QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*BNA* [2019] QCAT 246
PARTIES:	**In an application about a matter concerning BNA**
APPLICATION NO/S:	GAA5217-19
MATTER TYPE:	Guardianship and administration matters for adults
DELIVERED ON:	21 August 2019
HEARING DATE:	30 July 2019
HEARD AT:	Brisbane
DECISION OF:	Member Kanowski
ORDERS:	**The following documents, parts of documents and information are confidential and are withheld from all persons other than the source of the information, the provider of the information to the Tribunal, the Tribunal and any legal representative or appointed advocate for BNA:** **a) any information that would identify the applicant in the guardianship proceeding;** **b) the application for miscellaneous matters filed 17 April 2019.**
CATCHWORDS:	HEALTH LAW – GUARDIANSHIP, MANAGEMENT AND ADMINISTRATION OF PROPERTY OF PERSONS WITH IMPAIRED CAPACITY – where applicant for appointment of guardian and administrator sought anonymity – whether confidentiality order warranted *Guardianship and Administration Act* 2000 (Qld), s 103, s 104, s 109
APPEARANCES & REPRESENTATION:	
Adult:	Self-represented
Applicant/s:	-
Current Attorney/s:	ARA - an adult son of BNA
Public Guardian:	Megan Copley

REASONS FOR DECISION

Introduction

[1] On 4 April 2019 the Tribunal received an application for the appointment of a guardian and an administrator for BNA. The applicant proposed the appointment of the Public Guardian as guardian, and the Public Trustee as administrator.

[2] On 17 April 2019 the applicant applied for a confidentiality order, seeking anonymity. The main basis of the application was that the proceeding would anger ARA who is an adult son of BNA, because an appointment of the Public Guardian and/or the Public Trustee would overtake his role as attorney for BNA. It was said that ARA has a history of violence and verbal aggression, and that the applicant feared retaliation. The background was concern that ARA was, allegedly, misusing his role as attorney to benefit himself.

[3] On 3 May 2019 the Tribunal made a confidentiality order in response to the 17 April 2019 application. That order was made under sections 109(1) and 110(1) of the *Guardianship and Administration Act* 2000 (Qld) ('the Act'). By force of section 110(2), the order was vacated at the start of the hearing of the substantive application on 30 July 2019.

[4] By that stage, there was a Tribunal-initiated proceeding in relation to the enduring power of attorney to be considered in addition to the proceedings for the appointment of a guardian and an administrator.

[5] The persons present at the hearing, either in person or by phone, were BNA, ARA, BNA's two other children, the husband of BNA's daughter, Ms Copley from the office of the Public Guardian, and several Queensland Health staff.

[6] At the hearing I made a fresh confidentiality order under section 109(1) of the Act, in terms narrower than the previous order, after inviting submissions from the persons participating in the hearing. BNA and ARA took the opportunity to make submissions, though both pointed out that there was little that they could meaningfully say without knowing the identity of the applicant or the contents of the material sought to be made confidential. Their position was that it was preferable that all information be disclosed.

Reasons for confidentiality order made on 30 July 2019

[7] A confidentiality order is a 'limitation order' as defined in section 100 of the Act.

[8] Each active party to a proceeding must be given a reasonable opportunity to present their case, and, subject to any confidentiality order, to access documents that are relevant: section 103 of the Act. The active parties in this case include BNA and ARA: section 119 of the Act.

[9] In considering whether to make a confidentiality order, the Tribunal must take as the basis for its consideration that each active party is entitled to access any document that is credible, relevant and significant to an issue in the proceeding: section 104 of the Act.

[10] Sections 103 and 104 reflect principles of procedural fairness. A person involved in a proceeding should ordinarily be allowed to know all of the relevant information, so

that the person can put forward to the decision-maker evidence or arguments about any parts of that information that the person disputes or considers incomplete. The identity of an applicant is relevant information: for example an applicant may have a particular motive in bringing a proceeding, and that may affect the reliability of assertions made by the applicant.

[11] Section 109(1) of the Act, however, permits the Tribunal to make a confidentiality order – an order to withhold a document or other information from an active party or other person – in certain circumstances. The required circumstances are that the Tribunal is satisfied that such an order is 'necessary to avoid serious harm … to a person'. Any confidentiality order must withhold a document or information only 'to the extent necessary'. The making of a confidentiality order in those circumstances is discretionary rather than mandatory, because section 109(1) uses the word 'may'.

[12] I consider that the applicant is well-informed about ARA's character and behaviour, and was unlikely to be acting capriciously or maliciously in bringing the application for the appointment of a guardian and an administrator. According to the applicant, ARA has a history of violence and verbal aggression, and I accept this. There is evidence (contested by BNA and some other family members) that ARA was taking steps to isolate BNA from a number of other family members, quite possibly in connection with an intention of using his role as attorney to transfer property belonging to BNA to himself. In these circumstances, I consider that the applicant had a well-founded apprehension of verbal aggression or violence from ARA if the applicant's identity were revealed. I consider that such actions would constitute 'serious harm', and that a confidentiality order is necessary to avoid that harm. I also consider that an order in the terms made would be the minimum necessary to avoid such harm. Such an order withholds the identity of the applicant, and the application for miscellaneous matters which was the means by which the application for a confidentiality order was made. Disclosure of the application for miscellaneous matters would inevitably identify the applicant.

[13] While full transparency is the ideal, I consider that no substantial impairment of procedural fairness would result from the making of a confidentiality order. The likelihood of the applicant having an improper motive for seeking the appointment of a guardian and an administrator is very low, in my view. The withholding of the identity of the applicant would still leave accessible the vast bulk of the relevant evidence such as information about BNA's health and decision-making capacity, the actions of ARA in his role as attorney, and so on.

Conclusion

[14] In all of the circumstances, it is appropriate to make a confidentiality order that will withhold the identity of the applicant except, effectively, to any legal representative for BNA. Prior to the hearing, BNA had a solicitor acting for her but the solicitor did not attend the hearing, having advised that his instructions to appear had been withdrawn.