

The Tutorship Council




Le Curateur public
du Québec

À la rencontre de la personne

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Québec 



In the interest of and respect for the person

Persons who are incapable are nevertheless citizens. Anyone taking steps that affect them or on their behalf must act in their interest and respect their rights, autonomy and privacy.

To the extent possible, incapable persons must be consulted when decisions affecting them are to be made. At the very least, they must be informed of these decisions. They must consent to the care proposed for them and for this purpose, their capacity to consent must be verified.

What is a tutorship council?

A tutorship council consists of persons appointed by the court to ensure that the tutor or curator of an incapable person (someone who cannot take care of himself or his property) or a minor child acts in the best interest of this person, makes good decisions for him, looks after his physical and moral health and administers his assets properly. The tutorship council is therefore responsible for assisting the tutor or curator of the vulnerable person.

A tutorship council is formed when a tutorship or curatorship is instituted to protect a person of full age. A tutorship council must also be formed when a minor child is protected by a dative tutorship (that is, when a tutor is appointed instead of the child's parents) or by a legal tutorship (if the child's parent must manage the child's assets and these assets are worth more than \$25,000).

How is a tutorship council formed?

The members of this council are appointed by the court, based on the recommendation resulting from a meeting of relatives, persons related by marriage or friends, which also recommends to the court who should be the legal representative (tutor or curator) of the incapable person.

The members of the tutorship council can also be appointed by the court, based on the recommendation resulting from a **special** meeting of relatives if the tutor of a minor child (who is under 18) had been appointed by his parents before their death, or if the Société de l'assurance automobile du Québec (SAAQ) or the Commission de la santé et de la sécurité du travail (CSST) has appointed an administrator who will have the rights and obligations of a tutor of the minor's property.

Finally, the parents of a minor child who must administer assets worth over \$25,000 may request the court to form a tutorship council made up of one person recommended by them.

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

A secretary and two alternate members are also appointed by the court. The secretary may be chosen from the three members of the tutorship council or be an outside person. If only one person constitutes the tutorship council, he will act as secretary.

There is no tutorship council when the Public Curator or the Director of Youth Protection is appointed by the court to act as tutor or curator. Nevertheless, the Public Curator involves family members as much as possible in the major decisions that it must make on behalf of the persons it represents.

The Curateur public (in the case of a child or adult under protective supervision) and the Direction de la protection de la jeunesse (in the case of a child) can act in the capacity of tutorship council if the court so decides. This would be an option in a situation where, for example, an incapable person's family lives very far away.

What are the responsibilities of the tutorship council?

The tutorship council is responsible for **supervising** the administration of the tutor or curator, **making decisions** and **giving any necessary authorizations and opinions**.

The tutorship council sees to it that the legal representative properly performs tasks concerning the protection and exercise of the represented person's rights.

As for the administration of the assets of the represented person, the tutorship council will assist the tutor or curator while supervising his administration.

In order to perform this task, the tutorship council must receive a copy of the documents that the legal representative (tutor or curator) is required to submit. These include:

- ◆ an inventory of assets of the incapable person, prepared at the beginning of the tutor's or curator's administration;
- ◆ annual administration reports during his administration;
- ◆ the periodic reassessments of the incapable person of full age;
- ◆ a final account at the end of the tutor or curator's administration.

The tutorship council must also:

- ◆ determine the nature and object of the security that the tutor or curator must furnish to guarantee the performance of his duties;
- ◆ set the deadline for the curator or tutor to furnish the security;
- ◆ check every year that the security still exists.

There are three generally accepted forms of security: a mortgage guarantee, an insurance or surety contract or a hold of funds.

In addition, the tutorship council:

- ◆ **authorizes** the legal representative to perform certain tasks in the cases provided by law (including the sale of property worth less than \$25,000, disposal of moveable property of the protected person, simple emancipation of a minor*, renunciation of a succession, etc.);
- ◆ **gives an opinion to the court** in cases provided by law (including sale of property worth more than \$25,000, remuneration of the legal representative, full emancipation of a minor*, care required due to the represented person's state of health if a request to authorize medical care is presented to the court, etc.).

The tutorship council must meet once per year and invite the tutor or curator to this meeting. It can also invite the protected minor or person of full age to the meeting.

If the tutor or curator cannot perform his duties, dies or does not honor his obligations, the tutorship council may request the court to replace him.

* The age of majority is 18. However, simple emancipation gives the minor of 16 or more years of age the right to exercise his civil rights without being represented. The minor's tutor gives the minor a final account of his administration but continues to assist the minor, where necessary. Full emancipation entitles the minor to exercise his civil rights as if he were of full age. It results from a marriage or a court decision for a good reason.



Who keeps the documents?

The secretary of the tutorship council must take the minutes of the meetings. The tutorship council, however, is responsible for keeping all documents that concern the tutorship or curatorship so that they can be given to the minor when he has reached full age, to the person of full age when he becomes capable again, to his heirs when he dies, or to the person who is asked to replace the tutor or curator in his functions.