



Effective Date: 2010/07/01

Number: PD - 12

Title:

Practice Direction

Infant Settlements and Fee Agreements - Applications for Approval

Summary:

This Practice Direction sets out the procedures to seek court approval of:

- an infant settlement and legal fees as required by the *Infants Act* for settlements in excess of \$50,000
- legal fees following trial and judgment.

Direction:

Application before judgment

1. An application for approval of a proposed infant settlement and legal fees may be brought:
 - a. before trial, under Supreme Court Civil Rule 8-3, or
 - b. during a trial.
2. An application for court approval of proposed legal fees should be brought as part of the application to approve the settlement.
3. The application may be brought on behalf of the infant plaintiff by the solicitor for the litigation guardian.
4. The following material must be filed in support of the application for approval of a proposed infant settlement and legal fees:
 - a. a letter signed by the litigation guardian (attached to the infant plaintiff's counsel's affidavit) or an affidavit sworn by the litigation guardian confirming approval of the proposed settlement

and the proposed fees to be charged (where the litigation guardian is not the infant's guardian, the letter or affidavit should be completed by the guardian)

- b. affidavit material in support of the reasonableness of the proposed settlement, including experts' reports, estimates, correspondence, offers to settle and any other information that may be relevant to the granting of the approvals sought
 - c. affidavit material in support of the reasonableness of the legal fees, including evidence of any fee agreement in place and whether such fee agreement has been pre-approved in accordance with the *Infants Act*, and
 - d. except in those cases where the Public Trustee is the litigation guardian, a letter from the Public Trustee providing written comments concerning the proposed settlement and fees, as required pursuant to section 40(10) of the *Infants Act*.
5. The applicant may apply for an order sealing affidavits filed in support of the application or for hearing in private. In circumstances where the court orders documents sealed or a hearing in private, the Public Trustee will not be denied access to the sealed documents nor to the hearing in private.
 6. When an application is brought during the trial, unless the trial judge directs otherwise, he or she will hear the application.

Application following judgment

7. An application for approval of proposed legal fees and disbursements in excess of \$10,000, brought after judgment is recovered by the infant at trial, must be heard by the trial judge if available.
8. The trial judge will determine whether the matter will proceed by oral hearing or written submissions.

Robert J. Bauman
Chief Justice