



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Applicant²

and

Mr L

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Mr MA Kam-wah

Member referred to in section 59J (3) (c): Ms HO Suet-chun

Date of Reasons for Order: 10th August 2007.

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

² S2 of Mental Health Guardianship Board Rules.

³ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance.

Background

1. An application for guardianship was lodged on 3 May 2007, in respect of the subject Mr L. Mr L was an 82 year old man suffering from senile dementia. It was not in dispute that Mr L was singleton, having no relatives or siblings in Hong Kong.
2. The applicant was Miss R, a medical social worker of Queen Mary Hospital (QMH), on behalf of Director of Social Welfare.
3. At the time of application, Mr L had just been transferred from Queen Mary Hospital to Grantham Hospital (GH) for rehabilitation service. Prior to admission to QMH, Mr L used to live with a Chinese domestic helper (Madam C) and an Indonesian domestic helper (Miss S) in a self owned flat in Pokfulam.
4. Regarding finance, Mr L had substantial assets comprising of savings and investments in banks totalling about \$36,163,383.93; stocks and shares totalling about \$35,733,479.30; and his self-owned flat had a market value of \$2,750,000. He did not receive any old age allowance or disability allowance from the Government.
5. On 23 May 2007 i.e. 20 days after submission of the main guardianship application, the applicant filed an emergency guardianship application for the reason that the subject was at high risk of being financially abused.

Circumstances leading to the application of Emergency Guardianship Order (EGO)

6. Mr L was admitted to QMH due to loss of consciousness for 10 minutes on 25 April 2007. During the hospitalisation, the applicant Miss R was referred by ward staff to assess the subject's risk of being financially abused. Mr L verbally claimed (inter alia) he was cheated by his helper Madam C, though unable to provide solid evidence.
7. After being first certified as a mentally incapacitated person on 2 May 2007 by a hospital psychiatrist, an application was made for guardianship order, and Mr L was notified that he had no capacity to sign any important documents.
8. However, during Mr L's stay at GH from 3 May 2007 to 22 May 2007, the following incidents occurred: -
 - (a) Madam C, claiming that she was instructed by Mr L to "rescue" him from confinement in hospital, used Mr L's money to hire two solicitors for assistance. On 7 May 2007, Madam C invited a female staff of Hong Kong and Shanghai Banking Corporation (HSBC) to visit Mr L for an unknown purpose. The ward nurse informed the bank staff that Mr L was already certified as a mentally incapacitated person and she left without doing anything.

- (b) On 16 May 2007, Madam C arranged two letters for Mr L to sign for respectively requesting the Chief Executive and a Mr K, a solicitor to “rescue” him.
 - (c) On 21 May 2007, Mr K brought two psychiatrists to visit Mr L at GH. Mr L then signed on a letter purportedly terminating the previous solicitor and appointing him as his legal representative, allegedly witnessed by the two psychiatrists. They were subsequently asked to leave the ward by the Patients Relation Officer of GH.
 - (d) On 22 May 2007, Madam C asked Mr L to sign a cheque for \$100,000 payable to a law firm.
9. In light of the incidents mentioned above, Miss R and the medical staff of QMH suspected that Mr L was at high risk of being financially abused. An application for EGO was immediately submitted on 23 May 2007.
10. In the same morning, an interview was conducted between the subject Mr L and the Chairperson of Board at QMH. Mr L consented to the appointment of a public guardian for him after explanation was given. When asked if he had signed any cheques recently, he initially said none, but upon repeated probing, he remembered signing one cheque for paying fees to his lawyer. However, he remembered the amount to be only \$10,000 odd, which was inconsistent with the actual amount of \$100,000.

11. On 23 May 2007, shortly before the EGO hearing was due to started in the afternoon, Mr K, a solicitor, appeared at the Board's office, claiming that he had received instructions to act for Mr L in place of his previous lawyers. He submitted to the Board a letter of instruction purportedly signed by Mr L and allegedly witnessed by two psychiatrists. Mr K also submitted a long letter of his law firm challenging the Board's decision to call for an EGO hearing, as they believed Mr L was not at risk of being financially abused.
12. The Board was concerned with the validity of the said instruction to Mr K, particularly with the possible disclosure to unrelated third parties of the sensitive information involving the subject's confidential medical and financial information plus the alleged financial abuses on the subject Mr L.
13. The Board raised with Mr K squarely on the issue of the lack of a doctor's certificate on the subject's mental capacity to sign the said written instruction to his firm.

Ruling by the Board on legal representation

14. On the Board's query on the two medical doctors who signed on the written instruction to his firm as witnesses, Mr K said, as the two doctors had signed as witnesses, there was impliedly a certificate by the two doctors in place certifying subject's capacity to make such an instruction. Otherwise, he argued, there would be no point of seeking two doctors to sign on it. He said the ward staff was very pushy and no detail test could be done that day, but there should be a simple test that had been done. One of the two

private doctors, Dr LC attended the subject for over ten minutes. Dr LC saw the subject for the first time. The two doctors did not see the subject-person at the same time. It was Dr LC who saw the subject first.

15. The Board ruled that it was not satisfied with the explanation advanced by Mr K. The Board had with it a total of four medical reports made by three doctors (respectively dated 2 May 2007, 2 May 2007, 23 May 2007 and 23 May 2007) from the Hospital Authority all certifying that subject was a mentally incapacitated person. Particularly, the Board had read two discharge summaries respectively prepared by QMH (for period 25 April 2007 to 3 May 2007) and GH (for period 3 May 2007 to 22 May 2007). The medical views in the four reports were found to be supported by a brain scan, probably done at the QMH, with the finding that subject suffered from multiple lacunar infarct and cerebral atrophy. The Board found that with the overwhelming medical evidence, Mr K had not proved it beyond the balance of probability, clearly and convincingly that the subject had sufficient mental capacity to, as seen in the said written instruction, withdraw his previous instruction to his earlier solicitors and in their stead, appoint or instruct Mr K in these proceedings.

16. The Board refused to hear from Mr K, who then left the hearing room.

17. The Board conducted a hearing into the EGO on 23 May 2007, and ordered that an emergency guardianship order be made for the subject Mr L for a period not exceeding 3 months, commencing on 23 May 2007, and ceasing on 22 August 2007 or until such earlier time as a guardianship order was

made. The Director of Social Welfare was appointed as the public guardian vested with all six powers to the exclusion of any other person.

Development after the subject was received into emergency guardianship

18. As Mr L had assets which the GB did not have jurisdiction over, the Board recommended the public guardian to immediately apply to the Court of First Instance under Part II of the Mental Health Ordinance, for an order to manage the property and financial affairs of the subject and/or to seek the urgent provisions under section 10D of Mental Health Ordinance.
19. A representative of Social Welfare Department (SWD) then corresponded with Department of Justice on 7 June 2007 to seek advice on whether the guardian should apply to the Court of First Instance for administering the property of Mr L. The responsible Senior Government Counsel considered it more appropriate for the Official Solicitor to be appointed the committee of Mr L's estate. She suggested SWD to write to the Official Solicitor immediately to seek his agreement.
20. The hospital preferred no access of domestic helpers or any stranger to Mr L from 23 May 2007 onwards. The two domestic helpers were asked to leave Mr L's property on 25 May 2007. The case was reported to Cental Information System on Elder Abuse Cases on 26 May 2007. Mr L was finally admitted to a private aged home on 30 May 2007.

21. The related banks (Hang Seng Bank, Bank of China, HSBC) were immediately notified about the granting of an EGO on 23 May 2007 and they were instructed that Mr L's accounts should remain frozen until further notice. Mr L's finance was managed by the Director of Social Welfare Incorporated Account. The suspected elder abuse case was reported to the police on 8 June 2007 for investigation.
22. In the Social Enquiry Report, the SWD recommended Mr L to be received into guardianship with Director of Social Welfare appointed as public guardian and vested with all the six powers for a period of one year, upon expiry of present EGO on 22 August 2007.

Mental and health conditions

23. According to 2 medical reports on 2 May 2007, Mr L had been diagnosed with senile dementia for an unknown period of time, with poor chance of recovery. His MMSE score was 15/30, and he was certified to be mentally incapacitated. On past medical history, Mr L had suffered from diabetes mellitus, hypertension and renal impairment. He also had poor short term memory.

Hearing of the main application at the Board on 10 August 2007

24. Mr L, the subject, said he was feeling quite well in general. He said he could walk despite using a wheelchair. He lived at home, but he came to the Board today from an aged home. He said he was discharged from

QMH to the aged home. He did not quite understand the reason for the hospitalisation. He did not like the hospital in stopping visits by family members. On probing, he said he saw many such cases in hospital. The hospital staff told him so, irrespective of hospital visiting hours.

25. Mr L's domestic helpers were also stopped from visiting him. He had an Indonesian maid (who took care of his night time needs) and a local maid (who was in charge of the household affairs). He said he did not like to continue to live at the present aged home as it was not for normal people. With much prompting, he said he liked to hire a new local maid to take care of him at his own flat.
26. The Board made further probing to the subject relating to the previous suspected abuses. The subject said it was not Madam C who cheated him the money, but the previous one. He did not mention to hospital staff before that he would sell his flat and the papers were read to be signed. Nor did he mention about the purchase price of the flat at \$300,000. He later said he purchased the flat long time ago and it was cheap at that time and he might sell it and earn some money. Then he would buy another flat. Anyway he liked, if approved by the Board, to stay at his own flat. He did not mention to hospital staff that he had been cheated by Madam C. He said he was treated "normally" by QMH. When asked for details, he said the hospital always said people had problems with the brain. He further complained that the hospital did not allow him to leave. He said he was 92. He suddenly remembered that he taught in HK College before.

27. Miss R, the applicant and medical social worker of QMH, on behalf of the Director of Social Welfare, said there was no date fixed for the Part II hearing in High Court yet.
28. Miss T, Officer-in-charge of Medical Social Service of QMH, on behalf of the Director of Social Welfare, said it might take sometime to hire a maid for the subject.
29. Mr P, medical social worker of QMH and the maker of social enquiry report, on behalf of the Director of Social Welfare, made no further comment.
30. In private with the subject: the subject said he was very satisfied with the work of Miss R (the applicant) and Mr P (the social enquiry report maker). He lived in Hong Kong since young and studied in K College in Bonham Road. He appreciated the work of setting up of the office after the Chairperson explained to him the roles of the Board and SWD in relating to vulnerable elders like him.

Reasoning

31. The Board duly considered all evidence in this case and read all medical reports and reports prepared by social workers involved, including the case summary prepared by the applicant for the purpose of the emergency guardianship proceedings. Despite the absence of solid evidence of actual abuse on subject's finance, the degree of vulnerability of the subject caused a great deal of concern to the Board. The Board ruled that the subject in

his present mental state and as certified to be in lack (inter alia) of financial capacity to manage his property and affairs, was at risk of or likely to be exploited as he was susceptible to suggestions and easily coaxed. The Board further ruled that the overall lack of capacities of the subject was to an extent that warrants his reception into guardianship. The Board particularly noted that the subject had sizeable assets and had lived without adequate social support or any close family members around.

Decision

32. The Board is satisfied on the evidence and accordingly finds:

- (a) That the subject, as a result of senile dementia, is suffering from a mental disorder within the meaning of section 2 of the Mental Health 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 resulted in the subject being abused financially easily;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on welfare plan and finance;

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

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

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