

In the interest of and respect for the person

An incapable person is a citizen like any other. All those who work with incapable persons or on their behalf must act in their interests, respecting their rights, autonomy and privacy.

Incapable persons of full age must be consulted to the extent possible about decisions concerning them; at the very least, they must be informed of such decisions. They can give their consent to proposed treatments. For this to happen, their capacity to consent must be verified, even when a decision to institute protective supervision has been rendered.



The person: the Curateur public's raison d'être

By virtue of its mission, the Curateur public performs a social role that cannot be delegated to others because it intervenes as a last resort. It exercises its responsibilities, however, in partnership with others, in particular, the health and social services network, and, like any citizen, may periodically call on outside expertise for assistance or advice. It must also maintain contact with the family and friends of represented persons, to the extent possible, as well as with practitioners in the public and community-based networks and financial institutions.

It establishes a direct relationship with the people it represents. After obtaining a copy of the Superior Court judgment, in an effort to gain a thorough understanding of the person and their needs, the Curateur public traces a portrait of the person as well as their environment and property. It uses this information to formulate an action plan enabling it to act in the person's best interests.

What is incapacity?

A person is incapable when they are unable to care for themselves or manage their affairs.

Incapacity may be declared due to a mental or degenerative illness, stroke, intellectual disability, head injury or weakened state as a result of old age that alters the mental faculties or physical ability to express one's wishes.

What is meant by need for protection?

Under the law, the need for protection exists when an incapacitated person must be assisted or represented in the exercise of their civil rights. This need may arise from the person's isolation, the duration of their incapacity, the nature or state of the person's affairs, etc.

What justifies the institution of protective supervision?

People are considered to be in need of private or public protective supervision when three fundamental conditions are met:

- ◆ they have no protection mandate in which they have appointed another person to care for them;
- ◆ the court has declared them incapable based on medical and psychosocial assessments;
- ◆ they are in need of protection.



Who is the Public Curator?

The Public Curator is an individual appointed by the Québec government to protect the rights of incapacitated citizens who are isolated and have no family, or whose family and friends either cannot or will not assume this responsibility.

This person heads an agency called the Curateur public du Québec that is governed by two constitutive laws: *The Civil Code of Québec* and *the Public Curator Act*.

Who are the Curateur public's services for?

The Curateur public du Québec's public representation services are for incapacitated persons who need protection but who for some reason are alone, or have no family or friends to look after them, administer their property, ensure their well-being and safeguard their rights.

What is the Curateur public's role?

The Curateur public's role is a **replacement** role. Since no one can replace a family, the Civil Code of Québec stipulates that family and friends are primarily responsible for caring for an incapable person in need of protection.

When the Curateur public must act in its replacement role, it acts as the legal representative of incapable persons. To this end, it assumes the responsibility for protecting them and ensuring that all decisions concerning them or their property are made in their interest, respect their rights and safeguard their autonomy.

Who appoints the Curateur public as legal representative?

The court appoints the Curateur public to act as the legal representative of an incapable person.

This generally occurs when such persons have no one to care for them. Under special circumstances, the court may appoint the Curateur public instead of the family or friends because it considers that the person's interests will be better served by the Curateur public.



The responsibilities of the Curateur public

As a legal representative, the Curateur public has certain obligations. Its evaluation of the represented person's needs and ensuing action plan enable it to efficiently carry out the following responsibilities.

As tutor or curator to the person, the Curateur public must:

- ◆ Monitor the quality and accessibility of care and services received from the health and social services network (by visiting represented persons in their living environment, contacting family and friends, etc.);
- ◆ Act on behalf of the person with regard to the definition, promotion and respect of their rights;
- ◆ Ensure the person is represented in any legal actions;
- ◆ Ensure that the person is represented in decision-making bodies (users' committee, steering committees, etc.);
- ◆ Collaborate with health professionals and other practitioners concerned in implementing intervention plans;
- ◆ Consent to care (surgery, dental care under anesthetic, etc.);
- ◆ Authorize access to the represented person's medical and social file;
- ◆ Approve accommodations;
- ◆ Authorize the recording or utilization of images or voice.

As tutor or curator to the property, the Curateur public must:

- ◆ Draw up an inventory of property;
- ◆ Establish and administer a monthly budget to meet the needs of the represented person (collect income, pay bills, etc.);
- ◆ Store property or entrust it to another for safekeeping;
- ◆ Negotiate and deal with third parties;
- ◆ Proceed with the purchase or sale of movable and immovable property;
- ◆ Check the administration of a third party;
- ◆ Make applications for benefits and allowances;
- ◆ Avoid conflicts of interest;
- ◆ Make investments that are presumed to be sound;
- ◆ Conserve souvenirs and personal effects;
- ◆ Request the necessary authorizations to execute certain acts;
- ◆ Render an account of its management.

The Curateur public as legal representative: tutor, curator or provisional administrator?

Depending on the circumstances, the Curateur public may act as a legal representative of the person, or only with respect to the person's property (when a member of the person's family or friend has been appointed as the person's legal representative) or with respect to both the person and property.

Tutor

When the person is **partially or temporarily incapable**, a tutor is appointed. This is known as tutorship. In this case, represented persons can execute some acts on their own, or with their tutor's assistance. Tutors must represent them to carry out other actions.

Curator

When the person is **totally or permanently incapable**, a curator is appointed for them. This is known as curatorship. These individuals are represented by their curator for all civil acts, with no exceptions.

Provisional administrator

When a motion to institute protective supervision is imminent and to prevent harm from coming to the person in question, the court may appoint the Curateur public as provisional administrator of the person's property or to care for their person.

KEEP IN MIND

The decision to institute protective supervision is based on a person's **need for protection**. Some incapable persons do not benefit from protective supervision because they enjoy the support of a spouse or family member, or their property is being efficiently managed, or both are true.

Pursuant to the Health Insurance Act and the Act *respecting access to documents held by public bodies and the protection of personal information*, the Curateur public and the Régie de l'assurance maladie du Québec have signed an agreement enabling them to exchange confidential information about their respective clientele. This data sharing makes it possible to update the register of homologated mandates. The Curateur public guarantees that any personal information it gathers will remain confidential.

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

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The law takes precedence over
the content of this document.

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