

[Menu](#)[Read the Paper](#)[Subscribe](#)[Login](#)[NEWS](#)[SPORT](#)[BUSINESS](#)[ENTERTAINMENT](#)[LIFESTYLE](#)[CM IPAD SECTION NEWS FRONT PAGE](#)

# Court finds bias in QCAT's care denial

Margaret Wenham, CourierMail

September 15, 2011 12:00am



A DECISION by the Queensland Civil and Administrative Tribunal to deny a wife of 43 years control of her sick husband's care and financial affairs has been overturned by the Court of Appeal on the basis of apprehended bias.

But the win on Friday for Mrs Patricia Maher, 64, came too late - her husband died before her appeal could be heard.

In their judgment, Justices Richard Chesterman, Margaret White and Anthe Philippides said of a March 10 QCAT decision: "The fair-minded lay observer ... would entertain a reasonable apprehension of bias in the constitution of QCAT given (Senior Tribunal Member Clare Endicott's) prior involvement in determining, adverse to the applicant, the same issues which arose for determination in (an earlier QCAT) appeal".

They continued: "The circumstances giving rise to the apprehension are exacerbated by the most unfortunate appearance of secrecy in the choice of members to constitute QCAT for the hearing and the mode of proceeding ... the result has been most unhappy."

The court said although there could be no practical effect in Mrs Maher's case - as her husband died before the matter could be heard - leave to appeal was given and the matter determined because "the issue is an important one which goes to public confidence in the processes of QCAT

and the decision of this court may assist to avoid similar problems in the future".

Mrs Maher said yesterday she felt like she'd been "to hell and back" since being swept up in the guardianship system.

"It's too late for me - it's too late to bring my dignity back and my husband's dignity back but it's not too late for anyone else, that's why I kept it going," she said.

According to the judgment, the Public Trustee and Adult Guardian were appointed by the former Guardianship and Administration Tribunal to be administrator and guardian respectively of Mrs Maher's husband, Rodney, after she and her daughter disagreed about the means by which Mr Maher could best be cared for.

Ms Endicott was the presiding member of GAAT, which made orders appointing the Adult Guardian.

Last year Mrs Maher applied to QCAT, which has replaced GAAT, for a review of the case, seeking to resume guardianship of her husband, who had spastic paraparesis and dementia.

When her review request was refused, Mrs Maher sought leave to appeal to QCAT and on March 10 this year QCAT, constituted by tribunal president Justice Alan Wilson and Ms Endicott, heard the matter.

The first Mrs Maher learned the matter had been decided, that she had been unsuccessful - and that Ms Endicott had been a member of the QCAT tribunal dismissing her appeal - was when she received the order and reasons on March 18.

The Court of Appeal judgment said: "A tribunal member, or judge, in Ms Endicott's position should have alerted the applicant (and the other parties) to the proposed constitution of QCAT and asked whether there was objection to it.

"Objection would have been well founded as we have pointed out."

Originally published as [Court finds bias in QCAT's care denial](#)

