

**Who Can You Trust? Protecting Yourself and Others from Financial Elder Abuse
Presented by the Social Action – Frauds and Scams Committee, January 30, 2023**

A review of some of the terms shared in the presentation prepared by Ann Soden, Ad.E.



A '**mandatary**' in Québec, (may be called an attorney, proxy or representative in other jurisdictions), is a person authorized by a '**mandator**' (the principal'), under the terms of a contract for specific or general purposes, to carry out a mandate. Mandates cover many subjects and roles by contract.

'Power of Attorney' (POA) in Quebec is a mandate to administer one's property and finances. It is a unilateral contract made by the **mandator**, existing by law only while the mandator is capable of understanding and appreciating his or her assets and finances, with support. It can be specific or general - it is subject to the direction and instruction of the mandator for every task and transaction. It may be rescinded at any time. Many mandators believe they have ceded control, for life, of their finances to the mandatary once signed and are afraid of reprisals if they change mandataries. This allows for exploitation to occur in many instances. **A POA is for finances only and does not cover or extend to care matters.**

Care is covered under Article 15 of the Civil Code. A specific mandatary for the person and care of another person can be named in a Mandate of Protection along with a specific mandatary or mandataries for property finances but these roles of named persons only come into effect when the Mandate of Protection is homologated by the court. This, in the event of incapacity, demonstrating the need for formal protection of the mandator - to be validated under the contract and confirmed by judgment of the court.

Under Québec law we are called upon to safeguard autonomy, our cornerstone obligation, and in so doing to cause the least restrictions on a person's civil rights when assistance and support should only be provided. The court itself may name someone to represent an incapable person, provisionally and/or permanently, to act, in the absence of mandate of protection, after taking account of the advice and recommendations of specialized professionals, family and friends.

Too often, persons and professionals believe that in signing a power of attorney and mandate of protection, the mandatary is the legal representative for all matters of finances and care. This is mistaken, causing ripple effects of exclusion of adult children of an older parent, family conflict and even abuse by isolation of the parent or concerned person from family. It can result in undue control by the mandatary, asserting that he or she has full control for all matters under the power of attorney or by virtue of being named to care in a mandate of protection which is not yet homologated.

In the absence of advance legal planning or documentation by the concerned person, the court, after receiving recommendations from a doctor, social worker, family members a friend or the person him/ herself, will name one or more legal representatives under a protective regime of supervision called a 'Tutorship'. A tutorship council of family and friends, usually, will be named for oversight and respectful advice when needed. These protective regimes under 'tutorship' may be private or public in nature.

Later life planning documents are deceptively simple but very complex and call for instruction and follow-up throughout their use which notaries, lawyers and certified mediators should be increasingly called upon to provide, to promote the inclusion, autonomy and dignity of the person at every stage of later life, to inform the legal representatives, to resolve and repair family conflict and misunderstandings, and to resolve and prevent cases of abuse and financial exploitation.

An '**executor**' is commonly known as the person (may be plural) who is named in a Will to settle an estate, an important role that comes with important responsibilities which a notary can best guide and assist with at each stage of the settlement. This term, formerly used in Québec by anglophones and still prominent throughout Canada has for several years now been changed to the term, '**liquidator**' to mirror its equivalent in French. The duties remain the same.

The website of Educaloï, an educational arm of the Barreau du Québec, explains in the vernacular many difficult legal concepts and is an excellent reference on powers of attorney, mandataries, tutors, liquidators and much more on issues and challenges of later life.

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