Guide for the use of the legal tutor to a *minor*

Le Curateur public du Québec

Québec

Here are the main steps you must take to fulfill your mandate:

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INTRODUCTION

You are legal tutor to your minor child (less than 18 years old)

As parent, you exercise legal tutorship over each of your **minor** children. Both parents exercise this tutorship jointly, unless one of the parents has died or is somehow prevented from expressing his or her wishes. One of the parents may ask the other to act on their behalf for certain acts. If the two parents disagree, the court must decide in the interest of the child. You must administer the minor's **patrimony** until the minor reaches **full age**, at 18. If the value of this patrimony exceeds $25,000, you must comply with certain additional requirements defined in the Civil Code.

How to use the Guide

You have assumed a new role and probably have many questions. That is why the **Curateur public** has sent you this Guide. You can read it through to get a general understanding of your new role. Then, in future, when you have specific tasks to perform, you can refer to the appropriate chapter of the guide.

Each chapter deals with a task you will have to perform at some point as **legal representative**. If certain chapters or parts of chapters do not apply to you because you administer a fairly straightforward patrimony, just go to the section that does concern you.

At the end of each chapter, you will find a glossary explaining unfamiliar words and legal terms.

It may seem to you that some of the procedures are very complicated. If you follow the Guide, page by page, your task will be much easier. If your specific situation is not addressed in the following pages or if our advice does not apply in your case, you should consult a notary, a lawyer or one of the information agents of the Curateur public whose telephone numbers appear at the end of the Guide.

The role of the Curateur public

The Curateur public assists and supervises private curators and tutors. In each of its regional offices, staff members are specifically assigned to this responsibility. The file of each person represented by a private tutor or curator is assigned to an agent you can contact. The General Information Service of the Curateur public is also available to take your calls during normal business hours.

Basic materials

We hope that this Guide and the correspondence you receive from the Curateur public will assist you in performing your role as legal representative. However, if you wish to get to know the legal texts that govern this function, the duties and obligations of the legal representative are defined in the *Civil Code of Québe*c, the *Public Curator Act* and the regulation respecting its application. These materials can be consulted in most libraries. They are also sold in bookstores that distribute documents published by Les Publications du Québec and can be read or downloaded from the Internet at:

www.curateur.gouv.qc.ca/cura/html/anglais/geninfo/publica.html

GLOSSARY

Curateur public: person appointed by the Government of Québec whose duties include representing incapacitated persons (when their family cannot), supervising private legal representatives and assisting them as needed.

Person of full age, of age: person who is 18 years old or older

Minor*:* person who is less than 18 years old.

Patrimony: the general term for all of a person's assets.

Legal representative: person selected or chosen by the law or the court to look after an incapable person (may be a curator, a tutor or a mandatary for an incapable adult and a legal or dative tutor for a minor).

Section One

THE ROLE OF THE LEGAL REPRESENTATIVE WITH REGARD TO CHILD PROTECTION

The legal tutor acts as parent

While you administer the patrimony of your minor child as legal tutor, you also look after the child in the double role of parent and tutor. Like all parents, you act in your child's interest. You provide your child with security while satisfying basic needs such as housing, food and education. The *Civil Code of Québec gives* you "parental authority" over your child and a degree of responsibility for the child's actions.

Consent to care

In case of illness or accident, it is the parents who authorize the doctors to treat or operate on their child.

However, children 14 or older are authorized to give consent alone, provided they can express themselves and understand the implications of the proposed care. If they refuse care, the authorization of the court is required.

If your child is unable to consent to care (because of being intellectually disabled or unconscious, for example), you will be asked to authorize care.

Doctors may only provide treatment without authorization in an **emergency** (provided it is impossible to reach the parents) or for hygienic purposes. You must ask for full information about the treatment or operation and its consequences. It is based on this information that you will be able to choose the solution you consider best for your child.

The care you consent to must be intended to improve the child's health, and its benefits should, in your view, outweigh any negative side effects it may have.

If the treatment or the operation is not essential for the health of the child and could have serious or permanent consequences (plastic surgery, for example), court authorization and your consent are required. In the case of organ donation or participation in a research project, we suggest that you consult a lawyer, because the procedure for consent is more complex in these areas.

Upholding the rights of the child

As tutor, you must also uphold the rights of your child. For example, if the child is badly bitten by a dog, you can sue the owner of the dog on behalf of the child. If the child is entitled to an inheritance, **benefits** or an **allowance**, you must take the necessary steps to ensure that it is received.

Emancipation of a minor

When teenagers turn 16, they may receive either partial **(simple**) or **full emancipation**. This can be arranged in three ways:

1) The parents, as tutors, can consent to the minor's request and with the agreement of the tutorship council (see Section Two, Chapter I), file a declaration of emancipation with the Curateur public, whereupon the minor is granted simple emancipation.

2) The teenager can file for emancipation with the court. The court will ask the advice of the tutor and tutorship council before reaching a decision. Depending on that advice, the court may grant simple or full emancipation.

3) Teenagers who marry before coming of age (by law, minors may marry at the age of 16 with the consent of their tutor) are fully emancipated by marriage.

An incapacitated child

*If your child is unable to take care of himself or herself or look after his or her property, you should take steps to institute **protective supervision** during the year before the child comes of age (between 17 and 18 years old).*

You will need a medical assessment (from a doctor) and a psychosocial assessment (from a psychologist, nurse, social worker, etc.) of the child's condition.

The staff at your CLSC or at the child's institution or the information agents of the Curateur public can help you with this procedure.

GLOSSARY

Allowance: an amount of money granted for a specific purpose.

Compensation: an amount of money given to remedy a wrong or an injury.

Emancipation: giving a minor the rights of an adult.

Emergency: situation in which a person's life is in danger or their integrity threatened (risk of loss of a vital function or part of the body).

Full emancipation: authorization for a minor to exercise their civil rights as if a person of full age.

Protective supervision: legal representation of an incapacitated person. Curatorships and tutorships are forms of protective supervision.

Simple emancipation: authorization for a minor to perform certain acts as if a person of full age (examples: sign a lease for less than three years, perform acts related to civil rights and undertake all acts of simple administration). See Section Two, Chapter IV on the administration of patrimony.

Section Two

THE ROLE OF THE LEGAL REPRESENTATIVE WITH RESPECT TO THE ADMINISTRATION OF THE CHILD'S ASSETS

Chapter I

ESTABLISHMENT OF THE TUTORSHIP COUNCIL

You must establish a tutorship council

From the time you administer a patrimony worth more than $25,000 for your child, the Civil Code stipulates that a tutorship council must generally supervise how you function as legal representative, give advice and authorize certain acts.

The tutorship council is generally composed of three members chosen from the families of the father and mother of the person represented, as well as a secretary, who may or may not be a member of the council. Generally, two alternates are also designated in case one or several members withdraw from the council.

The tutorship council must meet at least once a year, and you are entitled to attend its meetings. The secretary must take and keep the **minutes** of these meetings.

How to establish a tutorship council

The members of the tutorship council are chosen by a ***meeting of relatives***

The people attending this meeting are summoned to it by the **clerk of the court** or the notary you have chosen to perform this task. The clerk of the court or the notary must call them by sending a notice to the person's parents, grandparents and brothers and sisters of full age. If, after issuing these notices, they are unable to summon five people, they may contact other relatives (aunts and uncles, cousins of full age) or friends of full age.

You may also make an application to the court for the establishment of a tutorship council composed of only one person designated by the court.

If five people cannot be found

If, despite these efforts, it is impossible to arrange a meeting of relatives consisting of at least five people, the court may waive the obligation to hold this meeting.

Appointment by the court

In most cases, the meeting of relatives is successfully organized. It meets and chooses the members of the tutorship council. A notary or lawyer then files **notice of motion** with the court of the **judicial district** where the represented minor resides to have it validated. When the decision is made, the court will advise the Curateur public.

In exceptional cases, when there are not enough relatives to form a tutorship council, the court may appoint a single person to fulfill this function. It may also appoint the Curateur public or the Director of Youth Protection to fill this office.

Payment of fees

These procedures entail costs. The Curateur public policy is to allow for payment of the notary or lawyer's professional fees and court fees (for filing and presenting the notice of motion) from the minor's patrimony, since these compulsory acts are being undertaken in the minor's interest.

The role of the tutorship council

The tutorship council supervises your administration.

In the following chapters, you will see that you are occasionally required to ask its authorization or send it a copy of certain forms that you will have to fill out.

The tutorship council must also determine what security is needed to guarantee your administration.

This is dealt with again in Chapter III.

The tutorship council may ask you to account for your management.

The tutorship council even has the power to ask the court to name another tutor to replace you, if it decides you are not performing your role adequately.

GLOSSARY

Clerk of the court: officer of the court; known as a prothonotary prior to January 1, 1994; the clerk's office is at the courthouse.

Judicial district: a geographic division in Québec under the jurisdiction of a courthouse for the management of judicial procedures.

Meeting of relatives: meeting of at least five people related to the minor who select the legal representative; the meeting of relatives also appoint the members of the tutorship council.

Minutes: report of the people attending and decisions reached at a meeting.

Notice of motion: official application made to the court according to an established procedure.

Subrogate tutor: prior to January 1, 1994, a person appointed in the tutorship judgment. With the new Civil Code of Québec, the subrogate tutor automatically became a tutorship council of only one person.

Chapter II

PREPARING AN INVENTORY

You are required to prepare an inventory

*As soon as the patrimony you manage as legal tutor exceeds $25,000, you are required to prepare an **inventory** of the property you manage.*

This procedure will give you a better idea of the extent of the patrimony before you decide how to manage it. This inventory will also enable you to set up a system for managing the property, allowing you to easily complete the annual report you are required to send to the Curateur public and tutorship council every year. These obligations are discussed in the next chapters.

In the meantime, note that the law requires you to prepare an inventory of each patrimony you manage (one patrimony per child) within two months after you are appointed tutor.

The inventory must describe all the property of the person represented, including both **assets** and **liabilities.**

*The inventory may be **notarial** or made as **a private writing.***

A notarial inventory

If the patrimony you manage includes many and varied items (for example, investments with several banks, securities or several buildings) or if the person you represent receives income from several sources, we recommend that you consult a notary.

The notary's fees will be paid from the patrimony of the person you represent.

An inventory by a private writing

If the patrimony of the child you represent is relatively straightforward (a building, a bank account into which is deposited an annuity or compensation from the Société de l'assurance automobile du Québec), you can make an inventory by a private writing.

To do this, use the form included with the Curateur public inventory request. You must fill out the form in the presence of two witnesses, who must sign it as well.

Some comments

- The patrimony for which you are required to make an inventory is the one you administer on behalf of one of your minor children, not your own.
- You must prepare an inventory for every child whose patrimony you administer.

Send a copy of the inventory...

... to the Curateur public within two months of your appointment;

... to the secretary of the tutorship council within the same period.

GLOSSARY

Assets: whatever items of value owned by a person.

Inventory: list of a person's assets and debts.

Liabilities: whatever a person owes.

Notarial: prepared and recorded by a notary.

Private writing: not notarial; an inventory by a private writing must be prepared in the presence of two witnesses.

Chapter III

SECURITY

If the patrimony is worth more than $25,000

If the property you administer is worth more than $25,000, the law requires you to furnish security to guarantee your administration. In this way, the patrimony of the child you represent will be protected or compensated if it loses value because a tutor has taken or mismanaged it.

Every patrimony worth more than $25,000 must be guaranteed by some form of security.

Trust companies that are tutors to the property of a minor are not required to furnish this security.

Role of the tutorship council

The tutorship council determines what kind of security the tutor must furnish.

In practice, three kinds of security are recognized:

– MORTGAGE, which allows the tutor to give a building he owns as security;

– SURETYSHIP, which is a kind of insurance policy purchased by the tutor to guarantee his management. The premiums paid for this insurance can be reimbursed from the patrimony of the represented child, if the tutor is not paid for this role;

– HOLD FUNDS, by which the financial institution holding the funds of the represented child agrees to keep them until the end of the administration of the current tutor, unless instructed otherwise by the tutorship council.

Only the tutorship council is entitled to modify the nature of the security required from the tutor. It also determines the date by which the tutor must furnish the required security. The Civil Code, however, stipulates that the security must be furnished “ without delay ”. The tutorship council, in its annual review, must also ensure that the security is maintained.

Role of the Curateur public

The tutor must advise the Curateur public of the nature of the security required by the tutorship council.

Once the security has been arranged, the tutor must send one copy to the secretary of the tutorship council and another to the Curateur public.

The law gives the Curateur public the necessary authority to ask the court to review the decisions of the tutorship council with respect to the security to be furnished by the tutor; thus, it could ask the council to increase the amount if the security seems insufficient in relation to the patrimony under administration.

The Curateur public must be notified without delay of any change to the security.

The tutor can be relieved of the obligation of maintaining security...

... by the tutorship council if the patrimony of the represented child falls under the $25,000 limit or the tutor is replaced by another.

Chapter IV

MANAGING THE PATRIMONY

A) General principles

Simple administration

If you were named tutor to the property of your minor child, you are responsible for managing the child’s patrimony until the child comes of age.

As tutor, you are responsible for the simple administration of the patrimony of your child. This means that you are required to maintain it so it can be returned to the child on the day the child comes of age (18 years old).

As a parent, you are required to satisfy your child’s needs. However, if the child has received compensation for an accident that has left the child disabled, you can use the compensation to pay for retrofitting the child's home or a car regularly used to transport the child. Likewise, if the compensation was paid because of the death of the other parent, and this death causes a substantial decline in family income, you may use some of the money to give the child the education you had intended for him or her. In case of doubt, you can consult the tutorship council or the agent handling your file at the Curateur public before making a decision. Your final decision must be made in the best interests of the child.

The tutorship council

The Civil Code provides that you must obtain AUTHORIZATION FROM THE TUTORSHIP COUNCIL in the following cases:

– to **renounce a succession** in favor of your child;

– to accept a gift that includes an obligation;

– to reach a compromise (negotiate to avoid or settle a lawsuit) or appeal a case on behalf of the child;

– to obtain a loan that is large in relation to the size of the patrimony, use assets as security, sell an important family asset, a building or a company, cause the definitive **partition** of assets of which the child is one of the undivided co-owners, if all these assets have a value of less than $25,000.

The court

If the asset in question is worth more than $25,000, you must apply to the court for authorization to act, specifically in the following cases:

- a loan that is significant in relationship to the patrimony being administered;

- the sale of a significant family asset (for example, a painting the child would have inherited).

Whatever the value of the asset involved, the court may be asked to decide if there is a disagreement between the mother and father on how the asset is to be administered. In every case, the court will consult the tutorship council before making a decision.

No conflict of interest

You must be careful to separate the administration of the represented child’s property from your own. Thus, the child's bank account should be separate from your own, and you cannot purchase, rent or use the child's property for your exclusive use.

In your administration, the child’s property will be registered under your name, “as tutor to", followed by the name of the child.

Income tax return

You are also required to prepare separate income tax returns for yourself and the child, if the child has income to report.

Note that the Income Tax Act exempts you from reporting compensation received by persons under 21 years old for injury they themselves incurred or the interest generated by such compensation.

Sound investments

In managing the patrimony of the child, you must limit yourself to presumed sound investments. The Civil Code (sections 1339 and following) offers various possibilities. These include:

– Money deposited in an account with a financial institution (bank, credit union, etc.). The money must, however, be available on demand or within no more than 30 days, unless the deposit is guaranteed by the Régie de l’assurance-dépôts du Québec (maximum $100,000 per account and per financial institution). Otherwise, you will need to obtain authorization from the court for such a deposit.

– You can also buy savings bonds issued by Québec, any other Canadian province, Canada, the United States or an American state, a municipality or a school commission.

– Real estate is considered a sound investment.

– Common shares issued by a company that for three years has complied with the *Securities Act*, sold by a recognized Canadian stock exchange (Montreal, Toronto, Vancouver), are also presumed sound investments. The same is true of shares in an investment trust and shares of a mutual fund or of a private trust, provided that 60% of its portfolio consists of presumed sound investments.

– You can also lend the funds you manage as a first loan on real estate in Québec, provided the value of the loan is not more than 75% of the value of the real estate.

These investments, like the other transactions, must be registered in the name of the tutor as tutor to (name of the child).

Other investments

If you make presumed sound investments, you will be considered as having acted prudently. The tutor must try to diversify investments to ensure a certain regularity of income.

A tutor who makes investments not as stipulated by the Civil Code is automatically liable for any losses.

B) In practice

Every case is unique

You must make decisions regarding the property of the child you represent. The following are examples of property you may have to manage. Disregard those that do not apply to your situation.

Remember that your decisions must be based on two major principles:
– the interest of the child;
– the conservation of the child's patrimony until the child is of full age.

In case of doubt, you can consult the tutorship council or contact the agent handling your file at the Curateur public.

An inheritance

Your child may have inherited property (real estate, stocks and bonds, cash, valuable family heirlooms). To begin, you must determine whether to accept or refuse the **succession** on behalf of the child. Your decision should be based on the value of the assets (and liabilities) involved and made in the sole interest of the child. If you decide to **renounce the succession**, you must do so through a notarial act.

If you accept the estate and if the property bequeathed or given to a child is not administered by the **liquidator** of the estate, you are required to manage the estate.

Before making a decision on the property, you must examine it carefully.

REAL ESTATE: in principle, you must maintain and manage the real estate inherited by the child. However, if necessary, it may be preferable to sell some or all of it.

You will require authorization from the court to do so, because it may constitute a significant portion of the patrimony. The court will consult the tutorship council before issuing its decision. We recommend that you discuss the matter with a lawyer or notary, who will be able to assist you.

STOCKS AND BONDS: although they are not presumed sound, you can keep existing investments until their expiry date. If you decide to sell them before they expire, you must be cautious, taking account of market fluctuations.

Again, the court must grant authorization for securities in an amount greater than $25,000.

VALUABLE FAMILY HEIRLOOMS: jewelry, paintings or other valuable family heirlooms must be kept to be returned to the child when the child reaches full age, unless you are required to sell them in full or in part to provide for the child. If this is the case, you must receive authorization from the tutorship council or, if the objects are valued at more than $25,000, from the court, which will consult the tutorship council before issuing a decision.

CASH: part of this money can serve to provide for the needs resulting from the child's situation (for example, a handicap).

The rest can be invested in securities, term deposits and bank accounts, provided the tutorship council does not request that it be frozen, in full or in part, as security for your administration (see the preceding chapter).

Compensation or allowance

The sums paid to the child (for example, if the child was the victim of a car accident or a crime) must be managed according to the principle of the simple administration.

Fee or salary

If the child you represent receives remuneration of any kind for work, some of this money can be used to manage the child’s affairs.

Children 14 years old or older are considered of full age by the Civil Code with respect to work or the performance of art (including the management of income from such work and responsibility for the quality of any product).

Important advice

You must keep all invoices, receipts and cheque stubs related to the administration of the property of your child. In addition to allowing you to justify certain acts you will have performed, these documents will let you report on your administration to the child when the child reaches full age and will be able to review them. The Curateur public must examine the annual reports of your administration, and may undertake a more thorough audit and request supporting documents.

C) Simple accounting

For keeping track

The best way to keep track of the administration of your child's assets is to set up a simple accounting system, recording income and expenditures.

By recording income and expenditures every month, you will find it easy at the end of each year of administration to fill out the annual report form you receive from the Curateur public.

GLOSSARY

Liquidator: person responsible for settling an estate until the assets are distributed to the heirs; previously known as testamentary executor.

Partition*:* the dividing up of the assets of a succession among its heirs, which may require assets to be liquidated so they can be shared among all those entitled to them.

Renounce a succession: refuse, in a document prepared by a notary, to be the heir of someone.

Succession: the estate or property of someone who has died.

Chapter V

THE ANNUAL REPORT

The obligation to submit an annual report

Every year, you must submit an annual report of your administration of the patrimony of each child you represent.

If you do not submit such a report, any interested party (including the Curateur public) may ask that you be replaced as tutor.

The Curateur public allows an administrative period of some four months to submit the annual report.

Who gets the annual report?

You must send your annual report to the following:

- the secretary of the tutorship council;
- the child you represent if 14 years of age or over;
- the Curateur public.

The Curateur public reviews your annual report to make sure that you are properly administrating the patrimony of the person you represent.

Two types of forms

At the end of one year of administration, you will receive a detailed annual report form. Depending on the financial situation of the child you represent, you may, in the second year, receive the same detailed report or a simplified form.

You will receive a simplified annual report if the child does not own any buildings, property, or bonds or shares, has not lent money as a mortgage on an asset and receives no interest on a loan. Otherwise, you will receive the same form as the first year.

Some comments

If the patrimony you administer is worth $100,000 or more, the Curateur public may require that your report be audited by a chartered accountant.

The copy you keep for your records will help you complete your annual report the following year.

Chapter VI

THE FINAL ACCOUNT AND TRANSFER OF ASSETS

The end of your administration

You continue to administer the patrimony of the child you represent until:

– the child comes of age (at age 18);

– the child dies before reaching full age;

– another tutor is appointed to replace you.

In all these cases, your office as tutor ends. You must then account for your administration to the child, the liquidator of the child's succession or the tutor who replaces you, as appropriate, and to the Curateur public.

A simplified final account

The Curateur public has developed a two-page final account form so that you can report on your management at the end of your administration. If you have not received these forms, you can request them by telephone from the Curateur public.

If the child (or the liquidator of the succession or the tutor who replaces you) will accept this form of final report, which includes the list of assets and liabilities at the end of your management, fill it out and ask the person to sign it, indicating that the final account you have submitted has been accepted.

A copy of the form goes to your child (or the liquidator of the child's succession or the tutor who replaces you). You also send a copy to the Curateur public and another to the tutorship council. YOU KEEP THE ORIGINAL because it is the proof that the person involved has acknowledged that you have properly administered the patrimony entrusted to you.

A more detailed final account

The people to whom you must report are entitled to ask you for a more detailed final account than the one on the Curateur public form. The Civil Code stipulates that the account must be sufficiently detailed for its accuracy to be verified, and your records and other supporting materials may be consulted by interested parties. It is important to note, however, that the fees incurred for preparing a detailed account are **paid by the person requesting it.**

To prepare the final account, you may refer to the initial inventory, the annual reports you completed during your years of administration and the invoices and cheque stubs you kept during that period. If preparation of the final account will be especially complicated, it may be entrusted to an accountant or a notary.

The role of the Curateur public

If the Curateur public does not receive a copy of the final report within a reasonable amount of time after the end of your administration, the Curateur public notifies your child (or the liquidator of the child's succession or the tutor who replaces you) and provides information about the remedies available with respect to your failure to comply.

Release of security

Once the final account has been accepted by the person concerned, you can obtain the release (cancellation) of the security you gave as a guarantee of your administration. This release will be given by:

– your child if of age;

– the liquidator of the child's succession, if the child has died;

– the tutorship council, if there has been a replacement tutor.

Transfer of assets

Once the final account has been accepted by the person concerned, there only remains the transfer of the property, documents, bank accounts and other sources of income to the child's name, since you are withdrawing from the responsibility.

Chapter VII

CONCLUSION

Death of the parents

Since parents are automatically and jointly the legal tutors of their minor children, the *Civil Code of Québec* stipulates that the death of one of them shifts the responsibility to the living parent. If both parents die, they may have named their replacement by will or by a declaration filed with the Curateur public. If the parents have not recorded their wishes in a legal document it is the court that, upon request, will appoint a tutor to orphan children.

In the meantime, the liquidator of the parents' succession will take the necessary steps to preserve the patrimony of minor children who were subject to legal tutorship intact.

A guideline

The situations that a legal representative can experience are as varied as life itself. You will certainly encounter some not described in this Guide. If you are unsure about what to do, you can contact with your agent at the Curateur public and discuss it.

Your main obligation to the child you represent is to act in the child's best interest

If you follow this principle in your actions and keep up-to-date accounts of the patrimony you administer on behalf of the child you represent, you should have no problems. If a problem does arise and you cannot find a solution in this Guide, call the person responsible for your file at the office of the Curateur public.

Your comments

The Curateur public recognizes and appreciates your commitment to the child you represent. We will be pleased to receive any comments that might make this guide more useful to legal representatives.

To find where our offices are located, consult the "To reach us" section of our Web site or call **1 800 363-9020**.