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LE PROTECTEUR DU CITOYEN

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Follow-up by the Curateur public to the reports from the Protecteur du citoyen: comments and recommendations

Summary

March 2004

In 1997, faced with a government agency presumably experiencing serious difficulty, the Protecteur du citoyen took the initiative of submitting his observations to the authorities, so that tangible actions could be taken quickly to remedy the situation. It was urgent. The exponential increase in complaints received, as well as the absence of any satisfactory reply to the recommendations submitted to this government agency were worrisome.

Therefore, after having produced three special reports, the Protecteur du citoyen closely followed the reform measures initiated by the Curateur public. He had committed himself before the members of National Assembly, to analyse the actions taken by the Curateur public pursuant to his recommendations. This analysis is now complete and the Protecteur du citoyen can now confirm the significant efforts had been made by the Curateur public in to improve his entire administration. However, a lot still remains to be done.

However, for these changes to last, the Protecteur du citoyen still believes that the government must provide the Curateur public with the required manpower and appropriate financial and material resources. If not, it is to fear that the adjustments undertaken over the last five years will never reach the goals set out.

The Curateur public is open to external expertise

Following the recommendations made by the Protecteur du citoyen, the Curateur public has taken the following measures:

- He created an advisory committee to provide guidance regarding the protection and representation of protected incapable people;
- He came to an agreement with the Health and Social services ombudsman on October 7, 2003. This agreement is primarily intended to allow the transfer of information between the two agencies and a more effective coordination of their interventions to guarantee the well-

being of the incapable people who are hospitalized or in care facilities. The Protecteur du citoyen recommended that whenever possible, the incapable person who is the subject of a complaint submitted before the Health and Social services ombudsman, be involved in inquiry process, as well as informed of any actions that the Curateur public takes in his name and of their results;

- He created an advisory committee on ethical matters. Although the Protecteur du citoyen approved the creation of such a committee, he feels that the Curateur public should also have asked the committee to develop guidelines on touchy issues where ethical challenges are often present;
- He made agreements with community organizations with the mandate of protecting and defending the rights of vulnerable persons. He should do the same with the user committees of healthcare institutions and social services with whom the Curateur public does not currently have a memorandum of understanding.

Preventive interventions by the Curateur public and inquiry methods

Since the Curateur public is the government agency responsible for protecting the interests of vulnerable people, the Protecteur du citoyen felt that he should have the power to intervene and therefore act quickly and decisively if the situation demands it, even before protective supervision measures are instituted, all throughout his mandate.

To that end, legislative amendments were enacted allowing him, upon authorization from the Court, to protect individuals through interim measures in cases where the institution of protective supervision is imminent. He recently implemented a policy outlining the applicable regulations in these circumstances.

Another policy provides guidelines in situations where an interim administration is required to protect the property of people for whom the protection process has been initiated.

Finally, a third policy provides guidance to employees of the Curateur public on the suitability and appropriate actions in managing a person's affairs when the urgency of the situation demands it.

The Protecteur du citoyen also wants to stress the fact that the Curateur public must be able to use his power as investigation commissioner provided by law, in any case where the life, health or safety of persons are threatened, as well as when their property is jeopardized. He is awaiting decisions from the Curateur public in that regard.

Representation of incapable people

The major part of the follow-up work done by the Protecteur du citoyen focused on how the Curateur public meets his responsibilities as representative of incapable people. While acknowledging that significant improvements have been made to this important part of his mandate, the Protecteur du citoyen fears that without additional labour and financial resources, the objectives that were set out will not be met.

Knowledge of his clients and their living environment

It is vital that the Curateur public be present in the living environment of all incapable persons he represents, that he visits them on a regular basis and that he pay particular attention to institutions or private persons who operate without a licence. At the moment and with the means at his disposal, it is

impossible for him to visit all his clients where they reside, if only once a year.

Knowledge of their needs

Being absent from long-term care facilities, the Curateur public was unaware of the needs of his clients and could therefore not evaluate properly whether personnel in these care facilities were providing the goods and services that their clients condition required. He was also unable of ascertaining whether these institutions were limiting their invoices to the goods and products that they were authorized to charge.

Despite some measure of improvement, the Protecteur du citoyen deems it necessary to recommend, again, that the Curateur public finds the means to properly identify on a regular basis the needs of the people he represents, that he ensures that the required care and services are provided and that the costs are invoiced correctly, as the case may be.

Exercising the rights of incapable people

The Curateur public could not lay claim to an excellent record regarding that exercise of his clients' civil rights. Recommendations were submitted to him on the matter, several of which have been accepted.

- The representation services including those provided by attorneys are now available to all protected persons.
- The Curateur public developed a "systemic approach" regarding legal problems where all employees can benefit from the expertise of its legal contingent.

The Protecteur du citoyen, however, believes that the Curateur public should improve his information exchange mechanisms with different organizations, in cases where people he represents are referred to the Commission d'examen des troubles mentaux following criminal charges brought or when they are confined to a care facility because they constitute a danger to themselves.

The Protecteur du citoyen believes that the Curateur public must also have the means of ensuring that incapable people are supported at all stages of the legal procedures.

In order to act in a timely manner, it is also essential that the Curateur public be informed immediately when a person will be or has been placed in custody and wishes to challenge this decision before the Tribunal administratif du Québec.

Health care consent

The Protecteur du citoyen had noted that the Curateur public did not verify thoroughly and systematically whether the person under care had refused to be treated, and, when consent to care forms were submitted to him by a care facility, was accepting blindly statements made by these facilities. This is why the Protecteur du citoyen felt it was necessary for the Curateur public to implement very strict guidelines regarding this matter.

The Protecteur du citoyen acknowledges the fact that significant changes have been made to the processing of consent to care forms.

However, the doubts of the Protecteur du citoyen that several consent to care forms were not forwarded to the Curateur public have been confirmed. The Curateur public admitted that care facilities neglected to obtain his consent in nearly 60% of the cases in the absence of resuscitation following cardio-

pulmonary arrest.

The Protecteur du citoyen therefore again recommends that the Curateur public be given the necessary verification tools in order to ensure that he will be called upon by the care facilities in all cases where his consent is required and that he has the necessary manpower at his disposal to act and react.

The “de-institutionalisation” of his clientele

The Protecteur du citoyen has reported on several occasions to the Curateur public's failure to intervene when people he represented were transferred to an open living environment after a long period in a psychiatric institution. It seemed contradictory that the government agency mandated to protect the rights of incapable people be, for all intents and purposes, absent from discussions dealing with discharge procedures and the choice of new living quarters.

The Protecteur du citoyen has noted that the Curateur public has recently been included in this process. Aside from simply visiting the care facilities or protected persons, he has taken part in developing response plans. He has implemented follow-up procedures in order to verify how the person is adapting to the new situation after leaving the hospital, and recommend a move, if necessary.

However, since as the employees of the Curateur public are not in any position to pay regular visits to the persons they represent, the Protecteur du citoyen felt it necessary to advise him to follow-up regularly and for a period of three years, those persons who have recently been relocated after spending a long period in a psychiatric institution, in order to make sure that the “de-institutionalisation objectives” have been reached.

The income of incapable people

Following the appointment of the Curateur public as a person's legal representative of the Curateur public, the delays in making an inventory of all the sources of income and property were quite lengthy. Since these delays are still so long, the Protecteur du citoyen fears this may penalise the incapable person under protection. If the Curateur public is not informed quickly of all the sums that these persons are owed but have not requested prior to being represented, they run the risk of losing these funds entirely or in part.

We are of the opinion that people under the protection of the Curateur public cannot, under any circumstance, be adversely affected in any way because of the Curateur public's tardiness in managing of his affairs. Consequently the Protecteur du citoyen urges the Curateur public to ensure that any money lost by people under his protection due to his own administrative delays in identifying all the sources of income.

The management of out-of-pocket expenses: delegated to institution employee

The legislator authorized the Curateur public to delegate to an institution employee the management of protected persons' monthly allowances, which are paid to cover the person's personal expenses. In so doing, the employee must take into account the wishes of the incapable person.

The Protecteur du citoyen considered that this legislative amendment should come with guarantees on how these institutions would execute this mandate. The Protecteur du citoyen also felt that they should be accountable to the Curateur public for that management. Nearly five years after this amendment

was enacted, the Curateur public is still working on a management guide. The Protecteur du citoyen will therefore refrain commenting on that issue.

Since they are not governed by the Act respecting the Health services and Social Services, the particular nature of the care facilities or persons operating without a licence gives them freedom to act as they see fit in their management of the property and of the people under their care. Consequently Protecteur du citoyen reiterates the recommendation he had already submitted to the Curateur public, whereby the latter should prepare a list of the facilities or private persons, including those who are operating without a licence who are caring for people he represents and oversee closely their management of the out-of-pocket expenses of protected people under their care.

Pick up, conservation and return of protected persons' personal property

The Protecteur du citoyen had given the Curateur public several recommendations to correct failings in the handling of personal property after being appointed as legal representative of an incapable person. The Protecteur du citoyen demonstrated the Curateur public's inability to protect his charges properly.

The Curateur public is now reviewing all his procedures in this matter. The Protecteur du citoyen will therefore refrain from commenting at the present time.

Maintenance, payment of relevant expenses and sale of buildings

In many cases, the Curateur public must take over the management of buildings belonging to people he represents. Procedures regarding the conservation, maintenance, rental or sale of real estate property needed to be reviewed thoroughly.

While a number of improvements have been noted, the Protecteur du citoyen still recommends that the Curateur public quickly provide some guidelines regarding his obligations in the case of a protected person who is the owner of real estate.

Monitoring cases of private protective supervision

By law, the Curateur public is required to oversee all cases of tutorship and curatorship of persons of full age and tutorship of some minors. The Protecteur du citoyen has suggested several times some improvements to be made in this regard.

The Curateur public examined the recommendations of the Protecteur du citoyen and took into account suggestions included in the report of a working committee created to examine this issue. He assured the Protecteur du citoyen, in December of 2003, that he should be able to provide him shortly with a policy covering this aspect of his mandate.

Access to summary account of administration

The Curateur public Act stipulates that he has to provide a summary account of his administration, at least once a year, to the persons he represents, a close relative or to those showing a special interest in the protected person.

When a request for this document was authorized, the Curateur public used to issue a statement of revenue and expenditure. This document is not adapted

to the person for whom it was intended and was often incomprehensible and incomplete. The Protecteur du citoyen recommended that it be modified.

The Curateur public has yet to implement this recommendation, but he believes that he will be able to do so in 2006 when the new computer system will be up and running. The Protecteur du citoyen recommends that, until then, a template of a simplified monthly statement be provided to his staff in order to meet the needs of his clientele.

The administration of property under trusteeship

The Protecteur du citoyen had recommended that the Curateur public be relieved of the trusteeship of unclaimed property, as he felt that Curateur public's vital social commitments of representing and assisting incapable people required his undivided attention.

This recommendation has not elicited any positive response as yet on the part of the government. Considering that the Curateur public has retained and even expanded his trusteeship mandate of unclaimed property, he must have the required resources to do so. If the resources currently attributed are not quickly and substantially upgraded, believing that the Curateur public will be able to fulfil this role adequately is wishful thinking.

Cost assumed by the Government to compensate damages

The extensive comments addressed to the Curateur public, both by the Vérificateur général and the Protecteur du citoyen, have prompted the government to compensate financial losses incurred by citizens. It also mandated a team of experts to guide the Curateur public in improving the system. A budget of nearly \$ 4,500,000 was allocated to that end.

The special budget allocated to the Curateur public by the government is now depleted. The results found to date by the Protecteur du Citoyen in his inquiries have led him to conclude that the Curateur public has erred in the application of his mandate. Some of these cases are still currently pending. The Curateur public has stated that he intends to continue to compensate damages sustained by people under his protection so as to ensure that all cases are settled equitably.

The Protecteur du citoyen's recommendations

1. THAT the government provide the Curateur public with the financial and material resources to allow him to accomplish the two main elements of his mission: protecting and representing protected incapable persons and their property and monitoring the management of private legal representatives, i.e. monitoring cases of private protective supervision for some minors or persons of full age.
2. THAT the Curateur public develop specific methods of cooperation with user committees of healthcare institutions and social services.
3. THAT whenever possible, the incapable person who is the subject of a complaint submitted before the Health and Social Services ombudsman be involved in the inquiry process, as well as informed of any actions that the Curateur public takes in his or her name and of their results.
4. THAT the Curateur public be present in the living environment of all incapable persons he represents, by ensuring that his employees visit their clientele individually at least once a year and more when required through a standard visiting program enabling investigators to act in a timely manner when irregularities are observed.

5. THAT the Curateur public be able to identify on a regular basis the needs of the people he represents, ensuring that the required care and services are provided and that costs are invoiced correctly.
6. THAT the Curateur public have the means of ensuring that incapable people are supported at all stages of legal procedures and to do so, that he enter into the appropriate agreements.
7. THAT the Curateur public ensure that he be informed immediately by care facilities when a person has been or will be placed in their custody and that he wishes to challenge this decision before the Tribunal administratif du Québec in order to act upon it.
8. THAT the Curateur public maintain his vigilance and ensure that all consent to care forms are forwarded to him.
9. THAT the Curateur public follow up regularly and for a minimum period of three years those persons who have recently been relocated after spending a long period in a psychiatric institution, in order to make sure that “de-institutionalisation” objectives have been reached.
10. THAT the Curateur public reimburse any money lost by people under his protection due to his own administrative delays in identifying all sources of income.
11. THAT, when informing institutions of his out-of-pocket expense policies, the Curateur public prepare a list of private facilities, including those operating without a licence, and oversee closely the management of their out-of-pocket expenses.
12. THAT the Curateur public immediately review his procedures in the handling of personal property.
13. THAT the Curateur public quickly provide guidelines regarding his obligations in the case of a protected person who is the owner of real estate.
14. THAT the Curateur public provide his staff with a simplified monthly statement, which could be customized in order to meet the needs of his clientele.