



Decision Box for patients

Incapacity in Older People

Choosing Whether or Not to Prepare a Protection Mandate*

THIS DOCUMENT IS AIMED AT...

- Patients with memory and attention disorders who live in the community
- Natural caregivers of patients with memory and attention disorders

THIS DOCUMENT IS DESIGNED TO...

- Inform patients and their loved ones about some of the options available
- Help prepare the person and their loved ones for discussions among themselves and with health professionals
- Help patients and their loved ones choose an option that reflects their priorities and capacities

* This document is also known in jurisdictions outside Quebec (Canada) as a **lasting power of attorney**, **power of attorney for personal care**, **representation agreement**, **personal directive**, **advance healthcare directive**, or **healthcare proxy**, among others.



Incapacity

- A person is considered incapacitated when they are **unable to take care of themselves, manage their property, or express their wishes**.
- Incapacity can be caused by a mental or degenerative illness, a stroke, an intellectual disability, a head injury, or a weakened state as a result of disease.
- Persons who are incapacitated may continue to manage their affairs and make decisions regarding their health themselves, **provided the court has not deprived them of their legal capacities**.
- The courts may determine legal incapacity further to an [incapacity finding*](#).

Examples of behaviours of an incapacitated person

- Difficulty following a familiar recipe.
- Hesitation when performing simple tasks like locking the door or getting dressed.
- Changes in their spending habits or budget management.

[* See Glossary p. 8](#)

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Protection Mandate*

- An official, [notarized*](#) or [holograph document*](#)
- Allows a person to:
 - **Express their wishes** about how they would like to be looked after and how their property is to be managed in the event they are incapacitated.
 - Knowingly **appoint the person of their choice to act on their behalf** in the event they are incapacitated ([mandatory*](#)).
- **Includes advance medical directives** that allow the person to express their care preferences (consent to care, end-of-life care wishes), for example, to avoid non-beneficial medical care.
- The protection mandate allows you to **appoint one or more persons to look after you and your property while you are still alive**.
- A protection mandate is **not a will**. The purpose of a will is strictly to state how and to whom your property will be distributed after your death.
- The protection mandate **annuls all the powers of attorney** authorized by the person (e.g., for their banking, or to look after them or manage their property).





INTRODUCTION (CONT'D)

Who and why?

Who can consider preparing a protection mandate?

Any person considered of sound mind, especially those with a medical condition that puts them at greater risk of becoming incapacitated and unable to care for themselves or their property.

Steps for preparing a protection mandate

1. Choose what you want to indicate in the mandate, e.g., mandatory, housing preferences, consent to care, preferences regarding property management, end-of-life wishes.
2. Discuss with your loved ones your desire to draw up a protection mandate.
3. Choose one or more mandataries.
4. Prepare your mandate with the help of a professional (lawyer or notary) or using the online form (see list of resources on page 7).
5. Let your loved ones know about your protection mandate, and keep a copy of it in a safe place.

Example of Mrs. Rose Gibson

Mrs. Gibson is a widow who suffers from Alzheimer's disease. She has no children and is no longer capable of taking care of herself. For instance, she forgets to pay her bills and to take her medication. When her husband was still alive, she drew up a holograph protection mandate in which she named her husband as mandatory, in the event she became incapacitated. Her husband has since passed away, but she had taken the precaution of naming a nephew and niece as replacement mandataries. Her mandataries will ask that the mandate be homologated, will ensure that Mrs. Gibson receives the care she needs, and will look after paying her bills. They will also make sure that the instructions she set out in her protection mandate are followed.

What if the court determines that a person is incapacitated and they don't have a protection mandate?

Another type of protection regime will be instituted, and a tutor or curator will be appointed (see page 5 for details).

Taking patient priorities into account

Depending on their priorities, patients **may decide to prepare a protection mandate or not**. The choice is up to them because...

- There are **pros and cons** to preparing a mandate.
- There is a **lack of scientific information** on the impacts of preparing a protection mandate.



We recommend that...

- The decision take into account the patient's and caregiver's values and priorities.
- The healthcare professional share this decision with the patient and, if necessary, with the caregiver.



PRIORITIES

Exercise to clarify your priorities
For patients and their natural caregivers

SELECT WHAT IS MOST IMPORTANT TO YOU.

CHECK ONE ITEM ONLY.

Decide myself HOW my property, well-being, and healthcare will be managed

POSSIBLE OPTIONS:

- Protection mandate (see p. 5)

Retain my civil rights (like the right to vote)

POSSIBLE OPTIONS:

- Protection mandate (see p.5)

Protect myself against financial abuse

POSSIBLE OPTIONS:

- Protection mandate (see p.5)
- Tutorship (see p.6)
- Curatorship (see p.6)

Limit the stress on my loved ones

POSSIBLE OPTIONS:

- Protection mandate (see p.5)

Express my wishes and preferences

POSSIBLE OPTIONS:

- Protection mandate (see p.5)
- Tutorship (see p.6)

Limit the legal costs

POSSIBLE OPTIONS:

- Protection mandate (see p.5)

Decide myself WHO will make decisions about my care

POSSIBLE OPTIONS:

- Protection mandate (see p.5)

Other:

List the options (see p.5-6) that allow respecting this priority:





OPTIONS

Explore the options



Protection Mandate

previously known as "mandate in case of incapacity"

BENEFITS

Decisions are taken by the mandatory ⊕⊕○○○

Of 100 mandataries appointed by the person in a mandate, 92 **actually make decisions on behalf of the person** (92%).

Choice to consent to certain care or not ⊕○○○○

Of 100 people who set out their end-of-life care wishes, between 50 and 97 **receive their desired care**:

- 97% receive comfort care, as requested.
- 83% receive more limited care, as requested.
- 50% receive all possible care, as requested.

Less stress for loved ones ⊕○○○○

Of 100 people who may have to make a decision for a patient at some point, 33 **will experience significant symptoms of stress** (33%).

A protection mandate can **make it easier for loved ones to make end-of-life treatment decisions**.

↑ Communication between patients and loved ones ⊕○○○○

Of 100 patient (with their loved ones) who plan to prepare a protection mandate, the 28 who discuss the matter amongst themselves will be in **greater agreement** than those who do not communicate with one another (28%).

No additional anxiety or symptoms of depression ⊕○○○○

Patients who discussed plans to prepare a protection mandate experience **no additional anxiety or symptoms of depression** compared to those who didn't.

HARMS

↑ Risk of mistreatment or abuse

Unlike in a tutorship or curatorship, it is not the Public Curator's role to supervise how mandataries manage the person's property and money. The Public Curator intervenes only when someone reports a possible case of mistreatment or abuse.

The protection mandate can, however, include certain clauses to limit the powers of the mandatory and reduce the risk of abuse.

Directives sometimes not applicable ⊕○○○○

Of 100 people appointed to make decisions for the patient, 11 report that the advance medical directives regarding end-of-life care do not apply to most of the decisions they will have to make (11%).

Of 100 people appointed to make decisions for the patient, 14 report experiencing difficulties in applying the patient's directives (14%).

Non-compliance with advance medical directives by loved ones or medical staff ⊕○○○○

Of 100 older adults who indicated their resuscitation preferences in an advance medical directive, 37 **do not receive their desired treatment** (37%).

Must be homologated (enter into effect) in its entirety

The protection mandate **must be homologated** as is. For example, if the person is able to care for themselves, but not their property, while the mandate stipulates protection of both, then it cannot be homologated solely for management of the person's property. In this case, a protection regime will need to be instituted, however the court may take into consideration the wishes set out in the mandate.

CONFIDENCE IN THESE RESULTS:

⊕⊕⊕⊕ **High:** Further research is very unlikely to change our confidence in the estimate of effect.

⊕⊕⊕○ **Moderate:** Further research is likely to have an important impact on our confidence in the estimate of effect and may change the estimate.

⊕⊕○○ **Low:** Further research is very likely to have an important impact on our confidence in the estimate of effect and is likely to change the estimate.

⊕○○○ **Very low:** Any estimate of effect is very uncertain.





PROTECTION MANDATE

GENERAL DESCRIPTION

Allows the person who is of sound mind to express how they wish their property and well-being to be managed, and to choose the person who will act on their behalf in the event they become incapacitated.

CHOOSING THE PERSON IN CHARGE

The person chooses the mandatary (see Glossary, page 8) who will act on their behalf.

MAKING DECISIONS

The mandatary is obliged to ensure the person's decisions are complied with, as described in the mandate.

RISK OF ABUSE

The mandate must include certain clauses to reduce the risk of abuse by the mandatary.

CIVIL RIGHTS, E.G., RIGHT TO VOTE

Upheld

DURATION OF LEGAL PROCEEDINGS

Relatively short proceedings

RELATED COSTS

Mandate preparation fees:

- Drafting (\$30)
- Notary (\$350-500)
- Homologation of protection mandate (\$1,000)
- Medical and psychosocial assessments (\$1,025 to \$1,500)

Annual fee: \$0

RISK OF CONFLICT

Between loved ones and mandatary

STRESS FOR LOVED ONES

Less

TUTORSHIP

Required by the court for a person who has not prepared a protection mandate and who becomes temporarily incapacitated

A tutorship council chaired by a judge appoints a tutor in accordance with the recommendations of the person's loved ones. The person is not consulted during this process.

The tutor makes all the decisions for the person, in accordance with their wishes, if they are known, but is not obligated to respect them. Allows the person to express their wishes, insofar as they are capable of doing so.

The tutor is supervised by the Public Curator.

Lost

Longer proceedings

Preparation fees:

- Instituting protective supervision (\$2,062)
- Legal fees (\$1,000)
- Bailiff (\$20)
- Medical and psychosocial assessments (\$1,025 to \$1,500)

Annual fees: Property management fees vary according to the person's needs: protection of the person (\$1,030/year).

The tutor can ask to be paid a salary.

Between the tutor and the person's loved ones

More

CURATORSHIP

Required of persons who have not prepared a protection mandate and who become permanently incapacitated. Last-resort solution.

A tutorship council chaired by a judge appoints a curator (private or public, see Glossary, page 8) in accordance with the recommendations of the person's loved ones. The person is not consulted during this process.

The curator makes all the decisions for the person, in accordance with their wishes, if they are known, but is not obligated to respect them.

The Public Curator requires that persons providing care and services to the individual submit reports.

Lost

Longer proceedings

Preparation fees:

- Instituting proceedings (\$2,062)
- Legal fees (\$1,000)
- Bailiff (\$20)
- Medical and psychosocial assessments (\$1,025 to \$1,500)

Annual fees: Property management fees vary according to the person's needs: protection of the person (\$1,030/year).

Between loved ones and the curator

More



CHOOSING AN OPTION

Do you prefer to prepare a protection mandate, or not?

Are you comfortable with you choice?

YES NO

Sure of myself	Do you feel SURE about the best choice for you?	<input type="radio"/>	<input type="radio"/>
Understand information	Do you know the benefits and risks of each option?	<input type="radio"/>	<input type="radio"/>
Risk-benefits ratio	Are you clear about which benefits and risks matter most to you?	<input type="radio"/>	<input type="radio"/>
Encouragement	Do you have enough support and advice to make a choice?	<input type="radio"/>	<input type="radio"/>

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RESOURCES AND CONTACTS

Protection Mandate form:

www.curateur.gouv.qc.ca/cura/en/outils/publications/mon_mandat.html

How to prepare a protection mandate:

Notary: 1-800-NOTAIRE (1-800-668-2473) or www.cnq.org/en/famillies-couples.html

Curator: www.curateur.gouv.qc.ca/cura/en/outils/publications/mon_mandat.html

To report a situation of mistreatment, negligence, or abuse of a person under a protection mandate:

Public Curator: www.curateur.gouv.qc.ca/cura/en/outils/joindre/index.html or 1-800-363-9020 (toll free)

For more information on elder abuse:

La ligne Aide, Abus, Aînés: www.aideabusaines.ca or 1-888-489-2287 (toll free)

Other resources:

Association des proches aidants de la Capitale-Nationale: 418-688-1511 or www.apacn.org

Société Alzheimer de Québec: 418 527-4294 or www.societealzheimerdequebec.com/wp/





GLOSSARY

Definitions

Mandatory

The person who receives a mandate or power of attorney to represent their mandatee in a legal act.

Tutorship council

One to four persons with an interest in the person and who are named by the court to take part in decisions regarding the management of the individual's property or well-being.

Incapacity finding

Incapacity is determined by a medical and psychosocial assessment.

Notarized document

Document that is signed before a notary, indicating it has been authenticated. Notarized documents are harder to challenge in court. The notary will register the notarized document in the register of mandates at the Chambre des notaries du Quebec.

Document in the presence of witnesses, or holograph

Document prepared without the help of a notary that is signed by the person and two witnesses who attest that the person is of sound mind. In the case of a holograph mandate, it will be homologated by the court at the time of the incapacity finding. This type of document can also be completed with the help of a lawyer.

Curator

Legal representative named by the court to represent the person who has become incapacitated, ensure their protection, and manage their property. The curator is named following a recommendation by the tutorship council made up of one to three people with a close relationship to the patient, insofar as possible.

Private curator

Anyone in the circle of friends and family of the adult needing protection can be named as their curator, as long as the person is an adult or emancipated minor: spouse, partner, family member, friend, or another person close to the protected person.

Public Curator

If no one in the person's circle of friends and family can or wants to be the curator, the court will name the Public Curator to act as the person's curator.

Management of property

Consists of partial or complete management of all the property belonging to the person (e.g., building and objects), and of their financial affairs (e.g., income, interest, and investments). Under a tutorship, the tutor is obligated to preserve and maintain the value of the property for which they are responsible. They can also make investments provided they are presumed to be sound. Under a curatorship, the curator must preserve the value of the property, and also has a duty to try and make it increase in value. In a curatorship, all financial decisions, such as selling or hypothecating a building, are considered legitimate actions, while in a tutorship, the tutor requires the approval of the court before taking out any loans, selling any property, or hypothecating a building.

Management of well-being

Includes all decisions relating to the health and well-being of the incapacitated person. The tutor responsible for managing the person's well-being, and the curator, are tasked with authorizing or refusing medical care, looking after the custody and care of the person, and obtaining a re-evaluation of the incapacity of the person every three years (tutorship) or every five years (curatorship). Responsibility for the custody and care of the person can be transferred to an establishment like a long term care facility or any other institution offering such essential services.





PROTECTION MEASURE

for patients of sound mind

Ordinary mandate

A written document (notarized or not) that allows you to name one or more persons to act on your behalf for certain predetermined administrative acts.

Adviser for adults (legal measure)

The adviser's role is to assist and advise patients in managing their property. They are not authorized to take legal action on the person's behalf.

End-of-life care directives or living will

Indicates the patient's preferences with regard to treatment to prolong life and to relieve pain.

Advance medical directives

(as per Bill 52, Quebec's Act respecting end-of-life care)

Sets out the medical care a patient agrees to or refuses in specific clinical situations.

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