

To be completed for an Application for Guardianship over the Property (Personal Injury Award or Settlement) of a Minor (A Person Under 18) under the *Children's Law Reform Act*.

THIS ANNOTATED DRAFT MANAGEMENT PLAN is a SAMPLE ONLY (any person reviewing this document should obtain independent legal advice before using it)

This Annotated Draft Form 2 Management Plan has been prepared by Kaylie Handler, lawyer with the Office of the Children's Lawyer, Property Rights Department. The author also wishes to give credit, and is grateful, to Cate Grainger and Samantha Preshner for their materials prepared for the 2015 Law Society of Upper Canada Program – Representing Children in Personal Injury Actions, Materials for Guardian of Property Applications under the *Children's Law Reform Act*.

ANNOTATION:

This Management Plan - Form 2 - is only to be used only when the guardianship application relates to the appointment of a guardian of property to manage the minor's personal injury award or settlement proceeds; in all other cases, the management plan to be used can be found here:

[Form 1 Management Plan Schedule A to judgement 2021 . The\(ontariocourtforms.on.ca\)](http://www.ontariocourtforms.on.ca)

At the outset, it is important to remember that the management plan sets the parameters for the guardian's management of the minor's property. A guardian of property must manage the minor's property in accordance with the management plan. Pursuant to section 47(2) of the Children's Law Reform Act, R.S.O. 1990, c. C. 12, as amended (the "CLRA"), a guardian of property has charge of and is responsible for the care and management of the property of the child.

In deciding whether to appoint the Applicant as guardian of property, the court shall consider (among other things) the merits of the proposed management plan (see section 49(b) of the CLRA).

A guardian of property has an ongoing obligation to maintain accounts and records and will be required to account, whether by way of informal accounts to be reviewed by the Office of the Children's Lawyer or formal application to pass accounts. Having a well-developed, clear management plan will reduce the likelihood of objections being raised with respect to the guardian's accounts. (See section 52 of the CLRA which provides that a guardian may be required to account or may voluntarily pass accounts in the same manner as a trustee.)

1. This management plan is provided as part of the application made by:

(Please list additional applicants on a separate page).

Full name of applicant

First Name

Middle Name

Last Name

Full name of applicant

First Name

Middle Name

Last Name

Full name of applicant

First Name

Middle Name

Last Name

to be appointed as guardian of the property of the minor: (referred to throughout this management plan as the minor)

First Name

Middle Name

Last Name

Date of Birth (yyyy/mm/dd)

ANNOTATION:

Pursuant to section 47(1) of the Children's Law Reform Act, (the "CLRA") the application may be brought by a child's parent or any other person.

Pursuant to section 48(1) of the CLRA – as between themselves and subject to any court order or agreement, the parents of the minor are equally entitled to be appointed guardian of property by the court.

Pursuant to section 48(2) of the CLRA – as between a parent and a person who is not the parent of the minor, the parent has preferential entitlement to be appointed guardian of property.

A court may appoint more than one guardian of property for a minor (see section 48(3) of CLRA). Where more than one guardian is appointed, the guardians are jointly responsible for the care and management of the child's property (see section 48(4) of the CLRA).

2. Guardianship of Property

ANNOTATION:

Use this section to provide details of the personal injury claim.

The minor has property further to the award/settlement of a claim regarding (insert nature of personal injury claim below e.g. medical negligence, motor vehicle accident)

bearing Court file number

in which the minor:
(Insert name of
minor)

First Name

Last Name

born (yyyy/mm/dd)

was the: (Select one)	<input type="checkbox"/> Primary plaintiff	<input type="checkbox"/> Derivative plaintiff
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To the best of my knowledge and belief, the award/settlement funds belonging to the minor are as follows:

ANNOTATION:

Use this section to disclose all assets and income to be managed by the guardian(s) of property.

Particulars	Applicable		Amount
Lump sum payment	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Monthly annuity payments indexed at %*	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Lump sum payments commencing on and recurring every *	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

*as set out in the structure printout attached as **Schedule "B"** to this management plan

List additional property, if any, from the award/settlement

3. Real Property (Where Applicable)

From the property described in section 2, funds up to a maximum amount of \$

will be used to purchase and/or modify housing for the minor's accessibility needs, subject to the mandatory requirements set out below. This amount shall include the building/modifications assessment, all land transfer tax, legal fees, essential service connections, and home inspections.

☐ Yes ☐ Not Applicable

A building/modifications assessment has been prepared

☐ Yes ☐ No

If yes, the building/modifications assessment has been prepared by: (Insert name of assessor below)

and will be carried out under the direction/ supervision of: (Insert name of director/supervisor below)

The plan includes the following: (e.g. elevator, ramps, Snoezelen room, attendant care suite etc.)

If no, a building/modifications assessment will be obtained prior to the matter being returned to the Court, on notice to the Children's Lawyer, for Court approval of the purchase and/or modification of a specific home for the minor. The plan will include the following: (e.g. elevator, ramps, Snoezelen room, attendant care suite etc.)

Particulars	Estimated Cost
Total	

The title to the real property shall be registered in the name of

the minor (Insert
name of minor)

First Name

Last Name

Provide details

The parents of the minor shall personally pay all utilities, taxes and insurance pertaining to the real property.

ANNOTATION:

A minor may be registered on title to real property in Ontario.

Unless the real property meets some special need of the child – for example, where the home is modified to meet the child’s accessibility needs – the court will generally not agree, nor will the Children’s Lawyer consent to, the use of the minor’s funds to purchase/renovate real property. Additionally, there must be evidence that the parent(s) has/have sufficient funds to pay for the balance of the purchase price, if applicable, and assume all maintenance of the property including insurance, property taxes, any mortgage and utilities.

The management plan must include details of the specific property proposed to be purchased and/or modified and a modification assessment report with respect to that specific property must be obtained. If, at the time of the guardianship application, the applicant has not located a specific property, the management plan (and guardianship judgment) should provide for the matter to be returned to court, on notice to the Children’s Lawyer, when a suitable property has been found (and a modification assessment report obtained). At that time, the guardian of property can seek approval to purchase and/or modify the specific property using the minor’s funds.

In accordance with section 59 of the CLRA, any mortgage or sale of real property in which a minor holds an interest requires a proceeding, on notice to the Children’s Lawyer, for court approval by a judge of the Superior Court of Justice.

While there may be a concern with registering a minor on title, as this means the property cannot be mortgaged or sold during the child’s minority without a court order, registering the minor’s interest on title provides the minor with necessary protection of his/her/their interest. A guardianship or trust relationship cannot be registered on title (see section 62 of the Land Titles Act, R.S.O. 1990, c. L.5, as amended).

4. Vehicle, Mobility & Personal Care Equipment (Where Applicable)

I/we have listed below the equipment that the minor will need, in accordance with the cost of care report of (Insert name of author of report and date of report below)

Dated		
Particulars	Applicable	Estimated Cost
Wheelchair Accessible Vehicle*	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Adjustable Bed/Hydraulic Lift	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Toilet Commode	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Shower Chair	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Exercise Ball, Exercise Table, Exercise Mat and Rolls, Tumble Wedge	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Walkers/Standers	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Wheelchair - Manual	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Wheelchair - Electric	<input type="checkbox"/> Yes <input type="checkbox"/> No	
GI Feeding Equipment	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total		

ANNOTATION:

The items listed above are those most commonly required, but it is not an exhaustive list. If the minor requires equipment or devices not listed above (eg. ankle foot orthotics, communication devices, etc.), these can be included in the management plan provided these are recommended by a healthcare professional, as defined under Schedule 1 Self Governing Professions - of the Regulated Healthcare Professionals Act, 1991.

It must be remembered that parents have an obligation to support their minor children (see section 31(1)(a) of the Family Law Act, R.S.O. 1990, c. F.3, as amended). As such, this section is meant for expenses/equipment related to the minor's extraordinary needs because of his/her/their injuries.

The guardian of property may use the lump sum funds for additional devices for the minor provided that each expenditure is:

- recommended in writing by a healthcare professional, as defined under Schedule 1 - Self Governing Professions - of the *Regulated Healthcare Professionals Act*, 1991; and
- does not exceed \$3,000.00.

ANNOTATION:

The above provision, which permits the guardian of property to use lump sum funds for additional devices required by the minor, provides the guardian of property with a measure of flexibility to ensure the minor's ongoing needs can be met in compliance with the management plan.

If the guardian of property is concerned that the minor may have unanticipated expenses, it may be possible to have a portion of the minor's funds paid to the Accountant of the Superior Court of Justice and held to the minor's credit. If the minor then has needs that fall outside the scope of the management plan, the parent or guardian may make a request via the Minors' Funds Program to pay for this additional expense. Information about the Minors' Fund Program can be found here: [Minors' Funds Program | ontario.ca](http://Minors'FundsProgram.ontario.ca)

*The minor's contribution to the vehicle purchase will be registered under the *Personal Property Security Act* and I will provide the Office of the Children's Lawyer with documentation confirming this registration within 60 days of the purchase of a wheelchair accessible vehicle.

5. Therapy and Medication

I/we have listed below the therapy and medications that the minor will need, in accordance with the cost of care report of : (Insert name of author of report and date of report below)

Dated

		Present to 18 years of age	
Service/Therapy	Applicable	Monthly	Annually
Case Management	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Occupational Therapy	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Physiotherapy	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Speech/Language Therapy	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Medications/GI Dietary Supplements	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Total			

The guardians of property may reallocate funds as between the various therapies and services noted under section 5, so long as the amount does not exceed the total annual funds available for same.

ANNOTATION:

Cost of care reports obtained during personal injury litigation generally represent the best-case scenario for care. As such, the expenditures detailed in these reports will likely exceed what is available to the minor following the personal injury award or settlement.

The applicant must ensure that the expenses included in the management plan align with the funds available to the minor.

6. Nursing, Attendant & Respite Care (Where Applicable)

Particulars	Applicable	Per Hour	Monthly	Annually
Weekday Attendant Care	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Weekend Attendant Care	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Respite Care - Weekday	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Respite Care - Weekends	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Nursing Care - Weeknights	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Nursing Care - Weekends	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Total				

7. Capacity Assessment (Where Applicable)

I/we shall arrange for a capacity assessment for the minor, to be conducted in accordance with the *Substitute Decisions Act*, 1992, at least three months prior to and no more than six months prior to the minor attaining the age of eighteen (18) years, to determine the minor's capacity to manage property. The reasonable cost of the capacity assessment will be paid for from the minor's funds.

☐ Yes ☐ Not Applicable

ANNOTATION:

Minors are incapable of managing property by virtue of their age. The authority of a guardian of property for a minor under the CLRA ends when the child turns 18 years old.

At age 18, there is a presumption of capacity to manage property. If there is a concern that a child may not have capacity to manage his/her/their property when he/she/they reach the age of majority (for example, if they have suffered a traumatic brain injury), a capacity assessment is to be arranged prior to the minor's 18th birthday. This capacity assessment is not binding. Rather, it will be used as evidence on an application to appoint a guardian of property under the Substitute Decisions Act, 1992, S.O. 1992 c.30, as amended (the "SDA"). Having a capacity assessment done three to six months prior to the person's 18th birthday ensures that the SDA application may be heard as soon as possible following their attaining the age of majority. Evidence of incapacity to manage property is required in order for a guardian of property to be appointed under the SDA.

8. Reserve Fund (Where Applicable)

I/we have listed below the amounts from the award/settlement funds that I/we will deposit into monthly GICs or interest generating savings accounts to maintain a reserve fund for the purpose of replacing the minor's transportation and mobility equipment in accordance with the cost of care report of (Insert name of author of report and date of report below)

☐ Yes ☐ Not Applicable

Dated

Particulars	Present to 18 years of age	
	Monthly	Annually
Modified Vehicle Replacement Fund		
Mobility Equipment Replacement Fund		

Total		

9. Investment Plan

If at any time I/we am/are holding a balance of funds in excess of \$10,000 which is not immediately required for the purposes described above, such balance will be invested in guaranteed investment certificates, treasury bills, term deposit or similar secured investments.

The minor's monies will not be disbursed except to the extent set out in this management plan. I/we will not seek nor will I/we take compensation or any management fees for my/our role as guardians of property for the minor.

Annotation:

A guardian of property is fiduciary and must manage the minor's property in accordance with his/her/their best interests and in accordance with the court-approved management plan.

It must be remembered that the property to be managed is personal injury award or settlement proceeds. These monies are all earmarked for the person's injury-related expenses. As such, the risk tolerance is very low – the goal is not to maximize wealth but to ensure that the requisite funds are available to pay for the person's injury related expenses when they come due.

10. Undertakings and Acknowledgement of the Applicant(s)

☐ I/we acknowledge that I/we read the above plan and understand its contents.

☐ I/we shall abide by the terms of the Management Plan approved by the Court.

☐ I/we shall keep true and accurate records and accounts of all transactions, including investments, receipts and disbursements and shall account for the guardianship as required.

☐ I/we understand that our authority to manage the minor's property under the *Children's Law Reform Act* ends when the minor attains the age of eighteen (18) years, and that at such time I/we shall hand over any amounts beneficially owned by the minor, remaining in our control, to the minor, subject to further Order of the Court.

*These terms are only intended to be used for a minor's personal injury award/settlement. Please see Form 1 for Management Plan terms where no minor's personal injury proceeds.

Name of Applicant	Signature	Date (mm/dd/yyyy)
Name of Applicant	Signature	Date (mm/dd/yyyy)
Name of Applicant	Signature	Date (mm/dd/yyyy)

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