

GENERAL

Compromise/Settlement

Form of **RESOLUTION** *usually* in the form of a **contractual agreement** enforceable by law between the parties in dispute which brings the dispute to an end.

Governed by Contract Law Binding on both parties - Court views as final decision (**Elkind v Bennet**). **MUST** be Offer, Acceptance, Consideration.

NO ADMISSION REQUIRED

Court prefers/encourages that the matters be settled out of Court.

POWER TO COMPROMISE

When can you Compromise/Settle

Any time after the issuance of the Originating Proceedings and before end of trial. **Green v Rozen**

WHO: Attorney as AGENT has *implied* and *ostensible* authority.

Implied Between attorney & client to compromise the suit without reference to the client as long as it does **not** involve matters "collateral to the action"

Ostensible Between attorney and opposing litigant to compromise without actual proof of authority. **Waugh v HB Clifford & Sons Ltd.**

APPROVAL

No approval from Court necessary (save for exceptions) **Noel v Becker**

MATTERS THAT NEED COURT APPROVAL

1. Persons under a disability. (minors **and/or** patients)
2. Actions concerning the Estate of a deceased person
3. Actions by representative parties
4. Defamation Actions

ADVANTAGES

1. In public Interest as less case load on the Court
2. Save Costs (no trial or shorter trial)
3. Settle on their own terms

DISABILITY - EXCEPTION

Order 70

WHO - O70 (1) Minor / Infant (3) Patient R1

Patient - O79 R1 A person incapable of managing and administering his property and affairs. **Mental Health Act**

Minor Anyone under the age of majority (18)

Rules of Compromise & Settlement - O70 R8 Personal Injuries and Fatal Accidents

General Rule Patient or Minor **must** have a Personal Rep. who is not under disability to conduct proceedings on his behalf.

Patient/Minor is Plaintiff Next Friend

Patient/Minor is Defendant Guardian ad Litem

Next Friend and Guardian ad Litem must act by an attorney O70 R2(3)

Compromise Rule - O70 R8

DISABILITY - EXCEPTION (cont)

NO Compromise or Settlement without the approval of the Court allowed

Court Considers If the Settlement is **reasonable** and if it is for the **benefit of the Patient/Minor**

Application Summons & Affidavit

Affidavit

- age of minor/patient
- details of accident
- witness statements
- police report
- medical report
- details of proposed settlement
- state in the best interest of minor/patient
- Opinion of independent Attorney confirming best interest

Settlement Rule - O70 R9

Settlement before action so Plaintiff must commence action by OS.

Approval of Settlement - O70 R10

If approved, Court will give directions on

- Who should pay
- Who to pay money to
- Amount to be paid
- How money is to be applied

DISABILITY - EXCEPTION (cont)

The **Order** is then drawn by the P's attorney and promptly served on D.

Rejection of Settlement - O70 R9(1)(b) The Court will give directions as to the further prosecution of the claim.

DISABILITY CONT'D

WHY COURT APPROVAL NEEDED

1. Protect persons under disability against incompetence of the legal advisor which may lead to receiving a lower amount of claim than it is worth;

2. Provide a way for the D to obtain a discharge against a person under disability (terms form part of the Consent Order);

3. Ensure Counsel is paid proper costs (no more no less);

4. Ensure that the money agreed to be paid to the person under disability is 'properly looked after and wisely applied'

FORMS OF SETTLEMENT & COMPROMISE

1. Judgment by Consent
2. Agreement for D to submit to Judgment
3. Order by Consent to Stay Proceedings
4. Consent Order to dismiss, discontinue or withdraw
5. Tomlin Order

STAY OF PROCEEDINGS

May be a part of Consent Order

NOT equivalent to discontinuance or granting of Judgment. Proceedings **remain in existence**

Stay can be removed if proper grounds can be shown **Cooper v Williams**

Application for Stay Summons to Registrar

CONSENT ORDER

Consent Order Judgment or Order made by the Court in accordance with the agreement made by the parties.

General Effect of Compromise Replace the claim in original action. **New** action required to enforce the contract.

Performance of Agreement Should include terms of Agreement in Order **with liberty to apply**.

Liberty to apply Can make application in **original** action to enforce the terms of the agreement.

EFFECTS OF SETTLEMENT & COMPROMISE

1. Ends Proceedings;
2. Precludes parties from taking further steps in action
3. Supersedes the original cause of action except where liberty to apply was pleaded;
4. Binds all parties until Order or Judgment set aside

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