

## **MANDATES EXPLAINED – ANN SODEN**

A 'mandatary' in Québec, called an attorney, proxy, representative in other jurisdictions, is a person authorized by a 'mandator' in Québec, or 'principal' elsewhere, under the terms of a contract for specific or general purposes to carry out a mandate. Mandates cover many subjects and roles by contract. The '**Power of Attorney**' (POA) in Quebec is a mandate to administer one's property and finances, is a unilateral contract made by the mandator, existing by law only while the mandator is capable of administering (understanding and appreciating) his or her assets and finances, with support, but is a contract often misunderstood by the public and even by professionals. It can be specific or general, it is subject of the direction and instruction of the mandator for every task and transaction and may be rescinded at any time by the capable mandator but rarely is as many mandators believe they have ceded control for life of their finances to the mandatary once signed and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 and ashamed to reveal their misjudgment, allowing exploitation to occur in many instances. A POA is for finances only, I repeat, and does not cover or extend to care matters. Care is covered under the law at Article 15 for the Civil Code. A specific mandatary for the person and care of another person can, of course, be named in a **Mandate of Protection** along with a specific mandatary or mandataries (there may be more than one) for and property finances but these roles of named persons only come into effect when the Mandate of Protection is homologated by the court 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 (remember that we are called upon constitutionally to protect human rights and to take account of and promote 'capacity with support' and not rush to declare a person incapable. 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 only should 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 forever and this is mistaken causing ripple effects of exclusion of adult children of an older parent, jealousies, family conflict and abuse by isolation of the parent or concerned person from family and undue control by the mandatary asserting, sadly supported by professionals incorrectly, that he or she has full control for all matters under the power of attorney alone or by virtue of being named to care in a mandate of protection which is not yet homologated. Siblings, in the absence of a spouse and parents, rank equally as to care of the person, should the person in question, despite respectful support and assistance, be unable to communicate his or her wishes and decisions as to health care ( note that the person always retains, irrespective of degree of incapacity and representation, the right to make his or her own decisions, by virtue of the right to refuse, as to care and where he or she wants to receive care, the legal representative always and only acting as an advocate of the wishes, current or previous competent wishes, and values of the person), the whole in the absence of the homologation of a mandate of protection or the court appointment of one or more legal representatives.

In the absence of advance legal planning documentation by the concerned person, the court, after receiving recommendations from a doctor, social worker, family members and friends and the person him or herself, will name one or more legal representatives called a '**tutor**' or 'tutors' under a modulated and adapted, 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.

Finally 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 much more on issues and challenges of later life.