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Extra protection in place for minors involved in a lawsuit

By AdvocateDaily.com Staff

Toronto personal injury lawyer Jasmine Daya is undaunted by the extra steps associated with a lawsuit launched on behalf of a minor plaintiff.

Daya, managing principal with Jasmine Daya & Co., says Ontario's *Rules of Civil Procedure*requires litigation involving minors to proceed as though they were individuals under a disability incapable of making their own decisions. Under rule 7.08, that means litigation guardians must be appointed for minor plaintiffs, and judges must approve any settlement reached in a case.

"The rule puts a number of added protections in place, and these extra steps can be quite time-consuming," she tells AdvocateDaily.com. "There are many lawyers who prefer to avoid claims involving minors for that reason, but it is not a problem for us."

Before a statement of claim can be filed on behalf of a minor plaintiff, Daya says the first task is to select an appropriate litigation guardian who can make decisions on behalf of the youngster.

"Usually with a minor, it will be a parent. It could also be a legal guardian or someone else who can protect the interests of the child," she says.

From that point, cases proceed in a fashion almost indistinguishable from those with adult plaintiffs, until the possibility of settlement comes into view, Daya says.

“When you settle a file involving an adult who is not under a disability, it just requires some paperwork to be signed and a cheque cut,” she says. “But when a minor is involved, court approval is required for any settlement.”

Daya says motions for court approval of settlements can be an onerous undertaking, requiring lawyers to lay out every detail of the deal and how it was reached so that a judge can determine whether the final result is fair, reasonable, and in the best interest of the minor.

That includes a close look at counsel’s fees, she adds, noting that judges will not hesitate to reduce professional fees they view as excessive.

“Even if you’re operating on a contingency fee basis, you will still have to show how much time you spent on a case and demonstrate why your fees are justified,” Daya says.

She says a landmark 2006 Ontario Court of Appeal decision expanded on the court’s role in such cases.

A three-judge panel of the province’s top court explained that its *parens patriae* jurisdiction has ancient origins, “founded on necessity, namely the need to act for the protection of those who cannot care for themselves … to be exercised in the ‘best interest’ of the protected person … his or her ‘benefit or welfare.’”

“It’s a safeguard that benefits anyone who goes through the process,” Daya says. “If you believe you’ve reached a fair and reasonable resolution in the circumstances, you should have no issue with a second set of eyes on the settlement negotiations.”

In general, funds due to a minor plaintiff as part of a settlement are held by the court, accumulating interest until the person reaches the age of 18. However, Daya says money can be advanced earlier, as long as guardians can convince a judge that there is a legitimate need for it.

For plaintiffs with catastrophic injuries, she says judges typically want to see a structured settlement — a financial product that divides court-ordered payouts into regular tax-free instalments — established to cover ongoing care costs.

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