



PROTECTEUR
DU CITOYEN



SPECIAL REPORT SUMMARY

UNDER TUTORSHIP BUT VULNERABLE NONETHELESS

PROTECT THE ASSETS OF INCAPABLE ADULTS UNDER PRIVATE PROTECTIVE SUPERVISION REGIMES

QUEBEC, MARCH 30, 2023

SUMMARY

When a court appoints someone close to represent an incapable person, this is tantamount to recognizing that the person needs protecting because of their isolation, their incapacity that is expected to last, and the nature or state of their assets.

In 2020-2021, there were approximately 33,000 incapable adults in Québec, 9,410 of whom were under a private protective supervision regime. In private tutorship, someone close acts as the person's legal representative and makes decisions on their behalf.

The Curateur public's mission is to see to it that incapable persons are protected. In private tutorships, it fulfils this mission by overseeing the tutor's patrimonial management and informing the tutor about their obligations. One of the purposes of its role as overseer is to make it easier to detect situations of financial abuse and to limit their gravity and prevent their recurrence.

The Québec Ombudsman cannot insist enough on the great vulnerability of the adults taken in charge under private protective supervision regimes. The effectiveness of the Curateur public's oversight (its ability to detect the faintest sign of any situation likely to harm protected people and to act quickly) hinges on having reliable work methods and tools.

Complaints received by the Québec Ombudsman in 2020-2021 revealed shortcomings in the Curateur public's monitoring of private protective supervision regimes. For example, faced with alleged or substantiated instances of financial abuse, the Curateur public was slow to react, used inadequate measures, exercised insufficient follow-up, or exhibited other failings. These deficiencies could have penalized certain represented persons.

As a result, the Québec Ombudsman decided to conduct a special investigation to:

- Analyze how the Curateur public supervises private regimes;
- Cross-check whether its methods are relevant as regards its obligations under the law;
- Identify ways of improving the effectiveness of the supervision carried out by the Curateur public.

Improve compliance with prescribed deadlines

For the Curateur public to fulfill its supervisory role, tutors must provide it with various information and documents proving that the represented person's assets are being handled properly. However, it is not uncommon that it takes tutors much longer than prescribed to complete certain duties that are incumbent on them. When this occurs, **tutors' failure to meet deadlines exacerbates the Curateur public's slowness to act.**

Tutors are late in sending in certain documents to the Curateur public (e.g. the annual management report on their administration or supporting documents that corroborate the information provided).

Other delays inherent to how the Curateur public operates were also seen (completing the examination of annual management reports, intervening with tutors in cases of irregularity or potential or substantiated financial abuse).

The Québec Ombudsman acknowledges that staff shortages because of the prevailing economic conditions have contributed to these delays, but they do not explain everything.

Detect mismanagement and financial abuse effectively

It is up to the Curateur public to red-flag the tutorship files that are more at risk for financial abuse and mismanagement so that they can be monitored more closely. Verifying annual management reports is its main detection tool in this respect.

The Curateur public selects the annual management records that will be verified based on various criteria. These include the date of the most recent examination, patrimonial variations and the monitoring level assigned to the file.

The Curateur public also forms a control sample whereby the annual management reports that are not selected by the system are randomly sampled at a rate of 3%.

During its investigation, the Québec Ombudsman noted that **the effectiveness and reliability of the Curateur public's methods for detecting financial abuse or mismanagement could be improved.**

The items to be improved included:

- The size of the random control sample, which should be adjusted annually to guarantee that it is representative;
- The criteria used for selecting the annual management reports, which must be reviewed periodically so as to improve the effectiveness of the process for identifying problematic reports;
- The summary examination requirements, which could stand redefining to include the obligation to provide basic supporting documents for corroborating the amounts entered in the annual management report.

Improve work practices and tools

The investigation showed that there was **a certain lack of consistency in the work practices of the various agents**. This not only undermines the quality, but also the speed, of the Curateur public's interventions. Disparities in handling files were seen, in particular, regarding:

- The decision about whether to carry out a retroactive analysis in confirmed cases of abuse;
- The suitability of requesting supporting documents for corroborating certain information;
- The interventions in cases of a tutor's non-authorized remuneration;
- The kind of information that must be entered in the file.

The Québec Ombudsman feels that the **shortcomings in supervising and counselling staff and in the work tools at their disposal may partly explain these disparities**. It noted that:

- The outdated computer system does not make it possible to quickly locate certain information required for prompt file handling;
- Some staff in charge of files are not given training specific to the tasks they are assigned;
- Updating of the verification handbook is not completed;
- Some work instructions are vague or incomplete;
- Certain work tools employed do not enable prompt follow-up on reimbursement claims, tracking of insufficient securities, reports received, etc.;
- Current practices do not make it possible to have quick access to the outcome of a report, and there is no deadline for completing handling of reports;

- The interventions with tutorship councils are insufficient;
- The Curateur public's legal investigative power is underused.

The Québec Ombudsman's recommendations

At the end of its investigation, the Québec Ombudsman concluded that to ensure that incapable adults are better protected, the Curateur public must bolster its role of supporting and overseeing tutorship management.

To do this, it must have work tools adapted to its mission and up-to-date work instructions. It must also improve the supervision and counselling of its staff so they promptly and consistently perform the tasks assigned to them at the different stages of file handling.

With this in mind, the Québec Ombudsman made **17 recommendations** to the Curateur public aimed at reducing file handling time and quickly detecting possible cases of financial abuse or mismanagement by tutors.