

Supreme Court of Nova Scotia

Between:

[name] as litigation guardian for [name] [title in proceeding]

and

[name] [title in proceeding]

**Affidavit of [name of litigation guardian or other proposed trustee]**

I [make oath/affirm] and give evidence as follows:

- 1 I am the litigation guardian for [name] /other. [Note: The precedents assume that the litigation guardian proposes to be the trustee of the settlement fund. If not, an affidavit from the proposed trustee is also necessary.]
- 2 I have personal knowledge of the evidence [sworn to /affirmed] in this affidavit except where otherwise stated to be based on information and belief.
- 3 I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.

**Child's background**

4 [name] is [ ] years old and was born on [ ], as shown by the birth certificate attached to this affidavit and marked Exhibit "A".

5 [name] resides at [ ] in [ ], Nova Scotia with [name other residents and state their relationship to the child] .

6 etc. [Provide relevant, personal information such as parents' employment, parents' marital status and address or addresses, child's schooling, child's relationship with each other person in the residence.]

For example:

- Joan Ann Smith resides at 4321 Main Street ... with her mother, my wife Jocelyn Smith, her brother and sister, Randall, four, and Beatrice, two, and me.
- I am a postal worker employed with Canada Post for eleven years since I graduated from high school in June, 1990.
- My wife is a registered nurse, but she presently works at home taking care of the children full-time.

### **Collision**

[Describe how the collision occurred and the mechanics that led to the injuries. Include sources for hearsay.]

For example:

- Joan Ann was injured in a two vehicle car crash on June 23, 2006 when the car in which she was a passenger was travelling south on Ridge Street near the intersection with Main.
- My knowledge of the car crash is based on the information of Reginald Smith, my brother-in-law and the driver of the car in which Joan Ann was a passenger; I believe what Mr. Smith told me to be true.
- Mr. Smith's car collided with a car owned and driven by the defendant.
- The defendant's car crossed the centre line and hit the front driver's side corner of Mr. Smith's car.
- Joan Ann was seated in a booster seat restrained by a seat belt.
- She suffered injuries as a result of the force of the collision and the effectiveness of the seat belt restraint.

### **Injuries**

[Describe injuries, their physical effects, the consequences for the child's comfort and functioning, the history of recovery, and remaining effects. Include sources for hearsay.]

For example:

- Both my wife and I have read the medical reports obtained by our lawyer, Donald Brown, and I have been in regular communication with our family doctor, Dr. Ralph Withers; I believe the information in the reports and the information from Dr. Withers to be true.
- Joan Ann's left arm was broken in two places and her most serious injury was a fracture of her pelvis.
- Her injuries required hospitalization for ten days followed by treatment and a program of physiotherapy.
- A cast on her arm was removed four weeks after the accident, and she remained immobile as a result of the pelvic fracture for a period of three and one half months.
- Initially our daughter suffered a great deal of pain and had concerns with traveling in a motor vehicle, plus considerable difficulty with mobility due to her pelvic fracture.
- The cuts and bruises have all healed and have left no permanent disfigurement, and from my own observations, she suffers no adverse effects from the injury to her left arm; she is left-handed and has no difficulty with writing.
- Her level of achievement at school has returned to that attained by her prior to the accident.
- While the injury to her pelvis has taken some considerable time to heal and she occasionally finds herself tired after strenuous exercise, she is able to participate in all activities that she previously engaged in prior to the accident, including bicycling, hiking, girl guides camp, and music.

### **Consent and Undertaking**

- 10± I have read the draft order to be filed in support of my motion for approval of the settlement and am willing to act as trustee.
- 11 I have signed an undertaking to be filed in support of the motion.
- 12 [Name of counsel] , explained to me the duties that will be imposed upon me if the draft order is granted and the duties that follow from the undertaking.

**Settlement and expenses**

- 13± I accept counsel's opinion that payment of \$ \_\_\_\_\_ in exchange for dismissal and release is a fair and reasonable settlement in the circumstances and one that is in the best interests of [name of child] .
  
- 14 I seek no trustee's fees.
  
- 15 I seek reimbursement out of the settlement of expenses incurred by me for [name of child] : [List each expense or rewrite the paragraph to incorporate a statement of the expenses as an exhibit.]

**Counsel's services and account**

- 16 On behalf of [name of child] I entered into a fee agreement with counsel, under which [describe terms] .
  
- 17 I have been provided with a detailed statement of the time and services performed by counsel and the account dated \_\_\_\_\_, 20 \_\_\_\_ .
  
- 18 Counsel advised me that I have a right to seek independent legal advice about the settlement, counsel's account, and the proposed disbursement of funds.
  
- 19 I approve of the account and I support counsel's request for court approval.

**Trustee's background**

- 20 I am \_\_\_\_\_ years of age.
  
- 21 My education consists in \_\_\_\_\_ .
  
- 22 I am a [occupation] , I work at \_\_\_\_\_ , and I have been employed in the field for \_\_\_\_\_ years.

**Financial Responsibility**

- 23 I propose to guarantee my personal liability as trustee [with a bond issued by name of surety company./with a bond executed by me and by \_\_\_\_\_ and \_\_\_\_\_ as sureties, who will swear or affirm affidavits of justification.]

[Provide evidence of the trustee's net worth. If a bond from a surety company is not offered, also provide evidence of the ability of each surety to respond to a claim.]

For example:

- My wife and I own our home in joint tenancy and the most recent municipal assessment for our property is in the amount of \$140,500; it is worth at least that.
- As of our last mortgage statement, which was dated \_\_\_\_\_, the balance outstanding on our mortgage was \$61,500, giving us an equity of about \$79,000 in the home.
- In addition, we have RRSPs, savings, and similar assets, with a value of about \$85,000. Our outstanding liabilities on credit cards and our credit line with a bank total about \$11,000; we have no other liabilities.
- Our net worth is \$153,000, and I am prepared to execute a bond in such amount as may be directed by the court; I understand that it may be 1.25 times the amount of the trust funds ( $\$39,675 \times 1.25 = \$49,593.75$ ).
- My wife, Jocelyn Smith, is prepared to be a surety and she will provide an affidavit of justification.
- My sister-in-law, Mary Elizabeth Johnson, has also agreed to act as surety and to provide an affidavit of justification.

**Plan for investment**

[Describe how the proposed trustee plans to invest the trust money.]

For example:

- I propose, if appointed trustee, to invest the net proceeds one half in a guaranteed investment certificate with an institution covered by Canada Deposit Insurance Corporation and one half in a mutual fund with one of the major investment companies in Canada.

Sworn to/Affirmed before me )  
 on \_\_\_\_\_, 20 )  
 at \_\_\_\_\_, )  
 )  
 )  
 )  
 \_\_\_\_\_ )

\_\_\_\_\_  
 Name of litigation guardian