14. Practice Direction No 4 of 2001 - Settlements – Persons under disability

On application to the Court to approve a settlement on behalf of a person under disability, it is necessary to satisfy the Court by evidence that the proposed compromise is, in all the circumstances of the case, a proper one, and reasonably in the interests of the person under disability: see generally *Katundi v Hay* (1940) St.R.QD. 39; *Gillespie v Alperstein* (1964) V.R. 749; *McWilliams v McWilliams* (1967) 87 WN (Pt.1) (NSW) 6.

In the usual case, the evidence will be in the form of 2 affidavits, one by the next friend *(litigation guardian)* of the plaintiff, the other by the plaintiff's solicitor.

In his affidavit, the next friend *(litigation guardian)* should state that he has considered the compromise, that he has discussed it with his solicitor or barrister, and that he is satisfied that it is a proper one for the benefit of the person under disability.

The affidavit by the plaintiff's solicitor should state that he too has considered the proposed compromise, and that, in his opinion, it is a satisfactory one, and in the best interests of the plaintiff. That opinion should be supported by sufficient facts and other information as to the circumstances giving rise to the plaintiff's claim, as well as by copies of medical reports and an opinion of counsel, as will enable the Court to reach a proper conclusion on the application.

Except in special circumstances, settlement for a sum inclusive of costs will not be sanctioned by the Court, and where costs have been agreed at the time the approval is sought, the Court will need to be satisfied that the costs were the subject of negotiation, independently of, and subsequent to, the settlement.

31 January 2001