

A TUTOR FOR A MINOR CHILD

What do you do when parents can no longer take proper care of their child?

BEING A TUTOR: A DUTY TO PROTECT!



Make sure the child's interests are properly safeguarded.

Consult your **notary!**



WHEN TO APPOINT A TUTOR FOR A MINOR CHILD?

When parents are no longer able to fulfil their parental responsibilities, a tutor must be appointed to protect their minor children and their property. This is called **dative tutorship**.

There may be various reasons why parents are no longer able to fulfil their responsibilities. The most obvious is death, but there are others:

- + They have been declared incapacitated by a court. (A person is declared incapacitated when his health prevents him from making decisions or acting on his own behalf.)
- + A court has withdrawn from them some or all of their parental responsibilities.
- + They are incapable of making a timely decision for their minor child (perhaps they cannot be found or are suffering from a serious illness that temporarily prevents them from being consulted).

*As soon as a tutor is appointed for the child, the law requires that a **tutorship council** be set up to supervise the acts and decisions of the tutor.*

WHAT IS THE ROLE OF THE TUTOR?

The tutor must generally take charge of all **parental responsibilities**.

For example:

- + Meet the needs of the minor (food, clothes and lodging).
- + Assume his custody and supervision.
- + See to his education.
- + Provide him with the health care he needs.
- + Represent him and defend his rights (take legal action on his behalf).
- + Administer his property and protect it until he comes of age, or entrust this duty to another person, a professional, or a specialized firm.

HOW IS A TUTOR APPOINTED?

Your notary will advise you on the administrative and judicial procedures to be taken in either of the following situations:

1. The parents have appointed a tutor for the child

The parents may have appointed the person who will act as tutor for their minor child.

You may report any abuse of a child to the Directeur de la protection de la jeunesse.

If the Curateur public finds irregularities in the administration of a child's property, or if someone informs him of such, he may investigate.

DID YOU KNOW?





THE CURATEUR PUBLIC IS A PERSON NAMED BY THE QUÉBEC GOVERNMENT. HIS DUTIES INCLUDE SUPERVISING THE TUTOR'S ADMINISTRATION.

To know whether this has been done, you may consult:

- + The will of the last parent to die
- + The protection mandate in case of incapacity of the last parent to become incapacitated
- + The Curateur public's form used for this purpose

You must then submit an **application to the court** so that a **tutorship council** is set up to supervise the acts and decisions of the tutor.

If a tutor has been designated in a **will that is not notarized** or in a **protection mandate**, you will also have to undertake **judicial procedures** to have the will probated or to validate the protection mandate.

In principle, the person appointed as tutor has **30 days** to accept or refuse the duty. He must inform the **Curateur public** of his decision. If the parent is deceased, the tutor must also inform the person responsible for settling the succession of his decision.

*The **Curateur public** is a person named by the Québec government. His duties include supervising the tutor's administration.*

2. The parents have not appointed a tutor for the child

If the parents have not appointed a tutor, an application must be made to the court. The court will designate a tutor and will set up a **tutorship council**. The same applies when the tutor appointed by the parents does not want to or cannot take on the duty.

Anyone may apply to the court, including the minor child.

*If no one can be appointed tutor, the **Directeur de la protection de la jeunesse** and the **Curateur public** become responsible for the child.*

WHAT IS THE PURPOSE OF THE TUTORSHIP COUNCIL?

As soon as a tutor is appointed for the child, the law requires that a **tutorship council** be set up to supervise the acts and decisions of the tutor.

More specifically, a **tutorship council** must:

- + Oversee how the tutor administers the minor child's property.
- + Ensure that the tutor's decisions are in the child's best interest.
- + Assist the tutor, if need be.
- + Authorize certain decisions and give notices to the court when so required by law.

The tutorship council is generally made up of three people from the child's family. To set it up, you must **apply to the court**.

Your notary will provide the best advice adapted to your particular situation and will take the necessary procedures including:

- + Call a meeting of the people required by law to discuss the selection of a tutor and the establishment of a tutorship council.
- + Prepare the documents required by the court.
- + Make sure that the file is complete.

*When the **Directeur de la protection de la jeunesse** and the **Curateur public** become responsible for the child, there is no tutorship council.*

HOW TO PREPARE?

INFORMATION TO COLLECT

- The full name, contact information, date of birth and birth certificate of the child
- The names and contact information of the members of his immediate family
- The information required regarding his parents (e.g. proof of death or incapacity)

FOOD FOR THOUGHT

- Who could be the tutor?
- Would the person accept this duty?
- Should this person be paid?
- Who could replace the person, if need be?
- Who could sit on the tutorship council?
- Any other question raised by your notary.