CURATEUR PUBLIC

Protecting a person under tutorship

Guide for the tutor

and the tutorship council

Awareness | Support | Action

Votre gouvernement

Québec

Produced by Curateur public

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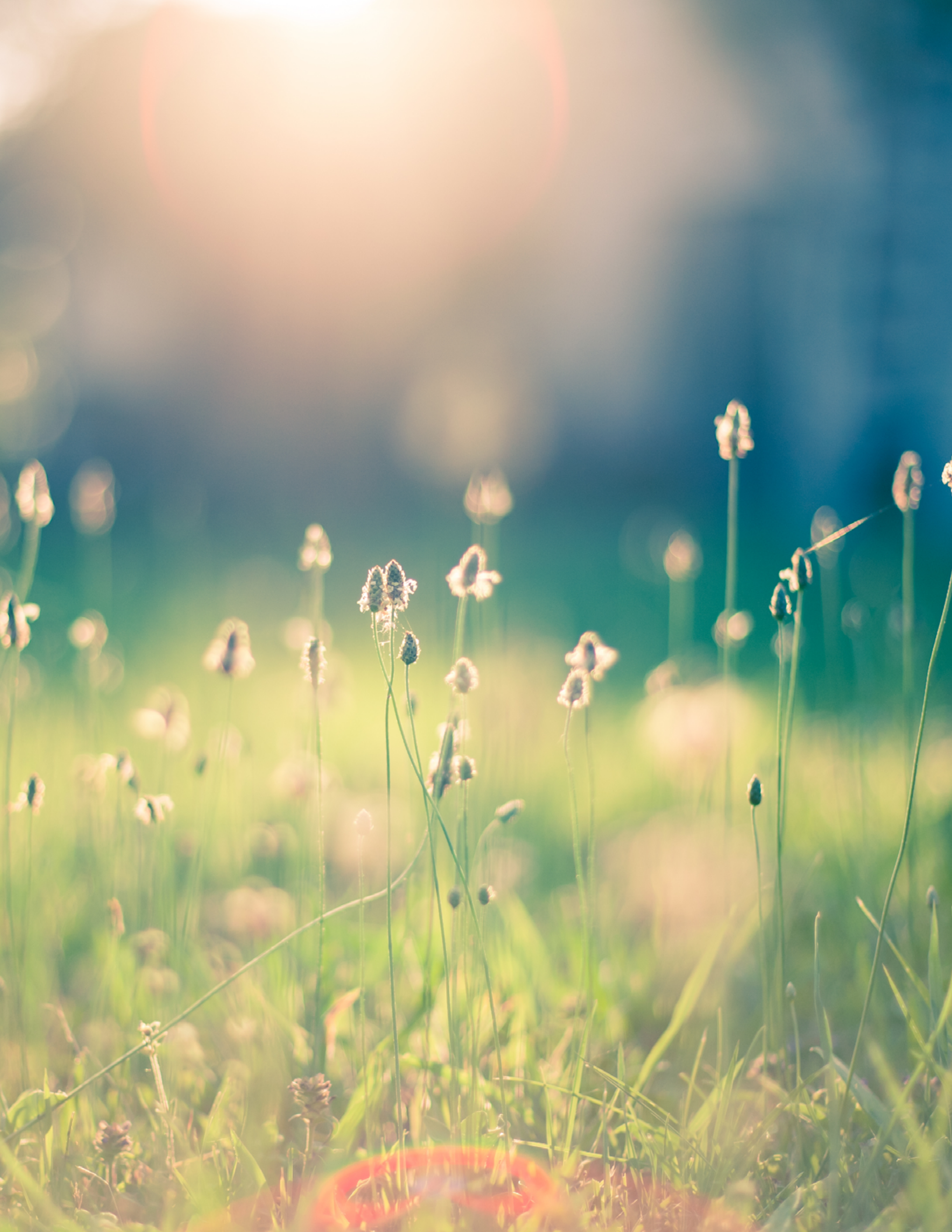

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Requirements to become a tutor or substitute tutor

A person wishing to become a tutor or substitute tutor must request a **judicial record check** from a police force. The police force will issue either a certificate of no judicial record or a judicial record list. The person must also make a sworn statement before a commissioner for oaths declaring that they have never had a civil judgment rendered against them or, where applicable, listing the judgments against them. The affidavit must also state whether the person has ever declared bankruptcy. Having a judicial record, prior civil judgments, or a previous bankruptcy does not automatically disqualify a person from being appointed by the court.

Request by the person concerned, someone close to her, or any interested person

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Filing of the application to institute a tutorship with the court
(with the person's medical and psychosocial assessment reports)

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Sending of a copy of the application to institute a tutorship to the person concerned, the relatives, and the Curateur public

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Interview of the person concerned by the court

↓

Invitation to a meeting of relatives, called by the special clerk or the notary, to hear the opinion of the family and the people close to the person concerned about the choice of tutor, replacement tutors, and members of the tutorship council

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Judgment (court decision) authorizing the institution of the tutorship, appointing the tutor and substitute tutor and defining their responsibilities, and appointing the members of the tutorship council

↓

Obligations of the tutor after their appointment:

- Within 60 days of the onset of the tutorship, prepare an inventory of the patrimony to be managed and submit it to the tutorship council and the Curateur public du Québec (see page 29).
- Manage his own patrimony independently of the patrimony of the represented person (whose money cannot be deposited in the tutor's bank account) (see page 33).
- Provide security, i.e., a guarantee to protect the property of the represented person (see page 31).
- Provide reports concerning his management to the tutorship council, the Curateur public and the represented person (whenever possible) (see page 39 and page 41).
- Seeing to the represented person's moral well-being (see page 21).
- Have the represented person reassessed (see page 27).
- Consent to care (see page 25).
- Etc.

Background

When a person is deemed incapable and in need of representation, a tutorship to a person of full age can be initiated by the court. The law also provides for the onset of this representation measure in the absence of a protection mandate or when the court has not authorized such a mandate's execution. Depending on circumstances, this tutorship seeks to:

- protect the incapable person;
- ensure the management of the person's patrimony, i.e., all of his physical and financial assets (money, buildings, vehicles, land, etc.);
- see to the exercise of the person's civil rights.

Under existing laws, the Curateur public and the tutorship council are responsible for supervision of the tutorship.

Have you been named tutor to a person of full age?

Are you required, as a member or secretary for a tutorship council, to supervise a tutor as he exercises his duties?

Then this guide is for you!

It provides details of your new responsibilities and how to assume them and will also help you better understand the responsibilities of other persons involved in a tutorship. Moreover, this guide describes all of the steps to follow and rules to comply with in order to ensure the protection of the represented person and the management of his patrimony. It also shares information on how to react when faced with difficult situations.

We nonetheless recommend that you refer to the ruling of the court who appointed you should you have any questions regarding your responsibilities as a tutor.

While reading this guide, you will encounter a number of symbols. These represent the following:

TUTOR

The section is destined for the tutor.

TUTORSHIP COUNCIL

The section is destined for the tutorship council.

TUTORSHIP COUNCIL SECRETARY

The section is destined for the tutorship council secretary.

Questions? Communicate with the person responsible for the represented person at the Curateur public or dial 1 844 LECURATEUR (532-8728).

1. Persons involved in a tutorship

A tutorship relies on the cooperation of several people committed to ensuring the well-being of the represented person and respect for the latter's rights.

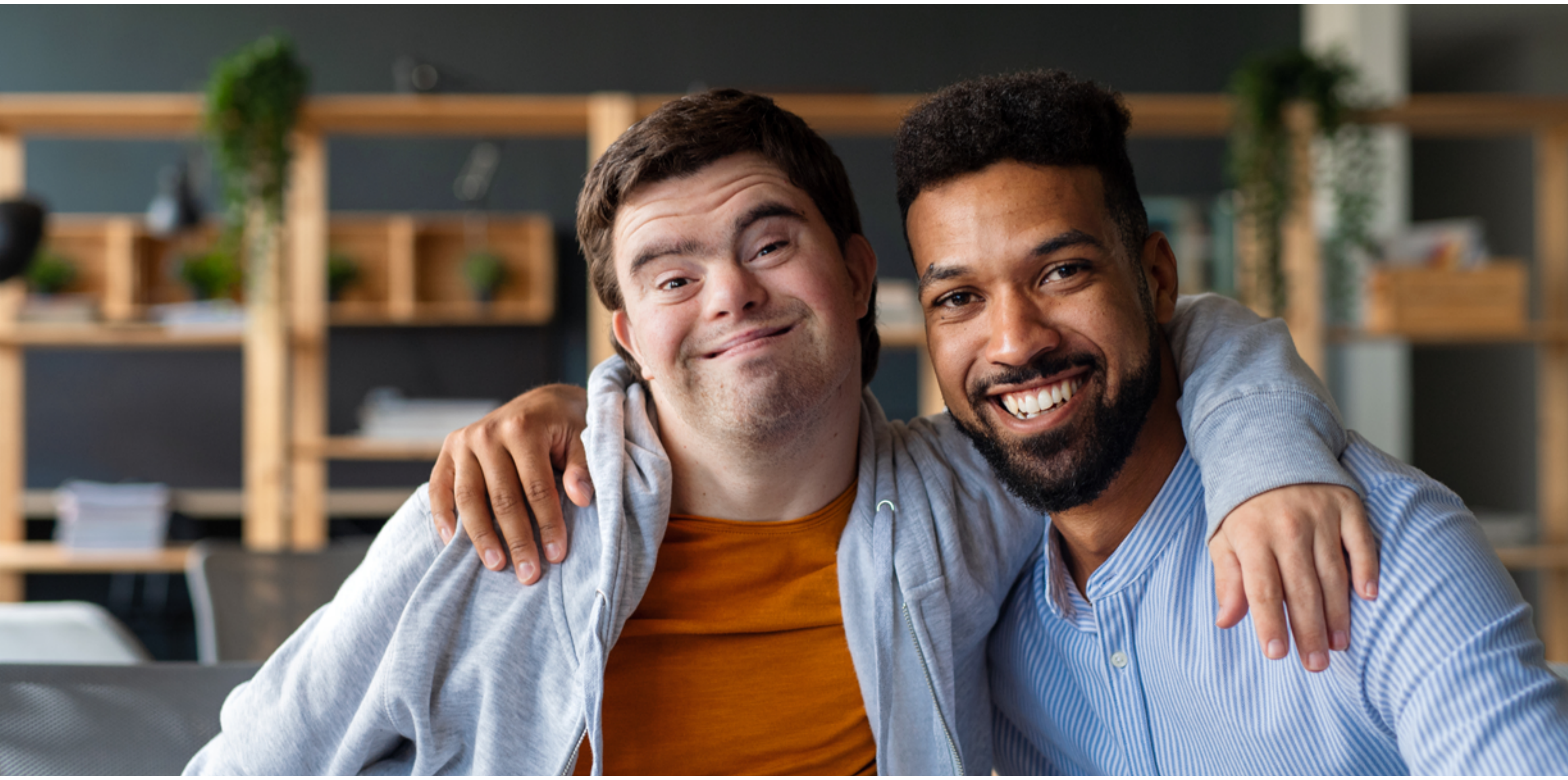
1.1 Represented person

The represented person is a person of full age subject to a tutorship created by the court after acknowledgement of his incapacity and need for representation. These observations are further detailed in the reports of medical and psychosocial assessments of the person carried out by health and social services professionals.

A represented person's need for representation could result from:

- the nature of the person's incapacity;
- the person's isolation;
- the duration of the incapacity;
- the person's inability to manage his property;
- the risk that the person could suffer harm.

Once his incapacity has been identified and the need for representation established, steps are taken with the court to institute a representation measure such as a tutorship to the person.



Understanding the rights of the represented person

The person you represent is still a full-fledged citizen. To that end, he essentially has the same civil rights as all other adults. However, he can no longer exercise some of his rights, which have been entrusted to you in your capacity as a tutor (see page 19).

The term ***civil rights*** refers to all of a person's prerogatives (privileges). These notably include: the right to respect for his privacy and family, his home and correspondence, his image, freedom and security, his right to come and go, his freedom of thought, conscience and religious, his freedom of speech, etc.

The represented person concerned by a tutorship has specific rights, namely:

- the right to participate in decisions concerning him and to express his wishes to the greatest possible extent;
- the right to be consulted and apprised of decisions taken on his behalf;
- the right to enjoy the same economic conditions as he did prior to the onset of the tutorship, to the extent that he still has the means to do so;
- the right to a reassessment of his incapacity and need for representation so that the tutorship can be adapted to his circumstances (see page 27);
- the right to request that you be replaced as his **tutor** should you neglect your responsibilities.

What about the represented person who performs certain acts?

The represented person could commit certain acts without having the capacity to do so. If the act in question is one the tutor should have performed on his behalf, it may be cancelled or the ensuing obligations amended should the represented person be subject to harm as a result of this act. One example would be a represented person who accepts an additional guarantee offered to him at the time of purchasing a product, but who does not fully understand what this guarantee entails.

If the act took place prior to the onset of the tutorship, it might be possible, depending on the situation, to have it cancelled or to obtain a modification of the resulting obligations.

1.2 Tutor

TUTOR

A tutor is a person named by the court to protect and represent a person of full age who no longer has the capacity to care for himself or manage his patrimony. A tutor can be named to ensure the protection of the person and see to the exercise of his civil rights property, to oversee the management of his property or both.

One tutor or several tutors?

When a person is subject to a tutorship, the law makes a clear distinction between the person and his property. The court, after considering a person's specific situation, may opt to name a single tutor to care for him and his property. It can also name more than one person, among them:

- a tutor to the person who:
  - oversees his moral well-being;
  - ensures the exercise of his civil rights (e.g., signing a contract with a cable company);
  - defends his rights (e.g., stepping in to settle an issue with his place of residence);
- one or more tutors to property who:
  - manage his material assets (buildings, vehicles, land, etc.);
  - manage his financial assets (income, investments, etc.);
  - represent him with regard to certain acts (e.g., filing a suit against someone who has caused him harm, for the purpose of obtaining a remedy – the costs incurred in such a case are deducted from the patrimony of the represented person).

When the court names more than one tutor, it can only designate one single physical person to ensure the represented person's moral well-being. As regards the tutor to property, this can be a physical person or a legal person (e.g., a trust company).

Attention
When the father and mother of a person that requires protection and representation are potential tutors, the court could name both of them tutors to the person. The court makes a decision based on the interests of the person needing protection as well as respect for his rights and independence. It also takes into consideration this person's interests and preferences.

Another possibility would be appointing a tutor to ensure the management of a single asset.

Understanding the responsibilities of a tutor

Becoming a tutor to a person who can no longer care for himself or his property is a significant commitment. Tutors, from the onset of the tutorship and for its entire term, must comply with specific legal responsibilities.

Responsibilities of a tutor to the person

As a tutor to the person, you are usually responsible for ensuring the moral well-being of the represented person. You must take this person's wishes and preferences into account, and encourage him to take part in making decisions concerning him to the greatest possible extent.

You must act in his sole and unique interest and with due respect for his rights at all times. It is recommended that you encourage the person to independently perform those acts he is still capable of executing.

More specifically, your role consists of: maintaining a personal relationship with the represented person whenever possible:

- maintaining a personal relationship with the represented person whenever possible;
- acting in concert with the tutor to the property to prepare a budget covering the normal and ordinary needs of the represented person (as the case may be);
- making sure the represented person's living conditions are adequate, based on his health status, income and needs (see page 22);
- consenting to care for the represented person if he is unable to do so. This mainly involves making decisions regarding medical treatment, nursing or psychosocial care, pharmacological treatment, lodgings and any other care required by virtue of the person's health status (see page 25);
- asking the person for his opinion and apprising him of all decisions concerning him, whenever possible;
- ensuring that the person can personally perform the acts he is still capable of executing (if he wishes to do so or if it is in his best interest);
- obtaining from the tutorship council or the court all of the authorizations and notices required by law for special circumstances;
- keeping the tutorship council apprised, for example through regular reports, with regard to measures taken to ensure the person's well-being (see page 26);
- having the person reassessed (see page 27);
- represent, in a general fashion, the person in the exercise of his civil rights.

Custody of the represented person

From the onset of the tutorship, not only are you named **tutor to the person,** but you are also responsible for this person's custody, unless the court determines otherwise (see page 19). This duty grants you the authority to intervene in specific areas, notably:

- the place of residence of the person you represent;
- the people with whom the person you represent spends time, to ensure they do not seek to cause him harm (e.g., physical abuse or financial exploitation);
- the person's leisure activities.

As the represented person's guardian, you may be required to exercise this authority at some point, albeit by taking into consideration the person's wishes and preferences and changing circumstances.

Responsibilities of a tutor to property

As a tutor to property, your responsibilities are established in accordance with the court's ruling. This being said, all tutors to property are required to manage the patrimony of the person they represent and to ensure that it retains its value. This is called the **simple administration** in the Civil Code of Québec. Under a simple administration, you must obtain an authorization from the tutorship council or the court to perform certain acts (see page 15).

There are a number of acts that a tutor may perform without authorization, by virtue of a simple administration. These include:

- Having repairs carried out to real property (home, apartment, etc.) which are deemed necessary to preserve the property's value;
- Leasing out a property and collecting rent;
- Demanding and receiving payment for amounts owed (debts) to the represented person;
- Paying property taxes.

All tutors to property have the following obligations:

- Within 60 days of the onset of the tutorship, prepare an inventory of the patrimony to be managed and submit it to the tutorship council and the Curateur public du Québec (see page 29).
- Provide security for the patrimony of the represented person, i.e., a guarantee to protect a patrimony valued at over $40,000 (see page 31).
- Separate the management of their own property from that of the represented person (i.e., refrain from depositing amounts associated with the latter in his own bank account) (see page 33).
- Ensure financial follow-up and prepare an annual administration report to be submitted to the tutorship council, the Curateur public du Québec and the tutor to the person, as the case may be (see page 38 and page 39).
- Prepare a final administration report at the end of the tutorship or his role (see page 41).

Resource in the event of a disagreement among the tutors

Disagreements between tutors can occur, for example, if they fail to concur on the budget for the represented person's personal expenses. Another example would be the funds necessary for a trip or to conserve or protect the represented person's patrimony.

When such disagreements occur, tutors must turn to the tutorship council. The tutorship council will take steps to promote an agreement between the parties. This helps avoid legal measures, the costs of which would be deducted from the patrimony of the represented person and potentially decrease its value.

Should a disagreement be difficult to resolve, the tutorship council may reach out to the Curateur public representative responsible for the represented person's file. Depending on the situation, the persons involved (or any other person with a special interest) may ask the court to settle the matter.

TUTORSHIP COUNCIL

1.3 Tutorship council

The tutorship council's role consists of supervising the tutor in the exercise of his responsibilities. To that end, it is a key player in a tutorship, for it ensures that the tutor acts in the best interests of the represented person, looks out for his well-being and properly administers his property.

Understanding the responsibilities of a tutorship council

As a **tutorship council,** you must:

- supervise the tutor's management of the finances (income, expenses, investments, etc.) of the represented person;
- verify the inventory, annual reports and final administration report prepared by the tutor;
- establish the security (the guarantee that the tutor must provide to protect the patrimony of the represented person when its value exceeds $40,000) and ensure that it remains compliant (see page 32);
- authorize the tutor to perform certain acts and provide notices to the court regarding certain acts or decisions;
- ask the court to appoint an **ad hoc tutor** to ensure that the interests of the represented person are protected. The ad hoc tutor represents the person when he and his tutor are faced with a situation that could lead to a legal dispute (note that the ad hoc tutor's role is no longer necessary once the situation in question is resolved);
- ask that the tutor be replaced if he can no longer fulfil his duties, dies or fails to meet his obligations;
- promote the settlement of disputes between tutors;
- handle any reports received, as the case may be (see page 49);
- retain all documents concerning the tutorship.

Examples of authorizations granted to the tutor and advice and information provided to the court

To perform certain specific acts, the tutor will need your prior authorization. In fact, the court will also ask for your advice and any information you may want to share prior to granting the tutor its authorization with regard to other acts or decisions. Depending on the details of the ruling and with due respect for the represented person's wishes and preferences:

- **The tutor will need your authorization before, for example:**
  - renouncing to an inheritance in favour of the represented person (see page 37);
  - giving property as a guarantee with regard to a payment;
  - accepting a donation with possible financial charges on behalf of the represented person (in other words, a donation carrying obligations);
  - selling movable property or other objects of value belonging to the person (e.g., a vehicle);
  - making changes to an existing security (see page 32);
- **The court may ask for your advice or information concerning:**
  - the sale of immovable property or certain movable property valued at over $40,000;
  - mortgage loans in excess of $40,000;
  - the appointment of an ad hoc tutor;
  - remuneration of the tutor, when necessary.

Remuneration of the tutor

The tutor or the tutorship council member essentially performs his duties without any compensation, i.e., for **free**. However, when management of the patrimony of the represented person proves complicated and is more or less the tutor's primary occupation, the latter can receive a remuneration established by the court. The court can also, if necessary, authorize the tutorship council to extend the tutor's remuneration.

In light of the significance of your role and your close relationship with the represented person, the tutor should decidedly communicate with you should he have any questions regarding the management of specific property, for example.

TUTORSHIP COUNCIL SECRETARY

1.4 Tutorship council secretary

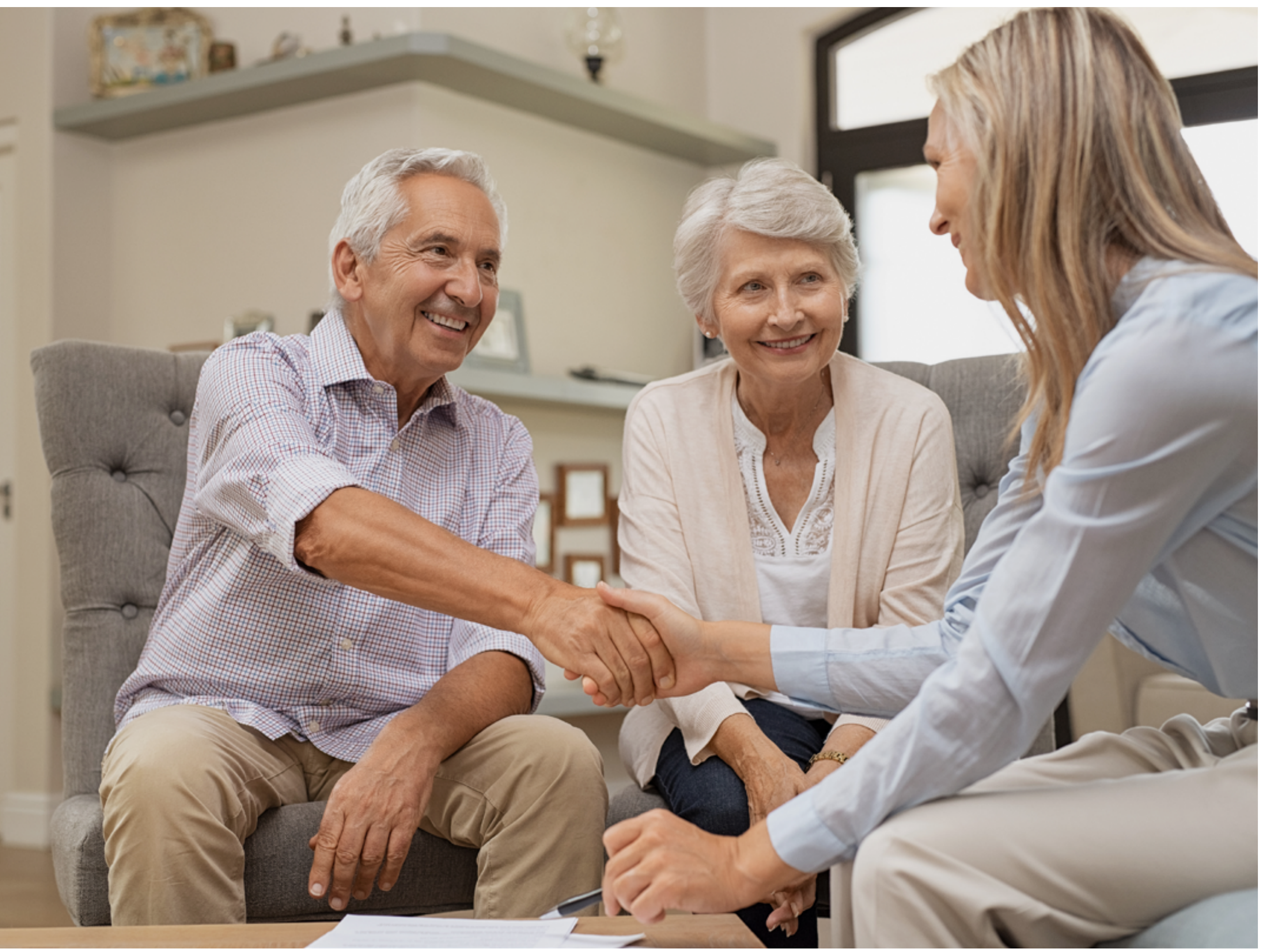
The secretary of a tutorship council may or may not be a member of the council. If the secretary is a council member, he will have the same decision-making power as the other members. A secretary who is not a member of the council has no decision-making power whatsoever.

Understanding the responsibilities of a tutorship council secretary

As secretary, your role involves drafting the agenda and the minutes of tutorship council meetings.

Also, in your capacity as a secretary, you will receive documents for the tutorship council, some of them sent by the Curateur public or the tutor. You must transmit this information to the tutorship council members. Always remember that the tutorship council is obligated to retain all of the documents concerning the tutorship.

Should the tutorship council be replaced, you must hand over the tutorship documents you have in your possession to the new tutorship council.



1.5 Curateur public du Québec

The Curateur public supervises and lends its assistance to various tutorships. It ensures that the tutor fulfils his duties by acting in the interest of the represented person, respecting his rights and independence, and taking into account his wishes and preferences.

Understanding the responsibilities of the Curateur public

As regards a tutorship to a person of full age, the Curateur public:

- provides the tutor and tutorship council with help and support as they fulfil their obligations;
- supervises the acts of the tutor in collaboration with the tutorship council;
- checks the inventory prepared by the tutor;
- establishes the required security if this has not been done by the tutorship council during the six-month period following the onset of the tutorship or if it is taking on the role of tutorship council;
- takes on the role of tutorship council when the represented person's relatives or persons with a special interest cannot do so;
- keeps a **register of tutorships to persons of full age** in its Public register of representation measures;
- uses its investigative authority during the verification of the annual administration report or when it considers such a measure necessary;
- handles all reports received concerning situations that could harm a represented person or his patrimony (see page 49).

The Curateur public can also be named tutor to the person or to property.

The Register of persons of full age

At the onset of a tutorship, the Curateur public adds the information regarding the represented person and his tutor in the register of tutorships to persons of full age. This register, which is regularly updated, comprises:

- the case/file number assigned to each tutorship by the Curateur public;
- the first and last names of the represented person;
- the first and last names of all tutors;
- the extent of the tutors' responsibilities (management of property and/or protection of the person);
- the date and number of the ruling regarding the tutorship.

When a tutorship comes to an end or a person dies, the related information is removed from the register as soon as the Curateur public receives a death certificate or the court ruling putting an end to the tutorship, called **the release**.

The register can be accessed online, at **Québec.ca/register-representation-measures**, or by calling 1 844 LECURATEUR (532-8728). The last name, first name and date of birth or social insurance number of the represented person will need to be provided.

2. Personalization of a tutorship

At the onset of a tutorship, a personalized tutorship is established for the represented person. **This tutorship is essentially tailored to a person's situation and takes their faculties (capabilities) into account so as to grant them as much independence as possible.** And while this personalization of a tutorship is more focused on what the person can do independently than on what he cannot do, the represented person can nonetheless be granted or denied the power to exercise certain rights.

The personalization of a tutorship generally involves **the type of tutorship, the reassessment timeframes** and **the modulation of the tutorship.**

2.1 The type of tutorship

The court can establish the type of tutorship by giving due consideration to the represented person's needs. The tutorship type defines the specific elements regarding which a tutor must intervene. It could be either a tutorship to the person, a tutorship to the property or a tutorship to the person and property. The court ruling must generally be consulted to determine the exact type of tutorship.

In a case where there are several tutors, it is critical that everyone cooperate for the single and unique purpose of protecting the interests of the represented person. An effective collaboration makes it possible to make the best decisions. For example, should the matter at hand consist of choosing housing, the tutor to the person should exchange with the represented person to learn more about his wishes and preferences. The tutor to property, in turn, would determine the amount of rent that would be best suited to the represented person's financial circumstances. And as regards the tutor to the person and property, he would choose housing that takes into consideration the represented person's preferences and is in line with his budget.

2.2 Reassessment timeframes

Timeframes for medical and psychosocial reassessments are established by the court, which takes into account the recommendations of both the physician and the social worker, as well as the opinion, situation and needs of the represented person. The two reassessments need not be conducted at the same time. The maximum timeframe for carrying out a psychosocial reassessment is 5 years. As for a medical reassessment, when it is obvious that the represented person's condition will not change, the timeframe could be more than 5 years but may not exceed 10 years.

2.3 Modulation of the tutorship

The Act provides for certain acts that a represented person can perform on his own or not. There is modulation of the tutorship when the court identifies or makes changes to these acts based on a person's capacities. The court takes into consideration the recommendations in the psychosocial assessment or reassessment report. The court also considers the opinions expressed during the **meeting of relatives, persons connected by marriage or civil union, or friends**, and the represented person's wishes and preferences.

The ***meeting of relatives, persons connected by marriage or civil union, or friends*** *is a meeting of members of the immediate family of the represented person and persons showing to him a special interest. This meeting takes place at the notary's office or the courthouse where the request for the onset of a tutorship was originally filed.*

The acts in question are divided into 6 categories:

Right to vote

A represented person who is a Canadian citizen retains his right to vote in municipal, provincial and school elections, unless the court strips him of this right. Despite retaining this right, the represented person could be denied the power to exercise it should he prove unable to confirm his identity or place of residence. Represented persons retain their right to vote in federal elections; this power cannot be denied to them by a court of law.

Custody

At the onset of a tutorship, the tutor is responsible for the care of the represented person (see page 12). The court, however, can subsequently determine, based on its examination of the psychosocial assessment or reassessment, that the person has no need for a guardian.

Power to take action to satisfy regular normal needs

The notion of taking action to satisfy regular normal needs refers to expenses incurred to meet usual needs. These needs generally include food, clothing, education/studies, dental services, personal care products, leisure activities (such as registering for art classes or a day camp), telecommunications and transportation services.

The court can rule that the represented person is able to make such purchases on his own, to choose service providers, etc. The person must also be capable of staying within the budget established with his tutor.

Signing of a lease

A represented person is not authorized to sign a lease on his own; this right must be granted to him by means of a court ruling.

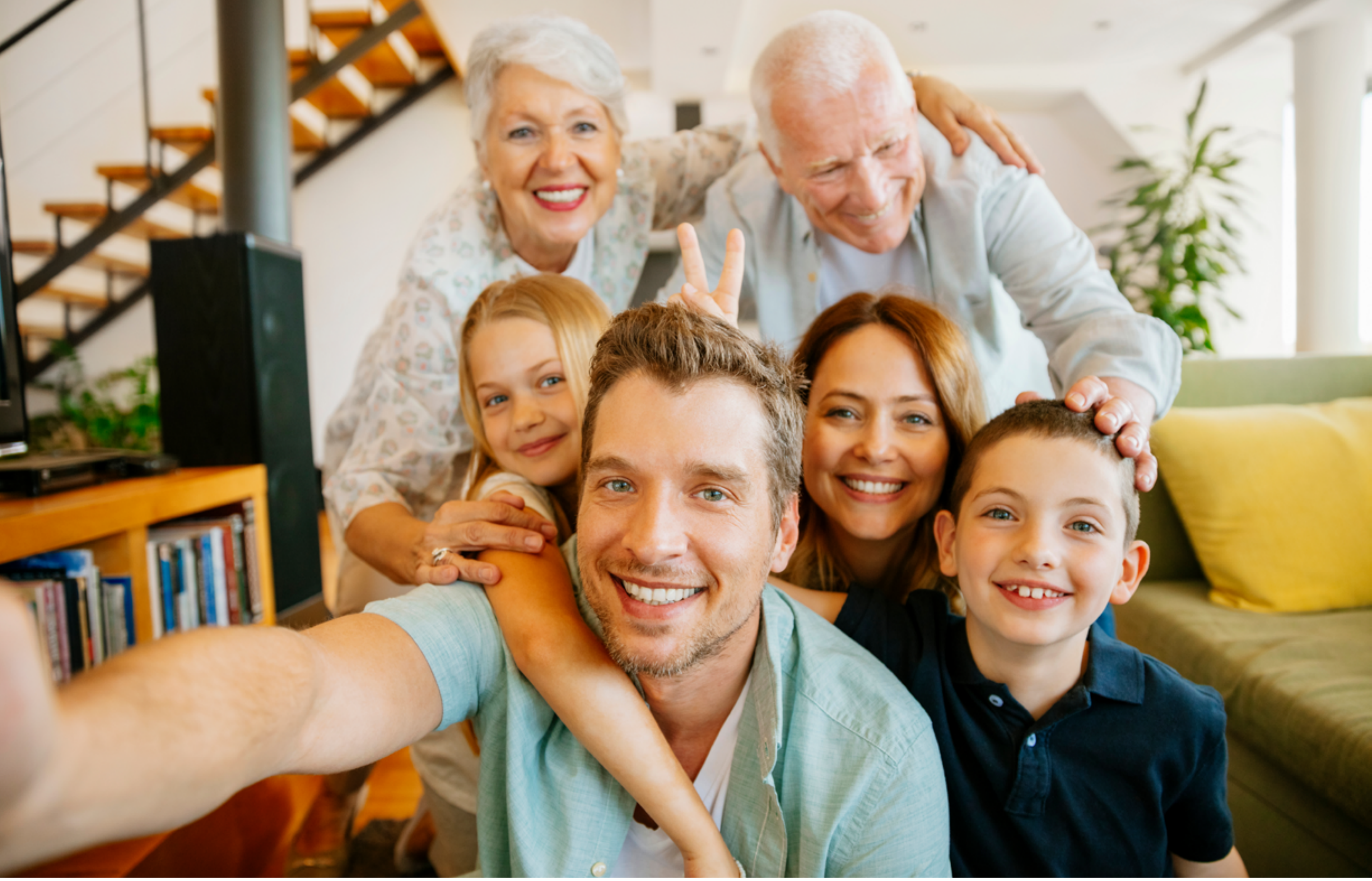
Acts related to the person's employment, art or profession

Acts in connection with one's employment, art or profession include all of the activities associated with an employee/employer relationship, among them signing an employment agreement or negotiating working conditions, consenting to the taking of and use of one's picture, voice, image, etc. The management of one's salary is not among these acts.

Management of the product of the person's work

Management of the product of a person's work is essentially handling the income or indemnities paid, such as employment insurance benefits. The court could deny this right to a represented person, either in part (by establishing a maximum amount that he can manage) or entirely.

The court may add other modifications at any time, depending on what the represented person is or is not able to do.



When the court modifies a tutorship by acknowledging the exercise of certain rights to the represented person, your responsibility as a **tutor** consists of ensuring that his needs are met and that he does not find himself in any situation that could cause him serious harm.

2.4 And what about if the person's circumstances change?

If the person's circumstances change and he can no longer exercise the rights granted to him by the court, reassessments may be requested. Modifications could then be suggested subsequent to medical or psychosocial reassessments. The court will decide which modifications should be made to the tutorship, based on the reassessment reports and the opinions of the represented person and relatives or persons with a special interest.

3. Protection of the represented person

This section of the guide provides detailed explanations of your responsibilities vis-à-vis the well-being of the represented person in conjunction with respect for his independence and rights. Protection of the person entails seeing to his moral well-being, defending his rights and representing him to ensure their exercise when required, all while taking into consideration his wishes and preferences.

3.1 Seeing to the represented person's moral well-being

TUTOR

Seeing to the represented person's moral well-being entails ensuring, for example, that his needs are met, that he can enjoy outings and leisure activities, etc. You must also encourage the represented person to continue doing those activities that he is able to do on his own.

TUTOR

Ensuring the person's living conditions and the quality of the services offered

To ensure the quality of the living conditions of the represented person, you can visit or contact him, or ask people whom he is in regular contact with questions about his overall situation.

Certain questions could help you in this regard, for example:

Are the daily needs of the represented person met, specifically as regards respect for his person, his dignity and his security?

Pay close attention to the medical care and services he receives (this includes medical appointments, the taking of medication, homecare services, etc.). Attempt to find out whether his essential needs are being met (food, clothing, leisure activities, etc.). Check whether he has access to enough money to cover his personal expenses. And lastly, verify whether he can easily access transportation to make his way to various daily activities.

Does the living environment of the represented person meet his needs?

You must ensure that the represented person's housing is in line with his current needs, preferences and financial means. If this is not the case, you will need to have a conversation with the person in an effort to determine whether he wishes to receive homecare services from health organizations such as CLSCs, EESADs (social economy businesses that provide domestic help), etc. His housing arrangements may also need to be modified (handrail, shower with no steps, higher toilet, etc.) to make it easier for him to continue living at home.

In some cases, the current housing could no longer be appropriate and it may not be in his best interest to continue living there. Also, if the person's condition calls for specific services or facilities and he has the financial means to pay for them, you could consider moving him into adapted housing, e.g., a private residence for seniors. The health and social services network could also suggest that the represented person be sent to live in an intermediate resource or a CHSLD. You would then need to explain to the represented person the reasons for such a measure and involve him in the decision-making process to the greatest possible extent. Because this type of housing is considered as care, please see the section of this guide addressing consent to care (see page 25).

Does the represented person have opportunities to socialize and participate in activities that are in line with his needs and which he enjoys?

To avoid the represented person feeling isolated, you will need to help him maintain relationships with other people, albeit in a secure environment. You could also strive to provide him as many opportunities as possible to participate in community activities. These could include activities organized by various local groups or associations that hold values or religious beliefs aligned with those of the person. You can contact your CLSC for information regarding organizations whose activities could benefit the represented person.

Favouring the represented person's independence

As a tutor, you must help the represented person carry out those activities that he is still able to do on his own.

Whenever possible, and when there is no risk of significant harm, you must let the represented person make decisions and act on his own. If he cannot decide or act on his own, the best approach is to provide him with relevant information, adapted to his circumstances and degree of understanding. Describe the possible consequences of the available options, and the impact his decision could have on him and on his relatives or persons with a special interest. Once the decision is made, you can help him implement it.

3.2 Defending the rights of the represented person

TUTOR

Protecting the represented person also entails defending his rights. As a tutor to the person, you must see to it that these rights are respected. In other words, you must make sure that third parties who interact with the represented person ask for his opinion and respect his wishes. You must also ensure that third parties fulfil their obligations to the represented person. This could include making sure that a lessor honours its obligations as detailed in a lease or requesting a replacement or reimbursement with regard to a defective item.

When you believe that the person's rights have been violated, you can either help him file a complaint or do so on his behalf. You could, for example, submit a complaint to:

- the Commission des droits de la personne (human rights commission), if the represented person was the victim of discrimination;
- the Commissaire aux plaintes et à la qualité des services (health and social services ombudsman) of a health establishment that is offering him services or refuses to do so;
- to the Protecteur du citoyen (provincial ombudsman);
- to the police, if the represented person is the victim of a crime.

In many instances, you can contest a decision that you feel is harmful by requesting that it be subject to a review. This would apply to decisions taken by the SAAQ, the RAMQ or the MTESS (Ministère du Travail, de l'Emploi et de la Solidarité sociale), the latter with regard to social assistance (welfare) benefits.

When required by a specific situation, you are entitled to take legal or quasi-legal measures on the represented person's behalf. Examples of these measures include contesting a rent increase with the Tribunal administratif du logement or contesting, in front of the Tribunal administratif du Québec, decisions rendered by public bodies such as the SAAQ, the RAMQ and the MTESS which cannot be appealed.

You are also entitled to appear in court to speak to the rights of the person you represent and obtain remedy, as the case may be. If your intervention results in costs not provided for in the budget, remember to check with the tutor to property (if applicable) prior to incurring the expenses in question. The represented person could also be eligible for legal aid, with some of the measures taken possibly covered.

Never hesitate to contact an attorney or various local resources to help you in your role.

TUTOR

3.3 Representing the person during decision-making

Protecting a represented person also entails representing him when making certain decisions. Doing so requires keeping his preferences of choices in mind and seeking advice from his relatives or persons with a special interest, or from the tutorship council, as the case may be.

Taking into account the preferences or choices of the represented person

Even if the represented person's preferences or choices are not what you would have preferred or opted for, you must nonetheless take them into account. This is the crux of why you must advise him of the situation and ask for his opinion before making a decision on his behalf.

Always remember that the decisions you make on his behalf must take into account his wishes and preferences, as well as rest on the following principles:

- his sole and unique interest;
- respect for his rights;
- preservation of his autonomy.

Protecting his personal information

In your role as a tutor, you must see to the protection of the personal information of the represented person (including banking information, tax information, etc.). You are also responsible for giving consent to access his medical record. You are also the one who can authorize the taking of his photograph or the filming of videos in which he appears. This is also true for the public use of his voice (such as in a televised report, a newspaper article or a video clip posted on the Web).

Consulting relatives or persons with a special interest and the tutorship council prior to taking difficult decisions

You have the possibility of consulting the tutorship council, the represented person's family, relatives or persons with a special interest when you are faced with a difficult decision. Given that these parties are close to the represented person, you can attempt to learn what the latter may have expressed in terms of wishes and preferences in the past. Their advice could help ensure that your decisions are in the interest of the represented person and that they take into account the latter's wishes and preferences.

You may also want to consider relying on the expertise of healthcare professionals as well as the opinions of the workers who regularly provide services to the represented person. They can often be extremely helpful, especially when the represented person is placed (in a CHSLD, intermediate resource, etc.) and they are responsible for the person's daily care.

> Regardless of the measures taken, you must always act with extreme prudence, to notably respect the privacy of the represented person and keep his personal information confidential.

3.4 Consent to care

TUTOR

The creation of a tutorship does not strip the represented person of his right to consent to care prior to it being provided, and this in instances other than emergencies.

Free and informed consent

The principle of free and informed consent refers to the fact that a person, prior to receiving care, must be provided and understand the medical details necessary to allow for making a sound decision regarding the proposed care or services. The person in question must also be able to make this decision without being unduly pressured.

Determining the ability to consent to care

If the professional acknowledges that the represented person has the ability to consent to care, this person's decision must be adhered to, regardless of whether he consents to or refuses specific care or services.

Consenting on behalf of the represented person

When the person is considered unable to consent, medical and healthcare personnel will turn to you, the tutor, to consent on the represented person's behalf when he has no **advance medical directives** or when these do not apply to the proposed care or services.

Hence, before giving your consent, you should imperatively ask certain questions to the healthcare professional. For example:

- In what way is the treatment required for the mental or physical health of the represented person?
- What benefits will it bring?
- What are the health risks, compared to the hoped for benefits?
- Is there an option of waiting a few days for the person to regain his capacity to consent (in the case of a non-emergency situation)?

Advance medical directives are essentially the wishes of a person, comprised in a document, regarding what he wants to have happen should he become unable to consent to care.

You must also attempt to identify any wish regarding care that the represented person may have expressed in the past. Try and discover whether he put anything down in writing in this regard (e.g., a protection mandate). You must also pay attention to the person's current wishes.

Should there be uncertainty regarding the decision that must be made, you can check in with the tutorship council and, depending on the circumstances, family members or persons with a special interest.

What to do if the represented person refuses care?

When the represented person categorically refuses the care or services proposed, and this at any time, the healthcare professional must request an authorization from the court if he wishes to not take this refusal into account. In such situations, healthcare professionals could opt to not seek out your consent. You will, however, need to give your opinion to the court at the time of the request's examination.

TUTOR

3.5 Providing reports on the representation of the person

The report regarding the representation of the person can help you, in your role as tutor to the person, to reflect on the actions performed over the course of the year with the objective of ensuring the well-being of the represented person. It also enables the tutorship council and the Curateur public to observe how you carried out your responsibilities with regard to protection of the represented person; hence the importance of preparing such a report on a regular basis.

Providing reports on the measures taken to ensure the person's well-being

To report measures taken to ensure the person's well-being, you can use the form entitled *Report Regarding the Representation of the Person,* which the Curateur public makes available at **Québec.ca/adult-tutorship-forms**. It is highly recommended to prepare this report at the same time as the annual management report (see page 38).

Submitting the report

Once you have filled out the form with regard to the report, you must submit it to the tutorship council and discuss its contents during the annual meeting (see page 43). This can also be done at any other moment when you must make a report on the well-being of the represented person. This document will be kept by the tutorship council secretary.

TUTORSHIP COUNCIL

To the tutorship council
If you have any concerns about the person's representation, well-being or rights, you can contact the Curateur public using the *Tutorship Council's Concerns about the Representation of the Person,* available at **Québec.ca/adult-tutorship-forms**.

3.6 Have the represented person be reassessed

TUTOR

This step primarily concerns the tutor to the person. In the absence of a tutor to the person, the tutor to the property must ensure that the reassessments are submitted within the established timeframes.

The medical and psychosocial reassessments concern the health status, degree of independence and need for representation of the represented person. The medical reassessment is carried out by a physician. As for the psychosocial reassessment, it is performed by a social worker or person authorized under the *Professional Code*.

Understanding the need for a reassessment of the represented person

Medical and psychosocial reassessments allow for knowing whether a tutorship is still relevant to the needs of the represented person. The tutorship can notably be adjusted by the court, based on the reassessment reports. This could manifest itself as changes to a tutorship to the property and to the person or further modifications to a tutorship in order to remove categories and actions that the represented person is no longer able to perform on his own.

Reassessments could also lead to the determination that the person is once again capable or that he no longer needs representation, which would have the effect of ending the tutorship. The legal term for such an outcome is a **release**.

Adhering to the reassessment timeframes

Medical and psychosocial reassessments can be scheduled at different times. As a tutor, you must consult the court ruling at the onset of the tutorship to familiarize yourself with all of the details. You must make sure that the represented person undergoes a reassessment as per the instructions provided. You will also receive a reminder from the Curateur public, via mail, to take the necessary steps, at the proper time.

Requesting medical and/or psychosocial reassessments

When the represented person is receiving services from a health and social services establishment, you can ask the workers of his establishment to perform a reassessment. If this is not the case, you can reach out to the CLSC in the person's region (go to **Québec.ca/clsc**). You can also reach out to professionals who are practicing in the private sector. If you go this route, you will have to pay for the services requested. The costs incurred in this regard can be deducted from the patrimony of the represented person.

Submitting the reassessment results to the right person

Once the reassessments are completed, you must submit a copy of all medical or psychosocial reassessment forms received from the establishment to the represented person and the Curateur public du Québec.

Various conclusions

- If the reassessment report recommends upholding the tutorship, you must submit a copy of the report to the Curateur public. The tutorship will be maintained until the next reassessment of the represented person.
- Should the reassessment report recommend a modification of the **reassessment timeframe,** you will need to send a copy of the report to the Curateur public and submit the copy you received to the court.
- If the reassessment report recommends any other changes to the tutorship, send a copy of the report to the Curateur public and **ensure** that the assessor submits his report to the court.

If the recommendation of the professionals is not contested within 30 days of the court clerk notice being sent to the relatives or persons with a special interest of the represented person, the court will make note of the modifications to be brought to the tutorship. It will share its observations with the represented person, the tutor, the tutorship council and the Curateur public.

> Whenever there is a modification of the tutorship, you must imperatively be aware of your new responsibilities. You must also pay particular attention to the new capacities recognized for the represented person or those that have been withdrawn.

If the reassessment brings about the **end of the tutorship,** you must prepare a final administration report.

4. Management of the patrimony of the represented person

As a tutor and to ensure the management of the patrimony of the represented person, you must take action as per your legal obligations and while taking into account the specific elements noted in the ruling. Also, the following steps are mandatory and must be executed.

4.1 Preparing the inventory

TUTOR

The inventory must be drawn up within the 60-day period following your appointment as a tutor.

Preparing the **inventory** involves preparing a **detailed list of all the assets and debts** of the represented person as of the date of your appointment as tutor. This list only includes items valued at $100 or more. While preparing the inventory, you can check for accounts in banks near the place of residence, pull up the credit score, etc.

The inventory contents may vary according to the court ruling. The court, however, normally assigns the responsibility for management of the represented person's property to the tutor. If this is the case, you will need to provide the details of all of the represented person's assets and debts. In some instances, the court appoints a tutor to solely manage a portion of the property, such as investments or real estate. Should this be the case, the inventory will only contain information regarding this particular property. In case of doubt, you can turn to the ruling to know more about which part of the patrimony of the represented person you are responsible for.

The inventory enables you to have a fair idea of the type and value of the patrimony whose management you were entrusted with. It will also prove useful when establishing the amount of the **security** (see page 31) and preparing the **annual management report** (see page 39). The inventory can be either notarized or signed in front of two witnesses.

Inventory signed in front of two witnesses (Inventory by Private Writing)

This inventory is drawn up by you, the tutor, and signed by two witnesses of full age. By apposing their signature, the witnesses declare that the tutor was in fact the one to have signed off on the inventory. This type of inventory is often used when the patrimony of the represented person is easy to enumerate in a list format.

In preparing this inventory, you must:

- gather all of the necessary documents (see the *Inventory Checklist [sample]* at **Québec.ca/adult-tutorship-tools**);
- fill out the inventory form found at **Québec.ca/adult-tutorship-forms** (it is also included in the first communication package sent to you by the Curateur public);
- sign and date the form;
- ask two other people to sign and date the form as well.

Notarized inventory

The notarized inventory is prepared by a notary. When the patrimony of the represented person consists of numerous and diverse items (investments in several financial institutions, immovables or shares of companies, for example), you may prefer calling on the services of a notary. The notary fees in such a case are deducted from the patrimony of the represented person.

Providing incomplete information

The inventory must be prepared within the timeframe of 60 days following the date of the onset of the tutorship. Whenever you become aware of new information pertaining to the patrimony of the represented person, you must make all necessary corrections to the inventory. Do not hesitate to communicate with the person at the Curateur public responsible for the file in order to obtain further details.

For information how to proceed, refer to the instructions on pages 5 and 6 of the form entitled *Inventory by Private Writing (before two witnesses).* This document is available at **Québec.ca/adult-tutorship-forms**.

Submitting the inventory to the proper person.

Once the inventory has been drawn up, you must provide a copy to:

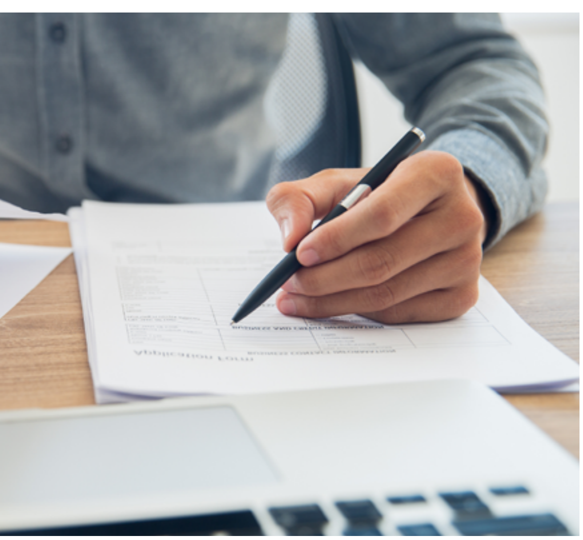
- the tutorship council;
- the Curateur public;
- the tutor to the person (if such is the case);
- the person represented (to whom you must also explain the contents of the inventory, to the greatest possible extent).

When submitting the documents to the Curateur public, make sure to indicate the name of the represented person and his file number.

TUTORSHIP COUNCIL

Verifying the inventory

The Curateur public and the tutorship council are tasked with verifying the inventory drawn up by the tutor.



As a tutorship council, you must ensure that:

- the inventory was prepared by the tutor within 60 days of the onset of the tutorship;
- the inventory lists all of the property and debts of the represented person;
- the information provided by the tutor is exact and included in the proper sections;
- the tutor has provided the relevant documents (check the *Inventory checklist [sample]* at **Québec.ca/adult-tutorship-tools**);
- the tutor has signed and dated the inventory;
- the inventory is in fact signed and dated by two witnesses (in the case of an inventory that is not notarized).

4.2 Providing security

TUTOR

Security is a **guarantee** that the tutor must provide when the value of the represented person's patrimony **exceeds $40,000.** The security is designed to protect the patrimony and ensure that it is properly administered by the tutor.

The type of security, the amount and the time granted to furnish it are determined by the tutorship council. The tutorship council must provide this security within 6 months of the onset of the tutorship, failing which the Curateur public will do so.

Understanding the various types of security

The Curateur public recognizes three types of security: holding of funds, mortgage security and contract of surety or other type of insurance.

Holding of funds

The holding of funds is a written commitment prepared by the financial institution where the represented person's accounts and investments are held. This is a measure whereby all or a part of the funds are blocked until the end of the tutorship. Once the hold is in effect, the tutor cannot unblock it without the written authorization of the tutorship council.

Mortgage security

A mortgage security is a contract that enables the tutor to offer a building which he owns as a guarantee. Should the tutor subsequently spend the represented person's money for an unwarranted reason and be unable to reimburse the amount in question, his building could be sold in order to recover the amount owing.

Contact your notary for further information on how to proceed.

Contract of surety or other type of insurance

The contract of surety is a liability insurance that the tutor takes out to guarantee his management of the patrimony of the represented person. This type of security offers a reimbursement should there be exploitation or other abusive behaviour from a tutor. Following this scenario, the latter must reimburse the insurance company, which will take the necessary measures in this regard.

For more information regarding this type of security, we recommend that you contact an insurance company or broker for assistance.

TUTORSHIP COUNCIL

Establishing the amount of the security

As a tutorship council, you must establish the amount of the security by considering the needs and budget of the represented person; this is true regardless of the type of security obtained. Below are instructions on how to proceed for the holding of funds.

Establishing the amount of the holding of funds

If the income of the represented person covers all of his expenses, the Curateur public, as part of its supervision of the tutorship, will recommend a holding of funds equal to 100% of the patrimony to be administered.

When it becomes necessary to turn to the patrimony because a person's income is not sufficient to cover all of his expenses, an additional amount to be deducted must be established and a holding of funds must be requested for the balance.

To document your decision and let it be known to the tutor and the Curateur public, you must use the form entitled *Attestation of a Tutorship Council Decision Regarding the Security Required from a Tutor.* This form can be accessed at **Québec.ca/adult-tutorship-forms**.

TUTOR

Obtaining the holding of funds

When the tutorship council apprises you of its decision, you must, in your role as a tutor to property:

- Contact the financial institution or financial advisor;
- Request a holding of funds for an amount equal to or greater than that decided by the tutorship council;
- Fill out the form entitled *Request to a Financial Institution Regarding the Holding of Funds;*
- Submit the completed *Request to a Financial Institution Regarding the Holding of Funds* form and the template *Confirmation of the Holding of Funds* to the financial institution. These documents are available at **Québec.ca/adult-tutorship-forms**.

The financial institution will then take the necessary steps to freeze the funds and investments indicated in the request for the holding of funds. It will subsequently reproduce the contents of the *Confirmation of the holding of funds* template onto its own letterhead and fill it out. It will then send the original document to the tutorship council and provide both the Curateur public and you, as the tutor, with a copy.

For all other types of security, you can reach out to the Curateur public for further information.

Maintaining the security

As a tutor to property, you are also responsible for maintaining the security. You must submit a written confirmation of its validity at the frequency established by the tutorship council. This confirmation must be sent to the tutorship council and the Curateur public along with the **annual management report** (see page 39). You must also notify them immediately should there be any changes to the security. One such change would be a switch to another financial institution.

> Providing **security** is **mandatory** and it must be ensured annually; a failure to do so could be considered a violation of one of your obligations. This could lead the tutorship council to take steps in that regard (see page 45).

4.3 Managing the patrimony of the represented person

TUTOR

As part of the tutorship, you must ensure that the patrimony of the represented person is properly managed and that his interests are protected. You must at all times act with prudence, diligence, honesty and loyalty. In other words, your actions must be transparent and taken in good faith. The extent of your obligations are determined as part of the court ruling; the following information will likely prove helpful in fulfilling your duties.

Remember to notify the various government agencies and service organizations of your appointment as tutor to the represented person.

Establishing a distinct patrimony

You must register the investments of the represented person with the notation **"as the tutor"** or **"in the quality of the tutor"**, from wherein comes the expression "***ex officio***". You must do the same for all of the bank accounts you are responsible for managing. Doing this, i.e., making sure to not place any of the represented person's money in your accounts, will eliminate any confusion regarding the patrimony. This specific access to the represented person's accounts also allows you to ensure that you manage his patrimony. Otherwise, the represented person would essentially continue to manage his affairs.

*The expression "**ex officio**" is a formulation used after a person's name to indicate that he is not personally involved but rather, involved solely due to the role he holds.*

According to the regulations of the financial institution where the funds are held, all financial transactions in the represented person's bank accounts or with regard to his investments will be signed "(name of the tutor), as the tutor of (name of the represented person)". Example:

Pierre Toutlemonde

Pierre Toutlemonde,
as the tutor of Nancy Toutlemonde

Establishing and receiving income and indemnities for the represented person

At the time of your appointment as tutor, attempt to identify all sources of income and indemnities of the represented person. There can be a number of these, among them:

- social assistance benefits;
- old-age pension benefits;
- private pension income;
- investment interest;
- employment income or income from the rental of immovables;
- various allowances such as the Ministère du Travail, de l'Emploi et de la Solidarité sociale's Social Solidarity **Program for adults with a severely limited capacity for employment,** an allowance for persons subject to a tutorship and who are eligible for a social solidarity allowance or benefits for persons with a handicap or functional limitations;
- child or spousal support/alimony.

Furthermore, children could even be legally bound to pay support to a parent who does not have sufficient financial means.

If the represented person has suffered an occupational injury/accident in the workplace, an accident aboard a motor vehicle or is the victim of a crime, contact:

- the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST);
- the Société de l'assurance automobile du Québec (SAAQ);
- the Direction de l'indemnisation des victimes d'actes criminels (IVAC).

You will thus be able to obtain more information.

You will, however, need to continue receiving all income and indemnities of the represented person as well as taking all of the necessary steps to ensure that he receives all of the government or other benefits or indemnities to which he is entitled. For example, check whether the represented person is eligible with regard to the **RDSP** (registered disability savings plan), a savings plan intended to help favour the financial security of disabled persons and which allows for receiving government subsidies.

Contact a financial advisor, a social worker affiliated with a CLSC or Services Québec to obtain more information on government benefits or indemnities.

Preparing a budget for the represented person

Knowing the monthly income and value of the patrimony of the represented person will give you a good idea of the lifestyle he can enjoy. This notably lets you develop a realistic budget where his expenses (housing, food, debts, etc.) are in line with his overall income. Any financial obligations will also need to figure in the budget.

Making investments presumed sound

Investing involves placing a certain amount in a financial vehicle or other, for the purpose of enjoying a capital gain, i.e., growing the amount invested.

Investments presumed sound are investments that carry little risk and which protect the value of the capital from decreasing significantly. By favouring these types of investments, you are acting prudently and are protecting the finances of the represented person from certain risks with the potential to heavily impact the value of his patrimony. Contact a financial advisor for more information on investments presumed sound.

Note that any investments made by the represented person prior to the onset of the tutorship can be kept as is even if they are not considered as investments presumed sound. Should you, however, make investments that are not presumed sound **during the tutorship,** you will be held responsible for any losses, which you will need to make good on.

In case of doubt, ask a financial advisor or financial planner to confirm whether the investments you are considering are presumed sound within the meaning of the law.

Verifying the investments

TUTORSHIP COUNCIL

As a tutorship council, you must ensure that the tutor has:

- opened up distinct accounts for managing the finances of the represented person;
- registered the bank accounts and investments with the mention "**as the tutor**" for the purpose of managing the finances of the represented person (see page 33);
- ensured that all investments made were investments presumed sound.

Preserving the value of the represented person's patrimony

TUTOR

As a tutor to the property, you have the power of simple administration. To that end, you are bound to maintain the value of the represented person's patrimony with a view to handing it over to him should he became capable again or to his heirs at the time of his death. Protection of the patrimony does not equate avoiding all expenses. However, any actions involving the patrimony must be justified and performed with an eye to ensuring that it remains intact over the long term.

Relying on the person's income to meet his needs

By examining the patrimony of the represented person, you will be able to determine the amounts to be spent on his needs, based on his interests, wishes and preferences. These needs include, among other things, costs of housing or mortgage payments; electricity, telephone, gas and cable services; food, personal expenses, clothing, etc. You can also rely on the person's income to pay the expenses associated with **the tutorship** (see page 37). If the represented person does not live with you, it is usually best to have his mail delivered to your address; this will notably ensure that various bills are received quickly and paid within the stipulated timeframes.

If the represented person has a vehicle and his physician has confirmed that he can still drive, you will need to pay the associated costs: driver's license, license plates/registration, insurance, etc.

Acquiring technical aids for the represented person

A technical aid is a device that allows an individual to be increasingly independent as regards his daily activities, and this by compensating for a physical disability. The devices are varied, and can help a person get out of bed, move about, communicate, etc. In some instances, a technical aid can be a disposable item or product, such as a urinary catheter, incontinence briefs, etc.

Various government programs offer financial assistance for the purchase of such technical aids, paying all or part of the costs involved. **Contact your CLSC or Services Québec** to learn more about the various financing you may be able to access as regards the devices needed by the represented person.

Selling property or contracting a major loan

As a tutor to property, you must obtain authorization from the tutorship council to sell an asset, item or property belonging to the represented person or borrowing money in his name. **If the value of the property or loan concerned exceeds $40,000,** you must obtain authorization from the court, which will ask the tutorship council for its opinion.

Authorization can be granted if the tutorship council or the court are convinced that the sale or loan in question is necessary to ensure the well-being of the represented person, to pay off his loans or to keep one of his assets in good condition. Examples: renovations, repairs or replacement of a roof or windows, etc. for the purpose of preserving the value of a building. Authorization can also be obtained if the sale or loan is necessary to preserve the value of the asset or the patrimony, or if the asset in question represents significant costs without serving the interests of the represented person.

When the item is a vehicle, it is best to discuss the matter with the tutorship council and the represented person before reaching a decision. Decisions in this particular regard could be to:

- allow a relative or person with a special interest to use the vehicle so as to care for the represented person;
- store the vehicle until such time as the represented person is once again capable;
- sell the vehicle before its value overly depreciates.

When the matter involves the sale of real estate, make sure to:

- carry out the transaction in the sole and unique interest of the represented person and while taking into consideration his wishes and preferences;
- have the market value of the real estate (or any other asset) assessed by a chartered appraiser, with the goal of selling at a fair price;
- avoid all situations that could constitute a conflict of interest.

As regards a loan to purchase a building, for example, make sure to:

- carry out the transaction in the sole and unique interest of the represented person;
- confirm that the price paid is fair and reasonable;
- verify that the property title is free and clear of all encumbrances;
- avoid being in a situation that constitutes a conflict of interest.

It is also strongly recommended to:

- have the building inspected (fees can be deducted from the incapable person’s patrimony);
- verify whether the asking price is in line with the fair market value of the property; if necessary, request an assessment.

Renouncing to an inheritance

An individual subject to a tutorship may at some point inherit property (immovables, shares and bonds, cash, valuable objects, etc.). When the value of the property received is greater than the total debts, you can accept it in his name. However, should you wish to renounce to the inheritance because the total debts are greater than the value of the property (this is referred to as an inheritance showing a **deficit**), you must first obtain the tutorship council's authorization. If this authorization is granted, you can proceed to the renunciation (also called a relinquishment) by means of a notarized act or a court declaration under oath. You must also notify Revenu Québec of the decision taken.

If you do not renounce to the inheritance, the represented person will be responsible for paying the associated debts, up to the value of the property received. For example, if the inheritance is valued at $30,000 but there are debts of $120,000, the person will only need to pay a maximum of $30,000.

Contact Revenu Québec for further information regarding the relinquishment or renunciation of an inheritance.

Filing a tax return for the represented person

Depending on your responsibilities as a tutor, you may need to file a tax return, regardless of the value of the patrimony. This return shall be separate from your personal income tax return. You can also turn to a professional for the preparation of the represented person's tax return; in such a case, the fees for this service will be deducted from the patrimony. Should the represented person not have the means to pay for such services, you must check whether he is eligible for the **Income Tax Assistance – Volunteer Program** offered by **Revenu Québec** and the **Canada Revenue Agency**.

Paying the tutorship expenses

The **tutorship expenses,** i.e., the expenses directly linked to the management, protection and preservation of the patrimony of the represented person, can be deducted from the latter's patrimony. These expenses may include:

- **Expenses related to the role of the tutorship**
  - Costs for the replacement of a tutorship council member when required (see page 46)
  - Accountant fees for the preparation of annual reports, if applicable
  - All expenses associated with the representation of the incapable person as regards the exercise of his civil rights (attorney fees, etc.)
- **Expenses related to the protection or preservation of the patrimony**
  - Costs of repairs to real property (an authorization from the tutorship council or the court might be required)
  - Investment and bank fees
  - Costs of insurance for the property
  - Property taxes

TUTOR

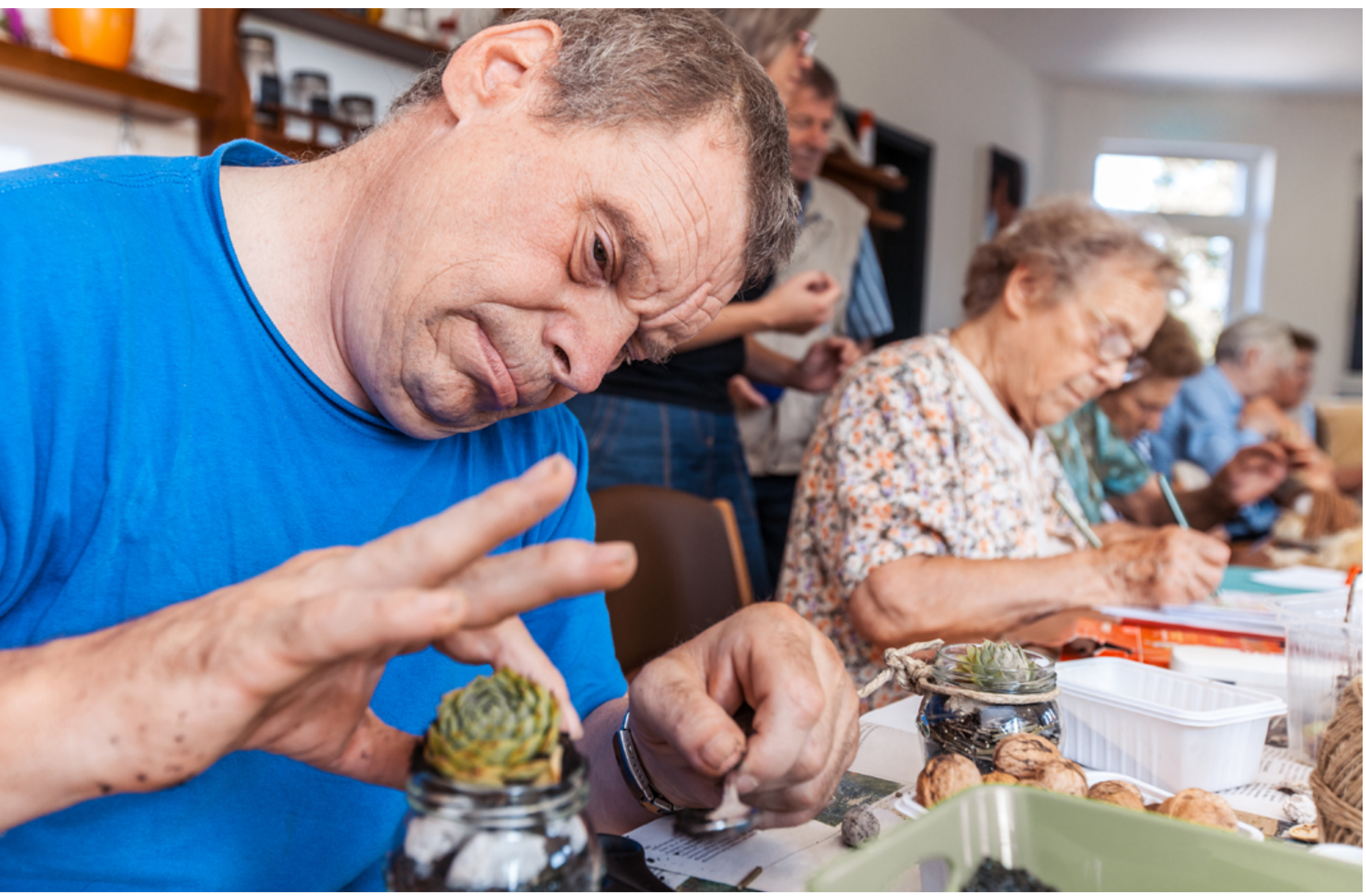
4.4 Executing a financial follow-up

To properly manage the patrimony of the represented person, an accounting record should be used. The use of such a record makes it easier to track the expenses incurred on behalf of the represented person as well as the income you receive in his name. This record can be electronic or handwritten. Either way, it should include a section for income and another for expenses. You can include the details of inputs and outputs (transactions) that are indicated on the monthly reports of the represented person's current bank account. By filling in this information on a regular basis, you will find it much easier to complete the **Annual Management Report** at the end of each year.

A financial tracking tool in Excel is available at Québec.ca/adult-tutorship-tools.

Conserving documents

You must keep all of the **original copies of supporting documents** associated with your management of the represented person's patrimony. These include bills, receipts, cheque stubs, bank statements and investment account statements from a financial institution. If applicable, ask the tutor to the person to provide you with the receipts for the purchases he has made. You must submit copies of all of these documents to the **tutorship council secretary.** The secretary will keep these archived until the end of your mandate as a tutor.



4.5 Preparing the annual management report

TUTOR

As a tutor, the annual management report is an excellent way for you to provide information on your management of the represented person's patrimony. It also allows you to account for all of the expenses and other actions undertaken on his behalf. It accurately portrays the totality of the person's property (his assets) and his debts (his liabilities), as well as his income and the expenses incurred over the course of the year. It also makes it possible to ascertain that you have duly met your obligations and that the interests of the represented person were well protected.

*The **anniversary date** corresponds to the date on which the tutorship was created. For example, if the onset of the tutorship was on June 1st, you must submit the annual report **by no later** than August 1st of each year thereafter (namely 60 days after).*

As indicated by its name, this report must be prepared each year. More specifically, **it must be done within 60 days of the anniversary date of the tutorship.**

Completing the Annual Management Report form

A month or so prior to the anniversary date of the tutorship, the Curateur public will send you, by mail, the appropriate Annual Management Report form, depending on the represented person's situation.

The first year, the person responsible for the represented person's file will call you to offer assistance filling in the first annual management report. You can ask any questions you may have, in addition to receiving help every step of the way. The person assisting you can also give you a hand with the preparation of your annual management reports for the following years, if needed.

As of the second year, you will receive either the same form or a different one, depending on the circumstances of the represented person.

These forms can also be accessed at **Québec.ca/adult-tutorship-forms**.

To prepare the annual administration report, you can refer to the previous year's report (if applicable) as well as the supporting documents and financial information you recorded throughout the year.

If the process appears complicated, you can always ask an accountant for assistance with the preparation of the annual administration report. In fact, if the value of the patrimony is $100,000 or more, the Curateur public could ask that a certified accountant audit the annual report. The professional fees in such a case are deducted from the patrimony of the represented person.

Submitting the annual management report to the right person

Once the annual report is prepared and signed, you must send a copy to:

- the tutorship council;
- the Curateur public;
- the tutor to the person (if such is the case);
- the person represented (to whom you must also explain the contents of the report, to the greatest possible extent). You can subsequently apprise the tutorship council and the Curateur public of your actions in this regard.

When sending the first annual account to the Curateur public and to the tutorship council, you must provide a copy of all supporting documents confirming the presence of all assets, debts, income and expenses in the annual management account. Supporting documents may include account and investment statements, bills, lease agreements, property titles, etc. When sending subsequent annual management reports, please include only account and investment statements.

Each year, the Curateur public may ask you to provide supporting documents during its audit. As for the tutorship council, you must continue to provide it with an updated copy of all supporting documents.

> **Reminder**
> When you send a document to the Curateur public, remember to include the name and case/file number of the represented person in the document itself.

TUTORSHIP COUNCIL

Checking the annual management report

As a tutorship council, you must verify the annual management report submitted by the tutor. To that end, you must ensure that:

- the annual report lists all of the property and debts of the represented person;
- the information provided in the report is exact and included in the proper sections;
- all of the applicable expenses have been entered correctly;
- the tutor has provided explanations for all of the expenses by providing, among other things, supporting documents.

To help you in this regard, you can refer to the *Annual Management Report Checklist (sample)* available at **Québec.ca/adult-tutorship-tools.**

Once the report has been verified, you can ask the tutor to correct any elements that you feel are inaccurate or incomplete. Once the modifications have been done, the tutor must provide a corrected copy to you and the Curateur public. However, should the tutor refuse to cooperate or if there is a dispute (for example, concerning the lack of various elements that should have been included in the annual report but were not), you can ask the person responsible for the file with the Curateur public for help or advice.

4.6 Preparing the final administration report

TUTOR

A final administration report is a document that you must prepare as soon as possible after the end of your duties as a **tutor** to property. This generally occurs when:

- the represented person is once again capable or no longer needs representation;
- the represented person dies;
- you are replaced by another tutor, named by the court.

This document consists of a report of your management for the period from the date of the last annual administration report and the date on which your role ended. It also indicates the status of the patrimony of the represented person after all debts and other expenses have been settled.

Tips for preparing the final administration report

The Curateur public has created a form to help you prepare the **final administration report**. This document, very similar to the Annual Management Report, will be sent to you at the end of your management. This form can also be accessed at Québec.ca/adult-tutorship-forms.

- Once you have completed the form and signed it, you must keep a copy for your records and depending on the situation, send the original either:
  - to the person who is once again capable;
  - to the liquidator of the estate in the event of the represented person's death;
  - to the new tutor should you have been replaced (in this case, a copy should ideally be sent to the represented person).
- You must also send a copy of the final administration report to:
  - the tutorship council secretary;
  - the tutor to the person (if such is the case);
  - the Curateur public.

If you feel that the preparation of the final administration report is too complicated of a process, you can entrust it to an accountant or another competent professional. The fees in such a case are deducted from the patrimony of the represented person.

TUTORSHIP COUNCIL

Checking the final administration report

As the tutorship council, you must check whether:

- the final report lists all of the property and debts of the represented person;
- the information provided in the report is exact and included in the proper sections.

Should you believe the document to be inaccurate or incomplete, you must ask the tutor who prepared the final report to make the necessary modifications. Once the document has been corrected, ask the tutor to send a copy to the person who is once again capable, to the liquidator of the succession or the replacement tutor and to the Curateur public.

Should the tutor refuse to cooperate or in the event of a disagreement, go to page 45 for further information on how to proceed.

If the Curateur public does not receive a copy of the final report by the established deadline, it notifies the person who was subject to a tutorship (or the liquidator of the succession or the replacement tutor) and advises them of the actions they may take against you in your role as tutor.

Ending the security

Ending the security refers to terminating the guarantee provided by the tutor for the protection of the represented person's patrimony. This step is taken once the tutor has submitted the final administration report to the entities and persons concerned. Depending on circumstances, the security can be ended by:

- the person who is once again capable and no longer has a need for representation;
- the liquidator of the succession, in the event of the represented person's death;
- the tutorship council, if you are being replaced in your role as tutor by another person.

Any expenses incurred to end the security will be deducted from the patrimony of the person who was represented.

TUTOR

Handing over the property

Once the entire procedure is completed, you will only need to submit the property titles, details of bank accounts and investments, etc.:

- to the person who is once again capable;
- to the liquidator of the succession (if the person has died);
- to the tutor replacing you.

TUTORSHIP COUNCIL

Handing over tutorship documents

At the end of the tutorship, you are responsible, as the **tutorship council** (notably the council **secretary** if he is a member) to hand over the tutorship documents and all supporting documents (bank statements, cheque stubs, bills, receipts, etc.) conserved since the very onset of the tutorship:

- to the person who is once again capable;
- to the liquidator of the succession, in the event of the represented person's death;
- to the new tutor.

5. Tutorship council meetings

TUTORSHIP COUNCIL

It can sometimes be difficult to ensure the well-being of the represented person and the management of his patrimony. Whether your role is that of tutor or a member of the tutorship council, you might find yourself faced with difficult situations at times. Always make sure that the decisions taken on behalf of the represented person take his wishes and preferences into account and seek to:

- protect his interests;
- preserve his independence;
- make use of his patrimony to favour his well-being.

5.1 Calling a meeting of the tutorship council

As members of the tutorship council, you are required to meet at least once a year.

A meeting can also be held when:

- a decision must be made to report on the protection and well-being of the represented person;
- administrative documents must be examined or approved;
- actions must be taken.

Meetings can also be called at the tutor's request.

A tutorship council meeting also constitutes an opportunity to review the patrimony's administration and the protection of the person. It also makes it possible to plan for the upcoming year in a fully transparent manner and for the sole purpose of ensuring the well-being of the represented person.

It is strongly recommended that the secretary or another member of the tutorship council send participants a notice of convocation as well as a detailed agenda. Participants can also be convened by e-mail or telephone. The meeting, moreover, may be held by videoconference or teleconference.

In fact, you must invite the tutors (as the case may be) to each of your meetings. If you would like, the represented person can also be invited to attend. The represented person must always, regardless of whether or not he was present for a given meeting, be advised of all decisions taken concerning him personally or his patrimony.

Templates of a **meeting agenda** and **minutes** are available at Québec.ca/adult-tutorship-tools.

TUTORSHIP COUNCIL SECRETARY

5.2 Holding a meeting

The meeting of the tutorship council may be led by the secretary (if a member of the council) or by one of the council members. All of the points of view expressed during the meeting must be noted. Whenever there is a difference of opinions and the council cannot come to an agreement, the necessary decisions will be made by means of a vote. In such a case, the majority will prevail.

In your role as tutorship council secretary, you are responsible for preparing and saving a copy of the minutes of the meetings. This enables keeping a record of the decisions taken with regard to the represented person. These minutes can sometimes also serve as a starting point for the subsequent meeting.

5.3 Transmitting the information to the Curateur public

While it is not mandatory, it is highly recommended that a copy of all meeting minutes be sent to the Curateur public. These documents keep it apprised of the management of the tutorship as well as the actions taken to ensure the well-being of the represented person. You could even provide the tutor with these copies, which he can then send to the Curateur public along with the annual management report.

6. Replacing a tutor or member of the tutorship council

There may be a number of reasons for which a tutor can no longer carry out his duties. Likewise, a member of the tutorship council could die or decide he no longer wishes to sit on the council. What happens then?

6.1 Replacing a tutor

Being replaced as a tutor

TUTOR

When you are no longer able to fulfil your obligations as a tutor, you must advise the tutorship council and the Curateur public. You must then submit a request for a replacement to the court so as to be relieved of your functions. Your resignation becomes official once the court has appointed a new tutor.

Once a replacement tutor is named at the onset of the tutorship, he must submit his acceptance of the role of tutor to the court. The court then sends a notice to relatives or persons with a special interest of the represented person regarding the steps taken to name a replacement tutor. The relatives or persons with a special interest will have a period of 30 days to pronounce themselves. Should they not do so within this specific timeframe, the replacement tutor shall assume his duties, after being appointed to his role by the court.

Requesting the replacement of a tutor

TUTORSHIP COUNCIL

In your capacity of tutorship council, you must file a request for replacement with the court when no replacement tutor is named at the onset of the tutorship and when:

- the tutor can no longer carry out his duties (because he is incapable or has died);
- the tutor is no longer meeting the legal obligations associated with his role (preparing the inventory, providing security, preparing annual or final administration reports) or has performed acts that called for the authorization of the tutorship council or the court.

The tutor to the person can act in such a fashion vis-à-vis the **tutor to property**, as the case may be.

Notably, the Curateur public or any other entity or person with a special interest can turn to the court to request the replacement of a tutor.

> The law in force grants the Curateur public the power to request the replacement of a tutor in circumstances that could prove detrimental to the property of the represented person or cause the latter personal harm.

The proposed substitute tutor must provide a certificate of no judicial record or a judicial record list. They must also make a sworn statement declaring that they have never had a civil judgment rendered against them or, where applicable, listing the judgments against them, and specify whether they have ever declared bankruptcy.

While awaiting the court's decision, the tutor shall continue to carry out his role unless the court determines otherwise.

TUTORSHIP COUNCIL

6.2 Replacing the secretary or a member of the tutorship council

Replacing the secretary or a member of a tutorship council comprised of 3 members

When one of your members wishes to step down or dies, the other members choose a successor from among the potential persons named in this capacity in the ruling (if applicable). Should there be no potential replacements or if those named refuse, in writing, to take on the responsibility, a person will be chosen from among the family members. A person with a special interest could also be appointed, as a last recourse.

If the tutorship council secretary wishes to step down from his role or dies when not a member of the tutorship council, one of you (other members) could be chosen to replace him.

If he was a member of the tutorship council, you can choose his replacement from of the two persons named in this regard when the tutorship council was first formed, if applicable. A totally distinct person can be named to replace this person in his role. **This council must always be composed of at least 3 members.**

Whether it be a member of the tutorship council or its secretary, the **Curateur public must receive a written notice of any waiver, replacement or new appointment.** Also, the represented person and the tutor must also be kept informed.

If a replacement cannot be found, you will need to reach out to the court.

Replacing a tutorship council comprised of one single member

When the tutorship council is formed of but one single person, a replacement must be found among the relatives or persons with a special interest of the represented person. A request must then be filed with the court to appoint a new member and tutorship council secretary. The Curateur public may also be named as the tutorship council.

These steps with regard to a replacement can be taken by the sole member who is resigning, the tutor or any other person with a special interest.

Whether the replacement be with regard to a tutor, a member of the tutorship council or the council's secretary, it is always possible to obtain help from an attorney or notary. The fees associated with the appointment of a replacement can be deducted from the patrimony of the represented person.

7. Actions to take in the event of non-compliance, mistreatment, exploitation or subsequent to the receipt of a report

TUTOR

TUTORSHIP COUNCIL

This section primarily concerns you, in the quality of a tutorship council. It allows you to understand what is meant by non-compliance, mistreatment, exploitation and the receipt of a report. It also helps you determine what to do so in such situations.

The information in this section, however, may also be useful to the tutor.

7.1 Understanding the notions of non-compliance, mistreatment and exploitation

What is non-compliance?

In the context of a tutorship, non-compliance refers to the tutor's failure to fulfill his legal obligations regarding the protection of the represented person or the management of his patrimony. Examples of instances of non-compliance would be a failure to draw up an inventory, to obtain security, or to prepare an annual administration report or a final administration report. Failure to take steps to have a person's condition reassessed is also considered as a non-compliance. It also bears noting that situations involving mistreatment or exploitation could also be considered as constituting non-compliance if they involve the tutor or if the tutor allows these situations to persist without intervening. Such instances of non-compliance could result in the tutor being replaced.

What is mistreatment?

Mistreatment – or abuse – consists of a situation where a specific gesture or the lack of appropriate action occurs once or repeatedly within the framework of a relationship that should be based on trust, with the result being a sentiment of distress felt by a represented person. Mistreatment does not necessarily mean that the person who is carrying out the mistreatment (the abuser) is benefiting from his actions. Nor does it always involve abuse, as it can sometimes occur as a result of sheer negligence. In this sense, faulty management of the patrimony could be considered mistreatment when it is due to the tutor's negligence.

Mistreatment can by physical, psychological or financial, and can also manifest itself through ageism, discrimination or prejudice, as well as organizational negligence and others. At its core, mistreatment rests on a relationship through which an individual or an organization takes advantage of its authority or power to impose its will on a dependent person.

What is exploitation?

Exploitation consists of taking advantage of a represented person's vulnerable position to personally benefit from his patrimony. Exploitation can include various types of abuse, but is generally financial. Unlike mistreatment, exploitation has an element of benefit in favour of the abuser. The abuser can be a relative or person with a special interest of the represented person or anyone else with whom the latter comes into contact.

Financial exploitation occurs when an individual makes use of the money or property of the represented person for his own personal gains and to the detriment of the represented person. The latter generally suffers financial and material losses. For example, a tutor who uses the represented person's patrimony for his own ends would be practicing abuse.

TUTORSHIP COUNCIL

7.2 Detecting cases of mistreatment and financial exploitation

As a tutorship council, one of your responsibilities involves supervising the tutor's management activities and helping to resolve difficult situations. When you witness or become aware of a situation involving mistreatment or financial exploitation of the represented person, you must immediately reach out to the tutor, intervening to ensure the latter brings the matter in question to an end. When the tutor is not directly involved in the mistreatment or exploitation, he must, in his capacity as the represented person's legal representative, intervene with the abuser to bring the situation to an end.

Below are certain signs that may point to poor financial management or mistreatment.

- **Signs of poor financial management**
  - Withdrawals of significant sums from the represented person's bank account or an increase in the number of banking transactions.
  - An unusual real estate transaction.
  - Sudden modifications to the beneficiaries of a life insurance policy.
  - The sudden disappearance of items (e.g., a vehicle) belonging to the represented person.
  - Late payments (bills, various accounts, etc.).
  - Investments that are not presumed sound (e.g., personal loans).
  - Etc.
- **Signs that the represented person may be suffering from mistreatment**
  - Poor hygiene, weight loss.
  - Deficient administration of medication.
  - Failure to receive necessary dental services.
  - Unsanitary living conditions.
  - Signs of injuries, burns, etc.
  - Suspicion from the represented person, or unwillingness to speak openly.
  - Etc.

As the tutorship council, you can bring such situations to the attention of the Curateur public, as needed.

7.3 Steps to take with regard to a report

TUTOR

TUTORSHIP COUNCIL

What is a report?

Filing a report consists of notifying the Curateur public of a situation that could pose a threat to the security and physical or mental well-being of a person or cause harm to his patrimony. Reports generally concern cases of mistreatment or financial exploitation. A report is generally made by an individual close to the family or by an organization.

Intervening in response to a report

Whenever the Curateur public is apprised of a situation that could hinder or harm the mental or physical well-being of a represented person or cause harm to his patrimony, it handles the report.

Depending on the situation, the Curateur public can ask the tutorship council or the tutor (as long as they are not targeted by the report) to initially handle the report. It will provide all of the necessary support during this phase.

If the report cannot be handled by either the tutor or the tutorship council, the Curateur public will take on the matter. It will initiate the procedures required to address the situation and protect the represented person and/or his property.

Available Assistance

As mentioned throughout this guide, a tutorship relies on the involvement of various players (the represented person, the tutor or tutors, the tutorship council, the Curateur public and the represented person's relatives or persons with a special interest, depending on the situation). Each of these parties has a specific role and its own particular responsibilities. The purpose of a tutorship being the protection of the represented person and his patrimony, it is important that all of the parties cooperate to achieve this goal. We urge you to reach out to the other parties involved in the tutorship if you have any concerns or questions regarding the decisions to be made or steps to take.

The Curateur public thanks you for your role in the tutorship to a person of full age and is available to help and support you as you carry out your duties in this regard.

CONTACT US

By telephone

1 844 LECURATEUR (532-8728)

Monday, Tuesday, Thursday and Friday:
8:30 a.m. to 12 p.m. and 1 p.m. to 4:30 p.m.

Wednesday:
10 a.m. to 12 p.m. and 1 p.m. to 4:30 p.m.

By email or by mail

To send us an email or obtain
the address of our offices:
Québec.ca/curateur-public-contact-us.

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