

Caregivers

Practical Legal Tools





Éducaloi is an independent non-profit organization that explains the law to Quebecers in everyday language.

About this guide

Sometimes, people close to us need help because of age, illness or a disability. When this happens, we become caregivers.

There are many aspects to caregiving and lots of resources out there. This guide is an introduction to some helpful legal tools.

We would like to thank the Wellness Centre operated by Jeffery Hale Community Partners (wejh.ca) and L'Appui pour les proches aidants d'âinés for their input in creating this guide.

Important notice

The law changes. The information in this guide was up to date on January 27, 2020. This guide is meant as legal information, not legal advice. If you need advice on a specific situation, consult a lawyer or notary.

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Powers of Attorney



As a caregiver, you might be asked to help manage the money of the person you're caring for. You might also be asked to act on the person's behalf, for example, to cash a cheque.

A power of attorney is a legal document that allows you to do this. People use powers of attorney to name someone they trust to act on their behalf. In particular, they can name someone to help manage their finances and property.

People decide to use a power of attorney for different reasons. For example, their affairs might be too complicated, they might be out of the country or they could have trouble getting around.



People using powers of attorney decide what powers to give the person they pick to help them. They also have the right to supervise that person.

When to use a power of attorney



Powers of attorney are meant for people who can still make their own decisions and care for themselves. You are not supposed to use one after a person becomes incapacitated.

One exception is when you start the court process to activate a protection mandate or protective supervision. The law says you can continue to use a power of attorney while you're waiting for a court judgment.

There are more details about incapacity, activating protection mandates and activating protective supervision in the section Dealing with Incapacity (pg. 13).

Banks and other institutions may refuse to honour a power of attorney if the person is incapacitated and you haven't taken steps to activate a protection mandate or protective supervision.

Different ways of making a power of attorney

The person you're caring for can make a power of attorney on their own, by filling out a form at the bank, or with a notary or lawyer.

Legally, a power of attorney can be a verbal agreement, but putting it in writing makes things clearer. Most institutions (banks, etc.) will require a written one.

If the person you're caring for makes their own power of attorney, there's no special format to follow. A Quebec government website called www.quebec.ca has a link to a free model. The Resources section at the end of this guide says where to find the model.

Keep in mind that notaries and lawyers can give helpful advice, especially if a person's situation is complicated.

If you are named in a power of attorney

If you are named in a power of attorney, you will have legal responsibilities. For example, you must follow the instructions in the power of attorney and act in the best interest of the person you're helping. You can be held personally responsible if you do not do this.



Avoid financial abuse

Powers of attorney can sometimes lead to the financial abuse of vulnerable people. So people shouldn't use them unless they have to.

Regardless of the date on the power of attorney, it can be cancelled any time. Anyone can contact a Quebec government agency called the Curateur public (public curator) if they suspect financial abuse.

The public curator's contact information is in the Resources section of this guide.

Domestic mandate between spouses

The simple fact of being married or in a civil union creates what is called a domestic mandate between spouses.



If you are caring for your spouse, you can act on your spouse's behalf for basic family needs, such as paying for heating, groceries, repairing a house or medical care. There is no need for a written document.

Important! A domestic mandate does not automatically exist between common-law partners, or for large transactions like buying and selling a house.

Planning Ahead



As a caregiver, you may want to help the person you're caring for plan ahead in case they lose the ability to make decisions for themselves. You may also want to help them decide what should happen when they pass away.

Legal tools like protection mandates, advance medical directives and wills let people make important decisions ahead of time. Otherwise, a caregiver (or Quebec law) might end up deciding for them. Legal tools also help make sure people's wishes are followed.

Protection mandates

Protection mandates let the person you're caring for name someone (or several people) to look after their well-being and manage their finances in case they lose the ability to do this themselves.

This is called being incapacitated. There are more details about incapacity in the section Dealing with Incapacity (pg. 13).

Protection mandates can also include specific instructions. For example, a protection mandate could say which type of housing or long-term care facility the person prefers.

When to make a protection mandate



Protection mandates must be put in place while people can still understand what a protection mandate is, what their protection mandate says and the effects of signing it.

A protection mandate may not be valid if the person signing could not understand it, or if they were pressured into signing or already incapacitated.

Different ways to make a protection mandate

People can make

1) a notarized mandate (with a notary)



2) a mandate in the presence of witnesses
(on their own, using a model or with a lawyer)



For mandates in the presence of witnesses, the person must sign it and have two witnesses sign as well. Witnesses cannot be people who are named in the protection mandate. They also can't benefit from the mandate.

A Quebec government agency called the Curateur public (public curator) has a free form with explanations. The Resources section at the end of this guide says where to find the form.

If you are named in a protection mandate

If you are named in a protection mandate, you'll have to decide whether or not you are able to do the job. If you accept, you will make important decisions for the person you're caring for. You will also have legal responsibilities. For example, you must act in the person's best interest and follow the instructions in the mandate.

If you do not do this, people can ask the public curator to investigate and intervene. A court can also dismiss you from your duties.

Advance medical directives

Advance medical directives let the person you're caring for decide ahead of time whether to accept or refuse some types of health care in certain situations. For example, the person can decide not to accept the use of a ventilator or artificial feeding.

If the person is unable to make these decisions in the future, health professionals can refer to the directives.

When to make advance medical directives



To make advance medical directives, people must still be able to consent to medical care. This means that they are able to understand the information given to them by health professionals. They must also understand the consequences of accepting or refusing proposed care.

Different ways to make advance medical directives

The person you're caring for can make advance medical directives with a notary or by using a free form available through the Régie de l'assurance maladie du Québec (RAMQ or Quebec medicare). You can find RAMQ contact information in the Resources section of this guide.

People can download the form from the RAMQ website or call the RAMQ to have a copy mailed to them. They must then register the form with the RAMQ. Medical professionals must follow advance medical directives that are on the RAMQ list.

For more information, see our web guide Caregivers: Practical Legal Tools (educaloi.qc.ca).

Other ways to decide on medical care ahead of time

The person you're caring for can include instructions about medical care in other documents, like protection mandates and in forms provided by a hospital or health institution.

For alternative options like these, people must still have their mental abilities and be able to understand the impact of their decisions.



Organ Donation

There are several ways to agree to organ donation. The person you're caring for could:

- Sign the back of their public Health Insurance Card (RAMQ or Medicare card)
- Fill out a RAMQ (Medicare) form
- Have a notary make a document
- Express their wishes orally in front of two people

Wills

A will lets the person you're caring for choose who will inherit from them after they pass away. A will also lets the person pick someone to settle their final affairs.

Without a will, the law decides who will inherit. This can lead to unexpected situations. For example, common-law partners won't inherit from each other if they don't have wills.

Different ways to make a will

There are three types of wills in Quebec. People can make

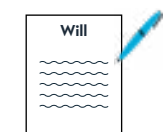
1) a notarized will (with a notary),



2) a will before two witnesses (on their own, using a model or with a lawyer), or



3) a holograph will (handwritten, on their own).



Wills must follow specific legal rules to be valid. There are advantages and disadvantages to each type of will. For more information, see our web guide [Caregivers: Practical Legal Tools \(educaloi.qc.ca\)](http://educaloi.qc.ca).

When to make a will



Wills must be put in place while people can still understand what a will is, what their will says and the effects of signing it.

Being under protective supervision can affect a person's ability to make a valid will:

- An adult with an **adviser** can still make a will.
- An adult with a **tutor** can make a will, but the court must check it.
- An adult with a **curator** cannot make a will.

A will may not be valid if a person was pressured into signing or could not understand it.

Planning for funerals

Often, wills are not read until after a person's funeral. So it's a good idea to ask the person you're caring for about their final wishes ahead of time.

It's also possible to pay for funeral arrangements in advance. Funeral homes must follow strict legal rules and keep 90 % of the money in a trust account until the funeral. A trust account is a special account with protections that keep your money separate from the funeral company's money.

For more information, see our web guide [Caregivers: Practical Legal Tools \(educaloi.qc.ca\)](https://educaloi.qc.ca).



Frozen bank accounts

In Quebec, banks freeze people's accounts after they pass away, including joint bank accounts.

If you have a joint bank account with the person you're caring for, you should keep this in mind.

Dealing with Incapacity



Sometimes, people experience a loss of autonomy so great that they become legally incapacitated.

Legal incapacity means that a person can no longer take care of themselves or their finances. Here are some causes of incapacity:

- decreased mental ability (for example, a person with advanced Alzheimer's disease)
- physical problems that prevent a person from expressing their wishes (for example, a coma).

There are different degrees of legal incapacity: it can be partial or complete, temporary or permanent.

Caregivers should not confuse physical health problems with legal incapacity: people can have serious physical health problems but still be legally capable of making their own decisions.

It's not always easy to tell if someone is incapacitated. You can start by having conversations with the person you're caring for and with the people around them.

To get to the heart of the matter, a doctor and social worker will have to evaluate the person. Courts use these evaluations to decide whether a person is legally incapacitated.

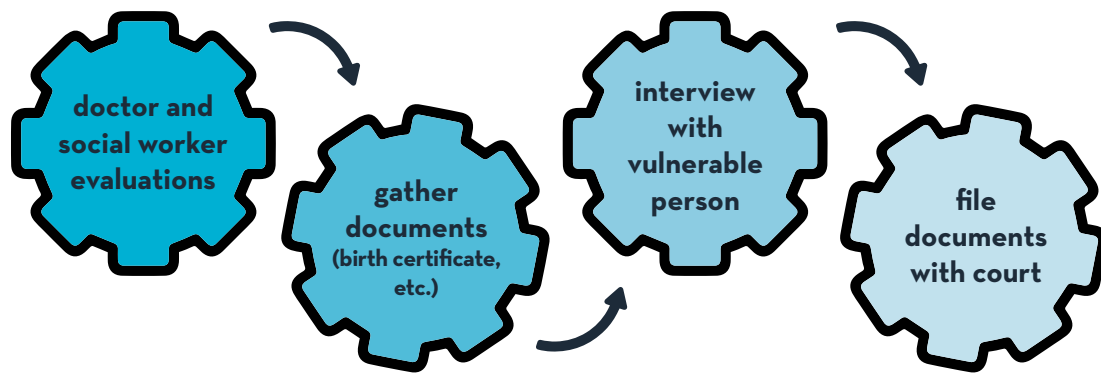
Once a court decides that a person is incapacitated, it can officially name someone (or a group of people) to protect the incapacitated person and act on their behalf.

Activating a protection mandate

Process

If the person you're caring for has a protection mandate, you must get a court judgment to activate it. This procedure is called homologation.

The whole process is complex and can take many months. You may wish to use the services of a notary or lawyer. The different steps often include these:



For more information about this process, see our web guide Caregivers: Practical Legal Tools (educaloi.qc.ca).

The court can refuse to activate a protection mandate if there is a very good reason to do so. For example, a court might opt for protective supervision if the incapacitated person was financially abused by the person named to look after them in the mandate.

Activating protective supervision

Process

If the person you're caring for doesn't have a protection mandate, or if it is invalid or incomplete, you can get a court judgment to activate protective supervision.

Asking for protective supervision is similar to activating a protection mandate. The process involves an official meeting of friends and relatives, who will give their opinion about protective supervision.

For more information about this process, see our web guide Caregivers: Practical Legal Tools (educaloi.qc.ca).

Types of protective supervision

The type of protective supervision put in place will depend on a person's level of autonomy. The court generally appoints

- an **adviser** for people who are slightly unable to manage their finances,
- a **tutor** for people who are temporarily or partly unable to take care of themselves or their finances, and
- a **curator** for people who are totally and permanently unable to take care of themselves or their finances.

People with advisors have the most freedom to make decisions for themselves. People with curators have the least freedom.

If friends and family are not willing or able to take on the role of tutor or curator, Quebec's public curator will do it. But this only happens as a last resort.

Automatic legal protections

Activating protective supervision might not be necessary. To a certain extent, the law allows caregivers to look after the affairs of an incapacitated person. Here are some examples:

- For some government programs, people close to an incapacitated person can collect and manage benefits for them. This includes Old Age Security pension cheques.
- Married and civil union spouses can continue to take care of basic family needs for their spouses. The law is silent on common-law couples.
- People close to an incapacitated person can act on the person's behalf to take care of urgent matters. For example, they can fix a leaky roof or pay important bills.
- If an incapacitated person can't make medical decisions on their own, the law says who can make decisions for them.

However, protective supervision might be necessary if an incapacitated person owns things that are worth a lot of money or if they are in a situation that makes them vulnerable to abuse.

Common Legal Questions



Time off for caregivers generally

Most employees in Quebec can be absent from work for 10 days a year due to the state of health of a person close to them or for whom they are a caregiver.

If you're not a relative of the person you're caring for, you may need a certificate attesting that you are a caregiver. The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST or labour commission) has a form for this. Contact information for the CNESST is in the Resources section of this guide.

If you've worked for the same employer for at least three consecutive months, the first two of the 10 days off are paid. The other days are at your own expense. The CNESST website has more information about this.

Time off for a serious illness or accident

Most employees also have the right to be absent from work for 16 weeks per year, without pay, when they need to be with a person close to them because of a serious illness or accident. You can be absent for up to 27 weeks if a medical certificate says the person is suffering from a serious and potentially fatal illness.



The rules on time off are different for some workers

For example, the rules will probably be different if you work for the federal government, a bank (except caisses populaires), a radio station, an interprovincial transport company or a telecommunication company. You can find more information on the Government of Canada's website: www.canada.ca.

Involuntary separation doesn't mean you're divorced

If your spouse must move out of the family home and into a long-term care facility, you can apply for special tax status called involuntary separation.

The spouse remaining at home is 'single' for tax purposes, which lets them receive more money through Old Age Security and possibly the Guaranteed Income Supplement. Otherwise, the couple might spend most of its income on the long-term care facility.

Some married couples worry that involuntary separation means that they are divorced or legally separated. This is not the case. You are still married.



Complaints about health and social services

Anyone who uses public health or social services has a right to make complaints about those services. It's also possible to file a complaint on behalf of an incapacitated person. If a person passes away, their heirs can make a complaint.

If the person you're caring for did not receive good service, you can speak to the institution directly. If this doesn't solve the problem, you can file a formal complaint with the Service Quality and Complaints Commissioner in your region. Consult the Resources section of this guide for the commissioners' contact information.

The Centre d'assistance et d'accompagnement aux plaintes (CAAP or complaint assistance and support centre) in your region can also help you with your complaint. The CAAP contact information is in the Resources section of this guide.

Rights of people at the end of life

The law establishes specific rights for people at the end of life. Here are some examples:

- Complaints about end-of-life care must be given priority treatment.
- People have the right to refuse or stop medical care prolonging their life. If you are making medical decisions for someone else, you can also refuse or stop life-prolonging medical care for them.
- In some situations, people have a right to receive end-of-life health care (see below).
- People receiving end-of-life care have a right to a private hospital room for the final few days of their life.

End-of-life care can mean

- palliative care (care aimed primarily at relieving suffering);
- continuous palliative sedation (when a doctor makes a person unconscious to relieve suffering until the person passes away); and
- medically-assisted dying (when a doctor hastens a person's death to relieve suffering).

For more information, see our web guide [Caregivers: Practical Legal Tools \(educaloi.qc.ca\)](http://educaloi.qc.ca).

You are not alone. There are lots of resources available for caregivers. Here are some of them.

Éducaloi

www.educaloi.qc.ca/en

Our web guide Caregivers: Practical Legal Tools is a collection of online articles for caregivers. It is more detailed than this print guide.

L'Appui

www.lappui.org/en

L'Appui pour les proches aidants d'ânés is a provincial organization for caregivers of seniors. The website contains practical information on topics like tax benefits for caregivers, home support services and home adaptation.

The Caregiver Helpline (1-855-852-7784) offers support and referrals.

Curateur public (Quebec's public curator)

www.curateur.gouv.qc.ca (then click English)

1-800-363-902

There is a free protection mandate form on this website. You can also find information about protection mandates, protective supervision and how to report abuse.

Chambre des notaires du Québec (professional association for notaries)

www.cnq.org (then click English)

This website has information about the tools in this guide. There is also a free, bilingual notary information line: 1-800-668-2473.

Quebec Government

www.quebec.ca/en/government/services-quebec/seniors/

This website has information on many topics for seniors. You can find a model power of attorney on this site. Click on Justice, then Power of Attorney.

Régie de l'assurance maladie (RAMQ, or Quebec medicare)

www.ramq.gouv.qc.ca/en

Quebec City: 418 646-4636

Montreal: 514 864-3411

Elsewhere in Quebec: 1-800-561-9749 (toll-free)

The RAMQ has a free form for Advance Medical Directives and information about organ donation. On the website, enter Advance Medical Directives in the search box.

Société d'habitation du Québec (Quebec housing corporation)

www.habitation.gouv.qc.ca/english

This website lists housing assistance programs in Quebec, including the Residential Adaptation Assistance Program.

Biblio-Aidants

biblioaidants.ca/en

This website has information booklets for caregivers. It is coordinated by the Québec Public Library Association. Booklets may also be available through your local library.

Community Health and Social Services Network (CHSSN)

www.chssn.org/members

Member groups of the CHSSN help English-speaking caregivers across Quebec find support and services.

Seniors Help Line (Ligne Info Abus Aînés)

A help line for seniors suffering from abuse. Anyone can call.

1-888-489-2287

Service Quality and Complaints Commissioner

The commissioner accepts complaints about health and social services. Your regional commissioner can also help you with the complaint. Call 1-877-644-4545.

Centres d'assistance et d'accompagnement aux plaintes (CAAP or complaint assistance and support centres)

CAAPs help people and their representatives file complaints about health and social services. To contact your local CAAP, call 1-877-527-9339 or visit www.fcaap.ca (website in French only).

Users' and Residents' Committees

All health and social services institutions have either a users' or residents' committee.

Ask the institution you are dealing with for the contact information of the committee.

Community Justice Centres

www.justicedeproximite.qc.ca/en

Free legal clinics across Quebec that give information in person and sometimes by phone.

Commission des droits de la personne et des droits de la jeunesse (Quebec human rights and youth rights commission)

The Commission can investigate the financial exploitation of vulnerable people.

www.cdpdj.qc.ca/en

1-800-361-6477

Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST or labour standards, pay equity and workplace health and safety board)

www.cnt.gouv.qc.ca/en

The Commission website contains information about time off for caregivers. There is also a form for health and social services professionals to fill out attesting that a person is a caregiver. The form is in French only.

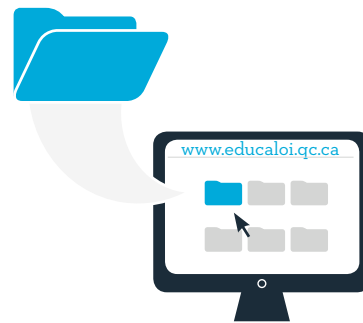
1-844-838-0808

Éducaloi explains the law to Quebecers in everyday language.



Read about these and other topics at www.educaloi.qc.ca/en:

- Health care decisions
- Homologating a protection mandate
- The health and social services network
- Estate planning
- Balancing work and caregiving
- Housing issues for seniors
- Dealing with death and settling an estate



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INFORMATION EMPOWERS