



**Guide for the use
of the tutor
to a person
of full age**

**Le Curateur public
du Québec**

À la rencontre de la personne

**Guide
for the use of the
tutor to a person of
full age**

June 2008

Here are the main steps you must take to fulfill your mandate:

Step 1

Prepare an inventory
(page 14)

Step 2

If the represented person holds assets
worth more than \$25,000,
you must furnish security
(page 16)

Step 3

Prepare an annual report of your
administration
(page 25)

Step 4

After three years, take steps to reassess the
state of the represented person
(page 7)

Step 5

At the end of your administration,
prepare the final account
(page 26)

TABLE OF CONTENTS

INTRODUCTION.....	1
You are tutor to a person of full age.....	1
How to use the Guide.....	1
The role of the Curateur public.....	1
Basic materials	1
GLOSSARY	2
<i>Section One</i>	3
THE ROLE OF THE LEGAL REPRESENTATIVE WITH REGARD TO THE PERSON.....	3
<i>Chapter I</i>	4
CONCERN FOR THE PERSON	3
Tutor to the person or the property?	3
The well-being of the person	3
<i>Chapter II</i>	4
CONSENT TO CARE.....	4
Consent to care	4
Upholding rights	4
GLOSSARY	6
<i>Chapter III</i>	7
THE REASSESSMENT OF THE PERSON YOU REPRESENT	7
At any time.....	7
Every three years	7
The two parts of reassessment	7
If maintaining the tutorship is recommended	7
If closing or changing the tutorship is recommended.....	8
<i>Chapter IV</i>	9
CONCLUSION	9
The annual report	9
GLOSSARY	10
<i>Section Two</i>	11
THE ROLE OF THE LEGAL REPRESENTATIVE WITH RESPECT TO THE ADMINISTRATION OF PROPERTY.....	11
<i>Chapter I</i>	13
ESTABLISHMENT OF THE TUTORSHIP COUNCIL	11
You must establish a tutorship council.....	11
How to establish a tutorship council.....	11
If five people cannot be found	11
Appointment by the court	11
Payment of fees	12
The role of the tutorship council	12

GLOSSARY	13
<i>Chapter II</i>	14
PREPARING AN INVENTORY	14
You are required to prepare an inventory	14
A notarial inventory.....	14
An inventory by a private writing	14
Send a copy of the inventory.....	14
GLOSSARY	15
<i>Chapter III</i>	16
SECURITY	16
If the patrimony is worth more than \$25,000.....	16
Role of the tutorship council.....	16
Role of the Curateur public.....	17
The tutor can be relieved of the obligation of maintaining security.....	17
<i>Chapter IV</i>	18
MANAGING THE PATRIMONY	18
A) General principles.....	22
Simple administration	18
The tutorship council	18
The court	18
No conflict of interest.....	19
Income tax return	19
Sound investments.....	19
Other investments	20
B) In practice	24
Every case is unique	20
A family home.....	20
An apartment.....	21
A car	21
Furniture and personal effects.....	21
An inheritance	21
Income and expenses	22
Assistive Devices: Reimbursement/Loan.....	22
Important advice.....	23
C) Simple accounting	27
For keeping track.....	23
GLOSSARY	24

<i>Chapter V</i>	25
THE ANNUAL REPORT	25
The obligation to submit an annual report	25
Who gets the annual report?	25
Two types of forms	25
Some comments	25
<i>Chapter VI</i>	26
THE FINAL ACCOUNT AND TRANSFER OF ASSETS	26
The end of your administration	26
A simplified final account	26
A more detailed final account	26
The role of the Curateur public	27
Release of security	27
Transfer of assets	27
<i>Chapter VII</i>	28
CONCLUSION	28
A guideline	28
Your comments	28

INTRODUCTION

You are tutor to a person of full age

The court has just appointed you tutor to an **incapable person of full age**. You may have been named **tutor to the person, tutor to the property** or both; a **judgment** may define the actions you must perform for the person you represent and those the person still has the right to do on their own. This judgment may also determine how long you exercise this tutorship.

How to use the Guide

You have assumed a new role and probably have many questions. That is why the **Curateur public** has sent you this Guide. You can read it through to get a general understanding of your new role. Then, in future, when you have specific tasks to perform, you can refer to the appropriate chapter of the guide.

Each chapter deals with a task you will have to perform at some point as **legal representative**. If certain chapters or parts of chapters do not apply to you because you administer a fairly straightforward patrimony, just go to the section that does concern you.

At the end of each chapter, you will find a glossary explaining unfamiliar words and legal terms.

It may seem to you that some of the procedures are very complicated. If you follow the Guide, page by page, your task will be much easier. If your specific situation is not addressed in the following pages or if our advice does not apply in your case, you should consult a notary, a lawyer or one of the information agents of the Curateur public whose telephone numbers appear at the end of the Guide.

The role of the Curateur public

The Curateur public assists and supervises private curators and tutors. In each of its regional offices, staff members are specifically assigned to this responsibility. The file of each person represented by a private tutor or curator is assigned to an agent you can contact. The General Information Service of the Curateur public is also available to take your calls during normal business hours.

Basic materials

We hope that this Guide and the correspondence you receive from the Curateur public will assist you in performing your role as legal representative. However, if you wish to get to know the legal texts that govern this function, the duties and obligations of the legal representative are defined in the *Civil Code of Québec*, the *Public Curator Act* and the regulation respecting its application. These materials can be consulted in most libraries. They are also sold in bookstores that distribute documents published by Les Publications du Québec and can be read or downloaded from the Internet:

www.curateur.gouv.qc.ca/cura/html/anglais/geninfo/publica.html

GLOSSARY

Curateur public: person appointed by the Government of Québec whose duties include representing incapacitated persons (when their family cannot), supervising private legal representatives and assisting them as needed.

Incapable person of full age: person 18 years old or older who, as the result of an accident, illness or advanced age, is no longer able to look after themselves or their property.

Judgment: decision by a court of law.

Legal representative: person selected or chosen by law or the court to look after an incapable person (may be a curator, a tutor or a mandatary for an incapable adult and a legal or dative tutor for a minor).

Person of full age: person at least 18 years old.

Tutor to a person of full age: person appointed by a judgment to look after a person of full age who is temporarily or partially incapable of doing so. It may be tutor to the person, tutor to property or both.

Tutor to the person: person appointed by a judgment to look after a person temporarily or partially incapable of doing so. This type of tutor looks after only the person, not the person's property.

Tutor to property: person appointed by a judgment to look after the property of a person of full age who is temporarily or partially incapable of doing so.

Section One

THE ROLE OF THE LEGAL REPRESENTATIVE WITH REGARD TO THE PERSON

Chapter I

CONCERN FOR THE PERSON

Tutor to the person or the property?

You may have been appointed tutor only to manage the property of an incapable person. If this is the case, go right on to the next section.

If you have been appointed tutor to the person only or to the person and the person's property, this section is addressed to you.

The well-being of the person

As legal representative, you must see to the well-being of the person you represent.

This means you must take into account the desires the person expresses and make sure that the person's living conditions (housing, food, care, security) are good, given the person's state of health and income. The best way to find out is to visit the person regularly. Someone else can do it in your place and inform you of any needs. If the person you represent does not live with you, the personnel in the institution where the person lives may also help you identify any needs.

If there is a deterioration in the living conditions or state of health of the person you represent, you must try to find a solution that will assure a better quality of life. Options can range from meals-on-wheels to hospitalization, by way of a home care helper from the CLSC, as appropriate.

In every choice you make for the represented person, you must take their opinion into account if they are able to express one, or any indications of their wishes they may have given while still lucid.

To the extent possible, you must respect the values and wishes of the person, unless their choices are contrary to their interest. For example, in the case of a person who has always said they wanted to stay in their own home as long as possible, you should look for a home care helper rather than decide on placement in a nursing home, even if the nursing home would be more practical for you.

If you are not sure of what to choose, you can discuss it with the person responsible for your file with the Curateur public.

Chapter II

CONSENT TO CARE

Consent to care

If doctors decide that the person you represent is unable to consent to care (in other words, they do not understand the nature and consequences of the treatment being proposed), they will ask you for authorization to provide the treatment or perform the operation.

It is only in case of an **emergency** (and when it is impossible to reach the tutor) or to provide hygienic care that the doctors may treat a represented person without having first obtained authorization.

They must give you all possible information on the treatment or operation and its consequences. Based on this information **and any wishes that the person may have expressed while still lucid** you will make the decision on whether to authorize or refuse care.

For care to be acceptable, it must be intended to improve the person's health, and its benefit obtained must appear to you greater than any unpleasant side effects it could cause.

You can also consult the members of the family of the person you represent; remember, however, that as the legal representative, it is your authorization alone that is valid in the eyes of the doctors.

If it is a matter of organ donations or participation by the patient in a research project, we suggest you consult a lawyer, because more complicated rules apply to consent in these areas.

The desires expressed by the person on the care they wished to receive may be contrary to your values or beliefs. Such situations most often occur when a person is in the terminal phase of an illness. If they had specified that they wanted treatment stopped if it exceeds a certain pain threshold whereas you are in favor of life at all cost, *it is the desire of the person which must take precedence, since it is their life.*

If you are unsure of your decision, you can discuss it with the person responsible for your file with the Curateur public.

Upholding rights

As legal representative, you must also uphold the rights of the person you represent. For example, if someone causes them an injury, you must take the steps necessary to see that the damage is repaired. If it is necessary to take legal steps so that the person can be paid a **benefit** or an **allowance** or an inheritance to which they are entitled, it is up to you to do so.

When one tutor has been designated to look after a person and another to look after their property, it is the tutor to the person who is responsible for defending their rights in a suit, even if the suit involves property.

GLOSSARY

Allowance: an amount of money granted for a specific purpose.

Compensation: an amount of money given to remedy a wrong or an injury.

Emergency: situation in which a person's life is in danger or their integrity threatened (risk of loss of a vital function or part of the body).

Chapter III

THE REASSESSMENT OF THE PERSON YOU REPRESENT

At any time

A person under tutorship can, at any time, request by themselves or through their legal representative, the legal review of their **protective supervision** if a change in their state, for better or worse, justifies this step.

If the conditions that led to their being placed under tutorship no longer exist, the person may also request the **discharge** of their protective supervision; the procedure is the same as for review.

Every three years

However, to be sure that the tutorship is always adapted to the physical and mental condition of the person, *the law provides that their state must in any case be reassessed every three years.*

The judgment that appoints you tutor may also provide for a shorter reassessment period.

In either case, it is up to you as legal representative to take steps to ensure that the reassessment is made.

The two parts of reassessment

The reassessment has two parts: medical and psychosocial. The Curateur public sends the reassessment forms to doctors, healthcare professionals and institutions that request them.

THE MEDICAL REASSESSMENT covers the health of the person. This form is completed by the doctor who habitually treats the person or by the doctor for the institution in which the person lives.

THE PSYCHOSOCIAL REASSESSMENT makes it possible to find out the person's degree of **autonomy**. This form must be completed by a healthcare professional (psychologist, nurse, social worker, etc.). If the person you represent does not live in an institution employing such professionals, you can ask the **CLSC** in the district in which the person lives to designate someone to make this reassessment.

If maintaining the tutorship is recommended

If those who have completed the reassessment reports recommend that the tutorship be maintained, you will be informed and the tutorship will remain in force until the next reassessment.

If closing or changing the tutorship is recommended

If those who have completed the reassessment reports recommend closing or changing the protective supervision, the person under tutorship will receive a copy of these reports. You will receive a copy as well and a third copy will go to the court of the **judicial district** where the person lives. If no one contests the recommendation of the healthcare professionals within 30 days from the filing of the report with the court, the tutorship will be changed as recommended. The court will notify the represented person and the Curateur public.

Chapter IV

CONCLUSION

The annual report

If you are tutor to the person only, each year you should receive a copy of the annual report that the tutor to the property must send to the Curateur public. This report will enable you to evaluate how that tutor is fulfilling their responsibility. If you have questions about their administration, you can discuss it with them or with the tutorship council. In case of misadministration, you can ask the court to appoint a different tutor to the property.

This is the end of the section on the responsibilities of the tutor to the person. The next section covers the responsibilities of the tutor to the property.

GLOSSARY

Autonomy: ability of persons to look after themselves and their property without assistance.

CLSC: local community service centre.

Judicial district: a geographic division in Québec under the jurisdiction of a courthouse for the management of judicial procedures.

Discharge: elimination of protective supervision by a court judgment.

Protective supervision: legal representation of an incapable person. Curatorship and tutorship are forms of protective supervision.

Section Two

THE ROLE OF THE LEGAL REPRESENTATIVE WITH RESPECT TO THE ADMINISTRATION OF PROPERTY

Chapter I

ESTABLISHMENT OF THE TUTORSHIP COUNCIL

You must establish a tutorship council

Under the Civil Code, the tutorship council must generally supervise how you fulfill your responsibility as legal representative, give advice and authorize certain acts.

The tutorship council is generally composed of three members chosen from the families of the father and mother of the person represented, as well as a secretary, who may or may not be a member of the council. Generally, two alternates are also designated in case one or several members withdraw from the council.

The tutorship council must meet at least once a year, and you are entitled to attend its meetings. The secretary must take and keep the **minutes** of these meetings.

How to establish a tutorship council

*The members of the tutorship council are chosen by a **meeting of relatives**.*

The people attending this meeting are summoned to it by the **clerk of the court** or the notary you have chosen to perform this task. The clerk of the court or the notary must call them by sending a notice to the person's parents, spouse or children of full age, grandparents and brothers and sisters of full age. If, after issuing these notices, the notary or clerk of the court is unable to summon five people, they may contact other relatives (aunts and uncles, cousins of full age) or friends of full age.

If five people cannot be found

If, despite these efforts, it is impossible to arrange a meeting of relatives consisting of at least five people, the court may waive the obligation to hold this meeting.

Appointment by the court

In most cases, the meeting of relatives is successfully organized. It meets and chooses the members of the tutorship council. A notary or lawyer then files **notice of motion** with the court of the judicial district where the represented person resides to have it validated. When the decision is made, the court will advise the Curateur public.

In exceptional cases, when there are not enough relatives to form a tutorship council, the court may appoint a single person or the Curateur public to fulfill this function.

Payment of fees

These procedures entail costs. The policy of the Curateur public is to allow for payment of the notary or lawyer's professional fees and court fees (for filing and presenting the notice of motion) from the patrimony of the person you represent since these compulsory acts are being undertaken in their interest.

The role of the tutorship council

The tutorship council must supervise your administration.

In the following chapters, you will see that you are occasionally required to ask its authorization or send it a copy of certain forms that you will have to fill out.

If you administer more than \$25,000 on behalf of the person you represent, the tutorship council must also determine what security is needed to guarantee your administration.

This is dealt with again in Chapter III.

The tutorship council may ask you to account for your management.

The tutorship council even has the power to ask the court to name another tutor to replace you, if it decides you are not performing your role adequately.

GLOSSARY

Clerk of the court: officer of the court; known as a prothonotary prior to January 1, 1994; the clerk's office is at the courthouse.

Judicial district: a geographic division in Québec under the jurisdiction of a courthouse for the management of judicial procedures.

Meeting of relatives: meeting of at least five people related to the minor who select the legal representative and make recommendations on the type of protective supervision; the meeting of relatives also appoint the members of the tutorship council.

Minutes: report of the people attending and decisions reached at a meeting.

Notice of motion: official application made to the court according to an established procedure.

Subrogate tutor: prior to January 1, 1994, a person appointed in the tutorship judgment. With the new *Civil Code of Québec*, the subrogate tutor automatically became a tutorship council of only one person.

Chapter II

PREPARING AN INVENTORY

You are required to prepare an inventory

*As legal representative, you are required to prepare an **inventory** of the property you manage on behalf of the person you represent.*

This procedure will give you a better idea of the extent of the patrimony before you decide how to manage it. This inventory will also enable you to set up a system for managing the property, allowing you to easily complete the annual report you are required to send to the Curateur public and tutorship council every year. These obligations are discussed in the next chapters.

In the meantime, note that the law requires you to prepare this inventory within two months after you are appointed tutor. The inventory must describe all the property of the person represented, including both **assets** and **liabilities**.

*The inventory may be **notarial** or made as **a private writing**.*

A notarial inventory

If the patrimony you manage includes many and varied items (for example, investments with several banks, securities or several buildings) or if the person you represent receives income from several sources, we recommend that you consult a notary.

The notary's fees will be paid from the patrimony of the person you represent.

An inventory by a private writing

If the patrimony of the person you represent is relatively straightforward (a building, a bank account into which is deposited an annuity or compensation from the Société de l'assurance automobile du Québec), you can make an inventory by a private writing.

To do this, use the form included with the Curateur public inventory request. You must fill out the form in the presence of two witnesses, who must sign it as well.

Send a copy of the inventory...

- ... to the Curateur public within two months of your appointment;
- ... to the secretary of the tutorship council within the same period.

GLOSSARY

Assets: whatever items of value a person owns.

Inventory: list of a person's assets and debts.

Liabilities: whatever a person owes.

Notarial: prepared and recorded by a notary.

Private writing: not notarial; an inventory by a private writing must be prepared in the presence of two witnesses.

Chapter III

SECURITY

If the patrimony is worth more than \$25,000

If the property you administer is worth more than \$25,000, the law requires you to furnish security to guarantee your administration. In this way, the patrimony of the person you represent will be protected or compensated if it loses value because a tutor has misappropriated or mismanaged it.

Trust companies that administer the property of a represented person are not required to furnish this security.

Role of the tutorship council

The tutorship council determines what kind of security the tutor must furnish.

In practice, three kinds of security are recognized:

- MORTGAGE, which allows the tutor to give a building they own as security;
- SURETYSHIP, which is a kind of insurance policy purchased by the tutor to guarantee his management. The premiums paid for this insurance can be reimbursed from the patrimony of the represented person, if the tutor is not paid for this role;
- HOLD FUNDS, by which the financial institution holding the funds of the represented person agrees to keep them until the end of the administration of the current tutor, unless instructed otherwise by the tutorship council.

Only the tutorship council is entitled to modify the nature of the security required from the tutor. It also determines the date by which the tutor must furnish the required security. The Civil Code, however, stipulates that the security must be furnished “without delay”. The tutorship council, in its annual review, must also ensure that the security is maintained.

Role of the Curateur public

The tutor must advise the Curateur public of the nature of the security required by the tutorship council.

Once the security has been arranged, the tutor must send one copy to the secretary of the tutorship council and another to the Curateur public.

The law gives the Curateur public the necessary authority to ask the court to review the decisions of the tutorship council with respect to the security to be furnished by the tutor; thus, it could ask the council to increase the amount if the security seems insufficient in relation to the patrimony under administration.

The Curateur public must be notified without delay of any change to the security.

The tutor can be relieved of the obligation of maintaining security...

... by the tutorship council if the patrimony of the represented person falls under the \$25,000 limit or the tutor is replaced by another.

Chapter IV

MANAGING THE PATRIMONY

A) **General principles**

Simple administration

If you are tutor only to the property of an incapable person of full age or tutor to their person and property, you are responsible for managing their property as long as they are under tutorship. If before being declared incapable, the person you represent had given a **power of attorney** to anyone to manage their property, this power of attorney is cancelled by your appointment.

The judgment that named you may have defined the administrative actions that are left to the incapable person and those you must do on their behalf.

Here are some general principles to guide your administration.

As tutor, you are responsible for the simple administration of the patrimony of the person you represent. This means that you are required to maintain it so it can be returned to the person on the day the person again becomes capable or to their heirs upon their death.

The tutorship council

The Civil Code provides that you must obtain AUTHORIZATION FROM THE TUTORSHIP COUNCIL in the following cases:

- to **renounce a succession** on behalf of the person you represent;
- to accept a gift that includes an obligation;
- to reach a compromise (negotiate to avoid or settle a lawsuit) or file an appeal in case on behalf of the represented person;
- to obtain a loan that is large in relation to the size of the patrimony, use assets as security, sell an important family asset, a building or a company, cause the definitive **partition** of assets of which the person is one of the undivided co-owners, if all these assets have a value of less than \$25,000.

The court

If the value involved is \$25,000 or more, YOU MUST ASK THE COURT FOR AUTHORIZATION TO ACT, specifically in the following cases:

- a loan that is significant in relationship to the patrimony being administered;
- the sale of a significant family asset.

In every case, the court will consult the tutorship council before making a decision.

No conflict of interest

You must be careful to separate the administration of the property of the person under tutorship from that of your own. This applies even in the case of spouses. Thus, maintain separate bank accounts for the person and yourself; avoid buying, leasing or using the person's property exclusively for yourself.

Throughout your administration, the property of the represented person will be registered under your name, "as tutor to", followed by the person's name.

Income tax return

You must also prepare separate tax returns for the person you represent and yourself.

Sound investments

In managing the property under your administration, you must limit yourself to presumed sound investments. The Civil Code (sections 1339 and following) offers various possibilities. These include:

- Money deposited in an account with a financial institution (bank, credit union, etc.). The money must, however, be available on demand or within no more than 30 days, unless the deposit is guaranteed by the Régie de l'assurance-dépôts du Québec (maximum \$100,000 per account and per financial institution). Otherwise, you will need to obtain authorization from the court for such a deposit.
- You can also buy savings bonds issued by Québec, any other Canadian province, Canada, the United States or an American state, a municipality or a school commission.
- Real estate is considered a sound investment.
- Common shares issued by a company that for three years has complied with the *Securities Act*, sold by a recognized Canadian stock exchange (Montreal, Toronto, Vancouver), are also presumed sound investments. The same is true of shares in an investment trust and shares of a mutual fund or of a private trust, provided that 60% of its portfolio consists of presumed sound investments.
- You can also lend the funds you manage as a first loan on real estate in Québec, provided the value of the loan is not more than 75% of the value of the real estate.

These investments, like the other transactions, must be registered in the name of the tutor as tutor to (name of the represented person).

Other investments

If you make presumed sound investments, you will be considered as having acted prudently. The tutor must try to diversify investments to ensure a certain regularity of income.

A tutor who makes investments not as stipulated by the Civil Code is automatically liable for any losses.

B) In practice

Every case is unique

You must make decisions regarding the property of the person you represent. The following are examples of property you may have to manage. Disregard those that don't apply to your situation.

Remember that your decisions must be based on two major principles:
– the wishes of the person you represent;
– their interest.

In case of doubt, you can consult the tutorship council or contact the agent handling your file at the Curateur public.

A family home

If the person you represent lives in a house they own, you must ask the following questions:

- Can they continue to live in this house, with or without assistance? Do they want to?
- If because of the state of their health, the person must be placed elsewhere, what would they want to be done with the house? If the person was the family breadwinner, can their spouse or children continue to remain in the house? Can they share the costs? Does the person need the proceeds of the sale or rental of the house to pay for their placement elsewhere? Does the current market allow for a fair price for the house or would it be better to wait before putting it up for sale?

Depending on what answers you give to these questions, if the person remains at home, you will have to pay the bills (electricity, telephone, gas, cable television, municipal and school taxes, water tax, etc.) and arrange its maintenance from the person's revenues.

If the person and family move, the house must be emptied and rented or sold, either directly or through a real estate agent.

An apartment

If the person you represent is a tenant, you must also determine together whether the person wants to continue to live at home and whether they are able to, with or without assistance. If not, the tutor to the person (if not you) must take steps to find another place for them to live. The CLSC may be able to help you in this. If the person moves out of an apartment, you must reach an agreement with the landlord on the cancellation of the lease, unless the diagnosis suggests that there is a possibility of their returning to this apartment within a year and their financial situation would allow paying both the institutional costs and rent. The furniture and personal effects must be stored until they can be taken back (see below).

A car

If the person you represent owns a car, it would be a good idea to check if they are still able to drive it. If not, you should decide, in consultation with the person and their family, whether it would be better to leave the use of the car to the spouse (if any) or to another member of the family who will use it in order to look after the person; it may be preferable to store it while waiting for the person to again be able to drive or to sell it quickly before it loses too much of its value.

Furniture and personal effects

If the person must leave their home, the Civil Code requires keeping their furniture and personal effects at their disposal. However, if it is evident that they will never again be able to maintain a home of their own and the money from the furniture would be better used paying for their housing, it is possible to sell the furniture (with the authorization of the tutorship council).

If there is no difference in price, it would be kinder to give preference to members of the family when selling furniture the person cannot or does not want to take along to their new home. The money so obtained will increase their patrimony.

With respect to personal effects (clothing, family photographs, diplomas, decorations, various souvenirs), the person may want to take them along. If not, you should keep them available; the Civil Code prohibits their sale or disposal “without urgent reasons”.

An inheritance

When the person you represent inherits a number of assets (real estate, stocks and bonds, cash, valuable family heirlooms), you must first know whether to accept or refuse the **succession** on their behalf.

Your decision should be based on the value of the assets (and liabilities) involved and made in the sole interest of the person. If you decide to **renounce the succession**, you must do so through a notarial act, after obtaining the authorization of the tutorship council. If you accept the estate and if the property bequeathed is not administered by the **liquidator** of the estate, you are required to manage the estate.

Income and expenses

It is important to make yourself known to the banks and other financial institutions with which the person you represent did business. You can bring them a copy of the judgment appointing you tutor to the property and defining the scope of your powers.

From making the inventory, you will have an exact idea of the bank accounts and investments of the person you represent. You will also see their sources of income (social assistance, old age pension, private pensions, alimony, investment interest, rental income from property, various allowances, etc.). It is important to continue to collect this income and take steps so that the person obtains all the benefits to which they are entitled.

The Individual and Family Assistance Act enables the Ministère de l'Emploi et de la Solidarité sociale (MESS) to automatically grant financial assistance to represented persons whose eligibility has already been determined and whose capacity for employment is severely restricted.

To find out more, contact the MESS Information and Complaint Office at one of these numbers:

In the Québec City region: 418 643-4721

Elsewhere in Québec, toll-free: 1 888 643-4721

An advisor from a financial institution can help you prepare a list of such benefits: housing assistance, survivor benefit, etc. A social worker from the CLSC can also be of great assistance in guiding you in these procedures. Once the monthly income and the patrimony of the person you represent have been identified, you will have a more accurate idea of the general standard of living these resources allow. Expenditures must be adapted to reflect the actual income; this is often how the type of housing selected for the person will be decided.

You will pay for their housing (which could also be a rent or a monthly mortgage payment on their house) and the current expenses of the person from their revenues. If they paid alimony, you will continue to assume this obligation on their behalf.

Assistive Devices: Reimbursement/Loan

Are you caring for a person who needs a wheelchair, incontinence briefs, eyeglasses or another assistive device? An assistive device is a technical product, instrument, apparatus or system used to correct, compensate for, alleviate or neutralize a deficit or incapacity, or to prevent or reduce a disability.

There are several government programs that reimburse the cost of these assistive devices on the condition that the person meets the particular program's **eligibility requirements**. (Some examples of these are: occupational injury compensation program, social assistance, and home care assistance.)

To help you with your duties as a legal representative, the Curateur public has prepared a guide, *Assistive Devices – Reimbursement/Loan*

Programs. It is an **interactive electronic directory** that deals with requests for technical assistance. It lists the main support programs, most of them governmental, that provide or pay for assistive devices. It links Web surfers to the sites of agencies that offer the assistive device program; these agencies are responsible for program updates. They are the ones you should contact for information on the assistive device program and eligibility criteria. Using the directory in no way constitutes a guarantee that you will be reimbursed for or loaned the assistive device required by the person for whom you are responsible.

The directory is available on the **Curateur public's Web site** at www.curateur.gouv.qc.ca in the *Assistive Devices* section, and, as a reference document, is **available in electronic format only**.

Important advice

You must keep all invoices, receipts and cheque stubs related to the administration of the property of the person you represent. In addition to allowing you to justify certain acts you will have performed, these documents will let you report on your administration to the person or their heirs when you cease to exercise your duties as tutor. They may be consulted by interested parties. The Curateur public must examine the annual reports of your administration, and may undertake a more thorough audit and request supporting documents.

C) Simple accounting

For keeping track

The best way to keep track of the administration of the assets of the person you represent is to set up a simple accounting system, recording income and expenditures.

By recording income and expenditures every month, you will find it easy at the end of each year of administration to fill out the annual report form you receive from the Curateur public.

GLOSSARY

Liquidator: person responsible for settling an estate until the assets are distributed to the heirs; previously known as testamentary executor.

Partition: the dividing up of the assets of a succession among its heirs, which may require assets to be liquidated so they can be shared among all those entitled to them.

Power of attorney: power given in writing to a person to perform certain acts in place of the signer.

Renounce a succession: refuse, in a document prepared by a notary, to be the heir of someone.

Succession: the estate or property of someone who has died.

Chapter V

THE ANNUAL REPORT

The obligation to submit an annual report

Every year, you must submit an annual report of your administration of the patrimony of the person you represent

If you do not submit such a report, any interested party (including the Curateur public) may ask that you be replaced as tutor to the property.

The Curateur public allows an administrative period of some four months to submit the annual report.

Who gets the annual report?

You must send your annual report to the following:

- the tutor to the person, if you do not perform that function;
- the secretary of the tutorship council;
- the Curateur public.

The Curateur public reviews your annual report to make sure that you are properly administering the patrimony of the person you represent.

Two types of forms

At the end of one year of administration, you will receive a detailed annual report form. Depending on the financial situation of the person you represent, you may, in the second year, receive the same detailed report or a simplified form.

You will receive a simplified annual report if the person does not own any buildings, property, bonds or shares, has not lent money as a mortgage on an asset and receives no interest on a loan. Otherwise, you will receive the same form as the first year.

Some comments

If the patrimony you administer is worth \$100,000 or more, the Curateur public may require that your report be audited by a chartered accountant.

The copy you keep for your records will help you complete your annual report the following year.

Chapter VI

THE FINAL ACCOUNT AND TRANSFER OF ASSETS

The end of your administration

You continue to administer the patrimony of the person you represent until:

- they become capable of doing so again (with confirmation by the court);
- they die;
- another legal representative is appointed to replace you.

In all these cases, your office as tutor ends. You must then account for your administration to the person, the liquidator of the person's succession or the tutor that replaces you, as appropriate, and to the Curateur public.

A simplified final account

The Curateur public has developed a two-page final account form so that you can report on your management at the end of your administration. If you have not received these forms, you can request them by telephone from the Curateur public.

If the person (or the liquidator of the succession or the tutor who replaces you) will accept this form of final report, which includes the list of assets and liabilities at the end of your management, fill it out and ask the person to sign it, indicating that the final account you have submitted has been accepted.

A more detailed final account

The people to whom you must report are entitled to ask you for a more detailed final account than the one on the Curateur public form. The Civil Code stipulates that the account must be sufficiently detailed for its accuracy to be verified, and your records and other supporting materials may be consulted by interested parties. It is important to note, however, that the fees incurred for preparing a detailed accounting are **paid by the person requesting it**.

To prepare the final account, you may refer to the initial inventory, the annual reports you completed during your years of administration and the invoices and cheque stubs you kept during that period. If preparation of the final account will be especially complicated, it may be entrusted to an accountant or a notary.

The role of the Curateur public

If the Curateur public does not receive a copy of the final report within a reasonable amount of time after the end of your administration, the Curateur public notifies the person represented (or the liquidator of their succession or the tutor who replaces you) and provides information about the remedies available with respect to your failure to comply.

Release of security

Once the final account has been accepted by the person concerned, you can obtain the release (cancellation) of the security you gave as a guarantee of your administration if the property managed was worth more than \$25 000. This release will be given by:

- the person if now capable;
- the liquidator of the person's succession, if the person has died;
- the tutorship council, if there has been a replacement tutor.

Transfer of assets

Once the final account has been accepted by the person concerned, there only remains the transfer of the property, documents, bank accounts and other sources of income to the person's name, since you are withdrawing from the responsibility.

Chapter VII

CONCLUSION

The situations that a legal representative can experience are as varied as life itself. You will certainly encounter some not described in this Guide. If you are unsure about what to do, you can contact with your agent at the Curateur public and discuss it.

A guideline

Your main obligation to the person you represent is to act in the person's best interest.

If you follow this principle in your actions and keep up-to-date accounts of the patrimony you administer on behalf of the person you represent, you should have no problems. If a problem does arise and you cannot find a solution in this Guide, call the person responsible for your file at the office of the Curateur public.

Your comments

The Curateur public recognizes and appreciates your commitment to the person you represent. We will be pleased to receive any comments that might make this guide more useful to legal representatives.