

APPOINTING A TUTOR OR A CURATOR

When a person becomes incapacitated, make sure you safeguard his interests.

Consult your **notary!**



What should we do when an adult becomes incapable of taking care of his own affairs?

SAFEGUARD HIS INTERESTS!



WHAT IS THE DIFFERENCE BETWEEN A TUTOR AND A CURATOR?

	DEGREE OF INCAPACITY	POWERS AND RESPONSIBILITIES DETERMINED BY A COURT
TUTOR	Temporary or partial incapacity (the incapacitated person has a certain autonomy)	Usually, the tutor has limited power over the incapacitated person's property . Depending on the circumstances, these powers may be adapted according to the person's degree of autonomy .
CURATOR	Total and permanent incapacity (the incapacitated person hardly has any autonomy)	In principle, the curator has all the powers needed to make every decision required to safeguard the interest of the incapacitated person .

The function of both a tutor and a curator is to represent a person declared incapacitated and protect their interests.

Whether a tutor or a curator is appointed by a court depends on the person's **degree of incapacity**.

Anyone who is part of the incapacitated person's circle may be appointed tutor or curator. For example, it may be his spouse, a member of his family, a friend or someone he is close to. If none of these people can perform the duties, the **Curateur public** may then be appointed.

*The **Curateur public** (i.e., the public curator) is a person appointed by the Québec government. His chief duty is to supervise the administration of an incapacitated person's property by a tutor or curator.*

He himself may act as tutor or curator if the court so decides.

Thousands of people are affected by a disability in Québec every year. It may occur at any age, because of an accident, an illness or a handicap.

DID YOU KNOW?



If the person signed a power of attorney before becoming incapacitated, it remains valid throughout the judicial process. However, once a judgment has been rendered, it is no longer valid.

WHEN MUST A TUTOR OR CURATOR BE APPOINTED?

It may be necessary to appoint a tutor or a curator to safeguard the interests of an **incapacitated** person who has no **protection mandate** (or an incomplete one).

A person is considered legally incapacitated when his health prevents him from making decisions or acting on his own behalf.

The appointed tutor or curator must protect the incapacitated person, administer his property and see that his rights are exercised. For example, he must make decisions concerning:

- + Where the incapacitated person will live
- + His safety
- + His daily needs (food, clothing, hygiene)
- + The care needed for his health
- + Defending his rights
- + Paying regular expenses (electricity, food, lodging)
- + Collecting his income (old age pension, allowances)
- + Managing his property and his debts (house, bank account, investments)

The appointment of a tutor or a curator has significant consequences for the **incapacitated person because generally he will no longer be able to act alone** when making decisions on several important aspects of his life.

HOW IS A TUTOR OR CURATOR APPOINTED?

Your notary will advise you on the administrative and judicial steps for appointing a tutor or curator and ensuring the best possible protection for the incapacitated person.

Administrative measures

Your notary will ensure that the following **administrative measures** are taken:

1. Obtain a **medical evaluation** and a **psychosocial evaluation** from a health establishment regarding the person capacity.
2. **Inform** this person of the situation as well as the members of his family.
3. **Submit a search request** to the Register of Mandate Dispositions of the Chambre des notaires and the Barreau du Québec to check whether a protection mandate exists.

Judicial measures

Your notary will prepare your file for court and will inform you of its progress at each phase of the process. Among other things, he will:

- + Prepare an application to open a protective supervision whereby a tutor or curator will be appointed for the incapacitated person.
- + Open a court file.
- + Advise in writing the people who must, by law, be informed of the situation (including the incapacitated person, certain members of his immediate family and the Curateur public).
- + Interview the incapacitated person in the manner stipulated by law.
- + Explain to those involved the duties and responsibilities of the tutor or the curator.
- + Call and lead a meeting of family members and other loved ones to discuss the choice of tutor or curator, his powers, and the supervision of his acts.
- + Submit the complete file to the court.

The tutor or curator may always consult a notary for advice when performing his duties.

WHO SUPERVISES THE TUTOR OR CURATOR?

The acts and decisions of the tutor or curator must be supervised, chiefly to prevent abuse:

- + The law requires that a **tutorship council** be set up for this purpose. It is generally made up of three people who are part of the incapacitated person's family or circle.
As well, the law provides that certain decisions by the tutor or the curator must be approved by the tutorship council and sometimes even by the court.
- + The **Curateur public** also supervises the administration of the incapacitated person's property by the tutor or curator. He has the power to intervene in the judicial process and to review inventories, reports and accounts. He may also investigate when a citizen reports a case of abuse.

If the Curateur public acts as tutor or curator for an incapacitated person, there is no tutorship council.



HOW TO PREPARE?

INFORMATION TO COLLECT

- The contact information, date of birth and social insurance number of the person deemed to be incapacitated
- His birth certificate
- The documents regarding his civil status (*marriage certificate, marriage contract, judgment of divorce, etc.*)
- The names and contact information of the members of his immediate family
- Any other information requested by your notary

FOOD FOR THOUGHT

- Have you discussed with the incapacitated person and his family the necessity of appointing a tutor or curator?
- Have you obtained recent medical and psychosocial evaluations?
- Does the incapacitated person have a protection mandate? If so, do you have a certified copy? If the mandate is not notarized, do you have the original?
- Have you obtained search certificates from the Register of Mandate Dispositions of the Chambre des notaires and the Barreau du Québec?
- Who could be appointed tutor or curator?
- Who could be a member of the tutorship council that supervises the tutor or curator?
- Any other question raised by your notary.