

The Tutor and Curator to a Person of Full Age

**Curateur public
du Québec**

À la rencontre de la personne



In the interest
of and respect
for the person



Persons who are incapable are nevertheless citizens. Anyone taking steps that affect them or on their behalf must act in their interest and respect their rights, autonomy and privacy.

To the extent possible, incapable persons must be consulted when decisions affecting them are to be made. At the very least, they must be informed of these decisions. They must consent to the care proposed for them and for this purpose, when they are capable of doing so.

THE TUTOR AND CURATOR TO A PERSON OF FULL AGE

A form of protective supervision must be instituted for a person of full age whenever three basic conditions are present:

- ◆ the person does not have a protection mandate and cannot benefit from measures for his/her protection;
- ◆ the court declares him/her incapable based on medical and psychosocial assessments, and;
- ◆ he/she needs protection.

Is protective supervision necessary?

The institution of protective supervision makes it possible, in particular, to ensure the legal representation of incapable persons, the administration of their assets and the exercise of their civil rights. However, there are situations where an incapable person does not need representation, because a family member or a loved one is supporting them or their affairs are being properly managed.

When protective supervision is necessary, it is preferable for a family member or friend to look after the incapable person rather than entrusting his/her care to the government. A tutor or curator is therefore appointed as the person's legal representative.

The decisions made by the legal representative of the protected person must always be made in the person's best interest, respect his/her rights and safeguard his/her autonomy.

Forms of protection

Tutorship

The tutor to a person of full age is appointed by the court based on a recommendation resulting from a meeting of relatives, persons related by marriage or friends. **The tutor is the legal representative of a partially or temporarily incapable person and is responsible for taking care of the person or administering his/her assets.**

The extent of the tutor's responsibilities is defined by the court decision appointing him/her and the Civil Code of Québec. Thus, incapable individuals can perform certain acts alone or with the assistance of their tutors, and in other situations, their tutors must represent them.

Curatorship

The curator to a person of full age is appointed by the court on the recommendation resulting from a meeting of relatives, persons related by marriage or friends. **The curator is the legal representative of a totally and permanently incapable person and is responsible for taking care of him/her or administering his/her assets.**

The curator represents the incapable person in all civil acts.

The tutor or the curator can be appointed to the person, to property, or to both at once. These responsibilities can also be shared by two people. The tutor or the curator to the property can even be a trust company or a financial institution authorized to act as such.

The tutor and curator are assisted and supervised in their task by a tutorship council.

The tutorship council

The tutorship council is normally constituted by three members appointed at the meeting of relatives, persons related by marriage or friends and by the court based on the recommendation of the meeting. A secretary and two alternate members are also appointed by the court.

In some cases, the court can appoint one member to form the tutorship council, who will also act as secretary.

The meeting of relatives, persons related by marriage and friends is arranged by a notary or the court, usually upon institution of protective supervision for the incapable person. The members of the tutorship council assist the curator or the tutor, give him/her certain authorizations and supervise his/her administration. The tutorship council must meet at least once per year and invite the tutor or curator. If it finds that the tutor or the curator can no longer carry out the role or is not meeting his/her responsibilities, the tutorship council can request the court to replace him/her.

The tutor and curator can be remunerated if the court so decides. The fees charged are reimbursable from the patrimony of the represented person. The secretary can also be remunerated, if the meeting of relatives so decides.

What are the responsibilities of the tutor or curator?

The responsibilities of the legal representative of an incapable person concern the person or the person's assets.

Regarding the person:

The tutor and curator must:

- ◆ look after the living conditions and care of the represented person;
- ◆ ensure the person's moral and material well-being, taking into account his/her condition, needs, faculties and other relevant circumstances;
- ◆ ensure respect for the rights of the represented person. Only the tutor and curator to the person can authorize or refuse medical treatment or surgical procedures on behalf of this person, if he/she is considered incapable of giving or refusing consent. The tutor and curator to the person must ensure that the care proposed will benefit the person represented, is appropriate in the particular circumstances and the known risks are proportionate to the desired result;
- ◆ represent the person of full age in the exercise of his/her civil rights and in any legal action. The tutor and curator to the person can engage the services of an attorney or a notary for this purpose, if necessary, at the expense of the represented person;
- ◆ to the extent possible, maintain a personal relationship with the represented person, learn his/her opinion and keep him/her informed of the decisions made for him/her because he/she retains the right to refuse a treatment despite his/her incapacity. The tutor and curator can however delegate the lodging and care of the represented person;
- ◆ arrange periodic medical and psychosocial reassessments of the represented person.

Regarding the assets of the person:

The curator and tutor to property must administer the assets of the incapable person with prudence and responsibility.

They must also:

- ◆ make an inventory of assets of the represented person within 60 days of the institution of the tutorship or curatorship. This inventory can also be done before a notary or privately, in the presence of two witnesses. It describes all property belonging to the represented person at the time the tutorship or curatorship was instituted. A copy of this inventory must be submitted to the tutorship council and to the Curateur public within two months of their appointment;
- ◆ furnish a security to guarantee their administration if the assets they must administer are worth more than \$25,000. The tutorship council and the Curateur public must each receive a copy of this document;
- ◆ in some cases, obtain authorization from the tutorship council or the court before selling, mortgaging or giving away property of the represented person;
- ◆ refrain from renting, buying or using property or the proceeds from property belonging to the represented person for their own benefit;
- ◆ submit annual administration reports to the tutor or curator to the person, the tutorship council and the Curateur public, which will send them a form specifically for this purpose. If the value of the property exceeds \$100,000 or if there are serious grounds to believe the represented person could suffer damage as a result of the legal representative's administration, the Curateur public may require that the books and accounts be audited.

When the legal representative's duties end (because the protective supervision has been terminated by the court, the legal representative withdraws from the role, or the represented person dies), the tutor or curator to property must submit a final account of their administration to the person or his/her heirs, or to their replacement. They must transfer the property under their responsibility and submit a copy of the final account to the tutorship council and the Curateur public.

Full and simple administration of property

The tutor to property has simple administration of the property of the person he/she represents. This means that he/she is obligated to do what is necessary to preserve and maintain these assets and their worth, including the person's home and furnishings. He/she cannot dispose of them without first obtaining the authorization prescribed by law. He/she cannot dispose of souvenirs or other personal effects of the represented person unless there is a compelling reason to do so.

The curator to property has full administration of the property. This means that he/she must not only preserve the property of the represented person but see that it yields a profit and increases in value. To fulfill his/her duties, he/she may borrow money, mortgage property or change its use or composition, unless there is a conflict of interests.

Just like the curator, the tutor can invest the assets of the represented person, on condition that these are investments presumed sound (real estate property, bonds, etc.) in the meaning of the Civil Code of Québec.

And the Curateur public du Québec?

The role of the Curateur public du Québec is to inform the private tutor and curator about how they can fulfill their obligations and assist them, if necessary, in the process of their appointment as legal representatives. It is also responsible for supervising their administration, in partnership with the tutorship council, to ensure that it is done in the incapable person's best interest.

For this purpose, the Curateur public bases its oversight on the following, among others:

- ◆ the judgment instituting the tutorship or curatorship sent to the Curateur public by the clerk of the court;
- ◆ the inventory of assets provided by the tutor or curator to the property at the beginning of his/her administration;
- ◆ the annual administration reports provided by the tutor or curator to property during his/her administration;
- ◆ any other document that may assist in the supervision.

In addition to the tutorship council, legal representatives can count on the Curateur public for assistance. The latter provides them with information and assists them in carrying out their responsibilities. This collaborative effort is preventive in nature, because the Curateur public, like the tutorship council, is legally obligated to monitor legal representatives' actions and administration and intervene in cases of abuse, which it may even investigate. In establishing ties with legal representatives and tutorship councils, the Curateur public is striving to protect the interests of incapable individuals, a principle that is central to all legal protection measures.



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 12 p.m., and 1 p.m. to 4:30 p.m. (Wednesdays, open at 10 a.m.) or visit our website at **curateur.gouv.qc.ca**.

Write to us

◆ E-mail

Contact us page of our website.

◆ Regular mail

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

The law takes precedence over
the content of this document.

