

SUPREME COURT OF NOVA SCOTIA

P.M.6B

Practice Memorandum No. 6B
Infant Settlement Precedents Under \$25,000

The attached precedents may be used for approval of settlements on behalf of a child for \$25,000 or less. They differ from the usual precedents in ways that are intended to make the motion or application less expensive.

Explanations of the child's injury, information about the child's background, and the justification of counsel's opinion are less detailed. A simple GIC suffices for an investment plan. Sureties are not required when the settlement proceeds are invested in a GIC and the trustee undertakes not to collapse the GIC before the child's nineteenth birthday unless the court permits.

As can be seen, the precedents contain these and other simplifications.

Adopted by the Court on June 27, 2014.

Joseph P. Kennedy
Chief Justice of the Supreme Court
of Nova Scotia

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Affidavit of Litigation Guardian
(Settlement Under \$25,000)**

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

- 1 I am the litigation guardian for [name of child] .
- 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.
- 4 [name of child] is _____ years old and was born on _____ , as shown by the birth certificate attached to this affidavit and marked Exhibit "A".
- 5 [He/She] resides at _____ in _____ , Nova Scotia.
- 6 I am informed by [name] , whom I believe, that [he/she/name of child] was injured as a result of a [car accident/slip and fall/assault/incident of malpractice/other] on the day of _____ , 20 _____ at _____ .

OR

- 6 I am informed by [name] , whom I believe, that [he/she/name of child] suffered loss of care, guidance, and companionship arising from the death of _____ in a car accident on the _____ day of _____ , 20 _____ at _____ .

7 I refer to the medical [report/reports] filed with the court and say that I relied on the facts and opinions stated in [it/them] when I considered settlement.

8 The [defendant/defendants] offered to settle the child's claims as follows:

9 Counsel for the child, [name] , advised me that the offer represents fair and reasonable compensation for the child's losses in light of all known circumstances, and I believe that acceptance is in the child's best interests.

10 I instructed counsel to accept the offer, subject to approval by this court.

11 Under a contingency fee agreement signed on the _____ day of _____, 20____, counsel or counsel's firm is entitled to charge _____ % of [the amount of the settlement/other] for fees, and I understand that this compares with counsel's hourly rate of \$ _____ usually charged for services without a contingency agreement.

12 I have read counsel's account, and I am satisfied that it is fair and reasonable and costs no more than is provided in the contingency agreement.

13 I approve the payment to counsel, or counsel's firm, of the amount of the account, plus HST, which total \$ _____ .

If other person is proposed trustee

[14 I agree that _____ is a proper person to act as trustee of the settlement fund.]

Sworn to/Affirmed before me)
on _____, 20____)
at _____,)
)
)
)
)
)

Name of litigation guardian

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Undertaking and Bond
(Settlement Under \$25,000)**

Undertakings

I undertake to abide by the terms in the order appointing me trustee of the settlement proceeds for [name of child] , to abide by any other directions given by a judge, and to account to the court and to [name of child] for my administration of the trust by filing with the court and delivering to [name of child] a statement of receipts and disbursements at each of the following times:

- whenever a judge directs
- when the trust terminates
- no more than six months after the nineteenth birthday of [name of child] .

Bond

I [name of trustee] , bind myself to pay to [name of child] the sum of \$ [1.25 times the amount of the trust fund] , or such other amount as the court orders, payable if I fail to abide by the order appointing me, to abide by another order made in connection with the trust, to manage the trust in accordance with law, to distribute trust property in accordance with law, or to account as undertaken.

Termination of Bond

This bond is void only when the trust terminates and only if I abide by the order appointing me and any other order made in connection with the trust, manage the trust funds in accordance with law, distribute it in accordance with law, and account to the court and to [name of child] .

Signed, sealed, and turned
over for delivery to the
court , 20

Subscribing Witness

Print name:

(Seal)
Name of proposed trustee

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Affidavit of Proposed Trustee
(Settlement Under \$25,000)**

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

- 1 I am the person who is proposed to be trustee of a fund resulting from the settlement of the claims of [name of child] *[and I am also his/her litigation guardian]* .
- 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.
- 4 I refer to the information about [name of child] in the affidavit of litigation guardian, including the losses and the offer to settle.
- 5 I have read the draft order for approval of the settlement, creation of a trust, approval of counsel's fees and disbursements, and release.
- 6 I am willing to act as trustee on the terms in the draft order, varied as the court may provide.
- 7 Attached as Exhibit "A" is a draft undertaking and bond, which I will sign and file if appointed.

- 8 Attached as Exhibit "B" is a copy of the latest income tax return I filed.
- 9 I am employed by _____, and expect to be paid \$ _____ this year.
- 10 I own the assets described in Exhibit "C", my liabilities total \$ _____, and my net worth is \$ _____.
- 11 [Purpose, amount, and timing of any allocation expected to be made before the child turns nineteen, and proposals for investment of these funds in the meantime.]
- 12 I propose, if appointed trustee, to invest the proceeds of the settlement after payment of counsel, or such other sum as is approved by the court, in a guaranteed investment certificate with [name of financial institution] _____, at its office at _____, _____, Nova Scotia in my name as trustee for [name of child] _____.
- 13 Attached as Exhibit "D" is my undertaking not to collapse the GIC until [name of child] turns nineteen unless the court permits otherwise.

Sworn to/Affirmed before me _____)
on _____, 20 _____)
at _____, _____)
_____)
_____)
_____)

Name of trustee

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Affidavit of Counsel
(Settlement Under \$25,000)**

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

- 1 I am [name] , counsel for the [name of child] .
- 2 I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information or 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.
- 4 The litigation guardian seeks approval of a proposed settlement for [name of child] in the amount of \$.
- 5 I refer to the medical [*report/reports*] on file.
- 6 The parties reached an agreement for settlement subject to approval by the court, which agreement is evidenced by the documents attached as Exhibit "A".
- 7 The terms of settlement are accurately summarized in the affidavit of the litigation guardian, my opinion of the settlement is accurately stated there, and I also believe that acceptance is in the child's best interests.

- 8 Services were provided in this case on a contingency agreement, a copy of which is attached as Exhibit "B" and attached as Exhibit "C" is a statement of the dates, hourly rates, and amounts of time devoted to the case. [If fees charged otherwise, state terms and exhibit time entries.]
- 9 Attached as Exhibit "D" is our account for fees and disbursements.
- 10 I believe [name of litigation guardian] has complied with all of the requirements of Civil Procedure Rules 36.07 and 36.09 and I have complied with Rules 36.13 and 36.15.

Sworn to/Affirmed before me)
on , 20)
at ,)
)
)
)
_____)

Name of counsel

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Counsel's Certificate
(Settlement Under \$25,000)**

I explained to [name of trustee] the duties [he/she] would have if an order appointing [him/her] trustee for [name of child] is granted, and I explained the duties [he/she] will have under the undertaking and bond.

Signature

Signed _____, 20

Name of counsel

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Consent of Young Person
(Settlement Under \$25,000)**

I, [name of young plaintiff] , am _____ teen years old. [name of counsel] advised me about the settlement sought to be approved and the proposed terms of the trust. I agree that the settlement ought to be made on my behalf, and I agree with the terms of the proposed trust.

Signed _____, 20____

Witness

Name of young plaintiff

Note: Rule 36.13(4)(b) requires a consent from a child who is over sixteen. The consent may be advisable for younger children who are capable of instructing counsel.

20

No.

Supreme Court of Nova Scotia

Between:

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

and

[name] [title in proceeding]

**Order Approving Settlement and Establishing Trust
(Under \$25,000)**

Before the Honourable Justice [name or blank] in chambers

The court is satisfied that a settlement between the parties to this action by which \$ is paid for the benefit of [name of child] , who is years of age, is in [his/her] best interests.

The court is also satisfied that [name of proposed trustee] is a fit person to act as trustee of the settlement funds.

On the motion of as counsel for , the following is ordered:

- 1 It is declared that the parties made a settlement agreement, by which the defendant [s] pays the sum of \$ for the benefit of [name of child] in exchange for a general release of the defendant [s] from all claims made by the child [if an action, *and an order dismissing this proceeding*].
- 2 The settlement is approved.
- 3 [name] is appointed trustee of the settlement fund for the benefit of [name of child].
- 4 Delivery of a bond signed by the trustee without sureties is accepted by the court.
- 5 The litigation guardian is authorized to bind [name of child] to a release by signing it and delivering it to the defendant [s].
- 6 Counsel's fees and disbursements are approved in the amount of \$, and counsel may deduct that amount from the settlement fund.

7 Counsel must pay the balance to the trustee, who is directed to deal with it as follows:

- (a) allocate \$ _____ to _____ for _____ ;
- (b) invest the balance in a guaranteed investment certificate with [name of institution] ;
- (c) manage the trust funds according to law;
- (d) not to collapse the guaranteed investment certificate until [name of child] turns nineteen or the court orders otherwise;
- (e) pay the balance to [name] when [he/she] reaches the age of majority or, if [he/she] should die or become unable to manage [his/her] affairs, to such person as a judge directs;
- (f) account as the trustee has undertaken to do.

8 An interested person may make a motion to change the terms of this order or for directions.

9 *[This action is dismissed when the settlement funds are delivered to counsel for the plaintiff./The claims of name of child are dismissed when the settlement funds are delivered to counsel for the plaintiff and the claims of other parties remain to be determined.]* Note: Do not include if the order is sought by notice of application rather than by motion in an action.

Signed _____, 20

Prothonotary

CONSENTED TO:

as counsel for the
[applicant/plaintiff]

as counsel for the
[respondent/defendant]