



**REASONS FOR ORDER**

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

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**BETWEEN**

**Mr CCK**

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

**and**

**Madam CM**

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

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

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**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms Alice LAU Shuk-yee

Member referred to in section 59J (3) (c): Ms Lana TSANG Chung-man

**Date of Reasons for order:** the 12<sup>th</sup> day of August 2016.

**Background**

1. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 25 April 2016, was registered as received by the

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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

Board on 25 April 2016. The applicant is Mr CCK, nephew. The evidence shows that the subject is 94 years of age, woman, with mixed-type dementia. The subject was unable to handle her savings (about \$1,200,000) for herself maintenance.

2. The purpose of this application filed by the applicant-nephew was to exhaust the remaining savings (i.e. \$1,200,000) in subject's sole name account. The circumstances leading to the application was that in January 2016 strangers took the subject from the old age home to bank and attempted withdraw of money by a replacement HKID card.
3. However, the social enquiry report from Social Welfare Department revealed that the subject has not only possessed the abovementioned savings. The applicant told that the subject received HK\$7,000,000 from a developer in Mainland for re-development compensations of her shop premises in 2012. According to the applicant, subject gave him nearly half of compensations as gift (\$3,000,000) and the subject asked him to manage the rest of compensations. The applicant then withdrew the rest of the compensations and set up a time deposit under joint names of his wife and him, for earning interest and settling the expenses of both himself and subject, etc.

## **The Law**

4. 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.

**Summary of evidence adduced at hearing**

5. **Mr CCK**, the applicant and nephew of the subject, said he agreed to a grant of Guardianship Order with Director of Social Welfare as the legal guardian.
6. **Mr RC**, the proposed guardian and grandnephew of the subject, said he agreed to a grant of Guardianship Order with Director of Social Welfare as the legal guardian.
7. [Relating to an alleged abuse incident which was posed as the main circumstances leading to the present application.] He said they did not know of the suspect bringing the subject (on wheelchair) to E Bank on 30 January 2016, with a new (replacement) HKID card of the subject. The original HKID card has all along been held by the applicant. After the incident, they applied for yet another new HKID card.
8. [Miss K, social enquiry report maker, said the old age home only kept a simple record that a “Mr L” has brought the subject out that day.] Mr RC said that the suspect might not be a Hong Kong resident. [The applicant said it could be a Mainland relative, a child of subject’s younger sister, by reference of his surname L. At that incident, he was immediately called by bank staff as he was the authorized signatory. He told the bank staff over phone that subject’s HKID card and chop were with him all along and how come a person was holding the subject’s HKID card there. The bank staff said the subject’s HKID card as shown to the bank was a new one issued in January (2016).]
9. **Miss K**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, said that it should be totally \$4.7 million (instead of \$4.5 million) being the alleged gifts to the applicant as

recorded in paragraph 10 of the Supplementary Information dated 10 August 2016.

10. The Board would like to thank Miss K for her reports.

### **Issues and Reasoning**

#### Reasoning for receiving the subject into guardianship

11. The Board received and adopted the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the views and reasoning for recommending guardianship order as contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

12. On perusing the social enquiry reports, the Board took the view that this was a serious financial abuse case. The Board recommended as follows: -

- (a) The public guardian to apply for a committee order in order to recover the alleged gifts of \$4.7 million made to the applicant on divers dates between 22 June 2012 to 27 February 2014, as the subject suffered moderate dementia (judging from her MMSE score of 13/30 since 2008), as well as an accounts to be taken of subject's expenses since admission to old age home on 28 April 2010.
- (b) A report be made to police on the alleged gifts for investigation to ascertain if there was criminal element.

- (c) A report be made to police on the incident on 30 January 2016 to ascertain if there were criminal elements.
- (d) A report be made to LORCHE to investigate if the old age home's procedure is improper in allowing strangers to bring subject out, being knowingly a mentally incapacitated person on psychiatric drugs, without keeping proper record of the strangers' particulars and/or without consent of the sponsor/guarantor.
- (e) The public guardian should arrange to remove the subject from the present old age home and change the subject to stay at another quality care home.
- (f) The public guardian shall become the new appointee of subject's disability allowance.

#### Reasoning for choosing the legal guardian

13. The Board accepted and adopted the view of the social enquiry report maker who recommended, as contained in the report, the proposed guardian the Director of Social Welfare to be appointed as the guardian of the subject in this case. By appointing the public guardian and making (amongst others) a recommendation to recover the alleged gifts to the applicant, the Board entirely agreed that there existed conflict of interests of a financial nature between the subject of the one side and the applicant and proposed guardian (the latter being the applicant's son) of the other side.

#### **DECISION**

14. The Guardianship Board was satisfied on the evidence and accordingly

finds:-

- (a) That the subject, as a result of mixed-type dementia, was 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 limited 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 might 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, her own welfare plan, treatment plan and finances, which has resulted the subject being abused financially;

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

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

15. The Guardianship Board applied the criteria in section 59S of the 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