

**THIS ANNOTATED DRAFT JUDGMENT is a SAMPLE ONLY (any person reviewing this document should obtain independent legal advice before using it)<sup>1</sup>**

COURT FILE NO.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
at Toronto**

THE HONOURABLE M ) MONDAY, THE DAY  
 )  
JUSTICE ) OF ,

2015 BETWEEN:

AA

Applicant

- and -

BB, a minor, by her Litigation Guardian,  
THE CHILDREN'S LAWYER

Respondent

**JUDGMENT**

**Annotation**

***The Applicant can be the parent or “any other person” in accordance with section 47(1) of the Children’s Law Reform Act, R.S.O. 1990, c.C.12, as amended (the “CLRA”) and the application must be on notice to the Children’s Lawyer who will act as the minor’s litigation guardian in the proceeding. Any other person can also include a trust company.***

***As between themselves, parents are equally entitled to be appointed guardian of property for their minor child, subject to any court order or any agreement between them. As between a parent or any other person, the parent has preferential entitlement to be appointed guardian of property for their minor child. A court may appoint more than one guardian of property and, if so, the guardians are jointly responsible for the care and management of the child’s property (see section 48 of the CLRA).***

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<sup>1</sup> This Annotated Draft Judgment 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*.

**THIS APPLICATION** made by AA, was heard this day at the Court House,

\_\_\_\_\_, \_\_\_\_\_, Ontario.

**UPON READING** the Notice of Application and evidence filed by the parties, and on hearing the submissions of counsel for the applicant,

1(a)(i). **THIS COURT ORDERS** that upon AA filing with the Court a copy of a [type of] bond in the amount of \$ \_\_\_\_\_ payable to BB (born m/d/y), the costs of same to be paid by/from \_\_\_\_\_, AA be appointed as the guardian of the property of BB in respect of the proceeds of the settlement of her personal injury action, as provided for in the Judgment of \_ dated \_\_\_\_\_, Court File Number \_\_\_\_\_.

**AND**

1(a)(ii). **THIS COURT ORDERS** that if AA has not filed with the Court a copy of the [type of] bond referred to in paragraph 1(a)(i) within \_\_\_\_\_ days of the date of this Judgment then this Judgment is of no force and effect.

**OR**

1(b)(i) **THIS COURT ORDERS** that AA be appointed as the guardian of the property of BB (born d/m/y), in respect of the proceeds of the settlement of her personal injury action as provided for in the Judgment of \_\_\_\_\_ dated \_\_\_\_\_, Court File Number \_\_\_\_\_.

**AND**

1(b)(ii) **THIS COURT ORDERS** that the posting of a bond or security by the applicant is hereby dispensed with.

### Annotation

*The specific property which the guardian(s) will be managing must be identified.*

*Where a minor may receive property but does not yet have any property to be managed (for example, if the minor is a plaintiff in an ongoing personal injury action), a CLRA guardian of property application cannot be heard, and a guardian of property cannot be appointed. That is, the guardianship application should only be brought once the quantum of the minor's property is known and finally determined (see the attached decision of the Honourable Mr. Justice P. Daley in Mahjabin v. Office of the Children's Lawyer 2023 ONSC 7552]. Until the quantum of the minor's property to be managed is determined, the Court and the Children's Lawyer cannot assess the management plan and the suitability of the applicant to act as guardian of property for the minor.*

*Pursuant to section 55(1) of the CLRA, the posting of a bond is mandatory for an applicant. However, if the applicant is the minor's parent, the Court has discretion to consider, on the facts before it, whether it will dispense with the posting of a bond (see section 55(2) of the CLRA).*

*A trust company registered under the Loans and Trust Corporations Act, R. S. O. 1990, c. L.25 is not generally required to post a bond when appointed guardian of property (or co-guardian) for a minor. Registered trust companies' size and liquidity will generally ensure that if the minor requires indemnification, there will be sufficient assets available.*

2. **THIS COURT ORDERS** that AA shall act, and invest the minor's property, in accordance with the management plan attached as Schedule "A" to this Judgment.

*Annotation*

*Pursuant to section 49(b) of the CLRA, a management plan is required to be provided by the applicant.*

*The management plan should be attached as a schedule to the Judgment as it includes the terms and conditions to which the applicant has agreed, and is required, to adhere. Adherence to the terms and conditions of the management plan by the guardian of property is assessed by the Court on the guardian's application to pass accounts.*

3. **THIS COURT ORDERS** that from the funds held by AA, payments will be made only for the benefit of BB in accordance with the management plan attached hereto.

*Annotation:*

*A guardian of property cannot use the minor's property outside the scope of the management plan. The minor's property must be used for the minor's benefit only.*

*A guardian of property is a fiduciary and must act in accordance with the guardian's court-approved management plan and in accordance with the minor's best interest.*

*The Children's Lawyer has no statutory authority to approve amendments to a management plan. If the applicant later needs to deviate from the management plan, a motion will be required to amend the management plan pursuant to court order.*

4. **THIS COURT ORDERS** that AA shall not use the minor's funds to purchase or renovate real property without filing a motion with the Court on notice to The Children's Lawyer.

***Annotation:***

***As set out above, the Children’s Lawyer has no statutory authority to approve amendments to a management plan. If the applicant later needs to deviate from the management plan, a motion will be required to amend the management plan pursuant to court order.***

***If the intended purpose of the Guardianship Application is for the minor’s funds to be used to purchase or renovate real property for the minor’s benefit then substitute paragraphs 11-16 in place of paragraph 4.***

5(a). **THIS COURT ORDERS** that AA shall not receive any compensation for his care and management of the minor’s property.

**OR**

5(b). **THIS COURT ORDERS** that AA [if a Trust Company] may claim compensation in accordance with the fee schedule attached as Schedule “B” to the Judgment, which compensation is subject to review by the Court, and without prejudice to the Children’s Lawyer’s right to object, on a passing of accounts to the claim for, and amount of, compensation.

***Annotation:***

***If a court order is made permitting the guardian to receive compensation (generally applicable when a trust company is guardian of property/co-guardian or property), the compensation is still subject to review by the Court on a passing of accounts.***

6. **THIS COURT ORDERS** that AA shall file an Application to pass his/her/their accounts for the period ending \_\_\_\_\_ from the date of the Court’s Judgment within six months of that date and thereafter as may be required by the Court or The Children’s Lawyer.

***Annotation:***

***A guardian of property has an obligation to account for his/her/their management of the minor’s property (see section 52 of the CLRA).***

***The time period for the passing of accounts will depend on the age of the minor and the complexity of the guardianship. Where the guardian is not a professional trustee (i.e. not a Trust Company), and the management plan permits significant expenditures, it is not uncommon for the Children’s Lawyer to request that the first passing period be one (1) year. This ensures that there is an opportunity to address any issues early in the guardian of property’s tenure.***

7. **THIS COURT ORDERS** that in the event that BB ceases to be in the care and control of AA or ceases to reside with AA on a full-time basis, AA shall forthwith advise The Children's Lawyer and shall apply to the Court for further directions in respect of the guardianship of property appointment.
8. **THIS COURT ORDERS** that AA shall arrange for a capacity assessment for BB, to be conducted in accordance with the *Substitute Decisions Act, 1992*, between three and six months prior to BB attaining the age of eighteen (18) years, to determine her capacity to manage property.

***Annotation:***

*If the minor has sustained a brain injury and/or if there is other reason to be concerned that the minor may not have capacity to manage property when he/she/they reach the age of majority, this term can be included. The capacity assessment report may then be used as evidence on an application to appoint a guardian of property under the Substitute Decisions Act, 1992. S.O. c. 30, as amended, after the person has reached the age of majority.*

9. **THIS COURT ORDERS** that the authority of AA to manage BB's property shall end when BB attains the age of eighteen (18) years, and at such time AA will hand over any amounts, beneficially owned by BB remaining in the control of AA, to BB, subject to further Order of the Court.

***Annotation:***

*Pursuant to section 53 of the CLRA, the authority of a guardian of property appointed under the CLRA ends when the minor attains the age of 18 years old.*

10. **THIS COURT ORDERS** that AA and the Children's Lawyer shall be permitted to seek further direction and advice from the Court regarding any aspect of the guardianship from time to time.

***Annotation:***

***If the intended purpose of the guardianship application is to use the minor's funds to purchase or renovate real property for the minor's benefit then paragraphs 11-16, as applicable, should be included.***

***For clarity, any real property purchased using the minor's property, should be situated in Ontario.***

- 11(a). **THIS COURT ORDERS** that AA shall pay from the minor's funds the sum of \$ \_\_\_\_\_ to purchase the real property known as [insert legal description] where the minor will reside, and that is for the benefit of the minor, in accordance with the management plan attached as Schedule "A" to this Judgment.

**OR**

- 11(b). **THIS COURT ORDERS** that if and when AA provides to The Children's Lawyer a specific plan to purchase a specific home for BB with details of the costs of purchase as well as the costs of maintaining that property, this matter may be returned to the Court, on notice to The Children's Lawyer.

**OR**

- 11(c). **THIS COURT ORDERS** that AA shall pay from the minor's funds a maximum of \$ \_\_\_\_\_ to renovate the real property known as [insert legal description] where the minor resides, for the benefit of the minor in accordance with the management plan attached as Schedule "A" to this Judgment.

**Annotation:**

*If the guardian of property intends to use the minor's funds to purchase or renovate real property, the specific property which will be purchased or renovated must be described and a modification assessment report addressing the suitability of the proposed property will be required.*

*If at the time of the application a suitable property has not been found, the judgment should provide for the matter to be returned to court, on notice to the Children's Lawyer (usually a minimum of 5 to 10 days' notice). At that time, the requisite order can be sought and the management plan amended to provide for the minor's funds to be used to purchase/renovate the specific property.*

12. **THIS COURT ORDERS** that AA shall register the title of the real property known as [insert legal description] in the name of BB.

**Annotation:**

*A minor may be registered on title to real property in Ontario. Registering title in the minor's name ensures protection of the minor's interest in the real property.*

13. **THIS COURT ORDERS** that The Children's Lawyer shall be served with any Application for approval of the sale or encumbrance of any property in which BB has an interest.

**Annotation:**

*A guardian of property may not sell or encumber any real property in which a minor has an interest without a motion, on notice to the Children's Lawyer, seeking court approval to do so (see section 59(1)(a) of the CLRA.*

14. **THIS COURT ORDERS** that no transfer, encumbrance, charges, mortgages or



liens shall be registered on the real property known as [insert legal description] prior to [insert date], BB's eighteenth (18<sup>th</sup>) birthday, without the approval of the Court on notice to The Children's Lawyer.

***Annotation:***

***As set out above, a guardian of property may not sell or encumber any real property in which a minor has an interest without a motion, on notice to the Children's Lawyer, seeking court approval to do so (see section 59(1)(a) of the CLRA).***

***As also set out above, the Children's Lawyer does not have statutory authority to amend a management plan. As such, if the guardian of property intends to deviate from the management plan, a motion to amend the management plan, and court order, is required.***

15. **THIS COURT ORDERS** that AA be personally liable to pay all taxes, utilities, insurance and associated expenses of the real property known as [insert legal description].

***Annotation:***

***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).***

16. **THIS COURT ORDERS** that in the event that BB ceases to reside on a full- time basis in the real property known as [insert legal description] to be that purchased for BB and her family, AA shall forthwith advise The Children’s Lawyer and shall apply to the Court for further directions in respect of the guardianship of property appointment.

***Annotation:***

***A note re Costs: If the applicant intends to pay their legal costs of the guardianship application out of the minor’s funds, this relief must be sought and any amount to be paid out of the minor’s property must be fixed in the judgment.***

***In addition, the applicant should consider whether the costs of a guardianship of property application, and any passing of accounts, are warranted in the circumstances. For example, where the minor’s property is modest and the expenses minimal, or if the minor is close to reaching the age of majority, consideration should be given as to whether the minor’s property should instead be paid to the Accountant of the Superior Court of Justice and accessed via the Minor Funds Program run by the Office of the Children’s Lawyer. Information about the Minor’s Funds Program can be found here: [Minors’ Funds Program | ontario.ca](https://www.ontario.ca/minors-funds-program)***

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**SUPERIOR COURT OF JUSTICE – ONTARIO**

7755 Hurontario Street, Brampton ON L6W 4T6

**RE:** MAHJABIN, plaintiff

**AND:**

OFFICE OF CHILDREN'S LAWYER, defendant

**BEFORE:** Justice P. Daley

**COUNSEL:** The plaintiff, MAHJABIN, Mehroz, is self-represented.  
Email: [Mehroz.mahjabin@gmail.com](mailto:Mehroz.mahjabin@gmail.com)

LEUNG, Angela, for the defendant  
Email: [Angela.Leung2@ontario.ca](mailto:Angela.Leung2@ontario.ca)

**HEARD:** June 6, 2023, by video conference

**ENDORSEMENT**

- [1] The applicant is the mother of Aaron Dimitrious Lake, a minor, who is involved in an underlying civil action as represented by this applicant as his litigation guardian. The civil action is proceeding in Toronto under civil action CV – 21 – 658312.
- [2] The applicant seeks an order appointing her guardian as to property of her minor son in respect of the underlying civil action.
- [3] The evidence submitted on behalf of the Office of the Children's Lawyer is clear that the underlying civil action remains ongoing. No judgment has been granted in favour of the minor plaintiff nor has there been a settlement of the action in his favour.
- [4] The applicant confirmed that examinations for discovery in that action are presently being scheduled.

- [5] Thus, there is no property owned by the minor or in respect of which he has any entitlement whether by court order or by settlement and as such there is no property in respect of which an order could be made appointing the applicant as guardian of property for her son.
- [6] The applicant is of the view that she must firstly obtain a guardianship order appointing her as guardian as to property for her minor son before any judgment is granted in his favour or where a settlement is achieved providing for a payment to him. Unfortunately, her understanding of the law is inaccurate.
- [7] The application is premature as there is no basis whatsoever for granting such an application.
- [8] Under the Children's Law Reform Act, a guardian of property cannot be appointed where the minor has no property which would be the subject of such an order.
- [9] Furthermore, in the event of the settlement of the applicant's son's claims in the underlying civil action, as he is a minor, such a settlement would require approval of the court. The monies resulting from such a settlement would be paid into court to the Accountant of the Superior Court of Justice, unless ordered otherwise.
- [10] On an application for the appointment of a guardian as to property in respect of property owned by a minor i.e. a judgment or settlement amount the court must be satisfied that the plan of management put forward by the proposed guardian of property is in the best interest the child. In order for a court to make such a determination, it is fundamental that the minor owns property and that the proposed plan of management has merits and is in the best interest of the minor.
- [11] On this application, there is no evidence that the minor owns any property that could possibly require the assistance of a guardian as to property.
- [12] On this application, the applicant is seeking an order "in the air" or hypothetically in respect of any monies or property that "may" come into the hands of the minor

and as such I have concluded that this court has no jurisdiction to make such an order in the circumstances. There must first be a determination of the underlying civil action and if it is determined to be in favour of the minor plaintiff, and a judgment is granted to him either by a court or upon settlement, then and only then would a detailed plan of management be considered.

- [13] The typical and recommended practice is that if litigation is settled on behalf of a minor a motion is brought on behalf of the minor for approval of the settlement in accordance with rule 7.08, and concurrent with that an application is brought for the appointment of a guardian as to property, setting out a specific plan of management for the property and monies awarded to the minor.
- [14] I agree entirely with the position as submitted by counsel on behalf of the Office of the Children's Lawyer. This application is premature for the reasons outlined. If and when the minor receives property or monies, and the applicant seeks to be appointed guardian as to property, the full particulars of the settlement or judgment would be placed before the court along with a plan of management of those funds for the court's consideration.
- [15] In the result, the application is dismissed, without prejudice to the applicant bringing a fresh application for her appointment as guardian as to property if judgment is granted in favour of the minor or a settlement is achieved in his favour as a result of which he will receive monies or property.
- [16] Despite that this application was ill-conceived from its outset, counsel for the Office of the Children's Lawyer did not seek costs upon the dismissal of the application.
- [17] An order shall issue accordingly dismissing the application without costs, and without prejudice to a future application on the terms indicated.

Dated: June 6, 2023

Daley J.