



Guide for
the Tutor and
the Tutorship
Council for
a Person
of Full Age



**LE CURATEUR PUBLIC
DU QUÉBEC**

À la rencontre de la personne

**GUIDE FOR THE TUTOR AND
THE TUTORSHIP COUNCIL
FOR A PERSON OF FULL AGE**

QUICK REFERENCE ON THE 8 STAGES OF TUTORSHIPS TO A PERSON OF FULL AGE

Curateur public

Québec



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NOTE

Usually a single person assumes two roles: tutor to the property (administration of patrimony or assets) and tutor to the person (protection of the person and the exercise of his or her rights). This guide applies to such a situation, which is most commonly the case. But, your role may involve just one of these two responsibilities (property or person). If this is the case, some sections of the guide do not concern you; still, it's a good idea to familiarize yourself with their contents.

ENSURING THE WELFARE OF A PERSON UNDER TUTORSHIP

Throughout the tutorship, tutors strive to act in the interests of the person under their protection. In addition to properly administering the person's assets and completing the main elements of the administration report, tutors work to ensure the person's mental and physical welfare. They do not necessarily personally provide the services required by the person under their protection, but they are responsible for ensuring that he or she receives them.



TUTORS

To keep informed about the condition of the person under tutorship and confirm that their living conditions are satisfactory, you can visit regularly, call them on the telephone, or learn about their condition and living environment from someone who is in regular contact with them.

By keeping abreast of the needs of the person under your protection, you will know if they are receiving the services they need, and, if necessary, you can arrange for them to receive additional services.

If you wish, fill out the "*Overview of Protective Supervision*". Give it to the tutorship council and discuss it in your annual meeting. The overview is a tool that will help you review the actions you have taken over the past year to ensure the welfare of the person under your protection. In it, you can include information about the person's daily needs, their living environment, health care services they are receiving, social needs, and issues concerning their rights and independence.

We suggest that you complete the overview at the same time as the annual report and give it to the tutorship council. You don't have to send it to the Curateur public.



TUTORSHIP COUNCILS

Tutorship councils support tutors in carrying out their tasks. They ensure that tutors are working for the welfare of the protected person, upholding the protected person's rights, making sure that the person's needs are met, fostering, to the extent possible, the maintenance and development of the protected person's capacities, and consulting and informing them about decisions made on their behalf.

To help you perform the support and oversight tasks, we suggest that you talk regularly with the tutor about the actions he or she is taking to ensure the person's protection. The "Overview of Protective Supervision" may also be a useful tool for you. You can discuss it with the tutor at your annual meeting.

If you are concerned about any aspects of the tutor's overview, complete the "*Tool to Assist Tutorship Councils in Consulting the Curateur public on Protective Supervision*" and return it to the Curateur public. You can also call the Curateur public staff member who is in charge of the protected person's file whenever you want to discuss the situation or talk about aspects of concern to you.



YOUR TOOLS

In the "*Tools and Forms*" section and on our website you'll find:

- » "*Overview of Protective Supervision*";
- » "*Guide to Completing the Overview of Protective Supervision*";
- » "*Tool to Assist Tutorship Councils in Consulting the Curateur public on Protective Supervision*".

Time limit: the inventory must be produced within 60 days of instituting the tutorship. It can be made by "*private writing*" or with a notary.



TUTORS

To make an inventory by private writing:

- » Gather the documents you will need to make the inventory;
- » Complete the inventory form that is supplied with this guide;
- » Ask two witnesses to sign the inventory;
- » Sign the document, taking care to include the date and where it was completed;
- » Give the inventory and copies of the documents confirming the patrimony of the person under your protection to the tutorship council and the Curateur public. It is suggested that you give the protected person a copy and explain its contents;
- » Keep a copy of the inventory.

To make a notarial inventory:

- » Make an appointment with a notary;
- » Gather the documents you will need to make the inventory;
- » Once the inventory has been completed, give it to the tutorship council and the Curateur public. It is suggested that you give the protected person a copy and explain its contents;
- » Keep a copy of the inventory.

The notary's fees may be covered by the patrimony of the person under your protection.



TUTORSHIP COUNCILS

- » Your role is to support the tutor and ensure that he or she properly completes the inventory within the prescribed 60-day time limit.
- » Make sure that:
 - » The inventory lists all of the protected person's property (assets) and debts (liabilities);
 - » The information contained in the inventory is accurate and entered under the proper headings;
 - » The tutor has attached all relevant documents;
 - » The protected person has been informed, depending on his or her capacity.



YOUR TOOLS

In the *"Tools and Forms"* section and on our website you'll find:

- » *"Guide for Curators and Tutors who Wish to Make an Inventory by Private Writing"*;
- » An inventory checklist.

For more information about the inventory, refer to section B, *"Principal Stages of Tutorships to a Person of Full Age"*, on page 12.



TUTORS

To properly administer the patrimony of the person under your protection, you must:

- » Register his or her bank account and investments in your name "*in the capacity of*": "(Your Name) *in the capacity of* tutor to (name of the protected person)";
- » Determine all the person's sources of income and collect them;
- » Establish a balanced budget based on the person's needs and income;
- » Pay their expenses and debts;
- » Make investments that are presumed sound;
- » Separate the administration of the protected person's patrimony from your own affairs.



TUTORSHIP COUNCILS

Make sure that the tutor:

- » Registers the protected person's bank account in the tutor's name "*in the capacity of*" the protected person for the purpose of administering their assets;
- » Registers the person's investments in the tutor's name "*in the capacity of*" the protected person;
- » Determines and collects the person's income;
- » Establishes a balanced budget that meets the protected person's needs;
- » Pays their expenses and debts;
- » Makes investments that are presumed sound;
- » Never mingles the protected person's assets with their own assets.

For more information about administering the property of the person under your protection, refer to section B, "*Principal Stages of Tutorships to a Person of Full Age*", on page 20, or section D, "*Managing the Patrimony*".

The tutor must obtain security if the property under administration is worth more than \$25,000. The kind and amount of the security, and the time granted to furnish it are determined by the tutorship council.



TUTORS

- » It is the tutorship council's role to determine the type of security, the amount, and the time limit for furnishing it;
- » Depending on the type of security chosen, complete the required procedure with the institution concerned;
- » If a hold funds is chosen, it will be executed by the financial institution in which the protected person's patrimony is held;
- » Security is mandatory and must be confirmed every year with the tutorship council and the Curateur public, or whenever a change has been made;
- » Once security has been established, you must provide proof to the tutorship council and the Curateur public, and repeat this step every year or whenever a change has been made.



TUTORSHIP COUNCILS

The tutorship council is responsible for:

- » Determining the type and amount of the security;
- » Setting the time limit by which the tutor must furnish this security;
- » Reviewing the security and adjusting it if necessary;
- » Ensuring that the tutor furnishes proof of the security every year, or whenever a change has been made;
- » Ensuring that the tutor sends proof of the security to the Curateur public.



YOUR TOOLS

In the "*Tools and Forms*" section and on our website you'll find:

- » A sample hold funds application;
- » A sample hold funds confirmation letter;
- » The "*Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative*" form.

For more information about the security, refer to section B, "*Principal Stages of Tutorships to a Person of Full Age*", on page 26.



TUTORS

We recommend you use a simple accounting system to facilitate your administration. It can be manual or electronic and should include a section for income and another section for expenses. If you enter cash inflows and outflows periodically, it will be easier to produce the annual report at the end of the year.

Keep all supporting documents related to the administration of the property of the person under your protection (invoices, receipts, cheque stubs, and investment reports) and give copies to the secretary of the tutorship council.



TUTORSHIP COUNCILS

The secretary of the tutorship must keep a file containing all the documents related to the tutorship.



YOUR TOOL

A sample financial tracking model is provided in "*Tools and Forms*," and on our website.

For more information about financial tracking, refer to section B, "*Principal Stages of Tutorships to a Person of Full Age*", on page 32.

PRODUCING THE ANNUAL REPORT

Time limit: the annual report must be produced within three months of the tutorship's anniversary date. For example, if the tutorship began on June 1, the report should be submitted by September 1 of each year. The tutorship's anniversary date corresponds to the date of the court judgment.



TUTORS

A handy aid: The Curateur public will phone you to help you complete your first annual report.

- » Check your mailbox. About one month before the tutorship's anniversary date, the Curateur public will send you an annual report form.
- » For help with completing your report, refer to the inventory you made at the beginning of your administration, or to last year's annual report.
- » If the patrimony of the person under your protection is complicated, you can hire an accountant. Accountant's fees may be covered by the patrimony.
- » Once you have completed the annual report, give a copy to the Curateur public and, if applicable, the tutor to the person. It is also recommended that you give a copy to the person under your protection. Keep the original for your files. The secretary of the tutorship council also keeps a copy.
- » When you produce your first annual report, give the Curateur public and the secretary of the tutorship council copies of all supporting documents that confirm the assets, liabilities, income, and expenses presented in the report. You must keep the originals of all these documents. In subsequent years, you will only have to give copies of supporting documents to the secretary of the tutorship council.



TUTORSHIP COUNCILS

- » Make sure that the annual report is produced within three months of the tutorship's anniversary date.
- » When you receive the annual report, check that:
 - » It presents all of the protected person's assets and liabilities;
 - » The information is accurate and entered under the proper headings;
 - » The annual report is signed by one or both tutors and that it is dated; also, verify that the protected person's Curateur public file number is mentioned.
- » The annual report checklist available on our website and in "*Tools and Forms*" could be a useful tool.
- » The secretary of the tutorship council is also responsible for preserving all supporting documents that confirm the assets, liabilities, income, and expenses listed in the annual report.



YOUR TOOLS

In the "*Tools and Forms*" section and on our website you'll find:

- » The "*Guide Addressed to Curators and Tutors Who Must Provide an Annual Administration Report*".
- » An annual report checklist.

For more information about the annual report, refer to section B, "*Principal Stages of Tutorships to a Person of Full Age*", on page 34.

OBTAINING MEDICAL AND PSYCHOSOCIAL REASSESSMENTS OF THE PERSON UNDER YOUR PROTECTION

Frequency: medical and psychosocial reassessments of individuals under protective supervision must be conducted every three years. The court may also set an earlier date.

A person under tutorship or their tutor can ask for medical and psychosocial reassessments at any time to confirm that the form of protective supervision is still adapted to the protected person's needs.



TUTORS

- » A medical reassessment is performed by the attending physician of the person under your protection or by a physician with the institution in which they are residing.
- » A psychosocial reassessment is conducted by a health practitioner other than a physician (usually a social worker).
- » If the person you are protecting does not live in a facility that employs health practitioners, you can ask the CLSC near their residence to assign a physician and social worker to conduct the reassessments.
- » You must give copies of the reassessment forms to the person under your protection and the Curateur public. In addition, keep one for your files and inform the tutorship council of the conclusions of the reassessments.
- » If the reassessments determine that the tutorship must be amended or revoked, the health and social services network establishment will have to submit the original versions of such documents to the court.



TUTORSHIP COUNCILS

- » The tutorship council must ensure that the tutor makes the necessary arrangements to have medical and psychosocial reassessments of the person under his or her protection every three years, or within the time limit set by the court.

For more information about obtaining medical and psychosocial reassessments, refer to section B, "*Principal Stages of Tutorships to a Person of Full Age*", on page 40.

Time limit: the final report must be completed as soon as possible after the end of the tutor's administration.

The final report is addressed to:

- » Individuals under protective supervision who have received a court judgment terminating the tutorship, because they are either no longer incapacitated or no longer require protection, or;
- » Their heirs or the liquidators of their successions, if they are deceased, or;
- » The new tutor and tutorship council if the tutor has been replaced.

In all cases, the report must also be sent to the tutorship council and the Curateur public.



TUTORS

- » The final report presents the assets and liabilities (debts) of the person under your protection as at the moment you conclude your administration as tutor.
- » If the final report is complicated, you can ask an accountant to do it for you. The fees you incur may be covered by the patrimony of the protected person.
- » The Curateur public supplies a simplified final report form. It will be mailed to you. If the individual to whom the final report is addressed wishes to obtain more detailed information, they must cover any associated costs.
- » Once the report has been completed, a copy is given to the person to whom it is addressed, the tutorship council, and the Curateur public.
- » You must also send any tutorship documents you have in your possession to the person to whom the report is addressed.



TUTORSHIP COUNCILS

The responsibilities of the tutorship council are to ensure that:

- » The tutor produces the final report within the prescribed deadline;
- » The final report presents an accurate accounting of the patrimony of the protected person;
- » The individual to whom the final report is addressed receives the entire amount of his or her patrimony and the documents related to its administration. Both the tutor and the secretary of the tutorship council must give him or her all the tutorship documents they have in their possession.

For more information about the final report, refer to section B, "*Principal Stages of Tutorships to a Person of Full Age*", on page 44.

INTRODUCTION TO THE TUTORSHIP TO A PERSON OF FULL AGE

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Foreword

You have agreed to become the tutor for an incapacitated relative or friend; perhaps, you are a member of a tutorship council. It is an admirable gesture that does you great credit. Your closeness to and familiarity with the person under tutorship means you are the person who is best placed to ensure their welfare and properly administer their property.

You will play an important role to ensure the rights and safeguard the autonomy of the person under your protection. The function of the tutor or member of a tutorship council does, however, involve a number of responsibilities. The Curateur public du Québec will support you in various ways to help you carry out your role and provide you with all the information and support you will need.

Whether you are a tutor to the property, tutor to the person, or both; or if you are the secretary or a member of the tutorship council, this guide will help you perform your new duties after tutorship has been instituted. Questions? Feel free to contact the Curateur public staff person who is in charge of the file of the person under your protection. He or she will be happy to assist you.

Have a good read!



In this section we will present the basic roles and responsibilities of the main stakeholders involved in protecting a person under tutorship. You will also learn about the overarching principles that should be kept in mind throughout the tutorship. You'll find general information, information addressed specifically to tutors  **TUTOR** and tutorship councils  **TUTORSHIP COUNCIL**, and references to tools and forms  **TOOLS AND FORMS** you can use for specific tasks, for instance, when producing the inventory or annual report.

I.

INTRODUCTION

I.I. How to use this guide?

This guide was written to provide you with the information you will need after the institution of tutorship. Presented in a question-and-answer format, it provides accurate information to guide you until the end of the tutorship. We have also created several tools to facilitate your job as tutor or member of the tutorship council. You'll find them in the "*Tools and Forms*" section and in digital format on the website of the Curateur public du Québec (www.curateur.gouv.qc.ca).

The guide is divided into five sections. Each of them presents information that has been adapted to the different situations you may encounter during the tutorship.

- » **Section A** contains basic information about the principal aspects of a tutorship.
- » **Section B** contains detailed information about the principal stages of tutorships and the actions that must be performed promptly once tutorship is underway. We suggest that you read this section as soon as possible to avoid delays in the administration process.
- » **Section C** discusses what is involved in protecting a person under tutorship. Among other things, it presents the different obligations of tutors, consent to treatment, and the use and development of the protected person's capacities.
- » **Section D** concerns the management of the protected person's patrimony. In it, you will find everything you should know about this subject.
- » **Section E** explains the procedures to be followed in the event of breaches, financial abuse of the protected person, a report of an irregularity or suspected abuse, or a replacement.

» Last, "**Tools and Forms**" contains the materials you will need throughout the tutorship. Among other things, you'll find a **glossary** of the words appearing in **red type** in the text.

I.2. Who needs protective supervision ?

Protective supervision is instituted for adults who need protection because their incapacitated state has made them vulnerable.

Individuals are said to be **incapable** when they are unable to care for themselves or manage their property. People are judged to be incapable as a result of a mental disorder or degenerative illness, stroke, intellectual disability, brain injury, age-related weakening that alters the mental faculties, or the lack of physical capacity to express their wishes.

Under the law, a **need for protection** is recognized when an incapacitated person must be assisted or represented in the exercise of their **civil rights**. This need may arise due to the person's socially isolated state, the duration of their incapacity, or the nature or state of their affairs.

When both conditions are present, in other words, when a person is **incapable** and **needs protection**, the court may institute tutorship or curatorship.

Mr. Hébert is 87 and lives alone in his home. He had a career in finance and has always monitored his affairs closely. He owns a few rental properties and stock investments. For the past few months he has suffered short-term memory problems and frequently forgotten to pay his bills. Sometimes he even neglects to tend to his personal hygiene.

Recently, he fell down at home and broke his hip. During Mr. Hébert's stay in the hospital his attending physician told his children that he suspected their father was having difficulty managing his affairs and caring for himself. After talking things over with his children, Mr. Hébert agreed to have a doctor and social worker assess his capacity and need for protection..

Not all people who are incapacitated require protective supervision. A number of other measures can be adopted to manage the property of an incapacitated **adult** and help to ensure their protection. These include representation by the person's spouse, power of attorney over the person's bank account to enable a trusted individual to make transactions in the person's name, and the homologation of a mandate in case of incapacity that the person has prepared in advance.

Homologating a mandate means getting the court to validate the mandate to make it effective.

After an evaluation, Mr. Hébert's attending physician concluded that he was suffering from dementia in the form of Alzheimer disease. He considered that the incapacitation was partial. The social worker who assessed his need for protection also deemed it necessary to institute tutorship because Mr. Hébert was living alone and was finding it difficult to protect himself and manage his affairs. Together with their father, Mr. Hébert's children started making arrangements to institute tutorship.

I.3. What is a tutorship on behalf of an incapacitated person of full age?

It's a form of protective supervision that is instituted to protect an adult who is partially or temporarily incapacitated. Someone who suffers from a mild intellectual disability and is able to perform certain activities on their own could be said to be partially incapacitated. Also, someone who was hospitalized for a long time after a serious car accident might be declared temporarily incapacitated if they could potentially regain full capacity at the end of their convalescence. Depending on the capacity they regain, they will be capable of making decisions without the aid of their tutor.

Tutorship is instituted for the purpose of ensuring the protection of the person or their property and safeguarding their rights. To this end, tutors must always act with care, prudence, honesty, and loyalty. This guide provides the information tutors and tutorship councils will need in order to properly fulfill their roles.



I.4. What is a tutor to a person of full age?

A tutor to a person of full age is an adult who has been legally appointed to protect and represent someone who has been declared incapable based on a medical and psychosocial evaluation. Any adult who is close to a person of full age who has been declared incapable and in need of protection, or any person who has their best interests at heart, can be appointed to act as tutor. In considering who to appoint as tutor, the court will take into account the medical and psychosocial evaluations and the minutes of the **meeting of relatives, persons connected by marriage or civil union, and friends** of the incapacitated individual. In some cases, the court may appoint more than one person to protect an incapacitated adult. One or several tutors to the property may be appointed to focus exclusively on protecting the person's **patrimony**, in addition to a **tutor to the person** who will ensure their physical and mental well-being. In most situations, a single tutor is vested with the responsibility of protecting both the person and their property. Some individuals under protective supervision may only have a **tutor to the property** if they are capable of ensuring their own well-being.

When tutorship is instituted, tutors must, among other things:

- » Act in the interests of the person under their protection, uphold their rights, and safeguard their autonomy;
- » Set up a tutorship council, if this has not already been done;
- » Produce an **inventory** of the property to be administered within 60 days of the institution of tutorship;
- » Arrange for **security**, if the property under administration is worth more than \$25,000;
- » Satisfactorily administer the property of the person under their protection;
- » Produce an **annual report** on their administration;
- » Complete a final report of their administration;
- » Obtain opinions and legal authorizations from the tutorship council or the court;
- » Arrange reassessments of the capacity and need for protection of the person under tutorship in accordance with the prescribed time limits.

For more on the obligations of tutors, see section B on the principal stages of tutorships.

The meeting of relatives, persons connected by marriage or civil union and friends is a meeting that brings together the relatives and friends of the person needing protection.

1.5. What is a tutorship council?

The tutorship council assists the tutor, sometimes by providing opinions and authorizations, and oversees the tutor in administering the tutorship. It is usually composed of three individuals from the protected adult's immediate circle who have been chosen by the meeting of family and friends and, subsequently, appointed by the court. A secretary (who may or not be a member of the tutorship council) and two alternates are also appointed. Tutorship councils may be composed of just one person, however, if the situation calls for it. This individual also serves as secretary. The creation of a tutorship council is mandatory.

For information on how to set up a tutorship council, go to page 8 of Section B, "*Principal Stages of Tutorships to a Person of Full Age*". For more information about its role and responsibilities, go to page 12 of this section.

1.6. What is the Curateur public du Québec?

The **Curateur public** is responsible for protecting people who are incapacitated. Its activities include:

- » Sensitizing the public to the protection needs of incapacitated individuals;
- » Informing and assisting family and friends who are protecting an incapacitated person of full age, administering their patrimony, or participating in a tutorship council;
- » Informing and assisting families and friends who are administering a minor's patrimony;
- » Ensuring that decisions are made in the interests of individuals under protective supervision, with a view to upholding their rights and safeguarding their autonomy;
- » In certain cases, directly assuming the role of curator, tutor, or tutorship council.

With regard to tutorships to a person of full age, the Curateur public informs tutors and tutorship council members of their obligations and supports them in fulfilling their responsibilities, especially during the first year of the tutorship. After that, it provides assistance as needed. It partners with tutorship councils in overseeing tutors' performance of their administration duties.

2.

ROLES AND RESPONSIBILITIES

In this section, you will find detailed explanations of the roles and responsibilities of tutors, **tutorship councils**, secretaries of tutorship councils, and the **Curateur public**.

There are two kinds of tutors: the **tutor to the property** and the **tutor to the person**. In most cases, a single person fulfills both functions, but more than one tutor may be appointed: one to protect a person of full age and one to administer their property. Because their responsibilities are different, they will be described separately.

If you are tutor to both the property and the person, please familiarize with the two types of responsibilities.

2.1. Role and responsibilities of tutors to the person



TUTOR

Tutors to the person monitor the welfare of the adult they are protecting. This means they must ensure that the person's living conditions (housing, food, clothing, care, security, recreational activities) are satisfactory, considering their state of health, income, and needs. They must also ensure that the person's interpersonal relationships are healthy and that, as much as possible, they go out into the community to prevent isolation..

All decisions made in the name of the protected person must comply with their rights. These include the right to life, security, integrity, freedom, dignity, and privacy. Decisions concerning them should restrict as little as possible their rights and freedom of action, and, where possible, foster their autonomy.

Even though the institution of tutorship deprives the protected person of the ability to exercise certain rights themselves, they are still entitled to perform several important actions, such as vote in elections and administer their earnings. Tutors to the person must therefore ensure that the adult under their protection can exercise their rights if that is their wish and it is in their interests to do so.

Tutors to the person monitor the welfare of the adult under their protection.

Tutors to the person must also:

- » Ensure the welfare of the person under their protection; As much as possible, maintain a personal relationship with the person, get their opinions, and inform them of all decisions made on their behalf; Represent the person in exercising their **civil rights** and in legal matters involving them;
- » Consent to treatment for the protected person if they are incapable of deciding for themselves and understanding the consequences;
- » If possible, they are required to help the person exercise their capacities and even develop them;
- » Arrange for medical and psychosocial reassessments of the person under tutorship at least every three years.

Last, if another person is appointed to act as tutor to the property, tutors to the person will receive a copy of the **annual report** that is sent every year to the tutorship council and the Curateur public. Based on this report, they can evaluate how well the tutor to the property is carrying out their responsibilities. If tutors to the person have concerns about how the tutor to the property is administering the patrimony, they can discuss it with him or her, or with the tutorship council. In the case of poor administration, they can ask the tutorship council to replace the tutor to the property, or apply directly to the court.

If you are acting as tutor to the person, don't hesitate to contact the tutorship council or the Curateur public staff person in charge of the protected person's file. Both these resources are there to assist and support you in your important role of protecting an incapacitated person.

All of these responsibilities are described in more detail in section C, on the protection of a person under tutorship.



TUTOR

2.2. Role and responsibilities of tutors to the property

The obligations of tutors to the property vary depending on the court judgment. Because each case is unique, tutors must read the judgment carefully to learn what their specific responsibilities will be. Regardless, a few basic principles apply to all those who act as tutors to the property. Among other things, they are obligated to preserve the protected person's **patrimony**. This is what is considered under the *Civil Code of Québec* as the powers of **simple administration**.

With these powers, tutors may perform some acts on their own, but for other actions, they are required to get authorization from the tutorship council or the court, depending on the sum of money involved.

Throughout the tutorship, tutors must fulfill certain obligations with a view to ensuring the sound management of the property of the person under their protection.

- » At the beginning of their administration, tutors must furnish an **inventory** of the protected person's property to the tutorship council and the Curateur public.
- » In addition to the inventory, they must produce annual administration reports and a final report at the end of their administration.
- » Tutors must also furnish **security** if the value of the patrimony they are administering exceeds \$25,000. This serves as a guarantee of a portion of the assets of the person under protective supervision. It means that the property will be protected or compensated for if the tutor or someone else appropriates or mismanages the property..

To find out how to fulfill these obligations, read section B on the principal stages of tutorship, and section D on managing the patrimony.

Your role as tutor to the property is to ensure that the patrimony of the person under your protection is correctly administered and that their interests are upheld.

2.3. Role and responsibilities of the tutorship council



In general, the tutorship council fulfills the following roles:

- » Assists and supports the tutor in protecting the person under tutorship and managing their patrimony;
- » Overseeing the tutor's administration;
- » Makes decisions concerning the **security** the tutor must furnish;
- » Gives authorizations to the tutor and opinions to the court concerning the protection of the incapacitated individual;
- » Processes any reports of suspected abuse.

The tutorship council is an important resource. It meets at least once a year. Tutors are encouraged to consult the council if they have any questions about representing the person under their protection. Before contacting the Curateur public, they should first check with the tutorship council.

As part of its oversight role, the tutorship council can ask the tutor for explanations about their administration and consult their documents. It receives a copy of the annual report prepared by the tutor. It must also determine whether the tutor's decisions uphold the interests of the person under their protection and if the tutor consults the person, if it is possible and advisable. Last, it has the power to ask the court to appoint another tutor if it believes the existing tutor is not adequately fulfilling his or her role.

The chief role of the tutorship council is to oversee the tutor's administration and provide assistance. In situations of disagreement with the tutor, the protected person's interests must always be central.

The tutorship council is responsible for making decisions regarding the security needed to guarantee the tutor's administration in cases where the patrimony of the person under its protection exceeds \$25,000.

You'll find more information concerning the security in section B, "*Principal Stages of Tutorships to a Person of Full Age*" on page 26.

In addition, tutorship councils may authorize tutors to perform certain acts such as selling or mortgaging property worth \$25,000 or less that belongs to the protected person, or renouncing a succession bequeathed to the protected person. Last, the court asks the opinion of the tutorship council in cases where the tutor wishes to sell or mortgage an asset belonging to the person under their protection that is worth over \$25,000.

The tutorship council can also be asked to give its opinion to the court about issues related to the protection of the incapacitated person, for instance, concerning consent to proposed treatments, or their participation in a trial treatment.

The tutorship council can also handle reports or ensure that the tutor carries out the necessary follow-up if the situation requires it. Such reports may concern the protection of the person under tutorship or that of their property. For instance, if their money is not being used to ensure their own well-being, or if they are a victim of mistreatment a report may be made to the Curateur public.

You'll find more information about reports and the procedure to follow in such situations on page 7 of section E on the actions to be taken in cases of breaches, financial abuse, mistreatment, report of suspected abuse, or replacement.

What kinds of decisions can the tutorship council make?

The tutorship council can make decisions concerning:

- » The sums needed to cover **costs incurred by the tutorship**;
- » Renunciation of a succession of which the protected person would be the beneficiary.

In addition, it must make decisions concerning:

- » The nature and amount of the security, time period for furnishing it, and eventually, when to release the security;
- » The appointment, when necessary, of an **ad hoc tutor** to prevent a situation in which the tutor would be placed in a situation of conflict of interest with the person under his or her protection.

What types of opinions might the court ask of the tutorship council?

Under certain circumstances, the court may ask the opinion of the tutorship council concerning:

- » The remuneration of the tutor, if applicable;
- » Sums over which the protected person maintains control;
- » Purchases, sales, donations, or loans if their value exceeds \$25,000;
- » Consent to care on behalf of the protected person

2.4. Role and responsibilities of the secretary of the tutorship council



The secretary of the tutorship council may or may not be a member of the tutorship council. The secretary's main responsibilities are to:

- » Keep a file of all documents pertaining to the tutor's administration and minutes of meetings to remit to the protected person, or to the protected person's heirs at the end of the tutorship. On request, the Curateur public may also consult these documents to verify the tutor's administration;
- » Convene and chair meetings of the tutorship council;
- » Prepare the agenda and the minutes of meetings.

The secretary is also the person the Curateur public communicates with, either by telephone, e-mail, or regular post.

The secretary is responsible for sending the information he or she receives to the members of the tutorship council.

What is the decisional power of the secretary of the tutorship council?

The decisional power of the secretary of the tutorship council varies depending on the case. If the secretary is also the sole member of the tutorship council, he or she makes decisions in collaboration with the tutor. If the secretary is a member of the tutorship council, he or she has the same decisional power as the other members. Last, if the secretary is not a member, he or she has no decisional power.

2.5. Role and responsibilities of the Curateur public

The Curateur public intervenes at many levels to protect individuals under tutorship. It informs tutors and tutorship council members of their obligations and helps them when necessary. The Curateur public staff person assigned to the file of the person under your protection can help you and answer your questions concerning the tutorship. This guide and the Curateur public's website are also good sources of information. Feel free to consult them throughout the duration of the tutorship.



Together with the tutorship council, the Curateur public oversees the tutor's activities and administration. The tutorship council is a key player in this oversight function, given its proximity to the person under protective supervision. The goal of this partnership is prevention, because the Curateur public is responsible for overseeing tutorships and is obligated to intervene in cases of abuse or negligence. By establishing ties with tutors and tutorship councils, it can better protect the interests of those under tutorship.

The Curateur public has the power to investigate, which it can use on its own initiative or on request, for instance, when a member of the public reports a situation of abuse concerning a protected person or their property.

The Curateur public assumes the role of tutor or tutorship council for incapacitated individuals when no one else close to them can perform this function.

In addition, the Curateur public keeps a register of private tutorships that it is overseeing and those for which it is directly responsible; this register can be consulted on the website.

A "private tutorship" is a tutorship in which the tutor is a relative or friend of the protected person.

3.

MEETINGS OF THE TUTORSHIP COUNCIL

3.1. Why meet?



The **tutorship council** meets at least once a year. The purpose of this meeting is to report on the administration of the tutorship and the protection of the person and plan for the upcoming year. It is recommended, however, that the council meet whenever there is a decision to be made concerning the protection and welfare of the person under tutorship, administrative documents to be reviewed and approved, or actions to be performed. The meeting can take any form that allows participants to speak to each other directly, for example, a conference call.

3.2. Who takes part in the meetings?

The tutorship council must invite the tutor to every meeting, and meetings may be held on the tutor's request. If you want, you can invite the person under your protection to attend. Regardless of their presence at the meetings, they must be informed of any decisions made that concern them, regarding either their personal protection or the protection of their **patrimony**.

For more about the participation of the person under tutorship in their own protection, see section C on the protection of a person under tutorship, on page 15.

3.3. How to run a meeting?



Meetings will run more smoothly if the secretary of the tutorship council sends participants a detailed agenda with the meeting invitation. During the meeting, make sure that everyone has a chance to express their opinion, and work for consensus. If the tutorship council is unable to come to an agreement, decisions shall be made by majority vote. Make sure to take note of these agreements during the meeting. Later, you can record them in the meeting minutes. If necessary, meetings can take the form of telephone conference calls or videoconferences.

Samples of an agenda and meeting minutes are available in "*Tools and Forms*" and in digital format on the Curateur public's website.



3.4. What about the minutes?

The secretary is responsible for writing and keeping minutes of tutorship council meetings because they provide a record of the decisions that were made in the interest of the protected person. He or she prepares them after the annual meeting and other meetings where decisions about the administration of the tutorship were made.

3.5. How is the Curateur public kept informed?

Even though it is not mandatory, it is strongly recommended that you send the minutes of tutorship council meetings to the **Curateur public**. They provide the Curateur public with important information about the administration of the tutorship and the actions undertaken to ensure the protected person's welfare. You can give a copy to the tutor to be sent to the Curateur public along with his or her **annual administration report**.

4.

PRINCIPLES OF TUTORSHIP TO A PERSON OF FULL AGE

The protection of a person under tutorship and their **patrimony** can be complicated, and you might find yourself in some delicate situations. The decisions you will be making on behalf of the protected person can have a major impact on their life. The **tutorship council**, in its oversight role, may also encounter some touchy situations. This section presents some principles that will help you further your thinking and guide your decisions.

4.1. Guiding principles

All decisions made in the name of a protected person must be rooted in the following overarching principles:

- » The person's best interests and the safeguarding of their autonomy;
- » Protection of the person's patrimony and using it to foster their well-being.

In addition, tutors must always:

- » Act with prudence, diligence, honesty, loyalty, and disinterestedness;
- » Exercise the protected person's human rights and protect their interests when dealing with other individuals, agencies, and corporations;
- » Obtain authorizations from the court or tutorship council when necessary;
- » Inform the protected person of decisions that affect them and consult them when possible.

When tutors are faced with a difficult situation or must make a sensitive decision, they should not hesitate to consult members of the tutorship council and those close to the person under their protection. They can also ask for opinions from health practitioners who see the person every day. For example, if the person is living in a residential facility, the tutor may consult the staff. He or she may also turn to the **Curateur public** for a referral to the appropriate resource.

Tutors may not purchase, rent, or use the assets of a person under their protection for their sole interests. Expenses must be related to the maintenance or improvement of the protected person's quality of life.

4.2. Acting in the interests of the person under protection and safeguarding their autonomy

To guide you in your decisions, either as tutor or member of the tutorship council, ask yourself first what would be best for the person under your protection. Because of your closeness to the person, you should be familiar with their preferences, values, and needs. In addition, make sure that your decisions are guided by the principles of respect and upholding their rights. If someone has caused him or her injury, you must take the necessary recourse to remedy the injury.

To foster respect and safeguard the autonomy of protected individuals, tutors must try to let them decide and act on their own. When this is not possible, they should at least participate, if they are able, in decisions and actions that concern them.

In some cases, protected individuals will find it difficult to make decisions in their own interests, despite the tutor's aid. Tutors need to exercise discernment in such situations. If they judge that the person is incapable of participating in a decision that concerns them or is making potentially harmful choices, they must then make decisions and act on the person's behalf. In such cases, the protected person should at least be informed about the decisions that were made and the reasons they were made.

For more information about how to encourage the person under your protection to use and develop their capacities, see section C on the protection of the person on page 15.

4.3. Protecting the patrimony of a person under tutorship and using it for their welfare

What does "*in the capacity of*" mean?

This is a phrase that follows an individual's name to indicate that they are not personally concerned, but rather are carrying out a particular role, for instance that of tutor.

The assets of a person under tutorship are kept totally separate from those of his or her tutor. This means that tutors must maintain separate bank accounts and investments for the protected person and themselves. Throughout the tutorship, the assets of the person under tutorship will be registered as follows: "(Your name) *in the capacity of* tutor to (name of the protected person)".

However, properly administering the patrimony does not mean that no expenditures may be made. The person under your protection must be able to use their assets to ensure their welfare. Expenses linked to their needs and the administration of their property may be covered using the patrimony; these include expenses such as housing, food, personal expenses, and clothes.

For more information concerning the protection of the assets of the protected person, see section D on the management of the patrimony.

PRINCIPAL STAGES OF TUTORSHIPS TO A PERSON OF FULL AGE

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STAGE I

ENSURING THE WELFARE OF A PERSON UNDER TUTORSHIP

In this section we will present the basic roles and responsibilities of the main stakeholders involved in protecting a person under tutorship. You will also learn about the overarching principles that should be kept in mind throughout the tutorship. You'll find general information, information addressed specifically to tutors  **TUTOR** and tutorship councils  **TUTORSHIP COUNCIL**, and references to tools and forms  **TOOLS AND FORMS** you can use for specific tasks, for instance, when producing the inventory or annual report.

STAGE I

ENSURING THE WELFARE OF A PERSON UNDER TUTORSHIP

I.1. Why must tutors ensure the welfare of the person under tutorship?



Throughout the tutorship, tutors must protect the person and act in his or her interests. For **tutors to the person**, this also means, in addition to the sound administration of the person's assets and the completion of the main elements of the administration report presented in this section, ensuring the person's mental and physical welfare. It is the tutor's job, therefore, to see that all the needs of the person under their protection are met, in accordance with the person's financial means.

For more information on the protection of a person under tutorship, see section C on how to protect a person under tutorship.

I.2. How do I ensure a person's welfare?



The best way to confirm that the living conditions of the person under your protection are satisfactory is to visit them regularly. You can also speak with the person on the telephone, or find out how they are from someone who is regularly in direct contact with them.

As tutor, you do not have to personally provide the services required by the person under your protection, but you are responsible for making sure that he or she receives them.

The patrimony of the person under tutorship must be used to ensure their welfare and meet their needs, in accordance with their financial means.

Monica is the tutor to her mother, Jane. She calls her mother every week to find out how she is doing and talks regularly with her brother, Ben, who lives a few blocks from their mother. He visits Jane once or twice a week.

If you stay informed of the protected person's needs and how they can be met, you can ensure they have access to the services they need and, if necessary, arrange for additional services.

I.3. Can the patrimony of the person under tutorship be used to contribute to his or her welfare ?

The main priority for tutors is to pay, using the **patrimony** of the person under their protection, expenses such as housing and food, and also the person's debts and other obligations (e.g., support payments). When the financial capacity of the protected person permits, additional expenses should be considered to enhance their well-being and meet their other needs. Because of their closeness to the protected person, tutors and **tutorship councils** are well placed to listen to them and find out their needs. Before incurring any expense, the following two points should always be considered: the interests of the protected person and their financial capacity.

During one of his visits, Ben notices that it is very hot in his mother's room. Jane says she wants him to install an air conditioner. He informs his sister Monica, who is their mother's tutor, of this request.

Monica and Ben share the work of helping their mother and they support each other. Usually, Ben takes care of his mother's purchases, while Monica manages the finances and administrative tasks (forms, etc.). So, it is Ben's job to buy an air conditioner to satisfy Jane's request. Monica reimburses him for the purchase with money from Jane's patrimony.

I.4. If it hasn't already been done, how do I form a tutorship council?



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

In most cases, the tutorship council is established at the same time as the tutor's appointment. If this is your situation, go directly to section 1.5.

After the institution of tutorship, a tutorship council should be formed promptly. This is the first stage to complete, because the council has a role to play at the outset of the tutorship. Its members are proposed by a **meeting of family and friends**. The individuals attending this meeting are convened by the **Clerk** of the Court or the notary you have assigned to perform this task. The meeting should be attended by at least five individuals. They can be the parents and grandparents of the protected person, their children, siblings, members of the extended family (uncles, aunts, cousins) or friends. All members must be adults.

During the meeting, those attending usually recommend three adults for membership in the tutorship council. They also recommend a secretary, who may or may not be a council member, and two alternates to replace a member should he or she be obliged to resign from the council. They also determine the secretary's remuneration, if applicable. The court then confirms these recommendations.

For more about the circumstances under which a secretary of the tutorship council is entitled to receive remuneration, see section 1.7 of section D, "*Managing the Patrimony*".

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

The meeting of relatives, persons connected by marriage or civil union and friends brings together the person's relatives and friends for the purpose of instituting the tutorship. It should be held in the office of a certified notary or at the courthouse of the judicial district where the person to be protected resides.



TUTORSHIP
COUNCIL

The tutorship council can contact the Curateur public at any time to discuss situations or issues of concern, and, if necessary, determine what steps to take.



TOOLS AND
FORMS



TUTOR

I.5. What is the role of the tutorship council in overseeing the welfare of the protected person?

As a member of the tutorship council, you must ensure that the tutor properly performs his or her tasks and makes sound decisions. As someone who is close to the person under tutorship, you are well placed to ensure his or her welfare. Your familiarity with the person's preferences, needs, and capacities will help you to properly assist the tutor, and guide you in overseeing his or her decisions.

To help you in your oversight tasks and support of the tutor, you'll find the "*Overview of Protective Supervision*" among the tools and forms provided in this guide. This tool will help you to determine, with the tutor, the actions needed to ensure the protection of the person under tutorship, and, when possible, possible ways to improve the person's well-being. We suggest that you ask the tutor to complete this overview when he or she produces the **annual report**, and to discuss it with you afterwards.

If you are concerned about any aspects of the tutor's overview, complete the "*Tool to Assist Tutorship Councils in Consulting the Curateur public on Protective Supervision*" that can also be found in the "*Tools and Forms*" section and return it to the **Curateur public**. You can also call the Curateur public staff member who is in charge of the protected person's file whenever you want..

I.6. How to fill out the "*Overview of Protective Supervision*"?

The "*Overview of Protective Supervision*" is a tool that is useful for reviewing the steps you have taken over the past year to ensure the welfare of the person under your protection. It is an excellent means of sharing information with the tutorship council about the person's welfare.

The overview contains five sections:

1. Material needs and daily needs
2. Living environment
3. Health needs
4. Social needs
5. Upholding and exercising rights, and respecting the autonomy of the protected person

In each section, you can write about these different areas of concern. Feel free to use additional sheets of paper if you need to provide more detailed explanations. Attach them to the overview form and submit everything to the tutorship council.

For more detailed information on the procedure for completing this form, see the "*Guide to Completing the Overview of Protective Supervision*" which can be found in "*Tools and Forms*".



TOOLS AND
FORMS



It is not obligatory to send the overview to the Curateur public. On the other hand, whether you are a tutor or member of a tutorship council, feel free to contact the Curateur public at any time for support and answers to your questions concerning the protection of the person under tutorship.

I.7. What do I do after completing the overview ?

We strongly suggest that you complete the "*Overview of Protective Supervision*" at the same time as you produce the annual report. You should then give it to the tutorship council and discuss it at your annual meeting or at any other time you think it necessary to report on the welfare of the person under your protection. The secretary of the tutorship council will keep the overview on file. You don't have to send it to the Curateur public.

STAGE 2

MAKING THE INVENTORY

STAGE 2

MAKING THE INVENTORY

2.1. What is an inventory ?

The **inventory** is the list of all the protected person's assets that were entrusted to the **tutor to the property** for administration on the date that tutorship was instituted. The assets can vary, depending on the case. Tutors should read the court judgment to learn what portion of the protected person's **patrimony** has been entrusted to them. For instance, they may be responsible only for administering the protected person's investments or real estate properties. In such cases, the inventory includes only these possessions. Tutors may also be required to administer all of the assets of the person under their protection. In such cases, the inventory must describe all of the person's property in detail. The inventory may be made by **private writing** (see 2.3) or **notarized** (see 2.4).

2.2. Why is it necessary to prepare an inventory ?

The inventory is the first action in the administration of a tutorship to the property. With the inventory, it is possible to establish the value of the protected person's patrimony at the outset of the tutor's administration. It provides the tutor with a more accurate picture of the nature of the assets under administration, and the decisions that must be made to ensure sound management. The inventory is therefore the first step in protecting the patrimony of the person under tutorship. It constitutes evidence of a tutor's sound management, and, because it provides a quick overview of the extent of the patrimony, helps them to avoid errors, making it easier, from the outset of the tutorship, to separate the protected person's assets from their own.

The inventory is also useful when it comes to completing other stages in administering the protected person's patrimony, in particular, determining the amount of the **security** (if the patrimony is worth more than \$25,000), and completing the annual administration report. These two important stages of the tutorship are explained on pages 29 and 34 of this section.

2.3. What is an inventory made by private writing ?

This is an inventory prepared by the tutor and signed by two witnesses. They may be members of the **tutorship council**, or individuals who are close to the protected person who confirm that the information recorded in the inventory is accurate. Tutors can use the applicable form that is enclosed in the folder accompanying this guide; it can also be downloaded from the **Curateur public**'s website.

This type of inventory is generally used if the protected person's patrimony comprises only a few items, for example, a building, an **allowance**, or a pension.

2.4. What is a notarized inventory ?

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



TUTOR

The inventory must be prepared within 60 days of the date of the judgment naming you as tutor.

2.5. How do I prepare an inventory ?

Making an inventory involves enumerating, describing, and appraising as accurately as possible all property worth \$100 or more that has been placed under your administration as tutor, and also assessing all of the protected person's debts. You don't have to include everyday items such as clothing.

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

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

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

1–3. Identification

4. Assets

5. Liabilities

6. Declaration of the tutor and signatures

If you use this form, please follow these instructions:

Sections 1–3: Identification

In these sections, write:

- » Curateur public file number for the protected person and the date of your inventory;
- » Protected person's last name, first name, date of birth, and address;
- » Your last name, surname, address and telephone number;
- » Last names, surnames, addresses, and telephone number of two witnesses.

Section 4: Assets

In this section, list the assets of the person under your protection under the appropriate categories as shown in the following chart. You may not have to fill in all the categories. Check for those that concern your situation. This step is important because it enables you to precisely establish the value of the protected person's assets. It's normal, however, to be unsure of the value of certain items, because it can sometimes be difficult to assess. Feel free to consult experts (jeweller, specialized collector, antique dealer) for help with this task.

You do not have to list in the inventory everyday items owned by the person under your protection, for example, his or her clothing or inexpensive kitchen accessories.

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

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

Section 5: Liabilities

In this section, list the liabilities of the person under your protection under the appropriate categories as shown in the following chart.

LIABILITIES	RELEVANT INFORMATION
14. Bank loans	Enter all outstanding balances on personal loans obtained in the protected person's name from a financial institution. Also enter the amount already drawn on a line of credit in the protected person's name, if applicable.
15. Accounts payable	Enter all received invoices that were outstanding when tutorship was instituted.
16. Notes payable	Enter balance payable on sums borrowed and guaranteed by a note in the protected person's name.
17. Mortgage payable	Enter the balance of a mortgage, if applicable, which must be paid in the event the protected person owns buildings or land.
18. Other loans	Enter any other outstanding loans that the protected person has yet to repay.
19. Other liabilities	Enter all other amounts owing not listed under the above headings that could be connected with the patrimony of the person under your protection

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

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

Section 6: Declaration of the tutor and signatures

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

- » Describe any of the protected person's assets that are in poor condition;
- » Add items to the inventory if you learn of other assets not included on the list you have just drawn up.

Sign the inventory form, and have two witnesses sign it, indicating the date and location. They may be members of the tutorship council.

A guide for curators and tutors who wish to make an inventory by private writing is available in the "*Tools and Forms*" section.





TUTOR

When you send documents to the Curateur public, make sure to include the name and file number of the person under your protection.



TUTOR

In exceptional cases, if the tutorship council has not yet been constituted when the inventory is produced, the tutor must send a copy to the Curateur public and keep another for the future tutorship council secretary.

2.7. Who do I send the inventory to?

Remit copies of the inventory to the secretary of the tutorship council and the Curateur public; if applicable, send another copy to the **tutor to the person**. We suggest that you inform the person under your protection concerning the details of his or her representation. To this end, it is suggested that you give him or her a copy of the inventory and explain its contents..

2.8. What documents do I enclose with the inventory?

You must provide copies of all supporting documents confirming the patrimony of the person under your protection. Depending on the particular case, these could include bank statements, investment statements, and municipal tax assessments. The secretary of the tutorship council must preserve copies of these documents so that the inventory may be reviewed.

In case of doubt about what documents to enclose with the inventory, contact the Curateur public staff member who is responsible for the file of the protected person.

2.9. Who verifies the inventory?

The tutorship council and the Curateur public are responsible for verifying the inventory. It is recommended that the tutorship council review and approve it first. Once this is done, the tutor sends the inventory to the Curateur public for additional verifications.

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

Since the inventory is a mandatory part of administering the tutorship, refusal to prepare one could ultimately lead to the tutor's replacement. The tutorship council and the Curateur public have the power to apply to the court for a tutor's replacement if the tutor fails to fulfill his or her responsibilities. Tutors to the person can take similar action with regard to tutors to the property.

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



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

- » The tutor produces the inventory by the required deadline, in other words, 60 days after the judgment establishing the institution of tutorship;
- » The inventory accurately reflects the protected person's patrimony on the date of the judgment instituting tutorship.

2.I2. What elements of the inventory must be verified ?



Pay special attention to the following:

- » Does the inventory list all of the protected person's assets and liabilities ?
- » Is the information contained in the inventory accurate and entered under the proper headings ?
- » Has the tutor attached all relevant documents ?
- » Did the tutor sign the inventory and indicate the date and place in which it was drawn up ?
- » If it is an inventory made by private writing, has it been signed and dated by two witnesses ?
- » Have all of the supporting documents been given to you ?

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



2.I3. What happens if the tutorship council does not agree with the contents of the inventory ?



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

STAGE 3

ADMINISTERING THE PROPERTY

STAGE 3

ADMINISTERING THE PROPERTY

3.1. Why is it necessary to open an account "*in the capacity of*" tutor to the protected person ?



TUTOR

To administer your assets separately from those of the protected person, you must open an account "*in the capacity of*" tutor to the person under your protection that is separate from your own account. This way, you can manage the person's assets, deposit their income, and pay their expenses. Often, it isn't necessary to open a new bank account. The financial institution will simply change the registration of the protected person's account to reflect the fact that you are now administering it in the capacity of tutor.

What does the expression "*in the capacity of*" mean ?

This is a phrase that follows an individual's name to indicate that they are not personally concerned, but rather are carrying out a particular role. In this case, it means that you manage the accounts and investments of the person you are protecting in the capacity of tutor while clearly specifying that these accounts belong to the protected person and not you.

3.2. Why do investments need to be registered "*in the capacity of*" tutor to the protected person ?



TUTOR

Similarly, the protected person's investments must be registered in your name "*in the capacity of*" tutor to the protected person to distinguish them from your own investments. They must be labelled as follows: "(Your Name) *in the capacity of* tutor to (name of the protected person)".

3.3. How do I determine the sources of income of the person under my protection ?



TUTOR

You must identify the sources of the protected person's income, because he or she may have several income sources, for example, **allowances** or annuities, interest on investments, or rental income from a building

You are also responsible for collecting the person's earnings and following the procedures required to obtain any other available benefits and allowances, governmental or other, to which they are entitled due to their condition. For example, if the person is disabled, he or she may be entitled to allowances or benefits.

Keep in mind that the person under your protection continues to exercise control over their earnings (salary), unless the court judgment delegates this responsibility to you.



3.4. How can the income of the person under my protection be used ?

Once you have determined all the sources of the protected person's income, you can use it to meet the needs of the person under your protection. The priority is to pay the person's main expenses, such as housing and food, but their debts and other obligations (support payments) may also be covered. In addition, depending on their financial capacity, you may also consider additional expenditures to improve the protected person's welfare.



Recently, Mr. Gilbert was declared incapable of managing his affairs on his own. His daughter Marie was appointed to act as his tutor. She made an inventory of the patrimony of her father and established a budget for him. He receives an old age pension and a pension from the employer for whom he worked for 35 years. His monthly income usually exceeds his monthly expenses.

A while ago, Mr. Gilbert expressed the wish to take a holiday with a friend in the Gaspésie region, where he often visits. Because he is in good health and has the means to pay for the trip, Marie supported his decision and arranged for him to have the funds he needs to visit with his friend.

3.5. What types of investments are presumed sound ?



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

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

These investments, like other assets belonging to the person under your protection, must be registered as follows: "(Your Name) *in the capacity of* tutor to (name of the protected person)".

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

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

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

For more information about managing the property of the person under your protection see section D, "*Managing the Patrimony*".



3.6. What are the tutorship council's responsibilities ?

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

- » Opens an account in the capacity of tutor to the protected person to administer their property;
- » Registers the person's investments in his or her name "*in the capacity of*" tutor to the protected person;
- » Furnishes the required **security** if the value of the assets exceeds \$25,000;
- » Determines the sources of the person's income and collects it;
- » Establishes a balanced budget that meets the protected person's needs;
- » Makes **investments that are presumed sound**;
- » Uses the protected person's **patrimony** for the person's benefit exclusively, and never mingles the protected person's assets with his or her own assets.

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



Remind the tutor of his or her obligations and their importance to the protection of the property of the person under tutorship. For example, you can check with the tutor that he or she has registered the protected person's bank account and investments in his or her name "*in the capacity of*" tutor to the protected person; or that he or she has made investments that are presumed sound. If, despite your intervention, the tutor refuses to carry out his or her obligations, you can contact the **Curateur public** staff person in charge of the protected person's file to inform them of the situation and learn what other steps to take under the circumstances.

If you observe repeated breaches or financial abuse on the part of the tutor, consult Section E, "*What to Do in the Case of a Breach, Abuse, Report of Suspected Abuse, or Replacement*", or contact the Curateur public staff person in charge of the protected person's file.

STAGE 4

FURNISHING SECURITY

STAGE 4

FURNISHING SECURITY

4.1. What is security ?

Security is a guarantee furnished by the tutor to protect the assets of the person under his or her protection. This means that the person's **patrimony** will be protected or compensated for if the tutor appropriates or mismanages the property.

4.2. What types of security are there ?

The **Curateur public** accepts three types of security, which must be confirmed annually by the **tutorship council** and the Curateur public.

Security taken on the funds of the protected person

Hold funds

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

The financial institution's written confirmation is remitted to the tutorship council and the Curateur public.

Contract of surety or another type of insurance

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

Security taken on the funds of the tutor

Mortgage guarantee

A mortgage guarantee is a contract that offers a piece of real estate owned by the tutor as a guarantee. It is made for the benefit of the protected person and is binding on the tutor up to the amount determined by the tutorship council. The document must be **notarized** and registered in the Registre foncier du Québec [Québec Land Register]. The notary's fees may be covered by the protected person's patrimony.



When you send documents to the Curateur public, be sure to include the name and file number of the person under your protection.

4.3. Who determines the type and amount of security ?

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

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

4.4. What are the tutor's responsibilities ?

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

4.5. How do I obtain security?

As a tutor, you must first get the tutorship council to decide on the amount and type of security that must be furnished. To do this, the tutorship council completes the *"Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative"* form and sends it to you. Next, arrange with the financial institution concerned to obtain the security within the deadline set by the tutorship council.



TUTOR



TOOLS AND
FORMS

Security is mandatory when the value of the property of the person under your protection exceeds \$25,000. It must be confirmed annually and whenever a change has been made.

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

1. Take the attestation form completed by the tutorship council to the financial institution that holds the protected person's patrimony and request a hold funds. The financial institution will then freeze the funds according to the directions of the tutorship council;
2. Ask the financial institution for written confirmation of the hold funds.

To assist you, the following documents are included in the *"Tools and Forms"* section and on the Curateur public's website:

- » *"Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative"*;
- » A sample Hold Funds application to a financial institution;
- » A sample hold funds confirmation letter.



TOOLS AND
FORMS

In the case of a mortgage guarantee, contact your own financial institution. They will explain the procedure you should follow. Because it is a notarized document, you will also need to contact a notary to complete the process.

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



4.6. What are the tutorship council's responsibilities ?

With respect to the security, the tutorship council has three responsibilities. First, you determine the amount and type of security and the time limit the tutor must respect to furnish this guarantee of his or her administration of the protected person's property. To do this, complete the "*Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative*" form and send it to the Curateur public and the tutor so that he or she can make the arrangements you have determined.

Second, you must ensure that the tutor provides proof of the requested security every year, and whenever a change is made.

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

It is compulsory to furnish security if the protected person's assets are worth more than \$25,000, and you must confirm it every year and whenever a change has been made.



4.7. How is the amount of security calculated ?

In general, the amount of security should correspond to the portion of the protected person's patrimony that will not be used to cover various needs such as living expenses, maintenance costs for a building owned by the protected person, or the **fees** of the accountant who produces the annual report. In other words, the fewer and smaller the needs, the higher the security.

In order to establish the amount, you should work with the tutor to assess the need to draw on the protected person's patrimony. We suggest that you work together to establish a budget with a detailed breakdown of his or her needs. Do this every year because needs can change over the course of the tutorship.

4.8. Can the amount of the security be contested ?

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

4.9. What happens if the tutor does not furnish security ?

Since the security is a mandatory aspect of administering the patrimony of a person under tutorship when his or her patrimony exceeds \$25,000 in value, refusal to furnish it could ultimately lead to the tutor's replacement. The tutorship council and the Curateur public have the power to apply to the court for a tutor's replacement if the tutor fails to fulfill his or her responsibilities. **Tutors to the person** can take similar action with regard to **tutors to the property**.

STAGE 5

FINANCIAL TRACKING

STAGE 5

FINANCIAL TRACKING

5.1. Why the need for financial tracking ?



TUTOR

To facilitate the administration of the protected person's **patrimony**, a simple accounting system is recommended. It can be manual or electronic and should include a section for income and another section for expenses. If you enter cash inflows and outflows at various points over the year, it will be easier to produce the **annual report**.

Financial tracking also makes it easier to budget the protected person's expenses while ensuring that their needs are satisfactorily met. Always keep in mind that the patrimony must serve this purpose. It is also important to maintain a balanced budget and keep a record of everything you spend.

A financial tracking model is included in the "*Tools and Forms*" section. You can also go to the Curateur public's website to download an Excel file that was specially designed for the protected person's financial accounting.



TOOLS AND
FORMS

For more information about the annual report, go to page 34 in this section.

5.2. What documents must be preserved ?



TUTOR

All supporting documents related to the administration of the property of the person under your protection should be preserved, including invoices, receipts, cheque stubs, and investment reports prepared by the financial institution, and financial statements.

5.3. Who preserves what ?

The secretary of the **tutorship council** is responsible for keeping a record of all the documents related to the tutorship. You should give him or her copies of all supporting documents relating to your administration. Keep the originals in your own file.

STAGE 6

PRODUCING THE ANNUAL REPORT

STAGE 6

PRODUCING THE ANNUAL REPORT

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

The **annual report** is the method that has been chosen for tutors to account for their administration and justify all the actions that have been taken in the name of the person under their protection. This is also a good time to use the "*Overview of Protective Supervision*" to describe the steps you have taken to ensure his or her protection. As its name indicates, the report must be produced every year.

For more information on the "*Overview of Protective Supervision*", see the first stage described in this section on page 9.



TUTOR



TOOLS AND
FORMS

6.2. How do I produce the annual report ?

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



TUTOR



TOOLS AND
FORMS

A financial tracking model is included in the "*Tools and Forms*" section. You can also go to the Curateur public's website to download an Excel file that was specially designed for the protected person's financial accounting.

If it turns out that it is too complicated for you to produce the annual report, you can ask for assistance from an accountant or another qualified professional. The fee can be paid using the **patrimony** of the person under your protection.

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

We ask that you send in the annual report within three months after the tutorship's anniversary date. For example, if the tutorship began on June 1, the report should be remitted by September 1 of every year. The tutorship's anniversary date corresponds to the date of the court judgment instituting tutorship.

The annual report presents the protected person's property (assets), debts (liabilities), income, and expenses for the past year.



TUTOR

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

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

The simplified form will be sent to you if the person under protection owns no buildings, land, stock, or bonds, and has not loaned money in the form of a mortgage on a piece of property, or received any interest on a loan.

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



TUTOR

6.4. Who is the report sent to?

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

- » Secretary of the **tutorship council**
- » Curateur public
- » **Tutor to the person**, if applicable

Keep a copy of the annual report for your own files.

Keep in mind that the participation of the person under your protection is important and strongly recommended. To this end, we suggest that you give him or her a copy of the annual report and, depending on his or her capacity to comprehend, explain its contents. You can inform the tutorship council and the Curateur public of your actions in this respect.

For more information concerning the participation of the protected person, go to page 15 in section C on encouraging the protected person to develop and make use of their capacities.

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



When you send your first annual report to the Curateur public, you must supply copies of all supporting documents to confirm all the **assets, liabilities**, income, and expenses listed in the report; the secretary of the tutorship council must also be given copies of all supporting documents. In subsequent years, you need only send the annual report to the Curateur public. Copies of all supporting documents must, however, be given to the secretary of the tutorship council. The Curateur public may also request them in the course of its review of the annual report. You keep the originals of all these documents. Every year, you must also remit proof of renewal of the **security**.

When you send documents to the Curateur public, be sure to include the name and file number of the person under your protection.

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

Since the annual report is a mandatory aspect of administering the patrimony of a person under tutorship, refusal to furnish it could ultimately lead to the tutor's replacement. The tutorship council and the Curateur public have the power to apply to the court for a tutor's replacement if the tutor fails to fulfill his or her responsibilities. Tutors to the person can take similar action with regard to **tutors to the property**.

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



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

- » The tutor produces the annual report within the prescribed time limits, in other words, three months after the tutorship's anniversary date, which is the date of the judgment instituting tutorship;
- » The annual report provides a full and accurate account of the patrimony of the person under your protection.

We ask that tutors send in the annual report within three months of the tutorship's anniversary date. For example, if the tutorship began on June 1, the report should be remitted by September 1 of every year. The tutorship's anniversary date corresponds to the date of the court judgment instituting tutorship.



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

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

- » Does the annual report list all of the protected person's assets and liabilities ?
- » Is the information contained in the annual report accurate and entered under the proper headings ?
- » Have all expenses been entered in the annual report? Were they entered properly ?
- » Have copies of all supporting documents been given to you ?
- » Do the expenses reported in the annual report correspond to the situation of the protected person? Were they incurred for the sole purpose of ensuring his or her welfare ?



A checklist is included in "*Tools and Forms*", and on the Curateur public's website.

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



If you believe that the annual report is incomplete or inaccurate, you can ask the tutor to make the necessary corrections. If the tutor refuses to cooperate and a dispute ensues, contact the Curateur public staff person who is responsible for the protected person's file to inform him or her of the situation and learn what further steps to take under the circumstances. He or she will support you in fulfilling your responsibilities.

STAGE 7

OBTAINING MEDICAL
AND PSYCHOSOCIAL
REASSESSMENTS OF
THE PERSON UNDER
YOUR PROTECTION

STAGE 7

OBTAINING MEDICAL AND PSYCHOSOCIAL REASSESSMENTS OF THE PERSON UNDER YOUR PROTECTION

This stage mainly concerns **tutors to the person**. However, if you are only acting as **tutor to the property** and the person under your protection is capable of looking after themselves, you are still responsible for requesting reassessments.

The medical reassessment has to do with the protected person's state of health. It is a form that can be filled out by the person's family doctor or by a physician who works for the facility in which he or she resides.

The purpose of the psychosocial reassessment is to determine the person's degree of independence and need for protection. This form must be completed by a health practitioner other than a physician (usually a social worker)

7.1. At what point should tutors arrange for medical and psychosocial reassessments of an incapacitated person ?



Tutors must ensure that the individual under tutorship undergoes medical and psychosocial reassessments at least every three years. The court may set a shorter time limit, however, in the judgment instituting **protective supervision**.

A person under tutorship or their tutor can ask for medical and psychosocial reassessments at any time to confirm that the form of protective supervision is still adapted to the protected person's needs. If the person regains their capacity or is no longer in need of legal protection, tutorship may be terminated. The opposite may also occur: the level of protective supervision may be increased. The person under tutorship would then be under curatorship.

Mrs. Fleming suffered serious head injuries as a result of a fall. Since then, she has been temporarily incapable of looking after herself and managing her affairs. The court declared that tutorship was required to ensure her protection and the protection of her patrimony. Her son John became her tutor.

Two years later, thanks to the medical care she received, Mrs. Fleming has almost completely recovered. She believes she is capable of managing her affairs by herself, without her tutor's help. She asks her family doctor to conduct a medical reassessment and meets with a social worker to obtain a psychosocial reassessment. These two practitioners will determine whether Mrs. Fleming's protective supervision is still necessary and adapted to her needs.



TUTOR

7.2. Who do I go to obtain these reassessments?

If the person under your protection receives health or social services, the practitioners associated with the institutions concerned will conduct the reassessments. If this is not the case, you can go to the CLSC in the area where the person lives and ask them to assign a physician and social worker to perform the reassessments.



TUTOR

7.3. What do I do with the conclusions of the reassessments?

Regardless of the recommendation stemming from the reassessment, it will be important for you to so advise the person under your protection, the Curateur public and the **tutorship council**.

If the Notice on filing of a reassessment was filled out by healthcare professionals with a recommendation to maintain tutorship, simply forward a copy of this form to the Curateur public. The tutorship will be maintained until the person's next reassessment.

If, on the other hand, the reassessment determines that the tutorship must be amended or revoked, the establishment will send you a copy of the forms involved (*Notice on filing of a reassessment*, *Medical reassessment* or *Psychosocial reassessment*) and have a request for amendment of the protective supervision filed before the court. It will be important for you to forward a copy of all these forms to the Curateur public.

Expenses incurred to process these court-ordered documents can be reimbursed directly out of the **estate** of the person under your protection.

If you have any questions about the documents you have received or the appropriateness of maintaining protective supervision, the Curateur public staff person in charge of the file can be of assistance.

If no one contests the recommendations made by healthcare professionals within 30 days of the reassessment report being forwarded to the court clerk, the tutorship will be amended as per the recommendation. The court will so advise the person under protective supervision as well as the Curateur public.

If the curatorship plan is amended as a result of the reassessment, do take the time to learn your new responsibilities. If the reassessment terminates the tutorship, refer to step 8 of this section.

7.4. What is the tutorship council's role in arranging for reassessments ?



As a member of the tutorship council, you must ensure that the tutor properly performs his or her tasks and makes sound decisions. You must therefore ensure that the tutor makes the necessary arrangements to have medical and psychosocial reassessments of the person under his or her protection every three years, or within the time limit set by the court. Tutorship reassessments are mandatory and aimed at ensuring that the form of protective supervision is still adapted to the person's protection needs.

If, despite your intervention, the tutor refuses to carry out his or her obligations, you can contact the Curateur public staff person in charge of the protected person's file to inform them of the situation and learn what other steps to take under the circumstances.

If you observe breaches on the part of the tutor, consult Section E, "*What to Do in the Case of a Breach, Abuse, Report of Suspected Abuse, or Replacement*", or contact the Curateur public staff person in charge of the protected person's file.

STAGE 8

AT THE END OF YOUR
ADMINISTRATION:
PRODUCING THE
FINAL REPORT

STAGE 8

AT THE END OF YOUR ADMINISTRATION: PRODUCING THE FINAL REPORT

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

Tutors to the property manage the **patrimony** of the person under their protection until:

- » Tutorship ends following a judgment of the court, either because the protected person has recovered their capacity or has no further need of protection;
- » The tutor is replaced by another tutor who has been appointed by the court;
- » The death of the protected person.

In every case, the mandate of the tutor is at an end. They then report on their administration to the person under their protection, the **liquidator** of the person's succession, or the tutor who replaces them, depending on the situation; they also report to the **tutorship council**, the **tutor to the person**, if there is one, and to the **Curateur public**.

Administration also comes to an end if the tutor is declared legally incapable or dies. In such a case, the tutor or the liquidator of the succession of the former tutor must notify the Curateur public and work to ensure the best interests of the protected person until a replacement can be appointed.

8.2. How do I produce the final report?



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

If it is too complicated, you can give the job to an accountant or another qualified professional. The fee can be paid using the patrimony of the person under your protection.

The Curateur public supplies a simplified final report form. This form will be sent to

you at the end of your administration. You will then be informed of the time limit by which you must complete the final report.

If you decide to complete the simplified final report form and the person to whom it is addressed accepts it, have them sign it. Their signature signifies their acceptance of the final report that has been submitted to them. The procedure is the same when you give the final report to the person under your protection.



TUTOR

When you send documents to the Curateur public, make sure to include the name and file number of the person under your protection.

8.3. To whom do I remit the final report ?

Depending on the situation, give a copy of the final report to:

- » The person under your protection;
- » The liquidators of their successions if they are deceased; or,
- » The tutor who replaces you.

You must also send a copy to the tutor to the person, if applicable, the tutorship council and the Curateur public.

Keep the signed original copy, because it serves as proof that the person under your protection, liquidator of his or her succession, or replacement tutor has acknowledged that you have properly administered the patrimony with which you were entrusted.



TUTOR

8.4. What happens if you do not produce the final report ?

If the Curateur public does not receive a copy of the final report within the prescribed time limit, they will inform the person to whom the report was addressed and tell him or her what recourse they can take against you. The Curateur public may take other measures to persuade you to produce it, for instance, issue a notice of offence.

8.5. What is the cancellation of security ?



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

The cancellation of the security may be given by:

- » The person under tutorship who has recovered their capacity or is no longer in need of protection;
- » The liquidator of their succession, if they are deceased; or,
- » The tutorship council, if another individual replaces you as tutor.

If there are charges associated with the cancellation of security, they may be covered by the protected person's patrimony.

8.6. What do I do with the property ?



Once the individual concerned has accepted the final report, all that remains to be done is transfer the property, documents, bank accounts, investments, and other sources of income to their name. You may have to check with a notary or your financial institution to complete the transaction and transfer the property.

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



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

- » The tutor produces the final report within the prescribed time limit, after the end of his or her administration;
- » The final report presents an accurate picture of the protected person's patrimony at the end of the tutor's administration.



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

Pay special attention to the following:

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



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

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

If the tutor refuses to cooperate and a dispute ensues, contact the Curateur public staff person who is responsible for the protected person's file to inform him or her of the situation and learn what further steps to take under the circumstances.



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

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

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

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

The secretary of the tutorship council and the tutor should give the archives of the tutorship to:

- » The person who was under tutorship, if they have recovered their capacity;
- » The liquidator of their succession if they are deceased; or,
- » The new tutorship council in the event of the council's replacement.

HOW TO PROTECT A PERSON UNDER TUTORSHIP

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I.

INTRODUCTION

The situations a tutor may encounter are as diverse as life itself. This section describes most of the situations you'll have to deal with during the period you are protecting the person under tutorship. Still, you may not find answers to all of your questions here. If so, do not hesitate to contact the **tutorship council** or the **Curateur public** staff person who is in charge of the file.

I.1. What does protecting a person under tutorship involve?

Protecting a person under tutorship means looking out for their psychological and physical welfare, in other words, safeguarding their rights to life, security, integrity, freedom, dignity, and privacy. This is the responsibility of a **tutor to the person**. The tutorship council supports tutors and oversees their actions. Because of its close ties to the protected person, it is well placed to ensure that tutors' decisions support the protected person's best interests.

I.2. What is the Curateur public's role in protecting the person?

The Curateur public plays a dual role in the protection of the person under tutorship. First, it informs tutors and assists them with their tasks by supporting them and, when necessary, referring them to the appropriate resources. It also assists the tutorship council in carrying out its responsibilities.

Second, the Curateur public has an oversight role and, when necessary, must intervene rapidly. It reviews the reassessment reports of the person under tutorship and ensures that any reports of abuse are dealt with promptly. It works closely with the tutorship council to provide proper oversight of the tutor's actions.

Whether you are a tutor or member of the tutorship council, feel free to contact the Curateur public staff person who is in charge of the protected person's file. He or she will offer you assistance and guidance.

2.

ENSURING THE WELFARE OF A PERSON UNDER TUTORSHIP



TUTOR

2.1. How do I ensure a person's welfare?

If the person you are protecting does not live with you, the best way to know whether their living conditions are satisfactory is to visit them, talk to them, or get regular updates on how they are doing. If the person lives in a residential facility, staff can help you determine their needs.

If the living conditions or state of health of the person under your protection begin to deteriorate, try to find a way to maintain or improve their quality of life as much as possible. This could range from meals on wheels to hospitalization, to home support provided by the CLSC, depending on the situation.



TUTOR

2.2. What things should you check to ensure the person's welfare?

To ensure that the protected person's living conditions meet their needs properly and correspond to their financial means, a number of aspects should be considered. Here are some suggestions to guide you.

Do not hesitate to use the "*Overview of Protective Supervision*" to keep track of needs you have identified for the person under your protection.

- » Are the **daily needs** of the person under your protection being met in a satisfactory manner, and in a way that respects their integrity, dignity, and security? Pay special attention to the medical care he or she is receiving (medical visits, administration of drugs, home support services, etc.). In addition, try to find out whether the person is eating properly and getting adequate personal care (hygiene, clothing). Check that they have enough money to cover their personal expenses. Verify that the person has access to a means of transport that enables them to easily get around and carry out their daily activities.

As tutor, you do not have to personally provide the services required by the person under your protection, but you are responsible for making sure that he or she receives them.

- » Does the **living environment** of the person under your protection adequately meet their needs? You are not obligated to house the person yourself, but it's important that their home corresponds to their needs and wishes, and, of course, financial means. If the person's living environment is unsatisfactory, try to change it. For instance, you can contact the healthcare network with a view to their eventual move into an environment that is better adapted to their condition, or apply to the CLSC for home support services.

It is crucial to respect the choices of the person under your protection, especially regarding their living environment, unless it is counter to their interests. For instance, if the person has always insisted that they want to remain at home as long as possible, you must look for home support rather than urge them to move into a facility, even if the second option is easier for you. The person's home can be modified (ramp, walk-in shower, high toilet seat, etc.) to make it easier to remain there. Home support workers or the CLSC can help you with these kinds of solutions.

On the other hand, the person's state of health may be such that they cannot get the care they need at home and must move. In such cases, it is important that you clearly explain the reasons for such a choice.

- » Does the person under your protection have access to opportunities for socializing and **activities** that suit their interests and needs? Look for ways to allow the person to maintain healthy interpersonal relations and participate, to every extent possible, in social activities to avoid isolation. As tutor, you can help them take part in community (local association or church group), educational, work, or recreational activities. You don't have to make the person do these things; simply provide them with a chance to do so, if they want to.

Mrs. Grant suffers from Alzheimer. Lately she has been forgetting things. Also, she has recently been found wandering the streets of her neighbourhood, unable to find her way home. These signs spurred her family into consulting a doctor and subsequently beginning the process to institute tutorship. At the conclusion of this process, her son John was appointed to act as her tutor.

He believes it would be better for his mother to move into a residential care facility because the staff could help her with personal care and prevent her from wandering away again. He suggests this to her, but Mrs. Grant categorically refuses. Even though he is her tutor, John may not force his mother to move without first confirming that it is in her best interests to do so. Further, Mrs. Grant must give her consent, because, legally speaking, a residential facility is considered to be a form of care.

Tutors should promptly inform the Curateur public of any address changes, whether their own, or that of the person under tutorship.

You'll find a document entitled "Overview of Protective Supervision" in the "Tools and Forms" section. It presents points that may be useful to you in your role of ensuring the welfare of the person under your protection.

John discusses the situation with the nurse who visits his mother at home, and with her doctor and social worker. All of them agree that Mrs. Grant's recent wandering episodes represent a risk to her security, and that it would be in her interests to move into a care facility.

The social worker shares this conclusion with Mrs. Grant and her son. He realizes that she is not afraid of moving, but simply does not want to be hospitalized. To reassure her, he presents her with different housing options other than the hospital, and explains that she will be able to receive the care her condition requires if she lives in a residential care facility. She is persuaded and agrees to move. John will work with the social worker to arrange the move.

For more information on consent to care, see the next section on page 11.



2.3. How do I safeguard the rights of the person under my protection?



As **tutor to the person**, you are also responsible for safeguarding the rights of the person under your protection. It is your job to represent them in the exercise of their **civil rights** in connection with the management of their **patrimony** (for example, signing a lease or entering into a contract). If someone has injured the protected person, you will take the appropriate recourse to remedy the injury. Any fees incurred can be paid using the patrimony of the person under your protection. If a **tutor to the property** has been appointed, however, you must consult him or her before incurring any large expenses. Feel free to make use of available local resources to assist you with this task. For instance, if the person under your protection lives in a residential facility, you can contact the users' committee.

Protection of personal information is another important issue. As tutor to the person, you will be responsible for giving consent to recordings of the protected person's image and voice. This means you must authorize any public utilization of a photo, video, or audio recording of the protected person, for instance, on TV, in a newspaper, or online video.

You will also be responsible for giving consent for access to the medical records of the person under your protection. In both situations, prudence is called for to ensure the protected person's confidentiality.

Although tutorship means that the person under your protection can no longer exercise certain rights themselves they can still:

- » Get married, with your authorization and the advice of the tutorship council;
- » Obtain a divorce;
- » Prepare their will, on the condition that the court eventually confirms its validity based on the submission of a medical attestation, or sworn affidavit of witnesses who are not in a position of conflict of interests in such a circumstance;
- » Manage their earnings (salary or other compensation);
- » Accept a small donation or customary gifts;
- » Exercise their right to vote in federal, provincial (including referendums), municipal, and school board elections;
- » Consent to care if they understand the repercussions of the treatment in question.

You will be required to ensure that the protected person can exercise their rights if they wish and if it is in their interests to do so. For example, if the person wants to vote, it will be your job to help them exercise this right to every extent possible, in particular, by seeing that their name is on the voting list and making any arrangements necessary to enable them to vote. You may also be called on to help them renew their health insurance card by assisting them in filling out the required forms and accompanying them to have their photo taken. At all times, you must have the safeguarding of their independence at heart.

2.4. How do reassessments contribute to a person's welfare?

Conducted a minimum of every three years, reassessments of incapacity and the need for protection are necessary to ensure that the rights of the person under tutorship are respected. Reassessments enable us to verify whether the current form of **protective supervision** is still suitable, ensuring that the protected person can exercise their rights to the full extent of their capacity, and fostering their independence.

For more information about medical and psychosocial reassessments of individuals under tutorship, see part 7 of section B, "*Principal Stages of Tutorships to a Person of Full Age*".



2.5. What is the tutorship council's role in ensuring the welfare of the person under tutorship?



As a member of the tutorship council, you must ensure that the tutor properly performs his or her tasks and makes sound decisions. Because of your close ties with the person under tutorship, you are well placed to see to their well-being. Your familiarity with the person's preferences, needs, and abilities will help to properly assist the tutor, and guide you in overseeing his or her decisions.

You'll find a document entitled "*Overview of Protective Supervision*" in the "*Tools and Forms*" section. It lists the points you should consider when reviewing with the tutor the steps he or she took to ensure the protected person's welfare.



You must also ensure that the tutor makes the necessary arrangements to have medical and psychosocial reassessments of the person under his or her protection at least every three years, or within the time limit set by the court.

For more information about medical and psychosocial reassessments of individuals under tutorship, see part 7 of section B, "*Principal Stages of Tutorships to a Person of Full Age*".

Another issue that you may face: responding to a report if the protected person becomes a victim of abuse or mistreatment. For more about this, see section E, which describes the procedure to be followed in such circumstances.

Whenever you are concerned about the protection of the person under tutorship, don't hesitate to complete the "*Tool to Assist Tutorship Councils in Consulting the Curateur public on Protective Supervision*" and return it to the Curateur public.

3.

CONSENTING TO CARE, WHEN NECESSARY



TUTOR

3.1. What is "consent to care"?

Whether it concerns a medical examination, surgery, treatments, even housing in a residential care centre, everyone must give their consent before receiving care. This also goes for the person under your protection. The institution of tutorship does not take away their right to accept or refuse care.

The capacity to consent to, or refuse care is verified by a health practitioner whenever a treatment is proposed. For instance, a physician might determine that an individual does not understand what is happening because their mental faculties are damaged, or because they are unconscious, and therefore not in a position to consent to the required treatment. This can happen to anyone, not just someone who is under tutorship.

If the person under your protection is in this situation, as the person's tutor you will be called on to give "substitute consent" for the required treatment, that is, consent on their behalf.

Mr. Lapointe suffered a brain injury as a result of a car accident and is unable to speak. Right after the accident, members of his family believed he was incapable of making any decisions. But they soon realized that he could indicate his choices by pointing at objects such as the clothes he wanted to wear, or the food he wanted to eat. His behaviour also showed that he liked going to a day centre but didn't enjoy going to the pool. His caregivers decided he was capable of making decisions of this nature, but incapable of managing his affairs, so tutorship was instituted to ensure his protection.

Mr. Lapointe needs hospital care, but is very anxious at the prospect of leaving his home. His mother, who is serving as his tutor, believes that this behaviour indicates a refusal of treatment. His father, on the other hand, does not believe he is capable of refusing care that might improve his condition. The physician who proposed the care must assess Mr. Lapointe's capacity to give his consent.

3.2. How do health practitioners assess a person's capacity to consent to care?



Health practitioners must evaluate the capacity of individuals under tutorship to consent to the treatments necessitated by their state of health. To this end, they must determine whether they are capable of understanding:

- » The nature of the illness for which a treatment is being proposed;
- » The nature and goal of the treatment;
- » The risks and benefits of the treatment;
- » The risks and benefits of not receiving the treatment.

Health practitioners also determine whether the person's state of health is affecting their capacity to consent to the proposed treatment. For example, if a person is delirious, they may not be capable of properly understanding what is being proposed.

3.3. Under what circumstances would I have to consent to care for the person?



If the health practitioner who is treating the person under your protection determines that the person is incapable of consenting to care (in other words, does not understand the nature and consequences of the proposed treatment), he or she will contact you for authorization to administer the treatment, perform surgery, or place the person in a care facility. In cases where the person is capable of consenting to their care, you will be informed of the situation.

3.4. How do I decide whether to accept or refuse care?



Before giving your consent or refusing care for the person under your protection, seek the following information from the health practitioner:

- » Why is the treatment necessary to ensure the person's mental or physical health?
- » In what way is it beneficial and appropriate for the person?
- » What are the potential risks and benefits?

If you are unsure about this decision, consult with the **tutorship council**, and, depending on the situation, the person's family or friends. However, only the tutor's consent is considered valid by health practitioners.



The physician explains different treatment options to Mr. Lapointe. The decision about Mr. Lapointe's capacity to accept or refuse treatment is the physician's to make.

In this case, based on the available information, the physician determines that Mr. Lapointe is incapable of understanding the nature, risks, and benefits of the care being proposed. It is therefore up to his mother, as tutor to the person, to decide in her son's place.

She discusses the situation with the physician and the staff of her son's day centre. She also talks it over with Mr. Lapointe. Finally, she consults other family members and the tutorship council.

Respecting the wishes of the person under protection

If possible, you must take into account the wishes of the protected person regarding the proposed treatment and consider the opinion they would have expressed when they were still lucid. You may find that the beliefs and wishes the person expressed in the past are contrary to your own. If so, you should respect them, even if they go against your own convictions.

3.5. What do I do if the incapacitated person refuses care?



It is possible that the person under your protection will refuse a proposed treatment. In such circumstances, the case can be taken to court for a decision on whether or not the person will receive the treatment.

3.6. What are the responsibilities of health institutions?



Health institutions must:

- » Inform tutors when a patient under protective supervision who is capable of giving consent refuses care. The patient's decision will be respected and the treatment will not be administered;
- » Inform tutors when a protected person who is incapable of giving consent refuses treatment;
- » File a court motion to obtain authorization to treat a patient considered incapable of giving consent who categorically refuses a required treatment.

Can the institution provide care without obtaining consent?

Yes, but only in an emergency and if it is impossible to reach the tutor in time. In such circumstances, a health practitioner can proceed without obtaining your authorization. He or she can also provide personal hygiene care without your consent, even if the person receiving the care is incapable of accepting or refusing it.

4.

HELPING A PROTECTED PERSON MAKE USE OF THEIR CAPACITIES OR DEVELOP THEM FURTHER



TUTOR

4.1. How do I help a protected person make use of their capacities or develop them further?

Eric, who suffers from a mild intellectual disability, attends a day centre. Recently, the centre added a new activity to its program: an arts and crafts workshop. In a discussion with his tutor, Paul, Eric says he wants to join the workshop. Paul encourages him to do it because the activity is in his interests and he has the financial means to pay for it. The next day, Paul contacts the day centre to confirm that Eric can join the workshop.

Whenever possible, help the person under protection develop their autonomy and capacities or, at least, see that they preserve them as long as possible. As in the case described above, this can be done fairly easily, by means of the person's regular activities. All cases are different and ways of doing things vary from one person to the next, depending on the cause of incapacity. To support the person under your protection in this area, focus on three aspects in particular.

» Where possible, encourage the person to make decisions and act on their own.

As much as you can, let the person decide and act on their own, as long as this poses no risk to their integrity, security, and dignity. Feel free to inform the person about the different aspects of tutorship. Because they are under tutorship, they have lost the ability to exercise certain rights, so you must make sure they still have the capacity and the right to make their own decisions.

It is also essential that the choices of the person under your protection be respected, unless they run counter to the person's interests or needs. As tutor, do your best to support the person in their decisions and exercise vigilance with regard to their choices.



» **If the person cannot decide or take action on their own, help them.**

If the person under your protection is unable to make decisions or act on their own, you are strongly encouraged to help them. Provide them with the relevant information, adapting it to their capacity to understand. Don't hesitate to describe the potential consequences of different options and the impact of a decision on them or their loved ones. Confronted with several choices, give the person the same type of information for each choice, without pressuring them. Once the decision has been made, you can help the person implement it.

» **If possible, help the person further develop their capacities.**

Taking into account the physical and mental condition of the person under your protection, it may be desirable and beneficial to provide them with access to the appropriate services to help them develop their independence and capacities. This can be accomplished quite simply by encouraging them to participate in social or recreational activities.

Whenever possible, the person under your protection should be able to decide and act for themselves, or at least, participate in decisions and actions that concern them.



TUTOR



TUTOR

If the person suffers from a degenerative illness, your goal would then be to help them optimize their capacities to maintain maximum independence for as long as possible.

Centres that deliver rehabilitation services for intellectual disability and pervasive developmental disorders (CRDITED), rehabilitation centres, and diverse community-based groups can be useful resources to improve the protected person's living conditions.

4.2. When do I have to make a decision on behalf of the protected person?

When the person under your protection cannot decide on their own, try to involve them as much as possible in the decision-making and implementation process.

If it is impossible for them to participate, you will have to make the decision in their name. As much as possible, the decision should reflect the decision that the person would have made, and be in their best interests.

4.3. What points should be considered when making a decision on behalf of the protected person?

Your decision should take into account several aspects that will protect the interests of the person under your protection, the respect of their rights, and the safeguarding of their independence. A few suggestions to guide you:

» The interests of the person under your protection

Your decision will benefit the person under tutorship or will have the least possible negative consequences for him or her.

Keep in mind what would best serve the person, and not what would be simplest or more advantageous for you, the **tutorship council**, or those close to the person.

» Needs of the protected person

Personal needs may be psychological, intellectual, emotional, physical, or material in nature, and should be taken into account in the decision.

» The opinion of the person under tutorship

Ask yourself what the protected person would think about the decision you have to make. Their desires, wishes, and values (religious or other) should be taken into account. Also consider any opinions they have expressed in the past.

The most important thing is that the decision reflects, as much as possible, what the person would have decided for themselves, based on what you know of their personality and habits.

» Respect for the rights of the person under tutorship

Opt for the least restrictive solution with regard to the rights of the person under your protection and their freedom to act. The decision should be made with respect for their dignity, integrity, and security.

» Respect for the independence of the person under your protection

Try to determine what would enable the person to participate in the decision-making process, when possible. Encourage the person to make use of their current capacities, and avoid doing anything that will prevent them from developing new ones.

In cases where the person may recover their capacity to decide and the decision is not urgent, it may be wiser to wait until later to settle the issue.

» Opinion of the tutorship council

As is generally the case in administering a tutorship, it is prudent to consult the tutorship council to get their opinion about questions concerning the person's protection and representation.

» The opinion of the person's loved ones and practitioners

Consult the family and loved ones of the person under your protection to learn their opinions. Also, take into account the expertise of health practitioners and the opinions of those who regularly work with the protected person.

If the decision is complex, do not hesitate to contact the Curateur public staff person who is in charge of the file. He or she will offer you assistance and guidance.



4.4. What is the tutorship council's role in helping the protected person use or further develop their capacities?

As a member of the tutorship council, you must ensure that the tutor properly performs his or her tasks and makes sound decisions. As someone who is close to the person under tutorship, you are well placed to ensure his or her welfare. Don't hesitate to talk with the tutor when he or she must make decisions on behalf of the protected person. You will also be called on to assist and support the tutor in his or her efforts to ensure that the protected person uses or further develops their capacities.



You'll find a document entitled "*Overview of Protective Supervision*" in the "*Tools and Forms*" section. It can be your reference for overseeing the protection of the person under tutorship. We strongly encourage you to ask the tutor to complete this form.

MANAGING THE PATRIMONY

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GENERAL INFORMATION ON MANAGING THE PATRIMONY

In this section we describe most of the situations you are likely to be faced with during your administration; still, you may not find answers to all your questions. If so, just speak with the **tutorship council** or the **Curateur public** staff person who is in charge of the file.

I.1. What are the responsibilities of tutors to the property?



The court judgment that named you as tutor may contain a description of the administration tasks that the person under your protection is able to do and those for which you are responsible on his or her behalf. Read it carefully to learn the full scope of your responsibilities. Whatever the case, a few basic principles apply to all those who act as **tutors to the property**. Among other things, you have the obligation to preserve the **patrimony** of the person under your protection. The *Civil Code of Québec* terms this the powers of **simple administration**. You will also have to administer your assets separately from those of the protected person.

The following questions address the types of assets you may have to administer. Please familiarize yourself with those that concern you.

For more information about the responsibilities of tutors to the property, see section A, "Introduction to Tutorships to a Person of Full Age" and the third part of section B, on page 20.

I.2. What are the tutorship council's responsibilities?



The tutorship council has several responsibilities with respect to protecting the property of the person under tutorship. In addition to assisting and supporting the tutor to the property in managing the patrimony, you must oversee his or her administration. This means making sure the tutor makes an **inventory** and, if applicable, furnishes **security**, produces an **annual report**, and, at the end of the tutorship, a final report.

For more about these responsibilities, see section B, "Principal Stages of Tutorships to a Person of Full Age".

Also, the tutorship council's authorization is required to sell an item worth \$25,000 or less or borrow a similar amount. If the item's value or the loan exceeds \$25,000, court authorization must be obtained, and you will be called on for your opinion. As well, the tutor needs your authorization to accept a gift with a charge, take someone to court (if he or she is also acting as **tutor to the person**), or cancel the security (release).

For more information about the responsibilities of tutors, see section A, "*Introduction to Tutorships to a Person of Full Age*".



I.3. Can I use the patrimony of the person under my protection to cover their needs?

Yes, you can pay for all expenses related to the needs of the person under your protection with their patrimony. Among other things, this includes their housing, food, personal expenses, and clothing.

Sometimes their regular cash inflow (retirement benefits, governmental allowances, etc.) is sufficient to meet their regular needs and the rest of their patrimony can be protected and preserved. Properly administering the patrimony, however, does not mean that you cannot spend anything. The person under your protection should be able to draw on their assets to foster their well-being.



I.4. Am I obliged to preserve the patrimony?

Yes, you are under the obligation to preserve the property of the person under your protection until you can remit it to them if they recover their capacity, or remit it to their heirs when they die. This is what the *Civil Code of Québec* terms simple administration. In other words, even though you can draw on their patrimony to cover their needs and pay the expenses of the tutorship, you must preserve the unused portion.

If you have any doubts about your right to cover certain expenses using the patrimony of the person under your protection, feel free to discuss it with the tutorship council or the Curateur public staff person who is in charge of the file.



I.5. What are the expenses of a tutorship?

Expenses that are directly related to the administration of the protected person's assets can be covered using their patrimony: these are known as the tutorship expenses. You can use their assets to cover these charges, but, whenever possible, try to preserve their patrimony.

Expenses related to the tutorship function

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

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

Expenses related to the preservation or protection of assets

Generally speaking, expenses used to preserve the assets of the person under your protection may be paid using his or her patrimony. For example, you can use his or her money to pay for:

- » Regular repairs of immovable property owned by the protected person that do not require taking out a loan or selling another asset (if so, you must obtain the authorization of the tutorship council or court);
- » Bank and investment fees;
- » Photocopying fees;
- » Purchase of property insurance;
- » Income tax, property tax, etc.;
- » Undertakings the protected person made before his or her incapacity was declared (prearranged funeral contract, life insurance, support payments, etc.).

I.6. Do I have to file a tax return for the person under my protection?



Depending on the responsibilities listed in the judgment, you may be required to file a tax return for the protected person. This return must be separate from your own tax return. Contact Revenu Québec or the Canada Revenue Agency for information about your obligations in this respect.

I.7. Can the tutor or tutorship council receive remuneration?

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

2.

ADMINISTERING THE ASSETS OF THE PERSON UNDER YOUR PROTECTION

2.1. How do I manage the income and expenses of the person under my protection?



Go to the banks and other financial institutions where the person under your protection has accounts. Bring a copy of the court judgment that names you as tutor to the property and sets out the scope of your powers.

Register the protected person's accounts in your name "*in the capacity of*" their tutor to ensure that you administer their property separately from your own assets.

For more about registering an account "*in the capacity of*" tutor to the person under tutorship, see page 20 in part three of section B, "*Administering the Property*".



When you produce the **inventory** of the protected person's **patrimony**, you'll have a precise idea of their bank accounts and investments. You'll also know the sources of their income (social assistance, old age pension, private pensions, support payments, interest on investments, employment or building rental income, various allowances, etc.). Continue collecting their income and arrange for the protected person to obtain any other benefits or **allowances** to which they are entitled.

A counsellor from a financial institution can help you draw up a list of benefits and allowances: housing assistance, survivor's benefits, etc. A social worker from the CLSC or employee of Services Québec can also help you in this respect.

In addition, take into account the support obligation that the family may have with respect to the protected person. Contrary to what is commonly believed, the support obligation is not reserved to children and people who are married or in a civil union. The requirement to furnish "support" is reciprocal. This means that the children of the person under your protection could be legally required to provide him or her with support payments if his or her financial means are extremely limited. Married people and spouses who have entered into a civil union are also under this obligation. Contact a legal advisor if you decide to take this recourse.

Also keep in mind that you cannot give away the property of the person under your protection unless it is of little value, and it is in the person's interests to make such a gift. For example, the person may wish to give a family keepsake of little monetary value to a loved one, or continue giving gifts as he or she has always done.

Once you have established the monthly income and the patrimony of the person under your protection, you'll have a clearer picture of the standard of living his or her resources permit. The person's expenses must be adapted to their income; this is frequently what determines the type of accommodations they will have. Establishing a budget can help you with this task.



A financial tracking model is included in the "*Tools and Forms*" section. You can also go to the Curateur public's website to download an Excel file that is specially designed for the protected person's financial accounting.

You will pay for housing (rent or the monthly mortgage payment on their house) and the person's regular expenses using their income. If the person makes support payments, you will assume this obligation on their behalf, in accordance with their financial means.

The Ministère de l'Emploi et de la Solidarité sociale automatically provides an allowance for people with severely limited capacity for employment, including individuals under tutorship who are eligible for the Programme de solidarité sociale [social solidarity program]. Make sure that the person under your protection receives this **allowance**. For more information about this, contact the Ministère de l'Emploi et de la Solidarité sociale.

2.2. What do I do if the person under my protection lives in a home that they own?



If the person under your protection lives in a home they own, you should ask the following questions:

- » Where does the person want to live?
- » Can they continue to live in this house? What assistance could they obtain to make it easier to remain at home? Does the person want to receive such assistance?
- » If, given their state of health, the person must be housed elsewhere, what do they want to do with their house?
- » If the person was supporting their family, can their spouse or children continue living in this house? Can they share in the costs?
- » Does the person need the money proceeding from the eventual sale or rental of their house to pay for their accommodations?
- » In the current market, is it possible to obtain a fair price for the house, or would it be better to wait a while before putting it up for sale?
- » Does the **tutorship council** agree with your decision?

Based on the answers to these questions, it will be easier for you to determine whether it is advisable for the person under your protection to remain at home. If so, you will be responsible for paying the bills (Hydro, phone, gas, cable, municipal and school taxes, water tax, etc.) and maintaining the property using the person's income. To receive their bills more quickly, we suggest that you arrange for their mail to be delivered to your address.

If you live with the person under your protection, you must work with the tutorship council to determine your share of the costs of maintaining the property. For example, you could pay rent to the person if they own the house.

The tutorship council is a key resource that can help you make an enlightened decision in this area. Feel free to consult them. In addition, the court will consult the tutorship council whenever you wish to sell an asset worth more than \$25,000 belonging to the person under your protection.

If the protected person and their family move, the house must be emptied and rented or sold, either directly or through a real estate broker. If this were to happen, the **tutor to the person** would be responsible for finding other accommodations for him or her. The CLSC can assist with this process.



2.3. What do I do if the person under my protection is renting an apartment?

If the person under your protection is a tenant, find out whether they want to continue living in their apartment and if they are capable of living there, with or without support. If they must move out, the tutor to the person, or the protected person, if they are capable of doing so, must find another place to live. The CLSC can help with this. The decision must take into account the protected person's financial means.

If the person leaves their apartment, you must arrange with the landlord to cancel the lease, unless the diagnosis is such that the person believes they can return within the year and their financial or family situation allows them to pay both the rent and the fee for the care facility. Their furniture and personal belongings must be put into storage until they return to the apartment.

For more information on cancelling a lease and tenants' rights, visit the website of the Régie du logement [rental board] at www.rdl.gouv.qc.ca.

It is particularly important to consider the opinion of the protected person and involve them as much as possible in this decision.



2.4. What do I do with the furniture and personal belongings of the person under my protection ?

If the person you are protecting must leave their home, you will have to arrange for their furniture and personal belongings to be kept somewhere accessible to them. However, if it's clear they can no longer independently maintain their home, and the money proceeding from the sale of the furniture would be better used to pay their accommodations costs, you can sell them, on the condition that you obtain the tutorship council's authorization.

We suggest that, if you get similar price offers when selling furniture that the protected person cannot or does not wish to bring to their new home, family members be given preference. The proceedings of the sale will be added to their patrimony.

With regard to personal belongings (clothing, family photos, diplomas, decorations, and keepsakes), the person may wish to bring them along. If not, you must put them in storage so they can recover them later. The *Civil Code* prohibits you from selling or giving them away without a serious and urgent reason.



The tutorship council is a key resource that can help you make an enlightened decision in this area. Feel free to consult them. It is particularly important to consider the opinion of the protected person and involve them as much as possible in this decision.



2.5. What do I do if the person under my protection owns a car?

If the person under your protection owns a car, check with their doctor whether they are still capable of driving it. If so, it's your job to pay the various fees (driver's licence, registration, insurance, etc.) using their patrimony. If not, you will have to decide, together with the person and the tutorship council, whether it is best for the tutor, spouse, or family member to have use of the vehicle to care for the protected person. It may also be preferable to put the car in storage unless the person recovers the ability to drive or sell it quickly before it loses too much value.



2.6. How can I obtain technical aids for the person under my protection?

A technical aid is a device, piece of equipment, or apparatus designed to correct a disability, compensate for incapacity, or reduce the level of impairment. With it, the person is more independent in going about daily living activities. Such devices can facilitate everyday living activities such as getting out of bed, moving around, communicating, getting dressed, and preparing meals, for people living with a physical or intellectual disability. In some cases, a technical aid can take the form of a disposable device (urinary catheter, incontinence briefs, etc.).

Several government programs either partially or completely subsidize the purchase of technical aids. Contact your CLSC or Services Québec to learn about the main sources of funding available to you.



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

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

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

The tutorship council or the court will agree to the expenditure or loan only in cases where it is necessary for the protected person's maintenance, to pay their debts, to keep their property in good condition, or to preserve its value, as in the above example.

2.8. How do I renounce a succession?

A succession that benefits the person under your protection is considered to be accepted unless notice to the contrary has been received. If you wish to renounce the succession because it is insolvent, the tutorship council must first give you its authorization. If it agrees, you can **renounce the succession** by means of a **notarial** act or a judicial declaration.

The inheritance then becomes an unclaimed succession and you must notify Revenu Québec. It should be pointed out, however, that the person under your protection would never be required to pay the debts of a succession if they exceeded the value of the assets they were inheriting.

For more information on the renunciation of a succession, contact Revenu Québec. You can also consult a legal advisor for guidance.



TUTOR

For additional information concerning the purchase or sale of immoveable property, feel free to contact the Curateur public staff person in charge of the file of the person under your protection.

PROCEDURES TO BE FOLLOWED IN THE EVENT OF A BREACH, FINANCIAL ABUSE, MISTREATMENT, REPORT OF ABUSE, OR REPLACEMENT

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

- » What is meant by a breach, financial abuse, and the reporting of abuse;
- » What you should do in each of these situations;
- » How to replace a member of the tutorship council or its secretary;
- » Under what circumstances you should appoint an ad hoc tutor and the procedure to follow.

This information can also be useful to the tutor because it explains what could happen if he or she were to commit a breach, or financially abuse or mistreat the person under tutorship.

I.

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

I.1. What is a breach?

Tutors commit a breach when they fail to fulfill their legal obligations with respect to protecting the person or administering their **patrimony**. Examples of breaches: neglecting to arrange for reassessments of the person by the established deadline, and failure to produce an **inventory** of their property, **annual reports**, and the final report.

I.2. What is financial abuse?

Financial abuse is when a person uses the money or assets of a person under protective supervision for their own personal advantage or for a purpose that is not in the interests of the protected person. Financial abuse causes losses to the protected person's patrimony.

For example, tutors commit financial abuse if they improperly manage the assets of the person under their protection or use the patrimony for their own interests. This could take the form of theft of personal effects or money, fraudulent investments, refusal to repay a loan, etc.

I.3. What constitutes mistreatment of the protected person?

This refers to single or repeated acts of violence, abuse, exploitation or negligence suffered by a person at the hands of another person whom they should be able to trust. Such actions and behaviour can cause direct injury to the person or potentially undermine their health or well-being.

For more information about mistreatment and how to recognize it, visit the website MaltraitanceAines.gouv.qc.ca, or contact the Curateur public staff person in charge of the protected person's file.



TUTORSHIP
COUNCIL

It's not always easy to intervene in situations of mistreatment. If necessary, the Curateur public can assist you. Feel free to contact the person in charge of the protected person's file. He or she is there to help.

I.4. What are the tutorship council's responsibilities?

Throughout the tutorship, the **tutorship council** must see that the tutor properly fulfills all of his or her obligations. For example, it must ensure that the tutor manages the patrimony in the interests of the protected person and produces requested administrative documents in a timely fashion. You also need to see that the person's dignity, **security**, and integrity are protected.

In addition to reminding the tutor of his or her obligations, if the tutor commits a breach or financial abuse, you must rapidly intervene to correct the situation, and inform the **Curateur public**. If the tutor refuses to make the required corrections, for instance, produce the annual administration report or repay the sums they illegally withdrew from the protected person's patrimony, you must arrange to replace them.

The same thing is true if you witness an incident of mistreatment or suspect it is happening. You must act quickly. First, if the tutor is not already aware of it, he or she must be informed. Together, you can make the required verifications to confirm any suspicions and act accordingly.



TUTORSHIP
COUNCIL

I.5. What do I do if I suspect that financial abuse is being committed?

Detecting financial abuse can be a very delicate exercise. The right questions need to be asked to confirm whether your suspicions are well founded. Ask the tutor for the necessary supporting documents and talk with him or her to get the clearest possible answers to the following questions:

- » Who is the person suspected of committing financial abuse?
- » What form does the financial abuse take (e.g., theft of property or money, poor administration)?
- » When was it committed?
- » Description of incident?
- » Estimated value of the abuses?

These questions can be simply summed up as "Who, what, when, how and how much?".

Keep in mind that an expense that initially seems irregular may be a simple misunderstanding. However, if the documents and answers you obtain confirm the existence of financial abuse, quick action is essential to put it to an end.

I.6. How do I intervene in the event of financial abuse?

If you are aware of financial abuse, it is your responsibility, as a member of the tutorship council or the tutor, to put an end to it and ensure that the rights of the person under tutorship are respected. You must also inform anyone else who is involved in protecting the person and the Curateur public of the situation and of what you are doing to correct it.

Several measures can be taken in the event of financial abuse. After putting a stop to the situation, complete repayment or recovery of property is the first option to consider. If this is impossible, the person who committed the abuse can undertake to voluntarily repay the protected person's money and sign an acknowledgement of debt. If the offender is the tutor and they are not cooperating, they may be relieved of the function of tutor to the property and legal action for damages may be brought against them. Depending on the circumstances, charges of fraud may also be laid.

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

I.7. How do I intervene in the event of mistreatment?

The steps you must take vary depending on the type of mistreatment. In every case, quick action is needed to put an end to the situation. Feel free to contact the Curateur public staff person who is in charge of the file of the person under your protection. He or she will be happy to assist you.

2.

WHAT TO DO IF SOMEONE REPORTS ABUSE

2.1. What is a report of abuse?

A report is information a person or agency gives to the **Curateur public** to notify it of a situation that could be damaging to the security, dignity, or integrity of a person under protective supervision (specifically, their physical or mental health), or to their property. A report may concern mistreatment, negligence, or financial abuse. Information reported to the Curateur public remains confidential.

2.2. What is the role of the tutorship council?

Depending on the nature of the information, the Curateur public may ask the **tutorship council** to handle the report. It will inform the council of the procedure they must follow and support them throughout the process.

2.3. What is the role of the Curateur public?

When it has been notified of a situation in which a person under tutorship is believed to be at risk, the Curateur public first reviews and confirms the information. It may then conduct an investigation. If appropriate, it then remits the report to the tutor or tutorship council to have them correct the situation. The Curateur public supports them and ensures that the person under tutorship and their property are protected.

If it is impossible to hand the report over to the tutor or tutorship council, the Curateur public takes direct responsibility for the situation. It takes the necessary steps to correct the situation and protect the person under tutorship and their property.

2.4. What to do when you receive a report of abuse?

Every situation is unique, so we cannot describe in detail what to do when you receive a report. We suggest that you contact the Curateur public staff person who is in charge of the protected person's file and ask for assistance.

However, there are a few guidelines that apply to any report of abuse. First, **quick action is essential to put an end to the suspected mistreatment or abuse**. The situation must be reviewed promptly and efficiently and the same thing applies to any follow-up action.

The interests of the incapacitated person must always be at the forefront when responding to a report of abuse. The situation must always be resolved in a manner that serves his or her best interests.

Last, don't hesitate to use community or local resources because they can be very useful (Elder Abuse Helpline, health and social service practitioners, police, etc.). Situations are often resolved through teamwork. So, feel free to draw on many resources to achieve a quick, effective resolution that respects the rights of the person under tutorship.



3.

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

3.1. What is involved in replacing the tutor?

Tutors continue to perform their duties until a new tutor is appointed.

If the tutor is unable or neglects to fulfill their obligations, the **tutorship council** must apply to the court for their replacement. **Tutors to the person** can take similar action with regard to tutors to the property. As a last resort, the **Curateur public** or other interested party can also initiate the replacement process. During these proceedings, tutors will continue to perform their duties, unless the court decides otherwise.

Last, if they have serious grounds, tutors may apply to the court to be relieved of their duties, after first notifying the tutorship council and Curateur public.



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

In the event of the retirement or death of a member of the tutorship council, the other members will choose a replacement from the two alternates named in the court judgment. If these two individuals refuse the responsibility, or no alternates were appointed, they choose a replacement from among the family members. As a last resort, they can also choose a close friend of the family. Written notification of the renunciation of a member of the tutorship council and the acceptance of a new member must be sent to the Curateur public. The tutor and the person under tutorship must also be informed.

If you cannot find a replacement after taking these steps, apply to the court.

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

If the secretary of the tutorship council renounces his or her duties or dies, the other members of the council will choose a replacement from the two alternates. They can also choose someone else to replace the secretary. If, exceptionally, the secretary is the only member of the tutorship council, you must apply to the court to replace him or her.

As with the replacement of any other member of the tutorship council, the tutor, the person under tutorship, and the Curateur public must be informed of the change.



3.4. What do we do if the tutorship council is formed of only one member?

When the tutorship council is composed of just one member and that person must be replaced, a replacement should be found from among the protected person's family and friends. An application is made to the court to appoint the new secretary. Depending on the case, this process may be undertaken by the sole member who is resigning or by the tutor to the person.

We suggest that you obtain a legal advisor for help with the legal proceedings. The fees you incur to appoint a replacement can be covered by the protected person's **patrimony**.

4.

APPOINTING AN *AD HOC* TUTOR

4.1. What is an *ad hoc* tutor?

An *ad hoc* tutor is someone appointed by the court to temporarily represent the protected person in a specific situation. His or her powers are limited, because he or she is only representing the person in that situation. *Ad hoc* tutors thus do not replace tutors in administering the protected person's property.

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

An *ad hoc* tutor is appointed when a protected person and his or her tutor have opposing legal interests. For example, if the person under tutorship owns a building that the tutor wishes to buy, an *ad hoc* tutor could be appointed to prevent a conflict of interest during the sale process. *Ad hoc* tutors ensure that the protected person obtains a fair price and that his or her interests are safeguarded.



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

It is the **tutorship council's** responsibility to see that an *ad hoc* tutor is appointed whenever the protected person needs representation before the court to settle an issue in which the opposing party is his or her tutor.

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

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