SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2017] CSIH 65
XA21/17

Lord Justice Clerk
Lord Brodie
Lord Drummond Young

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in the Appeal

by

ABERDEENSHIRE COUNCIL

Applicant and Respondent

against

JM

Respondent and Appellant

Applicant and Respondent: Leighton; Russell + Aitken LLP
Respondent and Appellant: Sharpe; Morton Fraser LLP

18 October 2017

Introduction

[1] On 6 January 2016 the sheriff at Aberdeen made a Guardianship Order in respect of the appellant's brother, JC, for a period of three years. A previous order had subsisted between 1992 and 2001. The order was not renewed in 2001, essentially because the Council believed that the circumstances making it necessary were no longer applicable. However, when JC was moved to new accommodation in 2013, the Council had renewed concerns, and made an application for a further order. The sheriff decided that it was in JC's best

interests to make an order appointing the Chief Social Work Officer (CSWO) of Aberdeenshire Council as his guardian, and to refuse the appellant's request that she herself should be appointed.

[2] Following the making of the order, an appeal at the instance of the appellant was refused by the Sheriff Appeal Court, which also refused leave to appeal to this Court. The appellant was given leave by this Court to argue a ground of appeal that the Sheriff Appeal Court erred in relation to an alleged conflict of interest said to arise from the sheriff's decision to obtain a report on the appellant's suitability as guardian from the Mental Health Officer (MHO) who had previously submitted a report on the general appropriateness of the Council's application.

Background

[3] At the time of the application leading to the present order, JC was 57 years of age. He has been diagnosed with severe mental retardation and learning disability. He requires 24 hour support. He has limited understanding and communication levels. His incapacity is permanent. The appellant is his only relative.

[4] When the local authority's application was lodged, it was accompanied by the usual reports, including the report from the MHO as to the "general appropriateness" of the order sought, as required under s 57(b)(i) of the Adults With Incapacity (Scotland) Act 2000 ("the Act"). That report was in favour of the application. An interim guardianship order was granted, appointing the respondent's CSWO as *interim* guardian. The appellant lodged a Minute seeking to be appointed as guardian. This Minute was not accompanied by a report from the MHO. The sheriff *ex proprio motu* ordered a report on the appellant's suitability as

guardian from the MHO whose report was already in process. That report suggested that the appellant was not suitable to be appointed.

[5] On appeal to the Sheriff Appeal Court the appellant's arguments included that the MHO should not have prepared a report in respect of her application, there being a conflict of interest. The Sheriff Appeal Court rejected that argument, stating (para 10)

> "It is for the sheriff, not the mental health officer, to decide whether or not to appoint a guardian (section 58 of the Act). To assist the sheriff in that task, Parliament has determined that there should be produced reports from at least two medical practitioners and from the mental health officer (section 57(3)). In preparing their reports the medical practitioners and the mental health officer will doubtless rely upon their individual professional qualifications and experience. In particular, the mental health officer can be expected to act in an independent manner from the local authority which seeks the appointment. He or she will consider the evidence and will, so far as reasonably possible, interview the adult and the applicant. Indeed, the requirement to interview the adult is expressly provided by section 57(3)(b)(i). But unlike a court the mental health officer cannot make findings in fact; instead, all that he or she can do is to consider the reported history of the case and the views of the various parties involved and then make a professional and independent assessment based upon the information provided. It is for the court to assess the value of that report. If, for example, the sheriff decides that material facts were not as reported to the mental health officer, the value of the report will be less. Indeed, as in this case, the mental health officer can expect in disputed cases to be examined and cross-examined at length under oath before the sheriff. So, there is a further opportunity for the sheriff to ingather information about the worth of the conclusions in the report."

Submissions

Appellant

[6] The MHO, being employed by the local authority was not institutionally independent from the authority, or from the CSWO as both were employed by the same authority and work in the same department. When the only candidate for appointment is the CSWO there can be no objection to the provision of a report from the MHO. However, where there is a subsequent competition for appointment, the local authority should obtain a report from an MHO employed by another authority. Further, the terms of the original

report suggest that the MHO had already formed a view as to the suitability of the order sought, and whilst not having in terms addressed the unsuitability of the appellant as a guardian, it is clear that the MHO formed certain adverse views in relation to the appellant. The whole point of the application was to prevent the local authority's decisions in respect of the appellant being undermined by the appellant. The procedure adopted was not fair to the appellant. Reference was made to Article 6 of ECHR and the requirements of domestic law that a fair procedure be followed in cases of this kind. The procedure generally was not fair and the decision of the sheriff should not stand. Modern standards of fairness required a different approach. The actions of a witness, such as the MHO, could, and in this case did, taint the whole procedure.

[7] Under reference to Article 5 of ECHR, it was submitted that a guardian's power to choose where the ward should live could be construed as depriving him of his liberty. The possibility of an independent check is a safeguard against arbitrariness. The procedure adopted gave insufficient protection of the rights of the individual who was the subject of the order.

Respondent

[8] The procedure followed was one which is provided for in statute. The sheriff *ex proprio motu* ordered a report from the MHO on the suitability of the appellant as guardian of the ward. This was a report in terms of section 57(3)(b)(ii) and required to be prepared by the MHO employed by the respondents. There is no statutory provision for a different MHO to prepare a report. Given that the appellant sought appointment as guardian, an assessment of her suitability was necessary to satisfy the terms of sections 57-59 of the Act. In any event, the MHO can be expected to act in a manner independent from the local

authority. The sheriff reached a decision on the appellant's suitability on the basis of the totality of the evidence before him, not only the report of the MHO.

The starting point for consideration of whether article 5 is engaged is the concrete situation in operation at the relevant time *(P* v *Cheshire West and Chester Council & Anr* [2014] UKSC 19). Article 5 was not engaged in the present case. In any event, the procedure for making a guardianship order is one prescribed by law, and satisfies the requirements of Article 5.

Legislation

[9] Local authorities have certain statutory functions under the Act. These include supervising a welfare guardian (section 10(1)(a)), investigating complaints relating to the exercise of the personal welfare functions by guardians (section 10(1)(c) and investigating any circumstances made known to them in which the personal welfare of an adult seems to be at risk (section 10(1)(d)). For the exercise of these functions "local authority" includes the local authority for an area in which the adult is present. Otherwise "local authority" is to be construed as a reference to the local authority for the area in which the adult resides (section 87). In consequence of any investigation carried out, *inter alia*, under section 10(1)(d) a local authority may take such steps, including the making of an application to the sheriff, as seem to be necessary to protect the interests of the adult in question.

[10] The supervisory functions of the local authority in relation to welfare guardians is complemented by a similar supervisory authority invested in the Public Guardian under section 6 of the Act in relation to the financial and property affairs of the adult.

[11] Provisions relating to the making and disposal of guardianship applications, and the appointment of a guardian are made in sections 57-59 of the Act as follows:

"57 Application for guardianship order

(1) An application may be made under this section by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult to the sheriff for an order appointing an individual or office holder as guardian in relation to the adult's property, financial affairs or personal welfare.

(2) Where it appears to the local authority that–

(a) the conditions mentioned in section 58(1)(a) and (b) apply to the adult; and

(b) no application has been made or is likely to be made for an order under this section; and

(c) a guardianship order is necessary for the protection of the property, financial affairs or personal welfare of the adult,

they shall apply under this section for an order.

(3) There shall be lodged in court along with an application under this section–

(a) reports, in prescribed form, of an examination and assessment of the adult carried out not more than 30 days before the lodging of the application by at least two medical practitioners one of whom, in a case where the incapacity is by reason of mental disorder, must be a relevant medical practitioner;

(b) where the application relates to the personal welfare of the adult, a report, in prescribed form, from the mental health officer, (but where it is in jeopardy only because of the inability of the adult to communicate, from the chief social work officer), containing his opinion as to–

(i) the general appropriateness of the order sought, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application; and

(ii) the suitability of the individual nominated in the application to be appointed guardian; and

(c) where the application relates only to the property or financial affairs of the adult, a report, in prescribed form, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application, by a person who has sufficient knowledge to make such a report as to the matters referred to in paragraph (b)(i) and (ii).

……..

(4) Where an applicant claims an interest in the personal welfare of the adult and is not the local authority, he shall give notice to the chief social work officer of his intention to make an application under this section and the report referred to in subsection (3)(b) shall be prepared by the chief social work officer or, as the case may be, the mental health officer, within 21 days of the date of the notice.

…….

58 Disposal of application

(1) Where the sheriff is satisfied in considering an application under section 57 that–

(a) the adult is incapable in relation to decisions about, or of acting to safeguard or promote his interests in, his property, financial affairs or personal welfare, and is likely to continue to be so incapable; and

(b) no other means provided by or under this Act would be sufficient to enable the adult's interests in his property, financial affairs or personal welfare to be safeguarded or promoted,

he may grant the application.

……

(3) Where the sheriff is satisfied that an intervention order would be sufficient as mentioned in subsection (1), he may treat the application under this section as an application for an intervention order under section 53 and may make such order as appears to him to be appropriate.

(4) Where the sheriff grants the application under section 57 he shall make an order (in this Act referred to as a *"guardianship order"*) appointing the individual or office holder nominated in the application to be the guardian of the adult for a period of 3 years or such other period (including an indefinite period) as, on cause shown, he may determine.

…….

59 Who may be appointed as guardian

(1) The sheriff may appoint as guardian–

(a) any individual whom he considers to be suitable for appointment and who has consented to being appointed;

(b) where the guardianship order is to relate only to the personal welfare of the adult, the chief social work officer of the local authority.

(2) Where the guardianship order is to relate to the property and financial affairs and to the personal welfare of the adult and joint guardians are to be appointed, the chief social work officer of the local authority may be appointed guardian in relation only to the personal welfare of the adult.

(3) The sheriff shall not appoint an individual as guardian to an adult unless he is satisfied that the individual is aware of–

(a) the adult's circumstances and condition and of the needs arising from such circumstances and condition; and

(b) the functions of a guardian.

(4) In determining if an individual is suitable for appointment as guardian, the sheriff shall have regard to–

(a) the accessibility of the individual to the adult and to his primary carer;

(b) the ability of the individual to carry out the functions of guardian;

(c) any likely conflict of interest between the adult and the individual;

(d) any undue concentration of power which is likely to arise in the individual over the adult;

(e) any adverse effects which the appointment of the individual would have on the interests of the adult;

(f) such other matters as appear to him to be appropriate.

(5) Paragraphs (c) and (d) of subsection (4) shall not be regarded as applying to an individual by reason only of his being a close relative of, or person residing with, the adult."

[12] Section 3 of the Act makes certain additional stipulations in relation to the powers of the sheriff in relation to such applications, including that:

"(1) In an application or any other proceedings under this Act, the sheriff may make such consequential or ancillary order, provision or direction as he considers appropriate.

(2) Without prejudice to the generality of subsection (1) or to any other powers conferred by this Act, the sheriff may–

(a) make any order granted by him subject to such conditions and restrictions as appear to him to be appropriate;

(b) order that any reports relating to the person who is the subject of the application or proceedings be lodged with the court or that the person be assessed or interviewed and that a report of such assessment or interview be lodged;

(c) make such further inquiry or call for such further information as appears to him to be appropriate;

(d) make such interim order as appears to him to be appropriate pending the disposal of the application or proceedings.

(3) On an application by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult, the sheriff may give such directions to any person exercising–

(a) functions conferred by this Act; or

(b) functions of a like nature conferred by the law of any country,

as to the exercise of those functions and the taking of decisions or action in relation to the adult as appear to him to be appropriate. ….."

[13] For the purposes of the Act, "Mental Health Officer" has the meaning given by section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003, which states:

"'Mental Health Officer' means a person appointed (or deemed to be appointed) under section 32(1) of this Act, and 'The Mental Health Officer', in relation to a patient, means a Mental Health Officer having responsibility for the patient's case."

"Patient" means a person who has, or appears to have a mental disorder. Section 32 of the Act of 2003 provides that a local authority must appoint a sufficient number of persons to discharge the functions of MHO under various statutes, including the Act of 2000. Only persons who are officers of a local authority, and who satisfy such requirements that the Scottish Ministers may direct in relation to qualification and competence, may be appointed.

[14] The Act of Sederunt (Summary Applications, Statutory Applications and Appeals Etc. Rules) 1999 specifies that an application under the Act should be made in a specified form (Rule 3.16.7), but that

> "Unless otherwise prescribed in this Part or under the 2000 Act, any application or proceedings subsequent to an initial application or proceeding considered by the sheriff, including an application to renew an existing order, shall take the form of a Minute lodged in the process" (Rule 3.16.8(1))

Analysis and decision

[15] A preliminary issue arose as to the procedure which applies in a case where the application of a local authority is not disputed in relation to the need for a guardianship order, but where a dispute arises as to the individual who should be appointed as guardian. In the present case, after lodging answers, the appellant lodged a Minute in terms of Rule 3.16.8 in which she herself sought appointment as guardian. The sheriff appears to have considered this to be the appropriate procedure. Furthermore, the sheriff considered that such an application constitutes a separate application under section 57(3). He considered that whilst it might have been open to the appellant to rely on the medical reports lodged with the original application, her own Minute should have been accompanied by a report from the MHO commenting on the appellant's suitability as guardian (presumably obtained by utilising the mechanism identified in section 57(4)). This was not done. However, the actions of the original sheriff in ordering such a report *ex proprio motu* meant that this information was available to the Court. Further, the wide terms of section 59 meant that in considering suitability the sheriff was not constrained to consider only material in a report from the MHO. The written submission for the respondent seemed also to contemplate that the appellant should have obtained a report from the MHO, stating that "Given that the

appellant sought appointment as guardian, an assessment of her suitability was necessary to satisfy the terms of sections 57-59 of the Act." This was departed from in oral argument.

[16] There are two Sheriff Court cases in which these issues have been discussed. These had not been referred to in written submissions but the parties were advised that the Court expected to hear oral argument in this procedural point. Both counsel submitted that (a) there was no need for a Minute; and (b) the report-lodging requirements of section 57(3) did not apply.

[17] In *Arthur* v *Arthur* 2005 SCLR 350, the grandson of the adult lodged an application for a guardianship order, and to be appointed guardian. The son lodged answers disputing the need for an order, as well as a Minute seeking appointment himself, should the Court find that an order was necessary. It was argued that this Minute was incompetent since it had not been accompanied by the reports required under section 57(3). That being so, and no such reports having been lodged, the Court would be unable to conclude that the respondent was a suitable person to be appointed guardian. The sheriff noted that whilst the requirement for lodging such reports was applied to applications for renewal or variation of an order, it was not an invariable requirement for appointment, since it did not apply to applications for appointment of a substitute. Furthermore, the question of who may be appointed as guardian was addressed in section 59, which was in very wide terms. The sheriff was entitled to appoint any person he considered suitable, whether party to an application or Minute or not in the proceedings at all, provided they consented. Where the application was for a welfare guardian, the sheriff could decide not to appoint the applicant, but to appoint the CSWO, who might not be in the process, who could not therefore have provided reports, and whose consent might not have been sought. Although it was necessary for the Minute to have been lodged, it was not necessary for reports in terms of

section 57(3) to be lodged with the Minute. The absence of reports as to the suitability of a Minuter would not prevent the sheriff appointing such a person provided they were suitable and consented.

[18] In *Cooke* v *Telford* 2005 SCLR 367an application for a guardianship order, and to be appointed guardian, was lodged by the niece of the adult in question. Answers were lodged by the adult's sister, accepting the need for guardianship, but seeking appointment herself either as joint guardian with the niece, or alone. However, no Minute was lodged. The Court held that although, as decided in *Arthur,* the sheriff was entitled to appoint as guardian an individual who was not a party to the application, if suitable and consenting, the sister's attempt to have herself appointed was a "subsequent" application in terms of Rule 3.16.8, and in the absence of a Minute was incompetent.

[19] The only basis upon which one might import the report-lodging requirements of section 57 to an application made by someone in the circumstances of the appellant in the present case would be if that application were to be treated as an application under section 57, separate from the original application in answer to which the counter proposal for appointment has been made. On that logic, the whole of the requirements in section 57(3) would apply, which would be absurd when there is no dispute that a guardianship order is required. Further, if the counter proposal came from anyone other than a local authority, the only way the reports under section 57(3)(b) could be provided would be by means of section 57(4), which would be cumbersome and impractical. The proper approach is that a counter proposal such as this is not separate from the application to which it is a response nor is it an application subsequent to earlier one. A Minute is not required, and the report-lodging requirements of section 57(3) do not apply.

[20] An initial application for a guardianship order under section 57 is made by summary application. In accordance with normal practice, an individual may enter the process to contest that application, and may seek the appointment as guardian of someone other than a person named in the application, or the CSWO. In doing so, he is not making a "subsequent" application which requires to be in the form of a Minute under Rule 3.16.8. That rule applies only to applications or proceedings subsequent to "an initial application or proceeding considered by the sheriff". It reflects the procedure followed in other forms of procedure, where for example, a decision has been made regarding welfare of children, and at a later stage someone seeks a further order in relation to those children. In such a case a Minute would require to be lodged in the original process, serving effectively as the initiating writ for the subsequent application.

[21] Where a request to be appointed guardian is made in circumstances such as the present, it is not an "application subsequent to an initial application or proceeding considered by the sheriff": it is a counter proposal for appointment of a different guardian made during the currency of an application which the Court is still "considering", and may be advanced in answers to the summary application. It is not a separate application under section 57, in respect of which the report lodging requirements would apply. For example, where an application under section 57 had been made and refused, a subsequent application, being "subsequent to an initial application …considered by the sheriff" would require to be made by Minute, and would be subject to the report lodging requirements since it would amount to an application under section 57. Any counter proposal in answers to the Minute would not be subject to the report lodging requirements.

[22] It is important to recognise that there are two separate matters which the Court has to consider. One is whether a guardianship order is required; the other is who should be

appointed guardian. In order to be able to grant the former, the Court must be satisfied that incapacity has been established, and is likely to continue; and that no lesser degree of intervention would be sufficient to protect his interests (section 58(1)). If so, a guardian may be appointed for three years, or, on cause shown, such other period as the sheriff shall determine (section 58(4)). The wording of section 58(4) which provides that when granting an application the sheriff shall make an order "appointing the individual or office holder nominated in the application" is infelicitous. However, it is clear that section 58 is in fact concerned only with the conditions for making a guardianship order – continuing incapacity and inadequacy of lesser intervention – and for how long, not with the question of who may be appointed guardian. That separate issue is addressed in section 59.

[23] If the sheriff determines that a guardianship order is necessary, the question arises who should be appointed. Section 59 provides that the sheriff may appoint as guardian any individual, such as a family member, whom he considers to be suitable, or, where the guardianship order is to relate only to the personal welfare of the adult, the CSWO. The latter may be appointed a joint guardian, but only in relation to welfare aspects of guardianship. Although it is not necessary for a counter proposal to be supported by a suitability report from the MHO, the sheriff still requires to be satisfied that the individual proposed is a suitable guardian. Section 59 requires the sheriff to be satisfied that the individual is suitable, that he consents, that he is aware of the adult's circumstances and the needs arising from these, and of the functions of a guardian. An individual's suitability is to be assessed having regard also to various criteria specified in section 59(4). In order to be satisfied as to suitability, the sheriff may call for any further reports he considers necessary, including *ex proprio motu* a report from the MHO, using the powers available to him under section 3. Where the issue of who is to be appointed is contested, the sheriff would no doubt

hear evidence, as he did in the present case, and take account of all the circumstances known to him. The question of suitability is not determined by a report from the MHO but by the sheriff, as the sheriff in *Arthur* recognised.

[24] In relation to the CSWO, there is in effect a presumption that such an office holder would be a suitable welfare guardian. Where appointment of the CSWO, the "office holder", is sought, no suitability report need be prepared or submitted. A suitability report, in "prescribed form", need only be submitted in relation to an application to appoint a named individual. This is apparent from the wording of section 57(3)(b)(ii). It is reflected in the statutory, prescribed form to be found in the Adults With Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002, para 4, and schedule 2. The section relating to suitability of a proposed guardian bears the words "Do not complete if the proposed guardian is the CSWO". The sheriff does not require to carry out a suitability assessment in relation to the CSWO, as he does for an individual, nor obtain consent or the like, all as directed for individuals in section 59.

[25] Turning to the specific arguments raised in this case, it was somewhat difficult to ascertain from counsel for the appellant (a) wherein the alleged unfairness was said to lie; and (b) upon what basis the appellant was seeking to vindicate any Article 5 rights of the ward.

[26] The unfairness was said to arise in two ways: first, that the MHO was employed by the authority seeking the appointment, the same authority as employed the CSWO whose appointment was proposed. This was said to have created a conflict of interest which "tainted the whole proceedings", although it was not clear wherein lay the alleged "interest" or indeed how it was productive of a conflict of interest. Second, in preparing her initial report in terms of section 57(b) the MHO had made adverse comments regarding the

appellant. The implication was that the MHO was thus prejudiced or biased against the appellant when it came to preparing the second report requested by the sheriff. There was the potential for Article 5 to be engaged, since the effect of a guardianship order could in certain circumstances impinge upon the liberty of the ward. The procedure adopted was not such as to provide protection from arbitrary interference.

[27] We are unable to accept any of the arguments advanced for the appellant. We note that the appellant's submission that when the only candidate for appointment is the CSWO there can be no objection to a report from the MHO makes no sense, and betrays an incomplete understanding of the structure of the Act: such a report is never required for the CSWO.

[28] In our view no conflict of interest could arise between the MHO and CSWO merely on account of the fact that they were employed by the same local authority. Moreover, the fact that the MHO might have formed certain broad views in relation to the appellant when preparing a report on the general appropriateness of the order sought, would not prevent the MHO from making a separate assessment of the suitability of the appellant as a potential guardian in a subsequent report. Neither the MHO nor the CSWO has an "interest" in who is appointed as guardian, and the only interest of the local authority is to secure the welfare of those within its locality who may be vulnerable through being unable to manage their own affairs. Their only interest is to discharge the duties entrusted to them by Parliament.

[29] The argument fails to recognise that the local authority, the MHO and the CSWO have certain functions and obligations imposed on them by the statutory scheme, that their actions were all taken in fulfilment of those functions or at the request of the Court, and that in the exercise of those functions they are subject to supervision of the Mental Welfare Commission, and ultimately, the Court. Both the MHO and the CSWO have professional

obligations requiring them to act in the best interests of those requiring their services. They are both bound to comply with the Scottish Social Services Council Code of Practice for Social Service Workers. The Sheriff Appeal Court were entirely entitled to conclude that the MHO could be expected to act in a manner independent from the local authority which seeks the appointment.

[30] Amongst the submissions which were most difficult to comprehend were those relating to alleged procedural unfairness. As noted above, the MHO is not the decision-maker in relation to suitability; and her report is not determinative of that issue. When the sheriff ordered the second report from the MHO, the appellant was represented by her agent, who accepted, as recorded in the note to the sheriff's interlocutor of 20 July 2015 that "a report from the local authority MHO was necessary." The agent advised that he was considering obtaining a report from an "independent" MHO. On 5 October 2015 the sheriff allowed a pre-proof hearing to be continued in order that further consideration could be given to this issue. No such report was lodged, and the case was continued to a proof, at which the appellant was again legally represented. Evidence was heard from the MHO, who was cross examined at length by the appellant's agent. The appellant herself gave evidence, as did her husband. The sheriff explained that much of the evidence from the appellant and her husband was directed at criticising arrangements made for her brother's care: "There was only limited evidence from the Minuter and her husband to try and satisfy me as to her suitability for appointment". There was ample opportunity for the appellant to have provided or obtained such evidence; it is clear that had she done so the sheriff would have had regard to it. Having considered all the evidence available to him, the sheriff concluded that the appellant was not suitable for appointment.

[31] As to the arguments relating to Article 5 these are untenable. No question under Article 5 arises. Even if it had done, the appellant's arguments ignore the structure of the Act, the safeguards built into it, in the form of the supervisory functions given to the public guardian and the local authority, overseen in the case of the latter by the Mental Welfare Commission. It ignores the fact that a guardianship order may only be made by a judicial officer, and only when satisfied in respect of stringent statutory requirements, which require to be interpreted according to the principles of minimal intervention in the best interests of the adult, taking account as far as possible his or her wishes, all as specified in section 1 of the Act. There is no merit in any aspect of this appeal, which will be refused.