

# INTRODUCTION TO THE DATIVE TUTORSHIP OF A MINOR'S PATRIMONY



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## FOREWORD

Generally speaking, dative tutorships are instituted when both parents are deceased or are incapable of looking after their child. A dative tutor is the person who then takes care of the child or children. Dative tutors can be designated in either the will of the last surviving parent, a written statement that is remitted to the Curateur public, a mandate in case of incapacity, or by the court, on the recommendation of the tutorship council.

The Curateur public usually oversees all dative tutorships. The Civil Code of Québec has stipulated this protective measure as a way to preserve the patrimony of minor children. A tutorship is instituted to protect the minor's best interests and ensure the respect and exercise of his or her rights.

Whether you are a dative tutor, or tutorship council secretary, or member, this guide will help you perform your new duties after tutorship has been instituted. Questions? Feel free to contact the person who is responsible for the minor's file at the Curateur public du Québec. They will be happy to assist you.

Have a good read!



This section contains the main stages you will follow when administering the tutorship of a minor's property. For each stage, we present accurate and useful information to assist you in properly fulfilling your responsibilities as tutor or as tutorship council. You will find for each stage general information and information addressed specifically to tutors and tutorship councils.

Look for the  DATIVE TUTOR and  TUTORSHIP COUNCIL symbols to quickly find the information you need.

# I.

## INTRODUCTION

### I.I. How to use this guide ?

This guide has been prepared to provide you with the information you will need after the institution of dative 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 dative tutor or member of the tutorship council. You will find them in «Tools and Forms,» and in digital format on the website of the Curateur public du Québec.

The guide is divided into five sections. Each of them presents information that has been adapted to the different situations you may encounter in the course of the tutorship. **Section A** contains basic information about the principal aspects of a tutorship. **Section B** contains detailed information about the main stages in a tutorship 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** describes how to administer the patrimony of the minor you represent. In it, you will find everything you should know about this subject. **Section D** explains the procedures to be followed in the event of breaches, financial abuse, a report of an irregularity or suspected abuse, or the replacement of a tutor or tutorship council member. Last, «**Tools and Forms**» contains all the forms and tools you will be using in the course of the tutorship. There, you will also find a [glossary](#), with definitions of the words appearing in [grey](#) throughout this guide.



## 1.2. What is a dative tutor ?

Children are usually under their parents' care until they turn 18. For all kinds of reasons, unfortunately, it is sometimes impossible for parents to care for their children until they are of age. In such cases, dative tutorship is instituted. Usually this occurs after the death of both parents, when the parents become incapable of looking after their children, or when they lose parental authority. A dative tutor is someone who agrees to take care of the minor child in such situations. Depending on the context, dative tutors are responsible for:

- » The minor's property only;
- » The minor's person only;
- » Both the minor's property and person.

For the sake of conciseness, the «dative tutor to the property of the minor» will be referred to simply as the «tutor.»

For more information about the roles and responsibilities of each, go to page 9 of this section.

A tutor to the property is responsible for ensuring the sound management of the minor's patrimony and protection of the minor's assets until he or she comes of age. A tutor to the person is concerned more specifically with the exercise of the minor's civil rights.

## 1.3. What is dative tutorship of a minor's property ?

With certain exceptions, dative tutorship of a minor's property is instituted automatically when a dative tutor takes charge of a minor's patrimony. General duties of dative tutors:

- » Promptly form a tutorship council.
- » Produce an inventory of the property to be administered within 60 days of the institution of tutorship.
- » Arrange for insurance or furnish another form of security if the property under administration is worth more than \$25,000.
- » Produce an annual report on their administration.
- » Draw up a final report of their administration at the end of the tutorship.
- » Obtain opinions and legal authorizations from the tutorship council or the court.

The purpose of tutorship is to protect the minor's patrimony and act in his or her interests. To this end, dative tutors must at all times act with prudence, diligence, honesty, and loyalty. This guide provides the information dative tutors and tutorship councils will need in order to properly fulfill their roles.

To learn about the circumstances under which a tutorship comes to an end, go to page 38 of section B, «*Stages in the Tutorship of a Minor's Property.*»

For more information, visit the Curateur public's website.

## I.4. What is a tutorship council ?

Tutorship councils assist tutors, sometimes providing opinions and authorizations, and oversee them in administering the tutorship. They are usually composed of three individuals from the minor's immediate circle who have been chosen by the **meeting of family and friends** and subsequently appointed by the court. A secretary and two alternates are also appointed. In certain situations, tutorship councils may be composed of just one person. 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 6 of section B, «*Stages in the Tutorship of a Minor's Property.*»

For more information about its role and responsibilities, go to page 10 of this section.

**The meeting of relatives, persons** connected by marriage or civil union and friends is a meeting that brings together the minor's relatives and friends.

## I.5. Who is the Curateur public du Québec ?

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

- » Sensitizing the public to the protection needs of incapacitated individuals.
- » Supporting families and friends who represent an incapacitated adult, administer their property or the property of a minor, or serve as members of a tutorship council.
- » Ensuring that decisions are made in the interests of represented individuals, with a view to protecting their rights and safeguarding their autonomy.
- » In certain cases, the Curateur public itself may assume the role of curator or tutor.

With regard to dative tutorships of minors' property, 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 dative tutors, tutorship councils, secretaries of tutorship councils, and the Curateur public.



### 2.1. Role and responsibilities of a dative tutor

Tutors are charged with preserving the minor's patrimony and returning it to them when they come of age (at age 18), or after their emancipation. This is what the Civil Code of Québec calls 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. You'll find more information on this in sections B and C.

The first act in a tutor's administration is to prepare an inventory of the minor's property and give it to the tutorship council and the Curateur public. After completing the inventory, tutors produce annual administration reports, and, at the end of the tutorship, a final report. Tutors must also furnish security, or a guarantee to preserve the minor's property, if the property is worth more than \$25,000. This means that the minor's property will be protected or compensated for if the tutor appropriates or mismanages the property.

The role of a dative tutor is to ensure that the minor's property is managed properly and that his or her interests are protected.

Tutors also represent minors in the exercise of their civil rights (e.g., instituting legal action, signing a contract, etc.), which means they may act on a minor's behalf. It is recommended that, whenever possible, minors participate in decisions being made in their name.

The tutor's administration comes to an end when the minor comes of age or is emancipated. After the minor has approved the final report, all that remains to be done is to remit the patrimony and any documents related to the tutor's administration: deeds of ownership, bank accounts, investments, etc.

**Important! Tutors are responsible for informing the Curateur public and the tutorship council of any major changes in the minor's situation, for example, concerning the patrimony or a move.**

## 2.2. Role and responsibilities of the tutorship council

In general, the tutorship council fulfills the following roles:

- » Supporting and assisting tutors in administering the property of a minor.
- » Overseeing the tutor's administration.
- » Making decisions, and giving authorizations to tutors and opinions to the court concerning the administration of certain assets.

The tutorship council is an important resource. Tutors are encouraged to consult their tutorship council when they have any questions concerning the administration of a minor's property. They should discuss their questions with the tutorship council first, before contacting the Curateur public.

As part of its oversight role, the tutorship council can ask tutors for explanations about their administration and consult their documents. They must also ensure that a tutor's decisions are in the minor's best interests. Last, they have the power to ask the court to appoint another dative tutor if they believe the existing tutor is not adequately fulfilling his or her role.

The tutorship council is responsible for making decisions about the administration of the tutorship, for example, determining the amount of security needed to guarantee the tutor's administration.

You'll find more information about the security that must be furnished in section B, «Stages in the Tutorship of a Minor's Property,» on page 24.



**The chief role of the tutorship council is to oversee the dative tutor's administration and provide assistance. The interests of the minor must always be at the forefront of its concerns.**

In addition, tutorship councils may authorize tutors to perform certain acts such as selling or mortgaging the minor's property if it is worth \$25,000 or less, or renouncing a succession that may be bequeathed to the minor. In some cases, they can even act in the minor's name. 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 minor that is worth over \$25,000.

If there is a disagreement among those involved in the tutorship, the tutorship council must try to resolve the disagreement. If the dispute persists despite these efforts, the issue will be decided by the court.

### **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;
- » The renunciation of a succession from which the minor would be the beneficiary.

In addition, it must make decisions concerning:

- » The nature and amount of the security, the time period for furnishing it, and eventually, when to release the security;
- » The appointment of an ad hoc tutor in the event of a legal dispute between the minor and his/her tutor.

The tutorship council can also give its opinion to the tutor concerning the simple emancipation of the minor when he or she reaches the age of 16.

### **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 tutor, if applicable;
- » Funds the minor is entitled to administer;
- » The minor's emancipation:
- » Purchases, sales, donations, and loans, when they are worth over \$25,000.

## 2.3. 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 the documents concerning the tutor's administration and minutes of meetings and return them to the minor or to the minor's heir(s) at the end of the tutorship. On request, the Curateur public may also consult these documents to verify the tutor's administration;
- » To convene and chair meetings of the tutorship council;
- » To 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. The secretary is responsible for sending the information he or she receives to the members of the tutorship council.

### **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.

## 2.4. Role and responsibilities of the Curateur public

The Curateur public intervenes in the administration of a minor's property in various ways. It informs tutors and tutorship council members of their obligations and helps them when necessary. In tandem with the tutorship council, it oversees the administration of the property of minors who have a dative tutor to the property, regardless of the value of their patrimony.

The Curateur public assumes the role of tutor to the property of minors who have no one in their immediate circle who is in a position to perform this role.

It has the power to investigate, which it can exercise on its own initiative or on request, for example, when a member of the public reports a situation involving the misuse of a minor's property, and this, whether or not it is overseeing the administration of the property in question.

In addition, the Curateur public maintains a registry of tutorships of property for which it exercises an oversight role and tutorships for which it is directly responsible.

## 3. MEETINGS OF TUTORSHIP COUNCIL



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 plan for the next year. It is recommended, however, that the council meet whenever there is a decision to be made, administrative documents to be reviewed and approved, or actions to be performed.



TUTORSHIP  
COUNCIL

### 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 wish, you can also invite the minor child to attend. The minor's participation is more desirable if he or she is 14 or older. Whether or not they attend meetings, minors aged 14 and over must be informed of the decisions made about their patrimony.



TUTORSHIP  
COUNCIL

### 3.3. How to run a meeting ?

Meetings will run more smoothly if you send participants a detailed agenda along 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 will be made by majority vote. Make sure to take note of these agreements during the meeting. Later, you can list them in the minutes. If necessary, meetings can take the form of telephone conference calls or videoconferences.

A sample agenda and a sample of meeting minutes are provided in «Tools and Forms,» and in digital format on the website of the Curateur public du Québec.

### 3.4. What about the minutes ?

It is the job of the secretary of the tutorship council to take and keep minutes of tutorship council meetings. They are produced after the annual meeting and any other meetings where decisions must be made about the administration of the tutorship.



### 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. You can give a copy to the tutor, who can send it to the Curateur public with his or her annual administration report.



# 4.

## PRINCIPLES UNDERLYING TUTORSHIP OF A MINOR'S PROPERTY

The administration of a minor's property can be complicated, and you may find yourself dealing with sensitive issues. The decisions you make on behalf of the minor may have a big impact on his or her future. This section presents some principles that will help guide your decisions.

### 4.I. Principles to guide your decisions

Any decision made in a minor's name must be based on two overarching principles:

- » The minor's best interests;
- » The preservation of the minor's patrimony until he or she is of age.

In addition, tutors must always:

- » Act with prudence, diligence, honesty, and loyalty
- » Exercise the minor's rights and protect the minor's interests when dealing with other individuals, agencies, and corporations.
- » If appropriate, consider the **support obligation** of the child's father and mother.
- » Obtain authorizations from the court or tutorship council when necessary.
- » Consult the minor, or, at least, inform them about decisions made on their behalf if they are 14 or older, taking into account their maturity and sense of judgment.

**A tutor may not buy, rent, or use the minor's property for his or her exclusive use.**

## **Establish a separate patrimony**

The property of a minor under tutorship is kept completely separate from that of the tutor. This means that tutors maintain separate bank accounts and investment accounts for themselves and the minors they represent. Throughout the tutorship, tutors register the minor's property under their name, followed by the phrase «**in the capacity of tutor to**» and the name of the minor.

### **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.

## **Respect the parents' support obligation**

When one or both parents of the minor under tutorship are still living, they have support obligations to their child, even when the child has a tutor to the property. For example, they must cover the cost of food, clothing, housing, education, personal care, transportation, recreation, and any other items or services their child may need. They must pay for these things with their own money. In other words, the fact that their child has assets or income does not relieve them of their parental obligation to cover these needs using their own money.

## **Preserve the minor's patrimony**

The main purpose of the tutorship of a minor's property is to preserve minors' patrimony so that it can be returned to them when they are of age. Authorization can be obtained, however, to draw on a minor's patrimony to meet the minor's needs in exceptional circumstances.

For more information, consult section C, «Administering the Minor's Patrimony.»



## 4.2. Participation of the minor: gradually moving towards independence

As soon as minors turn 14, they have the right to be informed about the administration of their patrimony and receive a copy of the annual administration report. This document is prepared and sent out every year to the tutorship council and the Curateur public. The tutor is responsible for ensuring that the minor understands the contents.

After this age, minors can also administer their employment earnings. After they turn 16, with their tutor's authorization, they can marry. If they marry, they are granted **full emancipation** and the tutorship comes to an end.

As the minor moves toward complete independence, it is suggested that tutors consider the minor's opinion concerning the administration of their patrimony in order to ensure as much as possible that decisions meet the minor's needs.

The chart below is a quick reference on the rights of minor children as they get older.

After they turn 14, minors can...	After they turn 16, minors can...
<ul style="list-style-type: none"> <li>» Be informed and consulted on the administration of their patrimony</li> <li>» Administer their own employment earnings</li> <li>» Give consent to proposed treatment</li> <li>» Start up a cooperative or become a member of one</li> <li>» Open a bank account</li> <li>» Take out a student loan</li> </ul>	<ul style="list-style-type: none"> <li>» Get married, with the consent of the court on opinion of your parents or dative tutor</li> <li>» Be a paid employee</li> <li>» Join a union</li> <li>» Name a beneficiary for a life insurance policy</li> <li>» Ask the court for <b>full emancipation</b> or ask the tutor and tutorship council for simple emancipation</li> </ul>

## Emancipation of the minor

There are two types of emancipation. The first, known as simple emancipation, gives teenagers partial independence. The effect of this is that parental authority comes to an end. Parents no longer have rights or responsibility for custody, oversight, and education. Minors manage their own property and do not have to be assisted by their tutor except for major actions such as the sale of property. They also have full power to exercise their **civil rights** on their own.

There are two ways of obtaining simple emancipation:

- » Tutors file a written declaration to the Curateur public on the request of the minor, who must be at least 16, after obtaining the agreement of the tutorship council. The existence of a tutorship council is therefore essential to this process. The document does not have to be notarized;
- » The tutor or the minor files a motion with the court. The Curateur public must be informed in writing.

The second type, known as **full emancipation**, enables teenagers to obtain full legal status. The tutorship then comes to an end. To obtain **full emancipation**, teenagers can either get married or file a request with the Superior Court. The Curateur public could intervene or contest this request.





[www.curateur.gouv.qc.ca](http://www.curateur.gouv.qc.ca)