

MANAGEMENT OF THE PATRIMONY

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In this section, we present basic notions for the sound management of a minor's patrimony. As a rule, this patrimony must be preserved. But there are some exceptions to the rule. We describe them in the following pages.

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

Generally speaking, dative tutors can use the minor's patrimony to provide for the minor's needs, except in cases where the child's parents are still able to fulfill their **support obligation**. This means that dative tutors must first find out whether the parents are still capable of paying their child's support costs. This will have a major impact on how you will manage the minor's patrimony.

I. MANAGEMENT OF THE PATRIMONY WHEN THE DATIVE TUTOR COVERS THE CHILD'S EXPENSES



I.1. Can I use the minor's patrimony to cover his or her needs ?

Yes, if the parents are no longer able to fulfill their support obligations, you can pay all the costs related to the minor's needs using his or her patrimony.



I.2. Am I obliged to preserve the patrimony ?

Yes, it is your obligation to preserve the minor's patrimony and remit it to them when they turn 18. This is what the Civil Code of Québec terms simple administration. This means that while you may use the minor's patrimony to cover his or her needs, you must do everything you can to preserve the portion that remains unused.

2.

PARENTAL SUPPORT OBLIGATION AND MANAGEMENT OF THE PATRIMONY

This section only concerns the patrimony of minors whose parents must fulfill their **support obligation**. If this is not your case, go to part 3.

Parents of a child under tutorship have support and maintenance obligations even though you are acting as tutor to the property of the minor. For example, they must ensure their child has food, clothing, housing, education, personal care, transportation, recreation activities, and any other goods and services he or she may need. They must pay for these things with their own money. In other words, the fact that their child has assets or earnings does not relieve them of their parental obligation to cover these needs using their own money. On the other hand, in exceptional circumstances, a dative tutor can use the minor's patrimony to cover the minor's needs. This section presents the circumstances under which this is permissible.

2.1. How do I decide whether an expense can be covered using the minor's patrimony ?

When parents are unable to pay for an item or services their child needs, the dative tutor can draw on the minor's patrimony to cover the expense. This is an exceptional situation, however, because parents are required to fulfill their **support obligation**.

The patrimony can be used when you and the tutorship council have determined that the parents do not have the means to cover the cost of a necessary item or service, in particular, to cover expenses related to the minor's health, education, or employment integration.

Here are some examples:

- » **Health:** orthodontic or other dental care, optometry expenses;
- » **Schooling:** tuition fees, purchase of educational materials, expenses related to educational and extracurricular activities in the program of study (outings, camp, etc.);
- » **Employment integration:** postsecondary tuition, purchase of work tools, special education fees, transportation costs, etc.



Preservation of the minor's patrimony is the rule; spending it is the exception.

The decision you and the tutorship council make jointly must be in the minor's interests. The tutorship council will evaluate whether it can authorize the exceptional use of the patrimony by considering the following questions:

- » Is it essential to draw on the patrimony ?
- » Is it in the minor's interests to make this expenditure ?
- » Have other options been considered (bursaries, grants, etc.) ?
- » Is the identified need truly necessary ?
- » Would the parents' income be sufficient to pay for the item or service without having to draw on the minor's patrimony ?

If you still have questions, consult the person who is in charge of the minor's file at the Curateur public.



2.2. When necessary, is it possible to use compensation benefits ?

Jeremy has been receiving benefits from the SAAQ since his father, Paul, died in a car accident. The tutor can use one of them to cover Jeremy's needs.

Certain **benefits** are paid to the child to compensate for the loss of income that usually results from the death of one of the parents. The purpose of these payments is to contribute to the child's maintenance. To cover the child's needs, the tutor can therefore use the lump sum death benefit paid to a dependant other than the spouse by the Société de l'assurance automobile du Québec (SAAQ), or the monthly death benefits paid by the Direction de l'indemnisation des victimes d'actes criminels (IVAC) [victims compensation] and the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) [workers compensation].

Other sums that the minor may receive must be preserved: inheritance, life insurance product, compensation for damage sustained, amount resulting from an out of court settlement, etc.

Please contact the person who is in charge of the child's file to learn more about the rules for using compensation benefits.

3.

OTHER IMPORTANT INFORMATION RELATING TO THE MANAGEMENT OF THE PATRIMONY

3.1. How do I sell property or borrow a large sum of money ?

Benjamin inherited a rental building that needs major renovations. Emily, his dative tutor, wants to take out a \$15,000 loan to make building repairs and thereby preserve its value. How must she proceed to obtain this loan ?

As a tutor, if you want to sell something that belongs to the minor or take out a large loan in the minor's name, you must first obtain the authorization of the tutorship council. If the value of the item or loan exceeds \$25,000 you must obtain court authorization, and the court will ask the tutorship council for its opinion.

The tutorship council or the court will agree to the expenditure or loan only in cases where it is necessary for the minor's education and maintenance, to pay the minor's debts, to keep an item of the child's property in good condition, or to preserve its value, as in the above example.

3.2. How do I renounce a succession ?

A succession devolved to a minor is automatically accepted unless otherwise indicated. If you wish to renounce the succession because it is insolvent, the tutorship council must first give you its authorization. If it agrees, you can renounce the succession by means of a notarized act or a judicial declaration. The inheritance then becomes an unclaimed succession and you must so notify Revenu Québec. It should be kept in mind, however, that a minor cannot be forced to pay the debts of a succession if they exceed the value of the assets he or she is receiving.



For additional information concerning the purchase or sale of immoveable property, feel free to contact the Curateur public.



For more information on the renunciation of a succession, contact Revenu Québec.



3.3. What are the expenses of a tutorship ?

Certain expenses that are directly related to the administration of the minor's property can be paid out of the minor's patrimony: these are the **tutorship expenses**.

Expenses related to the tutorship function

You are authorized to pay tutorship expenses out of the minor's patrimony, particularly the following:

- » **Fees** and costs related to the formation of the tutorship council;
- » Accountant's fees to produce the annual reports, if applicable;
- » Any expenses related to the representation of the minor in the exercise of his or her **civil rights** (lawyer's fee, etc.).

Expenses related to the preservation or protection of assets

As a general rule, expenses related to the preservation of the minor's property may be paid out of the minor's patrimony. For example, you can use his or her money to pay for:

- » Regular repairs of immovable property that do not require taking out a loan or selling another asset (in such cases, you must obtain the authorization of the tutorship council or court);
- » Bank and investment fees;
- » Purchase of property insurance;
- » Income tax, property tax, etc.



3.4. Do I have to file a tax return for the minor ?

Depending on the value of the minor's patrimony, you may have to file a tax return. Contact Revenu Québec or the Canada Revenue Agency for information about your obligations in this respect.

3.5. Can the tutor or tutorship council receive remuneration ?



The activities of the tutor or member of a tutorship council are usually unremunerated. However, the tutor may receive remuneration that is determined by the court, based on the recommendation of the tutorship council. The secretary of the tutorship council can also be remunerated, based on an amount determined by the **meeting of family and friends** and approved by the court.

Depending on the case, the father, mother, or **liquidator** of their succession, if authorized, can also set the amount of remuneration to be received by the dative tutor.



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