McKellar STRUCTURED SETTLEMENTS

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# PROFESSIONAL PERSPECTIVES


## SPECIAL INCOME TAX RULES FOR MINORS IN PERSONAL INJURY CLAIMS

**For income tax purposes, there are two categories of minor personal injury plaintiffs:**

- Those who sustain direct personal injury in an accident;

  and

- Those who have a derivative claim as a result of injury to or the death of a family member or someone on whom the minor is dependent.

Canada Revenue Agency treats these two categories very differently when it comes to the taxation of income earned on the investment of damages arising from a personal injury settlement or Court award.

## PERSONAL INJURY TO A MINOR

**Minors who sustain direct personal injuries are exempt from tax on income arising from the investment of the damages from a settlement or Court award by virtue of Paragraph 81(1)(g.1) of the Income Tax Act (see page three for the full wording).**

The exemption is extended through to December $31^{st}$ of the year in which they attain their $21^{st}$ birthday. Any income earned on the investment of the settlement funds subsequent to that date would attract income tax in the conventional manner. Since a structured settlement is always tax-free, structuring can extend the tax protection for a minor well beyond the age of 21.

## DEPENDENCY CLAIM TO A MINOR

**Minors who have a claim as a result of dependency loss and loss of care, guidance, and companionship are immediately exposed to tax on income generated from the investment of a damage award.**

For example, in Ontario, if the money is paid to the Accountant of the Superior Court of Justice, a T-slip is issued by the Accountant's office and there can be tax consequences to the minor at some point during his/her minority. This depends, of course, on the size of the deposit generating taxable interest income, the amount of interest accrued, and any additional underlying income the minor might have. A secondary tax burden occurs when, in most instances, the surviving parent sets about to claim the minor for married equivalent status only to find that the interest income reduces or negates that tax credit. There are, therefore, very viable income tax reasons to look at structuring any dependency claim.

## CONSIDERATIONS FOR ALL MINOR CLAIMS

**Minors, upon attaining the age majority, and assuming they are mentally competent, are entitled to receive funds held on their behalf by the Court or Public Guardian and Trustee.**

The receipt of these funds often produces an unsatisfactory result. Few 18 and 19 year olds have the maturity or financial sophistication required to manage money properly. The tax-free status of structure payments before and/or after age 21 is certainly an incentive to structure. An equally compelling reason to structure is the preservation of capital. Structured settlements allow virtually unlimited options as to how and when the periodic structure payments are made. Payments can be provided to allow for the minor's needs at various points throughout their life. Some examples of structured settlement options for minors are as follows:

- **Monthly payments starting on a specific date (ie. their 18th birthday) payable for a set period of time or for life with or without a guarantee period.**
- **Monthly payments can be indexed by a set amount or tied to the Consumer Price Index in order to allow for the impact of inflation.**
- **Lump sums starting on their 18th birthday and continuing annually for four years or longer to assist with their education needs.**
- **A lump sum at a specified age or date to contribute to a wedding fund, down payment on a home, or other needs.**


The design of structure options is virtually unlimited and can be custom-tailored to meet any specific needs.

Structured settlements are an important tool in settling almost any minor claim. The cases most appropriate for a structure are those where the child will be in a high marginal tax bracket, where there has been catastrophic injury such as brain damage, paraplegia or quadriplegia, or where there is inadequate funding available because of either liability issues or insufficient insurance policy limits.

It is recommended that, where structure payments are deferred (i.e. do not start to be paid until some date in the future, for example age 18), some portion of the minor's damages should be paid into Court or otherwise be made available to provide an accessible contingency fund during the minor's minority years. Such a contingency fund can provide money for unanticipated expenses such as medical bills, educational needs or other care and maintenance expenses incurred prior to the commencement of the structure payments.

In Ontario, and in most other provinces, no settlement by a minor is binding without the approval of a Judge.

## A CHECKLIST FOR MINOR CLAIMS

Structures for minors can be tremendously advantageous, but because of the many complex factors involved, they require careful attention to detail and considerable expertise. You must give consideration to several points including:


**01** The financial means of the parents and the minor;

**02** Special needs of the minor and the family, such as wheelchairs, vans, ramps, day care services, etc.;

**03** Present and future schooling, and other future needs, such as institutional or special home care;

**04** The health of the parents and siblings that may affect the present and future requirements of the minor;

**05** Future medical treatment; and

**06** The marginal tax bracket of the minor's surviving parent in a wrongful death case. If the minor's money is not structured, it may not be long before the surviving parent cannot claim the minor as a deduction because of the minor's taxable income.

## PARAGRAPH 81(1)(g.1) OF THE INCOME TAX ACT

**81. (1) Amounts not included in income**

**(g.1) Income from personal injury award property**

the income for the year from any property acquired by or on behalf of a person as an award of, or pursuant to an action for, damages in respect of physical or mental injury to that person, or from any property substituted therefore and any taxable capital gain for the year from the disposition of any such property,

**(i) Where the income was income from the property, if the income was earned in respect of a period before the end of the taxation year in which the person attained the age of 21 years, and**

**(ii) In any other case, if the person was less than 21 years of age during any part of the year;**