

AAC on Both Sides of the Fence



Fiona Given

Guardianship Division

NSW Civil and Administrative Tribunal

Obligations under the UNCRPD

- Article 13 – Equal access to justice
- Article 21 – Augmentative and alternative communication must be recognised in all official interactions with state parties.
- Reflected in the *Guardianship Act 1987 (NSW)*

Impact of AAC

- AAC has given me a voice!
- It has enabled me to express my thoughts which are:
 - Independent
 - Educated
 - Articulate
 - Opinionated

My Role on the Guardianship Division of the NSW Civil and Administrative Tribunal

- General Member for almost six years
- Accommodating of my own communication needs
- Abilities and talents recognised
- My participation as a member of the Tribunal has not been impeded by my need to use a communication device.

My Background

- Law degree
- Interest in access to justice for people with little or no speech

How the Guardianship Division Works

- Initial applications to the Guardianship Division are heard by a three member panel
- The panel is comprised of
 - Legal member
 - Health Professional member
 - General member

MHN [2017] NSWCATGD 14

- A young woman, who was the subject of a guardianship application who used a speech generating communication device
- Myself as part of the three member panel also used a speech generating communication device

The Parties of a Guardianship Application

- Applicant
- Person who is the subject of the application

The Role of AAC in MHN

- AAC was essential to the effective communication between the Tribunal panel and the subject of the application
- AAC was a central aspect of the panel's decision.
- Shared experience brings greater empathy.
- The first Tribunal case that involved an AAC user panel member and an AAC user as a party to the proceedings

The Essence of MHN

- Heard in regional NSW - greater opportunities for a face to face hearing.
- Whether Ms. MPH had capacity to appoint an enduring guardian herself
- Far less restrictive than having a guardianship order

Whether AAC is a Valid Means of Giving Evidence

- The rules of evidence do not apply in the Guardianship Division.
- There was never any question about whether Ms. MHN could give evidence using her speech generating device.

Why the Application for Guardianship was Made

- Ms. MHN's parents applied to be her guardians to assist her with medical and accommodation issues.
- Ms. MHN herself stated she wanted her parents to be appointed so they could assist her with making decisions and to be her voice at times because when she was not well she was unable to use her communication device.

Enduring Guardianship

- Made when a person is capable of appointing a guardian to make lifestyle decisions during times of incapacity
- This instrument can only be made if the person has capacity to make the appointment.

How Access to Justice for Ms. MHN was Enhanced

- Having another AAC user ask her questions and be part of the decision making panel as she had a peer involved.
- I reassured her that she could take her time.
- I was also able to assist by rephrasing some of the president's questions to ensure that they were accessible to Ms. MHN.

The Tribunal's Findings

- “The Tribunal found that while Ms. MHN has a physical disability and difficulties with verbal communication, her decision making capacity is not impaired.”

Aftermath

- The president emailed the divisional head back in Sydney saying how great it was to watch the duelling communication devices!
- For me, both professionally and personally, I felt that after years of studying and advocating, I had finally been a part of the change I am working towards.

The case confirms AAC is an accepted tool in Tribunal proceedings:

for a decision maker and

for a party

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATGD/2017/14.html>