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Le Relais

A newsletter for tutors or curators to a person of full age and tutorship council members

Le Curateur public du Québec

À la rencontre de la personne

Making sense of the security

The main role of the legal representative for the property is to protect and manage the represented person's patrimony for the duration of the tutorship or curatorship. To guarantee that the patrimony will be protected in the event of mismanagement or misappropriation, the legal representative is required to provide a security if the value of the patrimony exceeds $25,000.

Who determines the amount and type of the security?

The tutorship council is responsible for determining the amount and type of the security, as well as the deadline granted to the representative to provide it. The council conveys its decision to the legal representative and the Curateur public using the form entitled *Attestation to a Decision of the Tutorship Council Relative to the Security to be Provided by a Legal Representative.*

How does the tutorship council determine the security amount?

The amount of the security generally corresponds to the portion of the patrimony that will not be used to cover the represented person's expenses, such as the necessities of life, maintenance costs on a building he owns, or accounting fees to produce the annual report. If the person has a significant amount of annual expenses, this means the security could be lower.

The tutorship council, in consultation with the legal representative, must first establish a budget for the represented person to better determine his needs and the amount of the security. As these needs may change over time, it is important to repeat this exercise annually.

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Le Relais, for useful information on protecting a person of full age and his or her patrimony

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What are the legal representative's responsibilities?

Once the tutorship council has decided on the amount and type of the security, the legal representative must take steps to obtain the desired security from a financial services provider (bank, caisse, insurance company, etc.). The tutor or curator must also send the tutorship council and the Curateur public confirmation of the security. He must also maintain the security and confirm each year in writing that it is still in effect, both to the tutorship council and the Curateur public, simultaneous with preparing the annual report. He must also obtain the tutorship council's approval for any change to the security, for example, the type of security or the financial institution.

Can the representative be exempted from the obligation to provide a security?

When the represented person's property is valued at more than $25,000, the representative must always provide a security to guarantee his administration. However, certain property, for example, a building, may be excluded from the calculation of the patrimony. Do not hesitate to contact the private representation officer at the Curateur public, who will be able to help you establish the security.

What to do in the event of a violation

The security is essential to the protection of the represented person's property. If the legal representative refuses to provide or maintain one, the tutorship council could ask that he be replaced. If the tutorship council refuses to take action, the Curateur public can step in.

The private representation officer can help you establish the security.

Types of securities

Hold funds

A hold funds is a written undertaking made by the financial institution at which the represented person's funds are held. This undertaking serves as a guarantee for the amount of the security that will be retained, or "held," until the end of the tutorship or curatorship. You need the tutorship council's written authorization to "unfreeze" the security. The hold funds, which is generally free of charge, is a form of protection afforded by the banks, which could be required to reimburse any amount withdrawn without the tutorship council's consent, making it the most popular type of security.

Suretyship or other type of insurance

A suretyship is an insurance policy purchased by the legal representative to guarantee his administration. As such, in the event of a violation by the legal representative, the insurance company undertakes to compensate the represented person up to the amount agreed upon with the tutorship council. The insurance premium can be paid from the represented person's patrimony.

Mortgage guarantee on a building owned by the tutor or curator

As a security, the legal representative can provide a guarantee contract (mortgage) on a building that he owns. This guarantee is made in the represented person's name for an amount determined by the tutorship council. The document must be notarized and registered with the Registre foncier du Québec. The notary fee can be charged to the represented person's patrimony.

The annual report: not that complicated

The annual report contains the balance sheet of amounts spent or received in a 12-month period, starting on the date the tutorship or curatorship was instituted. If you are a tutor, you have an obligation to safeguard the value of the assets, dwelling, and furniture included in the patrimony of the person under your protection and to make presumed sound investments. If you are a curator, you must not only safeguard the patrimony, but also make it productive, insofar as possible, but always by safe presumed investments. However, whether you are a tutor or a curator, you are responsible for producing a balance sheet once a year as justification of all actions taken on behalf of the person. This obligation applies regardless of the value of the patrimony of the person under your protection.

The first year, one month before the tutorship or curatorship anniversary date, the Curateur public will send you a detailed annual report form to be filled out. The second year, you will receive a detailed or simplified form, depending on the incapable person's financial situation. If the annual report is complicated, you can get help from an accountant or another qualified professional. The fees can be charged to the protected person's patrimony. If the patrimony exceeds $100,000, the Curateur public may request that an accountant conduct an audit.

The report of your administration must be sent to the tutorship council, the Curateur public, and the person's representative (if it is someone other than you) once a year, on the tutorship or curatorship anniversary date. You must also submit a copy of all supporting documents (receipts, bank statements, investment statements) with the first annual report. In the years that follow, you only need to send them to the secretary of the tutorship council, making sure you always keep the originals in the event of an audit.

The forms are available online. They can be filled out on screen, but must be printed, signed, and sent by mail. A Checklist – Annual Report is also available on the Curateur public's website.

The person lives at home

After discussion with the members of the tutorship council, you have decided that the person under your protection can remain at home without risk to his health and safety. If applicable, any expenses related to the property (insurance, electricity, taxes, telephone) and its maintenance can be charged to the protected person's patrimony. If the person owns the property, you must fill out the annual administration report, not the simplified annual report, and specify all mortgage amounts paid or, as applicable, all rent payments collected. If family members live with the person (e.g., spouse, adult children), we recommend that you determine whether these expenses can be shared.

The person has a job

Does the person under your protection occasionally work a few hours a week? The salary earned is part of his patrimony and that income must be entered in the annual report. Note that a person under tutorship retains the right to manage his own employment income, unless the court decides otherwise.

The person inherits money

An incapable person's inheritance is part of his patrimony. The amount received or expected, and the value of the property he inherits (e.g., house, vehicle, jewelry), therefore needs to be entered in the annual report. Of course, the tutor or curator can always decide to accept or refuse the inheritance on the person's behalf. If the value of the inheritance is greater than the debts, accepting it is the right thing to do. On the other hand, if the debts are significantly higher than the value of the inheritance, it is best to refuse it. In making this decision, the person's interests should always come first. The representative is responsible for managing the incapable person's inheritance. If you are a tutor and you need to sell any property that the person has inherited, you must first obtain authorization from the tutorship council or the court. If you are a curator, you do not need to obtain authorization from the tutorship council, but it is recommended that you discuss the situation with the members of the tutorship council, who can help you make the right decision. It is important to know that CNESST and SAAQ benefits, and even life insurance proceeds with a designated beneficiary, are not considered part of an inheritance.

The person receives a gift

As with inheritances, gifts worth more than $100 and cash amounts, regardless of the amount, must be entered in the annual report, but they can be accepted without prior authorization from the tutorship council. However, if the gift is of low monetary value (a book, a meal) or it is given on a special occasion such as a birthday, the incapable person can accept it without your authorization.

Exemple of the Simplified Annual Report

Click here for the procedures to be followed

Before completing this form, read the guide on page 3

Curateur public Québec

Simplified Annual Report

Name of legal representative:

Name of the represented person:

File number:

FOR THE PERIOD

	year	month	day
starting			
ending			

These dates are indicated in the letter sent by the Curateur.

1) IDENTITY OF LEGAL REPRESENTATIVE

Are you:

- ☐ a tutor to a minor
- ☐ a tutor or curator to a person of full age

Your new address, if applicable

No. Street

City Province Country

Postal Code Telephone -

Your relationship with the person you represent:

Check the box indicating that you are a tutor or a curator to a person of full age.

Check "Or" and enter your contact information, if the person of full age's address is not the same as yours.

2) IDENTITY OF REPRESENTED MINOR OR PERSON OF FULL AGE

Surname	Address: same as above ☐ Or
Given name	Name of residence
Date of birth Year Month Day	No. Street
Civil status Single Married	City Province
Separated Divorced	Country Postal Code
Common-law marriage Widow(er)	Telephone -
	At that address since YEAR MONTH

3) ASSETS

1	Cash		1	$
2	Bank accounts: name and address of institution	Account Nos.	2	$
3			3	$
4			4	$
5			5	$
6	Deposit certificates: name and address of institution	Certificate Nos.	6	$
7			7	$
8			8	$
9			9	$
10			10	$
12	Accounts receivable (notes and loans): name and address of debtor		12	$
13			13	$
14			14	$
22	Funeral prearrangement contract		22	$
23	Vehicles (car, ATV, motor home, boat, etc.)		23	$
25	Furniture and personal effects		25	$
26	Others		26	$
30		Total of assets	30	$ 0.00

Le Curateur public du Québec

Return this copy to Public Curator

To be continued

Section 3
Assets as at the tutorship or curatorship anniversary date.

1. E.g., cash and cheques not cashed on behalf of the person of full age.

2. E.g., savings accounts and chequing accounts.

6. E.g., term deposits, RRSPs, RRIFs.

12. E.g., tax refund, settlement, future inheritance.

23. Make, model, and year of each vehicle.

25. Items over $100 only, including a brief description.

26. Brief description of all other items over $100.

42. E.g., electricity or phone bills more than 30 days past due for property belonging to the person of full age (e.g., buildings).

100. Interest earned on money in the bank and deposit certificates.

106. Amount including retirement benefits and surviving spouse's pension.

107. Amount including the guaranteed income supplement.

112. E.g., interest income other than from loans, bonds, dividends, an inheritance, or income earned by the person of full age.

200. E.g., banking, investment, brokerage, safety deposit box fees.

203. E.g., costs related to the formation of the tutorship council.

204. The Curateur public's fees for instituting protective supervision.

Section 4

Assets as at the tutorship or curatorship anniversary date.

4)	LIABILITIES			
42	Accounts payable: name and address of creditor	42	$	
43		43	$	
49	Other liabilities (specify)	49	$	
50		50	$	
55	Total of liabilities	55	$	0.00

Section 5

Amounts received in the previous 12 months.

5)	INCOME			
100	Bank interest	100	$	
105	Benefits of Social Assistance or Social Solidarity (income security)	105	$	
106	Québec Pension Plan (RRQ)	106	$	
107	Old age security pension (including guaranteed income supplement)	107	$	
108	Benefits and indemnities from the CSST	108	$	
109	Benefits and indemnities from the SAAQ	109	$	
111	Income tax refunds and other credits (GST, QST)	111	$	
112	Other income (specify)	112	$	
113		113	$	
120	Total income	120	$	0.00

Section 6

Amounts spent in the previous 12 months.

6)	EXPENSES			
200	Bank charges and investment expenses	200	$	
203	Professional fees	203	$	
204	Public Curator supervision fees	204	$	
208	Rent paid	208	$	
209	Accommodation and boarding expenses	209	$	
210	Heating, electricity, cable, phone	210	$	
212	Medical expenses (specify)	212	$	
213	Personal expenses of represented person	213	$	
214		214	$	
215	Other expenses (specify)	215	$	
216		216	$	
217		217	$	
220	Total expenses	220	$	0.00

I, the undersigned, declare that the information in this report is true.

Signature of legal representative(s) (sign all three copies)

Date

Home phone number: ( ) -

Work phone number: ( ) -

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Print tutorship council copy

Print a copy for your records

209. Rent of the person of full age who resides in a health and social services facility, a private nursing home, or a foster home.

210. Accommodation and boarding expenses for the person.

212. Medical expenses not covered by the RAMQ.

213. E.g., expenses for the person of full age's clothing, haircuts, outings, or recreational activities.

Curateur public services: accessible to everyone

Did you know that the Curateur public is required to give disabled people access to public documents and services, when requested and at no additional charge?

Let's consider the case of a legal representative who has a hearing impairment but would like to speak to an officer. In order to communicate by telephone, instead of by email, he can use the Bell Relay Service. This service allows people with a hearing and/or speech impairment to communicate with hearing persons thanks to operators who type out the message.

If a face-to-face meeting with an interpreter is required, the Curateur public generally uses the services of Services régionaux d'interprétation, a regional pool of interpreters who bill the Curateur public directly.

Finally, the Curateur public website is designed for people with impaired vision. Whether they have difficulty distinguishing colour differences or they use a text-to-speech synthesizer, they should be able to easily navigate the site, which meets the government's accessibility standards.

The reporting of abuse toward incapable persons is mandatory

Incapable persons under curatorship, tutorship, or homologated protection mandate are now better protected against abuse thanks to the introduction last May of the Act to combat maltreatment of seniors and other persons of full age in vulnerable situations.

This means that all health and social service providers, as well as all professionals, except for attorneys and notaries, are required to report acts of abuse against persons under curatorship, tutorship, or homologated protection mandate, regardless of their place of residence.

Reports of abuse must be filed with the local commissioner for complaints at the institution where the person is receiving care or with the police, as appropriate.

The Curateur public can also receive and handle reports of maltreatment, abuse, or negligence against a person under tutorship, curatorship, or homologated protection mandate, or against a person whose incapacity was demonstrated by a medical assessment but who is not under protective supervision.

In its brief submitted in January to the National Assembly, the Curateur public insisted on the importance of making reporting mandatory in certain circumstances.

The Régie: new means of collaboration

The obstacles that families of people with a mental incapacity faced when renewing a health insurance card or applying for a waiver of housing costs are a thing of the past.

In recognition of the rights of mentally disabled people and in response to concerns expressed by their loved ones, the Curateur public took the necessary steps with the Régie de l'assurance maladie du Québec, and both organizations now share the same understanding of the legislation stipulating that a person can act on behalf of another person who is unable to do so. A medical certificate can be issued as proof of incapacity.

This means you no longer need to institute protective supervision simply to obtain or renew a health insurance card or to apply for a waiver of housing costs—a welcome decision for people with a mental incapacity and their loved ones.

Always there for you

At the Curateur public, staff members are always standing by to offer support to tutors and curators throughout the protective supervision process, from the time it is first instituted to the production of the final report. These employees are called private representation officers and advisors, and they work closely with their colleagues, the compliance officers. Private representation officers or advisors are employees who advise, guide, and support legal representatives. They analyze situations and establish appropriate intervention plans. Private representation advisors receive and process reports of abuse, deal with cases of confirmed financial abuse, and act as the tutorship council when family members or loved ones are absent or unable to fulfill this role. Moreover, private representation officers or advisors can attend the meeting of family and friends, as needed.

For their part, compliance officers—in close collaboration with various other stakeholders, including private representation officers and advisors—make sure the patrimony is being managed appropriately. If necessary, they inform the stakeholders of the steps to take with the tutor or curator to ensure the latter makes the necessary corrections. They identify the risks and work together on documenting all relevant information in the represented person's file.

Present from the start

In the days following his appointment by the court, the new tutor or curator will receive an information kit from the Curateur public which includes comes up in the situation. No later than two months after the appointment, he will be contacted by his private representation advisor (when the Curateur public acts as the tutorship council) or officer, who steps in to provide assistance.

Since 2014, Marie Julie Dion has held this position at the Curateur public's Direction territoriale Nord, in Saint-Jérôme. Marie Julie enjoys the personal dimension of her job. "When a tutorship or curatorship is instituted because of an accident or a degenerative disease, it's a very delicate and emotional time for everyone involved. I'm very aware of that, and it's important that tutors and curators know they're not just a number and that they're dealing with people, not machines. The officers are there to offer them personalized service. The legal representative (tutor or curator) doesn't have to repeat his story to a different person each time he calls us; there's only one private representation officer assigned to each file," she explains. Marie Julie adds: "During the first year, our conversations are more frequent, because the representatives have more questions and because I have to analyze their situation. After the first annual report, if the administration of the property is being managed as it should and if the situation doesn't change, for example, if no property has been sold, then we talk whenever necessary. It's important to know that we're always available to deal with anything that comes up in the file. Usually, everything is done by telephone, but it's also possible for the representative to come to our offices if he prefers."

Josiane Gauthier, France Beauregard and Marie Julie Dion at the Direction territoriale Nord.

Ensuring sound administration

When a tutorship or curatorship to a person of full age is instituted, the *Civil Code of Québec* stipulates that the Curateur public and the tutorship council must play an oversight role to ensure that the legal representative properly administers the patrimony and looks after the person's well-being. Josiane Gauthier, Compliance Officer at the Curateur public's Direction territoriale Nord, plays an important role in this oversight process. "The first year is a major learning curve for representatives," Josiane states. "For example, unless they've acted as a tutor or curator, very few people have ever heard of things like the security, the hold funds, or the "in the

Feel free to call them!

You should never hesitate to call the Curateur public with your questions or even to confirm information. Did you lose the contact information for the private representation officer or advisor assigned to your protection supervision? Call the Curateur public's General Information department at 514-873-4074 or 1-800-363-9020. By giving them the incapable person's name, date of birth, social insurance number, or file number, they'll be able to provide you with the information you need.

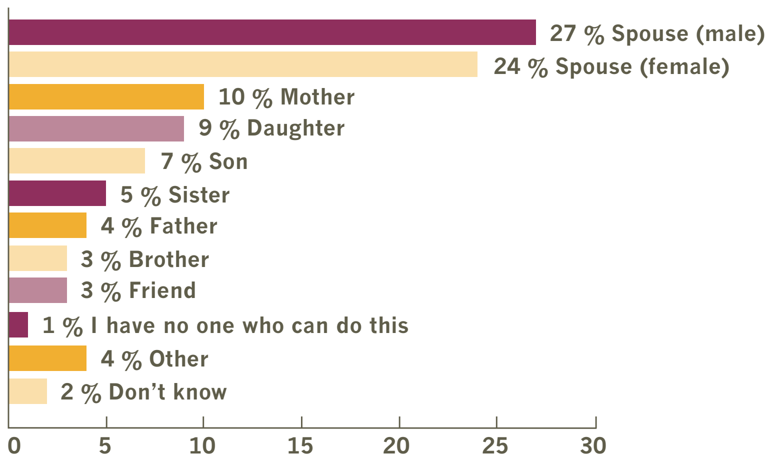
capacity of" account, which is completely normal. There's a whole vocabulary to be learned and new habits to be formed, such as systematically keeping receipts and submitting them with the annual report." As Josiane sums up so well: "Not everyone is an accountant." While the compliance officer is the person responsible for ensuring that the annual report reflects sound management of the patrimony, it's the officer's or advisor's responsibility to contact the representative before the first annual report to make sure he has all the information he needs and that he understands what information he has to send to the Curateur public. "We really work well together," Marie Julie says. "The private representation officers, advisors, and compliance officers share a lot of relevant information that helps us to better support the tutors and curators, and the incapable persons they look after."

The protection of incapable persons is a family matter

Did you know that nine in ten Québecers would want a loved one—a spouse, family member, or friend—to make decisions about their person and their property if they were to become incapable? For the Curateur public, this is a natural and valid desire, because there's no substitute for the loving care of a friend or family member in a vulnerable person's life. Nine in ten Québecers would also ask for permission to act on behalf of a loved one who became incapable.

A telling survey

In March 2017, the Curateur public commissioned a survey in which respondents were asked the following question: "If you were to become incapable following an accident or an illness and were no longer able to make your own decisions or manage your affairs, whom would you entrust to make decisions on your behalf?" Here are the most common answers.



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Le Relais

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Redaction: Anne-Marie Blain, Jacinthe Deslauriers, Nathalie Gilbert, Luc Laprise and Myriam Perron
Contributors to his issue: Yvon Trudel
Editor-in-chief: Anne-Marie Blain
Editor: Josée Saindon
Graphic layout: Vanessa Naud

Newsletter Le Relais
Curateur public du Québec
600, boulevard René-Lévesque Ouest
Montréal (Québec) H3B 4W9

Tel: 514 873-4074
Toll free: 1 800 363-9020
Website: www.curateur.gouv.qc.ca
Email: lerelais@curateur.gouv.qc.ca

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