



**REASONS FOR ORDER**

**Mental Health Ordinance (Cap. 136)<sup>1</sup>**

**(Section 59O)**

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**BETWEEN**

**A medical social worker**

**Applicant<sup>2</sup>**

**and**

**Mr CLC**

**Subject<sup>3</sup>**

**The Director of Social Welfare<sup>4</sup>**

**Madam ZL**

**Party added<sup>5</sup>**

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<sup>1</sup> Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

<sup>2</sup> S2 of Mental Health Guardianship Board Rules

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

<sup>4</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(c) of Mental Health Ordinance

<sup>5</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(b) of Mental Health Ordinance

**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr Henry KWOK Wai-ming

Member referred to in section 59J (3) (c): Ms Sally HO Wing-fong

**Date of Reasons for Order:** 2<sup>nd</sup> June 2008.

**Party added**

1. The Board directed that Madam ZL, the alleged adopted daughter of the subject, be added as party to these guardianship proceedings.

**Background**

2. The hospital medical social worker applied for guardianship soon after the subject, a 84-year-old man, was assessed as mentally incapacitated (due to Alzheimer's disease) and upon her knowing that a female friend of the subject (Madam TP), claiming to be subject's cousin, tempered with the money of the subject in his bank account.
3. The female friend rejected the medical team's advice to discharge the subject to a residential care home for the elderly and insisted to restore the subject to her care at home. Yet, the subject was turned a street-sleeper after he was, in the same month of his hospital admission, evicted from his own flat by his adopted younger sister in the process of an execution of a High Court judgement.

4. The first hearing at the Guardianship Board on 10 December 2007 was adjourned for calling further mental assessment.
5. The second hearing at the Guardianship Board on 18 February 2008 was also adjourned due to the sudden appearance of an adopted daughter Madam ZL and her solicitor, seeking to be appointed as the private guardian of the subject.
6. Section 59O (3) of the Ordinance provides that, in considering whether or not to make a guardianship order, the Guardianship Board must be satisfied that the person, the subject of the application, is in fact a mentally incapacitated person in need of a guardian, having considered the merits of the application and observed the principles and criteria set out in sections 59K (2) and 59O (3) (a) to (d) of the Ordinance respectively.

#### **Mental and health conditions**

7. The subject is suffering from Alzheimer's disease. The subject needed assistance in self-care including mobility, toileting, changing clothes and sometimes feeding. In day time, he was able to indicate his need for toilet. In evening, he needed to wear diaper. The subject was free from any medical problem at this stage and he was fit for discharge from hospital.

#### **Recommendation of the Director of Social Welfare**

8. The social enquiry report maker stated that in paragraphs 20-21 as follows: -

*“..... With the view to protecting his best interest, I recommend a guardianship order be made for Mr CLC.*

*I consider that there exists difficulty for Director Social Welfare to monitor the case progress and supervise a guardian who is not residing in Hong Kong. I also have reservation on Madam ZL, who is residing in Beijing, of her capability of promoting the interests of subject, particularly for issues like financial support or medical emergency. When further considering the strong rejection of subject's younger sister and daughter, I opine that it is not advisable to appoint Madam ZL as the guardian due to the vulnerability to unresolved disputes between the parties. Under these circumstances, I recommend that the Director of Social Welfare, a third neutral party, be appointed as the guardian of subject.....”*

**Hearings at the Board on 2 June 2008**

- 9. At the start, the Board would put the followings clearly on the record: -**
- (i) Madam ZL through her solicitor Mr WONG confirmed her willingness to join as a party. The Board ordered accordingly.
  - (ii) The Board made a further order that the hearing today would be a hearing de novo, as ZL did not appear at the first hearing on 10 December 2007.
  - (iii) All parties did not object to the same panel of Guardianship Board members to continue to hear this case today.

10. Mr T, a District Councilor, said on 12 June 2007, a day of heavy rain, he was handling the eviction case of subject from his home. Bailiff and one Mr WONG, a social worker, were present at the scene. Through a telephone contact, he talked to Madam CML, the adopted younger sister of the subject, who told him that she would pity a dog but not the subject. He asked her to let the subject stay at the flat till death. The social worker Mr WONG said the subject could offer a sum \$10,000 for the stay. Their requests were turned down. He then grumbled against the social enquiry report maker in not including the matters raised by him. Mr T appeared exceedingly emotional. He said other friends of the subject could communicate satisfactorily with the subject in Shanghainese. [Madam CML admitted that she did say she liked to keep a dog than the subject. She then told a long story on how she would like to keep the assets of the family within the family as the subject had a lot of dubious friends around and made influences on him.]
  
11. Ms L, the applicant and medical social worker of hospital, said the subject was planned for discharge and the hospital occupational therapist had assessed the subject as not able to live alone. She agreed to the grant of Guardianship Order and appointment of the Director of Social Welfare as the legal guardian. In response to what Mr T had said, Ms L said the hospital had specially arranged a Shanghainess interpreter during the mental assessments at ward by Dr W on the second and the third occasions.
  
12. On being questioned by Mr WONG, the solicitor of Madam ZL, Ms L said her view on residential care for the subject was based on independent assessments by the medical team and not by reason of the fact that the younger sister had proposed so. On why not restoring the subject home, she said Madam ZL could not provide a feasible plan so far.

13. On a future plan of engaging a helper at home as proposed by Madam ZL (see progress social enquiry report dated 10 April 2008, paragraphs 12, 13 and 19), she said Madam ZL once mentioned a plan of engaging a two-way permit helper, but she found it not feasible.
  
14. [Regarding the aforementioned paragraph 19 of her report which mentioned that the home restoration plan proposed by Madam ZL “might be workable”, Mrs F, the social enquiry report maker, explained that a home restoration plan was generally a workable solution, but attention must be paid to the special circumstances of each case, e.g. the carers around him. But in this case, the subject did not have routine and fixed carers all along. The adopted younger sister Madam CML did not object to any definite plan of future care, but she merely would like the Director of Social Welfare to act as guardian. Mrs F was doubtful as to whether Madam ZL was a suitable guardian due her resident status as a Mainlander.]
  
15. On being questioned by Mr MT, a District Councillor’s assistant, as to why residential care was still pursued despite objection by the subject, Ms L said she kept the dialogue ongoing with the subject during these months. Subject appeared less objectionable to residential care and became more co-operative at hospital ward.
  
16. Madam CML, the adopted younger sister of subject, said the first court case issued by her against the subject over the validity of the two wills of her late mother was started in 1999 and finished in 2001. Apart from her and the subject, there was in fact another adopted sibling, being their elder brother, who had fought against the subject over assets of her late mother. The elder brother subsequently disappeared and abandoned altogether his duty of attending to the burial matters. She was greatly disappointed by the

subject's refusal to take up the burial and funeral matters of her late mother. Finally, it was her and her daughter who took care of all such matters. She found out that the subject had a woman. And she was afraid that the assets to be vested to the subject would be lost into other people's hands. The woman at that time was someone else and not Madam TP who appeared much later. She found out that the living place of the subject was very chaotic and dirty. She then took out the legal proceedings to prove the will made subsequently by her late mother against the subject who held an earlier will because she thought all the women around the subject were crooks. Despite advice by the court, the subject did not retain a lawyer. Subject appeared and defended in person. The High Court case was decided in her favour. There was no appeal lodged by the subject from the judgment.

17. She later changed another firm of lawyers and proceeded for other legal proceedings including applying for charging orders in the subsequent two to three years.
18. At one stage, she was considering discharging subject to a rented room at a moderate rental. She did not know of a new flat purchased by the subject at that point in time.
19. It was in about 2005 that Madam TP got involved in this matter. Subject admitted to her that Madam TP was his woman and she saw Madam TP fed the subject, hugged him and cleaned his feet at ward.
20. She queried the status and the position of Madam ZL to involve in this matter as she knew that adoption (“過繼”) did not have legal basis.

21. Since all assets of the subject belonged originally to her late mother, she would pursue to trace back all such assets till the very end should the judgment debt remain unsatisfied even after the new charging order, if finally obtained, were executed.
22. She handed up the second will of her late mother. She handed up an old joint written statement made in 2000 by her and her daughter which showed her side of grievances. But this statement, according to her, had not been filed with the court at that time.
23. She handed up a sale and purchase agreement dated 12 July 2007 to rebut Madam TP's earlier allegation that the subject would hang himself to death in July 2007. She said it was illogical to accept that the subject would kill himself while in the same month he entered into a contract to buy a new flat.
24. She agreed to a grant of the Guardianship Order in this case. In fact, subject could return to the new flat to live. She would have no problem with that only if the title was first changed back to her. Yet, subject should pay for his own livelihood. She thought subject had about \$200,000 at bank. She viewed that, as no one would take care of the subject at home, residential care should be preferred.
25. She was suspicious of Madam ZL who came into all these proceedings at this very late stage. She has never heard of Madam ZL before until she met Madam ZL at the last adjourned hearing on 18 February 2008. All her four siblings (all adopted by the late mother) were Ningbo natives. She queried how the subject could have connected to people in Beijing. She had nothing to do with anyone else in Beijing. She did not know of Madam F, the alleged natural sister of the subject, mother of Madam ZL.



26. On being questioned by Mr WONG, solicitor of Madam ZL, she denied that she told Mr T over the phone as calling the subject “the dead old man”. Being confronted that she talked over the phone outside the hearing room and swore at the phone and used the word “dead” repeatedly when mentioning about the subject, she said whether she had deep hatred for the subject, it was her family matter.
27. After recess, upon being shown two photos of the subject with others (in both of which Madam ZL did appear) by Mr WONG, she said she only recognized the subject. She did not know that subject knew and had contacts with the Madam ZL before. She did not know of the adoption (“過繼”) relationship. She never changed her view. She opposed to Madam ZL to act as guardian. If subject changed the title of new flat to her, she welcomed the subject to return to the new flat to live. But she said the subject would not do it. She had no contacts with the subject except some telephone calls in these years. Those telephone conversations were cut short as she was always scolded by the subject. She did not have any concrete action showing concern to the subject in these years. She said both she and her daughter were driven away by the subject from his home once. Despite this background and poor relationship, she did not agree that she did not have the status and position to oppose Madam ZL from acting as the guardian. [Mr WONG then put forth his view that the focus today was the welfare of the subject, the cold relationship made Madam CML not suitable to give her view. The Board could not agree with Mr WONG as Madam CML was one of the adopted siblings. But as to how much weight the Board would attach to her view, it would be a separate matter.]
28. She said she paid visits at hospital and talked to Ms TSE, the former social worker, to look for some home placement upon discharge.

29. Madam TP, the friend of subject, said she met the subject in 1989. She met ZL for the first time 1995 in Hong Kong. She described how she saved the subject from the hanging rope on 25 June 2007. The money to purchase the new flat came from Madam ZL who sent money to subject once or twice yearly since 1995. Madam ZL brought along cash to her for keeping. Towards the completion of the purchase, she transferred all the cash saved up during the years to subject's bank account. She disagreed to a Guardianship Order, as Madam ZL would handle the affairs of the subject. She grumbled a lot against the social enquiry report maker. She agreed to Madam ZL in taking the subject back to Beijing for care.
30. [Madam CML emphasized that Madam TP must show all banking records to support her version of the source of the purchase price. She said she would refer this matter to police because TP took money away from subject's bank account.]
31. Being questioned by Mr WONG, solicitor of Madam ZL, she replied that she took care of the subject for 18 years, since 1989. Her position was to let Madam ZL take care of the subject and not Director of Social Welfare, she did not understand many things. She agreed with Madam ZL to take her as the maid to give care to the subject at home and also agreed to let Madam ZL take care of everything of the subject, e.g. finances and accommodation.
32. Being questioned by Mrs F, the social enquiry report maker, on the very poor living conditions in which the subject lived while allegedly under her care with apparent doubtful quality [according to the information of Mr WONG, social worker of Integrated Family Service Centre], Madam TP said the subject had no money and had a lot of debts arising out of the late

mother's funeral and medical expenses. As a result, the subject needed to pick up cartoons in the street. [Madam CML said Madam TP must produce all receipts to prove what she said.]

33. Mrs F further said during the initial stage of her enquiry on the major source of money coming into subject's bank account for purchase of the new flat, Madam TP did not disclose the source was from Madam ZL but just said from "her" friends. [The Board noted that paragraph 20 of the social enquiry report dated 6 October 2007 had this record.]
34. Mr MT, the Assistant of a District Councilor, said as far as he knew, legal aid was not granted in 1995 as judgment was already granted. Subject was picking up rubbish in the street for a living. Mr WONG, social worker, helped him to look for welfare services. He held a press conference and what was said by Mr T earlier was exactly what happened on the day of eviction in June 2007. He could communicate with the subject satisfactorily in Shanghainese and he felt that the subject was not mentally incapacitated. He did not have any contrary medical evidence to produce today upon the Board's explanation to him that there were now a total of four medical reports against his assertion.
35. (The Board continued the hearing in the afternoon.)
36. Madam ZL, the alleged daughter of subject, handed up a statement of declaration dated 2 June 2008 made by her in Chinese, making therein various accusations against Social Welfare Department.

37. Madam ZL said she did not oppose to this guardianship application. She agreed to a Guardianship Order to be granted today. She wished to be appointed the legal guardian.
38. She said the subject came to Beijing 1995, after which she came to Hong Kong and was shown all assets of the subject. She did not like to take the assets of the subject. But if the subject got old one day, and if no one would take care of him, she would take up the duty. She did not like to get involved into the properties because of the complicated family background of the subject. In 1999, she asked subject if he needed her help in the litigation. But the subject said no need.
39. She could take subject back to Beijing for care or give him care in Hong Kong.
40. In 1995, she saw the subject always repay debts which were all related to funeral expenses of his late mother previously paid by his younger sister. The scheme of paying the funeral expenses by the subject's younger sister first was for the purpose of evading tax by the younger sister. Therefore, the owner's name of the burial ground was registered in the name of the younger sister. She knew, therefore, that the rentals collected from the properties (forming the late mother's estate) were spent for repaying such debts.
41. Every year, she brought cash to the subject during her visits. Sometimes, she brought \$200,000 in cash or cash around that sum. As subject did not need her money, she then gave all to Madam TP to keep. Being pressed for a clarification by the Board, she said she continued to bring various sizeable sums of cash to subject during these ten years or so, even though the subject

did not take them, because she knew there were ongoing litigations with the younger sister. She then said she came to visit the subject about two to three times a year. [On this point, the Board reminded her that this was not the version on frequency of visitations that she gave to the Board during the last adjourned hearing on 18 February 2008.] Finally, she said she brought about \$800,000-\$900,000 in total to Madam TP.

42. In 2007, the flat (i.e. the old flat) of subject was observed to be very dirty. She discussed with Madam TP on the long term accommodation of the subject, e.g. on renting a room. But today, subject's accounts were all frozen by Director of Social Welfare.
43. She was prepared to bring subject back to Beijing.
44. On whether residential care would be better, Madam ZL said there was no one to wash the feet of the subject even at the present hospital. She did ask to take subject out for cutting his hair. Mrs F, social enquiry report maker, said she would also go with them. But the next day, the subject did not like to go. Later, she took subject to his old friend in Chai Wan to have his hair cut. She cut the subject's finger nails in the hospital. She therefore felt not comfortable to let subject remain in Hong Kong. There were good hospitals in Beijing. She thought the freezing of the bank accounts of the subject by Social Welfare Department was illegal.
45. She would be able to find people to give care to the subject in Hong Kong. She would employ a person or helper in Hong Kong.

46. She earned regular incomes as she operated a company in Beijing. She had retired now from civil service and since ran her own company carrying on property consultancy business. She had a self-occupying flat which was worth RMB¥2 million. She would send the subject to hospital any time in need.
47. If subject were to stay in Hong Kong, she would apply for a single-entry permit to Hong Kong. In fact, she started this application already. [On being pressed for further information, she showed the Board a receipt of \$500 and dated 29 May 2008 of a solicitors' firm in Hong Kong. But this receipt appeared to be related to the preparation of a Chinese notarial document.] She would also bring her assets to Hong Kong and live here permanently. On being questioned further by the Board, she admitted that she did not live with the subject before, except in respect of longer stays, she stayed with the subject in two occasions, each lasted for about two months, respectively during late 1995 and early 1996, and at the end 1996.
48. On examination by her solicitor Mr WONG, Madam ZL said she once mentioned to the social worker about her status as niece, she said she was not only the adopted daughter but also the natural niece as her own mother was the elder sister of the subject. On pressed for the reason why she needed to become the adopted daughter since her being already the natural niece, she said by such arrangement it would become a matter of course for her to inherit the estate of the subject in future. The reason why subject so arranged was that the subject felt he was single and needed someone to care of him at his later years and see over the funeral matters. She then described how, back in time, she and her mother met up with the subject in 1993. [The Board noted that the matter was already reported in paragraph 8 of the progress social enquiry report dated 10 April 2008.]

49. She knew of the frozen accounts from Madam TP just this morning at the hearing. [The Board pointed out that her own statement of declaration handed in this morning, well typed out and dated 2 June 2008 (i.e. today), had contradicted her saying as it already mentioned the freezing of accounts.] Yet, she said when she raised this issue in her said statement, she in fact had a question mark at her heart. The Board was puzzled by her answer.
50. She also complained that during the period pending the hearing, without the approval of the Social Welfare Department, she could not bring subject out.
51. She said she opposed to the Director of Social Welfare to be appointed as the subject's guardian. She observed something at the hearing that made her felt uncomfortable to let Director of Social Welfare be appointed. Those matters were mainly that Mrs F (the social enquiry report maker) did not make her reports according to the facts.
52. On request for production by the Board, Madam ZL said she did not have the original "agreement for adoption" ("過繼協議書") with her today. On the legality or validity of such an agreement, neither ZL nor her solicitor Mr WONG was able to provide a legislation of the Peoples' Republic of China in their support. Madam ZL confirmed that the document was signed in Beijing in the presence of her ex-husband. Madam ZL admitted that at the time she became the alleged "adopted daughter" through the agreement, she was already at the aged of 42. Madam ZL confirmed that she had not brought the "agreement for adoption" subsequently to the local court for validation and no such work was necessary. The said agreement was written by her. When further questioned by the Board, she said pursuant to the "agreement for adoption", she changed her entire name in 1996. In her support, her solicitor Mr WONG drew the Board's attention to the use of the

new name in the House Property Ownership Certificate No. 12345 [*an edited number*] dated as early as 1 June [Appendix 4 of the progress social enquiry report dated 10 April 2008.] and a Notarial Certificate dated 10 March 2008 and authenticated by Foreign Affairs Bureau [part of Appendix 3 of the progress social enquiry report dated 10 April 2008.]. On the question of how she was able to change her entire name, Madam ZL replied that since there was blood relation, the authority, i.e. the Public Security Bureau would allow the change of name. Madam ZL said in Beijing, an adult could not change her name without proof, for which she brought along the proof from the local (work) unit to which she belonged and the said “agreement for adoption”. On further pressed by the Board, Madam ZL said the local (work) unit should know of the uncle-and-niece relationship because she filled out some previous forms relating to changing of jobs since the time back in 1993 and the local (work) unit had also considered the said “agreement for adoption”. As to why she was angry at Social Welfare Department for freezing the subject’s accounts, Madam ZL said a person should have rights of freedom.

53. [At this point, Madam CML pointed out to Madam ZL that all funeral and burial expenses for the late mother including purchasing the tomb stone and the burial plot were first paid with her own money. She had no tax to evade. Total expenses were around \$300,000. The subject agreed to pay back the expenses to her by way of monthly installments of \$5,000 each for two years. The funeral and the burial matters were finished in 1989. Subject duly paid all installments towards the end of 1991. There was no such thing of repaying debts in 1995 as alleged by Madam ZL. There was no money issue between the subject and her between years 1991 to 1999. However, Madam CML later said the subject banked in \$100,000 to her representing the final part of the repayment of expenses.]



The row

54. [There was a serious row between Mr T and Mr MT of the one part and Madam CML and Madam CML's daughter (i.e. subject's adopted daughter) of the other part, with each side yelling hysterically against the other; as such it appeared to the Board that these persons had almost lost their control and the likelihood of a physical fight loomed large. In such circumstances, the Board ordered Mr T and Mr MT to leave the hearing room immediately.]
55. [The applicant said on 13 December 2007, she first met Madam ZL who told her that she was subject's niece. At that occasion, she asked Madam ZL if she ever met Madam TP before (who was also present together with the case social worker Ms L of Integrated Family Service Centre). Madam ZL replied that she only heard of Madam TP before.] The applicant questioned why just now Madam ZL told the Board that she had a lot of money transactions with Madam TP in the past ten years or so. The applicant would like Madam ZL to clarify this.
56. To this query, Madam ZL said she needed to explain. She said she used to address Madam TP as "Da Ah Tse" (direct interpretation as "The Big Sister") and she never knew that Madam TP was the same person as "Da Ah Tse". The Board followed up this question by raising that Madam TP was physically present at that occasion. Yet, Madam ZL just replied that Madam TP was only sitting next to subject and she started to cry upon seeing the subject. Madam ZL reiterated that although she knew Madam TP since 1995, she never knew Madam TP's full name and since she trusted Madam TP, therefore she entrusted sizeable sums to her as she was together with the subject. The Board was rather astonished by Madam ZL averments as her answers were simply unconvincing and unbelievable.

57. Questioned by the social enquiry report maker Mrs F as to what part or parts of her reports were not in accordance with facts as alleged, Madam ZL said just that the matters raised and described by Mr T and Mr MT were left out in the enquiry reports. She needed to read all the report again before further answering the question of Mrs F. She then remained in silence. The Board was frustrated by the answers given by ZL for either she criticized Mrs F without basis or that she had grossly exaggerated the importance of the matters voiced out by Mr T and Mr MT. The Board noted that the eviction history was already recorded in the first social enquiry report.
58. Mrs F, the maker of social enquiry report, on behalf of the Director of Social Welfare, said the Official Solicitor had not given her a reply yet. The Official Solicitor just requested some more information from her, to which request she had acceded to already. A staff of the Official Solicitor's Office once said that as the present litigation would seem to be related to levying of an execution of a Court judgment, there was little ground to argue against it. The staff further said it was usually for the Court to give an instruction to the Official Solicitor to appear in a certain proceedings. It would therefore be better to let the future guardian raise this matter to the Court and request assistance to be given to the subject. With a Part II order, the safe deposit box of the subject could be opened and that the Official Solicitor may then have a legal position to represent the subject's estate.
59. Madam CML asked Mrs F if there were any documents written by Madam TP but signed by the subject stating the various status of TP as a cousin, a friend, and someone that was going to be married to him. Mrs F answered that there were such documents including one saying that the subject wanted to marry Madam TP. [The Board noted that there were three letters in

Appendix 9 to the first social enquiry report. In relation thereto, the Board also noted the comments by Mrs F in paragraph 31 of the same report.]

60. In response to what Mrs F had just said, Madam TP said that subject grew up with her mother and addressed her mother as the “elder sister”. Therefore she was his niece. Madam TP said she addressed the subject as “Pak Pak” (meaning “Uncle”). Since Mrs F would recommend the Director of Social Welfare as the guardian due to subject’s singleton status, she therefore told the subject’s daughter Madam ZL of what happened here in Hong Kong. She told Mrs F that she would marry the subject and became one of his family members, but Mrs F viewed this proposal negatively. She met Madam ZL in 1995. She did not know if Madam ZL knew her full name, she was just addressed as “Da Ah Tse” by Madam ZL. Finally, Mrs F supplemented that when Madam TP raised the idea of marriage with the subject, she pointed out to her of the subject’s status as a mentally incapacitated person.
61. On being questioned by Mr WONG, the solicitor of Madam ZL, that her report had taken in too much of the view of Madam CML, an oppressing party to the subject, and then made a recommendation against Madam ZL to act as the guardian, Mrs F said her recommendation was based on her overall observation to all relevant matters. She disagreed with Mr WONG’s comment that she had emphasized too much on the view of Madam CML, who was remarked by Mr WONG as merciless to the subject. Mrs F further said Madam ZL was wrong in her perception that the bank accounts were frozen by her Department. On being asked, Mrs F confirmed that she held the bankbooks of the subject in her office. As to Mr WONG’s concern as to which party she had disclosed the details as contained in the bankbooks, Mrs F said during the enquiry, she had

confronted Madam TP and Madam CML with some unexplained withdrawals as appeared in a bankbook. Regarding the need for “further consideration and negotiation” over the accommodation plan of the subject, appearing in paragraph 19 of the progress social enquiry report dated 10 April 2008, Mrs F said she meant to say that due to differences of opinion on the future care between Madam ZL and Madam CML, and with an impending hospital discharge, there was a need to appoint a guardian to work out the welfare plan. As to whether it was premature for her to come to a conclusion in her report, Mrs F said since the medical team had assessed that independent living was unsuitable, then, living at an aged home might be more suitable. During the enquiry, the stance on future accommodation was kept open. She discussed with Madam ZL in great depth. All options might be workable. She had not eliminated any option. Finally, Mr WONG questioned that Mrs F’s recommendation was not based on full information because she had not obtained more facts from Mr T and Mr MT. Mrs F answered that she agreed that she did not contact Mr T during the enquiry.

### Final Submissions

62. The applicant said appointing the Director of Social Welfare as guardian was ideal. To such a view, both Madam CML and the Ms MC agreed. The latter said she preferred to admit the subject to a residential care home for elderly.
63. TP said she preferred Madam ZL to become the legal guardian.

64. Mr WONG, on behalf of Madam ZL, opposed to the appointment of the Director of Social Welfare as the guardian. He submitted that Madam ZL, who was both willing and capable, should be appointed instead. The social enquiry reports made by Mrs F were not comprehensive and were only partial and ambivalent and thus the conclusion therein should be discounted.
65. Mrs F said subject's interests were her focus, namely, his daily care and the protection of his money. Subject was hospitalized too long and should be returned to the community. The future care was open to all options. There should be a guardian to make to relevant decisions.

### **Issues and Reasoning**

#### Reasoning for receiving the subject into guardianship

66. In this case, except the witnesses Madam TP, Mr T and Mr MT, no other parties or witnesses opposed to a grant of Guardianship Order. The Board will regard Madam TP as opposing to this application due to what she said at the hearing (see paragraph 27 above).
67. It was quite difficult, due to her high pitch, peculiar style and high speed of speech, to understand Madam TP fully. Nevertheless, it would seem fair to say that she was only against the Director of Social Welfare to be the person handling the future decisions of the subject and not opposing to the guardianship application per se as she said she supported Madam ZL to be the responsible person in control of the subject's future and she supported the home restoration plan of the subject.

68. Regarding Mr T and Mr MT, they opposed on the ground that the subject was communicable in Shanghainese and was not a mentally incapacitated person. To their concerns, the Board had adjourned the hearing on 10 December 2007 for further medical assessments. So far, the Board received, in addition to the first two medical reports filed with Form 1, two further medical reports from Dr W, an approved doctor, respectively made on 21 December 2007 and 2 May 2008. Both subsequent assessments concluded that the subject was a mentally incapacitated person with static conditions and declining MMSE scores. Pursuant to the direction by the Board at the earlier adjourned hearing, both assessments were conducted with the assistance of a Shanghainese speaking interpreter. The Board therefore rejects the assertions of Mr T and Mr MT.
69. The Board takes into consideration of the all the evidence and came to a view that the subject, being a mentally incapacitated person with obvious impaired capacities to decide for his own accommodation, healthcare and financial affairs, is in need of a legal guardian to make the decisions for him. The subject has been hospitalized since 5 July 2007 for mainly social reasons due to differences of opinion on his discharge plan between the medical team and the people around him with obscure and suspicious background, namely Madam TP and Madam ZL. The background of this case was complicated by subject's earlier eviction from his own home in June 2007 by his adopted sister Madam CML in the process of levying execution for a High Court judgment. Such process was now continued to touch upon subject's another property (i.e. the new flat), which was recently purchased under unclear circumstances. As a result of the eviction process, some District Councillors or their assistants got involved in this matter, thus further complicated the situation. In the circumstances, the Board accepts and adopts the views of the two medical doctors as contained in the four

supporting medical reports as well as the social enquiry reports and the views and recommendations as contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

70. In view of the confused and complicated financial status of the subject, the Board would like to recommend the future guardian to apply for a committee order under Part II of Mental Health Ordinance, particularly with regard to the subject's safe deposit box. Whilst knowing that another charging order application was taken out against the subject over his last remaining property on 14 November 2007 under HCA2345 [*an edited number*], the Board would nevertheless seek the committee's careful consideration on merits before a decision to contest is made. The Board duly noted the long history of this series of legal actions (with the court judgment already partially executed) commenced by Madam CML.

Reasoning for choosing the legal guardian

71. The applicant-social worker Ms L, the social enquiry report maker Mrs F, the adopted young sister Madam CML and the adopted daughter MC (who was also the natural daughter of Madam CML) are of the view that the Director of Social Welfare should be appointed as the legal guardian of the subject. Opposing to them, Madam ZL sought to be appointed the legal guardian instead. Madam ZL's had the support of Madam TP to become the guardian.
72. S.59S, Mental Health Ordinance has set out a list of factors to be considered in order to assess the suitability of a proposed guardian. S.59S reads as follows:-

*“(1) A person (other than the Director of Social Welfare) shall not be appointed by the Guardianship Board as a guardian of a mentally incapacitated person received into guardianship under this Part unless the Board is satisfied that-*

- (a) the proposed guardian has attained the age of 18 years;*
- (b) the proposed guardian is willing and able to act as a guardian;*
- (c) the proposed guardian is capable of taking care of the mentally incapacitated person;*
- (d) the personality of the proposed guardian is generally compatible with the mentally incapacitated person;*
- (e) there is no undue conflict of interest, especially of a financial nature, between the proposed guardian and the mentally incapacitated person;*
- (f) the interests of the mentally incapacitated person will be promoted by the proposed guardian, including overriding the views and wishes of that person where the proposed guardian (once appointed) considers such action is in the interests of that person;*



- (g) *despite paragraph (f), the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected;*
        - (h) *the proposed guardian has consented in writing to the appointment as a guardian.*
- (2) *Where it appears to the Guardianship Board that there is no appropriate person available to be appointed the guardian of a mentally incapacitated person the subject of a guardianship application, the Guardianship Board shall make a guardianship order appointing the Director of Social Welfare as the guardian of the mentally incapacitated person.*
- (3) *In the performance of any functions or the exercise of any powers under this Ordinance the guardian shall ensure-*
  - (a) *that the interests of the mentally incapacitated person the subject of the guardianship order are promoted, including overriding the views and wishes of that person where the guardian considers that such action is in the interests of that person;*
  - (b) *despite paragraph (a), that the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected,*

*and shall comply with directions (if any) given by the Guardianship Board in respect of that guardian and any regulation made under section 72(1)(g) or (h).”*

73. In this case, the Board will particularly consider Madam ZL’s suitability in terms of her willingness, ability, capability and possible existence of conflict of interests (S.59S (b), (c) and (e)).

74. Upon considering the parties oral evidence at the hearing and considering all written reports and materials, the Board decided that in the situation of this particular case, the appointment of a public officer, namely, the Director of Social Welfare, as the legal guardian is most appropriate. The Board’s decision rests upon the following reasons, observations and rulings.

(a) The Board has strong doubts on the ability and capability of Madam ZL to act as the guardian of the subject.

(i) At the outset of the hearing, Madam ZL confirmed that she did not oppose to guardianship but just that she liked to be appointed as the guardian. Madam ZL vouched her willingness to act as the guardian of the subject. Yet, her support of guardianship is doubtful because as recorded in paragraph 15 of the progress social enquiry report dated 10 April 2008, Madam ZL denied the mental incapacity of the subject and, in essence, objected to appointing a guardian. Madam ZL made her stance absolutely clear by her email dated 1 April 2008 to Mrs F [Appendix 6 to the said report]. Her position was once again confirmed by filing to the Board immediately before the hearing started a Statement of Declaration

dated 2 June 2008 (i.e. today) showing her discontents over the application herein and made serious yet ungrounded complaints against the Social Welfare Department. Madam ZL was therefore not viewed by the Board to have even the slightest support to granting guardianship in this case.

- (ii) Her already aggrieved position against the Social Welfare Department would pose practical difficulties if she were appointed the guardian because she might probably think that once appointed the guardian, she would be free to do whatever she thought appropriate for the subject, including taking the subject back to Beijing, without supervision. She obviously did not realize that she needed to be monitored and guided by a case social worker of the Social Welfare Department after the appointment. On a whole, it would be difficult to expect a full co-operation from her with the case social worker in future.
  
- (iii) Madam ZL admitted in her evidence that since 1995, she never lived together with the subject save two longer periods of visits, each of about two months, between 1995 and 1996. Apart from these, she only paid yearly visits since 1995 to the subject in Hong Kong. On this level of rather trivial interaction, the Board is not convinced that Madam ZL has the adequate ability, knowledge and experience to handle the care needs of the subject in his present physical and mental conditions. On passing, the Board does not have concrete evidence as to whether their mutual personality are compatible generally as required under S.59S (1)(d).

The Board also has reservations on the significance of the so-called “agreement for adoption” (“過繼協議書”) drawn up by Madam ZL under her own hands. Both she and her solicitor emphasized on its legality on ground of an authenticated notarial certificate. The Board must register a caution here that it does not have sight of the original “agreement for adoption”. Equally, the Board must also record here that the existence of this agreement was never mentioned by Madam ZL at the last adjourned hearing on 18 February 2008. Whilst the Board could not dispute the existence of some form of association between Madam ZL and the subject (judging from the photos shown and the act of abandonment of Madam ZL’s original name), Madam ZL and her solicitor could not show the legal basis on the validity of this particular agreement under the law of Mainland by reference to a specific legislation. Madam ZL admitted that at the time of signing of this agreement, she was already 42. Thus, the agreement was obviously a different type from that of adopting a minor, i.e. in the sense of upbringing a child as one’s own (“領養”). In the instant agreement, the best it could be described would be an agreement to inherit one’s estate by a named offspring of one’s relative. Thus, in strict Chinese translation, the instant agreement was, as it is correctly named, a “過繼協議書” and not a “領養協議書”. The Board would point out that the two Chinese Notarial Certificates produced by Madam ZL, respectively stated ZL as subject’s “養女” and the subject as Madam ZL’s “father” were fundamentally wrong and misleading. As such, it was natural that Madam ZL and subject had never lived together as a family in the past. Finally on this point, the Board did not see establishing a legal

relationship of some form between a proposed guardian and a subject as of sole significance.

- (iv) Following this, the Board would also point out that Madam ZL gave various versions of the frequency of visitations to Hong Kong. She tended to increase the number of visits as many as she could in each version. She told the Board on the last adjourned hearing on 18 February 2008 that she visited subject once a year during Chinese New Year holidays, which was consistent with the contents of the first Notarial Certificate produced by her (In this respect, the Board equally doubted how frequency of visits could be notarized) and the version she gave to Mrs F as recorded in paragraph 8 of the progress social enquiry report dated 10 April 2008. Yet, at the hearing today, Madam ZL said she visited the subject two to three times a year during these ten years. The motive of saying so, as the Board perceives, closely linked to two matters. First, she liked to prove a closer relationship with the subject. Secondly, she tried to corroborate with her other assertion that she brought sizeable sums of cash to Hong Kong during those visits to an extent sufficient to pay for the newly acquired flat of the subject. As Madam ZL could not give any proof of entry in support, the Board could, at best, only accept the evidence that she did pay annual visits since 1995 and as such the actual tie or relationship between her and the subject was just ordinary. This view is further supported by the fact of her late appearance in these proceedings. According to the supplementary information dated 13 February 2008 of Mrs F, Madam ZL got involved into this case as late as three days after the adjourned hearing on 10 December 2007, namely, that she first approached

Integrated Family Service Centre on 13 December 2007. Hence, the Board has some doubts on the proclaimed closeness of relationship between her and the subject, as obviously she was not aware of the latest developments of the various situations of the subject.

- (v) On her financial ability, Madam ZL could show no documentary support whatsoever of her source of income and bank account reference or bank books to the Board or to Mrs F. She only claimed to Mrs F that she was rather resourceful and yet she was only a retired civil servant and now worked on projects, yet earning sizeable sums a year. At the hearing today, she told the Board that she had a company running property consultancy business. With changing versions plus lacking documentary proofs, the Board cannot tell what her actual financial situation is.
  
- (vi) Another major difficulty with Madam ZL was her resident status. She confirmed at the last adjourned hearing on 18 February 2008 that she was not an ordinary resident of Hong Kong SAR and had not applied for a one-way permit to come to live in Hong Kong. In her evidence, it was clear that she resided ordinarily in Beijing and had all her ties there. At the hearing today, she said she started to apply for one-way permit to Hong Kong but she could only produce a receipt from a firm of solicitors of Hong Kong, showing a payment of costs on account of \$500 on 29 May 2008. In view of these facts, there is no reasonable prospect that Madam ZL could come to live in Hong Kong in the foreseeable future, bearing also in mind that, according to what she said earlier, she has a company to operate in Beijing. As the guardian would need

to attend to almost every matters on welfare, treatment and finances of the subject and to make timely decisions from time to time, it would therefore be very difficult, if not impossible, for Madam ZL to effectively carry out the guardian duties if appointed, to an extent as expected by this Board. Likewise, the Board could not see how Madam ZL could possibly carry out all the duties imposed on her by the Board and under Section 3 of the Mental Health (Guardianship) Regulations, which provides:-

*“(1) It shall be the duty of the private guardian of a mentally incapacitated person-*

- (a) to permit access to the mentally incapacitated person for the purpose of any visit by or on behalf of the Director in the exercise of his powers and duties under the Ordinance;*
- (b) to notify the Director of any change of his or the mentally incapacitated person's place of residence not later than 14 days after such change takes place;*
- (c) where the mentally incapacitated person has been absent for a continuous period of 28 days from the place last notified to the Director as the mentally incapacitated person's place of*

*residence, to notify the Director of that fact as soon as is reasonably practicable and in any event not later than 14 days after the end of the continuous period of 28 days;*

*(d) to furnish the Director with such reports or information with regard to the mentally incapacitated person as the Director may from time to time require;*

*(e) where it appears to the guardian that he will be unable to discharge the duties or functions of guardian for any period, to notify the Director of that fact as soon as practicable, and in any event within 14 days, of the period for which it appears he will be unable to so act;*

*(f) in the event of the death of the mentally incapacitated person, to notify the Director of that fact as soon as is reasonably practicable and in any event not later than 14 days after the mentally incapacitated person's death;*

*(g) where it comes to his knowledge that the mentally incapacitated person has married or intends to marry, to notify the Director of that*



*fact as soon as is reasonably practicable and in any event within 14 days of acquiring the knowledge;*

*(h) where-*

*(i) the mentally incapacitated person takes up employment or takes a place on a training or educational course;*

*(ii) there is any change in the nature and location of the mentally incapacitated person's employment or training or educational course; or*

*(iii) the mentally incapacitated person leaves any employment or gives up a place on a training or educational course,*

*to notify the Director of that event, the date thereof and the nature and location of the employment or training or educational course as soon as is reasonably practicable, and in any event not later than 14 days after such date;*

*(i) to give the Director at least 2 weeks' notice of the mentally incapacitated person's intended departure from Hong Kong; and (L.N. 99 of 1998)*

*(j) to take all reasonable steps to ensure the safety and welfare of the mentally incapacitated person and to arrange for the provision of adequate care for the mentally incapacitated person.*

*(2) For the purpose of subregulation (1)(b), residence for a continuous period of 28 days at a place other than the place last notified to the Director shall constitute a change of address.”*

(vii) Besides, it would be exceedingly difficult to place a guardian, residing outside the jurisdiction of Hong Kong, under the effective monitoring by the social workers of Social Welfare Department.

(viii) Regarding capability, the Board has even more to worry. The Board has carefully read paragraphs 12 to 15 of Mrs F's progress social enquiry report dated 10 April 2008, which showed how Madam ZL rapidly changed from one welfare plan to another, namely, first proposing to bring the subject back to Beijing and then switching to find a local helper in Hong Kong. Besides her ambivalence as to which is her actual plan, her candidate of the future helper was also elusive. At the hearing, Madam ZL somehow evinced her determination to bring subject back to Beijing. Yet, the evidence showed time and again that the subject did not wish to live in Beijing at all. Neither does the evidence show that the subject had ever lived in Beijing before or at all. The Board does not think either of the two plans advanced by Madam ZL could really work out in the best interests of the subject

who was clearly, as assessed by the medical team, in need of residential care. In the circumstances, the Board did not have faith in Madam ZL to act competently as the guardian of the subject.

(b) The Board finds that there is a potential conflict of interest between the subject, Madam ZL and Madam TP. Besides, the Board has doubts on the genuineness of Madam ZL's willingness to act as the guardian.

(i) First of all, the Board could not be certain as to the exact relationship that existed between these three persons and particularly vis-à-vis Madam TP and Madam ZL. Madam TP first told the social worker-applicant that she was a niece of the subject, but later she posed herself as someone of intimacy with whom the subject would die for a marriage (see the three letters to Appendix 9 of the first social enquiry report dated 6 October 2007). TP tried to explain her relationship with the subject at the hearing today, but her assertions were confused, illogical and unconvincing.

On her own admissions to the applicant and Mrs F, Madam TP agreed that in July 2007, she manipulated subject's monies in bank account and even purchased a property for the subject who was in fact staying at the hospital at that time (see paragraph 20 to the first social enquiry report and the applicant's reasons attached to Form 1). The Board thought, on this account of rather confused affairs alone, the subject should already be received into guardianship in order to protect him from possible abuses.

(ii) The actual relationship of Madam ZL and the subject is even more confused. By the so-called "agreement for adoption", Madam ZL

believed, as set out in the last sentence of the agreement, she had the right (amongst others) to be the guardian and to inherit the subject's estate. In plain reading, it is a document showing an exchange of the estate of the subject for a change of name of Madam ZL (formerly known as "DLH"). While claiming both as a niece and an adopted daughter ("過繼女"), Madam ZL's relationship with the subject remains obscure when the Board reads paragraph 9 of Mrs F's progress social enquiry report dated 10 April 2008, which stated the very queer matrimonial history of Madam ZL, resultant upon the creation of the so-called adoption relationship.

#### The purchase money

- (iii) As recorded in paragraph 20 of the first social enquiry report dated 6 October 2007, Madam TP told that \$800,000, being the major part of the purchase price of the new flat, was provided by "her" friend in Mainland. She advanced a second version by telling Mrs F, as recorded in the progress social enquiry report dated 10 April 2008, those monies were in fact provided by Madam ZL. As recorded in the same report, Madam ZL told the same story (see paragraph 14).

The Board finds this affair doubtful, because firstly, as a matter of such significance, why Madam TP did not tell Mrs F in the very first place as Madam ZL, as alleged, was such a close and significant relative? Secondly, why Madam ZL did not tell the Board of this very important matter at the last adjourned hearing on 18 February 2008 when she was pressed by the Board for a detail

account of her visitations to Hong Kong since 1995? Thirdly, according to what Madam ZL had said, she brought sizeable sums of cash every time when she crossed the border for the past ten years, does it make sense? Madam ZL could not produce any documentary evidence in support of the source of the monies, not even a proof of local bank records in Beijing. Fourthly, at the hearing today, she said she initially gave the cash to the subject who refused to take it. Why then she continued to entrust the sizeable cash brought by her from time to time in those years to Madam TP? And for what purpose?

There was a lot of questions that Madam ZL could not answer or explain convincingly at the hearing today. At the hearing, the Board heard from Madam CML that there was no money issue between her and the subject between 1991 and 1999, i.e. Madam CML felt there was no purpose for Madam ZL to bring in monies during those years.

The Board also heard from the applicant Ms L who queried the credibility of Madam ZL. Ms L said Madam ZL told her on 13 December 2007 at ward (in the physical presence of Madam TP and another social worker) that she only heard of a person called Madam TP before but had never met her. If Madam TP were the person involved deeply with her in the past ten years, why would ZL tell Ms L that she had never met Madam TP before? The explanation of a nick name is plainly unbelievable or unsatisfactory (see paragraphs 53, 54 and 58 above). Also, the Board could not accept Madam ZL's explanation that as a Mainlander, she could not hold property in Hong Kong either.

Replying on the assertion that all purchase money was provided by her, Madam ZL further claimed to Mrs F that she had rights to the new flat (see paragraph 14 of the progress social enquiry report dated 10 April 2008). This assertion gave rise to a situation of conflict of interest between Madam ZL and the subject because the Board noted that the purchase money was all paid from subject's bank account at the time when the property deal was closed and that the new flat was registered in the name of the subject. In this connection, the Board finds that the background and intention of Madam TP and Madam ZL remains obscure and there is potential conflict of interest of a financial nature between them and the subject.

In the circumstances, the Board also concludes that Madam ZL's application to become the guardian of the subject cannot be regarded as entirely free from consideration of material interests. The genuineness of Madam ZL is called in doubt.

- (c) The Board would thank the two social workers Mrs F and Ms L (the applicant) in assisting the Board in this case. Particularly, the Board would express that the several reports produced by Mrs F are comprehensive and well prepared and had included all essential information. Mrs F's recommendation is based on all the information collected and her view is fairly formed. The Board does not find those reports inadequate in any sense. Conversely, the evidence respectively given by Mr T and Mr MT is of little relevance.

75. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the reports, the Director of Social Welfare, to be appointed as the guardian of the subject in this case.

## **DECISION**

76. The Guardianship Board is satisfied on the evidence and accordingly finds:-

- (a) That the subject, as a result of Alzheimer's disease, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;
- (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate to the subject's personal circumstances;
- (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available as the subject lacks capacity to make decisions on accommodation, his own welfare plan, treatment plan and finances, which has caused conflict between family members, relatives and friends in making decisions for subject's welfare or finance;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on future welfare plan upon discharge from hospital, future accommodation, future treatment plan and finance;

(d) The Board concludes that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

77. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare is the only appropriate person to be appointed as guardian of the subject.

(Mr Charles CHIU Chung-ye)  
Chairperson of Guardianship Board