

# WHAT TO DO IN THE EVENT OF A BREACH, FINANCIAL ABUSE, REPORT OF ABUSE, OR REPLACEMENT



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

- » The meaning of a breach, financial abuse, and the reporting of abuse;
- » What you must do in such situations;
- » How to replace a member of the tutorship council or its secretary;
- » Under what circumstances you should appoint an *ad hoc*.

This information can also be useful to the tutor because it explains the possible consequences if he or she commits a breach or financial abuse.

# I.

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

### I.1. What is a breach ?

A breach is the failure of the tutor to fulfill one of his or her legal obligations with respect to the administration of the minor's patrimony; for example, the tutor's failure to prepare an inventory, submit annual reports, or final report constitutes a breach.

### I.2. What is financial abuse ?

Financial abuse is the use of a minor's money or assets by someone who is either seeking personal financial gain or not using the funds in the minor's interests. The minor's patrimony is consequently reduced.

An example of this would be if a tutor mismanaged the minor's assets or used the minor's patrimony for personal gain. This could take the form of theft of personal effects or money, fraudulent investments, etc.

### 1.3. How do I detect financial abuse ?

Various signs suggest the presence of financial abuse:

- » Sudden withdrawal of large sums of money from the minor's bank account, or increased number of bank transactions;
- » An unusual real estate transaction;
- » The disappearance of property belonging to the minor;
- » Late payment of bills and unpaid accounts, etc.

### 1.4. What are the tutorship council's responsibilities ?



During the tutorship, the tutorship council must ensure that the tutor properly fulfills all of his or her obligations. For example, it must ensure that the tutor manages the minor's patrimony in the child's interests, and produces requested administrative documents in a timely fashion.

In addition to reminding the tutor of his or her obligations, if the tutor commits a breach or financial abuse, the tutorship council must rapidly intervene to correct the situation. It must also inform the Curateur public of the situation. If the tutor refuses to make the necessary corrections, for example, to produce the annual administration report, or repay the minor for money that he or she withdrew without permission from the minor's patrimony, the tutorship council must act as quickly as possible and consider replacing the tutor.

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

Many measures can be taken in the event of financial abuse. The most common measures are to correct the situation, or for the tutor to repay money or remit property that he or she has appropriated. If this is impossible, the tutor can voluntarily undertake to repay the sums belonging to the minor. If not, he or she may be replaced as tutor to the property of a minor and legal action for damages may be brought against him or her.

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

## 2. WHAT TO DO IF SOMEONE REPORTS ABUSE

Reports concerning a minor's well-being, and not his or her patrimony, should be addressed to the Direction de la protection de la jeunesse [youth protection department].



TUTORSHIP  
COUNCIL

### 2.1. What is a report of abuse ?

A report is information that a person or an agency gives to the Curateur public concerning a situation that could be damaging to the security, dignity, or integrity of a person or his or her property. In tutorships to the property of a minor, the Curateur public's responsibility is limited to the children's patrimony. In particular, a report can concern situations of negligence or financial abuse.

### 2.2. What is the role of the Curateur public ?

The Curateur public may conduct an investigation to verify the information it has received and take any necessary steps to correct the situation, thereby protecting the child's property.

### 2.3. What is the role of the tutorship council ?

The main responsibility of the tutorship council is to oversee the administration of the tutor and inform the Curateur public if it suspects the tutor or anyone else of committing financial abuse with respect to the minor's patrimony.

In addition, depending on the nature of the information, the Curateur public may ask the tutorship council to take action on the report. In such cases, it will inform the council about the next steps it must take. The Curateur public will assist the tutorship council throughout the process, which could ultimately result in the tutor's replacement.

# 3.

## REPLACING THE TUTOR, A MEMBER OF THE TUTORSHIP COUNCIL, OR THE COUNCIL SECRETARY

### 3.1. What is involved in replacing the tutor ?

If the tutor is unable or neglects to fulfill his or her obligations, the tutorship council must apply to the court for his or her replacement. The Curateur public and any other interested individual may also go to the Superior Court to institute replacement proceedings. During these proceedings, the tutor will continue to perform his or her duties, unless the court decides otherwise.

Last, if they have serious grounds, dative tutors may apply to the court to be relieved of their duties. They must first notify their tutorship council.



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

In the event of the retirement or death of a member of the tutorship council, the other members will choose a replacement from the two alternates named by the meeting of family and friends, or in the judgment. If there are no alternates, or if they refuse to assume this responsibility, the members will choose a replacement from the family. As a last resort, they can also choose a close friend of the family. Written notification of the renunciation of a member of the tutorship council and the acceptance of a new member must be sent to the Curateur public.

When a replacement has been designated, the tutorship council must also promptly inform the tutor and the minor if he or she is 14 or older.

If the tutorship council cannot find a replacement, it must apply to the court.



**Remember that ideally, both branches of the immediate family (maternal and paternal) should be represented on the tutorship council.**





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

If the secretary of the tutorship council renounces his or her duties or dies, the other members of the council will choose a replacement from the two alternates. They can also choose someone else to replace the secretary in performing his or her duties. If, under exceptional circumstances, the secretary is the sole member of the tutorship council, the replacement must be found by applying to the court.

As with the replacement of any other member of the tutorship council, the tutor and the minor, if he or she is 14 or older, and the Curateur public must be informed of the change.



### 3.4. How does the tutorship council operate if it is formed of only one member ?

When the tutorship council comprises a single person, a replacement must be found from among the family and friends. An application is made to the court to appoint this individual. Depending on the case, this process may be undertaken by the sole member who is resigning or by the tutor.

We recommend that you consult a lawyer or a notary to assist you with the legal proceedings. The fees you incur to appoint a replacement can be covered by the minor's patrimony.



## 4. APPOINTING AN *AD HOC* TUTOR

### 4.1. What is an *ad hoc* tutor ?

An *ad hoc* tutor is a person who is appointed to temporarily represent the minor for a specific reason. His or her powers are limited, because he or she is only representing the minor in a particular situation. He or she is not replacing the tutor in the administration of the minor's property.

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

An *ad hoc* tutor is appointed when the minor has legal interests to negotiate with his dative tutor. This would be the case, for example, where a minor child and his dative tutor own a building with other co-owners, one of whom disagrees with the terms of division of the building and asks the court to intervene. Since the minor and his dative tutor are involved in this application, an *ad hoc* tutor must be appointed to protect the minor's interests.

### 4.3. How is an *ad hoc* tutor appointed ?

The tutorship council is responsible for appointing an *ad hoc* tutor whenever the interests of the child and those of the dative tutor are in opposition.

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





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