

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.

Important notice

The law changes. The information in this guide is up to date to April 2023. Visit the Éducaloi website (educaloi.qc.ca) to check whether there is a more recent version of this guide.

This guide is meant as legal information, not legal advice. If you need advice on a specific situation, consult a lawyer or notary.

This guide only applies in Quebec. Anyone can reproduce this guide for non-commercial reasons. However, it cannot be modified in any way.

© Éducaloi, 2023

With financial support from:



Department of Justice
Canada

Ministère de la Justice
Canada

Table of Contents

- Assistance Measure** **4**

- Powers of Attorney** **7**

- Planning Ahead** **9**
 - Protection Mandates
 - Advance Medical Directives
 - Wills
 - Funerals

- Dealing with Incapacity** **15**
 - Temporary Representation
 - Activating a Protection Mandate
 - Establishing a Tutorship
 - Automatic Legal Protections

- Common Legal Questions** **20**
 - Time Off for Caregivers
 - Involuntary Separation
 - Decisions About Health Care and Housing
 - Complaints About Health and Social Services
 - Rights of People at the End of Life

- Resources** **24**

Assistance Measure

The person you are helping can use the assistance measure to appoint you as their assistant. You will then become their official go-between for dealing with other people or organizations. This will make it easier for the person to communicate with governmental organizations or financial institutions. Even people who are bound by professional secrecy are allowed to communicate with you!

When to use an assistance measure

The assistance measure can be used when a person is able to make their own decisions and to take care of themselves but is limited in other ways because of certain difficulties. If they lose this ability, they can no longer use the assistance measure.

For example, a person may want to appoint an assistant if:

- they are a senior who is experiencing a loss of autonomy;
- they have a mild intellectual disability or mental health problem;
- they have a physical limitation (for example, eyesight, hearing, or mobility);
- their first language is neither English nor French.

Official recognition of your assistant

The decision to appoint an assistant belongs to the person who expresses the need. You can inform the person you are helping about the existence of this measure, but you cannot force them to go through with it.

The person who wants to have their assistant officially recognized must submit a request either by:

- filling out a free online or paper application, or
- obtaining the help of accredited lawyers or notaries.

The Public Curator, lawyer or notary will then meet with the person you are helping and ask them to provide certain documents.

The assistant's name will be entered in a public register and can be accessed online once the procedure is completed.

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.

The person giving the power of attorney must be capable of making their own decisions and taking care of themselves at the time that they write it . Otherwise, they cannot make one.

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. In other words, the person named in a power of attorney can no longer act for the person who is incapacitated by invoking the power of attorney.

One exception is when you start the court process to activate a protection mandate or to establish a tutorship. 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 establishing tutorships in the section *Dealing with Incapacity* (pg. 15).

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 establish a tutorship .

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 the Commission des droits de la personne et des droits de la jeunesse du Québec (Quebec human rights commission) if they suspect financial abuse.

The Commission'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. 15).

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 Curateur public to investigate and intervene. A court can also dismiss you from your duties.

Advance medical directives

Advance medical directives let a person you care for make choices now about certain kinds of health care that might be needed later. The directives will be used if the person becomes unable to make healthcare decisions and needs certain kinds of care. The choices in the directives must be respected.

In directives, there are five kinds of care you can accept or refuse: CPR (cardiopulmonary resuscitation), breathing with help from a ventilator, kidney dialysis, forced or artificial feeding and forced or artificial hydration.

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 can understand the information given by health professionals. They must also understand the consequences 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/en).

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

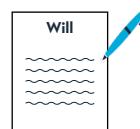
1) a notarized will (with a notary),



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/en).

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.

A person's ability to make a valid will can be affected if a tutorship has been established or a protection mandate has been activated for them. The court will have to verify the 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 funeral 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 \(educaloi.qc.ca/en\)](#).



Frozen bank accounts

In Quebec, banks generally freeze people's accounts after they pass away.

If you have a joint bank account with the person you're caring for, you should keep this in mind. However, if the person you're caring for is your spouse, common-law partner or ex, you can ask the bank in writing to give you your share of the joint account after they pass away.

Dealing with Incapacity



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

Legal incapacity means that they are no longer able to 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 her wishes (for example, a coma).

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. This will also help the court determine the nature of the incapacity as well as the person's abilities, their environment, the extent of their needs, and other circumstances of their condition.

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.

Temporary Representation

Temporary representation is a measure that allows the appointed representative to act on behalf of an incapacitated person for one specific legal act during a set amount of time. It avoids creating a tutorship when the person you are helping does not need daily protection, for example because their family members are already taking good care of them or because their finances and property are generally easy to manage.

When to ask for temporary representation

The court can appoint a temporary representative to meet a one-time need of the person you are helping. Temporary representation can be helpful in situations such as:

- Representing the incapacitated person at trial
- Signing a lease
- Selling a house
- Borrowing money
- Hypothecating (mortgaging) property
- Refusing a succession (inheritance)

The court will only grant permission for some acts, such as selling a house or borrowing money, if specific conditions are met. For example, the condition may be that the act is necessary for paying the incapacitated person's debts.

Recognizing a temporary representative

A request for temporary representation must be made in court for the representative to be recognized. This request can be made by:

- the incapacitated person,
- their spouse,
- close relatives,
- a mandatary appointed in a protection mandate, if the person has one,
- a person having a close connection with the incapacitated person, or
- the Public Curator.

Notaries and lawyers can also assist with requests for temporary representation in court.

The court must consider several factors when deciding whether to appoint a representative, including the medical and psychosocial assessments concerning the person. The court must also allow the person to provide their point of view.

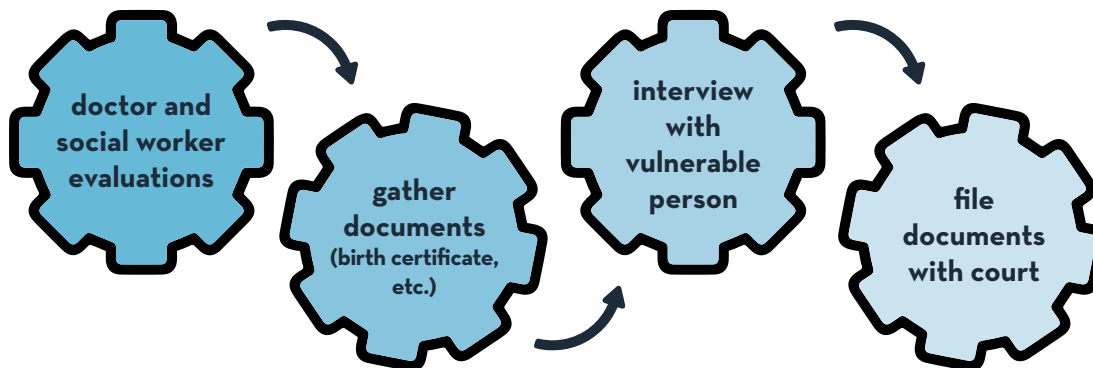
Once the court accepts the requests, the representative's name will be entered in a register maintained by the Public Curator.

Activating a protection mandate

Process

If the person you're caring for has a protection mandate, it must be activated through a court judgment. This procedure is called homologation.

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



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

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 to appoint a tutor if the incapacitated person was financially abused by the person named to look after them in the mandate.

Establishing a tutorship

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 establish a tutorship.

Asking to establish a tutorship is similar to activating a protection mandate. The process involves an official meeting of friends and relatives, who will give their opinion about the possible protective measures to be put in place.

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

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

Automatic legal protections

Establishing a tutorship 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.
- 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 healthcare decisions on their own, the law says who can take those decisions for them. Note that the term "health care" is broad and includes the choice of where the person will live.

However, a tutorship 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'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 website of the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST or labour standards, pay equity and health and safety board) has more information about this

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 CNESST has a form for this. Contact information for the CNESST is in the Resources section of this guide.

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

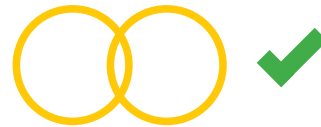
For example, the rules will probably be different if you work for the federal government, a bank (except caisses populaires), a radio station, an interprovincial transport company or a telecommunication company. You can find more information on the Government of Canada's website: www.canada.ca.

Involuntary separation doesn't mean you're divorced

If your spouse or partner 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 or partner remaining at home is 'single' for tax purposes, which lets them receive more money through Old Age Security and 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.



Decisions about health care and housing

The general rule is that adults make their own decisions about health care as long as they understand the impact of their decisions. "Health care" includes choices about housing.

Sometimes an illness or condition affecting mental abilities means people can't understand their situation and the impact of their decisions. To decide if a person can still make healthcare decisions, healthcare professionals must check if the person understands the situation and the care suggested.

When healthcare professionals decide a person is not able to make healthcare decisions, another person must decide. Here is the order of who decides:

- the mandatary, if a protection mandate has been activated
- a tutor, if a tutorship is in place
- a common law, married or civil union spouse
- a close relative,
- a person who shows special concern for the patient

The decision must always be made in the best interest of the patient and consider any wishes the patient expressed. If the patient made advance medical directives, they must be followed. For more information, see the section “Advance medical directives” at page 11.

Important! Even people found by a court to be incapacitated (unable to manage their affairs and care for themselves) can sometimes still make their own decisions about health care, including decisions about housing. Again, to decide if people can make their own decisions, healthcare professionals must check if they can understand information about their situation and the care suggested.

When incapacitated people refuse care required by their state of health, a court must decide what will happen. The court will consider the opinion of the incapacitated person.

If someone you are caring for wishes to stay in their home, there are various kinds of support that can be put into place. For more on this, see the Resources section at the end of this guide.

To learn more, see our Web Guide called Caregivers: Practical Legal Tools. (educaloi.qc.ca/en/web-guides).

Complaints about health and social services

Anyone who uses public health and 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
- medical aid in dying (when a doctor hastens your death to relieve suffering)

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

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

Éducaloi

educaloi.qc.ca/

See in particular our Web Guide called *Caregivers: Practical Legal Tools*:
educaloi.qc.ca/en/web-guide/caregivers-legal-tools/

Quebec Government: Programs and Services for Seniors

quebec.ca/en

Click on *Family and support for individuals*.
Then choose *Seniors*.

You can find a few model powers of attorney on this site.
Click on *Justice*, then *Power of Attorney*.

Boussole juridique

[boussole juridique.ca/en](http://boussolejuridique.ca/en)

A directory of legal resources across Quebec

Community Justice Centres

justicedeproximite.qc.ca/en

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

Resolve Problems

Seniors Help Line (Ligne Info Abus Aînés)

aideabusaines.ca/en

1-888-489-2287

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

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

cdpdj.qc.ca/en

514-873-5146 or 1-800-361-6477

The Commission can investigate the financial exploitation of vulnerable people.

Curateur public du Québec (public curator) and Quebec government website

quebec.ca/en/government/departments-and-agencies/curateur-public

quebec.ca/en/justice-and-civil-status/legal-protection

1-844-532-8728

These websites have information on protection mandates, tutorships, temporary representation and the assistance measure and how to report abuse of an incapacitated person. There is a free protection mandate form on the *Legal protection* website. See the section *Protection mandate*, subsection *Drawing up your protection mandate*.

Users' and Residents' Committees

rpcu.qc.ca/en

All health and social services institutions have either a users' or residents' committee. They can provide information and help regarding the complaint process. Ask the institution you are dealing with for the contact information of the committee.

Service Quality and Complaints Commissioner

The commissioner handles complaints about health and social services. For contact information of the commissioner, call Services Québec at 1-877-644-4545 or ask the staff at the institution you are dealing with.

Contact information of the commissioner is also available at quebec.ca/en. Go to *Health* then *Health system and services*. Then go to *Rights, Recourses and Complaints* and *The Health and Social Services Network Complaint Examination System*. Go down the page to *Contact Information for the Service Quality and Complaints Commissioner for Each Public Institution*.

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

fcaap.ca/en

1-877-767-2227

CAAPs help people and their representatives file complaints about health and social services. To find the centre in your region, go to *Contact us* on the website or call the phone number.

For Caregivers

L'Appui

lappui.org/en

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

L'Appui runs The Caregiver Helpline (1-855-852-7784), which offers support and referrals.

Proche aidance Québec

procheaidance.quebec (website in French only)

A federation of local and regional groups that help improve quality of life for caregivers

Biblio-Santé

bibliosante.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.

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)

cnesst.gouv.qc.ca/en

1-844-838-0808

The Commission website has information about time off for caregivers. There is also a form for health and social services professionals to fill out to certify that a person is a caregiver. The form is in French only. To get the form, go to the English version of the website, then go to *Documentation* at the bottom. Click on *Forms and publications*. In the search box on the right, enter *proche aidant*.

Community Health and Social Services Network (CHSSN)

chssn.org/members

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

Advance Medical Directives

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

ramq.gouv.qc.ca/en

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. You can also see *Issue my directives in case of incapacity* in the *What do you want to do?* section.

Help to Stay at Home

Société d'habitation du Québec (Quebec housing corporation)

habitation.gouv.qc.ca/english

This website lists housing assistance programs in Quebec, including the Residential Adaptation Assistance Program for people with special needs.

Tax Credits for Seniors - Quebec Government

revenuquebec.ca/en

Click on *Citizens* then click on *Tax Credits* at the top of the page. Then click on *Seniors* on the left side.

Financial Help for Renters

quebec.ca/en

Click on *Homes and housing*, then *Renting*. Go to *Financial Assistance for Housing*.

Tax Credits for Seniors – Federal Government

canada.ca

Chose English then click on Benefits. Go to *Public pensions*.

Popotes roulantes (Meals on wheels)

popotes.org (website in French only).

1-877-277-2722 ext 205

To find services in your area, go to the section *Trouver une popote près de chez vous* and enter your postal code.

Domestic help subsidized by the Régie de l'assurance maladie (RAMQ or health insurance board)

ramq.gouv.qc.ca/en

Go to *Aid Programs* then *Accommodation and domestic help* then *Domestic help*.

CLSC help at home for people experiencing a loss of independence

sante.gouv.qc.ca/en/repertoire-ressources

Find the CLSC in your area by clicking on *CLSC*. Then enter the postal code of the person you care for.



OUR LIVES AS CITIZENS

The law is at the heart
of life in society.
So knowing your rights
and responsibilities is key.



THE LAW IS EVERYWHERE

It's part of everyday situations,
not just conflicts.



HANDLE WHAT COMES YOUR WAY

By explaining the law, Éducaloi helps
Quebecers make informed decisions.

Éducaloï is there to help all Quebecers!



éducaloï