



SAT

State  
Administrative  
Tribunal

Western Australia

## ***Guardianship and Administration Act 1990***

### **DECISIONS BULLETIN**

**No 17 February 2008**

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This Bulletin contains summaries of written reasons published by the Tribunal in February 2008. The full text of decisions and reasons can be found on the Tribunal's website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

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**FBP [2008] WASAT 21**

**5 FEBRUARY 2008**

**MS D DEAN (MEMBER)**

**MS J STANTON (SENIOR SESSIONAL MEMBER)**

**MS V O'TOOLE (SESSIONAL MEMBER)**

**Applications for guardianship and administration - Capacity to make reasonable judgments - Need for a guardian - Need for an administrator - Conflictual relationship between partner and family of origin - Quality of couple's relationship - Need for an independent decision-maker**

Applications for guardianship and administration were made to the Tribunal in respect of a young man with an acquired brain injury as the result of a motor vehicle accident.

Prior to the accident, the young man lived with his partner in a home they were jointly purchasing. Soon after the accident, significant conflict developed between the partner and the young man's family of origin. This developed to the point where there was little or no communication between the parties and decisions were being made to accommodate the conflict between the parties rather than in the best interests of the young man.

The Tribunal found that it was in the young man's best interests to have decision-makers independent of the partner and family appointed, but took into account the fact that the father had made all medical decisions since the accident with the agreement of the partner.

The Tribunal appointed the father limited guardian to make treatment and health care decisions. The Public Trustee was appointed plenary administrator and the Public Advocate was appointed limited guardian to make decisions in respect of accommodation, services and contact with others.

**AB [2008] WASAT 25**

**6 FEBRUARY 2008**

**MS F CHILD (MEMBER)**

**Guardianship application - Capacity - Need for an order - Represented person with progressive neurological disorder - Family members not involved in care or in decision-making - Need for guardian with authority to consent to treatment and services, to decide where the represented person is to live and travel**

On an application by a social worker from an Adult Mental Health Centre, the Tribunal appointed the Public Advocate as limited guardian for a woman with a diagnosis of Huntington's Disease, a progressive neuro-degenerative disorder.

The woman was resident in a psychiatric hostel and in a relationship with another hostel resident. The woman and her partner proposed to leave the hostel and live in a flat which the woman owned in the metropolitan area. The partner proposed that they receive assistance of a weekly cleaner and said they would have family support. They also proposed to travel to visit the family of the partner in the Eastern States and possibly settle there if the partner obtained employment.

The professional evidence reported that the woman experienced significant and increasing personal care difficulties due her medical condition and lacked insight into her escalating health care needs.

The Tribunal determined that, because the woman's capacity to decide personal matters for herself was impaired and because her condition might place her safety at risk, it was in her best interests that decisions about her health care, her place of living and proposed travel be made by a guardian.

As there was no one else proposing their appointment, the Public Advocate was appointed with authority to consent to medical treatment and services, to decide where the woman was to live and whether she was to travel within or outside Western Australia.

**KS [2008] WASAT 29**  
**11 FEBRUARY 2008**  
**JUSTICE M L BARKER (PRESIDENT)**

***Guardianship and Administration Act 1990 (WA) - Enduring power of attorney - Application for intervention under s 109(1)(a) and s 109(1)(b) where donor deceased - Whether Tribunal has jurisdiction to make orders where donor is deceased - Whether Tribunal has jurisdiction to make orders where donor is capable***

The son of a donor of an enduring power of attorney applied to the Tribunal for orders for accounts of transactions allegedly undertaken by the donee under the power. The donor died in 2006, and it had not been established that he lacked legal capacity at any stage during his lifetime.

The Tribunal initially established to deal with the application referred two questions of law to the President for determination:

- whether the Tribunal has jurisdiction to make orders intervening in an enduring power of attorney where the donor has died; and
- whether the Tribunal has jurisdiction to make orders intervening in an enduring power of attorney where the donor has retained legal capacity.

The President determined both questions in the affirmative. The matter was remitted to the Tribunal as originally constituted for determination of the initial application.

**PN [2008] WASAT 32  
12 FEBRUARY 2008  
MS J TOOHEY (SENIOR MEMBER)  
MS F CHILD (MEMBER)  
MR J JAMES (SENIOR SESSIONAL MEMBER)**

**Guardianship - Community Guardian Program - Authority to consent to treatment and health care - Close personal relationship - Whether s 119(3) a less restrictive alternative to appointment of a guardian - Appointment of guardian in represented person's best interests - Whether additional authority to consent to chemical restraint required**

The Public Advocate asked the Tribunal to revoke her appointment as limited guardian for PN and appoint in her place a community guardian. PN needed someone to consent on his behalf to treatment and health care.

The Tribunal was satisfied that the proposed community guardian, ST, was a suitable person to make decisions on PN's behalf.

The Tribunal considered whether ST's close, personal relationship with PN was such that he would have authority by virtue of s 119(3)(e) of the *Guardianship and Administration Act 1990* (WA) to consent to treatment on PN's behalf. If so, that would be a less restrictive means of meeting PN's needs than the formal appointment of a guardian.

The Tribunal decided that, as the relationship between ST and PN was relatively new, it was in PN's best interests that ST be appointed his limited guardian. It considered a formal appointment, with the additional protection of the statutory obligations imposed by the *Guardianship and Administration Act 1990* (WA), and a review of the appointment by the Tribunal, would be in PN's best interests.

A medical report before the Tribunal raised a question as to whether any of PN's medication might be considered chemical restraint for the purposes of managing his occasional aggressive behaviour, rather than treatment or health care; if so, ST might need additional authority.

The Tribunal appointed ST limited guardian for PN for three months, with authority to consent on his behalf to treatment and health care. It asked the Public Advocate to investigate and report at the end of that time as to whether ST needed additional authority in relation to any chemical restraint.

**LWL [2008] WASAT 35  
14 FEBRUARY 2008  
MR J MANSVELD (MEMBER)  
MS J STANTON (SENIOR SESSIONAL MEMBER)  
MS V O'TOOLE (SESSIONAL MEMBER)**

**Guardianship and administration - Represented person unable to make reasonable judgments in respect of matters relating to all or any part of his estate - Represented person in need of an administrator and guardian - Remuneration of the administrator - Decisions about treatment and health care must be made by a person with the relevant formal authority - Role of the Public Advocate - Meaning of de facto relationship and its relevance to s 119(3)(b) of the *Guardianship and Administration Act 1990* (WA) - Can a guardian initiate divorce proceedings on behalf of the represented person?**

Applications for guardianship and administration were made for a 73-year-old man who had suffered two strokes.

The man had a large estate which included a property development. The development had stalled as the project manager owed \$400 000 to the man's private company. Progress payments to contractors were unpaid and concerns were raised that building on the development was in jeopardy.

The property development had to be dealt with urgently and would likely require legal action.

The man's son and daughter proposed themselves as sole administrators. The son said he would not act jointly with his sister. The man's partner proposed that she be appointed to act jointly with the man's accountant. The accountant consented to act with her but not with the man's son or daughter.

The Tribunal decided to appoint the man's partner and accountant as his joint plenary administrators. This was the recommendation of the Public Advocate who attended the hearing in her statutory role of advancing the man's best interests.

The Tribunal decided that the urgency of the situation with the property development required the business and financial experience of the accountant and accepted that the accountant was held in high regard and trust by the man. The accountant had provided accounting, taxation and business advice to the man for 12 years.

Although a concern had been raised about the inexperience of the man's partner in complex business matters, the Tribunal was satisfied that she could act jointly with the accountant.

The man's partner was appointed his limited guardian to continue to make his treatment and health care decisions.

The man's son was appointed his limited guardian to seek legal advice as to whether it was possible to initiate divorce proceedings against the person with whom he was still legally married but from whom he was separated.