

STAGES IN THE DATIVE TUTORSHIP OF A MINOR'S PROPERTY

CONTENTS

STAGE I	FORMING A TUTORSHIP COUNCIL	6
1.1.	What are the reasons for forming a tutorship council ?	6
1.2.	How do I form a tutorship council ?	6
1.3.	Who makes up the tutorship council ?	7
1.4.	Who pays the legal costs ?	8
1.5.	What happens if the tutor fails to form a tutorship council ?	8
STAGE 2	MAKING AN INVENTORY	10
2.1.	What is an inventory ?	10
2.2.	What is a notarized inventory ?	10
2.3.	What is an inventory made by private writing ?	10
2.4.	Why is it necessary to prepare an inventory ?	11
2.5.	Who verifies the inventory ?	11
2.6.	How do I prepare an inventory ?	11
2.7.	How do I complete the inventory made by private writing form that is supplied with this guide ?	12
2.8.	Who do I send the inventory to ?	15
2.9.	What documents do I enclose with the inventory ?	15
2.10.	What do I do if I don't have all the necessary information to complete the inventory ?	15
2.11.	What happens if the tutor fails to send in an inventory ?	16
2.12.	What are the tutorship council's responsibilities with regard to the inventory ?	16
2.13.	What elements of the inventory must be verified ?	17
2.14.	What happens if the tutorship council does not agree with the contents of the inventory ?	17
STAGE 3	ADMINISTERING THE PROPERTY	20
3.1.	Why is it necessary to open an account «in the capacity of» ?	20
3.2.	Why do investments need to be registered «in the capacity of» ?	20
3.3.	How do I determine the sources of the minor's income ?	20
3.4.	What types of investments are presumed sound ?	21
3.5.	What are the tutorship council's responsibilities ?	22
3.6.	What can the tutorship council do to fix a problem that may arise with the tutor ?	22
STAGE 4	FURNISHING SECURITY	24
4.1.	What is security ?	24
4.2.	What types of security are there ?	24
4.3.	Who determines the amount and type of security ?	25
4.4.	What are the tutor's responsibilities ?	25

4.5.	How do I obtain security ?	25
4.6.	What are the tutorship council's responsibilities ?	26
4.7.	How is the amount of security calculated ?	27
4.8.	Can the amount of the security be contested ?	27
4.9.	Can the tutor be exempted from the obligation to furnish security ?	27
4.10.	What happens if the tutor does not furnish security ?	28

STAGE 5 FINANCIAL TRACKING 30

5.1.	Why the need for financial tracking ?	30
5.2.	What documents must be preserved ?	30
5.3.	Who preserves what ?	30

STAGE 6 PRODUCING THE ANNUAL REPORT 32

6.1.	Why is it necessary to produce an annual report ?	32
6.2.	How do I produce the annual report ?	32
6.3.	Detailed or simplified? What form do I complete ?	33
6.4.	Who do I send the report to ?	33
6.5.	What documents should I enclose with the annual report ?	34
6.6.	What happens if the tutor does not send in the annual report ?	34
6.7.	What are the tutorship council's responsibilities with regard to the annual report ?	34
6.8.	What elements of the annual report must be verified ?	35
6.9.	What happens if the tutorship council does not agree with the contents of the annual report ?	35

STAGE 7 (END OF YOUR ADMINISTRATION) PRODUCING THE FINAL REPORT 38

7.1.	When does the administration of the tutorship come to an end ?	38
7.2.	How do I produce the final report ?	38
7.3.	Detailed or simplified? Which type of final report should I prepare ?	39
7.4.	To whom do I remit the final report ?	39
7.5.	What happens if the tutor does not produce the final report ?	40
7.6.	What is the cancellation of security ?	40
7.7.	What do I do with the property ?	40
7.8.	What are the tutorship council's responsibilities with regard to the final report ?	41
7.9.	What elements of the final report must be verified ?	41
7.10.	What happens if the tutorship council does not agree with the contents of the final report ?	41
7.11.	What happens if the tutor does not produce the final report ?	42
7.12.	To whom should the documents related to the tutorship be remitted ?	42

STAGE I

FORMING A TUTORSHIP COUNCIL

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.

STAGE I

FORMING A TUTORSHIP COUNCIL

I.1. What are the reasons for forming a tutorship council ?



Because of the importance of their role, all tutorships must have a tutorship council. The council is a key player because it assists in protecting the minor's property. Because of its members' close ties to the minor and tutor, it is well placed to ensure the sound management of the tutorship. It can also assist and support the tutor in fulfilling his or her role.

For more information about the role and responsibilities of the tutorship council, consult Section A, «Introduction to the Dative Tutorship of a Minor's Property.»

I.2. How do I form a tutorship council ?



In most cases, the tutorship council is established on the occasion of the dative tutor's appointment. If this is your case, go to the next point.

After the institution of tutorship of a minor's property, a tutorship council should be formed promptly. This is the first stage you must complete, because the council has a role to play at the outset of the tutorship. Its members are chosen by a meeting of the minor's family and friends. The individuals attending this meeting are convened by the **clerk** or the notary you have assigned to perform this task. The meeting should be attended by at least five individuals. They can be the minor's grandparents, adult brothers and sisters, and more distant family members (uncles and aunts, close cousins or friends).



The **meeting of relatives, persons connected by marriage or civil union and friends** brings together the minor's relatives and friends. It should be held in the office of a notary or at the courthouse of the **judicial district** where the minor resides.

During the meeting, those in attendance will choose the members of the tutorship council. They also select a secretary, who may or may not be a member of the council, and two alternates to replace any member who withdraws from the council. They also determine the secretary's remuneration, if applicable.

The time required to form a tutorship council varies from one region to another, depending on the processing time of the local court where the application is made. You can expect the judicial procedures to take from five to six months.



A tutor may not be a member of the tutorship council.

1.3. Who makes up the tutorship council ?

The tutorship council is usually formed of three individuals chosen from the minor's family, from both the mother's and father's sides. A secretary is also appointed, and this individual may or may not be a member of the council.

1.4. Who pays the legal costs ?

Costs incurred in forming the tutorship council—for instance, the notary’s or lawyer’s **fee** and court costs (to file and present the application)—may be covered using the minor’s patrimony. If the minor has few assets, you may be entitled to legal aid.



DATIVE
TUTOR

1.5. What happens if the tutor fails to form a tutorship council ?

Since the tutorship council is an obligation with respect to the administration of the minor’s property, refusal to form it could ultimately lead to the tutor’s replacement. The Curateur public has the power to apply to the court for a tutor’s replacement if the tutor fails to fulfill his or her responsibilities.



DATIVE
TUTOR



STAGE 2

MAKING AN INVENTORY

STAGE 2

MAKING AN INVENTORY

2.1. What is an inventory ?

The **inventory** is a list of all of the minor's property that was placed under the tutor's administration when tutorship was instituted. These assets are generally the proceeds of a life insurance policy, an **compensation**, pension, donation, or an inheritance. Everyday items belonging to the minor are excluded, for example, the minor's clothing or bedroom furniture. The inventory also includes a list of the minor's debts, for example, a mortgage on a building bequeathed to him or her. The inventory may be **notarized** (see 2.2) or made by **private writing** (see 2.3).



DATIVE
TUTOR

2.2. What is a notarized inventory ?

As its name indicates, this inventory is made by a notary, giving it authenticity. It is recommended that tutors hire a notary, particularly if the minor's property comprises numerous and diverse items, for example, investments in many financial institutions, buildings and stock. The notary's fees can be covered by the minor's patrimony.



DATIVE
TUTOR

2.3. What is an inventory made by private writing ?

This is an inventory prepared by the tutor and signed by two witnesses. The tutor can use the applicable form that is enclosed in the folder accompanying this guide; it can also be downloaded from the Curateur public's website.

This type of inventory is generally used if the minor's patrimony is small, for example, immovable property, an compensation, or a pension.



DATIVE
TUTOR



DATIVE
TUTOR

2.4. Why is it necessary to prepare an inventory ?

Preparing the inventory is the first action in the administration of the tutorship. It is an essential part of the tutor's sound management. With the inventory, it is possible to establish the value of the minor's **patrimony** at the outset of the tutor's administration. It provides the tutor with a more accurate picture of the nature of the assets under administration and the decisions that must be made to ensure a proper administration. The inventory is also useful when it comes to completing other stages in administering the minor's patrimony, in particular, determining the amount of the security, and completing the **annual administration report**. These two important stages of the tutorship are explained on pages 24 and 32 of this section.



DATIVE
TUTOR

2.5. Who verifies the inventory ?

The tutorship council and the Curateur public are responsible for verifying the inventory. It is recommended that the tutorship council verify it first. Once it has been approved, the tutor sends the inventory to the Curateur public for further verification based on information provided by the insurers, succession **liquidators**, and donors.

If the tutorship council has not yet been formed when the inventory is produced, the tutor must send a copy to the Curateur public and keep a copy for the secretary of the tutorship council.



DATIVE
TUTOR

2.6. How do I prepare an inventory ?

Making an inventory consists of enumerating, describing, and evaluating as accurately as possible all property worth \$100 or more that has been placed under your administration as tutor, and also assessing all of the minor's debts. You do not have to include everyday items that already belong to the minor, for example, the minor's clothing or bedroom furniture.

In cases where an item belonging to the minor is in poor condition, you must describe the condition in section 6 of the inventory.

If you are administering the patrimony of several minors, you must prepare an inventory for each of them.

The inventory must be prepared within 60 days of starting your administration of the tutorship.

2.7. How do I complete the inventory made by private writing form that is supplied with this guide ?

A form to prepare an inventory made by private writing is provided in the folder accompanying this guide. It comprises five sections:

1. Identification
4. Minor's Assets
5. Minor's Liabilities
6. Declaration of the Tutor
6. Signature

If you use this form, please follow these instructions.

Section 1: Identification

In this section, write:

- » Minor's last name, surname, date of birth and address;
- » Your last name, surname, address and telephone number;
- » Last names, surnames, addresses, and telephone numbers of two witnesses;
- » Date on which you prepared the inventory.

Section 4: Minor's Assets

In this section, describe the minor's assets by listing them in the appropriate categories. The following chart contains information about these categories. You may not have to fill in all the categories. Check for those that concern your situation.

You do not have to include in the inventory any everyday items owned already by the minor, for example, the minor's clothing or bedroom furniture.

ASSETS	RELEVANT INFORMATION
1. Cash	Enter the cash amount contained in the patrimony of the minor you represent and any cheques in the minor's name that have not yet been cashed or deposited.
2. Bank accounts	Write the number and balance of any bank accounts (savings and chequing accounts), including sums the minor possessed before institution of the tutorship.
3. Deposit certificates	Write the number and value of deposit certificates (term deposits) possessed by the minor.
4. Accounts receivable	Enter sums loaned from the minor's patrimony. Also enter the name and address of anyone owing money to the minor.
5. Bonds	Enter the names of bonds possessed by the minor, serial number, maturity date, and value.
6. Stocks and mutual funds	Enter the names of stocks possessed by the minor, serial numbers, and, if possible, their purchase value. You must also enter under this heading any mutual fund shares held by the minor.
7. Mortgages receivable	Enter sums loaned in the minor's name against a collateral asset such as a house. You must provide as much information as possible about this mortgage, because it frequently involves large sums.
8. Buildings and land	Describe the buildings owned by the minor. In the event there are several owners, indicate the minor's share. Indicate whether the value you have listed represents the current market value or a municipal assessment. You should also include under this heading any lots of land containing no buildings.
9. Funeral pre-arrangement contract	Unless the minor has a funeral prearrangement contract, ignore this section.
10. Vehicles	Enter the value of any vehicles owned by the minor. Indicate the model and year of cars and trucks.
11. Life insurance	Enter information about life insurance policies held by the minor and, if applicable, their surrender value. It is important to state whether the insurance was obtained before or after institution of the tutorship, who is paying the premium, and who is the beneficiary.
12. Furniture and personal effects	Describe personal effects worth over \$100 that the minor received when tutorship was instituted. If you believe that some items are very valuable (jewellery, paintings, etc.), have them appraised by an expert.
13. Others	Describe any other assets that you were unable to enter under heading 12.

When you have compiled all the information, determine the total value of all assets by adding the amounts in headings 1 to 13 inclusively.

Section 5: Minor's Liabilities

In this section, describe the minor's liabilities by entering them in the appropriate categories. The following chart contains information about these categories.

LIABILITIES	RELEVANT INFORMATION
14. Bank loans	Enter all outstanding balances on personal loans obtained from a financial institution in the minor's name. Also enter the amount already drawn on a line of credit in the minor's name, if applicable.
15. Accounts payable	Enter all bills that are still outstanding after 30 days.
16. Notes payable	Enter balance payable on sums borrowed and guaranteed by a note in the minor's name.
17. Mortgage payable	Enter the balance of a mortgage, if applicable, which must be paid in the event the minor owns buildings or land.
18. Other loans	Enter any other outstanding debts for which the minor is responsible.
19. Other liabilities	Enter all other liabilities that could be connected with the minor's patrimony.

When you have compiled all the information, determine the total value of all the liabilities by adding the amounts in headings 14 to 19 inclusive.

If you have other documents that could eventually concern the minor's patrimony, list them under the total liabilities. These could include the endorsement of someone else's loan, a legal case currently before the court, or a judgment.

Section 6: Declaration of the Tutor

This section presents additional information concerning the inventory. You can also use the inventory to:

- » Describe any of the minor's assets that are in poor condition.
- » Correct the inventory if you have knowledge of other assets that do not appear in the list you have just completed.

Section 6: Signature

Sign the inventory form, and have two witnesses sign it, indicating the date.

A guide to filling out the inventory form by private writing is included in «Tools and Forms.»



DATIVE
TUTOR

When you send documents to the Curateur public, make sure to include the minor's name and file number.

2.8. Who do I send the inventory to ?

Remit copies of the inventory to the secretary of the tutorship council and the Curateur public. It is advisable to give a copy to the minor, if he or she is 14 or older. This will give the minor a better understanding of the annual reports and the final report that he or she will receive throughout the tutorship and at its conclusion.



DATIVE
TUTOR

2.9. What documents do I enclose with the inventory ?

You must provide copies of all supporting documents that certify to the contents of the minor's patrimony. Depending on the case, these could include bank statements, investment statements, and municipal tax assessments. The secretary of the tutorship council must keep the copies.

In case of doubt about what documents to enclose with the inventory, contact the person who is responsible for the minor's file at the Curateur public.



DATIVE
TUTOR

2.10. What do I do if I don't have all the necessary information to complete the inventory ?

Although the inventory must be prepared within 60 days after you have begun administering the tutorship, it may turn out that, for reasons beyond your control, it is impossible to comply with this deadline. For example, if part of the minor's patrimony is an inheritance, and the succession has not yet been liquidated.

In such situations, here is the procedure:

- » If the minor has already received part of his or her assets, prepare the inventory and describe them, for example, an **indemnity** from the Société de l'assurance automobile du Québec (SAAQ) or a life insurance benefit.
- » If the minor has not received any assets, prepare a partial inventory, completing sections 1, 2, 3 and 6 of the form.
- » In both cases, enter the sum of \$1.00 on line 4 (Accounts Receivable) of the **Assets** section. This sum will be adjusted in your first annual report. You must also write «Succession Receivable» and the **liquidator's** name and contact details under «Name and Address of Debtor.»
- » Once the assets have been received:
 - » Send the documents relating to the succession to the Curateur public (e.g., the will or the inventory of the succession).
 - » If you have already furnished security, make sure you consult the tutorship council so that a new security can be determined based on the minor's actual patrimony.
- » When you prepare your first annual report, enter on line 112 of the «Income» section, the assets received by the minor that did not appear in the inventory. Attach any supporting documents relating to these assets and the final statement of the succession.

2.II. What happens if the tutor fails to send in an inventory ?



Since the inventory is a compulsory part of administering the patrimony of a minor, refusal to prepare one could ultimately lead to the tutor's replacement. The tutorship council and the Curateur public have the power to apply to the court for a tutor's replacement if the tutor fails to fulfill his or her responsibilities.

2.I2. What are the tutorship council's responsibilities with regard to the inventory ?



As tutorship council, your main responsibilities are to ensure that:

- » The tutor produces the inventory by the required deadline, in other words, 60 days after commencing his or her administration;
- » The inventory accurately reflects the minor's patrimony.



A checklist is included in «Tools and Forms,» and on the Curateur public's website. It presents the most important questions to ask the tutor and the principal elements of the inventory to check.

2.13. What elements of the inventory must be verified ?

Pay special attention to the following:

- » Does the inventory present all of the minor's assets and debts ?
- » Is the information contained in the inventory accurate and entered under the proper headings ?
- » Has the tutor attached all relevant documents ?
- » Did the tutor sign and date the inventory form ?
- » If it is an inventory made by private writing, has it been signed and dated by two witnesses ?
- » Have all of the supporting documents been given to you ?



2.14. What happens if the tutorship council does not agree with the contents of the inventory ?

If you believe that the inventory is incomplete or inaccurate, you can ask the tutor to make the necessary corrections. If the tutor refuses to cooperate and a dispute ensues, contact the person who is responsible for the minor's file at the Curateur public to inform him or her of the situation and learn what further steps to take. This individual will help you carry out your responsibilities.

STAGE 3

ADMINISTERING THE PROPERTY

STAGE 3

ADMINISTERING THE PROPERTY

3.1. Why is it necessary to open an account «in the capacity of?»



DATIVE
TUTOR

In order to manage your assets and the minor's assets separately, you must open an account «*in the capacity of*» the minor. It is completely separate from your personal account, and it enables you to manage the minor's assets and deposit her or his income.

What does the expression «*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. In this case, it indicates you are acting as a tutor and not on your personal behalf.

3.2. Why do investments needed to be registered «in the capacity of?»



DATIVE
TUTOR

Similarly, the minor's investments must be registered in an «in the capacity of» account to distinguish them from your own investments. They must be labelled as follows: «(tutor's name) in the capacity of tutor to (minor's name).»

3.3. How do I determine the sources of the minor's income?»



DATIVE
TUTOR

You must determine the sources of the minor's income, because he or she may have several income sources, for example, **compensations** or annuities, interest on investments, or rental income from a building.

You are also responsible for collecting the minor's earnings and following the procedures to obtain any other available benefits and compensations, government or other, to which the minor is entitled due to his or her condition. For example, the minor may be entitled to compensations or benefits because he or she is disabled or an orphan.

The Répertoire des aides financières gouvernementales pour le mineur [Directory of Government Subsidies for Minors] is available on the Curateur public's website.

3.4. What types of investments are presumed sound ?

Limit **investments** to those that are **deemed sound**, in other words, those that are mentioned in the Civil Code of Québec and considered as prudent investments. The following chart presents the most popular investments.

INVESTMENTS	CONDITIONS
Purchase of bonds	Bonds are issued and guaranteed by the government of Québec or another Canadian province, the federal government, the U.S. federal government or state governments, municipalities, school boards, and certain public service corporations in Canada.
Purchase of common shares	Shares must be issued by a company that has complied for three years with the Canadian Securities Act and is listed on a recognized Canadian stock exchange.
Purchase of property	Immoveable property may be deemed as a sound investment under certain circumstances. To assess your situation, contact the person who is responsible for your file at the Curateur public before buying a property. He or she can assist you with this process.
Mortgage loan	The loaned amount must be a first mortgage on a building located in Québec. The loan must not cover over 80% of the value of the building.
RESP	A registered education savings plan (RESP) is presumed sound if the investment in question is deemed sound. For example, if the RESP is composed of high-risk stock, it is not presumed sound. On the other hand, if it is composed of Québec savings bonds, it is presumed sound.

These investments, like other assets belonging to the minor, must be registered by the tutor in the capacity of the minor.

In case of doubt, ask a financial expert for confirmation that the investments you have made are presumed sound in the meaning of the law.

If you make what are deemed to be sound investments, you are acting prudently and properly fulfilling your obligations. However, if you make investments that are not stipulated by the law you could be held responsible for any losses and be required to repay them.

At the start of your administration, you may keep investments that were made before the institution of tutorship, even if they are not deemed sound.

3.5. What are the tutorship council's responsibilities ?



As tutorship council, your main responsibilities are to ensure that the tutor:

- » Opens an account in the capacity of the minor to administer the minor's property.
- » Registers the minor's investments in an «in the capacity of» account.
- » Determines the source of the minor's earnings and collects them.
- » Only makes investments that are presumed sound.

» 3.6. What can the tutorship council do to fix a problem that may arise with the tutor ?



Remind the tutor of his or her obligations and their importance to the protection of the minor's property. If, despite your intervention, the tutor refuses to carry out his or her obligations, you can contact the person in charge of the minor's file at the Curateur public to inform them of the situation and learn what other steps to take.

If you observe repeated breaches or financial abuse on the part of the tutor, consult Section D, «What to Do in the Case of a Breach, Abuse, Report of Suspected Abuse, and Replacement,» or contact the Curateur public.



STAGE 4

FURNISHING SECURITY

STAGE 4

FURNISHING SECURITY

4.1. What is security ?

Security is a guarantee furnished by the tutor to protect the minor's assets. This means that the minor's property will be protected or compensated for if the tutor appropriates or mismanages the property.

4.2. What types of security are there ?

The Curateur public accepts three types of security.

Hold funds

A hold funds is a written undertaking made by the financial institution in which the minor's funds are held to retain all or part of this money until the end of the tutor's administration, unless it receives written authorization from the tutorship council to unfreeze the funds.

The financial institution's written confirmation is remitted to the tutorship council and the Curateur public. The hold funds must be confirmed every year, unless it covers all of the minor's assets including interest until the end of the tutorship.

Mortgage guarantee

A mortgage guarantee is a contract that offers a piece of real estate owned by the tutor as a guarantee. The guarantee is made for the benefit of the minor. It is binding on the tutor up to the amount determined by the tutorship council. The document must be **notarized** and registered in the Registre foncier du Québec [Québec Land Register]. The notary's fee may be covered with the minor's funds. This type of security need not be renewed every year.

Contract of surety or another type of insurance

A contract of surety is an insurance policy that the tutor takes out to guarantee his or her administration. If the tutor fails to fulfill his or her obligations, the insurance company commits to pay the minor damages and interest up to the amount determined by the tutorship council. The premium for the contract of surety or insurance policy may be covered with the minor's funds.



TUTORSHIP
COUNCIL

4.3. Who determines the amount and type of security ?

The tutorship council is responsible for determining the type of security and the amount that must be furnished. It also sets a deadline by which the tutor must furnish this security. It must report its decision to the tutor and the Curateur public using the designated form, “Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative.” This form is included in «Tools and Forms,» and on the Curateur public’s website.

To find out how to calculate the amount of security, refer to 4.7 in this section.



DATIVE
TUTOR

When you send documents to the Curateur public, make sure to include the minor’s name and file number.

4.4. What are the tutor’s responsibilities ?

As a tutor, you are responsible for establishing and maintaining the security and providing written confirmation of its validity every year. You must send the confirmation to the tutorship council and the Curateur public at the same time as you send them your annual report. You must also promptly inform the tutorship council and Curateur public of any changes that have been made to the security, for instance, a change in the type of security, or a transfer of funds to another financial institution.

It is compulsory to furnish security if the minor’s assets are worth more than \$25,000. It must be confirmed every year, unless it is a mortgage guarantee or a hold funds that covers all of the minor’s assets including interest until he or she comes of age.



DATIVE
TUTOR

4.5. How do I obtain security ?

As a tutor, you must first get the tutorship council to decide on the amount and type of security that must be furnished. To do this, the tutorship council completes the “Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative” form and sends it to you. Then, you contact the appropriate service provider to obtain the security.

If the tutorship council opted for a hold funds, here is what you must do:

1. Take the form completed by the tutorship council to the financial institution that holds the minor's patrimony and request a hold funds. The financial institution will then freeze the funds according to the directions of the tutorship council.
2. You should ask the financial institution for written confirmation of the hold funds.

These steps must be repeated every year unless the hold funds covers the entire amount of the minor's patrimony, including interest, until the minor becomes of age. In this case, it is unnecessary to obtain confirmation every year.

In the case of a mortgage guarantee, because it is a notarized document, you will need to contact a notary to complete the process.

For a contract of surety or other type of insurance, contact an insurer to select the most appropriate product.

For your assistance, these documents are included in «Tools and Forms,» and on the Curateur public's website.

- » “Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative”;
- » A sample Hold Funds application to a financial institution;
- » A sample Hold Funds confirmation form.

4.6. What are the tutorship council's responsibilities ?

With respect to the security, the tutorship council has three responsibilities. First, it must determine the amount and type of security and the time limit the tutor must respect to guarantee the minor's property. To do this, you must complete the “Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative” form and send it to the tutor so that he or she can complete the steps required to obtain the security you have determined must be furnished.



Second, you must ensure that the tutor provides proof of the requested security every year, except in the case of a mortgage guarantee or hold funds that covers all of the minor's assets, including interest, until the minor comes of age.

Last, you must promptly communicate all information concerning the security (hold funds, release, unfrozen funds, etc.) to the Curateur public.

It is compulsory to furnish security if the minor's assets are worth more than \$25,000, and you must confirm it every year. However, if the security consists of a mortgage guarantee or a hold funds on all of the minor's assets plus interest until he or she comes of age, it is not necessary to confirm it annually.



TUTORSHIP
COUNCIL

4.7. How is the amount of security calculated ?

In general, the amount of the security should correspond to the portion of the minor's patrimony that will not be used to cover various needs such as maintenance costs for a building owned by the minor, or the **fees** of the accountant who produces the annual report. In other words, the fewer and smaller the needs, the higher the security. If both of the minor's parents are deceased, the dative tutor can use the minor's patrimony to cover the child's needs. This is an important element to consider in your overall analysis.

In order to establish the amount of the security, you should work with the tutor to assess the need to draw on the minor's patrimony. You will need to repeat this process every year.



TUTORSHIP
COUNCIL

4.8. Can the amount of the security be contested ?

If the Curateur public considers that your calculation of the security to be furnished is substantially less than what will be required to administer the minor's patrimony, they could ask you to revise your decision.



TUTORSHIP
COUNCIL

4.9. Can the tutor be exempted from the obligation to furnish security ?

All tutors must furnish security to guarantee their administration if the value of the minor's assets exceeds \$25,000. However, in calculating the amount, immovable property may be exempted. For example, a house, land, and certain material items

such as a vehicle, boat, or valuable furnishings may be exempted from the security calculation. If these items were to be sold, the proceeds of the sale would then have to be considered in the security calculation.

4.IO. What happens if the tutor does not furnish security ?

Since the security is a compulsory part of administering the patrimony of a minor, refusal to furnish it could ultimately lead to the tutor's replacement. The tutorship council and the Curateur public have the power to apply to the court for a tutor's replacement if the tutor fails to fulfill his or her responsibilities.



STAGE 5

FINANCIAL TRACKING

STAGE 5

FINANCIAL TRACKING

5.1. Why the need for financial tracking ?

To facilitate the administration of the minor's patrimony, a simple accounting system is recommended. It can be manual or electronic and should include a section for earnings and another section for expenditures. If you enter cash inflows and outflows from time to time during the year it will be easier to produce the **annual report**.



A sample financial tracking model is provided in “Tools and Forms.” You can also download the Excel file on the Curateur public's website and use it as your bookkeeping template.

For more information about the annual report, go to page 32 in this section.

5.2. What documents must be preserved ?

All supporting documents related to the administration of the minor's property should be preserved, including invoices, receipts, cheque stubs, and investment reports prepared by the financial institution.



5.3. Who preserves what ?

The secretary of the tutorship council is responsible for preserving all documents relating to the tutorship of the minor's property. You should give him or her copies of all supporting documents relating to your administration. Remember to keep the originals for your own records.



STAGE 6

PRODUCING THE ANNUAL REPORT

STAGE 6

PRODUCING THE ANNUAL REPORT

6.1. Why is it necessary to produce an annual report ?

The **annual report** is the method that has been chosen for tutors to account for their administration and justify all the actions that have been taken in the minor's name. As its name indicates, the report must be produced every year.



The annual report presents the minor's **assets**, debts (**liabilities**), earnings, and expenditures in the past year.

6.2. How do I produce the annual report ?

To produce the annual report, you can refer to the inventory that was drawn up at the beginning of your administration, the last annual report you prepared, and the invoices, cheque stubs, bank statements, and investment statements that you have kept over the year preceding the report.

If it is too complicated for you to produce the annual report, you can ask for assistance from an accountant or another qualified professional. The fees you incur can be covered by the minor's patrimony.

If the minor's patrimony is worth \$100,000 or more, the Curateur public may require that it be audited by an accountant who is a member of a professional order.



We ask that you send in the annual report within three months after the tutorship's anniversary date. For example, if the tutorship began on June 1, the report should be remitted by September 1 of every year. To find out the tutorship's anniversary date, contact the Curateur public.



6.3. Detailed or simplified? What form do I complete ?

The first year, you will receive a detailed annual report form one month before the tutorship's anniversary date. In the second year, depending on the minor's financial situation, you will receive the same detailed form or the simplified form.

You will be sent the simplified form, in particular, if the minor does not own any buildings, land, stocks, bonds, or investments guaranteed by a mortgage on a building or other property.

The person in charge of the minor's file for the Curateur public will call you to help you complete your first annual report. He or she will assist you in the process and answer any questions you may have



6.4. Who do I send the report to ?

Once the **annual report** has been completed, you must send it to:

- » The secretary of the tutorship council;
- » The minor, if he or she is 14 or older;
- » The Curateur public;
- » The tutor to the person of the minor, if applicable.

We recommend that you keep a copy of the annual report for your records.

Remember that if the minor is 14 or older, he or she is entitled to be informed about the administration of his or her patrimony and to receive a copy of the annual report. It is your responsibility to make sure that the minor understands the contents of the report. You can inform the tutorship council and the Curateur public of your actions in this respect.

6.5. What documents should I enclose with the annual report ?



When you send your first annual report to the Curateur public, you must supply a copy of all supporting documents to confirm all the **assets**, **liabilities**, earnings, and expenditures entered in the report in addition to giving them to the secretary of the tutorship council. In the following years, only the annual report needs to be sent to the Curateur public, but you should still give all supporting documents to the secretary of the tutorship council. The Curateur public may request them when it reviews your annual report. You are advised to keep your own copy of all these documents. Every year, you must also send the Curateur public proof that the security has been renewed.

When you send documents to the Curateur public, make sure to include the minor's name and file number.

6.6. What happens if the tutor does not send in the annual report ?



Since the annual report is a compulsory part of administering the patrimony of a minor, refusal to prepare one could ultimately lead to the tutor's replacement. The tutorship council and the Curateur public have the power to apply to the court for a tutor's replacement if the tutor fails to fulfill his or her responsibilities.

6.7. What are the tutorship council's responsibilities with regard to the annual report ?



The main responsibilities of the tutorship council are to ensure that:

- » The tutor produces the annual report within the prescribed time limits, in other words, three months after the tutorship's anniversary date.
- » The annual report presents an accurate picture of the minor's patrimony.

We ask that the tutor send in the annual report within three months after the tutorship's anniversary date. For example, if the tutorship began on June 1, the report should be remitted by September 1 of every year. To find out the tutorship's anniversary date, contact the Curateur public.



6.8. What elements of the annual report must be verified ?

As a member of the tutorship council, you must verify the annual report by paying particular attention to the following:

- » Does the annual report present all of the minor's property and debts ?
- » Is the information contained in the annual report accurate and entered under the proper headings ?
- » Have all the expenditures been entered in the annual report ? Have they been entered correctly ?
- » Have all of the supporting documents been given to you ?

A check list is included in «Tools and Forms,» and on the Curateur public's website.



6.9. What happens if the tutorship council does not agree with the contents of the annual report ?

If you believe that the annual report is incomplete or inaccurate, you can ask the tutor to make the necessary corrections. If the tutor refuses to cooperate and a dispute ensues, contact the person who is responsible for the minor's file at the Curateur public to inform him or her of the situation and learn what further steps to take. This individual will help you carry out your responsibilities.



STAGE 7

**(END OF YOUR
ADMINISTRATION)
PRODUCING THE FINAL
REPORT**

STAGE 7

(END OF YOUR ADMINISTRATION)

PRODUCING THE FINAL REPORT

7.1. When does the administration of the tutorship come to an end ?

The tutor administers the minor's patrimony until

- » The minor comes of age or is emancipated;
- » The minor dies before coming of age;
- » He or she is replaced by another tutor.

At the end of their administration tutors must account for their administration to the minor who has reached majority, the **liquidator** of the succession, or to the replacement tutor, depending on the case, as well as the tutorship council and the Curateur public.

7.2. How do I produce the final report ?

To prepare the final report, you can refer to the inventory prepared at the beginning, bank and investment statements, annual report, and invoices and cheque stubs that you have preserved during the tutorship.

If it is too complicated, you can give the job to an accountant or another qualified professional. The fees you incur can be covered by the minor's patrimony.



The final report must be completed within 30 days of the end of your administration. For example, if the minor turns 18 on April 8, you must give him or her the final report by May 8.

The final report includes a list of the **assets** and **liabilities** as they stand at the end of your administration.



7.3. Detailed or simplified? Which type of final report should I prepare ?

The Curateur public has provided a simplified form to help you prepare your final report at the end of the tutorship. This form will be sent out a month before the end of your administration.

If the minor who has reached majority accepts the simplified version, you should complete the form and have him or her sign it to show that he or she has accepted the final report. The procedure is the same if the final report is remitted to the liquidator of the minor's succession or the tutor who has replaced you.

The person who receives the final report is entitled to ask for additional supporting documents and explanations. They can also ask you for a more detailed final report than the form supplied by the Curateur public. In this case, they are responsible for covering the incurred costs.



7.4. To whom do I remit the final report ?

You must give a signed original of the final report to the minor who has come of age (or the **liquidator** of his or her succession, or the tutor who has replaced you). You must also send a copy to the tutor to the person, if applicable, the tutorship council and the Curateur public.

Keep the signed original copy, because it serves as proof that the minor who has come of age, liquidator of his or her succession, or replacement tutor has acknowledged that you have properly administered the patrimony for which you were responsible.

When you send documents to the Curateur public, make sure to include the minor's name and file number.

7.5. What happens if the tutor does not produce the final report ?



If the Curateur public does not receive a copy of the final report within 30 days of the end of your administration, it will inform the minor who has reached majority of this fact (or the liquidator of his or her succession, or the replacement tutor) and inform that individual of the recourse available. The tutorship council can also offer its assistance to the minor who has come of age to obtain the final report. The Curateur public may take other measures to persuade you to produce it, for instance, issue a notice of offence.

7.6. What is the cancellation of security ?



The cancellation of security (legal terms are discharge or release) is the elimination of the guarantee you gave to protect the patrimony of the minor under tutorship. You will obtain it when the concerned individual has accepted the final report.

The cancellation of the security may be given by:

- » The minor who has come of age or who is emancipated;
- » The liquidator of his or her succession, if the minor is deceased;
- » The tutorship council, if another individual replaces you as tutor.

If there are charges associated with the cancellation of security, they may be covered by the minor's patrimony. Some institutions automatically cancel the security when the child comes of age.

7.7. What do I do with the property ?



Once the individual concerned has accepted the final report, all that remains to be done is transfer the property, documents, bank accounts, investments, and other sources of income to the minor's name.



7.8. What are the tutorship council's responsibilities with regard to the final report ?

As a member of the tutorship council, your main responsibilities are to ensure that:

- » The tutor produces the final report within the prescribed time limit, which is 30 days after the end of his or her administration.
- » The final report presents an accurate picture of the minor's patrimony at the end of the tutor's administration.



7.9. What elements of the final report must be verified ?

Pay special attention to the following:

- » Does the final report present all of the minor's property and debts ?
- » Is the information contained in the annual report accurate and entered under the proper headings ?



7.10. What happens if the tutorship council does not agree with the contents of the final report ?

If you believe that the annual report is incomplete or inaccurate, you can ask the tutor to make the necessary corrections.

In the event of a disagreement, we recommend that you contact the person who is responsible for the minor's file at the Curateur public to inform him or her of the situation and learn what further steps to take.

7.II. What happens if the tutor does not produce the final report ?

You must remind the tutor of the obligation to produce the final report and its importance to the administration of the minor's property.

If, despite this intervention, the tutor still refuses to produce a final report, contact the person who is in charge of the minor's file for the Curateur public. This individual will consider with you any additional steps that need to be taken.

7.I2. To whom should the documents related to the tutorship be remitted ?

The secretary of the tutorship must remit the documents related to the tutorship to:

- » The minor who has come of age or who is emancipated;
- » The minor's heirs, if he or she is deceased;
- » The new tutorship council in the event of the council's replacement;
- » The tutor or curator if, at the age of 18, the minor who has come of age is incapable of taking care of himself or herself and is benefiting from protective supervision for persons of full age.

www.curateur.gouv.qc.ca