



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam A and Mr U

Applicants²

and

Mr N

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Ms Kitty CHAU Shuk-king

Member referred to in section 59J (3) (c): Mrs KONG MA Yuk-kum

Date of Reasons for Order: 30th October 2009.

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

⁴ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

Background

1. The subject, Mr N, is a mental handicap since childhood. He was a 23-year-old man. She used to live with his mother and a maid in a private flat after his father passed away since 1992. Unfortunately, his mother also passed away in 2002. Since then, the subject was taking care of by his aunt (father's sister) and uncle (mother's brother). The subject and the maid would stay at his mother's house from Monday to Thursday under the monitoring by his aunt and a cousin. His uncle would pick up the subject after school on Friday. The subject and the maid would stay with uncle every weekend and during holidays.
2. As at the time of death of subject's mother, the subject was attending special schooling. Since 2006, the subject was residing in a hostel in New Territories. His aunt and uncle usually visit him every two weeks. The subject received Disability Allowance (DA) and his uncle was the appointee. He also received wages from sheltered workshop and deposit to the joint account of subject and his aunt. His mother left over an estate estimated at a value of \$4.8 million in Hong Kong.

Circumstances leading to the Application

3. Since the death of subject's mother, his aunt and uncle support and maintain the subject out of their own pocket and they had tried to apply for Letters of Administration for the estate of subject's mother but the Probate Registry required them to provide surety before they would grant the Letters of Administration to them. Avoiding the surety, the Probate Registry suggested them to nominate a trustee company to jointly apply with them as the co-administrators of the estate of subject's mother. They have

contacted a trustee company which agreed to the co-administrator but the Probate Registry then doubted their legal authority to nominate the trustee company as a co-trustee/administrator. After getting advice from a solicitors' firm, they decided to apply for Guardianship Order.

4. The Official Solicitor was not involved in the estate of the subject's late mother and they may not have the locus to act as the applicant as requested by the Director of Social Welfare. During the enquiry, the Official Solicitor advised that an application under Part II of the MHO should be made for the appointment of a committee for the subject so that the committee will have the authority to apply for a grant for the use and benefit of the subject.

Summary of evidence adduced at hearing on 30 October 2009

5. Madam A, the aunt of the subject, voices out her discontents over the solicitors' works in the last seven years.
6. Mr U says he understands the situation as explained by the Board.
7. The social enquiry report maker says he would assist the parties in the future application for a Part II order.

Reasoning of the Guardianship Board

8. The Board notes that Specified Form No. L3.2 (Nomination of a Co-administrator) under the Non-contentious Probate Rules refers only to a guardian of infants. As such, the solicitors for the applicants' solicitors firm, is wrong in principle to advise the applicants to apply for adult

guardianship with the Board. The Board regrets that the applicants have taken a wasted journey to come all the way to apply for guardianship which could not possibly serve their original purpose for completing the onerous tasks fallen on them to apply for a grant of letters of administration of the estate of the late mother of the subject. The Board would thank the Official Solicitor Office for their helpful advice made urgently for the Director of Social Welfare for the Board's onward transmission to the applicants. The Board would also remark that the solicitors have failed to provide a copy of the Form No. L3.2 despite the request of the Board.

9. The Guardianship Board can only exercise its powers under section 59O to make an order if it is satisfied on certain criteria.

10. The Guardianship Board was NOT satisfied that the subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available

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