INTRODUCTION TO THE TUTORSHIP TO A PERSON OF FULL AGE
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Foreword

You have agreed to become the tutor 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 tutorship 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 tutor 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.

Whether you are a tutor to the property, tutor to the person, or both; or if you are the secretary or a member of the tutorship council, this guide will help you perform your new duties after tutorship 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 tutorship. You will also learn about the overarching principles that should be kept in mind throughout the tutorship. You'll find general information, information addressed specifically to tutors 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.1. How to use this guide?

This guide was written to provide you with the information you will need after the institution of tutorship. Presented in a question-and-answer format, it provides accurate information to guide you until the end of the tutorship. We have also created several tools to facilitate your job as tutor 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).

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 tutorship.

» Section A contains basic information about the principal aspects of a tutorship.

» Section B contains detailed information about the principal stages of tutorships and the actions that must be performed promptly once tutorship is underway. 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 tutorship. Among other things, it presents the different obligations of tutors, 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 tutorship. 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 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 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.

Not all people who are incapacitated 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, power of attorney over the person’s bank account to enable a trusted individual to make transactions in the person’s name, and the homologation of a mandate in case of incapacity 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 Alzheimer disease. He considered that the incapacitation was partial. The social worker who assessed his need for protection also deemed it necessary to institute tutorship because Mr. Hébert was living alone and was finding it difficult to protect himself and manage his affairs. Together with their father, Mr. Hébert’s children started making arrangements to institute tutorship.

1.3. What is a tutorship 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 partially or temporarily incapacitated. Someone who suffers from a mild intellectual disability and is able to perform certain activities on their own could be said to be partially incapacitated. Also, someone who was hospitalized for a long time after a serious car accident might be declared temporarily incapacitated if they could potentially regain full capacity at the end of their convalescence. Depending on the capacity they regain, they will be capable of making decisions without the aid of their tutor.

Tutorship is instituted for the purpose of ensuring the protection of the person or their property and safeguarding their rights. To this end, tutors must always act with care, prudence, honesty, and loyalty. This guide provides the information tutors and tutorship councils will need in order to properly fulfill their roles.
1.4. What is a tutor to a person of full age?

A tutor 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 tutor. In considering who to appoint as tutor, 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 tutors to the property may be appointed to focus exclusively on protecting the person’s patrimony, in addition to a tutor to the person who will ensure their physical and mental well-being. In most situations, a single tutor is vested with the responsibility of protecting both the person and their property. Some individuals under protective supervision may only have a tutor to the property if they are capable of ensuring their own well-being.

When tutorship is instituted, tutors must, among other things:

» Act in the interests of the person under their protection, 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 tutorship;
» 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 on 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 tutorship in accordance with the prescribed time limits.

For more on the obligations of tutors, see section B on the principal stages of tutorships.
I.5. What is a tutorship council?

The tutorship council assists the tutor, sometimes by providing opinions and authorizations, and oversees the tutor in administering the tutorship. 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 Tutorships to a Person of Full Age". For more information about its role and responsibilities, go to page 12 of this section.

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

In this section, you will find detailed explanations of the roles and responsibilities of tutors, tutorship councils, secretaries of tutorship councils, and the Curateur public.

There are two kinds of tutors: the tutor to the property and the tutor to the person. In most cases, a single person fulfills both functions, but more than one tutor may be appointed: one to protect a person of full age and one to administer their property. Because their responsibilities are different, they will be described separately.

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

2.1. Role and responsibilities of tutors to the person

Tutors 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 tutorship deprives the protected person of the ability to exercise certain rights themselves, they are still entitled to perform several important actions, such as vote in elections and administer their earnings. Tutors to the person must therefore ensure that the adult under their protection can exercise their rights if that is their wish and it is in their interests to do so.
Tutors 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 treatment for 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 tutorship at least every three years.

Last, if another person is appointed to act as tutor to the property, tutors 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 tutor to the property is carrying out their responsibilities. If tutors to the person have concerns about how the tutor 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 tutor to the property, or apply directly to the court.

If you are acting as tutor 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 tutorship.

### 2.2. Role and responsibilities of tutors to the property

The obligations of tutors to the property vary depending on the court judgment. Because each case is unique, tutors must read the judgment carefully to learn what their specific responsibilities will be. Regardless, a few basic principles apply to all those who act as tutors to the property. Among other things, they are obligated to preserve the protected person's patrimony. This is what is considered under the Civil Code of Québec as the powers of simple administration.

With these powers, tutors may perform some acts on their own, but for other actions, they are required to get authorization from the tutorship council or the court, depending on the sum of money involved.
Throughout the tutorship, tutors 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, tutors 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.

» Tutors 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 tutor or someone else appropriates or mismanages the property.

To find out how to fulfill these obligations, read section B on the principal stages of tutorship, 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 tutor in protecting the person under tutorship and managing their patrimony;

» Overseeing the tutor’s administration;

» Makes decisions concerning the security the tutor must furnish;

» Gives authorizations to the tutor 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. Tutors 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 tutor for explanations about their administration and consult their documents. It receives a copy of the annual report prepared by the tutor. It must also determine whether the tutor’s decisions uphold the interests of the person under their protection and if the tutor consults the person, if it is possible and advisable. Last, it has the power to ask the court to appoint another tutor if it believes the existing tutor is not adequately fulfilling his or her role.
The tutorship council is responsible for making decisions regarding the security needed to guarantee the tutor’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 Tutorships to a Person of Full Age” on page 26.

In addition, tutorship councils may authorize tutors to perform certain acts such as selling or mortgaging property worth $25,000 or less that belongs to the protected person, or renouncing a succession bequeathed to the protected person. Last, the court asks the opinion of the tutorship council in cases where the tutor wishes to sell or mortgage an asset belonging to the person under their protection that is worth over $25,000.

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

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

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

The tutorship council can make decisions concerning:

- The sums needed to cover costs incurred by the tutorship;
- 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* tutor to prevent a situation in which the tutor 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:

» The remuneration of the tutor, if applicable;
» Sums over which the protected person maintains control;
» Purchases, sales, donations, or loans if their value exceeds $25,000;
» 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 tutor’s administration and minutes of meetings to remit to the protected person, or to the protected person’s heirs at the end of the tutorship. On request, the Curateur public may also consult these documents to verify the tutor’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 the secretary is also the sole member of the tutorship council, he or she makes decisions in collaboration with the tutor. 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 tutorship. It informs tutors 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 tutorship. This guide and the Curateur public’s website are also good sources of information. Feel free to consult them throughout the duration of the tutorship.

Together with the tutorship council, the Curateur public oversees the tutor’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 tutorships and is obligated to intervene in cases of abuse or negligence. By establishing ties with tutors and tutorship councils, it can better protect the interests of those under tutorship.

The Curateur public has the power to investigate, which it can 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.

The Curateur public assumes the role of tutor 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 tutorships that it is overseeing and those for which it is directly responsible; this register can be consulted on the website.

A "private tutorship" is a tutorship in which the tutor is a relative or friend of the protected person.
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 tutorship 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 tutorship, 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 conference call.

3.2. Who takes part in the meetings?

The tutorship council must invite the tutor to every meeting, and meetings may be held on the tutor’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 tutorship in their own protection, see section C on the protection of a person under tutorship, 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 record them in the meeting minutes. If necessary, meetings can take the form of telephone conference calls or videoconferences.

Samples of an agenda and meeting minutes are available in “Tools and Forms” and in digital format on the Curateur public’s website.
3.4. What about the minutes?

The secretary is responsible for writing and keeping 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 prepares them after the annual meeting and other meetings where decisions about the administration of the tutorship 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 tutorship and the actions undertaken to ensure the protected person’s welfare. You can give a copy to the tutor to be sent to the Curateur public along with his or her annual administration report.
4.

**PRINCIPLES OF TUTORSHIP TO A PERSON OF FULL AGE**

The protection of a person under tutorship 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 well-being.

In addition, tutors 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;

» Inform the protected person of decisions that affect them and consult them when possible.

When tutors 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 tutor 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 tutor 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 foster respect and safeguard the autonomy of protected individuals, tutors must try to let them decide and act on their own. When this is not possible, they should at least participate, if they are able, in decisions and actions that concern them.

In some cases, protected individuals will find it difficult to make decisions in their own interests, despite the tutor’s aid. Tutors need to exercise discernment in such situations. If they judge that the person 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, the protected person should at least be informed 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.

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

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

However, properly administering the patrimony does not mean that no expenditures may be made. 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.

For more information concerning the protection of the assets of the protected person, see section D on the management of the patrimony.