

REGRETFULLY NECESSARY

As long as there's incapacity we'll need a public curator. What we don't need are the problems attached

It's sad when, for whatever physical or mental reason, anyone becomes incapable of looking after themselves or managing their affairs. Even sadder when there's no relative or friend willing or able to step in as private curator. In that case, once a judge confirms incapacity, the public curator automatically takes over.

The public curator is a large bureaucracy of some 650 employees. It's headed by a government appointee named for a five-year term. Their headquarters and a branch office are here in Montreal; other branch offices can be found throughout the province. Despite being government-funded, the operation functions completely independently, administers its own affairs and is answerable to no one. The files of their wards are confidential, safe from access by outside individuals.

Just from that short description Ura Greenbaum can spot three problems that cause trouble for people dealing with the public curator. Greenbaum, a jurist and a long-time member of AMI, is a director of Public Curator Surveillance, short for Association for the Defense of People and Property under Public Curatorship. Public Curator Surveillance, in existence since 1995 as a civil society watchdog, is a non-profit community resource for those who seek help in dealing with the public curator. Their operation is province-wide and the only one of its kind.

The ground rules

"The Public Curator Act spells out the organization's three main functions," Greenbaum explains. "Namely, they look after people deemed incapable by the court, supervise the management of the

private curator or tutor if there is one, and if a mandatary had been chosen in the event of incapacity, the public curator has the right to investigate any complaint of abuse by the mandatary of the incapable person."

The Act also specifies what the public curator can or can't do. "All decisions must



When curator troubles pile up, Greenbaum is a good man to know

be in the best interest of the incompetent person," says Greenbaum. "But that's open to interpretation. The public curator is a civil servant who often has no prior experience in healthcare or knowledge of the person they're supposed to be looking after. There's no connection to the ward's background or circumstances other than hospital or CLSC reports. They may think their decisions are in the ward's best interest, but family members may have different ideas."

When problems and misunderstandings arise, the resulting conflict can be a bitter one, as by law the public curator has the final say. That includes the right to decide on everything from medical care to residency. The ward's possessions have been inventoried. Money and property rights have been transferred into the curator's hands. Mail has been redirected to

the curator's address.

Bottom line, there's the law and there's reality. "An article in the Act states that the public curator must consult the ward on all decisions," says Greenbaum. "But what we see in practice is that the curator will meet with a person once a year at best. Many times it's less than that. Obviously if you don't see someone, there can't be consultation. With the standard plea of insufficient budget and a lack of personnel and resources, the curator simply makes decisions independently."

Recourse options

By law, anyone declared incompetent must be reassessed every five years; every three years for partial or temporary incompetence. That can be a long wait, particularly if there's been a misdiagnosis. That can and has happened. "In theory a ward can always go to court, but it's not easy," says Greenbaum. "When someone's been judged incompetent, when their finances are beyond their reach, when maybe their actions and speech are erratic, the chances of finding a sympathetic lawyer are slim."

Should someone be determined to petition for quick release from curatorship, there are steps and documents involved: re-evaluation by a doctor or a psychiatrist, a psychosocial report by a social worker, release applications by a lawyer. "We once had a client who suffered from anxiety and was misdiagnosed as incompetent," says Greenbaum. "We found legal representation for her, all the resources she needed and had her re-evaluated. It took over a year. In the end the judge released her. She never received a cent in compensation or damages. Not even an apology. She could have sued, but that would have been costly, drawn out and impractical. The public curator has 30 lawyers on staff."

Planning ahead

So what's a family to do? If you have an ill relative who's been declared incompe-

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