

**GUARDIANSHIP AND ADMINISTRATION BOARD
LAUNCESTON**

File No: XXXX of 2008.

Mr U.Q.F. on the application of Mr B.K.F.

REASONS FOR DECISION

Susan Hill (Chair)
Kate Brown (Member)
Kellie Ashman (Member)

Administration – suitability of appointment of private administrator – conflict of interests
Guardianship and Administration Act 1995 (Tas), ss 50, 51, and 54

1. The Application.

This was an application for administration pursuant to section 50 of the Guardianship and Administration Act 1995 (“the Act”) and for guardianship pursuant to section 19 of the Act. Present at the hearing at Henty House in Launceston on 6th June 2008 were Board members Susan Hill, Kate Brown and Kellie Ashman and the applicant, Mr B.K.F.

2. Background.

The proposed represented party, Mr U.Q.F. was admitted to hospital in Northern Tasmania on the 12th May 2008 after suffering a stroke two days earlier. He was residing in Northern Tasmania at the time. His nephew, Mr B.K.F lodged the application dated the 16th May 2008. The latter confirmed that he had discussed the matter with the Board’s investigator, Ms. Anne Perks, and was satisfied that a guardianship order was not warranted at this stage, accordingly that application was formally dismissed by the Board. The Board then proceeded to consider the application for an administration order.

3. Disability.

Under section 51 (a copy is attached) of the Act, the Board must first be satisfied that a person has a disability and, because of that disability is incapable of making reasonable judgments regarding his estate.

The Board was supplied with a Health Care Professional report from the stroke specialist, Dr. Simon Bazaadut at the Launceston General Hospital dated 16th May 2008. The members were satisfied from the doctor's comments that Mr U.Q.F. was currently disabled as a result of a stroke and was manifesting difficulties with memory, communication and in the doctor's opinion would be unable to make rational or meaningful decisions regarding his property. Mr B.K.F. confirmed that these observations were consistent with his own.

The Board accepted that on the face of it there was a need for an administrator.

4. Least Restrictive Option.

To a large extent this question involves an examination of the estate and the decisions which may be required. Mr U.Q.F. has quite a significant estate, consisting of the following:

- Property in Northern Tasmania
- Motor Vehicle
- Bank accounts containing \$81,475.67 and \$14,537.77, together with a safe custody packet (contents unknown).
- Wages and sick pay from employer (details unknown).
- Superannuation entitlements as well as a disability allowance may also be present.
- The contents of his house, including a military medal and coin collection
- In addition, there is an amount of \$16,000 which Mr B.K.F. removed from the home safe and put into his own account for security.
- The Board assumed that Mr U.Q.F. had the same outgoings or liabilities as any home-owner, although precise details were not available.

Clearly, given the extent of Mr U.Q.F.'s assets, an administrator was needed to pay any outgoings related to the house, safe-guard his property, recover any employment monies due and, if necessary at some point in the future, sell the house and conduct all negotiations and dealings for his residency in a nursing home, should this become necessary. Mr B.K.F. said that the possible sale of the house had been foreshadowed to him, although in the medical report, the doctor had thought there may be improvement which may affect that decision.

5. The Administrator.

Being satisfied that an administrator was needed, the Board proceeded to hear from Mr B.K.F. as to his relationship and suitability for the role. At the outset members noted the he holds an extremely responsible position as Group Manger, where he is charge of 300 personnel with an annual \$15 million budget.

Mr B.K.F. told members that Mr U.Q.F. was one of five children, but that he had become totally estranged from his siblings about 31 years ago. He thought that this was due to his involvement in some sort of secret military work, possibly latterly as a mercenary. Mr B.K.F. resumed contact with him after a chance meeting by a mutual acquaintance who had known him previously and he has been seeing him for the last 12 years or so. Apart from Mr B.K.F.'s father, Mr L.F., the other siblings who are alive are not at all interested in Mr U.Q.F.'s welfare.

Mr B.K.F. also said that Mr U.Q.F. had been married, but separated, if not divorced, he thought for at least 30 years. There had been six children of the marriage, two of whom had died as a result of cystic fibrosis. Mr B.K.F. last had any contact with these family six or seven years ago; although he passed a comment that the son Mr T.F. was opportunistic.

Mr B.K.F. was unsure of the terms of Mr U.Q.F.'s will. He said that he had some idea that all might go to the siblings, "if they wanted it", but if not then perhaps to Mr U.Q.F.'s children, although it could be that he was the residuary beneficiary. The position was far from clear.

He said that Mr U.Q.F. was a loner from the family. He had lived in Northern Tasmania for 18 years and had a good network of friends and was seemingly happy there. It was one friend, Mr H.E., who had found him two days after the stroke. He was concerned however that being a small community many people were aware of Mr U.Q.F.'s belongings and assets and that this was why his property needed safeguarding.

6. Consideration of the Board.

The Board accepted that Mr B.K.F. had his uncle's interest at the fore front. However, the facts of this matter are unusual in that Mr U.Q.F. has made certain

decisions many years ago, which now leave a disjointed family situation. As Mr B.K.F. stated, he may have had his reasons, but the fact remains that he has four surviving children who may have had an interest in these proceedings and certainly may ultimately have an interest in his estate. The Board cannot speculate as to what their level of interest may be.

The members are also mindful of section 54(1)(d)(ii) of the Act. This states that the Board must be satisfied that “the person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person...”.

Because of the nature of Mr U.Q.F.’s life prior to his stroke and the lack of information regarding his children and his intentions towards them particularly in regard to his testamentary intentions, it is not possible to state definitively that Mr B.K.F. would find himself in a position of conflict, but given the extremely unusual circumstances of this situation, it is more than likely that he could, through no fault of his own. This could arise through any action he might take with regard to the estate whilst Mr U.Q.F. is alive or through what seems to be potentially a very difficult and possibly litigious situation after his death, given the difficult relationships and the number of possible beneficiaries and the uncertainty about his will.

The Board thought it prudent and in Mr B.K.F.’s own interests that, in all the circumstances, an independent administrator be appointed.

ORDERS OF THE BOARD on 6th June 2008.

1. That the application for Guardianship be dismissed.
2. That the Public Trustee be appointed administrator for a period of three years with all the powers and duties contained in Division 4 of Part 7 of the Guardianship and Administration Act 1995.

Susan Hill
Chairperson

