

COURT APPROVAL OF SETTLEMENTS

Strong reputation, fresh approach.



Guild Yule LLP
BARRISTERS AND SOLICITORS

OVERVIEW

- Any proceeding involving a person under legal disability must be started or defended by his/her litigation guardian.
- Under Rule 20-2(17) no compromise of a claim by a litigation guardian is binding without approval of the court.
- While this involves both adult and infant litigants, there is an additional layer of review when the litigant is under age 19.



S. 40 OF THE *INFANTS ACT* AND 20-2(17) OF THE BCSC CIVIL RULES

- Guardian can settle up to \$50,000 excl. interest and costs with consent of PG&T
- Over \$50,000 settlement requires:
 - Written comments from the PG&T to be provided to the Court
 - Court approval



PG&T APPROVAL IN PRACTICE

- Upon reaching a settlement, Plaintiff's counsel must draft a detailed letter to the PG&T setting out all of the strengths and weaknesses of the Plaintiff's case.
- If the PG&T approves the settlement, PC's detailed letter and the PG&T's comments are attached as exhibits to PC's affidavit in support of the Court approval application.



PRIVILEGE AND PRIVACY IMPLICATIONS

- The Plaintiff has an interest in maintaining the confidentiality of PC's letter to the PG&T in case the Court rejects the settlement
- The Plaintiff also has a privacy interest in not having the amount of the settlement disclosed in open court
- The Defendants, particularly professionals, public bodies and municipalities, have an interest in not having the amount of the settlement and PC's views of their liability (which may include excerpts from discoveries) disclosed in open court.



IN-CAMERA HEARINGS AND SEALING ORDERS

Settlement privilege/confidentiality vs. the open court principle

Set up for success

- have a strong confidentiality clause in a mutual release agreed by all parties.
- Hope that PC has not previously made comments to the media
- Seek a sealing order that minimally interferes with open court principle
 - Unlikely to achieve sealing of entire file or redaction of party names.
 - Seek redaction of amount of settlement only
 - Emphasize the Plaintiff's privacy interest and inconsistency of allowing adult litigants to maintain confidentiality while offering less protection to infants
 - Emphasize settlement privilege constituting a social value of super-ordinate importance re SCC in *Sierra Club of Canada* and ONCA in *Hollinger*.



PG&T MANAGEMENT FEES

PGT acting as Trustee

The PGT holds funds or property in trust for children and youth, as set out in provincial law, will, trust agreement, court order or other agreement. The PGT invests and administers this money on the child's behalf, and responds to requests for expenditures from the trust.

Fee	Amount
Capital commission	3.75% of the total assets
Income commission	3.75% of all income received and income earned on it
Asset management fee (AMF)	0.7% per annum, computed monthly, on the gross value of all



PGT acting as a Financial or Legal Representative

When the PGT is appointed to act as the financial or legal representative (such as Committee of Estate, Attorney or Representative) for a vulnerable adult, the PGT has many responsibilities, including managing the adult's income, securing assets, conducting banking, paying expenses, investing and budgeting.

Fee	Amount
Capital commission	4% of the total assets
Income commission	4% of all income received
Asset management fee (AMF)	0.7% per annum, computed monthly, on the gross value of all assets
Estate liaison administration fee	\$120 per month
Acting as Committee, a minimum administration fee may be charged after death of the client	\$100 per month multiplied by the number of months the PGT was Committee of Estate less the total amount of fees and commissions charged to the client while the PGT was Committee of Estate



PG&T FEES IMPLICATIONS

Table A

Summary of Calculations

Descriptions of Money Sums (1)	Values (2)
1. Loss of Future Earnings	\$1,694,139
2. Costs of Care	\$8,159,821
3. Non-Pecuniary Damages	\$359,544
4. PGT and Custodial Fees	
- Capital Commissions 1	\$869,395
- Capital Commissions 2	\$684,198
- Other Non Deductible Fees	\$6,265,061
Sub-Total Non Deductible Fees	\$7,818,654
5. External Management Fees	
- Deductible Management Fees	\$2,808,061
6. Tax Gross-Up	\$2,792,868
Total, Items 1 to 3	\$10,213,504
Total, Items 4 to 6	\$13,419,583



Thank you for the opportunity to present to you!

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