

SETTLEMENTS: DON'T FORGET THE TUTORSHIP COUNCIL!

Since the reform of the Civil Code, article 212 C.C.Q. specifies that a tutor may not transact or prosecute an appeal without the authorization of the tutorship council.

Article 209 C.C.Q. exempts fathers and mothers who are acting as tutors from obtaining any advice or authorization from the tutorship council unless the property at stake is worth more than \$25,000.

The Superior Court, in *Tremblay v. Fisch*¹, has ruled that authorization of the tutorship council is necessary for the tutor to discontinue a lawsuit instituted in the capacity of tutor on behalf of minor children, regardless of the amount involved, since the court considers that this is a form of transaction and that article 212 C.C.Q. makes no distinction regarding the amount: any transaction involving a minor must be approved by the tutorship council.

In the *Tremblay* case, the two children of the plaintiffs were respectively awarded amounts of \$21,853 and \$23,642 at trial for damages suffered due to the failure of the defendant physicians to make a timely diagnosis of their mother's breast cancer. The Court of Appeal partially overruled the trial judgment, concluding that there was no causal relation between the damages suffered by the children and the faults alleged against the defendant physicians, and thus rejected their claims.

On February 16, 2006, the plaintiff is acting both personally and in his capacity as tutor to his two children, obtained leave to appeal the Court of Appeal's judgment to the Supreme Court. However, a settlement was reached between the defendants and the plaintiff before the Supreme Court was to hear the appeal. The terms of this settlement stipulated that, to give effect to the agreement, the plaintiff had to discontinue his appeal before the Supreme Court, which he did without obtaining the authorization of a tutorship council.

However, during the settlement discussions, the physicians' counsel required that the settlement be authorized by a decision of the tutorship council, in accordance with the provisions of article 212 C.C.Q. The plaintiff, believing that he did not have such an obligation, instead chose to file the Superior Court to declare valid the settlement and the discontinuance of his appeal. The plaintiff argued that, under article 209 C.C.Q., he did not need the authorization of a tutorship council because the amounts awarded to the minor children, and which were in dispute before the Supreme Court, were less than \$25,000.

¹ S.C. Chicoutimi, 150-05-002469-001, June 28, 2007, j. Roger Bandford, j.c.s.

Justice Banford concluded that the condition stipulated in article 212 C.C.Q. could not be ignored and that it would be inconsistent with the logic of the tutorship regime to claim that article 209 C.C.Q. creates a special regime which constitutes an exception to article 212 C.C.Q.

★ ★ ★

This judgment is important because it sets aside the only reported decision on the subject, *B.(O.)* and *Québec (Public Curator)*², rendered by Mtre Gaétan Corbeil, Special Clerk of the Superior Court of the District of Longueuil. That decision was to the effect that a tutor could enter into a transaction, without the authorization of a tutorship council, for an amount less than \$25,000, because doing so was permitted by the combination of articles 209 and 212 C.C.Q. In that case, the original claim was \$35,000 and the proposed transaction was for \$3,000.

Another decision, *Lévesque and Québec (Public Curator)*³, was to the same effect. The clerk decided that, even though the motion to institute proceedings claimed \$635,000 and the proposed settlement in the child's favour was less than \$25,000, approval by the tutorship council was not required to allow the parents to conclude the transaction. However, he considered the parents' motion to be a preventive measure and he appointed the maternal grandmother, the person chosen by the parents, as the sole member of the tutorship council.

COMMENTS

We should be careful when negotiating any settlement with a tutor for the benefit of minor children (or persons of adult age under tutorship or curatorship). The amount at stake is not a criterion. No matter if the proposed transaction is a discontinuance or a settlement of the action, even for an amount less than \$25,000, the Superior Court has ruled that the tutor must obtain the authorization of a tutorship council before the completion of the transaction. The sooner this authorization is obtained during the negotiation process, the better.

Anne Bélanger

Marie-Andrée Gagnon

January 2008

² [1995] R.D.F. 235.

³ C.S. Alma, 160-14-000003-072, March 27, 2007, Mtre Robert Tremblay-Paquin, Clerk.