

The Tutor to a Minor

Le Curateur public du Québec

À la rencontre de la personne



**In the interest of
and respect for
the person**



A minor is usually considered incapable in the meaning of the law and only gradually acquires legal autonomy. Except in exceptional cases, when they reach age 18, they are recognized as having full capacity to decide and to act on their own.

Minors must therefore be represented by a tutor in the exercise of their civil rights. There are exceptions, however. For example, minors can act alone to satisfy ordinary needs (buy clothes, apply for legal aid, etc.) or when they enjoy “emancipation” resulting from their marriage or a court decision.

Tutorship to a minor is thus a legal form of protective supervision and representation of an unemancipated minor. It is added to the parental authority (of the father and mother) and is automatically assumed by them. They are legal tutors.

In cases where the legal tutors cannot perform this office, the minor person will be represented by a dative tutor appointed by the court.

Tutor to a minor

As a rule, minor children (who are under 18) cannot exercise their rights themselves. They must be cared for and represented by an adult, except in certain circumstances.

How is a tutor to a minor child appointed?

In Québec, the parents of a minor child are automatically his **legal tutors**. If one of the two parents dies or is declared incapable of satisfying his or her parental obligations, the other one takes over.

If both parents die or become incapable, a relative of the child will be chosen to act as dative **tutor**. This tutor is appointed:

- ◆ in the will of the last parent to die, **or**
- ◆ in the protection mandate of the last parent to become incapable, **or**
- ◆ in a written statement to the Curateur public by both parents or the last parent to die, **or**
- ◆ by court order, based on the recommendation of a tutorship council.

The Société de l'assurance automobile du Québec (SAAQ) and the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) can also appoint an administrator who will have the rights and obligations of a tutor to property, if the child receives compensation payments from one of these organizations.

What is the role of the tutor?

Tutors must always act in the child's best interest. They must ensure the child's protection, defend his rights and administer his property with prudence and responsibility until the child reaches full age (18). This responsibility is normally not remunerated, unless the court decides otherwise.

To ensure protection of the child, tutors must consent to or refuse care proposed for him. Starting at the age of 14, however, it is the minor's wishes that take precedence in most cases, and he is entitled to confidentiality in this respect.

Defending the rights of the child means specifically that his tutor exercises any recourse necessary before the court, for example, to defend the child if he is attacked or accused, or to collect money owing to him.

And to manage the assets of a minor...

It is the duty of the parents (father and mother) to provide for the essential needs of their child, also known as the obligation of support. The child's private own assets may not be used to relieve them of this obligation.

Tutors are responsible for the **simple administration** of the child's assets, which means they must maintain their value until the child reaches full age (18). They may not use the assets for their own benefit or merge their property with the child's: the two administrations must remain separate. The tutor is liable for any damages resulting from mismanagement.

In order to preserve the child's assets, the law imposes certain acts on the tutor that will make control of his administration easier. Thus, all dative tutors, and legal tutors who administer assets worth \$25,000 or more, are required to:

- ◆ make an inventory of the minor's assets and give a copy of it to the tutorship council and the Curateur public;
- ◆ furnish a security to guarantee their administration, if the assets are worth more than \$25,000;
- ◆ produce an annual report on their administration and give a copy of it to the tutorship council and the Curateur public, as well as to the child if he is 14 or older;
- ◆ produce a final account at the end of their administration (at the tutors' death or when the child reaches full age or if they are replaced), and give a copy of it to the tutorship council or the Curateur public, and where appropriate, the liquidator of the succession, to the child who has reached full age or a new tutor.

The tutor is assisted by a tutorship council, which is also responsible for overseeing the tutor's actions.

And the Curateur public du Québec?

The Curateur public assists and informs parents and families on demand in their choice of tutor or in the formation of the tutorship council. It informs them of their obligations and helps them deal with them. Using the documents submitted by the tutor (inventory, security, annual administration reports), the Curateur public supervises the tutor's administration in collaboration with the tutorship council to ensure that the worth of the child's assets is preserved. Legal tutors (the parents) will be subject to this supervision if the worth of the assets they must administer on behalf of the minor exceeds \$25,000.

The law allows for the Curateur public to intervene in all stages of the tutor appointment process or the formation of a tutorship council. Likewise, the Curateur public has the right to investigate and intervene if it has knowledge of irregularities in the tutor's administration.

Although the Curateur public would prefer that an agreement be reached, its right to intervene can result in requesting the court to replace the tutor and even to have the tutor sued for losses incurred by the child.

When the minor is in a situation that could threaten his safety or development, the Curateur public can inform the Direction de la protection de la jeunesse, who is responsible for protecting the child, since the Curateur public acts only to protect the child's property.

The tutorship council*

The tutorship council consists of three members chosen from friends or family members of the child by the court. A secretary and two alternate members are also appointed by the court. However, the tutorship council can consist of one member recommended to the court by the parents. This person will also act as secretary. The tutorship council assists the tutor, gives opinions and authorizations and supervises his administration. The council is mandatory for dative tutors and legal tutors when the minor's property is worth more than \$25,000 or by court decision. If the tutorship council finds that the tutor is incapable or is not meeting his responsibilities, it has to request that the court replace him.

* A brochure on the tutorship council is available on the Curateur public website.

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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