

## Rules of the Supreme Court, 1986

### PRACTICE NOTE

#### P.N. (TD) No. 2002-01

DATE ISSUED: June 20, 2002

RULES AFFECTED: 8.06; 8.07; 8.08

EFFECTIVE DATE: Upon publication

PREVIOUS PRACTICE NOTES REVISED: N/A

The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Trial Division, and is published pursuant to rule 4.04 of the *Rules of the Supreme Court, 1986*.

### SETTLEMENTS INVOLVING MINORS

#### Background

1. Approval of a settlement of a claim by a minor involves the exercise of the parens patriae jurisdiction of the Court. Whenever that jurisdiction is invoked, the Court must be placed in a position to enable it to make an informed decision as to whether the proposed settlement and the manner of its distribution are in the best interests of the minor.
2. Although **rule 8.06** requires that a settlement, compromise or acceptance of money paid into court in relation to a proceeding must first be approved by the Court, and **rule 8.08** provides that the Court may give directions as to how any settlement money is to be dealt with, the Rules of Court do not specify what material should be placed before the Court to enable its duties to be properly discharged.

3. The practice respecting the information provided to the Court on an application to approve a minor's settlement has varied widely. Not infrequently, the information provided has been inadequate to provide a basis for the Court to conclude that the proposed settlement is fair and reasonable in all the circumstances. The Court cannot be put in the position of being asked to merely "rubber stamp" a proposed settlement.
4. The role of counsel advocating approval of a settlement has a special dimension. To a great extent, the Court must rely on the counsel's background knowledge and assessment of the case and on the recommendations being made. In so acting, counsel will be acting as an officer of the court and must disclose to the Court all relevant information that may affect the Court's willingness to sanction the settlement.
5. Occasionally, counsel seek to have the Court approve their specific legal fees and approve their deduction from the settlement amount. In so doing, there is a potential conflict of interest between counsels' own interests and their duties to the minor client and the Court.
6. For the purpose of distribution and payment of an approved settlement, an application for approval will usually be accompanied by a separate application for Letters of Guardianship to be granted, most often to the Registrar or, occasionally, to a parent of the minor or some other person who must be bonded. The guardian so appointed will then be vested with responsibility for receiving the settlement money, paying any expenses, including legal fees, associated with the settlement, distributing the money as and when required for the minor, and executing and delivering a release of the minor's claim to the party paying the settlement. The appointment of the Registrar as Guardian obviates the necessity for inquiry by the Court into the suitability of the guardian to perform the task and the provision of security.
7. Draft orders, as submitted to the Court, approving the settlement should provide adequate authorization for the guardian to carry out his or her duties with respect to implementation of the settlement.
8. **Rule 8.07** contemplates Court sanction of a settlement of a minor's claim even where no court proceeding has been commenced. In such a case, the matter is to be brought before the Court by way of Originating Application (Inter Partes).

9. Occasionally, counsel seek court approval, by way of an interlocutory application in a proceeding commenced by a minor as plaintiff against a defendant, of a settlement between the minor and the minor's own insurers rather than the insurers of the defendant. Such a settlement is not a settlement of a "proceeding" within the meaning of **rule 8.06** and therefore ought not to be brought by way of interlocutory application in the existing cause; rather it should be brought by way of a separate originating application under **rule 8.07** naming the minor as plaintiff and the minor's insurers as defendant.
10. In order to standardize practice and procedure with respect to court approval of minor's settlements it is appropriate to issue this Practice Note.

### **Practice Note**

11. **Applications for court approval of a settlement, compromise or acceptance of money paid into court relating to a claim by a minor should include or be accompanied by:**
  - (a) **a statement of the nature of the minor's claim and a description of the degree of damages suffered by the minor;**
  - (b) **sufficient documentation, such as medical reports, supporting the degree of damages suffered;**
  - (c) **the rationale for the conclusion that the proposed settlement is fair and reasonable in the circumstances, including, where appropriate, a brief discussion of sufficient available case law to demonstrate that any apportionment of liability is appropriate and that the settlement falls at least within the range of other damage awards of generally similar type, or such other information supporting any calculations used as the basis of the claim;**
  - (d) **an affidavit from the minor's guardian ad litem confirming that he or she has been made aware of the implications of the settlement and that, he or she believes it to be fair and reasonable in the interests of the minor, and finds it acceptable;**
  - (e) **an affidavit from counsel for the minor verifying that he or she is fully familiar with the case, has reviewed the applicable law and is**

satisfied that the settlement proposal is fair and reasonable in all the circumstances.

12. It is not sufficient for the affidavit of counsel referred to in paragraph 11(e) to state that it is the opinion of counsel that the settlement “should be sanctioned by the court”; it must go further and state that based on a review of the matter he or she is of the opinion that the proposed settlement is fair and reasonable in all the circumstances.
13. Except in special circumstances, the Registrar should be the guardian of choice for the purpose of receiving and administering the settlement funds on behalf of the minor.
14. As a general rule, the sanctioning court should not be asked to approve the specific legal account of the minor’s counsel or to ratify a contingency fee agreement. Exceptions to this approach might be where the settlement amount is small and the Guardian ad litem has approved the amount or where a "mature minor" has himself or herself approved the amount. As a general rule, there are separate and more appropriate procedures under rule 55 for taxation of solicitors’ accounts and approval of contingency fee agreements which may be followed.
15. The full amount of any approved settlement should be paid to the guardian in order that the guardian may sign a receipt and release for the full amount of the settlement and be in a position ultimately to account to the minor with respect to the full amount upon the minor attaining the age of majority.
16. The order approving a settlement should generally authorize the guardian to pay the reasonable expenses, including legal fees and disbursements satisfactory to the Registrar as Guardian or otherwise to be taxed, and to sign a release. If in exceptional cases, specific fees are considered and approved by the Court for payment, the amounts to be paid by the guardian should be specified in the order.
17. Subject to appropriate variations in individual cases, the form of the approval order should be substantially in the form attached as Schedule “A”.

- 18. Applications for approval of a settlement of a minor's claim against his or her own insurers, where no proceeding has been brought against those insurers, should not be brought by way of interlocutory application in the proceeding between the minor and another defendant, but should be brought by way of a separate originating application in which the minor, by guardian ad litem, is plaintiff and the minor's insurer is defendant.**

AUTHORIZED BY:

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J. Derek Green  
Chief Justice of the Supreme Court  
of Newfoundland and Labrador, Trial Division

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Barry R. Sparkes, B.C.L.  
Registrar of the Supreme Court  
Secretary, Rules Committee

**Schedule "A"**

[style of cause]

**ORDER SANCTIONING SETTLEMENT**

Before the Honourable Justice

UPON IT APPEARING that the plaintiff has made application under **rule 8.06** for approval of a minor's settlement AND UPON READING the affidavits of \_\_\_\_\_ [guardian ad litem] \_\_\_\_\_, father (or mother, etc.) of the minor \_\_\_\_\_, and of [counsel] \_\_\_\_\_, counsel for the minor \_\_\_\_\_, AND UPON HEARING \_\_\_\_\_ of counsel for the plaintiff **IT IS ORDERED THAT:**

1. The compromise settlement of \$\_\_\_\_\_ be sanctioned and approved.
2. The said sum of \$\_\_\_\_\_ in full and final settlement of the claim of [minor] \_\_\_\_\_, a minor, be paid to [the Registrar or other guardian], as Guardian of the Estate and Effects of [minor] \_\_\_\_\_, to be administered for the benefit of the said minor.
3. The Guardian is hereby authorized:
  - (A) to pay the reasonable legal fees and disbursements [satisfactory to the Registrar as Guardian or otherwise to be taxed] of the solicitors for the minor, incidental to this proceeding;
  - (B) to pay all other reasonable expenses and fees incidental to the proceeding;

(C) to execute and deliver to the defendant a receipt, release and discharge in such form as may be approved by the Guardian as appropriate to release the claims of the minor against the defendant relating to this proceeding [or to execute and deliver to the defendant a receipt, release and discharge substantially in the form annexed to this order marked "A" which form is hereby approved];

(D) to advance to or for the benefit of the minor from time to time

[if the Guardian is the Registrar] such amounts from the capital of, and income from, the settlement funds as in his or her discretion may be deemed proper;

or

[if the Guardian is someone other than the Registrar] such amounts from the income from the settlement funds as in his or her discretion may be deemed proper;

(E) to pay to or for the benefit of the minor the balance of the funds upon the minor's attainment of the age of majority.

DATED at \_\_\_\_\_, in the Province of Newfoundland and

Labrador, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.