GUIDE FOR THE TUTOR AND THE TUTORSHIP COUNCIL
FOR A PERSON OF FULL AGE

HOW TO PROTECT
A PERSON
UNDER TUTORSHIP

SECTION C

Curateur public
Québec
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I.

INTRODUCTION

The situations a tutor may encounter are as diverse as life itself. This section describes most of the situations you'll have to deal with during the period you are protecting the person under tutorship. Still, you may not find answers to all of your questions here. If so, do not hesitate to contact the tutorship council or the Curateur public staff person who is in charge of the file.

1.1. What does protecting a person under tutorship involve?

Protecting a person under tutorship means looking out for their psychological and physical welfare, in other words, safeguarding their rights to life, security, integrity, freedom, dignity, and privacy. This is the responsibility of a tutor to the person. The tutorship council supports tutors and oversees their actions. Because of its close ties to the protected person, it is well placed to ensure that tutors’ decisions support the protected person’s best interests.

1.2. What is the Curateur public’s role in protecting the person?

The Curateur public plays a dual role in the protection of the person under tutorship. First, it informs tutors and assists them with their tasks by supporting them and, when necessary, referring them to the appropriate resources. It also assists the tutorship council in carrying out its responsibilities.

Second, the Curateur public has an oversight role and, when necessary, must intervene rapidly. It reviews the reassessment reports of the person under tutorship and ensures that any reports of abuse are dealt with promptly. It works closely with the tutorship council to provide proper oversight of the tutor’s actions.
2.

ENSURING THE WELFARE OF A PERSON UNDER TUTORSHIP

2.1. How do I ensure a person’s welfare?

If the person you are protecting does not live with you, the best way to know whether their living conditions are satisfactory is to visit them, talk to them, or get regular updates on how they are doing. If the person lives in a residential facility, staff can help you determine their needs.

If the living conditions or state of health of the person under your protection begin to deteriorate, try to find a way to maintain or improve their quality of life as much as possible. This could range from meals on wheels to hospitalization, to home support provided by the CLSC, depending on the situation.

2.2. What things should you check to ensure the person’s welfare?

To ensure that the protected person’s living conditions meet their needs properly and correspond to their financial means, a number of aspects should be considered. Here are some suggestions to guide you.

Do not hesitate to use the "Overview of Protective Supervision" to keep track of needs you have identified for the person under your protection.

- Are the daily needs of the person under your protection being met in a satisfactory manner, and in a way that respects their integrity, dignity, and security? Pay special attention to the medical care he or she is receiving (medical visits, administration of drugs, home support services, etc.). In addition, try to find out whether the person is eating properly and getting adequate personal care (hygiene, clothing). Check that they have enough money to cover their personal expenses. Verify that the person has access to a means of transport that enables them to easily get around and carry out their daily activities.
» Does the living environment of the person under your protection adequately meet their needs? You are not obligated to house the person yourself, but it’s important that their home corresponds to their needs and wishes, and, of course, financial means. If the person’s living environment is unsatisfactory, try to change it. For instance, you can contact the healthcare network with a view to their eventual move into an environment that is better adapted to their condition, or apply to the CLSC for home support services.

It is crucial to respect the choices of the person under your protection, especially regarding their living environment, unless it is counter to their interests. For instance, if the person has always insisted that they want to remain at home as long as possible, you must look for home support rather than urge them to move into a facility, even if the second option is easier for you. The person’s home can be modified (ramp, walk-in shower, high toilet seat, etc.) to make it easier to remain there. Home support workers or the CLSC can help you with these kinds of solutions.

On the other hand, the person’s state of health may be such that they cannot get the care they need at home and must move. In such cases, it is important that you clearly explain the reasons for such a choice.

» Does the person under your protection have access to opportunities for socializing and activities that suit their interests and needs? Look for ways to allow the person to maintain healthy interpersonal relations and participate, to every extent possible, in social activities to avoid isolation. As tutor, you can help them take part in community (local association or church group), educational, work, or recreational activities. You don’t have to make the person do these things; simply provide them with a chance to do so, if they want to.

Mrs. Grant suffers from Alzheimer. Lately she has been forgetting things. Also, she has recently been found wandering the streets of her neighbourhood, unable to find her way home. These signs spurred her family into consulting a doctor and subsequently beginning the process to institute tutorship. At the conclusion of this process, her son John was appointed to act as her tutor.

He believes it would be better for his mother to move into a residential care facility because the staff could help her with personal care and prevent her from wandering away again. He suggests this to her, but Mrs. Grant categorically refuses. Even though he is her tutor, John may not force his mother to move without first confirming that it is in her best interests to do so. Further, Mrs. Grant must give her consent, because, legally speaking, a residential facility is considered to be a form of care.
John discusses the situation with the nurse who visits his mother at home, and with her doctor and social worker. All of them agree that Mrs. Grant’s recent wandering episodes represent a risk to her security, and that it would be in her interests to move into a care facility.

The social worker shares this conclusion with Mrs. Grant and her son. He realizes that she is not afraid of moving, but simply does not want to be hospitalized. To reassure her, he presents her with different housing options other than the hospital, and explains that she will be able to receive the care her condition requires if she lives in a residential care facility. She is persuaded and agrees to move. John will work with the social worker to arrange the move.

For more information on consent to care, see the next section on page 11.
2.3. How do I safeguard the rights of the person under my protection?

As tutor to the person, you are also responsible for safeguarding the rights of the person under your protection. It is your job to represent them in the exercise of their civil rights in connection with the management of their patrimony (for example, signing a lease or entering into a contract). If someone has injured the protected person, you will take the appropriate recourse to remedy the injury. Any fees incurred can be paid using the patrimony of the person under your protection. If a tutor to the property has been appointed, however, you must consult him or her before incurring any large expenses. Feel free to make use of available local resources to assist you with this task. For instance, if the person under your protection lives in a residential facility, you can contact the users' committee.

Protection of personal information is another important issue. As tutor to the person, you will be responsible for giving consent to recordings of the protected person's image and voice. This means you must authorize any public utilization of a photo, video, or audio recording of the protected person, for instance, on TV, in a newspaper, or online video.

You will also be responsible for giving consent for access to the medical records of the person under your protection. In both situations, prudence is called for to ensure the protected person's confidentiality.

Although tutorship means that the person under your protection can no longer exercise certain rights themselves they can still:

» Get married, with your authorization and the advice of the tutorship council;
» Obtain a divorce;
» Prepare their will, on the condition that the court eventually confirms its validity based on the submission of a medical attestation, or sworn affidavit of witnesses who are not in a position of conflict of interests in such a circumstance;
» Manage their earnings (salary or other compensation);
» Accept a small donation or customary gifts;
» Exercise their right to vote in federal, provincial (including referendums), municipal, and school board elections;
» Consent to care if they understand the repercussions of the treatment in question.
You will be required to ensure that the protected person can exercise their rights if they wish and if it is in their interests to do so. For example, if the person wants to vote, it will be your job to help them exercise this right to every extent possible, in particular, by seeing that their name is on the voting list and making any arrangements necessary to enable them to vote. You may also be called on to help them renew their health insurance card by assisting them in filling out the required forms and accompanying them to have their photo taken. At all times, you must have the safeguarding of their independence at heart.

2.4. How do reassessments contribute to a person’s welfare?

Conducted a minimum of every three years, reassessments of incapacity and the need for protection are necessary to ensure that the rights of the person under tutorship are respected. Reassessments enable us to verify whether the current form of protective supervision is still suitable, ensuring that the protected person can exercise their rights to the full extent of their capacity, and fostering their independence.

For more information about medical and psychosocial reassessments of individuals under tutorship, see part 7 of section B, "Principal Stages of Tutorships to a Person of Full Age".
2.5. **What is the tutorship council’s role in ensuring the welfare of the person under tutorship?**

As a member of the tutorship council, you must ensure that the tutor properly performs his or her tasks and makes sound decisions. Because of your close ties with the person under tutorship, you are well placed to see to their well-being. Your familiarity with the person’s preferences, needs, and abilities will help to properly assist the tutor, and guide you in overseeing his or her decisions.

You’ll find a document entitled “Overview of Protective Supervision” in the “Tools and Forms” section. It list the points you should consider when reviewing with the tutor the steps he or she took to ensure the protected person’s welfare.

You must also ensure that the tutor makes the necessary arrangements to have medical and psychosocial reassessments of the person under his or her protection at least every three years, or within the time limit set by the court.

For more information about medical and psychosocial reassessments of individuals under tutorship, see part 7 of section B, “Principal Stages of Tutorships to a Person of Full Age”.

Another issue that you may face: responding to a report if the protected person becomes a victim of abuse or mistreatment. For more about this, see section E, which describes the procedure to be followed in such circumstances.
3. CONSENTING TO CARE, WHEN NECESSARY

3.1. What is "consent to care"?

Whether it concerns a medical examination, surgery, treatments, even housing in a residential care centre, everyone must give their consent before receiving care. This also goes for the person under your protection. The institution of tutorship does not take away their right to accept or refuse care.

The capacity to consent to, or refuse care is verified by a health practitioner whenever a treatment is proposed. For instance, a physician might determine that an individual does not understand what is happening because their mental faculties are damaged, or because they are unconscious, and therefore not in a position to consent to the required treatment. This can happen to anyone, not just someone who is under tutorship.

If the person under your protection is in this situation, as the person's tutor you will be called on to give "substitute consent" for the required treatment, that is, consent on their behalf.

Mr. Lapointe suffered a brain injury as a result of a car accident and is unable to speak. Right after the accident, members of his family believed he was incapable of making any decisions. But they soon realized that he could indicate his choices by pointing at objects such as the clothes he wanted to wear, or the food he wanted to eat. His behaviour also showed that he liked going to a day centre but didn't enjoy going to the pool. His caregivers decided he was capable of making decisions of this nature, but incapable of managing his affairs, so tutorship was instituted to ensure his protection.

Mr. Lapointe needs hospital care, but is very anxious at the prospect of leaving his home. His mother, who is serving as his tutor, believes that this behaviour indicates a refusal of treatment. His father, on the other hand, does not believe he is capable of refusing care that might improve his condition. The physician who proposed the care must assess Mr. Lapointe's capacity to give his consent.
3.2. **How do health practitioners assess a person’s capacity to consent to care?**

Health practitioners must evaluate the capacity of individuals under tutorship to consent to the treatments necessitated by their state of health. To this end, they must determine whether they are capable of understanding:

» The nature of the illness for which a treatment is being proposed;
» The nature and goal of the treatment;
» The risks and benefits of the treatment;
» The risks and benefits of not receiving the treatment.

Health practitioners also determine whether the person’s state of health is affecting their capacity to consent to the proposed treatment. For example, if a person is delirious, they may not be capable of properly understanding what is being proposed.

3.3. **Under what circumstances would I have to consent to care for the person?**

If the health practitioner who is treating the person under your protection determines that the person is incapable of consenting to care (in other words, does not understand the nature and consequences of the proposed treatment), he or she will contact you for authorization to administer the treatment, perform surgery, or place the person in a care facility. In cases where the person is capable of consenting to their care, you will be informed of the situation.

3.4. **How do I decide whether to accept or refuse care?**

Before giving your consent or refusing care for the person under your protection, seek the following information from the health practitioner:

» Why is the treatment necessary to ensure the person’s mental or physical health?
» In what way is it beneficial and appropriate for the person?
» What are the potential risks and benefits?

If you are unsure about this decision, consult with the **tutorship council**, and, depending on the situation, the person’s family or friends. However, only the tutor’s consent is considered valid by health practitioners.
The physician explains different treatment options to Mr. Lapointe. The decision about Mr. Lapointe’s capacity to accept or refuse treatment is the physician’s to make.

In this case, based on the available information, the physician determines that Mr. Lapointe is incapable of understanding the nature, risks, and benefits of the care being proposed. It is therefore up to his mother, as tutor to the person, to decide in her son’s place.

She discusses the situation with the physician and the staff of her son’s day centre. She also talks it over with Mr. Lapointe. Finally, she consults other family members and the tutorship council.

Respecting the wishes of the person under protection

If possible, you must take into account the wishes of the protected person regarding the proposed treatment and consider the opinion they would have expressed when they were still lucid. You may find that the beliefs and wishes the person expressed in the past are contrary to your own. If so, you should respect them, even if they go against your own convictions.
3.5. What do I do if the incapacitated person refuses care?

It is possible that the person under your protection will refuse a proposed treatment. In such circumstances, the case can be taken to court for a decision on whether or not the person will receive the treatment.

3.6. What are the responsibilities of health institutions?

Health institutions must:

- Inform tutors when a patient under protective supervision who is capable of giving consent refuses care. The patient’s decision will be respected and the treatment will not be administered;
- Inform tutors when a protected person who is incapable of giving consent refuses treatment;
- File a court motion to obtain authorization to treat a patient considered incapable of giving consent who categorically refuses a required treatment.

Can the institution provide care without obtaining consent?

Yes, but only in an emergency and if it is impossible to reach the tutor in time. In such circumstances, a health practitioner can proceed without obtaining your authorization. He or she can also provide personal hygiene care without your consent, even if the person receiving the care is incapable of accepting or refusing it.
HELPING A PROTECTED PERSON MAKE USE OF THEIR CAPACITIES OR DEVELOP THEM FURTHER

4.1. How do I help a protected person make use of their capacities or develop them further?

Eric, who suffers from a mild intellectual disability, attends a day centre. Recently, the centre added a new activity to its program: an arts and crafts workshop. In a discussion with his tutor, Paul, Eric says he wants to join the workshop. Paul encourages him to do it because the activity is in his interests and he has the financial means to pay for it. The next day, Paul contacts the day centre to confirm that Eric can join the workshop.

Whenever possible, help the person under protection develop their autonomy and capacities or, at least, see that they preserve them as long as possible. As in the case described above, this can be done fairly easily, by means of the person’s regular activities. All cases are different and ways of doing things vary from one person to the next, depending on the cause of incapacity. To support the person under your protection in this area, focus on three aspects in particular.

» Where possible, encourage the person to make decisions and act on their own.

As much as you can, let the person decide and act on their own, as long as this poses no risk to their integrity, security, and dignity. Feel free to inform the person about the different aspects of tutorship. Because they are under tutorship, they have lost the ability to exercise certain rights, so you must make sure they still have the capacity and the right to make their own decisions.

It is also essential that the choices of the person under your protection be respected, unless they run counter to the person’s interests or needs. As tutor, do your best to support the person in their decisions and exercise vigilance with regard to their choices.
If the person cannot decide or take action on their own, help them.

If the person under your protection is unable to make decisions or act on their own, you are strongly encouraged to help them. Provide them with the relevant information, adapting it to their capacity to understand. Don’t hesitate to describe the potential consequences of different options and the impact of a decision on them or their loved ones. Confronted with several choices, give the person the same type of information for each choice, without pressuring them. Once the decision has been made, you can help the person implement it.

If possible, help the person further develop their capacities.

Taking into account the physical and mental condition of the person under your protection, it may be desirable and beneficial to provide them with access to the appropriate services to help them develop their independence and capacities. This can be accomplished quite simply by encouraging them to participate in social or recreational activities.
If the person suffers from a degenerative illness, your goal would then be to help them optimize their capacities to maintain maximum independence for as long as possible.

Centres that deliver rehabilitation services for intellectual disability and pervasive developmental disorders (CRDITED), rehabilitation centres, and diverse community-based groups can be useful resources to improve the protected person’s living conditions.

4.2. When do I have to make a decision on behalf of the protected person?

When the person under your protection cannot decide on their own, try to involve them as much as possible in the decision-making and implementation process.

If it is impossible for them to participate, you will have to make the decision in their name. As much as possible, the decision should reflect the decision that the person would have made, and be in their best interests.

4.3. What points should be considered when making a decision on behalf of the protected person?

Your decision should take into account several aspects that will protect the interests of the person under your protection, the respect of their rights, and the safeguarding of their independence. A few suggestions to guide you:

» The interests of the person under your protection

Your decision will benefit the person under tutorship or will have the least possible negative consequences for him or her.

Keep in mind what would best serve the person, and not what would be simplest or more advantageous for you, the tutorship council, or those close to the person.

» Needs of the protected person

Personal needs may be psychological, intellectual, emotional, physical, or material in nature, and should be taken into account in the decision.
» **The opinion of the person under tutorship**

Ask yourself what the protected person would think about the decision you have to make. Their desires, wishes, and values (religious or other) should be taken into account. Also consider any opinions they have expressed in the past.

The most important thing is that the decision reflects, as much as possible, what the person would have decided for themselves, based on what you know of their personality and habits.

» **Respect for the rights of the person under tutorship**

Opt for the least restrictive solution with regard to the rights of the person under your protection and their freedom to act. The decision should be made with respect for their dignity, integrity, and security.

» **Respect for the independence of the person under your protection**

Try to determine what would enable the person to participate in the decision-making process, when possible. Encourage the person to make use of their current capacities, and avoid doing anything that will prevent them from developing new ones.

In cases where the person may recover their capacity to decide and the decision is not urgent, it may be wiser to wait until later to settle the issue.

» **Opinion of the tutorship council**

As is generally the case in administering a tutorship, it is prudent to consult the tutorship council to get their opinion about questions concerning the person’s protection and representation.

» **The opinion of the person’s loved ones and practitioners**

Consult the family and loved ones of the person under your protection to learn their opinions. Also, take into account the expertise of health practitioners and the opinions of those who regularly work with the protected person.
4.4. What is the tutorship council’s role in helping the protected person use or further develop their capacities?

As a member of the tutorship council, you must ensure that the tutor properly performs his or her tasks and makes sound decisions. As someone who is close to the person under tutorship, you are well placed to ensure his or her welfare. Don’t hesitate to talk with the tutor when he or she must make decisions on behalf of the protected person. You will also be called on to assist and support the tutor in his or her efforts to ensure that the protected person uses or further develops their capacities.

You’ll find a document entitled "Overview of Protective Supervision" in the "Tools and Forms" section. It can be your reference for overseeing the protection of the person under tutorship. We strongly encourage you to ask the tutor to complete this form.