INTRODUCTION TO THE CURATORSHIP TO A PERSON OF FULL AGE
# TABLE OF CONTENTS

## FOREWORD

### 1. INTRODUCTION

1.1. How to use this guide? .......................................................... 5
1.2. Who needs protective supervision? ........................................ 6
1.3. What is a curatorship on behalf of an incapacitated person of full age? .................................................. 7
1.4. What is a curator to a person of full age? ............................... 8
1.5. What is a tutorship council? ................................................... 9
1.6. What is the Curateur public du Québec? .................................. 9

### 2. ROLES AND RESPONSIBILITIES

2.1. Role and responsibilities of curators to the person .................. 10
2.2. Role and responsibilities of curators to the property ................ 11
2.3. Role and responsibilities of the tutorship council .................... 12
2.4. Role and responsibilities of the secretary of the tutorship council . 14
2.5. Role and responsibilities of the Curateur public ....................... 14

### 3. MEETINGS OF THE TUTORSHIP COUNCIL

3.1. Why meet? ............................................................................ 16
3.2. Who takes part in the meetings? ............................................. 16
3.3. How to run a meeting? ......................................................... 16
3.4. What about the minutes? ..................................................... 17
3.5. How is the Curateur public kept informed? .............................. 17

### 4. PRINCIPLES OF THE CURATORSHIP TO A PERSON OF FULL AGE

4.1. Guiding principles ................................................................. 18
4.2. Acting in the interests of the person under protection and safeguarding their autonomy ......................... 19
4.3. Protecting the patrimony of a person under curatorship and using it for their welfare .......................... 19
Foreword

You have agreed to become the curator for an incapacitated relative or friend; perhaps, you are a member of a tutorship council. It is an admirable gesture that does you great credit. Your closeness to and familiarity with the person under curatorship means you are the person who is best placed to ensure their welfare and properly administer their property.

You will play an important role to ensure the rights and safeguard the autonomy of the person under your protection. The function of the curator or member of a tutorship council does, however, involve a number of responsibilities. The Curateur public du Québec will support you in various ways to help you carry out your role and provide you with all the information and support you will need.

This guide will help you perform your new duties as a curator or secretary or member of a tutorship council once curatorship has been instituted. Questions? Feel free to contact the Curateur public staff person who is in charge of the file of the person under your protection. He or she will be happy to assist you.

Have a good read!
In this section we will present the basic roles and responsibilities of the main stakeholders involved in protecting a person under curatorship. You will also learn about the overarching principles that should be kept in mind throughout the curatorship.

You’ll find general information, information addressed specifically to curators and tutorship councils, and references to tools and forms you can use for specific tasks, for instance, when producing the inventory or annual report.

I.
INTRODUCTION

I.I. How to use this guide?

This guide was written to provide you with the information you will need once curatorship has been instituted. Presented in a question-and-answer format, it provides accurate information to guide you until the end of the curatorship. We have also created several tools to facilitate your job as curator or member of the tutorship council. You’ll find them in the "Tools and Forms" section and in digital format on the website of the Curateur public du Québec (www.curateur.gouv.qc.ca/guide-curateur).

The guide is divided into five sections. Each of them presents information that has been adapted to the different situations you may encounter during the curatorship.

» Section A contains basic information about the main aspects of curatorship.

» Section B is a detailed presentation of the principal stages of curatorship and the actions that should be taken quickly, as soon as curatorship is instituted. We suggest that you read this section as soon as possible to avoid delays in the administration process.

» Section C discusses what is involved in protecting a person under curatorship. Among other things, it presents the different obligations of curators, consent to treatment, and the use and development of the protected person’s capacities.

» Section D concerns the management of the protected person’s patrimony. In it, you will find everything you should know about this subject.

» Section E explains the procedures to be followed in the event of breaches, financial abuse of the protected person, a report of an irregularity or suspected abuse, or a replacement.
» Last, "Tools and Forms" contains the materials you will need throughout the curatorship. Among other things, you'll find a glossary of the words appearing in red type in the text.

I.2. Who needs protective supervision?

Protective supervision is instituted for adults who need protection because their incapacitated state has made them vulnerable.

Individuals are said to be incapable when they are unable to care for themselves or manage their property. People are judged to be incapable as a result of a mental disorder or degenerative illness, stroke, intellectual disability, brain injury, age-related weakening that alters the mental faculties, or the lack of physical capacity to express their wishes.

Under the law, a need for protection is recognized when an incapacitated person must be assisted or represented in the exercise of their civil rights. This need may arise due to the person’s socially isolated state, the duration of their incapacity, or the nature or state of their affairs.

When both conditions are present, in other words, when a person is both incapable and needs protection, the court may institute tutorship or curatorship.

*Mr. Hébert is 87 and lives alone in his home. He had a career in finance and has always monitored his affairs closely. He owns a few rental properties and several stock investments. For the past few months he has suffered short-term memory problems and frequently forgotten to pay his bills. Sometimes he even neglects to tend to his personal hygiene.*

*Recently, he fell down at home and broke his hip. During Mr. Hébert’s stay in the hospital his attending physician told his children that he suspected their father was having difficulty managing his affairs and caring for himself. After talking things over with his children, Mr. Hébert agreed to have a doctor and social worker assess his capacity and need for protection.*

People who are incapacitated do not all require protective supervision. A number of other measures can be adopted to manage the property of an incapacitated adult and help to ensure their protection. These include representation by the person’s spouse, and the homologation of a protection mandate that the person has prepared in advance.
After an evaluation, Mr. Hébert’s attending physician concluded that he was suffering from dementia in the form of advanced Alzheimer disease. He considered that it was a permanent incapacitation. The social worker who assessed his need for protection also deemed it necessary to institute curatorship because Mr. Hébert was living alone and could no longer protect himself or his property. Together with their father, Mr. Hébert’s children started making arrangements to institute curatorship.

1.3. What is a curatorship on behalf of an incapacitated person of full age?

It’s a form of protective supervision that is instituted to protect an adult who is totally and permanently incapacitated. Someone with a serious intellectual disability who is unable to ensure their personal protection or that of their property could be said to be totally and permanently incapacitated. Similarly, someone with a degenerative illness such as Alzheimer could be assessed as incapable, in the advanced stages of their illness. The court can appoint a curator to assume responsibility for ensuring the protection of these individuals and their property and upholding their rights.

To this end, curators of incapacitated individuals must always act with care, prudence, honesty, and loyalty. This guide provides the information curators and tutorship councils will need to properly fulfill their roles.
I.4. What is a curator to a person of full age?

A curator to a person of full age is an adult who has been legally appointed to protect and represent someone who has been declared incapable based on a medical and psychosocial evaluation. Any adult who is close to a person of full age who has been declared incapable and in need of protection, or any person who has their best interests at heart, can be appointed to act as curator. In considering who to appoint as curator, the court will take into account the medical and psychosocial evaluations and the minutes of the meeting of relatives, persons connected by marriage or civil union, and friends of the incapacitated individual. In some cases, the court may appoint more than one person to protect an incapacitated adult. One or several curators to the property may be appointed to focus exclusively on protecting the person’s patrimony, in addition to a curator to the person who will ensure their physical and mental well-being. In most situations, a single curator is vested with the responsibility of protecting both the person and their property.

When curatorship is instituted, curators must, among other things:

» Act in the interests of the person under protective supervision, uphold their rights, and safeguard their autonomy;
» Set up a tutorship council, if this has not already been done;
» Produce an inventory of the property to be administered within 60 days of the institution of curatorship;
» Arrange for security, if the property under administration is worth more than $25,000;
» Satisfactorily administer the property of the person under their protection;
» Produce an annual report of their administration;
» Complete a final report of their administration;
» Obtain opinions and legal authorizations from the tutorship council or the court;
» Arrange reassessments of the capacity and need for protection of the person under curatorship in accordance with the prescribed time limits.

For more on the obligations of curators, see section B on the principal stages of curatorships.
1.5. What is a tutorship council?

The tutorship council assists the curator, provides opinions and authorizations, and oversees the curator’s administration. It is usually composed of three individuals from the protected adult’s immediate circle who have been chosen by the meeting of family and friends and, subsequently, appointed by the court. A secretary (who may or not be a member of the tutorship council) and two alternates are also appointed. Tutorship councils may be composed of just one person, however, if the situation calls for it. This individual also serves as secretary. The creation of a tutorship council is mandatory.

For information on how to set up a tutorship council, go to page 8 of Section B, "Principal Stages of Curatorships to a Person of Full Age". For more information about its role and responsibilities, go to page 12 of this section.

1.6. What is the Curateur public du Québec?

The Curateur public is responsible for protecting people who are incapacitated. Its activities include:

» Sensitizing the public to the protection needs of incapacitated individuals;
» Informing and assisting family and friends who are protecting an incapacitated person of full age, administering their patrimony, or participating in a tutorship council;
» Informing and assisting families and friends who are administering a minor’s patrimony;
» Ensuring that decisions are made in the interests of individuals under protective supervision, with a view to upholding their rights and safeguarding their autonomy;
» In certain cases, directly assuming the role of curator, tutor, or tutorship council.

With regard to curatorships to persons of full age, the Curateur public informs curators and tutorship council members of their obligations and supports them in fulfilling their responsibilities, especially during the first year of the curatorship. After that, it provides assistance as needed. It partners with tutorship councils in overseeing curators’ performance of their administration duties.
2. ROLES AND RESPONSIBILITIES

In this section, you will find detailed explanations of the roles and responsibilities of the curator, tutorship council, secretary of the tutorship council, and Curateur public.

There are two kinds of curators: the curator to the property and the curator to the person. In most cases, a single person fulfills both functions, but it is possible to appoint more than one curator to protect a person of full age and administer their property. Because their responsibilities are different, they will be described separately.

If you are curator to both the property and the person, please familiarize with the two types of responsibilities.

2.I. Role and responsibilities of curators to the person

Curators to the person monitor the welfare of the adult they are protecting. This means they must ensure that the person’s living conditions (housing, food, clothing, care, security, recreational activities) are satisfactory considering their state of health, income, and needs. They must also ensure that the person’s interpersonal relationships are healthy and that, as much as possible, they go out into the community to prevent isolation.

All decisions made in the name of the protected person must comply with their rights. These include the right to life, security, integrity, freedom, dignity, and privacy. Decisions concerning them should restrict as little as possible their rights and freedom of action, and, where possible, foster their autonomy.

Even though the institution of curatorship deprives the protected person of the ability to exercise certain rights themselves, they are still entitled to vote in federal elections. However, they lose this right for provincial, municipal, and school board elections (including provincial referendums). They also maintain the right to consent to care if they understand the repercussions of the treatment in question. Curators to the person must therefore ensure that the adult under their protection can exercise their rights where legally possible, if that is their wish and it is in their interests to do so.
Curators to the person must also:

» Ensure the welfare of the person under their protection, As much as possible, maintain a personal relationship with the person, get their opinions, and inform them of all decisions made on their behalf. Represent the person in exercising their civil rights and in legal matters involving them;

» Consent to treatments of the protected person if they are incapable of deciding for themselves and understanding the consequences;

» If possible, they are required to help the person exercise their capacities and even develop them;

» Arrange for medical and psychosocial reassessments of the person under curatorship at least every five years.

Last, if another person is appointed to act as a curator or a representative to the property, curators to the person will receive a copy of the annual report that is sent every year to the tutorship council and the Curateur public. Based on this report, they can evaluate how well the curator to the property is carrying out his or her responsibilities. If curators to the person have concerns about how the curator to the property is administering the patrimony, they can discuss it with him or her, or with the tutorship council. In the case of poor administration, they can ask the tutorship council to replace the curator to the property, or apply directly to the court.

If you are acting as curator to the person, don’t hesitate to contact the tutorship council or the Curateur public staff person in charge of the protected person’s file. Both these resources are there to assist and support you in your important role of protecting an incapacitated person.

All of these responsibilities are described in more detail in section C, on the protection of a person under curatorship.

2.2. Role and responsibilities of curators to the property

A few basic principles apply to all those who act as curators to the property. Among other things, curators to the property are under the obligation to preserve the patrimony of the person under their protection and make it grow. Curators are entitled to borrow, sell, or mortgage the property of the person under protective supervision except if they would be placing themselves in a situation of conflict of interest if they were to do so. Further, they can take money from the patrimony and invest it, on the condition that the investment is presumed sound. This is what the Civil Code of Québec terms powers of full administration.
In short, the powers of full administration enable curators to exercise the same rights and powers over the property they are managing as they would with their own property, as long as they are acting in the interests and for the sole benefit of the person under their protection.

For more information on investments presumed to be sound, check out part 3.5 of section B, "Principal Stages of Curatorships to a Person of Full Age".

Throughout the curatorship, curators must fulfill certain obligations with a view to ensuring the sound management of the property of the person under their protection.

» At the beginning of their administration, curators must furnish an inventory of the protected person’s property to the tutorship council and the Curateur public.

» In addition to the inventory, they must produce annual administration reports and a final report at the end of their administration.

» Curators must also furnish security if the value of the patrimony they are administering exceeds $25,000. This serves as a guarantee of a portion of the assets of the person under protective supervision. It means that the property will be protected or compensated for if the curator or someone else appropriates or mismanages the property.

To find out how to fulfill these obligations, read section B on the principal stages of curatorship and section D on managing the patrimony.

2.3. Role and responsibilities of the tutorship council

In general, the tutorship council fulfills the following roles:

» Assists and supports the curator in protecting the person under curatorship and managing their patrimony;

» Oversees the curator’s administration;

» Makes decisions concerning the security the curator must furnish;

» Gives authorizations to the curator and opinions to the court concerning the protection of the incapacitated individual;

» Processes any reports of suspected abuse.

The tutorship council is an important resource. It meets at least once a year. Curators are encouraged to consult the council if they have any questions about representing the person under their protection. Before contacting the Curateur public, they should first check with the tutorship council.
As part of its oversight role, the tutorship council can ask the curator for explanations about their administration and consult their documents. It receives a copy of the annual report prepared by the curator. It must also determine whether the curator's decisions uphold the interests of the person under their protection and whether they consult the person, if it is possible and advisable. Last, it has the power to ask the court to appoint another curator if it believes the existing curator is not adequately fulfilling his or her role.

The tutorship council is responsible for making decisions regarding the security needed to guarantee the curator's administration in cases where the patrimony of the person under its protection exceeds $25,000.

You'll find more information concerning the security in section B, "Principal Stages of Curatorships to a Person of Full Age" on page 26.

The tutorship council can also be asked to give its opinion to the court about issues related to the protection of the incapacitated person, for instance, concerning consent to proposed treatments, or their participation in a trial treatment.

The tutorship council can also handle reports or ensure that the curator carries out the necessary follow-up if the situation requires it. Such reports may concern the protection of the person under curatorship or that of their property. For instance, a report may be made to the Curateur public if the person’s money is not being used to ensure their well-being, or if they are a victim of mistreatment.

You’ll find more information about reports and the procedure to follow in such situations in section E on the actions to be taken in cases of breaches, financial abuse, mistreatment, report of suspected abuse, or replacement on page 7.

**What kinds of decisions can the tutorship council make?**

The tutorship council can make decisions concerning:

- Sums needed to cover **costs incurred by the curatorship**;
- Renunciation of a succession of which the protected person would be the beneficiary.

In addition, it must make decisions concerning:

- The nature and amount of the security, time period for furnishing it, and eventually, when to release the security;
- The appointment, when necessary, of an **ad hoc curator** to prevent a situation in which the curator would be placed in a situation of conflict of interest with the person under his or her protection.
What types of opinions might the court ask of the tutorship council?

Under certain circumstances, the court may ask the opinion of the tutorship council concerning:

» Remuneration of the curator, if applicable;
» Consent to care on behalf of the protected person.

2.4. Role and responsibilities of the secretary of the tutorship council

The secretary of the tutorship council may or may not be a member of the tutorship council. The secretary's main responsibilities are to:

» Keep a file of all documents pertaining to the curator's administration and minutes of meetings to remit to the protected person at the end of the curatorship or to the protected person's heirs. On request, the Curateur public may also consult these documents to verify the curator's administration;
» Convene and chair meetings of the tutorship council;
» Prepare the agenda and the minutes of meetings.

The secretary is also the person the Curateur public communicates with, either by telephone, e-mail, or regular post.

What is the decisional power of the secretary of the tutorship council?

The decisional power of the secretary of the tutorship council varies depending on the case. If he or she is the only member of the council, he or she makes decisions with the curator. If the secretary is a member of the tutorship council, he or she has the same decisional power as the other members. Last, if the secretary is not a member, he or she has no decisional power.

2.5. Role and responsibilities of the Curateur public

The Curateur public intervenes at many levels to protect individuals under curatorship. It informs curators and tutorship council members of their obligations and helps them when necessary. The Curateur public staff person assigned to the file of the person under your protection can help you and answer your questions concerning the curatorship. This guide and the Curateur public's website are also good sources of information. Feel free to consult them throughout the duration of the curatorship.
Together with the tutorship council, the Curateur public oversees the curator’s activities and administration. The tutorship council is a key player in this oversight function, given its proximity to the person under protective supervision. The goal of this partnership is prevention, because the Curateur public is responsible for overseeing curatorships and is obligated to intervene in cases of abuse or negligence. By establishing ties with curators and tutorship councils, it can better protect the interests of those under curatorship.

The Curateur public has the power to investigate, which it may use on its own initiative or on request, for instance, when a member of the public reports a situation of abuse concerning a protected person or their property, regardless of whether the person is under curatorship.

The Curateur public assumes the role of curator or tutorship council for incapacitated individuals when no one else close to them can perform this function.

In addition, the Curateur public keeps a register of private curatorships that it is overseeing and those for which it is directly responsible; this register can be consulted on the website.

**In case of a problem or disagreement**

Maybe you are dissatisfied with one of our services or an activity associated with our administration? Perhaps the legal representative and the private representation officer assigned to the file at the Curateur public had a disagreement? You may file a complaint by phone, mail, or email. Our Complaints Office guarantees that your complaint will be dealt with fairly and confidentially. Our staff will investigate carefully and inform you of the preliminary findings within 20 working days. Visit www.curateur.gouv.qc.ca/complaints for more information.
3. MEETINGS OF THE TUTORSHIP COUNCIL

3.1. Why meet?

The tutorship council meets at least once a year. The purpose of this meeting is to report on the administration of the curatorship and the protection of the person and plan for the upcoming year. It is recommended, however, that the council meet whenever there is a decision to be made concerning the protection and welfare of the person under curatorship, administrative documents to be reviewed and approved, or actions to be performed. The meeting can take any form that allows participants to speak to each other directly, for example, a teleconference.

3.2. Who takes part in the meetings?

The tutorship council must invite the curator to every meeting, and meetings may be held on the curator’s request. If you want, you can invite the person under your protection to attend. Regardless of their presence at the meetings, they must be informed of any decisions made that concern them, regarding either their personal protection or the protection of their patrimony.

For more about the participation of the person under curatorship in their own protection, see the fourth part of section C on the protection of a person under curatorship, on page 15.

3.3. How to run a meeting?

Meetings will run more smoothly if the secretary of the tutorship council sends participants a detailed agenda with the meeting invitation. During the meeting, make sure that everyone has a chance to express their opinion, and work for consensus. If the tutorship council is unable to come to an agreement, decisions shall be made by majority vote. Make sure to take note of these agreements during the meeting. Later, you can list them in the meeting minutes. If necessary, meetings can take the form of telephone conference calls or videoconferences.
3.4. What about the minutes?

The secretary is responsible for taking and preserving the minutes of tutorship council meetings because they provide a record of the decisions that were made in the interest of the protected person. He or she completes them after the annual meeting and other meetings where decisions about the administration of the curatorship were made.

3.5. How is the Curateur public kept informed?

Even though it is not mandatory, it is strongly recommended that you send the minutes of tutorship council meetings to the Curateur public. They provide the Curateur public with important information about the administration of the curatorship and the actions undertaken to ensure the protected person’s welfare. You can give a copy to the curator to be sent to the Curateur public along with his or her annual administration report.
4.

PRINCIPLES OF THE CURATORSHIP TO A PERSON OF FULL AGE

The protection of a person under curatorship and their patrimony can be complicated, and you might find yourself in some delicate situations. The decisions you will be making on behalf of the protected person can have a major impact on their life. The tutorship council, in its oversight role, may also encounter some touchy situations. This section presents some principles that will help you further your thinking and guide your decisions.

4.1. Guiding principles

All decisions made in the name of a protected person must be rooted in the following overarching principles:

» The person’s best interests and the safeguarding of their autonomy;
» Protection of the person’s patrimony and using it to foster their welfare.

In addition, curators must always:

» Act with prudence, diligence, honesty, loyalty, and disinterestedness;
» Exercise the protected person’s human rights and protect their interests when dealing with other individuals, agencies, and corporations;
» Obtain authorizations from the court or tutorship council when necessary;
» Insofar as possible, consult and inform the protected person of decisions that affect him/her.

When curators are faced with a difficult situation or must make a sensitive decision, they should not hesitate to consult members of the tutorship council and those close to the person under their protection. They can also ask for opinions from health practitioners who see the person every day. For example, if the person is living in a residential facility, the curator may consult the staff. He or she may also turn to the Curateur public for a referral to the appropriate resource.
4.2. Acting in the interests of the person under protection and safeguarding their autonomy

To guide you in your decisions, either as curator or member of the tutorship council, ask yourself first what would be best for the person under your protection. Because of your closeness to the person, you should be familiar with their preferences, values, and needs. In addition, make sure that your decisions are guided by the principles of respect and upholding their rights. If someone has caused him or her injury, you must take the necessary recourse to remedy the injury.

To safeguard the autonomy of the person under their protection, curators must, when possible, try to involve them in decisions and actions that concern them.

In some cases, the protected person will find it difficult to make decisions in their own interests or simply be unable to do so despite the assistance of his or her curator. Curators need to exercise discernment in such situations. If they judge that the person under their protection is incapable of participating in a decision that concerns them or is making potentially harmful choices, they must then make decisions and act on the person’s behalf. In such cases, it is important, at the very least, to inform the protected person about the decisions that were made and the reasons they were made.

For more information about how to encourage the person under your protection to use and develop their capacities, see section C on the protection of the person on page 15.

What does “in the capacity of” mean?

This is a phrase that follows an individual’s name to indicate that they are not personally concerned, but rather are carrying out a particular role, for instance that of curator.

4.3. Protecting the patrimony of a person under curatorship and using it for their welfare

The assets of a person under curatorship are totally separate from those of his or her curator. This means that curators must maintain separate bank accounts and investments for the protected person and themselves. Throughout the curatorship, the assets of the person under curatorship will be registered as follows: “(Your name) in the capacity of curator to (name of protected person)”.

However, properly administering the patrimony does not mean that no expenditures are allowed. The person under your protection must be able to use their assets to ensure their welfare. Expenses linked to their needs and the administration of their property may be covered using the patrimony; these include expenses such as housing, food, personal expenses, and clothes.