



Practical Guide

TO **MENTAL
HEALTH**

Rights

Answers to questions
by family and friends
of individuals with
mental health problems

Québec 

Practical Guide

**TO MENTAL
HEALTH
Rights**

Answers to questions
by family and friends
of individuals with
mental health problems

Produced by:

Direction des communications, ministère de la Santé
et des Services sociaux

This document is available online and can be ordered at
www.msss.gouv.qc.ca by clicking Documentation and then Publications.

It may also be ordered by contacting one of the following organizations:

diffusion@msss.gouv.qc.ca or by mail at:

Ministère de la Santé et des Services sociaux
Direction des communications
Diffusion
1075, chemin Sainte-Foy, 16^e étage
Québec (Québec)
G1S 2M1

**Fédération des familles et amis
de la personne atteinte de maladie
mentale (FFAPAMM)**

1990, rue Cyrille-Duquet, bureau 203
Québec (Québec)
G1N 4K8
418 687-0474 (Québec area)
1 800 323-0474 (elsewhere in Québec)

Masculine pronouns are used generically in this document.

Legal deposit

Bibliothèque et Archives nationales du Québec, 2009
Library and Archives Canada, 2009

ISBN : 978-2-550-54853-9 (print version)

ISBN : 978-2-550-54854-6 (PDF)

All rights reserved for all countries. Any reproduction whatsoever, translation or dissemination, in whole or in part, is prohibited unless authorized by Les Publications du Québec. However, reproduction in whole or in part for personal, non-commercial purposes is permitted solely in Québec, provided the source is mentioned.

© Gouvernement du Québec, 2009

ACKNOWLEDGEMENTS

We would like to thank everyone who helped revise the 2009 edition of this guide.

Special thanks go to the following people.

Pierre Desrochers, Attorney

Judith Lauzon, Attorney
Curateur public du Québec

Manon Dion, Development Officer

Hélène Fradet, Director General
Fédération des familles et amis de la personne atteinte de maladie mentale (FFAPAMM)

Christine Lavoie, Attorney
Cabinet du sous-ministre,
Direction des affaires juridiques

Diane Bois, Attorney
Cabinet du sous-ministre
Bureau du Dossier de santé du Québec, Ministère de la Santé et des Services sociaux

Coordination

Louise Latulippe, Research and Socioeconomic Planning Officer

Carole Hince, Research and Socioeconomic Planning Officer
Direction de la santé mentale, Direction générale des services de santé et médecine universitaire, Ministère de la Santé et des Services sociaux

Secretarial Work

Martine Chouinard

Lynn Guimont
Direction de la santé mentale, Direction générale des services de santé et médecine universitaire, Ministère de la Santé et des Services sociaux

We would also like to thank everyone who participated in the first edition published in 1999.

MESSAGE FROM THE MINISTER OF HEALTH AND SOCIAL SERVICES

Family members are often the prime advocates of individuals with mental disorders. Accompanying a loved one also means giving him or her reliable and easily understood information about mental-health rights and about how these rights can be applied in various situations in everyday life.

In this regard, the latest edition of the Practical Guide to Mental-Health Rights stands out as a genuine reference book for anyone who has a family member or friend with a mental-health disorder. In addition to breaking down legal information into everyday language, this guide provides answers to many of the questions asked by the families and friends of people with mental-health disorders.

I congratulate the FFAPAMM; federation of families and friends of individuals with mental-health disorders for this thoroughly updated guide, which was meticulously carried out with the collaboration of my ministry's *Direction de la santé mentale*. Working together, they fleshed out an important component of the *2005-2010 Action Plan on Mental Health – La force des liens*, which supports a stated concern for the close relations of people with mental disorders.

Consequently, I am proud to invite you to read this document and to keep it on hand for future reference. I am convinced that you will find it useful indeed in supporting and guiding your loved one with a mental disorder.

Yves Bolduc

TABLE OF CONTENTS

Introduction	15
Presentation	17



CHAPTER 1

Consent to care

1 What is consent to care?	22
2 What type of care is covered by consent?	22
3 Can everyone give consent to care?	23
4 What does free and enlightened consent mean?	24
5 What information must the person receive to make an informed decision?	24
6 When and how is a person's capacity to give consent to care assessed?	25
7 When must substituted consent be obtained?	26
8 Who is authorized to give substituted consent?	27
9 Under what conditions is substituted consent valid?	28
10 Is written consent required in all cases?	28
11 Under what circumstances is the authorization of a court required to force a person to undergo care?	29
12 Are there any exceptions to consent to care?	30

13	Who can give consent to care for a minor?	32
14	Must consent to care be obtained to restrain a person staying in an institution?	33



CHAPTER 2

The Act respecting the protection of persons whose mental state presents a danger to themselves or to others: confinement in an institution and the psychiatric assessment

15	What should I do if I have good reason to believe that the mental state of a person (someone close to me) presents a danger to themselves or to others?	36
16	In an emergency, how should I proceed to take someone to an institution if they refuse?	37
17	In an emergency, what happens once the person has been taken to an institution by a police officer?	38
18	What is a psychiatric assessment?	39
19	How can I obtain a court order to force a person to undergo a psychiatric assessment if they refuse or oppose it?	42
20	What criteria are used to determine the danger presented by a person?	43
21	What is confinement in an institution?	44
22	Who can give consent to confinement in an institution?	45
23	What can lead to a person being confined in an institution?	46
24	How long does confinement in an institution last?	47
25	What are the rights of persons placed under confinement? ...	47

26	What type of information can family and friends obtain when someone close to them is confined in an institution?	50
27	What are the recourses that a person can exercise if they are dissatisfied with their confinement?	51
28	How can you appeal to the Tribunal administratif du Québec?	51



CHAPTER 3

Professional privilege and confidentiality

29	What is professional privilege?	54
30	Who is bound by professional privilege?	54
31	What is the difference between professional privilege and confidentiality?	55
32	What information is considered confidential?	56
33	In which situations can a professional be relieved of their obligation to respect professional privilege?	56
34	Under which conditions can a family member or friend be given confidential information?	57
35	Is providing information concerning a friend or family member to a professional in the health and social services network considered by the professional to be a breach of professional privilege?	58


CHAPTER 4**Access to the medical record of a patient and their Québec Electronic Health Record**

- 36** What are the rules governing access to a patient's medical record? 60
- 37** Which persons other than the patient are authorized by law to have access to the patient's medical record? 61
- 38** What is the procedure for requesting access to a medical record? 63
- 39** What is the Québec Electronic Health Record? 63
- 40** What information will your Electronic Health Record contain? 64
- 41** Who will have access to your Electronic Health Record? 65
- 42** Who can decide not to have an Electronic Health Record? 65
- 43** Will I be able to access my Electronic Health Record? 66


CHAPTER 5**The right to receive services**

- 44** What is the right to receive services? 68
- 45** How can you tell whether the services provided by an institution are adequate? 69
- 46** When can a hospital centre release a person? 70
- 47** If an institution is unable to provide a service, does it have to refer the person to another resource? 70
- 48** Can I choose the professional from whom or the institution from which I wish to receive services? 70

49	How can I find out which services are offered in my region?	71
50	If I represent an incapable person of full age, can I exercise their right to access the services offered?	72
51	Can I accompany a close family member or friend looking for information or a service?	73



CHAPTER 6

Protective supervision

52	What is protective supervision?	76
53	What are the different types of protective supervision?	77
54	What is the procedure to choose the type of protective supervision most appropriate to the circumstances of a person of full age?	77
55	What are the responsibilities of the legal representative for each type of protective supervision?	79
56	What conditions are required to institute protective supervision?	82
57	What information do medical and psychosocial assessment reports contain?	82
58	Who can ask for protective supervision to be instituted?	84
59	Who should I contact to apply for the institution of protective supervision?	84
60	How do I file a motion for the institution or modification of protective supervision?	85
61	What is the role and make-up of the assembly of relatives, allies, and friends in the institution of protective supervision?	86

62	What is the role of the Curateur public?	87
63	What are the rights of persons for whom protective supervision has been requested, and what are the rights of their families?	88
64	What is tutorship to minors?	89



CHAPTER 7

The mandate in anticipation of incapacity

65	What is a mandate in anticipation of incapacity?	94
66	What are the advantages of a mandate in anticipation of incapacity?	94
67	What is the difference between a will, a power of attorney, and a mandate in anticipation of incapacity?	95
68	What forms can a mandate in anticipation of incapacity take?	96
69	What must a mandate in anticipation of incapacity contain?	97
70	What is the role of the mandatary?	98
71	How is a mandate in anticipation of incapacity homologated?	98


CHAPTER 8**Other legal aspects of concern to family members and close friends of a person with a mental health problem**

72	What is a will?	102
73	What are the advantages of drawing up a will?	102
74	What are the different kinds of wills?	102
75	What happens if a person dies without a will?	103
76	What dispositions must you take to ensure that a family member or friend with mental health problems can inherit your property?	104
77	Can the legal representative of an incapable person of full age make special provisions in their own will for this person of full age?	104
78	Can I make decisions regarding my minor children in anticipation of my death?	105
79	What are the main financial impacts after a death?	105
80	What is obligation of support?	106
81	Who is entitled to support payments?	107
82	What conditions are required to claim support payments?	107
83	Are parents obligated to lodge their children of full age, whether or not the children are capable of caring for themselves?	108
84	If I have custody of an incapable person of full age, what is my liability if he or she injures someone else?	109



GLOSSARY	111
-----------------------	-----



APPENDICES

APPENDIX 1 Summary Table	117
APPENDIX 2 Court Hierarchy	119
APPENDIX 3 Difference between a non-judicial recourse and a judicial recourse	121
APPENDIX 4 List of Fédération des familles et amis de la personne atteinte de maladie mentale (FFAPAMM) member associations and other resources	122

INTRODUCTION

Presentation

The purpose of this guide is to offer friends and family members of individuals with mental health problems easier-to-understand, concrete legal information on the rights of individuals with mental health problems. It is also designed to familiarize them with the scope of these rights and provide answers to their questions about them.

The guide is in keeping with the policy directions set out in the Québec Mental Health Policy adopted in 1989 and the 2005-2010 Mental Health Action Plan (*Plan d'action en santé mentale 2005-2010 – La force des liens*) with regard to the promotion, respect, and protection of the rights of mental health service users. The Ministère de la Santé et des Services sociaux (MSSS) facilitated the preparation and distribution of the first version, which was based on the recommendations of an advisory committee made up of representatives from the Direction de la planification at the Ministère de la Santé et des Services sociaux (physical and mental health unit), various health and social services agencies, and the Fédération des familles et amis de la personne atteinte de maladie mentale (FFAPAMM). The 2009 update was written with the collaboration of representatives from FFAPAMM, the Curateur public du Québec, the Direction générale des affaires juridiques et législatives, the Direction générale des services de santé et médecine universitaire, and the Direction de la santé mentale of the Ministère de la Santé et des Services sociaux.

Content

The guide provides answers to many legal questions asked by the family and friends of individuals with mental health problems. Written in simple, easy-to-understand language, it is divided into eight chapters, each of which deals with a specific legal theme and provides answers to the most frequently asked questions on that theme.

Table of Contents: How to use it?

The Table of Contents lists the questions that are dealt with in each chapter.

To make the guide easier to consult, the questions are presented individually so that they can be consulted separately. However, to gain a more in-depth understanding of the issues, we suggest that you read the entire chapter.

Legal Terms: Consult the Glossary

Certain legal terms or expressions and their definitions are listed in alphabetical order at the end of the guide. The glossary will help you to quickly find the meaning of these terms and expressions.

Appendices

The following documents can be found at the end of the guide:

- summary table of the main human rights and freedoms guaranteed by the Québec Charter of Human Rights and Freedoms (Appendix 1)
- table listing the main Canadian and Québec courts (Appendix 2)
- table listing legal and non-legal recourses (Appendix 3)
- list of the associations of families and friends of individuals with mental health problems (Appendix 4)

We trust that the information in this guide will give you a better understanding of the legal aspects of your situation and that of your friends and family members for which clear answers are not always readily available.

PRESENTATION

Fédération des familles et amis de la personne atteinte de maladie mentale (FFAPAMM), a trusted organization serving the public since 1986

The Fédération des Familles et Amis de la Personne Atteinte de Maladie Mentale (FFAPAMM) was established in 1986 and has received funding from the Ministère de la Santé et des Services sociaux since 1991. Its mission is to bring together, represent, and provide support to associations of families and friends of individuals with mental health problems.

FFAPAMM is a movement with a community-based philosophy. It encourages local initiatives and lobbies on behalf of member associations that provide highly appreciated and innovative support, activities, and services to the public.

The standards governing the services and the administration of the normative framework of member associations are aimed at espousing the recognition of these associations as gateways to services for families and friends of individuals affected by a severe mental health problem.

The main orientations are based on the following guiding principles:

- Providing the flexibility needed for member associations to grow and develop
- Developing support measures based on the principle of updating the knowledge and thus the potential for action of families and friends
- Respecting and valuing individuals involved in member associations
- Encouraging fair access for all to basic similar services, funding, and counselling
- Pursuing efforts devoted to the development of good working relationships with all stakeholders

FFAPAMM values are based on the importance of ensuring that there is no discrimination based on race, gender, religion, political opinion, or social status. FFAPAMM upholds the principle of the primacy of the individual and, more specifically, in his or her role as an attendant. Integrity, honesty, openness, diligence, and respect are the foundation of the strategies that guide its actions.

FFAPAMM member associations

When someone is diagnosed with a mental health problem, the family is plunged into a totally different universe with new rules that cause much apprehension and anxiety. Most family members go through a period of upheavals that they perceive as negative, at least until the period of adaptation comes to an end. Adaptation is a natural phenomenon that enables us not only to survive but also to acquire new knowledge and skills. When we develop these skills, they will remain with us for the rest of our lives.

The leitmotiv of FFAPAMM member associations is to provide guidance to help family members and friends develop these skills by providing a wide range of services adapted to their needs.

It is through specific, diverse activities that the member associations contribute to the well-being of those who call on them for help:

- Psychosocial counselling
- Information activities
- Support groups
- Educational activities
- Awareness-raising activities
- Respite care measures
- And many other services

The principles guiding all these actions and interventions are aimed at allowing family members and friends to:

- Fully play their roles as care givers
- Develop their ability to live their lives to the fullest
- Improve their quality of life
- Acquire a positive outlook despite the stress caused by the situations they are faced with
- Get actively involved in organizing and managing association services

The overarching goal is to constantly improve their quality of life and maintain a healthy and mutually respectful relationship with their family member or friend afflicted with a mental health problem.

All interventions are based on the values espoused by FFAPAMM's normative framework and code of ethics, i.e., integrity, honesty, openness, diligence, and respect.

The associations work in concert with sectoral and inter-sectoral partners in the public and community network to provide individuals with mental health problems, as well as their families and friends, all the complementary services required by their circumstances.

Feel free to contact the Fédération at the following address:

**Fédération des familles et amis de la personne
atteinte de maladie mentale (FFAPAMM)**

1990, rue Cyrille-Duquet, Bureau 203

Québec (Québec) G1N 4K8

Telephone: 418 687-0474 or 1 800 323-0474 (toll free)

Fax: 418 687-0123

Website: www.ffapamm.com

Email: info@ffapamm.com





Chapter 1

Consent to care

1 | What is consent to care?

Every individual has the right to consent or refuse consent to care. This right is based on two fundamental legal principles.

- Every human being has a right to inviolability and personal security.
- Save for the exceptions set out in the law, no one can violate the personal security of the person without having first obtained his or her free and enlightened consent.

IN BRIEF

Because of the principles listed above, only the person concerned can make decisions concerning his or her life and well-being. The health professional who offers care must respect the person's choice, i.e., his or her freedom to decide.

It should be noted that different rules apply to minors and persons of full age, i.e., someone aged 18 years or over, and minors. (see Question 13 for more information on the consent to care of minors)

2 | What type of care is covered by consent?

Under section 11 of the Civil Code of Québec, no person may be made to undergo care of any nature without his or her consent, whether for:

- Examinations
- Specimen taking
- Treatment
- Or any other medical, psychological, or psychosocial act (e.g., medical treatment or psychosocial or psychiatric assessment)

Note: Consent may also include consent to admission to a hospital, for example.

IN BRIEF

Whenever a health professional wants to provide care to a person, whatever the nature of the care, he or she must obtain the person's authorization or, in certain specific circumstances, provide the care by virtue of the law.

For example, a psychologist who wishes to perform a psychological test must obtain the person's consent. In the same way, a physician who wishes to prescribe medication must obtain the person's authorization.

3 | Can everyone give consent to care?

According to the Civil Code of Québec, all persons are fully able to exercise their civil rights. This is the presumption of capacity.

This means, in principle, that all persons of full age have the capacity to give their consent to care, whatever their state of health. However, according to the provisions of section 15 of the Code, if the person of full age is deemed incapable of giving consent, consent is given by a third party authorized by the law to act on the person's behalf. The consent given by the third party is substituted consent. However, the person who is deemed incapable of giving consent can refuse care despite the approval of his or her representative. Other questions below deal with the examination of the capacity to consent (**Question 6**), substituted consent (**Questions 7 to 9**), and the consent of minors (**Question 13**).

IN BRIEF

If a person is not deemed incapable by his or her physician of giving consent, the person may, at any time, accept or refuse care offered by the physician.

Even if the person is deemed incapable of taking care of him or herself or of administering his or her property (tutorship or curatorship), the person retains the capacity to consent to or refuse health care.

4 | What does free and enlightened consent mean?

To be valid, consent to care must be free and informed. This means that the individuals:

- Agree of their own free will, i.e., without pressure or threats, and without altered faculties (for example, by medication, alcohol, or drugs that alter their cognitive functioning)
- Receive all the information required to make a decision with full knowledge of the facts

5 | What information must the person receive to make an informed decision?

The main information the person must receive before consenting to a treatment or any other act must include the following:

- The nature and purpose of the treatment or act
- The anticipated effects of the treatment or act
- The procedure to be used, if any
- Possible risks and side-effects associated with the treatment or act
- Other possible treatments, if any
- The probable impact on his or her state of health and well-being if he or she refuses care

In addition, the information must be clear and presented in a language that the person understands. The health professional must also answer all the questions that the person asks.

IN BRIEF

If a person's physician or psychiatrist deems him or her incapable of giving consent to care, the information on the proposed care must be provided to the third party who is authorized to give consent for the person. (see Question 8)

6 | When and how is a person's capacity to give consent to care assessed?

Generally speaking, the examination of a person's capacity to give consent to care is a medical assessment. This assessment is required for a treatment, an examination, taking specimens, or any other act proposed to a person.

In the mental health field, the capacity of a person to give consent to care can vary over time as well as with the severity or importance of the treatment required by his or her state of health. The capacity or incapacity of a person to consent to care is never carved in stone. It must be evaluated each time care is proposed, whatever the nature of the care.

The capacity to give consent refers to the notion of competency. As such, to assess the capacity of the person to give consent, the health professional must measure the degree of autonomy and awareness of the person by evaluating the following competencies:

- Their ability to receive and understand the information provided to them
- Their ability to reason
- Their ability to evaluate the consequences of their choice regarding their particular circumstances
- Their ability to express their decision

Consequently, individuals are deemed capable of giving consent if:

- They clearly understand the nature and purpose of the proposed treatment
- They are capable of evaluating the consequences of the treatment
- They are able to express their decision
- Their ability to understand is not affected by their disease

IN BRIEF

The examination of the capacity to give consent to care does not depend on the reasonableness of the person's decision. A person who is deemed capable of consenting to care can make the decision as he or she sees fit, even if it may appear wrong-headed or unreasonable, insofar as he or she possesses the abilities required to make the decision. The decision may seem detrimental to the person's well-being but, if they are deemed capable of consenting to care, they are entitled to make their own decision.

7 | When must substituted consent be obtained?

Remember that every person is presumed to be capable of consenting to care. Consequently, that person is the only one who can give free and enlightened consent to care.

However, if someone close to you is deemed incapable of giving consent to care, the law requires the health professional (e.g., the psychiatrist) to obtain consent to care from another person authorized by the law to give it on the person's behalf. This is substituted consent.

IN BRIEF

If a psychiatrist declares a person incapable of consenting to care, he or she must provide the necessary information to the person designated by the Québec Civil Code to exercise the person's right on their behalf.

8 | Who is authorized to give substituted consent?

According to the provisions of section 15 of the Civil Code, substituted consent can be given, in the following order, by:

- **The mandatary**¹: In this case, the mandate in anticipation of incapacity must be complete, that is, it must authorize the mandatary to care for the person and it must be officially approved by the Superior Court.
- **The tutor**² **or the curator**³: If there is no mandatary, the tutor or the curator will be authorized to give substituted consent. For the tutor to be authorized to give such consent, he or she must have the ability to care for the person.
- **The spouse**: If the person who is incapable of consenting to care does not have a legal representative (i.e., a mandatary, a tutor, or a curator), the spouse will be authorized to give consent to care on his or her behalf. The term spouse refers to all types of spouses, whether the person is married, in a civil union, or in a common-law marriage.
- **A close relative (e.g., father, mother, sister, etc.) or someone with a special interest in the person** who is incapable of consenting to care (e.g., someone who has a stable, long-term relationship with the person, such as a friend) may give substituted consent.

1. See Chapter 6, which provides answers to questions concerning these representatives.
2. Idem
3. Idem

9 | Under what conditions is substituted consent valid?

Substituted consent must be free and enlightened. In addition, the individual called on to consent to care for another person must act in the sole interest of the person, taking into account, insofar as possible, the desires of that person. Substituted consent is a major responsibility because the individual must evaluate the positive and negative effects of his or her decision on the other person. As such, before giving consent, the individual must make sure:

- That the care will have a beneficial effect, despite the grave and permanent effects of the care,
- That the care is the best option given the circumstances, and
- That the possible risk is not disproportionate to the benefit that can reasonably be anticipated.

IN BRIEF

If you are called on to make a decision for someone close to you, remember that you must be guided by the sole interest of that person and by their wishes, not by your own values, opinions, or personal choices.

10 | Is written consent required in all cases?

Consent must be authorized in writing in certain circumstances only. For example, written consent must be given in the case of an organ donation, an experimental treatment, etc.

However, in all cases, written consent is not, in and of itself, proof of its validity. Written consent is only valid insofar as it has been given in a free and enlightened way by the person in question or by their representative.

IN BRIEF

Even after signing a consent form, a person may change their mind and refuse the proposed act or treatment, even if the refusal is verbal.

For example, someone close to you may, in the morning, sign an authorization for a treatment and then decide, in the evening, to refuse the treatment.

11 | Under what circumstances is the authorization of a court required to force a person to undergo care?

The Superior Court⁴ plays an important role in protecting the integrity of individuals. It is necessary to obtain the authorization of the court in the following situations:

- When the person authorized to give substituted consent is prevented from doing so. For example, when the person authorized to give substituted consent cannot be contacted because he or she is travelling abroad.
- When the person authorized to give substituted consent refuses to give consent and when the refusal is not justified by the best interests of the person. For example, when the person authorized to give consent refuses a treatment, even when, according to the medical team, this refusal could cause harm to the ill person.
- When the person of full age categorically refuses care that is offered. For example, when the person authorized to give substituted consent for someone who is deemed incapable of giving consent gives consent, but the incapable person is categorically opposed to the treatment and refuses to undergo the care related to the treatment. The health institution may then call on the Superior Court to obtain a court order to provide the treatment.

4. Please refer to Appendix 2 for more information on the Superior Court.

12 | Are there any exceptions to consent to care?

In the mental health field, certain situations make it impossible to obtain consent from the person for care that a health professional wishes to provide. Consent to care from the person may be overridden in the following situations:

- An emergency
- Reasons of hygiene
- When a psychiatric assessment is ordered by the court to determine whether or not the person should be confined in an institution
- When confinement in an institution is ordered by the Québec Court following a psychiatric assessment
- When a court order by the Superior Court to provide treatment is obtained

Let's look at these exceptions one at a time.

Emergency

There is an emergency when the person's life or bodily integrity is in danger. This is a situation when immediate care must be given without which the person may die or suffer a grave and permanent health problem. In these situations, the obligation to provide care to a person in danger overrides the obligation to obtain consent or substituted consent for care, which cannot be given in a timely fashion given the speed with which the care must be provided. For example, a person is taken to a hospital in an ambulance. He is very confused and suffering from drug poisoning. The situation is critical. The person must be treated rapidly because of this emergency situation. In this case, the speed with which the treatment must be provided does not allow consent or substituted consent to be obtained.

Hygiene

Since it is a question of basic care and not a medical treatment, hygienic care required by the person's condition can also be given without his or her consent (for example, a person who arrives at the hospital with deplorable personal hygiene and refuses to wash).

Psychiatric assessment ordered by the court

A person must undergo a psychiatric assessment, despite their refusal, if an assessment is ordered by the court (in this case, the Court of Québec) to determine whether the person's mental state is a danger to himself or to others. The judge may also authorize any other medical examination that is necessary in the circumstances. In addition, if the person is placed under confinement because of the danger their mental state represents, they must undergo periodic examinations to re-evaluate the necessity of remaining under confinement, even against their will.

Confinement in an institution following a psychiatric assessment

Confinement in an institution is an exceptional measure that allows, with the authorization of the Court of Québec, a person, despite their refusal or opposition, to be confined in an institution if their mental state is deemed to present a danger to themselves or to others. It should, however, be noted that this situation does not allow the person to be treated against their will.

Obtaining a court order to provide treatment

As we saw in Question 11, if the person of full age who is incapable of giving consent categorically refuses to receive treatment, the treatment cannot be given even if the person who is authorized to give substituted consent consents to the treatment, except if it is for an emergency or hygienic care. The institution can, however, ask the Superior Court for authorization to override the refusal. If authorization is granted, the institution can treat the incapable person of full age against his or her will.

13 | Who can give consent to care for a minor?

The rules governing consent to care of a minor are different if the person is under 14 years of age than if the minor is 14 years of age or over.

Minor under 14 years of age

Consent to care for a minor under 14 years of age must be given by a person holding parental authority (father, mother, or a dative tutor appointed by a judge). The tutor is the minor's legal representative. The person holding parental authority must act in the best interests of the child and must ensure that the proposed care will be beneficial, that the care is the best option given the circumstances, and that the possible risk is not disproportionate to the benefit that can reasonably be anticipated. The assessment of the pros and cons of the care are thus of utmost importance.

The authorization of the Superior Court may be necessary in certain cases, for example, if the person holding parental authority refuses the proposed care and the refusal is counter to the best interests of the child, or if the father and mother of the minor disagree on the proposed care.

Minor fourteen years of age or over

According to the *Act respecting health services and social services* (AHSSS), a minor 14 years of age or over can consent to care of his or her own volition. However, if his or her state of health requires that he or she stay in an institution for more than twelve hours, the person holding parental authority must be notified.

The authorization of the Superior Court may be necessary in certain cases, for example, if a minor 14 years of age or over refuses care required by his or her state of health. However, in an emergency, the authorization of the person holding parental authority, or the tutor, is sufficient.

IN BRIEF

If your child is under 14 years of age, it is you (father or mother) who must give consent to care.

If your child is 14 years of age or over, they can give consent to care of their own volition. However, if they stay in an institution (e.g., a hospital) for more than twelve hours, you must be notified.

14 | Must consent to care be obtained to restrain a person staying in an institution?

According to the document entitled *Les orientations ministérielles relatives à l'utilisation exceptionnelle des mesures de contrôle: Contention, isolement et substances chimiques* (Government policies pertaining to the exceptional use of safety measures: restraints, patient isolation and drug substances, published by MSSS in 2002 (French only):

“All persons, or their legal representatives, must be given all the information they need and be involved in the decision-making process leading to the use of safety measures so that they are able to give free and enlightened consent.”

However, the same document also mentions that:

“Healthcare workers can use exceptional safety measures without first obtaining the consent of the person in emergency situations, that is, when the situation is unforeseen and presents an imminent danger to the person or to others. Moreover, a follow-up analysis is required as part of the assessment measures that the institution must put in place.”

In brief, protecting the person or others is the only legal justification for authorizing practitioners to override consent to care.

However, when these exceptional measures are used, they must be noted in detail in the person's record, in particular:

- A description of the measures used,
- The time during which they were used, and
- A description of the behaviour that led to the application or continued application of the measures.

IN BRIEF

With the exception of emergency situations, the use of safety measures such as isolation, restraint, and chemical substances must be authorized by the person in question or, if this person is deemed incapable of giving such authorization, by the person authorized to give substituted consent.



Chapter 2

*The Act respecting the protection
of persons whose mental state
presents a danger to themselves
or to others: confinement in
an institution and the psychiatric
assessment*

15 | What should I do if I have good reason to believe that the mental state of a person (someone close to me) presents a danger to themselves or to others?

If you believe that the mental state of someone close to you presents a danger to themselves or to others, it is always preferable to first obtain the cooperation and consent of the person to take them to an institution for assessment.

In the event the person refuses

An interested party (or a physician) may request a court order for the temporary confinement of someone close to them. If the person refuses to be taken to a hospital, you can ask the Court of Québec for a court order for **temporary confinement** to oblige the person to undergo a psychiatric assessment. In this situation:

- You will have to prove to the court that the mental state of the person presents a grave and immediate danger to themselves or to others.
- Your proof must include facts and observations on the recent behaviour of the person that makes you believe that their mental state presents a danger to themselves or to others.

In the event of an emergency

EXCEPTIONALLY, a situation may be so urgent that you do not have the time to take the steps described above. In such cases, that is, when the mental state of the person in question presents a grave and immediate danger to themselves or to others, the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* allows you to override the need for the consent of the person or an authorization from the court. This means that the person can be taken, against their will, to an institution to have him or her placed under **temporary confinement**. (see Question 20)

IN BRIEF

Save for emergencies, you must turn to the court (Court of Québec) if you have good reason to believe that the mental state of someone close to you presents a danger to themselves or to others.

Note: FFAPAMM member associations provide support to families throughout the legal process and/or refer them to the appropriate community resources.

16 | In an emergency, how should I proceed to take someone to an institution if they refuse?

A police officer (peace officer) may, without the authorization of the court, take a person to an institution against their will at the request of a member of a crisis intervention unit in your region or, when no member of a crisis intervention unit is available in time to assess the situation, at the request of:

- The person who holds parental authority for a minor

If the person is of full age, the request must be made by:

- His or her mandatary, tutor, or curator⁵
- His or her spouse, a close relative, or someone with a special interest in the person

The police officer who takes the person to the institution must have good reason to believe that they present a grave and immediate danger to themselves or to others.

5. We will see who these persons can be in Chapter 6.

IN BRIEF

A grave and immediate danger arising from a mental health problem is considered an emergency that requires quick action. If there is a risk for the life or integrity of yourself or others, you can contact the crisis intervention unit in your region for help. Your association can provide information on this type of service. However, if no member of the unit is available, you can, as provided for in the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, contact your local police department for help.

Note: Certain FFAPAMM member associations can help you with your contact with the police.

17 | In an emergency, what happens once the person has been taken to an institution by a police officer?

Once the person arrives at the institution, the institution is obliged, while taking medical emergency priorities into account, to take charge of the person immediately and have him or her examined by a physician (generally an emergency physician). If the institution cannot place a person under observation because of the way it is organized or available resources, it must immediately transfer the individual to another institution with the necessary capacities. If the physician who examines the person deems that their mental state presents an immediate and grave danger, the physician must place the person under **preventive confinement** for no more than 72 hours.

If the physician makes this decision, he or she must immediately notify the director of professional services or the executive director of the institution. The physician can also release the person if he or she deems that the person does not present an immediate and grave danger to themselves or to others.

IN BRIEF

Preventive confinement does not permit the institution to submit the person to a psychiatric assessment against his or her will. If the person does not consent to the assessment or is opposed to it, the institution must obtain authorization for the assessment from the Court of Québec within the deadline set out in the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* (P38.001). The confinement authorized by the court to conduct a psychiatric assessment is temporary confinement.

A motion for temporary confinement can thus be filed in two situations: the situation described in Question 15 (when the person presents a danger but the danger does not constitute an emergency) and the situation described above.

18 | What is a psychiatric assessment?

A psychiatric assessment is a procedure authorized by the court with a view to evaluating the mental state of a person who refuses to be confined in an institution and determining whether or not the confinement is necessary.

A psychiatric assessment starts with a psychiatric examination. If the result of the first examination indicates that confinement in an institution is necessary, a second psychiatric examination must be carried out by a different psychiatrist within the specified deadline. The content of the examination reports is specified in the Civil Code and the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, and includes the following:

- The mention that the psychiatrist examined the person him or herself
- The date of the examination
- The diagnosis, even if only provisional, regarding the mental state of the person
- The opinion of the psychiatrist on the severity and probable or possible consequences of the person's mental state

- The reasons and facts upon which the psychiatrist based his or her opinion and diagnosis as well as the reasons and facts provided by others
- An assessment of the need for confinement in an institution if it has been determined that the person presents a danger
- An assessment of the capacity of the person to take care of him or herself and administer his or her property
- An assessment of the need, if the person has been deemed unable to take care of him or herself, to place him or her under protective supervision

In the event that both psychiatric examinations conclude that the person must be confined in an institution and that the court has authorized such confinement, the institution must examine the person periodically to determine whether continued confinement is necessary. These examinations must be conducted⁶:

- 21 days from the date of the court-ordered confinement order that resulted from a psychiatric assessment
- Every three months thereafter

IN BRIEF

As soon as a psychiatric examination concludes that the confinement is not or no longer justified, the confinement must be terminated and the person is free to leave the institution.

6. An example of how the deadlines stipulated in the Act are calculated is provided on the next page.

Sample calculations of the deadlines for a psychiatric assessment

PREVENTIVE CONFINEMENT	TEMPORARY CONFINEMENT
<p>Taking charge of the individual Monday, June 1, at 1:00 p.m.</p> <p>Request for preventive confinement Within 72 hours of management of the person's case; No later than Thursday, June 4, at 1:00 p.m.</p> <p>Court order Thursday, June 4, at 1:00 p.m.</p> <p>1st examination Within 24 hours of the court order; No later than Friday, June 5, at 1:00 p.m.</p> <p>2nd examination Within 48 hours of the court order; No later than Saturday, June 6, at 1:00 p.m.</p> <p>Motion for confinement based on psychiatric assessment With 48 hours of the 2nd examination; No later than Monday, June 8, at 1:00 p.m.</p>	<p>Court order Monday, June 1, at 1:00 p.m.</p> <p>Taking charge of the individual Tuesday, June 2, at 1:00 p.m.</p> <p>1st examination Within 24 hours of management of the person's case; No later than Wednesday, June 3, at 1:00 p.m.</p> <p>2nd examination Within 96 hours of management of the person's case; No later than Saturday, June 6, at 1:00 p.m.</p> <p>Motion for confinement based on psychiatric assessment Within 48 hours of the 2nd examination; No later than Monday, June 8, at 1:00 p.m.</p>

19 | How can I obtain a court order to force a person to undergo a psychiatric assessment if they refuse or oppose it?

As mentioned above, a request for a psychiatric assessment (temporary confinement) is necessary when the person refuses to submit to a psychiatric examination and there is good reason to believe that their mental state presents a danger to themselves or to others.

Following is a brief legal overview of how to proceed:

- The request must be filed with the Court of Québec in the form of a motion. The motion must be filed in the judicial district where the person who has refused the psychiatric assessment resides.
- In the motion, you must prove, by recent facts and observable behaviour (threat of suicide, lack of organization, violence, and threats to others, etc.), that the true and current mental state of the person presents a danger to themselves or to others.
- Before filing the motion with the court or judge, you must notify the person who refuses the confinement or the assessment at least two days in advance, save in cases of exemption.
- At the end of the hearing of the motion, the judge, if he or she is convinced by the proof, will hand down a judgment ordering the psychiatric assessment and will designate the institution where the person will be taken. The person may be taken there by a police officer. The judgment will then be forwarded to the Tribunal administratif du Québec since this body can, at any time, review the continuance of the confinement or any other decision concerning a person under confinement.

A physician or an interested party, including a close relative or friend, can file the motion for temporary confinement to force someone to undergo a psychiatric assessment.

Note: You can ask your association for more information before filing a motion. It can provide support throughout the legal process or refer you to the appropriate resources.

20 | What criteria are used to determine the danger presented by a person?

The Act does not define dangerousness, but it provides for two levels of danger:

- A danger to the person themselves or to others, which can lead to **temporary confinement**. Temporary confinement is confinement authorized by the court to oblige the person to undergo a psychiatric assessment to determine whether they are dangerous because of their mental state.
- A grave and immediate danger that can lead to preventive confinement. **Preventive confinement** is an exceptional measure that allows a person to be confined in an institution against their will, that is, without their consent and without the authorization of the court, for no more than 72 hours, if the mental state of the person presents a grave and immediate danger. A motion for temporary confinement can be filed thereafter.

In the case of preventive confinement, the level of danger is based on the facts as evaluated by a member of a crisis intervention unit or a police officer if a member of a crisis intervention unit is not available. If, according to their judgement, the mental state of the person presents a grave and immediate danger, the person can be taken to an institution where a physician (emergency physician, for example) can place him or her under preventive confinement. The level of danger is then determined by a psychiatric assessment. During the 72-hour preventive confinement period, consent must be obtained from the person to submit him or her to a psychiatric assessment. If the person does not provide consent, the institution must obtain authorization from the Court of Québec.

The Act provides for two levels of danger, the second of which, grave and immediate danger, is an emergency situation that requires quick action to remove the person from a situation that is a danger to their life or integrity or to protect the lives and integrity of others.

IN BRIEF

The second level of danger provided for in the Civil Code, that is, grave and immediate danger, is an emergency situation.

EXAMPLE

A family member has a very specific plan to commit suicide and his behaviour indicates that he will soon act on his plan. Or a close friend is intoxicated and is having hallucinations that are pushing him to injure himself (self-mutilation) and break things. He is becoming threatening to you too, he pushes you, etc. These situations require quick action because the life and integrity of this person and your own are in danger.

These are just a few examples of grave and immediate danger. Each situation is unique and must be judged based on the circumstances involved.

21 | What is confinement in an institution?

Confinement in an institution is an exceptional measure used to ensure the protection of a person whose mental state is a danger to themselves or to others.

It means that a person can be confined against their will in an institution in order to protect their safety or that of others. The Court of Québec must authorize confinement in an institution.

The legal rules authorizing confinement must be strictly respected since confinement in an institution temporarily deprives a person of their right to liberty. Since confinement infringes on this fundamental right, these rules should thus be only applied in exceptional circumstances.

It should also be noted that these rules apply only when the person refuses or is incapable, based on their opposition, of submitting to a psychiatric assessment to determine either the need for confinement in an institution or of submitting to confinement in an institution when the psychiatric assessment concludes that such confinement is necessary.

This means that if the person consents to submit to a psychiatric assessment or confinement following the assessment, these legal rules do not apply.

IN BRIEF

Authorization to confine a person in an institution does not mean authorization to treat the person.

This authorization only allows the institution to submit the person to physical control and supervision by a health professional because their mental state is deemed a danger to themselves or to others. As such, a person who is confined cannot leave the institution as long as their confinement is deemed necessary.

For example, if a close relative is confined in an institution, she cannot leave the institution in question. However, she cannot be forced to undergo a treatment that she refuses.

22 | Who can give consent to confinement in an institution?

To confine someone in an institution, you must first seek consent from that person.

However, when the person is placed under protective supervision, that is, when they have an officially appointed legal representative, this representative can give consent on their behalf.

The only representatives who are authorized to give consent to confinement are:

- For minors: the person holding parental authority (father, mother, or dative tutor)
- For persons of full age: the mandatary, the curator, or the tutor

The consent of the representative is only valid insofar as the person is not opposed to being confined in an institution.

IN BRIEF

In all cases where a family member or close friend refuses to be confined in an institution or is opposed to confinement, despite your consent, authorization must be obtained from the Court of Québec to submit the person to confinement. The motion must be filed with the court by the health institution concerned.

23 | What can lead to a person being confined in an institution?

The only reason for confining a person in an institution against their will is that their mental state presents a danger to themselves or to others; this is referred to as “dangerousness.”

Dangerousness is discussed in section 27 of the Civil Code of Québec:

“Where the court has serious reasons to believe that a person is a danger to himself or to others owing to his mental state, it may, on the application of a physician or an interested person and notwithstanding the absence of consent, order that he be confined temporarily in a health or social services institution for a psychiatric assessment. The court may also, where appropriate, authorize any other medical examination that is necessary in the circumstances. The application, if refused, may not be submitted again except where different facts are alleged.

If the danger is grave and immediate, the person may be placed under preventive confinement, without the authorization of the court, as provided for in the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others.*”

24 | How long does confinement in an institution last?

The court order authorizing confinement in an institution based on a psychiatric assessment also sets the length of the confinement. When the duration exceeds 21 days, the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* stipulates that the institution must examine the person periodically to ascertain whether continued confinement is necessary.

The deadlines for the periodic examinations are as follows:

- 21 days from the date of the decision by the court ordering confinement in an institution
- Every three months thereafter

25 | What are the rights of persons placed under confinement?

The legal system recognizes the following rights of persons placed under confinement.

Right to information

When a person is taken to an institution by a police officer, the officer must verbally tell them where they are being taken and inform them of their right to immediately contact their family or attorney and, if the person must be placed under temporary confinement, the officer must inform them that they must undergo a psychiatric assessment.

As soon as the institution takes charge of the person, whether for (1) **preventive confinement** or for (2) **temporary confinement**, the institution must verbally inform the person of:

- The place where they are being confined
- The reason for the confinement
- Their right to immediately contact their family or attorney

When the person is placed under (3) **confinement in an institution** based on a psychiatric assessment, the institution must give them an information document on their rights and recourses in accordance with the *Act respecting the protection of persons whose mental state*

presents a danger to themselves or to others. If the person is unable to understand the information in the document, it must be given to their curator, tutor, or mandatary. If the person is not represented by a curator, tutor, or mandatary, the document must be given to someone showing special interest in the person, like a family member or close friend.

According to the Civil Code of Québec, the institution must also inform the person of its program of care and any measures to be taken. If the person is deemed incapable of giving consent to care, the information will be given to the person authorized to give consent on their behalf.

As soon as the confinement ends, the institution must immediately inform the person.

Right to communication

The person has the right to communicate with close relatives and an attorney when they are under **preventive or temporary confinement** or when they are **under confinement in a institution**.

The person also has the right to communicate confidentially and without restriction with their legal representative, that is, with their mandatary, tutor, or curator, the person authorized to consent to care on their behalf, the Curateur public, and the Tribunal administratif du Québec.

A person placed under confinement may thus communicate confidentially, verbally or in writing, with any person of their choice. In this case, the decision must be in writing, must explain the reasons for the prohibition or restriction, must be given to the person under confinement, and must be placed in their file.

No restriction may be imposed on communications between the person under confinement and their representative. They must also be able to communicate freely with the person qualified to give consent to the care required by their state of health, an attorney, the Curateur public, or the Tribunal administratif du Québec.

Right to be transferred to another institution under certain conditions

A person under confinement based on a psychiatric assessment has the right to be transferred to another institution if its organization and resources so permit. However, the physician must be of the opinion that the transfer does not present any serious and immediate risks for the person or for others.

EXAMPLE

A person may choose an institution closer to their family and friends if the institution in question has the necessary resources to care for him or her and if this does not present a danger to themselves or to others.

In addition, when the confinement ends and the person must be accommodated elsewhere, it is up to the institution to make sure that the accommodation has the organization and resources appropriate for their state of health and well-being.

Other rights

When individuals are placed under confinement, they are temporarily deprived of their liberty. In the case of temporary confinement or confinement in an institution, they **must** undergo a psychiatric assessment and the periodic examinations provided for in the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. However, the person preserves all his or her other rights, like any other citizen.

In cases of preventive confinement, the person has the right to consent to care or to refuse it. Of course, all persons have the right to be treated with respect and dignity.

26 | What type of information can family and friends obtain when someone close to them is confined in an institution?

When a motion is filed in court, either to obtain a court order for temporary confinement (psychiatric assessment) or based on a psychiatric assessment in order to obtain a court order for confinement in an institution, the family must be informed of the motion. The motion must be given to:

- A close family member or, as warranted,
 - The person holding parental authority, the curator, the tutor, or the mandatary, or
 - The person who has custody of the person who is subject to the motion, or someone showing a special interest in the person.

In addition, the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* stipulates that the institution must, in the case of a minor, notify the person holding parental authority or, if there is no such person, the tutor, or, in the case of a person of full age who is represented, the mandatary, tutor, or curator of:

- The decision of the physician to place the person in preventive confinement
- The necessity, based on the results of the periodic examinations provided for in the Act, to maintain the confinement ordered by the court based on a psychiatric assessment
- Each application to the Tribunal administratif du Québec with regard to the continuance of the confinement or a decision taken under the Act by the Tribunal
- The end of the confinement

If someone close to you has been placed under confinement in an institution and is incapable of giving consent for care, the person authorized to do so on their behalf must also be notified of the program of care and any major changes to the program or the living conditions of the person in question.

In addition, if someone close to you is confined in an institution and is deemed incapable of giving consent to care, the information required to make a decision for them (substituted consent) must be given to the person authorized to give consent on their behalf.

27 | What are the recourses that a person can exercise if they are dissatisfied with their confinement?

If someone close to you is dissatisfied or does not agree with the fact that they are under confinement or under continued confinement based on a re-evaluation, they can appeal their case to the Tribunal administratif du Québec.

They can also contest decisions made during their confinement to the Tribunal, such as the prohibition to communicate with certain persons or a refusal of a transfer to another institution.

If the person is not in a position to exercise this recourse themselves, a family member, a person showing a special interest in them, or their legal representative can exercise it on their behalf.

28 | How can you appeal to the Tribunal administratif du Québec?

To appeal to the Tribunal administratif du Québec, you simply have to write a letter to the Tribunal explaining as best you can the reasons why the person is dissatisfied with a decision.

It is recommended that you complete the Motion to Institute a Proceeding form, which is available from either the Tribunal secretariat or a small claims registry office in any courthouse. You can also download a copy of the form from the Tribunal website www.ta.qouv.qc.ca.

Once the form has been completed, you must make sure that the Tribunal receives it within 60 days of the contested decision by filing it in person or by mailing it to the nearest Tribunal office or to one of the following addresses:

Québec area

Secretariat
Tribunal administratif du Québec
575, rue Saint-Amable
Québec (Québec) G1R 5R4
Telephone: 418 643-3418

Montréal area

Secretariat
Tribunal administratif du Québec
500, boulevard René-Lévesque Ouest, 21^e étage
Montréal (Québec) H2Z 1W7
Telephone: 514 873-7154

Elsewhere in Québec

Telephone (toll free): 1 800 567-0278



Chapter 3

**Professional privilege
and confidentiality**

29 | What is professional privilege?

Professional privilege is a legal obligation by virtue of which all the personal information that a professional in the health and social services network possesses concerning a given person must remain confidential. This means that the professional cannot reveal any information obtained during the exercise of his or her profession, except in the following circumstances:

- When the person in question authorizes the professional to disclose the information
- When the law authorizes the professional to disclose information with a view to preventing an act of violence, including suicide, or when there is good reason to believe that an identifiable person or group of persons is an imminent danger of death or serious injury

This obligation testifies to the importance of the confidential relationship that must be established between the professional and the person receiving their services.

IN BRIEF

By virtue of professional privilege, all information concerning a person, even a close relative, must be kept confidential by professionals, except in exceptional circumstances, unless the person in question authorizes the disclosure of the information.

30 | Who is bound by professional privilege?

All professionals who are members of a professional order are bound by professional privilege. For example, physicians, psychiatrists, psychologists, social workers, nurses, etc. must keep secret all the information they collect concerning persons receiving their services.

31 | What is the difference between professional privilege and confidentiality?

As we have just seen, members of a professional order are bound by professional privilege. Persons who work in the health and social services network, other than professionals, have the duty of confidentiality. For example, an orderly at a hospital must respect the confidentiality of patients.

The Civil Code of Québec stipulates that every person has the right to the respect of their dignity, their reputation, and their privacy. This means that all information concerning a person is confidential and cannot be disclosed without their authorization.

The following table indicates who is bound by professional privilege and confidentiality.

PROFESSIONAL PRIVILEGE	CONFIDENTIALITY
Every person who is a member of a professional order: physician general practitioner or specialist, including psychiatrists), nurse, social worker, psychologist, etc.	Every employee in a health and social services network institution or community organization Every professional working in a health and social services network institution or community organization

IN BRIEF

Unless legislation or the person in question authorizes its disclosure, anyone who has obtained information concerning this person in the course of his or her work must respect the confidentiality of this information. Even persons who are not bound by professional privilege must respect this obligation.

32 | What information is considered confidential?

All information concerning a patient that comes to the attention of a professional, an employee of the health and social services institution, or a community organization in the exercise of their duties is confidential.

All the information in a patient's medical record is confidential.

IN BRIEF

All the personal information individuals disclose to a professional, an employee of a health and social services institution, or a community organization must be kept confidential.

In the same way, all information concerning the state of health of the person (diagnosis, results of analyses, treatment, evaluation, etc.) as well as notes in their record is confidential.

33 | In which situations can a professional be relieved of their obligation to respect professional privilege?

There are two situations in which a professional is relieved of his or her obligation to respect professional privilege:

- When the person concerned authorizes the professional to provide personal information to another person (you, for example). In this case, the professional must respect the will of the person and give you the information in question.
- When called for by law. The law provides for exceptions to the rule of confidentiality and professional privilege. These exceptions include the following:
 - To prevent an act of violence, including suicide, that is, when there is good reason to believe that an identifiable person or groups of persons are in imminent danger of death or serious injury

- When a person is placed under confinement in an institution. In this case, the institution must notify the legal representative⁷ of the person under confinement of the end of the confinement and the program of care for the person
- When a person of full age (18 years and over) is incapable of giving consent to care. In this case, the person authorized to give substituted consent to care must be given all the information needed to be able to give free and enlightened consent
- When the safety or development of a minor (under 18 years of age) is compromised. In this case, the professional or any other person involved is required by law to notify the director of youth protection of the situation

34 | Under which conditions can a family member or friend be given confidential information?

The obligation to respect professional privilege and confidentiality exists to protect persons receiving services from a professional or an institution. As such, it is solely the person concerned who can authorize a professional to disclose personal information to a third party (a family member or friend, for example), unless the law expressly releases the professional from this obligation.

For examples of situations in which the law authorizes a professional to disclose confidential information, please refer to the preceding question.

IN BRIEF

You can generally only receive confidential information about a friend or family member when the person authorizes it.

However, a professional can provide general information on the problem and/or refer you to a family association.

7. Please refer to Question 22.

35 | Is providing information concerning a friend or family member to a professional in the health and social services network considered by the professional to be a breach of professional privilege?

No. Professional privilege refers to the disclosure of confidential information by the professional and not the collection of information that may be valuable for treating your friend or family member. You can provide information to the professional as you see fit. Moreover, he or she can also ask you for information concerning a friend or family member without the consent of the person concerned, since this is about collecting information, not disclosing it. The intent is to serve the best interests of the person receiving the services.

Chapter 4

Access to the medical record
of a patient and their
Québec Electronic Health Record

36 | What are the rules governing access to a patient's medical record?

The *Act respecting health and social services* (AHSS) sets out specific rules governing access to a patient's medical record and its confidentiality.

The general rule is as follows: Any patient 14 years of age or over is entitled to access their record in an institution in the health and social services network. On request, they will be given a written copy or obtain a verbal summary of their record.

This rule means that if a friend or family member is 14 years of age or over, they can have access to their medical record. However, the institution may temporarily deny them access if, on the advice of their attending physician or the physician designated by the executive director of the institution, providing the record or any part thereof would likely be seriously prejudicial to the person's health. In this case, the institution, on the recommendation of the physician, determines the time at which the person can have access to their record and notifies the person thereof.

Likewise, if the information in the medical record of a friend or family member was provided by a third party, (their spouse, for example), access will be denied to the information if its existence or content makes it possible to identify the third party who provided it, unless that person authorizes access in writing.

The AHSS also guarantees the confidentiality of the patient's medical record and sets out the circumstances and conditions that authorize other persons to access the record or part of it.

The general principle of this Act is to ensure that the patient's medical record remains confidential and that no one can have access to it without the consent of the patient or the person authorized to give consent on their behalf. It does, however, provide for cases and circumstances where certain persons can have access to the information in the record without the authorization of the patient. These cases and circumstances are very well defined in the Act. (see **Question 37**)

Moreover, at the request of the patient, an institution must send a copy or summary of or an extract from his or her medical record as soon as possible to another institution or professional of his or her choice.

If the person asks to consult their medical record, the institution must also provide them with the assistance of a qualified professional to help them understand the medical or psychosocial information in their record.

IN BRIEF

Every person aged 14 years or over is entitled to access to their medical record held by an institution in the health and social services network.

37 | Which persons other than the patient are authorized by law to have access to the patient's medical record?

Since the patient's medical record is confidential, a third party (a family member, for example) cannot have access to it without the authorization of the patient. The AHSSS also stipulates that in certain cases the following persons are entitled to have access to a patient's record or part of it:

- In the case of a minor under 14 years of age, the holder of parental authority is entitled to have access to the record unless the director of youth protection determines that the communication of the record to the holder of parental authority will or could be prejudicial to the health of the minor.
- In the case of a minor 14 years of age or over, the holder of parental authority is entitled to have access to the record. However, the institution must consult the minor and, if he or she refuses access to their record or if the institution determines that the communication of the record to the holder of parental authority could be prejudicial to the health of the minor, the institution must refuse access to the holder of parental authority.

- The tutor, curator, mandatary or the person who is authorized to give consent to care for the person. However, these persons will only be given access to the information required by them to give free and enlightened consent to the proposed care, where necessary.
- Any person who attests under oath that they intend to apply for the institution or review of protective supervision for a patient or for the validation (homologation) of a mandate given by the patient in anticipation of their incapacity to care for themselves and administer their property. The right to access is, however, limited to information concerning medical or psychological assessments of the patient, when these evaluations and assessments determine that the patient is unable to care for him or herself and administer his or her property.

In addition, the director of professional services of an institution (or, in certain cases, the executive director) may authorize a professional, under certain conditions, to examine the record of a patient for study, teaching, or research purposes.

The AHSSS also provides for certain very specific cases in which the information in a patient's medical record can be communicated to a third person without the consent of the patient. While not exhaustive, the following is a list of persons to whom a patient's medical record may be communicated:

- The legal heirs, spouse, and direct descendants, etc. of a deceased patient when the information is needed to exercise certain rights provided for by law
- Any person whose life is endangered, their representative, or any other person who may come to their assistance when the information can be used to prevent an act of violence, including suicide, or when there is good reason to believe that an identifiable person or group of persons is in imminent danger of death or serious injury
- A court or a coroner in the exercise of their duties
- The Curateur public or any person authorized by him or her to consult the record of a person who is incapable or a protected person (according to section 28 of the *Public Curator Act*) and make copies of the record

IN BRIEF

The most common situation allowing you access to the medical record of a family member or close friend is when that person authorizes this access.

38 | What is the procedure for requesting access to a medical record?

Every institution has a procedure governing access to records.

Generally speaking, applications for access are made in writing to the person in charge of access to documents in the institution. The person provides the assistance needed to file the application and access must be given as quickly as possible.

If the application for access is turned down, the person whose application was turned down has various recourses such as appealing to the Commission d'accès à l'information or the Tribunal administratif du Québec, Social Affairs Section.⁸ The institution must notify the person of all possible recourses.

IN BRIEF

The record containing information on a person belongs to that person. He or she can thus request access to it. By virtue of this principle (right to privacy), family members cannot make such a request, **except under the conditions and in the circumstances described in Question 37.**

39 | What is the Québec Electronic Health Record?

The Québec Electronic Health Record (EHR) is a new electronic tool that mainly allows physicians, nurses, and pharmacists to consult and transmit, simply and quickly, basic information regarding your health in order to improve medical follow-up.

8. Please refer to Appendix 3 for a list of possible appeals to this Tribunal.

The EHR was established following the adoption on November 25, 2005, of the *Act to amend the Act respecting health and social services and other legislative provisions*. On May 27, 2008, the National Assembly adopted the *Act to amend the Act respecting health and social services, the Act respecting health insurance and the Act respecting the Régie de l'assurance maladie du Québec, the Health Insurance Act and the Act respecting health services and social services* in order to introduce the principle of implicit consent as opposed to explicit consent of individuals to the creation of their EHR. However, these provisions are not yet in force.

The EHR will be implemented progressively throughout Québec. Any person who receives health services in Québec will have an EHR, unless he or she refuses within the stipulated deadline. Implicit consent is thus sufficient to create an EHR.

40 | What information will your Electronic Health Record contain?

The EHR does not replace the medical records held, for example, by your doctor or the hospital you go to. It will contain only part of your health information, that is, the most relevant information required to provide a quick overview of your state of health when a health professional takes charge of you so as to improve the quality of the care and the accessibility and continuity of health services provided to you.

Your EHR may contain your identity and personal contact information, contact information for the main health care providers you consult, your allergies and intolerances, your vaccination record, the list of medications you have received or been administered, examination and laboratory test results, diagnostic imaging test results, and certain information in your medical summary. In addition, the history of your examination, lab test, and diagnostic imaging test results since January 1, 2007, as well as the vaccinations you have received will be noted in your EHR.

Based on what you have agreed with your doctor, you can refuse to have the names of certain of your health care providers and certain information contained in your medical summary appear in your EHR.

41 | Who will have access to your Electronic Health Record?

Only authorized health care professionals with the appropriate level of access will be able to transmit or consult the information in your record, no matter where you receive health services.

In addition, even with your consent, the information in your EHR cannot be provided to insurance companies, employers, or anyone else in order to sign a contract, including an insurance contract, employment contract, or open employment contract.

42 | Who can decide not to have an Electronic Health Record?

Any person aged 14 years or over, holders of parental authority, tutors of persons under 14 years of age, tutors or curators of incapable persons of full age, or mandataries of persons whose mandates given in anticipation of incapacity have been homologated can decide not to have an EHR.

If you do not indicate your desire not to have an EHR before the stipulated deadline, your EHR will be created and will include certain details of your past medical history. Information will then be added by authorized health professionals, according to their level of access, as you receive health services. When you receive health services, authorized professionals will also be able to consult your EHR.

However, if you indicate your refusal before the stipulated deadline, no EHR will be created for you. Refusal to have an EHR will have no effect on your right to have access to and receive the health services required by your state of health.

The deadline for refusing to have an EHR will vary depending on the region since the Electronic Health Record will be progressively implemented across Québec. You can decide not to have an EHR any time thereafter.

If you decide to refuse to have an EHR after the stipulated deadline, no new information will be added to your existing EHR after that date. In addition, health care professionals will no longer have access to your EHR, with the exception of those who had access before your refusal, if

they can justify the access for medical follow-up purposes. In such cases, the justification will be noted in your EHR as well as the identity of the person who accessed it.

You can, at any time, apply to have an EHR, even after initially refusing.

43 | Will I be able to access my Electronic Health Record?

You will be able to consult your EHR and have any incorrect, inexact, or misleading information corrected or unauthorized information removed.

For more information, consult the Electronic Health Record website at http://www.dossierdesante.gouv.qc.ca/en_accueil.phtml.



Chapter 5

The right to receive services

44 | What is the right to receive services?

The AHSSS stipulates that every person is entitled to receive health and social services that are scientifically, humanly, and socially appropriate in a continuous, personalized, and safe manner.

This means that a person who wishes (needs) to receive health and social services is entitled to these services and that the services must meet certain quality and continuity criteria.

The main mission of institutions is to provide quality, continuous, and accessible services that respect the rights of people and their needs.

According to the AHSSS, health and social services are provided by the institutions in the following centres:

- Health and social services centres (CSSS)
- Hospital centres (CH)
- Child and youth protection centres (CPEJ)
- Residential and long-term care centres (CHSLD)
- Rehabilitation centres (CR)

Note: The Act stipulates that health and social services be provided by the institutions in the centres listed above. A health and social services centre (CSSS) is an institution whose mission is to operate several of these centres at the same time.

Each institution determines which health and social services it will offer as well as the various activities that it organizes, based on its mission, the centre(s) it operates, available resources, and the needs of the population in the territory it serves.

The Act also specifies that the right to receive services is subject to the constraints related to the organization and operation of the institution as well as the human, material, and financial resources at its disposal.

IN BRIEF

As with all citizens, persons with mental health problems are entitled to receive quality, continuous services that respect their rights and needs.

45 | How can you tell whether the services provided by an institution are adequate?

Institutions must provide services that meet certain quality and continuity criteria. The explanations that follow will help illustrate these criteria.

In terms of scientific criteria, professionals must provide services whose scientific value is recognized insofar as the resources of the institution allow. Professionals must exercise their profession according to the principle of “good practice,” that is with competence, prudence, and diligence (readily), and must act in keeping with their professional responsibilities.

However, even when professionals who are scientifically competent provide the services, this is not necessarily a guarantee of quality. The services must also:

- In human and social terms, be dispensed in a respectful manner. Every person must be treated with courtesy and understanding and with respect for their dignity, autonomy, and needs.
- Be offered continuously, that is, there must be, if needed, a follow-up of the physical and/or mental health of the person and interventions must be coordinated.
- Be personalized. For example, professionals must, with the help of a close relative or friend, seek solutions adapted to the person’s needs and avoid proposing ready-made solutions that do not take into consideration the person’s culture, values, etc. Every person has the right to participate in the preparation of his program of care or his or her individualized service plan when these plans are required by the Act.

IN BRIEF

Receiving adequate service means being treated by skilled professionals, being respected by the staff of the institution, being listened to, benefiting from good medical and professional follow-up, participating in decisions concerning one’s health and well-being, etc.

46 | When can a hospital centre release a person?

Before a person can leave a hospital, the institution must ensure that their health permits them to return home. If their state of health requires certain services, the hospital must make sure that another institution or one of its resources can provide the services before obliging the person to leave the hospital.

All institutions housing patients must respect this condition.

IN BRIEF

When a close relative of full age (18 years of age or over) leaves an institution, you have no legal obligation to take that person into your home, even if the institution pressures you to do so.

47 | If an institution is unable to provide a service, does it have to refer the person to another resource?

The various missions of the institutions are defined in the AHSSS. For example, hospitals offer diagnostic services and general and specialized medical care.

If an institution is unable to provide a service because the service is not part of its mission or operations, it has the duty to refer the person requiring this service to another institution or to a person who can provide the service required by the person's needs and state of health. This is a legal responsibility of the institution.

48 | Can I choose the professional from whom or the institution from which I wish to receive services?

The AHSSS recognizes that every person is entitled to choose the professional from whom or the institution from which he or she wishes to receive health services or social services.

Every person is entitled to choose the professional who will give the services or the institution where they wish to be treated and receive services. However, the professional is free to accept or refuse to treat a person, except in an emergency, that is, when the person's life or bodily integrity is endangered.

The choice of the professional is also determined by the choice of the institution. If one of your close relatives chooses an institution, they must choose a professional from among those who are authorized to practice in that institution and according to the in-house rules of the institution.

In no case must access to services be obstructed by sectorization. An institution cannot turn away a patient based on their postal code or place of residence.

49 | How can I find out which services are offered in my region?

Given the complexity of our network, it is not always easy to find out which services best meet our needs or where to go to get them. The AHSS sets out in concrete terms the right to information.

This Act assigns every health and social service agency the responsibility to inform patients in its territory of the services offered to them. In addition, it stipulates that institutions that are unable to offer certain services to patients who need them must refer them to the appropriate resources in such a way that users know where to go and how to obtain these services.

IN BRIEF

If one of your close relatives wants to obtain information on the services offered in their region, they can contact their health and social services agency or the closest health and social services centre. You can also contact your family and friends association, which can provide you with the appropriate information.

50 | If I represent an incapable person of full age, can I exercise their right to access the services offered?

If one of your close relatives is a person of full age (18 years of age or over) and has been declared incapable of making decisions or caring for himself, his representative can exercise his rights by virtue of the AHSSS.

The following persons are deemed to be representatives of an incapable person of full age:

- The mandatary, the curator, the tutor⁹, the spouse, or a close relative
- A person showing a special interest in him (for example, a common law spouse or a long-time friend)

The right to representation means that it is the representative who acts on behalf of the patient. They participate in all decisions regarding the state of health and well-being of the person they represent. For example, it is the representative who asks for relevant information, gives consent to care, participates in decisions that must be made, etc.

IN BRIEF

If you are the legal representative of one of your close relatives (person of full age who is deemed incapable of making decisions or caring for himself), you can act on his behalf and exercise the rights provided for in the *Act respecting health services and social services*.

9. Please refer to Chapter 6 where you will find answers to any questions you may have concerning these persons.

51 | Can I accompany a close family member or friend looking for information or a service?

The AHSSS stipulates that every user of the health and social services network is entitled to be accompanied and assisted by a person of their choice when they take steps regarding a service. If a close relative or friend asks you to be present to support and assist them, you can, under the AHSSS, accompany them. However, in this case, you are not acting as their legal representative. It is the person you are assisting who takes the steps and makes the decision(s).

Another example to illustrate this right: if a close relative or friend wishes to obtain information on the treatment they are receiving, he or she can ask that you be present during the discussion.

The right to be accompanied and assisted by a person of one's choice also means choosing oneself the person who will accompany us. This person can be:

- A friend
- A family member
- A trusted member of a community organization
- A member of the patients' committee of the institution where the services are provided
- A member of a community organization committed to the defence of rights, etc.

IN BRIEF

If a close relative or friend wants you to help him take steps to obtain a service or information, the AHSSS stipulates that you may accompany him. However, he is the one who takes the steps and makes his own decisions. In this case, you do not act as a legal representative.



Chapter 6

Protective supervision

52 | What is protective supervision?

The amended *Public Curator Act*, which came into force in April 1990, introduced new measures to better protect persons of full age who are incapable of caring for themselves or administering their property. These measures, collectively called protective supervision, are aimed at ensuring:

- The protection of the person
- The administration of his or her property (patrimony)
- The exercise of his or her rights

These measures are adapted according to the person's need for protection and degree of incapacity. Thus, if a person of full age becomes incapable of caring for him or herself or administering his or her property because of, for example:

- Illness,
- Deficiency, or
- Debility due to age impairing their mental faculties or physical ability to express their will,

it is possible to ask for the institution of protective supervision for that person. The type of protective supervision is chosen based on the capacities of the person with a view to preserving the person's autonomy as much as possible. The person of full age will be represented or assisted by a legal representative.

Normally, a member of the family or a close friend is appointed as legal representative. However, if no one can or wishes to represent the person of full age, the Curateur public will be appointed to take on this responsibility.

IN BRIEF

Protective supervision means that a legal representative will be appointed to care for the person or administer their property (or both) and, in general, to exercise their civil rights or simply assist and advise them. It should be noted, however, that no one, except the director of youth protection or the Curateur public, is obligated to agree to be the representative of an incapable person.

53 | What are the different types of protective supervision?

The Civil Code of Québec provides for three types of protective supervision:

- An advisor to a person of full age
- A tutor to a person of full age
- A curator to a person of full age

Protective supervision is adapted to the extent of the person's need for protection and degree of incapacity to care for him or herself or administer his or her property.

An incapable person who has given a mandate in anticipation of his incapacity will not require protective supervision if the appointed mandatary has the mandate validated (homologated).

54 | What is the procedure to choose the type of protective supervision most appropriate to the circumstances of a person of full age?

The type of protective supervision is determined by the court in the best interests of the person so as to respect their rights and safeguard their autonomy based on their degree of incapacity to take care of themselves or administer their property.

Advisor to a person of full age

Protective supervision called “advisor to a person of full age” is the “lightest” type of protective supervision. It is suitable for persons who are generally capable of caring for themselves and administering their property but who require, for certain acts or for a certain time, assistance or advice to administer their property.

EXAMPLE

A person inherits a large sum of money. While this person is generally capable of administering his property, he has trouble evaluating what is involved in administering such a large sum because of his disability. In such cases, the court can appoint an “advisor to a person of full age” to assist him in administering the inheritance.

Tutor to a person of full age

Tutorship is the most “flexible” type of protective supervision. It adapts to the extent of the person’s need for protection while allowing them to maintain a certain degree of autonomy in the exercise of their rights. Persons placed under tutorship are, partially or for a certain time, incapable of caring for themselves or administering their property. Tutorship can cover:

- Property only
- The person only
- Both property and the person

Tutors are the legal representatives of persons of full age. They make certain decisions on the person’s behalf based on the powers assigned to them by this type of protective supervision. These powers allow them to ensure the physical, moral, and material well-being of the incapable person and, if required, administer his or her property. The court order appointing a tutor can, where warranted, lay out the acts that the protected person of full age can continue to do on his or her own.

EXAMPLE

A person is hospitalized in the psychiatric department and is no longer capable of taking care of his business for a certain time. His incapacity is partial and temporary. In this case, the court can appoint his spouse or another close relative or friend to administer his property until he once again becomes capable of doing so on his own.

Curator to a person of full age

Curatorship to a person of full age is the type of protective supervision reserved for the most serious circumstances and is intended for persons who are totally and permanently incapable of caring for themselves or administering their property.

EXAMPLE

A person has a serious accident that causes a loss of contact with reality and makes her totally and permanently incapable of caring for herself or administering her property. In such cases, a curator is appointed to care for her and administer her property.

IN BRIEF

To determine which type of protective supervision is most appropriate for the circumstances of an incapable person of full age, medical and psychosocial assessments must be performed at a health and social services institution or by a health professional in a private clinic.

The court will take into consideration the opinion of the person of full age and that of the assembly of relatives, allies, and friends. (please refer to Question 56)

55 | What are the responsibilities of the legal representative for each type of protective supervision?

The role and responsibilities of the advisor to a person of full age

The advisor to a person of full age does not administer the property of the person of full age he or she advises. His or her role is limited to assisting and advising the person of full age in administering their properties based on the acts of assistance indicated by the court. However, acts performed alone by a person of full age without the assistance of his or her advisor for which the intervention of the advisor is required may be declared null.

IN BRIEF

If you are appointed as the advisor for a close relative or friend, you are not required to ensure his or her protection since he or she is deemed capable of caring for himself.

The role and responsibilities of the tutor to a person

The protection guaranteed by a tutorship is adapted to the degree of the person's incapacity and the extent of their need for protection. Thus, when a tutorship is instituted, the court indicates the acts that are the responsibility of the tutor. The tutor, unlike the advisor, who can only assist the protected person of full age, represents the person.

Tutor to the person

The tutor to the person is responsible for ensuring the moral and material well-being of the protected person. He or she is also responsible for their custody and maintenance. The tutor to the person is not obligated to house the person he or she represents. He or she may delegate this responsibility to an institution or to another resource that can meet the needs of the person. The tutor must, however, where possible, maintain a personal relationship with the person he or she represents and obtain their advice on and keep them informed of the decisions made in their regard. The tutor to the person can refuse or authorize a medical treatment on behalf of the person he or she represents when this person is deemed incapable of consenting to care required by their state of health. The authorization of the court is, however, required when the person categorically refuses to receive such care. (see **Question 11**)

Tutor to property

The tutor to property is responsible for administering the property of the protected person of full age. The tutor to property takes care of the "simple administration" of the property of the person he or she represents, doing all that is necessary to ensure its preservation or maintenance. For example, the tutor to property must ensure the maintenance and preservation of the furniture in the dwelling of the person of full age. This means that the tutor to property cannot sell or mortgage the property of the person of full age without the authorization of the tutorship council or the court. If the tutor to property

makes investments, they must be sound. It should be noted that a duly authorized financial institution or trust company may be appointed to administer the property.

Tutor to the person and to property

The tutor to the person and to property is responsible both for the protection of the person and the administration of their property as described above.

IN BRIEF

If you are appointed tutor for a close relative or friend, you are considered their legal representative. It is therefore important to clearly understand the responsibilities of the tutorship. For example, are you a tutor to the person and to property or simply to property? This is essential to know because you will be asked to make decisions for the person you represent. You can contact the Curateur public to find out how to exercise your tutorship. You will also have reports to remit to the Curateur public.

The role and responsibilities of the curator

Curatorships ensure the protection of both the person and their property. However, one curator may care for the person of full age while another administers his or her property. The curator generally represents the person of full age in the exercise of his or her civil rights.

As for the administration of the property of a protected person of full age, the curator has more powers than a tutor to property. For example, the curator can sell the property of an incapable person of full age if the sale is necessary or useful and in the best interests of the person. The curator has full administration of the property of the protected person of full age, except that he or she is bound to make only sound investments. The curator to property may be a financial institution or a trust company duly authorized by law.

IN BRIEF

If you are appointed curator to a person, you are their legal representative and you must care for them and administer their property. You can contact the Curateur public to find out how to exercise your curatorship. You will also have reports to remit to the Curateur public.

56 | What conditions are required to institute protective supervision?

The essential condition required to ask for the institution of protective supervision is that the person of full age in question is incapable of caring for him or herself or administering his or her property. This incapacity may result from, among things, an illness, a deficiency, or debility due to age that impairs the person's mental faculties or physical ability to express their will. A second condition is that the person must require protection. A person may become incapable without needing protective supervision. For example, if the person has very little property and is cared for by their family, they do not necessarily require protective supervision. The same is true if the person has given a mandate in anticipation of their incapacity.

IN BRIEF

The incapacity of the person and their need for protection must be demonstrated by medical and psychosocial assessments.

57 | What information do medical and psychosocial assessment reports contain?

Medical assessment

Medical assessments are performed by general practitioners or specialists, for example a psychiatrist, who knows the person in question. The assessment report normally contains the following information:

- A summary of the state of health of the person up to and including their current clinical state
- The diagnosis of the physician
- The symptoms manifested by the person

The assessment must help in determining the nature and duration of the incapacity and thus in choosing the appropriate type of protective supervision.

Psychosocial assessment

Psychosocial assessments are performed by health professionals such as social workers, psychologists, nurses, etc. These assessments are important because they help to identify factors that affect the person to such an extent that protective supervision must be instituted. They assess the capacity of the person to administer their own property and care for themselves.

Assessments of the capacity to administer property must take the following three factors into account:

- Daily financial management
- The person's knowledge of their financial circumstances
- The person's perception of their difficulty administering their property and their need for assistance

Assessments of the capacity of a person to care for themselves involve verifying whether they can realistically evaluate their circumstances and whether they are capable of making decisions in their own best interests. Several factors are taken into consideration in performing psychosocial assessments:

- The person's autonomy in daily and household activities
- The person's knowledge of their state of health
- The perception that the person has of their ability to care for and protect themselves

The assessment report recommends which relatives, allies, or friends should be convened to an assembly and proposes a possible legal representative.

IN BRIEF

The objective of medical and psychosocial assessments is to guarantee the need to protect the person while respecting his capabilities and ensuring insofar as possible their autonomy. These assessments must be performed in the person's best interests.

58 | Who can ask for protective supervision to be instituted?

The following persons can ask for protective supervision to be instituted:

- The person him or herself
- Their spouse
- Close relatives and allies
- Any person showing a special interest in the individual (a friend, etc.)
- Any other interested person, including the mandatary designated by the person or by the Curateur public

59 | Who should I contact to apply for the institution of protective supervision?

The institution of protective supervision is always ordered by the court (Superior Court).

The persons mentioned in the preceding question may present a request to the court for the institution of protective supervision or ask a lawyer or notary to do so for them.

The request to institute protective supervision can also be presented by a notary specially certified to do so by his or her professional order.

IN BRIEF

If you believe that protective supervision should be instituted for a close relative or friend, you can contact a notary or a lawyer. These legal professionals can explain the steps to take as well as the associated costs.

If the person presumed to be incapable is an employment-assistance recipient, legal aid may take charge of the institution of protective supervision.

60 | How do I file a motion for the institution or modification of protective supervision?

As we saw in the preceding question, the request to institute protective supervision can be presented in two ways.

First, the request must be presented, directly or with the assistance of a lawyer or notary, to a judge or clerk of the Superior Court in the district where the person of full age resides. The request can be in the form of a motion accompanied by a medical and psychosocial assessment report demonstrating the incapacity of the person of full age. The person (or his or her representative) will be heard by the judge or clerk of the court and an assembly of relatives, allies, and friends will be convened. The ruling will determine the type of protective supervision that will be instituted and the person who will be responsible for it.

Second, the motion can be presented to a certified notary. In this case, the notary will take the steps required by law. For example, he or she will meet with the person in question to verify their incapacity and ask for their advice if they are capable of expressing it. The notary will then convene the assembly of relatives, allies, and friends, and will subsequently file the minutes of the steps taken for the motion to institute protective supervision with the court so that the judge can examine it and make a ruling.

It should be noted that if the request is contested (for example, by the person in question), the certified notary cannot take steps regarding the contestation him or herself. The notary must transfer the request to the competent court.

A modification of protective supervision can be requested in the same way as the institution of protective supervision. It should be noted that all types of protective supervision must be periodically re-evaluated.

IN BRIEF

You may yourself present a request to institute protective supervision for a close relative or friend, be assisted by a notary or lawyer, or file a request with a certified notary. In all cases, the interests of the person in question, respect for their rights, and the safeguard of their autonomy must be taken into account.

61 | What is the role and make-up of the assembly of relatives, allies, and friends in the institution of protective supervision?

The assembly of relatives, allies, and friends, previously called the family council, is made up of at least five people. The following persons must be convened to the meeting of this assembly:

- The spouse
- The children of full age of the person in question
- The father and mother
- The other direct ascendants
- The brothers and sisters
- Friends and other relatives and allies, if there are not enough members of the family to form a quorum

Note: The institution of protective supervision for a person of full age may be requested during the year before he or she reaches the age of majority (18 years).

IN BRIEF

The assembly of relatives, allies, and friends is convened when protective supervision is instituted or modified to:

- Express one's opinion on the need to institute or modify protective supervision
- Determine the type of protective custody that best meets the needs of the person in question

- Designate the person best able to fulfil the role of advisor to the person of full age, tutor, or curator in order to assist, advise, and represent the person in question
- Designate persons to make up the tutorship council if the protective supervision requested is tutorship or curatorship

According to section 222 of the Civil Code, the role of the tutorship council is to supervise the tutorship. The tutorship council is composed of three persons designated by the assembly of relatives, allies, and friends or, if the court so decides, of only one person.

62 | What is the role of the Curateur public?

The Curateur public is a person appointed by the government whose powers are set out in the Civil Code of Québec and the *Public Curator Act*. The Curateur public notably exercises the following duties:

- Supervises the administration of tutorships and curatorships to persons of full age, of certain tutorships to minors, and of tutorship to absentees¹⁰
- Informs tutors and curators who so require of how to fulfil their obligations
- May be appointed curator, tutor to the person, tutor to property, or tutor to the person and to property when private protective supervision cannot be instituted, that is, when there is no one to exercise these responsibilities or when no one accepts them
- In exercising a tutorship or a curatorship, seeks a person to replace him or her and, if required, may assist this person in taking steps to be appointed as a tutor or curator
- May, of his or her own initiative or on request, hold an inquiry relating to the persons he or she represents, the property he or she administers or that should be entrusted to his or her administration and, generally, to any minor or to any person under protective supervision. The Curateur public may also hold an inquiry relating to

10. According to the Civil Code of Québec, an absentee is a person who, while he had domicile in Québec, ceased to appear there without advising anyone, and of whom it is unknown whether he is still alive.

any incapable person whose care or the administration of whose property has been entrusted to a mandatary

- May intervene in any proceedings pertaining to the institution of protective supervision, the homologation or revocation of a mandate given by any person in anticipation of their incapacity, the physical integrity of a person of full age unable to give consent who does not have a tutor, curator, or mandatary, and as the replacement of a tutor or curator

IN BRIEF

If you agree to be the legal representative of a close relative or friend, the Curateur public can inform you of how to fulfil your obligations.

63 | What are the rights of persons for whom protective supervision has been requested, and what are the rights of their families?

Persons for whom protective supervision has been requested are not deprived of their civil rights. They enjoy their full civil rights and are simply represented for the exercise of some of them. They can:

- Request that their protective supervision be modified
- Be heard and give their opinion and express their wishes
- Be informed of decisions made in their regard
- Have access to their file and to the file held by the Curateur public

Depending on the type of protective supervision chosen and the incapacity of the person, the person keeps and exercises certain rights. For example, if you are appointed as a tutor to property for a close relative or friend, you administer their property, but the person makes all decisions regarding their own well-being and state of health. They can also exercise their right to vote and, subject to certain restrictions, make a will.

The family has the following rights:

- The right to file a request to institute protective supervision
- The right to file a request to modify protective supervision
- The right to be summoned to a meeting of the assembly of parents, allies, and friends, and to express their opinion at the meeting
- The right to be informed when a report is provided to the Curateur public by the executive director of the institution regarding a relative who needs to be represented

IN BRIEF

Protective supervision is instituted to ensure the protection of the person, the administration of their patrimony and, generally, to secure the exercise of their civil rights. It is thus important to clearly understand the type of protective supervision instituted for the close relative or friend you are representing in order that you may exercise their rights if necessary and know the rights that they can exercise themselves, with a view to protecting their interests, respecting their rights, and safeguarding their autonomy.

64 | What is tutorship to minors?

In Québec, individuals become of full age at 18. Before then, they are minors and have a restricted legal capacity, that is, they cannot exercise certain rights on their own. For example, save for some exceptions, minors must be represented by a person of full age to exercise a legal recourse, administer certain inherited property, and perform major transactions.

Minors may, however, with the authorization of the court, institute an action on their own regarding their state, the exercise of parental authority, or an act that they can perform on their own. In addition, in such case, they can act alone in their own defence.

Tutorship to a minor is instituted in the interest of minors to:

- Ensure their protection
- Administer their property
- Secure the exercise of their civil rights

The father and mother of the minor have the rights and duties connected to holding parental authority. They are also, by right, tutors to their minor child, that is, they have no legal steps to take to be recognized as tutors. They fully assume the protection of the minor, the administration of his or her property, and the exercise of his or her rights.

If the parents of the minor are deceased or are no longer capable of fulfilling their obligations with respect to the minor, the court must appoint a person who will exercise the tutorship in their place. If it is necessary to appoint a tutor to the person and a tutor to property, it is generally the same person who will perform both duties. Unless the court decides otherwise, the tutor to the person also acts as the holder of parental authority.

It should be noted that the father or the mother can appoint a tutor for their minor child in their will, by a mandate given in anticipation of their incapacity, or by a statement sent to the Curateur public. The tutor of the minor child will be the person appointed by the last living parent (father or mother) or, as warranted, by the last of the two parents capable of exercising the tutorship, if he or she was the legal tutor on the date of his or her death or of his or her incapacity. Lastly, if the two parents die at the same time and have designated different tutors, it is up to the court to decide who the tutor will be.

IN BRIEF

If your child is under 18 years of age, you (father and mother) are naturally his or her tutors and you can, when necessary, represent him or her. You can also set out in your will, in the mandate given in anticipation of your incapacity, or in a declaration forwarded to the Curateur public, who will replace you on your death, that is, who will become the tutor of your minor child.

Emancipation of minors

The Civil Code of Québec sets full age or the age of majority at 18 years, at which time persons, until then minors, become capable of fully exercising all their civil rights.

However, the Civil Code provides for two mechanisms that confer on the minor part (or several) or all of their civil rights, that is, simple emancipation and full emancipation.

Simple emancipation

Simple emancipation can be:

- Deceyed by the tutor, after obtaining the agreement of the tutorship council, by filing a declaration with the Curateur public, to emancipate a minor who is 16 years or over
- Requested by the minor alone by applying to the court (Superior Court), which will make a ruling after obtaining the advice of the tutor and, where applicable, of the tutorship council

Simple emancipation does not put an end to minority nor does it confer all the rights resulting from majority, but it releases the minor from the obligation to be represented for the exercise of his or her civil rights. The tutor must render a final account of his or her administration to the emancipated minor, but continues to provide him or her assistance without charge as needed. The emancipated minor may have his or her own dwelling.

Full emancipation

Full emancipation is obtained by marriage or is granted by the court for a serious reason. Full emancipation enables minors to exercise their civil rights as if they were of full age.

For example, a responsible minor who wants to be fully autonomous and to be free to live on his own or to be the tutor of his younger brother following the death of his parents may request full emancipation.



Chapter 7

The mandate in anticipation
of incapacity

65 | What is a mandate in anticipation of incapacity?

The reformed *Public Curator Act*, which has been in effect since April 1990, introduced the protective supervision described in the preceding chapter into the Québec Civil Code. It also recognized the mandate in anticipation of incapacity as a measure to protect incapable persons of full age.

The mandate in anticipation of incapacity is an act whereby a capable person (the mandator), that is, a person in possession of all his or her faculties and fully capable of exercising his or her civil rights, empowers another person (the mandatary) to care for the person and to administer their property in the event they are no longer capable of doing so.

When the mandator becomes incapable of taking care of him or herself or administering his or her property, the mandatary must have the mandate homologated (sanctioned by the court) to make it enforceable (binding). Homologation is a legal procedure aimed at verifying the incapacity of the mandator and, if required, the validity of the mandate.

IN BRIEF

If a close relative or friend designates you as a mandatary, you must have their mandate homologated by the court. (see Question 71)

66 | What are the advantages of a mandate in anticipation of incapacity?

A mandate in anticipation of incapacity has the following advantages:

- It enables individuals to choose, while they are capable of doing so, someone they trust to represent them in the event of their incapacity.
- It enables individuals to express their wishes both with regard to their physical and moral well-being and the administration of their property.
- When it is complete, it helps to ensure sufficient protection for the person without it being necessary to institute protective supervision.

- The procedure to homologate a mandate is simpler and quicker than the procedure to institute protective supervision. Furthermore, an assembly of parents, allies, and friends does not have to be convened to examine the situation.

67 | What is the difference between a will, a power of attorney, and a mandate in anticipation of incapacity?

Will

A will is a judicial act by which a person (the testator) expresses their wishes regarding the disposal of their property in the event of their death. A will only takes effect after the death of the testator.

Power of attorney

A power of attorney is a contract, also called a mandate, by which the mandator empowers his or her mandatary to represent him or her in the performance of a judicial act with a third person. It can be a special power of attorney to deal with a specific affair or a general power of attorney that deals with all the affairs of the mandator.

For example, if a person plans a trip outside the country, she can give another person a power of attorney to take care of her everyday affairs (e.g., pay bills). She can also authorize this person to have access to her bank or Caisse populaire account to withdraw money for her or conduct other business (e.g., preauthorized payment).

A power of attorney is always limited to the administration of property. It takes effect when the mandator is capable and terminates on the date indicated on the power of attorney or when protective supervision is instituted.

Mandate in anticipation of incapacity

A mandate in anticipation of incapacity is a judicial act that enables a person (the mandator) to designate another person (the mandatary), who will be empowered to care for them or administer their property in the event they are no longer capable of doing so.

Unlike a power of attorney, a mandate in anticipation of incapacity takes effect when the incapacity occurs, after being homologated by the court. Moreover, it goes further than a power of attorney in the sense that it can cover the administration of the property of the mandator as well as the protection of his or her person and well-being, such as moving into an institution and consent to care. (see the questions in Chapter 1)

68 | What forms can a mandate in anticipation of incapacity take?

The Civil Code of Québec provides for two types of mandate in anticipation of inaptitude:

- The mandate by notarial deed
- The mandate given in the presence of witnesses

Notarial deed

A notarial deed is made in front of a notary. This way of proceeding has the advantage of presuming the validity of the mandate, guaranteeing its maintenance, and registering it with the *Chambre des notaires*. In addition, the notary provides the person who requests this type of act (mandator) with advice on the content of his or her mandate while respecting his or her wishes.

Mandate in the presence of witnesses

A mandate in the presence of witnesses is written by the person who wishes to give the mandate (the mandator) or by a third party (e.g., a lawyer). It is signed in the presence of two witnesses who have no personal interest in the mandate and who are in a position to determine whether the person is capable of acting. The mandator must simply state the nature of the act but does not have to disclose its contents. If the mandator has already signed the mandate, he or she must acknowledge his or her signature in the presence of witnesses. If the mandator is incapable of signing the mandate him or herself because of a physical handicap, they may ask a third party to sign it in their presence and according to their instructions. The two witnesses must counter-sign the mandate in the presence of the mandator.

It is recommended that the mandator store the original of the mandate signed in the presence of witnesses in a safe place, inform the mandatory, and give him or her a copy. In addition, it is always a good idea for the mandator to notify his or her family and close friends that he or she has given a mandate. If a lawyer writes the mandate, it will be registered with the Barreau du Québec.

A publication by the Curateur public that is sold by Publications du Québec at minimal cost can help you write a mandate in anticipation of incapacity. You can also consult the publication on the website of the Curateur public at www.curateur.gouv.qc.ca.

IN BRIEF

A mandate in anticipation of incapacity can be given before a notary by notarial deed. In this case, there is a fee for the preparation of the mandate. Individuals can also give a mandate themselves using the form provided by the Curateur public, which is on sale at Publications du Québec outlets at minimal cost. This form is also available on the website of the Curateur public at www.curateur.gouv.qc.ca. You can also consult a lawyer to give a mandate.

69 | What must a mandate in anticipation of incapacity contain?

The content of a mandate in anticipation of incapacity varies from person to person, depending on their needs and financial circumstances. Generally, a mandate gives a mandatory (the person chosen to be the mandator's legal representative) the following powers:

- The power to represent the mandator in giving consent, if needed, to receive care in the event the mandator is incapable of caring for him or herself.
- The power to represent the mandator in the administration of their property and to take the necessary actions to protect and administer their property. The mandatory can be required to render an annual account of his or her management to any designated person (with the exception of the Curateur public).

- The power to care for the physical, moral, and material well-being of the mandator.

In addition, if so desired by the mandator, the mandate may designate more than one mandatory for example, one to administer the property of the person and the other to protect the person him or herself.

70 | What is the role of the mandatory?

The mandatory is responsible, when the person (mandator) becomes incapable, of filing a request for the mandate to be homologated by the court.

After the homologation, the mandatory must assume the responsibilities provided for in the mandate. For example, if a family member or close friend gives you the power to care for his person, you must see to his custody, give consent to care for him, etc. If the mandate deals with the administration of his property, you may perform all the administrative acts required for this task. The content of the mandate is left entirely up to the mandator. It can thus be very specific or written in more general terms. It is important that the mandatory be very clear about the powers given to him by the mandate.

71 | How is a mandate in anticipation of incapacity homologated?

A mandate in anticipation of incapacity must be homologated by the Superior Court of the district where the mandator resides.

Mandararies can apply themselves to a judge or clerk of the Superior Court, or use the services of a lawyer or notary to do so. The application must be accompanied by a medical and psychosocial assessment of the mandator.

When the application is not contested and there are no divergent interests, the mandatory can also use the services of a certified notary to institute protective supervision. In such cases, the notary follows the steps required by law and files his or her report with a judge or clerk of the Superior Court in order for the mandate to be homologated. The

mandatary must provide the notary with the same documents, that is, the mandate and the medical and psychosocial assessment of the mandator.

IN BRIEF

If you are designated by a family member or close friend to be their mandatary, you must apply to the Superior Court in their legal district to have the mandate in anticipation of incapacity homologated. You can use the services of a notary or lawyer to help you. These legal professionals can advise you on the steps to take and inform you about the costs.

If you are looking for a mandate in anticipation of incapacity, you can contact:

Registre des dispositions testamentaires et des mandats du Québec

Chambre des notaires du Québec
1800, avenue McGill College, Bureau 600
Montréal (Québec) H3A 0A7
514 879-2906 or 1 800 340-4496 (toll free)



Chapter 8

Other legal aspects of concern
to family members and
close friends of a person
with a mental health problem

72 | What is a will?

A will is a legal document by which a person (the testator) expresses their last wishes and the disposal of their estate in anticipation of their death. It takes effect only on the testator's death.

73 | What are the advantages of drawing up a will?

One of the main advantages of a will is that it expresses your wishes concerning the disposal of your remains and the distribution of your property. It also allows you to bequeath specific assets. In addition, a will can include special provisions regarding, for example, your wishes concerning the future of a family member or friend with mental health problems or the designation of a tutor to a minor child.

It also designates one or more liquidators of your succession (formerly the testamentary executor). You can thus choose one or more people who you trust to carry out your last wishes and distribute your property.

IN BRIEF

A will is the best way to express your last wishes and your desires concerning the disposition of your property.

74 | What are the different kinds of wills?

The Civil Code of Québec recognizes three types of will, namely, the notarial or authentic will, the holograph will, and the will made in the presence of witnesses.

Notarial will

A notarial will is made before a notary, which confers authenticity (validity) on it since it was made according to the formalities required by law. The notary keeps the original in a safe place and also has it entered in the Register of Wills of the *Chambre des notaires du Québec*, making it easy to trace.

Holograph will

A holograph will is entirely handwritten and signed by the testator. It does not require a notary or a witness. However, the court must authenticate (probate) a holograph will after your death.

Will made in the presence of witnesses

A will made in the presence of witnesses is written by you or by a third party. It can be written by hand, computer, or any other mechanical means. It must, however, be signed by you before two witnesses who must also sign the document in your presence. Like a holograph will, this type of will must be authenticated and probated.

IN BRIEF

When you make a holograph will or a will in the presence of witnesses, the liquidator of your succession must, after your death, take your will to a notary (or lawyer) to have it authenticated and certified. This authentication procedure incurs fees that will be assumed by your estate.

75 | What happens if a person dies without a will?

If a person dies without a will (intestate), the succession, that is, the transfer of the property of the deceased will be partitioned according to the provisions of the Civil Code of Québec. For example, the property will be partitioned depending on whether the deceased left a legal spouse and children (1/3 – 2/3), only children, etc. In the event there are no heirs, that is, no spouse or relatives, or everyone renounces it, the succession devolves to the State.

76 | What dispositions must you take to ensure that a family member or friend with mental health problems can inherit your property?

The person you designate as your heir may be declared incapable of administering their property. In this case, you can include a special clause (a legacy) in your testament that confers the administration of the property you wish to bequeath to him or her to a trustee, a curator, or any other person who will act in accordance with your wishes and who will administer the property in question.

An inheritance can be included in the calculation of the assets of your family member or friend by virtue of laws such as the *Act respecting income support, employment assistance and social solidarity* (social assistance) and can thus have an impact on the benefits to which he or she will be entitled. Various solutions are possible.

There is no single solution. We recommend that you consult legal counsel specialized in this field. He or she will advise you on the best option for you and your heir.

77 | Can the legal representative of an incapable person of full age make special provisions in their own will for this person of full age?

If you are the curator, tutor, or advisor of an incapable family member or friend, you can, in your will, suggest a specific person to replace you on your death. Your death will not terminate the protective supervision but another representative must be appointed. In this situation, your suggestion will be taken into consideration by the court.

78 | Can I make decisions regarding my minor children in anticipation of my death?

When you have one or more minor children, you can appoint a tutor to take charge of them after your death. The purpose of this tutorship is to ensure their protection and administer their property. The tutor of your child or children will be the person named by the last surviving parent (father or mother).

When you choose a tutor, it is important to verify whether the person accepts the responsibility. You can also suggest another person to replace the tutor in the event of their incapacity or inability to assume this responsibility after your death.

IN BRIEF

You can, in your will, name a person you trust to be responsible for your minor child or children after your death.

You can also name this person in a mandate in anticipation of incapacity or a declaration that you send to the Curateur public.

79 | What are the main financial impacts after a death?

The settlement of a succession has fiscal and financial consequences, including paying the income taxes of the deceased, partitioning the family patrimony, etc. The liquidator of your succession (formerly the testamentary executor) will take care of the various formalities with a view to distributing your property, free of debt, among your heirs. The debts that must be paid first are the following:

- Funeral expenses
- Loan balances and regular bills such as telephone, electricity, etc.
- Claims related to the partition of the family patrimony (partition of property acquired during the marriage such as a house, a car, a cottage, house decorations, etc.)
- Income tax on the income of the deceased, etc.

Lastly, before any property is distributed to the heirs, the liquidator must obtain certificates from Revenu Québec and the Canada Revenue Agency authorizing the distribution of the property. All the income tax of the deceased must first be paid in full.

IN BRIEF

In conclusion, most successions can be settled without difficulty by the liquidator you chose and named in your will. However, the partition of your property requires your liquidator to take certain steps. There are a number of practical guides available to explain these steps. The liquidator can also ask an accountant, legal counsel, or any other appropriate specialist (e.g., his or her notary) about the fiscal consequences of settling the succession.

80 | What is obligation of support?

Obligation of support arises from marriage, civil union, or filiation (parent/child). It is based on the notion of solidarity between members of a family to maintain a certain balance in their living conditions. It enables the family, where possible, to meet its basic needs.

Generally, obligation of support takes the form of support payments to pay for food and meet certain other needs such as the cost of higher education, recreational activities, etc.

However, marriage or filiation do not in and of themselves constitute sufficient reason to claim support payments. Other conditions, depending on the context, must be met.

IN BRIEF

Obligation of support arises from marriage, civil union, or filiation (parent/child). Recourse to this obligation, while rare, can be used by someone close to you, including a son, daughter, or married or civil union spouse. It is aimed at providing for their basic needs if you have the means to meet them and if they are not receiving sufficient assistance from the State.

81 | Who is entitled to support payments?

The following people are entitled to support payments:

- Married or civil union spouses or former spouses such as divorced spouses
- Relatives in direct line in the first degree, that is, in this case, children

Since 1996, there is no longer any obligation of support between grandparents and grandchildren under Québec law.

82 | What conditions are required to claim support payments?

The bond of filiation (parent/child) or of marriage or civil union must obviously be proven before claiming support payments. Once the bond is established, it has to be proven that the person claiming support (creditor of support) is unable to support him or herself and that the person who is being asked to provide support (debtor of support) has the means to pay it. It is thus the general financial standing of the parties (creditor and debtor) that will be analyzed. This is what is called the “means and needs test.”

The factual proof must show that the situation in which the children of full age find themselves is such that:

- They have no means of livelihood, that is, they are unable to support themselves,
and
- They have done everything in their power to try to support themselves,
or
- They are physically or mentally incapable of supporting themselves and they receive no assistance from any source whatsoever (e.g., employment insurance, income security [formerly called social assistance], or invalidity benefits, etc.), or they receive assistance that is clearly insufficient to meet their basic needs.

In conclusion, persons who claim support must prove that they are unable to meet their basic needs (e.g., because of their physical or mental state) and that the assistance they receive is insufficient to meet these needs. Lastly, support claims are studied based on the capacity of the debtor to pay, that is, the means available to them and their family.

Claims between parents and children are therefore studied on a case-by-case basis. These claims are founded on the notions of solidarity and mutual assistance among members of a family in order to avoid a situation where one person is unable to meet his or her basic needs (lodging, food, clothing, etc.) while other members of the family enjoy a comfortable lifestyle. In practice, very few such claims are made.

IN BRIEF

There are very few claims for support payments. However, if a family member makes such a claim, they must prove that they have done everything in their means to try to support themselves (lodging, food, clothing, etc.), that they receive no financial assistance, and that they live in a state of extreme destitution (poverty), while you and your family enjoy a comfortable lifestyle. The granting of support is based on what is called family solidarity, which is founded on the notion of mutual assistance between parents and children.

83 | Are parents obligated to lodge their children of full age, whether or not the children are capable of caring for themselves?

Current laws do not provide for any obligation forcing a parent to lodge their children of full age, whatever their condition. As we have seen in Chapter 6 on protective supervision, the legal representative who has been given the custody of an incapable person of full age can delegate the custody of the person to an institution, a social resource, or anyone else who is able to meet the needs of the incapable person. **For questions regarding the responsibilities of legal representatives, please refer to Chapter 6.**

IN BRIEF

You are not obligated to lodge your children if they are of full age, and you cannot be forced to do so, regardless of their condition.

84 | If I have custody of an incapable person of full age, what is my liability if he or she injures someone else?

Persons who have custody of a person of full age who is incapable or who is not endowed with reason can only be held liable for reparations for prejudice (injury) caused by the person of full age, if they themselves are guilty of a deliberate or gross fault in exercising custody. A gross fault is a fault that shows gross recklessness, carelessness, or negligence.

In practice, it is very rare that the legal representative or custodian is held liable for an injury caused by a person of full age. The law guarantees a certain level of protection for persons who have custody of others and who, for the most part, do so on a volunteer basis.

IN BRIEF

You can only be held liable for an injury caused by an incapable person of full age of whom you have custody if you commit a gross fault, that is, gross recklessness, carelessness, or negligence. In practice, it is very rare that persons are held liable for the fault of a person of full age over whom they have custody.

GLOSSARY

Advisor to a person of full age

The advisor to a person of full age is the person appointed to assist and advise a person of full age in the administration of their property based on the powers conferred on the advisor by the protective supervision under which the person of full age is placed. The advisor to a person of full age is not the legal representative of this person since the person of full age is considered capable of administering his or her own property.

Confidentiality

Confidentiality applies to every person, in addition to professionals, who works in the health and social services network. All information concerning a person is confidential and cannot be disclosed.

Confinement in an institution

Confinement in an institution is an exceptional measure that must be authorized by the Court of Québec to protect a person whose mental state presents a danger to themselves or to others. It allows a person to be kept against their will in an institution in order to ensure their own protection or that of others.

Consent to care

Consent to care is the authorization that a health professional must obtain from a person before providing the person with care or any other form of treatment.

Court order to provide treatment

This is a court order by the Superior Court of Québec following a request from an institution to authorize treatment of a person against his or her wishes.

Creditor of support

A creditor of support is a person who is entitled, based on certain criteria, to claim support payments because of a bond of filiation (parent/child), marriage (spouses), or civil union.

Curator

A curator is a person appointed to represent an incapable person of full age on a complete and permanent basis. The curator is responsible for making decisions on behalf of the person of full age based on the powers conferred on him or her by the protective supervision under which the person of full age has been placed. The curator is thus the legal representative of the incapable person of full age and is responsible for caring for him or her and administering his or her property.

Dative tutor to a minor

A dative tutor to a minor is appointed by the court or by his or her father or mother in a will, a mandate in anticipation of incapacity, or a declaration to the Curateur public.

Debtor to support

A debtor to support is a person who must meet the basic needs of another person (by giving them money to purchase food) because of a bond of filiation (parent/child), marriage (spouses), or civil union.

Decision-making autonomy

Decision-making autonomy means the right of a person to express his or her wishes. It stems from the right to the inviolability of the person and allows the person to accept or refuse care.

Employment insurance

Employment insurance is temporary financial assistance granted by the federal government to unemployed Canadians for the period they are seeking a new job or upgrading their skills in a specific field.

Employment-assistance

Employment-assistance is financial assistance granted by the Government of Québec when an individual is deemed at or below the poverty level based on government criteria.

Filiation

Filiation is the bond between a person and his or her father and mother.

Grave and immediate danger

Grave and immediate danger is an emergency situation that requires rapid intervention to remove a person from a danger to his or her life or bodily integrity or to protect the life or bodily integrity of others.

Health professional

A health professional is a person who belongs to a professional order such as a physician (general practitioner or specialist, including psychiatrists), psychologist, social worker, nurse, etc.

Heir

An heir is a person designated by law or in a will to inherit the property of a deceased person.

Implicit consent

Implicit consent occurs when the acts or inactions of the person make it reasonable to deduce that there is consent. In the case of the Electronic Health Record, there is implicit consent when the person shows no refusal to open an EHR within the time allowed to do so.

Integrity

Integrity is a principle by which persons are protected from any harm to their body, health, and mind.

Inviolability

Inviolability is a principle by which no one can harm a person or force them to act against their wishes. In all cases, the free and enlightened consent of the person must be obtained.

Legal tutor to a minor

The father and mother of a child under 18 years of age are automatically the child's legal tutors and can exercise his or her civil rights

Liquidator of succession

A liquidator of succession (formerly the testamentary executor) is a person appointed to execute a will, that is, to observe the prescribed formalities with a view to distributing the property of the deceased person to the heirs.

Mandatory

A mandatory is a person who is designated in a mandate in anticipation of incapacity to represent the mandator. The mandatory is the legal representative of the mandator.

Mandate in anticipation of incapacity

This is an act whereby persons who are in possession of all their faculties give another person the power to care for them and administer their property in the event they are no longer capable of doing so.

Mandator

A mandator is a person who, by a mandate in anticipation of incapacity, gives another person the power to represent them in the event of their incapacity and to care for them or administer their property.

Preventive supervision

Preventive supervision is custody that may last up to 72 hours and is ordered by a physician who deems that the person is a danger to themselves or to others.

Professional privilege

Professional privilege is a legal obligation by virtue of which all the personal information that a professional (who is a member of a professional order) in the health and social services network possesses on a given person must be kept confidential. This means that the professional cannot disclose any information obtained during the exercise of their profession, save in the following circumstances: when the person him or herself authorizes the professional to disclose the information; to prevent an act of violence, including suicide; or when there is good reason to believe that an identifiable person or group of persons is in imminent danger of death or serious injury.

Protective supervision

Protective supervision is a measure provided for by law that is intended to protect a person of full age who has been declared incapable of caring for him or herself or administering his or her property. This measure allows the appointment of a legal representative to guarantee the protection and to exercise the rights of the incapable person.

Substituted consent

Substituted consent is consent given by a third party who is authorized by law to accept or refuse care on behalf of another person.

Temporary confinement

Temporary confinement is ordered by the court to submit a person to a psychiatric assessment to determine whether or not they are a danger to themselves or to others because of their mental state.

Testator

A testator is a person who makes a will.

Tutor to a person of full age

A tutor to a person of full age is appointed to represent an incapable person of full age to make decisions on his or her behalf based on the power conferred on the tutor by the protective supervision under which the tutor of full age is placed. The tutor is thus the legal representative of the incapable person of full age.

Will

A will is a legal act whereby a person expresses their last wishes and bequeaths their property in anticipation of their death.

APPENDICES

APPENDIX 1

SUMMARY TABLE

Human rights and freedoms guaranteed by the Québec Charter

FUNDAMENTAL RIGHTS	FUNDAMENTAL FREEDOMS
<ul style="list-style-type: none"> ■ Right to life, personal security, inviolability, and freedom ■ Right to assistance ■ Right to the safeguard of dignity, honour, and reputation ■ Right to respect for private life ■ Right to the peaceful enjoyment and free disposal of property ■ Right to the respect for private property ■ Right to the respect of professional secrecy 	<ul style="list-style-type: none"> ■ Freedom of person ■ Freedom of conscience ■ Freedom of religion ■ Freedom of opinion ■ Freedom of expression ■ Freedom of peaceful assembly and association

Full and equal recognition and exercise of human rights and freedoms

In addition to securing the human rights and freedoms mentioned above, the Québec Charter stipulates that discrimination is forbidden in the following situations:

- In the making of a juridical act concerning goods or services ordinarily offered to the public
- In employment
- By an employment bureau
- In notices, symbols, or signs
- In the clauses of a juridical act
- In access to public places
- In the granting of equal salary or wages for equivalent work

JUDICIAL RIGHTS	ECONOMIC AND SOCIAL RIGHTS
<ul style="list-style-type: none">■ Right to a fair hearing by an independent tribunal■ Right of every person who is arrested to be treated with respect■ Right to be told of the grounds for an arrest■ Right to be represented by a lawyer■ Right to advise next of kin■ Right to be brought promptly before a judge	<ul style="list-style-type: none">■ Right of a child to be protected by the persons who care for him or her■ Right to information■ Right of every aged or handicapped person to be protected against any form of exploitation

Political rights

- Right to vote
- Right to be a candidate for election

APPENDIX 2

COURT HIERARCHY

<p>Supreme Court of Canada</p>	<ul style="list-style-type: none"> ■ General court of appeal for all Canadian courts ■ Hears appeals of decisions handed down by final courts of appeal of all Canadian provinces (In Québec, the final court of appeal is the Court of Appeal of Québec.) ■ In most cases, hears appeals only if it gives permission first
<p>Court of Appeal of Québec</p>	<ul style="list-style-type: none"> ■ General court of appeal for Québec
<p>Court of Québec and Québec Superior Court</p>	<ul style="list-style-type: none"> ■ Courts of first instance in Québec ■ Have provincial jurisdiction in civil and criminal matters, but to different degrees: <ul style="list-style-type: none"> ■ The Court of Québec hears all proceedings brought to it under the law. It is the court that hears the most cases in Québec. It is made up of three divisions: the Civil Division, the Criminal and Penal Division, and the Youth Division. For example, the law grants it exclusive authority to rule on motions to submit a person to a psychiatric assessment when the person opposes such an assessment or to order the person's confinement in an institution as provided for in the <i>Act respecting the protection of persons whose mental state presents a danger to themselves or to others</i>. ■ The Superior Court is a court of common law, which means that it hears cases in the first instance (and occasionally on appeal) that a section of the law has not exclusively attributed to another court, like the Court of Québec. For example, cases concerning the integrity of the person (such as those involving consent to care and protective supervision) are heard by the Superior Court.

**Tribunal
administratif
du Québec**

- Specialized tribunal established under the *Act respecting administrative justice*.
- Conducts appeals of administrative decisions by certain government authorities such as ministries, agencies, health institutions, etc. It consists of four divisions, including the Social Affairs Division.
- It is the tribunal that hears applications where provided for in any given legislation. For example, the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* allows any person who is dissatisfied with the maintenance of confinement or any other decision made under this Act to appeal to the Tribunal administratif du Québec.

APPENDIX 3

DIFFERENCE BETWEEN A NON-JUDICIAL RECOURSES AND A JUDICIAL RECOURSES

	NON-JUDICIAL RECOURSES	JUDICIAL RECOURSES	
		Civil Law	Criminal Law
Place where recourses are filed	<ul style="list-style-type: none"> ■ Institution ■ Agency ■ Commissaire aux plaintes ■ Commission d'accès à l'information (CAI) ■ Commission des droits de la personne et des droits de la jeunesse ■ Disciplinary committee of a professional corporation ■ Tribunal administratif du Québec 	Courts <ul style="list-style-type: none"> ■ Court of Québec ■ Superior Court ■ Court of Appeal of Québec ■ Supreme Court of Canada 	Courts <ul style="list-style-type: none"> ■ Court of Québec ■ Superior Court ■ Court of Appeal of Québec ■ Supreme Court of Canada
Form of the recourse	<ul style="list-style-type: none"> ■ Complaints ■ Applications for review 	<ul style="list-style-type: none"> ■ Motions, proceedings 	<ul style="list-style-type: none"> ■ Motions, proceedings
Alleged act	<ul style="list-style-type: none"> ■ Non-respect of a right provided for in an Act or Regulation 	<ul style="list-style-type: none"> ■ Fault or failure to respect an obligation that results in an injury 	<ul style="list-style-type: none"> ■ Criminal act with intent to injure
Results sought	<ul style="list-style-type: none"> ■ Respect the affected right(s) 	<ul style="list-style-type: none"> ■ Repair the injury suffered 	<ul style="list-style-type: none"> ■ Punish the guilty party
Penalties	<ul style="list-style-type: none"> ■ Recommendations ■ Suspension ■ Reprimand ■ Revocation of permit, etc. 	<ul style="list-style-type: none"> ■ Monetary compensation 	<ul style="list-style-type: none"> ■ Fine, prison sentence, or other penalty

APPENDIX 4**LIST OF FÉDÉRATION DES FAMILLES ET AMIS
DE LA PERSONNE ATTEINTE DE MALADIE MENTALE (FFAPAMM)
MEMBER ASSOCIATIONS AND OTHER RESOURCES****Fédération des familles et amis de la personne atteinte
de maladie mentale (FFAPAMM)**

1990, rue Cyrille-Duquet, Bureau 203

Québec (Québec) G1N 4K8

Telephone: 418 687-0474 or 1 800 323-0474 (toll free)

Fax: 418 687-0123

Website: www.ffapamm.com

info@ffapamm.com

FFAPAMM Members**01 / Bas-Saint-Laurent****La lueur de l'espoir du Bas-Saint-Laurent**

188, rue Lavoie

Rimouski (Québec) G5L 5Z1

Telephone: 418 725-2544 or 1 877 725-2544

Fax: 418 723-1552

lueurespoirbsl@globetrotter.net

02 / Saguenay-Lac-Saint-Jean**Le Maillon**

232, rue Tessier

Chicoutimi (Québec) G7H 4Z6

Telephone: 418 543-3463 or 1 877 900-3463

Fax: 418 543-3531

lemaillon@qc.aira.com

Centre Nelligan

945, rue Paradis, P.O. Box 304

Roberval (Québec) G8H 2N7

Telephone: 418 275-0033

Fax: 418 275-0070

nelligan@bellnet.ca

03 / Capitale-Nationale

La Boussole

302, 3^e Avenue
Québec (Québec) G1L 2V8
Telephone: 418 523-1502
Fax: 418 523-8343
laboussole@bellnet.ca

La Marée

367, rue Saint-Étienne, Bureau 326
La Malbaie (Québec) G5A 1M3
Telephone: 418 665-0050
Fax: 418 665-0084
lamaree@lamaree.ca

Cercle Polaire

5000, 3^e Avenue Ouest, Bureau 202
Québec (Québec) G1H 7J1
Telephone: 418 623-4636
Fax: 418 623-7800
cercle.polaire@oricom.ca

L'Arc-en-Ciel

331, rue Notre-Dame
Donnacona (Québec) G3M 1H3
Telephone: 418 285-3847
Fax: 418 285-3879
larc.enciel@globetrotter.net

04/17 Mauricie et Centre du Québec

APAME Centre du Québec

1090, rue Lafontaine
Drummondville (Québec) J2B 1M9
Telephone: 819 478-1216
Fax: 819 478-5799
apamedr@cgocable.ca

Le Périscope

2493, avenue Saint-Marc
Shawinigan (Québec) G9N 2J9
Telephone: 819 539-6487
Fax: 819 539-3196
le.periscope@sh.cgocable.ca

La Lanterne

501-2, boulevard du Saint-Maurice
Trois-Rivières (Québec) G9A 3P1
Telephone: 819 693-2841
Fax: 819 693-0687
lalanterne@cgocable.ca

Association Le P.A.S.

59, rue Monfette, Bureau 132
Victoriaville (Québec) G6P 1J8
Telephone: 819 751-2842
Fax: 819 758-8270
lepas@cdcbf.qc.ca

Le Gyroscope

121, Petite Rivière, Local 28
Louiseville (Québec) J5V 2H3
Telephone: 819 228-2858
Fax: 819 228-0468
gyroscope@qc.aira.com

La Passerelle

4825, avenue Bouvet, Bureau 112
Bécancour (Québec) G9H 1X5
Telephone: 819 233-9143
Fax: 819 233-9843
lapasserelle@tlb.sympatico.ca

05 / Estrie

APPAMM - Estrie

574, rue King Est
Sherbrooke (Québec) J1G 1B5
Telephone: 819 563-1363
Fax: 819 563-1655
info@appamme.org

06 / Montréal

Association des parents et amis du bien-être mental du Sud-Ouest de Montréal

881, avenue de l'Église
Verdun (Québec) H4G 2N4
Telephone: 514 368-4824
Fax: 514 368-5418
apabemso@videotron.ca

A.P.S.M. Saint-Laurent-Bordeaux-Cartierville

1055, avenue Sainte-Croix
Bureau 114, Bloc G
Saint-Laurent (Québec) H4L 3Z2
Telephone: 514 744-5218
Fax: 514 744-3963
apasm@videotron.ca

La Parentrie

10780, rue Laverdure, Local R-107
Montréal (Québec) H3L 2L9
Telephone: 514 385-6786
Fax: 514 385-9513
entraide@bellnet.ca

AMI-Québec

5253, boulevard Décarie, Bureau 200
Montréal (Québec) H3W 3C3
Telephone: 514 486-1448
Fax: 514 486-6157
amique@amiquebec.org
(Services offered for the English community)

Les Amis de la santé mentale / Friends for mental health

750, avenue Dawson, Bureau 102

Dorval (Québec) H9S 1X1

Telephone: 514 636-6885

Fax: 514 636-2862

asmfmh@qc.aira.com

07 / Outaouais**L'Apogée**

92, boulevard Saint-Raymond, Bureau 304

Gatineau (Québec) J8Y 1S7

Telephone: 819 771-6488 or 1 866 358-6488

Fax: 819 771-5566

apogee@qc.aira.com

08 / Abitibi-Témiscamingue**VALPABEM**

375, avenue Centrale, P.O. Box 643

Val-d'Or (Québec) J9P 4P6

Telephone: 819 874-0257 or 1 877 874-9399

Fax: 819 874-2257

valpabem@lino.com

La Rescousse

34, 2^e Avenue Ouest

Amos (Québec) J9T 1S8

Telephone: 819 727-4567

Fax: 819 727-4555

larescousse@sec.cableamos.com

Le Portail

19, rue Gamble Ouest, Bureau 200

Rouyn-Noranda (Québec) J9X 2R3

Telephone: 819 764-4445

Fax: 819 764-4452

le_portail@tlb.sympatico.ca

La Bouée d'espoir

257, rue Principale, P.O. Box 231

La Sarre (Québec) J9Z 2X5

Telephone: 819 333-1184

Fax: 819 333-1186

labouee@cablevision.qc.ca

09 / Côte-Nord**APAME Sept-Îles**

652, avenue DeQuen

Sept-Îles (Québec) G4R 2R5

Telephone: 418 968-0448 or 1 888 718-2726

Fax: 418 968-0148

Email: apamesi@globetrotter.net

APAME Baie-Comeau

884-A, rue de Puyjalon, P.O. Box 2071

Baie-Comeau (Québec) G5C 2S8

Telephone: 418 295-2090

Fax: 418 295-2090

apamebc@globetrotter.net

10 / Nord-du-Québec

There are no member associations in this region.

Please refer to your health and social services centre.

11 / Gaspésie-Îles-de-la-Madeleine

For Gaspésie, refer to the following section on "Other resources and associations not affiliated with FFAPAMM".

Centre communautaire l'Éclaircie

330, chemin Principal, Bureau 401

Cap-aux-Meules

Îles-de-la-Madeleine (Québec) G4T 1C9

Telephone: 418 986-6456

Fax: 418 986-5989

eclaircie@tlb.sympatico.ca

12 / Chaudière-Appalaches

Le Contrevent

190, rue Saint-Joseph
Lévis (Québec) G6V 7S9
Telephone: 418 835-1967 or 1 888 835-1967
Fax: 418 835-0831
contrevent@videotron.ca

L'Ancre

227, avenue Collin
Montmagny (Québec) G5V 2S7
Telephone: 418 248-0068
Fax: 418 248-9696
ancre@globetrotter.net

Le Sillon

477, 90^e Rue, Bureau 240
Saint-Georges (Québec) G5Y 3L1
Telephone: 418 227-6464
Fax: 418 227-6938
lesillon@globetrotter.net

La Croisée

88, rue Saint-Joseph Nord
Thetford Mines (Québec) G6G 3N8
Telephone: 418 335-1184
Fax: 418 335-1184
Lacroise1@bellnet.ca

13 / Laval

ALPABEM

1800, boulevard Le Corbusier, Bureau 134
Laval (Québec) H7S 2K1
Telephone: 450 688-0541 or 1 888 688-0541
Fax: 450 688-7061
info@alpabem.qc.ca

14 / Lanaudière

La lueur du phare de Lanaudière

676, boulevard Manseau

Joliette (Québec) J6E 3E6

Telephone: 450 752-4544 or 1 800 465-4544

Fax: 450 752-6468

lueurduphare@citenet.net

15 / Laurentides

There are no member associations in this region.

Please refer to your health and social services centre.

16 / Montérégie

APAMM Rive-Sud

1295, chemin de Chambly

Longueuil (Québec) J4J 3X1

Telephone: 450 677-5697

Fax: 450 677-3914

Email: apammrs@videotron.ca

Le Vaisseau d'Or

213, rue Robillard

Sorel-Tracy (Québec) J3P 8C7

Telephone: 450 743-2300

Fax: 450 743-9846

levaisseauor@bellnet.ca

Oasis santé mentale Granby et Région

18, rue Saint-Antoine Nord

Granby (Québec) J2G 5G3

Telephone: 450 777-7131 or 1 877 777-7157

Fax: 450 777-4698

oasissantementale@b2b2c.ca

Éclusier du Haut-Richelieu

219, rue Jacques-Cartier Nord
Saint-Jean-sur-Richelieu (Québec) J3B 6T3
Telephone: 450 346-5252
Fax: 450 346-6751
eclusierhr@videotron.ca

L'Accolade Santé mentale

127, boulevard Saint-Jean-Baptiste, Bureau 12
Châteauguay (Québec) J6K 3B1
Telephone: 450 699-7059 or 1 866 699-7059
Fax: 450 699-1562
info@acoladesantementale.org

Le Phare

620, avenue Robert
Saint-Hyacinthe (Québec) J2S 4L8
Telephone: 450 773-7202 or 1 877 773-7202
Fax: 450 773-5117
reception@lephare-apamm.ca

Le Pont du Suroît

88, rue Alexandre
Salaberry-de-Valleyfield (Québec) J6S 3J9
Telephone: 450 377-3126 or 1 888 377-4571
Fax: 450 377-4571
info@lepont.com

For additional information, we encourage you to access FFAPAMM's website through the url given at the beginning of this appendix.

Other resources and associations not affiliated with FFAPAMM**06 / Montréal****AQPAMM**

1260, rue Sainte-Catherine Est, Bureau 202-A

Montréal (Québec) H2L 2H2

Telephone : 514 524-7131

Fax: 514 524-1728

aqpamm@videotron.ca

Société québécoise de la schizophrénie

7401, rue Hochelaga

Montréal (Québec) H1N 3M5

Telephone: 514 251-4000 (3400) or 1 866 888-2323

Fax: 514 251-6347

11 / Gaspésie-Îles-de-la-Madeleine**Nouveau Regard**

108, chemin Cyr

New Richmond (Québec) G0C 2B0

Telephone: 418 392-6414 or 1 888 503-6414

Fax: 418 392-6421

15 / Laurentides**ALPPAMM**

373, rue Parent

Saint-Jérôme (Québec) J7Z 2A1

Telephone: 450 438-4291 or 1 800 663-0659

Fax: 450 438-8960

Maison Clothilde

420, rue Hébert

Mont-Laurier (Québec) J9L 2X2

Telephone: 819 623-3843

Fax: 819 623-0843

www.msss.gouv.qc.ca

**Santé
et Services sociaux**

Québec



08-914-03A