

Protecting and supporting your loved ones

Useful tools

Awareness | Support | Action



Is your mother developing symptoms of Alzheimer's disease?

Is your brother, after suffering a brain injury, no longer able to manage his property?

Is your sister's mental illness becoming more severe?

Is your friend finding it increasingly difficult to exchange with government agencies and various organizations?

Do your loved ones want to plan for a future where they might not be able to care for themselves?

Learn more about tools that can help you help them.

What is incapacity?

Incapacity is when a person no longer has the intellectual ability to take care of themselves or to manage their property, or when a physical limitation prevents them from expressing their wishes.

Incapacity can strike anyone, of any social standing, in any physical condition, at any age or stage of life.

What are the primary causes of incapacity?

Incapacity can be caused by:

- an intellectual disability;
- a traumatic brain injury;
- a stroke;
- a degenerative disease (e.g., Alzheimer's disease);
- a mental illness.

A physical disability is not considered an incapacity if the person in question can let his wishes be known.



An explanation of incapacity and the need for representation

There is a need for representation when a person is incapable of exercising their civil rights.

This need for representation can be due to isolation, the duration of their incapacity, the nature or state of their affairs, or the absence of a protection mandate (or the fact that the latter cannot be homologated).

Determining whether a person is incapable and needs to be represented

The combination of the medical and psychosocial assessments is what determine a person's incapacity and need for representation. These assessments look at the person's ability to take care of themselves and their property. They also address the need for them to be represented by another person in exercising their civil rights.

When their incapacity and need for representation are established, steps must be taken with the court to institute a protective supervision regime for the person concerned.

If the person is well taken care of and their situation does not require the institution of a representation measure, there are simple solutions to help them.

Depending on your loved one’s situation, the following options could prove helpful:

SITUATIONS	SOLUTIONS
Your capable (or fit) loved one is wondering what will happen should he become incapable. (No step required before the court.)	Protection mandate (see p. 5)
Your loved one is living with a difficulty and wants help. (No step required before the court.)	Assistance measure (see p. 6)
Your incapable loved one is well taken care of.	Administration by a third party (see p. 7) Solutions for spouses who are married or living in a civil union: • Domestic mandate (see p. 7) • Court’s authorization* (see p. 7) • Judicial mandate* (see p. 7)
Your incapable loved one needs representation or needs to have their protection mandate homologated	Temporary representation* (see p. 8) Homologation of a protection mandate* (see p. 8) Tutorship* (see p. 9)
Emergency	Management of a person’s affairs (see p. 10) Interim protection measures (see p. 10)
* necessary step before the court	



Your capable loved one is wondering what will happen should he become incapable

As soon as today, your capable loved ones of full age can draw up a protection mandate to decide what will happen to them if they become incapable.

Protection mandate

A protection mandate is an official document prepared by your mother, brother, friend or loved one to express their wishes and name one or more trusted people to oversee their well-being and manage their property should they become incapable. Your loved one is referred to as the mandator and the designated person (e.g., you) as the mandatory.

This mandate is not the same as a will, which contains instructions for passing on the person's property after their death.

Preparing a mandate

There is form available free of charge at [Québec.ca/protection-mandate](https://quebec.ca/protection-mandate) or for purchase in bookstores. The protection mandate can also be drawn up by a lawyer or a notary, for a fee.

Reasons to prepare a mandate with no further ado

No one is immune to an illness, accident or mental health problem that could render them incapable of taking care of themselves or managing their property. This is why drawing up a protection mandate is so important. It allows a person to specify who will take care of them and their property, and how. It is also a way for the person to make their wishes and preferences known to the mandatory. If your loved one does not have a protection mandate, their wishes may be more difficult to ascertain, especially if they are no longer able to express them themselves.

If the person does not have a protection mandate, a tutorship could be instituted. Another person will then be responsible for protecting them and managing their property. Family members, people close to them, and friends will recommend this person to the court.

In case of incapacity, the protection mandate could be homologated ([see p. 8](#)).

You will find more details and examples at [Québec.ca/protection-mandate](https://quebec.ca/protection-mandate).

Your loved one is living with a difficulty and wants help

Depending on his situation, this solution is available to help your loved one.

Assistance measure

The assistance measure allows your loved one to be accompanied and provided advice when taking decisions, managing his property and exercising his rights. All that's needed is the official recognition of one or two people as assistants. They will then be able to act as intermediaries between the assisted person and third parties (government agencies and departments, service providers, professionals, etc.).

The assistance measure is for any adult who is living with any kind of difficulty, but who is capable of choosing their own assistant. The person must also understand the scope of the measure and be able to express his wishes and preferences.

Examples of difficulties

- Age-related loss of autonomy;
- Mild intellectual disability;
- Vision, hearing, or motor impairment;
- Mental illness;
- Language barrier;
- Addiction problem (substance abuse).

Unlike a power of attorney, under the assistance measure, the assistant cannot sign on behalf of the assisted person or make decisions for them.

A power of attorney is a contract whereby your capable loved one authorizes you to represent him and act on his behalf with regard to certain actions concerning his property. Having such a power of attorney could notably enable you to pay bills, cash cheques and even sell property.

Benefiting from the assistance measure

Together, your loved one and their prospective assistant can submit (free of charge) an online application for recognition of an assistant by visiting [Québec.ca/assistance-measure](https://quebec.ca/assistance-measure). They can also send the paper form, available at the same web address, to the Curateur public. Your loved one can also hire a lawyer or a notary to draw up the application, in which case, they will have to pay a fee.

For more information regarding the assistance measure, check out the page [Québec.ca/assistance-measure](https://quebec.ca/assistance-measure).

Your incapable loved one is well taken care of

If your loved one is well taken care of, their situation does not require the homologation of their protection mandate (see p. 8) nor the institution of a tutorship (see p. 9). These simple solutions could help.

Administration by a third party

Administration by a third party solely allows you to be named by government agencies or departments as being responsible for managing the pension income or other benefits received by your loved one who is considered incapable.

Solutions for spouses who are married or living in a civil union

These solutions are intended for people who are married or living in a civil union. They do not apply to common-law spouses.

Domestic mandate

A domestic mandate is the power of representation that automatically exists between legally married or civil-union spouses. It allows, for example, a wife to take care of routine family needs when her husband cannot express his wishes (food, clothing, housing, etc.).

Court's authorization

The court may authorize a person who is married or living in a civil union to perform an act alone that would normally require the spouse's agreement, such as selling a car.

Judicial mandate

The court may give one spouse the power to manage the other spouse's property or the property under their management pursuant to the matrimonial regime, when the other spouse is unable to express their wishes because of an incapacity. This authorization ceases to be valid when the court revokes it, upon the institution of a tutorship, or upon the homologation of a protection mandate.

Your incapable loved one needs representation or needs to have their protection mandate homologated

When medical and psychosocial evaluations attest to your loved one's incapacity or need to be represented (see p. 3), the law comprises certain measures to ensure his protection. These measures require taking the necessary steps with the court.

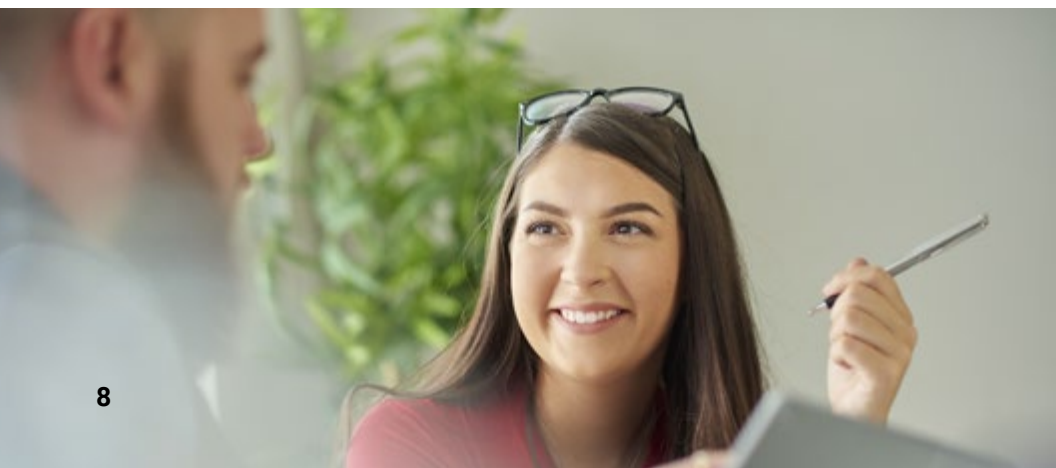
Temporary representation

Temporary representation allows your loved one to be represented for a specific act only. For example, the court may authorize you to renounce a succession or to sell property, if your loved one can manage the proceeds of the sale. You must then act in their best interest, ensuring their rights are upheld while taking into account their wishes and preferences. This temporary representation allows them to continue exercising their rights, except for the one related to the act in question. It ends once the act has been completed. An application to the court is needed to benefit from temporary representation.

For more information, visit [Québec.ca/temporary-representation](https://Quebec.ca/temporary-representation).

Homologation of a protection mandate

If your loved one needs to be represented for several acts, make sure they have drawn up their protection mandate. The court will have to authorize the entry into force of the protection mandate. This is known as homologation. Until it is homologated or ratified, a protection mandate has no power and does not allow the mandatary to act on behalf of another person.



Go to [Québec.ca/protection-mandate](https://quebec.ca/protection-mandate) for further details on the steps involved and the mandatory's role.

When an incapable person needs representation and there is no protection mandate or the mandate cannot be homologated, the law provides for the institution of a tutorship to the person of full age.

Tutorship

Tutorship is a representation measure that allows your loved one to be represented by another person for the protection of their person or the management of their property. The person appointed by the court is called the tutor. When the tutor is someone other than the Curateur public (parent, family, friend, etc.), this is called a private tutorship.

When no one in your loved one's life can act as tutor, the court may appoint the Curateur public to take on this role. This is called a public tutorship.

The tutorship can be adapted to the situation and abilities of the person concerned, so as to give them as much autonomy as possible. This is called **modulation of the tutorship**.

Modulation of the tutorship

In addition to determining whether:

- A** the tutor manages the incapable person's property (tutorship to the property), oversees their well-being (tutorship to the person), or both (tutorship to the property and the person);

the court must determine:

- B** the time limits for the incapable person's medical and psychosocial reassessments, based on their individual situation; and
- C** the acts that the person can perform alone.

Examples :



sign or co-sign
a lease



choose their
accommodations



manage their
income



choose their friends
and associates

Moreover, the institution of a tutorship to a person of full age sometimes results in the formation of a tutorship council (a group of people who oversee and guide the tutor in their role). This is the case with a private tutorship, but not a public one.

Go to [Québec.ca/tutorship-for-adults](https://quebec.ca/tutorship-for-adults) for further details.



Emergency

The steps involved in the homologation of a protection mandate or the onset of a tutorship take a certain amount of time (in other words, the process is not something that can be completed in a day). In the meantime, the law contains provisions in the event an emergency situation arises. These provisions shield your loved one from damages that could result in serious consequences to their property or personal life.

Management of a person's affairs

Administration of affairs refers to acts required to preserve the property of a person who is unable to act for themselves. For example, you can have your loved one's roof repaired if it's leaking, or have emergency plumbing work done on a building they own. Expenses you incur in the administration of their affairs will be reimbursed from their patrimony.

Interim protection measures

Interim protection measures can be put in place to prevent serious harm to an incapable person in urgent need of protection. The court may appoint someone to manage their property, protect their person, or represent them in exercising their rights. To do so, an application must be filed with the court before or at the same time as the application to institute a tutorship for them. The same goes for applying for the homologation of their protection mandate. This means you could collect the rent for your loved one's building or hire someone to take care of them at home, for example.



The Curateur public is there for you!

- It oversees the protection of incapable persons.
- It educates the public about the issues related to incapacity.
- It informs the public of ways to protect incapable people and to assist people living with difficulties.
- It informs assistants, tutors, temporary representatives and mandataries of their obligations.
- It offers guidance to tutors.
- It informs the persons who are helped and represented of the regulations concerning them.
- It ensures that the patrimony of the persons subject to a tutorship is properly managed.
- It is responsible for recognizing assistants to persons of full age.
- It can intervene in situations of abuse involving represented persons.
- It can use its investigative powers when deemed necessary.
- It acts as tutor, tutorship council, or temporary representative subsequent to a court decision, for persons who are alone and have no family or loved ones who can do so on their behalf.

For more information, go to [Québec.ca/en/gouv/curateur-public](https://quebec.ca/en/gouv/curateur-public).

CONTACT US



By telephone

1 844 LECURATEUR (532-8728)

Monday, Tuesday, Thursday and Friday:

from 8:30 a.m. to 12:00 noon and
from 1:00 p.m. to 4:30 p.m.

Wednesday:

from 10:00 a.m. to 12:00 noon and
from 1:00 p.m. to 4:30 p.m.



By email or by mail

To email us or for our mailing address, visit:

[Québec.ca/curateur-public-contact-us](https://Quebec.ca/curateur-public-contact-us).

Legal Deposit – Bibliothèque et Archives nationales du Québec

ISBN 978-2-550-92497-5 (Print format)

ISBN 978-2-550-92498-2 (Online)

© Gouvernement du Québec, 2022

Text originally drafted in French