

*Une meilleure vie grâce à l'engagement, à l'éducation, et à la recherche.  
Changing lives through advocacy, education, and research.*

Depuis 2007 notre clinique juridique mobile pro bono offre aux aînés du Québec et à ceux et celles qui jouent un rôle important dans la vie des aînés des services juridiques relatifs aux enjeux légaux de vieillissement: l'éducation et l'information légale, l'accompagnement et la représentation par avocat.

On fournit, à l'égard d'une vaste gamme de questions cruciales, des ressources précieuses pour les professionnels et les consommateurs, de l'assistance technique et de l'éducation juridique; on effectue de la recherche, tout en traitant les questions et les différends qui comportent une dimension éthique touchant les personnes âgées, notamment les suivants :

- Planification légale du vieillissement
- Devoirs des représentants légaux
- Maltraitance et exploitation financière des aînés
- Aptitude et capacité juridique
- Régimes de protection
- Options et besoins en matière de logement
- Soins de longue durée, qualité, planification et prise de décision
- Questions légales liées à la fin de la vie
- Régimes de retraite
- Questions de droit familial : accès, responsabilités filiales, familles reconstituées, divorce et séparation, mariage prédateur
- Droits et responsabilités civiles et légales des proches aidants
- Résolution de différends par l'approche de la justice participative
- Questions d'éthique professionnelle

***Voué à répondre aux besoins particuliers des aînés à travers la formation, la recherche  
et l'assistance judiciaire***

Les aînés qui sont vulnérables face à l'abus, l'exploitation, et la perte de leurs droits civils sont parfois seuls, sans information, ou atteints de pertes variables de capacité. De plus, ils ne connaissent parfois pas les approches à la justice possibles pour résoudre leurs problèmes en concert avec leurs souhaits ou valeurs, ou ne sont pas capables d'y accéder. Ces personnes ne reconnaissent souvent pas que leurs problèmes les plus importants ont une dimension de droits juridiques. De plus, beaucoup de professionnels travaillant auprès eux ne reconnaissent non plus les enjeux juridiques quant aux problèmes que font face les aînés.

À vrai dire, les adultes aînés ne cherchent généralement pas de solutions juridiques à leurs problèmes, souvent multidimensionnels et qui impliquent souvent les membres de leurs familles. Pour cette raison, nos approches cliniques sont interdisciplinaires et communautaires. Nous nous fions aux approches participatives et réparatrices à la justice afin de résoudre et de prévenir les problèmes, puisque celles-ci sont les approches nos clients cherchent et qui ont les meilleures chances de réussite. Nous allons au delà des simples solutions aux problèmes de courte terme ou aigus pour cerner le cœur de ceux-ci. Nous implantons des réseaux de soutien professionnel, du suivi continu des dossiers, et des solutions appuyés par la loi qui sont pratiques, humains, économiques et durables.

Nous travaillons toujours en partenariat avec les organismes communautaires dans les domaines juridique, des aînés, des handicaps et de la santé mentale, et nous stimulons les changements dans la pratique. Les changements durables aux niveaux provinciaux et nationaux viendront plus facilement en assurant une collaboration parmi les intervenants quant à la coordination et la recherche de solutions.

Notre objectif est d'équilibrer les besoins d'actualité au niveaux local et individuel avec une vision plus large de la réforme, et ce, afin d'assurer un effet d'envergure sur la politique et la pratique pour ainsi en avoir sur la qualité de vie des personnes vulnérables.

En 2013, le travail de l'Institut et de sa clinique juridique, le Centre du droit et le vieillissement, s'est centré sur cinq types d'activités :

**1. La politique et la recherche**

- Participation aux comités de la réforme du droit du Barreau canadien et du Québec au sujet des soins de fin de vie, de l'aide à la mort et l'euthanasie, de l'accréditation et réglementation des résidences pour aînés, et du réforme du *Code de procédure civil du Québec* en ce qui a trait aux

procédures non-contentieuses et les droits de la personne, ce qui a compris une parution à l'Assemblée nationale du Québec.

- Le développement d'une guide aux consommateurs sur les options de logement, de service et de soins, en partenariat avec l'Université de Montréal et l'Université de Sherbrooke (en cours).

- Le développement d'un texte multidisciplinaire à paraître en 2014 qui s'intitule *Droit des aînés*, à être publié par Lexis Nexis Québec (Ann Soden, Ad. E., Directrice de rédaction); et publication en avril 2014 de son chapitre «The Guardianship of Incapable Adults and Their Property in Canada » dans *Comparative Perspectives on Adult Guardianship*, A. Kimberley Dayton, Rédacteur en chef, Carolina Academic Press, North Carolina, 2014.

- La préparation d'un mémoire pour et comparution devant la Commission de la protection de la vie privée du Canada au sujet des modifications proposées à la *LPRPDE*, qui ont pour but de prévenir et de répondre à l'exploitation financière dans les institutions financières.

## 2. Coordination et collaboration

- La formation professionnelle (douze colloques mensuels) et des consultations régulières auprès des professionnels, y compris des avocats, des policiers, des travailleurs sociaux, et d'autres intervenants dans le domaine du vieillissement: ACCESSS, Société Alzheimer, AQDR, Services communautaires catholiques, Centres de justice à proximité, Équipe provinciale multisectorielle pour contrer la maltraitance de René Cassin, Équipe de travailleurs sociaux psycho-gériatriques du CLSC Metro Montréal, FADOC, FCCCAP, Fondation du Barreau du Québec, Juripop, Justes Solutions, Ligne Info-Abus, Pro-Bono Québec, SAVA, SPVM, Sureté du Québec, Université de Laval, et plusieurs autres organismes communautaires culturels et confessionnels à travers la province.

- La directrice exécutive, Ann Soden, Ad.E., conseiller juridique et bénévole depuis 1994 au sein de l'Équipe de consultation multisectorielle sur l'abus des aînés du CSSS Cavendish, a continué ses consultations en impliquant ses étudiants cliniques de McGill.

## 3. Assistance technique

- L'entretien du site web [www.elderlawcanada.ca](http://www.elderlawcanada.ca), en anglais et en français, qui contient des références aux ressources et publications au sujet du droit et le vieillissement, et le développement d'un site web pour l'Institut et sa clinique juridique.

## 4. Éducation (professionnelle et publique)

- Plus de 15 présentations et conférences dans la communauté offertes au grand public sur des enjeux variés: mandats, régime de protection, la maltraitance, droits des usagers, la planification médico et socio-légale du vieillissement, règlements des différends avec les proches; droits et obligations des proches aidantes; les devoirs des représentants légaux; enjeux et décisions à la fin de vie.

## 5. Services directes aux clients

- L'opération à temps plein d'une clinique juridique *pro bono* mobile à travers la province, le Centre du droit et le vieillissement, établie en 2007. La clinique œuvre dans le domaine des enjeux juridiques du vieillissement et offre ses services aux personnes âgées, sans égard au statut économique, mais plus particulièrement à celles les plus défavorisées et sous-représentées dans la province à cause de déficit cognitif. En 2013, le Centre a offert plus de 4000 heures de services directes aux clients (1200 de la part d'étudiants-stagiaires), a répondu à plus de 350 appels pour renseignements, avis et renvois par année, desquels plus de 50 personnes ont tiré le bénéfice de représentation juridique et d'accompagnement.

*Aidez-nous à continuer d'améliorer les vies des aînés et de ceux qui jouent un rôle important dans les leurs vies.*

## *COURS CLINIQUE À LA FACULTÉ DE DROIT, UNIVERSITÉ DE MCGILL*

Le Centre est un lieu d'apprentissage sous forme de clinique légale qui s'adresse aux étudiants en droit de l'université McGill; sur appel, le centre peut compter sur les généreux services bénévoles d'avocats, de notaires et d'un juge à la retraite.

En plus d'enseigner certaines compétences en matière d'exercice du droit et des principes juridiques, le Centre a pour objectif de favoriser chez les étudiants un engagement envers les idéaux de compassion et de communauté.

Les idéaux du Centre dépassent toutefois le service communautaire et les questions d'éthique. Les étudiants peuvent constater directement comment les objectifs d'indépendance d'un client âgé, droit fondamental inscrit dans les principes d'auto-détermination et d'autonomie, s'inscrivent mieux dans les intérêts de la société lorsque les personnes vulnérables sont protégées contre la maltraitance et l'exploitation par les mesures les moins contraignantes de leurs droits et qui sauvegardent leur autonomie (Article 257 CCQ). Il ne s'agit pas là d'un exercice académique théorique. La tension qui existe entre les idéaux d'indépendance et la responsabilité sociale est souvent sous-jacente aux cas traités au Centre.

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The Elder Law Clinic / La Clinique juridique des aînés, (the "Clinic"), a division of the National Institute of Law, Policy and Aging / l'Institut national du droit, de la politique et du vieillissement, formally opened on May 1, 2007 at the Institut de Gériatrie de Montréal. The Clinic has since moved to a new downtown location.

The Clinic is dedicated to research, education and advocacy of legal issues of aging and, in particular, to responding to the law-related needs of older Quebec adults. The Clinic serves older persons, those providing services to or representing older adults and those planning their later life. Currently there are no eligibility criteria for our services and they are available at no charge.

Students and volunteers collaborate with and learn from colleagues in geriatric medicine, palliative care, social work, finance, government and gerontology. While the Clinic's offices are located in downtown Montreal, our volunteers see clients in their homes, offices and residences or otherwise deal with requests by phone from across the province.

We employ a multidisciplinary and client-centered team approach to finding timely, effective and human solutions to legal problems of aging. The Clinic employs collaborative law, (informal and formal) mediation, participatory and restorative justice methods to these ends.

We cannot take an established approach that works for some. Older adults have complex, multifaceted issues at play which are profoundly different than those associated with other populations. Our approach is an evidence-based model which seeks to deliver the best results for the most vulnerable of older adults regardless of socioeconomic status.

Clients of the Clinic are served by students of McGill's Faculty of Law, under the supervision of the Centre's Supervising Lawyer, Ann Soden Ad. E. The Elder Law Clinic serves as a Legal Clinical course for credit at the law school. It is also staffed by volunteer lawyers and notaries.

## ***Meeting the unique needs of older adults through education, research and advocacy***

Older persons who are vulnerable to abuse, exploitation, and loss of their civil rights may be alone, uninformed, or have varying degree of diminished capacity. They may also not be aware of or able to access approaches to justice to resolve their problems which accord with their wishes or values. These people often do not recognize that their most important problems have a legal rights dimension, nor do many of the professionals serving them see the problems of older adults as legal in nature.

Indeed, judicial solutions are not usually desired by older adults whose problems are almost always multifaceted and frequently involve family members. Our clinical approaches are interdisciplinary and community-based. We employ participative and restorative justice approaches to resolving and preventing problems. We do this because these are the approaches our clients want and which have the greatest chance of success. We go beyond simply fixing a short-term or acute problem and get to its root. We put in place social and professional support networks, ongoing case management and solutions supported by the law but which are practical, human, cost-effective and durable.

We continue to partner with community entities in the legal, aging, disability and mental health fields and drive changes in practice. Lasting change at the provincial and national level is most likely to come about through collaborative stakeholder coordination and problem-solving.

Our aim is to balance attention to these timely local and individual needs with a broader vision for reform that can have a more widespread effect on policy and practice and in turn on the quality of life of vulnerable individuals.

The work of the Institute and its legal clinic, the Centre for Law and Aging, in 2013 focused on five types of activities:

### **1. Policy and Research**

- Participation on law reform committees of the Canadian and Québec Bars on end-of-life care, aid in dying and euthanasia, on certification and regulation of residences for older adults and reform of the *Code of Civil Procedure of Québec* relating to non-contentious proceedings and the rights of the person, including appearances before the National Assembly of Québec.

- Development of a consumer guide on housing, service and care options, in partnership with the Universities of Montreal and Sherbrooke and Educlooi (in progress).

- Development of a multidisciplinary text on *Droit des aînés* to be published in 2014 by Lexis Nexis Quebec, Ann Soden, Ad. E., General Editor; and co-authoring with Dr. Robert Gordon of the chapter, "The Guardianship of Incapable Adults and Their Property in Canada" in *Comparative Perspectives on Adult Guardianship*, A. Kimberley Dayton, General Editor, Carolina Academic Press, North Carolina, 2014.

- Memoire prepared for, and appearance before, the Privacy Commission of Canada on proposed modifications to *PIPEDA* intended to prevent and respond to financial exploitation in financial institutions.

## 2. Coordination and collaboration, including:

- More than 12 professional trainings and conferences and regular consultations to professionals, including lawyers, police, social workers, and other stakeholders in the field of aging: ACCESSS, Alzheimer's Society, AQDR, Catholic Community Services, Centres de justice à proximité, Equipe provinciale multisectoriale pour contrer la maltraitance de René Cassin, Equipe de travailleurs sociaux psycho-geriatiques du CLSC Metro Montréal, FADOC, FCCCAP, Fondation du Barreau du Québec, Juripop, Justes Solutions, Ligne Info-Abus, Pro-Bono Québec, SAVA, SPVM, Surété du Québec, Université de Laval, and numerous other community cultural and faith-based organizations across the province.

## 3. Technical assistance

- Maintaining the website, [www.elderlawcanada.ca](http://www.elderlawcanada.ca), in English and French, with references to resources and publications on law and aging issues, and development of a website for the Institute and its legal clinic.

## 4. Education (professional and public) including:

- Presenting more than 15 community presentations and conferences to the general public.

## 5. Direct Client Services

- Operating a province-wide full-time *pro bono* mobile legal clinic, the Centre for Law and Aging, established in 2007, on legal issues of aging offered to older persons, regardless of economic status, but particularly to the most disadvantaged and under-represented of the province due to cognitive impairment, providing in 2013 more than 4000 hours of direct client services (1200 from student interns), responding to more than 350 calls for information, advice and referrals annually of which more than 50 benefiting from legal representation and accompaniment.

Help us continue to improve the lives of older persons and those who play important roles in the lives of older adults.



### **Clients and cases which distinguish us:**

- Persons with varying degree of diminished capacity whose civil rights are at issue and require legal representation in the understanding and assertion of their legal rights and/or advocacy of due process protections;
- Persons declared by a court as incapable and who are currently represented by a mandatory, tutor or curator and wish to assert legal rights their representative is refusing or neglecting to advocate on their behalf or is, him or herself, the perpetrator of the problem(s) experienced;
- Incapable persons who have died and where an accounting from their former legal representative is required to recover monies of the incapable person's estate which were negligently misspent or intentionally misappropriated;
- Persons not eligible or cases not handled by legal aid for reasons of ineligibility or issues not treated by legal aid;
- Clients not meeting the eligibility criteria of 'vulnerability' nor cases deemed within the mandate of the Quebec Human Rights Commission (90% of whose cases relating to older adults involve financial exploitation contemplated by Article 48 of the Charter):
  - Estate/succession issues
  - Financial exploitation within a marriage where the person is capable but vulnerable (predatory marriage issues)
  - Leases of care facility (assisted living) premises
  - Cases involving care issues, described below
- Care issues:
  - Physical abuse and assaults in care facilities
  - Abuse of power in care facilities
  - Negligence in care facilities
  - Cases of restricted access to older persons in care facilities
  - Orders of forced housing and/or of care/medication
- Cases of abuse (notably psychological abuse and denial of rights) which are not legally actionable but which involve misunderstandings, incorrect application and/or failure to apply best professional practices of law and ethics, e.g. family disputes regarding representation (roles), accounting, access and wishes/rights of the vulnerable family member respecting capabilities, housing and care; professionals misunderstanding the limits of their powers.

## CLINICAL COURSE, FACULTY OF LAW, MCGILL

### STUDENTS LEARNING FROM EXPERTS

*The clinical course offered through the Centre of Law and Aging is a social justice course. It stresses access to justice, disability issues and law and aging.*

*Our clinical students learn substantive law issues and concepts from our experts and advisors and critically analyze the appropriateness and the sufficiency of law, policies and procedures in this field. In addition to knowledge of law and aging issues, we seek to instill recognition of ethical dilemmas, to extend skills in legal analysis, critical thinking and problem solving and in the full range of roles the lawyer is called upon to play as advocate, counsel, problem-solver and peacemaker. We want students to come away with how best to define these roles ethically, using multidisciplinary and case management skills, how to mediate a problem, how negotiate a problem, and how to deal firmly but respectfully with the other side, often members of one's family.*

*Besides teaching certain lawyering skills and legal principles, the Clinic seeks to develop in students a commitment to the ideals of compassion and community and to seek innovative, effective ways to serve people. But the ideals studied at the Clinic go further than community service and ethics. Students see first-hand how an older client's goals of dignity, security and autonomy - fundamental legal rights - are promoted and best balanced with society's interest in protecting vulnerable people from abuse and exploitation.*

*The tension between the ideals of independence and social responsibility underlie many of the cases handled at the Clinic.*

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*We aspire to have our students "...understand the intricacies of relationships, ground themselves in the particular and in the general, blend everyday questions with broader, governing principles, and stand both in and outside of the law - to constantly view and judge themselves and their community."*

(Roderick Macdonald, 2012)

## THE ELDER LAW CLINIC / CLINIQUE JURIDIQUE DES ÂÎNÉS

### Directrice exécutive/ Executive Director :

Ann M. Soden, Ad. E., BCL, LLB, Avocate et médiatrice,  
Montréal, Québec

### Nos conseillers/ Our Advisors :

1. Pierre Deschamps C.M., Ad. E., juge sortant, Tribunal canadien des droits de la personne, professeur, Faculté de droit, Université McGill
2. D<sup>r</sup> Robert Gordon, professeur, directeur sortant, Department of Criminology, Simon Fraser University, Vancouver, Colombie-Britannique
3. Kate Mewhinney, Clinical Professor of Law and Associate, School of Medicine, Wake Forest University, Caroline du Nord, États-Unis
4. Rebecca Morgan, directrice et professeure, Boston Asset Management, Faculty Chair in Elder Law, Stetson University College of Law, Centre for Excellence in Elder Law, Gulfport, Floride
5. D<sup>r</sup> Elizabeth Podnieks, C.M., professeure et infirmière autorisée, Ryerson University, Toronto, Ontario
6. Gerald Robertson, Q.C., professeur, University of Alberta, Faculty of Law, Edmonton, Alberta
7. Douglas Surtees, Doyen adjoint, College of Law, University of Saskatchewan, Saskatchewan

## SAMPLE CLIENT CASES

### *Leave No Stone Unturned: Allegations of Abuse*

Our older client alleged accounts of theft, vandalism and physical abuse over the past five years. She stated she had given a mandate to a cousin and now wanted to revoke it. While we explained to her that she was always free to revoke her power of attorney, we needed to visit the lady to better understand her challenges, her support systems and to explain her legal rights to her. She was living in a beautifully-appointed apartment in a seniors' complex. The director of the complex was very patient with the resident and explained that a video camera was installed on each floor and actually overlooked the client's door. An authorized call to her bank manager confirmed that she had no power of attorney and we asked the bank to confirm this fact to the client in writing. With her consent, we arranged for the client to have friendly visiting and other assistance from the local CLSC (local health and social services center) and called a cousin regarding various sources of help for this lady.

Postscript: The client has taken to calling the police recently and the police department's psychosocial emergency response team were referred to our clinic: We were able to confirm that this lady is being followed by the CLSC and although she has psychological challenges, she is able to function on a daily basis under the patient, compassionate eye of her apartment administration. We continue periodic visits.

### *The Importance of Consumer Protection*

Mme. D is an elderly lady who lives alone in rural Quebec. A travelling salesperson from an appliance company convinced her to purchase new heating and air conditioning systems for her house, with the promise of large electricity savings. She signed a contract with the salesperson right away, and wrote a deposit cheque of \$1000 to the appliance company. After the salesperson departed, she made further inquiries with Hydro Quebec and realized that the energy saving would not be so significant. She decided to cancel the contract with the appliance company. The company accepted to cancel the contract, but presented her with an invoice that slightly exceeded the amount of the deposit, for expenses that they had allegedly incurred. Mme. D contacted the Centre in order to recover her deposit. An examination of the contract revealed a host of irregularities according to the provisions of the *Consumer Protection Act*. The Centre sent a registered letter to the appliance company, detailing the non-performance and numerous problems with the contract and the invoice. The company reluctantly agreed to reimburse the deposit and the Office of Consumer Protection was informed of the case, the solution and the need for further public education of consumers and of itinerant vendors on their respective rights and obligations.

### *Interprovincial Residence Transfers*

Living alone in a Quebec residence as an Anglophone surrounded by French-speaking seniors became unbearably lonely for one client. As a result, this client's daughter contacted the Centre to help

coordinate moving her mother an English-speaking residence and in turn to a residence in British Columbia, where she lives. The Centre is coordinating with a representative of *Interior Health* in British Columbia and its Public Trustee in order to ensure the client was eligible for Long Term Care. In addition, the Centre wants to ensure that the client would be placed in a residence in close proximity to her daughter - ensuring loneliness would not be an issue again.

### *Respecting Individual Autonomy*

Mr. A lives in a residence in Montreal. He contacted the clinic after receiving a letter from the Public Curator seeking to declare him incapable to manage his finances and partially incapable as to his person. Mr. A does have a long history of trouble managing his finances. The Centre entered into communication with the Public Curator as well as the residence. In the interim, the Centre assisted Mr. A in arranging his finances at the start of each month, and accompanied him to the police station to file a complaint against companies sending him fraudulent letters promising him money in exchange for deposits of varying amounts. An attempt to organize his finances through the residence failed when he demanded full control but neglected to pay the rent. Mr. A now agrees that he could benefit from some assistance in managing his finances. The Centre negotiated and obtained, through the Public Curator, new medical and psychosocial assessments which provide specific information as to the client's capacities in many domains and conclude that the level of protection initially recommended for Mr. A. was not appropriate. The Centre will advocate the development of a protocol with the Public Curator to ensure that this client's capacities are preserved and fostered.

### *Who's Got the Power?*

A frequent type of case at the clinic is one wherein a family member calls us because the legal representative (normally a mandatary) is controlling/limiting visits or excluding access to a parent or family member. There is no justification to limit or prevent visits. This behaviour reflects a history of difficult family relations, in particular, sibling rivalry. The mandatary erroneously believes he/she has the power to decide for the older person.

The person with diminished capacity, even when represented, has the right to make his/her own decisions about whom to see unless there is an order of the court otherwise. The mandatary's true role is that of advocate of what the protected person wishes, whether that person is capable of communicating or not, and cannot substitute his/her own values and personal decisions for those of the person represented. The clinic attempts in such cases to bring the feuding parties together to a family meeting with a neutral third party who knows the person: a doctor or social worker, or the Public Curator where the Public Curator is the supervising body, and to mediate a solution. Where the door to facilitation or mediation of solutions remains closed, we have undertaken legal proceedings to confirm visitation rights and, where appropriate, seek to have the legal representative replaced or placed under the supervision of the Public Curator.

### *Family Matters*

A second wife who never got along with her husband's children wanted to restrict the children's visits with her husband at his residence to hours and types of outings she had approved of in advance. A facilitated family meeting was organized to which the wife, her lawyer and brother were invited along with our client, the husband, the three adult children and the residence social worker as a neutral, informed party. The legal rights of the husband and father to make his own decisions from time to time as to whether he wanted a visit or to go out were clarified. Visits would naturally be organized with the residence and be mindful of the regular visiting times of the wife. The fact that the husband had dementia or was legally represented by his wife, as mandatary, did not remove or alter and suspicious, his right to make all decisions he was capable of. Also put into place was permission for the children to receive full information as to the evolution of their father's mental and physical conditions directly from the health and social work professionals at the residence. The father gave his consent and his wife, previously uncooperative and suspicious, gave hers too, realizing, as the meeting went on, that we were all looking to promote her husband's wishes and legal rights while being respectful of her role as wife.

## *Vaincre la maltraitance*

## *Promouvoir des droits*

En tant que société, nous serons définis par nos approches à la maltraitance et à l'exploitation des personnes âgées.

L'intervention du Centre en contrant la maltraitance et l'exploitation financière actuelle ou potentielle des aînés est guidée par les valeurs suivantes:

- la promotion de mesures de prévention et de protection contre la maltraitance et l'exploitation;
- la recherche de solutions pratiques, humaines et psychosociales aux problèmes en s'appuyant sur le droit et l'éthique;
- la recherche des mesures de protection les moins restrictives de l'autonomie pour la personne qu'elle soit apte ou non;
- la préservation et l'amélioration des liens familiaux quand cela est possible;
- la réduction de l'isolement et la mobilisation du réseau communautaire;
- la mise de l'avant de la médiation et de l'intervention multidisciplinaire et multisectorielle indépendamment du niveau d'incapacité; et
- la promotion de la dignité et du respect des droits ainsi que la sauvegarde de l'autonomie.

Les problèmes légaux des aînés ne sont jamais unidimensionnels. Nous travaillons en concert avec d'autres professionnels dans le domaine du vieillissement et nous connaissons les ressources et des organismes disponibles pour aider, appuyer et entourer nos clients. Nous mettons en place des mesures de protection qui promeuvent et qui sauvegardent l'autonomie de l'individu.

Nous voyons nos clients où ils sont, dans leurs communautés: leurs domiciles, leurs résidences et à l'hôpital. Notre approche est holistique. Nous traitons tous les aspects sociaux-légaux et médico-légaux de la problématique de l'individu.

Nous trouvons des solutions efficaces et humaines pour les problèmes légaux qui sont en ligne avec les besoins et les désirs de notre clientèle. On se sert de la médiation, de la conciliation et de la justice restaurative. Nous assurons que les personnes les plus démunies, les personnes atteintes d'une déficience cognitive, sont entendues, défendues et représentées dans leurs droits.

Le droit des aînés comprend les questions légales, médico-légales, et sociojuridiques qui touchent les adultes plus âgés.

Nous devons faire face à de nouvelles applications du droit général dans le contexte de nouvelles réalités, comme la maltraitance et l'exploitation des personnes vulnérables ou affaiblies et des nouvelles compréhensions de la capacité. Nous travaillons à mettre au point une trame pour l'étude de la manière dont le droit touche le vieillissement et la manière dont les politiques à cet égard touchent cette population.

À certains égards la loi peut avoir des répercussions disproportionnelles sur les adultes âgés. Par exemple, les dispositions de certaines législations qui comportent des clauses de discrimination fondée sur l'âge comme « personne affaiblie dû à l'âge » (voir la disposition équivalente à l'Article 258 du Code civil du Québec), ou qui s'inspirent de façon inappropriée des lois sur la protection de l'enfant.

À d'autres égards, la loi devrait prendre en compte les intérêts des personnes âgées; formation et réglementation élargies des installations résidentielles et de soins, élimination de la retraite obligatoire, introduction de modèles de retraite progressive, élimination des attitudes discriminatoires face à l'âge et des autres pratiques discriminatoires en raison d'âge sur le marché, dans les soins de santé et quant au logement, soutien et promotion des droits des aidants, questions touchant la fin de la vie, et promotion et soutien du droit à l'autonomie et de l'autodétermination des personnes, particulièrement dans le cas de capacité réduite.



## STUDENT REFLECTIONS

*"This past summer has been an incredibly enriching experience. Not only was I able to learn so much from you about the field of elder law, but I was able to have a firsthand look at real cases. Meeting and getting to know many of these clients truly brought the issues to life for me. I've composed a list here of some of the most valuable lessons that I've learned during my time at the Centre for Law and Aging. Thank you for being a wonderful teacher and more importantly, an incredibly inspiring person.*

### **1- The human approach**

*One of the first things I learned at the clinic was that we would not be taking a typical approach to lawyering. The nature of the cases was such that had we done so, this would inevitably have created more problems than it would solve. We dealt with families that were often in the middle of a real and significant crisis. Many of whom were elderly clients who had been exploited and were feeling vulnerable. Instead of arriving on the scene and sending off lawyer's letters and bringing matters to court, we focused on trying to resolve the issue with a more human approach. That is, through mediation or conciliation. To me, this was not only more effective, but more natural considering the sensitive nature of many of the issues. It was incredible to see firsthand how much can be resolved without threats or proceedings, but simply through discussion and transparent communication among all involved. Often, all the parties are actually after the same thing, typically the safety and security of our aging client, but they disagree on the best method to achieve it. This can sometimes be resolved more amicably by surrounding the individual with a multi-disciplinary team that can support them and work together to reach an outcome that everyone can agree with. Court proceedings are often a drain on the client's already limited financial resources and the only one profiting is the lawyer.*

*Another dimension to this approach was the notion of a mobile clinic. Clients did not come to the clinic office for meetings. We went to them. I found this particularly useful because we were able to get to meet and see our clients in their own environment. We could witness firsthand their physical mobility, living conditions, and overall disposition in their environment such as how they interacted with their peers. All of this information was often extremely helpful in taking a more global approach to the situation, and of course, allowed us to get to know our clients on a more human level.*

### **2- Importance of informing and empowering seniors**

*Many of the older clients I encountered were misinformed about their rights. For instance, they did not realize that they could revoke a mandate. Others did not know that they had the right to refuse care or even the right to request a re-evaluation of their competency under different circumstances. I quickly saw that often simply providing basic legal information was empowering for them. It allowed for them to see that they still had a voice that could be heard and with our advice, were able to slowly start to regain control of their lives. At the clinic, I was able to attend a public conference on wills and mandates. These public legal education conferences were a perfect example of how getting this information out to the older population before they encounter any legal problems, is so critical. Pre-empting the risk of abuse is extremely important in this domain. We sometimes entered a file at a point where the situation had*

*already deteriorated. The client may have already lost all their finances or had their home sold. The point of entry in these files was often crucial and providing information to empower seniors early on is one of the best possible deterrents we have at our disposal.*

### **3- Elder law as a complex field of law**

*Elder law seems to be a commonly misunderstood field of law. One of the things I learned early on at the clinic was how broad and complex the field really was. Many of our cases dealt with a vast variety of legal issues. The common denominator was that they each affected an older person whose rights were at stake. I came to see elder law not as a field that only addresses issues that affect the elderly such as mandates, wills, and incapacity. Instead, it in fact addresses every legal issue imaginable that can affect anyone, regardless of age. The difference is that elder law looks at these legal issues through a lens. The fact is that legal issues affect the older client differently and it takes a certain sensitivity to this to adequately represent them. For instance, an older client who falls victim to fraud is treated differently than a younger person. They are often met with accusations of increased vulnerability and diminished capacity affecting their judgment. These incidents can then be used to paint a picture of the client over time as someone who is inapt.*

### **4- Focus always on the individual who is at risk**

*Who is the client? This summer, I learned to constantly ask myself that exact question. It may seem straightforward, but in the field of elder law, it can be easy to sometimes lose track of the answer. The answer is, of course, the person whose rights are at risk. The problem arises mainly when the person's capacity is already diminished and a concerned family member or friend is our main contact. Although the initial information is coming from these concerned individuals, it was essential that we meet with the client. This provided the opportunity to see for ourselves the capacity of the client in order to determine if they could even name a legal representative or if the court would have to appoint one. Also, this focus on the client would inevitably lead us to meet with the opposing party to get a full picture of what is going on. I learned that there are always two sides to a story and that if we simply take one family member's version of events and forcefully advocate that as the issue, we cannot be authentically representing the client. It is critical to look at the whole picture, try our best to determine what the clients values and wishes are, and then seek to determine how best to achieve them; regardless of which concerned family member's wishes this may coincide with.*

### **5- A team of multi-disciplinary professionals is invaluable-Cordiality is key**

*I learned quickly that this not a domain where you can work alone. It takes a team of professionals including social workers, doctors, occupational therapists, physiotherapists, family members, lawyers, and the list can just go on and on. In order to achieve our goals, it was almost always necessary to work with a team of professionals. By surrounding the client with support and various individuals all working together, we were better able to represent their interests. If we had tried to work against instead of with one of these professionals, the results would likely have been disastrous. For instance, a case might involve a client who is preparing to return home from a residence and the children are concerned this is a bad idea. By working together, a social worker could set up a plan to have in home assistance for meal preparation*

*or housekeeping, if needed. Therapists can work with the client to determine if they require additional assistance physically or perhaps with finances. Evaluations can be done to lay out any measures needed to ensure the security of the client and therefore, pacify the concerned children.*

*Furthermore, I also saw how important it was to remain professional and cordial with the team. Not just for the lawyers involved, but also for the client and their family members. Confronting these people or acting aggressively can practically guarantee a negative remark in the client's file that can later be held against them. I learned that our clients must remain positive and respectful despite sometimes being frustrated with the process.*

## **6- Right to refuse care**

*Among all the issues we looked at, the right to refuse care was perhaps the most shocking to me. Clients were essentially being stripped of their legal rights upon being declared incapable and those charged with their care were blindly acting in what often appeared to be their own self-interest. This was mostly seen in cases where a mandate had been or was in the process of being homologated and the mandatory was immediately ready to ship this person off to a residence with little regard to respecting the values of the person. In some circumstances, the client was not so diminished that they were unable to express their wishes which were to remain at home for as long as it was feasible. In others, relatives were able to attest that this person had always wanted to remain in their home. However, their refusals were not being heard. There is a principle of the right to refuse care, which encompasses placement in a residence, which is so fundamental yet seems to be widely ignored. I was introduced to article 16 of the CCQ which clearly states that an individual who has been declared incapable still retains the right to refuse care. Without authorization of the court, they cannot be shipped off to residences on the basis of being inapt alone. Yet, despite this article, this is exactly what is being done and very few people know that they can challenge this.*

*Also, I saw that one of the most basic principles of acting as an administrator is that you must do so in accordance with what you know to be that person's wishes. If their wishes are not known, then to respect what their values have traditionally been known to be. However, we saw this being overlooked repeatedly. Family members who have been named as mandatory, curator, or private tutor, were looking at what would be the most convenient for them. This was often done with a thinly veiled attempt at claiming it was for the person's security or to protect the finances. But all too often, we saw that protecting the finances was actually a means to protect their eventual inheritance and security claims masked the fact that they did not want to be burdened themselves with the person's care needs.*

## **7- General and broad mandates present problems**

*Another factor that was prevalent was the misuse of very broad mandates. Many notaries create these standard form mandates giving wide and general powers, yet when placed in the wrong hands, the potential for abuse skyrockets. I learned that being more specific in a mandate can go a long way. For instance, detailing your wishes regarding living in a residence in the event that you become incapable would be incredibly helpful for many of these debates we saw regarding what the person's values really were. Also, it would be beneficial for a mandatory to be informed of their role and powers and in what*

capacity they should be acting. Transparency is essential when taking on this role and informing the person acting of that beforehand would ensure that they take all the necessary precautions such as keeping receipts and providing accounting reports. Conflicts of interest were also readily apparent in almost all of these situations. The person named is almost always the same one who will inherit. While it may be impossible to avoid the conflict altogether, informing them of their responsibilities may at least alleviate some of the problems we encountered regularly.

## **8- Ageist attitudes are still prevalent**

Finally, I think what I took away most from this experience was not actually a legal issue but a social one. Time and again, I saw just how widespread ageist attitudes were. At one time or another, it affected almost every one of our clients in some way. While addressing their legal issues, it always felt as if we were also simultaneously fighting an uphill battle to convince those involved to be more open minded to different interpretations of events and not bias their opinions simply because of the age of the client. For example, an evaluation of a client stated that they found her living at home with her fridge completely bare. They also claimed she could not use an interac machine and that she had urinated on her own floor because she had been unable to get to the bathroom on time. This is precisely what someone who has pre-determined views on the older client and who has become biased reading similar negative reports from colleagues would see. Our own visit to the same client's house revealed that she carefully divided and stored all her food in her freezer and would defrost her meal daily. Looking at her refrigerator alone was useless as she seldom stored food in there aside from soft drinks. She also had two cats, one who had an accident on the kitchen floor that day and she had not yet discovered it. She admittedly could not use an interac machine because she had never had the need to. She preferred going to the bank teller and doing her banking with a person, which is perfectly normal for an older client. There were many cases of this taking place where this ageist attitude was preventing those involved from looking a little more carefully at the person and automatically concluding they must be incapable.

I saw the same issue with regards to the environment where a client is evaluated. For instance, this same client was tested in the residence to see how her cooking skills were. They decided she was not able to safely cook her own meals. However, a quick visit to her house where she was comfortable in her own kitchen, with appliances she was familiar with, and not under any pressure, showed us a very different picture. This woman was able to cook wonderfully and with grace and took every safety precaution imaginable."

.....

"(The Clinic) has been an enriching part of my law school experience. I originally applied to law school because I was interested in bioethics, the interaction between the law and the person. Through the Clinic, I have learnt that there is a great difference between this notion in the abstract and in fact. It is very hard to do what you do, to see people, come to understand them quickly, and advocate for their rights, in what most times seems a situation of conflict. It is no secret that I found this emotionally painstaking at

*first. The experience has, however, taught me how to embrace a sense of detached compassion. Heart is necessary in this line of work, but too much heart can hit too close to home. Detached compassion is what allows one to be the best advocate possible. Pride must also be taken in the small victories. For example, in the case of (one of our clients this term), your intervention allowed her to stay at home that much longer. This is a victory.*

*In the end it comes down to managing expectations, and expectations are very different when dealing with people and their own interests, versus contractual relationships, for example. The expectations in the Clinic's case are very high: there is no higher interest than the very self-determination that is at issue in all of the Clinic's cases. Every step towards these expectations is a success, even being in someone's corner, advocating for them, is a success. This is the realization that I have come to. It's not as hard to deal with other people's hardships when any help is some help, especially when any help is the best help one has to offer.*

*This Clinic experience has brought me full circle, and allowed me to explore what I originally came to law school for. For this, I thank you."*

.....

*"Unlike most of the McGill Law courses, which are heavily based on textbook- and case-readings, this community-based-service-learning allowed me to interact with people from different walks in the community, to learn by observing and doing. While my mentor and lawyer, Me. Ann Soden, was tremendously helpful in teaching me the principles and key issues in elder law, my learning was enriched by in-field observations and actions. My activities ranged from attending educational conferences to observing court motions and expert examinations; from visiting clients and their caregivers to doing research on the rights and autonomy of seniors in residences, and the right to access adoption records across Canada. All in all, I find the hands-on learning experience rewarding."*

.....

*"Working at the Centre for Law and Aging has provided me with an opportunity to learn fundamental principles of law outside the context of my casebooks. The elementary right to be heard takes on new meaning when a court fails to consider with complete sincerity the request of an elderly mother seeking to live with her son and not, for instance, in a residence. The importance of respecting the autonomy of clients with diminished capacity is equally transparent in situations where both loved ones and doctors disregard or fail to listen to those individual's most basic wishes and desires. Most importantly, working with Me Soden has demonstrated to me that the law is not necessarily synonymous with litigation or waging battles in court. Rather, through the provision of legal information or simply meeting with all*

*concerned parties in a mediatory environment, solutions to legal problems are not only possible, but also likely to result.”*

.....

*“Discovering the novel and expanding field of elder law through practical experience and the Centre for Law & Aging was an interesting and rewarding experience. Learning directly through practice gave me a clear picture of the multiple challenges and skills required for this type of practice. Elder law is a thoroughly multidisciplinary field. Throughout the year I encountered a variety of legal issues pertaining to various areas such as family law, consumer protection, homologation of incapacity mandates, or even property law to name a few. But elder law is also multidisciplinary in the sense that it requires the ability to work in contact and collaboration with medical professionals, social workers and mental health professionals. A panel event including lawyers, judges, medical practitioners and researchers as well as social workers organized by the Centre at McGill highlighted the opportunities offered by such collaboration in elder law. Overall, I realized that often our adversarial legal system is ill-suited to dealing with elder law issues, and can antagonize parties instead of promoting essential values of autonomy and dignity.”*

.....

*“(The Clinic) has been an enriching part of my law school experience. It is very hard to do what you do, to see people, come to understand them quickly, and advocate for their rights, in what most times seems a situation of conflict. It is no secret that I found this emotionally painstaking at first. The experience has, however, taught me how to embrace a sense of detached compassion. Heart is necessary in this line of work, but too much heart can hit too close to home. Detached compassion is what allows one to be the best advocate possible. Pride must also be taken in the small victories. For example, in the case of (one of our clients this term), your intervention allowed her to stay at home that much longer. This is a victory.*

*In the end it comes down to managing expectations, and expectations are very different when dealing with people and their own interests, versus contractual relationships, for example. The expectations in the Clinic’s case are very high: there is no higher interest than the very self-determination that is at issue in all of the Clinic’s cases. Every step towards these expectations is a success, even being in someone’s corner, advocating for them, is a success. This is the realization that I have come to. It’s not as hard to deal with other people’s hardships when any help is some help, especially when any help is the best help one has to offer.*

*This Clinic experience has brought me full circle, and allowed me to explore what I originally came to law school for.”*

.....

*“The field of elder law relies on a network of professionals to support clients and to protect their autonomy and the exercise of their civil rights.*

*I had the great pleasure of participating in informal discussions with a number of professionals with whom Me Soden works directly in her practice. A meeting with the Curateur public provided me with insight into the challenges of applying the law on protective regimes and tailoring them to the specific needs of each older person. A meeting with a social worker and a geriatric psychiatrist went a long way to helping me understand the difficulties and pitfalls of capacity assessments, the first official step toward a protective regime for an older person.*

*This type of interdisciplinary and interprofessional dialogue is the key to successful practice in elder law. Social work and health professionals become sensitized to the legal aspects of capacity assessments and the consequences of recourse to protective regimes. At the same time, legal professionals come to better understand the constraints of socio-medical practice and the systemic issues with which such professionals are confronted.*

*In contrast to my experience with the Centre for Law and Aging, however, there seems to be little interprofessional dialogue and collaboration outside discrete cases and occasional continuing legal education events (such as the personnes vulnérables conference I attended in January). If the promise of safeguarding autonomy—of respecting older persons as full members of society who enjoy the same civil rights all other persons of full age—is to be kept, those who work directly with older persons need to find better ways to share systematically their knowledge and understanding of the complex and intersecting issues that come into play when seeking to support older persons.*

*If this semester has taught me anything, it is that serving older persons is not simply a matter of finding the right legal solution to a discrete issue, but a matter of finding the right longer-term solution to ensure that older persons retain their autonomy and dignity. This can only be accomplished by embracing the inherently interdisciplinary nature of elder law.”*

## TESTIMONIALS

### Issues of Access by Family

*Thank you for all of your support in securing full unrestricted visitation to my father, age 78, with advanced dementia, limited communication abilities and confined permanently to a wheelchair by his lady-friend following over one and a half years of antagonism between the parties...*

*...It is my firm belief that if you had not been involved we would not be celebrating this successful end to a difficult period in the care of my father. Your professional “take the high road” approach created the communication break through. No assigned blame was needed to resolve this dispute. You opened up the dialogue with genuine intent to resolve and ensure a final solution in the best interest and care for my elderly father...*

*...I can appreciate that this effort was not easy. Countless hours of your time was required in dialogue and face-to-face meetings with all parties – myself, my father’s lady friend and administrators at all levels, including a visit and time spent with my father at his care centre in a small village in central Quebec. You exhibited great patience, understanding, but also resolve in making the right progress over time. A lot of emotions were mixed into this matter which you were able to deal with effectively, while working towards an end-goal...*

*...Your conciliatory approach, from the start, was no doubt the right one to pursue. Although there was pressure to take a confrontational approach, with the purpose of laying blame on parties, you convinced everyone that this would not result in a successful outcome – risking alienation, delays and likely incurring costs.*

- son of client

### Mental Illness and the Older Adult

*My mother is 79 years old and has a 35-year psychiatric history. Recently my mother had once again stopped taking her medication, all of her medication, both for psychiatric and physical conditions. We were unable to get her back on her medication, although we had managed, with difficulty and constant supervision, to keep her out of the hospital for the previous five years. We went to court and we were granted an Ordonnance pour évaluation psychiatrique...*

*...The hospital social worker met with us to tell us that under a curatorship, we would be making all the decisions on behalf of my mother. Over the next 10 days, we felt pressure from the hospital to find a notary and they called us several times. We did not understand the necessity of a curatorship and having my mother declared incapacitated seemed excessive to us...*

*...Me. Soden was an incredible help during a very difficult time. Immediately she explained that we did not need a curatorship for my mother, that it was indeed excessive and inappropriate...*



*...Me. Soden was always available for my calls; she called my mother's psychiatrist and advised him, as he was preparing documents for court once again, that a request for curatorship was not necessary and that what was needed was court-ordered treatment and care for my mother (Ordonnance pour autorisation de soins et hébergement). My mother's psychiatrist agreed with Me. Soden and together they visited my mother in hospital. Me. Soden explained the doctor's decision on her care and treatment to my mother and she advised her that she could represent her in court on the day of the hearing, if my mother so chose...*

*...Me. Soden advised me on the differences between the court order and a curatorship and I, in turn, was able to better discuss the process with hospital staff. In the end, despite visits and explanations from Me. Soden, from the hospital staff and from family members, my mother did not attend the court hearing. However, I felt comforted that, with Me. Soden's help, my mother's rights were respected and that we, her family, had made the right and informed decisions for her care.*

*I understand that the "system" is overburdened and so we were unintentionally misguided by hospital staff. We were pressured to find a notary as quickly as possible to have my mother declared incapacitated, simply because, it seemed to me, this is a legal tool that is often used by hospitals in these situations. We sincerely feel there is a gap that needs to be filled in helping people – patients, families and hospital staff – understand the legal issues when it comes to caring for the elder population. We were very fortunate to have learned about Me. Soden at the right time but I cannot help but wonder how many other people out there don't have this assistance or don't know their rights? It is only with the help of people like Me. Soden, who assisted us in navigating this complex maze, that there could be less pressure on an already overburdened health-care system, especially now when our aging population is growing at such a rapid rate.*

- daughter of client

*"I am writing to express our appreciation for the excellent assistance my wife and I have received from Me. Ann Soden, Ad. E., and the Centre. Madame Soden has been extremely helpful in defending our rights "pro bono" while we were imposed upon after having received a "mise en demeure" for latent defects in the family home we had sold, defects which were unfounded. As seniors aged 79 and 80 on fixed income (pensions) we were emotionally affected by this experience. Madame Soden expeditiously proceeded with a court directed mediation process in Small Claims Court where she was permitted to present the facts of our case (not the law), and to present a settlement to buy peace which finalized our predicament. Her expertise and relentless effort gave us much needed solace and confidence. We thank her very much for her free legal help, and also for her continued availability to other seniors with the Centre."*

- clients, 2012

**"The poverty of being unwanted, unloved and uncared for is the greatest poverty."**

Mother Teresa

## TEMOIGNAGES

"Je suis et je reste une personne à part entière.<sup>1</sup>"

It is rare that clients of the Centre are in a position to thank us, for a variety of reasons, notably diminished capacity. It was, therefore, very gratifying to receive a copy of a letter of thanks and a recommendation of the Centre made to the Quebec Minister Responsible for Seniors and the Bar of Quebec from a client, a caregiver daughter, whose mother had dementia and aphasia.

This client's devotion to her mother over the twelve preceding years had been miscast resulting in restrictions on her involvement with her mother and suspicions about her motives and competence as a caregiver. We were able through inquiry, mediation and collaboration from family and multidisciplinary professionals to set the record straight without judicial intervention except to confirm solutions reached. The daughter was formally recognized as legal representative to her mother, family ties were repaired and all authorities were pleased with an outcome which sought to impose no blame nor seek recriminations, only to find an efficient, thoughtful and effective resolution of issues and improvement to the quality of life of this daughter and her mother.

A portion of the letter is reproduced herein:

### **Une approche multidisciplinaire et holistique de conciliation et de la médiation des différends**

*« Je désire vous faire connaître une clinique pour les abus aux aînés où les services ont été très bénéfiques, encourageants et efficaces. Je vous décris la situation et le contexte d'aide reçue par Me. Ann Soden, professionnelle de la maltraitance des aîné(e)s de l'Institut National du droit, de la politique, et du vieillissement pour le besoin de ma mère âgée. Ayant la rencontre de cette avocate, j'ai fait des démarches pour recevoir les services de processus régulier des plaintes sans satisfaire aux exigences de la problématique...*

*...Un problème majeur de compréhension de ma position et de mon historique, le lien brisé avec mon père et l'attitude rigide dans une résidence pour personnes âgées avec la relation avec le gouvernement furent un casse-tête difficile à reconstituer...*

*...Il est à retenir que le système actuel pour aider à contrer les abus envers les aînés est long, exténuant et inefficace...*

*...Me. Soden, par son expertise de médiatrice a évité le processus de la cour. Elle a pris le temps d'enquêter sur la situation en consultant les documents légaux et autres, en demandant des références à mon égard, m'a fait renouer le lien brisé avec mon père, a rencontré le curateur public à plusieurs reprises, a trouvé des faits controversés et a reçu des références de divers professionnels qui ont témoigné positivement de mon implication de proche aidante. J'étais victime d'un profil négatif véhiculé pendant plusieurs années et mal interprété en raison du divorce de mes parents.*

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<sup>1</sup> Cliente du Centre du droit et du vieillissement atteinte de la maladie d'Alzheimer.

*D'une part, cette professionnelle du droit des aînés est capable de faire cheminer et d'encourager la population à saisir que la maltraitance peut être présente aussi envers les proche aidants et que son aide est par conséquent affectée. D'autre part, cette professionnelle a une vision de collaboration et de négociation ouverte et a une façon de faire réparer des liens familiaux brisés. De plus, elle trouve des moyens efficaces qui évitent des problèmes légaux par des méthodes de conciliation, de réparation et de collaboration, et ce, en faisant appel à des acteurs qui gravitent autour de la personne victime d'abus pour éviter de perdurer dans cette maltraitance. C'est une approche multidisciplinaire où plusieurs intervenants interviendront avec une vision globale dans une dimension holistique. J'ai moi-même utilisé cette façon de faire dans mon milieu de travail...*

*...Cette façon de procéder est faite dans un esprit très positif et respectueux pour favoriser des changements et pour aider plus rapidement la personne aînée victime de maltraitance. Je souligne particulièrement le travail persévérant de cette professionnelle qui nous a accompagnées pas à pas, à tout moment et en tout temps. Au-delà de son expertise d'avocate médiatrice, j'ai connu une professionnelle avec un véritable cœur pour les aînés du Québec.*

*...Me Soden nous a accompagnées plus de deux ans et nous avons eu gain de cause. Avec cette approche globale et multidisciplinaire, nous avons corrigé la mésente initiale avec le gouvernement et j'ai été nommée curatrice privée sans contestation judiciaire. De plus, nous rebâti une relation fragile du lien brisé avec mon père. »*

*- proche aidante au nom de la cliente, 2011*

## **La santé mentale et le vieillissement**

*...Le droit de décider des soins qu'on veut ou pas, est un droit fondamental, sacré et inviolable, dûment enchâssé dans la Loi sur la santé et les services sociaux. Or, les personnes âgées, notamment les personnes en santé mentale, sont les plus vulnérables à la perte de ce droit. Je veux témoigner ici que je suis victime d'une interprétation psychiatrique qui veut qu'une maladie mentale comme la psychose toxique ou la schizo affectivité, rend d'emblée et automatiquement, une personne inapte à prendre des décisions éclairées en ce qui concerne sa santé. Or, c'est avec cet argument que la juge de la Cour supérieure a accordé à l'hôpital une ordonnance de traitement de deux ans à mon endroit...*

*...Les interventions et l'accompagnement de Maître Ann Soden, tout au long du processus de ma bataille pour l'arrêt de la médication forcée et pour le changement de mon psychiatre, m'ont aidée de façon inespérée. Tout d'abord, son statut d'avocate apportait tout de go une importante crédibilité et un sérieux évident, que seule, en tant que personne « déclarée inapte », je ne pouvais pas et n'avais jamais réussi à avoir, auprès des instances de l'hôpital...*

*...Maître Ann Soden a toujours privilégié en priorité l'approche de la médiation et de la conciliation plutôt que l'approche de la cour et de la confrontation. Or, je privilégie au premier chef, tout comme elle, cette approche humaniste et médiatrice, et je crois qu'elle peut efficacement servir les intérêts des deux*

*parties, souvent de façon plus efficace et durable que par la voie de la guerre, de la confrontation et de la cour, voies qui de surcroît, sont plus « stressantes » et plus coûteuses. Or, mes moyens financiers, comme c'est le cas pour beaucoup de personnes âgées, sont limités. Le succès de la médiation conduite par Maître Soden, m'a évité une dépense supplémentaire de quelque 2000\$ si nous avions été en cour. Je lui suis infiniment reconnaissante pour son implication si active dans mon dossier et je me considère privilégiée de l'avoir trouvée sur ma route...*

*...Je souhaite ardemment que d'autres personnes de mon âge et vivant des situations d'atteinte grave à leur dignité et leurs capacités de décider pour elles, puissent profiter, comme moi, des services indispensables et déterminants d'une avocate du calibre et de l'expérience de Maître Soden. De plus, ses qualités et sa foi inconditionnelle dans les avantages de la médiation font d'elle une avocate de premier plan. Son bureau joue un rôle essentiel auquel aucun autre service ne répond actuellement. Or, les personnes âgées ont des besoins manifestes, grandissants et de plus en plus criants en matière du respect de leurs droits, de leur autonomie et de leur aptitude, notamment en ce qui concerne la santé mentale. Le Service qu'offre la Clinique de Maître Soden est un service essentiel...*

*...L'efficacité de l'approche de la médiation et de la conciliation de la clinique pro bono de Maître Soden et de son équipe dans le règlement de dossiers est éloquent. De plus, la force de la clinique de Maître Soden consiste en une approche multidisciplinaire réunissant tous les professionnels impliqués dans le dossier d'une personne âgée, y compris les alliés en l'absence de la famille...*

*...Ceux et celles qui sont vulnérables (on vit tous des périodes de fragilité au cours d'une vie), sont vulnérables parce qu'ils sont démunis physiquement et-ou mentalement, mais aussi, parce qu'ils manquent d'information et de soutien. La clinique pro bono de Maître Soden et de son équipe, répond à ces besoins impérieux.*

*- cliente, 58 ans*

## Ann Soden, Ad. E.

Avocate montréalaise et pionnière au Canada dans le domaine en plein essor du Droit des aînés, Ann Soden est présidente fondatrice de la Section nationale et présidente sortante de la Section québécoise du Droit des aînés de l'Association du Barreau canadien, membre fondateur des réseaux canadien et québécois de prévention de la maltraitance aux personnes âgées; elle est Présidente nationale canadienne de la World Jurist Association (de Washington, D.C.). Elle a été nommée, par l'American Bar Association, membre du conseil consultatif de la Commission on Law and Aging (de Washington, D.C.). Elle est la première étrangère à tenir ce poste.

M<sup>e</sup> Soden dirige l'Institut National du Droit, de la Politique et du Vieillissement (INDPV), centre canadien de référence dans les domaines de la recherche, de la formation et l'engagement relatives aux personnes âgées. En 2007 elle a ouvert le Centre du droit et le vieillissement, une division de l'INDPV. Cette clinique légale pour le public est offerte à la Faculté de droit, Université de McGill, comme un cours clinique en Droit des aînés. Elle était aussi chargée de cours au 2<sup>e</sup> cycle à l'Université de Montréal, Faculté de droit, de 2010-2012.

M<sup>e</sup> Soden est rédactrice principale de *Advising the Older Client*, premier texte juridique comparatif, de portée nationale, relatif au droit et au vieillissement, publié en 2005 (2<sup>e</sup> édition 2014) par Lexis Nexis Butterworths. Elle est l'auteure et rédactrice de deux autres textes – *Beyond Elder Law: New Directions in Law and Aging*, Springer-Verlag, Germany, 2012 avec Dr. Israel Doron de Haifa University et *Le droit et le vieillissement*, Lexis Nexis Québec, qui doit être publié en 2014; auteure avec Charmaine Spencer de Simon Fraser University de *A Softly Greying Nation: Law, Ageing and Policy in Canada*, *International Journal of Law and Aging*, Volume 2, AARP et Stetson University College of Law, 2007, avec Dr. Robert Gordon de Simon Fraser University de *The Guardianship of Incapable Adults and Their Property in Canada*, un chapitre dans *Comparative Perspectives on Adult Guardianship*, A. Kimberley Dayton, ed., (Carolina Academic Press, 2014); et de *Beyond Incapacity* dans *Towards Autonomy: Exploring the Clinical, Legal and Ethical Aspects of Mental Capacity* (2011 5:2 MJLH 271).

Dans le cadre des responsabilités qu'elle exerce dans la société et auprès des services publics, M<sup>e</sup> Soden est, depuis plus de vingt ans, experte-conseil à l'Institut québécois de gérontologie sociale dans le domaine de la maltraitance et de l'exploitation des personnes âgées.\* M<sup>e</sup> Soden donne fréquemment des conférences au Canada et à l'étranger sur des sujets touchant les personnes âgées.

Elle coordonne les activités d'un groupe d'étude canadien sur les questions des mandats de protection et des procurations, trait d'union entre l'Association du Barreau canadien et l'Association des banquiers canadiens; elle joue un rôle d'experte et de conseil juridique auprès de groupes gouvernementaux chargés d'étudier les problèmes de soins et de fin de vie, sous les auspices de Santé Canada, de l'Association médicale canadienne et de l'Association canadienne des soins palliatifs et siège auprès des comités du Barreau du Québec et l'Association du Barreau Canadien portant sur l'avenir du Curateur public du Québec, le resserrement de l'hébergement et les soins, l'éthique dans la représentation des personnes ayant une déficience cognitive et les réformes du Code Civil du Québec et du Code de procédure civile.

Dans l'exercice de sa profession, Ann Soden offre des conseils, de la défense des droits et la gestion de cas à ses clients âgés et aux personnes jouant un rôle dans leur vie : familles et aidants naturels, professionnels de la santé, des services sociaux, de la finance, de l'immobilier et de l'assurance, représentants légaux, héritiers, fiduciaires et exécuteurs testamentaires.

Elle a été nommée «Avocat Emérite» en 2007 par le Barreau du Québec, nouvelle désignation dont l'appellation « Ad. E. » pour ses contributions à la loi, à la profession et à la société dans le développement du Droit des aînés.

\* Ann Soden, Directrice Exécutive, agit depuis 1994 comme consultante légale et bénévole au sein de L'Équipe de consultation multisectorielle sur l'abus envers les aînés de René Cassin.

Créée en 1992, l'Équipe est composée de membres reconnus pour leur expertise dans le domaine de la maltraitance envers les aînés et qui représentent les secteurs médical, légal, ou social (avocats, notaire, policiers, Curateur public, éthicien, travailleurs sociaux, gestionnaires, ressources spécialisées, etc...). L'équipe collabore avec la Ligne Abus Aînés provinciale pour venir en aide aux professionnels de la santé et des services sociaux qui ont des cas particulièrement complexes. Plus précisément, son mandat est d'offrir aux professionnels des consultations cliniques en proposant diverses approches d'intervention et en les aidants à identifier quand recourir aux divers services publics et communautaires. L'équipe soutient également les professionnels pour les aider à mieux comprendre le potentiel de ce qu'ils peuvent faire, aussi bien que les limites de leur intervention. L'équipe a été créée pour répondre aux défis de l'intervention ainsi que pour identifier les lacunes au niveau des connaissances, des ressources et de la réponse sociale à la problématique de la maltraitance envers les aînés. L'équipe organise également des activités de sensibilisation et d'information pour le public et les professionnels.

Depuis 1990, l'Équipe a démontré une expertise et un leadership en matière de prévention, de dépistage, d'intervention et de recherche en maltraitance envers les aînés à travers le Québec.

## Ann M. Soden, Ad.E.

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Ann Soden is a Montreal lawyer and Founding Chair of the National Elder Law Section of the Canadian Bar Association. She is a former, and the first international, Commissioner of the American Bar Association's Commission on Law and Aging, Washington, D.C.

In Canada Ann Soden heads the National Institute of Law, Policy and Aging, based in Montreal, a Canadian reference center for excellence in research, education and advocacy on issues of law, policy and aging. In 2007 Ann opened the Centre for Law and Aging /Centre du droit et le vieillissement, a clinical course in Elder Law offered through the McGill Faculty of Law which serves as a pro bono advocacy clinic for the public and professionals in Quebec employing the services of students, senior lawyers and retired judges. In addition, she has, from 2010-2012, taught courses on Law and Aging to Masters of Law students at the Université de Montréal.

Ann Soden is General Editor and one of the authors of *Advising the Older Client*, Lexis Nexis Butterworths 2005 (Second Edition, 2012), a national, comparative law text on law and aging in Canada; general editor with Dr. Israel Doron of *Beyond Elder Law: New Directions in Law and Aging*, Springer, Germany, 2012; and General Editor of one of the authors of *Le droit et le vieillissement*, to be published in 2014 by Lexis Nexis Québec.

Ann graduated with her BCL and LLB in 1981 and 1982, respectively, as a National Scholar of the McGill University Faculty of Law. She was named an *avocate émérite* (Ad.E.) of the Bar of Québec in 2007 for her contributions to the profession, the law and to society through the development of Elder Law in Canada and in Québec.