

The Tutorship Council Tutorship to the property of a minor



**Le Curateur public
du Québec**

À la rencontre de la personne



In the interests of the child

When they turn 18, the age of majority in Québec, children become fully capable of exercising all of their civil rights, for example, concluding an important contract, disposing of a large sum of money or borrowing money.

Before this age, children usually have to be assisted and represented by their parents, who are also their legal tutors. This does not mean that a child must be assisted in every area: it depends on the child's age, level of maturity, sense of judgment and the nature of the act in question.

In some cases, a tutorship council is formed to support the tutors to a minor child.



What is a tutorship council?

The tutorship council is the body immediately responsible for supporting and assisting a tutor in carrying out her/his responsibilities toward the child and ensuring that she/he adequately fulfills this role.

It is formed in the case where the parent(s) is (are) required to administer a minor child's property valued at more than \$25,000, or when the court appoints a dative tutor in place of the parents, regardless of the value of the property being administered.

The council is made up of individuals who are appointed by the court to ensure that the tutor to a minor child acts in the child's interests, makes sound decisions in her/his regard, and correctly manages her/his assets.

The tutorship council is usually made up of three members who are chosen from among the minor's immediate circle of family and friends. One of the council members is designated to act as secretary or an outside person can be appointed to carry out this role. The court also names two replacements. If the tutorship council is made up of only one person, this person also acts as secretary.

How is the tutorship council formed?

The court appoints the members of the tutorship council on the recommendation of a meeting of relatives, persons connected by marriage or a civil union and friends. The meeting is held in the presence of the Clerk of the court or a certified notary. The purpose of the meeting is to give the minor's family a chance to give its opinion about the choice of the tutorship council members, while encouraging as much as possible the participation of the mother's and father's families.

A tutor may not be appointed as a member of the tutorship council.

The court may also appoint tutorship council members following a meeting of family and friends that is automatically called in cases where the parents appointed a tutor for their minor child prior to their death.

Last, parents of a minor child who are administering property exceeding \$25,000 in value should ask the court to form a tutorship council made up of a single individual who they recommend.

There is no tutorship council when the court appoints the Curateur public, the Director of Youth Protection or an individual recommended by this person to act as tutor. The Curateur public may act as tutorship council if the court so decides.

Is there any remuneration?

Being a member of a tutorship council is a personal commitment. The role is not transferable and it is unremunerated. Only the secretary may receive remuneration. The amount is usually set by the meeting of family and friends and approved by the court.

What are the tutorship council's responsibilities?

The role of the tutorship council is to **help and support the tutor, make decisions and give authorizations or advice**, when necessary; it can even act on **behalf of the minor** in some cases.

With regard to the protection and safeguarding of the child's rights, the tutorship council strives to ensure that the tutor carries out his/her duties correctly.

With regard to the administration of the minor's property, the tutorship council assists the tutor while overseeing his/her administration of the tutorship. It determines the security if the value of the minor's patrimony exceeds \$25,000. The tutorship council **should** ask the advice of a minor aged 14 or older if it is unsure about the merit of an expenditure made by the tutor.

The tutorship council must meet at least once a year and invite the tutor to this meeting, at which they discuss the previous year and make plans for the upcoming year. It is also recommended to invite the minor. The secretary of the tutorship council keeps the minutes of the meetings.

If the tutor is unable to exercise her/his function, dies or does not fulfill her/his obligations, the tutorship council must ask the court for a replacement. In the case of an irregularity, it can also demand that the tutor take corrective measures.

The tutorship council must also:

- ◆ **advise the court** in the cases provided for under the law (including the sale of an item worth over \$25,000, remuneration of the tutor, or emancipation of the minor*);
- ◆ **provide certain authorizations to the tutor**, for example, in the following situations:
 - renouncing a succession in which the child is named as an heir;
 - accepting a donation (gift, donation or inheritance) involving obligations;

* Minors may obtain their emancipation before reaching the age of majority and have the full exercise of their rights. **Simple emancipation** gives young people aged 16 or older the right to exercise their civil rights without being represented. The tutor provides a definitive report of the administration, but continues to provide assistance when needed. **Full emancipation** gives minors the ability to exercise their civil rights as if they were adults. It would result after the child's marriage or a court decision based on serious grounds.

- negotiating (to avoid or settle a legal dispute) or appealing a decision on behalf of the child;
- contracting a large loan (large in relation to the child's patrimony);
- providing a good as a guarantee in order to sell a major family asset, building or company;

The tutorship council gives its advice when an expense must be incurred for the benefit of the child. In some circumstances, it must authorize the expense in accordance with the parents' financial situation and the minor's need.

Security

As part of their obligations, tutors must furnish security if the value of the minor's property **exceeds \$25,000**. This security serves to guarantee the protection of the child's patrimony.

There are generally three acceptable types of security: a mortgage security, an insurance or surety contract, or a hold funds, in particular, the Security Investment.

The tutorship council must:

- ◆ determine the amount and type of the security that the tutor must furnish to guarantee the fulfillment of his/her obligations;
- ◆ determine the deadline by which the tutor must furnish the security;
- ◆ confirm the security's continued existence every year.

Exception

Trust companies acting as tutors to the property are exempt from the obligation to furnish security.



Documents

So that they may properly carry out their role, the tutorship council needs to be provided with a copy of the documents that the tutor is obliged to produce. These are:

- ◆ inventory of the minor's property, at the beginning of the tutor's administration;
- ◆ annual reports of their management*, throughout the period of their administration;
- ◆ final report* at the end of their administration;
- ◆ copy of the security obtained by the tutor (in the case of administration of a patrimony worth \$25,000 or more).

The tutorship council is responsible for preserving all the documents concerning the tutorship so they can be remitted to the minor when she/he reaches majority, or so that a copy can be remitted to the person who is appointed to replace the tutor in her/his duties.

The Curateur public du Québec is here to provide the necessary information and assistance to tutorship councils as they carry out their role.

For more information, visit the "You are a tutorship council" page in the "Tutorship of the property of a minor" section of our website at www.curateur.gouv.qc.ca/tutorship-minor.

*The tutorship council could ask the tutor to see the supporting documents for the annual reports and the final report.

If you have questions or are looking for the address of the office nearest you:

Call us at **514 873-4074** or **1 800 363-9020**
Monday to Friday, 8:30 a.m. to 4:30 p.m.
(Wednesdays open at 10:00 a.m.) or visit our
website at **www.curateur.gouv.qc.ca**.

Write to us

◆ E-mail

Contact us page of our website.

◆ Regular mail

Le Curateur public du Québec
600, boulevard René-Lévesque Ouest
Montréal (Québec) H3B 4W9

The law takes precedence over
the content of this document.

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