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## Minor Settlements – Beware of the Pitfalls



By [Sharon Stefanyk](#) and [Pablo Retamozo](#)

Claims involving minors require special consideration. In order to settle a claim without fear of the minor setting aside the settlement once he or she turns 18, a Court Order approving the settlement is required.

Several steps are required before a matter can come before a Justice of the Court of Queen's Bench. Firstly, the Public Trustee must be provided with at least 10 days' notice (preferably more) of any upcoming application. Secondly, if the minor is 14 years or older, the minor must consent to the settlement. Thirdly, an Affidavit must be sworn by the litigation representative, guardian or parent, which outlines the incident, the injuries, the treatment, the proposed settlement and confirmation that the settlement is in the best interests of the child. The Public Trustee, upon reviewing all of this material, can then either consent or appear at the application and make submissions as to why they believe that the settlement is not in the best interests of the child.

Once a settlement has been confirmed and approved by a Court, the funds are then payable to the Public Trustee. A Trust Officer is appointed to handle and invest these funds. The Trust Officer will rarely make any payments out of the settlement for day-to-day expenses, but will consider any cost of the care items which were necessary for the treatment of any injuries or expenses required for additional help at school.

In the past, one exception to paying the money to the Public Trustee has been where the settlement was \$5,000.00 or less. On November 25, 2014, the *Minors' Property Regulation* increased this amount from \$5,000.00 to \$10,000.00. If the settlement falls within this amount, then the funds can be payable to the minor's litigation representative, parent or guardian. The litigation representative, guardian or parent must then sign a Guardian's Acknowledgement of Responsibility. A Guardian's Acknowledgement of Responsibility confirms:

1. The Guardian's responsibility to care for the minor and make day to day decisions affecting the minor;
2. Request that the money be paid to the guardian to hold as trustee for the minor;
3. That the guardian will only expend the money for the minors' benefit; and

4. When the minor reaches 18, the guardian will pay the balance of the money to the minor.

While a Guardian's Acknowledgment of Responsibility allows a Defendant to pay the settlement to a guardian, parent or litigation representative, a Court Order is still required to confirm the settlement to ensure that a minor cannot set aside the settlement at a later date.

If you have any questions or concerns, please do not hesitate to contact [Sharon R. Stefanyk](#), Edmonton Insurance Practice Group Leader.

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