

PROCEDURES TO BE FOLLOWED
IN THE EVENT OF A BREACH,
FINANCIAL ABUSE, MISTREATMENT,
REPORT OF ABUSE, OR REPLACEMENT

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This section is mainly addressed to the **tutorship council**. After reading it you will know:

- » What is meant by a breach, financial abuse, and the reporting of abuse;
- » What you should do in each of these situations;
- » How to replace a member of the tutorship council or its secretary;
- » Under what circumstances you should appoint an **ad hoc curator** and the procedure to follow.

This information can also be useful to the curator because it explains what could happen if he or she were to commit a breach, or financially abuse or mistreat the person under curatorship.

I.

PROCEDURES TO BE FOLLOWED IN THE EVENT OF A BREACH, FINANCIAL ABUSE, OR MISTREATMENT

I.1. What is a breach?

Curators commit a breach when they fail to fulfill their legal obligations to protect the person or administer their patrimony. Examples of breaches: neglecting to arrange for reassessments of the person by the established deadline, and failure to produce an **inventory** of their property, **annual reports**, and the final report.

I.2. What is financial abuse?

Financial abuse is when a person uses the money or assets of a person under protective supervision for their own personal advantage or for a purpose that is not in the interests of the protected person. Financial abuse causes losses to the protected person's patrimony.

For example, curators commit financial abuse if they improperly manage the assets of the person under their protection or use the patrimony for their own interests. This could take the form of theft of personal effects or money, fraudulent investments, refusal to repay a loan, etc.

I.3. What constitutes mistreatment of the protected person?

This refers to single or repeated acts of violence, abuse, exploitation or negligence suffered by a person at the hands of another person whom they should be able to trust. Such actions and behaviour can cause direct injury to the person or potentially undermine their health or well-being.

For more information about mistreatment and how to recognize it, visit the website MaltraitanceAines.gouv.qc.ca, or contact the Curateur public staff person in charge of the protected person's file.



I.4. What are the tutorship council's responsibilities?

Throughout the curatorship, the **tutorship council** must see that the curator properly fulfills all of his or her obligations. For example, it must ensure that the curator manages the patrimony in the interests of the protected person and produces requested administrative documents in a timely fashion. You also need to see that the person's dignity, safety, and integrity are protected.

In addition to reminding the curator of his or her obligations, if the curator commits a breach or financial abuse, you must rapidly intervene to correct the situation, and inform the **Curateur public**. If the curator refuses to make the required corrections, for instance, produce the annual administration report or repay the sums they illegally withdrew from the protected person's patrimony, you must arrange to replace them.

The same thing is true if you witness an incident of mistreatment or suspect it is happening. You must act quickly. First, if the curator is not already aware of it, he or she must be informed. Together, you can make the required verifications to confirm any suspicions and act accordingly.

It's not always easy to intervene in situations of mistreatment. If necessary, the Curateur public can assist you. Feel free to contact the staff person in charge of the protected person's file. He or she is there to help.



I.5. What do I do if I suspect that financial abuse is being committed?

Detecting financial abuse can be a very delicate exercise. The right questions need to be asked to confirm whether your suspicions are well founded. Ask the curator for the necessary supporting documents and talk with him or her to get the clearest possible answers to the following questions:

- » Who is the person suspected of committing financial abuse?
- » What form does the financial abuse take (e.g., theft of property or money, poor administration)?
- » When was it committed?
- » Description of incident?
- » Estimated value of the abuse?

These questions can be simply summed up as "Who, what, when, how and how much?".

Keep in mind that an expense that initially seems irregular may be a simple misunderstanding. However, if the documents and answers you obtain confirm the existence of financial abuse, quick action is essential to put it to an end.

1.6. How do I intervene in the event of financial abuse?

If you are aware of financial abuse, it is your responsibility, as a member of the tutorship council or the curator, to put an end to it and ensure that the rights of the person under curatorship are respected. You must also inform anyone else who is involved in protecting the person and the Curateur public of the situation and of what you are doing to correct it.

Several measures can be taken in the event of financial abuse. After putting a stop to the situation, complete repayment or recovery of property is the first option to consider. If this is impossible, the person who committed the abuse can undertake to voluntarily repay the protected person's money and sign an acknowledgement of debt. If the offender is the curator and they are not cooperating, they may be relieved of the function of curator to the property and legal action for damages may be brought against them. Depending on the circumstances, charges of fraud may also be laid.

We recommend that you contact the person who is responsible for the protected person's file at the Curateur public to learn what steps to take.

1.7. How do I intervene in the event of mistreatment?

The steps you must take vary depending on the type of mistreatment. In every case, quick action is needed to put an end to the situation. 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.

2.

WHAT TO DO IF SOMEONE REPORTS ABUSE

2.1. What is a report of abuse?

A report is information a person or agency gives to the **Curateur public** to notify it of a situation that could be damaging to the security, dignity, or integrity of a person under protective supervision (specifically, their physical or mental health), or to their property. A report may concern mistreatment, negligence, or financial abuse. Information reported to the Curateur public remains confidential.

2.2. What is the role of the curator and the tutorship council?

Depending on the nature of the information, the Curateur public may ask the curator or **tutorship council** to handle the report. It will inform the council of the procedure they must follow and support them throughout the process.

2.3. What is the role of the Curateur public?

When it has been notified of a situation in which a person under curatorship is believed to be at risk, the Curateur public first reviews and confirms the information. It may then conduct an investigation. If appropriate, it then remits the report to the curator or tutorship council to have them correct the situation. The Curateur public supports them and ensures that the person under curatorship and their property are protected.

If it is impossible to hand the report over to the curator or tutorship council, the Curateur public takes direct responsibility for the situation. It takes the necessary steps to correct the situation and protect the person under curatorship and their property.

2.4. What do I do when I receive a report of abuse?

Every situation is unique, so we cannot describe in detail what to do when you receive a report. We suggest that you contact the Curateur public staff person who is in charge of the protected person's file and ask for assistance.

However, there are a few guidelines that apply to any report of abuse. First, **quick action is essential to put an end to the suspected mistreatment or abuse**. The situation must be reviewed promptly and efficiently and the same thing applies to any follow-up action.

The interests of the incapacitated person must always be at the forefront when responding to a report of abuse. The situation must always be resolved in a manner that serves his or her best interests.

Last, don't hesitate to use community or local resources because they can be very useful (Elder Abuse Helpline, health and social service practitioners, police, etc.). Situations are often resolved through teamwork. So, feel free to draw on many resources to achieve a quick, effective resolution that respects the rights of the person under curatorship.



3.

REPLACING THE CURATOR, A MEMBER OF THE TUTORSHIP COUNCIL, OR THE COUNCIL SECRETARY

3.1. What is involved in replacing the curator?

Curators continue to perform their duties until a new curator is appointed.

If the curator can no longer fulfil their duties, they must apply to the court for someone to replace them. If they fail to meet their obligations, this responsibility then falls to the tutorship council. As a last resort, the **Curateur public** or other interested party can also initiate the replacement process. During these proceedings, curators will continue to perform their duties, unless the court decides otherwise.

Last, if they have serious grounds, curators may apply to the court to be relieved of their duties, after first notifying the tutorship council and Curateur public.



3.2. How is a member of the tutorship council replaced?

In the event of the retirement or death of a member of the tutorship council, the other members will choose a replacement from the two alternates named in the court judgment. If these two individuals refuse the responsibility, or no alternates were appointed, they choose a replacement from among the family members. As a last resort, they can also choose a close friend of the family. Written notification of the renunciation of a member of the tutorship council and the acceptance of a new member must be sent to the Curateur public. The curator and the person under curatorship must also be informed.

If you cannot find a replacement after taking these steps, apply to the court.

3.3. How is the secretary of the tutorship council replaced?

If the secretary of the tutorship council renounces his or her duties or dies, the other members of the council will choose a replacement from the two alternates. They can also choose someone else to replace the secretary. If, exceptionally, the secretary is the only member of the tutorship council, you must apply to the court to replace him or her.

As with the replacement of any other member of the tutorship council, the curator, the person under curatorship, and the Curateur public must be informed of the change.



3.4. What do we do if the tutorship council is formed of only one member?

When the tutorship council is composed of just one member and that person must be replaced, a replacement should be found from among the protected person's family and friends. An application is brought before to the court to appoint the new secretary. Depending on the case, this process may be undertaken by the sole member who is resigning or by the curator to the person.

We suggest that you obtain a legal advisor for help with the legal proceedings. The fees you incur to appoint a replacement can be covered by the protected person's patrimony.

4.

APPOINTING AN AD HOC CURATOR

4.1. What is an *ad hoc* curator?

An ***ad hoc* curator** is someone appointed by the court to temporarily represent the protected person in a specific situation. His or her powers are limited, because he or she is only representing the person in that situation. *Ad hoc* curators thus do not replace curators in administering the protected person's property.

4.2. Under what circumstances would an *ad hoc* curator be appointed?

An *ad hoc* curator is appointed when a protected person and his or her curator have opposing legal interests. For example, if the person under curatorship owns a building that the curator wishes to buy, an *ad hoc* curator could be appointed to prevent a conflict of interest during the sale process. *Ad hoc* curators ensure that the protected person obtains a fair price and that his or her interests are safeguarded.



4.3. How is an *ad hoc* curator appointed?

It is the **tutorship council's** responsibility to see that an *ad hoc* curator is appointed whenever the protected person needs representation before the court to settle an issue in which the opposing party is his or her curator.

Ad hoc curators are appointed by the court on the advice of the tutorship council. Whenever the situation calls for it, the tutorship council selects an individual who will be able to properly defend the protected person's interests and then so notifies the court.

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