



Structured Settlements & Disability Assistance in British Columbia

BY ROBERT (BOB) NIGOL,
EPS SETTLEMENTS GROUP OF CANADA

We are often asked whether a structured settlement is an effective way by which to preserve eligibility to Disability Assistance in the event of an award or settlement of compensatory damages for personal injury.

The short answer is yes. To quote directly from the website of the Ministry of Social Development and Poverty Reduction, eligibility to Disability Assistance is defined as follows:

Disability assistance can help you if you need financial or health support. You must be designated as a Person with Disabilities (PWD) to receive this type of assistance.

ELIGIBILITY

To be eligible, you must:

- Show that you meet financial eligibility to receive assistance
- Be 18 years old (you can start the application process when you are 17 ½)
- Have a severe physical or mental impairment that is expected to continue for more than two years
- Be significantly restricted in your ability to perform daily-living activities
- Require assistance with daily living activities from
 - Another person
 - An assistive device, or
 - An assistance animal

ASSETS

You must meet certain income and asset criteria before you can receive disability assistance. Some general assets are exempt, including:

- Cash
- Personal property that can be turned into cash
- Personal interest in a trust

The general asset exemption limits are:

- \$100,000 for a single, couple, or family where one person has the PWD designation
- \$200,000 for a couple where both adults have the PWD designation

Some assets are allowed and don't count towards the general limit above, such as:

- Your home
- One motor vehicle
- Clothing and necessary household equipment
- A Registered Disability Saving Plan
- Assets held in a qualifying trust

TRUSTS

If you are a beneficiary of a trust, someone else legally owns money or other assets for your benefit. If you have a trust or are setting up a trust, we must review and approve it before it qualifies for the exemption.

Structured settlements are treated like trusts, and they are similar to trusts in that the actual asset is owned not by the recipient, but rather by a casualty insurer (or its assignee).

By way of background, structured settlements have been in existence in Canada since circa 1981. They were introduced by way of regulation pursuant to the Income Tax Act (i.e., CRA's Interpretative Bulletin IT-365R2). In essence, the government of Canada introduced structured settlements as a means to motivate those made vulnerable by injury to take their compensatory damages in the form of periodic payments that cannot be lost.

To follow the logic, while compensatory damages are not taxable, the interest income earned on the conventional investment of these is. However, if a structured settlement is opted for, the guaranteed periodic payments received over time are received entirely tax-free. This tax freedom then is the primary incentive offered by government through structured settlements. With a structured settlement, the injured party wins in that he or she receives guaranteed, tax-free income that is not susceptible to investment risk. The Government of Canada foregoes tax dollars, but more than makes that back by eliminating investment risk and the consequential risk of reliance on government support by those made vulnerable by injury.

The "rules" associated with placing a structured settlement are generally as follows:

1. The casualty insurer must consent to a structured settlement.
2. The structured settlement must be purchased by the casualty insurer with compensatory damages at the time of settlement.
3. The structured settlement must be non-assignable, non-commutable and non-transferrable.

The casualty insurer purchases the structured settlement on behalf of (and with guidance from) the injured recipient, makes an irrevocable direction to the recipient and the recipient then receives guaranteed, tax-free income that is non-assignable, non-commutable and non-transferable. The injured party pays no tax on the income produced by the structured settlement because he or she does not own it; and the casualty insurer, likewise, pays no tax on the income produced by the structured settlement because it derives no benefit from it.

In terms of a stepwise procedure by which to preserve eligibility to Disability Assistance when compensatory damages are paid in the form of a structured settlement, practitioners are encouraged to:

1. once in receipt of bona fide evidence of a structured settlement (e.g., the structured settlement contract), forward that to the Ministry of Social Development and Poverty Reduction and request that it be deemed exempt (which a structured settlement, by definition, will be);
2. upon receipt of the Ministry's response (which will come in the form of a letter), inform the client that it is assumed that he or she will be spending the income received from his or her structure in reference to disability-related needs, so as to promote his or her independence;
3. collateral to point two, inform the client that if he or she accumulates or "accrues" an amount more than \$100K in a bank account, for example, eligibility to Disability Assistance will likely be lost; and
4. remind the client that he or she is expected to complete the usual Monthly Report that the Ministry requires and that as long as the sum of the exempt assets accumulated does not exceed the \$100K threshold, eligibility to Disability Assistance is not likely to be lost.

It is worth noting that:

1. unlike the Ontario Disability Support Program, for example, the type of damages (e.g., future care) used to fund the structured settlement has no impact on whether a structured settlement is exempt and to what extent it is exempt; and
2. the accumulated payout of the structured settlement does not, in and of itself, affect eligibility to Disability Assistance--the Ministry monitors only whether the exempt assets held by a recipient amount to more than the prescribed monetary threshold.

Clearly then, structured settlements are an excellent way by which preserve eligibility to Disability Assistance in British Columbia. With a structured settlement, eligibility could only be lost if the recipient were to accumulate an amount (through the proceeds of the structure and otherwise) beyond the monetary threshold set by the Ministry, an unlikely outcome, given the medical and other requirements of this largely vulnerable population.

In the event of further questions, specifically related to structured settlements and Disability Assistance in British Columbia, we invite practitioners to contact us. Alternatively, as we have found, the Ministry is also extremely open to answering general questions, although answers to case-specific questions, particularly delivered in advance of a settlement, are almost invariably declined. ✓