

Executive Council passed the attached motion on November 29, 2017 regarding the application process for early access to minors' distributions.

It was previously announced that Executive Council had decided that the Nation would hold distribution funds for minors in trust until they reach their nineteenth birthday, subject to a policy which would allow for early distributions in circumstances when they would be in the best interests of the minor.

On the recommendation of the Citizen Development Committee and legal counsel, Executive Council has now approved aspects of the minors' distribution policy related to the application process for early distributions. A complete list approved terms is provided in the attached list. The key points are as follows:

- 1) A parent or guardian who is responsible for making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child may make an application for early distribution.
- 2) The application must include the following:
 - A completed "Guardian's Acknowledgment Form" which is a document required under the provincial *Family Relations Act*. This form requires a guardian to whom funds will be provided on behalf of a minor to confirm they recognize their legal obligations in accepting the money.
 - The signatures of all legal guardians. This will generally mean that both parents need to support an application for early distribution before it will be granted, although the taskforce will have some discretion for special circumstances.
 - The amount of money requested to be disbursed and the reason for requesting early distribution.
- 3) Assistance in the application process will be given by the Community Services Department.
- 4) The social services project implementation taskforce (the "taskforce") will make decisions in respect of applications, based on whether it is in the best interest of the minor to make an early distribution to the guardian(s) of that minor for the minor's maintenance or education. Where possible, the minor's view will be taken into account.
- 5) Early distribution for the maintenance of a child is to be a last resort. All other means of obtaining funding for the child's needs must be exhausted first. The Community Services Department will assist in accessing funding or other support through the Nation or other available resources or programs.
- 6) Funds may be disbursed by the Nation to a trustee of an appropriate investment vehicle, such as an RESP, where the taskforce is satisfied it is in the best interest of the child to do so.
- 7) If the minor is a child in care, the funds will be held trust by the Nation.

The policy elements approved by Executive Council regarding the application process will be part of the larger minors' distribution policy, which will also address matters such as how the funds are to be invested, record-keeping and accounting requirements. It will also specify that all interest on funds held in trust by the Nation will be provided when the funds are disbursed.

It is expected that the complete policy will be in place early in the new year and that citizens will be able to make applications for early distributions for minors starting in February, 2018.



huu ay aht

ANCIENT SPIRIT, MODERN MINE

WRITTEN MOTION of EXECUTIVE COUNCIL

(Government Act, s. 52)

For ease of reference, this motion may be referred to as:

Motion Regarding Application Process for Minors' Distributions Policy

Whereas:

- a) Executive Council has directed that minors' distributions from the partial proceeds from the Specific Claims Tribunal award in the IR 1 timber claim will be held in trust, subject to a policy regarding distributions to minors;
- b) Executive Council tasked the Citizen Development Committee with making a recommendation to Executive Council with respect to a minors' distribution policy;
- c) Executive Council further directed that the Citizen Development Committee make a recommendation to Executive Council with respect to the application process aspect of the policy no later than November 29, 2017;
- d) The Citizen Development Committee considered the matter at its meeting of November 27, 2017; and
- e) Executive Council has reviewed a privileged and confidential briefing note regarding the recommended policy provisions.

Be it resolved that Executive Council hereby:

- 1) Directs that the minors' distribution policy include the provisions set out in the attached appendix;
- 2) Directs that, in accordance with the Rule of Practice and Procedure for Consideration and Storage of Confidential Documents, the reports in respect of this matter will be kept confidential and stored with the *in camera* records of government in the Huu-ay-aht registry.

Appendices attached to Motion:

Written report prepared by _____ nil _____.

The following documents:

- Appendix setting out proposed minors' distribution policy provisions

Introduced by: Connie Waddell

 EXECUTIVE COUNCIL MEMBER

Date: November 29, 2017

 DATE OF EXECUTIVE COUNCIL MEETING

Administrative Requirements

The Law Clerk will give notice to the Citizen Development Committee of Executive Council's decision in respect of this matter, so that it can include appropriate provisions in its recommendation for the minor's distribution policy, in accordance with Executive Council's direction.

Minors' Distribution Policy Provisions regarding the Application Process

- 1) An application may be made by a guardian who is responsible for making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child.
- 2) The Guardian's Acknowledgment Form prescribed in accordance with the *Family Law Act Regulation* must be completed by the applicant.
- 3) Assistance in the application process will be given by the Community Services Department.
- 4) The social services project implementation taskforce (the "taskforce") will be tasked with making decisions in respect of the applications.
- 5) The taskforce will have discretion with respect to distributing the funds, based on criteria set out in the policy.
- 6) The over-arching criteria applied by the task-force will be whether it is in the best interest of the minor to make an early distribution to the guardian(s) of that minor for the minor's maintenance or education. In addition:
 - a. Where possible, the minor's views are to be taken into account, and
 - b. It must be shown all other means of funding for a particular purpose have been exhausted prior before an early distribution will be authorized.
- 7) The taskforce will have the ability to impose conditions it considers appropriate with respect to the method of disbursement of funds designed to ensure the funds are used for their intended purpose.
- 8) Funds may be disbursed by the Nation to a trustee of an appropriate investment vehicle, such as an RESP, where the taskforce is satisfied it is in the best interest of the child to do so.
- 9) The policy will include a general requirement that if a minor has more than one guardian, each guardian must sign the authorization form. However, the decision-maker will have discretion in situations where a child has an absentee parent but no formal court order with respect to guardianship is in place.
- 10) The applicant will indicate the purpose for which the distribution is sought in the application.
- 11) If a minor is a child in care, their funds will be held in trust.

Form 3 ([Family Law Act Regulation, section 24](#))

GUARDIAN'S ACKNOWLEDGMENT — CHILDREN'S PROPERTY

1 I, [name], of
..... [address], [occupation], am
the guardian of [name of child] born
..... [birthdate of child - mmm/dd/yyyy].

2 I have the parental responsibility to make day-to-day decisions affecting the child.

3 I request [name of person or organization] to deliver to
me, to hold as trustee for the child, money or other property of a total value of \$ that
..... [name of person or organization] has a duty to deliver to
the child.

4 I confirm that when I receive the money or other property referred to in section 3, the total value of
money and property that I will have received to hold as trustee for the child under [section 178](#) of
the [Family Law Act](#) will not exceed the amount prescribed by [section 24](#) of the [Family Law Act
Regulation](#). [Note: the amount prescribed as at March 18, 2013 is \$10,000]

5 I will hold the money or other property in trust for the child.

6 I will keep the child's money or other property separate from my own

7 I will expend the money or other property for the sole benefit of the child.

8 I will not profit from my role as trustee of the child's money or other property.

9 I will account to the child at any time that the child requests and when the child reaches 19 years of
age I will account to the child and transfer the balance of the money or other property remaining at
that time and all interest earned on it to the child.

Date:
.....
[mmm/dd/yyyy] Signature of guardian

This acknowledgement was signed in the presence of

WITNESS [The witness to this acknowledgement must be at least 19 years of age.]

Name:
.....

Address:
.....

Signature of witness

Occupation:
.....

Important Information

A guardian who holds money or other property for a child as a trustee under [section 178](#) of the *Family Law Act* must comply with [section 15.2](#) of the *Trustee Act* which states that "a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments".

Money or other property held by the guardian belongs to the child. The guardian holds and protects it and cannot personally benefit from it. The guardian cannot borrow any of the money or other property and lend it to anyone else. The guardian cannot give it to anybody else to hold as a trustee other than to the person replacing him or her as guardian.

When the guardian invests a child's money or other property, the guardian must ensure that the investment is registered in the name of the trust or on behalf of the child. A bank, credit union or trust company can assist the guardian in setting up a trust account.

Only the guardian can make a decision about whether to spend any of the income or capital or both. The money or other property can only be used for the sole benefit of the child.

The guardian is accountable for his or her management of the money or other property and must keep a record of all transactions, including all financial statements detailing income earned by the money or other property and a record of all money spent.