

Settlement Submissions under the Infants Act

Public Guardian and Trustee's Requirements

Table of Contents

A: Checklist of Items Commonly Required for Public Guardian and Trustee Review	2
B: Overview: Statutory Authority, Procedures and Forms	3
C: Submission Letter Seeking Public Guardian and Trustee Approval of a Settlement under the Infants Act	7
D: Child/Parent/Guardian Questionnaire	11
E: Head Injury Symptoms Form	14
E: Head Injury Symptoms Form (cont)	15
F1: Guardian Settlement Agreement and Release (\$50,000 or Under): Public Guardian and Trustee Will Be Trustee	16
F2: Guardian Settlement Agreement and Release (\$50,000 or Under): Court Appoints Trustee Pursuant to S. 179 Family Law Act	18
G1: Consent Order for Infant Settlement (\$50,000 or Under)	20
G2: Order for Infant Settlement (Over \$50,000) Action Commenced	22
G3: Order for Infant Settlement (Over \$50,000) No Action Commenced	24

Contents

A. Checklist of items commonly required for Public Guardian and Trustee review

This checklist identifies the information required in settlement submissions,

B. Overview of Statutory Authority, Procedures and Forms

This section identifies the Public Guardian and Trustee’s statutory authority to approve settlements under the *Infants Act*, the procedures for obtaining PGT approval and the related forms.

C. Submission Letter seeking Public Guardian and Trustee approval of a Settlement under the *Infants Act*

This section outlines the information that should be addressed in the Submission Letter to the PGT.

D. Child/Parent/Guardian Questionnaire

This information collected on this document is used, along with medical reports, to assess the infant’s claim for damages.

E. Head Injury Symptoms Form

This form should be completed where there has been a head injury.

F. Sample Guardian Settlement Agreements

F1: Guardian Settlement Agreement (\$50,000 or Under): PGT will be Trustee

F2: Guardian Settlement Agreement (\$50,000 or Under): Court Appoints Trustee pursuant to s. 179 of the *Family Law Act*

G. Sample court orders

G1: Consent Order for Infant Settlement (\$50,000 or Under)

G2: Order for Infant Settlement (Over \$50,000) – Action Commenced

G3: Order for Infant Settlement (Over \$50,000) – No Action Commenced

*Note: For purposes of this document the term “minor” refers to a person in BC who is under the age of 19. It includes an “infant” for purposes of the *Infants Act* and a “child” for purposes of the *Family Law Act*.*

A: Checklist of Items Commonly Required for Public Guardian and Trustee Review

1. The minor's full name, address and date of birth (and the minor's social insurance number if available) [see Submission Letter]
2. Concise narrative description of the accident [see Submission Letter]
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. [see Submission Letter]
4. A brief description of the minor's injuries and advice on the minor's current medical status, i.e., treatment, recovery and prognosis [see Submission Letter]
5. Copies of all medical information, including: [see Submission Letter]
 - (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 [see Head Injury Symptoms Form]
7. Child/Parent/Guardian Questionnaire (particularly useful in smaller claims where there may not be a full medical – legal report on the infant) [see Child/Parent/Guardian Questionnaire]
8. Case law supporting both the liability assessment and quantum assessment [see Submission Letter]
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 [see Submission Letter]
10. Originals of settlement agreement and draft court order, duly executed [see Samples]
11. Where the minor has suffered severe injuries, the following additional medical-legal information should be included: [see Submission Letter]
 - (a) actuarial reports
 - (b) vocational assessments
 - (c) rehabilitation assessments
 - (d) costs of future care reports
 - (e) details of any proposal to manage the minor's funds, e.g. structured settlement options including any rationale.

B: Overview: Statutory Authority, Procedures and Forms

The Public Guardian and Trustee's statutory authority with respect to the review of settlements for minors 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 settlements for settlements of \$50,000 or under, exclusive of interest and costs, without court approval. The *Infants Act* also requires the Public Guardian and Trustee to provide comments to the court where a settlement exceeds \$50,000. Settlements include personal injury claims, wrongful death claims with respect to an infant's deceased parent(s) and other claims for unliquidated damages. Most claims relate to motor vehicle accidents and these guidelines are prepared from this perspective. Submissions for other claims should be adapted as appropriate. For more information, readers are referred to the Continuing Legal Education of BC publication *Public Guardian and Trustee Handbook*.

Section 40 of the *Infants Act* creates four categories of settlements, two where the settlement amount, excluding interest and costs, is \$50,000 or under and two where the settlement amount, excluding interest and costs, is over \$50,000.

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.

1. Settlements: \$50,000 or under

- (a) No court action commenced (s. 40(4))

Procedure:

Where the proposed settlement, excluding interest and costs, is \$50,000 or under and no court action has been commenced, the guardian with parental responsibility for settling a proceeding relating to the minor, with the consent of the Public Guardian and Trustee, may enter into a Guardian

Settlement Agreement and Release which is binding on the minor. The Deputy Public Guardian and Trustee will sign the agreement and affix the Public Guardian and Trustee's corporate seal.

Required Documents for PGT:

- (i) Submission Letter with enclosures and review fee
 - (ii) Guardian Settlement Agreement and Release
- (b) Court action commenced (s.40 (7))

Procedure:

Where the proposed settlement is \$50,000 or under, excluding interest and costs, and a court action has been commenced, 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 signed order is returned to counsel and the order can then be filed with the Supreme Court as a desk order. See Supreme Court Civil Rules 8-3(1) and 17-1(2).

Required Documents for PGT:

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

2. Settlements Over \$50,000

See also Practice Direction 12 dated 2010/07/01 – Infant Settlements and Fee Agreements – Application for Approval

- (a) No court action commenced (s.40 (5))

Procedure:

Where the proposed settlement is greater than \$50,000, excluding interest and costs, and no court action has been commenced, 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 minors and solicitors' fee agreements may be made by desk order. The party must file, in addition to a draft order and requisition, the following documentation (See Supreme Court Civil Rule 17-1):

- (i) evidence of the consent of all parties. This may include a letter or statutory declaration signed by the guardian with parental responsibility for settling a proceeding relating to the minor, confirming approval of the proposed settlement and the proposed fees to be charged;
- (ii) evidence to support the propriety or reasonableness of the settlement. This will include affidavit material, including experts' reports, estimates, correspondence, offers to settle, and any other information that may be relevant to the granting of the approvals sought;
- (iii) affidavit material in support of the reasonableness of the legal fees; and
- (iv) the Public Guardian and Trustee's 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 for PGT:

- (i) Submission Letter with enclosures and review fee
 - (ii) Requisition and supporting affidavits, with the Public Guardian and Trustee's Statutory Comments attached as an Exhibit
- (b) Court action commenced (s.40 (8))

Procedure:

Where the proposed settlement is greater than \$50,000, excluding interest and costs, and a court action has been commenced, 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 an Application and supporting affidavits 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 for PGT:

- (i) Submission Letter with enclosures and review fee
- (ii) Application and supporting affidavits, with the Public Guardian and Trustee's Statutory Comments attached as an Exhibit
- (iii) Draft order

Provided that the application for court approval of a settlement over \$50,000 is consistent with the Public Guardian and Trustee's Statutory Comments, the Public Guardian and Trustee will not need to be served with the Application and supporting material. The Public Guardian and Trustee will request a copy of the entered order. A cheque in the amount of the net settlement proceeds should be made payable to the "Public Guardian and Trustee in trust

for [the minor] ” unless the court has appointed a trustee under s. 179 of the *Family Law Act*.

Once the Public Guardian and Trustee has provided Statutory Comments to counsel, the Public Guardian and Trustee has no further role in the case and, therefore, should not be asked to endorse the court order unless the Public Guardian and Trustee, or its counsel, will attend the hearing.

3. When the PGT does not recommend approval of settlement (s. 42 of the *Infants Act*)

Where the Public Guardian and Trustee is not prepared to recommend approval of a settlement, regardless of the settlement amount and whether or not court proceedings have been commenced, 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 provide comments 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 Action

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

A detailed submission explaining why the claim (or partial claim) should be dismissed should be included in the submission. The submission should also include applicable case law and copies of the evidence supporting the dismissal, including:

1. a description of the claim and why that claim (or that part of the claim) has not developed as hoped;
2. copies of all relevant reports and evidence relating to the dismissal request;
3. confirmation that the remaining defendants have sufficient resources or insurance to satisfy any outstanding claim the minor may have, where applicable;
4. confirmation of an indemnity agreement to protect the minor if a dismissed defendant is brought back into the action by another party, where applicable; and
5. advice about the outcome on costs, where applicable.

Required Documents:

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

5. Payment of Funds to Public Guardian and Trustee in Trust

Since August 2, 1994, the Court Registries have not accepted settlement funds for minors. The present procedure is to forward funds for minors to the Public Guardian and Trustee’s office. Under s. 178 of the *Family Law Act* and with the consent of the defendant, funds \$10,000 or under may be paid to a guardian to be held in trust for the minor. The court may appoint a trustee other than the Public Guardian and Trustee pursuant

to s. 179 of the *Family Law Act*. Where an application is being made to appoint someone other than the Public Guardian and Trustee as trustee of the trust for the minor, please see: **Applications to Appoint a Trustee of a Trust for a Child Under the Family Law Act**.

After a settlement has been approved by the court, 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 payable to the “Public Guardian and Trustee in trust for [the minor]”
- (iii) a copy of the entered court order

THE PUBLIC GUARDIAN AND TRUSTEE CANNOT ACCEPT SETTLEMENT FUNDS FOR A MINOR UNTIL IT HAS A COPY OF THE ENTERED COURT ORDER.

If the Public Guardian and Trustee has approved a settlement \$50,000 or under where no court action was commenced, a letter will be sent advising that the settlement has been approved and enclosing a copy of the endorsed Guardian Settlement Agreement and Release and the Payment Notice. Please forward:

- (i) completed Payment Notice
- (ii) a cheque for the net settlement proceeds payable to the “Public Guardian and Trustee in trust for [the minor]”

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

C: Submission Letter Seeking Public Guardian and Trustee Approval of a Settlement under the Infants Act

The Public Guardian and Trustee reviews the assessment of **liability, quantum** and the **legal fees** claimed in a minor'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 amount.

The party submitting the settlement for approval should include the following information in their Submission Letter: (For a more detailed discussion see the Continuing Legal Education Society of BC publication *Public Guardian and Trustee Handbook*).

1. Identifying information for the minor. This includes the minor's full name, address, and date of birth. Copies of the birth certificate and social insurance number should also be provided if available.
 2. Full name and address for the guardian(s) with parental authority to settle a proceeding relating to the minor.
 3. A concise narrative description of the accident;
 4. 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 minor;
 5. A description of the minor's injuries and advice on the minor'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
 6. In serious injury cases, details should be provided as to how it is proposed the minor's funds will be paid out (e.g. lump-sum payment or structured settlement). Include details of and rationale for any proposed structured settlement;
 7. Case law supporting assessment of quantum for more serious or unusual injuries or where particular cases were important in reaching the settlement amount;
 8. Where the Health Care Costs Recovery Act, S.B.C. 2008, c. 27 and its accompanying regulation apply, the submission must include confirmation that the claim for recovery of health care costs has been addressed to the satisfaction of Provincial authorities.
 9. When a minor's recovery is limited due to insufficient insurance or the involvement of an uninsured or unidentified motorist, the applicant should advise the Public Guardian and Trustee and outline the applicable law. If there is a pro rata division of available insurance, the settlement submission should outline the other claims to help the Public Guardian and Trustee and the court to assess the reasonableness of the pro rata division.
- evidence from parents (particularly useful in very small claims where there may not be a full medical-legal report on the minor) (see Child/Parent/Guardian Questionnaire);
- In serious injury cases please also include:
- actuarial reports
 - vocational assessments
 - economic reports re: loss of opportunity
 - rehabilitation assessments
 - cost of future care reports

The settlement submission should deal with any other issues affecting the minor's recovery of damages. Examples may include availability of Underinsured Motorist Protection (UMP) or the deduction of collateral benefits. The Public Guardian and Trustee should be provided with confirmation that each possible source of compensation for the minor was explored, even if it did not result in any further compensation.

In addition, a statutory declaration should be provided by the defendant confirming his or her financial situation, and identifying assets, liabilities and income, in order for the court to ascertain if there was any potential recovery against the defendant; and

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

Other matters

1. Family Compensation Act

When considering *Family Compensation Act* claims, the Public Guardian and Trustee will require counsel to break down the minor'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 minor 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 minor 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 minor, and therefore, should be paid to the "Public Guardian and Trustee in trust for [the minor]" until the minor reaches age nineteen.

2. First Nations Minors

There is an understanding between the Public Guardian and Trustee and the Minister of Aboriginal Affairs and Northern Development that the Public Guardian and Trustee reviews settlements proposed for First Nations minors in British Columbia. The process is the same as for all other minors.

3. Litigation Guardian

Rule 20-2 of the Supreme Court Civil Rules deals with persons under disability. Rule 20-2(2) states "that a proceeding brought by or against a person under legal disability must be started or defended by his or her litigation guardian."

Rule 20-2(5) provides that a person ordinarily resident in British Columbia 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 a minor, the Public Guardian and Trustee may be requested to act as litigation guardian.

If a minor is in the continuing custody of the Director under the *Child Family and Community Service Act*, does not have a guardian, or if the guardian appointed is dead, refuses to act or is incompetent at law to act, the Public

Guardian and Trustee is the minor's property guardian. Therefore the PGT is the minor's litigation guardian in any legal proceeding (see section 51 *Infants Act* and section 50(1) *Child Family and Community Service Act*).

4. Head Injuries

In cases where the minor has sustained a blow to the head, the Public Guardian and Trustee often requests that the minor'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.

5. Legal Fees

A fee agreement entered into by a guardian or litigation guardian is not binding on a minor without approval of the Public Guardian and Trustee or the court. Usually, approval of legal fees is obtained at the same time the settlement is approved or the court makes an order following a judgment at trial.

For settlements of \$50,000 or under, excluding interest and costs, the Public Guardian and Trustee reviews and approves the proposed fee. This review is a part of the function of reviewing the entire settlement submission. For settlements over \$50,000, excluding interest and costs, the court approves the legal fee, after considering the Public Guardian and Trustee's comments. The amount payable under the contingency fee agreement should be detailed along with any voluntary reduction that is being applied.

When the Public Guardian and Trustee has jurisdiction over a settlement of \$50,000 or under, excluding interest and costs, it usually approves up to a 25% contingency fee without the requirement of an extensive fee submission. Counsel claiming up to 25% on a small settlement may simply advise on the number of hours dedicated to the matter (if recorded) or provide an

estimate of the hours, advise of the major steps taken in the matter, and provide counsel's year of call to the bar. A more detailed submission based on the criteria established in case law may be required when a legal fee of greater than 25% is claimed on a settlement of \$50,000 or under. The Public Guardian and Trustee's counsel advises if there are further questions or if more detailed submissions on the legal fees are required.

When the Public Guardian and Trustee is providing statutory comments for the court, the Public Guardian and Trustee requires a more detailed fee submission based on criteria established in case law. Generally, the larger the legal fee claimed and the larger the premium over the hourly rate involved, the more detail required in the submission on legal fees.

When the Public Guardian and Trustee reviews legal fees, it considers the factors identified by the court in *Harrington (Guardian ad litem of) v. Royal Inland Hospital* (1995), 14 B.C.L.R. (3d) 201 (C.A.). *Harrington* followed *Yule v. Saskatoon (City)* (1955), 16 W.W.R. 305 (Sask. Q.B.), affirmed (1955), 17 W.W.R. 296 (Sask. C.A.). These factors have been expanded in subsequent cases and were summarized in *British Columbia (Public Guardian and Trustee) v. Ralston*, 2008 BCCA 372 at paragraph 21 to include:

1. the financial circumstances of the plaintiff;
2. the risk to the law firm where it carries disbursements;
3. the complexity of the issues;
4. the experience and skill of defendant's counsel;
5. the experience and skill of plaintiff's counsel;
6. the risk assumed by plaintiff's counsel that there would be no pay for effort expended;
7. the time expended by plaintiff's counsel;
8. the importance of the case to the plaintiff; and,
9. whether the settlement is a good settlement.

Some cases suggest the timing of the settlement is also important. (See Harrington; Murphy, *Battista v Tejani* 2009 BCSC 1782 at par 88)

6. Administration of Funds for Minors by the Public Guardian and Trustee

Under the *Public Guardian and Trustee Fees Regulation*, the PGT charges various fees and commissions for the administration of trusts. A detailed description of fees and commissions can be found at www.trustee.bc.ca/fees.

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 a minor, for the minor's maintenance, education or benefit prior to the minor turning 19.

Requests by parents or minors 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 a minor and their ability to meet those obligations.

The Public Guardian and Trustee contacts the minor two months prior to the minor's 19th birthday with instructions on how funds can be collected. A statement of account is provided setting out all income earned, all deductions of any discretionary encroachments, applicable taxes, and the Public Guardian and Trustee's management fees (*Infants Act*, s. 43).

For further information about trusts, see "Your Child's Trust Funds - FAQ" on our website.

7. Public Guardian and Trustee's Review Fee

The Public Guardian and Trustee charges a fee for reviewing applications under the *Infants Act*. This fee is based on a sliding scale, depending on the proposed settlement amount. The fee is payable upon submission of the settlement for review.

D: Child/Parent/Guardian Questionnaire

For completion by the parent/guardian in consultation with the injured child as appropriate

Name of Child

Date of Accident:

[month, day, year]

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

Describe exactly happened in the accident. If the accident was a motor vehicle accident, the description should address the following: 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 accident? Etc.

2. Injuries

Describe in detail the injuries your child sustained as a result of this accident.

3. School Missed

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

4. 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?

(f) Did the pain interfere with the 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? What activities could your child not participate in? etc.)

(g) By what date had your child returned to all his/her usual sports and activities?

5. Treatment

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

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

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, describe what treatment was provided and who provided it.

6. By what date was your child symptom free?

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

Date

Signature

Signature

Print Name

Print Name

E: Head Injury Symptoms Form

For completion by the parent/guardian in consultation with the injured child as appropriate

Name of Child

Date of Accident:

[month, day, year]

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 the child experience any of the following symptoms after the accident?

Loss of consciousness

Yes No

Inability to recall the accident and/or subsequent events

Yes No

Headaches

Yes No

Dizziness

Yes No

Blurred vision

Yes No

Excessive fatigue

Yes No

Problems with memory

Yes No

E: Head Injury Symptoms Form (cont)

Problems with concentration

Yes No

Problems with judgment

Yes No

Problems with social relationships

Yes No

Problems with behaviour

Yes No

Problems with his/her academic performance

Yes No

Do you wish to add any further comments?

Yes No

Date

Signature

Signature

Print Name

Print Name

F1: Guardian Settlement Agreement and Release (\$50,000 or Under): Public Guardian and Trustee Will Be Trustee

The following is a sample settlement agreement approved as to form by the Public Guardian and Trustee where the Public Guardian and Trustee will be the trustee of the settlement proceeds. 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 settlements to which consent is sought under the Infants Act, s. 40. This sample agreement applies only where no court proceeding has been commenced and the proposed settlement is \$50,000 or under. One or both guardians may make the agreement.

Guardian settlement agreement and release

WHEREAS the undersigned, *[name of guardian]* and *[name of guardian]*, of *[address]*, British Columbia, are the *[guardian/guardians]* of *[name of infant]*, born *[month, day, year]*;

AND WHEREAS the undersigned *[guardian/guardians]* have authority to enter this Guardian Settlement Agreement and Release on behalf of *[name of infant]*;

AND WHEREAS on or about *[date of accident]*, *[describe accident; e.g., (name of driver), 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 *[name of 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 *[name of infant]*, and the undersigned, arising out of the motor vehicle accident;

AND WHEREAS the undersigned for *[himself/herself/themselves and each of them]* and on behalf of *[name of infant]* *[has/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:

1. the sum of \$ *[amount]* to the undersigned;
2. the sum of \$ *[amount]* to *[name of law firm]*, barristers and solicitors, and
3. the sum of \$ *[amount]* to be paid to the Public Guardian and Trustee at *[location]*, British Columbia, to be placed in trust for *[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 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 [guardian/guardians] of [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, [I/We] acknowledge that [my/our] solicitor has explained to [me/us] that, notwithstanding any fee agreement that [I/We] have made, it is still possible for [me/us] to have [my/our] solicitor's bill reviewed by a Registrar of the Supreme Court in a taxation, to see whether it is reasonable as against the infant [name of infant] . However, we are satisfied that it is reasonable, we do not want it to be reviewed by the Registrar, and [I/We] ask the Public Guardian and Trustee to approve of the payment of the above-mentioned amount to [my/our] solicitor without taxation.

IN WITNESS WHEREOF the undersigned [has/have] hereunto set [his/her/their] [hand/hands] and [seal/seals] this [month, day, year] .

**Signed, sealed,
and delivered
In the presence of**

[As to both signatures] .

[name of guardian]

[name of guardian]

**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

F2: Guardian Settlement Agreement and Release (\$50,000 or Under): Court Appoints Trustee Pursuant to S. 179 Family Law Act

The following is a sample settlement agreement approved as to form by the Public Guardian and Trustee (PGT) where a trustee of the settlement proceeds will be appointed by the court pursuant to s. 179 of the Family Law Act. In these circumstances, the PGT will provide a letter to counsel advising it has approved the settlement under the Infants Act. An order must then be obtained appointing a trustee pursuant to s. 179 of the Family Law Act. The PGT will then endorse this agreement.

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 and the amount is \$50,000 or under. One or both guardians may make the agreement.

Guardian settlement agreement and release

WHEREAS the undersigned, *[name of guardian]* and *[name of guardian]*, of *[address]*, British Columbia, are the *[guardian/guardians]* of *[name of infant]*, born *[month, day, year]*;

AND WHEREAS the undersigned *[guardian/guardians]* have authority to enter this Guardian Settlement Agreement and Release on behalf of *[name of infant]*;

AND WHEREAS on or about *[date of accident]*, *[describe accident; e.g., (name of driver), 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 *[name of 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 *[name of infant]*, and the undersigned, arising out of the motor vehicle accident;

AND WHEREAS the undersigned for *[himself/herself/themselves and each of them]* and on behalf of *[name of infant]* *[has/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*;

AND WHEREAS *[name of trustee(s) has/have been appointed [trustee/co-trustees]* of the sum of \$ *[amount]*, under s. 179 of the *Family Law Act*;

NOW THEREFORE KNOW ALL WHOM IT MAY CONCERN that the undersigned, in consideration of the payment of \$ *[amount]* as follows:

4. the sum of \$ *[amount]* to the undersigned;
5. the sum of \$ *[amount]* to *[name of law firm]*, barristers and solicitors, and
6. the sum of \$ *[amount]* to be paid to *[name of trustee/trustee]* at *[location]*, British Columbia, to be held in trust for *[name of infant]*;

the receipt of which sum is hereby acknowledged, DO FOREVER RELEASE AND DISCHARGE *[name of defendant]* from all claims whatsoever that the 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 *[guardian/guardians]* of *[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, *[I/We]* acknowledge that *[my/our]* solicitor has explained to *[me/us]* that, notwithstanding any fee agreement that *[I/We]* have made, it is still possible for *[me/us]* to have *[my/our]* solicitor's bill reviewed by a Registrar of the Supreme Court in a taxation, to see whether it is reasonable as against the infant *[name of infant]*. However, we are satisfied that it is reasonable, we do not want it to be reviewed by the Registrar, and *[I/We]* ask the Public Guardian and Trustee to approve of the payment of the above-mentioned amount to *[my/our]* solicitor without taxation.

IN WITNESS WHEREOF the undersigned *[has/have]* hereunto set *[his/her/their]* *[hand/hands]* and *[seal/seals]* this *[month, day, year]*.

**Signed, sealed,
and delivered
In the presence of**

[As to both signatures].

[name of guardian]

[name of guardian]

**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

G1: Consent Order for Infant Settlement (\$50,000 or Under)

This sample consent order is based on prescribed Form 34 of the Supreme Court Civil Rules.

Form 34 (Rules 8-4(1), 13-1(3) and 17-1(2))

[style of proceeding]

Consent Order

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

))	
))	
))	
BEFORE))	[month, day, year]
))	
))	
))	

ON THE APPLICATION of [party(ies)], 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.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:

[A signature line in the following form must be completed and signed by or for each consenting party.]

Signature of

- party
- lawyer for *[name of party(ies)]*
[type or print name]

Signature of

- party
- lawyer for *[name of party(ies)]*
[type or print name]

by its authorized signatory

Signature of Signature of Public Guardian and Trustee

- party
- lawyer for *[name of party(ies)]*
[type or print name]

BY THE COURT

Registrar

G2: Order for Infant Settlement (Over \$50,000) Action Commenced

Form 35 (Rules 8-4(1), 13-1(3) and 17-1(2))

[style of proceeding]

Order made after application

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

))
) THE HONOURABLE JUSTICE [name])
) [or])
) A JUDGE OF THE COURT)
BEFORE) [or]) [month, day, year]
) MASTER [name])
) [or])
) A MASTER OF THE COURT)
))

ON THE APPLICATION of [party(ies)] coming on for hearing at [specify] on [month, day, year] and on hearing [name of party/lawyer] and [name of party/lawyer]; 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:

[If any of the following orders are by consent, indicate that fact by adding the words "By consent," to the beginning of the description of the order.]

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 of guardian], as guardian of the infant [name of infant], 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 of guardian]*, 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.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

[A signature line in the following form must be completed and signed by or for each consenting party.]

Signature of

- party
- lawyer for *[name of party(ies)]*
[type or print name]

Signature of

- party
- lawyer for *[name of party(ies)]*
[type or print name]

BY THE COURT

Registrar

G3: Order for Infant Settlement (Over \$50,000) No Action Commenced

This sample order is based on prescribed Form 34 of the Supreme Court Civil Rules.

Form 34 (Rules 8-4(1), 13-1(3) and 17-1(2))

[style of proceeding]

Consent order

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

BEFORE) A JUDGE OF THE COURT)
) [or])
) A MASTER OF THE COURT) [month, day, year]

ON THE APPLICATION of [party(ies)], 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 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 of guardian], as guardian of the infant [name of infant], 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 of guardian], 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.:

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:

[A signature line in the following form must be completed and signed by or for each consenting party.]

Signature of

- party
- lawyer for *[name of party(ies)]*
[type or print name]

Signature of

- party
- lawyer for *[name of party(ies)]*
[type or print name]

BY THE COURT

Registrar

Contact the Public Guardian and Trustee

Child and Youth Services

700–808 West Hastings Street
Vancouver, BC V6C 3L3

TRUST SERVICE PHONE	604 775 3480
LEGAL INTAKE PHONE	604 660 3040
FAX	604 775 2429
EMAIL	CYS@trustee.bc.ca

Toll free calling

Toll free calling is available through Service BC. After dialling the appropriate number for your area (see below) request to be transferred to the Public Guardian and Trustee.

VANCOUVER	604 660 2421
VICTORIA	250 387 6121
OTHER AREAS IN BC	1 800 663 7867
EMAIL	mail@trustee.bc.ca
WEBSITE	www.trustee.bc.ca

PGT Hours of operation Monday to Friday 8:30am to 4:30pm