

# Financial abuse of vulnerable seniors: are we part of the problem or part of the solution?

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# The case of Mr. Senior

- 83 year old widower, living in a residence
- Holocaust survivor
- No family
- Admitted to hospital for a hip fracture after a fall
- Longstanding psychiatric history
- Mild Alzheimer's disease

## Senior - 2

- Paid companion who has power of attorney, is named as mandatary, and is named as heir in the patient's will
- During the hospitalization, the paid companion attempted to convince the patient's physicians to have him declared incompetent
- This triggered an evaluation by Social Services

# Consequences of declaration of incompetence:

- The patient would no longer be able to consent to medical care or treatment
- No longer able to manage financial affairs
- Should trigger the process of homologating the mandate, so that the named mandatary becomes the legal representative for the patient

# Potential for financial abuse

- Warning flags:
  - Absence of family
  - Psychological vulnerability:
    - Holocaust survivor
    - Cognitive impairment
    - Psychiatric illness
  - Significant financial resources
  - Involvement by someone who may benefit

# Upon investigation:

- Mr. Senior's finances had been handled for many years, free of charge, by a family friend (an accountant), who would benefit in Mr. Senior's will
- The companion initially helped Mr. Senior for free
- Later, she convinced Mr. Senior to give her POA and a mandate, and change his will in her favour
- The family friend challenged the new mandate
- The companion hired a lawyer
- The family friend dropped his challenge, and submitted an invoice for the free services he had provided in the past



The background of the slide is a dark teal color with a faint, light-colored topographic map overlay. The map shows contour lines and some geographical features, including what appears to be a coastline on the left side. The title 'Senior - 3' is written in a large, bold, yellow font.

## Senior - 3

- The companion now arranged to pay herself generously for her services
- She also moved Mr. Senior from an luxury retirement residence to a smaller and much cheaper unlicensed private residence



# Social service intervention

- Given the possibility of financial abuse, the documents for instituting a régime de protection were submitted to the Office of the Public Curator
- After 8 months of inaction, a case conference was held
- The Public Curator's representative promised to institute provisional measures, and to begin legal proceedings against the companion



# Outcome

- Mr. Senior died several weeks later
- The curator asked the companion to make the funeral arrangements
- The curator's office decided not to pursue legal action against the companion
- The companion inherited Mr. Senior's estate

# Types of financial abuse (Bond et al, 1999)

- Forcing or tricking a senior into selling his or her property
- Stealing money or personal possessions
- Forcing a senior's signature on pension cheques or legal documents
- Misusing a Power of Attorney
- Pressuring a senior to provide services for no payment

# More examples (Bond et al, 1999)

- Selling property without permission
- Controlling money matters against a senior's will
- Charging excessively for goods or services
- Refusing to move out of a senior's home if asked
- Opening mail without permission
- Failing to repay borrowed money when asked
- Sharing a senior's home without paying fairly for expenses



# How big a problem is it?

(Bond et al, 1999)

- Possibly 4% of Canadian seniors may be abuse victims (98,000)
- More than 60,000 of these are victims of financial exploitation

# Who can do what in these situations?

- The Quebec Human Rights Commission
- The Office of the Public Curator
- The police and the legal system
- Health care professionals

# Québec Charter of Human Rights and Freedoms

- 48. Every aged person and every handicapped person has a right to protection against any form of exploitation.
- Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.



# Québec Charter of Human Rights and Freedoms - 2

- 71. The Commission shall promote and uphold, by every appropriate measure, the principles enunciated in this Charter.
- The responsibilities of the Commission include, without being limited to, the following:
  - (1) to make a non-adversary investigation, on its own initiative or following receipt of a complaint, into any situation ... which appears to the Commission to be ... a violation of the right of aged or handicapped persons against exploitation enunciated in the first paragraph of section 48;

# Québec Charter of Human Rights and Freedoms - 3

- 71. (3) to report to the Public Curator any case it becomes aware of in the exercise of its functions where, in its opinion, protective supervision within the jurisdiction of the Public Curator is required;
- 134. Every person is guilty of an offence
- (1) who contravenes ... the first paragraph of section 48;
- 136. Penal proceedings for an offence under a provision of this Act may be instituted by the Commission.

# Public Curator Act: Intervention

- 13. The Public Curator may intervene in any proceedings pertaining
  - 1) to the institution of protective supervision of a person of full age,
  - 2) to the homologation or revocation of a mandate given by any person in anticipation of his incapacity,
  - 3) to the physical integrity of a person of full age unable to give consent who is not already provided with a tutor, curator or mandatary,
  - 4) to the replacement of the tutor or curator of a minor or of a person of full age who is under protection or of the tutor to an absentee.

# Public Curator Act: Report of Disability

14. The Public Curator, upon receiving a report from the executive director of an institution governed by the Act respecting health services and social services ( chapter S-4.2) ... setting forth the inability of a person of full age to care for himself or to administer his property, may take, within a reasonable time, any appropriate measure including the calling of a meeting of relatives, persons connected by marriage or a civil union and friends of the person of full age, in order to establish his condition, the nature and extent of his needs and faculties and his other circumstances.

# Public Curator Act: Report of Disability - 2

- 14. (continued) The Public Curator, where he believes it expedient to apply for the institution of protective supervision, may transmit his recommendation to the clerk of the Superior Court with a statement of the measures he has taken, and propose a person able to assist or represent the person of full age and who consents to do so. He shall then file the report of disability in the office of the court and notify the persons qualified to apply for the institution of protective supervision that the report has been filed.



# Public Curator Act: Replacement of Tutor or Curator

- 22. The Public Curator may apply for the replacement of a tutor or curator ... where the annual account of the tutor or curator or an inquiry held by the Public Curator gives serious reason to believe that the person represented may suffer damage by reason of the failure of the tutor or curator to perform his duties, or of his performing them improperly.
- He may also apply for the revocation of any mandate for the eventuality of the inability of the mandator if the mandate is not faithfully carried out, or for any other serious cause.





# Public Curator Act: Inquiry

- 27. The Public Curator may, of his own initiative or on request, hold an inquiry relating to the persons he represents, the property he administers or that should be entrusted to his administration and, generally, to any minor or to any person under protective supervision; he may, in the same manner, hold an inquiry relating to any person who is unable whose care or the administration of whose property have been entrusted to a mandatary.

# Public Curator Act: Summary Account of Administration

- **39.** During his administration, the Public Curator must, once each year, at the request of a minor or a person of full age who is represented, a close relative or a person showing a special interest in the minor or person of full age, render a summary account of his administration.

# Public Curator Act: Access to record

- 52. No person may acquaint himself with any record kept by the Public Curator in respect of a person represented by him or whose property he administers, or receive written or oral communication thereof or otherwise have access thereto except
  - 1) the personnel of the Public Curator in the performance of their duties;
  - 2) the person the Public Curator represents or has represented and the person whose property he administers or their successors or heirs;
  - 3) the person having parental authority in respect of the person represented by the Public Curator, with the authorization of the Public Curator;
  - 4) the spouse, close relative, relative by marriage or a civil union, any other person who has shown special interest in the person of full age or the person delegated by the Public Curator, with the authorization of the Public Curator;
  - 5) the Public Protector.

# The Public Curator

- Empowered to collect unclaimed property and turn it over to the Minister of Finance
- Is this a conflict of interest?
  - When there is no family, does the Curator ensure that a person's wealth is used on behalf of that person, or is there pressure to maximize the eventual windfall to government coffers?