

Part 8 – Children’s Property

Other Canadian provinces give parents the authority to manage small amounts of property in trust on their child’s behalf and some also have criteria to govern the appointment of trustees where the trust is larger. In British Columbia, the Public Guardian and Trustee administers children’s trusts, regardless of their size. Parents can go to court to get an order to make them responsible for a child’s trust, but the time and expense may outweigh the amount at issue. Families also say that the fees associated with this service are relatively high for small trusts, and some say this approach undermines families’ autonomy.

The children’s property regime in the Family Law Act allows parents and guardians to manage children’s property under a certain value without the need for a court order appointing them as trustees. The monetary limit for this will be established by regulation.

The legislation also sets out criteria to govern the court appointment of trustees where the trust is larger. The children’s property regime is largely modelled on Alberta’s Minors’ Property Act.

The children’s property regime is intended to promote the value of family autonomy by allowing a guardian (usually a parent) to manage small trusts for their child. In this way, families can avoid the fees associated with professional trustees.

At the same time, to reduce the risk of mismanagement of the child’s property, the Act builds in safeguards, including limits on the value and type of property that the guardian may manage without court appointment, as well as the use of written acknowledgements of receipt of property.

Section 175 Definitions

- Section 175 creates definitions necessary to support interpretation of the other sections in this Part.

Section 176 Guardian not automatically entitled to receive property

- Section 176 clarifies the law that a parent or guardian is not automatically a trustee of a child’s property.
- This does not change the law. Under the Family Relation Act, a parent or guardian must have been appointed a trustee in order to administer their children’s trusts.

Section 177 Delivery of any property to trustee

- Section 177 clarifies that a person may discharge their duty to deliver property to a child by providing that property to a trustee.

Section 178 Delivery of small property

- Section 178 establishes the framework that allows a child’s guardian, usually a parent, to manage small trusts for children without the need for a court order. A person who has a duty to deliver property to a child may deliver it to the guardian of the child, who will act as trustee, so long as the property falls within the scope of small property.

- There is no obligation to pay the small trust to the guardian. A person with a duty to deliver property to a child may instead chose to deliver the property to the Public Guardian and Trustee if the Public Guardian and Trustee will accept it.
- This section promotes the value of family autonomy by allowing a guardian to manage small trusts for their child. It allows families to avoid the fees associated with professional trustees so that more of the trust is retained for the child.
- This section also provides safeguards to reduce mismanagement of the child’s property, including:
 - limits on the value and type of property that the guardian may manage without court appointment, the details of which will be set out in regulations;
 - the use of written acknowledgements of receipt of property to reduce the risk of mismanagement of the child’s property;
 - the requirement that the guardian administering small trusts must act as a trustee and therefore the Trustee Act requirements can apply.
- There are some British Columbian acts that provide that settlement monies for a child must be given to the Public Guardian and Trustee and there are others that provide the authority to give settlement monies to either the Public Guardian and Trustee or a trustee. This regime does not impact the provisions in other acts. This section does not impose an obligation to pay small settlements to guardians. It only provides it as an option to allow for a more flexible approach where the settlement funds are under a limited threshold. For example, this section does not mandate ICBC to pay small settlements for a child to a guardian, but does allow for ICBC to adjust their practice to do so if they feel it is appropriate.
- The monetary limit or value of the property to qualify as a small trust, will be set out in regulations, which will be drafted prior to the Act comes into force. This will allow the amount to be adjusted over time.

Section 179 Appointment of trustee by Supreme Court

- Section 179 establishes the framework for court appointment of a trustee of children’s property for larger trusts.
- This section provides a trust-specific best interest test to govern court appointment and allows the court to impose terms or conditions to protect the child’s interest and to tailor the appointment to suit the circumstances.
- The inclusion of factors for the court to consider in deciding whether to appoint a trustee for larger trusts will add greater clarity to the statute by establishing consistent standards for judges to use.
- A trustee’s powers are defined and limited by the court order or the trust document only. A trustee does not have any form of guardianship over a child.

Section 180 Subsequent applications respecting trustee

- Section 180 allows a court to make changes to an appointment of a trustee if it is in the best interest of a child. These changes include requiring a trustee to provide an accounting or terminating the trustee's appointment and ordering the trustee to reimburse the child if necessary.
- The section allows a flexible approach and provides safeguards to protect the child's interest.

Section 181 When child's property must be delivered to child

- Section 181 provides a duty on trustees, including guardians who are trustees of small trusts, to deliver the property and provide an accounting to the child when the child reaches 19 years old, unless a trust instrument, such as a will or an order, says differently.