[day]</i> day of            |
| <i>[name]</i>              | } | <i>[month]</i> , <i>[year]</i> |

**THE APPLICATION** of the plaintiff *[or the defendant]* coming on for hearing on *[month, day, year]* at *[location]*, British Columbia, and on hearing *[name]*, counsel for the plaintiff, and no one appearing for the defendant, and BY CONSENT, and upon reading the Public Guardian and Trustee's written comments and other material filed;

THIS COURT ORDERS that:

1. the proposed infant settlement of \$ *[amount]* inclusive of general damages, court order interest, and taxable costs and disbursements relating to a motor vehicle accident which occurred in *[location]*, British Columbia on *[month, day, year]* is approved;
2. the aforesaid sum be paid by the defendant *[name]* as follows:
  - (a) \$ *[amount]* to the Public Guardian and Trustee to be held in trust for the infant until the infant attains the age of 19 years, subject to s. 14(1) of the *Infants Act*, and
  - (b) \$ *[amount]* to *[name of solicitors]* for legal fees and disbursements.
3. *[name]*, as guardian of the infant *[name]*, is hereby authorized to enter into an agreement of settlement and release of the claim in this action in such form as counsel may approve under s. 40(5) of the *Infants Act*,
4. the agreement of settlement and release when executed by *[name]*, as guardian on behalf of the infant, shall be good and effectual for all intents and purposes as if the infant was of full age, and had *[himself/herself]* entered into an agreement of settlement and release.

BY THE COURT

\_\_\_\_\_  
District Registrar

CONSENTED TO:

\_\_\_\_\_  
Plaintiff's Solicitor

\_\_\_\_\_  
Defendant's Solicitor

**Order for Infant Settlement (over \$50,000), No Writ Filed***[Style of Proceeding]***ORDER**

|                            |   |                                |
|----------------------------|---|--------------------------------|
| BEFORE THE                 | } |                                |
| HONORABLE                  | } | <i>[day]</i> day the           |
| <i>[MR,/MADAM]</i> JUSTICE | } | <i>[day]</i> day of            |
| <i>[name]</i>              | } | <i>[month]</i> , <i>[year]</i> |
|                            | } |                                |
|                            | } |                                |

**THE APPLICATION** of the petitioner coming on for hearing on *[month, day, year]* at *[location]*, British Columbia, and on hearing *[name]*, counsel for the petitioner, and no one appearing for the respondent, and BY CONSENT, and upon reading the Public Guardian and Trustee's written comments and other material filed;

THIS COURT ORDERS that:

1. the proposed infant settlement of \$ *[amount]* inclusive of general damages, court order interest, and taxable costs and disbursements relating to a motor vehicle accident which occurred in *[location]*, British Columbia on *[month, day, year]* is approved;
2. the aforesaid sum be paid by the respondent *[name]* as follows:
  - a) \$ *[amount]* to the Public Guardian and Trustee to be held in trust for the infant until the infant attains the age of 19 years, subject to s. 14(1) of the *Infants Act*, and
  - b) \$ *[amount]* to *[name of solicitors]* for legal fees and disbursements.
3. *[name]*, as guardian of the infant *[name]*, is hereby authorized to enter into an agreement of settlement and release of the claim in this action in such form as counsel may approve under s. 40(5) of the *infants Act*;
4. the agreement of settlement and release when executed by *[name]*, as guardian on behalf of the infant, shall be good and effectual for all intents and purposes as if the infant was of full age, and had *[himself/herself]* entered into an agreement of settlement and release.

BY THE COURT

\_\_\_\_\_  
District Registrar

CONSENTED TO:

\_\_\_\_\_  
Petitioner's Solicitor

\_\_\_\_\_  
Respondent's Solicitor

**Order for Infant Settlement (under \$50,000), Desk Order**

*[Style of Proceeding]*

**ORDER**

BEFORE A MASTER OF  
THE COURT

}

}

}

*[or]*

}

*[day of week, month, day, year]*

}

BEFORE A REGISTRAR

}

**ON THE APPLICATION** of the *[party]* without a hearing and on an infant settlement of \$ *[amount]* inclusive of general damages and taxable costs and disbursements (the “Infant Settlement”) being reached by the plaintiff and the defendant and approved by the Public Guardian and Trustee, and by consent;

**THIS COURT ORDERS** that:

1. the Infant Settlement be paid by the defendant as follows:
  - (a) \$ *[amount]* to the Public Guardian and Trustee to be held in trust for the infant until the infant attains the age of 19 years, subject to s. 14(1) of the *Infants Act*, and
  - (b) \$ *[amount]* to *[name of solicitors]* for legal fees and disbursements.
2. on payment of the Infant Settlement by or on behalf of the defendant, this action shall stand dismissed as if tried on its merits.

BY THE COURT

\_\_\_\_\_  
District Registrar

CONSENTED TO:

\_\_\_\_\_  
Solicitor for the *[party]*

\_\_\_\_\_  
Solicitor for the *[party]*

\_\_\_\_\_  
Public Guardian and Trustee

FORM 56 (Rules 41 (16), (16.1) AND (16.3) AND 64(9))

*[Style of Proceeding]*

**REQUISITION**

Required: An order by consent

1. Pursuant to rule 41 (16) and section 40(7) of the ***Infants Act***, R.S.B.C. 1996 c. 223
2. Attached to this requisition is a draft of the order required.
3. Each party affected has consented to the order.
4. [name of party] is under a legal disability, namely [set out legal disability]..

\_\_\_\_\_  
Dated

\_\_\_\_\_  
John White  
Solicitor for Joe Smith, Infant

**SETTLEMENT AGREEMENT (UNDER \$50,000) [FP 25]**

*The following is a sample infant settlement agreement approved as to form by the Public Guardian and Trustee. The Public Guardian and Trustee's consent is sought under the Infants Act, s. 40.*

*Caution: This sample agreement is not intended to suit all cases; it must be amended to suit the circumstances of the settlement under consideration. It cannot be adapted to all forms of infant settlements to which consent is sought under the Infants Act, s. 40. This sample agreement applies only where no court proceeding has been commenced. One or both guardians may make the agreement.*

## SETTLEMENT AGREEMENT

WHEREAS the undersigned, *[name of parent]* and *[name of parent]*, of *[address]*, British Columbia, are the father and mother and joint guardians of *[name of infant]*, born *[month, day, year]*;

AND WHEREAS on or about *[date of accident]*, *[describe accident; e.g., (name of parent), while operating a motor vehicle in a westerly direction on Georgia Street, Vancouver, was in collision with a motor vehicle owned and being operated by (name of defendant) in a southerly direction on Burrard Street, Vancouver, British Columbia]*;

AND WHEREAS the infant sustained injuries;

AND WHEREAS *[name of defendant]*, while denying all liability has agreed to pay by way of ex gratia payment the sum of \$ *[amount]* in full settlement of all claims of the infant, *[name of infant]*, and the undersigned, arising out of the motor vehicle accident;

AND WHEREAS the undersigned for themselves and each of them and on behalf of the infant *[name of infant]* have agreed to accept the sum of \$*[amount]* subject to the consent of the Public Guardian and Trustee, pursuant to the provisions of the *Infants Act*,

NOW THEREFORE KNOW ALL WHOM IT MAY CONCERN that the undersigned, in consideration of the payment of \$ *[amount]* as follows: the sum of \$ *[amount]* to the undersigned; the sum of \$ *[amount]* to *[name of law firm]*, barristers and solicitors, and the sum of \$ *[amount]* to be paid to the Public Guardian and Trustee at *[location]*, British Columbia, to be placed in trust for the infant, *[name of infant]*, in accordance with the *Infants Act*, the receipt of which sum is hereby acknowledged, DO FOREVER RELEASE AND DISCHARGE *[name of defendant]* from all claims whatsoever that the infant undersigned now have or that they may have at any time in the future against *[name of defendant]*, arising out of any cause, matter, or thing whatsoever existing up to the present time, and in particular, but without restricting the generality of the foregoing, of and from all claims whatsoever arising out of or in connection with the said accident that occurred on or about *[date of accident]*;

AND the undersigned, as father and mother and joint guardians of the infant, *[name of infant]*, in consideration of the sum of \$ *[amount]* as aforementioned, DO HEREBY AGREE TO FOREVER RELEASE AND DISCHARGE *[name of defendant]* of and from all claims whatsoever that *[name of infant]*, an infant, now has or that *[he/she]* may have at any time in the future against *[name of defendant]* arising out of any cause, matter, or thing whatsoever existing up to the present time, and in particular, but without restricting the generality of the foregoing, of and from all claims whatsoever arising out of or in connection with the accident that occurred on or about *[date of accident]*;

THIS AGREEMENT OF SETTLEMENT AND RELEASE pursuant to s. 40 of the *Infants Act* shall be deemed to be a good and sufficient discharge to all intents and purposes and shall operate as an agreement of the undersigned and of *[name of infant]*, an infant, *[his/her]* heirs, executors,

administrators, and assigns as fully and effectually as if *[name of infant]* were of the full age of nineteen (19) years and had *[himself/herself]* entered into the agreement of settlement and release;

THIS AGREEMENT AND THE RELEASE herein contained are subject to the consent of the Public Guardian and Trustee and the payment of the sum of \$ *[amount]* as herein set out;

LASTLY, we acknowledge that our solicitor has explained to us that, notwithstanding any fee agreement that we have made, it is still possible for us to have our solicitor’s bill reviewed by a Registrar of the Supreme Court in a taxation, to see whether it is reasonable as against our infant child. However, we are satisfied that it is reasonable, we do not want it to be reviewed by the Registrar, and we ask the Public Guardian and Trustee to approve of the payment of the above-mentioned amounts to our solicitor without taxation.

IN WITNESS WHEREOF the undersigned have hereunto set their hands and seals this *[month, day, year]*.

Signed, sealed, and delivered  
In the presence of

\_\_\_\_\_  
As to both signatures.

?  
?  
?  
?  
?  
?  
?  
?  
?  
?  
?

\_\_\_\_\_  
*[name of parent]*

\_\_\_\_\_  
*[name of parent]*

THE OFFICIAL SEAL OF THE PUBLIC  
GUARDIAN AND TRUSTEE  
was hereunto affixed to signify *[his/her]*  
consent to this agreement under s. 40 of  
the *Infants Act* on *[month, day, year]*.

\_\_\_\_\_  
Deputy Public Guardian and Trustee