

How can the law help
children with special
needs?

In today's presentation:

- Minors (under 18) with special needs
- Majors (aged 18+) with special

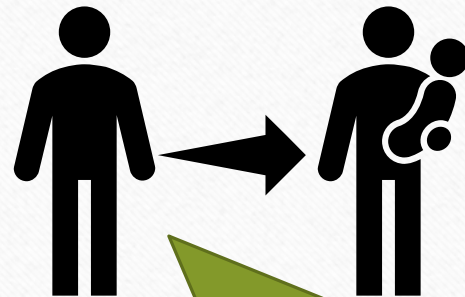


True or false?

1. The legal tutor is the presumed tutor of a child (his or her biological parent).
2. Suppletive tutorship applies for both minors and majors with special needs.
3. A child with special needs can consent on his or her own to care that can put his or her life at risk.
4. A child with special needs' tutor has full administration of the child's property.
5. A child with special needs, no matter how old he or she is, is legally represented by his or her tutor.

1.1 Types of tutorship

Legal tutorship: The presumed tutorship that a biological parent has on their child.



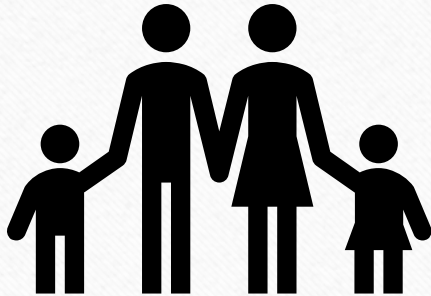
Dative tutorship: When a child doesn't have a legal tutor, this type of tutorship comes from a legal procedure.

Suppletive tutorship: With a legal tutor's consent, it allows a child's relative to become his or her tutor.



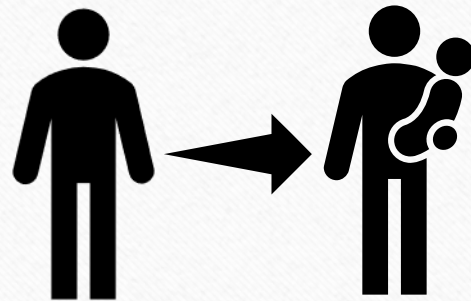
1.1.1 Legal tutorship

- A minor's tutor = simple administration of his or her property.



1.1.2 Dative tutorship

- When a child doesn't have a legal tutor anymore
- Can only be obtained by legal procedures



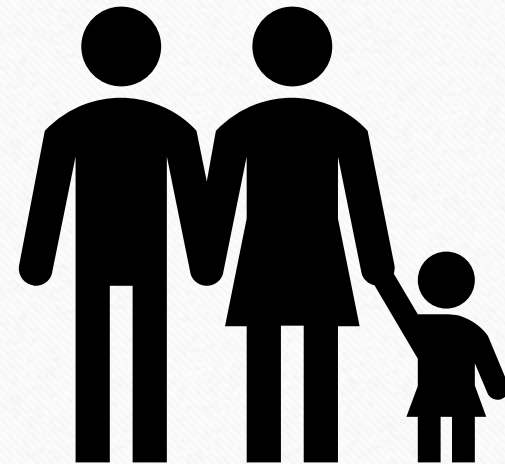
1.1.3 Suppletive tutorship

- Special new type of tutorship
- Can only be obtained with the legal tutor(s)' consent
- Only for the child's relatives or step parents



Exercise: Which type of tutorship applies to the following situation?

- Stacey is 13 years old. She lives with both of her biological parents, who take all of the important decisions in her life for her. Mary, her mother, asks you what kind of tutorship she has on Stacey.



1.2 Care for children with special needs



1.2.1 Child under 14 years old

- In most cases, the child's tutor will be the only one allowed to give their consent to care procedures



- However, the child will have his or her word to say if the care procedure is not needed

Example

- Dave is 5 years old. His parents and legal tutors want him to get a nose job to make sure that he doesn't get bullied when he starts school. Dave consents to this procedure, without fully understanding it. It is considered not required by Dave's general health. Will he be able to get the nose job without having to get the court's authorization?

1.2.2 Child over 14 years old

- Can consent alone to most care procedures



- However, if the child's life could be in danger because of the procedure, the tutor's consent will be required

Example

- Emily is 16 years old. After hearing that some celebrities get some of their ribs removed to look thinner, Emily wants to do the same. This procedure can seriously put her life at risk. Will Emily be able to get this surgery even if her legal tutors are opposed to this idea?

Example

- John's parents think that he might be depressive. When they suggested him to go see a psychologist, John refused, saying that he doesn't feel depressive. John is 14 years old. Can his parents force him to go see a mental health professional?

1.3 Administration of the minor's property



1.3.1 Simple administration of the minor's property

- Impossibility for the tutor to alienate the minor's property (art. 188 C.c.Q.).



1.4 Legal representation



1.4.1 Legal representation of children with special needs

- Representation will be done by the tutor, even after the age of 14 years old (art. 188 C.c.Q.).
- Some dispositions of the Civil Code will not apply to a child with special needs. (ex: Art. 156 C.c.Q.).

2. Major or person of full age (art. 256 C.c.Q.)

18 years and older

Protective supervision

- Definition : Protective supervision is to ensure the protection of the person, the administration of his patrimony (belongings) and to help the person in the exercise of their rights.

Incapacity

- Definition : A person can be declared incapable and have protective supervision when they are unable to care for themselves, administer their property for reasons such as illness, deficiency or debility which impairs the mental faculties or physical ability to express their will.

Protective supervision

- Done with the interest of the person with the respect and safeguarding of the autonomy of the major
- 2 aspects : person and property
- There is a scale for the protection regimes
 - Gravity of acts to be done
 - Degree of inaptitude

Who can ask for the opening of protective supervision?

- The person themselves
- Spouse
- Family
- People with the person's interest in mind

Factors taken into consideration by the courts

- Opinion of family and friends
- Medical and psychosocial reports
- Degree of autonomy of the person
- Wants of the person in question

The scale of protective supervision

Advisership

Tutorship

Curatorship

* They increase in gravity depending on the person's degree of incapacity

Advisership

- The person is generally or usually able, but needs help for certain acts or temporarily
- The adviser does not have administration of the property of the major but can intervene in the acts where the court has determined that the major needs assistance

Tutorship

- Partial or temporary incapacity to take care of themselves or administer their property
- The Court will specify which acts can be done by the individual by themselves without the assistance of their tutor
- Needs to be renewed every 3 years unless otherwise specified by the courts
- Guides are available on the public curator website for those who become tutors or curators regarding what the responsibilities are

Curatorship

- Total or permanent incapacity to take care of themselves and their property
- The curator has full administration of the property of the individual
 - Definition of full administration : the person will preserve the property of the person, can make revenue off of the property (ex : if the person owns a house, can rent it out), increase the value of the patrimony (patrimony includes all the assets and debts of the person), can alienate/donate belongings to fulfill obligations and pay off debts
- Needs to be renewed every 5 years unless the courts specify otherwise

Example

- Mark (19 years old) has autism and has trouble communicating with others. He does not understand the value of money and his doctor says he comprehends the world in similar ways as a 6 year old. What protective supervision do you think Mark would have?

How to ask for a protective supervision?

- A request for protective supervision can be made to a court or a notary.
- It is important to note that the request can only be to a notary if no one is challenging the request.

Wills

- It is very important to keep an updated will indicating who will become tutor in the event of death
- The will should be notarized in order to make it harder to contest
- Whoever you name in the will to become tutor of your child with special needs, be sure that the person has consented to assume this role and follow up with this person throughout the years
- **Educaloi:** <https://www.educaloi.qc.ca/en/capsules/dying-without-will>



2002 NBQB 185 – Case of protective supervision

- E.L., because of her dementia, is an incompetent adult under Jim Terry's curatorship.
- This case is linked to E.L.'s possible placement in a nursing facility.
- E.L.'s doctor believes that she should be placed in a nursing facility.
- The court must determine if E.L. is neglected and should be placed under the Minister of family and community services's protection.
- Conclusion: E.L. has been neglected, living with her husband. Therefore, she is placed under the Minister's supervision for 12 months.



Other resources that might help you:

- <http://www.handytax.ca/information/articles/resources-available-for-parents-of-special-needs-children-in-canada/>
- **Educaloi:** Governmental website, you can find various true legal information on it www.educaloi.qc.ca
- Public Curator of Québec:
<https://www.curateur.gouv.qc.ca/cura/en/outils/publications/index.html>